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Counsel for JEREMY RUBIN D/B/A TIDBIT

JEREMY RUBIN D/B/A TIDBIT,	)	SUPERIOR COURT OF NEW JERSEY
	)	LAW DIVISION
Plaintiff,	)	ESSEX COUNTY
	)	DOCKET NO. _____
v.	)	
	)	CIVIL ACTION
STATE OF NEW JERSEY DIVISION	)	
OF CONSUMER AFFAIRS,	)	<b><u>COMPLAINT</u></b>
	)	
Defendant.	)	
	)	
	)	

Plaintiff, by way of complaint against Defendant, states as follows:

**PRELIMINARY STATEMENT**

1. Plaintiff brings this action under the United States Constitution, the New Jersey Constitution, 42 U.S.C. § 1983, the New Jersey Civil Rights Act and other authority, to prevent the unlawful exercise of subpoena power by the State of New Jersey.

**PARTIES**

2. Plaintiff Jeremy Rubin d/b/a Tidbit is a person who resides in Cambridge, Massachusetts. He is one of the developers of a piece of computer code known as "Tidbit," which

is the subject of an administrative subpoena issued by the State of New Jersey Division of Consumer Affairs, Office of Consumer Protection.

3. Defendant New Jersey Division of Consumer Affairs is a division of the New Jersey Office of the Attorney General, tasked with protecting the residents of New Jersey from fraud, deceit and misrepresentation in the sale of goods and services. The Office of Consumer Protection serves as the chief investigative arm of the Division of Consumer Affairs for consumer complaints.

#### VENUE

4. Venue is proper in Essex County because Defendant is located there, because the subpoena was issued and is returnable there, and because the causes of action arose there.

#### FACTUAL ALLEGATIONS

5. Rubin is a 19-year-old electrical engineering and computer science student at the Massachusetts Institute of Technology (“MIT”) and resides in Boston, Massachusetts. *See* Certification of Jeremy Rubin.

6. Rubin has only been to New Jersey once, to attend his grandmother’s funeral. Neither he nor Tidbit has any contacts with New Jersey sufficient to justify the assertion by New Jersey of personal jurisdiction over either of them.

7. In November 2013, Rubin and three other classmates participated in the “Node Knockout” Hackathon.

8. A “hackathon” is an event where a number of computer programmers gather together over a short period of time – oftentimes hours or days – to work intensely on developing computer programs or applications. Hackathons are both collaborate and competitive. A number of people may work together to develop a program or computer code; many hackathons feature prizes for the best computer program or application that is developed during the hackathon.

9. The Node Knockout hackathon was a 48-hour hackathon held online between November 9 and 11, 2013. It featured programmers and developers working on projects involving the Node.js computer platform. Many of the prizes were sponsored by major companies including Amazon.com's web services division, Groupon and Paypal.

10. The program Rubin and his classmates developed for Node Knockout was called "Tidbit" and was intended to allow developers to mine for Bitcoins on a client's computer as a substitute for advertising.

11. "Bitcoin" is a virtual currency that solely exists online. Bitcoin users can make payments directly to other users without involving a centralized bank or clearing house. Bitcoins are stored in an online "wallet." A large public ledger called the "blockchain" records every transaction that occurs within the system, permitting anyone to determine the current balance of any bitcoin virtual account (called an "address") and to verify whether a payment (a transfer of value between addresses) has actually taken place.

12. New Bitcoins are created by a process called "mining." "Miners" are a community of Bitcoin participants who follow a set of rules and maintain the ledger. A miner can add to the ledger only by solving an extremely difficult mathematical problem. A miner searches for solutions to these problems on ordinary desktop computers by using their computing power. When a computer operated by a miner finds a solution, it communicates its solution to the network of Bitcoin users, who verify it and add it to the "blockchain" or ledger. Other users would recognize this solution as correct and valid. The miner would be credited with a "block reward," a certain amount of Bitcoin value paid directly to the miner who "discovered" it.

13. Over the last year, Bitcoins have grown in prominence and a growing number of retailers and services now accept payment through Bitcoin, including Overstock.com and the

National Basketball Association's (NBA) Sacramento Kings franchise. As Bitcoin has grown in popularity, there are several active markets that exchange Bitcoins for dollars and other currencies, and vice versa.

14. Tidbit was intended to replace website advertisements by instead allowing developers to mine for Bitcoins using their clients' computers.

15. At the Node Knockout hackathon, Tidbit was clearly presented as a "proof of concept," meaning the code was never fully functional and could not actually mine for Bitcoins. On the Node Knockout website, the Tidbit team explained "Tidbit isn't fully ready for production use" and "is only a proof of concept." The Tidbit code did not interact with a Bitcoin miner and neither Rubin nor the other Tidbit developers have ever received any Bitcoins as a result of the Tidbit code.

16. Tidbit won an award for having the highest innovation score at the Node Knockout Hackathon.

17. After the hackaton, Tidbit set up its own website where developers could download the Tidbit code, which they could embed onto their own websites. However, the code as distributed by Tidbit has never been capable of mining for Bitcoins. Anyone could access the Tidbit website from the Internet. Tidbit's code was stored on a cloud server that was not physically located in New Jersey.

18. On December 4, 2013, the New Jersey Department of Consumer Affairs, Office of Consumer Protection issued a *subpoena duces tecum* and interrogatories to Plaintiff, explaining the Attorney General had initiated an investigation of violations of the New Jersey Consumer Fraud Act ("CFA"). See Exhibit A to Certification of Hanni M. Fakhoury.

19. The subpoena requests 14 sets of documents, including Tidbit's past and current source code, any and all documents, correspondence and agreements between Tidbit and website publishers or other third parties, and documents concerning Bitcoin accounts and wallet addresses used or associated with Tidbit code.

20. The subpoena was accompanied by a set of 27 interrogatories, requesting additional documents, as well as narrative descriptions seeking information including, but not limited to, "the method, manner and process in which the Bitcoin code was developed and deployed" (Interrogatory #8); the number and identity of all "websites utilized and/or . . . affected by the Bitcoin code" (Interrogatory #14); and a list of "all instances where Tidbit, its employees and/or websites utilizing the Bitcoin code accessed consumer computers without express written authorization or accessed consumer computers beyond what was authorized." (Interrogatory #20).

21. Rubin was initially directed to comply with the subpoena by December 20, 2013, but received an extension to January 13, 2014.

22. On January 7, 2014, counsel for Rubin sent a letter to Defendant, informing it that Tidbit would not be able to comply with the subpoena. *See* Fakhoury certification, Exhibit B. First, the dormant commerce clause prohibited the state of New Jersey from investigating and regulating behavior occurring outside the state of New Jersey. Second, Tidbit did not have the bulk of the records requested by the state since the code has never been functional and in turn, no Bitcoins had been mined.

23. On January 9, 2014, Defendant responded via letter claiming that N.J.S.A. 56:8-3 and 56:8-4 give the Attorney General the authority to investigate unlawful practices in violation of the CFA that affects New Jersey consumers, and insisting that Tidbit comply with the subpoena. *See* Fakhoury certification, Exhibit C.

24. On January 9, 2014, counsel for Plaintiff spoke over the phone with counsel for Defendant and negotiated a further extension of the compliance deadline to January 21, 2014. See Fakhoury certification, Exhibit D.

## CAUSES OF ACTION

### COUNT 1

#### Dormant Commerce Clause

(brought under Article I, section 8, clause 3 of the United States Constitution and pursuant to 42 U.S.C. § 1983 and N.J.S.A. 10:6-2(c))

25. Rubin incorporates the preceding paragraphs as if fully set forth.

26. The state of New Jersey only has authority under federal and state law to investigate and regulate conduct occurring within the state of New Jersey.

27. The Internet, by definition, has no geographical boundaries, notwithstanding the fact that Tidbit's source code could be downloaded by a user in New Jersey or is alleged to have been found on websites hosted or maintained in New Jersey.

28. Defendant has no authority to issue a subpoena duces tecum and interrogatories to investigate and regulate behavior occurring outside of the state of New Jersey, as doing so discriminates against and unduly burdens interstate commerce, in violation of Article I, section 8, clause 3 of the United States Constitution.

29. The issuance of the subpoena duces tecum and interrogatories to Rubin was not authorized under N.J.S.A. 56:8-3 and 56:8-4 and is therefore an unlawful and unconstitutional *ultra vires* action by Defendant.

### COUNT 2

#### Ultra Vires Action

(brought under the Fourteenth Amendment to the United States Constitution and pursuant to 42 U.S.C. § 1983 and N.J.S.A. 10:6-2(c))

30. Rubin incorporates the preceding paragraphs as if fully set forth.

31. The state of New Jersey may only exercise personal jurisdiction on an out-of- state individual if that person has sufficient minimum contacts with the state so that the suit does not offend traditional notions of fair play and substantial justice.

32. Neither Rubin nor Tidbit have “continuous and systematic” contacts with the state of New Jersey and neither have done any act by which they purposefully availed themselves of the privilege of conducting activities in New Jersey.

33. The issuance of the subpoena duces tecum and interrogatories to Plaintiff when the state has no personal jurisdiction on Rubin or Tidbit is an unlawful and unconstitutional *ultra vires* action by Defendant.

### COUNT 3

#### **Privilege Against Self Incrimination**

**(brought under the Fifth and Fourteenth Amendments of the United States Constitution and pursuant to 42 U.S.C. § 1983 and N.J.S.A. 10:6-2(c), the New Jersey Common Law, N.J.S.A. 2A:84A-19, and 56:8-7, and N.J.R.E. 503)**

34. Rubin incorporates the preceding paragraphs as if fully set forth herein.

35. Defendant’s actions in issuing the subpoena duces tecum and interrogatories to Rubin violates the right of Plaintiff to be free from compelled self incrimination, in violation of the Fifth and Fourteenth Amendments of the United States Constitution, New Jersey state common law, N.J.S.A. 56:8-7 and 2A:84A-19 and N.J.R.E. 503).

36. Rubin has the right to be free from compelled self-incrimination. Defendant has violated his right against compelled self incrimination by issuing a subpoena duces tecum and interrogatories that compel Plaintiff to provide testimony that could tend to incriminate him, convict him of a crime, or subject him to a penalty or forfeiture under New Jersey and federal law.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests judgment against the Defendant as follows:

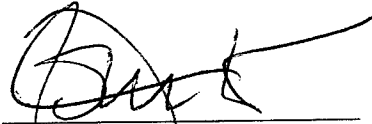
(a) Declaratory relief, including but not limited to a declaration that the subpoena and interrogatories to Jeremy Rubin d/b/a Tidbit is *ultra vires*, unconstitutional, and unenforceable.

(b) Injunctive relief, enjoining the New Jersey Division of Consumer Affairs, Office of Consumer Protection and any other division of the State of New Jersey from moving to enforce the subpoena issued unless and until there is a scheduled hearing;

(c) Attorney's fees and costs associated with this action, pursuant to N.J.S.A. 10:6-1 et seq. and other relevant authority;

(d) Any further relief as this Court deems just and proper and any other relief as allowed by law.

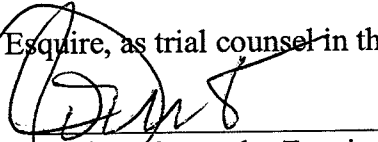
Dated: January 21, 2014



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**DESIGNATION OF TRIAL COUNSEL**

Plaintiff designates Frank Corrado, Esquire, as trial counsel in this action.



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**CERTIFICATION PRUSUANT TO R. 4:5-1**

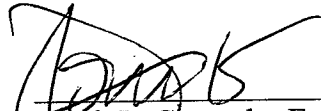
Plaintiff, via counsel, hereby certifies that there are no other proceedings or pending related cases arising from the same factual dispute described herein. The matter in controversy is not the subject of any other action pending in any other court or a pending arbitration proceeding, and no



other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this complaint, the undersigned knows of no other parties that are required to be joined in this lawsuit.

The undersigned recognizes the continuing obligation to file and serve on all parties and the court an amended certification if there is a change in the facts stated in this original certification.

Dated: January 21, 2014

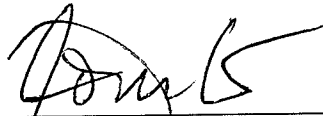


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#### CONFIDENTIAL PERSONAL IDENTIFYERS

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*.

Dated: January 21, 2014



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