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9 Attorneys for Plaintiff
 craigslist, Inc.

10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA
 12 SAN FRANCISCO DIVISION

14 craigslist, Inc., a Delaware corporation,

15 Plaintiff,

16 v.

17 John Doe d/b/a Adsoncraigs.com; and
 18 Does 2 through 25, inclusive,

19 Defendants.

Case No. **CV-08-05060 SC**

**STIPULATION AND [~~PROPOSED~~] ORDER
 GRANTING CRAIGSLIST LEAVE TO FILE
 ITS FIRST AMENDED COMPLAINT**

Dept: Courtroom 1, 17th Floor
 Before: Hon. Samuel Conti

1 WHEREAS, on November 5, 2008, craigslist, Inc. (“craigslist”) filed this case against
2 Defendants John Doe d/b/a Adsoncraigs.com; and Does 2 through 25, inclusive, Defendants, for
3 various causes of action based on their operation of the website adsoncraigs.com, which sold
4 auto-posting software in violation of craigslist’s terms of use.

5 WHEREAS, craigslist served Derek Boris as a Defendant in this action.

6 WHEREAS, Derek Boris filed an answer, alleging that Boris Group LLC is responsible
7 for the actions complained of in craigslist’s complaint.

8 WHEREAS, pursuant to Federal Rule of Civil Procedure 15, Derek Boris has provided
9 craigslist written consent to amend its complaint to name Boris Group LLC.

10 Now therefore, the parties, through the undersigned counsel, hereby stipulate and agree
11 that craigslist shall file its First Amended Complaint (attached as Exhibit A hereto) within five
12 days of the Court executing this Stipulation and Order.

13 **IT IS SO STIPULATED.**

14
15 DATED: September 29, 2009

PERKINS COIE LLP

16
17 By: /s/ Brian Hennessy

Brian Hennessy (SBN 226721)

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18 Elizabeth L. McDougall (WA Bar No. 27026)

19 EMcDougall@perkinscoie.com

20 Attorneys for Plaintiff
21 craigslist, Inc.

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DATED: September 29, 2009

PLUNKETT COONEY

By: /s/ Aaron B. Kendal
Aaron B. Kendal (MI Bar No 63021,
Admitted *Pro Hac Vice*)
akendal@plunkettcooney.com
Attorneys for Doe Defendant
Derek Boris and Boris Group LLC

I, Brian Hennessy, hereby attest, pursuant to N.D. Cal. General Order No. 45, that the concurrence to the filing of this document has been obtained from each signatory hereto.

DATED: September 29, 2009

PERKINS COIE LLP

By: /s/ Brian Hennessy
Brian Hennessy (SBN 226721)
BHennessy@perkinscoie.com
Attorneys for Plaintiff
craigslist, Inc.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

IT IS FURTHER ORDERED THAT craigslist shall file its First Amended Complaint (attached as Exhibit A hereto) within five days of the Court executing this Stipulation and Order.

Dated: 10/1/09

Honorable



EXHIBIT A

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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15
16 craigslist, Inc., a Delaware corporation,

17 Plaintiff,

18 v.

19 Boris Group, LLC, and Does 2 through 25,
inclusive,

20 Defendants.

Case No. CV 08-05060 SC

**PLAINTIFF CRAIGSLIST, INC.'S FIRST
AMENDED COMPLAINT FOR:
(1) COPYRIGHT INFRINGEMENT,
17 U.S.C. § 101, et seq.; (2) VIOLATION OF
THE DIGITAL MILLENNIUM
COPYRIGHT ACT, 17 U.S.C. § 1201;
(3) VIOLATION OF THE COMPUTER
FRAUD AND ABUSE ACT, 18 U.S.C.
§1030; (4) VIOLATION OF CALIFORNIA
PENAL CODE § 502; (5) TRADEMARK
INFRINGEMENT, 15 U.S.C. §§ 1114 AND
1125(A); (6) TRADEMARK
INFRINGEMENT UNDER CALIFORNIA
LAW; (7) BREACH OF CONTRACT;
(8) INDUCING BREACH OF CONTRACT;
(9) INTENTIONAL INTERFERENCE
WITH CONTRACTUAL RELATIONS;
AND (10) FRAUD;**

and

DEMAND FOR JURY TRIAL.

1 **I. INTRODUCTION**

2 1. Defendants are engaged in the unauthorized copying and intentional abuse of
3 craigslist for Defendants' own illicit profit at the expense of craigslist and legitimate craigslist
4 users. Their ongoing activities burden craigslist's operating systems and impede the free local
5 online marketplace communities that craigslist provides and seeks to protect. craigslist brings
6 this action to stop Defendants' unauthorized and unlawful conduct, and to recover for the harm
7 and expenses to craigslist already incurred.

8 2. craigslist and its twenty-five employees operate the website, www.craigslist.org.
9 The website provides online localized classified ad placements and related online services.

10 3. craigslist serves millions of users in cities and communities around the world.

11 4. Other than small fees for job postings in ten cities and brokered apartment rentals
12 in New York City, craigslist provides its services to the public free of charge.

13 5. craigslist is committed to providing users with a forum that is easy to use. To this
14 end, it has developed online communities based on simplicity, speed, and uncluttered user
15 interface displays.

16 6. craigslist presents users with simple lists of classified ads by category for
17 geographic areas. The ads are posted by other craigslist users.

18 7. To post an ad, a user selects his or her geographic area, selects the appropriate
19 category, and posts his or her ad.

20 8. craigslist automatically places new ads at the top of the list of ads for the chosen
21 category within the selected geographic area. As new ads are posted, existing ads move
22 progressively down the list.

23 9. craigslist implemented this system to create a simple, fair and efficient
24 organization of posted ads, and this system is a foundational pillar of craigslist's operation and
25 service.

26 10. craigslist protects this system through its Terms of Use ("TOUs") and security
27 measures.

1 thereon, alleges that each of the Doe Defendants participated in, ratified, endorsed, or was
2 otherwise involved in the acts complained of, and that they have liability for such acts. craigslist
3 will amend this Complaint if and when the identities of such persons or entities and/or the scope
4 of their actions become known.

5 23. Defendants Boris Group, LLC and the Doe Defendants are referred to collectively
6 in this Complaint as "Defendants."

7 V. FACTS GIVING RISE TO ALL CLAIMS FOR RELIEF

8 A. CRAIGSLIST BACKGROUND

9 24. craigslist started in San Francisco, California, in 1995. It was originally an email
10 list by Craig Newmark about events in and around the San Francisco Bay Area for his friends and
11 acquaintances. However, it quickly gained in popularity and scope as a forum for free local
12 online classified ads and incorporated in 1999.

13 25. craigslist remains headquartered in San Francisco to date. It has twenty-five
14 employees, all in San Francisco, and the servers on which the craigslist websites operate are
15 located primarily in San Francisco.

16 26. Today, the craigslist website – www.craigslist.org – is world renown. It provides
17 free localized online classified ad services in over 500 cities in more than 50 countries, and is one
18 of the most visited websites in the world. In the United States, craigslist's website is visited more
19 than 10 billion times by more than 30 million users each month.

20 B. CRAIGSLIST'S WEBSITE AND CLASSIFIED AD SERVICES

21 27. craigslist allows users to review or post online local classified advertisements for
22 various categories of products and services on the craigslist website.

23 28. The website is organized first by geographic area, and then by category of product
24 or service within a geographic area. This organizational system ensures that craigslist remains a
25 *localized* service so buyers know they will find products and services available in their
26 communities. It also ensures that craigslist remains an *efficient* service so buyers' searches for
27 particular types of products and services are not littered with irrelevant postings.
28

1 29. The categories within each geographic area (for example, jobs, personals, housing,
2 furniture, cars, clothes, and vehicles) are displayed on discrete webpages as lists of posted ads.

3 30. An ad appears in a category list identified by a descriptive title created by the user
4 who posted the ad.

5 31. When a new ad is posted, it is automatically placed at the top of the selected
6 category list in the chosen geographic area. Existing ads move progressively lower in the list as
7 new ads are posted at the top.

8 32. This prioritization was implemented by craigslist as a simple method to achieve
9 fair and efficient service to both buyers and sellers using craigslist. Every seller's ad receives
10 initial positioning at the top of its list, and buyers seeking a product or service within a category
11 see the most current ads first.

12 **C. CRAIGSLIST'S TOUs**

13 33. craigslist's services and the craigslist website are governed by TOUs. The TOUs
14 are posted on the craigslist website, and users must affirmatively accept the TOUs to post ads on
15 craigslist and to create an account on craigslist.

16 34. The TOUs grant users a limited, revocable, nonexclusive license to access the
17 craigslist website and use craigslist's services. The license limits the authorized uses of the
18 website and services, and identifies types of uses that are not authorized.

19 35. The TOUs also set out penalties for particular violations of their terms and the
20 craigslist's license.

21 36. At all times relevant, the TOUs have, without limitation, prohibited the following
22 activities:

- 23 • Repeatedly posting the same or similar content;
- 24 • Posting the same item or service in more than one category;
- 25 • Posting the same item or service in more than one geographic area;
- 26 • Posting ads on behalf of others, causing ads to be posted on behalf of others, and
27 accessing craigslist services to facilitate posting ads on behalf of others;
- 28 • Using a Posting Agent (a third-party agent, service, or intermediary that offers to
 post content to craigslist on behalf of others) to post ads;

- 1 • Attempting to gain unauthorized access to craigslist's computer systems or
2 engaging in any activity that disrupts, diminishes the quality of, interferes with the
3 performance of, or impairs the functionality of, craigslist's services or the craigslist
4 website;
- 5 • Using any automated device or computer program that enables postings without
6 each posting being entered manually (an "automated posting device"), including,
7 without limitation, the use of any automated posting device to submit postings in
8 bulk;
- 9 • Making available content that uses automated means (e.g., spiders, robots,
10 crawlers, data mining tools, and the like) to download data from craigslist; and
- 11 • Sending unsolicited email advertisements to craigslist email addresses or through
12 craigslist computer systems.

13 37. The TOUs are attached to this Complaint as Exhibit A and incorporated into the
14 Complaint as if fully set forth herein.

15 **D. POSTING ADS ON CRAIGSLIST**

16 38. At the outset, a visitor to the craigslist website must select the geographic area in
17 which they wish to find or post an ad.

18 39. Upon clicking the selected geographic area option, the user is presented with a
19 webpage specific to that geographic area. From that webpage, a user seeking to post an ad must
20 click a link titled "post to classifieds."

21 40. The user then chooses the type of posting they want to place from a list presented
22 by craigslist for that geographic area (for example, job offered, housing offered, housing wanted,
23 for sale, item wanted, personal/romance, or community). A yellow highlighted notice at the top
24 of this webpage reminds users, as stated in the TOUs, that "cross-posting to multiple cities or
25 categories is not allowed."

26 41. After selecting the type of posting, the user is presented with a list of categories for
27 posting ads in that geographic area (for example, categories under "for sale" ads include, without
28 limitation, auto parts, bicycles, boats, collectibles, electronics, jewelry, musical instruments, and
tools), and must select the appropriate category for his or her ad.

42. After selecting the appropriate category, the user specifies from a list the nearest
location within the geographic area, but a notice at the top of this webpage also alerts the users

1 that "there is no need to cross-post to more than one area - doing so may get you flagged and/or
2 blocked - thanks!"

3 43. On the subsequent page, the user creates the title, price, description and other
4 details for the ad, and provides an email address for replies to the ad. (craigslist anonymizes the
5 email address when the ad is posted and relays replies to the user's genuine email address.)

6 44. After verifying the content of the ad, the user is required to affirmatively accept
7 craigslist's TOUs before the ad is posted.

8 45. If the user chooses to decline the TOUs, the ad is not posted.

9 46. If the user accepts the TOUs, the user receives a screen display that requires the
10 user to respond to a CAPTCHA challenge (explained below). If the CAPTCHA challenge is
11 successfully completed, an email is sent to the user's email address with links that allow the user
12 to finally post, edit or delete the ad.

13 47. To help users manage ads for different products and services, craigslist enables
14 users to create an account with craigslist.

15 48. To create a craigslist account, a user must provide a valid email address and
16 affirmatively accept craigslist's TOUs.

17 49. Users with a craigslist account can post ads through an abbreviated process using
18 their account.

19 **E. CRAIGSLIST SECURITY MEASURES**

20 50. craigslist employs a number of security measures to protect the craigslist website,
21 the integrity and operation of craigslist's systems and services, and craigslist users.

22 51. One measure is the creation of temporary, anonymous email addresses for replies
23 to ads posted by users.

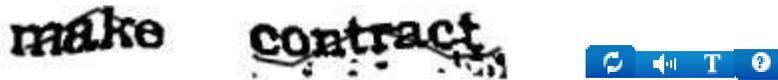
24 52. craigslist assigns a unique craigslist email address, in the form of sale-
25 xxxxxxx@craigslist.org, to each advertisement posted by a user. Emails sent to this craigslist
26 email address are automatically forwarded by craigslist to the user's personal email address
27 (provided when the user posts the ad or creates a craigslist account).

1 53. This system avoids publication of users' personal email addresses, but still allows
2 users to receive replies in their personal email accounts. It protects users' privacy and makes it
3 more difficult for spammers to obtain users' email addresses.

4 54. Another security measure employed by craigslist is the use of a verification
5 program commonly known as CAPTCHA ("Completely Automated Public Turing test to tell
6 Computers and Humans Apart"). CAPTCHA is designed to ensure that a human, not a machine,
7 completes a certain task.

8 55. craigslist uses a CAPTCHA to ensure that ads are posted manually (as required by
9 the TOUs) and not by automated means.

10 56. When a user creates an account or posts an ad, the user is presented with a
11 webpage displaying a challenge-response test that appears in the form of a box containing
12 partially obscured characters that the user must type into a designated box – this is the
13 CAPTCHA. As shown in the example below, in craigslist's CAPTCHA, the characters of words
14 are obscured so a person can read them, but computer programs, bots and other automated
15 devices usually cannot.



18
19
20 57. If the CAPTCHA is not timely solved, the post or creation of an account on
21 craigslist cannot be completed.

22 58. A further security measure employed by craigslist is telephone verification.

23 59. This measure is designed to prevent repetitious, unauthorized, unlawful and
24 abusive postings on craigslist by requiring a valid telephone number in order to post ads in certain
25 categories.

26 60. When telephone verification is mandated, craigslist requires the user to enter a
27 valid telephone number in a specified box on the craigslist website. craigslist then sends a
28

1 temporary passcode to that telephone number, and the user must enter the temporary password on
2 the craigslist website. Once a telephone number has been verified, it may be used to post ads to
3 craigslist. craigslist periodically requires re-verification of these accounts.

4 61. If the telephone number is not verified, the post cannot be completed.

5 62. craigslist also uses various technological tools to detect and remove ads that have
6 been abusively cross posted in multiple categories or multiple areas, or that are repetitively posted
7 to stay at or near the top of a chosen list or lists.

8 **F. CRAIGSLIST'S COPYRIGHTS**

9 63. As noted at the outset, craigslist is committed to providing users with an easy-to-
10 understand, easy-to-navigate forum to post and locate ads in local communities. To that end, the
11 craigslist website provides uncluttered interfaces and displays for user input, searches and results.

12 64. craigslist's website is, by design, uniquely distinctive in its clarity, composition
13 and simplicity. Among the significant unique elements of the craigslist's website are the clear and
14 simple craigslist account registration and log in features, and the clear and simple post to
15 classified features.

16 65. The website is a badge of craigslist's promise to provide local online marketplace
17 communities that are predominantly free, friendly and easy to use. The simplicity and clarity of
18 the craigslist website are fundamental to craigslist's reputation and garner substantial and valuable
19 goodwill with users.

20 66. As an online venture, the intellectual property related to the craigslist website is a
21 vital asset to craigslist.

22 67. craigslist's website is a work of authorship protected by copyright law.

23 68. craigslist owns all right, title and interest, including copyrights, in and to its
24 website, including, but not limited to, the post to classifieds, account registration and account log
25 in expressions and compilations.

26 69. The craigslist website displays copyright notices.
27
28

1 70. craigslist has registered copyrights in its website, including, but not limited to, the
2 post to classifieds, account registration and account log-in features of the website. These
3 registrations include:

4 Reg. No.	Reg. Date	Title
5 TX0006866660	September 19, 2008	Accounts.craigslist.org 2004.
6 TX0006866658	September 19, 2008	Accounts.craigslist.org 2008.
7 TX0006866657	September 19, 2008	Craigslist website 2006.
8 TX0006866662	September 19, 2008	Post.craigslist.org 2004.
9 TX0006866661	September 19, 2008	Post.craigslist.org 2008.

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11 **G. CRAIGSLIST'S TRADEMARKS**

12 71. craigslist also carefully protects its trademarks.

13 72. craigslist owns common law rights in the CRAIGSLIST mark.

14 73. craigslist is also the owner of U.S. federal registrations nos. 2395628, 2905107,
15 2985065, and 3008562 for the CRAIGSLIST mark, covering, *inter alia*, "[a]dvertising and
16 information distribution services," "online interactive bulletin boards for transmission of
17 messages among computer users concerning classified listings," and "on-line computer data bases
18 and on-line searchable databases featuring information, classified listings and announcements."
19 craigslist has also registered the CRAIGSLIST mark in many other countries throughout the
20 world.

21 74. CRAIGSLIST has been used in commerce by craigslist since 1995. craigslist's use
22 has been substantially continuous and exclusive.

23 75. craigslist has attained strong name recognition in the CRAIGSLIST mark. The
24 mark has come to be associated with craigslist and identifies craigslist as the source of
25 advertising, information, bulletin board and database services offered in connection with the
26 mark.

27 76. craigslist has also developed substantial goodwill in the CRAIGSLIST mark.
28

1 77. As noted previously, the craigslist website is one of the most visited websites in
2 the world, and, in the United States alone, the craigslist website is visited by more than 30 million
3 users each month.

4 78. craigslist considers the CRAIGSLIST mark among its most important and valuable
5 assets.

6 **H. ILLICIT POSTING SOFTWARE AND SERVICES**

7 79. Illicit auto-posting software and services threaten craigslist's simple, fair and
8 efficient classified ad posting and listing system. Auto-posting software and services enable
9 craigslist users to repetitiously post duplicative ads within a category on craigslist to keep the ad
10 at or near the top of the category list. They also enable postings in multiple categories on
11 craigslist and in multiple geographic areas.

12 80. Auto-posting software and services load craigslist's classified ad services with
13 hundreds or thousands, or more, ads that are redundant, miscategorized and/or mislocated.

14 81. Repetitious posting of an ad, posting an ad in multiple categories, and posting an
15 ad in more than one geographic area are all prohibited by the craigslist TOUs. The TOUs also
16 expressly prohibit the use of any automated posting devices, including, but not limited to
17 computer programs, that enable posting ads without manually entering each one.

18 82. Auto-posting disrupts craigslist's services by clogging craigslist categories with
19 numerous advertisements for the same products or services or ads for irrelevant products or
20 services. Auto-posting activities degrade craigslist user experiences and cause harm to
21 craigslist's reputation as a fast, efficient, and fair platform for sellers to advertise and buyers to
22 locate local items and services.

23 83. For example, auto-posting impairs the efficiency and ease-of-use of craigslist
24 services for legitimate users by causing category lists to display duplicative ads that users are
25 forced to sift through to find legitimate ads. Ads that are repeatedly auto posted also inequitably
26 displace new ads legitimately placed at the top of a category list. Additionally, auto-posting ads
27 in multiple categories or multiple geographic areas subverts users' expectations that they will find
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1 only ads regarding particular products or services within a certain category and that they will find
2 only ads for *local* products or services within a given geographic area.

3 84. Auto-posting imposes heavy burdens on craigslist's computer systems and
4 personnel. It creates heightened demands on craigslist's computers and systems, and causes
5 craigslist to expend time and resources and to incur additional costs in order to provide its users
6 with reliable, efficient service. But for craigslist's efforts and expenditures to thwart auto-posting
7 and its impacts, auto-posting would cause craigslist's computers and systems to operate
8 inefficiently, take longer to respond to legitimate users' requests, and become overwhelmed and
9 potentially fail.

10 85. To continue to profit from their sale of unauthorized, unlawful auto-posting
11 software and services despite craigslist's effort to bar them, Defendants intentionally circumvent
12 technological security measures implemented by craigslist to stop auto-posting. They have
13 circumvented tracking systems, CAPTCHAs, and telephone verification, among others. Indeed,
14 whenever craigslist implements a new preventive measure, Defendants appear deterred only as
15 long as it takes them to devise furtive means to circumvent the new measure.

16 **I. DEFENDANTS' AUTO-POSTING SOFTWARE AND SERVICES**

17 86. Defendants, operating www.adsoncraigs.com, sell "automated posting devices" as
18 defined in craigslist's TOUs. They sell computer software, entitled the "CL Auto Poster," and
19 other automated devices and related services that enable the submission of postings on craigslist
20 without each posting being entered manually, including, but not limited to, the automated
21 submission of postings in bulk that circumvent craigslist security measures, including, but not
22 limited to, CAPTCHAs and telephone verification.

23 87. Defendants' website at www.adsoncraigs.com advertises the "CL Auto Poster" as
24 "**THE #1 BEST SELLING CRAIGSLIST AUTOPOSTER!**" (Emphasis in original.)
25 Defendants advertise that the CL Auto Poster has the following features:

- 26 • Manage and post multiple ads in multiple categories with body and title
27 randomization features.

- 1 • Craigslist account support - Post and delete with one or unlimited Craigslist
- 2 Accounts!
- 3 • Optional post in all cities and categories
- 4 • Auto accept the terms of use
- 5 • Generate reports on what postings were posted when and failed postings with
- 6 links to EDIT delete each POST!
- 7 • Automatic CAPTCHA bypass available!

8 88. Defendants charge customers \$67.00 for the "CL Auto Poster Standard" and
9 \$99.00 for the "CL Auto Poster Professional."

10 89. Defendants also sell many Add-on features that were designed to circumvent
11 craigslist's security measures.

12 90. Defendants sell a "Word-Verification CAPTCHA Bypass" for \$99.00, which
13 circumvents CAPTCHA technology to allow the user to post ads without the need for the user to
14 respond to the CAPTCHA security challenge on the craigslist webpage.

15 91. Defendants sell an "Automatic Posting Scheduler" for \$99.00, which automatically
16 posts ads to craigslist at the intervals determined by the customer.

17 92. Defendants sell an "Automatic Repost Add-on" for \$99.00, which determines if an
18 ad has already been posted and automatically reposts it for the user.

19 93. Defendants sell an "Auto Re-Dialer Add-on" for \$99.00, which automatically
20 redials customers' internet service providers to obtain new IP addresses and which thwarts
21 craigslist's efforts to identify postings that originate from the same user.

22 94. Defendants sell a "CL Emailer" for \$99.00, which automatically extracts email
23 addresses from craigslist and sends messages to those addresses. The use of an automated device
24 to scrape email addresses from craigslist violates craigslist's TOUs and is not authorized by
25 craigslist. The indiscriminate collection and use of email addresses regardless of whether the
26 users have indicated that it is not acceptable to contact them for any commercial purpose violates
27 craigslist's TOUs and is not authorized by craigslist.

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1 95. In addition, Defendants sell "Craigslist Verified Accounts," which thwart
2 craigslist's telephone verification.

3 96. Defendants tout that the "Craigslist Verified Accounts" they sell are:

- 4 • Verified and ready to use
- 5 • Guaranteed for use
- 6 • Created from different IP Addresses
- 7 • Created with different phone numbers

8 97. Defendants sell 20 phone verified accounts for \$300 and 100 phone verified
9 accounts for \$900.

10 98. On information and belief, Defendants accessed and copied the craigslist website
11 (including, but not limited to, creation of cached copies of the website) to develop, test,
12 implement, use and provide their "CL Auto Poster," and other auto-posting software, programs,
13 devices and services.

14 99. These acts of access and copying were unauthorized or in excess of authorized
15 access to the craigslist website, services, computers and systems.

16 100. On information and belief, Defendants continue to access and copy the craigslist
17 website (including, but not limited to, creation of cached copies of the website) to operate,
18 maintain and update their auto-posting software, programs, devices and services.

19 101. These acts of access and copying were and are unauthorized or in excess of
20 authorization to the craigslist website, services, computers and systems.

21 102. On information and belief, Defendants were required to affirmatively agree to and
22 accept, and did affirmatively agree to and accept, craigslist's TOUs at one or more times when
23 they accessed the craigslist website and ad posting services.

24 103. On information and belief, each time Defendants affirmatively accepted and
25 agreed to abide by craigslist's TOUs, Defendants intended to violate the TOUs and concealed
26 their intent to violate the TOUs from craigslist.

27 104. Defendants' actions are knowing, intentional, willful, malicious and fraudulent.
28

1 105. On information and belief, Defendants do not disclose to their customers that their
2 services are unlawful and violate the craigslist TOUs.

3 106. Defendants knowingly, willfully, intentionally, fraudulently and maliciously
4 induce, encourage and assist craigslist users to abuse craigslist systems and services and violate
5 the craigslist TOUs.

6 **J. DEFENDANTS' USE OF THE "CRAIGSLIST" MARK**

7 107. Defendants without authorization have used the famous "CRAIGSLIST" mark in
8 commerce to advertise their unlawful software and services on the Internet in a manner likely to
9 confuse consumers as to their association, affiliation, endorsement or sponsorship with or by
10 craigslist.

11 108. Defendants' unauthorized use of the "CRAIGSLIST" mark includes, but is not
12 limited to, display of the mark in the text and in the headings of sponsored links on Internet
13 search engines.

14 109. For example, Defendants have used the CRAIGSLIST mark in the following
15 sponsored link advertisement on the Google search engine.

16 [Craigslis Auto Poster](#)
17 www.adsoncraigs.com The worlds Best Selling Craigslist software.
18 Works with new CAPTCHA!

19 110. Defendants' use of the CRAIGSLIST mark causes confusion and mistake and is
20 likely to deceive customers and potential customers regarding the origin, affiliation, association,
21 connection and/or endorsement of Defendants' auto-posting products and services, Defendants'
22 website, and/or Defendants with or by craigslist.

23 111. At no time has craigslist authorized or consented to Defendants' use of the
24 CRAIGSLIST mark or any other craigslist intellectual property.

25 112. At no time has craigslist had any association, affiliation or connection with, or
26 endorsed Defendants' products or services, Defendants' website, or Defendants. Specifically,
27 Defendants' software and services are *not* authorized, approved, endorsed, or sponsored by, or
28 associated, affiliated, or connected with craigslist, and Defendants and their website are *not*

1 authorized, approved, endorsed, or sponsored by, or associated, affiliated, or connected with
2 craigslist.

3 113. In using the CRAIGSLIST mark, Defendants have willfully and deliberately
4 sought to profit from craigslist's pre-established goodwill and reputation.

5 **K. CRAIGSLIST'S INJURIES**

6 114. Defendants' actions and activities burden, interfere with and harm craigslist's
7 systems, services, and resources; burden, interfere with and harm the use of craigslist by
8 legitimate users; burden, interfere with and harm craigslist's relationship, reputation and goodwill
9 with legitimate users; and violate numerous provisions of the TOUs.

10 115. Defendants have caused craigslist to incur substantial costs to investigate,
11 remediate, prevent and combat Defendants' auto-posting software, programs, devices and
12 services and Defendants' unauthorized access to and use of craigslist's systems and services, and
13 to investigate, remediate and prevent harm to craigslist's computer systems and services caused
14 by the Defendants.

15 116. For example, the increased load and burden on craigslist's servers, and the burden
16 on craigslist's personnel resources to develop counter measures, investigate incidents, remove
17 unauthorized ads, and address user complaints as a result of auto-posting, cost craigslist well in
18 excess of \$5,000 per year.

19 117. Damages and losses incurred by craigslist include, without limitation, interference
20 with craigslist's load balancing; interference with proper and efficient service to legitimate users;
21 requiring craigslist to undertake extraordinary actions to monitor and enhance website
22 infrastructure; and significantly increasing costs of data storage, troubleshooting, customer
23 service, and system maintenance.

24 118. Furthermore, the harm to craigslist's relationships, reputation and goodwill with
25 legitimate users is real and irreparable.

26 119. For example, users have blamed craigslist for interference with the fair and
27 efficient operation of craigslist services caused by illicit auto-posting, and have accused craigslist
28 of conspiring with parties responsible for auto-posting, like Defendants. Users who become

1 frustrated by auto-posting abuses on craigslist may stop using craigslist and never return. Such
2 injuries to craigslist cannot be compensated by monetary damages and are irreparable.

3 120. In a further effort to deter precisely the kind of activity in which Defendants are
4 engaged, the craigslist TOUs include a liquidated damages provision to compensate craigslist for
5 harm and injury from certain unauthorized and prohibited activities.

6 121. Under the TOUs' liquidated damages provision, as a result of their violations,
7 Defendants are liable to craigslist for, among other relief and remedies, the following amounts:

- 8 • \$1,000 for each post or message that impersonated any person or entity, or falsely
9 stated the affiliation of the sender with another person or entity;
- 10 • \$100 for each message posted in excess of limits established by craigslist or each
11 day that craigslist is accessed after craigslist terminates access to or use of the
12 service; and
- \$100 for each and every item posted by a posting agent.

13 122. craigslist is entitled to an injunction to stop Defendants' unlawful activities and the
14 irreparable harm they are causing craigslist. craigslist is also entitled to monetary damages,
15 including, but not limited to, liquidated damages, to compensate for the quantifiable harm and
16 injury Defendants have caused and continue to cause craigslist.

17 VI. CLAIMS FOR RELIEF

18 FIRST CLAIM FOR RELIEF 19 COPYRIGHT INFRINGEMENT (DIRECT, VICARIOUS AND CONTRIBUTORY) 20 17 U.S.C. § 101, *ET SEQ.*

21 123. craigslist realleges and incorporates by reference all of the preceding paragraphs.

22 124. craigslist owns and has registered copyrights in its website and specific portions
23 thereof.

24 125. Defendants had and have access to craigslist's website.

25 126. Defendants have copied and/or created derivative works from craigslist's website
26 and/or portions thereof, and continue to do so.

27 127. Defendants' copies and/or derivative works are substantially similar to craigslist's
28 original copyright-protected website.

1 128. The copies and/or derivative works created by Defendants are unauthorized.

2 129. At all times relevant, Defendants obtained a direct financial benefit from the
3 infringement and had the right and ability to control the infringing conduct, and/or intentionally
4 induced, encouraged, caused or materially contributed to the infringement.

5 130. The foregoing acts of Defendants constitute direct infringement, vicarious
6 infringement and/or contributory infringement of craigslist's exclusive rights in its copyrighted
7 works under 17 U.S.C. § 106.

8 131. Upon information and belief, Defendants' actions were and are intentional, willful,
9 wanton and performed in disregard of craigslist's rights.

10 132. craigslist has been and will continue to be damaged, and Defendants have been
11 unjustly enriched, by Defendants' unlawful infringement of craigslist's copyrighted works in an
12 amount to be proven at trial.

13 133. Defendants' conduct also has caused irreparable and incalculable harm and injuries
14 to craigslist, and, unless enjoined, will cause further irreparable and incalculable injury, for which
15 craigslist has no adequate remedy at law.

16 134. craigslist is entitled to the relief provided by 17 U.S.C. §§ 502-505, including, but
17 not limited to, injunctive relief, an order for the impounding and destruction of all Defendants'
18 infringing copies and/or derivative works, compensatory damages (including, but not limited to
19 actual damages and/or Defendants' profits), statutory damages, punitive damages, and craigslist's
20 costs and attorneys' fees in amounts to be determined at trial.

21 **SECOND CLAIM FOR RELIEF**
22 **VIOLATION OF THE DIGITAL MILLENNIUM COPYRIGHT ACT ("DMCA")**
23 **17 U.S.C. § 1201, *ET SEQ.***

23 135. craigslist realleges and incorporates by reference all of the preceding paragraphs.

24 136. craigslist has registered copyrights in its website and specific portions thereof.

25 137. craigslist employs numerous technological measures, including, but not limited to,
26 identification of recurrent IP addresses, CAPTCHAs, and telephone verification systems, to
27 effectively protect and control access to and use of its copyrighted website and/or portions
28 thereof.

1 138. Defendants have circumvented and are circumventing technological measures that
2 effectively control access to craigslist's copyrighted website and/or portions thereof.

3 139. On information and belief, Defendants manufacture, import, provide, offer to the
4 public, or otherwise traffic in technology, products, services, devices, components, or parts
5 thereof, that are primarily designed or produced for the purpose of circumventing technological
6 measures and/or protection afforded by technological measures that effectively control access to
7 craigslist's copyrighted website and/or portions thereof.

8 140. On information and belief, Defendants' technology, products, services, devices,
9 components, or parts thereof have limited or no commercially significant purpose or use other
10 than to circumvent technological measures that effectively control access to the craigslist website
11 and/or portions thereof.

12 141. On information and belief, Defendants and/or others acting in concert with
13 Defendants market such technology, products, services, devices, components, or parts thereof
14 with Defendants' knowledge for use in circumventing technological measures that effectively
15 control access to the craigslist website and/or portions thereof.

16 142. craigslist has been and will continue to be damaged in an amount not presently
17 known with certainty, but which will be proven at trial.

18 143. Defendants' conduct also has caused irreparable and incalculable harm and injuries
19 to craigslist, and, unless enjoined, will cause further irreparable and incalculable injury, for which
20 craigslist has no adequate remedy at law.

21 144. craigslist is entitled to the range of relief provided by 17 U.S.C. §§ 1201-1203,
22 including, but not limited to, injunctive relief, compensatory damages or statutory damages,
23 punitive damages, and craigslist's costs and attorneys' fees in amounts to be proven at trial.

24
25 **THIRD CLAIM FOR RELIEF**
26 **VIOLATION OF COMPUTER FRAUD AND ABUSE ACT**
27 **18 U.S.C. § 1030**

28 145. craigslist realleges and incorporates by reference all of the preceding paragraphs.

1 155. Defendants have knowingly accessed and without permission used craigslist data,
2 computers, computer systems and/or computer network in order to devise and/or execute a
3 scheme to defraud and deceive in violation of California Penal Code § 502(c)(1).

4 156. Defendants have knowingly accessed and without permission taken, copied, and/or
5 made use of data from craigslist computers, computer systems and/or computer network in
6 violation of California Penal Code § 502(c)(2).

7 157. Defendants have knowingly and without permission used or caused to be used
8 craigslist's computer services in violation of California Penal Code § 502(c)(3).

9 158. Defendants have knowingly and without permission accessed and added data to
10 craigslist computers, computer systems and/or computer network in violation of California Penal
11 Code § 502(c)(4).

12 159. Defendants have knowingly and without permission disrupted or caused the
13 disruption of craigslist's computer services and/or have knowingly and without permission denied
14 or caused the denial of computer services to authorized users of craigslist's computers, computer
15 services and/or computer network in violation of California Penal Code §502(c)(5).

16 160. Defendants have knowingly and without permission provided or assisted in
17 providing a means of accessing craigslist computers, computer systems, and/or computer network
18 in violation of California Penal Code § 502(c)(6).

19 161. Defendants have knowingly and without permission accessed or caused to be
20 accessed craigslist computers, computer systems, and/or computer network in violation of
21 California Penal Code § 502(c)(7).

22 162. craigslist has suffered and continues to suffer damage as a result of Defendants'
23 violations of the California Penal Code § 502 identified above.

24 163. Defendants' conduct also has caused irreparable and incalculable harm and injuries
25 to craigslist (including, but not limited to, craigslist's reputation and goodwill), and, unless
26 enjoined, will cause further irreparable and incalculable injury, for which craigslist has no
27 adequate remedy at law.
28

1 164. Defendants willfully violated California Penal Code § 502 in disregard and
2 derogation of craigslist's rights and the rights of legitimate craigslist users, and their actions as
3 alleged above were carried out with oppression, fraud and malice.

4 165. Pursuant to California Penal Code § 502(e), craigslist is entitled to injunctive
5 relief, compensatory damages, punitive or exemplary damages, attorneys' fees, costs and other
6 equitable relief.

7 **FIFTH CLAIM FOR RELIEF**
8 **TRADEMARK INFRINGEMENT, 15 U.S.C. §§ 1114 AND 1125(a)**

9 166. craigslist realleges and incorporates by reference all of the preceding paragraphs.

10 167. craigslist owns U.S. federal registrations nos. 2395628, 2905107, 2985065, and
11 3008562 for the CRAIGSLIST mark. These registrations are in full force and effect and are
12 enforceable.

13 168. At all times relevant, Defendants exercised ownership or control over sponsored
14 links and other online advertising for their products, services and website, and knowingly
15 cooperated in and/or induced, encouraged, enabled or aided the infringement of craigslist's
16 trademark rights in sponsored links and other online advertising for their products, services and
17 website.

18 169. Defendants' use of the CRAIGSLIST mark in interstate commerce is likely to
19 cause consumer confusion or to cause mistake or to deceive as to the origin of the products and
20 services offered and sold by Defendants and as to their affiliation, connection, or association with
21 and/or endorsement or approval by craigslist.

22 170. The foregoing acts of Defendants constitute false designation of association,
23 affiliation, connection, endorsement and/or approval under 15 U.S.C. § 1125(a), and/or vicarious
24 or contributory infringement of craigslist's rights under 15 U.S.C. § 1125(a).

25 171. Defendants' actions also constitute the use in interstate commerce of a
26 reproduction, counterfeit, copy, or colorable imitation of a registered trademark of craigslist in
27 connection with the sale, offering for sale, distribution, or advertising of goods or services on or
28

1 in connection with which such use is likely to cause confusion or mistake, or to deceive, in
2 violation of 15 U.S.C. § 1114.

3 172. Upon information and belief, Defendants have engaged in such false designation
4 of origin, association, affiliation, connection, endorsement and/or approval knowingly, willfully,
5 deliberately, and in conscious disregard of craigslist's rights, making this an exceptional case
6 within the meaning of 15 U.S.C. § 1117.

7 173. craigslist has been damaged and will continue to be damaged, and Defendants
8 have been unjustly enriched, by such unlawful conduct in an amount to be proven at trial.

9 174. In addition, Defendants' conduct described herein has caused and, if not enjoined
10 will continue to cause, irreparable damage to craigslist's rights in its marks, and to the business,
11 positive reputation and goodwill of craigslist, which cannot be adequately compensated solely by
12 monetary damages. craigslist therefore has no adequate remedy at law and seeks permanent
13 injunctive relief pursuant to 15 U.S.C. § 1116.

14 **SIXTH CLAIM FOR RELIEF**
15 **TRADEMARK INFRINGEMENT UNDER CALIFORNIA LAW**

16 175. craigslist realleges and incorporates by reference all of the preceding paragraphs.

17 176. craigslist owns common law rights in the CRAIGSLIST mark that date back to
18 1995.

19 177. The acts and conduct of Defendants as alleged in the CLAIM FOR RELIEF
20 immediately above constitute trademark infringement under the common law of California.

21 178. As a direct and proximate result of Defendants' conduct, craigslist has been
22 damaged in an exact amount to be proven at trial.

23 **SEVENTH CLAIM FOR RELIEF**
24 **BREACH OF CONTRACT**

25 179. craigslist realleges and incorporates by reference all of the preceding paragraphs.

26 180. Use of the craigslist website and use of craigslist services are governed by and
27 subject to the TOUs.
28

1 181. At all relevant times, the main craigslist homepage and the homepage for each
2 geographic region have provided links to the TOUs.

3 182. In addition, users are presented with the TOUs and must affirmatively accept the
4 TOUs to register for a craigslist account to post ads.

5 183. In addition, users are presented with the TOUs and must affirmatively accept the
6 TOUs before they can post an ad without an account.

7 184. On information and belief, Defendants affirmatively accepted and agreed to the
8 TOUs.

9 185. On information and belief, Defendants have repeatedly accessed and used
10 craigslist's website and services, and thereby accepted the TOUs.

11 186. On information and belief, Defendants affirmatively accepted the TOUs by
12 clicking the "ACCEPT the terms of use" option (not the "DECLINE the terms of use" option)
13 when they set up accounts on craigslist.

14 187. On information and belief, Defendants affirmatively accepted the TOUs by
15 clicking the "ACCEPT the terms of use" option (not the "DECLINE the terms of use" option)
16 when they posted ads on craigslist.

17 188. The TOUs are binding on Defendants.

18 189. Defendants' actions, as described above, have willfully, repeatedly and
19 systematically breached the TOUs.

20 190. craigslist has performed all conditions, covenants, and promises required of it in
21 accordance with the TOUs.

22 191. Defendants' conduct has damaged craigslist, and caused and continues to cause
23 irreparable and incalculable harm and injury to craigslist.

24 192. craigslist is entitled to injunctive relief, compensatory damages, liquidated
25 damages under the TOUs, attorneys' fees, costs and/or other equitable relief.

26 **EIGHTH CLAIM FOR RELIEF**
27 **INDUCING BREACH OF CONTRACT**

28 193. craigslist realleges and incorporates by reference all of the preceding paragraphs.

1 194. craigslist's TOUs constitute a valid and existing contract between craigslist and
2 craigslist users.

3 195. Defendants had knowledge of the TOUs and of the valid and existing contract
4 between craigslist and craigslist users created by the TOUs.

5 196. Defendants intended to induce users to breach their contract with craigslist.

6 197. Users who were induced to utilize Defendants' products and services did in fact
7 breach the TOUs by acts, including, but not limited to:

- 8 • Repeatedly posting the same or similar content;
- 9 • Posting the same item or service in more than one category;
- 10 • Posting the same item or service in more than one geographic area;
- 11 • Gaining unauthorized access to craigslist's computer systems; and
- 12 • Using "automated posting devices" to post to craigslist.

13 198. These breaches of the TOUs were caused by Defendants' unjustified and wrongful
14 conduct.

15 199. Defendants' conduct has damaged craigslist, and caused and continues to cause
16 irreparable and incalculable harm and injury to craigslist.

17 200. craigslist is entitled to injunctive relief, compensatory damages, liquidated
18 damages under the TOUs, attorneys' fees, costs and/or other equitable relief.

19 201. craigslist is informed and believes that Defendants' conduct was undertaken with
20 the intent to injure craigslist, or with a willful and conscious disregard of craigslist's rights, and
21 constitutes clear and convincing evidence of oppression, fraud and malice under California Civil
22 Code § 3294. As a result, craigslist is entitled to an award of punitive damages against
23 Defendants in an amount sufficient to deter them from future misconduct.

24 **NINTH CLAIM FOR RELIEF**
25 **INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS**

26 202. craigslist realleges and incorporates by reference all of the preceding paragraphs.

27 203. craigslist's TOUs constitute a valid and existing contract between craigslist and
28 craigslist users.

1 devices, post duplicative ads, post ads in multiple categories or multiple geographic areas, or
2 otherwise abuse or interfere with the website or services.

3 213. On information and belief, Defendants affirmatively accepted the TOUs by
4 clicking the "ACCEPT the terms of use" option (not the "DECLINE the terms of use" option)
5 when they posted ads on craigslist, and thereby expressly represented to craigslist that they would
6 comply with the TOUs, and thus that they would not, among other things, use automated devices,
7 post duplicative ads, post ads in multiple categories or multiple geographic areas, or otherwise
8 abuse or interfere with the website or services.

9 214. craigslist reasonably relied on Defendants' representations to provide Defendants
10 with access to portions of the craigslist website and access to certain services offered on the
11 craigslist website.

12 215. Defendants' representations that they would comply with the TOUs were false.

13 216. Defendants have accessed and used the craigslist website and services, and, when
14 they accepted the TOUs, they intended to, and did, access and use the craigslist website and
15 services, in violation of the TOUs as described above.

16 217. On information and belief, when Defendants accepted the TOUs and accessed and
17 used craigslist's website and services, they concealed from craigslist their true intent to violate the
18 TOUs.

19 218. As a result of Defendants' fraudulent representations and omissions, Defendants
20 obtained information about the structure and operating features of craigslist's website and services
21 to enable them to design, test and operate their auto-posting software and services and related
22 devices.

23 219. Defendants' conduct has damaged craigslist, and caused and continues to cause
24 irreparable and incalculable harm and injury to craigslist.

25 220. craigslist is entitled to injunctive relief, compensatory damages, liquidated
26 damages under the TOUs, attorneys' fees, costs and/or other equitable relief.

27 221. craigslist is informed and believes that Defendants' conduct was undertaken with
28 the intent to injure craigslist, or with a willful and conscious disregard for craigslist's rights, and

1 constitutes clear and convincing evidence of oppression, fraud and malice under California Civil
2 Code § 3294. As a result, craigslist is entitled to an award of punitive damages against
3 Defendants in an amount sufficient to deter them from future misconduct.

4 **VII. PRAYER FOR RELIEF**

5 WHEREFORE, plaintiff craigslist, Inc. prays for the following relief:

6 1. A preliminary injunction and permanent injunction enjoining and restraining all
7 Defendants, their employees, representatives, agents, and all persons or entities acting in concert
8 with them during the pendency of this action and thereafter perpetually from:

9 (a) Manufacturing, developing, creating, adapting, modifying, exchanging,
10 offering, distributing, selling, providing, importing, trafficking in, or using any automated device
11 or computer program (including, but not limited to, any technology, product, service, device,
12 component, or part thereof) that enables postings on craigslist without each posting being entered
13 manually;

14 (b) Manufacturing, developing, creating, adapting, modifying, exchanging,
15 offering, distributing, selling, providing, importing, making available, trafficking in, or using
16 content that uses automated means (including, but not limited to, spiders, robots, crawlers, data
17 mining tools, and data scraping tools) to download or otherwise obtain data from craigslist;

18 (c) Engaging in any activity that disrupts, diminishes the quality of, interferes
19 with the performance of, or impairs the functionality of, craigslist's services or the craigslist
20 website;

21 (d) Copying, distributing, displaying, creating derivative works or otherwise
22 using protected elements of craigslist's copyrighted website (located at www.craigslist.org),
23 including, but not limited to, the website's post to classifieds, account registration and account log
24 in expressions and compilations, and from inducing, encouraging, causing or materially
25 contributing to any other person or entity doing the same;

26 (e) Circumventing technological measures that control access to craigslist's
27 copyrighted website and/or portions thereof (including, but not limited to, CAPTCHAs, RE-
28

1 CAPTCHAs, and telephone verification systems), and from inducing, encouraging, causing or
2 materially contributing to any other person or entity doing the same;

3 (f) Manufacturing, developing, creating, adapting, modifying, exchanging,
4 offering, selling, distributing, providing, creating, importing, trafficking in, or using technology,
5 products, services, devices, components, or parts thereof, that are primarily designed or produced
6 for the purpose of circumventing technological measures and/or protection afforded by
7 technological measures that control access to craigslist's copyrighted website and/or portions
8 thereof, and from inducing, encouraging, causing or materially contributing to any other person or
9 entity doing the same;

10 (g) Accessing or attempting to access craigslist's computers, computer
11 systems, computer network, computer programs, and data, without authorization or in excess of
12 authorized access, including, but not limited to, creating accounts or posting content on the
13 craigslist website, and from inducing, encouraging, causing, materially contributing to, aiding or
14 abetting any other person or entity to do the same;

15 (h) Manufacturing, developing, creating, adapting, modifying, exchanging,
16 offering, selling, distributing, providing, importing, trafficking in, purchasing, acquiring,
17 transferring, marketing or using any program, device, or service designed to provide an
18 automated means of accessing craigslist's website, automated means of creating craigslist
19 accounts, or automated means of posting ads or other content on the craigslist's website,
20 including, but not limited to, any program, device, or service that is, in whole or in part, designed
21 to circumvent security measures on the craigslist website;

22 (i) Repeatedly posting the same or similar content on craigslist, posting the
23 same item or service in more than one category on craigslist, posting the same item or service in
24 more than one geographic area on craigslist, and from inducing, encouraging, causing, assisting,
25 aiding, abetting or contributing to any other person or entity doing the same.

26 (j) Posting ads on behalf of others, causing ads to be posted on behalf of
27 others, and accessing craigslist to facilitate posting ads on behalf of others;

1 (k) Using, offering, selling or otherwise providing a third-party agent, service,
2 or intermediary to post content to craigslist;

3 (l) Misusing or abusing craigslist, the craigslist website and craigslist services
4 in any way, including, but not limited to, violating the craigslist TOUs;

5 (m) Accessing or using craigslist's website for any commercial purpose
6 whatsoever; and

7 (n) Using the CRAIGSLIST mark and any confusingly similar designations in
8 Internet advertisements and otherwise in commerce in any manner likely to confuse consumers as
9 to their association, affiliation, endorsement or sponsorship with or by craigslist.

10 2. An order requiring Defendants to account for, hold in constructive trust, pay over
11 to craigslist, and otherwise disgorge all profits derived by Defendants from their unlawful
12 conduct and unjust enrichment as permitted by law;

13 3. An award to craigslist of damages, including, but not limited to, liquidated,
14 compensatory, statutory, and punitive damages, as permitted by law;

15 4. For an award of prejudgment and post-judgment interest; and

16 5. An award to craigslist of its costs of suit, including, but not limited to, reasonable
17 attorneys' fees, as permitted by law;

18 6. For such other relief as the Court deems just and proper.

19
20 DATED: September 29, 2009

PERKINS COIE LLP

21
22 By: /s/ Brian Hennessy

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