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7 **UNITED STATES DISTRICT COURT**

8 **NORTHERN DISTRICT OF CALIFORNIA**

10	PHONEDOG, LLC, a Delaware)	CASE NO. C11-03474
)	
11	Plaintiff,	)	DECLARATION OF NOAH
		)	KRAVITZ IN SUPPORT OF
12	v.	)	DEFENDANT’S MOTION TO
		)	DISMISS PLAINTIFF
13	NOAH KRAVITZ, an individual,	)	PHONEDOG, LLC’S
14		)	COMPLAINT FOR LACK OF
	Defendants.	)	SUBJECT MATTER
15		)	JURISDICTION UNDER FED. R.
16		)	CIV. PROC. RULE 12(b)(1)AND
17		)	FOR FAILURE TO STATE A
		)	CLAIM UNDER FED. R. CIV.
18		)	PROC. RULE 12(b)(6)
)	
19		)	Date: September 15, 2011
		)	Time: 10:00 a.m.
20		)	Dept.: Courtroom B – 15 th Floor
		)	Judge: Maria-Elena James

21
 22 I, Noah Kravitz, declare as follows:

23 1. I am the Defendant in this case. I have personal knowledge of the matters set
 24 forth herein and if called upon to testify, I could and would do so competently.

25 2. This declaration is submitted in support of Defendant’s Motion to Dismiss
 26 Plaintiff PhoneDog, LLC’s Complaint For Lack of Subject Matter Jurisdiction Under Fed. R.
 27

1 Civ. Proc. Rule 12(b)(1) and For Failure to State a Claim Under Fed. R. Civ. Proc. Rule
2 12(b)(6).

3 3. PhoneDog, LLC ("PhoneDog") and I did not have any agreement regarding the
4 Twitter account "@PhoneDog_Noah" (the "Account").

5 4. I initially set up the account and I created the password.

6 5. I have always been the sole person to utilize and maintain the Account.

7 6. I have never had the password to the Twitter accounts used by other PhoneDog
8 employees and have never accessed any of those accounts.

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

14 8. PhoneDog did not have any policy that required me to return the Account after
15 my separation from employment.

16 9. I separated from my employment with PhoneDog in October 2010.

17 10. I was informed by Tom Klein, the CEO of PhoneDog, in October 2010 that I
18 could retain the Account after my separation from employment.

19 11. After my separation from employment with PhoneDog, I changed the Twitter
20 handle to the Account to "@noahkravitz" and immediately informed PhoneDog.

21 12. After I separated from PhoneDog, and after I changed the Account handle to
22 "@noahkravitz", PhoneDog requested multiple times that I "tweet" or publish articles and
23 promotions on the Account "@noahkravitz" on its behalf. Each time, I obliged without
24 hesitation.

25 13. On December 10, 2010, PhoneDog sent me an email stating: "Please tweet
26 about our 12 Days of Christmas sweepstakes, we are giving away the 2nd of 3 phones tonight
27 at 8pm ET, a Motorola Flipout. <http://on.fb.me/PdogEvents> Just have to LIKE the Dog to
28

1 enter". Attached hereto as "Exhibit B" is a true and correct copy of the December 10, 2010
2 email from PhoneDog.

3 14. On December 15, 2010, PhoneDog sent me an email stating: "Will you tweet:
4 Like @PhoneDog on Facebook for the chance to win a Google Nexus S. Live drawing Nov. 17
5 8PM ET!". Attached hereto as "Exhibit C" is a true and correct copy of the December 15,
6 2010 email from PhoneDog.

7 15. At no time prior to June 8, 2011 (the date of the filing of my suit for unpaid
8 wages) did PhoneDog request I relinquish or return the Account.

9 16. At no time prior to June 8, 2011 did PhoneDog raise any concerns with me
10 regarding my continued use of the Account.

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

14 I declare under penalty of the laws of the state of California that the foregoing is true
15 and correct and that this declaration was executed on this 4th day of August 2011, in San
16 Mateo, California.

17 DATED: August 4, 2011

18 
19 _____
20 NOAH KRAVITZ

EXHIBIT A

[@noahkravitz](#) Noah Kravitz

Chicago soccer fans are feisty. I like it.

8 Aug via [TweetDeck](#)

[@noahkravitz](#) Noah Kravitz

dude. mad men is back on this weekend.

23 Jul 10 via [TweetDeck](#)

Retweeted by [CloudSpeaker](#) and 1 other



[@noahkravitz](#) Noah Kravitz

French football is a mess.

20 Jun 10 via [Plume](#)

Retweeted by [benjamin Meyer](#) and 5 others



[@noahkravitz](#) Noah Kravitz

What a great night in the NBA.

7 May 10 via [TweetDeck](#)

Retweeted by [yungholder](#)



[@noahkravitz](#) Noah Kravitz

My God, MTV is horrible.

9 Apr 10 via [TweetDeck](#)

Retweeted by [metallica4390](#) and 6 others



@noahkravitz Noah Kravitz

GUS JOHNSON IS ALL HYPED UP!!!

#kstate butler

27 Mar 10 via TweetDeck

Retweeted by _DOC17



[@noahkravitz](#) Noah Kravitz

Why do local governments have the worst websites ever?

17 Feb 10 via [TweetDeck](#)

Retweeted by [DustinKSmith](#)



@noahkravitz Noah Kravitz

The Eagles are just getting wrecked.

9 Jan 10 via twidroid

@noahkravitz Noah Kravitz

In English, too <http://bit.ly/3ac96GRT>

@ChrisLeckness: “Foo Fighters live concert at

Facebook <http://bit.ly/beeW1>”

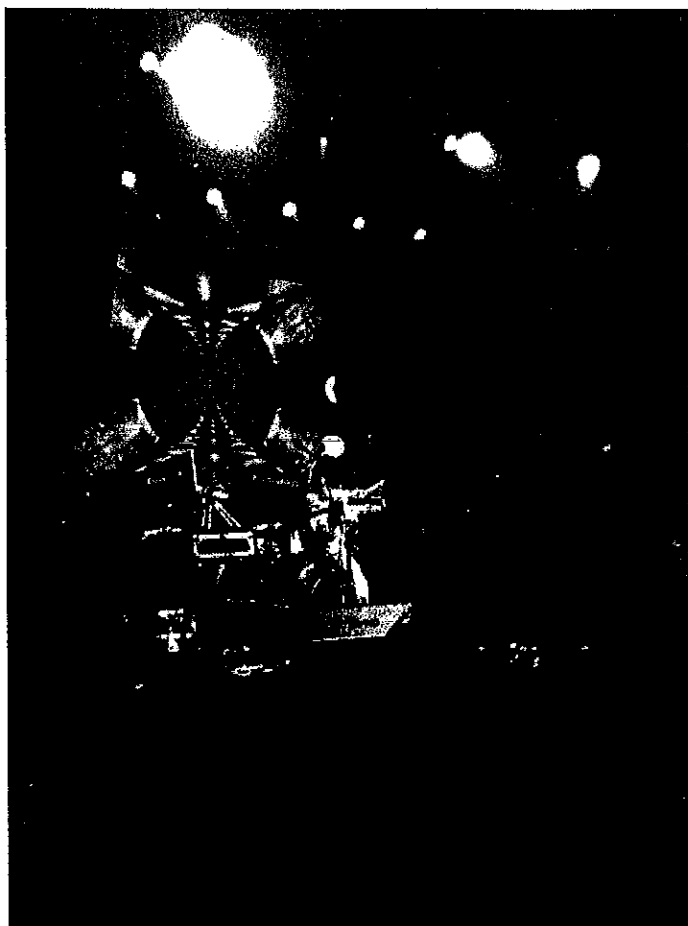
-@GeeksRoom

30 Oct 09 via [TweetDeck](#)



@noahkravitz

Noah Kravitz September 26, 2009



[Login to leave a comment](#)

1 Comment



jpartin 675 days ago

Thanks for the tip! Didn't realize they were in town until I saw you mention it on your twitter feed. Great show.

EXHIBIT B

From: Tom Klein <tkdog@phonedog.com>
Subject: **Tweet: #12DaysOfXMas**
Date: December 10, 2010 10:36:41 AM PST
To: Noah Kravitz <noah.kravitz@gmail.com>
Cc: Rebecca Atwood <radog@phonedog.com>

Noah,

Please tweet about our 12 Days of Christmas sweepstakes, we are giving away the 2nd of 3 phones tonight at 8pm ET, a Motorola Flipout. <http://on.fb.me/PdogEvents> Just have to LIKE the Dog to enter

Thanks
TK

EXHIBIT C

From: Rebecca Atwood <radog@phonedog.com>
Subject: **tweet please**
Date: December 15, 2010 7:50:13 AM PST
To: Noah Kravitz <noah.kravitz@gmail.com>

NK- Will you tweet: Like @PhoneDog on Facebook for the chance to win a Google Nexus S. Live drawing
Nov. 17 8PM ET! <http://bit.ly/gxqF5f>

Thanks RA