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12 Uber Technologies, Inc.

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

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

21
22 Uber Technologies, Inc.,
23 Cross-Complainant,
24 vs.
25 Phunware Inc., a Delaware corporation, Fetch
26 Media, Ltd., a foreign corporation, and DOES 1
27 through 100.
28 Cross-Defendant and
Third Party Defendants.

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
11/13/2017
Clerk of the Court
BY: VANESSA WU
Deputy Clerk

Case No.: CGC-17-561546

**PUBLIC – REDACTS MATERIAL FROM
CONDITIONALLY SEALED RECORD**
California Rule of Court 2.551(b)(3) & (4)

UBER TECHNOLOGIES, INC.'S CROSS-COMPLAINT FOR:

- 1. FRAUD
- 2. FRAUD
- 3. CONSPIRACY
- 4. INTENTIONAL INTERFERENCE WITH CONTRACT
- 5. NEGLIGENCE
- 6. BREACH OF CONTRACT
- 7. BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
- 8. INTENTIONAL BREACH OF FIDUCIARY DUTY

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- 9. CONSTRUCTIVE FRAUD
- 10. NEGLIGENT MISREPRESENTATION
- 11. PROFESSIONAL NEGLIGENCE
- 12. NEGLIGENCE
- 13. UNFAIR COMPETITION, CAL. BUS. & PROF. CODE §§ 17200, ET SEQ.
- 14. UNJUST ENRICHMENT

JURY TRIAL DEMANDED

1 Defendant and Cross-Complainant Uber Technologies, Inc. (“Uber”), by and through its
2 attorneys, and for its Cross-Complaint against Plaintiff and Cross-Defendant Phunware, Inc. and
3 Third Party Defendant Fetch Media, Ltd. (“Fetch”), hereby alleges as follows:

4 **NATURE OF THE ACTION**

5 1. Uber has filed suit against Fetch in the United States District Court for the Northern
6 District of California, Case Number 3:17-cv-05393-EDL, related to injuries Uber suffered from
7 Fetch’s failures to fulfill its duties and obligations as Uber’s mobile advertising agency. Upon
8 information and belief, Fetch contends that networks and publishers, including Phunware, are
9 exclusively responsible for Uber’s damages. Uber accordingly cross-claims here to the extent that
10 Phunware and others may share liability with Fetch, and/or any amounts allegedly owed by Uber to
11 Phunware are offset by Uber’s own damages.

12 **THE PARTIES**

13 2. Uber is a Delaware corporation with its principal place of business in San Francisco,
14 California.

15 3. Fetch is a U.K. mobile advertising agency with offices in London, Manchester, Hong
16 Kong, Berlin, New York, and San Francisco.

17 4. Phunware is a Delaware corporation with its principal place of business in Austin,
18 Texas. Upon information and belief, Phunware formerly was known as “Tapit.”

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

22 **JURISDICTION AND VENUE**

23 6. This Court has jurisdiction over this Cross-Complaint and venue is proper here
24 because, *inter alia*: (1) Uber’s causes of action against Phunware arise, at least in part, out of the
25 same transaction, occurrence, or series of transactions or occurrences as the cause of action asserted
26 in the Complaint filed by Phunware against Uber; (2) Fetch and Uber entered into an Agreement
27 that provided for exclusive jurisdiction and venue in San Francisco, California; (3) Uber’s principal
28

1 plac : of business is in San Francisco, California; (4) many of th : wrongful acts giving rise to Uber’s
2 caus :s of action ook place in this county; and (5) U ber suffered damages here.

3 **FACTUAL AL EGATIONS**

4 7. Uber is a San Francisco-based technology company. It has developed a smartphone
5 application (the ‘Uber App”) that enables users of t e application (“riders”) to request ridesharing
6 services from in dependent, third-party transportation providers (“drivers”).

7 8. Uber gains new riders and drivers in a number of ways, including through “organic”
8 dow loads and i stallations of the Uber App—where a mobile phone user navigates directly to her
9 mobile software provider’s app store or marketplace and downl ads the Uber App because of the
10 user’s prior kno vledge of Uber’s overall brand and eputation in the marketplace.

11 9. Uber also relies on mobile advertisin ; to gain new riders and drivers. “Mobile
12 advertising” refers to advertisements that appear on eith er mobile-optimized websites or in mobile
13 smartphone applications such as games. When a pot ential rider or driver clicks on a mobile
14 advertisement, s ie is directed to the app store or ma ketplace w here she has the opportunity to
15 dow load and install the Uber App.¹



27 **Figure 1 – Exa mples of Mobile Advertisements**

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

1 10. “Placements” are the actual spaces on a mobile-optimized website or mobile
2 smartphone application (called “mobile inventory”) where mobile advertisements can appear.

3 11. “Publishers” are companies that sell mobile inventory. A publisher can be the actual
4 owner of particular mobile websites or mobile smartphone applications that sell placements, such as
5 the New York Times mobile website or app, or a publisher can have mobile inventory from dozens
6 or even hundreds of different websites and/or mobile smartphone applications.

7 12. “Networks” are companies that, often acting at the direction of an advertising agency,
8 buy mobile inventory from different sources, including directly from publishers, from other
9 networks that own and operate inventory from multiple publishers, from exchanges that offer mobile
10 inventory for sale or auction, or through a combination of these methods.

11 13. “Mobile advertising agencies” are companies that specialize in digital advertisements
12 that appear on mobile smartphones. Mobile advertising agencies assist their clients (i.e., the
13 advertiser) to develop a mobile advertising strategy, buy mobile inventory on behalf of their clients,
14 increase engagement with their clients’ brands, acquire new users for their clients, and related
15 services.

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

24 15. Fetch is a mobile advertising agency that offers the following services to its clients:
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13 **Figure 2 – Fetch’s Public Representations of Expertise²**

14 16. Uber engaged Fetch to act as its mobile advertising agency between late 2014 and
15 early 2017 (the “Fetch Campaign”) based on Fetch’s representations of its expertise as a mobile
16 advertising agency and provider of mobile advertising services.

17 17. Uber relied on Fetch’s expertise to recommend and engage networks and publishers
18 best suited to encourage new riders to download and use the Uber App. Through Fetch, Uber
19 purchased mobile inventory from networks such as Adunware, and, ultimately, publishers. The
20 relationship between Uber and Fetch, and as between Fetch and the various networks and publishers
21 they supervised is illustrated by the diagram below:

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28 ² <http://wearefetch.com/services/media/> last viewed September 9, 2017.

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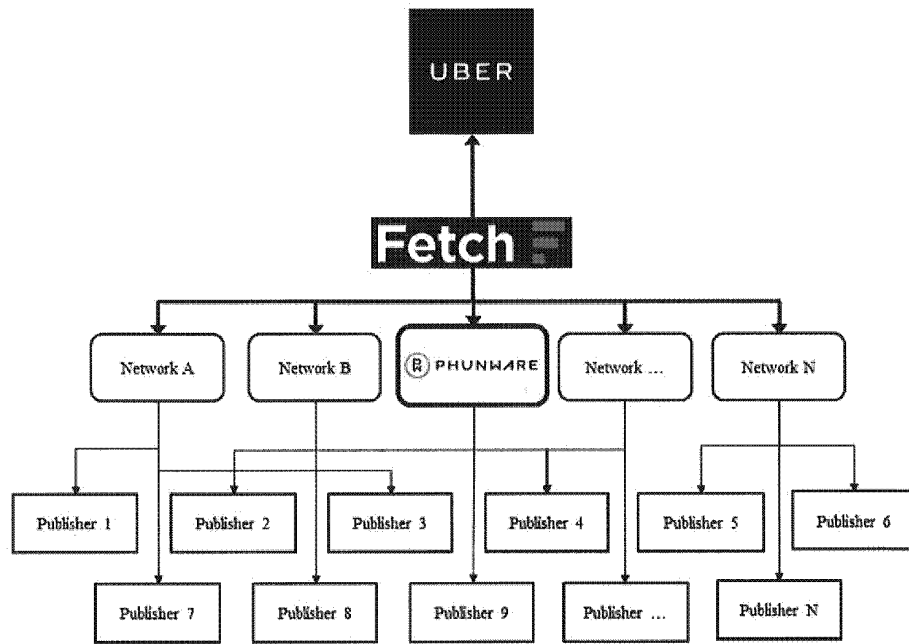


Figure 3 - Fetch’s Role in Supervising Networks and Publishers on Uber’s Behalf

18. The diagram above shows that Fetch, in its capacity as Uber’s mobile advertising agency, engaged networks to purchase mobile inventory to place Uber advertisements. Networks like Phunware, in turn, acquired mobile inventory from publishers. Fetch’s role was to select networks and supervise their conduct in order to purchase legitimate mobile inventory and ultimately acquire new riders for Uber.

19. Starting in 2015 Fetch recommended that Uber include the ad network Phunware (then doing business as Tapit) in the Fetch Campaign. Phunware holds itself out as being able to increase an advertiser’s mobile return on investment by helping to acquire and monetize app users, and specifically to “drive more app downloads to grow your user base and only pay when your app is downloaded and opened.” Fetch subsequently entered into a number of IOs with Phunware to run Uber ads on mobile sites Phunware owned, or that were owned by various publishers in the Phunware network.

1 **A. Uber Contracts With Fetch For Mobile Advertising Services**

2 20. In connection with the Fetch Campaign, Uber and Fetch entered into a Services
3 Agreement dated January 29, 2015 and an amendment dated December 22, 2015 (collectively “the
4 Agreement”), true and correct copies of which are attached hereto as Exhibits A and B.

5 21. Under the Agreement, Fetch promised to perform and deliver services [REDACTED]
6 [REDACTED] and to provide [REDACTED]
7 [REDACTED]

8 22. As contemplated in the Agreement, Uber (and its affiliates) and Fetch also entered
9 into a number of Statements of Work. As relevant here:

10 a. Effective January 29, 2015, Uber and Fetch entered into a Statement of Work for
11 expenditures in 2015 (the “2015 SOW”). A true and correct copy of the 2015 SOW is attached as
12 **Exhibit C.**

13 b. Effective December 26, 2015, Uber and Fetch entered into a Statement of Work for
14 expenditures in 2016 (the “2016 SOW”). A true and correct copy of the 2016 SOW is attached as
15 **Exhibit D.**

16 c. On April 18, 2016, Uber and Fetch entered into an Addendum to the 2016 SOW. A
17 true and correct copy of the Addendum to the 2016 SOW is attached as **Exhibit E.**

18 d. Effective January 1, 2017, Uber and Fetch entered into a Statement of Work for
19 expenditures in 2017 (the “2017 SOW”). A true and correct copy of the 2017 SOW is attached as
20 **Exhibit F.**

21 23. [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]

27 24. Uber entered into each of the above-referenced SOWs based on Fetch’s continued
28 representations that it had the resources available to acquire human viewable, quality mobile

1 inventory at scale, and provide the relevant insight, support, and services required to meet Uber’s
2 goal of acquiring new riders in both existing and new markets.

3 **B. Fetch Manages Uber’s Mobile Advertising Strategy**

4 25. During the Fetch Campaign, Fetch purchased mobile inventory from a number of
5 networks and publishers, including Phunware, on behalf of Uber and its affiliates in a number of
6 jurisdictions.

7 26. For mobile advertising conducted in the United States, Mexico, France, the
8 Philippines, Romania, and Singapore, Fetch purchased mobile inventory from networks on an
9 “agent-principal” basis—Fetch purchased mobile inventory on Uber’s behalf as Uber’s
10 representative in each transaction with networks and publishers.

11 27. For mobile advertising conducted in jurisdictions other than those referenced in the
12 prior paragraph, Fetch purchased mobile inventory on a “principal transaction” basis—Fetch
13 purchased mobile inventory from networks and publishers on its own behalf and then resold that
14 mobile inventory to Uber.

15 28. Regardless of whether Fetch purchased mobile inventory on an agent-principal or
16 principal transaction basis, Fetch was responsible for the day-to-day oversight of networks and the
17 vetting of publishers for quality and fraud prevention, concordant with the [REDACTED]
18 agreed-to in the Agreement and the duties of a reasonably prudent mobile advertising agency.

19 29. Regardless of whether Fetch made mobile inventory purchases on an agent-principal
20 or principal transaction basis, [REDACTED]
21 [REDACTED]

22 30. Fetch’s compensation under the Agreement was tied to [REDACTED]
23 [REDACTED]
24 [REDACTED]

25 31. Specifically, Fetch was paid [REDACTED]
26 [REDACTED]
27 [REDACTED]

28

1 32. Between 2016 and the first quarter of 2017, Uber paid Fetch more than \$82.5 million
2 related to the services ostensibly performed during the Fetch Campaign [REDACTED]

3 [REDACTED]
4 33. Beginning in December 2015, Fetch also agreed to [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]

9 34. In April 2016, Fetch and Uber executed an addendum to the 2016 SOW and [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 **C. Tracking And Performance Of The Fetch Campaign**

18 35. Uber pays only for legitimate clicks on actual mobile advertisements that are
19 attributable to installation of the Uber App, new sign ups, and/or first trips (called the “last click
20 attribution” or “app attribution”). Uber does not pay for advertisements to simply appear on a page
21 (i.e., views) or for clicks that do not lead to one of those outcomes. Thus, when Fetch “purchases”
22 mobile inventory on Uber’s behalf, it is actually purchasing the final outcome—not the number of
23 times an ad is displayed, viewed, or clicked.

24 36. For example, on Monday, potential rider Jane Doe views an Uber ad while browsing
25 a shopping website on her smartphone, but does not click on the advertisement. On Tuesday, Jane
26 Doe views a second Uber ad displayed in a game app, clicks on the ad and is taken to the app store,
27 but opts not to install the Uber App. On Wednesday, Jane Doe views a third Uber ad, this time
28 displayed on a mobile news website. Jane clicks on the ad and is taken to the app store where she

1 downloads and installs the Uber App. In this hypothetical, Fetch would only be entitled to
2 compensation on, and have to pay the publisher or network that placed the third advertisement on the
3 mobile news website, as that click was attributable to Jane Doe’s installation of the Uber App. It is
4 thus crucial to know which click, if any, is actually attributable to each of the millions of
5 installations of the Uber App.

6 37. As part of managing the Fetch Campaign, Fetch was supposed to spend Uber’s
7 advertising budget to purchase legitimate mobile inventory. In other words, Fetch was supposed to
8 pay networks and publishers for advertisements that caused a rider to install the Uber App on their
9 smartphone, sign up as an Uber rider, and/or take a first trip.³

10 38. To track which advertising network, website, or app generated clicks (and ultimately
11 installs, sign-ups and first trips), Uber contracted with a third party mobile analytics and
12 performance marketing platform called TUNE, Inc. (“TUNE”). Under the contract, Uber pays
13 TUNE per ad attributable to installations of the Uber App. The more attributions reported through
14 TUNE, the more Uber pays TUNE.

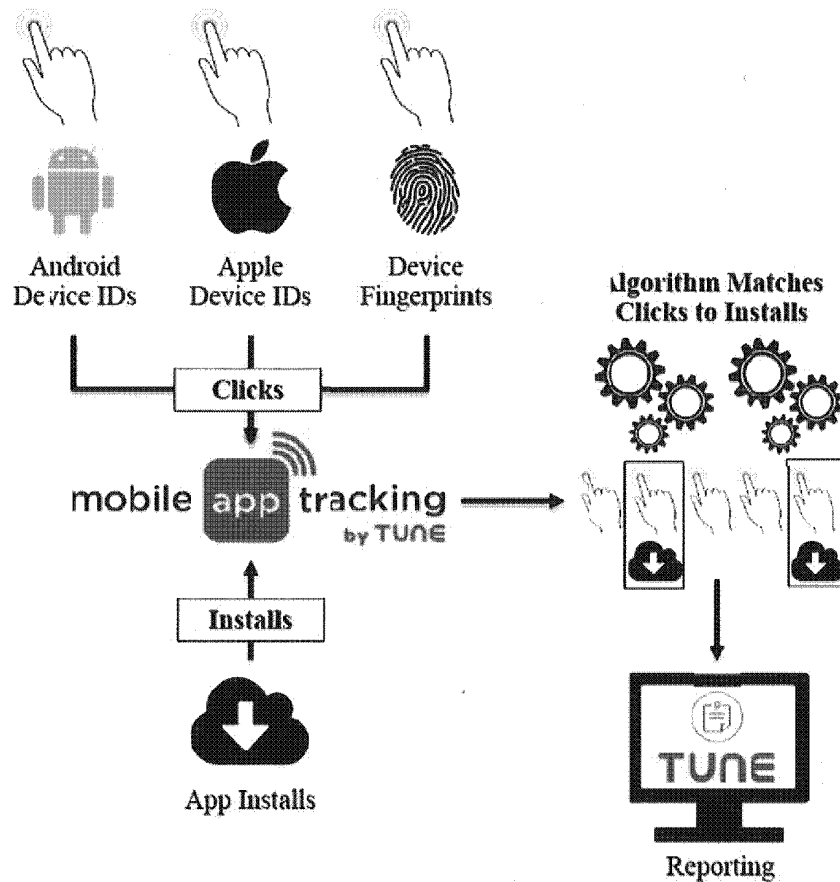
15 39. TUNE’s mobile app tracking service is supposed to collect information about mobile
16 advertising impressions (i.e., views) of, and clicks on, mobile advertisements. TUNE tracks clicks on
17 ads and then matches the last reported click to a rider’s installation of the Uber App. TUNE then
18 awards credit to the publisher, network, or mobile advertising agency that placed the advertisement
19 responsible for the last click attribution.

20 40. So that Fetch could optimize Uber’s mobile advertising, Fetch required Phunware and
21 the other networks and publishers participating in the Fetch Campaign to identify through TUNE all
22 app and mobile websites running Uber advertisements. Networks and publishers were also required
23 to implement “click tracking,” which was intended to identify the publisher reporting clicks to
24 TUNE that resulted in installations, the particular advertisement at issue, and the app or website
25 name where the click generated from. Fetch was responsible for ensuring that the networks and
26

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 publishers that it engaged, including Phunware, reported accurate and legitimate information to
2 TUNE.

3 41. The diagram below illustrates TUNE's mobile app tracking methodology employed
4 to determine the last click attribution, and therefore, which network or publisher "partner" should be
5 paid by Fetch using Uber's advertising budget:



22 **Figure 4 - Attribution for Mobile Advertising**

23 42. In addition to ensuring that networks and publishers report accurate information to
24 TUNE, Fetch also prepared reports aggregating the information reported through TUNE for Uber to
25 assess the quality of the Fetch Campaign ("transparency reports"). Transparency reports were
26 intended to be final and true reflections of (i) where Fetch's media partners were running Uber
27 advertisements, and (ii) the clicks and installations attributable to those ads. Given the volume of
28 Uber's mobile advertising, the transparency reports were also the only accessible means for Uber to

1 “see” the apps and mobile websites where its advertisements appeared and to assess the impact of
2 particular networks and publishers.

3 43. Beginning in mid-2015, Fetch provided transparency reports to Uber and represented
4 that such reports accurately reflected the Uber App installs driven by Phunware and the other
5 networks and publishers selected by Fetch to participate in the Fetch Campaign.

6 44. Uber relied on Fetch’s representations about the transparency reports in assessing the
7 Fetch Campaign against the key performance indicators used to judge Fetch’s success as Uber’s
8 mobile advertising agency.

9 45. Based on Fetch’s representations, Uber’s monthly mobile advertising spending on the
10 Fetch Campaign grew from less than \$1 million per month in late 2015 to in excess of \$6 million per
11 month by late 2016. Uber believed the money it paid was for legitimate app attribution, not for
12 fraudulently claimed attribution.

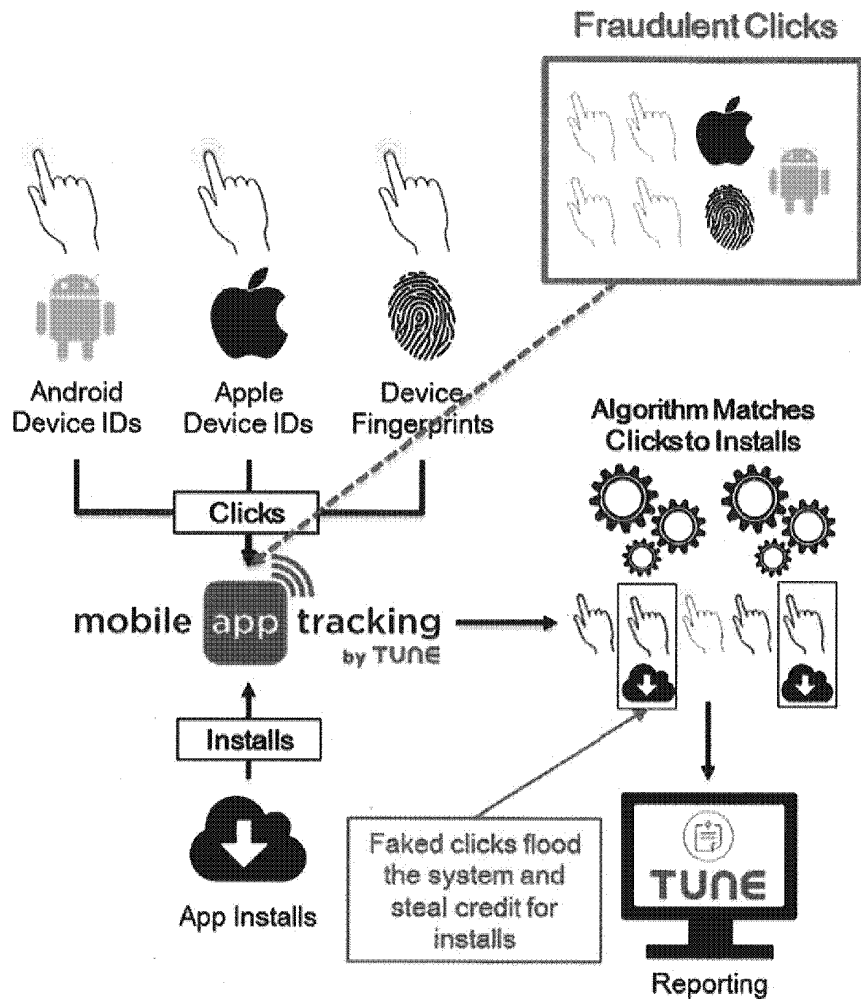
13 **D. Fraud In Mobile Advertising**

14 46. Paying networks and publishers based on last click attribution is a standard method of
15 compensation in the mobile advertising industry. In the absence of monitoring by the mobile
16 advertising agency overseeing the campaign, however, the model can invite fraud.⁴

17 47. Mobile advertising fraud generally falls within two broad categories: (i) fraudulent
18 installations, and (ii) attribution fraud.

19 48. “Attribution fraud” refers to a scheme where networks or publishers seek credit for
20 organic installations and for installations actually attributable to other media sources. Attribution
21 fraud occurs when networks or publishers insert false information into TUNE’s attribution
22 algorithm, as demonstrated by the diagram below:
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25 ⁴ See, e.g., Craig Silverman, Attack of the Zombie Websites: A BuzzFeed News investigation reveals how seemingly-
26 credible players in the ad supply chain can play an active role in — and profit from — fraud, BuzzFeed News, October
27 17, 2017, available at [https://www.buzzfeed.com/craigsilverman/ad-industry-insiders-are-connected-to-a-fraud-scheme-](https://www.buzzfeed.com/craigsilverman/ad-industry-insiders-are-connected-to-a-fraud-scheme-that?utm_term=.lsVKJGeZG#.dyVxyoQbo)
28 [https://www.buzzfeed.com/craigsilverman/ad-industry-insiders-are-connected-to-a-fraud-scheme-](https://www.buzzfeed.com/craigsilverman/ad-industry-insiders-are-connected-to-a-fraud-scheme-that?utm_term=.lsVKJGeZG#.dyVxyoQbo)
that?utm_term=.lsVKJGeZG#.dyVxyoQbo (last visited November 13, 2017); Alexandra Burell and Sharon Terlep, P&G
Cuts more than \$100 Million in ‘Largely Ineffective’ Digital Ads, The Wall Street Journal, July 27, 2017, available at
<https://www.wsj.com/articles/p-g-cuts-more-than-100-million-in-largely-ineffective-digital-ads-1501191104> (last visited
November 13, 2017).



19 **Figure 5 - Attribution Fraud in Mobile Advertising**

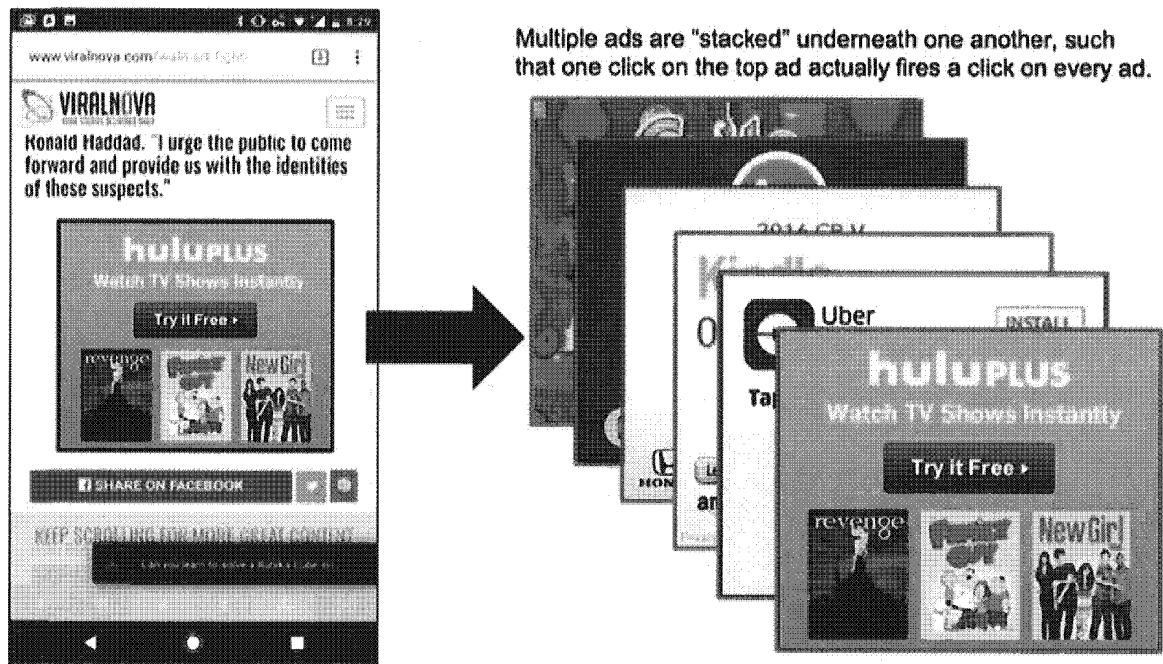
20 49. Some of the key forms of attribution fraud include the following:

21 a. "Click Spamming" is where a network or publisher fraudulently generates or
22 reports clicks for users without those clicks actually having occurred. Click spammers report
23 thousands or even millions of fake clicks so that when a user or bot automatically installs the Uber App, it
24 will appear as if the installation was attributable to a fraudulently reported click, thus qualifying for
25 payment. On information and belief, the custom and practice in the mobile advertising industry holds
26 that a high reported click rate without corresponding installs is indicative of fraud.

27 b. "Fake or Malicious Sites" refers to a scheme where a network or publisher
28 reports (and sees payment for) significant numbers of Uber App installs as attributable to clicks

1 mad : on fake or malicious website URLs, i.e., a website which is not a real site or is a sham. In this
2 sche ne, networks and publishers try to trick the TU NE tracking system to steal organic installations
3 of the Uber App. On information and belief, the custom and practice in the mobile advertising
4 industry holds that clicks or installs claimed as attributable to fake or malicious sites are fraudulent.

5 c. “Stacked Ads” or “Ad-stacking” refers to the schemes where a single mobile
6 inve itory place ment is filled with several mobile advertisements, even though only one
7 advertisement is visible. When the viewer clicks on a stacked ad, several clicks are sent to TUNE, of
8 which only one reflects legitimate user interest in a nobile advertisement.



22 **Figure 6 - Example of Ad Stacking**

23 On i nformation and belief, the custom and practice i n the mobil : advertising industry holds that
24 stac ed ads are fraudulent because the viewer never intended to click on, and never actually saw,
25 mult ple advertisements.

26 d. “Auto-Redirects” refers to the scheme where a mobile user is automatically
27 redirected to the app store or marketplace without h ving clicked on any mobile advertisement
28 whatsoever. Aut o-redirects are generally coded into the mobile smartphone application or mobile

1 website and used to generate millions of fake clicks to prompt installations or (more often) take
2 credit for organic installations. There are entire message boards dedicated to complaints about auto-
3 redirects:

4
5 GLSmyth

Posted July 17, 2016



New Member



I have got a Samsung Galaxy S3 with Android version 4.4.2. Recently, on an occasional basis, when opening an app (it might be going to Facebook, it might be opening Score, it is not consistent) I am first taken to the Google Play Store and Uber has been selected for me to download. It does not happen every time, but several times a day. I have AVG and Clean Master on the phone and neither are finding any problems. I have even tried downloading the Uber app and this still happens.



I am not knowledgeable about such things and have no idea where to turn. Any suggestions would be greatly appreciated.

Thanks.

Members

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7
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9 GLSmyth

Posted July 17, 2016



New Member



10 It just happened a little while ago and I told it to open with Firefox, which left the URL. (I had not been able to capture it in Chrome). In case it is any help, this is the URL:



11 `http://90692.measurementsapi.com/serve?action=click&publisher_id=90692&site_id=10741&destination_id=235216&gen_id=00882&ref_id=102281073&2615990226160000&sub_placement=Plano&sub_campaigns=Display-Ad-1775-1-09-ES-national_R_And_ADQ_CPI_en_0ngoing&sub_adgroup=A081_Art2_D444595&sub_ad=PM_1627-RD-en-US-096_NotReadyYet_120x30&device_ip=(device_ip)&user_agent=Mozilla/5.0-%20Linux%3B-Antroid-4.4.2%3B-SPH-L710-%20Build%2FROT491P%20AppleWebKit%2F537.96-%20KHTML,%20Like%20Gecko%20Version%2F3.0-%20Chrome%2F20.0.0.0-%20Mobile;Safari%2F317.46&tracking_id=102281073&64305&source=160000&sub_publisher=1037&sub_campaign_ref=4284&sub_campaign_name=US-%20National%2020v-Uber-ES-%20Android-CPI&android_id=9mac_address=8fce_1fa%2F20gle_aid=6e&android_aid=6e&os=7.50&os_model=cpu`

12
13 george

14 **Figure 7 - Complaints About Phunware/Tapit Ads Auto-Redirecting To App Store⁵**

15 On information and belief, the custom and practice in the mobile advertising industry holds that
16 auto-redirects are fraudulent because the viewer never intended to click on an advertisement but was
17 still redirected.

18 e. "Creative Issues" refer to instances where advertising content is displayed on
19 a website or mobile smartphone application in a manner that deceives the user; for instance, where
20 an ad is so small it is mistaken for a smartphone keyboard button and generates unintentional clicks
21 by the viewer.

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28 ⁵ <https://forums.malwarebytes.com/topic/185850-android-malware-unable-to-remove/>, last visited November 3, 2017

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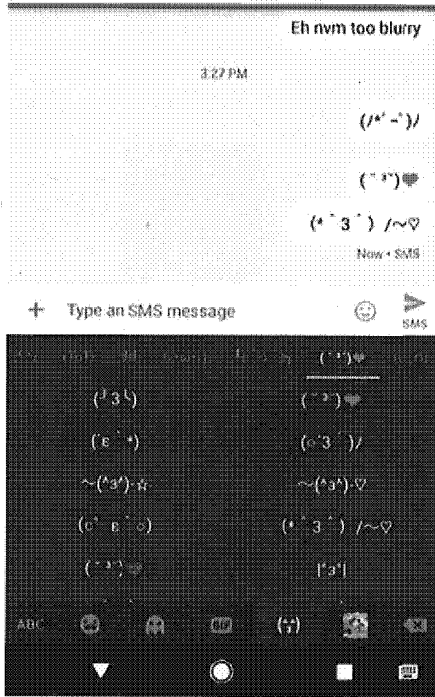
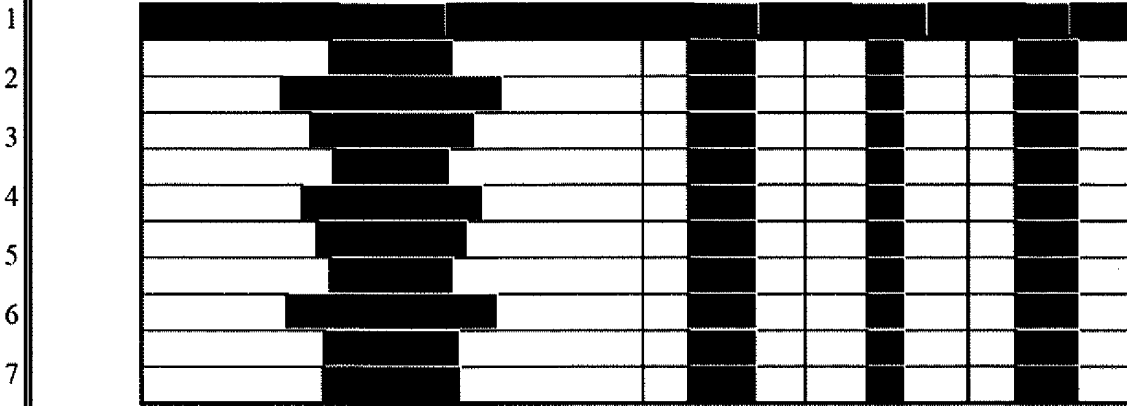


Figure 8 - Example of “Creative Issues” -- Ad Placement (Multi-Colored Block) Next to ‘Backspace’ Key

On information and belief, the custom and practice in the mobile advertising industry holds that creative issues in violation of IOs are indicative of fraud.

50. Fraud is also perpetuated through, and/or apparent from, the metrics and data that networks and publishers report through TUNE, and that Fetch put into the transparency reports it provided to Uber:

- a. “Metric Smoothing” refers to the scenario when a network or publisher misreports where advertisements are placed in order to conceal the true placement of the advertisement (or perhaps no placement at all). Misreporting can be spotted in transparency reports, for example, when a publisher reports key metrics, such as click volume and installs, across multiple mobile websites or apps all within a very close percentage of each other. For example, the ten lines excerpted immediately below are from a February 2017 Fetch transparency report where more than 100 sites reported nearly identical clicks, installs, and click-to-install rates:



8 **Figure 9 - Example of Metric Smoothing from Fetch Transparency Reports**

9 Patterns like this suggest that networks or publishers concealed the true placement of advertisements
10 and allocated supposed clicks and installs across a number of platforms to give the appearance of
11 legitimacy. On information and belief, the custom and practice in the mobile advertising industry
12 holds that where a number of apps report nearly identical metrics is indicative of fraud.

13 b. “Falsified Transparency” includes the scenario where a network or publisher
14 reports vague website or app names through TUNE, such as “MP3 Player” (e.g., as opposed to a
15 specific streaming service), as a source of clicks and installs. Falsified transparency also includes the
16 scenario where a website or app reports clicks and installs on Uber advertisements severely
17 disproportionate to the number of active users. For example, in the Fetch transparency report
18 excerpted below, the number of *weekly* reported clicks on Uber advertisements [REDACTED] that
19 supposedly appeared on the website [REDACTED] is nearly equal to the number of *monthly*
20 active users [REDACTED] of that site:
21



22
23
24
25 **Figure 10 - Example of Falsified Transparency from Fetch Transparency Reports**

26 On information and belief, the custom and practice in the mobile advertising industry holds that such
27 reporting issues are indicative of fraud.
28

1 c. "Deceptive Naming" include the scenario where a network or publisher
 2 misrepresents the source of its mobile inventory. Deceptive naming can be identified, for example,
 3 when the audience and/or demographic of a website or app supposedly running an advertisement
 4 does not make sense with respect to the reported installations. For instance, in February 2017
 5 transparency reports provided by Fetch, a significant number of Uber App installs were reported as
 6 attributable to Uber advertisements that supposedly appeared in [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 **Figure 11 – Example #1 of Deceptive Naming from Fetch Transparency Reports**

13 Deceptive naming can also be identified where a network or publisher reports installs as attributable
 14 to a generic source, as a way to conceal the true source of the inventory. For example, in one
 15 transparency report provided by Fetch, Phunware claimed thousands of installs as attributable to
 16 Uber advertisements in apps called "MP3 Player."

17

18 **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	1,392	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%

26 **Figure 12 - Example #2 of Deceptive Naming in Fetch Transparency Reports by Phunware**

27 On information and belief, the custom and practice in the mobile advertising industry considers all
 28 forms of deceptive naming as a form of fraud.

1 d. “Non-Mobile Optimized Sites” refers to the scenario where a network or
2 publisher reports significant numbers of installations as attributable to clicks made on advertisements
3 that supposedly appeared on non-mobile optimized websites. Non-mobile optimized sites can be
4 challenging to navigate on smartphones, and advertisements are difficult to view, making it
5 extremely unlikely that such advertisements would generate significant *intentional* clicks or installs
6 by mobile users. For this reason, and on information and belief, the custom and practice in the
7 mobile advertising industry holds that significant reported app installs generated from purported
8 advertisements on non-mobile optimized sites is indicative of fraud.

9 **E. Uber Relied On Fetch To Identify And Remedy Fraud By Phunware And Its**
10 **Other Media Partners**

11 51. Auto-redirects and unwanted popup advertisements are an unquestionable annoyance
12 to every smartphone user, including to Uber’s potential and current customers. Separate and apart
13 from the issue of unwittingly paying for such fraudulent advertisements, Uber has sought to protect
14 its customer base from being subject to such harassment.

15 52. Regardless of whether Fetch was acting in its capacity as Uber’s agent or principal,
16 Uber put its trust and confidence in Fetch to purchase mobile inventory consistent with Uber’s goals
17 of human viewable, *quality* mobile inventory at scale. Uber relied on its course of dealing with Fetch
18 as acknowledgement of Fetch’s responsibility to prevent fraud in the first place, and to identify and
19 remedy any fraud that did occur.

20 53. Fetch ostensibly undertook this responsibility to prevent, identify and remedy fraud in
21 Uber’s mobile advertising campaigns.

22 54. Among other things, Fetch recommended that Uber not purchase media from certain
23 “blacklisted” networks and publishers due to concerns about efficiency and traffic quality for those
24 entities. Fetch also represented to Uber on March 24, 2015 that it tracked publisher and site data in
25 order to [REDACTED]

26 [REDACTED] At no point did Fetch recommend blacklisting
27 Phunware or individual publishers in the Phunware network.
28

1 55. Fetch provided Uber with weekly fraud reports, which it represented [REDACTED]

2 [REDACTED]

3 56. Fetch regularly shared with Uber transparency reports that compiled performance
4 data reported through TUNE. The transparency reports were intended to facilitate the review of
5 publisher validity and performance and to authentic legitimate clicks and installations, so that Fetch
6 could optimize Uber’s mobile advertising. Because networks and publishers self-report data that
7 appeared in the transparency reports, Uber relied on Fetch to police the quality and accuracy of that
8 data as part of Fetch’s end-to-end planning and management of Uber’s mobile advertising.

9 57. Beginning in 2015, Fetch began to track new metrics using TUNE, such as total
10 clicks compared to clicks per unique visitor, which Fetch represented [REDACTED]

11 [REDACTED]

12 58. Fetch also analyzed referral URLs, validated site names, and made efforts to identify
13 re-brokered traffic and malicious redirects. Fetch again represented [REDACTED]

14 [REDACTED]

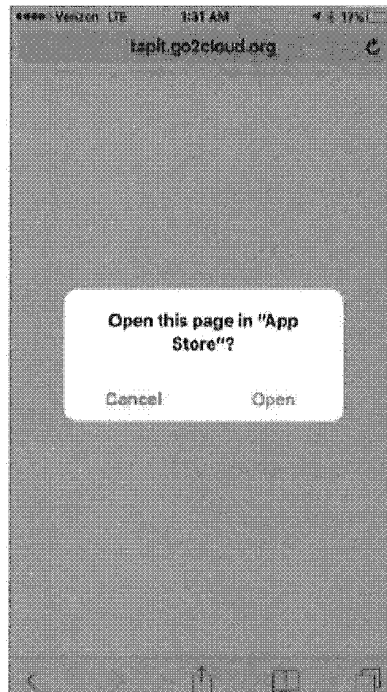
15 59. In certain instances, Fetch also acquired nominal “makegoods”—additional mobile
16 inventory given in lieu of a refund—from individual networks or publishers, including from
17 Phunware, for fraud identified by Fetch and/or Uber, and represented its diligence in doing so to
18 Uber.

19 **F. Fetch Buys Inventory From Phunware Despite Performance Issues**

20 60. During the Fetch Campaign, Fetch purchased significant mobile inventory from
21 Phunware on Uber’s behalf. In 2016 alone Uber and its affiliates paid Fetch approximately \$27
22 million for mobile inventory supposedly attributable to worldwide Uber App installs driven by
23 Phunware.

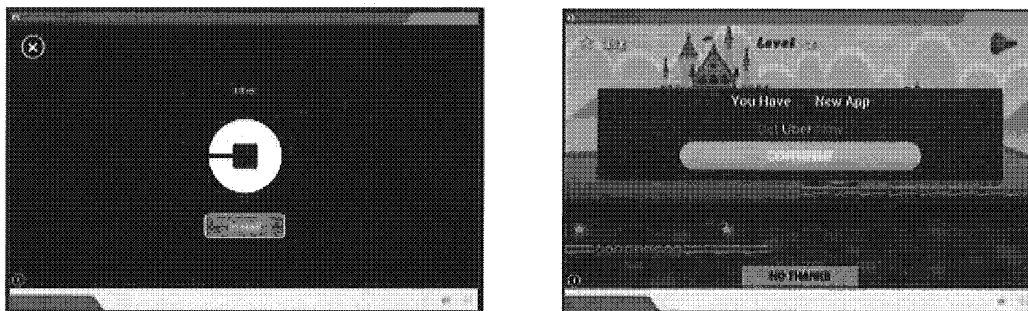
24 61. Fetch continued to recommend Phunware despite repeated quality issues. In May
25 2016, for instance, Uber became aware that Uber ads were running on adult sites with auto-redirects
26 to the app store. The Fetch IO with networks and publishers precludes both adult sites and auto-
27 redirects. A subsequent investigation revealed that Phunware was falsely reporting the clicks (and
28 resulting installs) as having come from advertisements in an app called “Temple Run.” The true

1 placement was “NudeVista Free Porn Search Engine” and visitors to that site were instead
2 automatically redirected to the app store and prompted to download the Uber App.



15 **Figure 13 - Auto-Redirect by Phunware/Tapit From NudeVista Free Porn Search Engine**

16 62. Similarly, in October 2016 Phunware agreed to reimburse Uber \$30,000 for “terrible
17 performance” related to campaigns running in France and Egypt. In March 2017 one of Phunware’s
18 publishers, Temple Princess Jungle Run, was caught serving unauthorized “creatives” (i.e.,
19 unapproved Uber advertisements) and running auto-redirects to the app store.



26 **Figure 14 - Examples of Unauthorized Creatives Run By Publisher In Phunware Network**

1 **G. Fetch Willfully Ignored Indicia Of Fraud To Keep Collecting Payments From**
2 **Uber And Fetch Concealed From Uber Secret Profits Received From Phunware**
3 **And Its Other Media Partners**

4 63. Fetch knew that the mobile inventory it purchased as Uber's agent, or as principal and
5 resold to Uber, was intended to promote the Uber App and drive new installations and signups
6 attributable to legitimate advertising.

7 64. A reasonably skilled mobile advertising agency would have purchased quality mobile
8 inventory and been aware of fraud by networks and publishers. A reasonably skilled mobile
9 advertising agency would have taken active steps to curtail fake clicks, false reporting, and other
10 fraudulent activities by the networks and publishers running advertisements for the agency's client.

11 65. Instead, Fetch allowed networks and publishers, including Phunware, to steal credit
12 for organic installs of the Uber App, and Uber App installs that were attributable to other sources.
13 While Fetch sat idly by, millions of Uber's dollars were squandered on nonexistent, nonviewable,
14 and/or fraudulent advertising. [REDACTED] Fetch in turn
15 received substantial, unearned, compensation from Uber.

16 66. Fetch failed to disclose problems with the mobile inventory it purchased because it
17 knew that Uber would have stopped purchases from the implicated networks and publishers, would
18 have insisted on remediation for fraudulent advertising, and would not have paid [REDACTED]
19 [REDACTED] Fetch related to such advertising.

20 67. Fetch actively misled Uber to prevent it from discovering the true facts. Fetch
21 recommended purchasing mobile inventory from Phunware and other networks and publishers, and
22 in doing so, Fetch expressly or impliedly represented to Uber that those entities could provide the
23 type of quality mobile inventory Uber required to drive legitimate incremental installations of the
24 Uber App by new riders.

25 68. Fetch provided Uber with transparency reports it represented as being an accurate
26 reflection of where Uber's mobile advertisements appeared, and the Uber App installations
27 attributable to those advertisements. Fetch also pointed to the weekly fraud reports and transparency
28

1 reports

2
3
4
5
6 70. As Fetch held itself out to be an expert in the mobile advertising industry, and
7 because Fetch was in a position of trust as Uber’s advertising agent, Fetch’s omissions and
8 misstatements induced Uber to continue its relationship with Fetch, and, foreseeably, to increase
9 spending on mobile advertising to millions of dollars per week

10
11 71. In early 2017, Uber became aware of the pervasive fraud in the Fetch Campaign, in
12 part as a result of complaints from the public regarding Uber advertisements appearing on mobile
13 websites that Uber had previously requested Fetch block from participating in the Fetch Campaign.
14 Uber’s investigation into that particular issue suggested deceptive naming was to blame.
15 Specifically, the publisher-reported name of the websites and mobile applications where Uber
16 advertisements supposedly appeared did not match the actual URL accessed. For example, one
17 publisher retained by Fetch reported clicks on Uber ads as coming from placements such as
18 “Magic_Puzzles” and “Snooker_Champion.” In fact, those clicks actually originated from
19 advertisements on Breitbart.com, despite the fact that Uber had instructed that no ads be placed with
20 that website.

referral_url	publish	sub_placer
http://www.breitbart.com/		Magic_Puzzles
http://www.breitbart.com/		Hill_Climb_Racing
http://www.breitbart.com/		Magic_Puzzles
http://www.breitbart.com/		Battleship_War_3D
http://www.breitbart.com/big-government/		Snooker_Champion
http://www.breitbart.com/big-government/		Snooker_Champion
http://www.breitbart.com/big-government/		Snooker_Champion
http://www.breitbart.com/big-government/		Snooker_Champion
http://www.breitbart.com/london/2016/04/		Snooker_Champion
http://www.breitbart.com/london/2016/04/		Battleship_War_3D
http://www.breitbart.com/texas/2017/02/13/		Hill_Climb_Racing

27 **Figure 15 - Deceptive Naming of Breitbart.com in Fetch Transparency Reports**

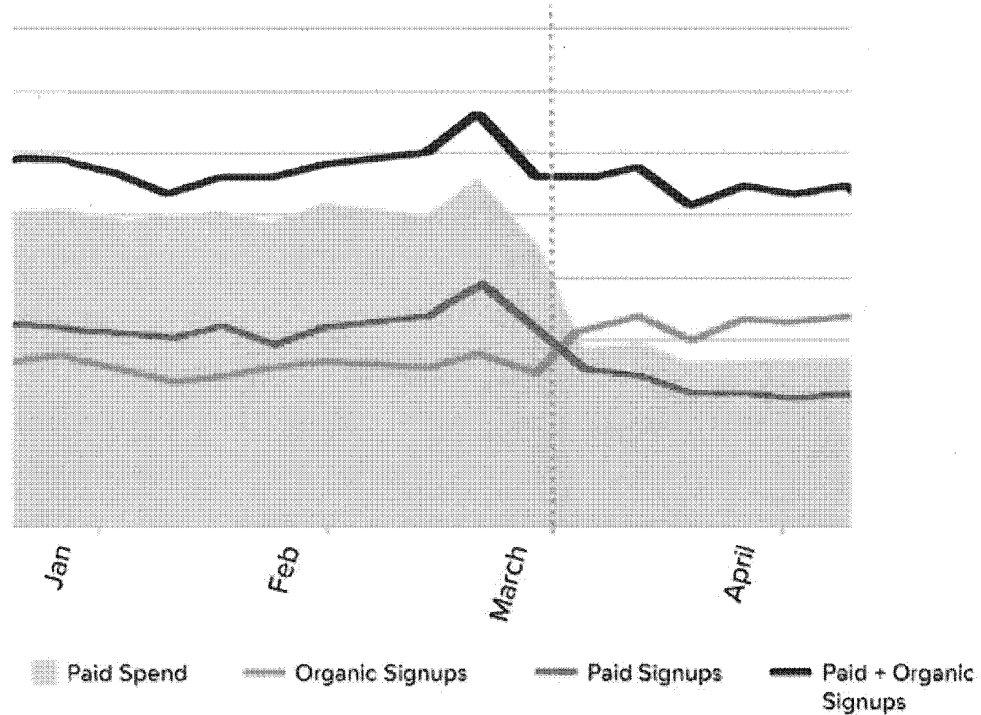
1 72. Fetch failed to prevent similar fraud by Phunware. Phunware regularly concealed the
 2 true source of its inventory and misrepresented the actual placement of Uber advertisements and
 3 attributable installs. A May 2016 transparency report provided by Fetch shows that Phunware
 4 hard-coded dozens of app names into TUNE to falsely make it appear as if advertisements running on
 5 prohibited pornographic sites had actually appeared in innocuous apps such as “Crazy_Tribes.”

6 **Figure 16 - Deceptive Naming of Adult Sites By Phunware/Tapit**

Traffic Source	referral_url	publisher_sub_placement_name
TAPIT / PHUNWARE	http://www.pornhub.com/	Crazy_Tribes
TAPIT / PHUNWARE	http://www.youporn.com/porn/tags/fu	Temple_Run_2
TAPIT / PHUNWARE	http://www.pornhub.com/	Unroll
TAPIT / PHUNWARE	http://www.youporn.com/porn/tags/tin	Shame_of_Chef
TAPIT / PHUNWARE	http://www.pornhub.com/	Convert_Units_Free
TAPIT / PHUNWARE	http://www.pornhub.com/video/search	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://pornexpand.com/zh-cn/gallery	Temple_Run
TAPIT / PHUNWARE	http://pornhdhd.com/perfect-ass	Temple_Run
TAPIT / PHUNWARE	http://pornexpand.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/porn/tags/pr	Beach_Rescue
TAPIT / PHUNWARE	http://www.pornvube.com/	Temple_Run
TAPIT / PHUNWARE	http://pornexpand.com/zh-cn/gallery	Temple_Run
TAPIT / PHUNWARE	http://www.pornhub.com/video/search	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/search	Crazy_Tribes
TAPIT / PHUNWARE	http://www.pornhub.com/video?page	Crazy_Tribes
TAPIT / PHUNWARE	http://www.pornhub.com/video/search	Temple_Run_2
TAPIT / PHUNWARE	http://www.novostrong.com/blonde-ft	Temple_Run
TAPIT / PHUNWARE	http://www.pornhub.com/view_video	Crazy_Tribes
TAPIT / PHUNWARE	http://www.pornhub.com/video/search	Crazy_Tribes
TAPIT / PHUNWARE	http://www.pornhub.com/users/wujas	Roerto_Travel_Guide
TAPIT / PHUNWARE	http://www.pornhub.com/video/search	Crazy_Tribes
TAPIT / PHUNWARE	http://www.pornhub.com/video?o=hti	iBaloot
TAPIT / PHUNWARE	http://www.pornhub.com/view_video	Agatcb2
TAPIT / PHUNWARE	http://sexix.net/?s=Noelle+Easton+	646418

24 73. Just before Uber suspended the entire Fetch Campaign in March 2017, Fetch was
 25 spending millions of Uber’s dollars per week on mobile inventory purportedly attributable to
 26 hundreds of thousands (even millions) of Uber App installs per week. Had the advertisements been
 27 legitimate, one would expect to see a substantial drop in installations when mobile advertising was
 28 suspended. Instead, when Uber suspended the Fetch Campaign, there was no material drop in total

1 installations. Rather, the number of installations supposedly attributable to mobile advertising (i.e.,
 2 “paid signups”) increased significantly, while the number of organic installations rose by a nearly
 3 equal amount. This indicates that a significant percentage of the installations believed to be
 4 attributable to advertising were in fact stolen organic installations. In other words, these installations
 5 would have occurred regardless of advertising. Instead, Phunware and the other networks or
 6 publishers engaged by Fetch fraudulently reported the last click attribution to claim attribution credit
 7 and were paid for the installation.



21 **Figure 17 - Effect of Fetch Campaign Pause: Fetch Signups Replaced by Organic Signups**

22 74. Fetch’s own actions perpetuated, and even encouraged, fraud by the networks and
 23 publishers like Phunware, from whom it purchased mobile inventory.

24 75. When Fetch obtained makegoods on behalf of Uber, including that obtained from
 25 Phunware, the credit would be in the form of additional mobile inventory *with the same network or*
 26 *publisher*. In other words, after a publisher was caught red-handed, for example click spamming,
 27 Fetch would reward the bad actor with additional volume and opportunities to report fake clicks.
 28

1 76. Upon information and belief, Fetch also misused its position as a marketplace leader,
2 and as Uber's mobile advertising agency, to solicit improper "rebate" payments from networks and
3 publishers in exchange for purchasing inventory during the Fetch Campaign, and concealed those
4 profits and benefits from Uber. Uber is informed and believes that Fetch covertly solicited and
5 received a 15% rebate from Phunware on all spend that Fetch directed to the Phunware network and
6 that Fetch concealed these profits from its principal, Uber.

7 77. Fetch also failed to enforce Uber's prohibition against rebrokering. "Rebrokering" is
8 where networks or publishers take advertising offers and re-broker them to third parties to obtain a
9 greater volume of clicks, and thus, hopefully, installations. Rebrokering is against the terms of the
10 IOs approved by Uber for use in the Fetch Campaign and also leads to a loss of control by the
11 mobile advertising agency over the quality of the advertising and the amount of fraud. On more than
12 one occasion, Uber brought rebrokered traffic by Phunware to Fetch's attention.

13 78. Fetch also failed to disclose material conflicts of interest to Uber. Fetch purchased
14 media inventory during the Fetch Campaign from [REDACTED]
15 [REDACTED]. Upon information and belief, Fetch, [REDACTED] was
16 thus dis-incentivized to police fraud committed by [REDACTED]

17 **H. Current Status**

18 79. Since 2015 Uber paid out more than \$82.5 million for mobile advertising in the
19 United States managed by Fetch. Uber is informed and believes that a material percentage of that
20 amount was used by Fetch to purchase nonexistent, nonviewable, and/or fraudulent mobile inventory
21 from networks and publishers, including Phunware, who Fetch knew or should have known were
22 perpetuating fraud. Uber is further informed and believes that Fetch received a commission on such
23 media spend, despite knowing about the problems with the inventory it purchased as Uber's agent or
24 on Uber's behalf.

25 80. In 2016 alone, Fetch spent more than \$27 million of Uber's global advertising budget
26 on inventory from Phunware. Uber is informed and believes that a material percentage of that
27 amount was for nonexistent, nonviewable, and/or fraudulent mobile inventory.
28

1 example, by hardcoding misleading names into TUNE to deceive Uber into believing installs were
2 driven by advertisements on approved sites.

3 87. Phunware intended that Uber rely on its omissions and misrepresentations to induce
4 Uber to spend more on mobile advertising.

5 88. Uber reasonably relied on Phunware's omissions and misrepresentations and, as a
6 result, approved millions of dollars in spend on mobile inventory purchases from Phunware that ran
7 nonexistent, nonviewable and/or fraudulent advertising and as compensation for claimed
8 installations not actually attributable to mobile advertising. Uber's reliance was justified because it
9 was not made aware of the true facts. Had Uber known the true facts, Uber would have paid only for
10 legitimate mobile advertisements attributable to installations.

11 89. Uber has suffered monetary injury and Phunware has been unjustly enriched by
12 reason of the foregoing, in an amount to be determined according to proof, with pre- and post-
13 judgment interest at the highest rate permitted by law.

14 90. Phunware's representations and omissions were intentional, malicious, oppressive, or
15 fraudulent, and give rise to liability for punitive damages according to proof at trial.

16 **Second Cause of Action**

17 **Fraud**

18 **(against Fetch)**

19 91. Uber incorporates all of the above paragraphs as though fully set forth herein.

20 92. Fetch knew that the mobile inventory it purchased as Uber's agent, or as principal and
21 resold to Uber, was intended to promote the Uber App and drive new installations and signups
22 attributable to legitimate advertising. As such, Fetch had an independent duty to disclose to Uber
23 that the mobile inventory it purchased was not actually attributable to installations by new riders.

24 93. Fetch knew that a substantial portion of the mobile inventory it purchased from
25 Phunware and others was nonexistent, nonviewable and/or fraudulent, and that such advertising was
26 not attributable to legitimate riders installing the Uber App.

27 94. Fetch failed to disclose problems with the mobile inventory it purchased from
28 Phunware and others because it knew that Uber would have stopped purchases from the implicated

1 networks and publishers, would have insisted on remediation for fraudulent advertising, and would
2 not have paid any commission or bonus to Fetch related to such advertising. By its omissions, Fetch
3 intended to prevent Uber from discovering the true facts, and from taking actions that would have
4 resulted in losses to Fetch.

5 95. Fetch also made a number of materially false representations to Uber, including but
6 not limited to: (i) representing the networks and publishers it recommended, including Phuuware,
7 could provide the type of quality mobile inventory Uber required to drive installations of the Uber
8 App by legitimate new riders; (ii) representing the transparency reports to be an accurate reflection
9 of where Uber's mobile advertisements appeared, and the Uber App installations driven by those
10 advertisements; and (iii) affirmatively representing that its mobile advertising strategies and
11 purchasing decisions were effective at increasing the number of legitimate riders installing the Uber
12 App to request ridesharing services from drivers.

13 96. Fetch's representations were false and Fetch knew as much at the time they were
14 made. In the alternative, Fetch made such representations to Uber recklessly and without regard for
15 the truth.

16 97. Fetch intended that Uber rely on its omissions and misrepresentations to induce Uber
17 to spend more on mobile advertising. As spending on mobile advertising increased, [REDACTED]

18 [REDACTED]
19 98. Uber reasonably relied on Fetch's omissions and misrepresentations and, as a result,
20 approved millions of dollars each week, for over two years, on mobile inventory purchases that ran
21 nonexistent, nonviewable and/or fraudulent advertising and as compensation for claimed
22 installations not actually attributable to mobile advertising.

23 99. Uber's reliance was justified because it was not made aware of the true facts. Had
24 Uber known the true facts, Uber would have paid only for legitimate mobile advertisements
25 attributable to installations.

26 100. Uber has suffered monetary injury and Fetch has been unjustly enriched by reason of
27 the foregoing, in an amount to be determined according to proof, with pre- and post-judgment
28 interest at the highest rate permitted by law.

1 110. As a proximate cause of Fetch and Phunware's actions, Uber has suffered damages in
2 an amount to be determined according to proof, with pre- and post-judgment interest at the highest
3 rate permitted by law.

4 **Fifth Cause of Action**

5 **Negligence**

6 **(against Phunware)**

7 111. Uber incorporates all of the above paragraphs as though fully set forth herein.

8 112. At all relevant times Phunware knew or should have known that Uber's mobile
9 advertising was intended to drive installations of the App and that Uber would pay only for
10 advertisements actually attributable to installation.

11 113. Phunware had a duty to use such skill, prudence, and diligence as a reasonable ad
12 network.

13 114. As more fully described above, Phunware breached its duty by engaging in attribution
14 fraud in order to mislead and misrepresent the volume of Uber App installations attributable to
15 mobile advertising and thereby increase the payments purportedly owed by Uber to Phunware.

16 115. As the actual and proximate result of Phunware's breach of its duty, Uber has
17 suffered monetary damages in an amount to be determined according to proof, with pre- and post-
18 judgment interest at the highest rate permitted by law.

19 **Sixth Cause of Action**

20 **Breach of Contract**

21 **(against Fetch)**

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

23 117. Uber and Fetch were parties to a valid and binding Agreement. The Agreement, and
24 SOWs executed pursuant thereto, provided, among other things, that:

25 a. [REDACTED]

26 [REDACTED]
27 b. [REDACTED]
28 [REDACTED]

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c.

118.

In total, Uber paid Fetch more than \$82.5

million related to the services ostensibly performed during the Fetch Campaign.

119. Uber has fully performed all promises, covenants, and conditions required under the Agreement, except those that have been prevented or otherwise excused.

120. Fetch materially breached the Agreement by failing to prevent and remediate fraud among the networks and publishers from which Fetch purchased mobile inventory on behalf of Uber, causing: (i) Uber to pay for mobile inventory that was not actually responsible for last click attribution; and (ii) Uber to pay Fetch commissions and/or bonuses on such fraudulent inventory.

121. In addition, Fetch materially breached the Agreement by failing to disclose conflicts of interest and failing to pass back to Uber volume rebates, commissions, or discounts received from networks and publishers, causing Uber to overpay for mobile inventory and Fetch's commission.

122. Fetch breached the Agreement knowing that its breaches would cause severe harm to Uber.

123. Fetch's breaches have caused, and will continue to cause, monetary damage to Uber in an amount that is no less than \$50 million.

Seventh Cause of Action

Breach of the Covenant of Good Faith and Fair Dealing

(against Fetch)

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

125. Uber and Fetch were parties to a valid and binding Agreement.

126. Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement. This implied covenant of good faith and fair dealing requires that no party do anything that will have the effect of impairing, destroying, or injuring the rights of the

1 other party to receive the benefits of their agreement. The covenant implies that in all contracts, each
2 party will do things reasonably contemplated by the terms of the contract to accomplish its purpose.
3 The covenant protects the benefits of the contract that the parties reasonably contemplated when they
4 entered into the agreement.

5 127. Fetch breached the covenant of good faith, and unfairly and intentionally interfered
6 with Uber's right to receive the benefits of the Agreement by, *inter alia*, failing to prevent and
7 remediate fraud among the networks and publishers from which Fetch purchased mobile inventory
8 on behalf of Uber, failing to disclose conflicts of interest, failing to stop rebrokering of mobile
9 inventory, and failing to pass back to Uber volume rebates, commissions, or discounts received from
10 networks and publishers.

11 As a direct and proximate result of Fetch's breaches, Uber has suffered damages in an
12 amount to be determined according to proof at trial.

13 **Eighth Cause of Action**

14 **Intentional Breach of Fiduciary Duty**

15 **(against Fetch)**

16 128. Uber incorporates all of the above paragraphs as though fully set forth herein.

17 129. Fetch purchased mobile inventory in the United States, Mexico, France, the
18 Philippines, Romania, and Singapore as Uber's agent. As such, Uber and Fetch were in a fiduciary
19 relationship whereby Uber put its trust and confidence in Fetch to advise on mobile advertising, plan
20 and manage Uber's mobile advertising campaigns, and purchase mobile inventory valued at millions
21 of dollars each week.

22 130. Uber relied on the expertise of Fetch to act on Uber's behalf in devising and
23 managing an effective mobile advertising strategy and campaign; vetting the networks and
24 publishers Fetch acquired mobile inventory from; purchasing quality inventory; validating networks'
25 and publishers' claimed Uber App installations; and optimizing the Fetch Campaign based on
26 results—Uber App installs actually attributable to valid mobile advertising.

27 131. Fetch breached its fiduciary duty by, *inter alia*, intentionally misrepresenting the
28 effectiveness of its mobile media strategy and media purchasing decisions; misrepresenting the

1 validity of transparency reports and networks/publishers' claims of app attribution; failing to identify
2 and remedy fraud and rebrokering by networks and publishers recommended and utilized by Fetch in
3 Uber's mobile advertising; failing to disclose and/or refund rebates and profits received from
4 networks and publishers and which Fetch earned while working on Uber's behalf; and/or failing to
5 disclose its close relationship with the [REDACTED]

6 132. Uber has suffered monetary injury and Fetch has been unjustly enriched by reason of
7 the foregoing, in an amount to be determined according to proof, with pre- and post-judgment
8 interest at the highest rate permitted by law.

9 133. Fetch's representations and omissions were intentional, malicious, oppressive, or
10 fraudulent, and give rise to liability for punitive damages according to proof at trial.

11 **Ninth Cause of Action**

12 **Constructive Fraud**

13 **(against Fetch)**

14 134. Uber incorporates all of the above paragraphs as though fully set forth herein.

15 135. Uber and Fetch were in a fiduciary or confidential relationship whereby Uber put its
16 trust and confidence in Fetch to advise on mobile advertising, plan and manage Uber's mobile
17 advertising campaigns, and purchase mobile inventory valued at millions of dollars each week.

18 136. Uber relied on the expertise of Fetch to act on Uber's behalf in devising and
19 managing an effective mobile advertising strategy and campaign; vetting the networks and
20 publishers Fetch acquired mobile inventory from; purchasing quality inventory; validating networks'
21 and publishers' claimed Uber App installations; and optimizing the Fetch Campaign based on
22 results—Uber App installs actually attributable to valid mobile advertising.

23 137. Fetch breached its fiduciary duty by, *inter alia*, intentionally misrepresenting the
24 effectiveness of its mobile media strategy and media purchasing decisions; misrepresenting the
25 validity of transparency reports and networks/publishers' claims of app attribution; failing to identify
26 and remedy fraud and rebrokering by networks and publishers recommended and utilized by Fetch in
27 Uber's mobile advertising; failing to disclose and/or refund rebates Fetch received from networks
28

1 and publishers; and/or failing to disclose its close relationship with the [REDACTED]

2 [REDACTED]

3 138. Uber has suffered monetary injury and Fetch has been unjustly enriched by reason of
4 the foregoing, in an amount to be determined according to proof, with pre- and post-judgment
5 interest at the highest rate permitted by law.

6 139. Fetch's representations and omissions were intentional, malicious, oppressive, or
7 fraudulent, and give rise to liability for punitive damages according to proof at trial.

8 **Tenth Cause of Action**

9 **Negligent Misrepresentation**

10 **(against Fetch)**

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

12 141. Fetch made a number of false statements set forth above, that were made without
13 reasonable grounds for believing them to be true when made, and such statements were false.

14 142. Fetch intended that Uber rely on its false representations to induce Uber to spend
15 more on mobile media advertising. As media spending increased, [REDACTED]

16 [REDACTED]

17 143. Uber reasonably relied on Fetch's representations and, as a result, approved millions
18 of dollars on mobile inventory purchases that ran nonexistent, nonviewable and/or fraudulent
19 advertising and as compensation for claimed installations not actually attributable to mobile
20 advertising.

21 144. Uber's reliance was justified because it was not made aware of the true facts. Had
22 Uber known the true facts, Uber would have paid only for legitimate mobile advertisements
23 attributable to installations.

24 145. Uber has suffered monetary injury and Fetch has been unjustly enriched by reason of
25 the foregoing, in an amount to be determined according to proof, with pre- and post-judgment
26 interest at the highest rate permitted by law.

27 146. Fetch's conduct constituted intentional misconduct or gross negligence that entitles
28 Uber to punitive damages according to proof at trial.

1 **Eleventh Cause of Action**

2 **Professional Negligence**

3 **(against Fetch)**

4 147. Uber incorporates all of the above paragraphs as though fully set forth herein.

5 148. At all relevant times Fetch represented itself to be a leader in mobile advertising.

6 149. Given the course of dealing between the parties, and custom and practice in the
7 mobile advertising industry, Fetch knew that Uber intended to, and did in fact, rely on Fetch's
8 expertise to devise and optimize its mobile advertising strategy and drive installations of the Uber
9 App by legitimate new riders.

10 150. In part of its role as Uber's mobile advertising agency, Fetch undertook the
11 responsibility to prevent, identify and remedy fraud in Uber mobile advertising campaigns. Among
12 other things, Fetch made recommendations to Uber about which networks and publishers to use (or
13 not use based on Fetch's own "blacklist"); represented that it [REDACTED]
14 held out the transparency reports as accurate representations of Uber App installs actually
15 attributable to mobile advertising; and acquired makegoods on behalf of Uber from individual
16 networks or publishers for identified fraud.

17 151. Fetch had the duty, as a professional in the advertising industry, to use such skill,
18 prudence, and diligence that other members of the profession commonly possess and exercise,
19 including but not limited to a duty to prevent, identify, and remedy fraudulent advertising and
20 reporting by the networks and publishers it engaged to participate in the Fetch Campaign.

21 152. Fetch breached its professional duty by misrepresenting the effectiveness of its
22 mobile media strategy and media purchasing decisions; misrepresenting the validity of transparency
23 reports and networks/publishers' claims of app attribution; failing to identify and remedy fraud by
24 networks and publishers recommended and utilized by Fetch in Uber's mobile advertising; failing to
25 disclose and/or refund rebates Fetch received from networks and publishers; and/or failing to
26 disclose its close relationship with the [REDACTED]

1 **Thirteenth Cause of Action**

2 **Unfair Competition, Cal. Bus. & Prof. Code §§ 17200, *et seq.***

3 **(against Phunware and Fetch)**

4 161. Uber incorporates all of the above paragraphs as though fully set forth herein.

5 162. Fetch engaged in unlawful, unfair, and fraudulent business acts and practices. Such
6 acts and practices include, but are not limited to misrepresenting the effectiveness of its mobile
7 media strategy and media purchasing decisions; misrepresenting the validity of transparency reports
8 and networks/publishers' claims of app attribution; failing to identify and remedy fraud by networks
9 and publishers recommended and utilized by Fetch in Uber's mobile advertising; failing to disclose
10 and/or refund rebates Fetch received from networks and publishers; and/or failing to disclose its
11 close relationship with the [REDACTED]

12 163. Phunware also engaged unlawful, unfair and fraudulent business acts and practices.
13 Such acts and practices include, but are not limited to concealing from Uber the true source of its
14 inventory.

15 164. Fetch and Phunware's business acts and practices were unlawful as described above.

16 165. Fetch and Phunware's business acts and practices were fraudulent in that a reasonable
17 person would likely be deceived by their material misrepresentations and omissions.

18 166. Fetch and Phunware's business acts and practices were unfair in that the substantial
19 harm suffered by Uber outweighs any justification that they may have had for engaging in those acts
20 and practices.

21 167. Uber has been harmed as a result of Fetch and Phunware's unlawful, unfair, and
22 fraudulent business acts and practices. Uber is entitled to recover restitution, including without
23 limitation all benefits that Fetch and Phunware received as a result its unlawful, unfair, and
24 fraudulent business acts and practices; and to injunctive relief restraining Fetch and Phunware from
25 engaging in further acts of unfair competition.

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Fourteenth Cause of Action

Unjust Enrichment

(against Phunware and Fetch)

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

169. Fetch and Phunware each knowingly and unjustly benefited from the conduct alleged herein, without providing commensurate consideration in return to Uber, and unjustly enriching themselves and other third party bad actors.

170. It would be inequitable to allow Fetch and Phunware to retain the benefits of their fraudulent conduct. Uber is entitled to restitution of such amounts.

PRAYER FOR RELIEF

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

1. Judgment in Uber's favor and against Fetch and Phunware, jointly and severally, on all causes of action alleged herein;
2. For damages in an amount to be proven further at trial;
3. For preliminary and permanent injunctive relief;
4. For punitive damages;
5. For restitution;
6. For costs of suit incurred herein;
7. For pre- and post-judgment interest;
8. For attorneys' fees and costs; and
9. For such other and further relief as the Court may deem to be just and proper.

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.

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1 DATED: November 13, 2017

REED SMITH LLP

By: 

Ashley L. Shively
Attorneys for Defendant and Cross-Complainant
UBER TECHNOLOGIES, INC.

REED SMITH LLP
A limited liability partnership formed in the State of Delaware

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EXHIBIT A

**PUBLIC – REDACTS MATERIAL FROM
CONDITIONALLY SEALED RECORD**

EXHIBIT B

**PUBLIC – REDACTS MATERIAL FROM
CONDITIONALLY SEALED RECORD**

EXHIBIT C

**PUBLIC – REDACTS MATERIAL FROM
CONDITIONALLY SEALED RECORD**

EXHIBIT D

**PUBLIC – REDACTS MATERIAL FROM
CONDITIONALLY SEALED RECORD**

EXHIBIT E

**PUBLIC – REDACTS MATERIAL FROM
CONDITIONALLY SEALED RECORD**

EXHIBIT F

**PUBLIC – REDACTS MATERIAL FROM
CONDITIONALLY SEALED RECORD**

EXHIBIT G

**PUBLIC – REDACTS MATERIAL FROM
CONDITIONALLY SEALED RECORD**