

1 changed the name of the Application, the company's logo, and the company's corporate
 2 structure as part of their effort to eliminate any vestige of Brown's involvement in the
 3 company he co-founded.

4 66. For example, on August 30, 2011 (two weeks after Brown's ouster),
 5 Defendant Spiegel sent out an email to market the Application which was strikingly similar
 6 to an email he wrote to a blogger on July 27, 2011 (before the ouster), discussed above at
 7 ¶50, with one obvious—and telling—exception: Brown's involvement in the building of
 8 the Application was omitted. The chart below compares the two emails.

10 July 27, 2011 Email By Defendant Spiegel 11 (Before Brown's Ouster)	August 30, 2011 Email By Spiegel (After Brown's Ouster)
12 <i>I just built an app with two friends of mine</i> 13 <i>(certified bros our frat just got kicked off</i> 14 <i>campus) and we think you might really, really</i> 15 <i>like it. It's called Picaboo and it's a game for</i> 16 <i>sending disappearing pictures with your</i> 17 <i>friends. You just take a picture, set the timer up</i> 18 <i>to 10 seconds, and send to a friend – when they</i> 19 <i>receive your Picaboo they can view it until the</i> 20 <i>timer runs out and then it's gone forever! Fun</i> 21 <i>stuff.</i>	12 <i>I built an app this summer with a friend</i> 13 <i>of mine (our frat got kicked off last</i> 14 <i>year ...) and I think you'd love it. It's</i> 15 <i>called Picaboo and it's a game for</i> 16 <i>sending disappearing pictures with your</i> 17 <i>friends. You take a picture, set the timer</i> 18 <i>up to 10 seconds, and send to a friend</i> 19 <i>–when they receive your Picaboo they</i> 20 <i>can view it until the timer runs out and</i> 21 <i>then it's gone forever! Fun stuff.</i>

22
 23 67. In September 2011, Defendants changed the name of the Application from
 24 "Picaboo" to "Snapchat."

25 68. On May 16, 2012, after Brown attempted to contact the Defendant Spiegel to
 26 resolve the matter without litigation, Defendants responded by hiring the international law
 27 firm of Cooley LLP to send a threatening letter to the young college graduate. In the letter,
 28 Cooley claimed that Brown "contributed nothing" to the joint-venture/partnership.

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15 Frank Reginald Brown, IV

5 FILED
Superior Court of California
County of Los Angeles

OCT 23 2013

Shari R. Carter, Executive Officer/Clerk
By: *[Signature]* Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF LOS ANGELES

- NO SUMMONS ISSUED -

13 FRANK REGINALD BROWN, IV,
14 Plaintiff,
15
16 v.
17 SNAPCHAT, INC., a Delaware corporation;
18 TOYOPA GROUP, LLC, a California
19 Limited Liability Company; EVAN
20 THOMAS SPIEGEL, an individual;
21 ROBERT CORNELIUS MURPHY, an
22 individual; LIGHTSPEED VENTURE
23 PARTNERS IX, L.P., a California limited
24 partnership; BENCHMARK CAPITAL
25 PARTNERS VII, L.P., a California limited
26 partnership; INSTITUTIONAL VENTURE
27 PARTNERS XIV, L.P., a Delaware limited
28 partnership; GENERAL CATALYST
GROUP VI, L.P., a Delaware limited
partnership; GC&H INVESTMENTS, LLC.,
a California limited liability company; SV
ANGEL IV LP; a Delaware limited
partnership; SF GROWTH FUND, an
unknown entity; THL A17 Limited, an
unknown entity; and DOES 1 through 25
inclusive,
Defendants.

CASE NO: BC501483
Assigned for all purposes to the Honorable
John L. Segal (Dept. 50)

VERIFIED FIRST AMENDED
COMPLAINT

- 1. Breach of Express Joint Venture Agreement;
- 2. Breach of Implied Joint Venture Agreement;
- 3. Breach of Express Partnership Agreement;
- 4. Breach of Implied Partnership Agreement
- 5. Breach of Fiduciary Duty;
- 6. Constructive Fraud;
- 7. Conversion; and
- 8. Conversion.

DEMAND FOR JURY TRIAL

VERIFIED FIRST AMENDED COMPLAINT

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INTRODUCTION

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1. This is a case of partners betraying a fellow partner. Plaintiff brings this action to obtain relief from the betrayal and breach of fiduciary duty committed by two of his former fellow students at Stanford University involving a startup venture they founded to implement Plaintiff's idea for a mobile device application. While at Stanford, Plaintiff came up with the idea of a mobile device application allowing users to send pictures to others that then quickly disappear from the recipient's mobile device (the "Application"). Plaintiff shared his idea for the Application with Individual Defendants named herein for the purpose of forming a joint venture/partnership to commercialize it. These three then did in fact structure the joint venture/partnership for this purpose, explicitly dividing ownership interests in it equally among them in thirds, living together to work on their startup for months, and through this joint venture/partnership developed and marketed the popular mobile phone application now universally known as "Snapchat."

2. Despite the fact that Plaintiff devised the idea for Snapchat and fully performed all his obligations in the joint venture/partnership, Individual Defendants then improperly excluded Plaintiff from all participation, profit and interest in the joint venture/partnership, just one month after the Application was publicly launched in July 2011. These defendants' actions were part of a deliberate scheme to deprive Plaintiff of his rightful ownership interest in the joint venture/partnership so as to improperly benefit themselves at the expense of Plaintiff, in violation of their agreement with Plaintiff and other legal duties to Plaintiff. From then on, despite Plaintiff's role as one of the three founders of the business, Individual Defendants held themselves out to the public as the only two individuals who started the business.

3. Due in large part to Plaintiff's contributions, Snapchat is now a wildly popular application. The *Business Insider* publication recently called Snapchat "*A Threat To Facebook, And It Is 2013's Most Likely Billion Dollar Startup.*" Other press articles reported that Snapchat users are now sending over 350 million pictures per day, over five

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1 times more than Instagram, a startup that was reportedly acquired by Facebook in 2012 for
2 \$1 billion dollars.

3 4. By this action, Plaintiff seeks to have his rights and interests restored to what
4 they would have been but for defendants' improper and actionable conduct.

5

6

PARTIES

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8 5. Plaintiff Frank Reginald "Reggie" Brown, IV ("Brown" or "Plaintiff" or
9 "Plaintiff Brown"), is an individual residing in Richland County, South Carolina.

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8. Defendant Evan Thomas Spiegel ("Spiegel" or "Defendant Spiegel") is an

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1 individual residing in the County of Los Angeles.

2 9. Defendant Robert "Bobby" Cornelius Murphy ("Murphy" or "Defendant
3 Murphy") is an individual residing in the County of Los Angeles.

4 10. Defendants Spiegel and Murphy are occasionally collectively referred to
5 herein as the "Individual Defendants."

6 11. Upon information and belief, Defendant Lightspeed Venture Partners IX,
7 L.P. ("Lightspeed"), is a California limited partnership with its principal place of business
8 and headquarters located in Menlo Park, California.

9 12. Upon information and belief, Defendant Benchmark Capital Partners VII,
10 L.P. ("Benchmark"), is a California limited partnership with its principal place of business
11 and headquarters located in Menlo Park, California.

12 13. Upon information and belief, Defendant Institutional Venture Partners XIV,
13 L.P. ("IVP"), is a Delaware limited partnership with its principal place of business and
14 headquarters located in Menlo Park, California.

15 14. Upon information and belief, Defendant General Catalyst Group VI, L.P.
16 ("GCG"), is a Delaware limited partnership with its principal place of business and
17 headquarters located in Palo Alto, California.

18 15. Upon information and belief, Defendant GC&H Investments, LLC
19 ("GC&H") is a California limited liability company with its principal place of business and
20 headquarters located in San Francisco, California.

21 16. Upon information and belief, Defendant SV Angel IV LP ("SVA") is a
22 Delaware limited partnership with its principal place of business and headquarters located
23 in San Francisco, California.

24 17. Upon information and belief, Defendant SF Growth Fund ("SFGF") is an
25 entity of unknown corporate form with its principal place of business and headquarters
26 located in Northern California.

27 18. Upon information and belief, Defendant THL A17 Limited ("THL") is an is
28 an entity of unknown corporate form with its principal place of business and headquarters

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1 located in Northern California.

2 19. Defendants Lightspeed, Benchmark, IVP, GCG, GC&H, SVA, SFGF and
3 THL are occasionally referred to herein as the "Venture Capitalist Defendants."

4 20. Plaintiff is unaware of the true names and capacities, whether individual,
5 corporate, associate or otherwise, of defendants Does 1 through 25, inclusive, or any of
6 them, and therefore sues these defendants, and each of them, by such fictitious names. The
7 Doe defendants include persons and entities assisting or acting in concert with the named
8 defendants in connection with the actions complained of herein and include persons and
9 entities that are responsible in some manner for the acts, occurrences and liability
10 hereinafter alleged and referred to. All defendants herein are referred to collectively as
11 "Defendants."

12 21. Defendants are jointly and severally liable for the wrongful conduct set forth
13 herein because they are aiding and abetting each other and/or conspired to commit such
14 wrongful conduct.

15
16 JURISDICTION AND VENUE

17
18 22. The Court has subject matter jurisdiction over this action pursuant to Article
19 VI, section 10 of the California Constitution and *California Code of Civil Procedure*
20 §410.10. The Court has personal jurisdiction over Defendants pursuant to *California Code*
21 *of Civil Procedure* §410.50.

22 23. Venue is proper in this County pursuant to *California Code of Civil*
23 *Procedure* §395 because one or more of the Defendants either resides or maintains
24 executive offices in this County, a substantial portion of the wrongful acts complained of
25 herein, including the conspiracy to commit such acts, occurred in this County, and the
26 Defendants have received substantial compensation in this County by doing business here
27 and engaging in numerous activities which had an effect in this County.

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ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

Plaintiff Comes Up With Idea of Disappearing Pictures

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5 24. In the Spring of 2011, Plaintiff Brown was a junior at Stanford University,
6 pursuing a degree in English and living on-campus in the Kimball Hall dormitory. At this
7 time, Plaintiff Brown independently conceived of the idea of a mobile device application
8 that would allow a person to transmit a picture to another mobile device user— but the
9 picture would then automatically delete itself after a short time, and no longer be present in
10 the recipient’s inbox (the “Application”). Thus, unlike the normal situation where the
11 recipient of a picture may store the sent picture or forward it to others, Plaintiff Brown’s
12 concept would impede the recipient from doing so.

13 25. Plaintiff Brown endeavored to share his idea with Defendant Spiegel, another
14 Stanford student also living at Kimball Hall and a person whom Plaintiff Brown considered
15 a friend. Brown did so for the purpose of potentially forming an association with Spiegel
16 to commercialize Brown’s idea together, in the form of a joint venture or partnership.

17 26. In his deposition in this case, Defendant Spiegel admitted that Plaintiff
18 Brown devised the idea for deleting picture messages. Defendant Spiegel testified as
19 follows:

20 *Q. Did you come up with the idea for deleting picture*
messages?

21 *A. No.*

22 *Q. Did [Defendant] Bobby [Murphy] come up with the idea?*

23 *A. No, he did not.*

24 *Q. Who came up with the idea?*

25 *A. [Plaintiff] Reggie [Brown] did.*

26 Formation of Joint Venture/Partnership With Individual Defendants

27 27. Around this time, one day Brown and Spiegel were together in Spiegel’s
28 dorm room. Brown stated to Spiegel something to the effect of: “we should make an

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1 application that sends deleting picture messages.” Spiegel acknowledged the commercial
 2 viability of Brown’s idea, repeatedly exclaiming that Brown had indeed conceived of a
 3 “million-dollar idea.” Spiegel also indicated his assent to the notion that the two were
 4 forming an association as partners to pursue the commercialization of Brown’s idea.
 5 Spiegel asked Brown if they could work on the Application together, Brown responded in
 6 the affirmative, and the two shook hands. That night, the two began searching for a
 7 computer “coder” to join in developing the Application. They then started interviewing a
 8 number of potential coders, including fellow Stanford students.

9 28. Sometime after their initial meeting where they agreed to develop the
 10 Application as joint venturers/partners, Brown and Spiegel chose defendant Murphy, a
 11 fellow Stanford student, to serve as the coder for the Application. Murphy was Spiegel’s
 12 friend in that the two had previously worked together on a failed project called
 13 “FutureFreshmen.”

14 29. At this point, Brown and the Individual Defendants, as joint venturers/
 15 partners, entered into an explicit oral agreement as to their respective interests in their joint
 16 undertaking to develop the Application (which would later be known as “Picaboo” and then
 17 “Snapchat”) for their common profit. That explicit agreement was that their interests in the
 18 venture would be equally distributed, *i.e.*, each of them would have 1/3 ownership and
 19 profit interests in the joint venture/partnership. Brown and Individual Defendants agreed
 20 also that Brown would serve as Chief Marketing Officer; Spiegel would serve as Chief
 21 Executive Officer; and Murphy would serve as Chief Technology Officer. Also, at this
 22 time Brown and Individual Defendants agreed that each would have equal say in the control
 23 and management of the joint venture/partnership. As alleged below, until the point where
 24 the Individual Defendants’ improperly kicked Plaintiff Brown out of the business, Plaintiff
 25 Brown’s conduct and the outward conduct of Individual Defendants were fully consistent
 26 with this explicit oral agreement.
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Plaintiff's Further Contributions to the Joint Venture/Partnership

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30. While the search for a coder was ongoing in about the Spring of 2011, Brown set about further developing the Application. Brown conceived of the original name for the Application, "Picaboo," a reference to the child's game where faces appear and disappear.

31. At this time, Brown also conceived of and designed the logo for the Application—the same logo that Defendants continue to use for the Application to this day. This logo is a ghost cartoon drawn in black on a yellow background; the ghost is smiling and sticking its tongue out on the right side. Brown created this logo by directing Spiegel on what to draw, while the latter implemented Brown's direction on Adobe InDesign. Brown also independently devised the name for the ghost logo – that of "Ghostface Chillah" – which Defendants continue to use to this day.

32. Brown also expended additional efforts in developing the Application. For example, Brown created the original pages for Picaboo on Twitter ("twitter.com/picaboo4you" and "twitter.com/teampictaboo"¹), and the original page for Picaboo on Facebook ("<https://www.facebook.com/pages/Picaboo/216412738369001?ref=hl>").²

33. In accordance with this joint venture/partnership agreement, once the 2010-2011 academic year ended, Brown and Individual Defendants decided to spend a good portion of the summer together developing the Application. As a startup company, Brown and Individual Defendants decided to perform their work that summer at the Los Angeles County residence of Spiegel's father. The residence is located on Toyopa Street, and is subsequently used as the corporate address for Defendants Snapchat, Inc., and Toyopa Group, LLC.

¹ "Pictaboo" was temporary, variant name for the Application.

² After excluding Plaintiff from the business, the Individual Defendants changed the name of the Application from "Picaboo" to "Snapchat."

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1 34. Accordingly, at the beginning of the summer of 2011, Brown and Individual
2 Defendants temporarily relocated to the Toyopa residence, where they lived and worked on
3 the Application pursuant to the joint venture/partnership agreement they had entered into.
4 Brown moved his personal belongings from his Stanford dorm to the Toyopa residence.

5 35. On June 9, 2011, in a text message to Plaintiff, Defendant Spiegel referred to
6 his father's house, where Plaintiff and Defendants Spiegel and Murphy were living and
7 working on the Application, as "startuphou5" (meaning "startup house"). By this message,
8 Defendant Spiegel meant to recognize that the three men would be working on their startup
9 company, Picaboo, at the house that summer.

10 36. During this time, Brown continued to fully perform all of his obligations
11 pursuant to the joint venture/partnership agreement. For example, Brown authored the
12 Terms of Service, Privacy Policy, website Frequently Asked Questions ("FAQ") and
13 marketing materials for the Application. Brown also drafted the FAQ and offering
14 language for the Application on the iTunes Store, as well as the photo release for the first
15 photo shoot for the Application's marketing materials. Brown further devised the name
16 "Toyopa Group, LLC," for Defendant Toyopa, the Limited Liability Company that he and
17 Individual Defendants agreed would hold their interests in the Application. In Plaintiff
18 Brown's discussions with Individual Defendants concerning Toyopa, Individual
19 Defendants explicitly acknowledged that Brown would be an equal member of Toyopa
20 with them. Brown also managed the tax returns for Toyopa.

21 37. Plaintiff Brown also contributed to the layout and design of the Application's
22 features, including the camera button, screen layout, and the colors.

23 38. During this time, in recognition of their status as three co-equals in the joint
24 venture/partnership, Plaintiff and Individual Defendants voted to make important decisions
25 concerning the Application. For example, the three voted in favor of changing the
26 Application's name from "Picaboo" to "Pictaboo" and then back again. The three also
27 voted to implement in the Application a notification that the recipient of the message had
28 taken a screenshot of it.

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1 39. On June 28, 2011, Defendant Murphy sent a mass email to his friends asking
2 them to try the beta test version of the Application that he, Spiegel and Plaintiff have been
3 working on, and signed the email as "Bobby, Evan, Reggie;"

4 40. In July of 2011, Plaintiff Brown and Individual Defendants publicly
5 launched the Application—by making it available for download by the public via the
6 iTunes Store—under Brown's name for it, "Picaboo."

7 41. At this time Brown also undertook substantial additional efforts to market the
8 Application, in accordance with his role as Chief Marketing Officer in the joint
9 venture/partnership. Brown used popular social media websites to market the Application,
10 interfacing with his numerous contacts to promote use of the Application.

11 42. For example, on August 3, 2011, Brown sent a Facebook message to an
12 acquaintance stating the following:

13 *im trying to tell you about the app though*
14 *you dont have to help me but my friends and i made an*
15 *app for the iphone that lets you send deleting picture*
16 *messages to your friends so if you have an iphone you should*
17 *get on that [...]*

18 43. The acquaintance, making reference to Brown's substantial marketing efforts
19 for the Application, responded: "*youre such the salesman wow... how many times have you*
20 *made this speech already? youre like an expert by now im sure.*"

21 44. Brown's marketing efforts were successful, and were in large part
22 responsible for creating the original groundswell of interest in the Application that
23 continues today.

24 45. In addition, at this time Brown undertook the responsibility of drafting and
25 filing a patent application for the technology used in the Application, which named Brown
26 and Individual Defendants as co-inventors. Brown prepared the patent application and
27 filed it with the United States Patent Office on behalf of the joint venture/partnership.

28 46. At all times, Brown was paid no monetary compensation for his work, in

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1 accordance with his role as a joint venturer/partner in an enterprise that was not yet
2 generating profits, as he was sharing equally in the risks and rewards of the startup.

3
4 **Individual Defendants Acknowledge that Plaintiff Was Among the Three**
5 **Individuals Who Built the Application and Co-Founded the Startup**

6
7 47. On several occasions, Individual Defendants acknowledged to Plaintiff and
8 others that the Application was developed by Brown, Spiegel and Murphy working
9 together as partners and co-founders of this startup.

10 48. For example, on June 21, 2011, Defendant Spiegel, in a Google chat to an
11 acquaintance, acknowledged Plaintiff Brown's central role in the marketing of the
12 Application:

13 *reggie gets here thurs*
14 *and thats when we'll solidify our marketing strategy*

15 49. Moreover, in recently produced discovery by Defendants, Plaintiff learned
16 that on July 21, 2011, Spiegel emailed his Stanford professor and wrote:

17 *Hi Professor Adams,*
18 *I found your sexting research compelling, and certainly in line*
19 *with my college experience. I have developed a new iPhone*
20 *application with two classmates called Picaboo*
21 *(<http://picaboo.me/d/>) that allows users to send timed picture*
22 *messages to each other. I would be very interested in any and*
23 *all feedback you might have and I would love the opportunity*
24 *to further discuss your research.*
25 *Thank you,*
26 *Evan Spiegel*

27 50. On July 27, 2011, Spiegel emailed to an acquaintance:

28 *Nicole,*
29 *I just built an app with two friends of mine (certified bros our*
30 *frat just got kicked off campus) and we think you might really,*
31 *really like it. It's called Picaboo and it's a game for sending*
32 *disappearing pictures with your friends. You just take a*
33 *picture, set the timer up to 10 seconds, and send to a friend --*
34 *when they receive your Picaboo they can view it until the timer*
35 *runs out and then it's gone forever! Fun stuff.*

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1 *We'd love to hear your feedback even though your last post*
 2 *was a little moody.*
 3 *(Nothing wrong with doing what you love and making \$\$\$.*
 4 *Swag. It. Out.)*
 5 *You can download our app here: <http://picaboo.me/id1> and if*
 6 *you get one of your girlfriends on it we promise you'll be*
 obsessed.
 Next time just Picaboo the weird dude that stares at you,
 Evan (emphasis added).

7 51. In his deposition in this case, Defendant Spiegel admitted that his reference
 8 to "two friends of mine" in this email referred to Defendant Murphy and Plaintiff Brown.
 9 Defendant Spiegel testified as follows:

10 *Q. Okay. You see where you referred to two friends of mine?*
 11 *A. That's correct.*
 12 *Q. Who are those two friends you are referring to?*
 13 *A. [Defendant] Bobby [Murphy] and [Plaintiff] Reggie*
 [Brown].

14 52. On July 1, 2011, Defendant Spiegel's father John Spiegel, sent a text
 15 message to Plaintiff Brown's mother. The text acknowledged that Plaintiff Brown and
 16 Individual Defendants had been working cooperatively on their "startup" that summer, and
 17 that this work included Brown's preparation of the patent application:

18
 19 *.... It is delightful to have Reggie with us this summer as he,*
 20 *Evan and Bobby work on their startup. They are working hard,*
 21 *having fun and seem to be learning a lot. Reggie is drafting his*
 22 *first patent application, so he is on his way to being a lawyer!*
 His lovely Southern manners are a welcome addition to my
 home (tho maybe you could get him to stop calling me "Mr.
 Spiegel", as I can't!). ...

23
 24 53. And in another recently produced document by Defendants, Mr. Spiegel
 25 wrote to a personal chef for the household:

26
 27 *Doug*
 28 *Thanks so much for your help cooking this summer. I am*
 looking forward to some more of those delicious meals you
 have cooked for deb and her family.

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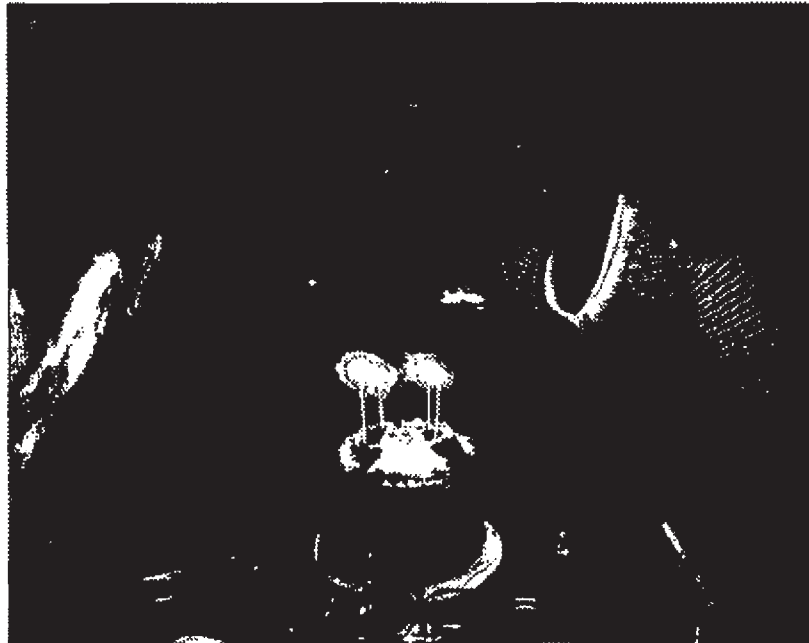
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Here is what we need at my house. My 21 year old son is home for the summer with two Stanford buddies, working on their start up business.

Thanks again
John*

54. And as discussed, for months during the summer of 2011, the three of them were living and working together on the Application at the Toyopa residence. These three were also celebrating together the milestones achieved by their startup business.

55. For example, in about mid-July 2011, shortly after Picaboo was launched on iTunes, Brown and Individual Defendants went to a restaurant in Los Angeles to celebrate the "birth of Picaboo" and Murphy's birthday. Below is a picture of them (from left to right, Brown, Murphy, and Spiegel) taken during that celebration with a cake that has the ghost logo of Picaboo (as discussed, this is the same logo now used by Snapchat).



56. On July 21, 2011, Defendant Murphy "tagged" Plaintiff Brown on the former's Facebook page "in Picaboo under Employers," indicating his understanding that Brown and Murphy were working together on the Application.

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1 57. On or about July 25, 2011, one of Individual Defendants posted the following
2 update on the www.crunchbase.com site:

3 Picaboo For iPhone

4 *Picaboo is the first-ever ephemeral picture messaging app for*
5 *iPhone*

6 *Milestones*

7 *Picaboo for iPhone added Reggie Brown as CMO (5/1/11)*

8 *Picaboo for iPhone added Bobby Murphy as CTO (5/1/11)*

9 *Picaboo for iPhone added Evan Spiegel as CEO (5/1/11)*

10

11 58. As the end of the 2011 summer drew near, Brown and Individual Defendants
12 decided to take a short break from their work at the Toyopa residence, and Brown returned
13 to South Carolina to visit his family while Murphy returned to Northern California to visit
14 his. The three of them, however, continued to work remotely on their joint venture. For
15 example, Brown was busy finalizing the patent application for Picaboo, and continued
16 promoting the Application.

17 59. Brown completed the patent application in early August 2011, and Individual
18 Defendants were happy with this development upon being informed of it.

19 60. During this time up until the betrayal in mid-August 2011 (discussed below),
20 Brown and Individual Defendants continued to update each other regarding the business
21 and the progress of their assigned tasks.

22

23 The August 2011 Betrayal

24

25 61. Unbeknownst to Plaintiff, at some time after the formation of their
26 joint/venture partnership, Individual Defendants formed an undisclosed intent to eventually
27 wrongfully exclude Plaintiff Brown from the joint venture/partnership, in order to take for
28 themselves Brown's rightful share of the enterprise. At this time, while *outwardly*

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1 manifesting a continuing intent to develop the Application as a joint venture/partnership of
2 co-equals with Plaintiff, Individual Defendants secretly began to take steps in preparation
3 of excluding Brown once the Application gained an established user base. For example,
4 while, as alleged above, Plaintiff and Individual Defendants explicitly agreed that Plaintiff
5 would have an equal ownership interest in Defendant Toyopa, the Individual Defendant
6 secretly formed Toyopa without including any interest for Plaintiff.

7 62. By late July of 2011, the Application was heavily gaining in popularity. For
8 example, on July 23, 2011, several days after launching the Application, Defendant Spiegel
9 texted Plaintiff to report on the increasing popularity of the Application and stated that
10 "[t]his thing is a rocketship." And on July 24, 2011, Spiegel texted to Brown of the
11 Application that "Our 7 day retention is 60% right now (target is 30%) and were *[[sic]]*
12 growing."

13 63. In mid-August 2011, as Brown was making plans to return to the Toyopa
14 residence (where he still had his personal belongings), he and Individual Defendants had a
15 contentious telephone conversation regarding their startup. Defendant Spiegel at one point
16 abruptly hung up the phone.

17 64. In the next few days, Individual Defendants wrongfully and physically shut
18 Brown out of the joint venture/partnership by, for example, changing the passwords for its
19 computer servers and accounts to prevent Brown from doing any further work on the
20 Application for the joint venture/partnership. Individual Defendants then cut off all
21 communication with Brown and refused to respond to his requests to discuss the matter
22 with them.

23
24 **The Cover-Up**

25
26 65. After they wrongfully ousted Brown from the joint-venture/partnership in
27 mid-August 2011, Defendants took one step after another to rewrite history to deny
28 Brown's undeniable role in the creation and building of the Application. Defendants also

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1 changed the name of the Application, the company's logo, and the company's corporate
 2 structure as part of their effort to eliminate any vestige of Brown's involvement in the
 3 company he co-founded.

4 66. For example, on August 30, 2011 (two weeks after Brown's ouster),
 5 Defendant Spiegel sent out an email to market the Application which was strikingly similar
 6 to an email he wrote to a blogger on July 27, 2011 (before the ouster), discussed above at
 7 ¶50, with one obvious—and telling—exception: Brown's involvement in the building of
 8 the Application was omitted. The chart below compares the two emails.

10 July 27, 2011 Email By Defendant Spiegel 11 (Before Brown's Ouster)	August 30, 2011 Email By Spiegel (After Brown's Ouster)
12 <i>I just built an app with two friends of mine</i> 13 <i>(certified bros our frat just got kicked off</i> 14 <i>campus) and we think you might really, really</i> 15 <i>like it. It's called Picaboo and it's a game for</i> 16 <i>sending disappearing pictures with your</i> 17 <i>friends. You just take a picture, set the timer up</i> 18 <i>to 10 seconds, and send to a friend – when they</i> 19 <i>receive your Picaboo they can view it until the</i> 20 <i>timer runs out and then it's gone forever! Fun</i> 21 <i>stuff.</i>	12 <i>I built an app this summer with a friend</i> 13 <i>of mine (our frat got kicked off last</i> 14 <i>year ...) and I think you'd love it. It's</i> 15 <i>called Picaboo and it's a game for</i> 16 <i>sending disappearing pictures with your</i> 17 <i>friends. You take a picture, set the timer</i> 18 <i>up to 10 seconds, and send to a friend</i> 19 <i>–when they receive your Picaboo they</i> 20 <i>can view it until the timer runs out and</i> 21 <i>then it's gone forever! Fun stuff.</i>

22
 23 67. In September 2011, Defendants changed the name of the Application from
 24 "Picaboo" to "Snapchat."

25 68. On May 16, 2012, after Brown attempted to contact the Defendant Spiegel to
 26 resolve the matter without litigation, Defendants responded by hiring the international law
 27 firm of Cooley LLP to send a threatening letter to the young college graduate. In the letter,
 28 Cooley claimed that Brown "contributed nothing" to the joint-venture/partnership.

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1 However, on May 24, 2012, just eight days after the Cooley letter, Defendants Spiegel and
2 Murphy applied to the California Secretary of State to convert-out Toyopa Group LLC into
3 a new entity, Defendant Snapchat, Inc. On the following day, May 25, 2012, Defendants
4 incorporated Snapchat Inc. in Delaware. When Defendant Spiegel was asked at his
5 deposition about why Defendants suddenly made this corporate change, his lawyers at
6 Cooley refused to allow Defendant Spiegel to provide a full answer, objecting on the basis
7 of attorney-client privilege. Upon information and belief, this corporate change was an
8 attempt by Defendants to distance themselves from Toyopa Group LLC which they told
9 Brown he would have an equal ownership interest in.

10 69. In June 2013, shortly after the filing of this lawsuit, Defendants changed the
11 company's ghost logo and replaced it with a logo that shows a face-less ghost. The *Los*
12 *Angeles Times* ran an article entitled "*Snapchat changes logo amid lawsuit challenging*
13 *founding of startup*" commenting on the change in the middle of this lawsuit in which
14 "Brown listed designing the Snapchat Ghostface Chillah logo [among] his contributions to
15 the company."

16
17 Venture Capitalist Investment in Snapchat, Inc.
18

19 70. In or around April of 2012, Defendant Snapchat, Inc., received a seed
20 investment from Defendant Lightspeed, and for this investment, Defendant Lightspeed
21 received equity shares in Defendant Snapchat, Inc. Upon information and belief, at the
22 time of its acquisition of these equity shares, Defendant Lightspeed had actual and/or
23 constructive notice of Plaintiff Brown's ownership interest in Snapchat, Inc.

24 71. Upon information and belief, in or around February of 2013, Defendant
25 Snapchat, Inc., received a Series A funding investment from Defendant Benchmark and
26 other firms, and for this investment, Defendant Benchmark received equity shares in
27 Defendant Snapchat, Inc. Upon information and belief, at the time of its acquisition of
28

1 these equity shares, Defendant Benchmark had actual and/or constructive notice of Plaintiff
2 Brown's ownership interest in Snapchat, Inc.

3 72. Upon information and belief, in or around June of 2013, Defendant Snapchat,
4 Inc., received a Series B funding investment from Defendants IVP, GCG, GC&H, SVA,
5 SFGF and THL, and for this investment, Defendants IVP, GCG, GC&H, SVA, SFGF and
6 THL received equity shares in Defendant Snapchat, Inc. Upon information and belief, at
7 the time of its acquisition of these equity shares, Defendants IVP, GCG, GC&H, SVA,
8 SFGF and THL had actual and/or constructive notice of Plaintiff Brown's ownership
9 interest in Snapchat, Inc. Upon information and belief, it is further alleged that Individual
10 Defendants each personally profited by over several millions of dollars as Individual
11 Defendants began selling shares in Snapchat to these other Defendants.

12
13
14 **FIRST CAUSE OF ACTION**

15 (BREACH OF EXPRESS JOINT VENTURE AGREEMENT)

16 (AS AGAINST DEFENDANTS SPIEGEL AND MURPHY)

17
18 73. Plaintiff repeats and adopts the above paragraphs of this Complaint as though
19 fully set forth herein.

20 74. In or around Spring of 2011, Plaintiff Brown and Defendants Spiegel and
21 Murphy entered into a valid oral joint venture agreement to commercialize the Application.
22 Pursuant to this joint venture agreement, the joint venture holds all rights and interests
23 corresponding to the Application now known as "Snapchat," with Plaintiff Brown owning
24 33.3% of the joint venture; Defendant Spiegel owning 33.3% of the joint venture; and
25 Defendant Murphy owning 33.3% of the joint venture.

26 75. At all times, Plaintiff Brown performed all conditions, covenants and
27 promises required to be performed on his part in accordance with the terms of the joint
28 venture agreement.

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1 76. Defendants Spiegel and Murphy breached this joint venture agreement by,
2 among other things, depriving Plaintiff Brown of his ownership share in the joint venture
3 and the past, present, and future proceeds therefrom, and by obstructing Plaintiff Brown's
4 right to equally manage and conduct the joint venture's business.

5 77. Defendants Spiegel and Murphy have further breached the joint venture
6 agreement by failing to provide Plaintiff Brown with an accurate accounting of the
7 financial affairs of the joint venture.

8 78. Other wrongful acts and/or omissions constituting breach by Defendants
9 Spiegel and Murphy of the joint venture agreement are presently unknown. Plaintiff will
10 seek leave of Court in order to amend this Complaint once such additional facts are
11 ascertained through discovery.

12 79. As a direct and foreseeable result of the breaches of the joint venture
13 agreement by Defendants Spiegel and Murphy, Plaintiff Brown has been damaged in an
14 amount according to proof within the jurisdiction of this Court. It is noted that in his
15 deposition in this case, Defendant Spiegel admitted that "[Plaintiff] Reggie [Brown] may
16 deserve something for some of his contributions [to the Application]."

17
18 **SECOND CAUSE OF ACTION**

19 (BREACH OF IMPLIED JOINT VENTURE AGREEMENT)

20 (AS AGAINST DEFENDANTS SPIEGEL AND MURPHY)

21
22 80. Plaintiff repeats and adopts the above paragraphs of this Complaint as though
23 fully set forth herein, but pleads this cause of action in the alternative to the First and Third
24 Causes of Action.

25 81. In performing the acts and engaging in the conduct of co-developing and
26 co-marketing the Application together, as described above, Plaintiff and Individual
27 Defendants manifested an intention to enter into a joint venture agreement to do those
28 things and to share co-equally in the profits and losses therefrom. Such acts and conduct

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1 included, but were not limited to, combining their efforts and resources to develop the
2 concept of the Application, and to implement and market the Application, and making
3 important decisions concerning the Application by voting among themselves, as alleged
4 above.

5 82. Individual Defendants and Plaintiff held themselves out to the public as a
6 co-equal joint venture for the development and marketing of the Application.

7 83. Individual Defendants performed these acts and conduct with the intent to
8 manifest their intention to form the described joint venture with Plaintiff, who understood
9 said intent and acted with his own intent to enter into the joint venture.

10 84. At no time did Individual Defendants conclusively manifest an intent to
11 Plaintiff that they did not intend to remain in the joint venture with Plaintiff, until their
12 betrayal of Plaintiff as alleged at ¶59 *ff.*

13 85. At all times, Plaintiff Brown performed all conditions, covenants and
14 promises required to be performed on his part in accordance with the terms of the joint
15 venture agreement.

16 86. Defendants Spiegel and Murphy breached this joint venture agreement by,
17 among other things, depriving Plaintiff Brown of his ownership share in the joint venture
18 and the past, present, and future proceeds therefrom, and by obstructing Plaintiff Brown's
19 right to equally manage and conduct the joint venture's business.

20 87. Defendants Spiegel and Murphy have further breached the joint venture
21 agreement by failing to provide Plaintiff Brown with an accurate accounting of the
22 financial affairs of the joint venture.

23 88. Other wrongful acts and/or omissions constituting breach by Defendants
24 Spiegel and Murphy of the joint venture agreement are presently unknown. Plaintiff will
25 seek leave of Court in order to amend this Complaint once such additional facts are
26 ascertained through discovery.

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1 89. As a direct and foreseeable result of the breaches of the joint venture
2 agreement by Defendants Spiegel and Murphy, Plaintiff Brown has been damaged in an
3 amount according to proof within the jurisdiction of this Court.

4
5 **THIRD CAUSE OF ACTION**

6 (BREACH OF EXPRESS PARTNERSHIP AGREEMENT)
7 (AS AGAINST DEFENDANTS SPIEGEL AND MURPHY)
8

9 90. Plaintiff repeats and adopts the above paragraphs of this Complaint as though
10 fully set forth herein.

11 91. In or around Spring of 2011, Plaintiff Brown and Defendants Spiegel and
12 Murphy entered into a valid oral partnership agreement to commercialize the Application.
13 Pursuant to this partnership agreement, the partnership holds all rights and interests
14 corresponding to the Application now known as "Snapchat," with Plaintiff Brown owning
15 33.3% of the partnership; Defendant Spiegel owning 33.3% of the partnership; and
16 Defendant Murphy owning 33.3% of the partnership.

17 92. At all times, Plaintiff Brown performed all conditions, covenants and
18 promises required to be performed on his part in accordance with the terms of the
19 partnership agreement.

20 93. Defendants Spiegel and Murphy have breached this partnership agreement
21 by, among other things, depriving Plaintiff Brown of his ownership share in the partnership
22 and the past, present, and future proceeds therefrom, and by obstructing Plaintiff Brown's
23 rights to equally manage and conduct the partnership's business.

24 94. Defendants Spiegel and Murphy have further breached the partnership
25 agreement by failing to provide Plaintiff Brown with an accurate accounting of the
26 financial affairs of the partnership.

27 95. Other wrongful acts and/or omissions constituting breach by Defendants
28 Spiegel and Murphy of the partnership agreement are presently unknown. Plaintiff will

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1 seek leave of Court in order to amend this Complaint once such additional facts are
2 ascertained through discovery.

3 96. As a direct and foreseeable result of the breaches of the partnership
4 agreement by Defendants Spiegel and Murphy, Plaintiff Brown has been damaged in an
5 amount according to proof within the jurisdiction of this Court.

6
7 **FOURTH CAUSE OF ACTION**

8 (BREACH OF IMPLIED PARTNERSHIP AGREEMENT)

9 (AS AGAINST DEFENDANTS SPIEGEL AND MURPHY)

10

11 97. Plaintiff repeats and adopts the above paragraphs of this Complaint as though
12 fully set forth herein, but pleads this cause of action in the alternative to the First and Third
13 Causes of Action.

14 98. In performing the acts and engaging in the conduct of co-developing and
15 co-marketing the Application together, as described above, Plaintiff and Individual
16 Defendants manifested an intention to enter into a partnership agreement to do those things
17 and to share co-equally in the profits and losses therefrom. Such acts and conduct included,
18 but were not limited to, combining their efforts and resources to develop the concept of the
19 Application, and to implement and market the Application, and making important decisions
20 concerning the Application by voting among themselves, as alleged above.

21 99. Individual Defendants and Plaintiff held themselves out to the public as a
22 co-equal partnership for the development and marketing of the Application.

23 100. Individual Defendants performed these acts and conduct with the intent to
24 manifest their intention to form the described partnership with Plaintiff, who understood
25 said intent and acted with his own intent to enter into the joint venture.

26 101. At no time did Individual Defendants conclusively manifest an intent to
27 Plaintiff that they did not intend to remain in the partnership with Plaintiff, until their
28 betrayal of Plaintiff as alleged above.

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1 102. At all times, Plaintiff Brown performed all conditions, covenants and
2 promises required to be performed on his part in accordance with the terms of the
3 partnership agreement.

4 103. Defendants Spiegel and Murphy have breached this partnership agreement
5 by, among other things, depriving Plaintiff Brown of his ownership share in the partnership
6 and the past, present, and future proceeds therefrom, and by obstructing Plaintiff Brown's
7 rights to equally manage and conduct the partnership's business.

8 104. Defendants Spiegel and Murphy have further breached the partnership
9 agreement by failing to provide Plaintiff Brown with an accurate accounting of the
10 financial affairs of the partnership.

11 105. Other wrongful acts and/or omissions constituting breach by Defendants
12 Spiegel and Murphy of the partnership agreement are presently unknown. Plaintiff will
13 seek leave of Court in order to amend this Complaint once such additional facts are
14 ascertained through discovery.

15 106. As a direct and foreseeable result of the breaches of the partnership
16 agreement by Defendants Spiegel and Murphy, Plaintiff Brown has been damaged in an
17 amount according to proof within the jurisdiction of this Court.

18
19 **FIFTH CAUSE OF ACTION**

20 **BREACH OF FIDUCIARY DUTY**

21 **(AS AGAINST DEFENDANTS SPIEGEL AND MURPHY)**

22
23 107. Plaintiff repeats and adopts the above paragraphs of this Complaint as though
24 fully set forth herein.

25 108. As alleged above, Brown and Individual Defendants entered into a joint
26 venture/partnership to develop the Application for commercial purposes. As a joint
27 venturer/partner of the joint venture/partnership, Defendants Spiegel and Murphy at all
28 times owed Plaintiff Brown the fiduciary duties of disclosure, loyalty and care. Pursuant to

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1 such fiduciary duties, Defendants Spiegel and Murphy were required to act in the utmost
2 good faith towards Plaintiff Brown, and to avoid acts and omissions adverse to Plaintiff
3 Brown. By virtue of this fiduciary relationship, Plaintiff Brown reposed trust and
4 confidence in the integrity of Defendants Spiegel and Murphy. Plaintiff Brown provided
5 no cause for Defendants Spiegel and Murphy to act in any manner inconsistent with this
6 fiduciary relationship.

7 109. Defendants Spiegel and Murphy have breached their fiduciary duties,
8 including the duties of disclosure, loyalty, and care to Plaintiff Brown by engaging in the
9 acts and omissions alleged above.

10 110. Defendants Spiegel and Murphy intended to induce Plaintiff Brown to rely
11 on their fiduciary relationship, and in reasonable reliance thereon, Plaintiff Brown was
12 induced to and did continue his fidelity.

13 111. As a direct and foreseeable result of these breaches of fiduciary duty by
14 Defendants Spiegel and Murphy, Plaintiff Brown has sustained damages in an amount
15 according to proof within the jurisdiction of this Court.

16 112. The aforementioned conduct was intentional on the part of Defendants
17 Spiegel and Murphy, to thereby deprive Plaintiff Brown of property and legal rights and
18 otherwise cause injury, and was despicable conduct that subjected Plaintiff to cruel and
19 unjust hardship and oppression in conscious disregard of his rights, so as to justify an award
20 of exemplary and punitive damages.

21
22 **SIXTH CAUSE OF ACTION**

23 **CONSTRUCTIVE FRAUD**

24 **(AS AGAINST DEFENDANTS SPIEGEL AND MURPHY)**

25
26 113. Plaintiff repeats and adopts the above paragraphs of this Complaint as though
27 fully set forth herein.

28 114. As alleged above, Brown and Individual Defendants entered into a joint

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1 venture/partnership to develop the Application for commercial purposes. As a joint
2 venturer/partner of the joint venture/partnership, Defendants Spiegel and Murphy at all
3 times owed Plaintiff Brown the fiduciary duties of disclosure, loyalty and care. Pursuant to
4 such fiduciary duties, Defendants Spiegel and Murphy were required to act in the utmost
5 good faith towards Plaintiff Brown, and to avoid acts and omissions adverse to Plaintiff
6 Brown. By virtue of this fiduciary relationship, Plaintiff Brown reposed trust and
7 confidence in the integrity of Defendants Spiegel and Murphy. Plaintiff Brown provided
8 no cause for Defendants Spiegel and Murphy to act in any manner inconsistent with this
9 fiduciary relationship.

10 115. In addition, at the time of the events alleged above, Plaintiff Brown was in a
11 close personal friendship with Defendant Spiegel. Defendant Spiegel encouraged Plaintiff
12 Brown to consider Defendant Spiegel a close personal friend of Brown's, worthy of his
13 trust and confidence. For example, in April of 2011, Defendant Spiegel sent Plaintiff a
14 message stating in part: "i love you and miss you dude." In addition, at this time Plaintiff
15 Brown and Defendant Spiegel were in the same Kappa Sigma college fraternity together.
16 The Mission Statement of that fraternity provides in part that "The Fraternity should
17 promote the ideal of Brotherhood," "The Fraternity fulfills the need of students to belong to
18 an extended family" and "The Fraternity should promote ethical behavior and
19 decision-making." Based on their close personal relationship and fraternity membership,
20 Plaintiff Brown reposed trust and confidence in the integrity of Defendant Spiegel not to do
21 anything that would prevent Plaintiff Brown from sharing in the fruits of the Application,
22 which sprung from his idea that he shared with his friend Defendant Spiegel.

23 116. Defendants Spiegel and Murphy have breached their fiduciary/confidential
24 duties, including the duties of disclosure, loyalty and care, to Plaintiff Brown by engaging
25 in the acts and omissions alleged above.

26 117. For example, as alleged above, Individual Defendants secretly formed
27 Defendant Toyopa excluding Brown. This was done without Brown's knowledge or
28 approval, and was directly contrary to the stated understanding of the parties, reached

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1 earlier, which was that Brown would be an equal member in Defendant Toyopa. The
2 Individual Defendants' failure to disclose this material fact to Plaintiff Brown, and their
3 efforts to conceal their actions from him, were in breach of their fiduciary/confidential
4 duties to Plaintiff Brown.

5 118. Because he reposed trust and confidence in the integrity of Defendants
6 Spiegel and Murphy, Plaintiff Brown reasonably relied upon the Individual Defendants'
7 statements that he would be an equal member in Defendant Toyopa, and further reasonably
8 relied upon the Individual Defendants' omission to inform Plaintiff Brown that they
9 intended to, and were in the process of, organizing Defendant Toyopa to his exclusion.
10 Had Plaintiff know of the truth, he would have taken steps to prevent the Individual
11 Defendants' actions and protect his rights and interests.

12 119. By virtue of this conduct, Individual Defendants secured an advantage to the
13 detriment of Plaintiff Brown, in that they gained ownership in Defendant Toyopa to the
14 exclusion of Plaintiff Brown.

15 120. As a direct and foreseeable result this conduct by Defendants Spiegel and
16 Murphy, Plaintiff Brown has sustained damages in an amount according to proof within the
17 jurisdiction of this Court.

18 121. The aforementioned conduct was intentional on the part of Defendants
19 Spiegel and Murphy, to thereby deprive Plaintiff Brown of property and legal rights and
20 otherwise cause injury, and was despicable conduct that subjected Plaintiff to cruel and
21 unjust hardship and oppression in conscious disregard of his rights, so as to justify an award
22 of exemplary and punitive damages.

23
24 SEVENTH CAUSE OF ACTION

25 CONVERSION

26 (AS AGAINST DEFENDANTS SPIEGEL, MURPHY, TOYOPA AND SNAPCHAT, INC.)

27
28 122. Plaintiff repeats and adopts the above paragraphs this Complaint as though

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1 fully set forth herein.

2 123. Plaintiff Brown, as a joint venturer/partner of the joint venture/partnership,
3 owned, possessed and/or was entitled to immediate possession at the time of conversion to
4 the personal property, assets, and profits in a sum capable of identification of the joint
5 venture/partnership.

6 124. Individual Defendants have intentionally taken possession of, transferred,
7 and/or prevented Plaintiff from having access to the joint venture/partnership's personal
8 property, profits and/or assets for a significant period of time after Plaintiff demanded its
9 return.

10 125. Plaintiff did not consent to Defendants' actions.

11 126. As a result of Defendants' conversion, Plaintiff has suffered damage and lost
12 profits in a sum capable of identification in an amount according to proof within the
13 jurisdiction of this Court.

14 127. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

15 128. The aforementioned conduct was intentional on the part of Defendants, to
16 thereby deprive Plaintiff Brown of property and legal rights and otherwise cause injury,
17 and was despicable conduct that subjected Plaintiff to cruel and unjust hardship and
18 oppression in conscious disregard of his rights, so as to justify an award of exemplary and
19 punitive damages.

20
21 EIGHTH CAUSE OF ACTION

22 CONVERSION

23 (AS AGAINST DEFENDANTS LIGHTSPEED, BENCHMARK, IVP, GCG, GC&H,
24 SVA, SFGF AND THL)

25
26 129. Plaintiff repeats and adopts the above paragraphs of this Complaint as though
27 fully set forth herein.

28 130. As alleged above, the Individual Defendants, Toyopa and Snapchat, Inc.,

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1 wrongfully converted Plaintiff's ownership interest in Defendant Snapchat, Inc.

2 131. In light of Plaintiff's true ownership interest in Snapchat, Inc., which had
3 been wrongfully converted by the Individual Defendants, Toyopa and Snapchat, Inc.,
4 Defendants Lightspeed, Benchmark, IVP, GCG, GC&H, SVA, SFGF and THL (the
5 "Venture Capitalist Defendants"), by taking equity shares in Snapchat, Inc. (as alleged
6 above at ¶¶67-69), wrongfully converted Plaintiff's ownership interest in Snapchat, Inc.

7 132. Upon information and belief, in doing so, the Venture Capitalist Defendants,
8 at the time each took equity shares in Defendant Snapchat, Inc., had actual and/or
9 constructive knowledge of Plaintiff's true ownership interest in Snapchat, Inc., and the fact
10 that Individual Defendants had wrongfully converted said interest as their own. The
11 Venture Capitalist Defendants converted Plaintiff's ownership interest in the absence of
12 good faith.

13 133. The Venture Capitalist Defendants have intentionally taken possession of,
14 transferred, and/or prevented Plaintiff from having access to his interest in Snapchat, Inc.,
15 for a significant period of time after Plaintiff demanded its return.

16 134. Plaintiff did not consent to the Venture Capitalist Defendants' actions.

17 135. As a result of the Venture Capitalist Defendants' conversion, Plaintiff has
18 suffered damage and lost profits in a sum capable of identification in an amount according
19 to proof within the jurisdiction of this Court.

20 136. The Venture Capitalist Defendants' conduct was a substantial factor in
21 causing Plaintiff's harm. The aforementioned conduct was intentional on the part of the
22 Venture Capitalist Defendants, to thereby deprive Plaintiff Brown of property and legal
23 rights and otherwise cause injury, and was despicable conduct that subjected Plaintiff to
24 cruel and unjust hardship and oppression in conscious disregard of his rights, so as to
25 justify an award of exemplary and punitive damages.

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PRAYER FOR RELIEF

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WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

1. For compensatory damages according to proof;
2. For the recovery of his one-third interest in the partnership/joint venture, and all profits and benefits arising therefrom;
3. For interest to the extent permitted by law;
4. For an award of exemplary and punitive damages; and
5. For such other and further relief as the Court may deem proper.

LEE TRAN LIANG & WANG LLP



Dated: October 22, 2013

K. Luan Tran
James M. Lee
Cyrus Khojandpour
Lisa J. Chin

**RAY A. MANDLEKAR, ATTORNEY
AT LAW**
Ray A. Mandlekar

Attorneys for Plaintiff
Frank Reginald Brown, IV


10/28/2013

REQUEST FOR JURY TRIAL

Plaintiff hereby requests a jury trial.

LEE TRAN LIANG & WANG LLP

Dated: October 24, 2013



K. Luan Tran
James M. Lee
Cyrus Khojandpour
Lisa J. Chin

RAY A. MANDLEKAR,
ATTORNEY AT LAW
Ray A. Mandlekar

Attorneys for Plaintiff
Frank Reginald Brown, IV

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VERIFICATION

I have read the foregoing and know its contents. The matters stated in the foregoing are true and correct to the best of my personal knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them, in good faith, to be true.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 11, 2013 in Durham, North Carolina.


Frank Reginald Brown, IV

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12 *Attorneys for Total Recall Technologies*

13
14 UNITED STATES DISTRICT COURT
15
16 NORTHERN DISTRICT OF CALIFORNIA

17 Total Recall Technologies,

18 Plaintiff,

19 vs.

20 Palmer Luckey and Oculus VR, LLC,
21 as successor-in-interest to Oculus VR,
22 Inc.,

23 Defendants.

CASE NO. 3:15-cv-02281-WHA

FIRST AMENDED COMPLAINT

DEMAND FOR JURY TRIAL

24 Plaintiff Total Recall Technologies (“TRT” or “Partnership”) alleges as
25 follows:

26 **NATURE OF THE ACTION**

27 1. TRT brings this action for Defendants’ breach of contract and wrongful
28 exploitation and conversion of TRT property in connection with TRT’s development
of affordable, immersive, virtual reality technology.

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PARTIES

2. Plaintiff TRT is a partnership by and between individuals Ron Igra (“Igra”) and Thomas Seidl (“Seidl”), which conducts business in Hawaii.

3. Igra and Seidl were resident in the State of Hawaii at the formation of the Partnership and have been for all relevant times thereafter.

4. On information and belief, Defendant Oculus VR, LLC (“Oculus”) is a Delaware corporation with its principal place of business in Menlo Park, California. On information and belief, Oculus is the corporate successor to Oculus VR, Inc. and Oculus LLC, a California limited liability company.

5. On information and belief, Defendant Palmer Luckey (“Luckey”), a founder of Oculus, is an individual who resides in Palo Alto, California, and who may be served with process at his place of employment, Oculus (together with Luckey, “Defendants”).

JURISDICTION AND VENUE

6. The Court has jurisdiction in this Action pursuant to 28 U.S.C. § 1332 because there is diversity of citizenship amongst the parties to this action, and the amount in controversy, without interest and costs, exceeds the sum or value specified by 28 U.S.C. § 1332.

7. Venue is proper in this District because a substantial part of the events giving rise to the claims occurred in this District, Oculus VR, LLC’s principal place of business is within the District, and the Defendants are otherwise subject to personal jurisdiction in the District pursuant to 28 U.S.C. § 1391(b), (c).

INTRADISTRICT ASSIGNMENT

8. Pursuant to Civil L.R. 3-5(b) and Civil L.R. 3-2(c)-(d), there is a basis for assigning this civil action to the San Francisco Division or Oakland Division, as a substantial part of the events giving rise to the claims occurred in San Mateo County, and Oculus VR, LLC’s principal place of business is located in San Mateo County.

BACKGROUND

1
2 9. In 2010, Igra and Seidl began their partnership with the aim of
3 developing immersive 3D technology, including cameras and head mounted
4 displays.

5 10. In particular, Igra and Seidl sought to develop a head mounted display
6 with, among other things, the following attributes: (1) immersive stereoscopic 3D
7 rendering, (2) an ultra-wide field of view such that the user could not see the edges
8 of the screen, (3) head tracking with low latency, and (4) a price point attractive to
9 the consumer mass market.

10 11. As of late 2010, on information and belief, no head mounted display on
11 the market had each of these characteristics. As a result, Igra and Seidl sought to
12 develop a prototype. In that regard, in December 2010, Seidl contacted Luckey in
13 connection with developing head mounted displays and began an exchange of
14 information about TRT’s project with a goal of building a head mounted display that
15 had each of these characteristics.

16 12. During 2010 and 2011, Seidl and Luckey exchanged dozens of emails
17 relating to the development of the foregoing head mounted display. In those
18 discussions, Seidl disclosed, among other things, the four primary characteristics
19 that were crucial to TRT’s head mounted display that Luckey was supposed to build.

20 13. On May 27, 2011, Igra and Seidl filed a patent application, entitled
21 “System and method for creating a navigable, three-dimensional virtual reality
22 environment having ultra-wide field of view.” That application later issued as
23 United States Patent No. 9,007,430.

24 14. In April 2011, Seidl requested that Luckey build a prototype to Seidl’s
25 specifications with parts paid for by the Partnership. Igra and Seidl agreed that the
26 Partnership would have exclusive rights to that prototype. In that regard, Seidl
27 explained to Luckey that with the Partnership’s initial payment to Luckey, he
28 expected exclusive rights to the design. Seidl emailed Luckey to confirm this

1 understanding on April 8, 2011 stating, among other things: “Just so we are on the
2 same page. With the initial payment to you I would like exclusive rights to your
3 design unless we decide not to use it. I need to cover myself if we pay for
4 development and then end up paying for a competitor.”

5 15. Luckey agreed that same day via e-mail: “Yes, we are on the same
6 page here. Once your patent hits pending, I am sure we can put together a contract
7 of some sort to finalize it all.”

8 16. Thereafter, in reliance on Luckey’s promises, on April 11, 2011, Ron
9 Igra transferred via PayPal a payment of \$798.00 to Luckey. The payment was used
10 to purchase parts for the TRT prototype. On information and belief, Luckey
11 understood as of at least this date that Igra was Seidl’s partner in connection with
12 development of the head mounted display and the prototype work that Luckey
13 performed.

14 17. At all relevant times, Luckey understood that the information used by
15 him concerning, among other things, all details, drawings, and parts suppliers for the
16 head mounted displays being built by Luckey for TRT was to be kept confidential
17 and that TRT expected the information to remain confidential.

18 18. To that end, on June 16, 2011, Seidl, on behalf of TRT, presented
19 Luckey with a written “Nondisclosure, exclusivity and payments agreement (the
20 “Agreement”). Luckey executed the Agreement on August 1, 2011. On
21 information and belief, two witnesses also executed the Agreement at Luckey’s
22 direction: Tom Allan and Jeff Bacon. A true and correct copy of the Agreement is
23 attached hereto as Exhibit A.

24 19. Pursuant to the terms of the Agreement, Luckey agreed, among other
25 things, to maintain confidential information he received in the strictest confidence
26 and not to use confidential information received for his own benefit. Furthermore,
27 Luckey agreed: “The Receiving party [Luckey] shall keep all details including
28 drawings and part suppliers of the Head Mounted Display confidential and shall not

1 aid any other person or entity in the design of a Head Mounted Display other than
2 the disclosing party.”

3 20. On August 23, 2011, Luckey shipped a Head Mounted Display to Seidl
4 pursuant to the Agreement. The Head Mounted Display was later returned to
5 Luckey for further improvement. That Head Mounted Display was never returned
6 to the Partnership.

7 21. Throughout the latter half of 2011 and into 2012, TRT provided
8 confidential feedback and information to Luckey in order to improve the design of
9 the Head Mounted Display.

10 22. Despite his contractual obligations, and without informing Seidl or the
11 Partnership, on information and belief, Luckey did not keep all details concerning
12 the Head Mounted Display confidential. Furthermore, Luckey passed off the Head
13 Mounted Display as his own and set off to design and commercialize the Head
14 Mounted Display for himself and Oculus rather than the Partnership. On
15 information and belief, Luckey called the Partnership’s Head Mounted Display the
16 Oculus Rift.

17 23. On or about April 15, 2012, without informing the Partnership, Luckey
18 registered the domain name oculusvr.com.

19 24. Without informing the Partnership, on or about April 15, 2012, on
20 information and belief, Luckey made his first post on oculusvr.com, claiming,
21 among other things, that:

22 The ‘RIFT’ page contains information on the first piece of hardware I
23 hope to bring to market through Oculus, the RIFT. In a nutshell: A
24 wide field of view, highly immersive stereoscopic head mounted
25 display at a price I can afford. After a quick glance at my bank
26 account, I am sure that if I can afford it, you can too! (\$500 is the
27 target price).
28

1 25. On April 15, 2012, Luckey also posted on the Meant to Be Seen 3D
2 (“MTBS3D”) online message board concerning his plan to pursue a Kickstarter
3 campaign in June 2012, during the term of the Agreement, for the Rift:

4 Oculus “Rift” : An open-source HMD for Kickstarter. Hey guys, I am
5 making great progress on my HMD kit! All of the hardest stuff
6 (Optics, display panels, and interface hardware is done, right now I am
7 working on how it actually fits together, and figuring out the best way
8 to make a head mount. It is going to be out of laser cut sheets of plastic
9 that slide together and fasten with nuts and bolts. . . . The goal is to
start a Kickstarter project on June 1st that will end on July 1st, shipping
afterwards as soon as possible. . . .

10 26. On information and belief, as a result of these posts and others, John
11 Carmack (“Carmack”), a ZeniMax employee and videogame developer, discovered
12 the Rift. In violation of the Agreement, Luckey provided the Rift to Carmack on or
13 about May 17, 2012.

14 27. On May 17, 2012, Carmack posted on the MTBS3D message board
15 about his experience with the Rift:

16 I am going to be giving several demos in the next month, and Palmer
17 graciously loaned me one of his test HMDs to go with the other things I
18 have to show. Here are my impressions after a day of working with it:

19 . . . I measured the horizontal field of view as a bit under 90 degrees
20 per eye (full binocular overlap), but when you first look through the
21 lenses you clearly feel the edge of the screen on the sides. The vertical
22 field of view is plenty, and you really have to push into the lenses to
catch a glimpse of the screen edge. . . .

23 With everything dialed in, the immersion level is so good that I can
24 give myself a type of simulator sickness that I’m not used to seeing . . .

25
26 Bottom line:

27 After dialing everything in, this is by far the most immersive HMD of
28 the five I have here. If Palmer comes close to his price target, it will

1 also be the cheapest. I will be including full support for this in the next
2 new PC title we release.

3 28. Carmack tweeted about the Rift on that same day. “This is a lot cooler
4 than it looks – Palmer Luckey’s 90+ FOV HMD, soon to be available as a cheap
5 kit.” A true and correct copy of this tweet is attached as Exhibit B.

6 29. On information and belief, on May 24, 2012, Luckey signed a Non-
7 disclosure Agreement with Carmack’s employer ZeniMax to allow further
8 discussions between Luckey, Carmack, and ZeniMax about the Rift.

9 30. On information and belief, during the June 5-7, 2012 Electronic
10 Entertainment Expo (“E3”) held in Los Angeles, California, Carmack used the Rift
11 to showcase a specially configured version of ZeniMax’s videogame Doom 3. On
12 information and belief, the Rift was awarded the E3 Game Critic Award for “Best
13 Hardware/Peripheral.”

14 31. On June 12, 2012, during the term of the Agreement, Luckey formed
15 Oculus LLC.

16 32. On information and belief, by late June 2012, Luckey, Brendan Iribe
17 (“Iribe”), Nate Mitchell (“Mitchell”), and Michael Antonov (“Antonov”) agreed to
18 form a company to commercialize the Rift.

19 33. At no time prior to July 1, 2012, did Luckey inform Seidl or the
20 Partnership that he had had discussions with Carmack, ZeniMax, Iribe, Mitchell, or
21 Antonov concerning the Rift.

22 34. In September 2012, Seidl wrote to Luckey claiming that Luckey was in
23 breach of the parties’ Agreement. In response, on September 7, 2012, Luckey
24 acknowledged his obligations under the parties’ Agreement but denied that he was
25 in breach claiming, among other things:

26 I should not be in breach of contract. I kept all the details (schematics, parts
27 lists, etc.) of my HMD designs to myself until mid-July, which is also when I
28 filed my LLC. The exclusivity only lasted until July 1st, I was free to design
something for myself after that exclusivity ended.

1
2 35. On information and belief, Luckey’s Kickstarter campaign raised \$2.4
3 million. Subsequently, Oculus raised nearly \$100 million in venture financing. In
4 March 2014, Facebook announced that it would acquire Oculus for more than \$2
5 billion.

6 **CLAIMS FOR RELIEF**
7 **FIRST CAUSE OF ACTION**
8 **(Breach of Contract)**
9 **(As Against Luckey)**

10 36. TRT realleges and reincorporates by reference the allegations set forth
11 in paragraphs 1 through 35.

12 37. Under the terms of the Agreement, Luckey agreed, among other things,
13 to the following: “The Receiving party [Luckey] shall keep all details including
14 drawings and part suppliers of the Head Mounted Display confidential and shall not
15 aid any other person or entity in the design of a Head Mounted Display other than
16 the disclosing party.”

17 38. Luckey breached this provision of the Agreement by, among other
18 things: First, Luckey did not keep all details including drawing and part suppliers of
19 the single Head Mounted Display confidential. To the contrary, Luckey disclosed
20 information about the Head Mounted Display publicly on the oculusvr.com Web site
21 and on the MTBS3D message boards, and also to third parties including Carmack.
22 Second, Luckey aided himself and his entity, Oculus, as well as others including at
23 least Carmack, Iribe, Mitchell, and Antonov, in the design of the Head Mounted
24 Display for his own benefit.

25 39. TRT performed all conditions, covenants, and promises required to be
26 performed on its part.

27 40. As a result of Luckey’s contractual breach, TRT has been injured in an
28 amount to be determined.

1 41. TRT will suffer irreparable injury by reason of the acts, practices, and
2 conduct of Luckey alleged above until and unless the Court enjoins such acts,
3 practices, and conduct.

4 **SECOND CAUSE OF ACTION**

5 **(Breach of the Duty of Good Faith and Fair Dealing)**

6 **(As Against Luckey)**

7 42. TRT realleges and reincorporates by reference the allegations set forth
8 in paragraphs 1 through 41.

9 43. In addition to the breach of contract set forth above, Luckey has
10 breached the duty of good faith and fair dealing inherent in every contract through
11 his actions, including frustrating the purpose of the Agreement by falsely promising,
12 among other things, (1) to keep all details including drawings and part suppliers of
13 the Head Mounted Display confidential, and (2) to refrain from aiding any other
14 person or entity in the design of a Head Mounted Display other than the Partnership.

15 44. As a result of Luckey's breach of the covenant of good faith and fair
16 dealing, TRT has been injured in an amount to be determined.

17
18 **THIRD CAUSE OF ACTION**

19 **(Conversion)**

20 **(As Against All Defendants)**

21 45. TRT realleges and reincorporates by reference the allegations set forth
22 in paragraphs 1 through 44.

23 46. At various times throughout 2012 and after, the Defendants knowingly
24 converted to the Defendants' own use tangible property owned by TRT. The
25 property converted consists, at a minimum, of at least one prototype virtual reality
26 Head Mounted Display (and associated components and materials) built for and in
27 conjunction with TRT.
28

1 47. Following conversion of TRT's property, Defendants have represented
2 the property to be theirs without credit or compensation being provided to TRT.

3 48. Defendants have monetized the converted assets without TRT's
4 consent resulting in damages to TRT in an amount to be determined.

5 49. Defendants are jointly and severally liable for the wrongful conduct set
6 forth herein because they aided and abetted each other and/or conspired to commit
7 such wrongful conduct.

8 50. The conduct by Defendants was fraudulent, oppressive, and malicious,
9 and as such constitutes the basis for the award of punitive damages pursuant to
10 California Civil Code § 3294.

11 **FOURTH CAUSE OF ACTION**

12 **(Constructive Fraud)**

13 **(As Against All Defendants)**

14 51. TRT realleges and reincorporates by reference the allegations set forth
15 in paragraphs 1 through 50.

16 52. Because of their contractual and personal relationship as evidenced by
17 the parties' Agreement, TRT put its trust in Luckey.

18 53. Luckey, assisted by those acting in concert with Luckey including
19 Oculus, breached his duties to TRT, by misleading TRT and its partners about his
20 intent to perform his duties by failing to disclose that he lacked such intent. As a
21 result of such omissions, he gained an advantage over TRT.

22 54. In particular, Luckey had no intention of refraining from aiding any
23 other person or entity in the design of a Head Mounted Display other than the
24 Partnership. Despite having no such intention, as evidenced by, among other things,
25 (1) creating a Web site – oculusvr.com -- in April 2012, (2) providing a Head
26 Mounted Display to Carmack in May 2012, (3) signing an NDA with ZeniMax
27 concerning the Head Mounted Display in May 2012, (4) permitting Carmack to
28 display the Head Mounted Display at the E3 convention in Los Angeles in June

1 2012, and (5) forming Oculus LLC in June 2012, Luckey failed to disclose such
2 lack of intention to the Partnership.

3 55. Oculus substantially assisted Luckey in his breach of duty by, during
4 the term of Luckey's Agreement with TRT, providing the corporate form necessary
5 for Luckey to design and monetize TRT's Head Mounted Display.

6 56. Had Luckey disclosed his intention to breach his duty, TRT would have
7 acted differently. It would not have placed its trust in Luckey and would have
8 pursued its desire to develop head mounted display technology with someone else.

9 57. As a result of Defendants' intentional actions, TRT was damaged, and
10 Luckey was unjustly enriched with the proceeds of his wrongdoing. In addition to
11 other damages as yet incapable of precise determination, TRT was denied the
12 opportunity to develop head mounted display technology, which was its goal in
13 working with Luckey, and Luckey was unjustly enriched because of his
14 wrongdoing.

15 58. Defendants are jointly and severally liable for the wrongful conduct set
16 forth herein because they aided and abetted each other and/or conspired to commit
17 such wrongful conduct.

18 59. The conduct by Defendants was fraudulent, oppressive, and malicious,
19 and as such constitutes the basis for the award of punitive damages pursuant to
20 California Civil Code § 3294.

21 **FIFTH CAUSE OF ACTION**

22 **(Unfair Competition in Violation of California Business & Professions Code**

23 **Section 17200, *et seq.*)**

24 **(As Against All Defendants)**

25 60. TRT realleges and reincorporates by reference the allegations set forth
26 in paragraphs 1 through 59.

27 61. Defendants' acts, including building and monetizing TRT's Head
28 Mounted Display and passing it off as their own original product constitutes an

1 unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue
2 or misleading advertising, in violation of California Business and Professions Code
3 Section 17200, *et seq.*

4 62. Defendants' conduct was willful, and TRT has been and is likely to be
5 damaged by these acts.

6 **SIXTH CAUSE OF ACTION**
7 **(Common Law Unfair Competition)**
8 **(As Against All Defendants)**

9 63. TRT realleges and reincorporates by reference the allegations set forth
10 in paragraphs 1 through 62.

11 64. Defendants' acts, including building and monetizing TRT's Head
12 Mounted Display and passing it off as their own original product, constitutes unfair
13 competition with TRT in violation of TRT's rights under the common law of the
14 State of California.

15 65. Defendants' willful acts have unjustly enriched Defendants and
16 violated TRT's rights.

17 66. The conduct by Defendants was fraudulent, oppressive, and malicious,
18 and as such constitutes the basis for the award of punitive damages pursuant to
19 California Civil Code § 3294.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of
22 them, as follows:

- 23 A. For compensatory damages;
24 B. For disgorgement of any proceeds obtained by wrongful act;
25 C. For constructive trust;
26 D. For an accounting;
27 E. For interest to the extent permitted by law;
28 F. For an award of exemplary and punitive damages;

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- G. For injunctive relief; and
- G. For such other and further relief as the Court may deem proper.

Dated: August 31, 2015

Respectfully submitted,

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

By: */s/ Robert W. Stone*

Robert W. Stone
Robert P. Feldman
Brian Cannon

Attorneys for Plaintiff TRT

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DEMAND FOR JURY TRIAL

Plaintiff Total Recall Technologies hereby demands a jury trial as provided by Rule 38 of the Federal Rules of Civil Procedure.

Dated: August 31, 2015

Respectfully submitted,
QUINN EMANUEL URQUHART &
SULLIVAN LLP

By: /s/ Robert W. Stone
Robert W. Stone
Robert P. Feldman
Brian Cannon

EXHIBIT A

Nondisclosure, exclusivity and payments agreement

This nondisclosure, exclusivity and payments agreement (the "Agreement") is entered into by and between Thomas Seidl with its principal offices at Maui USA, ("Disclosing Party") and Palmer Luckey, located at Lea's Beach ("Receiving Party") for the purpose of preventing the unauthorized disclosure of Confidential Information as defined below. The parties agree to enter into a confidential relationship with respect to the disclosure of certain proprietary and confidential information ("Confidential Information").

1. Definition of Confidential Information. For purposes of this Agreement, "Confidential Information" shall include all information or material that has or could have commercial value or other utility in the business in which Disclosing Party is engaged. If Confidential Information is in written form, the Disclosing Party shall label or stamp the materials with the word "Confidential" or some similar warning. If Confidential Information is transmitted orally, the Disclosing Party shall promptly provide a writing indicating that such oral communication constituted Confidential Information.

2. Exclusions from Confidential Information. Receiving Party's obligations under this Agreement do not extend to information that is: (a) publicly known at the time of disclosure or subsequently becomes publicly known through no fault of the Receiving Party; (b) discovered or created by the Receiving Party before disclosure by Disclosing Party; (c) learned by the Receiving Party through legitimate means other than from the Disclosing Party or Disclosing Party's representatives; or (d) is disclosed by Receiving Party with Disclosing Party's prior written approval.

3. Obligations of Receiving Party. Receiving Party shall hold and maintain the Confidential Information in strictest confidence for the sole and exclusive benefit of the Disclosing Party. Receiving Party shall carefully restrict access to Confidential Information to employees, contractors and third parties as is reasonably required and shall require those persons to sign nondisclosure restrictions at least as protective as those in this Agreement. Receiving Party shall not, without prior written approval of Disclosing Party, use for Receiving Party's own benefit, publish, copy, or otherwise disclose to others, or permit the use by others for their benefit or to the detriment of Disclosing Party, any Confidential Information. Receiving Party shall return to Disclosing Party any and all records, notes, and other written, printed, or tangible materials in its possession pertaining to Confidential Information immediately if Disclosing Party requests it in writing.

4. Time Periods. The nondisclosure provisions of this Agreement shall survive the termination of this Agreement and Receiving Party's duty to hold Confidential Information in confidence shall remain in effect until the Confidential Information no longer qualifies as a trade secret or until Disclosing Party sends Receiving Party written notice releasing Receiving Party from this Agreement, whichever occurs first.

5. Relationships. Nothing contained in this Agreement shall be deemed to constitute either party a partner, joint venturer or employee of the other party for any purpose.

6. Severability. If a court finds any provision of this Agreement invalid or unenforceable, the remainder of this Agreement shall be interpreted so as best to effect the intent of the parties.

7. Integration. This Agreement expresses the complete understanding of the parties with respect to the subject matter and supersedes all prior proposals, agreements, representations and understandings. This Agreement may not be amended except in a writing signed by both parties.

8. Waiver. The failure to exercise any right provided in this Agreement shall not be a waiver of prior or subsequent rights.

9. Exclusivity. The Receiving party shall keep all details including drawings and part suppliers of the Head Mounted Display confidential and shall not aid any other person or entity in the design of a Head Mounted Display other than the disclosing party. Unless within a twelve month period from 1st July 2011 the receiving party has not received a minimum payment in royalties of 10,000 US dollars by the disclosing party. The exclusivity shall remain in place for a period of 10 years providing a minimum of 10,000 US dollars is paid from the disclosing party to the receiving party per annum.

10. Payments. A royalty of 2.5% shall be paid of the net profit made by the disclosing party from sales of the head mounted display to the receiving party..

This Agreement and each party's obligations shall be binding on the representatives, assigns and successors of such party. Each party has signed this Agreement through its authorized representative.


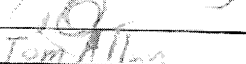
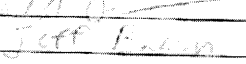
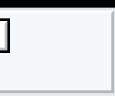
	_____	(Signature)
Palmer Luckey	(Typed or Printed Name) Date: 8/1/11	_____
	_____	(Signature)
Tom Allan	(Typed or Printed Name) Date: 8/1/11	_____
	_____	(Signature)
Jeff Babin	(Typed or Printed Name) Date: 8/1/11	_____
_____	(Signature)	_____
_____	(Typed or Printed Name) Date: _____	_____

EXHIBIT B



John Carmack
@ID_AA_Carmack

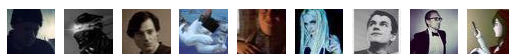


This is a lot cooler than it looks -- Palmer Luckey's 90+ FOV HMD, soon to be available as a cheap kit.

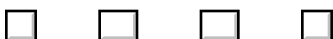


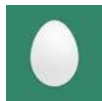
RETWEETS
49

FAVORITES
48



7:52 AM - 17 May 2012





moneyman10k @moneyman10k · 1 Aug 2012

@ID_AA_Carmack @palmerluckey seems to me like every HMD has been disposable. how about a standard platform with upgradeable panel?



Victor Fabiano @MobsterSquirrel · 7 Jul 2014

@ID_AA_Carmack Some people afraid using this. They say that it can cause side effects. Do you believe that?



Bikergofast @Bikergofast · 9 Jan 2013

@ID_AA_Carmack You use a MX518 too! Cool.



Nondisclosure, exclusivity and payments agreement

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1. Definition of Confidential Information. For purposes of this Agreement, "Confidential Information" shall include all information or material that has or could have commercial value or other utility in the business in which Disclosing Party is engaged. If Confidential Information is in written form, the Disclosing Party shall label or stamp the materials with the word "Confidential" or some similar warning. If Confidential Information is transmitted orally, the Disclosing Party shall promptly provide a writing indicating that such oral communication constituted Confidential Information.
2. Exclusions from Confidential Information. Receiving Party's obligations under this Agreement do not extend to information that is: (a) publicly known at the time of disclosure or subsequently becomes publicly known through no fault of the Receiving Party; (b) discovered or created by the Receiving Party before disclosure by Disclosing Party; (c) learned by the Receiving Party through legitimate means other than from the Disclosing Party or Disclosing Party's representatives; or (d) is disclosed by Receiving Party with Disclosing Party's prior written approval.
3. Obligations of Receiving Party. Receiving Party shall hold and maintain the Confidential Information in strictest confidence for the sole and exclusive benefit of the Disclosing Party. Receiving Party shall carefully restrict access to Confidential Information to employees, contractors and third parties as is reasonably required and shall require those persons to sign nondisclosure restrictions at least as protective as those in this Agreement. Receiving Party shall not, without prior written approval of Disclosing Party, use for Receiving Party's own benefit, publish, copy, or otherwise disclose to others, or permit the use by others for their benefit or to the detriment of Disclosing Party, any Confidential Information. Receiving Party shall return to Disclosing Party any and all records, notes, and other written, printed, or tangible materials in its possession pertaining to Confidential Information immediately if Disclosing Party requests it in writing.
4. Time Periods. The nondisclosure provisions of this Agreement shall survive the termination of this Agreement and Receiving Party's duty to hold Confidential Information in confidence shall remain in effect until the Confidential Information no longer qualifies as a trade secret or until Disclosing Party sends Receiving Party written notice releasing Receiving Party from this Agreement, whichever occurs first.
5. Relationships. Nothing contained in this Agreement shall be deemed to constitute either party a partner, joint venturer or employee of the other party for any purpose.
6. Severability. If a court finds any provision of this Agreement invalid or unenforceable, the remainder of this Agreement shall be interpreted so as best to effect the intent of the parties.



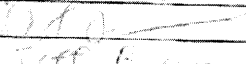
7. Integration. This Agreement expresses the complete understanding of the parties with respect to the subject matter and supersedes all prior proposals, agreements, representations and understandings. This Agreement may not be amended except in a writing signed by both parties.

8. Waiver. The failure to exercise any right provided in this Agreement shall not be a waiver of prior or subsequent rights.

9. Exclusivity. The Receiving party shall keep all details including drawings and part suppliers of the Head Mounted Display confidential and shall not aid any other person or entity in the design of a Head Mounted Display other than the disclosing party. Unless within a twelve month period from 1st July 2011 the receiving party has not received a minimum payment in royalties of 10,000 US dollars by the disclosing party. The exclusivity shall remain in place for a period of 10 years providing a minimum of 10,000 US dollars is paid from the disclosing party to the receiving party per annum.

10. Payments. A royalty of 2.5% shall be paid of the net profit made by the disclosing party from sales of the head mounted display to the receiving party..

This Agreement and each party's obligations shall be binding on the representatives, assigns and successors of such party. Each party has signed this Agreement through its authorized representative.

	_____	(Signature)
Palmer Luckey	(Typed or Printed Name) Date: 8/1/11	_____
	_____	(Signature)
Tom Allan	(Typed or Printed Name) Date: 8/1/11	_____
	_____	(Signature)
Jeff Babin	(Typed or Printed Name) Date: 8/1/11	_____
_____	_____	(Signature)
_____	(Typed or Printed Name) Date: _____	_____

Nondisclosure, exclusivity and payments agreement

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2. Exclusions from Confidential Information. Receiving Party's obligations under this Agreement do not extend to information that is: (a) publicly known at the time of disclosure or subsequently becomes publicly known through no fault of the Receiving Party; (b) discovered or created by the Receiving Party before disclosure by Disclosing Party; (c) learned by the Receiving Party through legitimate means other than from the Disclosing Party or Disclosing Party's representatives; or (d) is disclosed by Receiving Party with Disclosing Party's prior written approval.

3. Obligations of Receiving Party. Receiving Party shall hold and maintain the Confidential Information in strictest confidence for the sole and exclusive benefit of the Disclosing Party. Receiving Party shall carefully restrict access to Confidential Information to employees, contractors and third parties as is reasonably required and shall require those persons to sign nondisclosure restrictions at least as protective as those in this Agreement. Receiving Party shall not, without prior written approval of Disclosing Party, use for Receiving Party's own benefit, publish, copy, or otherwise disclose to others, or permit the use by others for their benefit or to the detriment of Disclosing Party, any Confidential Information. Receiving Party shall return to Disclosing Party any and all records, notes, and other written, printed, or tangible materials in its possession pertaining to Confidential Information immediately if Disclosing Party requests it in writing.

4. Time Periods. The nondisclosure provisions of this Agreement shall survive the termination of this Agreement and Receiving Party's duty to hold Confidential Information in confidence shall remain in effect until the Confidential Information no longer qualifies as a trade secret or until Disclosing Party sends Receiving Party written notice releasing Receiving Party from this Agreement, whichever occurs first.

5. Relationships. Nothing contained in this Agreement shall be deemed to constitute either party a partner, joint venturer or employee of the other party for any purpose.

6. Severability. If a court finds any provision of this Agreement invalid or unenforceable, the remainder of this Agreement shall be interpreted so as best to effect the intent of the parties.



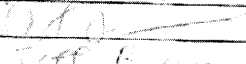
7. Integration. This Agreement expresses the complete understanding of the parties with respect to the subject matter and supersedes all prior proposals, agreements, representations and understandings. This Agreement may not be amended except in a writing signed by both parties.

8. Waiver. The failure to exercise any right provided in this Agreement shall not be a waiver of prior or subsequent rights.

9. Exclusivity. The Receiving party shall keep all details including drawings and part suppliers of the Head Mounted Display confidential and shall not aid any other person or entity in the design of a Head Mounted Display other than the disclosing party. Unless within a twelve month period from 1st July 2011 the receiving party has not received a minimum payment in royalties of 10,000 US dollars by the disclosing party. The exclusivity shall remain in place for a period of 10 years providing a minimum of 10,000 US dollars is paid from the disclosing party to the receiving party per annum.

10. Payments. A royalty of 2.5% shall be paid of the net profit made by the disclosing party from sales of the head mounted display to the receiving party..

This Agreement and each party's obligations shall be binding on the representatives, assigns and successors of such party. Each party has signed this Agreement through its authorized representative.

	_____	(Signature)
Palmer Luckey	(Typed or Printed Name) Date: 8/1/11	_____
	_____	(Signature)
Tom Allan	(Typed or Printed Name) Date: 8/1/11	_____
	_____	(Signature)
Jeff Babin	(Typed or Printed Name) Date: 8/1/11	_____
_____	_____	(Signature)
_____	(Typed or Printed Name) Date: _____	_____