

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

JUSTIN CONLEY, BRANDON)	
IVY-PERRY, LAURA LEBRYK, and)	
JEREMY BAIN, as Individuals and on)	
behalf of the Class,)	
)	
Plaintiffs,)	
)	
vs.)	NO. 3:11-cv-01059-GPM-SCW
)	
CARRIER IQ, INC.)	
)	
Defendant.)	

CLASS ACTION COMPLAINT

NOW COMES Plaintiffs, Justin Conley, Brandon Ivy-Perry, Laura Lebryk and Jeremy Bain, on behalf of themselves and all others similarly situated, by their attorneys, David Cates and The Cates Law Firm, LLC, and for the various causes of action against Carrier IQ, Inc., state as follows:

PARTIES

1. Plaintiff, Justin Conley, owns an iPhone 4, which is operating on AT&T’s cellular network. Plaintiff Conley is a citizen of the State of Illinois, who resides in St. Clair County, Illinois.
2. Plaintiff, Brandon Ivy-Perry, owns an Apple iPhone 4S, which is operating on Sprint’s cellular network. Plaintiff Ivy-Perry is a citizen of the State of Illinois, who resides in St. Clair County, Illinois. Plaintiff Ivy-Perry formerly owned an HTC Evvo, also on the Sprint Network.

3. Plaintiff, Laura Lebryk, owns an iPhone 4S, which is operating on AT&T's cellular network. Plaintiff Lebryk, is a citizen of the State of Illinois, who resides in St. Clair County, Illinois.

4. Plaintiff, Jeremy Bain, owns an HTC manufactured phone using the Android OS, which is operating on T-Mobile's cellular network. Plaintiff Bain is a citizen of the State of Illinois, who resides in St. Clair County, Illinois.

5. At all times relevant herein, Defendant, Carrier IQ, Inc., ("Carrier IQ") was a Delaware Corporation, with its principal place of business located at 1200 Villa Street, Suite 200, Mountain View, California, registered to do business in the State of Illinois.

6. At all times relevant herein, Carrier IQ was doing business in the State of Illinois and maintained an office at 1111 Plaza Drive, Suite 330, Schaumburg, Illinois 60173.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action under both the Class Action Fairness Act of 2005, 28 U.S.C. 1332(d)(2), as Plaintiffs are citizens of Illinois, Defendant is a citizen of Delaware, and the amount in controversy exceeds \$5,000,000.00 and under 28 U.S.C. §1331 as Defendant has violated 18 U.S.C. §2510, *et seq.*, and 18 U.S.C. §2701, *et seq.*

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 in that Plaintiffs (except for one) are residents of this District, many of the acts and transactions giving rise to this action occurred in this District, and because Carrier IQ:

- a. Is authorized to conduct business in this district and has availed itself of the laws and markets within this district within this district by the distribution and sale of its product in this District;
- b. Does substantial business in this District; and,
- c. Is subject to personal jurisdiction in the State of Illinois and in this District.

**GENERAL FACTUAL ALLEGATIONS
COMMON TO ALL COUNTS OF PLAINTIFF'S COMPLAINT**

9. Carrier IQ, Inc., is a software developer and manufacturer. “Carrier IQ, Inc. is the world’s leading provider of Mobile Service Intelligence solutions. Founded in 2005 and with a management team steeped in the mobile telecoms industry, the company is privately held and funded by some of the leading players in the venture capital industry.” www.carrieriq.com.

10. At issue in this lawsuit is whether Carrier IQ, Inc., (*hereafter*, “Carrier IQ”) violated certain laws applicable to members of the Class by placing its patented Carrier IQ software on the wireless phone and/or handsets of the members of the Class, including Plaintiffs herein; using that software to track the information that the users of the phone (and/or handset) entered through their keystrokes, including such information as websites visited, messages to other individuals, recording of calls, and all other keystrokes, which were then recorded and relayed to Carrier IQ, Inc. for distribution to third parties – all without the consent or knowledge of the members of the Class, including Plaintiffs herein.

11. By partnering with a variety of “wireless carriers,” the Carrier IQ software was placed on wireless phones running the Android OS, on iPhones and BlackBerrys, thereby allowing Carrier IQ to surreptitiously record all “key strokes” entered by the users into their phone or handheld device. The data surreptitiously captured is then sent to Carrier IQ, without the consent or knowledge of the individual using the phone or handheld device (*collectively referred to hereafter as “handsets”*).

12. Upon information and belief, the information generated by recording the “keystrokes” (*hereafter referred to generally as “keystroke data”*) was valuable to the wireless carriers and handset manufacturers who were customers of Carrier IQ. Because of the value of

this keystroke data, Carrier IQ was able to surreptitiously install its Carrier IQ software into millions of handsets, by selling its software program to the wireless carriers and handset manufacturers.

13. All Plaintiffs herein have handsets, which contain, upon information and belief, the Carrier IQ software program (*generically referred to hereafter as “Carrier IQ software application”*).

14. Upon information and belief, Carrier IQ boasts that its Carrier IQ software application is installed in more than 140,000,000 handsets in the U.S. alone. www.carrieriq.com.

15. Upon information and belief, the Carrier IQ software application is what is known as a “rootkit” application, which, in general terms, means software that enables Carrier IQ access to a handset or information stored or logged in the handset, but which is hidden from the user or administrator by subverting standard operating system functions within the handset. In other words, simply put, a “rootkit” application allows Carrier IQ access to the data on a user’s handset without the knowledge of the user.

16. Upon information and belief, Carrier IQ installed the Carrier IQ software application into handsets, such as the HTC Evvo, iPhone, and Blackberry at the requests of certain wireless carriers and handset manufacturers.

17. Once a handset is sold, and immediately upon activation, the Carrier IQ software application begins tracking all keystrokes made by the user on that handset, even including supposedly encrypted web addresses, which are submitted via a secure socket layer (https) and are supposed to be encrypted from view.

18. Upon information and belief, Carrier IQ, through its Carrier IQ software application, can also record phone calls and voicemails, and stores location and usage data.

19. Upon information and belief, Carrier IQ, through its Carrier IQ software application, is constantly tracking this keystroke data, even when the handset is not connected via a wireless connection, so that a wireless carrier would not have any legitimate reason to be monitoring the usage of the handset (if such a reason could exist in the first instance).

20. Upon information and belief, the Carrier IQ software application cannot be disabled, even by using a “Force Quit” button contained within the software application (if the software can even be located), which would make the user think the application has been turned off.

21. Upon information and belief, Carrier IQ created this software application with the ability to log every keystroke and keystroke data entry on a handset, including the recording of phone calls and voicemails, and then granted the wireless carriers the ability to determine what keystroke data the wireless carrier wanted to capture from the unsuspecting users, who were not told that their devices were being monitored, and, likewise, were not told that the keystroke data was being shared with third parties.

22. Upon information and belief, the wireless carriers, all of whom were customers of Carrier IQ, were also able to place events in the software application that would cause a user’s handset to automatically send reports back to Carrier IQ or the wireless carrier that contained the keystroke data that Carrier IQ had stored, all without the user’s knowledge or consent. (This feature is referred to generally hereafter as the “phone home feature.”)

23. In addition to the “phone home” feature, upon information and belief, Carrier IQ, and/or the wireless carriers, also maintained the ability to contact individual handsets, or a couple of handsets, running the Carrier IQ software application that would allow them to download the

keystroke data from Carrier IQ software application that was running on a user's handset, all without the user's knowledge and/or consent.

24. Carrier IQ's intent in the creation of this software application could not be clearer, as the patent application for the software application reads, in pertinent part:

2. A method for collecting data at a server coupled to a communications network, comprising: transmitting to a device a data collection profile, wherein the data collection profile comprises a plurality of parameters defining a set of data to be collected by the device, a first condition under which the set of data is to be collected, and a second condition under which the set of data is to be transmitted; and receiving from the device the set of data collected in response to the second condition.
10. The method of claim 2, wherein the set of data relates to an end user's interaction with the device.
11. The method of claim 10, wherein the interaction with the device comprises the end user's pressing of keys on the device.

Patent Application #20110106942, published May 5, 2011.

25. By its own admission, Carrier IQ intended to create a software application ("method") to capture keystroke data, including voice recordings and other actions inputted by a user on his/her handset.

26. Carrier IQ developed said software application with the intent to sell the software application to third party wireless carriers who, in conjunction with Carrier IQ, installed the software application on the handsets purchased by the wireless carriers' customers. Thereafter, Carrier IQ, in conjunction with the wireless carriers, willfully, intentionally, and surreptitiously downloaded and tracked the keystroke data entered by the user of the handset, all without the user's consent and/or knowledge.¹

¹ When Defendant's conduct was revealed in late November 2011 by a tech blogger, Carrier IQ sent a threatening cease and desist letter threatening litigation which it subsequently withdrew when the blogger demonstrated video of proof the Carrier IQ software application actively tracking all keystrokes on a phone.

27. In addition to the fact that Defendant willfully, intentionally and illegally tracked, gathered and stored the keystroke data from the Plaintiffs' handsets, the Defendant also "piggy-backed" on the available memory contained in the handsets of Plaintiffs and members of the Class. Carrier IQ's unlawful taking of memory from the Plaintiffs and members of the Class caused injury to the handset user because the owner of the handset did not receive the benefit of the bargain for which he/she had contracted.

28. Specifically, when the Plaintiffs herein purchased their respective handset, each handset had a specific value, all of which ranged between two hundred dollars and four hundred dollars, even with the agreement to a new or renewed service plan. None of Plaintiffs' handsets came with unlimited data storage or memory.

29. Therefore, when the purchaser of the handset bought his/her device, he/she purchased the handset knowing that there was a limited, albeit advertised, amount of memory available. Therefore, the amount of memory available has a set value, differing only by the price of the handset.

30. When the Defendant, Carrier IQ, tracks, gathers and stores the keystroke data on Plaintiffs' handsets, Carrier IQ intentionally and willfully deprives each and every user of the valuable memory and data storage capacity which the user bargained for in his/her purchase of the handset, all without informing the user and/or gaining his/her consent.

31. Therefore, Carrier IQ, through its software application, has intentionally, willfully and illegally stolen storage memory from Plaintiffs and each and every members of the Class. As a result of Carrier IQ's willful, intentional and illegal conduct, the value of the handset is decreased by the amount of memory unlawfully pirated by Carrier IQ, all without the knowledge of the user.

32. Carrier IQ has profited from the illicit tracking, gathering and storage and subsequent transmission of the keystroke data entered by Plaintiffs and members of the Class, considering that Carrier IQ has infected over 140,000,000 handsets with the Carrier IQ software application.

33. Upon information and belief, Carrier IQ has profited from the sale and/or licensing of this software application to the wireless carriers and handset manufacturers by advertising that the Carrier IQ software application “give[s] Wireless Carriers and Handset Manufacturers unprecedented insight into their customers’ mobile experience.”

www.carrieriq.com.

34. Plaintiffs and members of the proposed Class were further harmed because their handset were used in ways without their consent or permission, and without their knowledge, because their personal information was willfully and intentionally stolen and transmitted via the internet, and may have been stolen while being broadcast.

35. Carrier IQ has violated several federal laws regarding the access of personal information via computer devices and over wire communications, including the Electronic Communications Privacy Act (18 U.S.C. §2511 *et seq.*) and the Stored Communications Act (18 U.S.C. §2701 *et seq.*).

36. Even without a specific injury in fact, statutory damages are available to Plaintiffs and members of the Class for violations of the Electronic Communications Privacy Act (18 U.S.C. §2511 *et seq.*) and the Stored Communications Act (18 U.S.C. §2701 *et seq.*) as more fully set forth hereafter.

37. Further, Carrier IQ has violated various provisions of Illinois law, all to detriment of Plaintiffs and the Class, thereby causing Plaintiffs and the members of the Class various damages, as further described hereafter.

COUNT I
Violation of 18 U.S.C. §2511 – Electronic Communications Privacy Act – Interception And Disclosure Of Wire, Oral Or Electronic Communications Prohibited

For Count I of their cause of action on behalf of themselves and all others similarly situated, Plaintiffs, Justin Conley, Brandon Ivy-Perry, Laura Lebryk, and Jeremy Bain, state the following:

38. Plaintiffs hereby re-allege and incorporate herein paragraphs 1 through 38 as though fully set forth herein.

39. The United States Code, at 18 U.S.C. §2511 “Interception and disclosure of wire, oral, or electronic communications prohibited,” states in pertinent part:

“(1) Except as otherwise specifically provided in this chapter, any person who—

- (a) Intentionally intercepts, endeavors to intercept or procures any other person to intercept or endeavor to intercept, any wire, oral or electronic communication;
- (b) Intentionally uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when—
 - (i) such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication; or
 - (ii) such device transmits communications by radio, or interferes with the transmission of such communication; or
 - (iii) such person knows, or has reason to know, that such device or any component thereof has been sent through the mail or transported in interstate or foreign commerce; or

(iv) such use or endeavor to use (A) takes place on the premises of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or (B) obtains or is for the purpose of obtaining information relating to the operations of any business or other commercial establishment the operations of which affect interstate or foreign commerce;

* * *

(c) intentionally discloses or endeavors to disclose, to any other person the contents of any wire, oral or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral or electronic communication in violation of this subsection;

(d) intentionally uses, or endeavors to use, the contents of any wire, oral or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;

* * *

shall be punished as provided in subsection (4) or shall be subject to suit as provided in subsection (5).

28 U.S.C. §2511.

40. Carrier IQ created a software application that it surreptitiously installed on Plaintiffs' and the putative class members' handsets that tracked, gathered, stored, transferred, and removed keystroke data, including data communications and recorded and intercepted phone calls and voice messages to the handsets of Plaintiffs and members of the Class, all without the knowledge of the Plaintiffs and/or members of the Class.

41. Upon information and belief, the Carrier IQ software application also willfully and intentionally took the intercepted keystroke data, and sent it to Carrier IQ, who then distributed the keystroke data to unauthorized third parties, all in violation of 18 U.S.C. §2511.

42. 18 U.S.C. §2520 allows the Plaintiffs and members of the Class a private cause of action for the violation of 28 U.S.C. §2511.

43. Further, 18 U.S.C. §2520(c)(2) authorizes damages as follows:

- (2) In any other action under this section, the court may assess as damages whichever is the greater of -
 - (A) the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation; or
 - (B) statutory damages of whichever is the greater of \$100 a day for each day of violation or \$10,000.

44. Plaintiffs and members of the Class have suffered actual damages because of Carrier IQ's willful and intentional pirating of the memory available to each owner of the handset. Alternatively, Plaintiffs and members of the Class are entitled to statutory damages.

45. Further, 18 U.S.C. §2520(b) allows for recovery of punitive damages, attorney's fees, and other litigation costs.

**COUNT II - Violation of 18 U.S.C. §2512 – Electronic Communications Privacy Act –
Manufacture, Distribution, Possession And Advertising Of Wire, Oral Or Electronic
Communications Intercepting Devices Prohibited**

For Count II of their cause of action on behalf of themselves and all others similarly situated, Plaintiffs, Justin Conley, Brandon Ivy-Perry, Laura Lebryk and Jeremy Bain, state the following:

46. Plaintiffs hereby re-allege and incorporate herein paragraphs 1 through 38 as though fully set forth herein.

47. The United States Code, 18 U.S.C. §2512(1) "Manufacture, distribution, possession, and advertising of wire, oral, or electronic communication intercepting devices prohibited," states:

- (1) Except as otherwise specifically provided in this chapter, any person who intentionally –
 - (a) sends through the mail or sends or carries in interstate or foreign commerce, any electronic, mechanical, or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire, oral, or electronic communications;
 - (b) manufactures, assembles, possesses, or sells any electronic, mechanical, or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire, oral or electronic communications, and that such device or any component thereof has been or will be sent through the mail or transported in interests or foreign commerce; or
 - (c) places in any newspaper, magazine, handbill or other publication or disseminates by electronic means and advertisement of –
 - (i) any electronic, mechanical, or other device knowing the content of the advertisement and knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire, oral or electronic communications; or
 - (ii) any other electronic or mechanical, or other device, where such advertisement promotes the use of such device for the purpose of the surreptitious interception of wire, oral, or electronic communications, knowing the content of the advertisement and knowing or having reason to know that such advertisement will be sent through mail or transported in interstate or foreign commerce,

Shall be fined under this title or imprisoned not more than five years, or both.

18 U.S.C. §2512(1)

48. Carrier IQ created a software application that it surreptitiously installed on Plaintiffs' and the putative class members' handsets that tracked, gathered, stored, transferred, and removed keystroke data, including data communications and recorded and intercepted phone

calls and voice messages to the handsets of Plaintiffs and members of the Class, all without the knowledge of the Plaintiffs and/or members of the Class.

49. At the time Carrier IQ installed the Carrier IQ software application in handsets, Carrier IQ knew that the design of its software application and the design of the handset that contained the software application rendered the handset primarily useful for the purpose of the surreptitious interception of wire, oral or electronic communications, and that such handset and its component part, i.e., the software application, would be sent through the mail or transported in interests or foreign commerce, all in violation of 18 U.S.C. §2512(1).

50. Further, Carrier IQ violated 18 U.S.C. §2512(1) when it advertised via electronic means (i.e., its website) that the Carrier IQ software application when inserted into a handset, allowed “Wireless carriers and Handset Manufacturers unprecedented insight into their customers’ mobile experience.” Carrier IQ advertised its software application knowing, or having reason to know, that the design of such a component part device rendered the handset primarily useful for the purpose of the surreptitious interception of wire, oral or electronic communications, all in violation of 18 U.S.C. §2512(1).

51. 18 U.S.C. §2520 allows the Plaintiffs and members of the Class a private cause of action for the violation of 28 U.S.C. §2511.

52. Further, 18 U.S.C. §2520(c)(2) authorizes damages as follows:

- (3)** In any other action under this section, the court may assess as damages whichever is the greater of -
 - (A)** the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation; or
 - (B)** statutory damages of whichever is the greater of \$100 a day for each day of violation or \$10,000.

53. Plaintiffs and members of the Class have suffered actual damages because of Carrier IQ's distribution and/or advertising of the handsets as devices primarily useful for the purpose of the surreptitious interception of wire, oral or electronic communications.

Alternatively, Plaintiffs and members of the Class are entitled to statutory damages.

54. Further, 18 U.S.C. §2520(b) allows for recovery of punitive damages, attorney's fees, and other litigation costs.

COUNT III - VIOLATION OF 18 U.S.C. §2702(A) – VOLUNTARY DISCLOSURE OF CUSTOMER COMMUNICATIONS OR RECORDS

For Count III of their cause of action on behalf of themselves and all others similarly situated, Plaintiffs, Justin Conley, Brandon Ivy-Perry, Laura Lebryk and Jeremy Bain, state the following:

55. Plaintiffs hereby re-allege and incorporate herein paragraphs 1 through 38 as though fully set forth herein.

56. The United States Code, 18 U.S.C. §2702(a) – Voluntary Disclosure of Customer Communications or Records, states:

- (a) Prohibitions. - Except as provided in subsection (b) or (c) -
 - (1) a person or entity providing an electronic communication service to the public shall not knowingly divulge to any person or entity the contents of a communication while in electronic storage by that service; and
 - (2) a person or entity providing remote computing service to the public shall not knowingly divulge to any person or entity the contents of any communication which is carried or maintained on that service -
 - (A) on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communications received by means of electronic transmission from), a subscriber or customer of such service;

(B) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing; and

(2) a provider of remote computing service or electronic communication service to the public shall not knowingly divulge a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by paragraph (1) or (2)) to any governmental entity.

18 U.S.C. §2702(a).

57. At all times relevant herein, Carrier IQ was an entity providing an electronic communication service to the public through its development, manufacture, sale and use of the Carrier IQ software application.

58. Carrier IQ created a software application that it surreptitiously installed on Plaintiffs' and the putative class members' handsets that tracked, gathered, stored, transferred, and removed keystroke data, including data communications and recorded and intercepted phone calls and voice messages to the handsets of Plaintiffs and members of the Class, all without the knowledge of the Plaintiffs and/or members of the Class.

59. Contrary to the plain language of 18 U.S.C. 2702(a), upon information and belief, Carrier IQ knowingly divulged to third persons and/or entities the contents of stored keystroke data taken surreptitiously from the handsets of Plaintiffs and members of the Class while said keystroke data was placed in storage on the handsets of the Plaintiffs and members of the Class.

60. At the time Carrier IQ installed the Carrier IQ software application in handsets, Carrier IQ knew that the design of its software application and the design of the handset that contained the software application rendered the handset primarily useful for the purpose of the surreptitious interception of wire, oral or electronic communications, and that such handset and

its component part, i.e., the software application, would be sent through the mail or transported in interests or foreign commerce, all in violation of 18 U.S.C. §2512(1).

61. Plaintiffs and members of the Class have suffered actual damages because of Carrier IQ's distribution and/or advertising of the handsets as devices primarily useful for the purpose of the surreptitious interception of wire, oral or electronic communications.

Alternatively, Plaintiffs and members of the Class are entitled to statutory damages.

62. 18 U.S.C. §2707 allows the Plaintiffs and members of the Class a private cause of action for the violation of 28 U.S.C. §2702(a).

63. Further, 18 U.S.C. §2707 authorizes damages as follows:

- (a) **Cause of Action.**— Except as provided in section 2703 (e), any provider of electronic communication service, subscriber, or other person aggrieved by any violation of this chapter in which the conduct constituting the violation is engaged in with a knowing or intentional state of mind may, in a civil action, recover from the person or entity, other than the United States, which engaged in that violation such relief as may be appropriate.
- (b) **Relief.**— In a civil action under this section, appropriate relief includes—
 - (1) such preliminary and other equitable or declaratory relief as may be appropriate;
 - (2) damages under subsection (c); and
 - (3) a reasonable attorney's fee and other litigation costs reasonably incurred.
- (c) **Damages.**— The court may assess as damages in a civil action under this section the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation, but in no case shall a person entitled to recover receive less than the sum of \$1,000. If the violation is willful or intentional, the court may assess punitive damages. In the case of a successful action to enforce liability under this section, the court may assess the costs of the action, together with reasonable attorney fees determined by the court.

NATIONWIDE CLASS ACTION ALLEGATIONS

64. Pursuant to Federal Rule of Civil Procedure 23, Plaintiffs on behalf of themselves and all others similarly situated, seeks to represent the following nationwide Class:

All United States citizens who owned a handset that contained the Carrier IQ software application that intercepted keystroke data where Carrier IQ failed to obtain the consent of handset owner and/or failed to inform the handset owner.

Excluded from the Class are: 1) Any employees of the named Defendant, including its officers and agents, and the immediate family of those persons; 2) Plaintiffs' Counsel; and 3) the Judge of the Court to which this case is assigned.

65. Plaintiffs and members of the nationwide Class have met the requirements of Federal Rule of Civil Procedure 23(a) in that:

A. The nationwide Class so numerous that joinder of all members is impractical. Plaintiffs' proposed Class is comprised of millions of users of handsets into which Defendant has surreptitiously placed its Carrier IQ software application. Moreover, the amount of damages suffered individually by each member of the Class is so small as to make suit for its recovery by each individual member of the Class economically unfeasible. Class treatment of the claims asserted herein will provide substantial benefit to both the parties and the Court system.

B. There are common questions of law and fact applicable to the claims asserted on behalf of the nationwide Class, all of which predominate over individual issues.

These common questions include, but are not limited to:

1. Whether Defendant willfully, knowingly, intentionally and surreptitiously installed the Carrier IQ software application in the handsets of Plaintiffs and members of the nationwide Class;
2. Whether the Carrier IQ software application tracked, gathered and stored keystroke data on the nationwide Class members' handsets;

3. Whether the Carrier IQ software application transferred and/or removed data from the nationwide Class members' handsets;
4. Whether Carrier IQ, through the use of its Carrier IQ software application, intentionally intercepted or endeavored to intercept, or through a third party, intercepted any wire, oral or electronic communication from the nationwide Class members' handsets;
5. Whether the nationwide Class members' handsets, or the Carrier IQ software application designed by Defendant, transmits a signal through a wire or cable or other like connection used in wire communication, as defined in 18 U.S.C. §2510, *et seq.*;
6. Whether the nationwide Class members' handsets and/or the Carrier IQ software application, and the keystroke data obtained, meets the definitions specified by 18 U.S.C. §2510;
7. Whether Carrier IQ intentionally disclosed, or endeavored to disclose, to any other person, as defined by 18 U.S.C. §2510, *et seq.*, the contents of any wire, oral or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral or electronic communication in violation of this subsection;
8. Whether Carrier IQ intentionally used, or endeavored to use, the contents of any wire, oral or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication;
9. Whether Carrier IQ had any legal justification to intercept, track, collect, store, transfer, or remove the keystroke data obtained from the members of the nationwide Class or the recording of phone calls and messages;
10. Whether the conduct of Carrier IQ violated 18 U.S.C. §2511;
11. Whether the conduct of Carrier IQ violated 18 U.S.C. §2512(1);
12. Whether the conduct of Carrier IQ violated 18 U.S.C. §2702(a);
13. Whether the members of the nationwide Class have suffered an injury in fact or are entitled to statutory damages;
14. Whether the conduct of Carrier IQ was willful, intentional and malicious, justifying an award of punitive damages.

C. The Plaintiffs' claims are typical of the claims of the proposed nationwide Class, in that the Plaintiffs and members of the nationwide Class will all have had the Carrier IQ software application inserted on their handsets. All will have had their keystroke data intercepted unlawfully.

D. Plaintiffs will fairly and adequately represent and protect the interests of the proposed nationwide Class. Plaintiffs do not have any interests antagonistic to those of the members of the nationwide Class. Further, Plaintiffs have retained competent and experienced counsel in the prosecution of this type of litigation.

66. Plaintiffs and members of the nationwide Class have met the requirements of Federal Rule of Civil Procedure 23(b)(3) in that:

A. The questions of law and/or fact common to the members of the nationwide Class, as set forth above, predominate over any questions affecting only individual members of the Class. The prosecution of separate actions by individual members of the nationwide Class could lead to inconsistent or varying adjudications with respect to individual members of the nationwide Class and could substantially impair or impede the ability of other Class members to protect their interests.

B. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because members of the Class number in the millions and individual joinder is impractical. Further, the class action vehicle is the most appropriate and superior form for the fair and efficient adjudication of this claim, given that:

- (1) Common questions of law or fact predominate over any individual questions that may arise, such that there would be enormous economies to the courts and the parties in litigating the common issues on a class-wide basis instead of a repetitive individual basis;

- (2) Class Members' individual damage claims are too small to make individual litigation an economically viable alternative;
- (3) Class treatment is required for optimal deterrence and compensation and for limiting legal expenses incurred by Class Members;
- (4) Despite the relatively small size of the nationwide Class Members' individual claims, their aggregate volume, coupled with the economies of scale inherent in litigating similar claims on a common basis, will enable this case to be litigated as a nationwide class action on a cost-effective basis, especially when compared with repetitive individual litigation;
- (5) No unusual difficulties are likely to be encountered in management of this action as a nationwide class action in that all questions of law or fact to be litigated at the liability stage are common and predominate as they relate to the nationwide Class; and,
- (6) Class certification is fair and efficient because prosecution of separate actions would create a risk of adjudications with respect to individual members of the nationwide Class, which, as a practical matter, may be dispositive of the interests of other members not parties to the adjudication, or may substantially impair or impede their ability to protect their interests.

WHEREFORE, Plaintiffs, Justin Conley, Brandon Ivy-Perry, Laura Lebryk and Jeremy Bain, pray for an Order of this Court as follows:

- A. Certifying the nationwide Class as requested herein;
- B. Entering an Order appointing David Cates and The Cates Law Firm, L.L.C. as counsel for the nationwide Class; and,
- C. For an award of the actual damages suffered by Plaintiffs and members of the nationwide Class; and,
- D. For disgorgement of profits made by Carrier IQ as a result of its violation of 18 U.S.C. §2511 *et seq.* and 18 U.S.C. §2702(a); and,

E. Or, in the alternative, on behalf of the nationwide Class, for statutory damages of whichever is the greater of \$100 a day for each day of violation or \$10,000, as a result of Carrier IQ's violation of 18 U.S.C. §2511 *et seq.*; and,

F. And, on behalf of the nationwide Class, for an award of the actual damages suffered by Plaintiffs and members of the nationwide Class and disgorgement of profits made by Carrier IQ as a result of its violation of 18 U.S.C. §2702(a), but in no event shall the award be less than the sum of \$1,000.00 per class member; and,

G. On behalf of the nationwide Class, for punitive damages; and,

H. On behalf of the nationwide Class, for attorney's fees and costs incurred as a result of the filing of this cause of action; and,

I. On behalf of the nationwide Class, for injunctive relief prohibiting Carrier IQ from further violating 18 U.S.C. §2511 *et seq.* and 18 U.S.C. §2702(a); and,

J. On behalf of the nationwide Class, enjoin Carrier IQ from tracking, gathering, storing, transferring, or removing the keystroke data and recordings of oral information made by Carrier IQ which was obtained from the handsets of Plaintiffs and members of the nationwide Class; and,

K. For such other relief as this Court deems just under the circumstances.

Respectfully submitted,

/s/ David I. Cates

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