

Exhibit 2

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

10 TWITTER, INC., a Delaware corporation,)

CASE NO.: [3:12-cv-1721 SI](#)

11 Plaintiff,)

[FIRST AMENDED](#) COMPLAINT FOR
(1) BREACH OF CONTRACT; (2)
12 TORTIOUS INTERFERENCE WITH
CONTRACT; (3) FRAUD; AND (4)
13 UNFAIR OR DECEPTIVE BUSINESS
PRACTICES

12 v.)

JURY TRIAL DEMANDED

13 SKOOTLE CORP., a Tennessee corporation; ~~JL4~~)
~~WEB SOLUTIONS, a Philippines corporation;~~)
14 ~~JUSTIN CLARK, an individual, d/b/a-~~)
~~TWEETBUDDY.COM;~~ JAMES KESTER, an)
15 individual; ~~JAYSON YANUARIA~~ and [TROY](#))
[FALES](#), an individual; ~~JAMES LUCERO, an~~)
16 ~~individual; and GARLAND E. HARRIS, an~~)
~~individual.~~)

17 Defendants.)
18

18 Plaintiff Twitter, Inc. (“Twitter”) brings this civil action against Skootle Corporation, ~~JL4~~
19 ~~Web Solutions, and individual defendants Justin Clark, doing business as TweetBuddy.com,~~
20 James Kester, ~~Jayson Yanuaria, James Lucero,~~ and ~~Garland E. Harris~~ [Troy Fales](#) (collectively,
21 “Defendants”), and for its [first amended](#) complaint alleges as follows on personal knowledge as
22 to its own actions and on information and belief as to the actions of others:

23 **I. INTRODUCTION**

24 1. Twitter operates one of the world’s most popular online communications platforms,
25 with over 140 million active users. Twitter’s widespread success comes in large part because
26 Twitter is dedicated to providing a high quality user experience that promotes meaningful
27
28

1 interactions between its users. Among other things, Twitter protects its users' experience by
2 prohibiting a variety of fraudulent and deceptive practices on the Twitter platform, which Twitter
3 refers to collectively as "spam." Twitter has deployed a host of human and technological
4 measures to detect and combat spam on the Twitter platform.

5 2. By this action, Twitter seeks to hold Defendants and those who continue to ply the
6 spam trade accountable for the costs of their misconduct, and further safeguard its platform and
7 users from blatantly abusive activities.

8 3. As described below, ~~certain~~ Defendants ~~referred to below as the "Spamware~~
9 ~~Defendants"~~ distribute a software tool ~~called "TweetAdder" that is~~ designed to facilitate
10 abuse of the Twitter platform and marketed to dupe consumers into violating Twitter's user
11 agreement. ~~The remaining "Spammer Defendants" operate large numbers of automated Twitter~~
12 ~~accounts through which they attempt to trick Twitter users into clicking on links to illegitimate~~
13 ~~websites, again in violation of Twitter's user agreement.~~

14 **II. THE PARTIES**

15 4. Plaintiff Twitter is a corporation incorporated in Delaware with its principal place
16 of business in San Francisco, California.

17 ~~5. Defendant JL4 Web Solutions is a corporation incorporated in the Philippines, doing~~
18 ~~business in the State of California. Defendant Jayson Yanuaria ("Yanuaria") is an individual who~~
19 ~~conducts business in the State of California and is domiciled in the Philippines. Yanuaria is the~~
20 ~~principal officer of Defendant JL4 Web Solutions. Defendants JL4 Web Solutions and Yanuaria~~
21 ~~shall be referred to collectively in this Complaint as "TweetAttacks," except as otherwise~~
22 ~~specified.~~

23 5. ~~6.~~ Defendant Skootle Corporation ("Skootle") is a corporation incorporated in
24 Tennessee, with its principal place of business in the State of Virginia, doing business in the State
25 of California.

26 6. Defendant James Kester ("Kester") is an individual who conducts business in the
27 State of California and is domiciled in the State of Virginia. Kester is the principal officer of
28

1 Defendant Skootle. ~~Defendants Skootle and Kester shall be referred to collectively in this~~
2 ~~Complaint as “TweetAdder,” except as otherwise specified.~~

3 7. Defendant ~~Justin Clark~~Troy Fales (“~~Clark~~Fales”), ~~doing business as~~
4 ~~TweetBuddy.com~~, is an individual who conducts business in the State of California and is
5 domiciled in the State of ~~Florida~~. ~~Defendant Clark shall be referred to in this Complaint as~~
6 ~~“TweetBuddy,” except as otherwise specified.~~North Carolina. Plaintiff has recently learned that
7 Fales has been, and on information and belief continues to be, an employee of Defendant Skootle,
8 during at least part of the relevant time period.

9 ~~8. Defendant James Lucero (“Lucero”) is an individual who conducts business in the State~~
10 ~~of California and is domiciled in the State of Colorado.~~

11 ~~9. Defendant Garland E. Harris (“Harris”) is an individual who conducts business in the~~
12 ~~State of California and is domiciled in the State of Florida.~~

13 8. ~~10.~~ Defendants ~~JL4 Web Solutions, Yanuaria,~~ Skootle, Kester, and ~~Clark~~Fales shall
14 be referred to collectively in this Complaint as ~~the~~ “~~Spamware Defendants~~TweetAdder,” except as
15 otherwise specified. ~~Defendants Lucero and Harris shall be referred to collectively in this~~
16 ~~Complaint as the “Spammer Defendants,” except as otherwise specified.~~

17 **III. JURISDICTION AND VENUE**

18 9. ~~11.~~ This Court has diversity jurisdiction over this action under 28 U.S.C. § 1332
19 because Plaintiff is a citizen of a different state from each Defendant and because the value of the
20 matter in controversy exceeds \$75,000 with respect to Plaintiff’s claims against ~~each Defendant~~the
21 Defendants.

22 10. ~~12.~~ Venue is proper in this District under 28 U.S.C. § 1391(a)(2) because a
23 substantial part of the events giving rise to the claims at issue in this lawsuit occurred in this
24 District. Defendants have repeatedly, knowingly, and improperly targeted wrongful acts at
25 Twitter, which is headquartered in this judicial district, and have caused harm in this judicial
26 district.

27 **IV. INTRADISTRICT ASSIGNMENT**

1 keyword is also referred to colloquially as a “hashtag.” For example, including the hashtag
2 “#california” indicates that a Tweet is about California. Twitter’s algorithms analyze the content
3 of Tweets to determine current popular topics of discussion on Twitter, which are referred to on
4 Twitter as “trending topics.”

5 **B. “Spam” on Twitter**

6 16. ~~18.~~ Twitter has taken special efforts to make its service beneficial for businesses.
7 As a result, companies of every size now use Twitter to connect with customers, including driving
8 new business, offering discounts and deals, and providing customer service.

9 17. ~~19.~~ While many legitimate companies have grown their businesses through Twitter,
10 the service has also become an unwilling host to unscrupulous entities which exhibit a variety of
11 abusive behaviors on Twitter. Such behaviors are referred to as “spam,” a term borrowed from the
12 popular word for unsolicited commercial email messages. Examples of “spam” include posting a
13 Tweet with a harmful link (including links to phishing or malware sites) and abusing the @reply
14 and @mention function to post unwanted messages to a user. Sending such messages is known as
15 “spamming,” and the senders of such messages are called “spammers.”

16 18. ~~20.~~ Spam Tweets typically contain advertisements for businesses, products, or
17 services that are often, if not typically, false and misleading. Regardless, recipients do not desire
18 these unsolicited messages and they interfere with recipients’ use and enjoyment of the Twitter
19 service.

20 19. ~~21.~~ Spam Tweets are typically sent from Twitter accounts created for the sole
21 purpose of spamming Twitter users. These spam accounts frequently use software programs that
22 automate Twitter functions such as following and un-following users and sending Tweets and
23 @replies to users. Automated spam accounts are colloquially referred to on Twitter as “bots” or
24 “spambots.” These spam software programs typically permit spambots to rapidly follow or un-
25 follow a large number of users, to send a high volume of spam Tweets, and to automatically send
26 Tweets or @replies to users who mention certain keywords, hashtags, or trending topics in their
27 Tweets.

1 20. ~~22.~~ Twitter has invested a great deal of money and effort to prevent and fight spam.
2 Twitter empowers users to fight spam by letting them block accounts and report them for
3 spamming. Twitter also limits the number of Tweets and direct messages an account can send per
4 day and the number of users an account can follow.

5 21. ~~23.~~ Twitter employs a dedicated Trust & Safety team whose sole job is fighting
6 spam on Twitter. Twitter has dramatically expanded this team during the past year in response to
7 spam-based misconduct, including Defendants' misconduct. Twitter's Trust & Safety team
8 investigates users' spam reports and terminates spam accounts. Nevertheless, many spammers –
9 including ~~the Spammer Defendants and those using the Spamware Defendants' tools~~ software –
10 generate replacement accounts when one of their spam accounts is terminated and thus can quickly
11 resume their spamming activities.

12 22. ~~24.~~ Certain spam software – such as the software offered by ~~the Spamware~~
13 Defendants – allows a spammer to create a large number of accounts, making it easier for
14 spammers to shift to new accounts and to use dozens or even hundreds of spam accounts at once.

15 23. ~~25.~~ Spammers and the makers of spam software, including the Defendants in this
16 action, harm Twitter by negatively affecting Twitter users' experience, damaging users' goodwill
17 toward Twitter, and causing Twitter users to terminate their Twitter accounts due to dissatisfaction
18 with the level of spam on Twitter. Spammers and the makers of spam software, including the
19 Defendants in this action, have also forced Twitter to spend money – including substantial
20 amounts during the ~~past~~ year leading up to the institution of this action, and in the months since –
21 on costly anti-spam efforts as a proximate and direct result of their misconduct. Twitter would not
22 have incurred these costs if such misconduct did not take place. Such costs include those for
23 implementing technical measures to fight spam on Twitter, and those for expanding a specialized
24 team to detect, monitor, fight, and respond to user complaints and inquiries regarding spam.
25 Specifically, Twitter has incurred costs of at least \$~~100,000 to engage in anti-spam efforts to~~
26 ~~combat the wrongdoing of Lucero, at least \$~~75,000 to engage in anti-spam efforts to combat the
27 wrongdoing of ~~Harris, at least \$~~75,000 to engage in anti-spam efforts to combat the wrongdoing of
28 ~~TweetAdder, at least \$~~300,000 to engage in anti-spam efforts to combat the wrongdoing of

1 ~~TweetBuddy, and at least \$150,000 to engage in anti-spam efforts to combat the wrongdoing of~~
2 ~~TweetAttacks~~ TweetAdder. Twitter would not have incurred such costs but-for the misconduct of
3 Defendants.

4 **C. Twitter's User Agreement**

5 24. ~~26-~~ In order to create a Twitter account and use Twitter's service, or otherwise
6 access the service, a would-be Twitter user must first agree to be bound by Twitter's user
7 agreement, which comprises the Twitter Terms of Service ("Terms"), the Twitter Rules, and
8 Twitter's Privacy Policy (collectively the "TOS"). The Terms of Service and Rules are attached
9 as Exhibit A and can also be found on Twitter's website.

10 25. ~~27-~~ Twitter users who agree to Twitter's TOS enjoy a limited, non-assignable
11 license to access and use Twitter's websites and services, subject to acceptance of and compliance
12 with the TOS. By accessing or using Twitter's websites and services, a user agrees to be bound by
13 the TOS.

14 26. ~~28-~~ Twitter's TOS expressly prohibit spamming. The Twitter Rules (incorporated
15 into the TOS) include rules against certain activities defined as "Spam and Abuse." The Rules
16 provide that "user abuse ... will result in permanent suspension. Any accounts engaging in the
17 activities specified [as Spam and Abuse] are subject to permanent suspension." The Rules further
18 provide that engaging in any prohibited activities may result in investigation for abuse, and that
19 Twitter reserves the right to immediately terminate an account without further notice if Twitter
20 determines that an account violates the Rules or the Terms.

21 27. ~~29-~~ Activities forbidden as "Spam and Abuse" under the Rules include the creation
22 of serial accounts for disruptive or abusive purposes, or with overlapping uses. The "Spam and
23 Abuse" Rules further forbid the use of the Twitter service for the purpose of spamming users. The
24 Rules provide that Twitter determines what constitutes "spamming," based on criteria including,
25 but not limited to, the following account behaviors: (a) following a large number of users in a
26 short amount of time; (b) following and un-following people in a short time period, particularly by
27 automated means (a practice known as "churn"); (c) Tweeting misleading links; (d) sending
28 multiple Tweets to hashtags or trending or popular topics that are unrelated to those hashtags or

1 topics; (e) posting the same Tweet across multiple accounts or duplicate Tweets to the same
2 account; (f) sending large numbers of duplicate @reply Tweets or Tweets mentioning particular
3 users; (g) the number of spam complaints filed against the account; (h) creating or purchasing
4 accounts in order to gain followers; and (i) using or promoting third-party sites that claim to
5 generate more followers for an account, including “sites promising ‘more followers fast,’ or any
6 other site that offers to automatically add followers to your account.” In addition, the Rules
7 prohibit creating accounts for the purpose of selling such accounts, and they prohibit selling
8 usernames. The Rules provide that an account may be suspended for TOS violations if Twitter
9 detects any of the above activities.

10 28. ~~30.~~ For a third-party software application to communicate with the Twitter service,
11 the TOS requires the use of Twitter’s Software Programming Interface (“API”). Through the
12 TOS, Twitter forbids accessing, searching, or attempting to access or search Twitter’s services by
13 any means, automated or otherwise, other than Twitter’s official published interfaces, except by
14 separate, express agreement with Twitter.

15 29. ~~31.~~ Each of the Defendants has agreed to the TOS by opening at least one user
16 account on Twitter, and each has knowledge of the terms of the TOS. The ~~Spammer~~ Defendants
17 opened at least one user account in order to ~~send spam on Twitter. The Spamware Defendants~~
18 ~~opened at least one user account in order to~~ develop ~~their spamware~~ the TweetAdder software to
19 operate on Twitter’s website.

20 **~~D. TweetAttacks’ Abuse of the Twitter Service~~**

21 ~~32. Defendant TweetAttacks operates a website available at <http://tweetattacks.com>. It is~~
22 ~~the creator of a desktop computer program called “TweetAttacks” that enables users to automate~~
23 ~~the process of creating accounts and broadcasting spam Tweets to an enormous number of users.~~
24 ~~It licenses the TweetAttacks software in three versions, “TweetAttacks Pro,” “TweetAttacks Lite,”~~
25 ~~and “TweetAttacks Free Edition.” It advertises that TweetAttacks Pro allows a user to post~~
26 ~~Tweets and re-Tweets through “thousands of accounts,” simultaneously.~~

27 ~~33. In recent months, Twitter has received scores of complaints about myriad spam~~
28 ~~accounts that use the TweetAttacks software. Some Twitter users employing the software to~~

1 ~~create accounts and send spam have been misled by TweetAttacks into believing that use of the~~
2 ~~software for such purposes was permissible.~~

3 ~~34. TweetAttacks has promoted its software on a website visible until late March 2012 as~~
4 ~~offering features that assist the user in breaching the TOS by spamming other accounts, including:~~
5 ~~(a) multiple account management; (b) automated generation of Tweets, re-Tweets, and @replies;~~
6 ~~(c) automated sending of the same Tweet or re-Tweet across multiple Twitter accounts; (d)~~
7 ~~automatically following and un-following users, including within a scheduled period of time (i.e.,~~
8 ~~“churn”); (e) automatically copying Tweets of selected Twitter users; and (f) promising on the~~
9 ~~TweetAttacks website to “[B]uild thousands of followers without worrying [about] API limits.”—~~

10 ~~35. Until late March 2012, the TweetAttacks website advertised that when using its~~
11 ~~software, “Replies will appear very natural. They will be posted via the WEB NOT THE API and~~
12 ~~it will look like being posted by a REAL HUMAN” [sic]. TweetAttacks also asserted that it offers~~
13 ~~“[m]ore options to protect your accounts from getting banned.” These statements and others like~~
14 ~~them deceived users into believing that using the TweetAttacks software will conform to Twitter’s~~
15 ~~TOS and/or avoid having their accounts suspended for TOS violations. To that end, user support~~
16 ~~forums on the TweetAttacks website that were visible until late March 2012, and which~~
17 ~~TweetAttacks controlled, included tips on avoiding account suspension when using the tool.~~

18 ~~36. These features and representations, among others, have induced Twitter users who~~
19 ~~license TweetAttacks to violate the TOS, and deceived consumers through deceptive advertising.~~

20 ~~37. TweetAttacks also advertised that the TweetAttacks software does not use Twitter’s~~
21 ~~API to access Twitter’s websites and services. TweetAttacks developed and uses automated~~
22 ~~scripts through which the TweetAttacks software accesses Twitter’s websites and services without~~
23 ~~Twitter’s authorization. By connecting the TweetAttacks software to Twitter’s websites and~~
24 ~~services through unauthorized means rather than through Twitter’s API, TweetAttacks violates the~~
25 ~~Twitter TOS and induces violations thereof by the users of its software. TweetAttacks has~~
26 ~~benefited financially from its behavior while at the same time harming Twitter and its users.~~
27 ~~TweetAttacks purposefully directed its intentional activities toward California, thereby causing~~
28 ~~harm TweetAttacks knew was likely to be suffered by Twitter in California.~~

1 ~~38. In late March 2012, TweetAttacks altered its website to assert that its software~~
2 ~~purportedly is no longer available for license, in response to actions by Twitter. TweetAttacks~~
3 ~~continues to support certain customers, thereby continuing to induce their breaches of Twitter's~~
4 ~~TOS.~~

5 **D. ~~E.~~ TweetAdder's Abuse of the Twitter Service**

6 30. ~~39.~~ Defendant TweetAdder operates a website available at
7 http://www.tweetadder.com. It is the creator of a desktop computer program called "TweetAdder"
8 that enables users to automate the process of creating accounts and broadcasting spam Tweets to
9 an enormous number of users. It licenses the TweetAdder software in packages of one, five, ten,
10 or an unlimited number of Twitter accounts.

11 31. ~~40.~~ In ~~recent~~ the months leading up to the filing of the instant action and in the
12 months since, Twitter has received scores of complaints about myriad spam accounts that use the
13 TweetAdder software. Some Twitter users employing the software to create accounts and send
14 spam have been misled by TweetAdder into believing that use of the software for such purposes
15 was permissible.

16 32. ~~41.~~ TweetAdder promotes its software on its website as offering the following
17 features, the use of which by a Twitter user would constitute a breach by the user of the TOS: (a)
18 multiple account management; (b) automated following and un-following of other users; and (c)
19 automated generation of Tweets, re-Tweets and @replies; ~~and (d) automated sending of the same~~
20 ~~Tweet across multiple Twitter accounts.~~

21 33. Plaintiff has recently learned that Defendant Fales is the primary designer of the
22 TweetAdder software. Defendant Fales deliberately designed the TweetAdder software to violate
23 the TOS.

24 34. ~~42.~~ Nothing on the TweetAdder website informs prospective licensees that the
25 intended use of the software to send spam violates Twitter's Terms of Service. Rather, the website
26 is designed to create the impression that the software is created for permissible and appropriate use
27 with Twitter's service. The TweetAdder website claims that licensees can "get more followers,
28 instantly." It also advertises that licensees can "[u]se our program on an unlimited number of

1 Twitter profiles with TweetAdder Platinum!” TweetAdder also advertises that its software
2 “[w]orks your [T]witter profile or profiles like a human being.” These statements and others like
3 them deceive users into believing that using the TweetAdder software will conform to Twitter’s
4 TOS and/or avoid having their accounts suspended for TOS violations.

5 35. ~~43.~~ These features and representations, among others, induce Twitter users who
6 license TweetAdder to violate the TOS, and deceive consumers through deceptive advertising.

7 36. ~~44.~~ TweetAdder advertises that the TweetAdder software does not use Twitter’s
8 API to access Twitter’s websites and services. It developed and uses automated scripts through
9 which the TweetAdder software accesses Twitter’s websites and services without Twitter’s
10 authorization.

11 37. By connecting the TweetAdder software to Twitter’s websites and services through
12 unauthorized means rather than through Twitter’s API, TweetAdder violates the Twitter TOS and
13 induces violations thereof by the users of its software.

14 38. TweetAdder has benefited financially from its behavior while at the same time
15 harming Twitter and its users. TweetAdder purposefully directed its intentional activities toward
16 California, thereby causing harm TweetAdder knew was likely to be suffered by Twitter in
17 California.

18 **~~F. TweetBuddy’s Abuse of the Twitter Service~~**

19 ~~45. Defendant TweetBuddy operates a website available at <http://www.tweetbuddy.com>. It~~
20 ~~is the creator of a web-based computer program called “TweetBuddy” that enables users to~~
21 ~~automate the process of creating accounts and broadcasting spam Tweets to an enormous number~~
22 ~~of users. To assist with such activities, TweetBuddy has also offered for sale Twitter user~~
23 ~~accounts on the Marketplace portion of its website—and thereby agreed to the TOS at the time of~~
24 ~~each such account creation. It licenses the TweetBuddy software in packages of one, five, ten, or~~
25 ~~one hundred Twitter accounts.~~

26 ~~46. In recent months, Twitter has received scores of complaints about myriad spam~~
27 ~~accounts that use the TweetBuddy software. Some Twitter users employing the software to create~~
28

1 ~~accounts and send spam have been misled by TweetBuddy into believing that use of the software~~
2 ~~for such purposes was permissible.~~

3 ~~47. TweetBuddy promotes its software on its website as offering the following features, the~~
4 ~~use of which by a Twitter user would constitute a breach by the user of the TOS: (a) automated~~
5 ~~following of other users; (b) automated Tweet generation; (c) automated Tweeting and/or re-~~
6 ~~Tweeting from multiple accounts; (d) automated sending of the same Tweet across multiple~~
7 ~~Twitter accounts; and (e) automatically following and un-following users, including within a~~
8 ~~scheduled period of time (i.e., “churn”).—~~

9 ~~48. Nothing on the TweetBuddy website informs prospective licensees that the intended~~
10 ~~use of the software to send spam violates Twitter’s Terms of Service. Rather, the website is~~
11 ~~designed to create the impression that the software is created for permissible and appropriate use~~
12 ~~with Twitter’s service. The TweetBuddy website advertises, “Don’t look like a bot to twitter they~~
13 ~~don’t like that [sic]. Our custom settings delay message[s] and responses to give the impression it~~
14 ~~is a human doing all the work.” These statements deceive users into believing that using the~~
15 ~~TweetBuddy software will conform to Twitter’s TOS and/or avoid having their accounts~~
16 ~~suspended for TOS violations.—~~

17 ~~49. These features and representations, among others, induce Twitter users who license~~
18 ~~TweetBuddy to violate the TOS, and deceive consumers through deceptive advertising.~~

19 ~~50. TweetBuddy has also created Twitter accounts for its customers, and then gave the~~
20 ~~customer control of the accounts by providing the account usernames and passwords to the~~
21 ~~customer. TweetBuddy thus violated the TOS.~~

22 ~~51. TweetBuddy developed and uses automated scripts through which the TweetBuddy~~
23 ~~software accesses Twitter’s websites and services without Twitter’s authorization. By connecting~~
24 ~~the TweetBuddy software to Twitter’s websites and services through unauthorized means rather~~
25 ~~than through Twitter’s official API, TweetBuddy violates the Twitter TOS and induces violations~~
26 ~~thereof by the users of its software. TweetBuddy has benefited financially from its behavior while~~
27 ~~at the same time harming Twitter and its users. TweetBuddy purposefully directed its intentional~~
28

1 ~~activities toward California, thereby causing harm TweetBuddy knew was likely to be suffered by~~
2 ~~Twitter in California.~~

3 **G. James Lucero's Abuse of the Twitter Service**

4 52. ~~Defendant James Lucero operates a number of dubious websites, including~~
5 ~~http://justinlover.info, that provide no legitimate goods or services, and that he promotes through~~
6 ~~spam on Twitter.~~

7 53. ~~A high volume of misleading Tweets from spam accounts link to websites operated by~~
8 ~~Lucero. These Tweets typically promise to teach the recipient how to get celebrity singer Justin~~
9 ~~Bieber to follow the recipient's Twitter account. However, the links in the Tweets go to Lucero's~~
10 ~~spam websites, which do not deliver the promised information. Lucero's Tweets therefore~~
11 ~~mislead consumers. Lucero operates, uses, controls, and/or authorizes the operation, use, and/or~~
12 ~~control of the spam accounts that Tweet misleading links to Lucero's spam websites. In recent~~
13 ~~months, Twitter has received many complaints about, and has terminated, numerous such~~
14 ~~accounts.~~

15 54. ~~Lucero violates the Twitter TOS through conduct that includes, but is not limited to,~~
16 ~~the following: (a) spamming users; (b) creating serial accounts for disruptive, abusive, and/or~~
17 ~~overlapping purposes; (c) Tweeting misleading links; (d) rotating URLs to post links that have~~
18 ~~been banned from posting; and (e) posting the same Tweet across multiple accounts. Lucero has~~
19 ~~benefited financially from his behavior while at the same time harming Twitter and its users.~~
20 ~~Lucero purposefully directed his intentional activities toward California, thereby causing harm~~
21 ~~Lucero knew was likely to be suffered by Twitter in California.~~

22 **H. Garland E. Harris's Abuse of the Twitter Service**

23 55. ~~Defendant Garland E. Harris operates websites available at http://troptiontrading.com,~~
24 ~~http://troption.com, and http://gtp123.com, through which Harris provides online auction and~~
25 ~~online payment services of questionable legitimacy.~~

26 56. ~~Harris operates, uses, controls, and/or authorizes the operation, use, and/or control of a~~
27 ~~massive number of automated spam Twitter accounts (over 129,000 as of the filing of this~~
28 ~~Complaint) which send spam Tweets linking to websites promoted by Harris. Many of the spam~~

1 ~~Tweets use deceptive language to drive users to the websites to which they link. Harris's Tweets~~
2 ~~therefore deceive consumers about the purpose of such websites. In recent months, Twitter has~~
3 ~~received many complaints about, and has terminated, numerous accounts used to promote Harris's~~
4 ~~websites.~~

5 ~~57. Harris violates the Twitter TOS through conduct that includes, but is not limited to, the~~
6 ~~following: (a) spamming users; (b) creating serial accounts for disruptive, abusive, and/or~~
7 ~~overlapping purposes; (c) Tweeting misleading links; and (d) posting the same Tweet across~~
8 ~~multiple accounts. Harris has benefited financially from his behavior while at the same time~~
9 ~~harming Twitter and its users. Harris purposefully directed his intentional activities toward~~
10 ~~California, thereby causing harm Harris knew was likely to be suffered by Twitter in California.~~

11 **FIRST CLAIM FOR RELIEF**

12 **Breach of Contract** 13 **(Against All Defendants)**

14 39. ~~58.~~ Plaintiff Twitter realleges and incorporates by reference the allegations in all
15 the preceding paragraphs as though fully set forth herein.

16 40. ~~59.~~ All Twitter users, including the Defendants, are parties to the TOS and are
17 bound to the TOS through their actions. The TOS is a valid, enforceable contract through which
18 Twitter provided Defendants with a limited license to use the Twitter websites and services. By
19 entering into this contract, Defendants, and each of them, purposefully availed themselves of the
20 privilege of conducting business in California.

21 41. ~~60.~~ Twitter has performed all of its obligations under the TOS that were not
22 excused by the Defendants' actions.

23 42. ~~61.~~ As set forth in the paragraphs above, the ~~Spamware Defendants and the~~
24 ~~Spammer~~ Defendants exceeded the scope of, materially breached, and continue to materially
25 breach the terms of the TOS by engaging in specific acts which constitute spam and related
26 abuses, including ~~among the various Defendants~~: (1) creating [connecting to Twitter's websites and](#)
27 [services through unauthorized means rather than through Twitter's API; \(2\) inducing the creation](#)
28 [of serial Twitter accounts for disruptive or abusive purposes, or with overlapping uses; \(2\) creating](#)

1 ~~accounts for the purpose of selling those accounts; (3) selling usernames; (4)~~ using software to
2 interfere with and disrupt the access of other users; ~~(5)~~ using software which scripts the creation
3 of content in such a manner as to interfere with or create an undue burden on Twitter's services;
4 and ~~(6)~~ using software to induce spamming conduct ~~(through use of software or otherwise)~~
5 including, but not limited to, (a) following a large number of users in a short amount of time; (b)
6 following and un-following people in a short time period by automated means; (c) Tweeting
7 misleading links; (d) sending multiple Tweets to hashtags or trending or popular topics that are
8 unrelated to those hashtags or topics; (e) posting ~~the same Tweet across multiple accounts or~~
9 duplicate Tweets to the same account; (f) sending large numbers of duplicate @reply Tweets or
10 Tweets mentioning particular users; (g) having a number of spam complaints filed against the
11 accounts; ~~(h) creating or purchasing accounts in order to gain followers;~~ and ~~(i)~~ using or
12 promoting third party sites that claim to generate more followers for an account.

13 43. ~~62-~~As a direct and proximate result of Defendants' ongoing material breaches of
14 the TOS, Twitter has been harmed and is entitled to monetary damages against each of them in an
15 amount to be determined at trial, but exceeding the minimum unlimited jurisdiction of this Court,
16 exclusive of attorneys' fees and costs.

17 ///

18 ///

19 SECOND CLAIM FOR RELIEF

20 Tortious Interference with Contract 21 (Against the Spamware Defendants)

22 44. ~~63-~~Plaintiff Twitter realleges and incorporates by reference the allegations in all
23 the preceding paragraphs as though fully set forth herein.

24 45. ~~64-~~All users of the ~~Spamware~~ Defendants' ~~respective~~ software offerings (the
25 "~~Spamware~~TweetAdder Users") are parties to Twitter's TOS, which is a valid and enforceable
26 contract.
27
28

1 46. ~~65.~~ Twitter has performed all of its obligations under the TOS that were not
2 excused by the actions of the ~~Spamware Users. All of the Spamware Defendants'~~TweetAdder
3 Users. The TweetAdder software ~~offerings include~~includes features that, when used on Twitter's
4 service, breach Twitter's TOS, as more fully set forth in the preceding paragraphs.

5 47. ~~66.~~ By designing, creating, and marketing ~~their respective~~the TweetAdder software
6 ~~offerings~~ for use on Twitter as more fully described in the preceding paragraphs, each ~~Spamware-~~
7 Defendant was and is aware of the TOS contract between Twitter and the ~~Spamware~~TweetAdder
8 Users. Notwithstanding that knowledge, the ~~Spamware~~ Defendants induced and continue to
9 induce Twitter users to breach their contracts with Twitter.

10 48. ~~67.~~ Defendants have intentionally and maliciously interfered with Twitter's
11 contracts with the ~~Spamware~~TweetAdder Users by committing the following wrongful acts,
12 among others: (a) knowingly including features in their respective software offerings that enable
13 users to breach Twitter's TOS, and promoting, marketing, and/or advertising those features in
14 order to induce such users to breach Twitter's TOS; and (b) knowingly inducing, encouraging, and
15 allowing the ~~Spamware~~TweetAdder Users to send unsolicited commercial messages to Twitter
16 users through the ~~Spamware Defendants' respective~~TweetAdder software ~~offerings~~, all without
17 Twitter's authorization.

18 49. ~~68.~~ As a direct and proximate result of the ~~Spamware~~ Defendants' intentional and
19 malicious interference with Twitter's contracts, Twitter has been and continues to be harmed and
20 is entitled to both injunctive relief and monetary damages against each of them in an amount to be
21 determined at trial, but exceeding the minimum unlimited jurisdiction of this Court, exclusive of
22 attorneys' fees and costs.

23 50. ~~69.~~ The ~~Spamware~~ Defendants' ongoing acts of tortious interference constitute
24 transgressions of a continuing nature for which Twitter has no adequate remedy at law. Unless the
25 ~~Spamware~~ Defendants are each enjoined from further acts of tortious interference, Twitter will
26 suffer irreparable injury to its business goodwill.

27 51. ~~70.~~ The ~~Spamware~~ Defendants' actions of inducement and interference – as shown
28 through their deceptive marketing tactics and their deliberate creation of software designed to

1 facilitate breach of the TOS and annoy Twitter users with unsolicited spam – were intentionally
2 undertaken to injure Twitter and/or undertaken with willful and conscious disregard of Twitter’s
3 rights, and constitute clear and convincing evidence of oppression, fraud, and malice. For these
4 reasons, Twitter is entitled to an award of punitive damages against each ~~Spanware~~ Defendant in
5 an amount sufficient to deter each of them from future misconduct.

THIRD CLAIM FOR RELIEF

Fraud

(Against All Defendants)

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9 52. ~~71.~~ Plaintiff Twitter ~~realleges~~re-alleges and incorporates by reference the
10 allegations in all the preceding paragraphs as though fully set forth herein.

11 53. ~~72.~~ Through the acts of creating one or more Twitter accounts and/or by creating
12 software that accesses Twitter’s service, Defendants have agreed to be bound by the TOS. In
13 agreeing to be bound by the TOS, Defendants misrepresented to Twitter that they would comply
14 with the TOS. Defendants made those false promises having no intention of performing them.

15 54. ~~73.~~ Twitter justifiably relied on Defendants’ representations and granted access to
16 the Twitter service. When Defendants made these representations, each of them knew them to be
17 false and made these representations with the intention to defraud Twitter and to induce Twitter to
18 act in reliance on these representations in the manner alleged.

19 55. ~~74.~~ As a direct and proximate result of Defendants’ fraudulent conduct, Twitter has
20 suffered losses including, but not limited to, (1) loss of business relationships; (2) loss of
21 prospective business relationships; (3) loss of goodwill; and (4) expenditures of money, server
22 space, personnel, and other resources that Twitter would not have been forced to expend but for
23 Defendants’ fraudulent conduct. Twitter therefore is entitled to monetary damages against each of
24 the Defendants in an amount to be determined at trial, including a constructive trust over each of
25 the Defendants’ ill-gotten gains, but exceeding the minimum unlimited jurisdiction of this Court,
26 exclusive of attorneys’ fees and costs.

27 56. ~~75.~~ Defendants’ intentional conduct of making misrepresentations and concealing
28 material facts known to them, with the intention of depriving Twitter of property or legal rights or

1 otherwise causing injury, was fraudulent and despicable conduct that subjected Twitter to an
2 unjust hardship in conscious disregard of Twitter’s rights, so as to justify an award of exemplary
3 and punitive damages.

4 **FOURTH CLAIM FOR RELIEF**

5 **Unlawful, Unfair, and Fraudulent Business Practices Under California Business &**
6 **Professions Code § 17200, et seq.**
7 **(Against All Defendants)**

8 57. ~~76.~~ Plaintiff Twitter realleges and incorporates by reference the allegations in all
9 the preceding paragraphs as though fully set forth herein.

10 58. ~~77.~~ The acts and conduct of each Defendant as alleged above in this Complaint
11 constitute unlawful and/or fraudulent business acts or practices as defined by California Business
12 and Professions Code section 17200 *et seq.* (“Section 17200”).

13 59. ~~78.~~ Each of the Defendants’ conduct is fraudulent under Section 17200 because
14 reasonable consumers have been and will continue to be confused and deceived by Defendants’
15 business and advertising practices. Specifically, ~~the Spamware~~ Defendants deceive the public by
16 causing Twitter users to believe that their use of the ~~Spamware Defendants’~~ TweetAdder software
17 will not violate Twitter’s Terms of Service and will not cause Twitter to suspend their accounts for
18 violations of those Terms of Service. The ~~Spammer Defendants deceive the public by sending~~
19 ~~deceptive spam messages that cause Twitter users to believe that clicking on the link in such~~
20 ~~messages will lead them to websites other than those to which they actually lead, and/or that do~~
21 ~~not offer what they promise.~~ The Twitter Trust & Safety Team has responded to dozens of
22 appeals from suspended users that signed up for ~~each of the Spamware products~~ the TweetAdder
23 software.

24 60. ~~79.~~ Each of the Defendants’ conduct is unlawful under Section 17200 because, as
25 described in detail in the paragraphs above, Defendants have engaged in the independently
26 unlawful wrongs of breach of contract, tortious interference with contract, and fraud, to Twitter’s
27 detriment.

28 61. ~~80.~~ Defendants’ unlawful and fraudulent business acts or practices have caused and
continue to cause irreparable harm to Twitter. Unless such practices are enjoined, Defendants will

1 each cause further irreparable and incalculable injury, whereby Twitter has no adequate remedy at
2 law, as a direct and proximate result of their unfair and deceptive business practices in violation of
3 Section 17200. Thus, pursuant to California Business and Professions Code section 17203,
4 Twitter is entitled to an order of this Court enjoining Defendants, and each of them, from
5 continuing to engage in unlawful and/or fraudulent business acts or practices as defined in Section
6 17200.

7 **PRAYER FOR RELIEF**

8 **WHEREFORE**, Plaintiff Twitter prays for the following relief:

9 A. For injunctive relief, as follows:

10 1. As against each of Defendants ~~JL4 Web Solutions, Yanuarita,~~ Skootle, Kester, and
11 ~~ClarkFales~~, a preliminary injunction and a permanent injunction enjoining and restraining such
12 Defendants, and all persons or entities acting in concert with them, during the pendency of this
13 action and thereafter perpetually from:

14 (a) Creating or soliciting the creation of Twitter accounts for purposes that violate
15 Twitter's Terms of Service (including the Twitter Rules);

16 (b) Accessing, searching, or attempting to access or search Twitter's website, computer
17 systems, and services in order to engage in specific acts that violate Twitter's Terms of Service
18 (including the Twitter Rules);

19 (c) Creating, developing, manufacturing, adapting, modifying, making available,
20 trafficking in, using, disclosing, selling, licensing, distributing (with or without monetary
21 charge), updating, providing customer support for, or offering for use, sale, license, or
22 distribution (with or without monetary charge), any software or technology designed for use in
23 connection with Twitter's service, the use of which would violate Twitter's Terms of Service
24 (including the Twitter Rules) (including but not limited to ~~TweetAttacks Pro, TweetAttacks Lite,~~
25 ~~TweetAttacks Free Edition,~~ TweetAdder, TweetAdder Platinum, ~~TweetBuddy, and TweetBuddy~~
26 ~~Enterprise Edition~~ TweetAdder 2009, TweetAdder 2010, and TweetAdder 3.0);

1 (d) Transmitting, assisting with the transmission of, or procuring or inducing the
2 transmission of unsolicited commercial messages to users on Twitter’s service, including but not
3 limited to Tweets, @replies, and direct messages, to Twitter users;

4 (e) Engaging in false representations or false advertising that would misleadingly suggest
5 to a reasonable consumer that a software or other technology conforms to Twitter’s Terms of
6 Service (including the Twitter Rules) and/or will not result in a Twitter user’s account being
7 suspended; and

8 (f) Engaging in any activity that violates, or induces others to violate, Twitter’s Terms of
9 Use, Rules, or Privacy Policy.

10 ~~2. As against each of Defendants Lucero and Harris, a preliminary injunction and a~~
11 ~~permanent injunction enjoining and restraining such Defendants, and all persons or entities~~
12 ~~acting in concert with them, during the pendency of this action and thereafter perpetually from:~~

13 ~~(a) Creating or soliciting the creation of Twitter accounts for purposes that violate~~
14 ~~Twitter’s Terms of Service (including the Twitter Rules), including “bot” accounts that direct~~
15 ~~users to external websites;~~

16 ~~(b) Accessing, searching, or attempting to access or search Twitter’s website, computer~~
17 ~~systems, and services in order to engage in specific acts that violate Twitter’s Terms of Service~~
18 ~~(including the Twitter Rules);~~

19 ~~(c) Transmitting, assisting with the transmission of, or procuring or inducing the~~
20 ~~transmission of unsolicited commercial messages to users on Twitter’s service, including but not~~
21 ~~limited to Tweets, @replies, and direct messages, to Twitter users;~~

22 ~~(d) Engaging in any false representation or false advertisement that would misleadingly~~
23 ~~suggest to a reasonable consumer that a link within a Tweet will lead to information and/or an~~
24 ~~Internet destination other than the information and/or destination to which it actually leads, or~~
25 ~~promise goods or services other than those offered; and~~

26 ~~(e) Engaging in any activity that violates, or induces others to violate, Twitter’s Terms of~~
27 ~~Use, Rules, or Privacy Policy.~~

1 B. An award to Twitter of damages, assessed jointly and severally, including but not
2 limited to, compensatory, statutory, punitive, and exemplary damages, restitution, and
3 disgorgement of profits, as permitted by law and in such amounts to be proved at trial. ~~For each~~
4 ~~Defendant, such~~ Such damages shall be no less than ~~(a) \$100,000 as to Lucero; (b) \$75,000 as to~~
5 ~~Harris; (c) \$75,000 as to TweetAdder; (d) \$300,000 as to TweetBuddy; and (e) \$150,000 as to~~
6 ~~TweetAttacks.~~

7 C. An award to Twitter of reasonable costs, including reasonable attorneys' fees, to
8 the extent permitted by law.

9 D. For pre- and post-judgment interest as allowed by law.

10 E. For such other relief as the Court may deem just and proper.

11
12 Dated: ~~April 5~~ November 2, 2012

Respectfully submitted,

13
14
15 David H. Kramer

/s/ Charles T. Graves

16 David H. Kramer

17 Charles T. Graves

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JURY DEMAND

Plaintiff hereby demands a trial by jury as to all issues so triable in this action.

Dated: ~~April 5~~November 2, 2012

Respectfully submitted,

/s. Charles T. Graves

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