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

PARLER LLC,

Plaintiff,

v.

AMAZON WEB SERVICES, INC.,

Defendant

No. _____

VERIFIED COMPLAINT

(JURY DEMAND REQUESTED)

VERIFIED COMPLAINT - 1



David J. Groesbeck, P.S.
Attorney and Counselor
1716 Sylvester St. SW
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(509) 747-2800

1 Plaintiff Parler LLC (“Parler”), by its undersigned counsel, alleges, and by
2 its Chief Operating Officer, verifies, as follows:

3
4 **NATURE OF THE ACTION**

5 1. This is a civil action for injunctive relief, including a temporary
6 restraining order and preliminary injunctive relief, and damages. Last Month,
7 Defendant Amazon Web Services, Inc. (“AWS”) and the popular social media
8 platform Twitter signed a multi-year deal so that AWS could support the daily
9 delivery of millions of tweets. AWS currently provides that same service to Parler,
10 a conservative microblogging alternative and competitor to Twitter.
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13
14 2. When Twitter announced two evenings ago that it was permanently
15 banning President Trump from its platform, conservative users began to flee
16 Twitter en masse for Parler. The exodus was so large that the next day, yesterday,
17 Parler became the number one free app downloaded from Apple’s App Store.
18

19
20 3. Yet last evening, AWS announced that it would suspend Parler’s
21 account effective Sunday, January 10th, at 11:59 PM PST. And it stated the reason
22 for the suspension was that AWS was not confident Parler could properly police its
23 platform regarding content that encourages or incites violence against others.
24 However, Friday night one of the top trending tweets on Twitter was “Hang Mike
25 Pence.” But AWS has no plans nor has it made any threats to suspend Twitter’s
26 account.
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1 4. AWS’s decision to effectively terminate Parler’s account is apparently
2 motivated by political animus. It is also apparently designed to reduce competition
3 in the microblogging services market to the benefit of Twitter.
4

5 5. Thus, AWS is violating Section 1 of the Sherman Antitrust Act in
6 combination with Defendant Twitter. AWS is also breaching its contract with
7 Parler, which requires AWS to provide Parler with a thirty-day notice before
8 terminating service, rather than the less than thirty-hour notice AWS actually
9 provided. Finally, AWS is committing intentional interference with prospective
10 economic advantage given the millions of users expected to sign up in the near
11 future.
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15 6. This emergency suit seeks a Temporary Restraining Order against
16 Defendant Amazon Web Services to prevent it from shutting down Parler’s account
17 at the end of today. Doing so is the equivalent of pulling the plug on a hospital
18 patient on life support. It will kill Parler’s business—at the very time it is set to
19 skyrocket.
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22 **JURISDICTION AND VENUE**
23

24 7. This Court has subject matter jurisdiction over Parler’s federal
25 antitrust claims under 28 U.S.C. §§ 1331 and 1337, as well as under 15 U.S.C. §
26 26. The Court has supplemental jurisdiction over Parler’s state law claims under
27 28 U.S.C. § 1367.
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1 8. This Court has personal jurisdiction over AWS as it is headquartered
2 in the District. Also, AWS has engaged in sufficient minimum contacts with the
3 United States and has purposefully availed itself of the benefits and protections of
4 both United States and Washington law such that exercise of jurisdiction over AWS
5 would comport with due process requirements.
6

7
8 9. Venue lies in this District under 28 U.S.C. § 1391(b) because AWS
9 maintains its principal place of business in the State of Washington and in this
10 District, and because a substantial part of the events giving rise to Parler's claims
11 occurred in this District. Personal jurisdiction and venue may also be deemed
12 proper under 15 U.S.C. § 22, because AWS may be found in or transacts business
13 in this District.
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16
17 **PARTIES**

18 10. Plaintiff Parler LLC is a Nevada limited liability corporation with its
19 principal place of business in Henderson, Nevada. Parler is “the solution to
20 problems that have surfaced in recent years due to changes in Big Tech policy
21 influenced by various special-interest groups.” *Our Company*,
22 <https://company.parler.com>. Thus, “Parler is built upon a foundation of respect for
23 privacy and personal data, free speech, free markets, and ethical, transparent
24 corporate policy.” *Id.*
25
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27



1 11. Defendant Amazon Web Services, Inc., an Amazon.com, Inc.
2 company, is a Delaware corporation with its principal place of business in Seattle,
3 Washington. AWS is the world's leading cloud service providers, capturing a third
4 of the global market. See Global Cloud Infrastructure Market Q3 2020,
5 <https://www.canalys.com/newsroom/worldwide-cloud-market-q320>,
6 This is almost
7 double the next largest competitor, and equal to the next three largest competitors
8 combined. *Id.* AWS generates tens of billions of dollars in revenue annually. *Id.*

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10
11 12. According to its own press release, “[f]or 14 years, [AWS] has been the
12 world's most comprehensive and broadly adopted cloud platform.” *Twitter Selects*
13 *AWS as Strategic Provider to Serve Timelines*, Press Center, Amazon, (Dec. 15,
14 2020), [https://press.aboutamazon.com/news-releases/news-release-details/twitter-](https://press.aboutamazon.com/news-releases/news-release-details/twitter-selects-aws-strategic-provider-serve-timelines)
15 [selects-aws-strategic-provider-serve-timelines](https://press.aboutamazon.com/news-releases/news-release-details/twitter-selects-aws-strategic-provider-serve-timelines). That is why “[m]illions of
16 customers—including the fastest-growing startups, largest enterprises, and leading
17 government agencies—trust AWS to power their infrastructure, become more agile,
18 and lower costs.” *Id.* In short, AWS is the Rolls Royce of cloud platform providers.

22 FACTS

23
24 13. Parler contracts with AWS to provide the cloud computing services
25 Parler needs for its apps and website to function on the internet. Further, that both
26 the apps and the website are written to work with AWS's technology. To have to
27 switch to a different service provider would require rewriting that code, meaning
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1 Parler will be offline for a financially devastating period.

2
3 14. Parler is also a competitor of Twitter as both provide a similar
4 platform for users to communicate with short messages, links, and pictures. Like
5 many social media platforms, Parler's business model is not based on subscription
6 fees.
7

8
9 15. Less than a month ago, AWS announced with a press release a new
10 multi-year deal with Twitter. AWS will "provide global cloud infrastructure to
11 deliver Twitter timelines." *Twitter Selects AWS as Strategic Provider to Serve*
12 *Timelines*, Press Center, Amazon, (Dec. 15, 2020),
13 [https://press.aboutamazon.com/news-releases/news-release-details/twitter-](https://press.aboutamazon.com/news-releases/news-release-details/twitter-selects-aws-strategic-provider-serve-timelines)
14 [selects-aws-strategic-provider-serve-timelines.](https://press.aboutamazon.com/news-releases/news-release-details/twitter-selects-aws-strategic-provider-serve-timelines)
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18 16. According to the deal, "Twitter will leverage AWS's proven
19 infrastructure and portfolio of services to support delivery of millions of daily
20 Tweets." *Id.* Further, "[t]his expansion onto AWS marks the first time that Twitter
21 is leveraging the public cloud to scale their real-time service." *Id.* This deal "buil[t]
22 on the companies' more than decade-long collaboration, where AWS continues to
23 provide Twitter with storage, compute, database, and content delivery services to
24 support its distribution of images, videos and ad content." *Id.* What is more,
25 together "Twitter and AWS will create an architecture that extends Twitter's on-
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1 premises infrastructure to enable them to seamlessly run and scale the real-time
2 service globally, increase its reliability . . . , and rapidly move new features into
3 production around the world.” *Id.*

4
5 17. At the same time, Parler began to significantly increase its usership
6 at the expense of Twitter. After the election in November, the New York Times
7 reported that “millions have migrated to alternative social media and media sites
8 like Parler” Mike Isaac & Kellen Browning, *Fact-Checked on Facebook and*
9 *Twitter, Some Conservatives Switch Their Apps*, NY Times (Nov. 18, 2020),
10 <https://www.nytimes.com/2020/11/11/technology/parler-rumble-newsmax.html>. In
11 fact, less than a week after Election Day, between November 3rd and November
12 8th, Parler’s app experienced nearly one million downloads. *See Parler, A*
13 *Conservative Twitter Clone, Has Seen Nearly 1 Million Downloads Since Election*
14 *Day*, *The Verge* (Nov. 9, 2020),
15 [https://www.theverge.com/2020/11/9/21557219/parler-conservative-app-download-](https://www.theverge.com/2020/11/9/21557219/parler-conservative-app-download-new-users-moderation-bias)
16 [new-users-moderation-bias](https://www.theverge.com/2020/11/9/21557219/parler-conservative-app-download-new-users-moderation-bias). This resulted in Parler rocketing to be “the #1 free app
17 in the iOS App Store, up from #1,023” just a week earlier. *Id.* Likewise, in that
18 same week the Parler app went from 486th to 1st in the Google Play rankings. *Id.*
19 Not surprisingly, “the app was the 10th most downloaded social media app in 2020
20 with 8.1 million new installs.” Jonathan Schieber, *Parler Jumps to No. 1 on App*
21 *Store after Facebook and Twitter Ban Trump*, TechCrunch (Jan. 9, 2021),
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1 [https://techcrunch.com/2021/01/09/parler-jumps-to-no-1-on-app-store-after-](https://techcrunch.com/2021/01/09/parler-jumps-to-no-1-on-app-store-after-facebook-and-twitter-bans/)
2 [facebook-and-twitter-bans/](https://techcrunch.com/2021/01/09/parler-jumps-to-no-1-on-app-store-after-facebook-and-twitter-bans/).

3
4 18. In 2021, this trend not only continued, it accelerated, thanks to
5 Twitter's announcement two days ago that it would permanently ban President
6 Trump from its platform. *Id.* On that day, last Friday, Parler saw installs increase
7 in the United States by 355%. *Id.* After Twitter's announcement, conservative
8 politicians and media figures began encouraging their followers to switch to Parler.
9
10 *See* Yelena Dzhanova, *Top Conservative Figures are Tweeting to Advertise their*
11 *Parler Accounts After Trump was Permanently Banned from Twitter*, Business
12 Insider (Jan. 9, 2021), [https://www.businessinsider.com/top-conservatives-moving-](https://www.businessinsider.com/top-conservatives-moving-to-parler-after-trumps-ban-from-twitter-2021-1)
13 [to-parler-after-trumps-ban-from-twitter-2021-1](https://www.businessinsider.com/top-conservatives-moving-to-parler-after-trumps-ban-from-twitter-2021-1). *See also* Joseph A. Wulfsohn,
14 *Conservatives Flee to Parler Following Twitter's Permanent Suspension of Trump*,
15 Fox News (Jan. 9, 2021), [https://www.foxnews.com/media/conservatives-join-](https://www.foxnews.com/media/conservatives-join-parler-twitter-trump-ban)
16 [parler-twitter-trump-ban](https://www.foxnews.com/media/conservatives-join-parler-twitter-trump-ban).

17
18 19. Speculation began to mount that President Trump would likewise
19 move to Parler. *Id.* Given the close to 90 million followers the President had on
20 Twitter, this would be an astronomical boon to Parley and a heavy blow to Twitter.
21
22 *See Donald J. Trump (@realDonaldTrump) Twitter Statistics*, Socialbakers,
23 [https://www.socialbakers.com/statistics/twitter/profiles/detail/25073877-](https://www.socialbakers.com/statistics/twitter/profiles/detail/25073877-realdonaldtrump)
24 [realdonaldtrump](https://www.socialbakers.com/statistics/twitter/profiles/detail/25073877-realdonaldtrump).



1 20. Given the context of Parler’s looming threat to Twitter and the fact
2 that the Twitter ban might not long muzzle the President if he switched to Parler,
3 potentially bringing tens of millions of followers with him, AWS moved to shut
4 down Parler. *See id.*

6 21. Yesterday evening, at 6:07 pm PST, web news site BuzzFeed posted
7 an article with screenshots of a letter from AWS to Parler, informing Parler that
8 its account would be suspended at 11:59 pm PST on Sunday, less than thirty hours
9 later. *See John Paczkowski, Amazon Is Booting Parler Off of Its Web Hosting*
10 *Service*, BuzzFeed (Jan. 9, 2021),
11 <https://www.buzzfeednews.com/article/johnpaczkowski/amazon-parler-aws>.

15 Strangely, the article with the letter was posted before Parler itself received the
16 letter in an email, received at 7:19 pm PST, over an hour after the BuzzFeed article
17 went online, meaning AWS leaked the letter to BuzzFeed before sending it to
18 Parler. *See Exhibit A.*

21 22. Last evening, the Associated Press reported that “Parler may be the
22 leading candidate” for President Trump after his Twitter ban as “[e]xperts had
23 predicted Trump might pop up on Parler”). Frank Bajak, *Squelched by Twitter,*
24 *Trump Seeks New Online Megaphone*, Associated Press (Jan. 9, 2021),
25 [https://apnews.com/article/donald-trump-politics-media-social-media-coronavirus-](https://apnews.com/article/donald-trump-politics-media-social-media-coronavirus-pandemic-f5b565ca93a792640211e6438f2db842)
26 [pandemic-f5b565ca93a792640211e6438f2db842](https://apnews.com/article/donald-trump-politics-media-social-media-coronavirus-pandemic-f5b565ca93a792640211e6438f2db842). However, the AP also observed
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1 that “Amazon struck [a] blow Saturday [against the chances of Trump adopting
2 the platform], informing Parler it would need to look for a new web-hosting service
3 effective midnight Sunday.” *Id.*
4

5 23. This death blow by AWS could not come at a worse time for Parler—
6 a time when the company is surging with the potential of even more explosive
7 growth in the next few days. Worse than the timing is the result—Parler has tried
8 to find alternative companies to host it and they have fallen through. It has no
9 other options. Without AWS, Parler is finished as it has no way to get online. And
10 a delay of granting this TRO by even one day could also sound Parler’s death knell
11 as President Trump and others move on to other platforms.¹ It is no wonder, then,
12 that competitor Twitter’s CEO has heartily endorsed efforts to remove Parler from
13 the public sphere. *See* Kevin Shalvey, *Parler’s CEO John Matze Responded Angrily*
14 *After Jack Dorsey Endorsed Apple’s Removal of the Social Network Favored by*
15 *Conservatives*, *Business Insider* (Jan. 10, 2021),
16 [https://www.businessinsider.com/parler-john-matze-responded-angrily-jack-](https://www.businessinsider.com/parler-john-matze-responded-angrily-jack-dorsey-apple-ban-2021-1)
17 [dorsey-apple-ban-2021-1.](https://www.businessinsider.com/parler-john-matze-responded-angrily-jack-dorsey-apple-ban-2021-1)
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27 ¹ AWS indefinitely suspending Parler’s account is categorically different than Google or Apple
28 dropping Parler from their app stores. In the instance of the latter, existing Parler users can still use
29 its app—it’s just harder for Parler to sign up new users. But with AWS’s move, both existing users
30 and new users are completely prevented from using the app until Parler can find some other service
31 to replace AWS. Users are also prevented from using Parler’s website, which is likewise dependent
32 upon AWS.



1 24. Parler’s rival social media apps, such as conservative-oriented Gab or
2 conservative media Rumble, are also experiencing record growth right now. *See*
3 Isaac & Browning, *Fact-checked on Facebook and Twitter*, supra. If Parler is not
4 available, people will turn to alternatives, or perhaps return to Twitter or
5 Facebook. What is more, Parler’s current users are likely to leave and go to another
6 platform if Parler is down for an indefinite period. And once those users have begun
7 to use another platform, they may not return to Parler once it’s back online.
8
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10
11 25. And by silencing Parler, AWS silences the millions of Parler users
12 who do not feel their free speech is protected by Twitter or other social media apps.
13

14 26. What is more, by pulling the plug on Parler but leaving Twitter alone
15 despite identical conduct by users on both sites, AWS reveals that its expressed
16 reasons for suspending Parler’s account are but pretext. In its note announcing the
17 pending termination of Parler’s service, AWS alleged that “[o]ver the past several
18 weeks, we’ve reported 98 examples to Parler of posts that clearly encourage and
19 incite violence.” Exhibit A. AWS provide a few examples, including one that stated,
20 “How bout make them hang?”, followed by a series of hashtags, including “#fu-
21 mikepence.” *Id.*
22
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25 27. AWS further stated to Parler that the “violent content on your website
26 . . . violates our terms.” *Id.* Because, AWS declared, “we cannot provide services to
27 a customer that is unable to effectively identify and remove content that
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1 encourages or incites violence against others,” AWS announced the pending
2 termination of Parler’s account. *Id.*

3
4 28. However, the day before, on Friday, one of the top trends on Twitter
5 was “Hang Mike Pence,” with over 14,000 tweets. *See* Peter Aitken, ‘*Hang Mike*
6 *Pence’ Trends on Twitter After Platform Suspends Trump for Risk of ‘Incitement of*
7 *Violence’*, Fox News (Jan. 9, 2021), [https://www.foxnews.com/politics/twitter-](https://www.foxnews.com/politics/twitter-trending-hang-mike-pence)
8 [trending-hang-mike-pence](https://www.foxnews.com/politics/twitter-trending-hang-mike-pence). And earlier last week, a Los Angeles Times columnist
9
10 observed that Twitter and other social media platforms are partly culpable for the
11 Capital Hill riot, by allowing rioters to communicate and rile each other up. *See*
12 Erika D. Smith, *How Twitter, Facebook are Partly Culpable for Trump DC Riot*,
13 LA Times (Jan. 6, 2021), [https://www.latimes.com/california/story/2021-01-06/how-](https://www.latimes.com/california/story/2021-01-06/how-twitter-facebook-partly-culpable-trump-dc-riot-capitol)
14 [twitter-facebook-partly-culpable-trump-dc-riot-capitol](https://www.latimes.com/california/story/2021-01-06/how-twitter-facebook-partly-culpable-trump-dc-riot-capitol). Yet these equivalent, if not
15
16 greater, violations of AWS’s terms of service by Twitter have apparently been
17
18 ignored by AWS.

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21 29. AWS knew its allegations contained in the letter it leaked to the press
22 that Parler was not able to find and remove content that encouraged violence was
23 false—because over the last few days Parler had removed everything AWS had
24 brought to its attention and more. Yet AWS sought to defame Parler nonetheless.
25
26 And because of AWS false claims, leaked to the public, Parler has not only lost
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28 current and future customers, but Parler has also been unable to find an
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1 alternative web hosting company. In short, AWS false claims have made Parler a
2 pariah.

3
4 **Count One: Sherman Act, Section 1**

5 **AWS is prohibited from contracting or conspiring to restrain trade or**
6 **commerce.**

7 30. Parler restates, re-alleges, and incorporates by reference each of the
8 allegations set forth in the rest of this Complaint as if fully set forth herein.

9
10 31. Section 1 of the Sherman Act prohibits “[e]very contract, combination
11 in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce .
12 . . .” 15 U.S.C. § 1. “To state a claim under Section 1, a plaintiff must allege facts
13 that, if true, will prove: (1) the existence of a conspiracy, (2) intention on the part
14 of the co-conspirators to restrain trade, and (3) actual injury to
15 competition.” *Coalition For ICANN Transparency, Inc. v. VeriSign, Inc.*, 611 F.3d
16 495, 501-02 (9th Cir. 2010).

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20 32. Less than a month ago, AWS and Parler’s competitor, Twitter,
21 entered into a multi-year deal. Late Friday evening, Twitter banned President
22 Trump from using its platform, thereby driving enormous numbers of its users to
23 Parler. Twenty-four hours later, AWS announced it would indefinitely suspend
24 Parler’s account.

25
26
27 33. AWS’s reasons for doing so are not consistent with its treatment of
28 Twitter, indicating a desire to harm Parler.



1 34. By suspending Parler’s account, AWS will remove from the market a
2 surging player, severely restraining commerce in the microblogging services
3 market.
4

5 35. AWS’s actions violate the Sherman Act, 5 U.S.C. § 1.
6

7 36. Parler is entitled to injunctive relief.
8

9 **Count Two: Breach of Contract**

10 **AWS breached its contract with Parler by not providing thirty days’
11 notice before terminating its account.**

12 37. Parler restates, re-alleges, and incorporates by reference each of the
13 allegations set forth in the rest of this Complaint as if fully set forth herein.
14

15 38. Under Washington law, “[a] breach of contract is actionable only if the
16 contract imposes a duty, the duty is breached, and the breach proximately causes
17 damage to the claimant.” *See Northwest Independent Forest Mfrs. v. Dept. of Labor*
18 *and Industries*, 78 Wn. App. 707, 712, 899 P.2d 6 (1995).
19

20 39. The AWS Customer Agreement with Parler allows either party to
21 terminate the agreement “for cause if the other party is in material breach of this
22 Agreement and the material breach remains uncured for a period of 30 days from
23 receipt of notice by the other party.” Exhibit B.
24

25 40. On January 8, 2021, AWS brought concerns to Parler about user
26 content that encouraged violence. Parler addressed them, and then AWS said it
27 was “okay” with Parler.
28
29
30



1 41. The next day, January 9, 2021, AWS brought more “bad” content to
2 Parler and Parler took down all of that content by the evening.

3
4 42. Thus, there was no uncured material breach of the Agreement for 30
5 days, as required for termination.

6
7 43. Further, while AWS used the term “suspension” in its notice to Parler,
8 it stated that it would “ensure that all of your data is preserved for you to migrate
9 to your own servers, and will work with you as best as we can to help your
10 migration.” Exhibit A. This is not action AWS would take for a temporary
11 suspension, but rather for a permanent termination. Thus, whatever words AWS
12 used, it was terminating the Agreement with Parler.
13
14

15 44. This termination will immediately make it impossible for Parler to have
16 an online presence for at least a week, depriving Parler’s current users of any use
17 of the app and website, and completely preventing any new users from
18 downloading and using the app, or the website.
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21 45. Thus, AWS will have breached its contract with and harmed Parler.
22 Further, lost future profits in this case are difficult to calculate due to the rapidly
23 increasing nature of Parler’s user base. That’s because “[t]he usual method for
24 proving lost profits is to establish profit history.” *Tiegs v. Watts*, 135 Wash.2d 1
25 (1998). But that history will, at best, undervalue the future given how quickly
26 Parler is growing. And at worst, Parler will get nothing as “[l]ost profits cannot be
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1 recovered where they are speculative, uncertain and conjectural” because “[t]he
2 amount of lost profits must be established with reasonable certainty.” *Id.* Thus,
3 money damages may not be available, but at the least are insufficient to make
4 Parler whole.
5

6 46. Parler is entitled to injunctive relief.
7

8 **Count Three: Tortious Interference with a Contract or Business**
9 **Expectancy**

10 **By terminating Parler’s account, AWS will intentionally interfere with**
11 **the contracts Parler has with millions of its present users, as well as**
12 **with the users it is projected to gain this week.**

13 47. Parler restates, re-alleges, and incorporates by reference each of the
14 allegations set forth in the rest of this Complaint as if fully set forth herein.
15

16 48. In Washington, “[t]he elements of tortious interference with a contract
17 or expectancy are: (1) the existence of a valid contractual relationship or business
18 expectancy; (2) the defendant’s knowledge of that relationship; (3) an intentional
19 interference inducing or causing a breach or termination of the relationship or
20 expectancy; (4) the defendant's interference for an improper purpose or by
21 improper means; and (5) resulting damage.” *Koch v. Mutual of Enumclaw Ins. Co.*,
22 108 Wn. App. 500, 506, 31 P.3d 698 (2001).
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26 49. Parler currently has over 12 million users under contract. It expects to
27 add millions more this week given its growth the last few days and the growing
28 voice of conservatives encouraging their Twitter followers to switch to Parler.
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1 50. AWS is aware of Parler's user numbers and current trends. AWS also
2 knew that Parler was negotiating with it to increase its server capacity given this
3 ongoing and expected growth. AWS also knew of public speculation that Trump,
4 with his nearly 90 million Twitter followers, was going to switch to Parler, likely
5 bringing many of those followers with him. Finally, AWS also knew from public
6 statements that Parler was about to go to the market to raise money.
7

8
9 51. AWS intentionally will interfere with Parler's current contracts and
10 future expected customer relationships by terminating Parler's Agreement with it
11 under the pretext that Parler was in violation of that contract when AWS knew
12 Parler was not in violation (and when Twitter was engaging in identical conduct
13 but AWS did not terminate its contract with Twitter).
14
15

16 52. Parler will be severely damaged financially and reputationally if it
17 must go offline Sunday at midnight because AWS terminates Parler's account. As
18 noted above, given the speculative nature of Parler's financial and reputational
19 damages, money damages will not make it whole.
20
21

22 53. Therefore, Parler is entitled to injunctive relief.
23

24 **PRAYER FOR RELIEF**

25
26 Plaintiff respectfully requests that the Court:

27 A. Grant Parler's motion for a Temporary Restraining Order and order AWS to
28 maintain Parler's account until further notice from this Court, and to refrain from
29
30



1 suspending, terminating or failing to provide any services previously provided
2 under Parler's customer agreement with AWS.

3
4 B. Grant Parler damages, including trebled damages, in an amount to be
5 determined at trial.

6
7 C. Grant Parler such other relief as the Court deems just and proper.

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16
17 Dated: January 10, 2021.

18 Respectfully submitted,

19
20 /s David J. Groesbeck
21 WSBA No. 24749
22 DAVID J. GROESBECK, P.S.
23 1716 Sylvester St. SW
24 Olympia, WA 98501
25 (509) 747-2800
26 david@groesbecklaw.com

27 621 W. Mallon Ave., Suite 507
28 Spokane, WA 99201

29
30 *Counsel for Plaintiff*



VERIFICATION

I, John Matze, say that I am the Chief Executive Officer of Parler LLC in the case captioned *Parler LLC v. Amazon Web Services, Inc.*, in the U.S. District Court for the Western District of Washington, and have authorized the filing of this complaint. I have reviewed the allegations made in the complaint, and to those allegations of which I have personal knowledge, I know them to be true. As to those allegations of which I do not have personal knowledge, I believe them to be true.

Dated: January 10, 2021

Verified by:



John Matze
Chief Executive Officer, Parler LLC

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

PARLER LLC,

Plaintiff,

v.

AMAZON WEB SERVICES, INC.,

Defendant

No. _____

**PLAINTIFF'S MOTION FOR
TEMPORARY RESTRAINING
ORDER**

**NOTE ON MOTION CALENDAR
January 10, 2021**

**PLAINTIFF'S MOTION FOR
TEMPORARY RESTRAINING
ORDER - 1**



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INTRODUCTION

1
2 Plaintiff Parler, LLC moves the Court for a temporary restraining order
3
4 against Defendant Amazon Web Services, Inc (“AWS”). AWS is threatening to
5 suspend all services to Parler tonight at 11:59 PM PST—and thus shut Parler down
6 completely—with little more than a day’s notice. These actions not only breach the
7 parties’ contract memorialized in the AWS Customer Agreement (the “Agreement”)
8 but worse, threaten Parler with extinction right when the social media company
9 was experiencing explosive growth. The elements are met for Rule 65 relief.
10
11

12 To prevent irreparable harm to the plaintiff, the Court should enter a
13 temporary restraining order enjoining the defendant from suspending Parler’s
14 account with AWS or terminating the Agreement. A proposed form of order is
15 submitted to the Court in connection with this motion.
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18 This motion is supported by the memorandum of points and authorities
19 submitted herein; and by the Verified Complaint and exhibits thereto. For the
20 reasons collectively presented to the Court, the motion should be granted.
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RELEVANT FACTS

23
24 1. Parler restates and incorporates by reference each of the allegations
25 set forth in the Complaint as if fully set forth herein.
26

27 2. Last Month, Defendant Amazon Web Services (“AWS”) and the
28 popular social media platform Twitter signed a multi-year deal so that AWS could
29



1 support the daily delivery of millions of tweets. AWS currently provides that same
2 service to Parler, a conservative microblogging alternative and competitor to
3 Twitter. (Compl. ¶ 1.)
4

5 3. When Twitter announced two evenings ago that it was permanently
6 banning President Trump from its platform, conservative users began to flee
7 Twitter en masse for Parler. The exodus was so large that the next day, yesterday,
8 Parler became the number one free app downloaded from Apple's App Store.
9
10 (Compl. ¶ 2.)
11

12 4. Yet last evening, AWS announced that it would suspend Parler's
13 account effective Sunday, January 10th, at 11:59 PM PST. And it stated the reason
14 for the suspension was that AWS was not confident Parler could properly police its
15 platform regarding content that encourages or incites violence against others.
16
17 However, Friday night one of the top trending tweets on Twitter was "Hang Mike
18 Pence." But AWS has no plans nor has it made any threats to suspend Twitter's
19 account. (Compl. ¶ 3.)
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22 5. AWS's decision to suspend Parler's account is apparently motivated by
23 political animus. It is also apparently designed to reduce competition in the
24 microblogging services market to the benefit of Twitter. (Compl. ¶ 4.)
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27 6. Thus, AWS is violating Section 1 of the Sherman Antitrust Act in
28 combination with Twitter. AWS is also breaching its contract with Parler, which
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1 requires AWS to provide Parler with a thirty-day notice before terminating service,
2 rather than the less than thirty-hour notice AWS actually provided. Finally, AWS
3 is committing intentional interference with prospective economic advantage given
4 the millions of users expected to sign up in the near future. (Compl. ¶ 5.)

6
7 7. This emergency motion seeks a Temporary Restraining Order against
8 Defendant Amazon Web Services to prevent it from shutting down Parler’s account
9 at the end of today. Doing so is the equivalent of pulling the plug on a hospital
10 patient on life support. It will kill Parler’s business—at the very time it is set to
11 skyrocket. (Compl. ¶ 6.)

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14 **MEMORANDUM IN SUPPORT**

15 To succeed on a motion for a temporary restraining order, the moving party
16 must show: (1) a likelihood of success on the merits; (2) a likelihood of irreparable
17 harm to the moving party in the absence of preliminary relief; (3) that a balance of
18 equities tips in the favor of the moving party; and (4) that an injunction is in the
19 public interest. *See Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).
20 The Ninth Circuit employs a “sliding scale” approach, according to which these
21 elements are balanced, “so that a stronger showing of one element may offset a
22 weaker showing of another.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127,
23 1131 (9th Cir. 2011). Under the *Winter* test, a party merits relief when it raises
24 serious questions going to the merits of its case and a balance of hardships that tips
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1 sharply in its favor, provided it also makes a showing for the irreparable harm and
2 public interest factors. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131.
3
4 (9th Cir. 2011).

5 The plaintiff meets all four elements.

6
7 **1. The plaintiff will suffer immediate, irreparable harm unless**
8 **the order issues.**

9
10 To qualify for *ex parte* relief, Rule 65 requires a showing that “immediate and
11 irreparable injury, loss, or damage will result to the movant before the adverse
12 party can be heard in opposition.” Fed.R.Civ.P. 65(b)(1)(A). AWS has clearly
13 indicated willingness to inflict such harm. First, and most obviously, because AWS
14 has given Parler only a single day’s notice of its intent to suspend Parler’s account,
15 the threatened harm to Parler could hardly be more immediate.
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18 The threatened suspension will have the effect of rendering Parler, a social
19 media service, entirely unable to function online, either on a web browser or an app
20 on a mobile phone. (Compl. ¶¶ 13, 20-21, 23.) That alone would inflict “[i]rreparable
21 harm ... for which there is no adequate legal remedy.” *Arizona Dream Act Coalition*
22 *v. Brewer*, 757 F. 3d 1053, 1068 (9th Cir. 2014). First, by booting Parler from its
23 servers, AWS will entirely frustrate Parler’s mission to provide a privacy-focused
24 forum for free speech. (Compl. ¶¶ 10, 25.) Parler’s surging popularity in a crowded
25 field of social and mainstream media shows that the company is satisfying an
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1 otherwise unmet demand for such a forum. (Compl. ¶¶ 2, 10, 25.) By shutting Parler
2 down, AWS eviscerates Parler's whole corporate purpose and functionality, leaving
3 Parler without a remedy.
4

5 Second, although Parler occupies a unique space in the market, it still
6 competes with other microblogging services like Twitter to facilitate real-time
7 discussions of breaking news and other contemporaneous events. (Compl. ¶¶ 1-2,
8 14, 17-19, 22, 24.) Losing all of its online capabilities will leave Parler entirely
9 unable to compete with the offerings of those direct competitors, eliminating its
10 relevance as a forum for discussion and driving millions of users, out of necessity,
11 to those other platforms. (Compl. ¶ 24.) Because Parler's business model is not
12 based on subscription fees, there is no adequate monetary remedy to measure and
13 compensate for Parler's imminent loss of users and user loyalty. (Compl. ¶ 14.)
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18 There is nothing speculative about the likelihood of harms Parler will suffer absent
19 preliminary relief. AWS has been quite forthright in publicizing when Parler will
20 lose its account and, with it, Parler's ability to function at all. (Compl. ¶¶ 13, 21-
21 22.) To lose all functionality, even temporarily, will inflict irreparable damage on
22 Parler's free-speech mission, reputation, and competitive position in a fluctuating
23 market. Given Parler's current dynamic growth, it would be too difficult to calculate
24 money damages for these harms. Hence, the absence of an adequate legal remedy
25 necessitates preventative, injunctive relief.
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1 **2. The threatened injury to the plaintiff far outweighs whatever**
2 **damage, if any, the proposed order or injunction may cause the**
3 **defendant.**

4 The defendant will suffer little to no inconvenience by being ordered to
5 preserve the status quo. Indeed, when, after several rounds of productive
6 discussions, AWS abruptly notified Parler that it would suspend the account, it
7 made no mention of any harm that AWS itself might suffer by continuing to comply
8 with its contractual obligations. By contrast, AWS's intended actions signify an
9 existential threat to Parler. Weighing the inconvenience to AWS by continuing to
10 host Parler against Parler's imminent loss of all ability to function as an online
11 service and consequent damage to its entire business and mission, the balance of
12 hardships tips sharply in favor of Parler. This element strongly favors the plaintiff.
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17 **3. The order would serve the public interest.**
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19 The public interest is served when service providers, whether they be online
20 computing platforms or social media sites, fulfill their contractual obligations. The
21 public interest in fair and robust market competition is also served when companies
22 are prevented from construing the same contractual obligations inconsistently
23 when applied to different customers who are direct market competitors.
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26 On the other hand, there is no public interest in allowing large, quasi-monopolies
27 to coordinate in stifling smaller, disruptive innovators or to tortiously interfere with
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1 another's contracts and business expectations. The public interest element favors
2 injunctive relief.

3
4 **4. There is a substantial likelihood that the plaintiffs will succeed**
5 **on the merits of the underlying claims, or the case presents**
6 **serious issues on the merits.**

7 The plaintiffs have sued the defendants on three causes of action that form
8 the basis for this injunctive relief motion: Sherman Act violation, breach of contract,
9 and tortious interference with a contract or business expectancy. The plaintiffs are
10 likely to succeed on each of these claims, or they present serious issues on the
11 merits.
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14 **a. Sherman Act Violation.**

15
16 To prove a violation of Section 1 of the Sherman Act, Parler must show: (1)
17 the existence of a conspiracy, (2) intention on the part of the co-conspirators to
18 restrain trade, and (3) actual injury to competition.” *Coalition For ICANN*
19 *Transparency, Inc. v. VeriSign, Inc.*, 611 F.3d 495, 501-02 (9th Cir. 2010). As stated
20 in the Verified Complaint, AWS provides online hosting services to both Parler and
21 Twitter, Parler’s direct competitor. The complaint further shows that, by shutting
22 down Parler for content comparable to that found in abundance on Twitter, AWS
23 suppresses a smaller but surging microblogging company to the direct benefit of a
24 larger one—a major customer of AWS—thereby reducing competition and severely
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1 restraining commerce on pretextual grounds. Parler therefore has shown a
2 substantial likelihood of succeeding on this claim, and certainly presents serious
3 issues on the merits.
4

5 **b. Breach of Contract**

6 Under Washington law, a claimant establishes breach of contract where he
7 shows that “the contract imposes a duty, the duty is breached, and the breach
8 proximately causes damage to the claimant.” *See Northwest Independent Forest*
9 *Mfrs. v. Dept. of Labor and Industries*, 78 Wn. App. 707, 712, 899 P.2d 6 (1995).
10 Plaintiff meets all of these elements.
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14 As stated in the Verified Complaint, the Agreement allows either party to
15 terminate the Agreement “for cause if the other party is in material breach of this
16 Agreement and the material breach remains uncured for a period of 30 days from
17 receipts of notice by the other party.” (Compl., Ex. B.) AWS brought its concerns to
18 Parler on January 8, 2021 and, after approving Parler’s curing of those concerns,
19 nevertheless notified Parler on January 9 that it would suspend Parler’s account on
20 January 10. Although AWS used the term “suspension,” its language about
21 migrating Parler’s data to other servers revealed AWS’s intent to permanently
22 terminate Parler’s account without the requisite 30-day curing period. (Compl. ¶¶
23 40-43.) Because AWS’s threatened breach will entirely disrupt Parler’s ability to
24 function as an online microblogging service, and because even a temporary
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1 disruption will hurt Parler’s mission, reputation, and competitive position in the
2 microblogging market, Parler has shown both serious issues on the merits of this
3 claim and a substantial likelihood of success.
4

5 ***c. Tortious Interference with a Contract or Business***
6 ***Expectancy***

7 Finally, under Washington law Parler can establish tortious interference by
8 showing “(1) the existence of a valid contractual relationship or business
9 expectancy; (2) the defendant’s knowledge of that relationship; (3) an intentional
10 interference inducing or causing a breach or termination of the relationship or
11 interference inducing or causing a breach or termination of the relationship or
12 expectancy; (4) the defendant's interference for an improper purpose or by improper
13 means; and (5) resulting damage.” *Koch v. Mutual of Enumclaw Ins. Co.*, 108 Wn.
14 App. 500, 506, 31 P.3d 698 (2001). The Verified Complaint shows that AWS is well
15 aware that: Parler has millions of users under contract, expects to add millions
16 more, and was about to go to the market to raise more capital. (Compl. ¶¶ 48-49.)
17 Thus, when coupled with AWS’s anti-competitive motives, pretextual reasons, and
18 contractual breaches, Parler has demonstrated a substantial likelihood of success
19 and serious issues on the merits.
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CONCLUSION

For the foregoing reasons, the plaintiff requests that the Court grant it a temporary restraining order against the defendant as set forth herein. A proposed form of Temporary Restraining Order is submitted herewith.

Dated: January 10, 2021

Respectfully submitted,

/s David J. Groesbeck
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