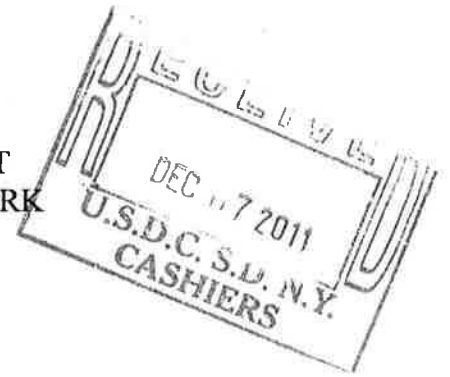


JUDGE GRIESA

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



CHAD MARON and)
 THOMAS NAUDUS, as Individuals and on)
 behalf of the Class,)
)
 Plaintiffs,)
)
 vs.)
)
 CARRIER IQ, INC.)
)
 Defendant.)

11 CIV 8930
NO. _____

Trial by Jury Demanded

CLASS ACTION COMPLAINT

Plaintiffs Chad Maron and Thomas Naudus, on behalf of themselves and all others similarly situated, by their attorneys, Morelli Ratner PC, and for the various causes of action against Carrier IQ, Inc., allege as follows:

PARTIES

1. Plaintiff, Chad Maron owns an iPhone 4, which is operating on AT&T's cellular network. Plaintiff Frisbie is a citizen of the State of New York, who resides in the County of New York, New York.
2. Plaintiff, Thomas Naudus, owns an iPhone 4S, which is operating on AT&T's cellular network. Plaintiff Slaughter, is a citizen of the State of New York, who resides in the County of New York, New York.
3. 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 New York.

4. At all times relevant herein, Carrier IQ was doing business in the State of New York.

JURISDICTION AND VENUE

5. 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 New York, 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.*

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 in that Plaintiffs 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 New York and in this District.

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

7. 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.

8. 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.

9. 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”*).

10. Upon information and belief, the information generated by recording the “keystrokes” (hereafter referred to generally as “keystroke data”) was valuable to the wireless carriers 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.

11. 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”*).

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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).

18. 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.

19. 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.

20. 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.")

21. 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.

22. 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.

23. 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.

24. 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

25. 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.

26. 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.

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. 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.

28. 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.

29. 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.

30. 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.

31. Upon information and belief, Carrier IQ has profited from the sale and/or licensing of this software application to the wireless carriers 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.

32. 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.

33. 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.*).

34. 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.

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 Chad Maron and Thomas Naudus allege the following:

35. Plaintiffs hereby re-allege and incorporate herein paragraphs 1 through 34 as though fully set forth herein.

36. 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.

37. 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.

38. 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.

39. 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.

40. 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.

41. 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.

42. 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 Chad Maron and Thomas Naudus allege the following:

43. Plaintiffs hereby re-allege and incorporate herein paragraphs 1 through 34 as though fully set forth herein.

44. 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)

45. 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.

46. 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).

47. 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).

48. 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.

49. 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.

50. 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.

51. 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 Chad Maron and Thomas Naudus allege the following:

52. Plaintiffs hereby re-allege and incorporate herein paragraphs 1 through 34 as though fully set forth herein.

53. 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).

54. 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.

55. 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.

56. 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.

57. 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).

58. 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.

59. 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).

60. 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

61. 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.

62. 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.

63. 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 Chad Maron and Thomas Naudus pray for an Order of this Court as follows:

- A. Certifying the nationwide Class as requested herein;
- B. Entering an Order appointing David S. Ratner of Morelli Ratner PC 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.

Dated: December 6, 2011

Respectfully submitted,

MORELLI RATNER PC
Attorneys for the Plaintiffs
950 Third Avenue, 11th Floor
New York, New York 10022
(212) 751-9800

By: 
David S. Ratner (DE7758)

Email: DRatner@morellilaw.com

**INDIVIDUAL PRACTICES OF
MAGISTRATE JUDGE RONALD L. ELLIS**

Unless otherwise ordered by Judge Ellis, matters before Judge Ellis shall be conducted in accordance with the following practices. These practices are applicable to matters before Judge Ellis if the matter is within the scope of the District Judge's Order of Reference or if the case is before Judge Ellis pursuant to the parties' consent under 28 U.S.C. § 636(c). Otherwise, the practices of the District Judge to whom the case is assigned apply.

1. Communications With Chambers

A. Letters. Except as otherwise provided below, communications with chambers shall be by letter, with copies simultaneously delivered to all counsel. Letters to chambers in an ECF case should not be electronically filed. Such letters should simply be mailed to Chambers as they would be in a non-ECF case. Copies of correspondence between counsel shall not be sent to the Court.

B. Telephone Calls. Telephone calls to chambers are permitted. Call Chambers at **212-805-0242**.

C. Faxes. Faxes to Chambers are not permitted. Hand delivered mail should be left with the Court Security Officer at the Worth Street entrance of the Courthouse, and may not be brought to Chambers.

D. Docketing, Scheduling, and Calendar Matters. For docketing, scheduling and calendar matters, call Courtroom Deputy Michael Brantley at **212-805-0242** between **10:00 A.M.** and **4:00 P.M.**

E. Requests for Adjournments or Extensions of Time. All requests for adjournments or extensions of time must state (1) the original date, (2) the number of previous requests for adjournment or extension, (3) whether these previous requests were granted or denied, and (4) whether the adversary consents, and, if not, the reasons given by the adversary for refusing to consent. If the requested adjournment or extension affects any other scheduled dates, a proposed Revised Scheduling Order (reflecting only business days) must be attached. If the request is for an adjournment of a court appearance, absent an emergency, it shall be made at least 48 hours prior to the scheduled appearance.

2. Motions

A. Pre-Motion Conferences in Civil Cases. For discovery motions, follow Local Civil Rule 37.2. If a discovery dispute is raised with the Court by letter, the letter shall not exceed three pages. For motions other than discovery motions, a pre-motion conference is not required.

B. Courtesy Copies.

1. **Pleadings.** Courtesy copies of pleadings should not be submitted.
2. **Motions.** Courtesy copies of all motion papers, marked as such, should be submitted to Chambers at the time the papers are served.

C. Memoranda of Law. Unless prior permission has been granted, memoranda of law in support of and in opposition to motions are limited to 25 pages, and reply memoranda are limited to 10 pages. Memoranda of 10 pages or more shall contain a table of contents.

D. Filing of Motion Papers. Motion papers shall be filed promptly after service.

E. Oral Argument on Motions. Parties may request oral argument by letter at the time their moving or opposing or reply papers are filed. The Court will determine whether argument will be heard and, if so, will advise counsel of the argument date.

3. Pretrial Procedures

A. Joint Pretrial Orders in Civil Cases. Unless otherwise ordered by the Court, within 30 days from the date for the completion of discovery in a civil case, the parties shall submit to the Court for its approval a joint pretrial order that includes the information required by Federal Rule of Civil Procedure 26(a)(3), and the following:

- i. The full caption of the action,
- ii. The names, addresses (including firm names), and telephone and fax numbers of trial counsel.
- iii. A brief statement by plaintiff as to the basis of subject matter jurisdiction, and a brief statement by each other party as to the presence or absence of subject matter jurisdiction. Such statements shall include citations to all statutes relied on and relevant facts as to citizenship and jurisdictional amount.
- iv. A brief summary by each party of the claims and defenses that party has asserted which remain to be tried, without recital of evidentiary matter but including citations to all statutes relied on. Such summaries shall identify all claims and defenses previously asserted which are not to be tried.
- v. A statement by each party as to whether the case is to be tried with or without a jury, and the number of trial days needed.
- vi. Any stipulations or agreed statements of fact or law which have been agreed to by all parties.

vii. A list of all witnesses, with a brief summary of the substance of each witness's testimony, and an indication whether such witness will testify in person or by deposition.

viii. A designation by each party of deposition testimony to be offered in its case in chief, with any cross-designations and objections by any other party.

ix. A list by each party of exhibits to be offered in its case in chief, with one star indicating exhibits to which no party objects on grounds of authenticity, and two stars indicating exhibits to which no party objects on any ground.

B. Filings Prior to Trial in Civil Cases. Unless otherwise ordered by the Court, each party in a consent case shall file, 15 days before the date of commencement of trial if such a date has been fixed, or 30 days after the filing of the final pretrial order if no trial date has been fixed:

i. In jury cases, requests to charge and proposed voir dire questions.

ii. In nonjury cases, a statement of the elements of each claim or defense involving such party, together with a summary of the facts relied upon to establish each element;

iii. In all cases, motions addressing any evidentiary or other issues which should be resolved in limine; and

iv. In any case where such party believes it would be useful, a pretrial memorandum.

C. Digital Copies. Any pretrial submissions, including additional requirements in the Court's Final Pretrial Scheduling Order, shall also be accompanied by a CD Rom containing the files in WordPerfect or Word format.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

<hr/>		X
	Plaintiff(s),	:
	- against -	:
	Defendant(s).	:
<hr/>		X

CONSENT TO PROCEED BEFORE
UNITED STATES MAGISTRATE JUDGE
_____ Civ. _____ () ()

IT IS HEREBY STIPULATED by the undersigned:

1. All parties consent, pursuant to 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73, that a United States Magistrate Judge conduct all further proceedings in this action, including any trial and entry of final judgment.

2. Any appeal from a judgment entered in this case will lie to the Court of Appeals for the Second Circuit as from any other judgment of the district court pursuant to 28 U.S.C. § 636(c)(3) and Fed. R. Civ. P. 73(c).

Attorney(s) for Plaintiff(s)
Address
Telephone

Attorney(s) for Defendant(s)
Address
Telephone

Attorney(s) for _____
Address
Telephone

Attorney(s) for _____
Address
Telephone

(Separately executed forms may be submitted. See Fed. R. Civ. P. 73(b).)

SO ORDERED.

U.S.D.J.

Magistrate Judge _____ was assigned this case on _____.

For: Clerk U.S.D.C. S.D.N.Y.

A copy of this Notice must be served by the plaintiff with the complaint on all adversary parties, and attached to any third-party complaint served by a defendant.

RIGHT TO PROCEED BEFORE A UNITED STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73, and S.D.N.Y. Local Civil Rule 73.1, the United States Magistrate Judges of the Southern District of New York have jurisdiction, with the consent of all parties, to conduct any or all proceedings in a civil case, including jury or non-jury trials, and order the entry of judgment. Trial before a Magistrate Judge proceeds in the same manner as trial before a District Judge.

The Magistrate Judge previously designated for the case will conduct the consent proceedings. If no Magistrate Judge has been designated, one will be drawn by lot to preside.

In accordance with 28 U.S.C. § 636(c)(3) and Fed. R. Civ. P. 73(c), appeal in a consent proceeding lies to the United States Court of Appeals for the Second Circuit as it would from any judgment of the district court.

The decision to consent, or not to consent, to proceed before a Magistrate Judge under § 636(c) is entirely voluntary. Only if all parties to the case consent to the reference will either the District Judge or Magistrate Judge be informed of the decision. Fed. R. Civ. P. 73(b).

If the parties in this action consent to proceed before a Magistrate Judge, the attached consent form should be signed by counsel for all parties and submitted to the Judgment and Orders Clerk in Room 120 of the Courthouse at 500 Pearl Street or Room 167 of the White Plains Courthouse. Separately executed forms may be submitted. See Fed.R. Civ. P. 73(b).

Electronic Case Filing Rules & Instructions

April 4, 2011 Edition

IMPORTANT INFORMATION FOR NEW CASES

A party filing a new civil or miscellaneous case assigned to the Electronic Case Filing (ECF) system must do the following after obtaining a civil case number:

- (1) E-mail a PDF-A copy of the case initiating documents to the Clerk's Office within 24 hours of delivering the paper documents to the Court; and**
- (2) Serve each party to the action with the initiating documents and a copy of:**
 - (a) SDNY Electronic Case Filing Rules & Instructions; and**
 - (b) The assigned Judge's Individual Practices.**

Table of Contents

Section	Page
<u>Introduction.....</u>	<u>3</u>
<u>What's New.....</u>	<u>4</u>

Part I. Electronic Case Filing Rules

<u>1. Scope of Electronic Case Filing.....</u>	<u>5</u>
<u>2. Eligibility, Registration, Passwords.....</u>	<u>5</u>
<u>3. Consequences of Electronic Case Filing.....</u>	<u>6</u>
<u>4. Entry of Court Orders.....</u>	<u>7</u>
<u>5. Attachments and Exhibits.....</u>	<u>7</u>
<u>6. Sealed Documents.....</u>	<u>8</u>
<u>7. Retention Requirements.....</u>	<u>8</u>
<u>8. Signatures.....</u>	<u>8</u>
<u>9. Service of Documents by Electronic Means.....</u>	<u>9</u>
<u>10. Notice of Court Orders and Judgments.....</u>	<u>9</u>
<u>11. Technical Failures.....</u>	<u>10</u>
<u>12. Public Access.....</u>	<u>10</u>

Part II. - Electronic Case Filing Instructions

<u>13. ECF Basics.....</u>	<u>11</u>
<u>14. Opening a Civil Action.....</u>	<u>15</u>
<u>15. Motions</u>	<u>17</u>
<u>16. Default Judgments.....</u>	<u>17</u>
<u>17. Appeals</u>	<u>19</u>
<u>18. Non-Electronic Documents.....</u>	<u>20</u>
<u>19. Service of Electronically Filed Documents.....</u>	<u>23</u>
<u>20. Attorney Appearances.....</u>	<u>25</u>
<u>21. Privacy and Public Access to ECF Cases.....</u>	<u>26</u>
<u>22. ECF Passwords.....</u>	<u>28</u>
<u>23. ECF Computer System Information.....</u>	<u>29</u>
<u>24. ECF Help Desk and Training.....</u>	<u>31</u>

Introduction

The United States District Court for the Southern District of New York implemented a Case Management / Electronic Case Filing (ECF) system in December 2003. Electronic versions of documents filed by attorneys over the Internet have largely replaced paper documents in the Court's files. Almost all new civil and criminal cases filed in this Court after December 2, 2003 are Electronic Case Filing (ECF) cases. Cases filed before December 2, 2003, are not ECF cases. *Pro se* litigants (who are not members of the bar and who do not have an active ECF account) must file pleadings and documents in the traditional manner on paper. *Pro se* cases, Social Security appeals and *habeas corpus* cases may be designated as ECF cases. The information in this document applies only to cases assigned to the ECF system.

The following should be observed when filing electronically: the Federal Rules of Civil and Criminal Procedure; the Court's Local Rules; the assigned judge's individual practices; and these Electronic Case Filing Rules & Instructions.

The Court is prepared to assist you in filing electronically in several ways:

- The SDNY Electronic Case Filing Rules & Instructions is your guide to electronic filing.
- Training in Electronic Case Filing (ECF) is available both in person at the courthouse and on-line at www.nysd.uscourts.gov (See section 24 - ECF Help Desk and Training).
- Filing parties are encouraged to view the Court's website, www.nysd.uscourts.gov, for more information regarding Electronic Case Filing (See section 24 - ECF Help Desk and Training).

What's New

Updated April 4, 2011:

This edition of the ECF Rules & Instructions contains new material:

Effective September 1, 2010, *pro se* cases, Social Security appeals and *habeas corpus* cases may be designated as ECF cases.

Effective December 1, 2010, civil miscellaneous matters must be initiated by filing in the traditional manner on paper and paying the appropriate fee to the Clerk of Court. Thereafter, except in *pro se* cases, all subsequent documents must be filed electronically in the ECF system at no extra charge (see section 18.11).

Notice of Appearance on behalf of criminal defendants must now be electronically filed in the ECF system (see section 2.4).

The maximum file size for a single PDF document filed electronically on the ECF system has been increased from 2.5 megabytes to 4.0 megabytes (4.0 mb)(see section 23.3).

Electronically filed documents must now be filed in PDF-A format (see section 23.2).

Part I. Electronic Case Filing Rules

The Court will accept for filing documents submitted, signed or verified by electronic means that comply with the following rules.

Section 1. Scope of Electronic Filing

1.1 The Court will designate which cases will be assigned to the Electronic Case Filing (ECF) system. Except as expressly provided and in exceptional circumstances preventing a Filing User from filing electronically, all petitions, motions, memoranda of law, or other pleadings and documents required to be filed with the Court in a case assigned to the ECF system must be filed electronically. A paper may be filed electronically from a remote location via the Internet. Unless ordered by the Court, documents filed by *pro se* litigants (who are not members of the bar and who do not have an active ECF account) will continue to be filed in the traditional manner on paper and will be scanned and docketed by the Clerk's Office into the ECF system.

1.2 Unless limited by their terms to civil cases, the provisions of these procedures relating to electronic filing apply in criminal cases that are initiated by the filing of an indictment or information. Electronic filing procedures shall not apply to applications for arrest, search or electronic surveillance warrants; for other orders in aid of or ancillary to a criminal investigation; or to proceedings relating to the grand jury.

1.3 Electronic filing procedures shall not apply to cases initiated before December 2, 2003.

(See section 13 - ECF Basics).

1.4 The filing and service of the initial papers in a civil case, including the complaint, the issuance of the summons and the proof of service of the summons and complaint, as well as service of non-party subpoenas, will be accomplished in the traditional manner on paper in accordance with the Federal Rules of Civil Procedure and applicable Local Rules governing service, rather than electronically. In a criminal case, the indictment or information, including any superseders, shall also be filed and given to the defendant in the traditional manner on paper in accordance with the Federal Rules of Criminal Procedure and applicable Local Rules rather than electronically; in addition, service of subpoenas shall be made in the traditional manner on paper in accordance with the Federal Rules of Criminal Procedure and applicable Local Rules. After a case assigned to the ECF system has been opened, parties must promptly provide the Clerk of Court with electronic copies of all documents previously provided in paper form. All subsequent documents must be filed electronically except as provided in these Rules & Instructions or as ordered by the Court.

(See section 14 - Opening a Civil Action).

1.5 The Clerk of Court shall write and revise as necessary Instructions to guide Filing Users and maximize the efficiency of the Electronic Case Filing system.

(See Part II - Electronic Case Filing Instructions)

Section 2. Eligibility, Registration, Passwords

2.1 Attorneys admitted to the bar of this Court, including those admitted *pro hac vice* and attorneys

authorized to represent the United States, may register and may be required to register as Filing Users of the Court's ECF system. Unless excused by the Court, attorneys not already Filing Users appearing in cases assigned to the ECF system must register as Filing Users upon the case being so designated. Registration is in a form prescribed by the Clerk and requires the Filing User's name, address, telephone number, Internet e-mail address, and a declaration that the attorney is admitted to the bar of this Court or authorized to represent the United States, or admitted *pro hac vice*. See the ECF page at www.nysd.uscourts.gov for details.

2.2 The Court may permit or require a party to a pending civil action, who is not represented by an attorney, to register as a Filing User in the ECF system solely for purposes of that action. Registration is in a form prescribed by the Clerk and requires identification of the action as well as the name, address, telephone number and Internet e-mail address of the party. The Court may require the party to attend in-person training for Electronic Case Filing as a condition of registering as a Filing User. If, during the course of the proceeding, the party retains an attorney who appears on the party's behalf, the attorney must advise the Clerk to terminate the party's registration as a Filing User upon the attorney's appearance.

2.3 Once registration is completed, the Filing User will receive notification of the user log-in and password. Filing Users agree to protect the security of their passwords and immediately notify the Clerk if they learn that their password has been compromised. Users may be subject to sanctions for failure to comply with this provision.

2.4 In a civil action, the Clerk will enter, as Filing Users to whom Notices of Electronic Filing (NEF) will be transmitted, (a) each attorney identified on the Civil Cover Sheet, as well as (b) each additional attorney who subsequently appears in the action and files a Notice of Appearance (which must be filed electronically). In a criminal case, the Clerk will enter, as Filing Users to whom Notices of Electronic Filing will be transmitted and who will be granted access to electronically file and retrieve documents in the case, the attorney(s) for the United States identified on the Criminal Designation Form or subsequently identified as representing the United States in the case and each attorney filing a Notice of Appearance on behalf of a defendant. Notices of Appearance on behalf of a criminal defendant must be electronically filed in the ECF system.

2.5 An attorney of record may, by written request to the Judge, have transmission of Notices of Electronic Filing (NEF) to another attorney in his or her firm terminated. Please review the Judge's Individual Practices.

(See section 22 - ECF Passwords).

Section 3. Consequences of Electronic Filing

3.1 Except as otherwise provided in Rule 4 herein, electronic filing of a document in the ECF system consistent with these procedures, together with the transmission of a Notice of Electronic Filing (NEF) from the Court, constitutes filing of the document for all purposes of the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, and the Local Rules of this Court and constitutes entry of the document on the docket kept by the Clerk under Federal Rules of Civil Procedure 58 and 79 and Federal Rules of Criminal Procedure 49 and 55.

3.2 When a document has been filed electronically, the official record is the electronic recording of the document as stored by the Court (subject to the exception set out in Rule 4 below), and the filing party is bound by the document as filed. Except in the case of documents first filed in paper form and subsequently submitted

electronically under Rule 1, a document filed electronically is deemed filed on the date and time stated on the Notice of Electronic Filing (NEF) from the Court. For *pro se* litigants, paper documents filed with the Court, and subsequently scanned and docketed to the ECF system, shall be deemed filed on the date the documents are received by the Court.

3.3 Electronic filing must be completed before midnight local time where the Court is located in order to be considered timely filed that day.

3.4 Individual Judges' Practices should continue to be followed with respect to delivery of courtesy copies.

(See section 19 - Service of Electronically Filed Documents).

Section 4. Entry of Court Orders

4.1 All orders, decrees, judgments and proceedings of the Court will be filed in accordance with these procedures and entered on the docket kept by the Clerk under Federal Rules of Civil Procedure 58 and 79 and Federal Rules of Criminal Procedure 49 and 55. Each document signed by a judge shall be scanned so as to contain an image of the judge's signature and shall be filed electronically by the Court, and the manually signed original shall be filed by the Clerk. In the event of a discrepancy between the electronically filed copy and the manually signed original, the manually signed original shall control.

4.2 A Filing User submitting a document electronically that requires a judge's signature must promptly deliver the document in such other form, if any, as the Court requires (see section 18.4).

Section 5. Attachments and Exhibits

5.1 Filing Users must submit in electronic form all documents referenced as exhibits or attachments, unless the Court permits paper filing.

5.2 A Filing User must submit as exhibits or attachments only those excerpts of the referenced documents that are relevant to the matter under consideration by the Court. Excerpted material must be clearly and prominently identified as such. Filing Users who file excerpts of documents as exhibits or attachments under this procedure do so without prejudice to their right to file timely additional excerpts or the complete document. Responding parties may file timely additional excerpts that they believe are relevant or the complete document. A party may move before the court for permission to serve and file in hard copy documents that cannot be reasonably scanned.

5.3 In cases where the record of an administrative or other prior proceeding must be filed with the Court, such record may be served and filed in hard copy without prior motion and order of the Court.

(See section 15 - Motions).

Section 6. Sealed Documents

6.1 Documents ordered to be placed under seal may not be filed electronically.

6.2 A motion to file documents under seal should be filed electronically unless prohibited by law, in redacted form if necessary; however, a motion to file under seal that includes a statement of why the filing should not be made electronically may be made in paper copy. The order of the Court authorizing the filing of documents under seal may be filed electronically unless prohibited by law. For complete instructions see the sealed records filing instructions on the Cases page at www.nysd.uscourts.gov.

6.3 A paper copy of the sealing order must be attached to the outside of the envelope containing the documents under seal and be delivered to the Clerk's Office.

(See section 18 - Non-Electronic Documents).

Section 7. Retention Requirements

Documents that are electronically filed and require original signatures other than that of the Filing User must be maintained in paper form by the Filing User until one year after all time periods for appeals expire, except that affidavits, declarations and proofs of service must be maintained in paper form by the Filing User until five years after all time periods for appeals expire. On request of the Court, the Filing User must provide original documents for review.

(See section 13 - ECF Basics).

Section 8. Signatures

8.1 The user log-in and password required to submit documents to the ECF system serve as the Filing User's signature on all electronic documents filed with the Court. They also serve as a signature for purposes of the Federal Rules of Civil Procedure, including Rule 11, the Federal Rules of Criminal Procedure, the Local Rules of this Court, and any other purpose for which a signature is required in connection with proceedings before the Court. Each document filed electronically must indicate that it has been electronically filed (see section 13.15).

8.2 Electronically filed documents must include a signature block and must set forth the name, address, telephone number and e-mail address all in compliance with the Federal Rules of Civil Procedure and Local Civil Rule 11.1. In addition, the name of the Filing User under whose log-in and password the document is submitted must be preceded by an "s/" typed in the space where the signature would otherwise appear.

8.3 No Filing User or other person may knowingly permit or cause to permit a Filing User's password to be used by anyone other than an authorized agent of the Filing User.

8.4 A document requiring the signature of a defendant in a criminal case may be electronically filed only in

a scanned format that contains an image of the defendant's signature.

8.5 Documents requiring signatures of more than one party must be electronically filed either by: (a) submitting a scanned document containing all necessary signatures; (b) representing the consent of the other parties on the document; (c) identifying on the document the parties whose signatures are required and by the submission of a notice of endorsement by the other parties no later than three business days after filing; or (d) in any other manner approved by the Court.

(See section 13 - ECF Basics).

Section 9. Service of Documents by Electronic Means

9.1 In a case assigned to the ECF system, transmission of the Clerk's Notice of Electronic Filing (NEF) of a document shall constitute service of such document upon any Filing User in that case. It remains the duty of the Filing User to regularly review the docket sheet of the case.

9.2 Attorneys and *pro se* parties who are not Filing Users shall be served with a paper copy of any electronically filed pleading or other document. Service of such paper copy must be made according to the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure and the Local Rules. Where the Clerk scans and electronically files pleadings and documents on behalf of a *pro se* party, the associated NEF does not constitute service (see section 9.3 below for information regarding waiver of this rule).

9.3 Attorneys in *pro se* cases may waive paper service upon themselves and rely on service via the NEF by electronically filing a Notice of Waiver of Paper Service in the ECF system and delivering a paper copy of said Notice to the *pro se* party (form available at www.nysd.uscourts.gov). Where such waiver has been filed, the *pro se* party will no longer be required to serve paper documents on the attorney who filed the waiver or file proof of service on such document.

(See section 19 - Service of Electronically Filed Documents).

Section 10. Notice of Court Orders and Judgments

Immediately upon the entry of an order or judgment in a proceeding assigned to the ECF system, the Clerk will transmit to all Filing Users in the case, in electronic form, a Notice of Electronic Filing (NEF). Electronic transmission of the Notice of Electronic Filing (NEF) constitutes the notice required by Federal Rule of Criminal Procedure 49(c) and Federal Rule of Civil Procedure 77(d). In ECF cases, it remains the duty of the Filing User with an active ECF account to regularly review the docket sheet of the case. The Clerk must give notice in paper form to a person who is not a Filing User in accordance with the Federal Rules of Civil Procedure or the Federal Rules of Criminal Procedure.

(See section 19 - Service of Electronically Filed Documents).

Section 11. Technical Failures

A Filing User whose filing is made untimely as the result of a technical failure may seek appropriate relief from the Court.

(See section 23 - ECF Computer System Information).

Section 12. Public Access

A person may review filings that have not been sealed by the Court, in person, at the Clerk's Office.

A person may also view available court records on-line through the Public Access to Court Electronic Records (PACER) computer system (separate PACER log-in and password required). A person who has PACER access may retrieve docket sheets in civil, criminal and miscellaneous cases; documents in civil and miscellaneous cases assigned to the ECF System; and documents in criminal cases filed after November 1, 2004. Only counsel for the government and for a defendant may retrieve documents in criminal cases filed prior to November 1, 2004.

(See section 13 - ECF Basics).

Part II. Electronic Case Filing Instructions

Section 13. ECF Basics

13.1 May letters be filed electronically?

No. Letters are submitted in the traditional manner on paper. An attorney should not file a letter electronically on the ECF system. The Judge may direct the Clerk to place a letter on the docket if it is deemed appropriate. In criminal ECF cases, a letter brief may be filed electronically as a motion. The letter must include the formal case caption.

13.2 In brief, how do I file a document electronically?

- (a) Use your secure SDNY ECF password (see section 22 - ECF Passwords) to log-in to the ECF system from any Internet connection.
- (b) Select the appropriate category, CIVIL or CRIMINAL.
- (c) Find the appropriate ECF Filing Event or title for your document. Find a list of ECF filing events at <http://www.nysd.uscourts.gov/ecf/dictionary/dictionary.pdf>.
- (d) Indicate the party filing the document (hold down the control key to designate more than one party).
- (e) Upload a PDF-A copy (see section 23 - ECF Computer System Information) of your document. Include any exhibits as attachments to the main document. Separately file supporting documents such as a Memorandum of Law or Affidavit in Support.
- (f) Print the final screen, the Notice of Electronic Filing (NEF), for your records.
- (g) In cases assigned to the ECF system, service is complete provided all parties receive a Notice of Electronic Filing (NEF), which is sent automatically by email from the Court (see the NEF for a list of who was/was not served electronically). If a party will not receive electronic notice via the NEF email, such as a *pro se* party, you must serve that party in the traditional manner on paper, then electronically file proof of service (see section 9.3 - Service of Documents by Electronic Means).
- (h) Submit a paper courtesy copy to the Judge if required (see the Judge's Individual Practices at www.nysd.uscourts.gov).

13.3 What is the secure website for electronic filing on the SDNY ECF system?

To file electronically go to <https://ecf.nysd.uscourts.gov>, or link to the filing website via the Court's public

website (see below). You will need your SDNY ECF log-in and password to file electronically.

13.4 What is the public website for information about the Court?

For publicly available information go to www.nysd.uscourts.gov (no password required). From the homepage click on ECF for information on Electronic Case Filing.

13.5 What are the mailing addresses for the Court?

United States District Court, Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, NY 10007-1312; and

United States District Court, Southern District of New York, Charles L. Brieant Jr. Federal Building and United States Courthouse, 300 Quarropas Street, White Plains, NY 10601-4150.

13.6 How can I tell if my case is an ECF case?

The docket sheet will include the letters “ECF” in the upper right corner and an entry titled “CASE DESIGNATED ECF”.

13.7 If a case is deemed an ECF case, am I required to file documents electronically?

Yes. In an ECF case the Filing User is responsible for electronically filing documents over the Internet using a secure SDNY log-in and password. With certain exceptions outlined below, the Clerk’s Office will not accept paper filings in an ECF case.

(See section 1 - Scope of Electronic Case Filing and section 18 -Non-Electronic Documents).

13.8 May I file documents electronically in a non-ECF (paper) case?

No. Do not file documents electronically in non ECF (paper) case.

(See section 1 - Scope of Electronic Case Filing).

13.9 Will the Court file documents electronically in a non-ECF (paper) case?

Yes, the Court may file Orders and Opinions in electronic format (PDF-A) in a non-ECF (paper) case. This will not convert a non-ECF case to an ECF case, and parties should continue to file documents on paper.

13.10 Can I file electronically at any time?

Yes. You can file electronically 24 hours a day, 7 days a week, 365 days a year. Filing must be completed before midnight local time where the Court is located in order to be considered timely filed that day.

(See section 3 - Consequences of Electronic Case Filing).

13.11 When is an electronically filed document deemed filed?

An electronically filed document is deemed filed on the date and time stated on the Notice of Electronic Filing (also referred to herein as the NEF or “filing receipt”) from the Court.

(See section 3 - Consequences of Electronic Case Filing).

13.12 What is a docket sheet, and how can I view one?

The docket sheet is the official record of all filings in a case. You can view the docket sheet, including images of electronically filed documents, via the Public Access to Court Electronic Records (PACER) public access computer system (for details go to <http://pacer.psc.uscourts.gov> or call (800) 676-6856). Or you can use one of the public access computers available in the Clerk’s Office.

(See section 12 - Public Access).

13.13 Should I routinely view the docket sheet in my case?

Yes. In ECF cases, service is accomplished by an e-mail sent by the Court, the Notice of Electronic Filing (NEF). However, e-mail is not foolproof. Therefore it remains the duty of the Filing User to review regularly the docket sheet of the case in order not to miss a filing.

(See section 9 - Service of Documents by Electronic Means).

13.14 How will I know if it’s appropriate to electronically file my document?

First, determine if your case is an ECF case - not all cases are ECF cases. When filing in an ECF case if you can find an ECF Filing Event that directly matches your document then it should be electronically filed. If you cannot find a matching ECF Filing Event it probably should not be electronically filed. The ECF Event Dictionary (a PDF document available on our public website at www.nysd.uscourts.gov) is very useful for finding your event and the category in which it is listed. See the list of non-ECF documents in section 18.1.

(See section 24 - ECF Help Desk and Training).

13.15 Must the caption indicate the case is an electronic (ECF) case?

Yes. The case number must be followed by the judge’s initials in parenthesis, and “ECF CASE” below the case number. For example:

06 cv 1234 (ABC)
ECF Case

(See section 8 - Signatures).

13.16 How do I sign an electronically filed document?

The ECF log-in and password of the filing attorney serve as an electronic signature. The filing attorney may place an “s/” as the signature. The attorney’s name and contact information, including e-mail address, must appear below the signature line. Signatures for all other persons (clients, witnesses etc.) must be scanned in order to capture the actual ink signature.

(See section 8 - Signatures).

13.17 How do I find the correct ECF Filing Event for my document?

When filing electronically you will be asked to name your document by selecting the appropriate ECF Filing Event. The ECF Filing Event is essentially the title of the document on the docket sheet, such as Motion for Summary Judgment or Affidavit in Support of Motion. ECF Filing Events are listed by category on the ECF system. Within each category is an alphabetical listing of available ECF Filing Events. You may use the search function to find your Filing Event. The ECF Event Dictionary (a PDF document available on our public website at www.nysd.uscourts.gov) is also very useful for finding your event and the category in which it’s listed. Print the dictionary for future reference. If you cannot find the appropriate event for your document do not file it using the wrong event. Call the ECF Help Desk at (212) 805-0800 for assistance if necessary.

(See section 24 - ECF Help Desk and Training).

13.18 Must I retain paper originals of documents I electronically file?

Yes. Filing Users must retain original versions of electronically filed documents for a period of time after filing. On request of the Court, the Filing User must provide original documents for review. See section seven for specific retention requirements.

(See section 7 - Retention Requirements).

13.19 Should I continue to submit courtesy copies?

Read the Judge’s Individual Practices to learn if courtesy copies are required. Individual Practices are available on-line at www.nysd.uscourts.gov/judges

(See section 3 - Consequences of Electronic Case Filing).

13.20 Are Administrative Records filed electronically?

Yes, if possible. If, however, the administrative record is too large to be scanned, it may be served and filed in hard copy without prior motion and order of the Court.

(See section 5 - Attachments and Exhibits).

13.21 In Consolidated and MDL cases can I file simultaneously in member cases?

Yes. When filing in Consolidated and Multi-District Litigation (MDL) cases you can save time by electronically filing a document simultaneously in the member case(s) using the computer function titled "Spread Text and Effects" (not available in related cases). Please observe the following MDL filing rules:

- In consolidated and MDL cases you must file all documents first under the Lead or MDL case number.
- You may then precisely designate the member case(s) in which you wish to simultaneously file.
- Do not file in all cases unless it is appropriate. Your document may not relate to all member cases.
- The case caption must include all the case numbers in which your document will be filed.
- Instructions for Spread Text and Effects are available on-line at www.nysd.uscourts.gov

13.22 What if I make a mistake in electronic filing?

Call the ECF Help Desk immediately at (212) 805-0800.

(See section 24 - ECF Help Desk and Training).

Section 14. Opening a Civil Action

14.1 Electronically filed (ECF) cases are opened and service of the initiating documents (complaint, notice of removal, etc.) is accomplished in the traditional manner on paper.

14.2 In order to alert your adversary(s) to the requirements of Electronic Case Filing and the Judge's Individual Practices you are required to deliver paper copies of the following documents to all parties (available at the courthouse, and www.nysd.uscourts.gov):

- **Electronic Case Filing Rules & Instructions** (this document)
- **The Individual Practices** of the assigned Judge

Pro se litigants (who are not members of the bar and who do not have an active ECF account) are exempt from this Rule.

14.3 Within 24 hours of the assignment of a case number, you are required to e-mail to the Clerk's Office (e-mail is not ECF filing) the initiating documents in PDF-A format only (such as Adobe Acrobat, see section 21). Include a Federal Rule of Civil Procedure 7.1 Statement (if applicable) and all exhibits. The case number followed by the Judge's initials and "ECF CASE" must appear in the case caption. Failure to do so within 24 hours will delay adding your documents to the computerized ECF docket.

Each document must be in a separate PDF-A file no larger than 4 megabytes (separate large computer files into smaller parts if necessary, and label accordingly). The subject line of the e-mail and the name of the file should list the case number followed by a brief document description (ex. "Re: 01cv1234 KMW-complaint").

Send a copy of the initiating documents by e-mail (do not file on the ECF system) to:

- For new civil cases assigned to a Manhattan Judge e-mail to:
caseopenings@nysd.uscourts.gov
or **case_openings@nysd.uscourts.gov**
- For new civil cases assigned to a White Plains Judge e-mail to:
wpclerk@nysd.uscourts.gov

Pro se litigants (who are not members of the bar and who do not have an active ECF account) are exempt from this Rule.

14.4 File the proof of service for the initiating document in the following manner:

- (a) Electronically file the proof of service for the initiating document on the ECF system (do not e-mail), and
- (b) Deliver the original paper proof of service, with summons attached, to the Clerk's Office. Include a copy of the ECF Notice of Electronic Filing (NEF or filing receipt).

Pro se litigants who have been granted *in forma pauperis* (IFP) status are exempt from this Rule.

Pro se litigants who have not been granted IFP status (and who are not members of the bar and who do not have an active ECF account) shall deliver the original paper proof of service with summons attached to the Clerk's Office.

(See section 19 - Service of Electronically Filed Documents).

14.5 Subsequent documents, including the Defendant's Answer, must be filed electronically on the ECF system at <https://ecf.nysd.uscourts.gov>. With the exception of documents filed by *pro se* litigants and other limited exceptions, the Clerk's Office will not accept a paper document for filing in an ECF case.

(See section 18 - Non-electronic Documents).

14.6 *Pro se* cases

Pro se litigants – including *pro se* defendants – are not permitted to file documents electronically without permission of the Court and must continue to file documents in the traditional manner on paper. Where directed by the Court, the Clerk will scan documents received from *pro se* litigants and will file them electronically on the ECF system.

(See section 1 - Scope of Electronic Filing)

Section 15. Motions

15.1 What ECF Filing Event should be used to file a motion?

A motion must be filed using an ECF Filing Event beginning with the word “Motion”. The ECF system contains over 160 separate motion Filing Events for your use, all beginning with the word “Motion” (e.g., “Motion for Summary Judgment”, etc.). See the ECF Events Dictionary at www.nysd.uscourts.gov for a complete list of motions and supporting documents. Do not use the “Notice” filing event to file a motion. *Pro se* litigants (who are not members of the bar and who do not have an active ECF account) shall continue to file motions and supporting papers in the traditional manner on paper. Where directed by the Court, the Clerk will scan documents received from *pro se* litigants and will file them electronically on the ECF system.

15.2 Should I file supporting papers as attachments to the motion?

No. File supporting or response documents separately under the appropriate ECF Filing Event found in the category “Replies, Opposition and Supporting Documents.” For example, a motion, an affidavit in support and a memorandum of law in support must be filed separately.

15.3 What ECF Filing Event should be used to file supporting papers?

Use the appropriate ECF Filing Events for supporting papers found in the category “Replies, Opposition and Supporting Documents” (e.g. Affidavit in Support of Motion, Memorandum of Law in Support of Motion, etc.). Never use the ECF Filing Event for Motion to file supporting papers. For example, filing a motion, an affidavit in support and a memorandum of law in support, and labeling each one “Motion” would make it appear incorrectly that three motions were filed instead of one.

15.4 How do I file exhibits?

Exhibits must be filed only as attachments to a document, such as a motion or an affidavit. Do not use the ECF Filing Event for “Motion” to file exhibits separately. Exhibits are the only items that should be attached to electronically filed documents. You are limited to electronically filing only relevant excerpts of exhibits. Excerpts must be clearly identified as such. If the exhibit is too large to be scanned and electronically filed call the ECF Help Desk at (212) 805-0800.

(See section 5 - Attachments and Exhibits; see also section 24 - ECF Help Desk and Training).

Section 16. Default Judgments

16.1 How do I file a Default Judgment?

Consult the Individual Practices of the Judge to determine the appropriate method (at www.nysd.uscourts.gov). If the Judge’s Individual Practices contain no specific rules regarding Default Judgments you should follow

section 16.4 below.

When electronically filing a Request to Enter Default Judgment before submitting a Default Judgment, you must:

- (a) file an unsigned Clerk's Certificate as an attachment to the Request to Enter Default;
- (b) submit a paper copy of the proposed Clerk's Certificate to the Orders and Judgments Clerk (the clerk will sign and docket the Clerk's Certificate); and
- (c) after completion of the above, you may then move for a Default Judgment using the appropriate method outlined in section 16.2, 16.3 or 16.4 below.

When necessary, submit paper documents to the Orders and Judgments Clerk in Manhattan, (212) 805-0143, or White Plains (914) 390-4000, depending upon where the Judge sits. If sending documents by mail, enclose a return envelope with postage. For mailing addresses see section 13 - ECF Basics.

16.2 Default Judgment brought by Motion:

- (a) Submit to the Orders and Judgments Clerk a paper Clerk's Certificate. The clerk will sign and docket the Certificate, and provide a copy to the filing party.
- (b) Electronically file the Motion for Default Judgment on the ECF system. The following items should be filed as attachments to the Motion: (1) the signed Clerk's Certificate; and (2) a copy of the Summons and Complaint with proof of service. The following supporting documents should be filed as separate ECF Filing Events: Affidavit in Support; and Statement of Damages (unless requesting an inquest).
- (c) Electronically file proof of service for the Motion for Default Judgment.
- (d) Submit a courtesy copy of the Motion to the Judge, including a copy of the original signed Clerk's Certificate and a copy of the proof of service.

16.3 Default Judgment brought by Order to Show Cause (O.S.C.):

- (a) Submit to the Orders and Judgments Clerk a paper original of the O.S.C. Include as exhibits to the Affidavit in Support a Clerk's Certificate and a proposed Default Judgment. Include courtesy copies of all documents.
- (b) If signed by the Court, the Clerk's Office will electronically file only the Order. After the Order appears on the docket sheet, the attorney must electronically file all supporting papers.
- (c) Electronically file proof of service for the O.S.C.

16.4 Default Judgment brought on by Default Judgment and Order:

- (a) Submit to the Orders and Judgments Clerk: (1) a paper original of the proposed Default Judgment and Order; (2) the Affidavit in Support; (3) a Statement of Damages (unless requesting an inquest); (4) a copy of the Summons and Complaint with proof of service; and (5) a Clerk's Certificate. The papers will be forwarded to the Judge for signature.
- (b) If signed by the Court, the Clerk's Office will electronically file only the Order. After the Order appears on the docket sheet, the attorney must electronically file all supporting papers.

Section 17. Appeals

17.1 Are appeals filed electronically?

No. Appeals in ECF and non-ECF cases must be filed in the traditional manner on paper.

17.2 How do I file an appeal in an ECF case?

File the appeal in the traditional manner on paper either at the courthouse or by mail. Include the filing fee if necessary. Within 24 hours of filing the paper copy of your Appeal, you are required to e-mail to the Clerk's Office a stamped electronic copy of the Notice of Appeal in PDF-A format. Include any exhibits. Each document must be in a separate file no larger than 4 megabytes. The District Court case number followed by the Judge's initials and "ECF CASE" must appear in the document's case caption. When sending e-mail, the subject line of the e-mail should always list the case number followed by a document description (e.g., "Re: 01cv1234-appeal"). Questions may be directed to the Appeals Clerk in Manhattan at (212) 805-0636, or in White Plains at (914) 390-4000. Send the e-mail (do not file on the ECF system) to:

- For appeals from an ECF case assigned to a Manhattan Judge e-mail to:
appeals@nysd.uscourts.gov
- For appeals from an ECF case assigned to a White Plains Judge e-mail to:
wpclerk@nysd.uscourts.gov

Pro se litigants (who are not members of the bar and who do not have an active ECF account) are exempt from that portion of this Rule that requires litigants to e-mail to the Clerk's Office the Notice of Appeal. The Clerk's Office will scan and electronically file all proper appellate papers received from *pro se* litigants who do not have an active ECF account.

Section 18. Non-Electronic Documents

18.1 In an ECF case are there documents that I should not file electronically?

Yes, including:

- Letters, see instruction 18.2 below.
- Case initiating documents (complaint, notice of removal, etc.), see section 14;
- All types of complaints (Third Party, Interpleader etc.), see instruction 18.3 below;
- Proposed orders; proposed judgments, stipulations; consents, see instruction 18.4 below;
- Orders to show cause (with or without a temporary restraining order), see instruction 18.6 below;
- Motions for Admission *pro hac vice*, see instruction 18.7 below;
- Sealed documents, see instruction 18.8 below;
- Surety bonds, see instruction 18.9 below;
- Bill of Costs, see instruction 18.10 below;
- Miscellaneous Initiating Documents, see instruction 18.11 below; and
- Notices of Appeal, see section 17;

18.2 May letters be filed electronically?

No. Letters are submitted in the traditional manner on paper. An attorney should not file a letter electronically on the ECF system. The Judge may direct the Clerk to place a letter on the docket if it is deemed appropriate. In criminal ECF cases, a letter brief may be filed electronically as a motion. The letter must include the formal case caption.

18.3 Are Amended Complaints, Third Party Complaints, Interpleader Complaints, etc. filed electronically?

No. All complaints, no matter what type, are filed the same way:

- (a) Deliver the paper original to the appropriate Clerk's Office (Manhattan or White Plains), and
- (b) E-mail a PDF-A copy of the document within 24 hours, including exhibits and Federal Rule of Civil Procedure 7.1 Disclosure Statement (if required) to the Clerk's Office. Send the e-mail to:

- For cases assigned to a Manhattan Judge e-mail to:

caseopenings@nysd.uscourts.gov

or **case_openings@nysd.uscourts.gov**

- For cases assigned to a White Plains Judge e-mail to:

wpclerk@nysd.uscourts.gov

Pro se litigants (who are not members of the bar and who do not have an active ECF account) are exempt from that portion of this Rule that requires litigants to email to the Clerk's Office all complaints. The Clerk's Office will scan and electronically file all complaints received from *pro se* litigants who do not have an active ECF account.

18.4 Are Proposed Orders, Proposed Judgments, Stipulations or Consents filed electronically?

No. Any document that requires the signature of a Judge should not be electronically filed. Proposed orders, judgments, stipulations and consents should not be submitted through the ECF system. Instead they should be sent by e-mail to the Clerk. Proposed orders should be submitted in word processing format (WordPerfect or Word) rather than as a PDF document. Stipulations should be submitted in PDF-A format. Stipulations must contain ink signatures not s/. Questions may be directed to the Orders and Judgments Clerk in Manhattan at (212) 805-0143 or in White Plains at (914) 390-4000. E-mail the proposed order, judgment or stipulation to:

- For cases assigned to a Manhattan Judge e-mail to:

judgments@nysd.uscourts.gov

- For cases assigned to a White Plains Judge e-mail to:

wpclerk@nysd.uscourts.gov

Pro se litigants (who are not members of the bar and who do not have an active ECF account) are exempt from that portion of this Rule that requires litigants to e-mail to the Clerk's Office proposed orders, judgments, stipulations and consents. *Pro se* litigants shall, instead, deliver such documents to the Clerk's Office. The Clerk will deliver them to the judge for consideration. Where possible, proposed orders, judgments, and stipulations filed on consent and jointly by a represented party and a *pro se* party shall be e-mailed by the represented party in conformity with this Rule.

18.5 Must a Stipulation or Consent include a traditional ink signature?

Yes. You cannot substitute s/ for a traditional ink signature for these documents. Faxed signatures are acceptable.

(See section 8 - Signatures).

18.6 Are Orders to Show Cause filed electronically?

No. An Order to Show Cause (with or without a Temporary Restraining Order) must be submitted in the traditional manner on paper, to the Orders and Judgments Clerk. If signed by the Court, the Clerk's Office will electronically file only the Order. After the Order appears on the docket sheet, the attorney must electronically file all supporting papers

18.7 Are Motions for Admission *pro hac vice* filed electronically?

No. A Motion for Admission *pro hac vice* is filed in the traditional manner on paper. See the Attorney Admissions page at www.nysd.uscourts.gov for details and sample forms.

18.8 Are sealed documents filed electronically?

No. Sealed documents are filed in the traditional manner on paper. The sealed envelope must contain the paper document and a CD-ROM containing a PDF-A copy of the document. A copy of the Judge's sealing order must be attached to the outside of the envelope.

(See section 6 - Sealed Documents).

18.9 Are surety bonds filed electronically?

No. Surety bonds are filed in the traditional manner on paper. Include a copy of the Court's Order regarding the bond.

18.10 Is a Bill of Costs filed electronically?

No. A Bill of Costs should be filed in the traditional manner on paper. See Local Civil Rule 54.1 for details. See also the required Bill of Costs form at www.nysd.uscourts.gov.

18.11 How are Miscellaneous documents filed?

As of December 1, 2010 civil miscellaneous cases will be filed electronically through the District Court's Case Management Electronic Case Files (ECF) system. The party initiating the civil miscellaneous case is required to appear at the Clerk's Office and present the following documents:

1. A completed civil miscellaneous case cover sheet (original & two copies)
2. The hard copy of the civil miscellaneous application and any other supporting documents
3. Federal Rule of Civil Procedure 7.1 statement, if applicable (original & one copy)
4. Applicable filing fee

Within 24 hours of the assignment of a case number, the filing party is required to e-mail the PDF-A copy of the initiating document, the Federal Rule of Civil Procedure 7.1 statement (if applicable), and any supporting documents to:

- For miscellaneous applications assigned to Manhattan e-mail to:
miscfoley@nysd.uscourts.gov
- For miscellaneous applications assigned to White Plains e-mail to:
miscwhiteplains@nysd.uscourts.gov

The subject line of the e-mail and name of the file should list the case number followed by a brief document

description (e.g., "Re: 10 MC 1234 - a letter rogatory"). Failure to do so within 24 hours will delay adding your documents to the computerized ECF docket. Each document must be in a separate PDF-A format file no larger than 4.0 megabytes (separate large computer files into smaller parts if necessary).

The party commencing the civil miscellaneous action is required to serve initiating documents on the opposing party in the traditional manner on paper, and electronically file the proof of service for the initiating documents on the ECF system. The original paper proof of service is required to be delivered to the Clerk's Office along with a copy of the ECF Notice of Electronic Filing (NEF) of the proof of service (the filing receipt).

All subsequent filings on an existing ECF civil miscellaneous case are required to be filed electronically. The party initiating the application will be required to pay a filing fee (see fee schedule). There will be no fee for the filing of the opposition/response and or reply papers, if any.

Pro se litigants (who are not members of the bar and who do not have an active ECF account) are not permitted to file documents electronically without permission of the Court and must continue to file documents in the traditional manner on paper. Where directed by the Court, the Clerk will scan documents received from *pro se* litigants and will file them electronically on the ECF system.

Section 19. Service of Electronically Filed Documents

19.1 How is service accomplished for electronically filed documents?

In cases assigned to the ECF system you will receive a Notice of Electronic Filing (NEF) by e-mail whenever there is activity in your case, including court orders and filings by your adversary. In non-*pro se* cases, that e-mail from the Court constitutes service. A hyperlink to a PDF image of any electronically filed document will be included (not all activity includes a PDF document). Save a copy of the document and the NEF for your records. The Clerk's Office will no longer mail paper copies of electronically filed documents to Filing Users with active ECF accounts. The Clerk's Office will mail copies of all court-initiated documents to non Filing Users in *pro se* cases.

(See section 9 - Service of Documents by Electronic Means).

19.2 Am I required to serve a paper copy of an electronically filed document?

Possibly. In cases assigned to the ECF system, if all parties receive a Notice of Electronic Filing (NEF), service is complete upon transmission of the NEF by the Court, and you are not required to serve a paper copy.

If any party does not receive a NEF, you are required to accomplish service on that party in the traditional manner on paper. Then you must electronically file proof of service (see below).

The Notice of Electronic Filing (NEF) receipt will inform you who will receive notice of the filing "electronically" (by e-mail from the Court) and who will receive notice "by other means" (traditional service on paper).

See section 9 for information regarding service in pro se cases.

(See section 9 - Service of Documents by Electronic Means).

19.3 Am I required to electronically file proof of service in an ECF case?

Only two circumstances require the electronic filing of an Affidavit proof of service in an ECF case:

- (a) Proof of service for the initiating document (complaint, notice of removal, etc.) must be filed as follows:
 - (1) Electronically file proof of service for the initiating document on the ECF system (do not send by e-mail), and
 - (2) Deliver the original paper proof of service with summons attached to the Clerk's Office. Attach a copy of the ECF filing receipt for this document.
- (b) Proof of service must be electronically filed anytime a party is served with a paper document. This usually occurs when a party will not receive electronic notice of the filing (via e-mail) from the Court. See the Notice of Electronic Filing (NEF) for a list of who was or was not served electronically.

Pro se litigants (who are not members of the bar and who do not have an active ECF account) are exempt from that portion of this Rule requiring proof of service to be filed electronically.

(See section 9 - Service of Documents by Electronic Means).

19.4 Is a filing timely if it is completed before midnight?

Yes. Filing must be completed before midnight local time where the Court is located in order to be considered timely filed that day.

(See section 3 - Consequences of Electronic Case Filing).

19.5 Do I receive a receipt (Notice of Electronic Filing (NEF)) when I file electronically?

Yes. When you successfully complete an electronic filing the final screen will display a NOTICE OF ELECTRONIC FILING (NEF), or filing receipt. Save a copy for your records. The NEF receipt will tell you what was filed, by whom, when it was filed and if a document number was assigned on the docket sheet. If you do not see the NEF screen your filing may not have been successful and you are advised to check the docket sheet.

19.6 Should I routinely view the docket sheet in my case?

Yes. Although service is accomplished in ECF cases by an e-mail sent by the Court, e-mail is not foolproof and

you risk missing an e-mail message. Therefore it remains the duty of the Filing User with an active ECF account to review regularly the docket sheet of the case.

(See section 9 - Service of Documents by Electronic Means).

Section 20. Attorney Appearances

20.1 How does an attorney's name appear on the docket sheet?

Each attorney whose name appears under the signature line on the initiating document will be added to the docket sheet when the Clerk's Office opens the case on the ECF system. The attorney responding to that filing must add his or her own name to the docket sheet the first time he or she appears in the case. When electronically filing the first document, the responding attorney must: (a) click to create an "Association" with the client (i.e. represent the client); (b) ensure the "Notice" box is checked to receive electronic notice of case activity; and (c) click the "Lead" attorney box if applicable. If the responding attorney is not offered the opportunity to create an "association" with the client on the first electronic filing, the attorney must electronically file a Notice of Appearance in order to appear on the docket.

20.2 If the attorney's name is on the docket sheet why doesn't that attorney receive e-mail notification of filings?

It could be because the attorney's name was added to the docket sheet before the attorney obtained an ECF password. In that case the attorney's name and firm address will appear at the top of the docket sheet, but the e-mail address will be missing. If this is the case the solution is to obtain an ECF password. Or it could be because the attorney filed a Notice of Appearance but failed to check the "Notice" box when creating an association with the client to receive e-mail notification of activity in the case. In this case, call the ECF Help Desk at (212) 805-0800.

(See section 24 - ECF Help Desk and Training).

20.3 How do I electronically file a Notice of Appearance in an ECF case?

If an attorney joins a case already in progress he or she must electronically file a Notice of Appearance. When electronically filing the Notice of Appearance, the attorney must: (a) click to create an "Association" with the client (i.e., represent the client); (b) ensure the "Notice" box is checked to receive electronic notice of case activity; and (c) click the "Lead" attorney box if applicable. Please note the ECF system will not allow an attorney to file electronically a Notice of Appearance on behalf of another attorney. The Notice of Appearance and the ECF password must belong to the same attorney.

(See section 2 - Eligibility, Registration, Passwords).

20.4 How do I file a Motion for Admission *pro hac vice* in an ECF case?

A Motion for Admission *pro hac vice* is filed in the traditional manner on paper. After the Order of Admission *pro hac vice* is signed, the attorney must apply for an ECF password. See the Attorney Admissions page at www.nysd.uscourts.gov for details and sample forms.

20.5 Am I required to notify the Court when my contact information changes?

Yes. Local Civil Rule 1.3 requires an attorney to notify the court of any contact information changes. For information go to www.nysd.uscourts.gov.

20.6 What if only my e-mail address has changed?

You can change your e-mail address yourself on the ECF system. To update your primary e-mail address log into the SDNY ECF system, click on Utilities, click on Maintain Your Account and E-mail Information. If, however, your other contact information has changed you must follow the directions above to update your full contact information.

20.7 Can I specify additional e-mail addresses to receive notification of activity in my cases?

Yes. You can add alternate e-mail addresses in the SDNY ECF system by clicking on Utilities, Maintain Your Account, and E-mail Information.

20.8 Can I receive electronic notification of activity in cases where I do not represent a party?

Yes. You can add cases to your e-mail notification list on the SDNY ECF system even if you don't represent a party to the case. Click on Utilities, Maintain Your Account, and E-mail Information.

Section 21. Privacy and Public Access to ECF Cases

21.1 Has electronic filing expanded public access to documents?

Yes, documents filed electronically on the ECF system are more widely available than ever before. Electronic documents can now be viewed over the Internet by anyone with a PACER account. In order to protect people's privacy and reduce the threat of identity theft, parties should be cautious when filing sensitive information.

21.2 Who is responsible for redacting sensitive information from filed documents?

It is the sole responsibility of counsel and the parties to be sure that all documents comply with the rules of this Court requiring redaction of personal identifiers. Neither the judge nor the Clerk of Court will review documents for compliance with these rules.

21.3 Am I required to redact certain sensitive information in a document?

Yes. Amendments to Federal Rule of Civil Procedure 5.2 and Criminal Procedure 49.1 require that personal identification information be redacted from documents filed with the court. You should not include sensitive information in any document filed with the Court unless such inclusion is necessary and relevant to the case. This applies to both ECF cases and non-ECF (paper) cases. In compliance with the E-Government Act of 2002, a party wishing to file a document containing the personal data identifiers listed below must file a redacted version in the public file:

- Social Security Numbers: include only the last four digits of the number.
- Names of Minor Children: include only the initials of the child.
- Dates of Birth: include only the year.
- Financial Account #'s: include only the last four digits of these numbers.
- Home Addresses: include only the City and State.

21.4 Is there other sensitive information that I should consider redacting?

Yes. Caution should be exercised when filing documents that contain the following:

- Personal identifying numbers (PIN #'s), such as a driver's license number
- Medical records, treatment and diagnosis
- Employment history
- Individual financial information
- Proprietary or trade secret information
- Information regarding an individual's cooperation with the government

21.5 Am I required to file sensitive information under seal?

No. In addition to the redacted public filing a party may, but is not required to, file the personal data identifiers listed above by filing under seal.

You may file under seal either: (a) a reference list or (b) an original, unredacted version of the document.

If you find it necessary to file sensitive information, the Court prefers a reference list to the filing of a complete document. The reference list shall contain the complete personal data identifier(s) and the redacted identifier(s) used in its (their) place in the filing. The reference list may be amended as of right.

21.6 Are sealed documents filed electronically?

No. Sealed documents are filed in the traditional manner on paper. The sealed envelope must contain the paper document and a CD-ROM containing a PDF-A format copy of the document. A copy of the Judge's sealing order must be attached to the outside of the envelope. For complete instructions see the sealed records filing instructions on the Cases page at www.nysd.uscourts.gov.

(See section 6 - Sealed Documents).

21.7 Who should maintain custody of original unredacted documents?

Parties are responsible for maintaining possession of original, unredacted documents, and information redacted from publicly filed documents. The Court may later require counsel to furnish the unredacted information.

21.8 What if I mistakenly file sensitive or confidential information?

- (a) Immediately contact the ECF Help Desk at (212) 805-0800. The filing will be temporarily sealed and made invisible to the public.
- (b) After notifying the ECF Help Desk, the filing party must ask the Judge, in writing, for the filing to be formally sealed by the Court.
- (c) Electronically file a redacted version of the mistaken filing.

Section 22. ECF Passwords

22.1 To file electronically in this Court, do I need an ECF password from the United States District Court for the Southern District of New York?

Yes. To file electronically in this District Court you must have an ECF log-in and password issued by this Court. This password is unique, and is not the same as a password from another District or Bankruptcy Court, or a PACER password. Protect the security of your password by reporting a lost or stolen password immediately to the ECF Help Desk by email helpdesk@nysd.uscourts.gov or by telephone (212) 805-0800.

(See section 2 - Eligibility, Registration, Passwords).

22.2 Is my SDNY ECF password the same as my PACER password?

No. Your SDNY ECF password is unique and is not the same as your password for the PACER public access system. For information on PACER go to <http://pacer.psc.uscourts.gov> or call (800) 676-6856.

22.3 Must I be an attorney admitted to this Court to obtain an ECF password?

Yes. ECF passwords are available only to attorneys in good standing with this Court.

22.4 How do I obtain an ECF password if I am already admitted to practice in this Court?

An attorney admitted to practice in this court may register for an ECF password on-line at www.nysd.uscourts.gov.

22.5 How do I obtain an ECF password if I am not yet admitted to practice in this Court?

The application to be admitted to the bar of this Court includes a request for an ECF password. Go to www.nysd.uscourts.gov and from the homepage click on Attorney Admission. If you wish to practice in one case only, you may move for admission *pro hac vice* (see instructions below).

22.6 How do I obtain an ECF password if I am admitted to practice *pro hac vice*?

An attorney may be admitted to practice in one case by moving for admission *pro hac vice*. For complete *pro hac vice* motion and password instructions go to www.nysd.uscourts.gov, then click on Attorney Admission.

22.7 Do I need a new ECF password if I change law firms?

No. The ECF password will remain the same even if the contact information changes. Local Civil Rule 1.3 requires an attorney to notify the court of any contact information changes. For information go to www.nysd.uscourts.gov

22.8 How will I know if my ECF password application was submitted successfully on-line?

When you are ready click the “Submit” button on the bottom of the form. The screen will turn red and you will be asked to review your answers for accuracy. After review click “Proceed.” If the screen turns green your application was submitted successfully.

22.9 How long does it take to obtain an ECF password?

Your ECF password will be sent to you by e-mail, within 48 hours of your on-line request. The Court recommends you print a copy of your ECF account information for your records.

Section 23. ECF Computer System Information

23.1 What Internet browser should I use to file electronically on the ECF system?

Each new version of ECF is tested with specific Internet browsers before release. Check the ECF log-in page for a list of approved Internet browsers.

23.2 What is a PDF-A file and how do I create one?

All documents electronically filed on the ECF system must be in PDF-A format (portable document format). A PDF-A file is created by scanning a printed document using PDF writer software such as Adobe Acrobat (go to Adobe.com for details). PDF-A files cannot be altered, providing security to the filer and the Court.

23.3 Is there a limit to the size of a document that can be filed on ECF?

Yes. No single PDF file may be larger than 4.0 megabytes (4.0 mb). If the filing is too large, the ECF system

will not allow it to be filed, and you will not see a Notice of Electronic Filing (NEF or filing receipt) screen. To determine the size of an Adobe Acrobat PDF file click on File, Document Properties, Summary.

23.4 What if my document exceeds the file size limit?

Scan your documents at low resolution. Within the Adobe Acrobat program, on the “Scan Manager” screen, adjust the settings for black and white and 200 dpi (dots per inch). This creates a good quality picture and allows you to fit more pages into a single PDF-A file. If that doesn’t work, separate an oversized file into 2 or more parts. Simply label each file 1a, 1b, 1c, etc. Only relevant excerpts of exhibits should be electronically filed (see below).

(See section 24 - ECF Help Desk and Training).

23.5 Do I need the Court’s permission to file on paper in an ECF case?

Yes. If your document is too large to file electronically after following the directions above, you may seek permission from the Judge to file on paper.

(See section 5 - Attachments and Exhibits).

23.6 Must I file only relevant excerpts of exhibits?

Yes. You are limited to electronically filing only relevant excerpts of exhibits. Excerpts must be clearly identified as such.

(See section 5 - Attachments and Exhibits).

23.7 What if a technical failure prevents me from filing electronically?

If a technical failure prevents you from filing electronically, follow the steps below:

- (a) Do not attempt to file paper documents in ECF cases except for emergency filings (eg. Temporary Restraining Order).
- (b) If the Court’s ECF system is out of order you should electronically file your document as soon as the system is restored.
- (c) If you missed a filing deadline when the ECF system was out of order, attach a statement to your filing explaining how the interruption in service prevented you from filing in a timely fashion.

(See section 11 - Technical Failures)

July 15, 1998

INDIVIDUAL PRACTICES OF JUDGE THOMAS P. GRIESA

Unless otherwise ordered by Judge Griesa, matters before him shall be conducted in accordance with the following practices.

1. Communications With Chambers

A. Letters. Copies of letters to chambers shall simultaneously be delivered to all counsel. Copies of correspondence between counsel shall not be sent to the court.

B. Telephone Calls. In addition to Paragraph 1(D) below, telephone calls to chambers are permitted. For matters other than docketing, scheduling or calendaring, call chambers at 212-805-0210.

C. Faxes. Faxes to chambers are not permitted.

D. Docketing, Scheduling, and Calendar Matters. For docketing, scheduling and calendar matters, call Jon Beale at 212-805-0101 between 9:30 a.m. and 5:30 p.m.

E. Requests for Adjournments or Extensions of Time. All requests for adjournments or extensions of time must state (1) the original date, (2) the number of previous requests for adjournment or extension, (3) whether these previous requests were granted or denied, and (4) whether the adversary consents, and if not, the reasons given by the adversary for refusing to consent. If the requested adjournment or extension affects any other scheduled dates, a proposed Revised Scheduling Order (reflecting only business days) must be attached. If the request is for an adjournment of a court appearance, absent an emergency, it shall be made at least 48 hours prior to the scheduled appearance.

2. Motions

A. Pre-Motion Conferences in Civil Cases. For discovery motions, follow Local Civil Rule 37.2. For motions other than discovery motions, pre-motion conferences are not required.

B. Courtesy Copies. Courtesy copies of all motion papers, marked as such, should be submitted for chambers.

C. Memoranda of Law. Unless prior permission has been granted, memoranda of law in support of and in opposition to motions are limited to 25 pages, and reply memoranda are limited to 10 pages. Memoranda of 10 pages or more shall contain a table of contents.

D. Filing of Motion Papers. Motion papers shall be filed promptly after service.

E. Oral Argument on Motions. Parties may request oral argument by letter at the time their moving or opposing or reply papers are filed. The court will determine whether argument will be heard and, if so, will advise counsel of the argument date.

3. Pretrial Procedures.

A. Joint Pretrial Orders in Civil Cases. Pretrial orders are not required unless specifically directed by the court in a particular case.

B. Filings Prior to Trial in Civil Cases. Unless otherwise ordered by the court, each party shall file, 15 days before the date of commencement of trial if such a date has been fixed, or 30 days after the filing of any final pretrial order if no trial date has been fixed:

i. In jury cases, requests to charge and proposed voir dire questions. When feasible, proposed jury charges should also be submitted on a 3.5" diskette in WordPerfect version 5.1 or higher format;

ii. In non-jury cases, a statement of the elements of each claim or defense involving such party, together with a summary of the facts relied upon to establish each element;

iii. In all cases, motions addressing any evidentiary or other issues which should be resolved in limine; and

iv. In any case where such party believes it would be useful, a pretrial memorandum.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X		:	
		:	CONSENT TO PROCEED BEFORE
	Plaintiff(s),	:	UNITED STATES MAGISTRATE JUDGE
		:	
	- against -	:	_____ Civ. _____ () ()
		:	
	Defendant(s).	:	
----- X			

IT IS HEREBY STIPULATED by the undersigned:

1. All parties consent, pursuant to 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73, that a United States Magistrate Judge conduct all further proceedings in this action, including any trial and entry of final judgment.

2. Any appeal from a judgment entered in this case will lie to the Court of Appeals for the Second Circuit as from any other judgment of the district court pursuant to 28 U.S.C. § 636(c)(3) and Fed. R. Civ. P: 73(c).

Attorney(s) for Plaintiff(s)
Address
Telephone

Attorney(s) for Defendant(s)
Address
Telephone

Attorney(s) for _____
Address
Telephone

Attorney(s) for _____
Address
Telephone

(Separately executed forms may be submitted. See Fed. R. Civ. P. 73(b).)

SO ORDERED.

U.S.D.J.

Magistrate Judge _____ was assigned this case on _____.

For: Clerk U.S.D.C. S.D.N.Y.

A copy of this Notice must be served by the plaintiff with the complaint on all adversary parties, and attached to any third-party complaint served by a defendant.

RIGHT TO PROCEED BEFORE A UNITED STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73, and S.D.N.Y. Local Civil Rule 73.1, the United States Magistrate Judges of the Southern District of New York have jurisdiction, with the consent of all parties, to conduct any or all proceedings in a civil case, including jury or non-jury trials, and order the entry of judgment. Trial before a Magistrate Judge proceeds in the same manner as trial before a District Judge.

The Magistrate Judge previously designated for the case will conduct the consent proceedings. If no Magistrate Judge has been designated, one will be drawn by lot to preside.

In accordance with 28 U.S.C. § 636(c)(3) and Fed. R. Civ. P. 73(c), appeal in a consent proceeding lies to the United States Court of Appeals for the Second Circuit as it would from any judgment of the district court.

The decision to consent, or not to consent, to proceed before a Magistrate Judge under § 636(c) is entirely voluntary. Only if all parties to the case consent to the reference will either the District Judge or Magistrate Judge be informed of the decision. Fed. R. Civ. P. 73(b).

If the parties in this action consent to proceed before a Magistrate Judge, the attached consent form should be signed by counsel for all parties and submitted to the Judgment and Orders Clerk in Room 120 of the Courthouse at 500 Pearl Street or Room 167 of the White Plains Courthouse. Separately executed forms may be submitted. See Fed.R. Civ. P. 73(b).

December 7, 2011

Shadow Investigation, Inc.
199-10 32nd Avenue
Flushing, New York 11358

Re: CHAD MARON and THOMAS NAUDUS
V.
CARRIER IQ, INC.

Dear Sir/Madam:

Enclosed please find an original and 1 copy of the Complaint, 2 copies of Civil Cover Sheet, and 1 copy of a Summons in the above-referenced matter. Please purchase the civil case number (\$350.00 check enclosed) and file the Summons and Complaint with the United States District Court for Southern District of New York.

Please do this at:

**United States District Court for the Southern District of New York
Cashier Department, Room 120
500 Pearl Street
New York, NY 10007**

When this is complete, please return the Copy of the Complaint, the Summons and the receipt with the civil case number to me at:

**Jake Nachmani
Morelli Ratner PC
950 Third Avenue
New York, NY 10022
O: (212) 751-9800
F: (212) 751-0466**

We will need a copy of the civil case number within 24 hours. So when the complaint is filed, please fax back to me a copy of the documents, the receipt, and the civil case number.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Jake Nachmani

Enclosures

