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UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PARLER LLC,	)	
	)	
Plaintiff,	)	CASE NO. 2:21-cv-0031-BJR
	)	
v.	)	ORDER DENYING MOTION FOR
	)	PRELIMINARY INJUNCTION
AMAZON WEB SERVICES, INC.,	)	
	)	
Defendant.	)	
	)	
_____	)	

I.   INTRODUCTION

This matter comes before the Court on a Motion for Temporary Restraining Order

("TRO"), filed by Plaintiff Parler LLC ("Parler"). Dkt. No. 2. Parler is seeking to have the Court

order Defendant Amazon Web Services, Inc. ("AWS") to reinstate AWS's web-hosting services

that AWS provided Parler under the parties' Customer Services Agreement. Parler initially filed

the motion as one requesting a TRO, but after the Court ordered Parler to serve AWS notice,

ordered additional briefing, and held a hearing, the parties agree that the motion has been

converted to one for a preliminary injunction.

In its Complaint, Parler asserts three claims: (1) for conspiracy in restraint of trade, in

violation of the Sherman Act, 15 U.S.C. § 1; (2) for breach of contract; and (3) for tortious

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interference with business expectancy. AWS disputes all three claims, asserting that it is Parler, not AWS, that has violated the terms of the parties' Agreement, and in particular AWS's Acceptable Use Policy, which prohibits the "illegal, harmful, or offensive" use of AWS services.

It is important to note what this case is not about. Parler is not asserting a violation of any First Amendment rights, which exist only against a governmental entity, and not against a private company like AWS. And indeed, Parler has not disputed that at least some of the abusive and violent posts that gave rise to the issues in this case violate AWS's Acceptable Use Policy. This motion also does not ask the Court to make a final ruling on the merits of Parler's claims. As a motion for a preliminary injunction, before any discovery has been conducted, Parler seeks only to have the Court determine the *likelihood* that Parler will ultimately prevail on its claims, and to order AWS to restore service to Parler pending a full and fair litigation of the issues raised in the Complaint. Having reviewed the briefs filed in support of and opposition to the motion, and having heard oral argument by videoconference, the Court finds and rules as follows.

II.   BACKGROUND

Parler was founded in 2018, and describes itself as "a conservative microblogging alternative and competitor to Twitter." Compl., ¶ 1. Parler—like Twitter, Facebook, and other social media entities referenced in this action—is an online platform that allows third-party users, sometimes anonymously, to express thoughts and ideas for other users to read and comment on. Parler takes a laissez faire or "reactive" approach to moderation of its users' speech. *See, e.g.,* Parler's December 4, 2020 Community Guidelines, Decl. of Ambika Doran, Ex. B ("We prefer that removing community members or member-provided content be kept to the absolute minimum."). At the time of the filing of its Complaint, Parler claims to have had 15 million end-user accounts and a million downloads of its app per day. Decl. of John Matze, ¶ 3.

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AWS, an Amazon.com, Inc. company, offers "computing services for businesses, nonprofits, and government organizations globally." Decl. of Amazon Exec. 2, ¶ 3 ("Exec. 2 Decl."). According to Parler, "AWS is the world's leading cloud service providers [*sic*], capturing a third of the global market." Compl., ¶ 11. In June 2018, Parler entered into a Customer Services Agreement ("CSA" or "Agreement") with AWS for the latter to provide "the cloud computing services Parler needs for its apps and website to function on the internet." Compl., ¶¶ 12, 13; *see* CSA, Exec. 2 Decl., Ex. A.

In recent months, Parler's popularity has grown rapidly, and around the time of the 2020 presidential election, according to Parler, millions of users were abandoning Twitter and migrating to the Parler platform. *See* Compl., ¶ 17. During this same time period, AWS claims that it received reports that Parler was failing to moderate posts that encouraged and incited violence, in violation of the terms of the CSA and AWS's Acceptable Use Policy ("AUP"). Exec. 2 Decl., ¶ 4; Ex. C (AUP). The AUP proscribes, among other things, "illegal, harmful, or offensive" use or content, defined as content "that is defamatory, obscene, abusive, invasive of privacy, or otherwise objectionable." AUP at 1. AWS claims that in recent weeks, it repeatedly communicated with Parler its concerns about third-party content that violated the terms of the CSA and AUP, and that Parler failed to respond to those concerns in a timely or adequate manner. *Id*., ¶ 5.

AWS has submitted to the Court multiple representative examples, reflecting content posted on Parler during this period, that AWS claims violated the terms of the AUP and the parties' Agreement.[1] *See* Opp. Br. at 3-4. Parler has not denied that these posts are abusive or that they violate the Acceptable Use Policy. Parler does claim, however, that AWS knew Parler

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[1] The Court will not dignify or amplify these posts by quoting them here.

was attempting "to address content moderation challenges," and that AWS appeared to be willing to cooperate in Parler's efforts. Matze Decl., ¶¶ 6, 7 (asserting "AWS's actions and communications led Parler's corporate officers to believe that, far from being concerned about remaining in a contractual relationship with Parler, AWS wished to expand that contractual relationship").

On January 6, 2021, supporters of President Donald Trump, seeking to overturn the results of the presidential election, marched on Congress, resulting in a violent and deadly riot at the U.S. Capitol. *See* Doran Decl., Ex. F. On January 8, Twitter and Facebook banned President Trump from their platforms. Compl., ¶ 18. Parler claims that in response to speculation that the President would move to Parler, there was a mass exodus of users from Twitter to Parler and a 355% increase in installations of Parler's app. *Id.*, ¶¶ 2, 8. Parler also claims that the surge during this time was responsible for its failure to deal with a backlog of some 26,000 posts that it acknowledges "potentially encouraged violence" in violation of the AUP. *See* Rep. Br. at 4 (acknowledging "backlog of 26,000 instances of content that potentially encouraged violence").

On January 9, 2021, AWS notified Parler that it intended to "suspend all services" as of 11:59 p.m. Sunday, January 10. Ex. 1 to Compl., January 9, 2021 email from AWS to Parler ("It's clear that Parler does not have an effective process to comply with the AWS terms of service. . . . Given the unfortunate events that transpired this past week in Washington, D.C., there is serious risk that this type of content will further incite violence. . . . Because Parler cannot comply with our terms of service and poses a very real risk to public safety, we plan to suspend Parler's account effective Sunday, January 10th, at 11:59PM PST."). At some time during the night between January 10 and 11, AWS suspended its services and Parler went dark.

On the morning of January 11, Parler filed its Complaint and the instant motion, seeking *ex parte* a TRO from this Court prohibiting AWS from suspending services. Parler failed, however, to provide the certification required under the Federal Rules, verifying that its counsel made an effort to serve AWS notice of the motion, or in the alternative, why notice should not be required. *See* Fed. R. Civ. P. 65(b)(1)(B); LCR 65. The Court therefore ordered Parler to provide notice of its motion to AWS. Further, the Court set a briefing schedule. As directed, AWS filed its opposition on January 12, and Parler filed a reply on January 13. On January 14, 2021, the Court held a hearing on the motion by videoconference. The Court and the parties agree that the motion for a temporary restraining order is now essentially one for a preliminary injunction, and is ripe for this Court's consideration.

III.   DISCUSSION

A. Standard for Issuance of Preliminary Injunction

As courts have repeatedly emphasized, an injunction represents an "extraordinary remedy" that is never awarded as a matter of right. *See Winter v. Natural Res. Def. Council*, 555 U.S. 7, 22 (2008). For a preliminary injunction to issue, the moving party has the burden of demonstrating all four of the following elements: (1) that it is likely to succeed on the merits; (2) that it is likely to suffer irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in its favor; and (4) that an injunction serves the public interest. *Winter*, 555 U.S. at 20.

In the wake of *Winter*, in which the Supreme Court narrowed the path to an injunction, the Ninth Circuit has maintained that a preliminary injunction "may also be appropriate if a movant raises 'serious questions going to the merits' and the 'balance of hardships tips sharply towards' it, as long as the second and third *Winter* factors are satisfied." *Disney Enters., Inc. v.*

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