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7 **UNITED STATES DISTRICT COURT**

8 **NORTHERN DISTRICT OF CALIFORNIA**

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10 PHONEDOG, LLC, a Delaware

11 Plaintiff,

12 v.

13 NOAH KRAVITZ, an individual,

14 Defendants.

) CASE NO. C11-03474

)  
) **DEFENDANT'S EVIDENTIARY**  
) **OBJECTIONS TO**  
) **DECLARATION OF TOM KLEIN**  
) **IN SUPPORT OF DEFENDANT'S**  
) **MOTION TO DISMISS**  
) **PLAINTIFF PHONEDOG, LLC'S**  
) **COMPLAINT FOR LACK OF**  
) **SUBJECT MATTER**  
) **JURISDICTION AND**  
) **FOR FAILURE TO STATE A**  
) **CLAIM**

) **Date:** September 15, 2011

) **Time:** 10:00 a.m.

) **Dept.:** Courtroom B -- 15<sup>th</sup> Floor

) **Judge:** Maria-Elena James

1 Defendant Noah Kravitz (“Kravitz”) hereby objects to the Declaration of Tom Klein  
2 (“Klein”) on the following grounds:

3 Paragraph 8:

4 “...During the time that Kravitz provided services to PhoneDog, the Account generated  
5 approximately 17,000 followers (the “Followers”). The Followers were integral in generating  
6 traffic to PhoneDog’s website. The Followers on the Twitter Account were derived from links  
7 placed throughout the PhoneDog website, PhoneDog’s YouTube Page, PhoneDog’s Facebook  
8 page, PhoneDog’s video content, television media appearances, all mediums managed by  
9 PhoneDog to promote its properties and editors....”

10 Objections:

11 Kravitz objects to this statement contained in Klein’s declaration because Klein lacks  
12 personal knowledge of the matter and these statements lack foundation. Fed. R. Evid. 602.  
13 These statements are also inadmissible opinions by a lay witness. Fed. R. Evid. 701.  
14 Moreover, these statements are also inadmissible because they are hearsay. Fed. R. Evid. 802.

15 Paragraph 8.

16 “...In the year and a half that Kravitz provided services to PhoneDog, 17,000 followers  
17 on the Twitter account were generated. Since then, only a small percentage of that amount  
18 have been added as followers to the Twitter account...”

19 Objections:

20 Kravitz objects to this statement contained in Klein’s declaration because Klein lacks  
21 personal knowledge of the matter and these statements lack foundation. Fed. R. Evid. 602.  
22 These statements are also inadmissible opinions by a lay witness. Fed. R. Evid. 701. Since  
23 Kravitz’s separation from PhoneDog in October 2010, the Account has obtained an  
24 approximate 22% gain in followers. Klein’s statement that this gain is only a “small  
25 percentage” is not a fact, but an inadmissible opinion. Moreover, these statements are also  
26 inadmissible because they are hearsay. Fed. R. Evid. 802.  
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1           Paragraph 9.

2           “...It has always been my understanding, which was communicated to Kravitz, that the  
3 Account is to be used for the benefit of PhoneDog...”

4           Objection:

5           Kravitz objects to this statement contained in Klein’s declaration because Klein lacks  
6 personal knowledge of the matter and these statements lack foundation. Fed. R. Evid. 602.  
7 These statements are also inadmissible opinions by a lay witness. Fed. R. Evid. 701.  
8 Moreover, these statements are also inadmissible because they are hearsay. Fed. R. Evid. 802.

9           Paragraph 10.

10           “My valuation of the Account is based on my years of experience in the Internet  
11 publishing industry and other methods of valuing Twitter accounts. Based on my valuation of  
12 the Account, the Account is worth far more to PhoneDog than \$10,000 per month and  
13 increases with each passing month.”

14           Objection:

15           Kravitz objects to this statement contained in Klein’s declaration because Klein lacks  
16 personal knowledge of the matter and these statements lack foundation. Fed. R. Evid. 602.  
17 These statements are also inadmissible opinions by a lay witness. Fed. R. Evid. 701.

18           Paragraph 11.

19           “...Kravitz’s use of the Account directly contravenes the agreement between PhoneDog  
20 and Kravitz that Kravitz would use the Account for the benefit of PhoneDog...”

21           Objection:

22           Kravitz objects to this statement contained in Klein’s declaration because Klein lacks  
23 personal knowledge of the matter and these statements lack foundation. Fed. R. Evid. 602.  
24 These statements are also inadmissible opinions by a lay witness. Fed. R. Evid. 701. Klein’s  
25 statement is not a fact, but a legal conclusion and argument that should be stricken. See, N.D.  
26 CA, Local Rule 7-5(b).  
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Paragraph 11.


“...Kravitz continues to use the Account to contact the Followers in order to promote himself and TechnoBuffalo, a competitor of PhoneDog...”

Objection:

Kravitz objects to this statement contained in Klein’s declaration because Klein lacks personal knowledge of the matter and these statements lack foundation. Fed. R. Evid. 602. These statements are also inadmissible opinions by a lay witness. Fed. R. Evid. 701. Klein’s statement is not a fact, but a legal conclusion and argument that should be stricken. *See*, N.D. CA, Local Rule 7-5(b).

Dated: August 25, 2011

KLETTER LAW FIRM

By:   
Sally Trung Nguyen  
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NOAH KRAVITZ