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IMPLY DATA, INC.

ELECTRONICALLY
FILED

Superior Court of California,
County of San Francisco

12/13/2022
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Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

12 IMPLY DATA, INC.,

13 Plaintiff,

14 v.

15 TWITTER, INC. and DOES 1-5, inclusive,

16 Defendants.

Case No.

CGC-22-603473

COMPLAINT FOR:

- (1) BREACH OF CONTRACT;**
(2) BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING;
(3) ANTICIPATORY REPUDIATION;
AND
(4) DECLARATORY RELIEF

17
18 Plaintiff ImPLY Data, Inc. ("ImPLY") alleges as follows for its complaint against
19 Defendant Twitter, Inc. ("Twitter") and Does 1-5, inclusive (collectively, "Defendants").

20 **OVERVIEW OF LAWSUIT**

21 1. According to press reports, Twitter has been refusing to pay its vendors
22 and suppliers without good cause since the company's acquisition by the world's richest
23 man, Elon Musk. This lawsuit involves one such egregious case. For over four years,
24 ImPLY has licensed its proprietary software to Twitter, and Twitter has paid ImPLY over
25 \$10 million. Twitter has always been very pleased with ImPLY's product and its related
26 maintenance and support services, so, in mid-2021, the parties extended the term of their
27 software license and service agreement for an additional three years from October 1, 2021
28 through September 30, 2024. Twitter then made the first four quarterly payments of

1 \$1,092,000 – a total of about \$4.4 million. However, shortly after Musk’s purchase of
2 Twitter closed, Twitter refused to pay the outstanding quarterly invoice, which was due
3 on November 30, 2022, and Twitter disclaimed any obligation to pay any future invoices
4 from Imply, despite the unambiguous language in the software license and service
5 agreement requiring Twitter to do so. Imply has thus been damaged in an amount to be
6 proven at trial, but which will exceed \$8 million plus prejudgment interest and attorneys’
7 fees and costs.

8 **PARTIES**

9 2. Imply is a Delaware corporation with its principal place of business in
10 Burlingame, California. Imply is a software company founded in 2015 by the founders of
11 open-source Apache Druid, a real-time database designed to power analytics
12 applications. Imply provides software for developers of modern analytic applications.

13 3. Upon information and belief, Twitter is a Delaware corporation with its
14 principal place of business in San Francisco, California. Twitter is a social media
15 company that operates the microblogging and social networking service Twitter. Twitter
16 had been a public company for nearly a decade until its acquisition by Musk for about
17 \$44 billion on October 27, 2022.

18 4. The true names and capacities of defendants Does 1 through 5, inclusive,
19 are unknown to Imply, and Imply therefore sues such Defendants by such fictitious
20 names pursuant to California Code of Civil Procedure section 474. Imply will seek leave
21 of court to amend this complaint after it has ascertained the true names and capacities of
22 the Doe Defendants.

23 5. Upon information and belief, each of the Defendants, including the
24 Defendants served as Doe Defendants herein, was the agent and/or employee of each of
25 the remaining Defendants and in doing the things herein mentioned was acting within
26 the scope of such agency and/or employment and are responsible for each and every act
27 and obligation herein set forth and proximately caused the damages complaint of herein.

28

1 **JURISDICTION AND VENUE**

2 6. This Court has jurisdiction over this dispute because the amount in
3 controversy, exclusive of interest and costs, exceeds the jurisdictional minimum of this
4 Court.

5 7. Venue is proper in San Francisco County because Twitter is based in this
6 County; the contract at issue herein was entered into, and was to be performed, in whole
7 or in part, in this County; and a substantial part of the events or omissions giving rise to
8 Imply’s claims against Defendants occurred in this County.

9 **GENERAL ALLEGATIONS**

10 8. On September 27, 2018, Imply and Twitter entered into the Master Software
11 License and Service Agreement (the “Original Agreement”), pursuant to which Imply
12 licensed its proprietary software to and provided related maintenance and support
13 services for Twitter for an initial term of three years. Twitter paid Imply approximately
14 \$6.75 million under the Original Agreement between December 2018 and August 2021.

15 9. On July 30, 2021, Imply and Twitter entered into the Amendment No. 2¹ to
16 Master Software License and Service Agreement (the “Second Amendment”, and
17 together with the Original Agreement and the First Amendment, the “License
18 Agreement”), pursuant to which Imply and Twitter added certain features, extended the
19 term by an additional three years from October 1, 2021 through September 30, 2024, and
20 increased Twitter’s quarterly payments to \$1,092,000 for a total fee of over \$13 million
21 under the three-year term of the Second Amendment.

22 10. On May 24, 2022, Twitter notified Imply that it had elected not to renew the
23 License Agreement and, thus, the License Agreement would terminate at the end of its
24 term on September 30, 2024. In that letter, Twitter acknowledged the License agreement
25 would “continue in full force and effect” until the end of its term on September 30, 2024.

26 _____
27 ¹ On June 24, 2019, Imply and Twitter entered into the Amendment No. 1 to Master
28 Software License and Service Agreement (“First Amendment”), which is not relevant for
purposes of this lawsuit.

1 11. Between November 2021 and August 2022, Twitter made the first four
2 required quarterly payments under the Second Amendment, totaling over \$4.35 million.

3 12. On October 1, 2022, Imply sent Twitter an invoice for the fifth required
4 quarterly payment of \$1,092,000, which was due 60 days later (i.e., on or before
5 November 30, 2022). Per Twitter's request, Imply uploaded that invoice to its vendor
6 portal, and Twitter approved the invoice on October 5, 2022.

7 13. On November 28, 2022, when Imply accessed the vendor portal, Imply
8 learned that Twitter had deleted the invoice and closed the License Agreement. Twitter
9 had also uploaded an internal email chain to the vendor portal to support those actions,
10 which revealed the following:

- 11 • On November 23, 2022, Martin O'Neill, the Head of Global Strategic
12 Sourcing at Twitter, wrote to Kristena Bravo, the Head of Global Procure to
13 Pay & Corporate Services at Twitter: "A heads up that we will not be
14 paying Imply any longer. If we can flag them in our AP system to not route
15 any of their invoices for approval that would be great, thank you!"
- 16 • Then, on November 24, 2022, Ms. Bravo forwarded that email to other
17 Twitter employees and wrote: "Can you please cancel all invoices for Imply
18 currently pending in Oracle (if any) and deactivate the supplier using the
19 email below as evidence?"

20 14. On November 29, 2022, in response to an email from Imply asking about
21 the status of the payment on the invoice, Twitter's account payable department notified
22 Imply that the invoice had been "cancelled" and that, if Imply had any concerns, Imply
23 should "reach out to [Imply's] Twitter business partner."

24 15. Imply has reached out to Twitter to discuss the cancellation of the invoice;
25 however, Twitter has not yet responded in substance to that outreach.

26 **FIRST CAUSE OF ACTION**

27 **(Breach of Contract)**

28 16. Imply repleads, realleges, and incorporates by reference the allegations of

1 Paragraphs 1 through 15, inclusive, as though set forth herein in full.

2 17. Imply and Twitter entered into the License Agreement pursuant to which
3 Imply agreed to license its proprietary software to and provide related maintenance and
4 support services for Twitter; and Twitter agreed to make the required quarterly
5 payments during the term of the License Agreement.

6 18. Imply did all, or substantially all, of the significant things that the License
7 Agreement required Imply to do or was excused from having to do those things.

8 19. Twitter breached the License Agreement by failing to pay the fifth required
9 quarterly invoice of \$1,092,000 on or before November 30, 2022.

10 20. Imply was harmed by Twitter's breach of the License Agreement.

11 21. Imply anticipates that Twitter's breach will continue, with the amount in
12 default increasing each quarter until the end of the License Agreement's term. Twitter's
13 breach of contract was a substantial factor in causing Imply's harm. Twitter's breach has
14 damaged and will damage Imply in an amount that will be proven at trial, but which will
15 likely be in excess of \$8 million.

16 **SECOND CAUSE OF ACTION**

17 **(Breach of Covenant of Good Faith and Fair Dealing)**

18 22. Imply repleads, realleges, and incorporates by reference the allegations of
19 Paragraphs 1 through 21, inclusive, as though set forth herein in full.

20 23. Imply and Twitter entered into the License Agreement pursuant to which
21 Imply agreed to license its proprietary software to and provide related maintenance and
22 support services for Twitter; and Twitter agreed to make the required quarterly
23 payments during the term of the License Agreement.

24 24. Imply did all, or substantially all, of the significant things that the License
25 Agreement required Imply to do or was excused from having to do those things.

26 25. Twitter prevented Imply from receiving the benefits under the License
27 Agreement (i.e., payment of the quarterly invoices) by deleting Imply's invoice in the
28 vendor portal, closing the License Agreement, and refusing to pay Imply in the future; by

1 doing so, Twitter did not act fairly and in good faith.

2 26. Imply was harmed by Twitter's conduct.

3 27. Imply anticipates that Twitter's breach will continue, with the amount in
4 default increasing each quarter until the end of the License Agreement's term. Twitter's
5 breach of the covenant of good faith and fair dealing was a substantial factor in causing
6 Imply's harm. Twitter's breach has damaged and will damage Imply in an amount that
7 will be proven at trial, but which will likely be in excess of \$8 million.

8 **THIRD CAUSE OF ACTION**

9 **(Anticipatory Repudiation)**

10 28. Imply repleads, realleges, and incorporates by reference the allegations of
11 Paragraphs 1 through 27, inclusive, as though set forth herein in full.

12 29. The License Agreement terminates on September 30, 2024. This term
13 includes 7 future quarterly payments owed by Twitter, in addition to the one quarterly
14 payment currently in arrears.

15 30. Imply was and remains ready and willing to perform under the License
16 Agreement for the remainder of the term.

17 31. As described in detail above, Twitter has expressly, unequivocally, and
18 absolutely repudiated and renounced the License Agreement by declaring that Twitter
19 would not pay Imply and instructing its employees not to approve any invoices and to
20 deactivate Imply from the vendor portal. Twitter has thereby breached the License
21 Agreement.

22 32. Twitter's breach has damaged and will damage Imply in an amount that
23 will be proven at trial, but which will likely be in excess of \$8 million.

24 **FOURTH CAUSE OF ACTION**

25 **(Declaratory Relief)**

26 33. Imply repleads, realleges, and incorporates by reference the allegations of
27 Paragraphs 1 through 32, inclusive, as though set forth herein in full.

28 34. Upon information and belief, an actual controversy exists between the

1 parties about their respective rights and obligations under the License Agreement,
2 specifically: (a) whether Twitter had the unilateral right to terminate the License
3 Agreement before the end of its term; (b) whether Twitter is contractually obligated to
4 make the remaining quarterly payments to ImPLY under the License Agreement; and
5 (c) whether Twitter's anticipatory breach excused ImPLY from any remaining
6 performance obligations under the License Agreement.

7 **PRAYER FOR RELIEF**

8 1. WHEREFORE, ImPLY prays for judgment against Defendants, and each of
9 them, as follows:

10 2. For money damages according to proof;

11 3. For pre-judgment and post-judgment interest on money damages to the
12 maximum extent allowed by law;

13 4. For a declaration that Twitter did not have the unilateral right to terminate
14 the License Agreement;

15 5. For a declaration that Twitter is contractually obligated to make the
16 remaining quarterly payments to ImPLY under the License Agreement;

17 6. For a declaration that Twitter's anticipatory breach excused ImPLY from any
18 remaining performance obligations under the License Agreement;

19 7. For attorneys' fees and costs of suit incurred herein; and

20 8. For such other and further relief as the Court may deem just and proper.

21 Dated: December 13, 2022

LUBIN OLSON & NIEWIADOMSKI LLP

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23
24 By: 

25 Kyle A. Withers
26 Attorneys for Plaintiff
27 IMPLY DATA, INC.
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