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

10	TWITTER, INC., a Delaware corporation,)	CASE NO.: 3:12-cv-1721 SI
11	Plaintiff,)	FIRST AMENDED COMPLAINT FOR
12	v.)	(1) BREACH OF CONTRACT; (2)
13	SKOOTLE CORP., a Tennessee corporation;)	TORTIOUS INTERFERENCE WITH
14	JAMES KESTER, an individual; and TROY)	CONTRACT; (3) FRAUD; AND (4)
15	FALES, an individual,)	UNFAIR OR DECEPTIVE BUSINESS
16	Defendants.)	PRACTICES
17)	JURY TRIAL DEMANDED

18 Plaintiff Twitter, Inc. (“Twitter”) brings this civil action against Skootle Corporation,
 19 James Kester, and Troy Fales (collectively, “Defendants”), and for its first amended complaint
 20 alleges as follows on personal knowledge as to its own actions and on information and belief as
 21 to the actions of others:

22 **I. INTRODUCTION**

23 1. Twitter operates one of the world’s most popular online communications platforms,
 24 with over 140 million active users. Twitter’s widespread success comes in large part because
 25 Twitter is dedicated to providing a high quality user experience that promotes meaningful
 26 interactions between its users. Among other things, Twitter protects its users’ experience by
 27 prohibiting a variety of fraudulent and deceptive practices on the Twitter platform, which Twitter
 28

1 refers to collectively as “spam.” Twitter has deployed a host of human and technological
2 measures to detect and combat spam on the Twitter platform.

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

6 3. As described below, Defendants distribute a software tool called “TweetAdder”
7 that is designed to facilitate abuse of the Twitter platform and marketed to dupe consumers into
8 violating Twitter’s user agreement.

9 **II. THE PARTIES**

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

12 5. Defendant Skootle Corporation (“Skootle”) is a corporation incorporated in
13 Tennessee, with its principal place of business in the State of Virginia, doing business in the State
14 of California.

15 6. Defendant James Kester (“Kester”) is an individual who conducts business in the
16 State of California and is domiciled in the State of Virginia. Kester is the principal officer of
17 Defendant Skootle.

18 7. Defendant Troy Fales (“Fales”) is an individual who conducts business in the State
19 of California and is domiciled in the State of North Carolina. Plaintiff has recently learned that
20 Fales has been, and on information and belief continues to be, an employee of Defendant Skootle,
21 during at least part of the relevant time period.

22 8. Defendants Skootle, Kester, and Fales shall be referred to collectively in this
23 Complaint as “TweetAdder,” except as otherwise specified.

24 **III. JURISDICTION AND VENUE**

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

1 specifically subscribed to the accounts. Twitter users may also send private Tweets, called “direct
2 messages,” to other users, which are viewable only by the recipient (and the sender).

3 15. A Twitter user can mark keywords or topics in a Tweet by including the # symbol,
4 which is colloquially called a “hashtag” on Twitter, before a relevant keyword in the Tweet, with
5 no spaces between the two elements. The combination of the # symbol and the keyword is also
6 referred to colloquially as a “hashtag.” For example, including the hashtag “#california” indicates
7 that a Tweet is about California. Twitter’s algorithms analyze the content of Tweets to determine
8 current popular topics of discussion on Twitter, which are referred to on Twitter as “trending
9 topics.”

10 **B. “Spam” on Twitter**

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

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

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

24 19. Spam Tweets are typically sent from Twitter accounts created for the sole purpose
25 of spamming Twitter users. These spam accounts frequently use software programs that automate
26 Twitter functions such as following and un-following users and sending Tweets and @replies to
27 users. Automated spam accounts are colloquially referred to on Twitter as “bots” or “spambots.”
28 These spam software programs typically permit spambots to rapidly follow or un-follow a large

1 number of users, to send a high volume of spam Tweets, and to automatically send Tweets or
2 @replies to users who mention certain keywords, hashtags, or trending topics in their Tweets.

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

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

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

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

1 **C. Twitter’s User Agreement**

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

7 25. Twitter users who agree to Twitter’s TOS enjoy a limited, non-assignable license to
8 access and use Twitter’s websites and services, subject to acceptance of and compliance with the
9 TOS. By accessing or using Twitter’s websites and services, a user agrees to be bound by the
10 TOS.

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

18 27. Activities forbidden as “Spam and Abuse” under the Rules include the creation of
19 serial accounts for disruptive or abusive purposes, or with overlapping uses. The “Spam and
20 Abuse” Rules further forbid the use of the Twitter service for the purpose of spamming users. The
21 Rules provide that Twitter determines what constitutes “spamming,” based on criteria including,
22 but not limited to, the following account behaviors: (a) following a large number of users in a
23 short amount of time; (b) following and un-following people in a short time period, particularly by
24 automated means (a practice known as “churn”); (c) Tweeting misleading links; (d) sending
25 multiple Tweets to hashtags or trending or popular topics that are unrelated to those hashtags or
26 topics; (e) posting the same Tweet across multiple accounts or duplicate Tweets to the same
27 account; (f) sending large numbers of duplicate @reply Tweets or Tweets mentioning particular
28 users; (g) the number of spam complaints filed against the account; (h) creating or purchasing

1 accounts in order to gain followers; and (i) using or promoting third-party sites that claim to
2 generate more followers for an account, including “sites promising ‘more followers fast,’ or any
3 other site that offers to automatically add followers to your account.” In addition, the Rules
4 prohibit creating accounts for the purpose of selling such accounts, and they prohibit selling
5 usernames. The Rules provide that an account may be suspended for TOS violations if Twitter
6 detects any of the above activities.

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

12 29. Each of the Defendants has agreed to the TOS by opening at least one user account
13 on Twitter, and each has knowledge of the terms of the TOS. The Defendants opened at least one
14 user account in order to develop the TweetAdder software to operate on Twitter’s website.

15 **D. TweetAdder’s Abuse of the Twitter Service**

16 30. Defendant TweetAdder operates a website available at <http://www.tweetadder.com>.
17 It is the creator of a desktop computer program called “TweetAdder” that enables users to
18 automate the process of creating accounts and broadcasting spam Tweets to an enormous number
19 of users. It licenses the TweetAdder software in packages of one, five, ten, or an unlimited
20 number of Twitter accounts.

21 31. In the months leading up to the filing of the instant action and in the months since,
22 Twitter has received scores of complaints about myriad spam accounts that use the TweetAdder
23 software. Some Twitter users employing the software to create accounts and send spam have been
24 misled by TweetAdder into believing that use of the software for such purposes was permissible.

25 32. TweetAdder promotes its software on its website as offering the following features,
26 the use of which by a Twitter user would constitute a breach by the user of the TOS: (a) multiple
27 account management; (b) automated following and un-following of other users; and (c) automated
28 generation of Tweets, re-Tweets and @replies.

1 40. All Twitter users, including the Defendants, are parties to the TOS and are bound to
2 the TOS through their actions. The TOS is a valid, enforceable contract through which Twitter
3 provided Defendants with a limited license to use the Twitter websites and services. By entering
4 into this contract, Defendants, and each of them, purposefully availed themselves of the privilege
5 of conducting business in California.

6 41. Twitter has performed all of its obligations under the TOS that were not excused by
7 the Defendants' actions.

8 42. As set forth in the paragraphs above, the Defendants exceeded the scope of,
9 materially breached, and continue to materially breach the terms of the TOS by engaging in
10 specific acts which constitute spam and related abuses, including: (1) connecting to Twitter's
11 websites and services through unauthorized means rather than through Twitter's API; (2) inducing
12 the creation of serial Twitter accounts for disruptive or abusive purposes, or with overlapping
13 uses; (3) using software to interfere with and disrupt the access of other users; (4) using software
14 which scripts the creation of content in such a manner as to interfere with or create an undue
15 burden on Twitter's services; and (5) using software to induce spamming conduct including, but
16 not limited to, (a) following a large number of users in a short amount of time; (b) following and
17 un-following people in a short time period by automated means; (c) Tweeting misleading links;
18 (d) sending multiple Tweets to hashtags or trending or popular topics that are unrelated to those
19 hashtags or topics; (e) posting duplicate Tweets to the same account; (f) sending large numbers of
20 duplicate @reply Tweets or Tweets mentioning particular users; (g) having a number of spam
21 complaints filed against the accounts; and (h) using or promoting third party sites that claim to
22 generate more followers for an account.

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

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SECOND CLAIM FOR RELIEF
Tortious Interference with Contract

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4 44. Plaintiff Twitter realleges and incorporates by reference the allegations in all the
5 preceding paragraphs as though fully set forth herein.

6 45. All users of the Defendants' software (the "TweetAdder Users") are parties to
7 Twitter's TOS, which is a valid and enforceable contract.

8 46. Twitter has performed all of its obligations under the TOS that were not excused by
9 the actions of the TweetAdder Users. The TweetAdder software includes features that, when used
10 on Twitter's service, breach Twitter's TOS, as more fully set forth in the preceding paragraphs.

11 47. By designing, creating, and marketing the TweetAdder software for use on Twitter
12 as more fully described in the preceding paragraphs, each Defendant was and is aware of the TOS
13 contract between Twitter and the TweetAdder Users. Notwithstanding that knowledge, the
14 Defendants induced and continue to induce Twitter users to breach their contracts with Twitter.

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

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

27 50. The Defendants' ongoing acts of tortious interference constitute transgressions of a
28 continuing nature for which Twitter has no adequate remedy at law. Unless the Defendants are

1 each enjoined from further acts of tortious interference, Twitter will suffer irreparable injury to its
2 business goodwill.

3 51. The Defendants' actions of inducement and interference – as shown through their
4 deceptive marketing tactics and their deliberate creation of software designed to facilitate breach
5 of the TOS and annoy Twitter users with unsolicited spam – were intentionally undertaken to
6 injure Twitter and/or undertaken with willful and conscious disregard of Twitter's rights, and
7 constitute clear and convincing evidence of oppression, fraud, and malice. For these reasons,
8 Twitter is entitled to an award of punitive damages against each Defendant in an amount sufficient
9 to deter each of them from future misconduct.

10 **THIRD CLAIM FOR RELIEF**

11 **Fraud**

12 52. Plaintiff Twitter re-alleges and incorporates by reference the allegations in all the
13 preceding paragraphs as though fully set forth herein.

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

18 54. Twitter justifiably relied on Defendants' representations and granted access to the
19 Twitter service. When Defendants made these representations, each of them knew them to be
20 false and made these representations with the intention to defraud Twitter and to induce Twitter to
21 act in reliance on these representations in the manner alleged.

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

3 56. Defendants' intentional conduct of making misrepresentations and concealing
4 material facts known to them, with the intention of depriving Twitter of property or legal rights or
5 otherwise causing injury, was fraudulent and despicable conduct that subjected Twitter to an
6 unjust hardship in conscious disregard of Twitter's rights, so as to justify an award of exemplary
7 and punitive damages.

8 **FOURTH CLAIM FOR RELIEF**

9 **Unlawful, Unfair, and Fraudulent Business Practices Under California Business &**
10 **Professions Code § 17200, et seq.**

11 57. Plaintiff Twitter realleges and incorporates by reference the allegations in all the
12 preceding paragraphs as though fully set forth herein.

13 58. The acts and conduct of each Defendant as alleged above in this Complaint
14 constitute unlawful and/or fraudulent business acts or practices as defined by California Business
15 and Professions Code section 17200 *et seq.* ("Section 17200").

16 59. Each of the Defendants' conduct is fraudulent under Section 17200 because
17 reasonable consumers have been and will continue to be confused and deceived by Defendants'
18 business and advertising practices. Specifically, Defendants deceive the public by causing Twitter
19 users to believe that their use of the TweetAdder software will not violate Twitter's Terms of
20 Service and will not cause Twitter to suspend their accounts for violations of those Terms of
21 Service. The Twitter Trust & Safety Team has responded to dozens of appeals from suspended
22 users that signed up for the TweetAdder software.

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

27 61. Defendants' unlawful and fraudulent business acts or practices have caused and
28 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 Skootle, Kester, and Fales, a preliminary
11 injunction and a permanent injunction enjoining and restraining such Defendants, and all persons
12 or entities acting in concert with them, during the pendency of this action and thereafter
13 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 TweetAdder, TweetAdder Platinum,
25 TweetAdder 2009, TweetAdder 2010, and TweetAdder 3.0);

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

