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9 Counterclaim Plaintiff
10 PADMAPPER, INC.

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

14 CRAIGSLIST, INC., a Delaware corporation,

15 Plaintiff,

16 v.

17 3TAPS, INC., a Delaware corporation;
18 PADMAPPER, INC., a Delaware corporation;
19 DISCOVER HOME NETWORK, INC., a
20 Delaware Corporation c/b/a LOVELY;
21 BRIAN R. NIESSEN, an individual, and
22 DOES 1 through 25, inclusive,

23 Defendants.

Case No. CV-12-03816 CRB

PADMAPPER, INC.'S FIRST AMENDED
COUNTERCLAIM

JURY TRIAL DEMANDED

Honorable Charles R. Breyer

24 PADMAPPER, INC.,

25 Counterclaim Plaintiff,

26 v.

27 CRAIGSLIST, INC.,

28 Counterclaim Defendant.

1 PadMapper, Inc. (“PadMapper”) for its counterclaims against craigslist, Inc.
2 (“craigslist”), alleges as follows:

3 **NATURE OF ACTION**

4 1. This is an action for damages and injunctive relief arising from unlawful and
5 anticompetitive practices within the online classified advertising industry. craigslist’s unlawful
6 actions as described herein severely harm PadMapper’s ability to compete, thereby decreasing
7 competition, and resulting in fewer and less beneficial offerings for consumers, all in violation
8 of Section 2 of the Sherman Act (15 U.S.C. § 2) and California Business & Professions Code §§
9 17200 *et seq.* PadMapper also requests declaratory relief from the Court as to craigslist’s
10 claims of copyright infringement.

11 **THE PARTIES**

12 2. PadMapper is a Delaware corporation with its principal place of business in
13 Mountain View, California. PadMapper operates its PadMapper website, located at
14 <http://www.padmapper.com> (the “PadMapper Site”) and its PadLister website located at
15 <http://www.padlister.com> (the “PadLister Site”).

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

20 **JURISDICTION, VENUE AND COMMERCE**

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

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

1 advertising content relating to housing rentals, with what is believed to be an approximately
2 65%-77% market share. PadMapper, by comparison, has a market share of only a fraction of
3 one percent.

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

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

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

22 16. There are no readily substitutable competing products for the onboarding of
23 classified advertising content relating to housing rentals.

24 17. Traditional classified advertising, such as that found in newspapers or in
25 periodicals, is not a readily substitutable competing product. Onboarding of housing rental
26 advertising provides a multitude of superior features, such as being able to reach a wider
27 audience, the ability to edit ads subsequent to posting them without cost, the ability to take
28 down an ad once a property has been rented, additional and more convenient methods of

1 communication (such as direct messaging), and integrated management of listing information.
2 Generally, onboarding of housing rental information is also less expensive than traditional print
3 media classified advertising.

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

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

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

18 20. The second relevant product market is the market for real-time searching of
19 indexed housing rental classified advertising content. Indexed data is classified advertising
20 content data that has been, collected, categorized, organized, and stored. Defendant 3Taps, Inc.
21 (“3Taps”) operates in the indexing market, collecting online classified advertising data from
22 multiple sources and making it available to real-time search service providers such as
23 PadMapper.

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

28 22. In connection with the Department of Justice's investigation of Google's

1 acquisition of ITA in 2011, the DOJ determined that a distinct antitrust market for this type of
2 real-time search service existed in the analogous airline data space. Similarly, here, real-time
3 search services of indexed online housing rental classified ads constitutes a relevant antitrust
4 market.

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

8 24. There are no readily substitutable competing services for real-time search
9 services. General internet search engines such as Google and Bing return search results based
10 on criteria which are not ideal for purposes of searching classified ad content. The criteria
11 employed by general search engines typically involve the number of links to a page and the
12 number times the page has been viewed. Because these criteria result in older pages being rated
13 more favorably by a general internet search engine, the top results are typically not the most
14 recently pages. However, most people searching online classified ad content typically desire the
15 most recent information, not what may be deemed the most "authoritative" information by a
16 general search engine. Thus general internet search engines are not adequate for searching
17 classified ads.

18 25. Many real-time search engines also offer additional features which are absent
19 from general internet search engines, such as more defined search parameters, alternative ways
20 of displaying results, overlays of related information (such as commute times in the case of
21 housing), instant messaging between users, email alerts that inform users of new listings based
22 on users' specified parameters and locations, and integrated online payment features (such as
23 PayPal).

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

27 27. craigslist's monopoly in the market for real-time search of indexed classified ad
28 data related to housing rentals is evidenced by its ability to exclude competitors from the real-

1 time search market as a whole. craigslist has stamped out potential competitors in the real-time
2 search market including craiggers, HuntSmartly, Invatory, for-sale-alert.com, list-alert.com,
3 Tempest, jumpoffcampus.com, wishcan.com, and SnapStore. PadMapper is in danger of
4 joining the ranks of these former real-time search providers if craigslist is allowed to continue
5 its anticompetitive practices.

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

10 29. The onboarding venue for which there is the greatest number of searchers will be
11 selected by the large majority of persons wishing to onboard housing rental content and, in turn,
12 searchers will choose to use the search-engine venue for which there is the greatest quantity of
13 onboarded content, in order to appeal to as many potential transaction partners as possible.
14 Economies of scale and network effects, which reinforce one another, result in high barriers to
15 entry into the relevant markets.

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

19 31. These network effects are illustrated by the fact that competitors such as eBay
20 Classifieds, though offering what many people believe to be a superior product, have not been
21 able to gain significant market share in the United States. Indeed, in terms of the number of
22 onboarded listings, craigslist maintains a 15 to 1 advantage over its next closes competitor,
23 BackPage, and a 75 to 1 advantage over eBay Classifieds. Yet, where eBay's offerings compete
24 with craigslist in most foreign markets, eBay's offerings are the more dominant offering, often
25 having arrived to the market first.

26 **II. GEOGRAPHIC MARKETS**

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

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

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

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

12 **CRAIGSLIST'S UNLAWFUL ANTICOMPETITIVE CONDUCT**

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

14 36. craigslist has engaged in a concerted effort to bully competitors in the relevant
15 markets by threatening legal action or filing lawsuits against its competitors based on spurious
16 breach of contract, copyright infringement, and trademark infringement claims. This lawsuit is
17 but one example. Other companies subjected to this bullying include 3Taps, Lovely,
18 HuntSmartly, Invatory, for-sale-alert.com, list-alert.com, Tempest, jumpoffcampus.com,
19 wishcan.com, SnapStore. craigslist's threats and litigation have been for the purpose of
20 stamping out competition.

21 37. craigslist's breach of contract claims against PadMapper and 3Taps in this case
22 are illustrative. craigslist's breach of contract claims purportedly stem from violations of the
23 craigslist Site's Terms of Use ("TOU"). However, at the time it filed the original complaint,
24 craigslist knew that 3Taps was not directly accessing the craigslist Site in order to collect and
25 index classified ad data. Rather, 3Taps would obtain such data from caches created by general
26 search engines such as Google and Bing, which were expressly permitted under craigslist's
27 TOU to access the craigslist Site and index classified data. Similarly, PadMapper and other
28 3Taps partners do not access craigslist's Site in order to obtain the classified ad data that they

1 use to provide their products and services, but instead obtain the indexed data from 3Taps.
2 Consequently, PadMapper and other 3Taps partners such as HuntSmartly, Invatory, for-sale-
3 alert.com, list-alert.com, Tempest, jumpoffcampus.com, wishcan.com, and SnapStore, which
4 have been the target of craigslist's legal threats, are also not bound by the TOU agreement.

5 38. craigslist's copyright infringement claims are similarly spurious. craigslist
6 classified ad listings are written and submitted by craigslist's users. Thus, to the extent such
7 listings contain any information that is copyrightable, it is the users who are the copyright
8 holders, not craigslist. craigslist's TOU provides that users grant a license to use the
9 information submitted by the users, but such license is not an exclusive license. (Nor could it
10 be, because under the Copyright Act, an exclusive license must be in writing and signed by the
11 copyright owner.) Thus, under the Copyright Act, craigslist has no standing to bring a
12 copyright infringement claim premised on use of user-submitted data, as the Copyright Act
13 provides that only the owner or exclusive licensee of a work may bring an action for
14 infringement. This is a basic tenet of copyright law, and therefore craigslist's copyright
15 infringement allegations are patently unreasonable. In fact, as is evidenced by craigslist's
16 attempt to change its TOU to provide for the grant of an *exclusive* license subsequent to the
17 filing of this lawsuit, craigslist was well aware of this fact. (craigslist's change to its TOU was
18 short lived due to widespread industry and consumer condemnation.)

19 39. craigslist's trademark claims are also not well-founded. To the extent they are
20 based on allegations of reproduction of craigslist postings, they are merely copyright claims
21 disguised as trademark claims. Such claims are precluded under the Supreme Court's holding
22 in Dastar Corporation v. Twentieth Century Fox Film Corporation, 539 U.S. 23, 28 (2003) and
23 subsequent court opinions applying Dastar. Courts have consistently applied Dastar to bar
24 trademark claims where the core allegation against the defendant is the improper reproduction
25 of the plaintiff's copyrighted material. See, e.g., Fractional Villas, Inc. v. Tahoe Clubhouse,
26 2009 U.S. Dist. LEXIS 4191, *10-11 (S.D. Cal. Jan. 22, 2009) ("Plaintiff has not accused
27 defendants of taking tangible objects or services, repackaging them, and selling them under
28 defendants' name. Rather, plaintiff has accused defendants of incorporating copyrighted

1 materials into defendants' website. Therefore, the Court finds plaintiff has failed to plead a
2 cause of action under the Lanham Act.”)

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

9 41. Knowing full well that the legal bases for its claims against PadMapper and other
10 competitors were without merit, craigslist has persisted in a campaign of legal bullying, the sole
11 purpose of which is the elimination of competitors or potential competitors from the Relevant
12 Markets.

13 **II. COPYRIGHT MISUSE**

14 42. For a copyright owner to use an infringement suit, or threat of suit, to obtain
15 benefits that copyright law does not confer is an abuse of process and constitutes copyright
16 misuse. craigslist's campaign of legal threats and litigation against its competitors, including
17 PadMapper, 3Taps, and Lovely, is exactly that.

18 43. In asserting copyright infringement claims against indexers such as 3Taps,
19 craigslist has attempted to obtain an exclusive right to use factual content contained in
20 onboarded classified ad listings. However, no copyright protection exists in factual content.

21 44. Additionally, craigslist has engaged in copyright misuse by asserting copyright
22 infringement claims against its competitors when it clearly lacks standing to do so. The
23 Copyright Act provides that only the owner or exclusive licensee of a work may bring an action
24 for infringement, and craigslist is neither the owner nor an exclusive licensee of content from
25 listings submitted by users of craigslist's Site.

26 45. craigslist has engaged in copyright misuse for the sole purpose of reducing or
27 eliminating competitors, and craigslist has been successful in doing so. craigslist's bullying has
28 forced competitors such as HuntSmartly, Invatory, for-sale-alert.com, list-alert.com, Tempest,

1 jumpoffcampus.com, wishcan.com, and SnapStore out of the real-time search engine markets.

2 **III. UNDULY RESTRICTIVE TERMS OF USE**

3 46. The craigslist Site's TOU are another part of craigslist's effort to inhibit
4 competition in the relevant markets.

5 47. The TOU prohibit making "available any program, application or service . . . that
6 enables or provides access to, use of, operation of or interoperation with craigslist." Thus, the
7 TOU prevents the development and use of innovative products that are interoperable with the
8 craigslist Site, such as search and interaction tools which consumers overwhelmingly desire, but
9 which craigslist has chosen not to develop or provide. The TOU further prohibit "[a]ny
10 copying, aggregation, display, distribution, performance, or derivative use of craigslist or any
11 content posted on craigslist." Thus, the TOU also prevents the development of services that
12 would make use of user-submitted content that craigslist does not own or have an exclusive
13 license to use.

14 48. There is no legitimate business justification for these provision of craigslist's
15 TOU. craigslist's TOU purports that these restrictions are "[t]o maintain the integrity and
16 functionality of craigslist for its users." But the development of interoperable programs,
17 applications and services would benefit craigslist's users and pose no threat of harm to the
18 integrity or functionality of craigslist. However, because such programs, applications or
19 services could potentially lead to competition in the relevant markets, craigslist imposes these
20 restrictions on its users.

21 49. These and other terms of the craigslist TOU are overbroad, unenforceable, and
22 designed solely to unfairly inhibit competition in the relevant markets.

23 **IV. "GHOSTING"**

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

26 51. 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 52. Certain competitors of craigslist employ technology which gives a user the
7 option to have a classified ad listing submitted to the craigslist website automatically via the
8 competing site’s service, at the same time as they post the listing to the competing site. This
9 type of services offers the obvious benefit of saving the user time and reaching as large an
10 audience as possible. However, if craigslist believes that a listing was submitted in this manner,
11 the listing 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 55. Although craigslist asserts that this practice is employed to combat spam, in
20 reality its purpose is to thwart competition. This is evidenced by the fact that craigslist could
21 simply inform the person attempting to submit a listing why craigslist is will not accept the
22 listing.

23 56. There is no legitimate business reason for craigslist to implement “ghosting.”
24 craigslist’s sole intent in engaging in “ghosting” is to reduce competition in the relevant
25 markets.

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

27 57. craigslist’s monopolistic and anticompetitive practices have had the following
28 effects, among others, in the relevant markets:

1 a. Competition in the relevant markets has been unreasonably restrained,
2 suppressed, and in some cases, destroyed as a result of craigslist's anticompetitive actions.
3 Companies such as Oodle, NotifyWire, craiggers, HuntSmartly, Invatory, for-sale-alert.com,
4 list-alert.com, Tempest, jumpoffcampus.com, wishcan.com, SnapStore, and others have been
5 forced to withdraw from the relevant markets.

6 b. Development of competing products and services, such as those offered by
7 PadMapper, have been hindered or deterred, damaging consumers by depriving them of a
8 choice of products and services with different and, perhaps, superior sets of features;

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

11 d. craigslist's anticompetitive conduct has caused PadMapper to suffer loss in the
12 value of its capital investment in its business, and has reduced the value of PadMapper's
13 business as a going concern. If not for craigslist's conduct, PadMapper's value would be
14 considerably greater, as evidenced by the value of other major search providers operating in
15 analogous markets. For example, in November 2012, Kayak, which operates a search engine
16 service in the travel space, was acquired by Priceline.com for \$1.8 billion. Trulia, which
17 operates a search engine service in the real estate listings space, became a publicly-traded
18 company in September 2012 and currently has a market capitalization of approximately \$450
19 million. Similarly, AirBnB, which provides search engine services for online vacation rental
20 classified ads has been valued at approximately \$1.3 billion.

21 e. Additionally, craigslist's anticompetitive conduct in the related indexing market,
22 most notably its conduct aimed at quashing 3Taps, if allowed to continue, will prevent the
23 acquisition of the pre-staged, indexed data necessary for PadMapper to offer its real time search
24 services.

25 f. craigslist's monopoly has been entrenched and expanded, resulting in greater
26 domination of the relevant markets and enhancement of barriers to entry.

27 **CLAIMS FOR RELIEF**

28 **First Claim for Relief**

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

2 58. PadMapper re-alleges and incorporates by reference all allegations of all prior
3 paragraphs as though fully set forth herein.

4 59. Through the actions described herein, craigslist has willfully maintained
5 monopoly power in the relevant markets. This conduct has reduced competition in the relevant
6 markets, reduced the availability to consumers of new and alternative products in the relevant
7 markets, and reduced the quality of the products being offered in the relevant markets.

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

10 61. 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 62. 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.

17 **Second Claim for Relief**

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

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

21 64. Through the actions described herein, craigslist has knowingly and intentionally
22 attempted to unlawfully monopolize the relevant markets.

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

27 66. There is a dangerous likelihood that craigslist will succeed in its attempt to
28 monopolize the relevant markets. If craigslist is successful, it will result in reduced competition

1 in the relevant markets, reduced the availability to consumers of new and alternative products in
2 the relevant markets, and reduced the quality of the products being offered in the relevant
3 markets.

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

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

11 **Third Claim for Relief**

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

14 69. PadMapper re-alleges and incorporates by reference all allegations of all prior
15 paragraphs as though fully set forth herein.

16 70. California Business and Professions Code sections 17200 et seq. declares unfair
17 competition unlawful and defines unfair competition as, inter alia, "any unlawful, unfair or
18 fraudulent business act or practice"

19 71. As described herein, craigslist has engaged in unlawful business practices in
20 violation of the Sherman Act, 15 U.S.C. § 2. This statutory violation constitutes unfair
21 competition that will continue unless enjoined by the Court.

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

25 73. PadMapper is entitled to a preliminary and permanent injunction restraining
26 craigslist from continuing such conduct. PadMapper has no adequate remedy at law.

27 **Fourth Claim for Relief**

28 **(Declaratory Relief – Noninfringement of craigslist's Copyrights)**

1 74. craigslist asserts that PadMapper infringes on craigslist's copyrights by
2 displaying listings originally posted to craigslist via PadMapper's website.

3 75. craigslist does not own or have rights in the individual listings. PadMapper's
4 display or publication of those listings therefore does not infringe on craigslist's copyrights.
5 Alternatively, PadMapper is using the listings in a manner that constitutes fair use.

6 76. PadMapper seeks a declaration that its aforementioned conduct does not infringe
7 on craigslist's copyrights.

8 **PRAYER FOR RELIEF**

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

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

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

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

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

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

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

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

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

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

28 (a) For entry of a final and binding declaration determining that craigslist actions as

1 described herein constitute unlawful and unfair business practices in violation of California
2 Business and Professions Code Sections 17200 *et seq.*; and

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

7 **D. Fourth Claim For Relief**

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

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

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

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

14 **DEMAND FOR JURY TRIAL**

15 PadMapper, Inc. requests a jury trial in this matter

16 Dated: December 21, 2012

Respectfully submitted,

17 **FOCAL PLLC**

18 By: /s/Venkat Balasubramani

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24 Counterclaim Plaintiff
25 PADMAPPER, INC.
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