

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

GODADDY MEDIA TEMPLE INC., a
California Corporation,

Plaintiff,

vs.

ANEXIO DATA CENTERS, LLC, DOES 1
through 10,

Defendants.

C.A. NO.:

COMPLAINT FOR BREACH OF
CONTRACT, ACCOUNT STATED,
BOOK ACCOUNT, UNJUST
ENRICHMENT, AND
DEMAND FOR JURY TRIAL

COMPLAINT

Plaintiff GODADDY MEDIA TEMPLE INC., a California Corporation, (“PLAINTIFF”) alleges as follows against Defendant ANEXIO DATA CENTERS, LLC (“DEFENDANT” or “ANEXIO”):

NATURE OF ACTION

1. This action involves breaches of contractual, statutory, and common law duties owed by DEFENDANT to PLAINTIFF (collectively “the Parties”).

2. On or about June 15, 2016, the Parties entered into a “MASTER SERVICES AGREEMENT” (“MSA”). A true and correct copy of the MSA is attached hereto as Exhibit A. Pursuant to the MSA, DEFENDANT was required to use reasonable efforts to deliver an invoice for recurring monthly service charges at least thirty days prior to the first day of the month to which such invoice relates. ANEXIO offered PLAINTIFF a 10% discount for services associated with the data center in El Segundo, CA (“LA Data Center”) in exchange for advance payment for the time period from March 1, 2019 through December 31, 2019. PLAINTIFF advanced payment to DEFENDANT in the amount of \$1,899,713 to cover services from March 1 through December 31, 2019. On June 20th, 2019, however, DEFENDANT was evicted from the LA Data Center and

ceased to provide PLAINTIFF with services, or access to the LA Data Center pursuant to the terms of the MSA, leaving a credit balance in the amount of \$1,139,827.80 not including interest.

3. DEFENDANT recognized the debt it owed to PLAINTIFF for its failure to deliver services per the Parties' contract, and promised to offset, or otherwise provide full credit for the balance it owes to PLAINTIFF. Ultimately, however, DEFENDANT failed to provide any offset, credit, or refund, and failed to provide the services that it promised to PLAINTIFF.

4. PLAINTIFF was forced to contract with a third party to provide the same, or substantially similar services at the same location for the same time period in 2019 without receiving any credit for payment to DEFENDANT. In spite of repeated requests, DEFENDANT failed to reimburse PLAINTIFF or provide any value in exchange for the amount it owes to PLAINTIFF.

THE PARTIES

5. At all times mentioned herein, PLAINTIFF was, and is now, an entity organized under the laws of California with a principal place of business in Los Angeles, California.

6. At all times mentioned herein, DEFENDANT was, and is now, a Delaware limited liability company, with its principal place of business at One Bank of America Plaza, 421 Fayetteville Street, Suite 1100, Raleigh, North Carolina 27601.

7. PLAINTIFF is unaware of the true names and capacities, whether individual, corporate, associate or otherwise of defendants sued herein as Does 1 through 10, inclusive, and, therefore, PLAINTIFF sues said defendants by such fictitious names and will ask leave of court to amend this complaint to show their true names and capacities when the same have been ascertained.

8. At all times mentioned herein, defendants, and each of them, were the agents, employees, joint venturers, joint tortfeasors and partners of each of their co-defendants and, in doing the things herein described, were acting within the course and scope of their authority as such agents, employees, joint venturers, joint tortfeasors and partners.

JURISDICTION AND VENUE

9. PLAINTIFF brings its Complaint under federal diversity jurisdiction, 28 U.S.C. § 1332. The Parties are completely diverse in citizenship, and the amount in controversy exceeds the jurisdictional minimum.

10. PLAINTIFF is a California Corporation with its principal place of business in Los Angeles. DEFENDANT is a Delaware Limited Liability Corporation with its principal place of business in North Carolina. Therefore complete diversity of citizenship exists.

11. The total amount of damages sought in this action exceeds the jurisdictional limit as PLAINTIFF is owed a minimum of \$1,139,827.80 not including interest.

12. Venue is proper in this Court because the Parties, by contract, specified that they consent to the mutual and exclusive jurisdiction of the state or federal courts located in the State of Delaware for any action brought in connection with, arising out of, or relating to the MSA. [Exh. A ¶ 15.]

GENERAL ALLEGATIONS

13. On or about June 15, 2016, the Parties entered into the MSA.

14. Pursuant to the terms of the MSA, PLAINTIFF was to pay all fees and charges for services set forth on a “Service Order Form.” PLAINTIFF promptly paid all such fees.

15. DEFENDANT invoiced PLAINTIFF in advance for services, and offered a 10% discount for advance payment of six months of service, and a 20% discount for advance payment of twelve months of service.

16. On February 27, 2018, by invoice number 40642 (“Invoice 40642”), DEFENDANT requested advance payment from PLAINTIFF for “ORDER #6861” covering “SERVICE PERIOD 2/1/2018-6/30/2018” in the amount of \$1,087,984.44. Invoice 40642 also included a “Pre-payment discount” of approximately 10%. A true and correct copy of Invoice 40642 is attached hereto as Exhibit B. PLAINTIFF promptly paid the entire sum of \$1,087,984.44 set forth on Invoice 40642.

17. Similarly, by an invoice dated June 26, 2018 bearing invoice number 40929 (“Invoice 40929”), for example, DEFENDANT requested that PLAINTIFF pay \$1,139,828.13 in advance for the “SERVICE PERIOD” from “7/1/2018-12/31/2018.” The same invoice included a Pre-Payment discount of approximately 10%. PLAINTIFF promptly paid the entire sum of \$1,139,828.13 billed by DEFENDANT to PLAINTIFF on Invoice 40929. A true and correct copy of Invoice 40929 is attached hereto as Exhibit C.

18. In February of 2019, the parties discussed a similar discount in exchange for advance payment for services to be rendered from the beginning of March through the end of 2019. ANEXIO ultimately offered a 10% discount to PLAINTIFF for advance payment for services associated with the LA Data Center from March 1 through the end of 2019. By an invoice dated February 25, 2019 bearing invoice number 5139A (“Invoice #5139A”), DEFENDANT then billed PLAINTIFF for the “SERVICE PERIOD 3/01/19 – 12/31/2019” for services associated with the LA Data Center. A true and correct copy of invoice #5139A is attached hereto as Exhibit D. On February 28, 2019, DEFENDANT sent a copy of Invoice #5139A to PLAINTIFF by email. A

service order was attached to the same email. Invoice #5139A states that DEFENDANT applied a “Pre-Payment Discount – 10%” in the amount of \$211,079.25 for advance payment of services through the end of the year. PLAINTIFF promptly advanced payment of \$1,899,713.25, the total amount set forth on Invoice #5139A, for services through the end of the year.

19. On subsequent invoices, including Invoice No. 5342 dated May 1, 2019 (“Invoice 5342”), DEFENDANT credited PLAINTIFF’s advanced payment as “Pre-Payment Application,” and noted that it was applying a “Pre-Payment Invoices.” A true and correct copy of Invoice No. 5342 is attached hereto as Exhibit E.

20. On June 20th, 2019, ANEXIO was evicted from the LA Data Center and ceased to provide PLAINTIFF with services or access to the LA Data Center pursuant to the terms of the MSA, leaving a credit balance in the amount of \$1,139,827.80 (“Credit Balance”) not including interest.

21. On July 2, 2019 Tony Pompliano of ANEXIO wrote to PLAINTIFF and stated that PLAINTIFF’s expectation for a refund was reasonable. Specifically, he wrote: “Your expectations for getting a refund is reasonable, and understood. Unfortunately, I cannot just release the money because my lender/ bank has put restrictions on my access to cash.” Mr. Pompliano then suggested that DEFENDANT apply the Credit Balance to the amount PLAINTIFF was paying on a monthly basis for services associated with a data center in Ashburn, Virginia. Specifically, in recognition of the outstanding Credit Balance, DEFENDANT made the following offer to PLAINTIFF on July 2, 2019: “I want to talk through with you about how we can potentially work together to getting money released from our bank. Not trying to get you in the middle of this, but I don’t want to ignore your request, and share with you the current challenges. If in the short term we are unable

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