

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 Attorneys for Plaintiff
 7 Twitter, Inc.

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

12 TWITTER, INC., a Delaware corporation,)
)
 13 Plaintiff,)
)
 14 v.)
)
 15 SKOOTLE CORP., a Tennessee corporation; and)
 JAMES KESTER,)
 16)
 Defendants.)
 17)
 18)
 19)
 20)

CASE NO.: 3:12-CV-01721 SI
DECLARATION OF CHARLES T. GRAVES IN SUPPORT OF PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR LEAVE TO AMEND COMPLAINT
 Date: Friday, December 14, 2012
 Time: 9:00 AM
 Dept: Courtroom 10, 19th Floor
 Before: Honorable Susan Illston

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1 I, Charles T. Graves, declare as follows:

2 1. I am an attorney at law duly admitted to practice in the State of California and
3 before this Court. I am a partner at Wilson Sonsini Goodrich & Rosati PC, counsel of record for
4 Plaintiff. I am over 18 years of age and have personal knowledge of the matters set forth in this
5 declaration. If called as a witness, I could and would testify competently to them. I provide this
6 declaration in support of Plaintiff's Notice of Motion and Motion for Leave to Amend
7 Complaint.

8 2. Defendants served their initial disclosures on Plaintiff on August 21, 2012.

9 3. Plaintiff served its first set of interrogatories, requests for admission, and
10 production of documents on Defendants Skootle Corp. ("Skootle") and James Kester ("Mr.
11 Kester") on August 6, 2012.

12 4. Defendants responded to Plaintiff's first set of interrogatories, requests for
13 admission, and requests for production of documents on September 14, 2012.

14 5. Defendants supplemented their responses to Plaintiff's first set of interrogatories
15 on September 28, 2012 and October 17, 2012.

16 6. Defendant Skootle supplemented its responses to Plaintiff's first set of requests
17 for production of documents on September 28, 2012 and October 17, 2012.

18 7. Defendant Mr. Kester supplemented his responses to Plaintiff's first set of
19 requests for production of documents on October 17, 2012.

20 8. Skootle's responses to Plaintiff's first set of interrogatories identified five current
21 or former Skootle employees, independent contractors, consultants, executives, managers,
22 officers, owners, and/or members of the board of directors, including Amanda Kester ("Ms.
23 Kester") and Troy Fales ("Mr. Fales"). It is not clear from the interrogatory responses whether
24 Mr. Fales was a contractor rather than an employee for part of the time period at issue.

25 9. After Plaintiff learned that Mr. Fales and Ms. Kester are current or former
26 employees of Skootle, Plaintiff served third-party subpoenas on Mr. Fales and Ms. Kester on
27 September 21, 2012, through counsel for Defendants, who represent Mr. Fales and Ms. Kester in
28 connection with the respective subpoenas.

1 10. In response to Plaintiff's interrogatory seeking to learn the means by which the
2 TweetAdder software accesses Twitter's system, Defendants originally responded that they did
3 not know.

4 11. In a meet and confer letter dated September 28, 2012, counsel for Defendants and
5 Mr. Fales reiterated that Defendants did not know how the TweetAdder software accesses the
6 Twitter system.

7 12. Defendants' responses to Plaintiff's first set of interrogatories state that Mr. Fales
8 and Mr. Kester planned, programmed, contributed code to, or otherwise developed the
9 TweetAdder software.

10 13. Defendants' responses to Plaintiff's first set of requests for production of
11 documents state that Defendants are not in possession, custody, or control of the source code for
12 the TweetAdder software.

13 14. In the September 28, 2012 meet and confer letter, counsel for Defendants and Mr.
14 Fales repeated that Defendants do not possess copies of the source code, and stated that Mr.
15 Fales would produce the TweetAdder source code.

16 15. Mr. Fales and Ms. Kester served their responses and objections to the respective
17 subpoenas on Plaintiff through counsel on October 5, 2012.

18 16. Mr. Fales's subpoena responses state that Mr. Fales resides in the State of North
19 Carolina.

20 17. Mr. Fales's subpoena responses state that Mr. Fales will produce the source code
21 for the TweetAdder software.

22 18. In a meet and confer letter dated October 12, 2012, counsel for Defendants and
23 Mr. Fales informed counsel for Plaintiff that Mr. Fales opened a Twitter account in the course
24 and scope of his work for Skootle.

25 19. In their October 17, 2012 supplemental response to Plaintiff's interrogatory,
26 Defendants explained how the TweetAdder software accesses the Twitter system.

27 20. The circumstances strongly indicate that Mr. Fales provided the information to
28 Defendants about how the TweetAdder software works.

1 21. Ms. Kester produced documents through counsel in response to the subpoena on
2 October 19, 2012.

3 22. On that same date, counsel for Defendants and Mr. Fales informed Plaintiff's
4 counsel that production of Mr. Fales's documents was forthcoming.

5 23. Documents produced by Ms. Kester indicate that Mr. Fales handles bug fixes and
6 provides support services for the TweetAdder software.

7 24. Plaintiff has contacted Defendant five times since October 30, 2012 to see if
8 Defendants opposed the motion or would stipulate to the amendment and to attempt to schedule
9 a meet and confer call. On November 2, my associate contacted defense counsel again on this
10 subject, and indicated that Twitter would file the motion at the end of the day. We received no
11 response from Defendants regarding whether they consent to or oppose the amendments, and
12 therefore we assume that they oppose the amendments.

13 25. A true and correct copy of the proposed Complaint as amended is attached hereto
14 as Exhibit 1.

15 26. A form of the amended pleading that indicates in what respects the amended
16 pleading differs from the original Complaint which it amends, is attached hereto as Exhibit 2.

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18 I declare under penalty of perjury under the laws of the United States of America that the
19 foregoing is true and correct and that this declaration is executed the 2nd day of November,
20 2012, at San Francisco, California.

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/s Charles T. Graves
Charles T. Graves

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