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Attorneys for Plaintiff, ENGAGE BDR, LLC and Plaintiff, KENNETH KWAN

**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA**

**WESTERN DIVISION - SPRING STREET COURTHOUSE**

ENGAGE BDR, LLC, a California  
limited liability company; KENNETH  
KWAN, an individual;

Plaintiff,

v.

GODADDY INC., a Delaware  
corporation; DOES 1 through 10,  
inclusive;

Defendants.

Case No. 2:21-cv-2014

Assigned to:

**COMPLAINT FOR:**

- 1. NEGLIGENCE**
- 2. NEGLIGENT INTERFERENCE  
WITH PROSPECTIVE  
ECONOMIC ADVANTAGE**
- 3. UNFAIR AND FRAUDULENT  
BUSINESS PRACTICES**
- 4. BREACH OF IMPLIED  
COVENANT OF GOOD FAITH  
AND FAIR DEALING**

**[DEMAND FOR JURY TRIAL]**

Plaintiff, ENGAGE BDR, LLC (hereinafter referred to as “Engage”) and Plaintiff,  
KENNETH KWAN, on behalf of Engage (hereinafter referred to as “Mr. Kwan”)  
(hereinafter collectively referred to as the “Plaintiffs”), by and through its undersigned  
attorney, alleges on knowledge as to its own acts and otherwise on information and belief  
as follows:

**THE PARTIES**

1  
2 1. Engage is a California limited liability company with a principal place of  
3 business located at 8581 Santa Monica Blvd., #12, West Hollywood, CA 90069.

4 2. Mr. Kwan is an individual who is a citizen of the United States and resides  
5 in Bangkok, Thailand.

6 3. GODADDY INC. (hereinafter referred to as “Defendant” or “GoDaddy”), is  
7 a Delaware corporation with a principal place of business located at 14455 N. Hayden Rd  
8 #219, Scottsdale, AZ 85260, and is doing business in and with the state of California.

9 4. The true names and capacities, whether individual, corporate, or otherwise of  
10 the defendants named in this complaint as Does 1 through 10, inclusive, are unknown to  
11 Plaintiffs. Plaintiffs are informed and believe, and on that basis allege, that each of said  
12 fictitiously named defendants is liable to Plaintiffs on the causes of action herein alleged  
13 and/or asserts some interests, legal or equitable, in the subject matter of this action, and  
14 therefore Plaintiffs sues said defendants by said fictitious names. Plaintiffs will move to  
15 amend this complaint when the true names and capacities of said fictitiously named  
16 defendants have been ascertained.

17 5. Defendant and Does 1 through 10 are collectively referred to as “Defendant”  
18 herein.

**JURISDICTION**

19  
20 6. This Court has jurisdiction under 28 U.S.C. § 1332(a)(1) as the matter in  
21 controversy is between citizens of different states.

22 7. This Court has jurisdiction under 28 U.S.C. § 1332(a) as the matter in  
23 controversy exceeds the sum or value of \$75,000 exclusive of interest and costs.

24 8. Engage is a limited liability company duly organized under the laws of  
25 California and is a citizen of California.

26 9. The sole member of Engage is Engage BDR, Ltd. Engage BDR, Ltd. is  
27 organized under the laws of Australia and accordingly, is a citizen of Australia.

28 ///



20. On or about December 2019, GoDaddy transferred the Domain name out of Mr. Kwan's account to a third party without his authorization or approval.

21. Upon information and belief, DOES 1 – 10, and each of them, breached/hacked Defendant's system and got into Mr. Kwan's account and transferred multiple domain names off under that account, including but not limited to the Domain Name.

### **FIRST CAUSE OF ACTION**

#### **(Negligence)**

22. Plaintiffs re-allege and incorporate herein by this reference, each and every allegation contained in paragraphs 1 through 21 of this Complaint as though fully set forth herein.

23. At all relevant times herein alleged, Defendant was and is an American Internet domain registrar and web hosting company that is publicly traded on the New York Stock Exchange.

24. At all relevant times herein alleged, Defendant registered and maintained the Domain Name.

25. On or about October 19, 2019, Defendant experienced a security breach that affected approximately 28,000 customer's hosting accounts including Mr. Kwan's account in which he purchased and held the Domain Name.

26. The aforesaid security breach lasted for a period of approximately six (6) months before detection by the Defendant's security team on April 23, 2020.

27. On or about December 2019, Defendant transferred the Domain name out of Mr. Kwan's account to a third party without his authorization or approval.

28. Upon information and belief, DOES 1 – 10, and each of them, breached/hacked Defendant's system and got into Mr. Kwan's account and transferred multiple domain names off under that account, including but not limited to the Domain Name.

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29. Defendant, as registrar of the Domain Name, had the duties to Mr. Kwan to:
- a. provide adequate security for Mr. Kwan's hosting account and the Domain Name;
  - b. provide adequate security mechanisms to protect the Domain Name from an unauthorized transfer to a third party;
  - c. to contact Mr. Kwan to obtain authorization to transfer the Domain Name to a third party;
  - d. to contact Mr. Kwan to verify any request to transfer the Domain Name to a third party;
  - e. to adequately warn Mr. Kwan of the possibility of an unauthorized transfer of the Domain Name to a third party;
  - f. to otherwise exercise due care with respect to the matters alleged in this Complaint.

30. Defendant, as registrar of the Domain Name, failed to meet the aforesaid duties that it owed to Mr. Kwan.

31. As a direct and proximate result of the negligence and carelessness of Defendant as set forth above, the Domain name was transferred out of Mr. Kwan's account to a third party without his authorization or approval.

32. As a direct and proximate result of the negligence and carelessness of Defendant as set forth above, Plaintiffs' economic relationships with their various partners with regard to the use of the Domain Name were, and continues to be, disrupted.

33. As a direct and proximate result of the negligence and carelessness of Defendant as set forth above, Plaintiffs were damaged in a sum in excess of \$75,000.

## **SECOND CAUSE OF ACTION**

### **(Negligent Interference with Prospective Economic Advantage)**

34. Plaintiffs re-allege and incorporate herein by this reference, each and every allegation contained in paragraphs 1 through 33 of this Complaint as though fully set forth herein.

37. Defendant knew or should have known of Plaintiffs' economic relationships regarding the use of the Domain Name.

39. Defendant breached its duty to act with reasonable care by transferring the Domain name out of Mr. Kwan's account to a third party without his authorization or approval.

40. Defendant engaged in wrongful conduct by transferring the Domain name out of Mr. Kwan's account to a third party without his authorization or approval.

41. As a direct and proximate result of the actions and omissions by Defendant as set forth above, Plaintiffs' economic relationships with their various partners regarding the use of the Domain Name were, and continues to be, disrupted.

42. As a direct and proximate result of the actions and omissions by Defendant as set forth above, Plaintiffs were damaged in a sum in excess of \$75,000.

**Violation of Cal. Bus. & Prof. Code § 17200. ET SEQ.**

43. Plaintiffs re-allege and incorporate herein by this reference, each and every allegation contained in paragraphs 1 through 42 of this Complaint as though fully set forth herein.

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1           44. Pursuant to California Business & Professions Code, Section 17200, unfair  
2 competition is defined in part as “any unlawful, unfair or fraudulent business act or  
3 practice.”

4           45. Pursuant to California Business & Professions Code, Section 17204, any  
5 person who engages, has engaged or proposes to engage in unfair competition may be  
6 enjoined in any court of competent jurisdiction. The court may make such orders or  
7 judgments, including the appointment of a receiver, as may be necessary to prevent the  
8 use or employment by any person or any practice which constitutes unfair competition, as  
9 defined in this chapter, or as may be necessary to restore to any person in interest any  
10 money or property, real or personal, which may have been acquired by means of such  
11 unfair competition.

12           46. The conduct of Defendant described above herein was committed within the  
13 last three (3) years and constitutes unlawful, unfair and/or fraudulent business practices in  
14 violation of Section 17200 et seq. of the California Business and Professions Code in  
15 California common law.

16           47. The conduct of Defendant was unlawful and unfair in that it failed to give  
17 Plaintiffs the use and benefit of the Domain Name. Furthermore, it disrupted Plaintiffs’  
18 economic relationships regarding the use of the Domain Name and/or Plaintiffs’ various  
19 partners regarding the use of the Domain Name.

20           48. As a direct and proximate result of the wrongful acts of Defendant, Plaintiffs  
21 have suffered and will continue to suffer substantial pecuniary losses and irreparable  
22 injury to its business reputation and good will. As such, no remedy at law is adequate to  
23 compensate for the injuries inflicted by Defendant. Accordingly, Plaintiffs are entitled to  
24 temporary, preliminary and permanent injunctive relief.

25           49. By reasons of such wrongful acts, Plaintiffs are and were, and will be in the  
26 future, deprived of the profits and benefits of said business relationships, agreements,  
27 transactions with various existing clients, perspective clients, developers and/or  
28

prospective developers, suppliers and Defendant has wrongfully obtained benefits and profits in a sum in excess of \$75,000.

#### **FOURTH CAUSE OF ACTION**

##### **(Breach of Implied Covenant of Good Faith and Fair Dealing)**

50. Plaintiffs re-allege and incorporate herein by this reference, each and every allegation contained in paragraphs 1 through 49 of this Complaint as though fully set forth herein.

51. The Agreement entered into between Mr. Kwan and GoDaddy when Mr. Kwan purchased the Domain Name on behalf of Engage imposed upon Defendant an implied covenant of good faith and fair dealing requiring that Defendant not do anything that would injure the rights of Mr. Kwan and Engage to receive the benefits of the Agreement.

52. Plaintiffs are informed and believe and based thereon allege that by reason of the transferring of the Domain Name out of Mr. Kwan's account to a third party without his authorization or approval, Defendant has breached the implied covenant of good faith and fair dealing.

53. The actions by Defendant were undertaken with fraud, malice and/or oppression, and/or with a conscious disregard of the rights of Plaintiffs, and, therefore, Plaintiffs are entitled to an award of exemplary and punitive damages against Defendant.

54. As a direct and proximate result of the actions of Defendant, Plaintiffs have suffered general, direct, consequential, special, and incidental damages, including the expenditure of attorney's fees, those damages all in a sum in excess of \$75,000.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs pray for judgment against Defendant as follows:

##### **A. FIRST CAUSE OF ACTION (Negligence)**

1. For all general, direct, consequential, special, and incidental damages in a sum in excess of \$75,000;

2. For the costs of suit incurred herein;



3. For Pre- and Post-Judgment Interest as allowed by law;
4. For Attorney's fees, as permitted by law;
5. For such other and further relief as the court deems just and proper.

**B. SECOND CAUSE OF ACTION (Negligent Interference with Prospective Economic Advantage)**

1. For all general, direct, consequential, special, and incidental damages in a sum in excess of \$75,000;
2. For the costs of suit incurred herein;
3. For Pre- and Post-Judgment Interest as allowed by law;
4. For Attorney's fees, as permitted by law;
5. For such other and further relief as the court deems just and proper.

**C. THIRD CAUSE OF ACTION (Unfair and Fraudulent Business Practices)**

1. For disgorgement of any improper profits received by Defendant as a result of its improper conduct, in a sum in excess of \$75,000;
2. For injunctive relief to ensure compliance with Cal. Bus. & Prof. Code § 17203;
3. For punitive and exemplary damages in a sum to be proven at trial;
4. For the costs of suit incurred herein;
5. For Pre- and Post-Judgment Interest as allowed by law;
6. For Attorney's fees, as permitted by law;
7. For such other and further relief as the court deems just and proper.

**D. FOURTH CAUSE OF ACTION (Breach of Implied Covenant of Good Faith and Fair Dealing)**

1. For all general, direct, consequential, special, and incidental damages in a sum in excess of \$75,000;
2. For punitive and exemplary damages in a sum to be proven at trial;
3. For the costs of suit incurred herein;
4. For Pre- and Post-Judgment Interest as allowed by law;
5. For Attorney's fees, as permitted by law;

6. For such other and further relief as the court deems just and proper.

Plaintiff demands a jury trial on all issues so triable pursuant to Fed. R. Civ. P. 38 and the 7th Amendment to the United States Constitution.

Dated: March 4, 2021

**THE LAW OFFICE OF THAD M. SCROGGINS**

By: /s/ Thad M. Scroggins  
Thad M. Scroggins, Esq.  
Attorney for Plaintiff,  
ENGAGE BDR, LLC and  
Plaintiff, KENNETH KWAN