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5
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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,	)	REQUEST FOR JUDICIAL
		)	NOTICE IN SUPPORT OF
12	v.	)	DEFENDANT’S MOTION TO
		)	DISMISS PLAINTIFF
13	NOAH KRAVITZ, an individual,	)	PHONEDOG, LLC’S
		)	COMPLAINT FOR LACK OF
14	Defendants.	)	SUBJECT MATTER
		)	JURISDICTION UNDER FED. R.
15		)	CIV. PROC. RULE 12(b)(1)AND
16		)	FOR FAILURE TO STATE A
17		)	CLAIM UNDER FED. R. CIV.
		)	PROC. RULE 12(b)(6)
18)	
19		)	Date: September 15, 2011
		)	Time: 10:00 a.m.
20		)	Dept.: Courtroom B – 15 th Floor
21		)	Judge: Maria-Elena James

22 IT IS HEREBY REQUESTED that this Court take Judicial Notice of the following:

- 23 1. On July 15, 2011, Plaintiff PhoneDog, LLC, a Delaware corporation, filed a
 24 complaint in this action against Defendant Noah Kravitz, an individual, in the United States
 25 District Court, Northern District of California alleging: (1) misappropriation of trade secrets;
 26 (2) intentional interference with a prospective economic advantage; (3) negligent interference
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with a prospective economic advantage; and (4) conversion. A true and correct copy of the Complaint is attached hereto as "Exhibit A".

Dated: August 4, 2011

KLETTER LAW FIRM


By: 
Cary Kletter
Attorney for Defendant,
NOAH KRAVITZ

EXHIBIT A

E-filing

ORIGINAL
FILED
JUL 15 2011
RICHARD W. WEIDING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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13 PHONEDOG, LLC

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA

ADR

16 PHONEDOG, LLC, a Delaware
17 corporation,
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19 Plaintiff,
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21 v.
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23 NOAH KRAVITZ, an individual,
24
25 Defendant.

CASE NO. C11-03474MEJ

COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF;
MISAPPROPRIATION OF TRADE
SECRETS; INTENTIONAL
INTERFERENCE WITH PROSPECTIVE
ECONOMIC ADVANTAGE; NEGLIGENT
INTERFERENCE WITH PROSPECTIVE
ECONOMIC ADVANTAGE; AND
CONVERSION

[JURY TRIAL DEMANDED]

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1 Plaintiff PHONEDOG, LLC, ("PhoneDog") alleges as follows:

2 **JURISDICTION**

3 1. Plaintiff PhoneDog, LLC is a Delaware Corporation with its principal place of
4 business in Mount Pleasant, South Carolina.

5 2. Defendant Noah Kravitz ("Defendant") is a citizen of California residing in this
6 judicial district.

7 3. This court has original jurisdiction under 28 U.S.C. § 1332(a), in that it is a civil
8 action between citizens of different states in which the matter in controversy exceeds, exclusive
9 of costs and interest, \$75,000.

10 **VENUE**

11 4. Venue is proper in this district by virtue of 28 U.S.C. § 1391(a).

12 **THE PARTIES**

13 5. Plaintiff PhoneDog is a corporation organized and existing under the laws of the
14 State of Delaware, with its principal place of business in the State of South Carolina.

15 6. Defendant is and at all times relevant, was a citizen of California residing in
16 Alameda County, California.

17 **FACTUAL ALLEGATIONS**

18 7. PhoneDog was created on or around August 1, 2001.

19 8. PhoneDog is, and at all times relevant hereto was, a highly interactive mobile news
20 and reviews web resource. PhoneDog reviews the latest mobile products and services across all
21 carriers and platforms, and provides users the resources needed to research, compare prices, and
22 shop from those providers that fit their needs.

23 9. PhoneDog's website attracts approximately 1.5 million visitors each month.
24 PhoneDog's videos reach an average audience of 3 million viewers per month. PhoneDog uses a
25 variety of social media, including Twitter, Facebook, and YouTube to market and promote its
26 services.

27 10. There are many details of PhoneDog's relationships with its users that are not
28 generally known or readily accessible to the public or PhoneDog's competitors. PhoneDog

1 derives independent economic value from this information, which it has developed through many
2 years of substantial time, effort, expense, research, and communication with its users.

3 11. PhoneDog has taken and continues to take reasonable efforts to maintain the
4 secrecy of this proprietary information, including restricting access to, and distribution of, this
5 confidential information only to employees who need this information to perform their jobs.

6 12. This confidential information includes, but is not limited to, the following: the
7 passwords to PhoneDog's Twitter accounts, including all @PhoneDog_NAME Twitter accounts
8 used by PhoneDog's employees (collectively, the "Confidential Information").

9 13. The Confidential Information is not generally known or readily accessible, and is
10 maintained in confidence by PhoneDog, with limited access provided to employees on a need to
11 know basis. PhoneDog has at all times taken reasonable steps to protect such Confidential
12 Information from being stolen or misused. The Confidential Information would be of substantial
13 value to PhoneDog's competitors if it became known to them.

14 14. PhoneDog employed Defendant as a product reviewer and video blogger
15 beginning on or around April 13, 2006. As part of Defendant's employment with PhoneDog,
16 Defendant submitted written and video content to PhoneDog, which was then transmitted to
17 PhoneDog's users via a variety of mediums including but not limited to, PhoneDog's website and
18 PhoneDog's @PhoneDog_Noah Twitter account.

19 15. As an employee of PhoneDog, Defendant was given use of and maintained the
20 Twitter account "@PhoneDog_Noah" (the "Account"). Defendant accessed the Account using
21 PhoneDog's Confidential Information, and used the Account to disseminate information and
22 promote PhoneDog's services on behalf of PhoneDog.

23 16. During the course of Defendant's employment with PhoneDog, the Account
24 generated approximately 17,000 Twitter followers ("PhoneDog's Followers"). According to
25 industry standards, each Twitter follower is currently valued at approximately \$2.50 per month.
26 Given the Account's approximately 17,000 followers (PhoneDog's Followers), on or about
27 October 2010, the Account had a value of approximately \$42,500 per month.

28 17. Defendant suddenly resigned his employment with PhoneDog in October 2010.

1 Following Defendant's resignation, PhoneDog requested that Defendant relinquish use of the
2 Account. Instead of relinquishing actual use of the Account, Defendant merely changed the
3 Twitter handle on the Account to "@noahkravitz". Defendant continues to use the Account,
4 under the handle @noahkravitz.

5 18. On information and belief, between October 2010 and December 2010, Defendant
6 free-lanced for a variety of media outlets before obtaining a full-time position with
7 TechnoBuffalo. TechnoBuffalo offers services that compete with those of PhoneDog.

8 19. On information and belief, subsequent to resigning his employment with
9 PhoneDog, Defendant used PhoneDog's Confidential Information to access the Account.
10 Defendant has used and continues to use the Account, by way of the handle @noahkravitz, to
11 communicate with PhoneDog's Followers without PhoneDog's permission. Defendant's use of
12 the Account and communication with PhoneDog's Followers is and was done in an attempt to
13 market and advertise his services and the services of his employer.

14 20. On information and belief, Defendant has and is attempting to discredit PhoneDog
15 and destroy the confidence that PhoneDog's users have in PhoneDog by and through Defendant's
16 use of the Account, disparaging PhoneDog.

17 **CLAIMS FOR RELIEF**

18 **FIRST CLAIM FOR RELIEF**

19 **(Misappropriation of Trade Secrets)**

20 21. PhoneDog refers to and incorporates paragraphs 1 through 20 above, as though
21 fully set forth herein.

22 22. At all times relevant the Confidential Information constituted PhoneDog's trade
23 secrets.

24 23. PhoneDog is informed and believes, and on that basis alleges, that within the last
25 eight months, Defendant willfully and intentionally used his employment with PhoneDog, and
26 trust, authority, and access afford to Defendant by PhoneDog, along with other improper means,
27 as such are defined in Civil Code § 3426.1(a), to obtain and misappropriate the Confidential
28 Information with the intent and desire to further his career, to use and profit from such

1 information, to call on and solicit the very same users of PhoneDog's services, and to harm the
2 relationship that PhoneDog enjoys with its users and thus injure PhoneDog. On information and
3 belief, at all relevant times, PhoneDog knew or had reason to know that the Confidential
4 Information constituted PhoneDog trade secrets.

5 24. Among other matters, PhoneDog is informed and believes and thereon alleges that
6 Defendant has:

7 (a) Used Defendant's knowledge of the Confidential information to access the
8 Account and communicate with PhoneDog's Followers, all in an attempt to position Defendant
9 favorably against PhoneDog and convert PhoneDog's users to Defendant's own use;

10 (b) Made improper use of Defendant's knowledge of the Confidential
11 Information to access the Account to compete unfairly against PhoneDog for PhoneDog's existing
12 customers;

13 (c) Devised Defendant's marketing of his and his employers' services based on
14 Defendant's knowledge of the Confidential Information; and

15 (d) Avoided the expenditure of time and resources on locating or obtaining
16 potential users by making use of the Confidential Information to access the Account and
17 communicate with PhoneDog's Followers.

18 25. As a proximate result of Defendant's trade secret misappropriation, PhoneDog has
19 suffered damages to its business, reputation, and goodwill, including lost users and user
20 opportunities in excess of the minimum jurisdiction of this Court. As a further proximate result
21 of Defendant's trade secret misappropriation, Defendant was unjustly enriched by obtaining the
22 business of PhoneDog's Followers.

23 26. PhoneDog is informed and believes and thereon alleges, that the aforementioned
24 acts by Defendant were willful and oppressive, or fraudulent, or malicious. PhoneDog is
25 therefore entitled to punitive damages and its reasonable attorneys' fees and costs.

26 27. Unless and until enjoined by order of this Court, Defendant will continue his
27 illegal efforts and scheme to exploit the Confidential Information. PhoneDog has no adequate
28 remedy at law for the irreparable injuries Defendant has caused and continues to cause, including,

1 but not limited to, damage to PhoneDog's Confidential Information, business, reputation, and
2 goodwill. The continued misappropriation by Defendant of the Confidential Information would
3 require PhoneDog to maintain a multiplicity of judicial proceedings to protect its interests.

4 WHEREFORE, PhoneDog prays for judgment as set forth below.

5 **SECOND CLAIM FOR RELIEF**

6 **(Intentional Interference With Prospective Economic Advantage)**

7 28. PhoneDog refers to and herein incorporates paragraphs 1 through 27 above, as
8 though fully set forth herein.

9 29. PhoneDog has had and continues to enjoy relationships with existing and
10 prospective users of its mobile news and reviews services. Defendant, through his former
11 employment with PhoneDog, has extensive knowledge of those relationships, including
12 PhoneDog's Confidential Information. Defendant knows the history of PhoneDog's relationships
13 with its users in detail, including which of those relationships contain the probability of future
14 economic benefit to PhoneDog, when, and on what terms, by reasons of PhoneDog's ongoing
15 marketing of its services to these customers.

16 30. The aforementioned conduct by Defendant was designed to disrupt, and has in fact
17 disrupted, PhoneDog's economic relationships with its existing and prospective users and has
18 adversely affected, and will continue to adversely affect, PhoneDog's ongoing relationships with
19 these users. This conduct includes the wrongful misappropriation and use of the Confidential
20 Information by Defendant, Defendant's attempt to wrongly discredit PhoneDog in the eyes of its
21 users, and Defendant's attempt to destroy PhoneDog's customers' confidence in PhoneDog by
22 disparaging PhoneDog. This conduct was intended to persuade PhoneDog's users to terminate
23 their existing or future relationships with PhoneDog. Said conduct accordingly constitutes
24 interference with PhoneDog's prospective economic advantage.

25 31. As a direct and proximate result of Defendant's acts, PhoneDog has suffered
26 damage to its business, reputation, and goodwill in excess of the minimum jurisdiction of this
27 Court.

28 32. Defendant's aforementioned conduct was willful and oppressive, or fraudulent, or

1 malicious. PhoneDog is therefore entitled to punitive damages.

2 33. Unless and until enjoined by order of this Court, Defendant will continue his
3 illegal efforts and scheme to interfere with PhoneDog's prospective economic advantage and
4 cause damage to its reputation and goodwill. PhoneDog has no adequate remedy at law for the
5 irreparable injuries Defendant has caused and continues to cause, including, but not limited to,
6 damage to PhoneDog's prospective economic advantage, business, reputation, and goodwill. The
7 continued interference by Defendant with PhoneDog's prospective economic advantage would
8 require PhoneDog to maintain a multiplicity of judicial proceedings to protect its interests.

9 WHEREFORE, PhoneDog prays for judgment as set forth below.

10 **THIRD CLAIM FOR RELIEF**

11 **(Negligent Interference with Prospective Economic Advantage)**

12 34. PhoneDog refers to and incorporates paragraphs 1 through 33 above, as though
13 fully set forth herein.

14 35. Defendant knew or had reason to believe that the aforementioned conduct engaged
15 in by Defendant would affect and irreparably harm PhoneDog's economic relationships with its
16 users and that such relationships contained a probability of future economic benefit. As alleged
17 above, Defendant did wrongfully interfere with PhoneDog's prospective economic relationships.

18 36. As a direct and proximate result of the negligent interference, PhoneDog suffered
19 damage to its business, reputation, and goodwill in excess of the minimum jurisdiction of this
20 Court.

21 WHEREFORE, PhoneDog prays for judgment as set forth below.

22 **FOURTH CLAIM FOR RELIEF**

23 **(Conversion)**

24 37. PhoneDog refers to and incorporates paragraphs 1 through 36 above, as though
25 fully set forth herein.

26 38. At all times herein mentioned, PhoneDog was and still is, the owner of the
27 Account and was, and still is, entitled to the possession of the Account. The Account and all
28 approximately 17,000 of PhoneDog's Followers generated by the Account, were and are the sole

1 property of PhoneDog.

2 39. PhoneDog gave Defendant permission to use the Account during PhoneDog's
3 employment of Defendant. Once Defendant ceased to be employed by PhoneDog, Defendant was
4 required to return the Account to PhoneDog.

5 40. On or about October 15, 2010, upon Defendant's resignation from PhoneDog,
6 PhoneDog requested that Defendant relinquish the Account to PhoneDog. At that point in time,
7 Defendant wrongfully converted the Account to his own use by changing the handle on the
8 Account to @noahkravtiz. Defendant has used and continues to use the Account with the handle
9 @noahkravtiz to communicate with and market his services and services of his employer to
10 PhoneDog's Followers.

11 41. According to industry standards, each Twitter follower is currently valued at
12 approximately \$2.50 per month. Given the Account's approximately 17,000 followers
13 (PhoneDog's Followers), on or about October 2010, the Account had had a value of
14 approximately \$42,500 per month.

15 42. Between the time of Defendant's conversion of the Account to his own use, and
16 the filing of this action, PhoneDog has expended time and money in the pursuit of the converted
17 Account, all to PhoneDog's further damage in an amount to be proved at trial.

18 43. Defendant's acts alleged above were willful, wanton, malicious, and oppressive,
19 and justify the awarding of exemplary and punitive damages.

20 WHEREFORE, PhoneDog prays for judgment as set forth below.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, PhoneDog prays:

23 1. For the First Claim for Relief for Trade Secret Misappropriation:

24 (a) For an order requiring Defendant to show cause, if he has any, why he
25 should not be enjoined as hereinafter set forth, during the pendency of this action;

26 (b) For a temporary restraining order, a preliminary injunction, and a
27 permanent injunction, all enjoining Defendant and all persons acting or claiming to act under, in
28 concert with, or for Defendant, or any of them from:

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- * (i) Engaging in any solicitation of PhoneDog users;
- (ii) Using, copying, dealing with, disclosing, trading, and otherwise exploiting or misappropriating PhoneDog's Confidential Information in order to, including, but without limitation, communicate with PhoneDog's users and PhoneDog's Followers;
- (iii) Destroying any documents or files of any kind, actively or passively, whether in written or electronic form, that relate in any way to PhoneDog's employment of Defendant, the PhoneDog Confidential Information, and/or PhoneDog's actual or prospective users.
- (c) For a temporary restraining order, a preliminary injunction, and a permanent injunction, all requiring Defendant and all persons acting or claiming to act under, in concert with, or for Defendant, or any of them to return all of PhoneDog's Confidential Information in their custody, possession, or control to PhoneDog;
- (d) For general damages in the amount necessary to prevent the unjust enrichment of Defendant (alternatively, if neither PhoneDog's actual damages or Defendant's unjust enrichment is subject to proof, for reasonable royalties);
- (e) For punitive damages;
- (f) For reasonable attorneys' fees;
- (g) For all costs of suit incurred; and
- (h) For such other and further relief as the court may deem proper.

2. For the Second Claim for Relief for Intentional Interference with Prospective Economic Advantage:

- (a) For an order requiring Defendant to show cause, if he has any, why he should not be enjoined as hereinafter set forth, during the pendency of this action;
- (b) For a temporary restraining order, a preliminary injunction, and a permanent injunction, all enjoining Defendant and all persons acting or claiming to act under, in concert with, or for Defendant, or any of them from:
 - (i) Using the Account to solicit PhoneDog's users;
 - (ii) Using, copying, dealing with, disclosing, trading, and otherwise

1 exploiting or misappropriating PhoneDog's Confidential Information to, including, but without
2 limitation, communicate with PhoneDog's users and PhoneDog's Followers;

3 (iii) Destroying any documents or files of any kind, actively or
4 passively, whether in written or electronic form, that relate in any way to PhoneDog's
5 employment of Defendant, PhoneDog's Confidential Information, and/or PhoneDog's actual or
6 prospective clients.

7 (c) For a temporary restraining order, a preliminary injunction, and a
8 permanent injunction, all requiring Defendant and all persons acting or claiming to act under, in
9 concert with, or for Defendant, or any of them to return all of PhoneDog's Confidential
10 Information in their custody, possession, or control to PhoneDog;

11 (d) For general damages;

12 (e) For punitive damages;

13 (f) For all costs of suit incurred; and

14 (g) For such other and further relief as the court may deem proper.

15 3. For the Third Claim for Relief for Negligent Interference with Prospective
16 Economic Advantage:

17 (a) For general damages;

18 (b) For all costs of suit incurred; and

19 (c) For such other and further relief as the court may deem proper.

20 4. For the Fourth Claim for Relief For Conversion:

21 (a) For the value of the property converted;

22 (b) For the interest at the legal rate on the foregoing sum pursuant to Section
23 336 of the Civil Code, from and after October 15, 2010;

24 (c) For damages for the proximate and foreseeable loss resulting from
25 defendant's conversion in the sum of \$340,000 (17,000 twitter followers, each worth
26 \$2.50/month, for 8 months);

27 (d) For interest at the legal rate on the foregoing sum pursuant to Section
28 3287(a) of the Civil Code, from and after October 15, 2010;

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- (e) For damages for time and money properly expended in pursuit of the converted property in an amount to be proved at trial;
- (f) For punitive and exemplary damages;
- (g) For costs of suit herein incurred; and
- (h) For such other and further relief as the court may deem proper.

Dated: July 15, 2011

DONAHUE GALLAGHER WOODS LLP

By: _____

John C. Kirke
John C. Kirke
Attorneys for Plaintiff
PHONEDOG, LLC


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DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38 and local rule 38-201, Plaintiff hereby demands trial by jury.

Dated: July 5, 2011

DONAHUE GALLAGHER WOODS LLP

By: 
John C. Kirke
Attorneys for Plaintiff
PHONEDOG, LLC