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    and James Kester
9

10   UNITED STATE DISTRICT COURT

11   NORTHERN DISTRICT OF CALIFORNIA

12   SAN FRANCISCO DIVISION

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    TWITTER, INC., a Delaware corporation,   CASE NO. CV 12-1721 SI
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                    Plaintiff,   **RESPONSE TO TWITTER, INC.'S**
16   **MOTION FOR LEAVE TO AMEND**
                    v.   **COMPLAINT**
17
    SKOOTLE CORP., a Tennessee corporation;   Date: December 14, 2012
18 and JAMES KESTER, an individual,   Time: 9:00 a.m.
                                                     Dept: Ctrm. 10, 19th Floor
19   Defendants.   Judge: Hon. Susan Illston
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21   Filing Date: April 5, 2012
                                                     Trial Date: None Set
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RESPONSE TO TWITTER INC.'S MOTION FOR LEAVE TO AMEND

Defendants Skootle, Corp. and James Kester (collectively "Defendants") hereby submit this statement in response to Twitter, Inc.'s Motion for Leave to Amend Complaint. Defendants have no objection to plaintiff's request for leave to amend the allegations in the complaint as they relate to the current Defendants. However, Defendants object to plaintiff's attempt to add third-party Troy Fales as a defendant.

I. ALLEGATIONS AGAINST SKOOTLE AND MR. KESTER

On June 25, 2012 this Court issued an Order to Show Cause (see Docket No. 45) and subsequently held that Skootle and Mr. Kester were not properly joined in one action with the remaining defendants and ordered all claims and allegations not made against Skootle and/or Mr. Kester severed from the litigation. (See Docket No. 54.)

In light of the Court's order, plaintiff's request for leave to amend the complaint to remove any reference to or allegations against defendants other than Skootle and/or Mr. Kester is appropriate and necessary. Defendants do not oppose such request.

On Wednesday, October 31, 2012, counsel for plaintiff for the first time sent defendants' counsel a draft of the amended complaint that plaintiff now proposes. Twitter's counsel wrote that they intended to file a motion for leave to amend within the next two days. Defendants' counsel responded that Storm Sandy might prevent it from consulting with east-coast-based defendants in the next twenty-four hours but that counsel would try to make contact to provide the requisite feedback. Twitter then filed its motion for leave to amend on Friday, November 2, barely forty-eight hours after providing counsel a copy of the proposed amendments.

II. INCLUSION OF TROY FALES IS PREMATURE AND UNJUSTIFIED

By way of its motion for leave to amend, plaintiff also seeks to include third-party Troy Fales as a defendant.

Defendants recognize the liberality with which Federal Rule of Civil Procedure 15(a) is applied enabling a plaintiff to amend its pleadings. For this reason, defendants do not oppose plaintiff's motion for leave to amend to include Mr. Fales as a defendant.

1   This Court should note, however, that plaintiff has put forth no evidence Mr. Fales had any

2 role in Skootle that would subject him to personal liability for the actions of Skootle. Even if Mr.

3 Fales was an employee of Skootle, such employment would not expose him to personal liability for

4 the actions of Skootle. Moreover, plaintiff has offered no evidence of the requisite minimum contacts

5 with California that would subject Mr. Fales to personal jurisdiction in this court. These and other

6 issues may be pursued by defendants and/or Mr. Fales in a motion to dismiss should this Court grant

7 plaintiff leave to Mr. Fales as a defendant.

8

9 Date: November 16, 2012   Submitted By,

                             COLT / WALLERSTEIN LLP

                             By:_____
                                  Doug Colt
                                  Thomas E. Wallerstein
                                  Nicole M. Norris
                                  Attorneys for Defendants Skootle Corp.
                                  and James Kester

RESPONSE TO TWITTER, INC.'S MOTION FOR LEAVE TO AMEND COMPLAINT
CASE NO. CV 12-1721 SI