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8 Attorneys for Defendant/Counterclaim Plaintiff
9 PADMAPPER, INC.

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 CRAIGSLIST, INC., a Delaware corporation,

14 Plaintiff,

15 v.

16 3TAPS, INC., a Delaware corporation;
17 PADMAPPER, INC., a Delaware corporation;
18 and DOES 1 through 25, inclusive,

19 Defendants.

20 Case No. CV-12-03816 CRB

21 DEFENDANT PADMAPPER, INC.’S
22 ANSWER TO COMPLAINT,
23 AFFIRMATIVE DEFENSES AND
24 COUNTERCLAIMS

25 JURY TRIAL DEMANDED

26 Honorable Charles R. Breyer

27 3TAPS, INC.; and PADMAPPER, INC.,

28 Counterclaim Plaintiffs,

v.

CRAIGSLIST, INC.,

Counterclaim Defendant.

Defendant PadMapper, Inc. (“PadMapper”) answers the allegations made by Plaintiff craigslist, Inc. (“craigslist”) as follows:

INTRODUCTION

1. PadMapper admits that craigslist provides classified advertising services, that some of craigslist’s services are provided without charge and without third-party advertising

1 and marketing. PadMapper lacks knowledge or information sufficient to form a belief as to the
2 truth of the remaining allegations of paragraph 1 and, therefore, denies the same.

3 2. PadMapper denies the allegations against PadMapper in paragraph 2. To the
4 extent the allegations in paragraph 2 relate to defendants other than PadMapper, PadMapper
5 lacks knowledge or information sufficient to form a belief as to the truth of the allegations of
6 paragraph 2 and, therefore, denies the same.

7 3. The allegations contained in paragraph 3 relate solely to defendants other than
8 PadMapper. PadMapper lacks knowledge or information sufficient to form a belief as to the
9 truth of the allegations of paragraph 3 and, therefore, denies the same.

10 4. The allegations contained in paragraph 4 relate solely to defendants other than
11 PadMapper. PadMapper lacks knowledge or information sufficient to form a belief as to the
12 truth of the allegations of paragraph 4 and, therefore, denies the same.

13 5. PadMapper admits that it offers an apartment search service at padmapper.com
14 and that it uses publicly available information indexed by 3Taps, Inc. (“3Taps”) in connection
15 with the padmapper.com website. To the extent the allegations in paragraph 5 relate to
16 defendants other than PadMapper, PadMapper lacks knowledge or information sufficient to
17 form a belief as to the truth of the allegations of paragraph 5 and, therefore, denies the same.

18 6. PadMapper denies the allegation that it misappropriates craigslist’s content. To
19 the extent the allegations in paragraph 6 relate to defendants other than PadMapper, PadMapper
20 lacks knowledge or information sufficient to form a belief as to the truth of the allegations of
21 paragraph 6 and, therefore, denies the same.

22 7. PadMapper denies that it has violated United States copyright laws. To the
23 extent the allegations in paragraph 7 relate to defendants other than PadMapper, PadMapper
24 lacks knowledge or information sufficient to form a belief as to the truth of the allegations of
25 paragraph 7 and, therefore, denies the same.

26 8. PadMapper denies the allegations against PadMapper in paragraph 8. To the
27 extent the allegations in paragraph 8 relate to defendants other than PadMapper, PadMapper
28 lacks knowledge or information sufficient to form a belief as to the truth of the allegations of

1 paragraph 8 and, therefore, denies the same.

2 9. PadMapper denies the allegations against PadMapper in paragraph 9. To the
3 extent the allegations in paragraph 9 relate to defendants other than PadMapper, PadMapper
4 lacks knowledge or information sufficient to form a belief as to the truth of the allegations of
5 paragraph 9 and, therefore, denies the same.

6 **JURISDICTION AND VENUE**

7 10. PadMapper admits that this Court has jurisdiction over the subject matter.
8 PadMapper admits that craigslist has alleged violations of federal statutes.

9 11. PadMapper admits that this Court has supplemental jurisdiction over the
10 remaining claims.

11 12. PadMapper admits that venue is proper in this District.

12 13. PadMapper admits that craigslist's Terms of Use ("TOU") purport to govern
13 craigslist users' access to and use of the craigslist website and services and that the TOU provide
14 that courts located within the County of San Francisco, California shall have exclusive
15 jurisdiction over the relationship between craigslist and craigslist users. PadMapper denies that
16 its activities are governed by the TOU. To the extent the allegations in paragraph 13 relate to
17 defendants other than PadMapper, PadMapper lacks knowledge or information sufficient to
18 form a belief as to the truth of the allegations of paragraph 13 and, therefore, denies the same.

19 14. PadMapper denies the allegations against PadMapper in paragraph 14. To the
20 extent the allegations in paragraph 14 relate to defendants other than PadMapper, PadMapper
21 lacks knowledge or information sufficient to form a belief as to the truth of the allegations of
22 paragraph 14 and, therefore, denies the same.

23 15. PadMapper admits the allegations in paragraph 15.

24 **THE PARTIES**

25 16. PadMapper admits the allegations of paragraph 16.

26 17. PadMapper lacks knowledge or information sufficient to form a belief as to the
27 truth of the allegations of paragraph 17 and, therefore, denies the same.

28 18. PadMapper admits the allegations of paragraph 18.

1 19. PadMapper lacks knowledge or information sufficient to form a belief as to the
2 truth of the allegations of paragraph 19 and, therefore, denies the same.

3 **FACTS**

4 20. PadMapper lacks knowledge or information sufficient to form a belief as to the
5 truth of the allegations of paragraph 20 and, therefore, denies the same.

6 21. PadMapper lacks knowledge or information sufficient to form a belief as to the
7 truth of the allegations of paragraph 21 and, therefore, denies the same.

8 22. PadMapper lacks knowledge or information sufficient to form a belief as to the
9 truth of the allegations of paragraph 22 and, therefore, denies the same.

10 23. PadMapper lacks knowledge or information sufficient to form a belief as to the
11 truth of the allegations of paragraph 23 and, therefore, denies the same.

12 **A. The craigslist Classified Ad Service**

13 24. PadMapper admits the allegations of paragraph 24.

14 25. PadMapper admits the allegations in the first two sentences of paragraph 25.
15 PadMapper lacks knowledge or information sufficient to form a belief as to the truth of the
16 remaining allegations of paragraph 25 and, therefore, denies the same.

17 26. PadMapper admits the allegations of paragraph 26.

18 27. PadMapper admits the allegations in the first two sentences of paragraph 27.
19 PadMapper denies the remaining allegations of paragraph 27.

20 28. PadMapper admits the allegations of paragraph 28.

21 29. PadMapper admits the allegations of paragraph 29.

22 30. PadMapper admits the allegations in the first two sentences of paragraph 30.
23 PadMapper admits that craigslist assigns proxy email addresses for most postings. PadMapper
24 lacks knowledge or information sufficient to form a belief as to the truth of craigslist's
25 allegation of the motivation for providing proxy email addresses and, therefore, denies the
26 allegation. PadMapper admits that, in most cases, craigslist's servers automatically forward an
27 email sent to a proxy email address to the poster's actual email account, but denies that
28 craigslist always does so.

1 31. PadMapper admits that craigslist requires a user to accept craigslist's TOU before
2 craigslist will post a classified ad, and that at one time craigslist's TOU purported to confer
3 craigslist with exclusive rights to information submitted by a user. PadMapper denies that
4 craigslist's TOU could confer exclusive rights over all information submitted to craigslist by a
5 user, and further denies that craigslist's TOU currently purports to confer craigslist with any such
6 exclusive rights.

7 32. PadMapper admits that craigslist requires a user to accept craigslist's TOU before
8 craigslist will post a classified ad, and that at one time craigslist's TOU purported to confer
9 craigslist with exclusive rights to information submitted by a user. PadMapper denies that
10 craigslist's TOU could confer exclusive rights over all information submitted to craigslist by a
11 user, and further denies that craigslist's TOU currently purports to confer craigslist with any such
12 exclusive rights.

13 33. PadMapper admits the allegations of the first sentence in paragraph 33.
14 PadMapper admits that craigslist adds a copyright notice to users' ads, but denies that such
15 copyright notice is valid or warranted under United States copyright law.

16 34. PadMapper admits that craigslist has obtained patent, trademark and copyright
17 registrations in the United States and foreign jurisdictions, but denies that all such registrations
18 are valid or proper.

19 35. PadMapper admits that craigslist enters into license agreements with companies
20 that facilitate access to craigslist from mobile devices. PadMapper denies that craigslist owns or
21 has an exclusive license over all information provided by users of craigslist. PadMapper admits
22 that it was offered a license by craigslist, that the license purported to restrict PadMapper's use
23 of user supplied information, and that PadMapper chose not to enter into a license agreement
24 with craigslist. PadMapper further denies the inference that the license offered by craigslist was
25 a viable license made in good faith. The license was completely incompatible with fundamental
26 aspects of PadMapper's service. For example, although craigslist knew that PadMapper
27 provided its services via a website, craigslist's proposed licensed prohibited use of licensed
28 information in connection with a website. PadMapper lacks knowledge or information

1 sufficient to form a belief as to the truth of craigslist's allegation regarding the terms of its
2 license agreements with parties other than PadMapper and, therefore, denies the allegation to
3 the extent it relates to other parties.

4 **B. The craigslist Terms of Use**

5 36. PadMapper admits that craigslist's TOU purports to grant users a limited and
6 revocable license to access and use craigslist in accordance with the TOU's terms, but denies
7 the legal sufficiency of craigslist's TOU. PadMapper admits the second sentence of paragraph
8 36.

9 37. PadMapper admits that craigslist's TOU contains types and examples of access
10 and use that craigslist purports to deem are "unauthorized," but denies that all such types and
11 examples of access and are in violation of rights held by craigslist.

12 38. PadMapper denies the allegations of paragraph 38.

13 39. PadMapper denies the allegations of paragraph 39.

14 40. PadMapper denies the allegations of paragraph 40.

15 **C. The craigslist Copyrights**

16 41. PadMapper denies the first sentence of paragraph 41. PadMapper admits that the
17 elements identified in the second sentence of paragraph 41 are part of the craigslist website, but
18 denies craigslist's characterization of the elements as "original."

19 42. PadMapper denies the allegations of paragraph 42.

20 43. PadMapper admits that user postings on craigslist contain a written description of
21 goods or services, and that the postings often contain photographs. PadMapper denies the
22 remaining allegations of paragraph 43.

23 44. PadMapper denies the allegations of paragraph 44.

24 45. PadMapper admits that craigslist is the copyright claimant for the registrations
25 identified in paragraph 45.

26 46. PadMapper lacks knowledge or information sufficient to form a belief as to the
27 truth of the allegations of paragraph 46 and, therefore, denies the same.

28 47. PadMapper lacks knowledge or information sufficient to form a belief as to the

1 truth of the allegations of paragraph 47 and, therefore, denies the same.

2 **D. The craigslist Trademarks**

3 48. PadMapper admits the allegations in the first sentence of paragraph 48.
4 PadMapper lacks knowledge or information sufficient to form a belief as to the truth of the
5 allegations in the second sentence of paragraph 48 and, therefore, denies the same.

6 49. PadMapper lacks knowledge or information sufficient to form a belief as to the
7 truth of the allegations of paragraph 49 and, therefore, denies the same.

8 50. PadMapper lacks knowledge or information sufficient to form a belief as to the
9 truth of the allegations of paragraph 50 and, therefore, denies the same.

10 51. PadMapper lacks knowledge or information sufficient to form a belief as to the
11 truth of the allegations of paragraph 51 and, therefore, denies the same.

12 52. PadMapper lacks knowledge or information sufficient to form a belief as to the
13 truth of the allegations of paragraph 52 and, therefore, denies the same.

14 53. PadMapper lacks knowledge or information sufficient to form a belief as to the
15 truth of the allegations of paragraph 53 and, therefore, denies the same.

16 **E. The Defendants' Unlawful Activities**

17 **a. 3Taps**

18 54. PadMapper denies the allegations contained in paragraph 54.

19 55. PadMapper lacks knowledge or information sufficient to form a belief as to the
20 truth of the allegations of paragraph 55 and, therefore, denies the same.

21 56. PadMapper denies that 3Taps is profiting from the unlawful distribution of
22 content from craigslist. PadMapper lacks knowledge or information sufficient to form a belief
23 as to the truth of the remaining allegations of paragraph 56 and, therefore, denies the same.

24 57. PadMapper denies that 3Taps "copies of all of craigslist's content." PadMapper
25 admits that 3Taps provides access to user-generated data that users, through craigslist, have
26 made publicly available, but denies that 3Taps' provision of access to such data is unlawful.
27 PadMapper lacks knowledge or information sufficient to form a belief as to the truth of the
28 remaining allegations of paragraph 57 and, therefore, denies the same.

1 58. PadMapper admits that 3Taps provides an API that allows access to user-
2 generated data that users, through craigslist, have made publicly available, but denies
3 craigslist’s characterization that 3Taps’ API provides access to any information owned by
4 craigslist. PadMapper admits that craigslist does not offer an API, but denies that 3Taps has
5 “usurped” any exclusive right of craigslist to offer “an API.” PadMapper denies that craigslist
6 has the right to control distribution of the information that 3Taps provides access to through
7 3Taps’ API.

8 59. PadMapper lacks knowledge or information sufficient to form a belief as to the
9 truth of the allegations of paragraph 59 and, therefore, denies the same.

10 60. PadMapper lacks knowledge or information sufficient to form a belief as to the
11 truth of the allegations of paragraph 60 and, therefore, denies the same.

12 61. PadMapper lacks knowledge or information sufficient to form a belief as to the
13 truth of the allegations of paragraph 61 and, therefore, denies the same.

14 62. PadMapper lacks knowledge or information sufficient to form a belief as to the
15 truth of the allegations of paragraph 62 and, therefore, denies the same.

16 63. PadMapper lacks knowledge or information sufficient to form a belief as to the
17 truth of the allegations of paragraph 63 and, therefore, denies the same.

18 64. PadMapper lacks knowledge or information sufficient to form a belief as to the
19 truth of the allegations of paragraph 64 and, therefore, denies the same.

20 65. PadMapper admits that the term “craigslist” appears in the figures referred to in
21 paragraph 65. PadMapper denies that the figures referred to in paragraph 65 illustrate use of a
22 craigslist trademark by 3Taps to promote 3Taps’ products or services, or that such figures
23 illustrate use by 3Taps in a manner likely to confuse consumers or to dilute by blurring
24 craigslist’s trademark.

25 66. PadMapper lacks knowledge or information sufficient to form a belief as to the
26 truth of the allegations of paragraph 66 and, therefore, denies the same.

27 67. PadMapper lacks knowledge or information sufficient to form a belief as to the
28 truth of the allegations of paragraph 67 and, therefore, denies the same.

1 68. PadMapper lacks knowledge or information sufficient to form a belief as to the
2 truth of the allegations of paragraph 68 and, therefore, denies the same.

3 69. PadMapper lacks knowledge or information sufficient to form a belief as to the
4 truth of the allegations of paragraph 69 and, therefore, denies the same.

5 **b. PadMapper**

6 70. PadMapper admits the first two sentences of paragraph 70. PadMapper denies
7 the remaining allegations of paragraph 70.

8 71. PadMapper admits that its website located at padmapper.com allows aggregation,
9 favoriting, and saving of user-generated data that users (through craigslist) have made publicly
10 available. PadMapper denies that such user-generated data is owned or exclusively licensed to
11 craigslist. PadMapper admits that its website allows aggregation of such user-generated data
12 with information from other sources, but denies that such aggregation facilitates cross-posting
13 of listings to craigslist. PadMapper admits that the features offered by it on its PadMapper site
14 are not offered by craigslist.

15 72. PadMapper denies the allegations against PadMapper in the first sentence of
16 paragraph 72. PadMapper admits that craigslist sent it a cease and desist letter which alleged
17 that PadMapper had violated the law and craigslist's TOU, but denies the truth of the allegations
18 in the letter. To the extent the allegations in paragraph 72 relate to defendants other than
19 PadMapper, PadMapper lacks knowledge or information sufficient to form a belief as to the
20 truth of the allegations of paragraph 72 and, therefore, denies the same.

21 73. PadMapper admits that beginning on or about June 22, 2012 and lasting until
22 July 9, 2012, it stopped making available certain user-generated data that users through
23 craigslist had made publicly available. PadMapper admits that during this period traffic to its
24 website decreased drastically. PadMapper denies that the data it ceased making available
25 during this period of time was owned or exclusively licensed to craigslist.

26 74. PadMapper admits that on or about July 9, 2012, it resumed making available
27 certain user-generated data that users (through craigslist) have made publicly available, and that
28 such data has been, and is being, obtained from 3Taps. PadMapper denies that such data is

1 owned or exclusively licensed to craigslist. PadMapper admits that on July 9, 2012, it published
2 a blog post at <http://blog.padmapper.com> that stated that it was “Bringing Craigslist Back” to
3 the PadMapper website.

4 75. PadMapper denies the allegations of paragraph 75.

5 76. PadMapper denies the allegations of paragraph 76. PadMapper does not
6 “display” craigslist postings. PadMapper provides an inline link, or “frame,” that allows a user
7 to view the actual posting on the craigslist site. Thus, the posting that a user views is not
8 “identical” to the craigslist posting, it is the posting itself.

9 77. PadMapper incorporates the response to paragraph 76, *supra*, by reference, and
10 denies the allegations of paragraph 77.

11 78. PadMapper denies the allegations of paragraph 78.

12 79. PadMapper admits that craigslist has not provided authorization or consent to
13 PadMapper to use craigslist’s intellectual property, but denies that PadMapper has used
14 craigslist’s intellectual property.

15 80. PadMapper admits that it derives revenue from online real estate rental
16 applications submitted via PadLister, but denies that it derives revenue directly from real estate
17 listings. PadMapper admits that allegations of the second sentence of paragraph 80.

18 81. PadMapper denies that allegations of paragraph 81.

19 **c. Other 3Taps Subscribers**

20 82. PadMapper lacks knowledge or information sufficient to form a belief as to the
21 truth of the allegations of paragraph 82 and, therefore, denies the same.

22 83. PadMapper lacks knowledge or information sufficient to form a belief as to the
23 truth of the allegations of paragraph 83 and, therefore, denies the same.

24 84. PadMapper lacks knowledge or information sufficient to form a belief as to the
25 truth of the allegations of paragraph 84 and, therefore, denies the same.

26 **FIRST CLAIM FOR RELIEF**

27 (Copyright Infringement)

28 85. PadMapper realleges its responses in all preceding paragraphs as if fully set forth

1 herein.

2 86. PadMapper denies the allegations of paragraph 86.

3 87. PadMapper denies the allegations of paragraph 87.

4 88. PadMapper denies the allegations of paragraph 88.

5 89. PadMapper denies the allegations of paragraph 89.

6 90. PadMapper denies the allegations of paragraph 90.

7 91. PadMapper denies the allegations of paragraph 91.

8 92. PadMapper denies the allegations of paragraph 92.

9 93. PadMapper denies the allegations of paragraph 93.

10 94. PadMapper denies the allegations of paragraph 94.

11 95. PadMapper denies the allegations of paragraph 95.

12 **SECOND CLAIM FOR RELIEF**

13 (Contributory Copyright Infringement as to 3Taps)

14 96. PadMapper realleges its responses in all preceding paragraphs as if fully set forth
15 herein.

16 97. PadMapper lacks knowledge or information sufficient to form a belief as to the
17 truth of the allegations of paragraph 97 and, therefore, denies the same.

18 98. PadMapper lacks knowledge or information sufficient to form a belief as to the
19 truth of the allegations of paragraph 98 and, therefore, denies the same.

20 99. PadMapper lacks knowledge or information sufficient to form a belief as to the
21 truth of the allegations of paragraph 99 and, therefore, denies the same.

22 100. PadMapper lacks knowledge or information sufficient to form a belief as to the
23 truth of the allegations of paragraph 100 and, therefore, denies the same.

24 101. PadMapper lacks knowledge or information sufficient to form a belief as to the
25 truth of the allegations of paragraph 101 and, therefore, denies the same.

26 102. PadMapper lacks knowledge or information sufficient to form a belief as to the
27 truth of the allegations of paragraph 102 and, therefore, denies the same.

28 103. PadMapper lacks knowledge or information sufficient to form a belief as to the

1 truth of the allegations of paragraph 103 and, therefore, denies the same.

2 104. PadMapper denies the allegations of paragraph 104.

3 **THIRD CLAIM FOR RELIEF**

4 (Breach of Contract as to all Defendants)

5 105. PadMapper realleges its responses in all preceding paragraphs as if fully set forth
6 herein.

7 106. PadMapper denies the allegations of paragraph 106.

8 107. PadMapper denies the allegations of paragraph 107.

9 108. PadMapper denies the allegations of paragraph 108.

10 109. PadMapper denies the allegations of paragraph 109.

11 110. PadMapper denies the allegations of paragraph 110.

12 111. PadMapper denies the allegations of paragraph 111.

13 112. PadMapper denies the allegations of paragraph 112.

14 113. PadMapper denies the allegations of paragraph 113.

15 114. PadMapper denies the allegations of paragraph 114.

16 115. PadMapper denies the allegations of paragraph 115.

17 116. PadMapper denies the allegations of paragraph 116.

18 117. PadMapper denies the allegations of paragraph 117.

19 **FOURTH CLAIM FOR RELIEF**

20 (Federal Trademark Infringement as to all Defendants)

21 118. PadMapper realleges its responses in all preceding paragraphs as if fully set forth
22 herein.

23 119. PadMapper denies the allegations of paragraph 119.

24 120. PadMapper denies the allegations of paragraph 120.

25 121. PadMapper denies the allegations of paragraph 121.

26 122. PadMapper denies the allegations of paragraph 122.

27 123. PadMapper denies the allegations of paragraph 123.

28 124. PadMapper denies the allegations of paragraph 124.

FIFTH CLAIM FOR RELIEF

(Federal False Designation of Origin as to all Defendants)

125. PadMapper realleges its responses in all preceding paragraphs as if fully set forth herein.

126. PadMapper denies the allegations of paragraph 126.

127. PadMapper denies the allegations of paragraph 127.

128. PadMapper denies the allegations of paragraph 128.

129. PadMapper denies the allegations of paragraph 129.

130. PadMapper denies the allegations of paragraph 130.

131. PadMapper denies the allegations of paragraph 131.

SIXTH CLAIM FOR RELIEF

(Federal Dilution of a Famous Mark as to all Defendants)

132. PadMapper realleges its responses in all preceding paragraphs as if fully set forth herein.

133. PadMapper denies the allegations of paragraph 133.

134. PadMapper denies the allegations of paragraph 134.

135. PadMapper denies the allegations of paragraph 135.

136. PadMapper denies the allegations of paragraph 136.

137. PadMapper denies the allegations of paragraph 137.

138. PadMapper denies the allegations of paragraph 138.

139. PadMapper denies the allegations of paragraph 139.

140. PadMapper denies the allegations of paragraph 140.

SEVENTH CLAIM FOR RELIEF

(Federal Cyberpiracy Prevention as to 3Taps)

141. PadMapper realleges its responses in all preceding paragraphs as if fully set forth herein.

142. PadMapper lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 142 and, therefore, denies the same.

1 143. PadMapper lacks knowledge or information sufficient to form a belief as to the
2 truth of the allegations of paragraph 143 and, therefore, denies the same.

3 144. PadMapper lacks knowledge or information sufficient to form a belief as to the
4 truth of the allegations of paragraph 144 and, therefore, denies the same.

5 145. PadMapper lacks knowledge or information sufficient to form a belief as to the
6 truth of the allegations of paragraph 145 and, therefore, denies the same.

7 146. PadMapper denies the allegations of paragraph 146.

8 147. PadMapper denies the allegations of paragraph 147.

9 **EIGHTH CLAIM FOR RELIEF**

10 (California Trademark Infringement as to all Defendants)

11 148. PadMapper realleges its responses in all preceding paragraphs as if fully set forth
12 herein.

13 149. PadMapper denies the allegations of paragraph 149.

14 150. PadMapper denies the allegations of paragraph 150.

15 151. PadMapper denies the allegations of paragraph 151.

16 **NINTH CLAIM FOR RELIEF**

17 (Common Law Trademark Infringement as to all Defendants)

18 152. PadMapper realleges its responses in all preceding paragraphs as if fully set forth
19 herein.

20 153. PadMapper denies the allegations of paragraph 153.

21 154. PadMapper denies the allegations of paragraph 154.

22 155. PadMapper denies the allegations of paragraph 155.

23 156. PadMapper denies the allegations of paragraph 156.

24 **TENTH CLAIM FOR RELIEF**

25 (California Unfair Competition)

26 157. PadMapper realleges its responses in all preceding paragraphs as if fully set forth
27 herein.

28 158. PadMapper denies the allegations of paragraph 158.

1 159. PadMapper denies the allegations of paragraph 159.

2 160. PadMapper denies the allegations of paragraph 160.

3 **AFFIRMATIVE DEFENSES**

4 **FIRST DEFENSE**

5 The Complaint, in whole or in part, fails to state a claim upon which relief can be
6 granted.

7 **SECOND DEFENSE**

8 The Complaint, in whole or in part, is precluded by the doctrines of laches, waiver, and
9 estoppel.

10 **THIRD DEFENSE**

11 The Complaint, in whole or in part, is barred by the doctrine of unclean hands.

12 **FOURTH DEFENSE**

13 The Complaint fails, in whole or in part, because use of craigslist's alleged copyrighted
14 materials, if any, constitutes fair use.

15 **FIFTH DEFENSE**

16 The Complaint fails, in whole or in part, because use of craigslist's allegedly
17 copyrighted materials, if any, is de minimis.

18 **SIXTH DEFENSE**

19 The Complaint fails, in whole or in part, because craigslist lacks standing to bring a
20 claim of copyright infringement.

21 **SEVENTH DEFENSE**

22 The Complaint fails, in whole or in part, because the copyright registrations cited by
23 craigslist are fraudulent, improper, or invalid.

24 **EIGHTH DEFENSE**

25 The Complaint fails, in whole or in part, because the copyright registrations and all
26 derivative claims of infringement, separately and collectively, constitute misuses of copyrights.

27 **NINTH DEFENSE**

28 The Complaint fails, in whole or in part, because use of craigslist's trademarks, if any,

1 constitutes fair use or does not constitute use in commerce.

2 TENTH DEFENSE

3 The Complaint fails, in whole or in part, because use of craigslist’s trademarks, if any,
4 does not cause consumer confusion or dilution and is not misleading in any way.

5 ELEVENTH DEFENSE

6 The Complaint fails, in whole or in part, because the craigslist TOU are unconscionable.

7 TWELFTH DEFENSE

8 The Complaint fails, in whole or in part, because PadMapper is not legally bound to the
9 craigslist TOU.

10 WHEREFORE, PadMapper requests relief as follows:

- 11 1. craigslist takes nothing by this action;
- 12 2. craigslist’s Complaint be dismissed with prejudice;
- 13 3. PadMapper be awarded costs and attorneys’ fees under 17 U.S.C. § 505; and
- 14 4. PadMapper be awarded such other relief as the Court may deem appropriate.

15 COUNTERCLAIMS

16 Counter-claimant PadMapper, Inc. (“PadMapper”) for its counterclaims against counter-
17 defendant craigslist, Inc. (“craigslist”), states as follows:

18 NATURE OF ACTION

19 1. This is an action for damages and injunctive relief arising from unlawful and
20 anticompetitive practices within the online classified advertising industry. craigslist’s unlawful
21 actions as described herein severely harm PadMapper’s ability to compete, thereby decreasing
22 competition, and resulting in fewer and less beneficial offerings for consumers, all in violation
23 of Section 2 of the Sherman Act (15 U.S.C. § 2) and California Business & Professions Code §§
24 17200 *et seq.* PadMapper also requests declaratory relief from the Court as to craigslist’s
25 claims of copyright infringement.

26 THE PARTIES

27 2. PadMapper is a Delaware corporation with its principal place of business in
28 Mountain View, California. PadMapper operates its PadMapper website, located at

1 <http://www.padmapper.com> (the “PadMapper” Site) and its PadLister website located at
2 <http://www.padlister.com> (the “PadLister” Site).

3 3. Upon information and belief, craigslist is a Delaware corporation with its
4 principal place of business in San Francisco, California. craigslist operates its craigslist
5 website, located at craigslist.org (the “craigslist Site”). The craigslist Site contains geographic
6 area sub-sites, such as that for the Chicago area located at chicago.craigslist.org.

7 **JURISDICTION, VENUE AND COMMERCE**

8 4. PadMapper’s counterclaims are compulsory counterclaims brought in accordance
9 with Federal Rule of Civil Procedure 13(a)(1) in that they arise out of the same transactions and
10 occurrences that are the subject matter of the Complaint, and do not require adding another
11 party over whom this Court cannot acquire jurisdiction.

12 5. PadMapper’s first two claims for relief are brought to recover damages caused
13 by, and to secure injunctive relief against, craigslist for its past and continuing violations of
14 Section 2 of the Sherman Act (15 U.S.C. § 2). The Court has federal question jurisdiction over
15 PadMapper’s first two claims for relief herein pursuant to 28 U.S.C § 1331 and 1337.

16 6. PadMapper’s third claim is brought pursuant to California Business &
17 Professions Code §§ 17200 *et seq.* The facts underlying PadMapper’s third claim for relief
18 share a common nucleus of operative facts and law with PadMapper’s first two claims for relief.
19 Therefore, the Court has supplemental jurisdiction over the third claim for relief pursuant to 28
20 U.S.C. § 1367.

21 7. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391, because
22 craigslist resides in this judicial district and a substantial part of the events giving rise to
23 PadMapper’s counterclaims occurred in this district.

24 8. On information and belief, at all times relevant to these counterclaims, craigslist
25 has provided online classified advertising services throughout the United States, and in every
26 state. Consequently, craigslist’s business activities that are the subject of these counterclaims
27 are within the flow of and substantially affect interstate trade and commerce.

RELEVANT MARKETS

I. PRODUCT MARKETS

A. Onboarding of Housing Rental Classified Advertising Content

9. The term “onboarding” refers to the creation, uploading, and maintenance of online classified advertising content.¹ There is a market for onboarding online classified advertising content.

10. craigslist dominates the market for onboarding of online classified advertising content, with what is believed to be a 90% share of the market. In comparison, craigslist’s two closest competitors in this market, BackPage and eBay Classifieds, have market shares of approximately 7% and 1.5%, respectively.

11. Within the market for onboarding of online classified advertising content there are smaller markets pertaining to certain categories of classified ads, such as for jobs, housing rentals, goods for sale, and services for hire. PadMapper competes with craigslist in the market for onboarding of classified advertising content pertaining to housing rentals via its PadLister website (<http://www.padlister.com>).

12. craigslist also dominates this smaller market for onboarding of classified advertising content pertaining to housing rentals, with what is believed to be an approximately 65%-77% market share. PadMapper, by comparison, has a market share of only a fraction of one percent.

13. There are significant barriers to entry into the market for onboarding of classified advertising content pertaining to housing rentals. Because of craigslist’s dominating market share and user base, persons wishing to onboard classified ads pertaining to housing rental listings have little choice but to do so on craigslist if they wish to reach a significant audience. This makes it difficult for competitors to gain and sustain users. Likewise, without onboarded listings, those competitors have little chance of attracting an audience with which to attract users wishing to onboard listings.

¹ For ease of reference by the Court and the parties, PadMapper has adopted and will use certain terms, such as “onboarding,” used by 3Taps in its responsive filing (Dkt. No. 12).

1 14. As described in 3Taps' Answer to Complaint and Counterclaim (see paragraph
2 87), even well-established online companies with substantial resources, such as eBay, have been
3 unable to make significant inroads into the onboarding markets in the United States. As noted
4 by the Delaware Chancery Court in a dispute between craigslist and eBay, "[t]hus far, no
5 competing site has been able to dislodge craigslist from its perch atop the pile of most-used
6 online classifieds sites in the United States. craigslist's lead position is made more enigmatic by
7 the fact that it maintains its dominant market position with small-scale physical and human
8 capital." eBay Domestic Holdings, Inc. v. Newmark, 16 A.3d 1, 8 (Del. Ch. 2010). Smaller
9 companies, such as PadMapper, without the significant resources held by companies like eBay,
10 are further disadvantaged.

11 15. craigslist's monopoly power in this market can be inferred from its dominant
12 market share and significant barriers to entry.

13 16. There are no readily substitutable competing products for the onboarding of
14 classified advertising content pertaining to housing rentals.

15 17. Traditional classified advertising, such as that found in newspapers or in
16 periodicals, is not a readily substitutable competing product. Onboarding of housing rental
17 advertising provides a multitude of superior features, such as being able to reach a wider
18 audience, the ability to edit ads subsequent to posting them without cost, the ability to take
19 down an ad once a property has been rented, additional and more convenient methods of
20 communication (such as direct messaging), and integrated management of listing information.
21 Generally, onboarding of housing rental information is also less expensive than traditional print
22 media classified advertising.

23 18. A hypothetical monopolist can profitably impose a small but significant and non-
24 transitory increase in price for onboarding services, including for onboarding of housing rental
25 listings. The fact that craigslist itself was able to impose fees of between \$10 and \$75 for
26 onboarding of job postings in certain geographic markets, apartment listings in New York, and
27 therapeutic service listings throughout the United States, while maintaining or increasing its
28 market dominance, provides evidence of this.

1 19. craigslist’s monopoly power in the markets and submarkets for onboarding of
2 online classified ad content is further evidenced directly by its ability to exclude competitors.
3 When competitors who compete in the downstream real-time search markets—such as
4 PadMapper—attempt to provide both onboarding and real-time search services, craigslist,
5 through its market dominance and anticompetitive practices, has been able to prevent those
6 competitors from entering and remaining in both the onboarding and search markets.

7 **B. The Market for Real-Time Searching of Indexed Housing Rental Classified**
8 **Ad Content**

9 20. The second relevant product market is the market for real-time searching of
10 indexed housing rental classified advertising content. Indexed data is classified advertising
11 content data that has been, collected, categorized, organized, and stored. 3Taps operates in the
12 indexing market, collecting online classified advertising data from multiple sources and making
13 it available to real-time search service providers such as PadMapper.

14 21. Real-time search services allow end-users to search for housing rental
15 information in multiple geographic areas and from multiple websites at one time, while
16 applying filters for desired characteristics, such as price, the number of bedrooms and/or
17 bathrooms, age of listings, or the presence of certain keywords in the listings.

18 22. In connection with the Department of Justice’s investigation of Google’s
19 acquisition of ITA in 2011, the DOJ found a distinct antitrust market for this type of real-time
20 search service in the analogous airline data space. Similarly, here, real-time search services of
21 indexed online classified ad content constitute a relevant antitrust market.

22 23. craigslist dominates the market for real-time searching of indexed housing rental
23 classified ad content. craigslist’s market share is estimated to be roughly the same as its market
24 share for onboarding of housing rental classified ad content: 65%-77%.

25 24. There are no readily substitutable competing services for real-time search
26 services. General internet search engines such as Google and Bing return search results based
27 on criteria which are not ideal for purposes of searching classified ad content. The criteria
28 employed typically involve the number of links to a page and the number times the page has

1 been viewed. Because these criteria result in older pages being rated more favorably by a
2 general internet search engine, the top results are typically not the most recently pages.
3 However, end users searching classified ad content typically desire the most recent information,
4 not what may be deemed the most authoritative information by a general search engines. Thus
5 general internet search engines are not adequate for searching classified ads.

6 25. Many real-time search engines also offer additional features which are absent
7 from general internet search engines, such as alternative ways of displaying results, overlays of
8 related information (such as commute times in the case of housing), instant messaging, and
9 integrated online payment features.

10 26. A hypothetical monopolist can profitably impose a small but significant and non-
11 transitory increase in price for real-time search of online classified advertising related to
12 housing rentals because there are no substitutes for real-time search engines.

13 27. craigslist's monopoly in the market for real-time search of indexed classified ad
14 data related to housing rentals is evidenced by its ability to exclude competitors from the real-
15 time search market as a whole. craigslist has stamped out potential competitors in the real-time
16 search market including craiggers, HuntSmartly, Invatory, for-sale-alert.com, list-alert.com,
17 Tempest, jumpoffcampus.com, wishcan.com, and SnapStore. PadMapper is in danger of
18 joining the ranks of these former real-time search providers if craigslist is allowed to continue
19 its anticompetitive practices.

20 28. craigslist has been able to maintain and grow its market share in the relevant
21 markets for an extended period of time. The persistence of craigslist's market power in the
22 onboarding and real-time search markets in part reflects the fact that the markets are
23 characterized by certain economies of scale and by significant "network effects."

24 29. The onboarding venue for which there is the greatest number of searchers will be
25 selected by the large majority of persons wishing to onboard housing rental content and, in turn,
26 searchers will choose to use the search-engine venue for which there is the greatest quantity of
27 onboarded content, in order to appeal to as many potential transaction partners as possible.
28 Economies of scale and network effects, which reinforce one another, result in high barriers to

1 entry into the relevant markets.

2 30. The barriers that exist to the entry of new competitors or the expansion of
3 smaller existing competitors, including network effects, mean that dominance, once achieved,
4 cannot readily be reversed.

5 31. These network effects are illustrated by the fact that competitors such as eBay
6 Classifieds, though offering what many people believe to be a superior product, have not been
7 able to gain significant market share in the United States. Yet, where eBay's offerings compete
8 with craigslist in most foreign markets, eBay's offerings are the more dominant offering, often
9 having arrived to the market first.

10 **II. GEOGRAPHIC MARKETS**

11 32. The relevant geographic markets are each local market in the United States in
12 which the relevant product markets operate.

13 33. A hypothetical monopolist can profitably impose a small but significant and non-
14 transitory increase in price for onboarding and/or real-time search of online classified ads in one
15 local market.

16 34. A person seeking to post a housing rental listing in San Francisco, for example,
17 would not post the housing rental listing in Chicago as a result of a price increase related to
18 posting the listing in San Francisco. An end user of a real-time online search-engine searching
19 for housing rental listings in Boston would not switch to searching for housing rental listings in
20 San Diego because of an increase in price for searching for housing rental listings in Boston.

21 35. On information and belief, craigslist's market share is over 65% in many of the
22 local geographic markets for onboarding and real-time search of housing rental classified ad
23 content, and far greater in some cities, such as San Francisco.

24 **CRAIGSLIST'S UNLAWFUL ANTICOMPETITIVE CONDUCT**

25 **I. SPURIOUS LEGAL THREATS AND LITIGATION**

26 36. craigslist has engaged in a concerted effort to bully competitors in the relevant
27 markets by threatening legal action or filing lawsuits against its competitors based on spurious
28 breach of contract, copyright infringement, and trademark infringement claims. This lawsuit is

1 but one example. Other companies subjected to this bullying include Oodle, NotifyWire,
2 craiggers, HuntSmartly, Invatory, for-sale-alert.com, list-alert.com, Tempest,
3 jumpoffcampus.com, wishcan.com, SnapStore. craigslist's threats and litigation have been for
4 the purpose of stamping out competition.

5 37. craigslist's breach of contract claims against PadMapper and 3Taps in this case
6 are illustrative. craigslist's breach of contract claims purportedly stem from violations of the
7 craigslist Site's Terms of Use ("TOU"). However, as craigslist well knows, 3Taps does not
8 need to access the craigslist Site in order to collect and index classified ad data. Rather, it can
9 obtain such data from caches created by search engines such as Google and Bing, which are
10 expressly permitted under craigslist's TOU to access the craigslist Site and index classified
11 data. Similarly, PadMapper and other 3Taps partners do not access craigslist's Site in order to
12 obtain the classified ad data that they use to provide their products and services, but instead
13 obtain the indexed data from 3Taps. Consequently, PadMapper and other 3Taps partners which
14 have been the target of craigslist's legal threats are also not bound by the TOU agreement.

15 38. craigslist's copyright infringement claims are similarly spurious. craigslist
16 classified ad listings are written and submitted by craigslist's users. Thus, to the extent such
17 listings contain any information that is copyrightable, it is the users who are the copyright
18 holders, not craigslist. craigslist's TOU provides that users grant a license to use the
19 information submitted by the users, but such license is not an exclusive license. (Nor could it
20 be, because under the Copyright Act, an exclusive license must be in writing and signed by the
21 copyright owner.) Thus, under the Copyright Act, craigslist has no standing to bring a
22 copyright infringement claim premised on use of user-submitted data, as the Copyright Act
23 provides that only the owner or exclusive licensee of a work may bring an action for
24 infringement. This is a basic tenet of copyright law, and one which craigslist cannot have been
25 unaware. In fact, as is evidenced by craigslist's attempt to change its TOU to provide for the
26 grant of an exclusive license subsequent to the filing of this lawsuit, craigslist was well aware.
27 (craigslist's change to its TOU was short lived due to widespread industry and consumer
28 condemnation.)

1 39. craigslist’s trademark claims are also not well-founded. To the extent they are
2 based on allegations of reproduction of craigslist postings, they are merely copyright claims
3 disguised as trademark claims. Such claims are precluded under the Supreme Court’s holding
4 in Dastar Corporation v. Twentieth Century Fox Film Corporation, 539 U.S. 23, 28 (2003) and
5 subsequent court opinions applying Dastar. Courts have consistently applied Dastar to bar
6 trademark claims where the core allegation against the defendant is the improper reproduction
7 of the plaintiff’s copyrighted material. See, e.g., Fractional Villas, Inc. v. Tahoe Clubhouse,
8 2009 U.S. Dist. LEXIS 4191, *10-11 (S.D. Cal. Jan. 22, 2009) (“Plaintiff has not accused
9 defendants of taking tangible objects or services, repackaging them, and selling them under
10 defendants’ name. Rather, plaintiff has accused defendants of incorporating copyrighted
11 materials into defendants’ website. Therefore, the Court finds plaintiff has failed to plead a
12 cause of action under the Lanham Act.”)

13 40. To the extent craigslist’s trademark infringement claims are premised on
14 allegations of identifying craigslist as the onboarding source of classified ad data, such use is
15 clearly a nominative fair use of the CRAIGSLIST mark, intended only to provide attribution,
16 not a trademark use. The doctrine of nominative fair use is also well-established in trademark
17 law, most famously enunciated more than 20 years ago in New Kids on the Block v. News
18 America Publishing, Inc., 971 F.2d 302 (9th Cir. 1992).

19 41. Knowing full well that the legal bases for its claims against PadMapper and other
20 competitors were without merit, craigslist has persisted in a campaign of legal bullying, the sole
21 purpose of which is the elimination of competitors or potential competitors.

22 **II. COPYRIGHT MISUSE**

23 42. For a copyright owner to use an infringement suit, or threat of suit, to obtain
24 benefits that copyright law does not confer is an abuse of process and constitutes copyright
25 misuse. craigslist’s campaign of legal threats and litigation against its competitors is exactly
26 that.

27 43. In asserting copyright infringement claims against indexers such as 3Taps,
28 craigslist has attempted to obtain an exclusive right to use factual content contained in

1 onboarded classified ad listings. However, no copyright protection exists in factual content.

2 44. Additionally, craigslist has engaged in copyright misuse by asserting copyright
3 infringement claims against its competitors when it clearly lacks standing to do so. The
4 Copyright Act provides that only the owner or exclusive licensee of a work may bring an action
5 for infringement, and craigslist is neither the owner or exclusive licensee of content from
6 listings submitted by users of craigslist's Site.

7 45. craigslist has engaged in copyright misuse for the sole purpose of reducing or
8 eliminating competitors, and craigslist has been successful in doing so. craigslist's bullying has
9 forced competitors such as HuntSmartly, Invatory, for-sale-alert.com, list-alert.com, Tempest,
10 jumpoffcampus.com, wishcan.com, and SnapStore out of the real-time search engine markets.

11 **III. UNCONSCIONABLE TERMS OF USE**

12 46. The craigslist Site's TOU are another method by which craigslist inhibits
13 competition.

14 47. The TOU prohibit making "available any program, application or service . . . that
15 enables or provides access to, use of, operation of or interoperation with craigslist." Thus, the
16 TOU prevents the development and use of innovative products that are interoperable with the
17 craigslist Site.

18 48. There is no legitimate business justification for this provision of craigslist's
19 TOU. Interoperable programs, applications and services would benefit craigslist's users.
20 However, because such programs, applications or services could potentially lead to competition
21 in the relevant markets, craigslist imposes this provision on its users. This is just one example of
22 the many unconscionable—and legally untenable—provisions of craigslist's TOU.

23 **IV. "GHOSTING"**

24 49. "Ghosting" refers to a practice utilized by craigslist in connection with postings
25 that craigslist believes originated with or are associated with competitors.

26 50. Typically, when a posting is submitted to craigslist, it will be assigned a unique
27 URL where the entire posting can be viewed, and a link to the posting, along with a brief text
28 description, will be provided on the category index page (the front page for the particular

1 category section of the craigslist Site). However, when a posting is “ghosted,” craigslist assigns
2 the URL but does not provide the link to the posting on the index page. Thus, a user of the
3 craigslist Site browsing the particular index page will never be made aware of the posting. The
4 person posting, however, is unaware of the fact that their post was “ghosted,” because the poster
5 receives a posting confirmation just as they would if the post had not been ghosted.

6 51. Although craigslist asserts that this practice is employed to combat spam, in
7 reality its purpose is to thwart competition.

8 52. Certain competitors of craigslist employ technology which allows a user to
9 submit a classified ad listing to the craigslist website at the same time as they post to the
10 competitor’s site. If craigslist believes that a listing was submitted in this manner, the listing
11 may be “ghosted.”

12 53. A user whose listing has been ghosted will, as a result, receive fewer inquiries
13 about the listing. Because the user receives fewer inquiries, they may become curious as to the
14 reason. Upon investigation, they will learn that the listing was never posted to the index page of
15 the craigslist Site, and will likely believe (falsely) that the competitor’s site was at fault.

16 54. The net effect of “ghosting” is to lessen consumer confidence with craigslist’s
17 competitors. craigslist could just as easily provide notice that listing was not posted, but this
18 would not provide the anticompetitive effect that it desires.

19 **EFFECTS OF CRAIGSLIST’S ANTICOMPETITIVE CONDUCT**

20 55. craigslist’s monopolistic and anticompetitive practices have had the following
21 effects, among others, in the relevant markets:

22 a. Competition in the relevant markets has been unreasonably restrained,
23 suppressed, and in some cases, destroyed. Companies such as Oodle, NotifyWire, craiggers,
24 HuntSmartly, Invatory, for-sale-alert.com, list-alert.com, Tempest, jumpoffcampus.com,
25 wishcan.com, SnapStore, and others have been forced to withdraw from the relevant markets.

26 b. Development of competing products and services, such as those offered by
27 PadMapper, have been deterred, damaging consumers by depriving them of a choice of products
28 with different and, perhaps, superior sets of features;

1 c. craigslist's unlawful conduct has deterred consumers from doing business with
2 its competitors, including PadMapper, in the relevant markets.

3 d. craigslist's monopoly has been entrenched and expanded, resulting in greater
4 domination of the relevant markets and enhancement of barriers to entry.

5 **CLAIMS FOR RELIEF**

6 **First Claim for Relief**

7 **(Illegal Maintenance of a Monopoly in Violation of Sherman Act, 15 U.S.C. § 2)**

8 56. PadMapper re-alleges and incorporates by reference all allegations of all prior
9 paragraphs as though fully set forth herein.

10 57. Through the actions described herein, craigslist has willfully maintained
11 monopoly power in the relevant markets. This conduct has reduced competition in the relevant
12 markets, reduced the availability to consumers of new and alternative products in the relevant
13 markets, and reduced the quality of the products being offered in the relevant markets.

14 58. There is no appropriate or legitimate business justification for the actions and
15 conduct which have facilitated craigslist's monopolization of the relevant markets.

16 59. As a direct and proximate result of craigslist's actions PadMapper has suffered
17 and will continue to suffer injuries in the form of lost capital investment, lost business
18 opportunities, and damage to the value of its business as a going concern.

19 60. craigslist's conduct described herein is in violation of the Section 2 of the
20 Sherman Act, 15 U.S.C. § 2, and PadMapper is entitled to a preliminary and permanent
21 injunction restraining craigslist from continuing such conduct. PadMapper has no adequate
22 remedy at law.

23 **Second Claim for Relief**

24 **(Attempted Illegal Maintenance of a Monopoly in Violation of Sherman Act, 15 U.S.C. § 2)**

25 61. PadMapper re-alleges and incorporates by reference all allegations of all prior
26 paragraphs as though fully set forth herein.

27 62. Through the actions described herein, craigslist has knowingly and intentionally
28 attempted to unlawfully monopolize the relevant markets.

1 63. craigslist's intends by its actions to: (a) control the price of products offered in
2 the relevant markets; (b) eliminate, reduce, limit and foreclose actual and potential competition
3 in the relevant markets; (c) exclude and foreclose other persons from participating in or entering
4 the relevant markets; and (d) injure competition in the relevant markets.

5 64. There is a dangerous likelihood that craigslist will succeed in its attempt to
6 monopolize the relevant markets. If craigslist is successful, it will result in reduced competition
7 in the relevant markets, reduced the availability to consumers of new and alternative products in
8 the relevant markets, and reduced the quality of the products being offered in the relevant
9 markets.

10 65. As a direct and proximate result of craigslist's actions PadMapper has suffered
11 and will continue to suffer injuries in the form of lost capital investment, lost business
12 opportunities, and damage to the value of its business as a going concern.

13 66. craigslist's conduct described herein is in violation of the Section 2 of the
14 Sherman Act, 15 U.S.C. § 2, and PadMapper is entitled to a preliminary and permanent
15 injunction restraining craigslist from continuing such conduct. PadMapper has no adequate
16 remedy at law.

Third Claim for Relief

(Unlawful and Unfair Business Practices in Violation of California Business Professions Code §§ 17200 et seq.)

20 67. PadMapper re-alleges and incorporates by reference all allegations of all prior
21 paragraphs as though fully set forth herein.

22 68. California Business and Professions Code sections 17200 et seq. declares unfair
23 competition unlawful and defines unfair competition as, inter alia, "any unlawful, unfair or
24 fraudulent business act or practice"

25 69. craigslist has engaged in unlawful business practices in violation of the Sherman
26 Act, 15 U.S.C. § 2. This statutory violation constitutes unfair competition that will continue
27 unless enjoined by the Court.

28 70. As a direct and proximate result of craigslist's actions, PadMapper has suffered

1 and will continue to suffer injuries in the form of lost capital investment, lost business
2 opportunities, and damage to the value of its business as a going concern.

3 71. PadMapper is entitled to a preliminary and permanent injunction restraining
4 craigslist from continuing such conduct. PadMapper has no adequate remedy at law.

5 **Fourth Claim for Relief**

6 **(Declaratory Relief – Noninfringement of craigslist’s Copyrights)**

7 72. craigslist asserts that PadMapper infringes on craigslist’s copyrights by
8 displaying listings originally posted to craigslist via PadMapper’s website.

9 73. craigslist does not own or have rights in the individual listings. PadMapper’s
10 display or publication of those listings therefore does not infringe on craigslist’s copyrights.
11 Alternatively, PadMapper is using the listings in a manner that constitutes fair use.

12 74. PadMapper seeks a declaration that its aforementioned conduct does not infringe
13 on craigslist’s copyrights.

14 **PRAYER FOR RELIEF**

15 PadMapper requests for entry of judgment against craigslist as follows:

16 **A. First Claim for Relief:**

17 (a) For entry of a final and binding declaration determining that craigslist has
18 monopolized the relevant markets in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2;

19 (b) For entry of a preliminary and permanent injunction prohibiting craigslist and its
20 officers, directors, employees, agents and others acting in concert or association with craigslist,
21 from directly or indirectly continuing to monopolize the relevant markets in violate Section 2 of
22 the Sherman Act, 15 U.S.C. § 2; and

23 (c) For entry of an award granting PadMapper treble damages.

24 **B. Second Claim for Relief:**

25 (a) For entry of a final and binding declaration determining that craigslist has
26 attempted to monopolize the relevant markets in violation of Section 2 of the Sherman Act, 15
27 U.S.C. § 2;

28 (b) For entry of a preliminary and permanent injunction prohibiting craigslist and its

1 officers, directors, employees, agents and others acting in concert or association with craigslist,
2 from directly or indirectly continuing to attempt to monopolize the relevant markets in violation
3 of Section 2 of the Sherman Act, 15 U.S.C. § 2; and

4 (c) For entry of an award granting PadMapper treble damages.

5 **C. Third Claim for Relief:**

6 (a) For entry of a final and binding declaration determining that craigslist actions as
7 described herein constitute unlawful and unfair business practices in violation of California
8 Business and Professions Code Sections 17200 *et seq.*; and

9 (b) For entry of a preliminary and permanent injunction prohibiting craigslist and its
10 officers, directors, employees, agents and others acting in concert or association with craigslist,
11 from directly or indirectly continuing to engage in unlawful and unfair business practices in
12 violation of California Business and Professions Code Sections 17200 *et seq.*

13 **D. Fourth Claim For Relief**

14 For entry of a final and binding declaration determining that PadMapper's
15 actions as alleged by craigslist do not infringe on craigslist's copyrights.

16 **E. All Claims for Relief:**

17 (a) For entry of an award granting PadMapper costs of suit incurred and reasonable
18 attorneys' fees, costs, and expenses; and

19 (b) For such other and further relief as the Court deems just and proper.

20 Dated: October 30, 2012

Respectfully submitted,

21 **FOCAL PLLC**

22 By: /s/Venkat Balasubramani

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Attorneys for Defendant and

Counterclaim Plaintiff

PADMAPPER, INC.

CERTIFICATE OF SERVICE

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The undersigned hereby certifies under penalty of perjury of the laws of the United States and the State of California that he filed the foregoing Answer and Counterclaims using the Court's CM/ECF system which will provide ecf notice to counsel for all parties.

By: /s/ Venkat Balasubramani
Venkat Balasubramani, Cal Bar No. 189192