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12 Uber Technologies, Inc.

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SAN FRANCISCO

15 Phunware, Inc.,
16 Plaintiff,
17 vs.
18 Uber Technologies, Inc.,
19 Defendant.

20
21 Uber Technologies, Inc.
22 Cross-Complainant,
23 vs.

24 Phunware, Inc., Alan Knitowski, Dave Stasiuk,
Marty Borotsik, Andrew Cook, and Does 1-100
25 Cross-Defendant and Third
26 Party Defendants.

ELECTRONICALLY
FILED

Superior Court of California,
County of San Francisco

07/12/2019
Clerk of the Court

BY: JUDITH NUNEZ
Deputy Clerk

Case No.: CGC-17-561546

**UBER TECHNOLOGIES, INC. – FIRST
AMENDED CROSS-COMPLAINT FOR:**

1. CIVIL RICO
2. CIVIL RICO CONSPIRACY
3. FRAUD
4. FRAUDULENT CONCEALMENT
5. CONSPIRACY TO COMMIT FRAUD
6. NEGLIGENCE
7. UNFAIR COMPETITION, CAL. BUS. & PROF. CODE §§ 17200, ET SEQ.

JURY TRIAL DEMANDED

**UNREDACTED-LODGED
CONDITIONALLY UNDER SEAL**

1 Defendant and cross-complainant Uber Technologies, Inc. (“Uber”), by and through its
2 attorneys, against plaintiff and cross-defendant Phunware, Inc. (“Phunware”) and third party
3 defendants Alan Knitowski (“Knitowski”), Dave Stasiuk (“Stasiuk”), Marty Borotsik (“Borotsik”)
4 and Andrew Cook (“Cook”) (collectively, “Defendants”) hereby alleges as follows:

5 **A. Summary of the fraud claims.** This lawsuit details a massive, multi-year mobile
6 advertising fraud committed by all defendants. Uber hired Fetch Media, Ltd.
7 (“Fetch”), as its mobile advertising agency. Fetch then hired Phunware as a
8 “network” to service the Uber account. As a network, Phunware was to purchase for
9 placement Uber advertisements (“ads”) on mobile sites. Defendants knew that: (i)
10 Uber was the end customer for Phunware’s services; (ii) Uber would pay only for
11 actual Uber ads viewed by real people, which were clicked on consciously by those
12 people and which resulted in an intended and actual installation of the Uber app; (iii)
13 Uber required full transparency—meaning detailed information as to all ads being run,
14 including the location of where the alleged ads were placed (often known as
15 “Site ID”); (iv) certain sites were blacklisted and/or certain types of advertising were
16 prohibited; and (v) Phunware would not be paid for ads not meeting requirements (ii),
17 (iii) and (iv) above. Additionally, Defendant Knitowski, knew that any rebates or
18 discounts earned by Fetch through Phunware were to be disclosed and rebated back to
19 Uber.

20 **B.** Defendant Knitowski is and was President and CEO of Phunware. Defendants
21 Stasiuk, Borotsik and Cook were employees of Phunware based in Canada.
22 Defendants Knitowski, Stasiuk, Borotsik and Cook are collectively referred to as the
23 “Uber Fraud Team.” Defendants Stasiuk, Borotsik and Cook are collectively referred
24 to the “Canadian Team.” Defendant Knitowski knew of, approved of and directed
25 continuation of the fraud by the Canadian Team. Defendants Stasiuk, Borotsik and
26 Cook implemented many aspects of the fraud. As CEO and a major shareholder of
27 Phunware, Knitowski stood to profit by defrauding Uber and the millions of dollars it
28 was receiving from the Uber account. Defendants Stasiuk, Borotsik and Cook’s

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earnings were highly dependent on the number of installations of the Uber app attributable to clicks on ads purportedly placed by Phunware.

C. In order to defraud Uber and to obtain money and property in the form of payments and commissions, Defendants engaged in a multi-year fraud scheme, which among other laws, violated the federal criminal wire fraud, interstate transportation of funds obtained by fraud, and racketeering statutes, as well as common law fraud. In summary terms, the scheme to defraud and racketeering violations worked as follows:

1. Defendants purportedly purchased ad placements on behalf of Uber, which were in fact not real ads, were illegitimate ads, and/or were prohibited ads, such as “auto-redirects” or ads placed on prohibited sites such as pornographic websites.
2. Defendants had an obligation to identify the location of where the alleged ads were placed (often known as “Site ID”) so that Uber would have visibility into where its advertising money was spent.
3. Defendants instead caused to be written, wrote and ran masking software known as “scripts” to alter the names of the sites or apps where the ads allegedly appeared in order to trick Uber into believing the advertising was legitimate.
4. Defendants caused to be provided and provided so called “transparency” information to Fetch, knowing it would be submitted to Uber, containing false information as to where the ads allegedly appeared.
5. Phunware, at the direction of Defendant Knitowski, entered into undisclosed agreements with Fetch, in the form of undisclosed rebates, in exchange for Fetch providing Phunware with business opportunities. This amounted to a kickback.

1 placed by Phunware, the more commissions he received.

2 6. Andrew Cook was a member of the “Canadian Team” of Phunware. Cook worked
3 on the Uber account and his compensation was significantly commission-based. The more
4 installations of the Uber app that Uber was tricked into believing had resulted from advertising
5 placed by Phunware, the more commissions he received.

6 7. The true names and capacities of third party defendants DOES 1-100 are presently
7 unknown to Uber, and Uber will seek leave of court to amend this cross-complaint to allege such
8 names and capacities as soon as they are ascertained.

9 **JURISDICTION AND VENUE**

10 8. This Court has jurisdiction over this complaint and venue is proper here because,
11 *inter alia*: (1) Uber’s causes of action against Defendants arise, at least in part, because many of the
12 wrongful acts giving rise to Uber’s causes of action took place in the County of San Francisco
13 California; (2) Uber suffered damages here; (3) Defendants purposefully directed their activities
14 described herein at Uber.

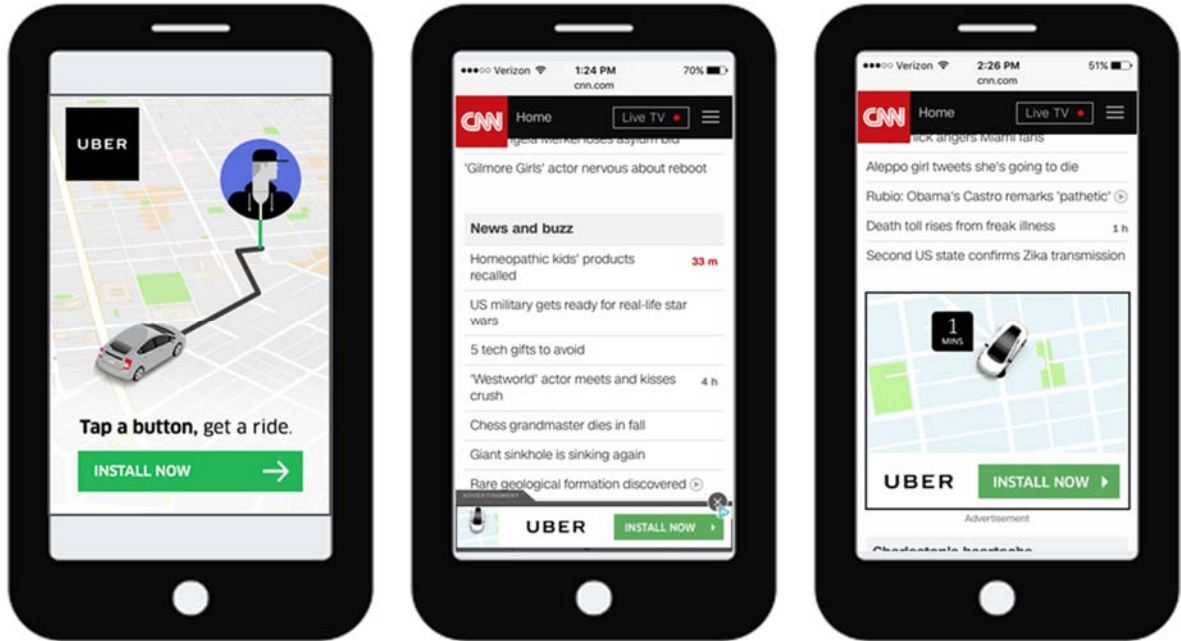
15 **FACTUAL ALLEGATIONS**

16 9. Uber is a San Francisco-based technology company. It has developed a smartphone
17 application (the “Uber App”) that enables users of the application (“riders”) to request ridesharing
18 services from independent, third-party transportation providers (“drivers”).

19 10. Uber gains new riders and drivers in a number of ways, including through “organic”
20 downloads and installations of the Uber App—where a mobile phone user navigates directly to her
21 mobile software provider’s app store or marketplace and downloads the Uber App because of the
22 user’s prior knowledge of Uber’s overall brand and reputation in the marketplace.

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1 11. Uber also relies on mobile advertising to gain new riders and drivers. “Mobile
2 advertising” refers to ads that appear on either mobile-optimized websites or in mobile smartphone
3 applications such as games. When a potential rider or driver clicks on a mobile ad, she is directed to
4 the app store or marketplace where she has the opportunity to download and install the Uber App.¹



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16 *Figure 1 – Examples of Uber Mobile Ads*

17 12. “Placements” are the actual spaces on a mobile-optimized website or mobile
18 smartphone application (called “mobile inventory”) where mobile ads can appear.

19 13. “Publishers” are companies that sell mobile inventory. A publisher can be the actual
20 owner of particular mobile websites or mobile smartphone applications that sell placements, such as
21 the New York Times mobile website or app, or a publisher can have mobile inventory from dozens
22 or even hundreds of different mobile websites and/or apps.

23 14. “Networks” are companies that are often retained by an advertising agency to buy
24 mobile inventory from different sources, including directly from publishers, from other networks
25 that own and operate inventory from multiple publishers, from exchanges that offer mobile inventory
26 for sale or auction, or through a combination of these methods.

27
28 ¹ In the mobile advertising industry, the concept of “installing” an app includes opening it for the first time.

1 15. “Mobile advertising agencies” are companies that specialize in digital ads appearing
2 on mobile smartphones. Mobile advertising agencies assist their clients (i.e., the advertiser) to
3 develop a mobile advertising strategy, buy mobile inventory on behalf of their clients, increase
4 engagement with their clients’ brands, acquire new users for their clients, and related services.

5 16. “Insertion Orders” or “IOs” are forms used by mobile advertising agencies to
6 purchase, on behalf of a client, mobile inventory from networks and/or publishers. IOs typically
7 include limitations on the types of mobile inventory on which a client’s ads may appear (e.g., many
8 clients elect not to advertise on sites with adult content), placement and size requirements for ads,
9 payment arrangements, and other requirements. IOs are intended to ensure appropriate and
10 legitimate mobile inventory is purchased. Mobile advertising agencies are responsible for ensuring
11 that the terms of IOs are followed by the networks and publishers engaged on behalf of a client.

12 **Uber Contracts With Fetch For Mobile Advertising Services**

13 17. Uber engaged Fetch to act as its mobile advertising agency beginning in late 2014
14 through early 2017.

15 18. In its role as Uber’s mobile advertising agency Fetch engaged networks and
16 publishers to encourage new riders to download and use the Uber App. Phunware was one of the
17 networks engaged by Fetch on behalf of Uber. Through Fetch, Uber purchased mobile inventory
18 from Phunware, and, ultimately, publishers (the “Phunware Campaign”). The relationship between
19 Uber and Fetch, and as between Fetch and Phunware is illustrated by the diagram below:
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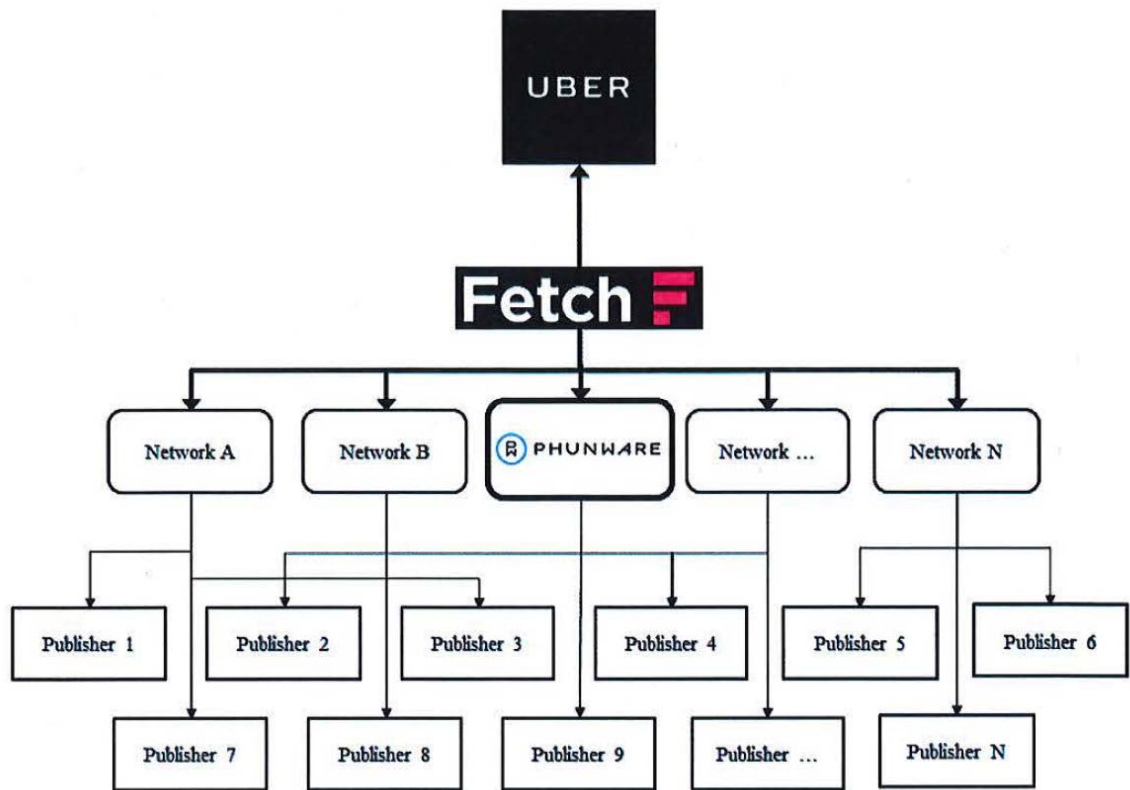


Figure 2 – Uber/Fetch/Phunware Relationship Diagram

Phunware Is Hired To Service Uber

19. Starting in 2015 Fetch recommended that Uber utilize Phunware (then doing business as Tapit) as a network. Phunware held itself out as being able to increase an advertiser’s mobile return on investment by helping to acquire and monetize app users, and promised in its marketing materials to “drive more app downloads to grow your user base and *only pay when your app is downloaded and opened*” (emphasis supplied). On or about March 31, 2015, Fetch entered into the first of several IOs with Phunware to run Uber ads on mobile sites Phunware owned, or were owned by various publishers in the Phunware network. Phunware thereupon commenced acquiring inventory from publishers for placement of Uber ads.

20. This IO, along with all the Fetch/Phunware IOs entered into thereafter to run Uber ads, specified that “Uber requires full transparency via a site list and app name/site name passback,” and that “[f]ailure to comply [with that transparency requirement] will result in campaign pause.”

1 21. Phunware was required to pay for the ads it was placing through publishers.
2 Phunware then billed Fetch for reimbursement. Fetch then passed Phunware’s cost of advertising
3 onto Uber for payment. As a result Uber was ultimately responsible for the payments flowing to
4 Phunware. Again, Phunware was not entitled to compensation unless it placed real ads which were
5 viewed by real humans (not “bots” or automated “click farms”) and caused conscious downloads of
6 the Uber App.

7 22. Beginning in December 2015, Fetch also agreed to “pass back any volume discounts
8 received from media owners [i.e., networks and publishers] as a directly attributable result of Uber’s
9 media bookings . . . includ[ing] the equitable share of any volume rebates, commissions, or discounts
10 received from media owners as a result of [Uber’s] proportional contribution to [Fetch’s] overall
11 volume spend with its media owners.” Defendant Knitowski was aware of this.

12 23. Because Uber was compensating based on actual downloads, it was important for it
13 to understand actual results. In order to satisfy Uber beginning in 2015, Fetch began to track new
14 metrics using TUNE², such as total clicks compared to clicks per unique visitor, which it believed
15 would assist in fraud detection and help ensure more accurate click attribution. The TUNE metrics
16 were reported to Uber.

17 24. If Phunware ever failed to perform as required, or was discovered to have been
18 committing a fraud on Uber, Uber could terminate the relationship at any time. Concealment of the
19 ongoing fraud was a critical component to avoid cancellation and to keep millions of dollars flowing
20 from Uber to Phunware.

21 25. Between 2016 and the first quarter of 2017, Uber paid Phunware approximately \$17
22 million.

23 **Tracking And Performance Of Phunware**

24 26. As stated, Uber pays only for legitimate clicks by real people on actual mobile ads
25 that are attributable to installation of the Uber App, new sign ups, and/or first trips (called the “last
26 click attribution” or “app attribution”). Uber does not pay for ads to simply appear on a page (i.e.,
27 views) or for clicks that do not lead to one of those outcomes. Thus, when Phunware “purchases”

28 ² See Paragraphs 29-30 for description of TUNE.

1 mobile inventory on Uber’s behalf, it is actually purchasing the final outcome—not the number of
2 times an ad is displayed, viewed, or clicked.

3 27. For example, on Monday, potential rider Jane Doe views an Uber ad while browsing
4 a shopping website on her smartphone, but does not click on the ad. On Tuesday, Jane Doe views a
5 second Uber ad displayed in a game app, clicks on the ad and is taken to the app store, but opts not
6 to install the Uber App. On Wednesday, Jane Doe views a third Uber ad, this time displayed on a
7 mobile news website. Jane clicks on the ad and is taken to the app store where she downloads and
8 installs the Uber App. In this hypothetical, Phunware would be entitled to compensation only on the
9 third ad on the mobile news website, as that click was attributable to Jane Doe’s installation of the
10 Uber App. It is thus crucial to know which click, if any, is actually attributable to each of the
11 millions of installations of the Uber App.

12 28. Phunware was supposed to pay publishers for ads that caused a rider to install the
13 Uber App on their smartphone, sign up as an Uber rider, and take a first trip.³

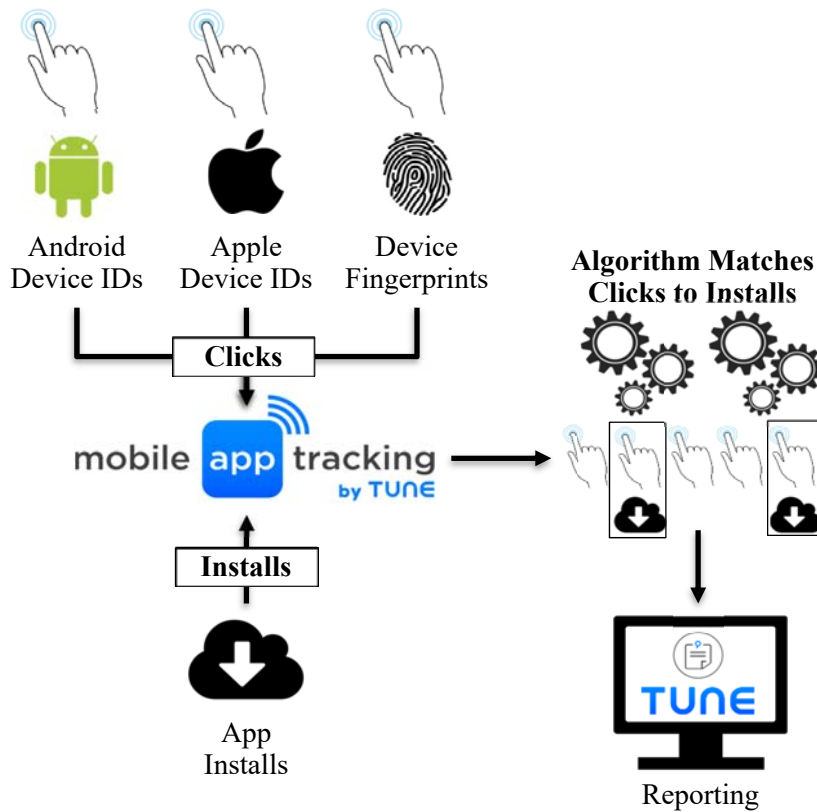
14 29. To track which advertising network, website, or app generated clicks (and ultimately
15 installs, sign-ups and first trips), Uber contracted with a third party mobile analytics and
16 performance marketing platform called TUNE, Inc. (“TUNE”).

17 30. TUNE’s mobile app tracking service collects information about mobile advertising
18 impressions (i.e., views) of, and clicks on, mobile ads. TUNE tracks clicks on ads and then matches
19 the last reported click to a rider’s installation of the Uber App. TUNE then awards credit to the
20 publisher, network, or mobile advertising agency that placed the ad responsible for the last click
21 attribution.

22 31. By virtue of IOs, Uber required Phunware to identify through TUNE all app and
23 mobile websites running Uber ads. Networks and publishers were also required to implement “click
24 tracking,” which was intended to identify the publisher reporting clicks to TUNE that resulted in
25 installations, the particular ad at issue, and the app or website name where the click generated from.
26 Phunware was obligated to report accurate and legitimate information to TUNE.

27 _____
28 ³ For the sake of brevity, Uber generally refers herein only to “installations” or “installs” rather than installation of the
Uber App, new sign ups, and/or first trips.

1 32. The diagram below illustrates TUNE’s mobile app tracking methodology employed
 2 to determine the last click attribution, and therefore, which network or publisher “partner” should be
 3 paid by Uber:



17 *Figure 3 – Attribution for Mobile Advertising*

18 33. In addition to ensuring that networks and publishers report accurate information to
 19 TUNE, Fetch also prepared reports aggregating the information reported by Phunware through
 20 TUNE for Uber to assess the quality of the Phunware Campaign (“transparency reports”).
 21 Transparency reports were intended to be final and true reflections of (i) where Fetch’s media
 22 partners, including Phunware, were running Uber ads, and (ii) the clicks and installations attributable
 23 to those ads. Given the volume of Uber’s mobile advertising, the transparency reports were the only
 24 accessible means for Uber to “see” the apps and mobile websites where its ads appeared and to
 25 assess the impact of particular networks and publishers.

26 34. Beginning in mid-2015, Phunware provided transparency report data to TUNE and
 27 Fetch, which in turn passed the information on to Uber. The transparency reports were required to

1 accurately reflect the Uber App installs driven by Phunware.

2 35. Fetch regularly shared with Uber transparency reports that compiled performance
3 data reported through TUNE. The transparency reports were intended to facilitate the review of
4 publisher validity and performance, and to authentic legitimate clicks and installations, so that Fetch
5 could optimize Uber’s mobile advertising.

6 36. Uber relied on Phunware’s representations via the transparency reports in assessing
7 the Phunware Campaign against the key performance indicators and whether to continue paying
8 Fetch and Phunware.

9 **The Fraud**

10 37. Beginning no later than early 2015 and continuing through at least March of 2017
11 Defendants devised and carried out a scheme to defraud Uber of many millions of dollars. As part
12 of the scheme to defraud, knowing that Uber would only pay for ads running on certain sites, the
13 Defendants caused to be written and wrote software known as “scripts” that falsified the location of
14 the ads.

15 38. As a further part of the scheme to defraud Defendants caused to be carried out and
16 carried out “click flooding.” This caused a higher number of clicks to be reported than were actually
17 occurring.

18 39. As a further part of the scheme to defraud Defendants caused to be used and used
19 prohibited “auto-redirects.”

20 40. As a further part of the scheme to defraud so that they could continue results in
21 payments from Uber, Defendants engaged in steps to conceal their unlawful conduct. These
22 included use of ephemeral messaging apps, avoiding use of emails, and conducting discussions
23 about the subject matter of the fraud orally.

24 41. Defendant Knitowski, in order to conceal the fraud and continue receiving payments
25 from Uber, directed Phunware to pay large sums of money to blacklisted publishers so that they
26 would not expose Phunware’s illicit advertising scheme.

27 **Uber Voices Suspicion About Phunware**

28 42. In mid-May of 2016 Uber began suspecting irregularities with Phunware and it

1 began questioning the transparency of Phunware’s activities. Uber became aware that Uber ads
2 were running on adult sites with auto-redirects to the app store. The Fetch IO with networks and
3 publishers, including with Phunware, precludes both adult sites and auto-redirects. On February 24,
4 2017, an Uber employee wrote to Phunware Former Employee B (defined below) expressing
5 concern about Phunware’s response to its demand for greater visibility, and also made demands on
6 Phunware going forward. Uber wrote “... we began digging into our historical transparency reports
7 and were disappointed with Tapit’s [Phunware’s former name] response and compliance with our
8 request to clean up inventory sources. In order to scale as a direct partner we need partners to have
9 an iron grip and understanding of their inventory and prioritize reducing fraudulent traffic...” On
10 March 27, 2017 a Fetch employee wrote to a Phunware employee saying Uber “...[is] operating a
11 zero tolerance policy for violations of IO [insertion order], re-brokering and blacklist sites.”

12 **Two Phunware Employees Conduct an Internal Investigation**

13 43. In light of Uber’s concerns, two of Phunware’s employees commenced an internal
14 investigation into the legitimacy of Phunware’s servicing of the Uber account. These Phunware
15 employees are identified herein as “Former Employee A” and “Former Employee B.”

16 44. Former Employees A and B were well qualified to conduct the investigation.
17 Former Employee A was employed by Phunware in April 2012 and worked there until September
18 2018. Former Employee A was the Director of Engineering / DevOps Director at Tapit and the
19 Director of Engineering for Advertising / DevOps Administrator Engineer for Phunware. Former
20 Employee B was employed by Phunware in July of 2015 and worked there until October of 2018.
21 Former Employee B was the Executive Vice President / General Manager for Mobile Audience
22 Building, Engagement and Monetization. Among his responsibilities was supervision of Defendants
23 Stasiuk, Borotsik and Cook.

24 45. In conducting their internal investigation, Former Employee A examined Phunware
25 data, software, and servers, and Former Employee B examined Phunware data, emails, and
26 communications.

27 **Former Employee A’s Findings**

28 46. Former Employee A discovered that Phunware was using software known as

1 “scripts” that had been created and used to mask where Phunware was actually spending Uber’s
2 advertising money. The script would falsify the location of where the alleged ads were running by
3 inserting a fake app name randomly from a pre-populated list. On October 2, 2018 Former
4 Employee A reported these findings to Former Employee B, who was conducting the investigation
5 with him.

6 **Former Employee B’s Findings**

7 47. Former Employee B co-conducted the investigation with Former Employee A. He
8 testified under oath on April 12, 2019. During the deposition he described the following findings:

9 (a) “Most of” and the “lions share” of the app installs reported by Phunware were
10 fraudulent;

11 (b) The fraud was carried out in part through a technique known as “click
12 flooding.” Under Click Flooding a higher number of clicks was being reported than were
13 actually occurring.

14 (c) Much of the “traffic” Phunware purchased for Uber was through prohibited
15 auto-redirects, in which a user is automatically directed to the App Store without having
16 made a conscious choice or having clicked on an ad. Phunware knew such auto-redirects
17 were prohibited by Uber.

18 (d) Another technique used to defraud Uber was through “script fraud.” By
19 writing software called “scripts” the names of the actual sites or apps where the alleged ads
20 appeared were falsified.

21 48. Former Employee B also testified that, at the direction of Defendant Knitowski,
22 steps were taken to avoid leaving evidence of the fraud that could be discovered. Defendant
23 Knitowski directed that discussions regarding the subject matter of the fraud should be conducted
24 through ephemeral messaging apps (where messages disappear), through email servers outside of
25 Phunware or in person or by phone. Former Employee B testified under oath that Defendant
26 Knitowski would get upset, and did in fact get upset with Former Employee B, if the ephemeral
27 messaging apps were not used because Defendant Knitowski wanted to maintain plausible
28 deniability when executives had discussions about certain aspects of the fraud.

1 49. Another aspect of the concealment of the fraud was to pay what Former Employee B
2 characterized as “blackmail.” Phunware was either late in paying, or disputed amounts owed to,
3 blacklisted publishers who were running Uber ads placed by Phunware. Certain publishers
4 threatened to expose Phunware’s conduct if they were not paid, and Defendant Knitowski directed
5 they be paid to silence them.

6 50. Defendant Knitowski knew about the fraud and was told it had to stop. Defendant
7 Knitowski and Former Employee B discussed the fraud multiple times. On one such occasion in
8 2016, when Former Employee B informed Defendant Knitowski of his findings and expressed his
9 concerns, Defendant Knitowski responded “it would be professional suicide” to stop. This
10 amounted to a direction by the CEO to continue the fraud and it did continue. Former Employee B
11 testified under oath that it was his impression that Defendant Knitowski did not want to stop the
12 fraud because Defendant Knitowski did not want to part with the significant revenue the fraud
13 brought in for Phunware. On another occasion in 2018, Former Employee B informed Defendant
14 Knitowski of the fraudulent scripts being used to facilitate the fraud. Former Employee B testified
15 under oath that, after Former Employee B informed Defendant Knitowski of the fraudulent scripts,
16 Defendant Knitowski simply “threw his shoulders up” and acted like “it was not a big deal.” Former
17 Employee B also testified that another Phunware executive had conversations with Defendant
18 Knitowski where that executive exposed aspects of the fraud to Defendant Knitowski discovered
19 during that executive’s due diligence of the Canadian Team.

20 51. Defendants Stasiuk, Borotsik and Cook were three members of the so called
21 “Canadian Team” because they were based in Canada. Former Employee B found in his
22 investigation, and so testified under oath, that they implemented the Phunware fraud on Uber by
23 writing the scripts (described above). Through his efforts on committing the fraud on Uber, one
24 member of the Canadian Team was awarded for his role in committing the fraud on Uber with an
25 increase in his base salary of \$110,000 per year to commissions as high as \$50,000 per month above
26 the base. The other members of the Canadian Team also received significant commissions due to
27 the fraud.

28

1 **E-Mails Confirming The Fraud and Corroborating Former Employees A and B**

2 52. Although Defendant Knitowski demanded that communications revealing the fraud
3 not be conducted in a way that led to a discoverable written record, from time to time Phunware
4 employees disregarded these directions.

5 53. On January 22, 2016, Defendant Borotsik wrote an email to an employee at Flymob,
6 one of Phunware’s ad networks working on the Uber Campaign, stating, “...Uber requires real-time
7 SiteNames...so we are just going to *spoof* them with the sites you gave me...” (emphasis supplied.)
8 “Spoof” means “fabricate,” as a Phunware employee—designated as Phunware’s PMQ—testified to
9 under oath.

10 54. On February 8, 2016, Defendant Stasiuk received an email from Phunware
11 Employee 10⁴ stating, “...we can’t keep having to make up site names, because we have sent them
12 all of the sites we have on Tapit already...”

13 55. On May 24, 2016, Defendant Stasiuk received an email from Phunware Employee 1
14 stating, “Got hit up by Fetch saying they found more porn over this past weekend... The site being
15 passed back is Temple Run 2... Looking into this, but could this be that an ad was shown on a porn
16 site and then the site name ‘Temple Run 2’ was passed back instead?”

17 56. On May 27, 2016, Defendants Stasiuk, Borotsik, and Cook received an email from
18 Phunware Employee 2 saying, “I think HasOffers even offers us the ability to change the name
19 displayed on our tracking links... One other thought – if everyone else is doing it, can we look to
20 mask our name in the tracking url?”

21 57. On October 11, 2016, Defendant Cook sent an email to Phunware’s IT Support, and
22 copied Phunware Employee 4 and Defendant Stasiuk. The subject of Cook’s email was “PLEASE
23 HELP – Domain Broken – <http://dailyprizegiveaway.mobi/>”, noting that “this domain
24 (<http://dailyprizegiveaway.mobi/>) is no-longer working.” The domain Cook referenced in his email
25 is one of the fraudulent “scripts” that Former Employees A and B later discovered in their
26 investigation. Phunware’s IT department indicated that the domain was turned off “because it was

27 _____
28 ⁴ The identities of current and former Phunware employees not named as defendants have been masked for purposes of this amended cross-complaint.

1 causing the entire www.phunware.com site to go offline” and IT indicated it “reached out to
2 Advertising, and didn’t see any campaigns associated to this domain since 2014 (when it was first
3 setup).” Defendant Cook urged IT to “get it back up” because he was “using it to host landing
4 pages for some media buys for Uber and other various campaigns,” and insisted that “[w]e will have
5 to come up with a solution here as **there is a lot of revenue attached to this domain.**” (emphasis
6 supplied). One day later, on October 12, 2016, the <http://dailyprizegiveaway.mobi/> domain was
7 back online.

8 58. On October 31, 2016, Defendant Stasiuk received an email from Phunware
9 Employee 3 stating “...[G]uys it’s that time of the month... no not that time... **its time to spin some**
10 **more BS to Uber to keep the lights on**” (emphasis supplied). “BS” means the fraudulent
11 representation to Uber. “Keep the lights on” refers to the millions of dollars Uber was being tricked
12 into paying Phunware as a result of the fraud.

13 59. On February 8, 2017 Former Employee B sent an email to Defendant Knitowski
14 informing him that Uber was demanding through Fetch a high level of data and a demonstration of
15 how Phunware was placing its ads. He warned Defendant Knitowski that the “gravy train” was
16 going to end if Phunware could not supply the data Uber was demanding and that “this is not a
17 veiled threat [from Uber].” Defendant Knitowski responded “If [Fetch Employee 3] [a Fetch
18 employee demanding information on behalf of Uber] and Fetch push this... and allow Uber to push
19 this... then the risk to that [is] when their primary customers get informed of what they are doing,
20 why and how. **Let’s not have mutually assured self-destruction here...** and I agree... zero chance
21 they get the requested demo.” (emphasis supplied). “Mutually assured destruction” meant that the
22 Uber Campaign revenues for both Fetch and Phunware would cease if full disclosure of Phunware’s
23 actual underlying conduct was made.

24 60. On March 13, 2017, Defendant Stasiuk wrote an email to Former Employee B
25 stating, “**The thing is basically all our traffic is on this ‘blacklist’ so we are still at risk...**”

26 61. Former Employee B at times acted as the intermediary between Defendant
27 Knitowski and Fetch, which conveyed Uber’s demands. In an email dated February 13, 2018,
28 Former Employee B informed Fetch employees that “**Alan [Knitowski] is resistant for our team to**

1 share that level of information outside of Phunware.”

2 62. In his deposition Former Employee B explained that Phunware was falsely
3 attributing large portions of ad placement to generic music apps for the purpose of hiding what sites
4 they were really appearing on. Allegations relating to fraudulent conduct regarding generic music
5 apps are also set forth at ¶ 66 *supra*. On February 22, 2017 Former Employee B sent an email to a
6 fellow Phunware employee that “*over 90% of the traffic we buy with our Uber campaigns are from*
7 *those apps...*” (emphasis supplied).

8 63. Despite having been warned that Uber had a zero tolerance policy on fake sites,
9 Phunware still placed 30,000 referral links per month with Propeller Ads, which was a network
10 devoted to placing prohibited auto-redirects. Phunware knew that Propeller was blacklisted by Uber.

11 **Non E-Mail Documentary Evidence Further Establishing The Fraud**

12 64. Other evidence establishes the fraud, such as the “re-direct” pictured below. This re-
13 direct is evidence that Phunware was falsely reporting the clicks (and resulting installs) as having
14 come from ads in an app called “Temple Run.” Investigation has shown that the true placement of
15 the ad was “Nude Vista Free Porn Search Engine,” which automatically redirected visitors to that
16 site to the app store and prompted to download the Uber App, and thus giving Phunware fraudulent
17 attribution credit.

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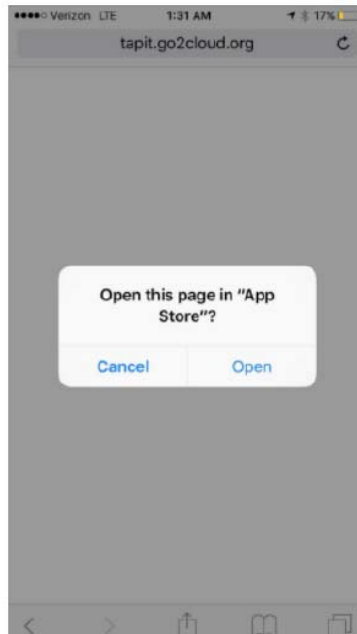


Figure 4 – Example of an Automatic Redirect

65. Below is an excerpt from another transparency report reporting so called generic MP3 Player data in the Site Name field. Former Employee B in his sworn testimony explained that MP3 attribution was used to mask fraudulent clicks from scripts that randomly assigned in an effort to trick Uber into thinking that the placements were on legitimate sites that were not blacklisted.

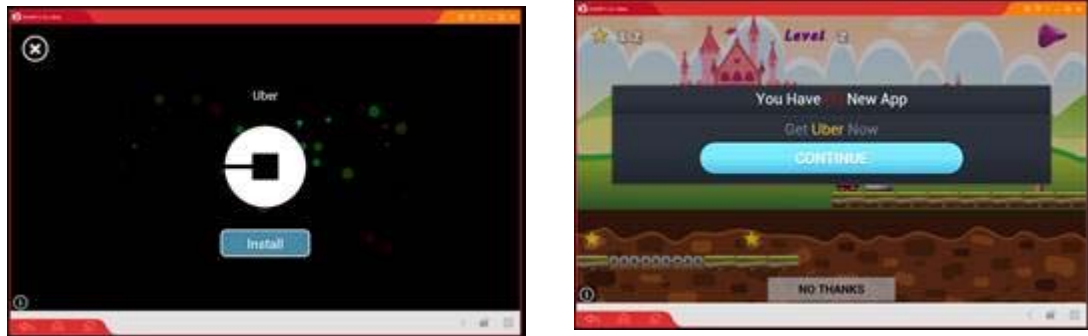
PHUNWARE/TAPIT			
Site Name	Clicks	Installs	CTI
MP3 Player	3,119,043	12,679	0.41%
Mp3_Pro	986,330	5,261	0.53%
MP3 Player 184	542,083	2,571	0.47%
MP3 Player 168	305,175	1,592	0.52%
MP3 Player 165	309,634	1,398	0.45%
MP3 Player 144	159,501	902	0.57%
MP3 Player 83	291,072	885	0.30%
Simple MP3 Music Downloader	197,899	761	0.38%
MP3 Player 57	169,192	635	0.38%
MP3 Player 65	179,929	576	0.32%
MP3 Player 59	116,216	496	0.43%
MP3 Player 36	105,839	425	0.40%
MP3 Player 54	135,353	422	0.31%
MP3 Downloader	111,053	414	0.37%
MP3 Player 166	89,907	403	0.45%

Figure 5 – Excerpt from Transparency Report

66. From approximately January 2016 through March 2017, approximately 60-70

1 transparency reports were transmitted to Uber via email that masked fraudulent clicks and
2 installations.

3 67. In March 2017 one of Phunware’s publishers, Temple Princess Jungle Run, was
4 caught serving unauthorized “creatives” (i.e., unapproved Uber ads) and running auto-redirects to
5 the app store.



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12 *Figure 6 – Examples of Unauthorized Creatives Run By Publisher In Phunware Network*

13 68. Phunware regularly concealed the true source of its inventory and misrepresented the
14 actual placement of Uber ads and attributable installs. Below is an excerpt from TUNE data showing
15 that Phunware hardcoded dozens of app names into TUNE to falsely make it appear as if ads that
16 were actually running on prohibited pornographic sites had actually appeared in innocuous apps such
17 as “Crazy_Tribes.” The information in the “publisher_sub_placement_name” column was sent to
18 Uber in transparency reports; the information in the “referral_url” column was not.

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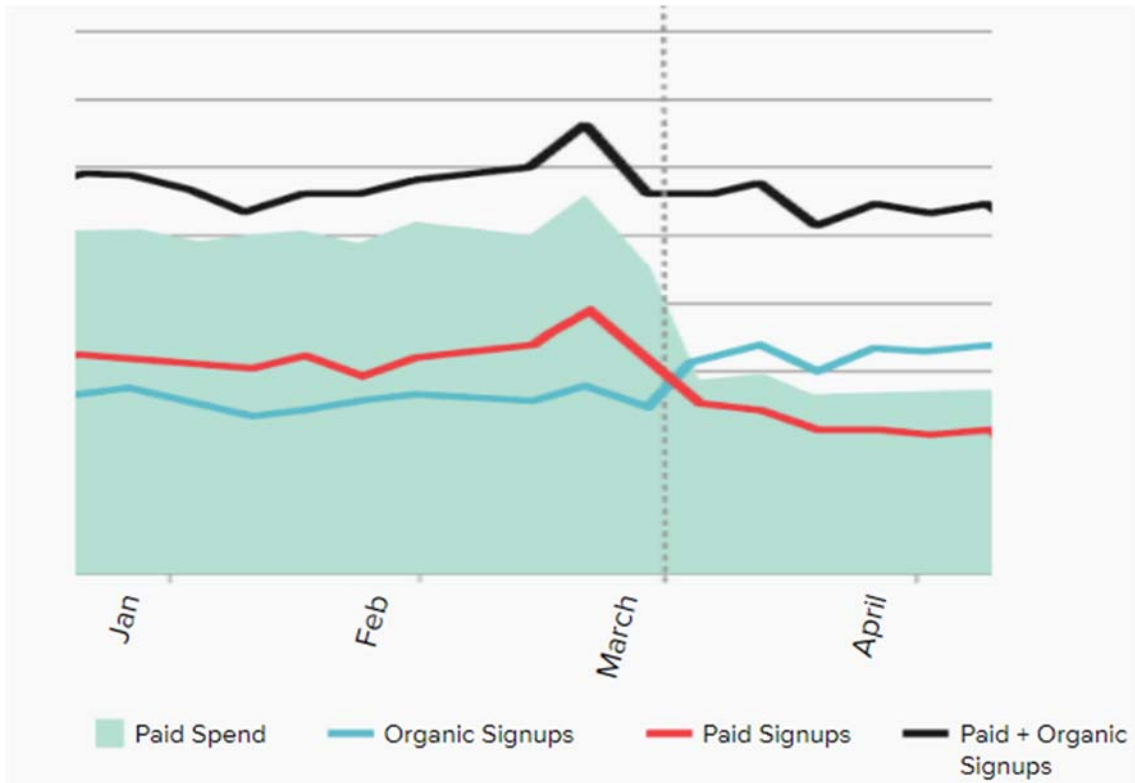
Traffic Source	referral_url	publisher_sub_placement_name
TAPIT / PHUNWARE	http://www.pornhub.com/	Crazy_Tribes
TAPIT / PHUNWARE	http://www.youporn.com/porntags/fu	Temple_Run_2
TAPIT / PHUNWARE	http://www.pornhub.com/	Unroll
TAPIT / PHUNWARE	http://www.youporn.com/porntags/tin	Shame_of_Chef
TAPIT / PHUNWARE	http://www.pornhub.com/	Convert_Units_Free
TAPIT / PHUNWARE	http://www.pornhub.com/video/searc	Crazy_Tribes
TAPIT / PHUNWARE	http://freejavhd.net/video/caribbean	Mp3Blaster
TAPIT / PHUNWARE	http://www.pornhub.com/	Temple_Run_2
TAPIT / PHUNWARE	http://www.pornhub.com/	Sonic_Dash
TAPIT / PHUNWARE	http://www.pornhub.com/view_video.	iBaloot
TAPIT / PHUNWARE	http://pornexpanse.com/zh-cn/gallery	Temple_Run
TAPIT / PHUNWARE	http://pornhdhporn.com/perfect-ass	Temple_Run
TAPIT / PHUNWARE	http://pornexpanse.com/zh-cn/gallery	Temple_Run
TAPIT / PHUNWARE	http://www.pornhub.com/view_video.	Crazy_Tribes
TAPIT / PHUNWARE	http://m.pornsteep.com/top-rated/	Temple_Run
TAPIT / PHUNWARE	http://www.youporn.com/porntags/pr	Beach_Rescue
TAPIT / PHUNWARE	http://www.pornvube.com/	Temple_Run
TAPIT / PHUNWARE	http://pornexpanse.com/zh-cn/gallery	Temple_Run
TAPIT / PHUNWARE	http://www.pornhub.com/video/searc	Whats_That_Logo
TAPIT / PHUNWARE	http://m.pornsteep.com/video/meand	Temple_Run
TAPIT / PHUNWARE	http://www.pornhub.com/video?c=67	Sonic_Dash
TAPIT / PHUNWARE	http://www.pornhub.com/video/searc	Crazy_Tribes
TAPIT / PHUNWARE	http://www.pornhub.com/video?page	Crazy_Tribes
TAPIT / PHUNWARE	http://www.pornhub.com/video/searc	Temple_Run_2
TAPIT / PHUNWARE	http://www.novostrong.com/blonde-fi	Temple_Run
TAPIT / PHUNWARE	http://www.pornhub.com/view_video.	Crazy_Tribes
TAPIT / PHUNWARE	http://www.pornhub.com/video/searc	Crazy_Tribes
TAPIT / PHUNWARE	http://www.pornhub.com/users/wujas	Roverto_Travel_Guide
TAPIT / PHUNWARE	http://www.pornhub.com/video/searc	Crazy_Tribes
TAPIT / PHUNWARE	http://www.pornhub.com/video?o=ht	iBaloot
TAPIT / PHUNWARE	http://www.pornhub.com/view_video.	Aga1cb2
TAPIT / PHUNWARE	http://sexix.net/?s=Noelle+Easton+	646418

Figure 7 – Excerpt from TUNE Report

Other Evidence of The Fraud

69. Just before Uber suspended the entire Fetch campaign (which included the Phunware Campaign) in March 2017, Fetch was spending millions of Uber’s dollars per week across all networks and publishers, including Phunware, on mobile inventory purportedly attributable to hundreds of thousands (even millions) of Uber App installs per week. Had the ads been legitimate, one would expect to see a substantial drop in Uber App installs when mobile advertising was suspended. Instead, when Uber suspended the overall Fetch campaign, there was no material drop in total Uber App installs. Rather, the number of installs supposedly attributable to mobile advertising (i.e., “paid signups”) decreased significantly, while the number of organic installations rose by a nearly equal amount. This indicated that a significant percentage of the installs believed to be attributable to advertising were in fact stolen organic installations. In other words, these installs would have occurred regardless of advertising. Instead, Phunware and the other networks or

publishers engaged by Fetch fraudulently reported the last click attribution to claim attribution credit



and were paid for the installation.

Figure 8 – Graph of Spend and Signups

70. Additionally, Phunware, at the direction of Defendant Knitowski, entered into agreements with Fetch in the form of undisclosed rebates in exchange for Fetch providing Phunware with business opportunities. Defendant Knitowski did not disclose these rebate agreements to Uber, but instead concealed these rebate agreements under the guise of innocuous agreements like a “Consultancy Agreement” or “ForEx [i.e. Foreign Exchange] Agreement.” These undisclosed rebate agreements constituted a form of kickback in that: (i) any rebates belonged to Uber; (ii) Defendants knew they belonged to Uber; (iii) rather than rebating them to Uber, Phunware agreed to have them paid elsewhere, in exchange for which Phunware would receive more network referrals.

71. Defendants knew that a substantial portion of the mobile inventory it sold to Uber’s agent Fetch for use in the Phunware Campaign was nonexistent, non-viewable and/or fraudulent, and that such inventory was not attributable to legitimate riders installing the Uber App.

1 72. Defendants failed to disclose problems with the mobile inventory it sold because it
2 knew that Uber would have pulled its advertising and insisted on remediation for fraudulent
3 advertising. By their omissions, Defendants intended to prevent Uber from discovering the true
4 facts, and from taking actions that would have resulted in losses to Phunware and its downstream
5 publishers.

6 73. As described more fully herein, Defendants actively concealed nonexistent,
7 nonviewable and/or fraudulent inventory and prevented Uber from uncovering the true facts, for
8 example, by hardcoding misleading names into TUNE to deceive Uber into believing installs were
9 driven by ads on approved sites.

10 74. Defendants intended that Uber rely on its omissions and misrepresentations to
11 induce Uber to spend more on mobile advertising.

12 75. Uber reasonably relied on Defendants' omissions, lies, misrepresentations and
13 fraudulent behavior, and, as a result, approved millions of dollars in spend on mobile inventory
14 purchases from Phunware that ran nonexistent, nonviewable and/or fraudulent advertising and as
15 compensation for claimed installations not actually attributable to mobile advertising. Uber's
16 reliance was justified because it was not made aware of the true facts. Had Uber known the true
17 facts, Uber would have paid only for legitimate mobile ads attributable to installations.

18 76. Uber has suffered substantial financial injury by reason of the foregoing.
19 Defendants also have been unjustly enriched by reason of the foregoing, in an amount to be
20 determined according to proof, with pre- and post-judgment interest at the highest rate permitted by
21 law.

22 77. Defendants' representations and omissions were intentional, malicious, oppressive,
23 or fraudulent, and give rise to liability for statutory as well as punitive damages according to proof at
24 trial.

25 78. Had Uber known of the deliberate fraud, it would have immediately ceased
26 payments.

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1 **CAUSES OF ACTION**

2 **First Cause of Action**
3 **Violation of RICO 18 USC § 1962(c)**
4 **(Against Knitowski, Stasiuk, Borotsik, and Cook)**

5 79. Uber incorporates all of the above paragraphs as though fully set forth herein.

6 80. Beginning in at least 2015 and continuing through at least March of 2017,
7 Defendants Knitowski, Stasiuk, Borotsik, and Cook were associated in fact in and with an enterprise
8 which conducted its affairs through a pattern of racketeering activity, and whose conduct and
9 activities affected interstate and foreign commerce.

10 81. The enterprise (the “Uber Fraud Team”) consists of Defendants Knitowski, Stasiuk,
11 Borotsik and Cook. Defendants Knitowski, Stasiuk, Borotsik and Cook agreed to and did conduct
12 the affairs of the Uber Fraud Team enterprise through a pattern of racketeering for the unlawful
13 purpose of defrauding Uber and other victim companies.

14 82. Alternatively, the enterprise is Phunware, and consists of Defendants Knitowski,
15 Stasiuk, Borotsik and Cook. Defendants Knitowski, Stasiuk, Borotsik and Cook agreed to and did
16 conduct the affairs of the Phunware enterprise through a pattern of racketeering for the unlawful
17 purpose of defrauding Uber and other victim companies.

18 83. Defendants Knitowski, Stasiuk, Borotsik and Cook were employed by Phunware.

19 84. Pursuant to and in furtherance of their fraudulent scheme, the Uber Fraud Team
20 and/or Phunware committed multiple related acts which include: acts in violation of: (i) 18 U.S.C. §
21 1343 (wire fraud); and (ii) causing the transportation of money having a value of \$5,000 or more in
22 interstate commerce by means of fraud (18 USC § 2314).

23 85. The predicate acts alleged herein occurred after the effective date of 18 U.S.C. §
24 1961, et. seq. and the last such act occurred within ten years after commission of a prior act of
25 racketeering activity. These racketeering activities include repeated acts of:

26 86. **Wire Fraud – 18 U.S.C. § 1343.** The Uber Fraud Team and/or Phunware devised,
27 and intended to devise, a scheme to defraud and to obtain money and property by means of false and
28 fraudulent pretenses, representations and promises. For the purpose of executing their schemes to
defraud and attempting to do so, the Uber Fraud Team and/or Phunware did transmit and caused to

1 be transmitted by means of wire communications in interstate and foreign commerce.

2 87. Based on the limited information to date available to Uber at this time, there are tens
 3 of thousands of predicate acts committed by the Uber Fraud Team and/or Phunware. Examples
 4 include:

5 88. **Use of Interstate Wire Communications.** Each email below constitutes a
 6 transmission, writing, sign or signal by means of interstate or foreign commerce sent in furtherance
 7 of the scheme to defraud.

Date	Description	From	To
January 22, 2016	Email stating "... Uber requires real-time SiteNames...so we are just going to spoof them with the sites you gave me..."	Marty Borotsik Calgary, Alberta, Canada	Flymob Employee Madrid, Spain
February 8, 2016	Email stating "...we can't keep having to make up site names, because we have sent them all of the sites we have on Tapit already."	Phunware Employee 10 Newport Beach, California	David Stasiuk, Phunware Employee 1, Phunware Employee 5 Newport Beach, California British Columbia, Canada
May 24, 2016	Email from Fetch stating "It's come to our attention that we are still getting a significant amount of redirects from porn sites for the Uber campaign... one of the main concerns we had was with people hard coding site names and it appears this has happened."	Fetch Employee 1 San Francisco, California	Phunware Employee 1, Phunware Employee 2, Phunware Employee 3, Phunware Employee 6, Phunware Employee 7, Phunware Employee 10, Uber Employee 1, Uber Employee 2, Fetch Employee 2 Orange County,

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			California Newport Beach, California London, United Kingdom San Francisco, California
May 24, 2016	Email stating "Got hit up by Fetch saying they found more porn over this past weekend... The site being passed back is Temple Run 2... Looking into this, but could this be that an ad was shown on a porn site and then the site name 'Temple Run 2' was passed back instead?"	Phunware Employee 1 Newport Beach, California	David Stasiuk, Phunware Employee 2, Phunware Employee 3, Phunware Employee 6, Phunware Employee 7, Phunware Employee 8, Phunware Employee 10 London, United Kingdom Los Angeles, California Orange County, California British Columbia, Canada
May 25, 2016	Email stating "Only option we have now is to go hunt links/screenshots from other networks/affiliates and light a big fuck off fire for Uber to put out to take the heat off us."	Phunware Employee 3 Los Angeles, California London, United Kingdom	David Stasiuk, Phunware Employee 7, Phunware Employee 8, Phunware Employee 9 British Columbia, Canada Orange County, California
May 27, 2016	Email stating "I think HasOffers even offers us the ability to	Phunware Employee 2	David Stasiuk, Marty Borotsik,

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	<p>change the name displayed on our tracking links... One other thought – if everyone else is doing it, can we look to mask our name in the tracking url?”</p>	<p>Orange County, California</p>	<p>Andrew Cook, Phunware Employee 1, Phunware Employee 3, Phunware Employee 7, Phunware Employee 8, Phunware Employee 9, Phunware Employee 10</p> <p>Newport Beach, California</p> <p>Orange County, California</p> <p>London, United Kingdom</p> <p>British Columbia, Canada</p> <p>Calgary, Alberta, Canada</p>
<p>October 11, 2016</p>	<p>Email with subject of “PLEASE HELP – Domain Broken – http://dailyprizegiveaway.mobi/”, noting that “this domain (http://dailyprizegiveaway.mobi/) is no-longer working” and urging IT to “get it back up” because he was “using it to host landing pages for some media buys for Uber and other various campaigns,” and insisted that “[w]e will have to come up with a solution here as there is a lot of revenue attached to this domain.”</p>	<p>Andrew Cook</p> <p>British Columbia, Canada</p>	<p>Phunware IT Support, David Stasiuk, Former Employee A, Phunware Employee 4</p> <p>Austin, Texas</p> <p>San Diego, California</p> <p>British Columbia, Canada</p> <p>Bel Air, Maryland</p>
<p>October 31, 2016</p>	<p>Email stating “...time to spin more BS to Uber to keep the lights on...”</p>	<p>Phunware Employee 3</p> <p>Los Angeles, California</p>	<p>David Stasiuk, Phunware Employee 1, Phunware Employee 2,</p>

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		London, United Kingdom	Phunware Employee 7, Phunware Employee 10, Phunware Employee 11, Phunware Employee 12, Phunware Employee 13 Newport Beach, California British Columbia, Canada Austin, Texas
February 8, 2017	“If Steve and Fetch push this ... and allow Uber to push this ... then the risk to them is when their primary customers get informed of what they are doing, why and how. [¶] Let’s not have mutually assured destruction here...”	Alan Knitowski Austin, Texas	Former Employee B, Phunware Employee 14, Phunware Employee 15 Austin, Texas San Diego, California
March 13, 2017	Email stating “The thing is basically all our traffic is on this ‘blacklist’ so we are still at risk...”	David Stasiuk British Columbia, Canada	Former Employee B Austin, Texas

1 2 3 4 5 6 7 8 9 10 11	October 3, 2018	Email stating “I’ve gone ahead and attached an archive of the scripts I discovered. <u>Dailyprizegiveaway.mobi</u> was one of the many domain names we were using to mask that the ads were not Phunware ads. It looks like we had a bunch... Pretty simple, but highly effective. Those clicks could have been coming from anywhere and the advertiser (in this case, Uber) wouldn’t be able to know where they were originating from. I counted 34 different scripts for different advertisers they were doing this with.”	Former Employee A Bel Air, Maryland	Former Employee B, Phunware Employee 16 Austin, Texas London, United Kingdom
12 13 14	January 2016– March 2017	Weekly Transparency Reports containing hundreds of thousands, if not millions, of falsified entries reported by Phunware	Phunware (via Fetch) Austin, Texas	Uber San Francisco, California
15 16	2015–2017	Electronic transmissions to TUNE containing billions of falsified entries	Phunware Austin, Texas	TUNE Seattle, Washington
17 18 19	2015–2017	Invoices for fraudulent attributions	Phunware (via Fetch) Austin, Texas	Uber San Francisco, California

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89. **Additional Wire Transmissions.** Each invoice described in Paragraph 91 were transmitted via means of wire communication.

90. Each fake and fraudulent Uber ad was transmitted via the internet by means of wire communications, in interstate commerce, writings, signals, signs and pictures. Millions of Uber ads were so transmitted throughout the period of the fraud.

91. **Transportation of Funds In Interstate Commerce Obtained By Fraud.** Each entry below describes a payment sent by Uber due to the fraud:

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Client	Invoice Number	Description	Period	Issue Date	Total	Payment Date
UBER TECHNOLOGIES INC	800817	TAPIT MEDIA GROUP	01-DEC-14 to 31-DEC-2014	31-Dec-2014	\$114,266.35	05-Feb-15 (Wire)
UBER TECHNOLOGIES INC	800841	TAPIT MEDIA GROUP	01-JAN-15 to 31-JAN-2015	31-Jan-2015	\$213,852.55	26-Feb-15 (Wire)
UBER TECHNOLOGIES INC	800858	TAPIT MEDIA GROUP	01-FEB-15 to 28-FEB-2015	8-Mar-2015	\$212,863.92	26-Mar-15 (Wire)
UBER TECHNOLOGIES INC	800917	TAPIT MEDIA GROUP	01-MAR-15 to 31-MAR-15	31-Mar-15	\$124,313.41	23-Apr-15 (Wire)
UBER TECHNOLOGIES INC	800958	TAPIT MEDIA GROUP	01-APR-15 to 30-APR-15	30-Apr-15	\$60,752.24	21-May-15 (Wire)
UBER TECHNOLOGIES INC	800982	TAPIT MEDIA GROUP	01-MAY-15 to 31-MAY-15	31-May-15	\$109,524.37	25-Jun-15 (Wire)
UBER TECHNOLOGIES INC	801008	TAPIT MEDIA GROUP	01-JUN-15 to 30-JUN-15	30-Jun-15	\$74,638.33	21-Jul-15 (Wire)
UBER TECHNOLOGIES INC	801030	TAPIT MEDIA GROUP	01-JUL-15 to 31-JUL-15	31-Jul-15	\$142,228.26	03-Sep-15 (Wire)
UBER TECHNOLOGIES INC	801074	TAPIT MEDIA GROUP	01-SEP-15 to 30-SEP-15	30-Sep-15	\$87,008.29	05-Nov-15 (Wire)
UBER TECHNOLOGIES INC	801047	TAPIT MEDIA GROUP	01-AUG-15 to 31-AUG-15	31-Aug-15	\$133,625.05	19-Nov-15 (Wire)
UBER TECHNOLOGIES INC	801123	TAPIT MEDIA GROUP	01-NOV-15 to 30-NOV-15	30-Nov-15	\$192,514.36	29-Dec-15 (Wire)
UBER TECHNOLOGIES INC	801100	TAPIT MEDIA GROUP	01-OCT-15 to 31-OCT-15	31-Oct-15	\$135,009.66	14-Jan-16 (Wire)
UBER TECHNOLOGIES INC	801156	TAPIT MEDIA GROUP	01-DEC-15 to 31-DEC-15	31-Dec-15	\$143,675.31	27-Jan-16 (Wire)
UBER TECHNOLOGIES INC	801187	TAPIT MEDIA GROUP	01-JAN-16 to 31-JAN-16	31-Jan-16	\$144,6866.25	03-Mar-16 (Wire)
UBER TECHNOLOGIES INC	801220	TAPIT MEDIA GROUP	01-FEB-16 to 29-FEB-16	29-Feb-16	\$371,463.27	25-Mar-16 (Wire)
UBER TECHNOLOGIES INC	801249	TAPIT MEDIA GROUP	01-MAR-16 to 31-MAR-16	31-March-16	\$1,593,716.73	02-May-16 (Wire)
UBER TECHNOLOGIES INC	801279	TAPIT MEDIA GROUP	01-APR-16 to 30-APR-2016	30-Apr-16	\$2,249,825.57	25-May-16 (Wire)
UBER TECHNOLOGIES INC	801279	TAPIT MEDIA GROUP	01-APR-16 to 30-APR-2016	30-Apr-16	\$155,057.89	25-May-16 (Wire)

1	UBER TECHNOLOGIES INC	801322	TAPIT MEDIA GROUP	01-MAY-16 to 31-MAY-16	31-May-16	\$2,304,729.47	28-Jun-16 (Wire)
2	UBER TECHNOLOGIES INC	801349	TAPIT MEDIA GROUP	01-JUN-16 to 30-JUN-16	30-Jun-16	\$1,915,598.36	27-Jul-16 (Wire)
3	UBER TECHNOLOGIES INC	801381	TAPIT MEDIA GROUP	01-JUL-16 to 31-JUL-16	31-Jul-16	\$1,092,416.52	01-Sep-16 (Wire)
4	UBER TECHNOLOGIES INC	801434	TAPIT MEDIA GROUP	01-AUG-16 to 31-AUG-16	31-Aug-16	\$752,416.34	27-Sep-16 (Wire)
5	UBER TECHNOLOGIES INC	801481/801480	TAPIT MEDIA GROUP	01-SEP-16 to 30-SEP-16	30-Sep-16	\$506,507.04	03-Nov-16 (Wire)
6	UBER TECHNOLOGIES INC	801514	TAPIT MEDIA GROUP	01-OCT-16 to 31-OCT-16	31-Oct-16	\$391,784.71	15-Dec-16 (Wire)
7	UBER TECHNOLOGIES INC	801583	TAPIT MEDIA GROUP	1-DEC-16 to 31-DEC-16	31-Dec-16	\$601,310.38	03-Feb-17 (Wire)
8	UBER TECHNOLOGIES INC	801542	TAPIT MEDIA GROUP	01-NOV-16 to 30-NOV-16	30-Nov-16	\$366,901.50	16-Feb-17 (Wire)

92. Based upon sworn testimony by Former Employee B, the Uber Fraud Team and/or Phunware also victimized at least three other nationally known companies in a manner similar to Uber. On information and belief, tens of thousands of wire transmission occurred in commission of those frauds.

93. Defendants Knitowski, Stasiuk, Borotsik and Cook each had a role in the racketeering enterprise that was distinct from the Uber Fraud Team and/or Phunware.

94. Uber's business and property were injured as a direct and proximate result of the Uber Fraud Team's and/or Phunware's violations of 18 U.S.C. § 1962(c), including by reason of the predicate acts constituting the pattern of racketeering injury, as alleged with greater particularity in the foregoing paragraphs.

95. As a result of the Uber Fraud Team's and/or Phunware's violations of 18 U.S.C § 1962(c), Uber suffered substantial damages, in an amount to be proved at trial. Pursuant to 18 U.S.C. § 1964(c), Uber is entitled to recover treble its general and special compensatory damages, plus interest, costs and attorney fees incurred by reason of the Uber Fraud Team's and/or Phunware's violations of 18 U.S.C. § 1962(c).

1 Uber's agent Fetch for use in the Phunware Campaign was nonexistent, nonviewable and/or
2 fraudulent, and that such inventory was not attributable to legitimate risers installing the Uber App.

3 106. Defendants failed to disclose problems with the mobile inventory Phunware sold
4 because they knew that Uber would have pulled its advertising and insisted on remediation for
5 fraudulent advertising. By their omissions, Defendants intended to prevent Uber from discovering
6 the true facts, and from taking actions that would have resulted in losses to Phunware and its
7 downstream publishers.

8 107. As described more fully herein, Defendants actively concealed nonexistent,
9 nonviewable and/or fraudulent inventory and prevented Uber from uncovering the true facts, for
10 example, by hardcoding misleading names into TUNE to deceive Uber into believing installs were
11 driven by advertisements on approved sites.

12 108. Defendants intended that Uber rely on the omissions and misrepresentations to induce
13 Uber to spend more on mobile advertising.

14 109. Uber reasonably relied on Defendants' omissions and misrepresentations and, as a
15 result, approved millions of dollars in spend on mobile inventory purchases from Phunware that ran
16 nonexistent, nonviewable and/or fraudulent advertising and as compensation for claimed
17 installations not actually attributable to mobile advertising. Uber's reliance was justified because it
18 was not made aware of the true facts. Had Uber known the true facts, Uber would have paid only for
19 legitimate mobile advertisements attributable to installations.

20 110. Uber has suffered monetary injury and Defendants have been unjustly enriched by
21 reason of the foregoing, in an amount to be determined according to proof, with pre- and post-
22 judgment interest at the highest rate permitted by law.

23 111. Defendants' representations and omissions were intentional, malicious, oppressive, or
24 fraudulent, and give rise to liability for punitive damages according to proof at trial.

25 **Fifth Cause of Action**
26 **Conspiracy to Commit Fraud**
(Against Knitowski, Stasiuk, Borotsik, and Cook)

27 112. Uber incorporates all of the above paragraphs as though fully set forth herein.

28 113. The Uber Fraud Team Members conspired with each other to defraud Uber. The

1 Uber Fraud Team Members were aware that Phunware regularly sold nonexistent, non-viewable
2 and/or fraudulent advertising and sought compensation for claimed installations not actually
3 attributable to mobile advertising.

4 114. Knitowski, Stasiuk, Borotsik, and Cook agreed with each other and intended to
5 defraud Uber.

6 115. As the actual and proximate result of this conspiracy, Uber has suffered monetary
7 damages in an amount to be determined according to proof, with pre- and post-judgment interest at
8 the highest rate permitted by law.

9 **Sixth Cause of Action**
10 **Negligence**
(Against All Defendants)

11 116. Uber incorporates all of the above paragraphs as though fully set forth herein.

12 117. At all relevant times Defendants knew or should have known that Uber's mobile
13 advertising was intended to drive installations of the Uber App and that Uber would pay only for ads
14 actually attributable to installation.

15 118. Defendants had a duty to use such skill, prudence, and diligence as a reasonable ad
16 network and its employees.

17 119. As more fully described above, Defendants breached their duty by engaging in
18 attribution fraud in order to mislead and misrepresent the volume of Uber App installations
19 attributable to mobile advertising and thereby increase the payments purportedly owed by Uber to
20 Phunware.

21 120. As the actual and proximate result of Defendants' breach of its duty, Uber has
22 suffered monetary damages in an amount to be determined according to proof, with pre- and post-
23 judgment interest at the highest rate permitted by law.

24 **Seventh Cause of Action**
25 **Unfair Competition, Cal. Bus. & Prof. Code §§ 17200, et seq.**
(Against All Defendants)

26 121. Uber incorporates all of the above paragraphs as though fully set forth herein.

27 122. Defendants engaged unlawful, unfair and fraudulent business acts and practices.

28 Such acts and practices include, but are not limited to, concealing from Uber the true source of

1 Phunware's inventory.

2 123. Defendants' business acts and practices were unlawful as described above.

3 124. Defendants' business acts and practices were fraudulent in that a reasonable person
4 would likely be deceived by their material misrepresentations and omissions.

5 125. Defendants' business acts and practices were unfair in that the substantial harm
6 suffered by Uber outweighs any justification that they may have had for engaging in those acts and
7 practices.

8 126. Uber has been harmed as a result of Defendants' unlawful, unfair, and fraudulent
9 business acts and practices. Uber is entitled to recover restitution, including without limitation all
10 benefits that Defendants received as a result their unlawful, unfair, and fraudulent business acts and
11 practices; and to injunctive relief restraining Defendants from engaging in further acts of unfair
12 competition.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Cross-Complainant Uber Technologies, Inc. prays for relief as follows:

- 15 1. Judgment in Uber's favor and against Defendants, jointly and severally, on all causes
16 of action alleged herein;
 - 17 2. Treble damages its general and special compensatory damages to Uber's business and
18 property, damages in an amount to be proven further at trial, plus interest, costs and
19 attorney fees incurred by reason of the Uber Fraud Team's and/or Phunware's
20 violations of 18 U.S.C. §§ 1962 (c) and (d).
 - 21 3. For general damages and punitive damages under the California fraud claims.
 - 22 4. For punitive damages;
 - 23 5. For restitution;
 - 24 6. For costs of suit incurred herein;
 - 25 7. For pre- and post-judgment interest;
 - 26 8. For attorneys' fees and costs; and
 - 27 9. For such other and further relief as the Court may deem to be just and proper.
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DEMAND FOR JURY TRIAL

Uber hereby demands trial by jury for all causes of action, claims, or issues in this action that are triable as a matter of right to a jury.

DATED: July 10, 2019

REED SMITH LLP



By: _____
John Bovich
Attorneys for Plaintiff
UBER TECHNOLOGIES, INC.

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PROOF OF SERVICE

Phunware, Inc. v. Uber Technologies, SF Sup. Ct., CGC-17-561546

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is REED SMITH LLP, 101 Second Street, Suite 1800, San Francisco, CA 94105-3659. On July 12, 2019, I served the following document(s) by the method indicated below:

UBER TECHNOLOGIES, INC.’S FIRST AMENDED CROSS-COMPLAINT

- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below. I am readily familiar with the firm’s practice of collection and processing of correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business.
- By electronic transmission via File and ServeXpress to the parties listed below.

Craig A. Hansen Stephen Holmes Gina Huerta HANSEN LAW FIRM P.C. 75 E. Santa Clara St., Suite 1250 San Jose, CA 95113	Telephone: (408) 715.7980 Facsimile: (408) 715.7001 Email: craig@hansenlawfirm.net steve@hansenlawfirm.net gina@hansenlawfirm.net <i>Attorneys for Plaintiff Phunware, Inc.</i>
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 12, 2019, at San Francisco, California.

Deborah Kalahale