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14 **UNITED STATES DISTRICT COURT**
 15 **NORTHERN DISTRICT OF CALIFORNIA**

16 WIWYNN CORPORATION,
 17 Plaintiff,
 18 vs.
 19 X Corp.,
 20 Defendant.

Case No. 3:24-cv-05322-AGT
**PLAINTIFF WIWYNN
 CORPORATION’S FIRST AMENDED
 COMPLAINT**

DEMAND FOR JURY TRIAL
[REDACTED - PUBLIC]

21 Plaintiff Wiwynn Corporation (“Plaintiff” or “Wiwynn”) brings this First Amended Complaint
 22 (“FAC”) against Defendant X Corp. (“Defendant” or “X Corp.”) and alleges as follows:

23 **NATURE OF ACTION**

24 1. Wiwynn Corporation is an innovative provider of customized cloud IT infrastructure
 25 solutions, specializing in high-performance computing and storage products. Wiwynn works closely
 26 with its customers to deliver tailored solutions that address their specific technical and operational
 27 needs.

28 2. X Corp., formerly Twitter, Inc. (“Twitter”), is a global social media platform that
 provides digital services for its large user base.

1 9. This Court has personal jurisdiction over X Corp. pursuant to a binding jurisdiction
2 clause within an agreement giving rise to the present dispute that was negotiated and executed by the
3 parties, which states that “[a]ny legal action or proceeding arising under this Agreement will be
4 brought exclusively in the federal or state courts located in the Northern District of California and the
5 parties hereby irrevocably consent to the personal jurisdiction and venue therein.” Further, this Court
6 has personal jurisdiction over X Corp. because X Corp. has a place of business in this District, and, at
7 all relevant times, has conducted commercial activities within the State of California that are
8 substantial, continuous, and systematic.

9 10. Venue is proper under 28 U.S.C. § 1391(b) and based on X Corp.’s express prior
10 consent in the agreement to the venue of this Court. Further, venue is proper in this District because
11 X Corp. resides in this District and is subject to personal jurisdiction here, and because a substantial
12 part of the events, acts and omissions giving rise to the claims occurred in this District.

13 **FACTUAL ALLEGATIONS**

14 11. Wiwynn is an innovative provider of cloud IT infrastructure solutions, specializing in
15 high-performance computing and storage products, including integrated rack solutions for leading data
16 centers. Wiwynn offers a full suite of services, including the design, assembly, customization, testing,
17 and validation of its products, ranging from individual components to fully integrated systems,
18 including what are known as L10 and L11 rack integration services. Wiwynn has a business model to
19 work directly with customers to design and deliver custom solutions tailored to their individual needs.

20 12. On September 24, 2014, recognizing the value that Wiwynn’s cloud IT infrastructure
21 products would bring, X Corp. (then known as Twitter, Inc.) contracted with Wiwynn and entered into
22 a Master Purchase Agreement. A true and correct copy of the Master Purchase Agreement is attached
23 hereto as **Exhibit A**.

24 13. Pursuant to the Master Purchase Agreement, X Corp. agreed to purchase and Wiwynn
25 agreed to manufacture IT infrastructure products customized according to the specific features,
26 technical requirements, and performance standards provided by X Corp. in the form of exhibits
27 attached to the Master Purchase Agreement (referred to as “Product Exhibits” under the Master
28

1 Purchase Agreement). True and correct copies of the Product Exhibits and award letter of the products
2 relevant to this action are attached here to as **Exhibit B**.


3 14. The manufacture of these custom-made products required a complex and globally
4 managed supply chain. The production involved the procurement of numerous components, many of
5 which were custom components specifically tailored to X Corp.'s unique product needs. These custom
6 components were sourced from various suppliers worldwide and required significant lead times for
7 procurement. The parties acknowledged the critical nature of custom components in each Product
8 Exhibit by including an appendix listing such components as "Unique Long Lead-Time Components."
9 *See, e.g.*, Exhibit B at 16, 67, 112-113 and 179.


10 15. Given the significant logistical complexity and financial commitment involved in the
11 procurement of custom components, the parties recognized that the management of custom
12 components must be treated differently from standard components that do not require customization,
13 are more readily available, and can be interchangeably used for other products. X Corp.'s obligation
14 to accept responsibility for the forecasts provided for the procurement of custom components is
15 grounded in several provisions.

16 16. Section 4.3.3 of the Master Purchase Agreement demonstrates that X Corp.'s forecasts
17 for custom components were binding. Specifically, it provides:

18 

21 Notably, Section 4.3.3 expressly states that forecasts are not binding on X Corp. as to standard
22 components. However, this provision did not state that forecasts were not binding on X Corp. as to
23 custom components; instead, the risk of loss as to custom components would fall on X Corp. by
24 negative inference—if X Corp. was not intended to bear the risk of loss as to custom components,
25 Section 4.3.3 would have expressly stated as much just as it did for standard components.

26 17. The Product Exhibits attached to the Master Purchase Agreement confirm that the
27 forecasts provided by X Corp. were ".

28 *See, e.g.*, Exhibit B at 10, 62, 106 and 169. The Product Exhibits further provide that ".

1 [REDACTED]
2 [REDACTED]” See,
3 *e.g., id.* at 10, 62, 106 and 169-170. These provisions further make clear that X Corp. was obligated
4 to provide accurate forecasts for custom components, with Wiwynn required to manage its
5 procurement and inventory in reliance on those forecasts. The parties’ agreement to exclude liability
6 for common materials while imposing obligations related to custom components underscores the
7 understanding that X Corp.’s forecasts for custom components were binding. Thus, X Corp. was
8 obligated under Section 4.3.3 of the MPA and pursuant to the Product Exhibits to bear the risk of loss
9 for custom components.

10 18. The course of performance and course of dealing between the parties over nearly eight
11 years further confirms their mutual understanding that X Corp.’s forecasts for custom components
12 were binding, and thus X Corp. bore the risk of loss for custom components pursuant to Section 4.3.3
13 of the Master Purchase Agreement and the accompanying Product Exhibits attached and incorporated
14 by reference thereto. Throughout this period, upon receiving forecasts from X Corp., Wiwynn
15 prepared lists of the custom components required to fulfill X Corp.’s forecasted needs. Wiwynn then
16 submitted these lists to X Corp. and only proceeded to place orders for the custom components from
17 its suppliers after receiving X Corp.’s explicit written approval. X Corp. and Wiwynn agreed that,
18 without X Corp.’s formal approval, Wiwynn would not initiate procurement of any custom
19 components. X Corp. further understood that by approving the purchase of the needed components,
20 X Corp. was assuming liability for these components in the event that the components were not used
21 in the manufacture of the products forecasted by X Corp.

22 19. On multiple occasions, Wiwynn expressly informed X Corp. that, without explicit
23 approval, procurement activities for custom components would not commence. X Corp. provided
24 such approval only after conducting internal reviews to ensure that the forecasts were stable and no
25 changes were necessary. True and correct copies of exemplary email correspondence between the
26 parties in which X Corp., through its then Senior Supply Chain Manager Christopher Kan, approved
27 and assumed liability for the procurement of such custom components are attached hereto as **Exhibit**

28 **C.**

1 20. For example, on May 29, 2022, Wiwynn submitted to Mr. Kan a list of [REDACTED]
2 [REDACTED] among other custom
3 components based on earlier forecasts provided by X Corp. Exhibit C at 1-2. Receiving no response
4 from X, Wiwynn deferred the procurement. On June 1, 2022, Wiwynn followed up, seeking X's
5 explicit approval and indicated that, without such approval, Wiwynn would not "[REDACTED]
6 [REDACTED]" *Id.* at 1. On June 9, 2022, Mr. Kan approved the procurement. *Id.* Notably, in Mr. Kan's
7 response, he confirmed that, before giving any approval, X checked internally "[REDACTED]
8 [REDACTED]" and the approval was only given when the forecast was "[REDACTED]" *Id.*

9 21. In addition to approving the purchase of custom components under the Master Purchase
10 Agreement, on several occasions, X Corp. requested that Wiwynn procure excess electrical and
11 electronic components. Wiwynn explicitly informed X Corp. that Wiwynn would not procure these
12 non-custom components (which, unlike the custom components discussed above, were non-binding
13 on X Corp. pursuant to Section 4.3.3 of the MPA) without an explicit written acknowledgement from
14 X Corp. that X Corp. would assume liability for those components. Again and again, X Corp. provided
15 written approval and confirmed that it would assume liability for the excess components, stating in
16 writing that it would "[REDACTED]." True and correct copies of exemplary email correspondence
17 between the parties in which X Corp., through its then Senior Supply Chain Manager Christopher Kan,
18 requested and assumed liability for the procurement of such excess components are attached hereto as
19 **Exhibit D.**

20 22. For example, in response to Mr. Kan's request to purchase certain NICs on February
21 26, 2022, Wiwynn asked for explicit assurance from X that X would assume liability for ordering such
22 excess components that were not covered by X's forecasts and expressed hesitancy to order any excess
23 components without such explicit assurance. Exhibit D at 1. On March 1, 2022, Mr. Kan confirmed
24 that X Corp. "[REDACTED]," even though there was "[REDACTED]."
25 *Id.* Wiwynn did not proceed to purchase excess components until after obtaining X's explicit
26 "[REDACTED]." *Id.*

1 23. As another example, when instructing Wiwynn to purchase certain excess NIC
2 inventory not covered by X’s forecasts, Mr. Kan again reassured Wiwynn that he had “[REDACTED]
3 [REDACTED]” and that X would “[REDACTED].” *Id.* at 3.

4 24. In each instance discussed above, Wiwynn purchased these non-custom components
5 upon instruction and in reliance on X Corp.’s express promise, as conveyed repeatedly by Mr. Kan,
6 that X Corp. would bear the risk of loss for these non-custom components.

7 25. The Parties followed this general course of conduct for approximately eight years
8 without issue. Prior to November 2022, X Corp. placed purchase orders six months following any
9 forecasts, and made full payments for all of the products made from the components that Wiwynn
10 purchased only after receiving X Corp.’s confirmation that it would assume liability for those
11 components.

12 26. Upon information and belief, X Corp. underwent an acquisition process that began in
13 April 2022 and was finalized on October 28, 2022, when Elon Musk completed his \$44 billion
14 purchase of the company. At no time before or during this acquisition did X Corp. indicate any
15 intention to deviate from the parties’ established course of performance—X Corp. continued to
16 provide forecasts, approve procurement only after confirming its stable needs, and reaffirm its
17 assumption of liability for approved components. Notably, some early forecasts, made slightly more
18 than six months before November 2022, were converted into a purchase order issued on October 27,
19 2022, further reassuring Wiwynn that X Corp. would continue honoring its obligations under the
20 Master Purchase Agreement and the longstanding course of performance between the parties.

21 27. Beginning in November 2022 (when new management took over Twitter), however,
22 X Corp. abruptly stopped making any payments to Wiwynn—including for delivered finished
23 products—and failed to respond to multiple communications from Wiwynn inquiring about and
24 demanding the past-due payments for delivered finished products.

25 28. At this time, Wiwynn had procured approximately \$120 million of components, all of
26 which had been expressly approved and authorized by X Corp. in writing for use in the manufacture
27 of products that had been forecasted and/or ordered by X Corp. However, at this time, X Corp. also
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1 stopped providing any additional instructions for Wiwynn to manufacture or deliver any finished
2 products to X Corp.—despite Wiwynn’s multiple inquiries to X Corp.

3 29. Despite repeated attempts since November 2022 to resolve the issue, including
4 mediation, X Corp. has refused to accept responsibility for the unused components.

5 30. In addition to its attempts to resolve the issue of its excess components with X Corp.,
6 Wiwynn immediately attempted to mitigate its damages through various means, including but not
7 limited to cancelling approximately \$40 million worth of components that had not yet been delivered
8 to Wiwynn, attempting to sell the delivered but unused components to other third parties, attempting
9 to use the unused components in manufacturing products for other Wiwynn customers, and attempting
10 to repurpose the unused components for Wiwynn’s use to absorb the relevant costs itself. Wiwynn
11 has been able to recoup approximately \$19 million by re-selling and/or repurposing the unused
12 components that were intended to be used in products for X Corp. However, due to the custom nature
13 of the components, Wiwynn has been and continues to be limited in its ability to resell and reuse a
14 substantial amount of components—which hold a significant total value—despite Wiwynn’s best
15 efforts.

16 31. Wiwynn has incurred and continues to incur significant storage and handling expenses
17 for the remaining unused components.

18 32. Because it was left with no other options, Wiwynn files this action to recover from X
19 Corp. what X Corp. owes Wiwynn for the unused components.

20 **COUNT I**

21 **(Breach of Contract Against X Corp.)**

22 33. Wiwynn incorporates by reference and realleges paragraphs 1-32 above of this FAC as
23 if fully set forth herein.

24 34. As stated above, X Corp. and Wiwynn entered into the Master Purchase Agreement,
25 along with the Product Exhibits attached thereto, which is a valid and binding agreement.

26 35. Although the parties did not formally execute a final Product Exhibit for F6AWW, the
27 parties began performing the terms of the Product Exhibit for F6AWW in a manner consistent with
28 their longstanding course of performance no later than June 2022.

1 36. Wiwynn has fully performed all its obligations under the Master Purchase Agreement
 2 and the parties’ course of performance.

3 37. X Corp. failed to properly compensate Wiwynn for the price of the unused components
 4 purchased by Wiwynn at the direction of X Corp. for the manufacture of custom products for X Corp.,
 5 breaching Section 4.3.3 of the Master Purchase Agreement as understood by the Parties, as evidenced
 6 by the course of performance of the Parties over eight years.

7 38. X Corp. also engaged in the wrongful termination of the Master Purchase Agreement
 8 in violation of at least Section 11.3 of the Master Purchase Agreement, impairing Wiwynn’s ability to
 9 mitigate procurement risks. Section 11.3 of the Master Purchase Agreement provides:

10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]

13 39. Despite Wiwynn’s repeated requests for payment, X Corp. has declined to cure, or
 14 attempt to cure, its breach of the Master Purchase Agreement.

15 40. As a direct and proximate result of X Corp.’s breach, Wiwynn has been damaged in an
 16 amount to be proved at trial but in no event less than \$61 million, with interest at the legal rate on that
 17 amount from the due date of each of the relevant invoices and costs.

18 **COUNT II**

19 **(Promissory Estoppel Against X Corp.)**

20 41. Wiwynn incorporates by reference and realleges paragraphs 1-40 above of this FAC as
 21 if fully set forth herein.

22 42. In approving the purchase of components by Wiwynn, X Corp. made clear and
 23 unambiguous promises to pay Wiwynn a total of at least \$120 million should X Corp. not purchase
 24 the custom products for which the components were purchased for.

25 43. The promises made by X Corp. as reflected in the Master Purchase Agreement, the
 26 parties’ course of performance and emails between the parties were supported by consideration.
 27 However, Wiwynn pleads in the alternative that the Court should enforce the promises made by X
 28 Corp. to prevent an injustice.

1 44. In reliance of X Corp.’s promise of payment made in email communications from X
2 separate from X’s forecasts, Wiwynn expended resources, including but not limited to purchasing
3 components needed for production of the forecasted custom products.

4 45. Wiwynn’s reliance on X Corp.’s promise of payment was not only reasonable, but also
5 entirely foreseeable in light of the parties’ longstanding practice over nearly eight years of X Corp.
6 separately providing written approval to Wiwynn to purchase components in the amounts that X Corp.
7 had previously forecasted or otherwise requested. X Corp. is well-aware of this because, as reviewed
8 above, Wiwynn repeatedly sought assurance that X Corp. would assume liability for these components
9 and X Corp. repeatedly acquiesced or affirmatively confirmed so—including in writing.

10 46. In addition, and in reliance on X Corp.’s promise of payment, Wiwynn expended
11 resources, including but not limited to purchasing additional non-custom components based on X
12 Corp.’s express promises to bear the risk of loss as stated by X Corp.’s representative, Mr. Kan, in
13 writing.

14 47. Because of its reliance on X Corp.’s promise, Wiwynn has been injured at least in the
15 amount of \$61 million with interest at the legal rate on that amount from the due date of each of the
16 relevant invoices and costs.

17 **COUNT III**

18 **(Breach of the Covenant of Good Faith and Fair Dealing Against X Corp.)**

19 48. Wiwynn incorporates by reference and realleges paragraphs 1-47 above of this FAC as
20 if fully set forth herein.

21 49. Implied in the Master Purchase Agreement, as well as the longstanding course of
22 performance between the parties, was a covenant that X Corp. would act in good faith and deal fairly
23 with Wiwynn, that X Corp. would do nothing to interfere with Wiwynn’s interests and commitments,
24 and that X Corp. would give at least the same level of consideration to the interests of Wiwynn as
25 X Corp. would give its own interests.

26 50. X Corp. breached this implied good faith and fair dealing to perform its obligations.
27 X Corp.’s improper objective in so conducting itself was, on information and belief, at all times to
28 delay, and if possible in whole or in part avoid, payment of Wiwynn’s legitimate claims.

COUNT V

(Negligent Misrepresentation Against X Corp.)

59. Wiwynn incorporates by reference and realleges paragraphs 1-58 above of this FAC as if fully set forth herein.

60. X Corp.—by and through its agents including but not limited to Christopher Kan—represented to Wiwynn that X Corp. would assume liability of the approved components.

61. To the extent X Corp. contends that X Corp. had no intention of fully compensating Wiwynn for the procurement of such components, X Corp. made false representations, or made these representations without a reasonable basis for believing them to be true.

62. X Corp. intended that Wiwynn rely on X Corp.’s representations in order to induce Wiwynn to procure components on X Corp.’s behalf to provide services for X Corp.

63. Wiwynn reasonably relied on X Corp.’s representations in deciding to procure the approved components, and continuing to do so until X Corp. abruptly ceased payment. X Corp. has refused, and to a large extent ignored, Wiwynn’s repeated requests for compensation of the costs.

64. As a direct and proximate result of X Corp.’s conduct, Wiwynn suffered and continues to suffer, damages in an amount to be determined at trial, but no less than an amount in excess of \$61 million with interest at the legal rate on that amount from the due date of each of the relevant invoices and costs.

PRAYER FOR RELIEF

WHEREFORE, Wiwynn respectfully prays for judgment and relief as follows:

- A. The Court award Wiwynn damages in amount to be determined at trial, but no less than \$61 million;
- B. The Court award Wiwynn its costs of suit and reasonable attorneys’ fees incurred in this action;
- C. The Court award pre-judgment and post-judgment interest on all damages awarded; and
- D. The Court award such other relief as the Court may deem just and proper.

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JURY DEMAND

Wiwynn demands a trial by jury, pursuant to Fed. R. Civ. P. 38, on all claims set forth in the FAC and all other triable issues.

Dated: October 15, 2024

Respectfully submitted,

PILLSBURY WINTHROP SHAW PITTMAN LLP

/s/ Aleksandir Morton

Aleksandir Morton

Attorneys for Plaintiff
Wiwynn Corporation