

1 DAVID H. KRAMER, State Bar No. 168452
 CHARLES T. GRAVES, State Bar No. 197923
 2 RIANA S. PFEFFERKORN, State Bar No. 266817
 WILSON SONSINI GOODRICH & ROSATI
 3 Professional Corporation
 650 Page Mill Road
 4 Palo Alto, CA 94304-1050
 Telephone: (650) 493-9300
 5 Facsimile: (650) 565-5100
 Email: dkramer@wsgr.com
 6

7 Attorneys for Plaintiff
 Twitter, Inc.

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

11 TWITTER, INC., a Delaware corporation,)
)
 12 Plaintiff,)
)
 13 v.)
)
 14 SKOOTLE CORP., a Tennessee corporation; JL4)
 WEB SOLUTIONS, a Philippines corporation;)
 15 JAMES KESTER, an individual; JAYSON)
 YANUARIA, an individual; and GARLAND E.)
 16 HARRIS, an individual,)
)
 17 Defendants.)
 18)

CASE NO.: 3:12-cv-1721-SI
**PLAINTIFF'S RESPONSE TO
 ORDER TO SHOW CAUSE**

19
 20
 21
 22
 23
 24
 25
 26
 27
 28

1 **INTRODUCTION**

2 Plaintiff Twitter, Inc. (“Twitter” or “Plaintiff”) respectfully submits this response to the
3 Court’s June 25, 2012 Order to Show Cause for the joinder of Defendants JL4 Web
4 Solutions/Jayson Yanuaria (collectively, “TweetAttacks”), Skootle Corp./James Kester
5 (collectively, “TweetAdder”), James Lucero (“Lucero”), and Garland E. Harris (“Harris”) (all
6 together, “Defendants”)¹ (Dkt. 45).

7 As set forth in Twitter’s Complaint, unscrupulous mass marketers have attempted to
8 flood the Twitter service with unsolicited messages (“spam”). Their wrongdoing often is
9 enabled by software (“spamware”), deliberately designed and advertised to induce breaches of
10 Twitter’s Terms of Service, which automates the process of sending “Tweets” on Plaintiff’s
11 service. Twitter has been forced to incur massive expenses to combat these attackers, all of
12 whom violate its Terms of Service, denigrate the experience of its users, and cost it goodwill.

13 Twitter brought several of the worst offenders together as Defendants in a single suit
14 which involves the same background facts, the same contract terms, virtually identical conduct,
15 and the same categories of harm to Twitter. In light of this shared fact background, as well as
16 the common legal issues in play, joinder of the seven original Defendants was proper under Rule
17 20 of the Federal Rules of Civil Procedure.

18 As some Defendants have either voluntarily settled or ceased their misconduct and
19 attempted to hide from Twitter, this lawsuit has narrowed. At this point, the TweetAdder
20 Defendants appear to be the only Defendants who are openly continuing their unlawful conduct.
21 For these reasons, and while Twitter believes that the original Defendants were all properly
22 joined at the outset, the question of joinder has become – or will soon become – moot.
23 Accordingly, and for reasons explained herein, the Court’s *sua sponte* order should be
24 discharged.

25 //

26 _____
27 ¹ The Court previously dismissed Defendant Justin Clark. (Dkt. 43). Plaintiff has since
28 dismissed Defendant Lucero. (Dkt. 46).

1 ARGUMENT

2 **I. Defendants Were Properly Joined Under Rule 20.**

3 **a. Legal Standard**

4 Rule 20 of the Federal Rules of Civil Procedure allows the permissive joinder of
5 defendants in one action if “(A) any right to relief is asserted against them jointly, severally, or in
6 the alternative with respect to or arising out of the same transaction, occurrence, or series of
7 transactions or occurrences; and (B) any question of law or fact common to all defendants will
8 arise in the action.” FED. R. CIV. P. 20(a)(2). The rule’s purpose is “to promote trial
9 convenience and to expedite the final determination of disputes, thereby preventing multiple
10 lawsuits.” *League to Save Lake Tahoe v. Tahoe Reg’l Planning Agency*, 558 F.2d 914, 917 (9th
11 Cir. 1977) (citations omitted). “Under the rules, the impulse is toward entertaining the broadest
12 possible scope of action consistent with fairness to the parties; joinder of claims, parties and
13 remedies is strongly encouraged.” *Id.* (quoting *United Mine Workers of Am. v. Gibbs*, 383 U.S.
14 715, 724 (1966)). “A determination on the question of joinder of parties lies within the
15 discretion of the district court.” *Wynn v. Nat’l Broad. Co., Inc.*, 234 F. Supp. 2d 1067, 1078
16 (C.D. Cal. 2002) (citations and quotations omitted).

17 **b. Analysis**

18 The “same transaction or occurrence” requirement of Rule 20(a)(1)(A) employs a
19 “flexible” test requiring that claims asserted against joined parties be “logically related.”
20 *OpenMind Solutions, Inc. v. Does 1-39*, No. C 11-3311 MEJ, 2011 WL 4715200, at *7 (N.D.
21 Cal. Oct. 7, 2011) (quoting *Disparte v. Corporate Exec. Bd.*, 223 F.R.D. 7, 10 (D.D.C. 2004));
22 *Call of the Wild Movie*, 770 F. Supp. 2d at 342. There is a logical relationship between the
23 claims alleged against the Defendants in the Complaint. They fraudulently agreed to the Twitter
24 Terms of Service (“TOS”) when creating user accounts, then breached the “Spam and Abuse”
25 provisions thereof through their deceptive activities, which caused numerous users’
26 dissatisfaction with Twitter and imposed costly burdens on Twitter. (Compl. ¶¶ 26-31, 61, 72-
27 73, 78). Defendants’ actions caused Plaintiff the same types of injuries, including (1) loss of
28 goodwill; (2) loss of existing and prospective Twitter users; and (3) substantial expenditures on

1 technical anti-spam measures, server resources, and Trust & Safety team personnel, who have
2 invested a great deal of time and effort fighting Defendants’ wrongdoing. (Compl. ¶¶ 25, 74).
3 Such a “degree of factual commonality underlying the claims” makes permissive joinder
4 appropriate, *Coughlin v. Rogers*, 130 F.3d 1348, 1350 (9th Cir. 1997), particularly in light of the
5 liberal policy of “entertaining the broadest possible scope of action.” *Gibbs*, 383 U.S. at 724.
6 Therefore, Twitter’s joinder of the Defendants was appropriate under Rule 20(a)(2)(A).

7 Next, under Rule 20(a)(2)(B), “some question of law or fact common to all parties must
8 arise in the action.” *Desert Empire Bank*, 623 F.2d at 1375 (citation omitted). The Complaint
9 asserts three causes of action against all Defendants. (Compl. ¶¶ 58-80). Those claims entail the
10 same legal issues, such as, for example, the interpretation of the Twitter TOS and Twitter’s
11 reasonable reliance on the Defendants’ agreement to the TOS. The claims against the
12 Defendants likewise share a host of fact issues, such as how the Twitter service and API operate,
13 the Twitter Trust & Safety team’s anti-spam efforts, and the harm the Defendants have caused.
14 Further, the Complaint requests common elements of injunctive relief against all the Defendants.
15 (Compl. at 18-20). While it is possible that a Defendant might present a slightly different
16 defense to Twitter’s claims, “that does not defeat, at this stage of the proceedings, the
17 commonality in facts and legal claims that support joinder under Rule 20(a)(2)(B).” *Call of the*
18 *Wild Movie*, 770 F. Supp. 2d at 343; *see also MCGIP, LLC v. Does 1-18*, No. C-11-1495 EMC,
19 2011 WL 2181620, at *1 (N.D. Cal. June 2, 2011) (citation omitted) (same).

20 Because joinder is permissible under Rule 20, the Court must next consider whether
21 joinder “would prejudice any party or result in needless delay” in resolving the case, *Call of the*
22 *Wild Movie*, 770 F. Supp. 2d at 342, and would comport with notions of fundamental fairness.
23 *Desert Empire Bank*, 623 F.2d at 1375. Permitting joinder in the instant case is fair and
24 promotes convenience, administrative efficiency, and judicial economy. Joinder will lead to a
25 more expedient resolution and prevents further crowding of the Court’s docket, whereas the
26 existence of multiple cases would merely delay all of them and result in unnecessary expenses
27 and duplicative discovery, thereby prejudicing Plaintiff. *See Call of the Wild Movie*, 770 F.
28 Supp. 2d at 344 (forcing plaintiffs to file separate lawsuits, incur separate fees, and pursue

1 separate discovery would not “secure a just, speedy, and inexpensive determination of the
2 action” (internal quotation omitted)). The instant case has already been narrowed considerably,
3 so case management will not be complex. *See Hard Drive Prods., Inc. v. Does 1-188*, 809 F.
4 Supp. 2d 1150, 1164 (N.D. Cal. 2011) (ordering severance where joinder of nearly 200
5 defendants “would result in a logistically unmanageable case” (citation omitted)). Furthermore,
6 no prejudice will result to the Defendants from being joined in a single action. While, formally,
7 five Defendants remain, in effect there are three. The unanimity of interest between the
8 respective principals and business entities for TweetAttacks and TweetAdder, as well as the
9 similarity of Plaintiff’s claims against both, eliminates the potential that defending the case will
10 be prejudicial with regard to such considerations as of number of witnesses or discoverable
11 documents.

12 In sum, the Defendants were properly joined in the Complaint because Rule 20’s
13 requirements are met and joinder will not prejudice any party or delay resolution, whereas
14 severance would cause needless delay and would prejudice Plaintiff.

15 **II. The Current Narrowing of the Case Renders the Joinder Issue Irrelevant.**

16 As noted, Defendants Clark and Lucero have already been dismissed from the case.
17 (Dkt. 43, 46). Defendants TweetAdder, TweetAttacks, and Harris remain. As to TweetAttacks,
18 its principals appear to have shuttered their spamware service and cancelled the email accounts
19 they used to communicate with customers, and they are attempting to dodge Twitter’s efforts to
20 serve them in the Philippines (which is not a Hague Convention signatory). Twitter therefore
21 expects to dismiss them without prejudice in the coming days.

22 Separately, Plaintiff is in the process of discussing resolution with Defendant Harris in
23 confidential settlement communications.

24 As a result, it is likely that the only remaining Defendants will soon be the two
25 TweetAdder Defendants (Skootle and Kester), because TweetAdder has chosen to persist in its
26 wrongful conduct despite the lawsuit. The joinder of Skootle and Kester is not in question, in
27 light of the Court’s order noting that Plaintiff has alleged a connection between the two. (Dkt.
28 45 at 2). Therefore, while permissive joinder of all of the Defendants was proper from the

