

D-1-GN-14-005374

CAUSE NO. _____

21CT, INC.,
Plaintiff

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IN THE JUDICIAL DISTRICT COURT

VS

OF TRAVIS COUNTY, TEXAS

JAMES FRINZI,
Defendant

201ST
_____ JUDICIAL DISTRICT

PLAINTIFF’S ORIGINAL PETITION

Comes Now, 21CT, Inc. (“21CT”) and files this Original Petition against James Frinzi and would respectfully show the Court as follows:

INTRODUCTION

1) 21CT is a technology company with its headquarters in Austin, Texas that provides network security and fraud detection services to governmental agencies across the country. James Frinzi is a lobbyist who previously contracted to represent 21CT with regard to governmental relations work in the State of Oklahoma. Without authority from 21CT, Frinzi registered himself as a lobbyist for 21CT in Texas. Despite having never represented 21CT in Texas, Frinzi has apparently made false, malicious, and damaging statements to news reporters regarding 21CT and its contracts with the Texas Health and Human Services Commission (“HHSC”). These false and disparaging statements have contributed to cancellation of HHSC contracts worth several million dollars. 21CT brings this suit against Frinzi for damages for business disparagement, breach of fiduciary duty, breach of contract, and indemnity.

PARTIES, JURISDICTION, VENUE, AND DISCOVERY

2) 21CT is a corporate entity with its principal place of business in Austin, Travis County, Texas, and may be served in this matter through its undersigned counsel of record.

3) James Frinzi is an individual whose residence and principal place of business are in Austin, Travis County, Texas. Frinzi may be served at his place of business at 4611 Bee Caves Road, Suite 211, Austin, Travis County, Texas. Alternatively, Frinzi may be served at his residence at 10300 Lisa Cove, Austin, Travis County, Texas 78733.

4) All parties are subject to personal jurisdiction in this court and this court has subject matter jurisdiction over all claims in this case. A substantial part of the acts or omissions giving rise to this lawsuit occurred in Travis County and Travis County is the county of residence and principal place of business of Frinzi, therefore venue is proper in this Court.

5) Plaintiff expects to conduct discovery in this lawsuit under a level three discovery control plan pursuant to T.R.C.P. 190.4.

FACTS

6) 21CT is a security and fraud detection technology company that provides software and services to governmental agencies across the country. Sometime in October 2013 Frinzi began contacting 21CT to solicit their business, proposing 21CT hire him for governmental relations and lobbyist work. 21CT eventually agreed to retain Frinzi solely for representation relating to Medicaid fraud contract opportunities with the State of Oklahoma. Unbeknownst to 21CT, Frinzi submitted unauthorized paperwork registering himself as a lobbyist of 21CT in the State of Texas and misrepresenting that amounts had been paid to him for lobbying in Texas.

7) At the time of his retention, Frinzi entered two agreements with 21CT. One of those agreements is a Non-Disclosure and Confidentiality Agreement in which Frinzi agreed to keep all business information of 21CT confidential. The second is a Retainer Agreement which provides that Frinzi will defend, indemnify, and hold 21CT harmless from any all claims,

damages, losses, or suits, including attorney's fees, resulting from the negligent, gross negligent, or intentional acts of Frinzi.

8) 21CT has previously contracted with the Office of Inspector General ("OIG") at HHSC to provide Medicaid fraud detection services. 21CT obtained its contract with HHSC in a competitive contracting process through the Texas Department of Information Resources. At all times during the bidding and negotiation process, 21CT followed all procurement rules and policies requested of them by HHSC.

9) HHSC was favorably impressed with the effective tools and services provided by 21CT. In its first contract, 21CT was able to identify over \$200 million (as of the date of this filing) in suspicious activity, and was a central data analytic support to the state's efforts in negotiating millions of dollars of recoveries back into the State of Texas Medicaid program. Furthermore, 21CT's data analytic tools have helped distinguish and clear thousands of conscientious providers who may have been improperly targeted for investigation based on minor clerical errors or reasonable decisions regarding patient care. This is because 21CT's patented data analytic techniques successfully allow the state to laser focus on the behavior that is suspicious, as opposed to behavior that is the result of simple clerical error or subjective disagreement over patient need, and therefore not recommended for lengthy review that could serve to drive good providers from the Medicaid program. Finally, 21CT's efforts have identified numerous policy gaps or policy interpretations that can be tightened in order to improve the Medicaid program overall.

10) Based on the good work and the clear value provided by 21CT, HHSC requested approval for a contract expansion from the Centers for Medicare and Medicaid Services ("CMS") for 21CT to continue its work and provide additional resources to OIG investigators.

On September 26, 2014, after six months of negotiation and discussion, CMS approved the contract expansion with a budget of approximately \$89.9 million.

11) 21CT never authorized Frinzi to have any dealings with HHSC personnel or any other agency of the State of Texas. Frinzi was never authorized to be involved in any of 21CT's work with HHSC or any HHSC personnel. Despite never having been involved with any of 21CT's business with the State of Texas, HHSC, Frinzi apparently claims that he has knowledge of 21CT's business with HHSC and has falsely claimed that 21CT had planned to hire Jack Stick, who served as Deputy Inspector General of HHSC-OIG and later as Chief Counsel of HHSC.

12) Frinzi's statements are absolutely and categorically false. At no time has 21CT ever had any communications with Mr. Stick regarding any future employment. 21CT has never had any communications with Frinzi regarding any potential employment of Mr. Stick or anyone else at HHSC. Frinzi's false statements to the press contributed to the cancellation of 21CT's contract expansion with HHSC, which has resulted in millions of dollars in damages to 21CT.

CAUSES OF ACTION

13) **Business Disparagement.** Frinzi has made false, disparaging statements regarding 21CT. These statements have been made with knowledge that they are false, with reckless disregard for the truth or falsity thereof, with ill will, or with intent to harm 21CT's economic interest. Furthermore, Frinzi registered himself as a lobbyist for 21CT in Texas without 21CT's authorization, knowledge or consent. Frinzi intentionally misrepresented payments made by 21CT to Frinzi. Frinzi's actions created an inaccurate and harmful appearance about 21CT's lobbying efforts in Texas, which contributed to the cancellation of the contract expansion with HHSC. These statements have caused special damage to 21CT of up to \$90 million. 21CT requests the Court to enter judgment against Frinzi for business disparagement.

14) **Breach of Fiduciary Duty.** Frinzi undertook to act as 21CT's agent, representing 21CT with regard to governmental relations in Oklahoma, which agency relationship imposes a fiduciary duty on Frinzi to place the interests of 21CT ahead of his own. Frinzi has made false statements about 21CT in breach of his fiduciary duty resulting in damages of up to \$90 million. 21CT requests the Court to enter judgment against Frinzi for breach of fiduciary duty.

15) **Indemnity.** Frinzi expressly contracted to provide defense, indemnity, and attorney's fees for 21CT for any claims, damages, losses, or suits resulting from the negligent, grossly negligent or intentional acts of Frinzi. As a result of the negligent, grossly negligent or intentional acts of Frinzi, 21CT has incurred damages of up to \$90 million and has been forced to retain attorneys with regard to multiple legal proceedings. 21CT requests the Court to enter judgment against Frinzi for damages, defense costs, and attorney's fees resulting from Frinzi's actions.

16) **Jury Demand.** 21CT hereby submits its request for jury trial in this matter.

17) **Relief Requested.** 21CT requests judgment awarding the following relief:

- a. Compensatory damages
- b. Punitive or exemplary damages
- c. Prejudgment and post judgment interest
- d. Attorney's fees for this claim
- e. Attorney's fees and expenses for all claims or suits resulting from the actions of Frinzi.
- f. Costs of court.

WHEREFORE premises considered, 21CT requests the James Frinzi be cited to appear and answer and that the Court grant 21CT judgment for all relief requested herein as well as all such further relief to which 21CT shows itself justly entitled at law and in equity.

Respectfully Submitted,



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