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 7 PHONEDOG, LLC

8
 9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA

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

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

**PLAINTIFF'S EVIDENTIARY
 OBJECTIONS TO DECLARATIONS OF
 CARY KLETTER AND NOAH KRAVITZ
 IN SUPPORT OF PLAINTIFF'S
 OPPOSITION TO MOTION TO DISMISS**

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

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1 **I PLAINTIFF PHONEDOG, LLC ("PHONEDOG") HEREBY OBJECTS TO THE**
2 **DECLARATION OF CARY KLETTER ON THE GROUNDS SET FORTH**
3 **BELOW:**

4 Paragraph 6.

5 "Attached hereto as "Exhibit B" is a true and correct copy of the Twitter Terms of Service
6 governing Twitter accounts."

7 Objections: PhoneDog objects to the sixth paragraph of Kletter's declaration because
8 Kletter lacks personal knowledge of the matter and these statements lack foundation. Fed. R.
9 Evid. 602. Moreover, Exhibit B, the alleged Twitter Terms of Service governing Twitter
10 accounts, is also inadmissible because it is hearsay, not properly authenticated and it is not the
11 original writing. Fed. R. Evid. 802, 901 & 1002.

12 Paragraph 7.

13 "Attached hereto as "Exhibit C" is a true and correct copy of the Twitter Rules governing
14 Twitter accounts."

15 Objections: PhoneDog objects to the sixth paragraph of Kletter's declaration because
16 Kletter lacks personal knowledge of the matter and these statements lack foundation. Fed. R.
17 Evid. 602. Moreover, Exhibit C, the alleged Twitter Rules governing Twitter accounts, is also
18 inadmissible because it is hearsay, not properly authenticated and it is not the original writing.
19 Fed. R. Evid. 802, 901 & 1002.

20 **II PLAINTIFF PHONEDOG, LLC HEREBY OBJECTS TO THE DECLARATION**
21 **OF NOAH KRAVITZ ON THE GROUNDS SET FORTH BELOW:**

22 Paragraph 7.

23 "I have always used the Account to create and disseminate information regarding my
24 personal and professional life. Attached hereto as "Exhibit A" are true and correct copies of some
25 examples of my tweets while I was employed at PhoneDog. Although they show the handle
26 "@noahkravitz", because I had already changed the handle at the time I printed them out, they
27 were originally tweeted under the "@PhoneDog_Noah" handle."

28 Objections: PhoneDog objects to the seventh paragraph of Kravitz's declaration as
follows: Exhibit A, the alleged examples of Kravitz's tweets, is inadmissible because it is not the

1 original writing. Fed. R. Evid. 1002. Exhibit A is also inadmissible because it is not properly
2 authenticated. Fed. R. Evid. 901. Finally, the statements contained in Exhibit A are inadmissible
3 hearsay. Fed. R. Evid. 802.

4 Paragraph 8.

5 "PhoneDog did not have any policy that required me to return the Account after my
6 separation from employment."

7 Objections: PhoneDog objects to the eighth paragraph of Kravitz's declaration because
8 Kravitz lacks personal knowledge of the matter and the statement lacks foundation. Fed. R. Evid.
9 602.

10 Paragraph 17.

11 "In my opinion, based upon my several years of tweeting in the "twitterverse", the
12 Account is worth less than \$10,000, for many reasons, but most importantly because I do not
13 believe anyone would even pay \$8,000 for it, if it is even legal to sell it."

14 Objections: PhoneDog objects to the seventeenth paragraph of Kravitz's declaration
15 because Kravitz lacks personal knowledge of the matter and these statements lack foundation.
16 Fed. R. Evid. 602. These statements are also inadmissible opinions by a lay witness. Fed. R.
17 Evid. 701.

18 Dated: August 18, 2011

DONAHUE GALLAGHER WOODS LLP

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20 By: 

21 John C. Kirke
22 Attorneys for Plaintiff
23 PHONEDOG, LLC
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