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 7 PHONEDOG, LLC

8
 9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA

11
 12 PHONEDOG, LLC, a Delaware
 corporation,
 13
 Plaintiff,
 14
 v.
 15 NOAH KRAVITZ, an individual,
 16
 Defendant.

CASE NO. 3:11-cv-03474-MEJ

**DECLARATION OF TOM KLEIN IN
 SUPPORT OF PLAINTIFF PHONEDOG,
 LLC'S OPPOSITION TO DEFENDANT
 NOAH KRAVITZ'S MOTION TO DISMISS
 FOR LACK OF SUBJECT MATTER
 JURISDICTION AND FAILURE TO
 STATE A CLAIM**

Date: September 15, 2011
 Time: 10:00 a.m.
 Dept.: Courtroom B - 15th Floor
 Judge: Maria-Elena James

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1 I, Tom Klein, declare as follows:

2 1. I am the President of PhoneDog, LLC, the plaintiff in this matter.

3 2. I have reviewed the Declaration of Noah Kravitz ("Kravitz" or "Defendant") in
4 support of Defendant's Motion to Dismiss. I disagree with certain factual assertions made in his
5 declaration.

6 3. I have worked in the Internet publishing industry for over 10 years. The practice of
7 driving Internet users to websites from various mediums is a primary source of revenue and
8 branding for online publishing companies. Advertisers pay for ads placed on the publishers web
9 properties and the revenue generated correlates directly with the amount of traffic a particular
10 website receives. The more traffic a website generates, the greater the advertisement revenue for
11 the publisher.

12 4. A significant source of PhoneDog's income derives from advertisements being
13 sold on its website. The advertisers pay for ad inventory on PhoneDog for every 1000 pageviews
14 (known as the CPM rate) generated from users visiting our site. Because PhoneDog is so reliant
15 on advertising to generate revenue, PhoneDog devotes substantial resources into finding ways to
16 drive Internet users to its website.

17 5. PhoneDog generates pageviews on its website through a variety of social
18 mediums, including YouTube, Facebook and Twitter. Twitter is one of the top sources for routing
19 pageviews to PhoneDog's website. As such, PhoneDog requests that its employees maintain
20 Twitter accounts to use in the scope of their employment with PhoneDog. PhoneDog's
21 representatives tweet links directing users to PhoneDog content via the Twitter accounts in order
22 to generate traffic to the PhoneDog website and in turn, generate advertising revenue for
23 PhoneDog. Specifically with respect to Kravitz, PhoneDog paid for Kravitz to appear in media,
24 including on television, where the Twitter account would be displayed. PhoneDog paid for
25 Kravitz to travel to various locations around the world where the use of the Twitter account was
26 an important tool to promote PhoneDog content.

27 6. The passwords to PhoneDog's Twitter accounts are not known to individuals
28 outside of PhoneDog. In order to protect its access to the Twitter accounts, PhoneDog makes

1 efforts to maintain the secrecy of the passwords to its Twitter accounts by restricting access to
2 and distribution of the passwords generally to only one specific editor who maintains the account.

3 7. Kravitz provided product reviewer and video blogger services for PhoneDog
4 beginning on or around April 13, 2006.

5 8. Kravitz agreed to maintain a Twitter account with the name @PhoneDog_Noah
6 (the "Account"). The decision to use the PhoneDog name within the Twitter handle was decided
7 internally and agreed to by Kravitz. PhoneDog and Kravitz agreed that Kravitz's primary use of
8 the Account was to promote PhoneDog utilizing Twitter. Kravitz was to publish content and
9 PhoneDog related activities to the Account in order to drive users to the PhoneDog.com website.
10 During the time that Kravitz provided services to PhoneDog, the Account generated
11 approximately 17,000 followers (the "Followers"). The Followers were integral in generating
12 traffic to PhoneDog's website. The Followers on the Twitter account were derived from links
13 placed throughout the PhoneDog website, PhoneDog's YouTube page, PhoneDog's Facebook
14 page, PhoneDog's video content, television media appearances, all mediums managed by
15 PhoneDog to promote its properties and editors. In the year and a half that Kravitz provided
16 services to PhoneDog, 17,000 followers on the Twitter account were generated. Since then, only a
17 small percentage of that amount have been added as followers to the Twitter account.

18 9. In Paragraph 12 of Kravitz's declaration, Kravitz states that, after he left
19 PhoneDog, each time PhoneDog requested that he tweet or publish articles and promotions on the
20 Account, he "obliged without hesitate." This assertion by Kravitz is not true. In fact, Kravitz was
21 requested to tweet certain items for PhoneDog and did not respond to multiple requests. It has
22 always been my understanding, which was communicated to Kravitz, that the Account is to be
23 used for the benefit of PhoneDog and Kravitz refusing to tweet or publish articles on the Account
24 promoting PhoneDog is what prompted me to insist that access to the Account be given back to
25 PhoneDog.

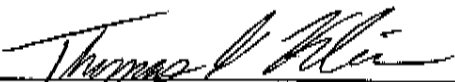
26 10. In Paragraph 17 of his declaration, Kravitz states that "in [his] opinion" the
27 Account is worth less than \$10,000. I disagree. My valuation of the Account is based on my years
28 of experience in the Internet publishing industry and on other methods of valuing Twitter

1 accounts. Based on my valuation of the Account, the Account is worth far more to PhoneDog
2 than \$10,000 per month and increases with each passing month.

3 11. Kravitz's use of the Account directly contravenes the agreement between
4 PhoneDog and Kravitz that Kravitz would use the Account for the benefit of PhoneDog. After
5 Kravitz stopped complying with his obligations to tweet on behalf of PhoneDog, the relationship
6 between PhoneDog and Kravitz deteriorated. Kravitz continues to use the Account to contact the
7 Followers in order to promote himself and TechnoBuffalo, a competitor of PhoneDog.

8 The foregoing is based on my personal knowledge. If called to testify as a witness, I
9 could and would testify competently thereto.

10 I declare under penalty of perjury under the laws of the United States of America that the
11 foregoing is true and correct and that this declaration was executed on this 18th day of August,
12 2011 at Mount Pleasant, South Carolina.

13 
14 _____
Tom Klein