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2  
3 UNITED STATES DISTRICT COURT  
4 WESTERN DISTRICT OF WASHINGTON  
5 AT SEATTLE

6 CHAD GOODMAN and JON J. OLSON,  
7 individually and on behalf of all others  
8 similarly situated,

9 Plaintiffs,

10 vs.

11 HTC AMERICA, INC., a Washington  
12 corporation, and ACCUWEATHER.COM,  
13 INC., a Pennsylvania corporation,

14 Defendants.

Case No.

**COMPLAINT — CLASS ACTION**

JURY TRIAL DEMANDED

15 Plaintiffs, individually and on behalf of all others similarly situated, allege as follows  
16 based on personal knowledge of their own acts and observations and, otherwise, on infor-  
17 mation and belief based on investigation of counsel.

18 **I. NATURE OF THE ACTION**

19 1. Plaintiffs seek injunctive relief and compensation for their purchases of HTC  
20 EVO 3D and the EVO 4G smartphones that are unreasonably defective and which Plaintiffs  
21 would not have purchased had they known of the defects.

22 2. In particular, Defendants integrated an AccuWeather application into Plaintiffs’  
23 HTC smartphones, ostensibly to make weather information conveniently available to Plaintiffs  
24 (*see infra* at ¶ 5, fig. 1). In actuality, Defendants have used and continue to use the application  
25 to track Plaintiffs’ exact geographic location for Defendants’ own purposes unrelated to weath-  
26 er information (*see infra* at ¶ 5, fig. 2).

27 3. The location data Defendants cause Plaintiffs’ smartphones to transmit to Ac-

1 cuWeather is based on GPS coordinates and is accurate to within a few feet of where Plaintiffs  
 2 are holding their smartphones. This location data is unnecessarily precise for displaying local  
 3 weather information on Plaintiffs’ smartphones; HTC smartphones are equipped to transmit  
 4 “coarse” location data accurate to within a few blocks and which takes less of a toll on Plain-  
 5 tiffs’ Internet data usage and battery life.

6 4. Further, Defendants transmit Plaintiffs’ location data over the Internet “in the  
 7 clear,” without any encryption. This is a substandard practice for transmitting individuals’ pre-  
 8 cise location data and is unnecessary, since HTC smartphones are capable of transmitting data  
 9 over the Internet using SSL encryption.

10 5. Figure 1 below depicts HTC EVO 3D and 4G smartphone displays. The boxed  
 11 area indicates the AccuWeather widget. Figure 2 below shows the unencrypted statement re-  
 12 vealing precise geographic location that Defendants transmit to AccuWeather when a user taps  
 13 the AccuWeather widget. The boxed area indicates GPS coordinates; italics indicate redaction.

14 *Figure 1. HTC EVO 3D and 4G displays with AccuWeather widget*



Figure 2. Unencrypted transmission with precise GPS coordinates

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http://htc.accuweather.com/widget/htc/  
lat-lon-search.asp?ac=ZZ3zzz3Z&  
lat=99.999999&lon=99.999999  
&nocache=33333333333333
```

6. The AccuWeather application cannot be uninstalled or reasonably disabled.

7. Plaintiffs, individually and on behalf of all others similarly situated, seek relief under state consumer protection statutes and common law to remedy the injuries Defendants caused.

## II. PARTIES

8. Plaintiff Chad Goodman is a resident of San Diego, California. During the Class Period (as defined herein), he purchased a new HTC EVO 3D smartphone and a new HTC EVO 4G smartphone at a Sprint store. On both devices, he used the AccuWeather software application (the “AccuWeather App”) integrated into the smartphones.

9. Plaintiff Jon J. Olson is a resident of Minneapolis, Minnesota. During the Class Period, he purchased a new HTC EVO 3D smartphone at a Sprint store. He used the AccuWeather App integrated into the smartphone.

10. Defendant HTC America, Inc. (“HTC”), a subsidiary of Taiwan-based HTC Corporation, is a Washington corporation with headquarters at 13920 SE Eastgate Way, Bellevue, Washington 98005. HTC’s headquarters in Bellevue, Washington are the actual center of its direction, control, and coordination: According to a complaint HTC Corporation filed in a case captioned *HTC Corporation, et al. v. Samsung Co, Ltd., et al.*, C11-511 MJP (W.D. Wash. filed Mar. 23, 2011), Bellevue, Washington is HTC’s principal place of business and the Bellevue headquarters works with HTC Corporation in promoting its products among consumers and affiliates throughout the United States, including in the Western District of Washington. In addition, the offices of HTC’s President, Secretary, Treasurer, and Privacy Administrator are

1 located at HTC's Bellevue, Washington headquarters. HTC designs, develops, and produces  
2 handheld wireless telecommunications devices.

3 11. Defendant AccuWeather.com, Inc. ("AccuWeather") is a Pennsylvania corpora-  
4 tion with a principal place of business at 385 Science Park Road, State College, Pennsylvania  
5 16803. AccuWeather provides weather information services through many channels, including  
6 through the AccuWeather application integrated into certain HTC smartphone.

7 12. HTC and AccuWeather are each jointly and severally liable for the conduct of  
8 the other, alleged herein.

9 13. HTC and AccuWeather are collectively referred to herein as "Defendants."

### 10 III. JURISDICTION AND VENUE

11 14. This Court has diversity jurisdiction in this case under the Class Action Fairness  
12 Act, 28 U.S.C. § 1332(d)(2). This complaint states claims on behalf of classes of consumers  
13 who are minimally diverse from Defendants. The amount in controversy exceeds \$5 million,  
14 exclusive of interest and costs.

15 15. The classes each consist of more than one hundred members, inasmuch as the  
16 HTC EVO 3D was reportedly one of the top three Android-based smartphones in 2010 third  
17 quarter sales with millions of the devices sold to date; and sales of the HTC EVO 4G on the  
18 day of its release reportedly exceeded any prior sales of smartphones in a one-day period and  
19 supplies ran out at a number of the 22,000 locations carrying the device.

20 16. This Court has personal jurisdiction over Defendants because: (a) some of the  
21 acts alleged herein were committed in the state of Washington; (b) HTC America, Inc. is regis-  
22 tered to do business in the state of Washington; and (c) each Defendant systematically and con-  
23 tinuously conducts business here.

24 17. Venue is proper in this Court under 28 U.S.C. § 1391 because HTC America,  
25 Inc. is a corporation headquartered in this District and/or because Defendants' improper con-  
26 duct occurred in, was directed from, and/or emanated from this District.

1 **IV. GENERAL ALLEGATIONS**

2 **A. Smartphones**

3 18. A smartphone is a mobile device that combines cellular telephone voice and  
4 text-messaging communications capabilities with non-telephone functions such as digital cam-  
5 era, portable media player, personal digital assistant (PDA), and various software applications.

6 19. In addition, smartphones are Internet-enabled mobile computers based on mo-  
7 bile operating systems such as Google Android.

8 20. Smartphone users can run computer applications designed to work on smart-  
9 phones (“mobile apps” or “apps”); some apps are designed to communicate with websites that  
10 provide information, GPS navigation, social networking, and other content and services availa-  
11 ble on the Internet.

12 21. Smartphone users can download some apps from the Internet; apps may be pre-  
13 installed on a smartphone by the manufacturer or reseller; and, in some cases, the device manu-  
14 facturer may incorporate apps into a smartphone’s operating system, fully integrated the apps  
15 with the device’s hardware and other functional components.

16 **B. HTC EVO 3D and 4G Smartphones**

17 22. HTC designs, develops, manufactures, promotes, markets, distributes and sells  
18 smartphones to consumers in the states of Washington, California, Minnesota, and generally  
19 throughout the United States. Its smartphone products include the HTC EVO 3D and the HTC  
20 EVO 4G smartphone models. HTC smartphones can be purchased directly from HTC’s web-  
21 site, in retail stores such as Best Buy, RadioShack, or Wal-Mart, and from Sprint, a wireless  
22 communications services provider.

23 23. HTC uses operating systems provided by others, such as Google Android, and  
24 applies its own operating system development and customization, middleware, end-user inter-  
25 faces and applications, and product design to create smartphones consisting of tightly integrat-  
26 ed hardware and software components. HTC has also manufactured smartphones for Google.

1 **C. HTC EVO 3D and 4G Defects**

2 24. HTC has integrated a third-party app, the AccuWeather App, into the HTC EVO  
3 3D and 4G smartphones; the app is customized for HTC smartphones and cannot be uninstalled  
4 or reasonably disabled using features available or known to Plaintiffs and Class Members.

5 25. HTC manufactured the EVO 3D and 4G smartphones with defects that caused  
6 the smartphones to function in undesirable ways that unreasonably transmitted Plaintiffs' and  
7 Class Members' personally identifiable information ("PII") information to a third party, Ac-  
8 cuWeather, and transmitted that information unencrypted, in a manner that fails to meet base-  
9 line information security standards.

10 26. Plaintiffs' and Class Members' information Defendants transmitted to Ac-  
11 cuWeather included "fine" geographic location data, along with the date and time.

12 27. "Fine" location data means data derived from Global Positioning System  
13 ("GPS") information that identifies the latitude and longitude of a particular location within  
14 several feet. HTC and AccuWeather caused this information to be transmitted in the following  
15 format:

16 lat=99.999999&lon=99.999999

17 28. The precision of the latitude and longitude coordinates transmitted to Ac-  
18 cuWeather effectively identify Plaintiffs or any other user at the doorstep of that person's  
19 home.

20 29. The precision of the latitude and longitude coordinates transmitted to Ac-  
21 cuWeather was unnecessarily precise for providing weather conditions and forecast infor-  
22 mation to Plaintiffs and Class Members.<sup>1</sup>

23 30. HTC smartphones are readily capable of transmitting coarse location infor-  
24

25 <sup>1</sup> For example, employing an accuracy of six decimal places, the GPS coordinates of lati-  
26 tude 47.608755 and longitude -122.340548 pinpoint the Seattle, Washington location of a  
27 street sign at the northwest corner of Pike Street and Pike Place. In contrast, the same coordi-  
nates rounded or truncated to two decimal places define an area bounded on the east by 2nd  
Avenue; somewhere in the Puget Sound on the west; Pine Street on the north; and South Main  
Street on the south—a location sufficient to provide a useful report of weather conditions.

1 mation based on cell network tower locations, which is sufficient for providing weather infor-  
2 mation).

3 31. Plaintiffs’ and Class Members’ information was transmitted to a custom, HTC-  
4 specific location on AccuWeather’s servers—<http://htc.accuweather.com>.

5 32. Sending such information unencrypted (or “plain text” or “in the clear”) over  
6 standard, Web-based communications channels (HTTP) is an unreasonable violation of gener-  
7 ally accepted information security practices.

8 33. At a minimum, Defendants caused Plaintiffs’ and Class Members’ coarse loca-  
9 tion information to be transmitted to AccuWeather at regular intervals throughout the day; in  
10 addition, Defendants caused Plaintiffs’ and Class Members fine, GPS-based location data to be  
11 transmitted whenever they sought more detailed weather information by tapping the Ac-  
12 cuweather widget on their smartphones. (HTC smartphones also insecurely transmit plain-text,  
13 fine location data to several other apps, including Groupon, Flixster, and UrbanSpoon; these  
14 apps are not integrated by HTC on its smartphones and do not automatically transmit user loca-  
15 tion information at regular intervals.)

16 34. In addition, AccuWeather automatically received Plaintiffs’ and Class Members’  
17 “user agent” information—information about their device and browser characteristics—that  
18 enables AccuWeather to perform “device fingerprinting” to assign unique identifiers to each of  
19 Plaintiffs’ and Class Members’ smartphones.

20 35. In addition, the AccuWeather has the capability to read the smartphone’s unique  
21 device identifier, send text messages, modify events on the calendar, and transmit email mes-  
22 sages.

23 36. Further, AccuWeather derives a substantial portion of its revenue by collecting  
24 information from AccuWeather users, including Plaintiffs and Class Members, and analyzing  
25 that information to display behaviorally targeted advertising to those users.

26 37. Upon information and belief, AccuWeather uses the location information it un-  
27 necessarily receives from Plaintiffs and Class Members to identify individuals, analyze their

1 behavior based on their smartphone uses and locations, build profiles about them, and profit  
 2 from sharing the profile information and/or using the profile information in providing services  
 3 to yet other third parties, such as by serving behaviorally targeted advertising to Plaintiffs and  
 4 Class Members on their smartphones or the Web.

5 38. Upon information and belief, HTC and AccuWeather use the defects in the HTC  
 6 EVO 3D and 4G smartphones to their financial advantage.

7 39. Another unreasonable security defect in HTC smartphone is the HtcLoggers  
 8 service feature on the smartphones. This is not a feature available for Plaintiffs and Class  
 9 Members to use; it is, however, available to the providers of third-party apps installed on Plain-  
 10 tiffs' and Class Members' smartphones.

11 40. The HtcLoggers feature allows any Internet-connected app, regardless of its  
 12 purpose, to access Plaintiffs' and Class Members' email addresses; phone numbers for calls di-  
 13 aled and received; fine and coarse location and location history; text messages; and activity  
 14 logs for all apps running on the smartphone—essentially, all information regarding all activity  
 15 on the smartphone.<sup>2</sup>

16 41. HTC Corporation reportedly has acknowledged the HtcLogger defect<sup>3</sup> but has  
 17 failed to alert purchasers, rectify the defect, investigate AccuWeather's use and/or onward  
 18 transfer of purchasers' detailed geographic location data, or remediate AccuWeather's retention  
 19 of such data.

20 **D. Economic Harm to Plaintiffs and Class Members**

21 42. Plaintiffs and Class Members did not give consent or authorization to HTC or  
 22 AccuWeather for AccuWeather to acquire their fine location information and/or to acquire such  
 23 information for undisclosed purposes that Plaintiffs and Class Members would not reasonably

24 <sup>2</sup> Android Police, <http://www.androidpolice.com/2011/10/01/massive-security-vulnerability-in-htc-android-devices-evo-3d-4g-thunderbolt-others-exposes-phone-numbers-gps-sms-emails-addresses-much-more/>, last updated Oct. 5, 2011.

25 <sup>3</sup> Android Police, <http://www.androidpolice.com/2011/10/04/htc-acknowledges-data-exposing-vulnerability-in-some-devices-promises-over-the-air-patch-shortly//>, last updated  
 26 Oct. 5, 2011.  
 27



1 expect for the furnishing of weather information.

2 43. Plaintiffs and Class members did not give consent or authorization to HTC or  
3 AccuWeather to transmit such information to AccuWeather in an unreasonably insecure man-  
4 ner.

5 44. Defendants, by offering AccuWeather-embedded smartphones in the market-  
6 place, represented to Plaintiffs and Class Members that the EVO 3D and 4G did not cause per-  
7 sonal information to be unreasonably and unexpectedly transferred to third parties and that the  
8 transfer of any such information, expected or not, was accomplished using reasonable measures  
9 to maintain the privacy and security of Plaintiff's and Class Members' personal information.

10 45. Plaintiffs and Class Members paid more for their smartphones than they would  
11 have paid and more than the smartphones would have been valued by the market if HTC had  
12 disclosed the fact that the smartphones were designed, manufactured, distributed, and/or sold  
13 with defects.

14 46. Plaintiffs and Class Members paid more for their smartphones than they would  
15 have paid if these products had been labeled accurately and had contained adequate disclosures  
16 about their defects.

17 47. A reasonable consumer would, and Plaintiffs and Class Members did, in fact,  
18 expect that if HTC smartphones were subject to defects such as those identified above, HTC  
19 would disclose these material facts; and then Plaintiffs and Class Members would not have  
20 bought these HTC smartphones.

21 48. Defendants' competitors manufacture, market, and distribute comparable  
22 smartphones that do not send fine location data to third parties without a users' express permis-  
23 sion and without encryption or other reasonable security protocols. In comparison to similar  
24 products that display adequate disclosures, Defendants charged a premium for the EVO 3D and  
25 the EVO 4G.

26 49. Plaintiffs and Class Members paid premiums for HTC smartphones because  
27 they reasonably believed the devices were designed to employ reasonable security in their op-

1 eration.

2 50. Plaintiffs and Class Members suffered actual damages as a result of Defendants'  
3 acts and omissions. Specifically, as a proximate result of Defendants' conduct, Plaintiffs and  
4 other Class Members suffered monetary losses, including the purchase price of the HTC  
5 smartphones or, at a minimum, the difference between the inflated price that Plaintiffs and  
6 Class Members paid and the price Defendants would have been constrained to charge for a  
7 product that contained adequate disclosures of its defects.

8 51. As a consequence of Defendants' failure to provide adequate disclosure of the  
9 defects, Plaintiffs' and Class Members' PII has been exposed to third parties.

10 52. Plaintiffs and Class Members who purchased HTC smartphones and activated  
11 the AccuWeather App are entitled to a refund of the purchase price, a replacement smartphone,  
12 or in the alternative, the premium they paid for the product above the amount charged for simi-  
13 lar, adequately labeled products.

14 53. Plaintiffs and the Classes also seek a court order requiring the Defendants to  
15 cure the defects and to purge any PII they collected, retained, and/or shared as a result of its  
16 deceptive and unjust practices.

## 17 V. CLASS ALLEGATIONS

18 54. Plaintiffs bring this action pursuant to Rules 23(a) and (b)(2) and 23(b)(3) of the  
19 Federal Rules of Civil Procedure on behalf of themselves and the following classes:

20 a. **National Class:** All persons residing in the United States who purchased  
21 the HTC EVO 3D and/or the HTC EVO 4G smartphone and whose claims are not barred by  
22 statutes of limitations.

23 b. **Minnesota Subclass:** All persons residing in the state of Minnesota who  
24 purchased the HTC EVO 3D and/or the HTC EVO 4G smartphone and whose claims are not  
25 barred by the statutes of limitations.

26 c. **California Subclass:** All persons residing in the state of California who  
27 purchased the HTC EVO 3D and/or the HTC EVO 4G smartphone and whose claims are not

1 barred by the statutes of limitations.

2 55. Excluded from the Class are Defendants, their assigns and successors, legal rep-  
3 resentatives, and any entity in which a Defendant has a controlling interest. Also excluded is  
4 the judge to whom this case is assigned and the judge's immediate family.

5 56. Plaintiffs reserve the right to revise the definitions of these Classes based on  
6 facts they learn as litigation progresses.

7 57. Each class consists of thousands of persons, making joinder impractical.

8 58. The claims of Plaintiffs are typical of the claims of all other members of the  
9 Classes.

10 59. Plaintiffs will fairly and adequately represent the interests of the Classes. Plain-  
11 tiffs have retained counsel with substantial experience in prosecuting complex litigation and  
12 class actions, including cases involving consumers' personal information in the context of In-  
13 ternet-connected consumer electronics. Plaintiffs and their counsel are committed to prosecut-  
14 ing this action vigorously on behalf of the Classes and have the financial resources to do so.  
15 Neither Plaintiffs nor their counsel have any interests adverse to those of the Classes.

16 60. Absent a class action, most Class Members would find the cost of litigating their  
17 claims to be prohibitive and would have no effective remedy. The class treatment of common  
18 questions of law and fact is also superior to multiple individual actions or piecemeal litigation  
19 in that it conserves the resources of the courts and the litigants and promotes consistency and  
20 efficiency of adjudication.

21 61. Defendants have acted and failed to act on grounds generally applicable to  
22 Plaintiffs and the Classes, requiring the Court's imposition of uniform relief to ensure compati-  
23 ble standards of conduct toward the Classes.

24 62. The factual and legal bases of Defendants' liability to Plaintiffs and to the other  
25 Class Members are the same, resulting in injury to Plaintiffs and all of the other Class Mem-  
26 bers. Plaintiffs and the other Class Members have all suffered harm and damages as a result of  
27 Defendants' wrongful conduct.

1           63.     There are many questions of law and fact common to Plaintiffs and the Classes,  
2 and those questions predominate over any questions that may affect only individual Class  
3 Members. Common and predominant questions for the Class include but are not limited to the  
4 following:

5           a.     whether Defendants designed, designed, manufactured, distributed,  
6 and/or sold the EVO 3D and/or the EVO 4G with defects that unreasonably exposed Plaintiffs'  
7 and Class Members' PII and exposed them to computer security risks paid more for their  
8 smartphones than they would have paid and more than the smartphones would have been val-  
9 ued by the market if HTC had disclosed the fact that the smartphones were designed, config-  
10 ured, and/or distributed with defects;

11           b.     whether HTC and AccuWeather purposefully incorporated a defect into  
12 the HTC smartphone that sent Plaintiffs' and Class Members' detailed, personal information,  
13 including PII, to AccuWeather, a third party, in unencrypted form;

14           c.     whether Defendants obtained and transmitted Plaintiffs' and Class  
15 Members' precise location data and other confidential and personally identifiable information;

16           d.     whether Defendants transmitted and stored such information in an un-  
17 reasonably insecure manner;

18           e.     what information continues to be retained and used by Defendants;

19           f.     what third parties that Plaintiffs' and Class Members' confidential in-  
20 formation and PII as a result of Defendants' conduct;

21           g.     whether Defendants' conduct described herein violates various states'  
22 consumer protection statutes;

23           h.     whether Defendants' conduct has resulted in their unjust enrichment;

24           i.     whether, as a result of Defendants' conduct, Plaintiffs and the Classes are  
25 entitled to equitable relief and/or other relief and, if so, the nature of such relief; and

26           j.     whether, as a result of Defendants' conduct, Plaintiffs and the Classes are  
27 entitled to damages and/or treble damages.

1 64. The questions of law and fact common to the Classes predominate over any  
2 questions affecting only individual members, and a class action is superior to all other available  
3 methods for the fair and efficient adjudication of this controversy.

4 65. Based on the foregoing allegations, Plaintiffs' claims for relief arise under the  
5 legal bases set forth below.

6 **VI. CLAIMS FOR RELIEF**

7 **FIRST CLAIM FOR RELIEF**

8 **PREVENTION OF CONSUMER FRAUD ACT**

9 **MINN. STAT. §§ 325F.68-.70**

10 **(on behalf of Plaintiff Olson and the Minnesota Subclass)**

11 66. Plaintiffs incorporate the above allegations by reference as if fully set forth  
12 herein.

13 67. Minn. Stat. § 325F.69, subdivision 1 provides: The act, use, or employment by  
14 any person of any fraud, false pretense, false promise, misrepresentation, misleading statement  
15 or deceptive practice, with the intent that others rely thereon in connection with the sale of any  
16 merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby,  
17 is enjoined as provided in section 325F.70.

18 68. During the Class Period, Plaintiff Olson and the Minnesota Subclass entered in-  
19 to consumer transactions with Defendants by purchasing EVO 3D and/or EVO 4G  
20 smartphones.

21 69. At all relevant times hereto, Defendants were "persons" in the business of "sell-  
22 ing" "merchandise" within the meaning of Minn. Stat. § 325F.68 subs. 2-4.

23 70. HTC, by failing to disclose the above-described defects in its HTC EVO 3D and  
24 HTC EVO 4G smartphones purchased by Plaintiffs and members of the Minnesota Subclass,  
25 and AccuWeather, by actively participating with HTC in incorporating those defects into the  
26 HTC smartphones, Defendants individually and/or jointly, engaged in misrepresentations, un-  
27 lawful schemes and courses of conduct intended to induce the Plaintiff Olson and members of

1 the Minnesota Subclass to purchase smartphones in violation of Minnesota’s law and engaged  
2 in consumer fraud as defined under Minn. Stat. §§ 325F.68-.70.

3 71. Plaintiff Olson and members of the Minnesota Subclass have been harmed by  
4 Defendants’ unlawful violations of this section and are therefore entitled to relief in the form of  
5 damages, costs and disbursements, including the costs of investigation and reasonable attor-  
6 neys’ fees and are entitled to equitable relief as determined by this Court.

7 **SECOND CLAIM FOR RELIEF**

8 **UNLAWFUL TRADE PRACTICES ACT**

9 **MINN. STAT. §§ 325D.09-.16**

10 **(on behalf of Plaintiff Olson and the Minnesota Subclass)**

11 72. Plaintiffs incorporate the above allegations by reference as if fully set forth  
12 herein.

13 73. This claim is brought pursuant to Minnesota’s Unlawful Trade Practices Act,  
14 Minn. Stat. §§ 325D.09-.16 and Minn. Stat. § 8.31, Subds. 1 and 3a.

15 74. Minnesota’s Unlawful Trade Practices Act prohibits persons from misleading  
16 consumers as to the quality of a product (§ 325D.09) and prohibits a person, in connection with  
17 the sale of merchandise, to knowingly misrepresent, directly or indirectly, the true quality, in-  
18 gredients or origin of the merchandise (§ 325D.13).

19 75. During the Class Period, Defendants were “persons” as defined under Minn.  
20 Stat. § 325D.10(a).

21 76. During the Class Period, Defendants’ transactions were “sales” to consumers as  
22 defined under Minn. Stat. § 325D.10(c).

23 77. During the Class Period, Defendants were engaged in the sale of smartphones to  
24 consumers, which is considered the “sale of merchandise” as used in Minn. Stat. § 325D.13.

25 78. HTC, by failing to disclose the above-described defects in its HTC EVO 3D and  
26 HTC EVO 4G smartphones purchased by Plaintiffs and members of the Minnesota Subclass,  
27 and AccuWeather, by actively participating with HTC in incorporating those defects into the

1 HTC smartphones, Defendants knowingly, in connection with the sale of smartphones, misrep-  
2 resented the true quality of the smartphones.

3 79. As a result of Defendants' unlawful violation of this section, Plaintiff Olson and  
4 the Minnesota Subclass have been damaged, by among other things, failing to receive the qual-  
5 ities and benefits a product impliedly represented to them as defective free.

6 80. Plaintiff Olson and the Minnesota Subclass have been harmed by Defendants'  
7 unlawful violations of this section and are therefore entitled to relief in the form of damages,  
8 costs, and disbursements, including costs of investigation and reasonable attorney's fees and  
9 are entitled to equitable relief as determined by this Court.

10 **THIRD CLAIM FOR RELIEF**

11 **DECEPTIVE TRADE PRACTICES ACT**

12 **MINN. STAT. §§ 325D.43-.48**

13 **(on behalf of Plaintiff Olson and the Minnesota Subclass)**

14 81. Plaintiffs incorporate the above allegations by reference as if fully set forth  
15 herein.

16 82. This claim is brought pursuant to Minnesota's Deceptive Trade Practices Act,  
17 Minn. Stat. §§ 325D.43-.48 and Minn. Stat. § 8.31, Subds. 1 and 3a.

18 83. Minnesota's Unlawful Trade Practices Act prohibits deceptive conduct in the  
19 course of business, including:

20 a. misrepresenting goods or services that have benefits or uses that they do  
21 not have. 325D.44, Subd. 1(5);

22 b. misrepresenting goods or services that have a particular standard, quality  
23 which they do not. 325D.44, Subd. 1(7).

24 c. advertising goods or services with the intent not to sell them as adver-  
25 tised, 325D.44, Subd. 1(9).

26 d. engaging in any other conduct that similarly creates a likelihood of con-  
27 fusion or of misunderstanding. 325D.44, Subd. 1(13).

1 84. Defendants knowingly and intentionally engaged in deceptive trade practices by  
2 the following: designing, manufacturing, and distributing the HTC EVO 3D and the HTC EVO  
3 4G with defects, by failing to disclose such defects when Plaintiff Olson and the members of  
4 the Minnesota Subclass purchased their smartphones, and by failing to cure such defects.

5 85. Plaintiff Olson and the Minnesota Subclass have suffered damages as a result of  
6 Defendants' violation of this section and will continue to do so unless and until Defendants are  
7 enjoined from continuing their conduct in violation of the Minnesota Deceptive Trade Practices  
8 Act.

9 86. Plaintiffs are entitled to equitable relief under this section and any other relief as  
10 the Court determines to be just and reasonable.

11 **FOURTH CLAIM FOR RELIEF**

12 **FALSE STATEMENT IN ADVERTISEMENT**

13 **MINN. STAT. § 325F.67**

14 **(on behalf of Plaintiff Olson and the Minnesota Subclass)**

15 87. Plaintiffs incorporate the above allegations by reference as if fully set forth  
16 herein.

17 88. This claim is brought pursuant to Minn. Stat. § 8.31, Subd. 3a, and Minnesota's  
18 False Statement in Advertisement law, Minn. Stat. § 325F.67.

19 89. Minnesota's false advertising statute prohibits advertisements containing untrue,  
20 deceptive or misleading representations with the intent to sell or in any way dispose of mer-  
21 chandise or services to increase consumption of such merchandise or services or to induce the  
22 public in any manner to enter into any obligation relating to the same.

23 90. Defendants knowingly and intentionally, for the purposes of inducing Plaintiff  
24 Olson and members of the Minnesota Subclass to purchase the HTC EVO 3D and/or the HTC  
25 EVO 4G, engaged in the dissemination of false advertising in violation of this section in the  
26 following ways: failing to disclose defects in these smartphones and the AccuWeather App in-  
27 tegrated with the smartphones when Plaintiff Olson and the Minnesota Subclass purchased



1 them, and by failing to cure such defects.

2 91. Plaintiff Olson and the Minnesota Subclass has been harmed by Defendants un-  
3 lawful violations of this section and are therefore entitled to relief in the form of damages,  
4 costs and disbursements, including costs of investigation and reasonable attorney's fees and are  
5 entitled to equitable relief as determined by this Court.

6 **FIFTH CLAIM FOR RELIEF**

7 **CONSUMER LEGAL REMEDIES ACT**

8 **CAL. CIV. CODE § 1750 *et seq.***

9 **(on behalf of Plaintiff Goodman and the California Subclass against Defendant HTC)**

10 92. Plaintiffs incorporate the above allegations by reference as if fully set forth  
11 herein.

12 93. In violation of Civil Code section 1750 *et seq.* (the "CLRA"), Defendant HTC  
13 has engaged and is engaging in unfair and deceptive acts and practices in the course of transac-  
14 tions with Plaintiff Goodman and the California Subclass, and such transactions are intended to  
15 and have resulted in the sales of services to consumers.

16 94. Plaintiff and the Class Members are "consumers" as that term is used in the  
17 CLRA because they sought or acquired HTC smartphones with integrated AccuWeather apps  
18 for personal, family, or household purposes.

19 95. Defendant's past and ongoing acts and practices include but are not limited to  
20 Defendant HTC's representation that its goods or services are of a particular standard, quality,  
21 and grade when in fact, they are of another; in particular, HTC impliedly represented that the  
22 EVO 3D and the EVO 4G smartphones with integrated AccuWeather app were defect-free  
23 when, in fact, such smartphones were defective.

24 96. Defendant's violations of California Civil Code § 1770 have caused damage to  
25 Plaintiff and the other Class Members and threaten additional injury if the violations continue.<sup>4</sup>

26 <sup>4</sup> While this complaint does not seek compensation for damages under the CLRA but in-  
27 stead serves as notice under Cal. Civ. Code § 1782, Plaintiffs reserve the right to amend to seek  
damages under the CLRA.

1 97. Pursuant to section 1782(d) of the California Civil Code, Plaintiff Goodman, on  
2 behalf of himself and the California Class, seeks a Court order enjoining HTC from such future  
3 conduct and any other orders as may be necessary to arrest and rectify the fraudulent, unlawful,  
4 and unconscionable commercial practices of HTC, including requiring Defendants to cure the  
5 defects and purge any PII collected, retained and/or shared with third parties as a result of such  
6 conduct.

7 98. Plaintiff Goodman and the California Subclass seek only the injunctive relief to  
8 which they are entitled under California Civil Code section 1750.

9 **SIXTH CLAIM FOR RELIEF**

10 **UNFAIR COMPETITION LAW**

11 **CAL. BUSINESS AND PROFESSIONS CODE § 17200 *et seq.***

12 **(on behalf of Plaintiff Goodman and the California Subclass against all Defendants)**

13 99. Plaintiffs incorporate the above allegations by reference as if fully set forth  
14 herein.

15 100. In violation of California Business and Professions Code Section 17200 *et seq.*  
16 (the “UCL”), Defendants’ unlawful, unfair, or fraudulent business acts or practices as alleged  
17 herein are ongoing and include, but are not limited to, Defendants’ omissions and failure to dis-  
18 close their business conduct, including by designing, configuring, and/or distributing the EVO  
19 3D and EVO 4G smartphones with defects as described above; failing to disclose such defects;  
20 and failing to cure the defects HTC publically acknowledged.

21 101. By engaging in the above-described acts and practices, Defendants have com-  
22 mitted one or more acts of unfair competition within the meaning of the UCL and, as a result,  
23 Plaintiff Goodman and the California Subclass have suffered injury-in-fact and have lost mon-  
24 ey and property—specifically, the value of their smartphones, the premium they paid for such  
25 smartphones, and/or the private and secure use of their smartphones and applications on their  
26 smartphones.

1 a. **Unlawful Business Acts and Practices**

2 102. Defendants' business acts and practices are unlawful, in part, because they vio-  
3 late California's False Advertising Law, Cal. Bus. & Prof. Code § 17500 *et seq.*, which prohib-  
4 its false advertising, in that they were untrue and misleading statements relating to Defendants'  
5 performance of services and provision of goods and with the intent to induce consumers to en-  
6 ter into obligations relating to such goods and services, and regarding which statements De-  
7 fendants knew or which, and by the exercise of reasonable care Defendants should have  
8 known, were untrue and misleading.

9 103. Defendants' business acts and practices are also unlawful in that, as set forth  
10 herein, they violate the California Consumer Legal Remedies Act, Cal. Civ. Code § 1750 *et*  
11 *seq.*

12 104. Defendants' business acts and practices are also unlawful in that they violate the  
13 California Constitution, Article I, Section 1, which articulates the inalienable right to pursue  
14 and obtain privacy, in that Defendants interfered with and obstructed Plaintiff Goodman's and  
15 Class Members' rights and reasonable expectations regarding the privacy of their personal in-  
16 formation and the security of Defendants' devices reasonably required to safeguard that priva-  
17 cy, particularly in light of their reasonable expectation that the HTC EVO 3D and EVO 4G  
18 were defect-free and were designed and functioned according to reasonable security standards.

19 105. Defendants are therefore in violation of the unlawful prong of the UCL.

20 **Unfair Business Acts and Practices**

21 106. Defendants' business acts and practices are unfair because they have caused  
22 harm and injury-in-fact to Plaintiff Goodman and the California Subclass and for which De-  
23 fendants have no justification other than to increase, beyond what Defendants would have oth-  
24 erwise realized, profits and/or information assets of Plaintiffs and Class Members supportive of  
25 its advertising revenue.

26 107. Defendants' conduct lacks reasonable and legitimate justification in that De-  
27 fendants have benefited from such conduct and practices while Plaintiff and the Class Members

1 have been misled as to the nature and integrity of Defendants' products and services and have,  
2 in fact, suffered material disadvantage regarding their interests in the value of their  
3 smartphones privacy and security of their personal information. Defendants' conduct offends  
4 public policy in California tethered to the Consumer Legal Remedies Act and the right of pri-  
5 vacy accorded by the Constitution of the State of California, particularly those policies recog-  
6 nizing consumers' need for information that supports their interests in taking steps to protect  
7 their own privacy and information security interests, including by choosing to business with  
8 merchants whose products and practices conform to those consumers' reasonable privacy and  
9 security expectations.

10 108. In addition, Defendants' *modus operandi* constitutes a sharp practice in that De-  
11 fendants knew and should have known Plaintiff and Class Members were unlikely to be aware  
12 of and able to detect the above described defects in the EVO 3D and the EVO 4G and that such  
13 defects would have been material to Plaintiffs and Class Members in their smartphone purchase  
14 decisions. Defendants are therefore in violation of the unfairness prong of the Unfair Competi-  
15 tion Law.

#### 16 **Fraudulent Business Acts and Practices**

17 109. Defendants' acts and practices were fraudulent within the meaning of the UCL  
18 because they were likely to mislead the members of the public to whom they were directed.

19 110. Defendants' practice of capturing, storing, and transferring PII, including fine  
20 location data, as described above, and storing and transmitting such information in unencrypted  
21 form and to third parties, and Defendant HTC's practice of selling smartphones with the  
22 HtcLogger defect was and is likely to mislead the members of the public to whom they were  
23 directed.

24 111. Defendants' business acts or practices violate the "fraudulent" prong of the  
25 UCL.

1 **SEVENTH CLAIM FOR RELIEF**

2 **UNJUST ENRICHMENT**

3 **(on behalf of Plaintiffs and the National Class)**

4 112. Plaintiffs incorporate the above allegations by reference as if fully set forth  
5 herein.

6 113. Plaintiffs and the National Class have conferred upon Defendants benefits, in-  
7 cluding their money, traffic, transactions and valuable PII they would not have otherwise re-  
8 ceived but for their wrongful acts and practices.

9 114. Defendants, through their wrongful acts and practices, have acquired and con-  
10 tinue to retain things of value of Plaintiffs and members of the National Class identified above,  
11 which things of value include money and information belonging to Plaintiffs and the National  
12 Class. and which

13 115. Defendants appreciate and have knowledge of said benefits.

14 116. Defendants unjustly gained money from Plaintiffs and the Class as a direct re-  
15 sult of their conduct.

16 117. Under principles of equity and good conscience, Defendants should not be per-  
17 mitted to retain the information and revenue they acquired by virtue of their unlawful conduct.  
18 All funds, revenues, and benefits received by them rightfully belong to Plaintiffs and the Class,  
19 which Defendants have unjustly received as a result of its actions.

20 **VII. PRAYER FOR RELIEF**

21 Plaintiffs, individually and on behalf of all others similarly situated, pray for the follow-  
22 ing relief:

- 23 A. certify this matter as a class action;
- 24 B. enter judgment in favor of Plaintiffs and the Classes;
- 25 C. enter injunctive and/or declaratory relief as is necessary to protect the in-  
26 terests of Plaintiffs and the Classes;
- 27 D. award damages to Class Members, in amounts to be proved;

- 1 E. award restitution against Defendants in amounts to be proved;  
2 F. award increased or treble damages in amounts to be proved;  
3 G. award disgorgement in amounts to be proved;  
4 H. award Plaintiffs and the Classes pre- and post-judgment interest, to the  
5 extent allowable;  
6 I. make such orders or judgments as may be necessary to restore to any  
7 person in interest any money or property that may have been acquired by means of false or  
8 misleading advertising or unfair competition;  
9 J. award Plaintiffs and the Classes their reasonable litigation expenses and  
10 attorneys' fees; and  
11 K. award such other and further relief as equity and justice may require.

12 **VIII. JURY REQUEST**

13 Plaintiffs demand a trial by jury of all issues so triable.

14 Dated: October 26, 2011

Respectfully submitted,

15 By: *s/ Cliff Cantor*

16 Cliff Cantor, WSBA # 17893

17 LAW OFFICES OF CLIFFORD A. CANTOR, P.C.

627 208th Ave. SE

18 Sammamish WA 98074-7033

Tel: (425) 868-7813

19 Fax: (425) 732-3752

Email: cliff.cantor@comcast.net

20 Scott A. Kamber (not admitted)

21 KAMBERLAW, LLC

100 Wall Street, 23rd Floor

22 New York, New York 10005

Tel: (212) 920-3071

23 Fax: (212) 920-3081

24 Email: skamber@kamberlaw.com

25 David A. Stampley (not admitted)

26 KAMBERLAW, LLC

100 Wall Street, 23rd Floor

27 New York, New York 10005

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Tel: (212) 920-3071  
Fax: (212) 920-3081  
Email: dstampley@kamberlaw.com

Grace E. Parasmo (not admitted)  
KAMBERLAW, LLC  
100 Wall Street, 23rd Floor  
New York, New York 10005  
Tel: (212) 920-3071  
Fax: (212) 920-3081  
Email: gparasmo@kamberlaw.com

George Pressly (not admitted)  
KYROS & PRESSLY LLP  
60 State Street, Suite 700  
Boston, MA 02109  
Tel: (603) 320-7030  
Fax: (866) 333-0712  
Email: gpressly@presslylaw.com

Attorneys for Plaintiffs