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15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN FRANCISCO DIVISION

18 TWITTER, INC., a Delaware corporation,
19

20 Plaintiff,

21 v.

22 SKOOTLE CORP., a Tennessee corporation;
and JAMES KESTER, an individual,

23 Defendants.
24
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Case No. 3:12-cv-1721 SI

**FURTHER JOINT CASE
MANAGEMENT STATEMENT**

Date: November 2, 2012
Time: 3:00 p.m.
Place: Courtroom 10
Judge: Hon. Susan Illston

1 The parties to the above-entitled action jointly submit this FURTHER CASE
2 MANAGEMENT STATEMENT pursuant to the schedule set by the Court during the Case
3 Management Conference held in chambers on August 31, 2012. (Docket No. 62).

4 **1. Amendment of Pleadings**

5 Pursuant to this Court's July 20, 2012 order severing defendants, the claims as originally
6 filed against Defendant Garland Harris are no longer a part of this case. At the August 31, 2012
7 Case Management Conference, the parties agreed to meet and confer regarding the possibility of
8 amending the Complaint. Plaintiff is willing to amend the Complaint in order to remove
9 paragraphs 5, 7, 8, 9, 32-38, and 45-57 as non-operative with regard to Defendants. Plaintiff also
10 seeks to add Troy Fales, an individual employed by Defendant Skootle, as a defendant.
11 Defendants' discovery responses indicate that Mr. Fales wrote the TweetAdder software and is
12 an agent of Defendant Skootle. Therefore, plaintiff contends that he is jointly and severally
13 liable for any damages Twitter has incurred due to TweetAdder, and his addition as a defendant
14 is appropriate. Plaintiff will seek leave to amend via a stipulation or a motion in the coming
15 days.

16 Defendants agree that Plaintiff should amend its Complaint and remove at least
17 paragraphs 5, 7-9, 32-38 and 45-57. Defendants also believe that other portions of the Complaint
18 require amendment as well. Plaintiff has only just agreed to amend its Complaint on Tuesday,
19 October 23, 2012, and Defendant will meet and confer with Plaintiff as to the precise
20 amendments that are appropriate. Plaintiff only informed Defendants of its intention to add Troy
21 Fales as a defendant on Tuesday, October 23, 2012. Defendants do not consent to Plaintiff's
22 proposed addition of Mr. Fales as a defendant to this action and will meet and confer with
23 Plaintiff as appropriate, and otherwise oppose his addition as a defendant.

24 **2. Discovery**

25 **A. Discovery Taken to Date**

26 Plaintiff's Statement: To date, Plaintiff has served and supplemented its responses to
27 Defendants' first set of interrogatories and document requests, and has begun producing
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1 documents on a rolling basis. Defendants Skootle and Mr. Kester have served and supplemented
2 their responses to Plaintiff's first set of interrogatories and requests for admission, but have not
3 yet begun producing documents in response to Plaintiff's first set of document requests. Plaintiff
4 has also served its second set of interrogatories on Defendants. Plaintiff has served deposition
5 and/or document subpoenas on four third parties to date, and anticipates the possibility of
6 motions to compel regarding some of the subpoenas in their respective issuing courts.

7 To attempt to resolve their disputes regarding certain discovery issues, the parties have
8 exchanged several meet-and-confer letters and met and conferred in person on October 9, 2012.
9 Plaintiff anticipates filing a joint statement with Defendants in the near future addressing the
10 discovery issues on which the parties have been unable to reach resolution. In brief, the parties
11 presently have disputes over the following information Plaintiff seeks in its discovery requests:

- 12 • Information about Skootle employees' non-work Twitter accounts;
- 13 • Documents relating to Defendants' revenues, financial statements, and (redacted)
14 tax records; and
- 15 • Documents sought in a subpoena to a third party represented by Defendants'
16 counsel.

17 Defendants' Statement: Defendant Skootle has propounded interrogatories and document
18 requests on Plaintiff. Plaintiff has thus far produced only 111 pages of documents, all of which
19 are readily available on its website. Defendants have responded to, and supplemented their
20 responses in light of meet and confer exercises, Plaintiff's requests for admission, requests for
21 documents and interrogatories. Defendants are still collecting and reviewing documents that
22 may be responsive to Plaintiff's requests, including those to third-party Troy Fales, and will
23 produce any responsive documents on a rolling basis.

24 **B. Electronically Stored Information**

25 The parties anticipate that they will agree to a procedure for producing electronically
26 stored information, including the form or forms in which it should be produced.

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1 **3. Mediation**

2 The Court has entered the parties' Stipulation and Order Selecting ADR Process in which
3 the parties agreed to participate in mediation. (Docket No. 61). The parties have submitted a
4 notice to inform the Court that they have chosen private mediation. (Docket No. 63).

5 At the Case Management Conference held on August 31, 2012, the Court ordered counsel
6 for the parties to include a mediation schedule and their selected mediator in their Further Case
7 Management Statement. Counsel for the parties met and conferred via letter on October 23 and
8 25, 2012 to discuss mediation, and have agreed as follows:

9 Mediator: The parties are considering several mediators from JAMS.

10 Mediation Schedule: The parties anticipate a mediation will take place in early 2013.
11 The parties previously agreed that the mediation will take place no later than 30 days after the
12 close of discovery on March 1, 2013. (Docket Nos. 61, 62). The parties will inform the Court
13 when a date has been chosen.

14 **4. Other**

15 The parties do not have any other matters to address with the Court at this time.
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17 Dated: October 26, 2012

WILSON SONSINI GOODRICH & ROSATI PC

18

By: /s Charles T. Graves
Charles T. Graves
tgraves@wsgr.com

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Attorneys for Plaintiff TWITTER, INC.

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23 Dated: October 26, 2012

COLT / WALLERSTEIN LLP

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By: /s Nicole M. Norris

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Attorneys for Defendants SKOOTLE CORP. and
JAMES KESTER

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CERTIFICATION

I, Charles T. Graves, am the ECF User whose identification and password are being used to file the **Further Joint Case Management Statement**. In compliance with General Order 45.X.B, I hereby attest that Nicole M. Norris has concurred in this filing.

DATED: October 26, 2012

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: s/Charles T. Graves
Charles T. Graves

Attorneys for Plaintiff Twitter, Inc.