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8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA  
 10 SAN FRANCISCO DIVISION

12	TWITTER, INC., a Delaware corporation,	)	CASE NO.: 3:12-CV-01721 SI
		)	
13	Plaintiff,	)	PLAINTIFF'S NOTICE OF MOTION
		)	AND MOTION TO SERVE FOREIGN
14	v.	)	DEFENDANTS BY ALTERNATIVE
		)	MEANS
15	SKOOTLE CORP., a Tennessee corporation; JL4	)	
	WEB SOLUTIONS, a Philippines corporation;	)	
16	JUSTIN CLARK, an individual, d/b/a	)	
	TWEETBUDDY.COM; JAMES KESTER, an	)	Date: Thursday, July 12, 2012
17	individual; JAYSON YANUARIA, an	)	Time: 9:00 AM
	individual; JAMES LUCERO, an individual; and	)	Dept: Courtroom 10, 19th Floor
18	GARLAND E. HARRIS, an individual,	)	Before: Honorable Susan Illston
		)	
19	Defendants.	)	

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1 **NOTICE OF MOTION AND MOTION**

2 **PLEASE TAKE NOTICE** that on Thursday, July 12, 2012, at 9:00 AM, or as soon as the  
3 Court’s calendar permits, in Courtroom 10, 19th Floor of the United States District Courthouse,  
4 450 Golden Gate Avenue, San Francisco, CA 94102, before the Honorable Susan Illston, Plaintiff  
5 Twitter, Inc. (“Twitter” or “Plaintiff”) will and hereby does move this Court, pursuant to Local  
6 Rule 7-1 and Federal Rule of Civil Procedure 4(f)(3), for an order authorizing service by  
7 alternative means, namely email, on Defendants Jayson Yanuaria (“Yanuaria”) and JL4 Web  
8 Solutions (“JL4”) (collectively, “Foreign Defendants”).<sup>1</sup>

9 Despite repeated efforts, Plaintiff has been unable to serve the Foreign Defendants at the  
10 physical addresses with which Plaintiff believed the respective Foreign Defendants to be  
11 associated based on extensive investigation. Plaintiff has no information regarding other physical  
12 addresses associated with the Foreign Defendants. In order to prevent further delay, Plaintiff  
13 requests leave to serve the Foreign Defendants by email.

14 This motion is based upon the Memorandum of Points and Authorities below, the  
15 Declaration of Charles T. Graves in support of the instant motion (“Graves Decl.”), Exhibits A  
16 and B attached thereto, and the files and records in this action.

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27 <sup>1</sup> As a courtesy, Plaintiff plans to send a copy of this motion and supporting documents to  
28 Yanuaria and JL4 by email to the email addresses noted *infra*.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. FACTUAL AND PROCEDURAL BACKGROUND**

3 Plaintiff filed the instant action against the Foreign Defendants on April 5, 2012. (ECF  
4 No. 1). Plaintiff’s Complaint alleges, and Plaintiff believes, that the Foreign Defendants are  
5 located in the Philippines. (*Id.*, ¶ 5). Since filing the Complaint, Plaintiff has made several  
6 attempts in good faith to serve the Foreign Defendants pursuant to Federal Rule of Civil Procedure  
7 Rule 4(f)(2)(C)(ii). However, these attempts have been, thus far, unsuccessful. Accordingly,  
8 Plaintiff hereby respectfully requests that the court enter an order for Plaintiff to serve the Foreign  
9 Defendants via email pursuant to Federal Rule of Civil Procedure 4(f)(3). As more fully explained  
10 below, service via this means is not prohibited by international agreement and is reasonably  
11 calculated to provide actual notice of this case to the Foreign Defendants.

12 As alleged in the Complaint, Defendant JL4 is a corporation incorporated in the  
13 Philippines, and Defendant Yanuaria, JL4’s principal officer, is an individual domiciled in the  
14 Philippines; both conduct business in California. (ECF No. 1, ¶ 5). JL4 and Yanuaria are  
15 responsible for the Twitter spam software known as TweetAttacks. (*Id.*, ¶ 32). The court issued  
16 summonses as to Yanuaria and JL4 on April 5, 2012. (ECF No. 3, pp. 3, 7). Plaintiff thereafter  
17 attempted to serve process on the Foreign Defendants pursuant to Federal Rules of Civil  
18 Procedure 4(f)(2)(C)(ii) and 4(h)(2)<sup>2</sup> on two occasions: first on April 11, 2012 (ECF Nos. 6, 7),  
19 and again on May 3, 2012. (ECF Nos. 12, 13).

20 Plaintiff made two unsuccessful attempts to serve the Foreign Defendants at addresses  
21 Plaintiff gathered in the course of an investigation it conducted prior to filing the Complaint.

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23 <sup>2</sup> Rule 4(f)(2)(C)(ii) provides for service on an individual in a foreign country “using any  
24 form of mail that the clerk addresses and sends to the individual and that requires a signed  
25 receipt,” “unless prohibited by the foreign country’s law.” FED. R. CIV. P. 4(f)(2)(C)(ii). In turn,  
26 Rule 4(h)(2) allows service on foreign corporations in any manner allowed by Rule 4(f), except  
27 for personal service. FED. R. CIV. P. 4(h)(2). Accordingly, throughout this motion, Plaintiff’s  
28 arguments with respect to Rule 4(f)(3) apply with equal force to Rule 4(h)(2), which applies to  
foreign corporate defendant JL4. Plaintiff notes that service by mail is permitted under  
Philippines procedural rules. *See* RULES OF COURT, Pt. I, R. 13, §§ 5, 7 (Phil.), *available at*  
[http://sc.judiciary.gov.ph/rulesofcourt/RULES%20OF%20COURT.htm#rule\\_13](http://sc.judiciary.gov.ph/rulesofcourt/RULES%20OF%20COURT.htm#rule_13) (last visited  
June 4, 2012).

1 (Graves Decl. at ¶¶ 4-5). Based on the information gathered in that investigation, at the times it  
2 attempted service, Plaintiff believed that Yanuaria and JL4 maintained and were associated with  
3 the respective physical addresses in the Philippines at which Plaintiff attempted to serve them.  
4 (Graves Decl. at ¶ 6). Plaintiff has no information about any other physical addresses currently  
5 associated with either Yanuaria or JL4. (Graves Decl. at ¶ 7).

6 Also based on information gathered in the investigation, Plaintiff believes that Yanuaria is  
7 married to a woman named Maria “Lou” Lourdes Macabasco-Yanuaria. (Graves Decl. at ¶ 8).  
8 Additionally, based on information from its original investigation and subsequent investigative  
9 efforts, Plaintiff believes that Yanuaria, the principal officer of JL4, is associated with certain  
10 email addresses including but not limited to jyanuaria@gmail.com, jayson.yanuaria@yahoo.com,  
11 and xyz\_jay@yahoo.com; that Yanuaria has recently been using these email addresses to  
12 communicate with TweetAttacks customers; and that he continues to use these email addresses for  
13 TweetAttacks-related business purposes to the present day. (Graves Decl. at ¶¶ 9-10). For  
14 example, the email address jyanuaria@gmail.com is listed as Yanuaria’s contact email address in  
15 a recent posting to a thread discussing TweetAttacks on an online message board for Internet  
16 marketers. *See* Warrior Forum, [http://www.warriorforum.com/warrior-forum-classified-](http://www.warriorforum.com/warrior-forum-classified-ads/557956-valid-tweetattacks-discount-coupon-get-20-off.html)  
17 [ads/557956-valid-tweetattacks-discount-coupon-get-20-off.html](http://www.warriorforum.com/warrior-forum-classified-ads/557956-valid-tweetattacks-discount-coupon-get-20-off.html) (last visited June 5, 2012).

18 On the first occasion when Plaintiff attempted service by mail, neither Foreign Defendant  
19 returned the receipt submitted with the respective mailing. (Graves Decl. at ¶ 11). Following the  
20 second attempted service by mail, on June 1, 2012, Plaintiff received a signed return receipt,  
21 attached as Exhibit A, for the mailing sent to Yanuaria. (Graves Decl. at ¶ 12; Ex. A). The  
22 signature, dated May 21, 2012, is neither Yanuaria’s name nor his spouse’s, but rather appears to  
23 be “Mary Sharpe,” followed by an illegible second surname. (Graves Decl. at ¶ 13; Ex. A).  
24 Plaintiff has no information linking Yanuaria to an individual by that name. (Graves Decl. at ¶  
25 14).

26 With regard to JL4, Plaintiff has never received the return receipt submitted with the  
27 second mailing to JL4. (Graves Decl. at ¶ 15). The United States Postal Service (“USPS”)  
28 tracking records for the receipts submitted respectively with the two JL4 mailings, attached as

1 Exhibit B, likewise show no tracking information for either of the mailings after they left the  
2 USPS sort facility in San Francisco. (Graves Decl. at ¶ 16; Ex. B). On May 15, 2012, Plaintiff  
3 initiated an inquiry with USPS regarding the disposition of the May 3, 2012 mailing, and was told  
4 by the responding USPS agent to expect around 60 days' wait for the results of the inquiry.<sup>3</sup>  
5 (Graves Decl. at ¶ 17). The 60-day period would end on July 14, 2012, about three weeks before  
6 Plaintiff's deadline to serve the Foreign Defendants. *See* FED. R. CIV. P. 4(m) (providing 120-day  
7 time limit for service).

## 8 II. DISCUSSION

9 Plaintiff requests that the court allow Plaintiff to serve the Foreign Defendants via email  
10 pursuant to Federal Rule of Civil Procedure 4(f)(3). Plaintiff has made multiple good-faith  
11 attempts to serve the Foreign Defendants under Rule 4(f)(2)(C)(ii), to no avail. The method of  
12 service Plaintiff requests is not prohibited by international agreement; moreover, it is reasonably  
13 calculated to provide actual notice of the case to the Foreign Defendants.

14 Rule 4(f)(3) allows the service of process on an individual at a place not within any  
15 judicial district of the United States by "means not prohibited by international agreement, as the  
16 court orders." Fed. R. Civ. P. 4(f)(3). Court-ordered service under Rule 4(f)(3) enjoys an equal  
17 footing with service under Rule 4(f)(1) or 4(f)(2). *Rio Properties, Inc., v. Rio Int'l Interlink*, 284  
18 F.3d 1007, 1014, 1015 (9th Cir. 2002). A method of service ordered under Rule 4(f)(3) must not  
19 violate any international agreement. Further, it must comport with constitutional notions of due  
20 process, meaning it must be "reasonably calculated, under all the circumstances, to apprise  
21 interested parties of the pendency of the action and afford them an opportunity to present their  
22 objections." *Id.* at 1015, 1016, 1017 (quoting *Mullane v. Cent. Hanover Bank & Trust*, 339 U.S.  
23 306, 314 (1950)).

24 Service by email is both permissible and particularly suitable in this case. First, in both the  
25 Ninth Circuit and this court, service by email has been found to comport with due process. *Id.* at  
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27 <sup>3</sup> For a description of the USPS inquiry process initiated by Plaintiff, *see* "920 Inquiries and  
28 Claims," [http://pe.usps.com/text/imm/imm9\\_002.htm](http://pe.usps.com/text/imm/imm9_002.htm) (last visited May 23, 2012).

1 1017-18; *see also* *Craigslist, Inc. v. Meyer*, No. 09-CV-4739 SI, 2010 WL 2975938, at \*2 (N.D.  
2 Cal. Jul. 26, 2010). In both *Meyer* and *Rio Properties*, the defendants conducted business entirely  
3 through the Internet. *See Meyer*, 2010 WL 2975938, at \*2. For that reason, in *Meyer*, this court,  
4 relying on *Rio Properties*, allowed service by email on a defendant believed to reside in Thailand  
5 at an unknown physical address, concluding that email would give the defendant “sufficient notice  
6 and the opportunity to respond” to the complaint against him. *Id.*

7 Likewise, here, Plaintiff alleges that until recently, the Foreign Defendants operated a  
8 website by which they promoted TweetAttacks, which is intended for use with Twitter’s online  
9 communications service, and that the Foreign Defendants continue to provide some online  
10 customer support for TweetAttacks. (ECF No. 1, ¶¶ 1, 5, 32-38). Accordingly, as in *Meyer* and  
11 *Rio Properties*, the Foreign Defendants have chosen to conduct their business through the Internet,  
12 making service by email particularly appropriate. And since Yanuaria is the principal of JL4 (*id.*,  
13 ¶ 5), service by email on Yanuaria is reasonably calculated to provide notice to both Foreign  
14 Defendants.

15 Moreover, the return receipt signed by an unknown individual suggests that the address at  
16 which Plaintiff has twice attempted service is no longer a valid address for service on Yanuaria.  
17 And even though Plaintiff sent its second mailings to JL4 and Yanuaria on the same date and  
18 subsequently received a return receipt for the mailing to Yanuaria, Plaintiff has never received a  
19 signed return receipt from JL4 (whether from an individual known or not known to be affiliated  
20 with JL4). This likewise suggests that the address Plaintiff used is no longer a valid address for  
21 service on JL4. Accordingly, further attempts at service at the same addresses, whether again by  
22 international registered mail or by alternate means such as a private courier service (*e.g.*, Federal  
23 Express or DHL), would likely be unavailing. And Plaintiff has no information about any other  
24 physical addresses for either Yanuaria or JL4. By contrast, Yanuaria has recently used the email  
25 address associated with him, demonstrating that email sent to that address is likely to reach its  
26 intended recipient.

27 Service by email is even more appropriate in this case because the return receipt Plaintiff  
28 received is insufficient proof of valid service on Yanuaria, and the same would be true of any

1 other mailings sent to the same physical address but signed by someone not known to be  
2 associated with Yanuaria. Service not within any judicial district of the United States made  
3 pursuant to Rule 4(f)(2) must be proved “by a receipt signed by the addressee, or by other  
4 evidence satisfying the court that the summons and complaint were delivered to the addressee.”  
5 FED. R. CIV. P. 4(1)(2)(B). The return receipt signed by an unknown individual is insufficient  
6 proof of valid service on Yanuaria. See *Intelsat Corp. v. Multivision LLC*, 736 F. Supp. 2d 1334,  
7 1341-42 (S.D. Fla. 2010) (finding foreign defendant was not properly served where the return  
8 receipts were signed by receptionists at his place of work, not by him). Although the summons  
9 and complaint may in fact have reached Yanuaria, Plaintiff cannot use this receipt to prove valid  
10 service absent any further information to that effect. See FED. R. CIV. P. 4(1)(3); *Yao v. Crisnic*  
11 *Fund, SA*, No. 10-CV-1299 AG (JCGx), 2011 WL 3818406, at \*6 (C.D. Cal. Aug. 29, 2011)  
12 (return receipt signed by individual other than defendant was not satisfactory evidence that  
13 summons and complaint were delivered to defendant, and there was no evidence that the other  
14 individual passed the delivery along to defendant). Therefore, service by email is especially  
15 called-for in these circumstances.

16 Finally, there is no authority that service by email is prohibited by international agreement,  
17 per the requirements of Rule 4(f)(3). The Philippines is not a signatory to the Hague Service  
18 Convention, so it does not apply.<sup>4</sup> *Meyer*, 2010 WL 2975938, at \*2 (citing *Rio Properties*, 284  
19 F.3d at 1016). And “service by email is not generally prohibited by international agreement.” *Id.*  
20 (citing *Bank Julius Baer & Co. Ltd. v. Wikileaks*, No. 08-CV-00824 JSW, 2008 WL 413737, at \*2  
21 (N.D. Cal. Feb. 13, 2008); *Williams-Sonoma Inc. v. Friendfinder Inc.*, No. 06-CV-06572 JSW,  
22 2007 WL 1140639, at \*2 (N.D. Cal. Apr. 17, 2007)).

23 In sum, email is an appropriate method of service for both Foreign Defendants. In light of  
24 Plaintiff’s multiple unsuccessful attempts to serve the Foreign Defendants by mail at the only  
25 physical addresses Plaintiff has for them, as well as the fact that the Foreign Defendants have

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27 <sup>4</sup> See Hague Conf. on Private Int’l Law, Status Table 14,  
28 [http://www.hcch.net/index\\_en.php?act=conventions.status&cid=17](http://www.hcch.net/index_en.php?act=conventions.status&cid=17) (last visited May 31, 2012)  
(listing convention signatories).

