

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT
CIVIL ACTION NO.

23-142A

CRA INTERNATIONAL, INC., d/b/a
Charles River Associates,

Plaintiff,

v.

TWITTER, INC.

Defendant.

COMPLAINT

SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE
2023 JAN 19 12:03

INTRODUCTION

Through these proceedings, the Plaintiff seeks to recover the damages sustained as a result of the Defendant's breach of an expert consulting contract with the Plaintiff. As part of its action, the Plaintiff also seeks to recover double or treble damages as a result of the Defendant's intentional and willful unfair and deceptive intentional breach of the consulting agreement, plus interest, costs, and legal fees.

PARTIES

1. The Plaintiff, CRA International, Inc., ("CRA"), doing business as Charles River Associates, is a corporation with a principal place of business at 200 Clarendon Street, Boston, Suffolk County, Massachusetts.

2. The Defendant, Twitter, Inc. ("Twitter"), is a Delaware corporation with a principal place of business at 1355 Market Street, San Francisco, California. Twitter has appointed Incorporating Services, Ltd., 3500 South DuPont Highway, Dover, Delaware 19901 as its registered agent for service of process.

JURISDICTION

3. Pursuant to a written agreement, Twitter has contracted with CRA, a Massachusetts business, for CRA to provide expert consulting services to Twitter and thus has

subjected itself to the jurisdiction of this Court pursuant to Massachusetts General Laws Chapter 223A, § 3. See Exhibit “1” hereto.

4. Moreover, pursuant to a written contract with CRA, Twitter has also expressly submitted itself to the personal jurisdiction of, and agreed that any dispute arising in connection with the contract shall be resolved by, the Courts of Massachusetts, and thus has further submitted itself to the jurisdiction of this Court.

5. In its contract with CRA, Twitter agreed to “hereby submit to the personal jurisdiction of the courts of the Commonwealth of Massachusetts, agree that any dispute that may arise in connection with this agreement shall be resolved by the courts of the Commonwealth of Massachusetts, and governed under the laws of the Commonwealth of Massachusetts without regard to conflicts of laws.” See Exhibit “1” hereto.

6. Moreover, Twitter regularly conducts business in Massachusetts and, therefore, is subject to the personal jurisdiction of the Massachusetts court pursuant to Massachusetts General Laws Chapter 223A, § 3.

FACTS COMMON TO ALL COUNTS

7. Twitter is an American social media company which operates the microblogging and social networking service Twitter.

8. In July 2022, Twitter commenced a lawsuit in the Court of Chancery of the State of Delaware against Elon R. Musk, X Holdings I, Inc., and X Holdings II, Inc. (the “Musk Litigation”).

9. In connection with the Musk Litigation, Twitter’s legal team requested CRA to provide expert consulting services to Twitter.

10. On August 22, 2022, CRA and Twitter entered into a Retention Agreement effective August 15, 2022 (the “Contract”), which contained the terms and conditions under

which CRA agreed to provide expert consulting services to Twitter in connection with the Musk Litigation. A true and accurate copy of the Contract is annexed hereto and incorporated by reference herein as Exhibit "1".

11. Twitter was represented by three different law firms in the Musk Litigation, which included Potter Anderson & Corroon LLP, Wachtell, Lipton, Rosen & Katz, and Wilson Sonsini Goodrich & Rosati, P.C.

12. On September 10, 2022, Wachtell, Lipton, Rosen & Katz accepted the terms and conditions of the Contract by signing on its behalf and on behalf of Twitter.

13. On September 10, 2022, Wilson Sonsini Goodrich & Rosati, P.C. accepted the terms and conditions of the Contract by signing on its behalf and on behalf of Twitter.

14. On September 10, 2022, Potter Anderson & Corroon LLP accepted the terms and conditions of the Contract by signing on its behalf and on behalf of Twitter.

15. Twitter agreed with the terms and conditions of the Contract and executed the Contract on September 11, 2022 when it was signed by Twitter's head of global litigation, Karen Colangelo.

16. CRA and its Senior Consultant, Professor Mark Zmijewski, were retained by Twitter to provide economic consulting services related to Professor Zmijewski's anticipated expert rebuttal report and expert rebuttal testimony, which were to be in rebuttal of the expert report and testimony of one of the experts for the Musk parties, Yvette Austin Smith.

17. In furtherance of its retention by Twitter, between August 15, 2022, the effective date of its retention, and October 27, 2022, the close of the merger, CRA provided all requested expert consulting work and services to Twitter and its legal counsel in connection with the Musk Litigation and pursuant to the terms and conditions of the Contract.

18. Per the Contract, Twitter agreed that all CRA “invoices will be submitted to Wachtell, Lipton for prompt delivery to Twitter for payment.”

19. At the outset of Twitter’s retention of CRA, Twitter did not inform CRA that Twitter utilized the Serengeti Billing System or that CRA had any obligation to submit its invoices to Twitter in some way other than as agreed by Twitter in the Contract.

20. Pursuant to the Contract, in August 2020, CRA began work under the Contract and provided expert consulting services as requested by Twitter and its outside counsel.

21. Pursuant to the Contract on or about September 22, 2022, CRA invoiced Twitter in the amount of \$430,332.25 (the “First Invoice”).

22. CRA’s First Invoice reflected work performed from August 15, 2022 through August 31, 2022.

23. CRA began its work during this period, which focused on the review of materials provided by counsel and preliminary analysis of key issues and other expert consulting and litigation support at the direction of Twitter’s legal counsel.

24. With regard to CRA’s First Invoice, and per the engagement letter, on September 23, 2022, Stephen O’Neil, Vice President and Finance Practice Co-Leader of CRA (“Mr. O’Neil”) sent a copy of the First Invoice to Wachtell Lipton.

25. On October 5, 2022, Wachtell Lipton acknowledged receipt of the First Invoice and inquired of Mr. O’Neil whether he had submitted the First Invoice through Twitter’s billing system.

26. In response to then being informed for the first time that Twitter had a billing system, Mr. O’Neil noted to Wachtell Lipton that the Contract did not include any such notice or

information or requirements, but asked Wachtell Lipton if it had information to share with CRA about Twitter's billing system.

27. Wachtell Lipton suggested that Mr. O'Neil send the First Invoice to Attorney Colangelo at Twitter because she "is the head of litigation and the Twitter rep who signed CRA's engagement letter."

28. Per Wachtell Lipton's suggestion, and notwithstanding that CRA had no obligation to do so under the engagement letter, on October 6, 2022, Mr. O'Neil emailed a copy of the First Invoice to Attorney Colangelo.

29. In response to receipt of the First Invoice, Attorney Colangelo thanked Mr. O'Neil for sending a copy of the First Invoice to her and represented that Twitter would "work on processing this."

30. Twitter, through Attorney Colangelo, did not ask CRA to submit this First Invoice to Twitter in some other manner.

31. Pursuant to the Contract on or about October 12, 2022, CRA invoiced Twitter in the amount of \$1,160,365.20 (the "Second Invoice").

32. CRA's Second Invoice reflected work performed from September 1, 2022 through September 30, 2022.

33. CRA's work during this period expanded on its work performed in August. The work related primarily to the research and analysis underlying the expert opinions to be included in the expert rebuttal report and preparation of preliminary drafts of the expert rebuttal report, and other expert consulting and litigation support at the direction of Twitter's legal counsel.

34. On October 14, 2022, CRA, through Mr. O'Neil, emailed Attorney Colangelo the Second Invoice.

35. In response to the Second Invoice, CRA received an automatically generated email confirming Attorney Colangelo's receipt of the Second Invoice.

36. Pursuant to the Contract on or about October 26, 2022, CRA invoiced Twitter in the amount of \$554,891.88 for work in October from October 1, 2022 through October 25, 2022 (the "Third Invoice").

37. CRA's Third Invoice reflected work performed from October 1, 2022 through October 25, 2022.

38. CRA's work during this period focused on the rebuttal of the Austin Smith report and preparation of drafts of the expert rebuttal report, and other expert consulting and litigation support at the direction of Twitter's legal counsel.

39. On October 26, 2022, CRA, through Mr. O'Neil, sent the Third Invoice to Attorney Colangelo.

40. Since as of October 26, 2022, Twitter had not yet paid the First Invoice or the Second Invoice, Mr. O'Neil also provided courtesy copies of the First Invoice and the Second Invoice as part of his October 26, 2022 email submission to Attorney Colangelo.

41. In the October 26, 2022 email, Mr. O'Neil referenced the Twitter "Supplier Registration," which CRA had been invited to join on October 25, 2022.

42. Mr. O'Neil indicated to Attorney Colangelo that CRA was awaiting approval of its application.

43. On October 27, 2022, Attorney Colangelo acknowledged receipt of the Third Invoice and Mr. O'Neil's October 26, 2022 submission where Mr. O'Neil referenced the Twitter Supplier Registration.

44. Also in response, Attorney Colangelo introduced Mr. O'Neil to Erika Rothschild, who Attorney Colangelo indicated "should be able to assist here."

45. Once Mr. O'Neil was provided the email contact information for Ms. Rothschild on October 27, 2022, Mr. O'Neil promptly emailed Ms. Rothschild and inquired about any billing process, including asking whether there was any necessity for CRA to submit its invoices electronically.

46. When Ms. Rothschild did not respond to Mr. O'Neil's October 27, 2022 email inquiry, he again followed up with Ms. Rothschild by email on October 28, 2022 providing her with further information, such as that CRA had successfully registered in "Twitter's Supplier Portal."

47. Mr. O'Neil advised Ms. Rothschild that based upon the email he received from Twitter Vendor Management, that CRA had been asked to work with his "Twitter Legal Contact for next steps" and he asked about those next steps, and indicated that he assumed the next steps were to submit the invoices "via Serengeti, but would appreciate confirmation and any instruction/guidance that you can provide."

48. Ms. Rothschild did not respond to Mr. O'Neil's October 28, 2022 email requesting confirmation of his assumption, nor did CRA receive any instruction or guidance from Twitter about submitting the Invoices electronically.

49. Mr. O'Neil emailed Ms. Rothschild again with additional information providing Ms. Rothschild with the identity of the CRA contact who would be the contact person for Serengeti, as well as her email address.

50. When Ms. Rothschild did not respond to Mr. O'Neil's October 28, 2022 email, he followed up with her on November 1, 2022 again indicating that CRA was "trying to submit our

invoices in Serengeti and needs someone at Twitter to connect with CRA (our contact person is Kathi Legg) on Serengeti.”

51. Ms. Rothschild did not respond to Mr. O’Neil’s requests for additional information and assistance with regard to any electronic submission of CRA’s invoices to Twitter.

52. On November 9, 2022, after receiving no response from Ms. Rothschild to the many emails referenced above, Mr. O’Neil once again sent Ms. Rothschild a request for additional information in order to enable CRA to submit its Invoices to Twitter “on Serengeti” and that Twitter had not taken the necessary steps to allow such a submission to happen.

53. Ms. Rothschild did not respond to CRA’s request for additional information and assistance connecting CRA with Twitter’s electronic billing system.

54. Pursuant to the Contract on or about November 11, 2022, CRA invoiced Twitter in the amount of \$43,412.50 for work in October from October 26, 2022 through October 27, 2022 (the “Fourth Invoice”). (The First Invoice, Second Invoice, Third Invoice, and Fourth Invoice shall be referred to herein as the “CRA Invoices” or “Invoices”).

55. CRA’s Fourth Invoice reflected work performed on October 26 and October 27, 2022.

56. The work during this time related to the preparation of drafts of the expert rebuttal report, and other expert consulting and litigation support at the direction of Twitter’s legal counsel.

57. On November 11, 2022, Mr. O’Neil sent an email to Attorney Colangelo enclosing the Fourth Invoice.

58. Also, because the first three Invoices had not yet been paid and for Attorney Colangelo's convenience, Mr. O'Neil provided Attorney Colangelo with additional copies of the first three invoices.

59. Moreover, and partly because neither Attorney Colangelo nor Ms. Rothschild had responded to Mr. O'Neil or provided CRA with any additional information in order to enable CRA to submit any of its Invoices through the Twitter Serengeti system, Mr. O'Neil confirmed for Attorney Colangelo that CRA had completed "Twitter's Onboarding Tax Review and Legal Firm Application process and is waiting for Twitter to connect Twitter and CRA on Serengeti for the electronic submission and payment of these invoices . . ."

60. Mr. O'Neil was unaware that Attorney Colangelo had left the employ of Twitter until she so informed him on November 21, 2022.

61. At that time, Attorney Colangelo recommended that Mr. O'Neil communicate with Alex Spiro at Quinn Emanuel about the CRA Invoices.

62. Mr. O'Neil then followed Attorney Colangelo's recommendation, and made efforts to communicate with Attorney Spiro and to provide him with the CRA Invoices in late November, and followed up with Attorney Spiro in early December, but Attorney Spiro did not respond to Mr. O'Neil's inquiries.

63. As part of the Contract, Twitter agreed that it would pay CRA on a "time and material basis" based upon the invoices submitted by CRA.

64. The individual hourly rates charged were specifically set forth in each of the CRA Invoices.

65. The Contract further provides that "invoices are due and payable upon receipt."

66. Pursuant to the Contract, interest at the rate of 1.5% per month, or 18% per annum, has been accruing on each of the invoices which remain unpaid thirty (30) days after the issuance of each such invoice.

67. Twitter agreed pursuant to the terms of the Contract that any “objection with respect to CRA’s invoices must be made by the client in writing within five (5) business days following receipt of the invoice to which objection is made.”

68. Twitter has never provided any objection to CRA with regard to the CRA Invoices.

69. The Contract also provides that Twitter is liable to CRA for all of its attorneys’ fees incurred to collect the Invoices.

COUNT I
(v. Twitter for Breach of Contract)

70. CRA realleges and incorporates by reference herein Paragraphs 1 through 69 above.

71. On August 22, 2022, CRA and Twitter entered into a Retention Agreement effective August 15, 2022 (the “Contract”), which contained the terms and conditions under which CRA agreed to provide expert consulting services to Twitter in connection with the Musk Litigation. A true and accurate copy of the Contract is annexed hereto and incorporated by reference herein as Exhibit “1”.

72. On September 11, 2022, Twitter executed the Contract.

73. In connection with its retention by Twitter between August 2022 and October 2022, CRA provided all requested consulting work and services to Twitter pursuant to the terms and conditions of the Contract.

74. The total amount of the Invoices which have been rendered to Twitter and remain unpaid are \$2,189,001.83.

75. Twitter has breached the Contract by failing to pay all of the CRA Invoices.

76. As a result of Twitter's breach of the Contract, Twitter is liable to CRA for all of its damages, plus attorneys' fees, interest at the rate of eighteen percent (18%) per annum, and costs.

COUNT II
(v. Twitter for Chapter 93A Violations)

77. CRA realleges and incorporates by reference herein Paragraphs 1 through 76 above.

78. CRA and Twitter are each engaged in trade or commerce as defined in Massachusetts General Laws Chapter 93A, §§ 2 and 11.

79. CRA performed all of the services requested of it under the Contract, and worked per the terms of the Contract and with the expectation that Twitter would timely pay all Invoices.

80. Notwithstanding all of the work provided to Twitter, Twitter has failed and refused to pay all monies to CRA under the Contract.

81. The failure and refusal of Twitter to pay the monies owed to CRA under the Contract has been intentional and willful.

82. The intentional and willful breach of the Contract is an unfair and deceptive act and practice within the meaning Massachusetts General Laws Chapter 93A, §§ 2 and 11.

83. As a result, CRA seeks damages against Twitter in the amount of \$2,189,001.83, to be doubled or trebled, plus interest, costs, and attorneys' fees.

PRAYERS FOR RELIEF

WHEREFORE, the Plaintiff, CRA International, d/b/a Charles River Associates, hereby moves this Honorable Court to order as follows:

1. That Judgment enter in favor of the Plaintiff, and against Twitter under Count I in the amount of Plaintiff's damages, plus interest, costs, and attorneys' fees;
2. That Judgment enter in favor of the Plaintiff, and against Twitter, under Count II in the amount of the Plaintiff's damages, to be doubled or trebled, plus interest, costs, and attorneys' fees; and
3. For such other and further relief as this Honorable Court deems just and proper.

CRA INTERNATIONAL, INC., d/b/a Charles
River Associates,

By Its Attorneys,
RIEMER & BRAUNSTEIN LLP

Dated: January 19, 2023

/s/ Dennis E. McKenna
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