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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TWITTER, INC., a Delaware corporation,

Plaintiff,

v.

SKOOTLE CORP., a Tennessee corporation;
JL4 WEB SOLUTIONS, a Philippines
corporation; JUSTIN CLARK, an individual,
d/b/a TWEETBUDDY.COM; JAMES
KESTER, an individual; JAYSON
YANUARIA, an individual; JAMES
LUCERO, an individual; and GARLAND E.
HARRIS, an individual,

Defendants.

CASE NO. CV 12-1721

**JAMES KESTER'S ANSWER TO
COMPLAINT**

Filing Date: April 5, 2012
Trial Date: None Set

1 Defendant James Kester (“Kester”) hereby submits this Answer to the complaint of Twitter,
2 Inc. (“Twitter”) for Breach of Contract; Tortious Interference with Contract; Fraud; and Unfair or
3 Deceptive Business Practices:

4 **PRELIMINARY STATEMENT**

5 James Kester is the founder and President of Defendant Skootle Corporation. Skootle sells
6 the product referred to in the complaint as “TweetAdder.” Twitter claims to have filed this action to
7 fight “spam.” While some individuals, companies or products may abuse Twitter in order to send
8 spam, TweetAdder does not. TweetAdder is a product far different from the products referred to in
9 the complaint as TweetAttacks and TweetBuddy. TweetAdder is a lawful, legitimate program that
10 helps businesses and individuals manage their Twitter accounts more efficiently and more effectively.

11 Traditionally, “spam” refers to the use of electronic messaging systems to send unsolicited
12 bulk commercial messages indiscriminately. TweetAdder is not intended to send spam, and in fact, it
13 is impossible to send spam using TweetAdder. To the contrary, in order for any Twitter user to
14 receive a tweet or direct message that originated from TweetAdder, the Twitter user must have either
15 (a) made the decision to follow a TweetAdder user’s twitter profile and therefore elected to read
16 tweets from the user; or (b) posted a tweet @[TweetAdder user].

17 TweetAdder is a standalone desktop application. By automating certain repetitive and
18 mundane tasks, TweetAdder users are able to find Twitter users with similar interests to follow and
19 interact with. TweetAdder also allows users to schedule Tweets to be posted throughout the day to
20 provide their followers with news, updates, and other information without the need to manually post
21 each individual update. This feature is readily available, for example, with TweetDeck (a similar
22 program owned by Twitter). For example, a news station or blogger can post an article on its
23 website, and TweetAdder can automatically post an excerpt of the article with a link referencing the
24 article on twitter.com. This is something the user could have done anyway, but TweetAdder saves
25 them the extra time and extra steps. As another example, most celebrities are not able to sit at their
26 computer all day and post tweets and manually follow back 1,000 or more Twitter users throughout
27 the day. They can hire someone to do it for them, or they can automate the task with TweetAdder.

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1 This helps them grow their fan base through Twitter and allows their fans to feel they are more
2 connected to them.

3 Customers of TweetAdder include popular television shows and newspapers, radio stations,
4 PR firms, charities, law firms, musicians, celebrities, politicians and political campaigns, city
5 chambers of commerce, banks, and numerous other businesses from small startups to Fortune 500
6 companies. These customers use TweetAdder to save the time and expense of manually locating and
7 following users so they can spend more time engaging with the Twitter users that want to hear what
8 they have to say and stay connected with them. Many tasks that TweetAdder performs can already
9 be performed manually by the end user. TweetAdder simply makes it easier with added search
10 capabilities.

11 Skootle has created TweetAdder in a way that makes it a useful and legitimate tool. Skootle
12 specifically elected to exclude certain features from TweetAdder that would otherwise allow users to
13 abuse Twitter. Without these features, it would be exceedingly difficult to use TweetAdder for
14 illegitimate and malicious purposes. Those excluded features include:

- 15 a. Account creation. TweetAdder clients have no ability to create multiple profiles
16 automatically. They must create their profiles manually with Twitter.
- 17 b. Bulk profile editing. TweetAdder users must create and edit each profile they enter
18 into the program manually.
- 19 c. Mass importing accounts. TweetAdder users must input each twitter profile
20 manually. They cannot upload a list of multiple profiles into the program.
- 21 d. Duplication of account settings. TweetAdder users must open each profile in
22 TweetAdder one by one and manually set each profile setting for that particular
23 profile. They cannot simply copy over settings to their remaining profiles.
- 24 e. Following the same user on multiple accounts. TweetAdder does not permit a user
25 to follower another user from multiple accounts.
- 26 f. @Replies based on user keywords. TweetAdder allows a user to send an “@reply”
27 only on the condition that another Twitter user mentioned them in an @reply, such
28 as a “thank you for mentioning me.” TweetAdder does not allow its users to

1 indiscriminately send @replies to Twitter users who have not already mentioned
2 them.

3 g. Automatic conversion of keywords to hashtags. TweetAdder does not permit users
4 to automatically convert keywords to hashtags.

5 **ANSWER TO TWITTER COMPLAINT**

6 **II. INTRODUCTION**

7 1. Kester is without knowledge or information sufficient to form a belief as to the truth of
8 the allegations in ¶ 1 and therefore denies them.

9 2. Kester admits that Twitter brought this action against Kester. To the extent any
10 further allegations in ¶ 2 relate to Kester or Skootle, Kester denies each and every allegation and/or
11 implication of wrongdoing. To the extent the allegations in ¶ 2 relate to other defendants, Kester is
12 without knowledge or information sufficient to form a belief as to the truth of the allegations and
13 therefore denies them.

14 3. Kester admits that by this action Twitter brings certain allegations against Kester and
15 refers to Kester as a “Spamware Defendant,” but denies this moniker is applicable. To the extent any
16 further allegations in ¶ 3 relate to Kester or Skootle, Kester denies each and every allegation and/or
17 implication of wrongdoing. To the extent the allegations in ¶ 3 relate to other defendants, Kester is
18 without knowledge or information sufficient to form a belief as to the truth of the allegations and
19 therefore denies them.

20 **III. THE PARTIES**

21 4. Kester is without knowledge or information sufficient to form a belief as to the truth of
22 the allegations in ¶ 4 and therefore denies them.

23 5. Kester is without knowledge or information sufficient to form a belief as to the truth of
24 the allegations in ¶ 5 and therefore denies them.

25 6. Kester admits that Skootle is a corporation incorporated in Tennessee, with its
26 principal place of business in the State of Virginia, doing business in the State of California. Kester
27 admits that he is a resident of the State of Virginia but denies he individually conducts business in
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1 California. Kester admits that he is the principal officer of Skootle. Kester objects to the collective
2 reference to Skootle and Kester as “TweetAdder” as the two are not one and the same.

3 7. Kester is without knowledge or information sufficient to form a belief as to the truth of
4 the allegations in ¶ 7 and therefore denies them.

5 8. Kester is without knowledge or information sufficient to form a belief as to the truth of
6 the allegations in ¶ 8 and therefore denies them.

7 9. Kester is without knowledge or information sufficient to form a belief as to the truth of
8 the allegations in ¶ 9 and therefore denies them.

9 10. Kester is without knowledge or information sufficient to form a belief as to the truth of
10 the allegations in ¶ 10 and therefore denies them.

11 **IV. JURISDICTION AND VENUE**

12 11. Kester does not contest this Court’s diversity jurisdiction.

13 12. Kester denies he is subject to personal jurisdiction in this jurisdiction. Otherwise,
14 Kester does not contest that venue is proper in this District under 28 U.S.C. § 1391 (b)(2). To the
15 extent any further allegations in ¶ 12 relate to Kester or Skootle, Kester denies each and every
16 allegation and/or implication of wrongdoing. To the extent the allegations in ¶ 12 relate to other
17 defendants, Kester is without knowledge or information sufficient to form a belief as to the truth of
18 the allegations and therefore denies them.

19 **V. INTRADISTRICT ASSIGNMENT**

20 13. Kester is without knowledge or information sufficient to form a belief as to the truth of
21 the allegations in ¶ 13 and therefore denies them.

22 **VI. GENERAL ALLEGATIONS**

23 **A. Twitter’s Service**

24 14. Kester admits Twitter is an online communications platform that lets users share and
25 receive information in real-time through short messages called “tweets,” which have a maximum
26 length of 140 characters. Kester admits the Twitter service is free of charge. As to the remaining
27 allegations in ¶ 14, Kester is without sufficient knowledge to form a belief and therefore denies them.

28 15. Kester admits this is an accurate reflection of how Twitter may be used.

1 16. Kester admits this is an accurate reflection of how Twitter may be used, with the
2 clarification that a direct message may only be received by a user who is a follower.

3 17. Kester admits this is an accurate reflection of how Twitter may be used.

4 **B. “Spam” on Twitter**

5 18. Kester admits that certain uses of Twitter are beneficial for businesses and that, as a
6 result, companies of every size now use Twitter to connect with customers, including driving new
7 businesses, offering discounts and deals, and providing customer service. Kester is without
8 knowledge or information sufficient to form a belief as to the special efforts taken by Twitter, and
9 therefore denies that allegation.

10 19. Kester admits that many legitimate companies have grown their businesses through
11 Twitter. Kester is without knowledge or information sufficient to form a belief as to the truth of the
12 remaining allegations in ¶ 19 and therefore denies them.

13 20. Kester is without knowledge or information sufficient to form a belief as to the truth of
14 the allegations in ¶ 20 and therefore denies them.

15 21. Kester is without knowledge or information sufficient to form a belief as to the truth of
16 the allegations in ¶ 21 and therefore denies them.

17 22. Kester admits that Twitter attempts to limit the number of Tweets and direct messages
18 an account can send per day and the number of users an account can follow. Otherwise, Kester is
19 without knowledge or information sufficient to form a belief as to the truth of the remaining
20 allegations in ¶ 22 and therefore denies them.

21 23. Kester is without knowledge or information sufficient to form a belief as to the truth of
22 the allegations in ¶ 23 and therefore denies them. To the extent any further allegations in ¶ 23 relate
23 to Kester or Skootle, Kester denies each and every allegation and/or implication of wrongdoing. To
24 the extent the allegations in ¶ 23 relate to other defendants, Kester is without knowledge or
25 information sufficient to form a belief as to the truth of the allegations and therefore denies them.

26 24. To the extent any allegations in ¶ 24 relate to Kester or Skootle, Kester denies each
27 and every allegation and/or implication of wrongdoing. To the extent the allegations in ¶ 24 relate to
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1 other defendants, Kester is without knowledge or information sufficient to form a belief as to the
2 truth of the allegations and therefore denies them.

3 25. To the extent any allegations in ¶ 25 relate to Kester or Skootle, Kester denies each
4 and every allegation and/or implication of wrongdoing. To the extent the allegations in ¶ 25 relate to
5 other defendants, Kester is without knowledge or information sufficient to form a belief as to the
6 truth of the allegations and therefore denies them.

7 **C. Twitter’s User Agreement**

8 26. Kester admits that in order to create a Twitter account, a would-be Twitter user must
9 first agree to be bound by Twitter’s user agreement, which comprises the Twitter Terms of Service
10 (“Terms”), the Twitter Rules, and Twitter’s Privacy Policy (collectively the “TOS”). Kester denies
11 that a Twitter account is necessary to access Twitter and use many of Twitter’s services. Kester is
12 without knowledge or information sufficient to form a belief as to the truth of the remaining
13 allegations in ¶ 26 and therefore denies them.

14 27. Kester denies that by accessing or using Twitter’s websites and services a user agrees
15 to be bound by the TOS. Kester is without knowledge or information sufficient to form a belief as to
16 the truth of the remaining allegations in ¶ 27 and therefore denies them.

17 28. Kester admits the terms of Twitter’s TOS and Twitter Rules speak for themselves.
18 Kester is without knowledge or information sufficient to form a belief as to the truth of the remaining
19 allegations in ¶ 28 and therefore denies them.

20 29. Kester admits the terms of Twitter’s TOS and Twitter Rules speak for themselves.
21 Kester is without knowledge or information sufficient to form a belief as to the truth of the remaining
22 allegations in ¶ 29 and therefore denies them.

23 30. Kester admits the terms of Twitter’s TOS and Twitter Rules speak for themselves.
24 Kester is without knowledge or information sufficient to form a belief as to the truth of the remaining
25 allegations in ¶ 30 and therefore denies them.

26 31. Kester admits to having opened a Twitter account in 2009 and to agreeing to the TOS
27 in place at that time. To the extent any further allegations in ¶ 31 relate to Kester or Skootle, all
28 remaining allegations and/or implications of wrongdoing are denied by Kester. To the extent the

1 allegations in ¶ 31 relate to other defendants, Kester is without knowledge or information sufficient to
2 form a belief as to the truth of the allegations and therefore denies them.

3 **D. TweetAttacks**

4 32. Kester admits there exists a product known as TweetAttacks. Otherwise, Kester is
5 without knowledge or information sufficient to form a belief as to the truth of the remaining
6 allegations in ¶ 32 and therefore denies them.

7 33. Kester is without knowledge or information sufficient to form a belief as to the truth of
8 the allegations in ¶ 33 and therefore denies them.

9 34. Kester is without knowledge or information sufficient to form a belief as to the truth of
10 the allegations in ¶ 34 and therefore denies them.

11 35. Kester is without knowledge or information sufficient to form a belief as to the truth of
12 the allegations in ¶ 35 and therefore denies them.

13 36. Kester is without knowledge or information sufficient to form a belief as to the truth of
14 the allegations in ¶ 36 and therefore denies them.

15 37. Kester is without knowledge or information sufficient to form a belief as to the truth of
16 the allegations in ¶ 37 and therefore denies them.

17 38. Kester is without knowledge or information sufficient to form a belief as to the truth of
18 the allegations in ¶ 38 and therefore denies them.

19 **E. TweetAdder**

20 39. Kester admits that he is the founder and President of Skootle, which owns and
21 operates a website available at www.tweetadder.com. Kester further admits that Skootle sells and
22 services a product called “TweetAdder.” Kester further admits that Skootle customers may purchase
23 TweetAdder for more than one account. Kester denies the remaining allegations in ¶ 39.

24 40. To the extent any allegations in ¶ 40 relate to Kester or Skootle, Kester denies all
25 allegations and/or implications of wrongdoing. To the extent the allegations in ¶ 40 relate to other
26 parties, Kester is without knowledge or information sufficient to form a belief as to the truth of the
27 allegations and therefore denies them.

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1 41. The allegations in this paragraph assert legal conclusions to which no response is
2 required and on that basis Kester denies them.

3 42. Kester admits that the TweetAdder website states that licensees can “get more
4 followers, instantly;” “use our program on an unlimited number of Twitter profiles with TweetAdder
5 Platinum;” and “works your Twitter profile or profiles like a human being.” Kester denies the
6 remaining allegations in ¶ 41.

7 43. Denied.

8 44. The allegations in this paragraph assert legal conclusions to which no response is
9 required and on that basis Kester denies them.

10 **F. TweetBuddy**

11 45. Kester admits there exists a product known as TweetBuddy. Otherwise, Kester is
12 without knowledge or information sufficient to form a belief as to the truth of the remaining
13 allegations in ¶ 45 and therefore denies them.

14 46. Kester is without knowledge or information sufficient to form a belief as to the truth of
15 the allegations in ¶ 46 and therefore denies them.

16 47. Kester is without knowledge or information sufficient to form a belief as to the truth of
17 the allegations in ¶ 47 and therefore denies them.

18 48. Kester is without knowledge or information sufficient to form a belief as to the truth of
19 the allegations in ¶ 48 and therefore denies them.

20 49. Kester is without knowledge or information sufficient to form a belief as to the truth of
21 the allegations in ¶ 49 and therefore denies them.

22 50. Kester is without knowledge or information sufficient to form a belief as to the truth of
23 the allegations in ¶ 50 and therefore denies them.

24 51. Kester is without knowledge or information sufficient to form a belief as to the truth of
25 the allegations in ¶ 51 and therefore denies them.

26 **G. James Lucero**

27 52. Kester is without knowledge or information sufficient to form a belief as to the truth of
28 the allegations in ¶ 52 and therefore denies them.

1 53. Kester is without knowledge or information sufficient to form a belief as to the truth of
2 the allegations in ¶ 53 and therefore denies them.

3 54. Kester is without knowledge or information sufficient to form a belief as to the truth of
4 the allegations in ¶ 54 and therefore denies them.

5 **H. Garland E. Harris**

6 55. Kester is without knowledge or information sufficient to form a belief as to the truth of
7 the allegations in ¶ 55 and therefore denies them.

8 56. Kester is without knowledge or information sufficient to form a belief as to the truth of
9 the allegations in ¶ 56 and therefore denies them.

10 57. Kester is without knowledge or information sufficient to form a belief as to the truth of
11 the allegations in ¶ 57 and therefore denies them.

12 **FIRST CLAIM FOR RELIEF**

13 **Breach of Contract**
14 **(Against All Defendants)**

15 58. Kester incorporates by reference each and every response contained in paragraphs 1
16 through 57.

17 59. To the extent any allegations in ¶ 59 relate to Kester or Skootle, Kester denies all
18 allegations and/or implications of wrongdoing. To the extent the allegations in ¶ 59 relate to other
19 parties, Kester is without knowledge or information sufficient to form a belief as to the truth of the
20 allegations and therefore denies them.

21 60. Kester is without knowledge or information sufficient to form a belief as to the truth of
22 the allegations in ¶ 60 and therefore denies them.

23 61. To the extent any allegations in ¶ 61 relate to Kester or Skootle, Kester denies all
24 allegations and/or implications of wrongdoing. To the extent the allegations in ¶ 61 relate to other
25 parties, Kester is without knowledge or information sufficient to form a belief as to the truth of the
26 allegations and therefore denies them.

27 62. To the extent any allegations in ¶ 62 relate to Kester or Skootle, Kester denies all
28 allegations and/or implications of wrongdoing. To the extent the allegations in ¶ 62 relate to other

1 parties, Kester is without knowledge or information sufficient to form a belief as to the truth of the
2 allegations and therefore denies them.

3 **SECOND CLAIM FOR RELIEF**

4 **Tortious Interference with Contract**
5 **(Against the Spamware Defendants)**

6 63. Kester incorporates by reference each and every response contained in paragraphs 1
7 through 62.

8 64. Kester is without knowledge or information sufficient to form a belief as to the truth of
9 the allegations in ¶ 64 and therefore denies them.

10 65. To the extent any allegations in ¶ 65 relate to Kester or Skootle, Kester denies all
11 allegations and/or implications of wrongdoing. To the extent the allegations in ¶ 65 relate to other
12 parties, Kester is without knowledge or information sufficient to form a belief as to the truth of the
13 allegations and therefore denies them.

14 66. Kester admits it is aware Twitter has a TOS. To the extent any allegations in ¶ 66
15 relate to Kester or Skootle, Kester denies all allegations and/or implications of wrongdoing. To the
16 extent the allegations in ¶ 66 relate to other parties, Kester is without knowledge or information
17 sufficient to form a belief as to the truth of the allegations and therefore denies them.

18 67. To the extent any allegations in ¶ 67 relate to Kester or Skootle, Kester denies all
19 allegations and/or implications of wrongdoing. To the extent the allegations in ¶ 67 relate to other
20 parties, Kester is without knowledge or information sufficient to form a belief as to the truth of the
21 allegations and therefore denies them.

22 68. To the extent any allegations in ¶ 68 relate to Kester or Skootle, Kester denies all
23 allegations and/or implications of wrongdoing. To the extent the allegations in ¶ 68 relate to other
24 parties, Kester is without knowledge or information sufficient to form a belief as to the truth of the
25 allegations and therefore denies them.

26 69. To the extent any allegations in ¶ 69 relate Kester or Skootle, Kester denies all
27 allegations and/or implications of wrongdoing. To the extent the allegations in ¶ 69 relate to other
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1 parties, Kester is without knowledge or information sufficient to form a belief as to the truth of the
2 allegations and therefore denies them.

3 70. To the extent any allegations in ¶ 70 relate to Kester or Skootle, Kester denies all
4 allegations and/or implications of wrongdoing. To the extent the allegations in ¶ 70 relate to other
5 parties, Kester is without knowledge or information sufficient to form a belief as to the truth of the
6 allegations and therefore denies them.

7 **THIRD CLAIM FOR RELIEF**

8 **Fraud**
9 **(Against the Spamware Defendants)**

10 71. Kester incorporates by reference each and every response contained in paragraphs 1
11 through 70.

12 72. To the extent any allegations in ¶ 72 relate to Kester or Skootle, Kester denies all
13 allegations and/or implications of wrongdoing. To the extent the allegations in ¶ 72 relate to other
14 parties, Kester is without knowledge or information sufficient to form a belief as to the truth of the
15 allegations and therefore denies them.

16 73. To the extent any allegations in ¶ 73 relate to Kester or Skootle, Kester denies all
17 allegations and/or implications of wrongdoing. To the extent the allegations in ¶ 73 relate to other
18 parties, Kester is without knowledge or information sufficient to form a belief as to the truth of the
19 allegations and therefore denies them.

20 74. To the extent any allegations in ¶ 74 relate to Kester or Skootle, Kester denies all
21 allegations and/or implications of wrongdoing. To the extent the allegations in ¶ 74 relate to other
22 parties, Kester is without knowledge or information sufficient to form a belief as to the truth of the
23 allegations and therefore denies them.

24 75. To the extent any allegations in ¶ 75 relate to Kester or Skootle, Kester denies all
25 remaining allegations and/or implications of wrongdoing. To the extent the allegations in ¶ 75 relate
26 to other parties, Kester is without knowledge or information sufficient to form a belief as to the truth
27 of the allegations and therefore denies them.

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1 **FOURTH CLAIM FOR RELIEF**

2 **Unlawful, Unfair, and Fraudulent Business Practices Under California Business & Professions**
3 **Code § 17200, et seq.**
4 **(Against All Defendants)**

5 76. Kester incorporates by reference each and every response contained in paragraphs 1
6 through 76.

7 77. To the extent any allegations in ¶ 77 relate to Kester or Skootle, Kester denies all
8 allegations and/or implications of wrongdoing. To the extent the allegations in ¶ 77 relate to other
9 parties, Kester is without knowledge or information sufficient to form a belief as to the truth of the
10 allegations and therefore denies them.

11 78. To the extent any allegations in ¶ 78 relate to Kester or Skootle, Kester denies all
12 allegations and/or implications of wrongdoing. To the extent the allegations in ¶ 78 relate to other
13 parties, Kester is without knowledge or information sufficient to form a belief as to the truth of the
14 allegations and therefore denies them.

15 79. To the extent any allegations in ¶ 79 relate to Kester or Skootle, Kester denies all
16 allegations and/or implications of wrongdoing. To the extent the allegations in ¶ 79 relate to other
17 parties, Kester is without knowledge or information sufficient to form a belief as to the truth of the
18 allegations and therefore denies them.

19 80. To the extent any allegations in ¶ 80 relate to Kester or Skootle, Kester denies all
20 allegations and/or implications of wrongdoing. To the extent the allegations in ¶ 80 relate to other
21 parties, Kester is without knowledge or information sufficient to form a belief as to the truth of the
22 allegations and therefore denies them.

23 81. Kester denies any and all allegations of the complaint that it has not expressly
24 admitted or qualified.

25 **RESPONSE TO PRAYER FOR RELIEF**

26 Kester denies that Twitter is entitled to any of the relief requested in its Prayer for Relief, or
27 any other relief.
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colt/wallerstein^{llc}

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AFFIRMATIVE DEFENSES

In addition to the defense described below, Kester expressly reserves the right to allege additional defenses as they become known during the course of discovery. In asserting any or all of these defenses, Kester does not concede that it bears the burden of establishing any fact or proposition on any issue.

AFFIRMATIVE DEFENSE 1

82. FAILURE TO STATE A CLAIM – Kester asserts that the complaint fails to state a claim against Skootle upon which relief can be granted.

AFFIRMATIVE DEFENSE 2

83. NON-BREACHING USES – Kester asserts that TweetAdder offers features that do not breach the TOS.

AFFIRMATIVE DEFENSE 3

84. NON-BREACH – Kester asserts he did not breach and has not breached (directly, indirectly, contributorily, or by inducement) any contracts alleged in the complaint. In fact, Kester asserts that the TOS alleged in the complaint contains terms in addition to and different from the terms of the TOS in place in 2009.

AFFIRMATIVE DEFENSE 4

85. ACCORD AND SATISFACTION – Kester asserts that Twitter’s claims, or parts thereof, are barred by the doctrine of accord and satisfaction.

AFFIRMATIVE DEFENSE 5

86. PERFORMANCE – Kester asserts that he discharged each and every obligation, if any, which he may have owed to Twitter.

AFFIRMATIVE DEFENSE 6

87. SUBSTANTIAL COMPLIANCE – Kester asserts that Twitter’s claims against Kester are barred by the doctrine of substantial compliance.

AFFIRMATIVE DEFENSE 7

88. ECONOMIC LOSS RULE – Kester asserts that Twitter’s claims are barred by the economic loss rule.

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AFFIRMATIVE DEFENSE 8

89. JUST CAUSE – Kester asserts that the actions taken of which Twitter complains were taken with just cause and were not in violation of any federal or state statute.

AFFIRMATIVE DEFENSE 9

90. LACHES – Kester asserts that Twitter’s claims are barred by the doctrine of laches.

AFFIRMATIVE DEFENSE 10

91. ESTOPPEL – Kester asserts that Twitter’s claims are barred by the doctrine of estoppel.

AFFIRMATIVE DEFENSE 11

92. FAILURE TO DO EQUITY – Kester asserts that no relief may be obtained under the complaint by reason of Twitter’s failure to do equity in the matters alleged in the complaint.

AFFIRMATIVE DEFENSE 12

93. FAILURE TO MITIGATE – Kester asserts that Twitter’s claims are barred for failure to mitigate damages.

AFFIRMATIVE DEFENSE 13

94. MERITLESS CLAIM(S) – Kester asserts that Twitter’s complaint and the cause(s) of action alleged therein is frivolous and brought and maintained in bad faith and without reasonable cause, is totally and completely without merit, and was brought for the sole purpose of harassing Kester and that Kester is entitled to recover reasonable expenses, including attorneys’ fees, from Twitter and its counsel.

AFFIRMATIVE DEFENSE 14

95. RATIFICATION – Kester asserts that he did not ratify or approve any wrongful conduct.

AFFIRMATIVE DEFENSE 15

96. WAIVER – Kester asserts that Twitter’s claims are barred by the doctrine of waiver.

AFFIRMATIVE DEFENSE 16

97. UNCLEAN HANDS - Kester asserts that Twitter’s claims are barred by the doctrine of unclean hands.

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AFFIRMATIVE DEFENSE 17

98. FIRST AMENDMENT – Kester asserts that the actions taken by him, Skootle or Skootle’s customers are protected by the First Amendment.

JURY TRIAL DEMANDED

Kester hereby demands a trial by jury as to all issues so triable in this action.

Date: May 25, 2012

COLT / WALLERSTEIN LLP



By: _____

Doug Colt
Thomas E. Wallerstein
Nicole M. Norris
Attorneys for James Kester