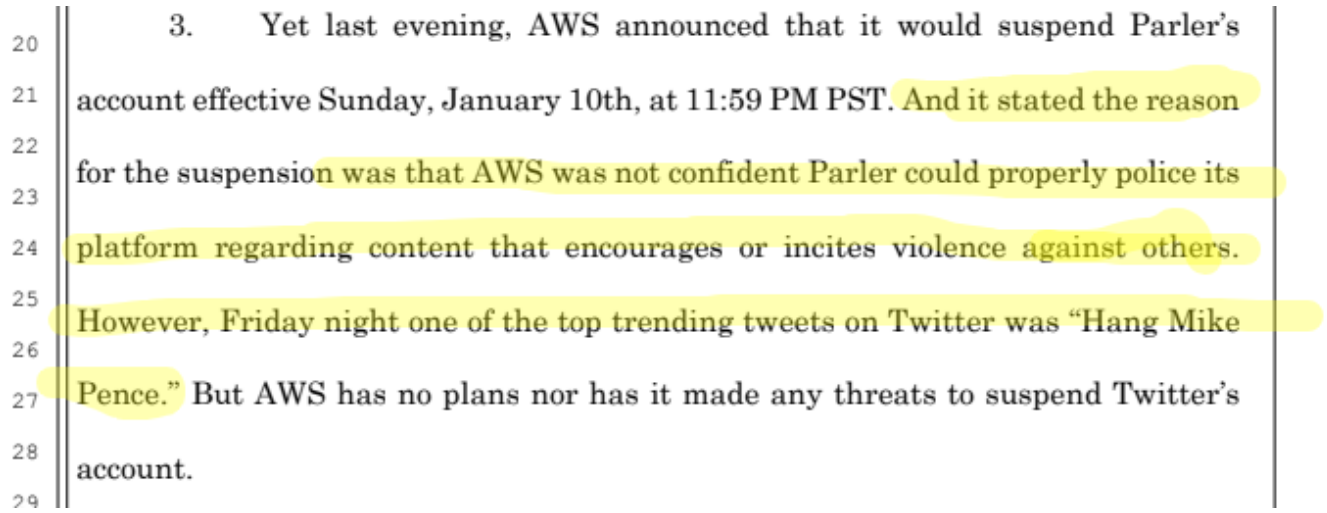
# Twitter Thread by Akiva Cohen

**Akiva Cohen**
@AkivaMCohen

## Looks like we need to spend some time talking about the Parler lolsuit against Amazon and why it's deader than a Mitch McConnell comedy special. They've brought three claims - antitrust, breach of contract, and tortious interference. None will survive. Here's why

Here's the meat of their intro: Amazon isn't being fair to us. They're holding us to a higher standard than Twitter - they say we allow violent content, but look what Twitter does!



3. Yet last evening, AWS announced that it would suspend Parler's account effective Sunday, January 10th, at 11:59 PM PST. And it stated the reason for the suspension was that AWS was not confident Parler could properly police its platform regarding content that encourages or incites violence against others. However, Friday night one of the top trending tweets on Twitter was "Hang Mike Pence." But AWS has no plans nor has it made any threats to suspend Twitter's account.

There are a few problems with this approach. First, there's a factual problem: Twitter and Parler take very different approaches to moderation. Hell, *that's Parler's entire pitch.* So "we're the same as Twitter, why are you treating us different" isn't going to fly

ALSO, the hashtag was mostly people saying "these folks are calling to hang Mike Pence!"

https://t.co/3ixZYQ8nRc

> Five minutes of scrolling a search for #hangmikepence, a gallery: pic.twitter.com/40hsyJNK50
>
> — Jawafawa (@jawafawa) January 11, 2021

And ALSO also, did anyone notice any prominent right wingers complaining about losing tens of thousands of followers yesterday? You know why they did? Because Twitter has been active in deleting accounts that violate its TOS

So factually, this complaint isn't going to fly.

But more fundamentally, Parler has a legal problem: There's no right to have a contracting party apply its rules equally. If you and I sign a contract with a supplier that says the supplier can stop providing us with beer if

we support the NE Patriots (and by "sign a contract" I mean we sign 2 separate contracts, 1 for me and 1 for you), and we both tweet out love for that horrible organization, and the supplier terminates me but not you, you know what happens if I sue them?

https://t.co/8aOSh2bTjf




The only thing that governs my contract with that supplier is my contract with that supplier. If they have discretion to terminate me, the fact that they exercised that discretion for me, but didn't for someone else, doesn't give me a cause of action. Not even a little bit

(Note: The one exception to this would be if I could show the company was exercising its discretion as a means of discriminating against a protected class - i.e. it terminated all white people who did X but no black people who did, ever. That's not and couldn't be alleged here)

So ... this is NOT what you would call a good start to a complaint. If your intro - which is the part of the complaint that should hit the reader in the gut, set the hook, and make them start thinking "you have a case" - is "they did something they were allowed to do"




Moving on. They then *specifically allege* that Amazon is motivated by "political animus" before ALSO claiming that it's an antitrust violation.

Folks ...

4. AWS's decision to effectively terminate Parler's account is apparently motivated by political animus. It is also apparently designed to reduce competition in the microblogging services market to the benefit of Twitter.

5. Thus, AWS is violating Section 1 of the Sherman Antitrust Act in combination with Defendant Twitter. AWS is also breaching it contract with Parler, which requires AWS to provide Parler with a thirty-day notice before terminating service, rather than the less than thirty-hour notice AWS actually provided. Finally, AWS is committing intentional interference with prospective economic advantage given the millions of users expected to sign up in the near future.

https://t.co/LDAxWRH5X0



Words can't express how bad a job this is. It really can't.

But I guess I'll try

First, "political animus" is NOT a problem in our society. Parties are allowed to choose to do or not do business with counterparties whose politics they dislike. "Republican Pollsters & PR R Us" does not have to take on the DSA as a client.

I don't have to take on David Duke if he comes looking for a lawyer. Tom O'Halloran's Irish Pub is allowed to boot out Unionists if it wants to.

So when Parler says "Amazon booted us because they don't like our politics" they are *specifically alleging* that Amazon was doing a thing it was entitled to do

This is a problem, because Parler is *also* trying to allege a Sherman anti-trust act claim based on wishes and innuendo. Essentially, Parler - which sued only Amazon and not Twitter - is alleging that Amazon is working with Twitter to shut down competition for Twitter

There are lots of reasons why this won't fly, and we'll get there as they get to the meat of the claim.

But when your core argument is "this conduct makes me think it's an anti-competitive conspiracy," DON'T SPECIFICALLY ALLEGE AN ALTERNATIVE, NON-CONSPIRACY EXPLANATION FOR IT




Also, it's worth pausing here to talk about Bell Atlantic Corp. v. Twombly, which is the "Tw" in the term "Twiqbal", the cases that set up the "plausibility" standard we've discussed in prior threads. (Refresher on plausibility here https://t.co/RIwlukf497)

> "They did this as a conspiracy to help Biden" isn't an allegation of fact. It's a *conclusion* being alleged as *supported* by the factual allegations.
>
> An example near and dear to my heart may make the distinction clearer. Anyone remember Asghar Bukhari?
>
> — Akiva Cohen (@AkivaMCohen) November 27, 2020

The claim in Twombly was that telephone companies were conspiring to reduce competition by not entering into their competitors' markets, violating the Sherman Antitrust Act.

Here's the wikipedia summary of what the Supreme Court held, which is good enough to work with.

As an initial matter, the Supreme Court clarified the requirements of proving a claim of anti-competitive behavior under Section 1 of the Sherman Act. The Sherman Act prohibits entering into a "contract, combination, or conspiracy" to restrain trade. The court held that while parallel conduct (actions by competing companies that might be seen as implying some agreement to work together) is "admissible circumstantial evidence" from which an agreement to engage in anti-competitive behavior may be inferred, parallel conduct alone is insufficient to prove a Sherman Act claim.

The court then upheld the district court's dismissal of the plaintiff's complaint, holding that the mere allegations contained in the complaint that the competitors had agreed not to compete were insufficient to state a claim of conspiracy under the Sherman Act. The court found that Twombly's complaint had not provided enough facts for the court to find it plausible that the companies had engaged in a conspiracy; instead, the complaint provided factual bases for parallel conduct, not enough under the court's new interpretation of the Sherman Act, and stated only that an agreement had taken place, with no details to support that allegation. The court held that the dismissal of the complaint was therefore proper.

The decision changed the existing interpretation of the notice pleading requirements of Federal Rule of Civil Procedure 8(a)(2) and the standards for dismissal under Federal Rule of Civil Procedure 12(b)(6) by creating a new, stricter standard of a pleading's required specificity.

Previously, under the standard the court set forth in *Conley v. Gibson*, a complaint needed to state only a "conceivable" set of facts to support its legal claims. In other words, a court could not dismiss claims unless it appeared, beyond a reasonable doubt, that plaintiffs would be able to prove no set of facts in support of their claims that would entitle them to relief. In *Twombly*, the court adopted a stricter "plausibility" standard that required "enough fact[s] to raise a reasonable expectation that discovery will reveal evidence of illegal agreement."

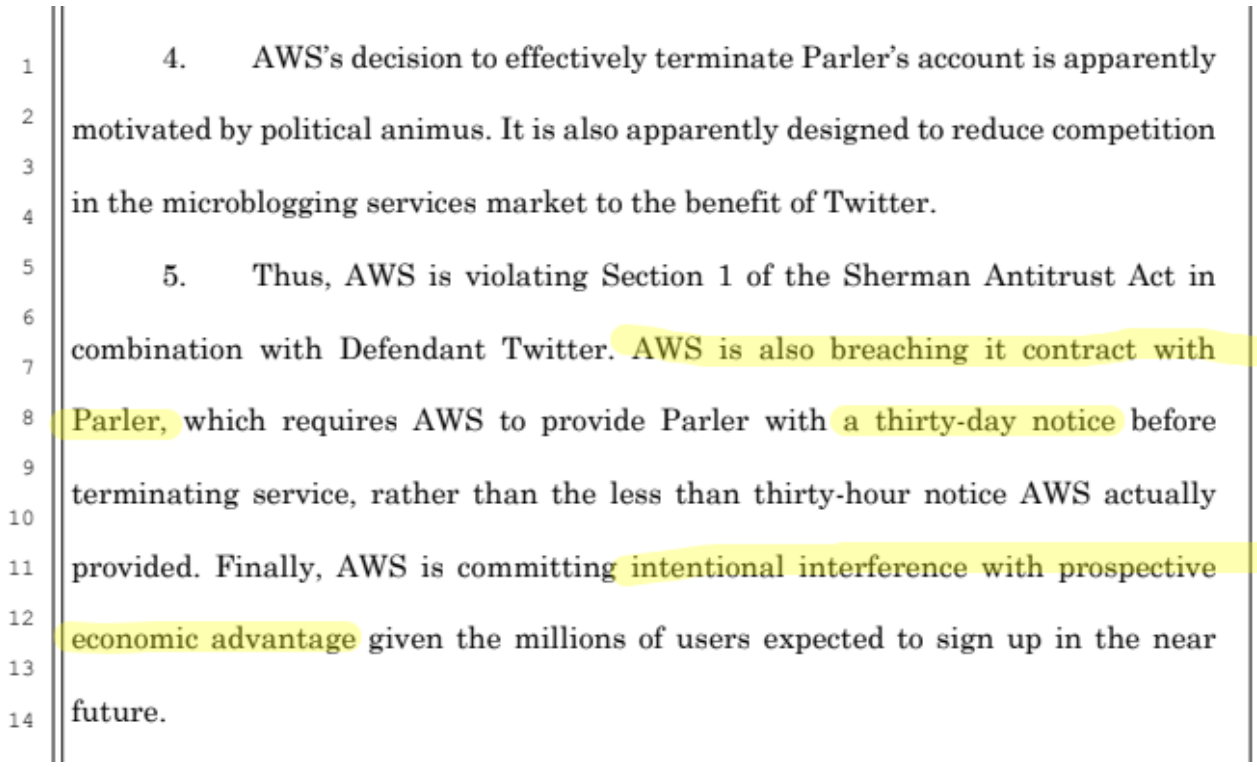
The general applicability of this heightened standard of pleading outside of antitrust cases was established in *Ashcroft v. Iqbal*, when the court also provided guidance as to how lower courts should apply the *Bell Atlantic Corp. v. Twombly* test:

> Two working principles underlie our decision in *Twombly*. First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions... Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. Determining whether a complaint states a plausible claim for relief will, as the Court of Appeals observed, be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. In keeping with these principles a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief. Our decision in *Twombly* illustrates the two-pronged approach.

Do you see the problem this poses for Parler?

If so, you're a step ahead of Parler's lawyers, who apparently completely missed it.

Onward for the rest of the intro, which sets out the claims: Aside from the Sherman Antitrust Act, they're also alleging breach of contract, based on a provision they say gives them a right to 30 days notice of termination (spoiler, it does not), and tortious interference



4. AWS's decision to effectively terminate Parler's account is apparently motivated by political animus. It is also apparently designed to reduce competition in the microblogging services market to the benefit of Twitter.

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To show tortious interference, btw, you need to show that someone: Knew you had (or were about to have) a contract, and did something that you weren't allowed to do, or for an improper reason, specifically designed to cause your contracting party to breach the contract

Tl;dr, that's also not going to fly here, for various and many reasons

Now we move into the "Parties" section, where Parler tells the court who it's suing. This particular paragraph is basically "but your Honor, we REALLY REALLY want to use AWS"

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

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

**FACTS**

The problem?



No, seriously. There is no cause of action for "a business we really want to partner with doesn't want to partner with us".

That's just not a thing.




Next, they describe what's happening: We built our product around AWS, they're kicking us off, and it's going to really suck for us.

Also, we're a competitor of Twitter. This is important, because we're about to segue into their evidence of an antitrust conspiracy

**FACTS**

13. Parler contracts with AWS to provide the cloud computing services Parler needs for its apps and website to function on the internet. Further, that both the apps and the website are written to work with AWS's technology. To have to switch to a different service provider would require rewriting that code, meaning



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Parler will be offline for a financially devastating period.

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

In my head, I call this section "This is Evidence of a Conspiracy, Right? (No)"

15. Less than a month ago, AWS announced with a press release a new multi-year deal with Twitter. AWS will "provide global cloud infrastructure to deliver Twitter timelines." *Twitter Selects AWS as Strategic Provider to Serve Timelines*, Press Center, Amazon, (Dec. 15, 2020), https://press.aboutamazon.com/news-releases/news-release-details/twitter-selects-aws-strategic-provider-serve-timelines.

16. According to the deal, "Twitter will leverage AWS's proven infrastructure and portfolio of services to support delivery of millions of daily Tweets." *Id*. Further, "[t]his expansion onto AWS marks the first time that Twitter is leveraging the public cloud to scale their real-time service." *Id*. This deal "buil[t] on the companies' more than decade-long collaboration, where AWS continues to provide Twitter with storage, compute, database, and content delivery services to support its distribution of images, videos and ad content." *Id*. What is more, together "Twitter and AWS will create an architecture that extends Twitter's on-

Let me explain.

No, it is too much, let me sum up:

Amazon serves us and also Twitter. It was afraid we would grow at Twitter's expense, so it shut us down to prevent that.

That's their conspiracy theory. All of it. One problem



Your ... your theory is that ... that Amazon has a financial interest in preventing your growth because Twitter is a client?

And that's why it kicked, you, ALSO AN AMAZON CLIENT, off their servers?

Idiots, user migration from Twitter (an Amazon client) to Parler (an Amazon client at the time) literally CANNOT harm Amazon. It's a zero net business effect for Amazon; whichever of the two of you the users go to, they're still on platforms using AWS

In fact, the only way that could possibly harm Amazon is if users migrate from platforms that use AWS to platforms that DON'T. On your "protect its business" theory, Amazon should be *encouraging* Twitter competitors on its platform, so it has a better chance of retaining users

Instead, you just argued that Amazon did the one thing that could *harm* Amazon, economically, in this particular environment: Cut off a within-Amazon-ecosystem destination for users exiting Twitter

Not only do you have a Twombly problem - nothing here comes close to alleging an agreement between Amazon and Twitter - but the allegations directly contradict any claim that could have possibly been the motivation

Or, in gif form




Also, they talked about Amazon's letter to them. Here it is. Note what it says: We've been raising issues about this stuff for weeks, you haven't responded effectively, and you've affirmatively told us that you won't be responding effectively

> Dear Amy,
>
> Thank you for speaking with us earlier today.
>
> As we discussed on the phone yesterday and this morning, we remain troubled by the repeated violations of our terms of service. Over the past several weeks, we've reported 98 examples to Parler of posts that clearly encourage and incite violence. Here are a few examples below from the ones we've sent previously: [See images above.]
>
> Recently, we've seen a steady increase in this violent content on your website, all of which violates our terms. It's clear that Parler does not have an effective process to comply with the AWS terms of service. It also seems that Parler is still trying to determine its position on content moderation. You remove some violent content when contacted by us or others, but not always with urgency. Your CEO recently stated publicly that he doesn't "feel responsible for any of this, and neither should the platform." This morning, you shared that you have a plan to more proactively moderate violent content, but plan to do so manually with volunteers. It's our view that this nascent plan to use volunteers to promptly identify and remove dangerous content will not work in light of the rapidly growing number of violent posts. This is further demonstrated by the fact that you still have not taken down much of the content that we've sent you. 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 of that, you are in breach of the terms of service and we think you're a risk to public safety, so we're terminating you on Sunday.

Wow.

Can they do that?

In a word, yes.

Let's take a look at Amazon's relevant agreements and terms.

Amazon's AWS Terms of service, which expressly bind any customer to the Amazon Acceptable Use Policy

**Last Updated: January 4, 2021**

The Service Terms below govern your use of the Services. Capitalized terms used in these Service Terms but not defined below are defined in the AWS Customer Agreement or other agreement with us governing your use of the Services (the "Agreement"). For purposes of these Service Terms, "Your Content" includes any "Company Content" and any "Customer Content," and "AWS Content" includes "Amazon Properties."

Amazon's Acceptable Use Policy, which says "nothing illegal, or that may harm others, or that may harm our reputation, or offensive"

# AWS Acceptable Use Policy

*Updated September 16th, 2016*

This Acceptable Use Policy (this **"Policy"**) describes prohibited uses of the web services offered by Amazon Web Services, Inc. and its affiliates (the **"Services"**) and the website located at http://aws.amazon.com (the **"AWS Site"**). The examples described in this Policy are not exhaustive. We may modify this Policy at any time by posting a revised version on the AWS Site. By using the Services or accessing the AWS Site, you agree to the latest version of this Policy. If you violate the Policy or authorize or help others to do so, we may suspend or terminate your use of the Services.

## No Illegal, Harmful, or Offensive Use or Content

You may not use, or encourage, promote, facilitate or instruct others to use, the Services or AWS Site for any illegal, harmful, fraudulent, infringing or offensive use, or to transmit, store, display, distribute or otherwise make available content that is illegal, harmful, fraudulent, infringing or offensive. Prohibited activities or content include:

- **Illegal, Harmful or Fraudulent Activities.** Any activities that are illegal, that violate the rights of others, or that may be harmful to others, our operations or reputation, including disseminating, promoting or facilitating child pornography, offering or disseminating fraudulent goods, services, schemes, or promotions, make-money-fast schemes, ponzi and pyramid schemes, phishing, or pharming.
- **Infringing Content.** Content that infringes or misappropriates the intellectual property or proprietary rights of others.
- **Offensive Content.** Content that is defamatory, obscene, abusive, invasive of privacy, or otherwise objectionable, including content that constitutes child pornography, relates to bestiality, or depicts non-consensual sex acts.
- **Harmful Content**. Content or other computer technology that may damage, interfere with, surreptitiously intercept, or expropriate any system, program, or data, including viruses, Trojan horses, worms, time bombs, or cancelbots.

And Amazon's AWS Customer Agreement, which has a few relevant sections. 4.2, which requires customers to make sure their users' content complies with the Acceptable Use Policy, and holds customers responsible for end-user content that violates it

# AWS Customer Agreement

**Last Updated: November 30, 2020**

See What's Changed

This AWS Customer Agreement (this "**Agreement**") contains the terms and conditions that govern your access to and use of the Service Offerings (as defined below) and is an agreement between the applicable AWS Contracting Party specified in Section 14 below (also referred to as "**AWS**," "**we**," "**us**," or "**our**") and you or the entity you represent ("**you**" or "**your**"). This Agreement takes effect when you click an "I Accept" button or check box presented with these terms or, if earlier, when you use any of the Service Offerings (the "**Effective Date**"). You represent to us that you are lawfully able to enter into contracts (e.g., you are not a minor). If you are entering into this Agreement for an entity, such as the company you work for, you represent to us that you have legal authority to bind that entity. Please see Section 14 for definitions of certain capitalized terms used in this Agreement.

4.5, which says, basically, you are responsible for your end users and you MUST ban end-users for violating the acceptable use policy if you know about it. So, for example, when Parler deleted Lin Wood's post about killing people, but didn't ban him for it, they violated this

4.5 End Users. You will be deemed to have taken any action that you permit, assist or facilitate any person or entity to take related to this Agreement, Your Content or use of the Service Offerings. You are responsible for End Users' use of Your Content and the Service Offerings. You will ensure that all End Users comply with your obligations under this Agreement and that the terms of your agreement with each End User are consistent with this Agreement. If you become aware of any violation of your obligations under this Agreement caused by an End User, you will immediately suspend access to Your Content and the Service Offerings by such End User. We do not provide any support or services to End Users unless we have a separate agreement with you or an End User obligating us to provide such support or services.

6.1: We get to suspend your access to AWS *without any notice at all* if you violate the customer agreement (which, as referenced in the above Tweet, Parler inarguably did)

**6. Temporary Suspension.**

6.1 Generally. We may suspend your or any End User's right to access or use any portion or all of the Service Offerings immediately upon notice to you if we determine:

(a) your or an End User's use of the Service Offerings (i) poses a security risk to the Service Offerings or any third party, (ii) could adversely impact our systems, the Service Offerings or the systems or Content of any other AWS customer, (iii) could subject us, our affiliates, or any third party to liability, or (iv) could be fraudulent;

(b) you are, or any End User is, in breach of this Agreement;

(c) you are in breach of your payment obligations under Section 5; or

(d) you have ceased to operate in the ordinary course, made an assignment for the benefit of creditors or similar disposition of your assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding.

6.2 Effect of Suspension. If we suspend your right to access or use any portion or all of the Service Offerings:

(a) you remain responsible for all fees and charges you incur during the period of suspension; and

(b) you will not be entitled to any service credits under the Service Level Agreements for any period of suspension.

Section 7.2, which has the 30 days notice provision Parler is relying on - but which ALSO says (check the red) "except we don't need to give you any notice at all if we could suspend you under Section 6"

**7. Term; Termination.**

7.1 Term. The term of this Agreement will commence on the Effective Date and will remain in effect until terminated under this Section 7. Any notice of termination of this Agreement by either party to the other must include a Termination Date that complies with the notice periods in Section 7.2.

7.2 Termination.

(a) Termination for Convenience. You may terminate this Agreement for any reason by providing us notice and closing your account for all Services for which we provide an account closing mechanism. We may terminate this Agreement for any reason by providing you at least 30 days' advance notice.

(b) Termination for Cause.

(i) By Either Party. Either party may terminate this Agreement for cause if the other party is in material breach of this Agreement and the material breach remains uncured for a period of 30 days from receipt of notice by the other party. No later than the Termination Date, you will close your account.

(ii) By Us. We may also terminate this Agreement immediately upon notice to you (A) for cause if we have the right to suspend under Section 6, (B) if our relationship with a third-party partner who provides software or other technology we use to provide the Service Offerings expires, terminates or requires us to change the way we provide the software or other technology as part of the Services, or (C) in order to comply with the law or requests of governmental entities.

7.3 Effect of Termination.

(a) Generally. Upon the Termination Date:

(i) except as provided in Section 7.3(b), all your rights under this Agreement immediately terminate;

(ii) you remain responsible for all fees and charges you have incurred through the Termination Date and are responsible for any fees and charges you incur during the post-termination period described in Section 7.3(b);

And also, just to cap it off, a limitation of liability that says "you can't recover any lost profit damages against us, you can just get a refund"

**11. Limitations of Liability.**

WE AND OUR AFFILIATES AND LICENSORS WILL NOT BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, REVENUES, CUSTOMERS, OPPORTUNITIES, GOODWILL, USE, OR DATA), EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, NEITHER WE NOR ANY OF OUR AFFILIATES OR LICENSORS WILL BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH: (A) YOUR INABILITY TO USE THE SERVICES, INCLUDING AS A RESULT OF ANY (I) TERMINATION OR SUSPENSION OF THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE SERVICE OFFERINGS, (II) OUR DISCONTINUATION OF ANY OR ALL OF THE SERVICE OFFERINGS, OR, (III) WITHOUT LIMITING ANY OBLIGATIONS UNDER THE SERVICE LEVEL AGREEMENTS, ANY UNANTICIPATED OR UNSCHEDULED DOWNTIME OF ALL OR A PORTION OF THE SERVICES FOR ANY REASON; (B) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; (C) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY YOU IN CONNECTION WITH THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE SERVICE OFFERINGS; OR (D) ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY OF YOUR CONTENT OR OTHER DATA. IN ANY CASE, EXCEPT FOR PAYMENT OBLIGATIONS UNDER SECTION 9.2, OUR AND OUR AFFILIATES' AND LICENSORS' AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED THE AMOUNT YOU ACTUALLY PAY US UNDER THIS AGREEMENT FOR THE SERVICE THAT GAVE RISE TO THE CLAIM DURING THE 12 MONTHS BEFORE THE LIABILITY AROSE. THE LIMITATIONS IN THIS SECTION 11 APPLY ONLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

With all of this background, you can see why this case is deader than a year-old fruit fly. They're suing for breach of contract based on a 30-day notice provision that the contract EXPRESSLY says doesn't apply. And they are no-doubt unquestionably toast

Anyway, back to Parler saying "but we were positioned to do so well before we got shut down for violating the terms of the contract we agreed to"

22. Last evening, the Associated Press reported that "Parler may be the leading candidate" for President Trump after his Twitter ban as "[e]xperts had predicted Trump might pop up on Parler . . . ."). Frank Bajak, *Squelched by Twitter, Trump Seeks New Online Megaphone*, Associated Press (Jan. 9, 2021), https://apnews.com/article/donald-trump-politics-media-social-media-coronavirus-pandemic-f5b565ca93a792640211e6438f2db842. However, the AP also observed



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that "Amazon struck [a] blow Saturday [against the chances of Trump adopting the platform], informing Parler it would need to look for a new web-hosting service effective midnight Sunday." *Id.*

More paragraphs of "but having consequences for breaching our agreements with Amazon will really suck for us", to which a court will reply ...

23. This death blow by AWS could not come at a worse time for Parler—a time when the company is surging with the potential of even more explosive growth in the next few days. Worse than the timing is the result—Parler has tried to find alternative companies to host it and they have fallen through. It has no other options. Without AWS, Parler is finished as it has no way to get online. And a delay of granting this TRO by even one day could also sound Parler's death knell as President Trump and others move on to other platforms.[1] It is no wonder, then, that competitor Twitter's CEO has heartily endorsed efforts to remove Parler from the public sphere. *See* Kevin Shalvey, *Parler's CEO John Matze Responded Angrily After Jack Dorsey Endorsed Apple's Removal of the Social Network Favored by Conservatives,* Busines Insider (Jan. 10, 2021), https://www.businessinsider.com/parler-john-matze-responded-angrily-jack-dorsey-apple-ban-2021-1.

https://t.co/d3yAblmwsD




Seriously. Parler signed a contract that said "Do NOT allow your end users to post violent, harmful stuff that might damage Amazon's reputation."

They agreed that if they violated that contract, Amazon could terminate them without notice.

They violated the contract.

And now they're complaining that they are getting the consequences they agreed to for doing the thing they agreed not to do?




That's ... that's not gonna move the needle, son.

Back to "no fair, what about Twitter", which just isn't a thing that a court will give even 1 fuck about, let alone 2

26. What is more, by pulling the plug on Parler but leaving Twitter alone despite identical conduct by users on both sites, AWS reveals that its expressed reasons for suspending Parler's account are but pretext. In its note announcing the pending termination of Parler's service, AWS alleged that "[o]ver the past several weeks, we've reported 98 examples to Parler of posts that clearly encourage and incite violence." Exhibit A. AWS provide a few examples, including one that stated, "How bout make them hang?", followed by a series of hashtags, including "#fu--mikepence." *Id*.

27. AWS further stated to Parler that the "violent content on your website . . . violates our terms." *Id*. Because, AWS declared, "we cannot provide services to a customer that is unable to effectively identify and remove content that

Now they're arguing that "hey, we finally took this stuff down" should be good enough. But it isn't. Not under the contract they signed. And especially not when they deleted the content but left the users

29. AWS knew its allegations contained in the letter it leaked to the press that Parler was not able to find and remove content that encouraged violence was false—because over the last few days Parler had removed everything AWS had brought to its attention and more. Yet AWS sought to defame Parler nonetheless. And because of AWS false claims, leaked to the public, Parler has not only lost current and future customers, but Parler has also been unable to find an



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alternative web hosting company. In short, AWS false claims have made Parler a pariah.

And here we get to the actual causes of action. First, antitrust, which I've been mentally referring to as

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

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

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

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

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

33. AWS's reasons for doing so are not consistent with its treatment of Twitter, indicating a desire to harm Parler.

"Let's Do the Twombly Again"




Seriously, look those allegations over again. They're even less meaty than the ones the Supreme Court looked at in Twombly and said "nah, that's not enough to let your antitrust claim survive in court". Basically "Twitter is now an Amazon client and this thing will help Twitter"




"They could suspend us without notice, sure, but this is really a termination so we needed notice" is NOT a good argument when your contract says "we can terminate you without notice for anything we can suspend you for"

**Count Two: Breach of Contract**

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

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

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

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

40. On January 8, 2021, AWS brought concerns to Parler about user content that encouraged violence. Parler addressed them, and then AWS said it was "okay" with Parler.

Seriously, this is the worst possible version of this breach of contract claim; by conceding that they could've been suspended without notice, they affirmatively argued that there was no breach

Full disclosure - in my first run-through of the AWS agreement I missed 7.2(b) (the "we can terminate if we can suspend"). But, um ... I wasn't being paid to litigate this claim, so "we were just as careless as the guy reading it for sport" is not a strong argument, guys

"Give us an injunction, because this is really going to suck for us": sorry, that the contract specifically says you lose means no injunction.

Also, the fact that the contract says "your only possible damages are what you paid us" means they are very very easy to calculate

45. Thus, AWS will have breached its contract with and harmed Parler. Further, lost future profits in this case are difficult to calculate due to the rapidly increasing nature of Parler's user base. That's because "[t]he usual method for proving lost profits is to establish profit history." *Tiegs v. Watts*, 135 Wash.2d 1 (1998). But that history will, at best, undervalue the future given how quickly Parler is growing. And at worst, Parler will get nothing as "[l]ost profits cannot be



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recovered where they are speculative, uncertain and conjectural" because "[t]he amount of lost profits must be established with reasonable certainty." *Id.* Thus, money damages may not be available, but at the least are insufficient to make Parler whole.

46. Parler is entitled to injunctive relief.

Seriously, did these attorneys just not bother reading the relevant contract before Leeroy Jenkinsing this filing? How do you build your irreparable harm claim around lost profits that the contract specifically bars you from recovering??




Last, we have our turtle law claim (tortoise interference, yeah, I got dad jokes). This isn't going to fly for any number of reasons.

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

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

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

48. In Washington, "[t]he elements of tortious interference with a contract or expectancy are: (1) the existence of a valid contractual relationship or business expectancy; (2) the defendant's knowledge of that relationship; (3) an intentional interference inducing or causing a breach or termination of the relationship or expectancy; (4) the defendant's interference for an improper purpose or by improper means; and (5) resulting damage." *Koch v. Mutual of Enumclaw Ins. Co.*, 108 Wn. App. 500, 506, 31 P.3d 698 (2001).

49. Parler currently has over 12 million users under contract. It expects to add millions more this week given its growth the last few days and the growing voice of conservatives encouraging their Twitter followers to switch to Parler.

For one thing, tortious interference claims are based on "you made Dave, who had a contract with me, breach it, and therefore harmed me"

This seems to be "you made me breach my contract with Dave"

That's ... um ... not a thing.

Also, and I guess this is a minor note, but when you're alleging tortious interference you need to show that there was an existing contract that was breached

Maybe I missed it in the Complaint, but did any of you see any paragraphs detailing what Parler's "contract" with its users are or explaining how "not being able to provide Parler for a while" is a *breach* of that contract?

Seriously - they're essentially alleging that any Parler user can now sue Parler for breach of contract due to Parler being down, which ... well ...




I mean, I haven't reviewed the Parler terms of service but I feel preeeetty preeeeetty confident that isn't a good faith reading of them

Also, as our returning Threadnought sailors know very well, you can't get to tortious interference based on "third parties doing things they're allowed to do"

If your contract says "hey, Amazon, you can terminate me without notice if I don't delete Lin Wood's account now that he's called for murder", and then you don't delete the account and get terminated, you can't say "no, actually, turtle law says that's a problem"

That's not "improper means" or "improper purpose"

It's (again) what you SPECIFICALLY agreed would happen if you did the things you actually did.

Bottom line - this suit is a heaping pile of garbage with no chance of any success at all. It won't even make it to discovery. Whatever they paid their lawyers for this - even if it was on contingency - was too much.

/fin

cc @DefiantlyFree you may be interested in the above