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15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN FRANCISCO DIVISION
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19 TWITTER, INC., a Delaware corporation,

20 Plaintiff,

21 v.

22 SKOOTLE CORP., a Tennessee corporation;
JAMES KESTER, an individual; and TROY
23 FALES, an individual,

24 Defendants.
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Case No. 3:12-cv-1721 JST

**FURTHER JOINT CASE
MANAGEMENT STATEMENT**

Date: TBD
Time: TBD
Place: Courtroom 9
Judge: Hon. Jon S. Tigar

1 The parties to the above-entitled action jointly submit this FURTHER JOINT CASE
2 MANAGEMENT STATEMENT pursuant to the Court’s Order dated February 11, 2013.
3 (Docket No. 83).

4 **1. Date of Case Filing**

5 The original Complaint was filed on April 5, 2012 against defendants Skootle Corp. and
6 James Kester, among others. (Docket No. 1). By leave of Court, Plaintiff filed its First
7 Amended Complaint on November 19, 2012 to which Twitter added defendant Troy Fales.
8 (Docket Nos. 68, 69, 74, 76).

9 **2. The Parties**

10 Plaintiff: Plaintiff Twitter, Inc. (“Twitter”) is a Delaware corporation with its principal
11 place of business in San Francisco, California. Twitter runs an eponymous online real-time
12 communications platform through which users share and receive information via short messages
13 called “Tweets.”

14 Defendants: Defendant Skootle Corporation (“Skootle”) is a corporation incorporated in
15 Tennessee, with its principal place of business in Richmond, Virginia. Defendant James Kester
16 (“Kester”) is an individual residing in Virginia and the principal officer of Skootle. Defendant
17 Troy Fales (“Fales”) is an individual residing in North Carolina and a contractor for Skootle.

18 **3. Claims**

19 Plaintiff’s Amended Complaint asserts claims for (1) breach of contract, (2) tortious
20 interference with contract, (3) fraud, and (4) unfair or deceptive business practices under Cal.
21 Bus. & Prof. Code § 17200. (Docket No. 76).

22 **4. Events Underlying the Action**

23 Plaintiff’s Statement:

24 Twitter operates a popular online communications platform, well-known for the short,
25 140-character “Tweets” that Twitter users post for others to read and follow. Twitter brought
26 this lawsuit in order to combat unwanted messages known as “spam” on its platform.
27 Defendants offer a software product to Twitter users called TweetAdder, which does not comply
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1 with Twitter’s rules for third party software developers, and which is designed to enable spam
2 messages on Twitter’s service – generally mass advertising messages generated through
3 automated means and sent in bulk to Twitter users. Whether or not the businesses which send
4 these messages are legitimate businesses in and of themselves, Defendants do not have a right to
5 enable their disruption of Twitter’s user experience.

6 It is undisputed that Defendants’ TweetAdder product does not use Twitter’s required
7 authentication protocol for user password security. It is likewise undisputed that Defendants’
8 TweetAdder product contains numerous features that are prohibited by Twitter’s Terms of
9 Service. Unlike many other third party developers who successfully market software products
10 that comply with Twitter’s Terms of Service, Defendants have refused to comply with Twitter’s
11 rules so that they can make money from spammers.

12 Twitter therefore alleges that Defendants violate Twitter’s Terms of Service, interfere
13 with Twitter’s agreements with its users, engage in deceitful marketing, and damage Twitter by
14 marketing the TweetAdder software. Twitter has expended a great amount of time, money, and
15 resources to combat the problems caused by Defendants. Defendants refuse to abide by
16 Twitter’s rules, which all third party developers building businesses on the Twitter platform are
17 required to follow. Defendants could have modified their software to conform to Twitter’s
18 Terms of Service, but they refuse to do so.

19 Defendants’ Statement:

20 James Kester is the owner and founder of defendant Skootle Corp, which licenses a
21 software program that enables businesses and other Twitter users to automate their use of Twitter
22 to promote and advance legitimate business, social, and branding objectives.

23 Despite Twitter’s contentions, TweetAdder is not “spamware.” TweetAdder is a useful
24 tool for legitimate businesses and individuals that can be used to automate certain repetitive,
25 mundane, and time-consuming tasks that are otherwise permitted by Twitter. Customers of
26 TweetAdder include popular television shows and newspapers, radio stations, PR firms,
27 charities, law firms, musicians, celebrities, politicians and political campaigns, city chambers of
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1 commerce, banks, and numerous other businesses from small startups to Fortune 500 companies.
2 These customers use TweetAdder to save the time and expense of manually locating and
3 following users so they can spend more time engaging with the Twitter users that want to hear
4 what they have to say and stay connected with them.

5 Many tasks that TweetAdder performs can already be performed manually by the end
6 user. TweetAdder simply makes it easier with added search capabilities. Defendants
7 specifically elected to *exclude* certain features from TweetAdder that would otherwise allow
8 users to abuse Twitter. Without these features, it would be exceedingly difficult to use
9 TweetAdder for illegitimate and malicious purposes. These excluded features include:

- 10 • Account creation - TweetAdder clients have no ability to create multiple profiles
11 automatically. They must create their profiles manually with Twitter.
- 12 • Bulk profile editing - TweetAdder users must create and edit each profile they
13 enter into the program manually.
- 14 • Mass importing accounts - TweetAdder users must input each Twitter profile
15 manually. They cannot upload a list of multiple profiles into the program.
- 16 • Duplication of account settings - TweetAdder users must open each profile in
17 TweetAdder one by one and manually set each profile setting for that particular
18 profile. They cannot simply copy over settings to their remaining profiles.
- 19 • Following the same user on multiple accounts - TweetAdder does not provide an
20 automated method to follow the same user with multiple accounts. Each
21 TweetAdder account is managed independently of each other account.
- 22 • @Replies based on user keywords - TweetAdder allows a user to send an
23 “@reply” only on the condition that another Twitter user mentioned them in an
24 @reply, such as a “thank you for mentioning me.” TweetAdder does not allow its
25 users to indiscriminately send @replies to Twitter users who have not already
26 mentioned them.

- Automatic conversion of keywords to hash-tags - TweetAdder does not permit users to automatically convert keywords to hash-tags. TweetAdder specifically seeks to exclude certain features from TweetAdder that would otherwise allow users to abuse Twitter in the way now claimed. Specifically, TweetAdder clients cannot:

Defendants and the TweetAdder software abide by all terms of the TOS into which they entered with Twitter. TweetAdder does not “spam” other Twitter users as that term is used in Twitter’s Terms of Service attached to its Complaint. Furthermore, TweetAdder accesses the Twitter service through Twitter’s own currently available, published services that are provided by Twitter. On more than one occasion prior to filing this lawsuit, Defendants have worked with Twitter to address any concerns Twitter had about TweetAdder users abusing the software and engaging in frowned-upon behavior, including committing to changes requested by Twitter, blocking abusing users, and modifying the TweetAdder software to remove features so requested by Twitter.

5. Relief Sought and Damages Claimed

Plaintiff’s Statement:

Twitter seeks injunctive relief and specific performance against the Defendants, enjoining and restraining their ongoing violations of the Twitter TOS, from engaging in their unlawful and deceptive practices, and from offering or supporting any version of the TweetAdder software containing any features that violate the TOS. Twitter also seeks to recover compensatory and statutory damages, including restitution and disgorgement of profits. In addition, Twitter is seeking exemplary and punitive damages and attorneys’ fees and costs.

Defendants’ Statement:

Defendants seek no affirmative relief other than the declination of the Court to grant Twitter its requested relief. Defendants reserve the right to supplement this response, if and when, they make a damages claim.

1 **6. Discovery Status**

2 Discovery is ongoing and is subject to the parties' stipulated protective order. (Docket
3 No. 61). Pursuant to the Court's Order, non-expert fact discovery closes on April 1, 2013, and
4 expert discovery closes on May 9, 2013. (Docket No. 82). The parties have both engaged in
5 written discovery, have produced documents, and are proceeding with depositions.

6 **7. Procedural Background**

7 The instant case was originally assigned to Magistrate Judge Laurel Beeler, but was later
8 reassigned to Judge Susan Illston after Defendants Kester and Skootle declined to proceed before
9 a magistrate. (Docket Nos. 1, 31, 32, 35, 37).

10 In its original Complaint, Plaintiff named as defendants Skootle and Kester, as well as
11 five other defendants who have since been dismissed by Plaintiff or severed by the Court.¹
12 (Docket Nos. 1, 41, 42, 43, 46, 49, 45, 54). Before his severance from the action, former
13 defendant Harris moved to dismiss the Complaint against him on various grounds, including lack
14 of personal jurisdiction. The Court denied the motion, upholding the forum selection clause in
15 Plaintiff's TOS.² (Docket Nos. 23, 36, 44).

16 Shortly before the filing of the Amended Complaint, the Court granted in part and denied
17 in part Plaintiff's motion to compel discovery responses by Kester, Skootle, and Fales. At the
18 time, Fales was a non-party on whom Twitter had served a third-party document and deposition
19 subpoena. The Court ordered Defendants to produce financial, tax, and compensation
20 information (redacted for relevance or sensitive personal information where needed), and also
21 ordered Fales to produce all communications relating to Twitter, Skootle, or TweetAdder.
22 (Docket No. 71). Plaintiff's First Amended Complaint added Fales as a defendant. (Docket No.
23 76).

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25 _____
26 ¹ Plaintiff's voluntary dismissal of two defendants located in the Philippines rendered
27 moot Plaintiff's motion for alternative service on them. (Docket Nos. 41, 49).

28 ² In its order, the Court also denied Plaintiff's earlier motion for entry of default as to
Harris. (Docket Nos. 16, 44).

1 The parties agreed to private mediation as their chosen ADR process. (Docket Nos. 58,
2 63). The parties plan a mediation before JAMS on February 28, 2013.

3 No motions are currently pending before the Court.

4 **8. Other Deadlines in Place Before Reassignment**

5 A case management conference was set for March 1, 2013. (Docket No. 75). The
6 deadline for dispositive motions was set for May 13, 2013, with oppositions and replies due June
7 3 and 10, 2013, respectively. A dispositive motion hearing was set for June 24, 2013. (Docket
8 No. 82). The pre-trial conference was set for July 23, 2013, and trial was set to begin on August
9 5, 2013. (Docket No. 62).

10 **9. Requested Modifications to Deadlines**

11 Plaintiff: Plaintiff does not request any modifications to the foregoing deadlines at this
12 time, save to request a different date for a case management conference, as detailed below.

13 Defendants: Defendants do not request any modifications to the foregoing deadlines at
14 this time.

15 **10. Trial by Magistrate Judge**

16 The parties do not consent to trial by a magistrate judge.

17 **11. Immediate Need for Case Management Conference**

18 Plaintiff: Plaintiff requests that a case management conference be held on or about the
19 first week of April 2013, in order to update the Court on the status of the case following
20 mediation and close of fact discovery.

21 Defendants: Defendants have no objection to scheduling a case management conference
22 on or about the first week of April 2013.

23 **12. Immediate Relief Sought Regarding Case Schedule**

24 Plaintiff: Plaintiff does not seek any immediate relief at this time.

25 Defendants: Defendants do not seek any immediate relief at this time.

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Dated: February 26, 2013

WILSON SONSINI GOODRICH & ROSATI P.C.

By: /s Charles T. Graves
Charles T. Graves
tgraves@wsgr.com

Attorneys for Plaintiff TWITTER, INC.

Dated: February 26, 2013

COLT / WALLERSTEIN LLP

By: /s Nicole M. Norris
Attorneys for Defendants SKOOTLE CORP.,
JAMES KESTER, and TROY FALES

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CERTIFICATION

I, Charles T. Graves, am the ECF User whose identification and password are being used to file the **Further Joint Case Management Statement**. In compliance with General Order 45.X.B, I hereby attest that Nicole M. Norris has concurred in this filing.

DATED: February 26, 2013

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: s/Charles T. Graves
Charles T. Graves

Attorneys for Plaintiff Twitter, Inc.