

CIVIL COVER SHEET

JS 44 (Rev. 12/07) (CAND Rev 1/10)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

<p>I. (a) PLAINTIFFS</p> <p>PHONEDOG, LLC, a Delaware corporation,</p>	<p>DEFENDANTS</p> <p>NOAH KRAVITZ, an individual,</p>
<p>(b) County of Residence of First Listed Plaintiff CHARLESTON (EXCEPT IN U.S. PLAINTIFF CASES)</p>	<p>County of Residence of First Listed Defendant ALAMEDA (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</p>
<p>(c) Attorney's (Firm Name, Address, and Telephone Number)</p> <p>JOHN C. KIRKE, ESQ. DONAHUE GALLAGHER WOODS LLP 1999 HARRISON STREET, 25TH FLOOR OAKLAND, CA 94612</p>	<p>Attorneys (If Known)</p>

<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <p>(For Diversity Cases Only)</p> <table style="width:100%;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:10%;"><input type="checkbox"/> 1</td> <td style="width:10%;"><input checked="" type="checkbox"/> 1</td> <td style="width:33%;">Incorporated or Principal Place of Business In This State</td> <td style="width:10%;"><input type="checkbox"/> 4</td> <td style="width:10%;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input checked="" type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	<input type="checkbox"/> 1	<input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input checked="" type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6														

IV. NATURE OF SUIT (Place an "X" in One Box Only)

<p>CONTRACT</p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)</p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p>	<p>PERSONAL INJURY</p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel & Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p>	<p>PERSONAL INJURY</p> <p><input type="checkbox"/> 362 Personal Injury—Med. Malpractice</p> <p><input type="checkbox"/> 365 Personal Injury — Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p>PERSONAL PROPERTY</p> <p><input checked="" type="checkbox"/> 370 Other Fraud</p> <p><input checked="" type="checkbox"/> 371 Truth in Lending</p> <p><input checked="" type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p>FORFEITURE/PENALTY</p> <p><input type="checkbox"/> 610 Agriculture</p> <p><input type="checkbox"/> 620 Other Food & Drug</p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 630 Liquor Laws</p> <p><input type="checkbox"/> 640 R.R. & Truck</p> <p><input type="checkbox"/> 650 Airline Regs.</p> <p><input type="checkbox"/> 660 Occupational Safety/Health</p> <p><input type="checkbox"/> 690 Other</p>	<p>BANKRUPTCY</p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p>PROPERTY RIGHTS</p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p>	<p>OTHER STATES</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 810 Selective Service</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 875 Customer Challenge 12 USC 3410</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 892 Economic Stabilization Act</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 894 Energy Allocation Act</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>
<p>REAL PROPERTY</p> <p><input type="checkbox"/> 210 Land Condemnation</p> <p><input type="checkbox"/> 220 Foreclosure</p> <p><input type="checkbox"/> 230 Rent Lease & Ejectment</p> <p><input type="checkbox"/> 240 Torts to Land</p> <p><input type="checkbox"/> 245 Tort Product Liability</p> <p><input type="checkbox"/> 290 All Other Real Property</p>	<p>CIVIL RIGHTS</p> <p><input type="checkbox"/> 441 Voting</p> <p><input type="checkbox"/> 442 Employment</p> <p><input type="checkbox"/> 443 Housing/Accommodations</p> <p><input type="checkbox"/> 444 Welfare</p> <p><input type="checkbox"/> 445 Amer. w/Disabilities - Employment</p> <p><input type="checkbox"/> 446 Amer. w/Disabilities - Other</p> <p><input type="checkbox"/> 440 Other Civil Rights</p>	<p>PRISONER PETITIONS</p> <p><input type="checkbox"/> 510 Motions to Vacate Sentence</p> <p>Habeas Corpus:</p> <p><input type="checkbox"/> 530 General</p> <p><input type="checkbox"/> 535 Death Penalty</p> <p><input type="checkbox"/> 540 Mandamus & Other</p> <p><input type="checkbox"/> 550 Civil Rights</p> <p><input type="checkbox"/> 555 Prison Condition</p>	<p>LABOR</p> <p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Mgmt. Relations</p> <p><input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Empl. Ret. Inc. Security Act</p>	<p>SOCIAL SECURITY</p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p>	<p>FEDERAL TAX SUITS</p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</p>

V. ORIGIN (Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment
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VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. section 1332(a)

Brief description of cause:

Conversion of business property and misappropriation of trade secrets.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint: **JURY DEMAND:** Yes No

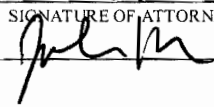
VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)

SAN FRANCISCO/OAKLAND SAN JOSE EUREKA

DATE: July 15, 2011

SIGNATURE OF ATTORNEY OF RECORD: 

E-filing

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 7 Attorneys for Plaintiff
 PHONEDOG, LLC

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

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ADR

8 UNITED STATES DISTRICT COURT
 9
 10 NORTHERN DISTRICT OF CALIFORNIA

C11-03474 *MEJ*

11
 12 PHONEDOG, LLC, a Delaware
 corporation,

13 Plaintiff,

14 v.

15 NOAH KRAVITZ, an individual,

16 Defendant.

CASE NO.

**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]

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 @noahkravtiz.

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:

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

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

- 22 (a) For an order requiring Defendant to show cause, if he has any, why he
- 23 should not be enjoined as hereinafter set forth, during the pendency of this action;
- 24 (b) For a temporary restraining order, a preliminary injunction, and a
- 25 permanent injunction, all enjoining Defendant and all persons acting or claiming to act under, in
- 26 concert with, or for Defendant, or any of them from:
 - 27 (i) Using the Account to solicit PhoneDog's users;
 - 28 (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;

1 (e) For damages for time and money properly expended in pursuit of the
2 converted property in an amount to be proved at trial;

3 (f) For punitive and exemplary damages;

4 (g) For costs of suit herein incurred; and

5 (h) For such other and further relief as the court may deem proper.

6 Dated: July 15, 2011

DONAHUE GALLAGHER WOODS LLP


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8 By: 
9 John C. Kirke
10 Attorneys for Plaintiff
11 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 15, 2011

DONAHUE GALLAGHER WOODS LLP

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

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