

Exhibit 5

UNITED STATES DISTRICT COURT

for the

Northern District of California

TWITTER, INC., a Delaware corporation,

Plaintiff

v.

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

Defendant

Civil Action No. 3:12-cv-1721 SI

(If the action is pending in another district, state where:)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: TROY FALES, c/o Colt Wallerstein LLP
Shorebreeze II, 255 Shoreline Drive, Suite 540, Redwood Shores, CA 94065

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: PLEASE SEE EXHIBIT "B" ATTACHED

Place: Wilson Sonsini Goodrich & Rosati P.C.
650 Page Mill Road, Palo Alto, CA 94304
Attention: Deborah Grubbs

Date and Time:

10/12/2012 10:00 am

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 3/21/2012

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Riana S. Pfefferkorn
Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing *(name of party)* Plaintiff Twitter, Inc., who issues or requests this subpoena, are:

Riana S. Pfefferkorn, Wilson Sonsini Goodrich & Rosati P.C., One Market, Spear Tower, Suite 3300, San Francisco, CA 94105; E-mail: rpfefferkorn@wsgr.com; Tel.: (415) 947-2072

Civil Action No. 3:12-cv-1721 SI

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* TROY FALES
was received by me on *(date)* 09/21/2012 .

I served the subpoena by delivering a copy to the named person as follows: _____

Served in PDF form by electronic transmission to Doug Colt, authorized agent for service of subpoena,
at dcolt@coltwallerstein.com on *(date)* 09/21/2012 ; or

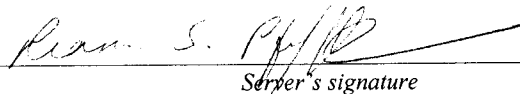
I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: 09/21/2012



Server's signature

Riana S. Pfefferkorn, Attorney for Plaintiff Twitter Inc.
Printed name and title

Wilson Sonsini Goodrich & Rosati P.C.
One Market Street, Spear Tower
Suite 3300
San Francisco, CA 94105
Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) *Contempt.* The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

EXHIBIT A
DEFINITIONS

1. “YOU” and “YOUR” shall mean Troy Fales.
2. “TWITTER” shall mean Twitter, Inc., including without limitation ALL predecessors-in-interest, successors-in-interest, parents, subsidiaries, affiliates, AND ALL past OR present officers, directors, trustees, employees, agents, consultants, attorneys, patent agents, entities acting in joint venture, licensing OR partnership relationships with Twitter, Inc., AND others acting on behalf of Twitter, Inc., in ANY country.
3. “SKOOTLE” shall mean Skootle Corp., including without limitation ALL predecessors-in-interest, successors-in-interest, parents, subsidiaries, affiliates, AND ALL past OR present officers, directors, trustees, employees, agents, consultants, attorneys, patent agents, entities acting in joint venture, licensing OR partnership relationships with Skootle Corp., AND others acting on behalf of Skootle Corp., in ANY country.
4. “MR. KESTER” shall mean James Kester, including without limitation ALL predecessors-in-interest, successors-in-interest, affiliates, AND ALL past OR present employees, agents, consultants, attorneys, patent agents, entities acting in joint venture, licensing OR partnership relationships with James Kester, AND others acting on behalf of James Kester, in ANY country.
5. “TWEETADDER” shall mean ANY version, past OR present, of ANY software marketed, sold, leased, licensed, distributed, disseminated to ANY third party, OR otherwise referred to by SKOOTLE OR MR. KESTER as “TweetAdder”, “Tweet Adder”, OR ANY variation thereon.
6. “SERVICE” shall mean ANY version of the software, applications, websites, OR services offered by TWITTER.
7. “DOCUMENT(S)” shall have the broadest meaning ascribed to it by Fed. R. Civ. P. 34(a)(1)(A) and Fed. R. Evid. 1001, including, without limitation, electronic or computerized data compilations. A draft or non-identical copy of a document is a separate document within the meaning of this term.

8. “COMMUNICATION(S)” shall mean, without limitation, ANY transmission, conveyance or exchange of a work, statement, fact, thing, idea, DOCUMENT, instruction, information, demand or question by ANY medium, whether by written, oral or other means, including but not limited to electronic communications and electronic mail (“email”).

9. “PERSON(S)” shall mean ANY natural person or ANY business, legal, or governmental entity or association.

10. The phrase “THIRD PARTY” means all PERSONS other than employees, directors, or officers of TWITTER, SKOOTLE, or MR. KESTER and all entities other than TWITTER, SKOOTLE, or MR. KESTER.

11. “THING(S)” refers to ANY physical specimen or tangible item, including research and development models, samples, prototypes and the like.

12. “AND” and “OR” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of each request all responses that might otherwise be construed outside the scope.

13. “ANY” shall include “ALL” and “ALL” shall include “ANY.”

14. “REFERRING TO,” “RELATING TO,” “REGARDING,” or ANY variation thereof, means concerning, containing, describing, discussing, embodying, commenting upon, identifying, incorporating, summarizing, constituting, comprising, or otherwise pertinent to the matter or ANY aspect thereof.

15. “CONCERNING” shall mean RELATING TO or REFERRING TO.

16. This “ACTION” shall mean the lawsuit Twitter, Inc. v. Skootle Corp. et al., Case No. 3:12-cv-1721 SI, United States District Court for the Northern District of California.

17. Definitions or usages of words or phrases in these requests are not intended to be, and shall not be, construed as admissions as to the meaning of words or phrases at issue in the action, and shall have no binding effect on TWITTER in this or in ANY other proceeding.

INSTRUCTIONS

The following instructions shall apply to each of the Document Requests herein:

A. Computerized information and DOCUMENTS stored in electronic form must be produced in an intelligible format or together with a description of the system from which they were derived sufficient to permit viewing of the DOCUMENTS or information in an intelligible form.

B. File folders with tabs or labels identifying DOCUMENTS must be produced intact with the DOCUMENTS contained therein.

C. Selection of DOCUMENTS from files, records, electronic storage media, or other sources, must be done in such a way as to ensure that the source of each DOCUMENT may be determined, if necessary.

D. DOCUMENTS attached to one another, including cover sheets, must not be separated.

E. Color copies of DOCUMENTS are to be produced where color is necessary to interpret or understand the contents.

F. When requested to provide "ALL DOCUMENTS," you must provide ANY responsive DOCUMENTS located following a diligent search of all locations reasonably likely to contain DOCUMENTS responsive to the request.

G. If no DOCUMENTS or THINGS exist that are responsive to a particular request, that fact should be stated in each of your responses to such requests.

H. Should you seek to withhold ANY document based on some limitation of discovery (including attorney/client privilege), you must supply a list of all DOCUMENTS you seek to withhold on that basis. This list should include:

- (a) The identity of each DOCUMENT'S author(s), writer(s), sender(s), or initiator(s);
- (b) The identity of each DOCUMENT'S recipient(s), addressee(s), or parties for whom it was intended;
- (c) The date of creation or transmittal indicated in each DOCUMENT, or an estimate of the date, indicated as such, if no date appears in the DOCUMENT;

(d) The general subject matter as described on each DOCUMENT, or, if no such description appears, a description sufficient to identify the DOCUMENT;

(e) The claimed ground(s) for limitation of discovery (e.g., “attorney-client privilege” or “work-product privilege”).

I. The obligation to provide the information sought by these requests for production is continuing within the requirement of Fed. R. Civ. P. 26(e).

EXHIBIT B

DOCUMENT REQUESTS

1. YOUR most recent resume OR CV.
2. DOCUMENTS sufficient to show YOUR current residential address.
3. DOCUMENTS sufficient to show the complete amount OR amounts of ANY salary, stipend, bonus, payments, OR other money YOU have received from SKOOTLE OR ANY other entity OR individual CONCERNING ANY work OR services performed for, OR on behalf of, SKOOTLE, MR. KESTER, OR TWEETADDER.
4. DOCUMENTS sufficient to fully identify ANY account(s) YOU have created on the SERVICE, including ALL account username(s) AND the full name(s) AND email address(es) which YOU used to create each account OR which YOU currently associate with each account.
5. DOCUMENTS sufficient to show the date(s) on which YOU first created OR caused to be created ANY account(s) on the SERVICE.
6. DOCUMENTS sufficient to show the complete source code in human-readable format for ALL versions of TWEETADDER, OR ANY portion of the source code in human-readable format for ANY version of TWEETADDER that is within YOUR possession, custody, OR control.
7. ALL DOCUMENTS necessary to constitute an operational copy of ANY AND ALL versions of TWEETADDER, including the executable file AND ANY AND ALL other files necessary to successfully operate ANY version of TWEETADDER from a personal computer.

8. ALL DOCUMENTS RELATING TO TWEETADDER.
9. ALL DOCUMENTS RELATING TO the research, design, development, experimentation OR testing of TWEETADDER.
10. ALL COMMUNICATIONS between YOU AND ANY PERSON RELATING TO TWEETADDER, ANY user of TWEETADDER, OR ANY customer OR prospective customer of SKOOTLE OR MR. KESTER.
11. ALL COMMUNICATIONS between YOU AND ANY PERSON RELATING TO TWITTER.
12. ALL COMMUNICATIONS between YOU AND MR. KESTER RELATING TO TWITTER, SKOOTLE, OR TWEETADDER.
13. ALL COMMUNICATIONS between YOU AND TWITTER.
14. ALL DOCUMENTS RELATING TO TWITTER, the SERVICE, OR ANY other products, services, OR websites offered by TWITTER.
15. ALL DOCUMENTS RELATING TO ANY agreement between YOU AND TWITTER.
16. ALL COMMUNICATIONS with ANY PERSON RELATING TO this ACTION.
17. ALL DOCUMENTS RELATING TO this ACTION.