

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

-----X
CANTOR FITZGERALD SECURITIES

Plaintiff,
- against -

IT CONVERGENCE INC.,

Defendants
-----X

:
: Index No. _____
:

Summons

To the above-named Defendant(s)

IT Convergence, Inc.

511 East John Carpenter Freeway, Suite 500-580
Irving, TX 75062

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on Plaintiff's attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is both N.Y. C.P.L.R. § 503(a), which is proper because Plaintiff resides in New York County, and the parties' contractual agreement to venue in New York County.

Dated: May 29, 2024

New York, New York

By: /s/ Nirav Shah

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

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CANTOR FITZGERALD SECURITIES,	:	<u>COMMERCIAL DIVISION</u>
	:	
Plaintiff,	:	Index No.:
	:	
- against -	:	
	:	<u>COMPLAINT</u>
IT CONVERGENCE INC.,	:	
	:	
Defendant.	:	
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Plaintiff Cantor Fitzgerald Securities (“Plaintiff” or “Cantor”), as and for its Complaint against Defendant IT Convergence Inc. (“ITC”), alleges as follows:

NATURE OF THE ACTION

1. This action arises from Defendant’s breach of the parties’ Master Services Agreement, effective as of April 8, 2013 (the “MSA”), the Ordering Document, dated August 1, 2016 (the “2016 Order”), and the IT Convergence Cloud and Managed Services Amendment 22-420, effective as of December 20, 2022 (the “Amendment 22-420,” and together with the MSA and the 2016 Order, the “ITC Agreement”). A true and correct copy of the ITC Agreement is attached hereto as **Exhibit 1**.

2. Plaintiff provides back-office services – including information technology services – for a broad array of affiliated companies, including Newmark Group, Inc, a public commercial real estate services firm, BGC Group, Inc., a public interdealer brokerage, and Cantor Fitzgerald, L.P., one of Wall Street’s oldest private partnerships. For years, Cantor trusted Defendant ITC with hosting some of these affiliates’ most critical and sensitive data: the large volume of information that makes up their financial books and records.

3. Recently, Cantor made a decision to move its and its Affiliates' data to a competing vendor rather than renewing the ITC Agreement. This decision should have been uncontroversial: as part of the MSA, the subsequent agreements between the parties, and basic commercial common sense, ITC was required to cooperate with Cantor to migrate the data.

4. ITC not only failed to offer the required cooperation but seized the opportunity to extort Cantor, withholding Cantor's and its Affiliates' data unless Cantor complied with an outrageous demand: the immediate wire transfer of over \$700,000 in invented costs and fees that Cantor never owed. ITC's Chief Financial Officer—the apparent architect of this shakedown—was clear in his communications with Cantor that unless the money was paid, ITC would not permit Cantor to receive its own data. ITC's motivations were as transparent as its threats: to penalize Cantor for exercising its right to choose a new service provider and to leverage Cantor's own data to increase ITC's bottom line.

5. Because Cantor had no alternative, it gave into ITC's extortion. Cantor has now received its data and terminated the ITC Agreement. Cantor brings this action promptly to recover the extortion payments ITC wrongfully extracted and to seek damages consistent with the Donnelly Act's prohibition of such brazen anticompetitive conduct, plus interest, attorneys' fees, and costs.

THE PARTIES

6. Plaintiff Cantor provides back-office support to its Affiliates. Those Affiliates include Cantor Fitzgerald L.P., a global financial services firm providing clients with specialized expertise, innovative products, and personalized financial solutions across multiple business sectors, including investment banking, asset management, and prime brokerage. They also include two publicly traded companies: BGC and Newmark. BGC Group, Inc. (Nasdaq: BGC), together

with its subsidiaries (collectively “BGC”), is a leading global brokerage and financial technology company. BGC provides a wide variety of services, including trade execution, brokerage, and clearing, and specializes in the brokerage of a broad range of products, including foreign exchange, equities, commodities, and futures. Newmark Group, Inc. (Nasdaq: NMRK), together with its subsidiaries (collectively “Newmark”), is a world leader in commercial real estate, providing clients with uniquely tailored real estate brokerage services, including landlord and tenant representation, investment sales, debt financing, valuation, and tax advisory services. Plaintiff is a general partnership organized under the laws of New York, with its principal place of business at 110 East 59th Street, New York, New York 10022.

7. Defendant ITC is a global technology company offering data storage, cloud-based infrastructure and solutions, and migration strategies for customers’ data. Upon information and belief, Defendant ITC is a foreign business corporation registered in New York, with its principal place of business located at 511 East John Carpenter Freeway, Suite 500-580, Irving, TX 75062.

JURISDICTION AND VENUE

8. This Court has personal jurisdiction over this action pursuant to C.P.L.R. § 302, as this dispute concerns agreements made and services performed in the state of New York, as well as tortious conduct causing injury to Plaintiff and its Affiliates in the state of New York.

9. Venue is proper in this Court pursuant to C.P.L.R. § 503(a) because Plaintiff resides in New York County.

10. Additionally, this Court may exercise personal jurisdiction over ITC and venue is proper in this Court because this action is brought under a contract between the parties, the MSA, in which ITC agreed that any disputes relating to the MSA shall be litigated without a jury “in a Federal or State court in New York County, New York State.” *See* Ex. 1 at 9, MSA §6.7.

FACTUAL ALLEGATIONS

A. Cantor's Need For Oracle Data Hosting

11. As a back-office support provider, one of Cantor's responsibilities is to provide data management and support solutions to its affiliates, including BGC and Newmark (together with Cantor Fitzgerald, L.P., and their and Cantor Fitzgerald, L.P.'s subsidiaries, "Affiliates"). These Affiliates all maintain electronic records and data that are critical to their business operations. These Affiliates' general ledgers, accounts payable and accounts receivable systems, invoicing of vendors, compensation and reimbursement of its employees, and approval, execution, and documentation of trades are all dependent upon their ready access to data and data applications, as well as the ability of those application to interface with one another.

12. Each of the Affiliates has an obligation to make accurate, regular reports, including, in the case of BGC and Newmark, financial disclosures to shareholders. The preparation of these reports relies on the data that is managed by Cantor. Cantor is thus responsible for data that is not only essential to business operations – it is of the utmost concern to various regulators and to shareholders of the public companies.

13. Moreover, by its very nature, the data of Cantor and its Affiliates is highly confidential. Among other things, the data contains employees', contractors', and clients' personally identifiable information and financial information, as well as material non-public information.

14. To manage this data, Cantor uses a suite of programs referred to as the "Oracle Applications e-Business Suite." These programs, which are offered by Oracle, allow highly sophisticated businesses like Cantor's Affiliates to have a unified platform to manage ledgers, accounts payable and accounts receivable, payroll, and other services.

15. Because of the scope of Cantor's Affiliates, the data managed with the Oracle Applications e-Business Suite is substantial. Cantor's Affiliates collectively manage over 5.6 terabytes of data using the Oracle Applications e-Business Suite.

16. Hosting this much data requires specialized and highly sophisticated servers. A limited number of data storage providers compete to host data in this "Oracle Data Hosting Market." Participants in this market advertise their expertise in the Oracle Applications e-Business Suite and their ability to keep data secure while ensuring uninterrupted access, in recognition that their customers need to ensure quick, uninterrupted access to their own vital information.

B. Cantor Entrusts ITC with Hosting Cantor's and Its Affiliates' Data Pursuant to a Written Contract.

17. ITC describes itself as "a global Oracle Platinum Partner"¹ that has "specialized in Oracle services for over two decades."² ITC's website touts that its Oracle data hosting services "are designed to avoid critical interruptions and minimize downtime, while maintaining continuity as you unlock new opportunities."³

18. Since 2013, Cantor has used ITC to host its and its Affiliates' Oracle Applications e-Business Suite and related data. In April 2013, the parties executed the MSA, whereby Plaintiff engaged ITC as its Oracle Data Hosting service. *See* Ex. 1 at 2-11.

19. In 2016, pursuant to the MSA, Cantor executed the 2016 Order to obtain cloud hosting and data management services from ITC. *See* Ex. 1 at 12-103.

¹ IT Convergence Website. URL: <https://www.itconvergence.com/about/>. Last accessed: May 26, 2024.

² IT Convergence Website. URL: <https://www.itconvergence.com/oracle-cloud-applications/#:~:text=Why%20ITC&text=We%20have%20specialized%20in%20Oracle,Applications%20at%20a%20global%20level>. Last accessed: May 26, 2024.

³ IT Convergence Website. URL: <https://www.itconvergence.com/oracle-e-business-suite/>. Last accessed: May 26, 2024.

20. By executing the MSA and 2016 Order, ITC agreed to provide data hosting services for Cantor’s electronic business applications and related data, as well as “any and all data Customer requests from time to time” made by Cantor. *See* Ex. 1 at 14, 2016 Order §2.1.

21. In addition to data hosting services, the scope of the 2016 Order included all data management services “required to address proactive and reactive maintenance and administration” of Cantor’s Server and Database. *Id.* at 17-18, 2016 Order §2.2.

22. The 2016 Order also contemplated data transitioning services, which includes the migration of Cantor’s data to ITC and all activities required to install, setup, configure, and test the data.

23. Cantor and its Affiliates owned the data that they entrusted to ITC for hosting services, managed services, and transition services.

24. Cantor specifically negotiated for and secured the right to access its data upon demand and with ITC’s full cooperation.

25. ITC guaranteed Cantor that: “Customer shall have the right at any time to (*and ITC will cooperate with Customer to enable Customer to*) establish backup security for data and to keep backup data and data files in its possessions if it so chooses[.]” *Id.* at 26, 2016 Order §11.2 (emphasis added).

26. The terms of the 2016 Order prohibit ITC from using the data of Cantor and Cantor’s Affiliates “for any purpose other than that of rendering Hosting Services and Managed Services and Transition Services.” *Id.*

27. The Parties agreed to specific payment terms for services performed pursuant to the ITC Agreement.

28. The 2016 Order provides that “Monthly Recurring Charges for Hosting Services[,] Managed Services, Transition Services[,] and the R12 Oracle Payroll Implementation Instance shall be invoiced monthly in advance, *no earlier than 30 days prior to the month to which the Monthly Recurring Charges relate*, and are due and payable when invoiced.” *Id.* at 26, §9.1 (emphasis added).

29. The Parties also agreed to specific payment terms for services *outside* the scope of the MSA and 2016 Order.

30. The 2016 Order provides that “[c]harges for excess and/or out of scope services not included in this Ordering Document and any other costs and expenses shall be billed at the rate and in accordance with the terms of the written agreement signed by the parties authorizing such services.” *Id.* at 26, §9.2 (emphasis added).

31. Thus, a written, executed agreement between the parties is necessary for ITC to receive payment for any services it deems to be outside the scope of the ITC agreement.

32. Section 1 of the 2016 Order provides that “[i]n the event of any inconsistencies between the Master Services Agreement... and this Ordering Document, this Ordering Document shall take precedence.” *Id.* at 14.

33. The 2016 Order had an initial term of 36 months, after which the agreement automatically renews for successive one-year terms. To terminate the automatic renewals of the 2016 Order, Cantor must provide written notice of non-renewal to ITC at least sixty days prior to the expiration of the renewal term. *Id.* at 23, §7.

34. The current renewal term of the 2016 Order ends on July 31, 2024. Under the terms of the agreement, in order to terminate the 2016 Order at the end of the current renewal term, Cantor was required to submit a written notice of nonrenewal to ITC on or before May 31, 2024.

C. Cantor Decides To Engage A New Data Hosting Servicer

35. In December 2022, Cantor decided that it would switch to a new data hosting provider. Cantor decided it would terminate the ITC Agreement according to its terms, so that the contract did not renew for another year-term after the term expired on July 31, 2024. Cantor would instead use Oracle to host its data. In addition to providing the software that Cantor used to organize and enter its data, Oracle also competed with ITC to provide data hosting services.

36. Oracle was more attractive to Cantor for several reasons. Among other reasons, Oracle could host Cantor's data at a lower monthly cost. In addition, Oracle's expertise with its software would simplify Cantor's experience by providing a single vendor for everything related to data storage and management.

37. The process of transferring from ITC to Oracle, however, was a complex one that Cantor had to carefully manage.

38. To make this transition, Cantor would need several steps to occur. First, ITC would need to provide Cantor with a backup of the data connected to its Oracle electronic business applications suite, Hyperion, and related data (the "EBS Backup"). Then, Cantor and its Affiliates would need to take their systems offline to engage in a large-scale update of the Oracle software supporting Cantor's and its Affiliates' electronic business applications and financial record systems. Once that update was completed, Cantor would need to take the backup and import all of the data into the newly updated systems that were now running on Oracle's servers. Because of the number of affected systems and the scale of the needed updates, this process would take a full week.

39. Of principal importance to Cantor and its Affiliates was the timing of the transition from hosting data with ITC to hosting data with Oracle. The timing of the transition had to be carefully managed to avoid disruption to the financial reporting of Cantor and its Affiliates.

40. Cantor also needed to ensure that no data was lost or corrupted during the transfer process. ITC was hosting the general ledgers of two public companies and several other large financial institutions, which would need to be preserved. Cantor's Affiliates similarly had fiduciary duties that could be compromised if their data was adversely affected by the transfer process. And, the loss of accounts payable and receivable information would disrupt the daily operation of Cantor's Affiliates.

41. In short, Cantor needed to manage the process in a way that avoided the risk of data loss, data corruption, or disruption of financial reporting during this transition.

42. Furthermore, while the transition was happening, all of the vital business processes that used Oracle software would need to adapt. Cantor's Affiliates would need to find different ways to track changes to their general ledgers, to manage accounts payable and accounts receivable, enter timecards and expenses, and to complete many other critical operations.

43. Cantor's agreement with ITC presented another restriction: Cantor's transition to Oracle, which would take a full week, had to be complete in advance of May 31, 2024 – the deadline to provide notice of nonrenewal and effectuate termination of the ITC Agreement upon expiration of the current term thereof.

44. Upon information and belief, ITC understood the importance of the May 31 deadline and recognized that if it could obstruct the orderly transfer of data before that date, Cantor would be forced to renew the contract for another year, with all the added revenue to ITC such an auto-renewal would entail.

D. ITC Demands Exorbitant Fees to Prepare Backups For Cantor's Transition to a New Data Hosting Servicer

45. Because Cantor needed to manage its transition on schedule and without errors, it needed to rehearse the entire process. Just as actors and technicians rehearse a play many times

before opening night to catch any issues, so too would Cantor simulate the entire transfer process repeatedly to ensure that disruption from the actual transfer was minimized.

46. These rehearsals required ITC's cooperation. Cantor needed to make sure the process of receiving a backup from ITC was well managed, as every other step depended on that backup. And Cantor also needed to work with real data for each rehearsal, so that it could assess and avoid any errors introduced during the transition.

47. Cantor explained to ITC its goals and the reason it needed to perform multiple rehearsals: the actual transition would need to happen in a narrow timeframe and without issues, lest Cantor's Affiliates face significant business disruptions.

48. Such rehearsals squarely fall under the data requests and services that were contemplated under the 2016 Order. ITC itself represents to customers on its website that "[a]ll of [ITC's] service options are designed to avoid critical interruptions and minimize downtime, while maintaining continuity" of clients' business operations.⁴

49. Despite this, ITC took advantage of Cantor's need to test delivery of the hosted data. ITC conditioned its cooperation with Cantor's data backup requests upon an amendment to the ITC Agreement, so that ITC could charge Cantor \$17,000 per backup request – an excessive charge comprised of inflated fees.

50. ITC presented obviously inflated labor estimates in support of each \$17,000 charge. On top of 9 hours of so called "infrastructure labor," ITC claimed that completing the requested backup—a process that largely runs by itself—would require an additional 164 hours of labor per backup iteration.

⁴ IT Convergence Website. URL: <https://www.itconvergence.com/oracle-e-business-suite/>. Last accessed: May 26, 2024.

51. Upon information and belief, each requested sample backup did not require 164 hours of labor. But, the cost of 164 hours of labor purportedly required per backup iteration helped ITC to arrive at the \$17,000 it sought to charge Cantor for each backup request.

52. ITC also claimed that completing the requested backup would require an additional 35 hours of labor by the ITC Service Delivery Manager (“SDM”). SDM labor was a contractual service that, pursuant to the 2016 Order, should have been covered by the monthly fees that Cantor paid to ITC. *See* Ex. 1, 2016 Order, §2.3. Contrary to the Parties agreement, however, ITC presented SDM labor as an independent cost to reverse-engineer the \$17,000 it sought to charge Cantor for each backup request.

53. Cantor recognized these charges for what they were: improper price gouging. Still, Cantor had no alternative for testing ITC’s ability to successfully deliver Cantor’s and its Affiliates’ data ahead of the notice deadline. Thus, Cantor was forced to agree to Amendment 22-420 with ITC. Ex. 1 at 104-110.

54. Under the terms of Amendment 22-420, ITC would provide a data backup that met Cantor’s specifications in exchange for \$17,000 plus a one-time fee of \$400. Cantor would then have the right to request additional backups on the same terms on demand. *Id.* at 105, Amendment 22-420 § 2.8(a).

55. After entering into Amendment 22-420, ITC produced, upon Cantor’s request, three sample EBS Backups via hard drive on or about February 21, 2023, November 24, 2023, and February 7, 2024. On each occasion, ITC provided Cantor with the sample EBS Backup within a short period following Cantor’s request for the data. These test-run backups confirmed that ITC was capable of generating and transmitting the EBS Backup to Cantor on the date that Cantor requested.

56. ITC worked closely with Cantor in each of these rehearsals. ITC's understanding of the nature and significance of Cantor's data was vital, as ITC and Cantor needed to work together to ensure that absolutely no data were lost, and that the backup was compatible with the systems involved in the transfer.

E. At The Critical Moment, ITC Suddenly Refuses To Produce The Final Backup

57. On April 30, 2024, Cantor told ITC that, as the three rehearsals had succeeded, Cantor would begin the full EBS Backup transfer on May 17, 2024.

58. ITC had produced all previous sample EBS Backups shortly after Cantor provided notice of its request, but out of an abundance of caution, Cantor gave ITC seventeen days' notice before the real performance.

59. However, in response to Cantor's April 30 data request, ITC stated that it could not provide a full EBS Backup on May 17, 2024. ITC claimed that it was undergoing maintenance that day and, as a result of the maintenance, no one at ITC could give Cantor its data. Upon information and belief, this representation was false.

60. Cantor asked ITC to deliver the requested data on May 16, 2024, before the supposed maintenance began. ITC refused.

61. Cantor asked ITC to deliver the data on May 20, 2024, after the supposed maintenance would conclude. ITC refused.

62. Cantor asked ITC to identify what it would cost to pay ITC employees to perform the needed work on May 17, 2024, so that Cantor could pay that amount (in addition to the \$17,000 pursuant to Amendment 22-420) and ensure timely delivery of its data. ITC refused to identify the cost of conducting the backup as originally scheduled or to provide any details as to what would be required to overcome those costs.

63. ITC stated that it would only provide the EBS Backup on one day: May 31, 2024. ITC insisted that it would not provide the EBS Backup on any earlier day in May.

64. ITC had never told Cantor that ITC might become unable to provide Cantor with its data for an entire month. Such limits on data availability were inconsistent with ITC's role as a global data hosting servicer managing the highly confidential and sensitive data of publicly traded companies, and flatly violated ITC's obligation to cooperate with Cantor's requests for a backup of its data.

65. A delay in delivery of the full EBS Backup until May 31, 2024 was not a viable option for Cantor. Such a delay could result in significant disruption to Cantor's and its Affiliates' business operations, as well as their quarterly and annual financial reporting.

66. The Affiliates had already put preparations in place to be without access to the Oracle Applications e-Business Suite and related data between May 17, 2024 and May 24, 2024. If the transfer were delayed by two weeks, those preparations would be wasted. Putting new systems in place to prepare for a new date would be extremely costly, if it was possible at all.

67. Moving the transfer to a different week created another difficulty: because the Affiliates' businesses were not static, different functions would be implicated during a different week. Not only would this further complicate the process of preparing to have systems offline, but it also meant that systems that had never been tested in rehearsals would now be impacted. ITC, which had participated in these rehearsals, fully understood this issue.

68. ITC's proposed date also meant that Cantor's data would be unavailable during the first week of June, when Cantor's Affiliates were preparing their quarterly public filings. ITC knew both the timing of these filings and the vital importance of the data it hosted.

69. Moreover, ITC knew that a delay in delivery of the full EBS Backup until May 31, 2024 would prevent Cantor from timely providing notice of nonrenewal for the subsequent August 1, 2024 to July 31, 2025 term. ITC was thus refusing to release Cantor's and its Affiliates' data before Cantor's automatic renewal obligation was triggered.

70. ITC's unsupported assertion that it could only produce a backup on May 31, 2024 thus struck Cantor as an obvious ruse. ITC, which had previously produced backups within a short time frame and on the date that Cantor requested, was now claiming that no backup was available for an entire month, even though it had never raised such a possibility during the several rehearsals of the transfer process. According to ITC, this improbable inability to produce a backup would miraculously abate the day that Cantor's notice of nonrenewal was due.

F. ITC Extorts Cantor for the Release of Cantor's and its Affiliates' Data

71. When Cantor reiterated its need for the requested data backup to be delivered on May 17, 2024, ITC's claims developed a remarkable but unsurprising nuance.

72. ITC announced that it actually *could* produce a full EBS Backup on May 17, 2024, but only through a cloud backup solution, rather than via hard drive as done during the rehearsals. But ITC claimed this cloud backup would not cost the \$17,000 paid for previous backups under Amendment 22-420. ITC claimed that producing a full EBS Backup via cloud would cost **\$250,000.**

73. ITC neither provided any justification for this extortionate price, nor explained why it could timely provide an EBS Backup only in this cloud format.

74. ITC had never before offered to produce backups via cloud. On the contrary, in September 2023 when Cantor initially requested a transfer of the EBS backup via cloud, ITC represented to Cantor that ITC could not do so.

75. But ITC's extortionist behavior was not limited to this \$250,000 charge.

76. ITC also demanded that Cantor wire ITC an additional \$460,000 before ITC would produce the needed backup.

77. This additional \$460,000 demand was not even nominally linked to the production of the full EBS Backup. Instead, ITC claimed that it reflected money owed as additional monthly recurring charges, above the amount reflected in the parties' written agreement, as well as payments for future months at this inflated, contractually unsupported rate. Although ITC had sought an increase in additional monthly recurring charges under the ITC Agreement, Cantor had never agreed to such an increase, and no written amendment reflecting such an increase had ever been drafted, let alone executed. Nor had ITC ever invoiced Cantor "monthly in advance" for these supposedly increased payments, as it would have been contractually required to do. Cantor had similarly never agreed to make any payments in advance, as ITC now demanded. Nonetheless, ITC claimed that these supposed additional amounts must be paid prior to ITC's delivery of the full EBS Backup.

78. Cantor made clear in written and oral communications to ITC, including to ITC's Chief Financial Officer, Brett Hatch, that none of the amounts that ITC was now demanding were owed and that Cantor was alarmed that its provider appeared to be using Cantor's and its Affiliates' data as leverage.

79. In response, ITC made clear that it would not negotiate and that it would withhold the data until Cantor submitted to ITC's demands. Hatch wrote to Cantor's Information Officer via text message that he "will not approve the backup until all invoices are paid. **This is not negotiable.**" (emphasis added).

80. Faced with no other way to avoid a significant disruption to the business of its Affiliates, Cantor made the extortion payments, wiring ITC a total of \$710,000.

81. Cantor never agreed that the money was in fact due to ITC and never entered into a written agreement to make this payment. On the contrary, Cantor indicated in the memo of its wire that it was reserving all rights. And, on May 17, 2024, Cantor's counsel wrote to Brett Hatch to reiterate that the extortion payments were not owed under any agreement and promising that Cantor would initiate legal action based on ITC's misconduct.

82. Once it received all the payments it demanded, ITC produced the final, complete EBS Backup via cloud to Cantor, pursuant to Amendment 22-420. While Amendment 22-420 called for a price of \$17,000 to deliver the data, ITC forced Cantor to pay *42 times* that amount before ITC actually produced the final backup.

83. On May 28, 2024, Cantor sent ITC notice of its intent to terminate the ITC Agreement, though, for the reasons set forth above, ITC's material breach had already resulted in the ITC Agreement's termination.

COUNT I
(Breach of Contract)

84. Cantor repeats and re-alleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

85. The ITC Agreement is a valid and binding written contract.

86. Cantor has performed all of its obligations under the ITC Agreement.

87. Defendant breached Sections 2 and 11 of the 2016 Order by, among other things, failing to cooperate with Cantor's data requests and failing to provide the data of Cantor and Cantor's Affiliates upon demand.

88. Defendant further breached Sections 2 and 11 of the 2016 Order by using Cantor's and its Affiliates' data for an impermissible purpose: as leverage to extract extracontractual payments from Cantor for services within the scope of the ITC Agreement.

89. Defendant breached Section 9 of the 2016 Order by, among other things, demanding payment for all remaining monthly recurring charges for hosting services and managed services earlier than 30 days prior to the month in which those monthly recurring charges related.

90. Defendant further breached Section 9 of the 2016 Order by demanding payment from Cantor for purportedly excess services, without a written agreement signed by the Parties.

91. Defendant further breached the provisions of Amendment 22-420 by refusing to schedule the required backup iteration within a reasonable period of time.

92. As a direct and proximate result of Defendant's breach of the ITC Agreement, Cantor has been damaged in an amount to be determined at trial, but in no event less than \$710,000.

COUNT II

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

93. Cantor repeats and re-alleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

94. The ITC Agreement is a valid and enforceable contract between Cantor and Defendant and consistent with New York law, imposed upon the parties an implied covenant of good faith and fair dealing.

95. Upon the execution of the ITC Agreement, Defendant became obligated to deliver backups of Cantor's and Cantor's Affiliates data to Cantor, and to cooperate with Cantor, in the event that Cantor so requested.

96. Cantor has performed all of its obligations under the ITC Agreement.

97. During the Term of the ITC Agreement, Cantor demanded that Defendant deliver backups of Cantor's and Cantor's Affiliates data to Cantor, which Defendant refused to provide absent payment of substantial, unearned amounts.

98. Defendant's refusal to cooperatively perform its contractual obligations and to deliver Cantor's and Cantor's Affiliates data to Cantor upon request materially breached Defendant's duty of good faith and fair dealing.

99. Defendant's breach was motivated by a bad faith desire to extract as many extracontractual payments from Cantor as possible, for services that ITC was contractually obligated to perform under the ITC Agreement.

100. Defendant's breach has deprived Cantor of the benefit of its bargain regarding the ITC Agreement.

101. As a direct and proximate result of Defendant's material breach of the ITC Agreement and the implied duty of good faith and fair dealing, Cantor has suffered damages in an amount to be determined at trial, but in no event less than \$710,000.

COUNT III
(Economic Duress)

102. Cantor repeats and re-alleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

103. Neither Cantor's data nor the data of Cantor's Affiliates were Defendant's property.

104. At all relevant times, Cantor owned the data that it hosted with Defendant.

105. Pursuant to the ITC Agreement, Cantor had the right to obtain its data at any time, upon request.

106. Cantor demanded its data from Defendant.

107. Defendant manufactured invoices, totaling \$710,000, to extract payments from Plaintiff—funds to which Defendant knew that it was not entitled.

108. Defendant unlawfully threatened to withhold Plaintiff's data unless Plaintiff submitted to Defendant's demands for payment, totaling \$710,000.

109. Plaintiff's data is critical to the operation of its global financial business. Plaintiff's only means of obtaining its data was through delivery by ITC – either by cloud or hard drive.

110. Under extreme duress, with no viable alternative, Plaintiff acquiesced to Defendant's unlawful demands and made involuntary payments, totaling \$710,000.

111. Plaintiff therefore is entitled to return of its payments to ITC, in the amount of \$710,000, as well as interest thereon.

COUNT IV
(Money Had and Received)

112. Cantor repeats and re-alleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

113. Defendant received and retained sums of money from Cantor, totaling \$710,000, to which Defendant was not entitled.

114. At all relevant times, Cantor owned the data that it hosted with Defendant.

115. The extracontractual payments properly belong to Plaintiff because, pursuant to the ITC Agreement, Cantor had a right to obtain its data at any time, upon request, without exorbitant payments.

116. Cantor demanded its data from Defendant.

117. Defendant refused to release Cantor's and Cantor's Affiliates' data unless and until Cantor acquiesced to Defendant's demands for exorbitant, extracontractual payments.

118. Defendant charged inflated fees for Cantor to test ITC's ability to timely transition Cantor's and its Affiliates' data. ITC demanded these amounts and accepted payment, yet when it came time for Cantor to reap the benefits of these paid-for tests, ITC refused to even entertain the type of backup that it had received \$51,400 to prepare.

119. Defendant benefitted from its receipt of the extracontractual payments by receiving a windfall for sums to which it was not entitled.

120. Under the principles of equity and good conscience, Defendant should not be allowed to retain payment for testing of a process that it then refused to implement.

121. Under the principles of equity and good conscience, Defendant should not be allowed to retain the much larger extortion payments that it forced Cantor to make for the release of its own property.

122. Therefore, Defendant should be compelled to disgorge the wrongfully received payments, in an amount to be determined at trial, but in no event totaling less than \$761,400, and to pay Cantor interest thereon.

COUNT V
(Violation of the Donnelly Act)

123. Cantor repeats and re-alleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

124. ITC competes with other companies, including Oracle itself, to host data for Oracle software. ITC, Oracle, and other firms compete in this “Oracle Data Hosting Market” in New York. The Oracle Data Hosting Market includes the data storage solutions offered to corporations using Oracle’s suite of software. Oracle Data Hosting represents a distinct market from other forms of data hosting because the technical specifications of Oracle’s software and the subject matter involved are not compatible with all data hosting services and require specialized expertise in the Oracle Applications e-Business Suite.

125. ITC is, by its own marketing, “a top Oracle cloud managed services provider” that has “specialized in Oracle services for over two decades.” ITC is one of a small number of companies with the expertise and ability to serve large customers in the Oracle Data Hosting

Market. ITC's share of the Oracle Data Hosting Market gives it the power to produce market-wide anticompetitive effects through its conduct.

126. The Oracle Data Hosting Market is a nationwide market, as United States companies seeking to host their data can choose between Oracle Data Hosting providers anywhere within the United States. ITC's participation in this market includes competing within the state of New York.

127. By demanding an extortionate payment before releasing customer data, ITC dramatically increased the costs involved in switching to one of ITC's competitors in the Oracle Data Hosting Market. This demand prevents ITC's customers from freely exercising their business, undermines competition, and restricts free trade. Because any customer subject to such an extortionate demand faces large costs in switching to a competitor, the process of price discovery is impaired.

128. Additionally, ITC's conduct to obstruct transfer of data is intended to, and does, force customers to delay transitioning services to other hosting platforms, increasing costs to customers and forcing customers to receive ITC's inferior services for longer.

129. ITC's extortion of a \$710,000 payment from Cantor in exchange for the release of Cantor's data is an agreement, arrangement, or combination whereby competition or the free exercise of activity in the conduct of business, trade or commerce or the furnishing of a service in New York is or may be restrained, and is thus in violation of the Donnelly Act, N.Y. Gen. Bus. Law § 340.

130. ITC's conduct is *per se* anticompetitive because it is inherently anticompetitive and harmful to the public, extracting unearned extortion payments and undermining customers' access

to vital data entrusted with ITC while impeding competition and price discovery by impairing customers from leaving ITC for one of its competitors.

131. Therefore, ITC is liable for three-fold the actual damages Cantor sustained, as well as costs not exceeding ten thousand dollars, and reasonable attorneys' fees.

PRAYER FOR JUDGMENT

WHEREFORE, Plaintiff Newmark respectfully requests judgment to be made and entered against Defendant and in favor of Plaintiff as follows:

- a. Awarding compensatory damages in an amount to be determined at trial, but in no event less than \$761,400.00;
- b. Awarding compensatory damages under the Donnelly Act in an amount to be determined at trial, but in no event less than \$2,284,200.00;
- c. Awarding punitive damages;
- d. Awarding pre-judgment and post-judgment interest as provided by New York law;
- e. Awarding costs and expenses of this action, including attorney's fees; and
- f. Granting such other and further relief that the Court deems just and proper.

Dated: May 29, 2024
New York, New York

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