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7 UNITED STATES DISTRICT COURT

8 NORTHERN DISTRICT OF CALIFORNIA
9

10 PHONEDOG, LLC, a Delaware

11 Plaintiff,

12 v.

13 NOAH KRAVITZ, an individual,

14 Defendants.
15

) CASE NO. C11-03474
)

) **[PROPOSED] ORDER**
) **GRANTING DEFENDANT'S**
) **MOTION TO DISMISS**
) **PLAINTIFF PHONEDOG, LLC'S**
) **SECOND AND THIRD CLAIMS**
) **FOR RELIEF IN THE FIRST**
) **AMENDED COMPLAINT**
) **PURSUANT TO**
) **FED. R. CIV. PROC. RULE 12(b)(6)**
)

) **Date:** January 26, 2012

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

) **Dept.:** Courtroom B – 15th Floor

) **Judge:** Maria-Elena James
)
)

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22 Defendant Noah Kravitz's ("Kravitz") motion to dismiss Plaintiff PhoneDog, LLC's
23 ("PhoneDog") Second and Third Claims for Relief in the First Amended Complaint Pursuant
24 to Fed.R.Civ.Proc. Rule 12(b)(6) for failure to state a claim upon which relief can be granted
25 came on regularly for hearing on January 26, 2012 at 10:00 a.m. in Courtroom B – 15th Floor
26 of this Court. John C. Kirke appeared for plaintiff and Cary Kletter appeared for defendant.

27 The Court, having considered the papers and pleadings on file herein and the oral
28 argument of counsel, and good cause appearing therefore,

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IT IS HEREBY ORDERED:

(A) Plaintiff PhoneDog's Second Claim for Relief based upon allegations of intentional interference with economic prospective advantage is dismissed with prejudice for failure to state a claim upon which relief can be granted. Plaintiff's factual allegations are insufficient to raise a right to relief above a speculative level. See *Bell Atlantic v. Twombly*, 550 U.S. 544, 555 (2007). Plaintiff's First Amended Complaint does not sufficiently allege (1) the existence of an economic relationship that would have probably resulted in an economic benefit, (2) a negligent act by Kravitz that actually disrupted that relationship, and (3) economic harm caused by Kravitz. *CRST Van Expedited v. Werner Enter., Inc.* 479 F.3d 1099, 1108 (9th Cir. 2007).

(B) Plaintiff PhoneDog's Third Claim for Relief based upon allegations of negligent interference with economic prospective advantage is dismissed with prejudice for failure to state a claim upon which relief can be granted. Plaintiff's factual allegations are insufficient to raise a right to relief above a speculative level. See *Bell Atlantic v. Twombly*, 550 U.S. 544, 555 (2007). Plaintiff's First Amended Complaint does not sufficiently allege (1) the existence of an economic relationship that would have probably resulted in an economic benefit, (2) a negligent act by Kravitz that actually disrupted that relationship, and (3) economic harm caused by Kravitz. *CRST Van Expedited v. Werner Enter., Inc.* 479 F.3d 1099, 1108 (9th Cir. 2007). Plaintiff's Complaint also fails to allege that Defendant owes PhoneDog the requisite "duty of care". See *LiMandri v. Judkins*, 52 Cal.App.4th 326, 348 (1997); *Lange v. TIG Ins. Co.*, 68 Cal.App.4th 1179, 1187 (1998).

IT IS SO ORDERED.

DATED: _____

Hon. Maria-Elena James
Chief Magistrate Judge