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PONY.AI, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PONY.AI, INC., a Delaware corporation,

Plaintiff,

v.

DIGITAL REALTY TRUST INC., a Maryland corporation; DIGITAL REALTY TRUST, L.P., a Maryland limited partnership; TELX - SANTA CLARA, LLC, a Delaware limited liability company; and DOES 1–20, inclusive,

Defendants.

Case No.:

COMPLAINT FOR:

- (1) DECLARATORY RELIEF
- (2) UNJUST ENRICHMENT
- (3) RESCISSION
- (4) BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING
- (5) CONVERSION
- (6) COMMON COUNT - MONEY HAD AND RECEIVED
- (7) PROMISSORY ESTOPPEL
- (8) BREACH OF CONTRACT - ACCORD & SATISFACTION
- (9) UNFAIR/UNLAWFUL BUSINESS PRACTICES
[B.P.C. §§ 17200 *et seq.*]

JURY TRIAL DEMANDED

[REDACTED PUBLIC VERSION]

1 Plaintiff PONY.AI, INC. (“Plaintiff” or “Pony.ai”) brings this action against Defendants
2 DIGITAL REALTY TRUST INC; DIGITAL REALTY TRUST, L.P.; TELX - SANTA
3 CLARA, LLC; and DOES 1-20 (collectively “Defendants” or “Digital Realty”) for breach of
4 contract, declaratory relief, and related claims.

5 INTRODUCTION

6 1. In January 2020, the world changed irreversibly in a manner that no one
7 (including the parties to this dispute) anticipated or foresaw when a novel and highly-pathogenic
8 severe acute respiratory syndrome coronavirus (SARS-CoV-2) began spreading worldwide,
9 triggering the global COVID-19 pandemic. To date, the pandemic has claimed the lives of over
10 6.3 million people, including over one million in the U.S. alone.

11 2. For almost every person and every business worldwide, all best laid plans went
12 awry in early 2020, as worldwide economic activity came to an abrupt halt when governments
13 and society took immediate public-health measures to stop the spread of the virus. Among the
14 many things put on hold during this time were Pony.ai’s prior plans to expand its leased server
15 capacity at a data center colocation facility in Santa Clara that was owned, leased, and operated
16 by Digital Realty and its related entities.

17 3. While Pony.ai — an autonomous vehicle company — had signed a service order
18 for this additional space, power, and equipment in late 2019 (which was to be delivered in
19 phased deliveries to begin April 1, 2020), it was more than obvious to everyone involved by
20 early 2020 that the space and leased power and equipment would not be needed. When Pony.ai
21 communicated that it wished to rescind the expansion order and enter a smaller service order for
22 late 2020 or early 2021, Digital Realty gave repeated assurances to Pony.ai’s representatives that
23 the request would be processed, approved, and that a superseding service order would be
24 forthcoming. But Digital Realty instead started to bill Pony.ai for the space and services they
25 agreed would be canceled. Pony.ai made repeated inquiries about mounting invoices with added
26 late fees that were supposed to be removed, but Digital Realty ducked and dodged the billing
27 issue, and failed to respond. Eventually, Pony.ai sent a formal dispute notice in October 2020
28 about these improper billings, but, again, Digital Realty did not respond. It was not until

PLAINTIFF’S COMPLAINT FOR DAMAGES

1 December 2020 when Digital Realty finally provided the superseding service order to Pony for a
2 smaller expansion to begin in 2021.

3 4. Throughout this time, Digital Realty knew that Pony.ai wished to cancel the 2019
4 expansion service order and had assured Pony.ai that the service order would be cancelled and
5 superseded and all outstanding billing issues would be resolved. But despite those assurances,
6 Digital Realty's authorized agents transmitted invoices for the full expansion order that had been
7 canceled, with compounding assessments of improper late fees. And even after further
8 discussions between the companies' authorized representatives, Digital Realty attempted to hold
9 Pony.ai to the original service order for the expanded space, even though it had previously
10 agreed to rescind the order and knew that the purpose of the entire order — a large expansion of
11 Pony.ai's computing capacity and operation — had been frustrated by the COVID-19 pandemic
12 and the unprecedented global slowdown in economic activity it caused.

13 5. When Pony.ai refused to pay the amounts in dispute and further attempted to
14 resolve the issue, Digital Realty went nuclear and resorted to drastic measures by threatening to
15 power-down Pony.ai's servers unless all disputed amounts were paid on a very short timeline.
16 To avoid irreparable damage to its business and operations, and to avoid a shutdown of the
17 company's autonomous vehicle ("AV") operations, Pony.ai was forced to pay the amount under
18 duress and under protest, reserving all rights. The damage to the parties' relationship was
19 irreparable. Because Pony.ai no longer believed Digital Realty to be a reliable business partner,
20 Pony.ai properly terminated the Master Agreement (including all remaining service orders) in
21 early 2022. To this day, Digital Realty continues to improperly invoice Pony.ai for amounts it
22 claims are owed under the cancelled and superseded service order. Accordingly, Pony.ai now
23 seeks to recover the amounts previously paid and a declaration that no further amounts are due
24 and owing to Digital Realty, in addition to other damages shown below.

25 **THE PARTIES**

26 6. Plaintiff PONY.AI, INC. is a Delaware corporation with its principal place of
27 business in Fremont, California. Plaintiff Pony.ai is an autonomous vehicle technology company
28 with co-located corporate offices in Beijing, China and Guangzhou, China.

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1 7. Defendant DIGITAL REALTY TRUST, INC. (“DRT INC.”) is a Maryland
2 corporation with its principal place of business in Austin, Texas. Defendant DRT INC. is a
3 public real estate investment trust that owns, acquires, develops and manages technology-related
4 real estate worldwide. Defendant DRT INC. owns a controlling interest in defendant Digital
5 Realty Trust, L.P. and various subsidiaries. Through its controlling interests in these entities,
6 defendant DRT INC. provides data center, colocation and interconnection solutions for
7 customers across a variety of industry verticals.

8 8. Defendant DIGITAL REALTY TRUST, L.P. (“DRT L.P.”), is a Maryland
9 limited partnership with its principal place of business in Austin, Texas. It is the entity through
10 which defendant DRT INC. conducts its business of owning, acquiring, developing and
11 operating data centers. Defendant DRT INC. has the full, exclusive and complete responsibility
12 for DRT L.P.’s day-to-day management and control.

13 9. Defendant TELX - SANTA CLARA, LLC is a Delaware limited liability
14 company with its principal place of business in New York, New York. Defendant telx - Santa
15 Clara, LLC is a subsidiary of defendant DRT INC.

16 10. Plaintiff is unaware of the true names and capacities, whether individual, entity,
17 or otherwise, of the Defendants sued herein as DOES 1 to 20, inclusive, and therefore sues said
18 Defendants by such fictitious names. Plaintiff is informed and believes, and thereon alleges, that
19 each of these fictitiously named Defendants is in some manner responsible for the injuries and
20 damages to Plaintiff alleged in this complaint, either through the Defendants’ own conduct or
21 through the conduct of its agents or employees, or in some manner, and that Plaintiff’s injuries
22 alleged herein were proximately caused by each of the Defendants. All references in this
23 complaint to “Defendant” or “Defendants” include all Defendants sued herein as DOES. Plaintiff
24 will move for leave to amend this complaint, if necessary, to state the true names, capacities and
25 liabilities of the DOE Defendants after they are ascertained.

26 Agents, Co-Conspirators, Aiders & Abettors

27 11. At all times relevant to this Complaint, Defendants, including the fictitiously-
28 named Defendants, and each of them, were acting as each other’s agents, and were acting within

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1 the course and scope of their agency with the full knowledge, consent, permission, authorization
2 and ratification, either express or implied, of each of the other Defendants in performing the acts
3 alleged in this Complaint.

4 12. As members of the conspiracy alleged herein, each of the Defendants knowingly
5 and willingly participated and acted with or in furtherance of said conspiracy, or aided or assisted
6 in carrying out the purposes of the conspiracy, and have performed acts and made statements in
7 furtherance of the conspiracy and other violations of law.

8 13. Each of the Defendants acted both individually and in alignment with other
9 Defendants with full knowledge of their respective wrongful conduct. As such, the Defendants
10 conspired together, building upon each other's wrongdoing, to accomplish the acts alleged
11 herein.

12 14. Defendants are sued herein individually and as principals, participants, and aiders
13 and abettors in the wrongful conduct complained of and the liability of each arises from the fact
14 that each has engaged in all or part of the improper acts, plans, conspiracies, or transactions
15 complained of herein. The acts alleged to have been done by Defendants were authorized,
16 ordered or done by them and their agents or representatives while actively engaged in the
17 management of each of the Defendants' affairs.

18 **JURISDICTION AND VENUE**

19 15. This court has subject matter jurisdiction of the claims asserted herein pursuant to
20 28 U.S.C. §1332(a)(1), as there is complete diversity of citizenship between the parties and the
21 amount in controversy exceeds \$75,000.

22 16. Venue in this District is proper under 28 U.S.C. § 1391 because a substantial part
23 of the events giving rise to the complaint occurred in this District. Moreover, assignment to the
24 San Francisco or Oakland Division is appropriate under Civil Local Rule 3-2(d) because a
25 substantial part of the events giving rise to the claims occurred in Alameda County, California,
26 where Pony.ai maintains its principal place of business.

27 17. Pursuant to the choice of law provision in the parties' Agreement, California law
28 governs the parties' rights and obligations in this matter.

PLAINTIFF'S COMPLAINT FOR DAMAGES

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