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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

PROPERTY SOLUTIONS INTERNATIONAL, INC., a Delaware corporation,

Plaintiff,

vs.

YARDI SYSTEMS, INC., a California corporation,

Defendant.

DEFENDANT'S MOTION TO DISMISS & MEMORANDUM IN SUPPORT

Civil Action No. 2:15-cv-00102-CW-PMW

Judge Clark Waddoups

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MOTION

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant Yardi Systems, Inc. ("Yardi"), hereby moves for dismissal of the Fifth, Sixth, and Seventh Claims of Plaintiff Entrata, Inc.'s ("Entrata")[1] First Amended Complaint (D.I. 55) (hereinafter, Entrata's "Third Complaint").[2] These claims, styled as violations of the Sherman Antitrust Act and the Clayton Antitrust Act, all fail because they are not supported by allegations of non-conclusory facts sufficient to make them plausible under the pleading standard established in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-57 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662, 667-80 (2009)[3] and rigorously applied in this circuit.[4] "[V]ague and conclusory allegation[s] [also] do[] not sufficiently allege anticompetitive effect." *Vincent v. Utah Plastic Surgery Soc.*, 621 F. App'x 546, 548 (10th Cir. 2015). "'[A] plaintiff's obligation to provide the grounds of [its] entitlement to relief requires more than labels and conclusions.'" *Id.* at 550 (citation omitted).

Indeed, Entrata's federal antitrust claims of monopolization, attempted monopolization, monopoly leveraging, and tying fundamentally and primarily suffer from a failure to allege non-

[1] Entrata was formerly known as Property Solutions International, Inc. ("PSI"), the name under which this lawsuit was filed.

[2] Because this complaint is actually Entrata's third attempt to draft a pleading properly alleging its antitrust claims, we will, for clarity and simplicity, refer to it as the "Third Complaint."

[3] The Supreme Court in *Iqbal* stated that "[a] claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." 556 U.S. at 678. Previously, in an antitrust setting involving summary judgment, the Court held that "if the factual context renders [the plaintiffs'] claim implausible—if the claim is one that simply makes no economic sense—[the plaintiffs] must come forward with more persuasive evidence to support their claim than would otherwise be necessary." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

[4] Interpreting *Twombly*, this circuit has held that "'plausibility' . . . refer[s] to the scope of the allegations in a complaint: if they are so general that they encompass a wide swath of conduct, much of it innocent, then the plaintiffs 'have not nudged their claims across the line from conceivable to plausible.' The allegations must be enough that, if assumed to be true, the plaintiff plausibly (not just speculatively) has a claim for relief." *Robbins v. Oklahoma*, 519 F.3d 1242, 1247 (10th Cir. 2008) (citations omitted).

conclusory facts plausibly demonstrating harm to competition, rather than mere harm to Entrata or other competitors. It has long been the rule in the federal courts that:

> The purpose of the [Sherman] Act is not to protect businesses from the working of the market; it is to protect the public from the failure of the market. The law directs itself not against conduct which is competitive, even severely so, but against conduct which unfairly tends to destroy competition itself. It does so not out of solicitude for private concerns but out of concern for the public interest.

Spectrum Sports, Inc. v. McQuillan, 506 U.S. 447, 458 (1993) (citations omitted); *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 488 (1977) (The antitrust laws "were enacted for the protection of *competition* not *competitors*.") (emphasis in original) (citation and internal quotation marks omitted). "Because protecting competition is the *sine qua non* of the antitrust laws, a complaint alleging only adverse effects suffered by an individual competitor cannot establish an antitrust injury."[5] *Care Heating & Cooling, Inc. v. Am. Standard, Inc.*, 427 F.3d 1008, 1014-15 (6th Cir. 2005) (citation omitted).

Entrata also fails to plead non-conclusory facts making plausible a dangerous probability of Yardi's successfully monopolizing an Integration Product Market, which is an essential element of both Entrata's claim of attempted monopolization of that market and its monopoly leveraging claim. Entrata further fails to plead non-conclusory facts making plausible an unlawful tying arrangement.

Without the requisite well-pleaded facts, Entrata's claims reveal themselves as nothing more than single-damage commercial tort claims masquerading as treble-damage antitrust claims. In attempting thus to dress up those claims, Entrata hopes to expose Yardi to: (1) the

[5] "Antitrust Injury" is a unique requirement in antitrust law relating to, but different from, the pleading requirements of *Twombly* and its progeny. As the Supreme Court first held in *Brunswick*, an antitrust plaintiff must allege that it suffered injury that itself flows from the injury to competition. Injury to a plaintiff that is not connected to an injury to competition is insufficient to state or establish an antitrust claim. *Brunswick, supra*, 429 U.S. at 488-89; *see generally* ABA Section of Antitrust Law, *Antitrust Law Developments* 758-64 (7th ed. 2012).

significant burden and expense of defending complex antitrust claims, and (2) the treble damages and attorneys' fees potentially associated with those claims. Indeed, it was in material part the enormous burden of antitrust discovery that led the Supreme Court in *Twombly* to require plaintiffs to plead facts making their claim plausible, rather than merely possible, in order to survive a motion to dismiss. *See Twombly*, 550 U.S. at 555-57, 558.

Taking the *Twombly* standard and all of the infirmities of Entrata's antitrust allegations appropriately into account, Yardi respectfully requests that the Court dismiss with prejudice Entrata's Fifth, Sixth, and Seventh Claims of its Third Complaint for failure to state a claim upon which relief can be granted.

PROCEDURAL BACKGROUND

On October 21, 2013, Yardi sued Entrata in the United States District Court for the Central District of California, alleging that Entrata had infringed Yardi's copyrights, stolen its trade secrets and interfered with its contractual relations. Entrata filed its First Complaint in this suit on February 12, 2015, during – and Yardi suspects in response to – that litigation. (Compl. (D.I. 2).) That First Complaint included eight claims: (1) injurious falsehoods; (2) false advertising; (3) deceptive trade practices; (4) tortious interference with existing and potential economic relations; (5) monopolization and attempted monopolization of the Accounting Product Market; (6) monopoly leveraging and attempted monopolization of the Integration Product Market; (7) unlawful tying; and (8) third-party-beneficiary breach of contract.

Yardi answered the First Complaint, and then moved on April 30, 2015, for partial judgment on the pleadings with respect to Entrata's antitrust claims. (Answer (D.I. 26); Def.'s Mot. & Mem. for Partial Judgment on the Pleadings ("Rule 12(c) Motion" (D.I. 33)).) In its memorandum supporting the Rule 12(c) Motion, Yardi argued that Entrata had failed properly or plausibly to allege the harm to competition required to assert an antitrust claim. Rather, Yardi

noted that Entrata had alleged "nothing more than harm to [Entrata] itself" in the context of a business dispute between Yardi and Entrata. (Rule 12(c) Motion 2.) Instead of opposing Yardi's Rule 12(c) Motion, Entrata moved to amend its Complaint. Entrata attached its proposed amended complaint (Entrata's "Second Complaint") to that motion pursuant to District of Utah Civil Rule 15-1. (Pl.'s Mot. for Leave to File First Am. Compl. (D.I. 36) iv.)

Yardi opposed the motion to amend, arguing that among other things, Entrata's proposed amendments were futile because they failed to address the deficiencies that Yardi had highlighted in its Rule 12(c) Motion. (Def.'s Opp. to Pl.'s Mot. for Leave to File First Am. Compl. (D.I. 47).)

On November 24, 2015, after a stay of the case to accommodate settlement discussions (Order (D.I. 49)), Entrata filed Plaintiff's Reply to Defendant's Opposition to Plaintiff's Motion for Leave to File First Amended Complaint. (D.I. 52.)

On April 7, 2016, Magistrate Judge Paul Warner granted Entrata's Motion for Leave and ordered Entrata to file its amended complaint within ten days. (Memorandum Decision and Order (D.I. 54).) Notably, in his Memorandum Decision, Judge Warner took care not to decide the merits of Yardi's futility arguments. Rather, he stated that Yardi's arguments were "more properly raised in a motion to dismiss," and further remarked that "Plaintiff's challenged causes of action may eventually fail as a matter of law." (*Id.*) Judge Warner's ruling was instead grounded on his view that the proposed amendment would not prejudice Yardi due to the "infancy" of the case. (*Id.* (citation and internal quotation marks omitted).)

On April 18, 2016, Entrata filed its Third Complaint, styled as its "First Amended Complaint." Although both the 2015 and the 2014 versions of District of Utah Civil Rule 15-1 (cited by Entrata on page iv of its Motion for Leave) direct that an "amended complaint filed

must be the same complaint proffered to the court, unless the court has ordered otherwise," Entrata's Third Complaint contains multiple changes from the Second Complaint that had been attached to its motion to amend. (*See, e.g.*, First Am. Compl. ¶¶ 83-87.)

STATEMENT OF FACTS AND FACTUAL ALLEGATIONS

I. ALLEGATIONS REGARDING PRODUCTS AND PRODUCT MARKETS AT ISSUE

1. Both parties involved in this action are software and technology companies producing "various competing property management software products. Property management software—depending upon its features—generally allows owners and managers of multiple rental and lease units to better manage their rental properties by offering functionality to perform accounting and management tasks, including, but not limited to, accounting and revenue management, marketing available units, processing rental applications, organizing and storing resident information, receiving and responding to maintenance requests from residents, managing utility usage and costs, and processing rent payments." (*Id.* ¶ 6.)

2. Yardi produces "core accounting database software," or "Accounting Products," "for use by the multi-family housing industry in the United States." (*Id.* ¶¶ 18, 96.) Its flagship property management system is Yardi Voyager. Yardi also sells other Accounting Products such as Yardi Genesis and Yardi Enterprise. (*See id.* ¶ 18.) Entrata's Accounting Product is called Entrata Core. (*Id.* ¶ 14.)

3. Accounting Products "provide unique, specialized functionality and tools required by property management customers with significant data volumes and complex needs that arise from managing properties with a large number of units (1,000 and over)." (*Id.* ¶ 98.)

4. Yardi competes with a number of other providers of Accounting Products in what Entrata alleges is an "Accounting Product Market." (*Id.* ¶¶ 98, 100.) Entrata defines the

Accounting Product Market as "core property management accounting software products (such as Yardi Voyager) used in the multi-family housing industry in the United States by 'enterprise'-sized property management companies, which typically manage at least 1,000 units . . . ." (*Id.* ¶ 96.)

5. Entrata's Third Complaint identifies Voyager's share of the Accounting Product Market as "greater than" or "at least" 60%. (*Id.* ¶¶ 24, 100.)

6. Yardi's competitor Real Page allegedly has a share of approximately 26% of the Accounting Product Market, followed by MRI with about 9%, and then AMSI, Entrata and others splitting about 6% among them. (*Id.* ¶ 100.)

7. Yardi and other companies also provide a variety of software modules that work in conjunction with Accounting Products by "accessing data and information maintained in a Core Accounting Product." (*Id.* ¶ 103.) Entrata refers to these products as "Integration Products" and calls its own Integration Products "Point Solution Products." (*Id.* ¶¶ 10, 96.)

8. Integration Products are capable of interfacing with Yardi's Voyager either through custom interfaces designed by the Integration Product vendor or through a standard interface provided by Yardi. (*See id.* ¶ 30.)

9. Entrata defines an Integration Product Market as "'plug-in' or portal special purpose software products (such as Entrata's Point Solution Products) that integrate or interface with the Core Accounting Products . . . in the United States." (*Id.* ¶ 96.)

10. According to Entrata, Yardi's share of the alleged "Integration Product Market" is approximately 10%, and Entrata acknowledges that Yardi is not dominant in this market. (*Id.* ¶ 106.)

11. Entrata does not state its own share of the alleged Integration Product Market, but the Third Complaint includes a non-exhaustive list of nine other companies that compete in that market with both Entrata and Yardi. (*See id.* ¶ 7.)

12. In its First Complaint, Entrata alleged that, in 2015, some of these competitors reached out to offer their services to Entrata's customers in response to rumors that Entrata would not be providing Integration Products to Yardi. (Compl. ¶ 57.) Entrata has since deleted that allegation in both its Second Complaint and its now-filed Third Complaint.

13. Entrata claims that it "has successfully integrated [its] Point Solution Products with the core accounting and property management databases of several other software vendors in the industry" besides Yardi. (First Am. Compl. ¶ 16.)

II. ALLEGATIONS UNDERLYING ENTRATA'S CLAIMS

A. Allegations underlying the claim of monopolization and attempted monopolization of the Accounting Product Market

14. Entrata alleges that Yardi has monopolized or attempted to monopolize the Accounting Product Market by disseminating false information intended to "damage Entrata [sic] reputation in the market." (*Id.* ¶ 141.) The allegedly false statements also form the basis for Entrata's claim of injurious falsehoods, false advertising, violations of Utah's Truth in Advertising Act, and tortious interference. (*Id.* ¶¶ 109-135.)

15. Entrata additionally accuses Yardi of "forcing its mutual customers into intentionally anticompetitive agreements through coercion." (*Id.* ¶ 141.)

16. Entrata further alleges that Yardi "impair[ed] the functionality of Entrata's Integration Products." (*Id.* ¶ 139.) Slightly more specifically, Entrata alleges that Yardi has impaired the functionality of its Integration Products' custom interfaces with Voyager. (*See, e.g., id.* ¶¶ 57-58, 60-63, 68-72, 74-77, 83-84.)

17. Finally, Entrata alleges that Yardi will "discontinue the use of all custom integrations [with Voyager] for *all* participants in the market." (*Id.* ¶ 140) (emphasis in original). To that end, Entrata alleges that, in November 2015, Yardi announced its intention to "no longer host . . . custom Third Party Application(s)." (*Id.* ¶ 85.)

18. Entrata also alleges "[o]n information and belief" that Yardi will discontinue allowing other third-party vendors to participate in Yardi's Standard Interface Program. (*Id.* ¶ 87.)

B. Allegations underlying the claim of monopoly leveraging and attempted monopolization of the Integration Product Market

19. Entrata alleges four courses of conduct to support its claims of monopoly leveraging and attempted monopolization of an Integration Product Market. First, Entrata alleges that Yardi is moving its Voyager clients to a "SaaS" (*i.e.*, Software as a Service) model. (*Id.* ¶ 147.)

20. SaaS products are cloud-based products. (*See id.* ¶ 64.)

21. Entrata also uses a "cloud-based approach," which it claims "dramatically lower[s] [customers'] information technology costs." (*Id.* ¶ 17.)

22. Second, Entrata argues that Yardi's alleged spreading of false information supports its claim of attempted monopolization of an Integration Product Market. (*Id.* ¶149.)

23. Third, Entrata accuses Yardi of "coercing" customers to purchase Yardi's products. (*Id.*)

24. Finally, Entrata accuses Yardi of "interfering with the performance of competitive products." (*Id.*) Specifically, Entrata alleges that:

a. Yardi ceased to allow all Integration Product providers to use a custom interface to connect to Voyager (*id.* ¶¶ 47, 85);

b. Yardi announced in 2012 that it would begin charging vendors for the use of its standard interface (*id.* ¶ 49);

c. Yardi has impaired and delayed aspects of Entrata's interface with Voyager (*see, e.g.*, *id.* ¶¶ 57-58 (specific file from integration utility rendered inaccessible), ¶ 60 (same), ¶¶ 68-69 (general functionality issues), ¶¶ 70-72 ("change management form" required to upgrade custom integration), ¶¶ 74-84 (disputes over forms and information required to install or upgrade Entrata custom integrations); and

d. Yardi's Vice President and General Counsel notified Entrata's Chief Legal Counsel that Yardi "has no plans to allow Entrata to join the Yardi Standard Interface Program" (*id.* ¶ 86).

25. Entrata also alleges "on information and belief" that Yardi will discontinue hosting custom third-party Integration Products owned by other companies after August 31, 2018, and will bar other Integration Products vendors from participating in its Standard Interface Program. (*Id.* ¶ 87.)

C. Allegations underlying the tying claim

26. Entrata alleges that Yardi "seeks to coerce purchasers of its Voyager product to also purchase its Plug-In [Integration] Products, rather than the [I]ntegration [P]roducts of Yardi's competitors (such as Entrata's Point Solution Products) by":

a. "refusing to certify or allow the use of Integration Products";

b. "refusing to install Entrata Integration Products";

c. "discontinuing the allowance of Entrata Integration Products"; and

d. "causing and coercing customers in the Accounting Products Market to purchase Yardi Integration Products or abstain from purchasing Integration Products from any other provider." (*Id.* ¶ 155.)

Entrata also claims that Yardi offers its Integration Products for free "in head-to-head deals against Entrata's Point Solution Products." (*Id*. ¶ 157.) Entrata does not allege that Yardi, in such situations, raises the price of its Accounting Product to offset any loss of revenue incurred by offering the Integration Products for free. Entrata also does not allege that Yardi requires its Voyager customers to purchase any Integration Product.

ARGUMENT

Entrata's third attempt to fashion viable federal antitrust claims does not remedy the pleading infirmities already brought to its and the Court's attention (*see* Rule 12(c) Motion & Def.'s Opp. to Pl.'s Mot. for Leave to File First Am. Compl.), and it also does not state a claim for antitrust injury. Specifically, Entrata's Fifth, Sixth and Seventh Claims remain unsupported by non-conclusory facts sufficient to make it logical or plausible that Yardi's alleged conduct harmed competition in any purported relevant market or that Entrata was itself injured as a result of conduct that injured competition.

To withstand a motion to dismiss for failure to state a claim, a plaintiff must plead non-conclusory facts sufficient to "allow[] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). The factual details provided to support a claim must be great enough to push the claim past the "line between possibility and plausibility." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007). Although the court must accept as true "all well-pleaded factual allegations, as distinguished from conclusory allegations," viewing those allegations "in the light most favorable to the plaintiff," *Mglej v. Garfield Cty.*, No. 2:13-cv-713, 2014 WL 2967605, at *1 (D. Utah July 1, 2014) (Waddoups, J.) (unpublished), "[t]hreadbare recitals of the elements of a cause of action[] supported by mere conclusory statements," or "legal conclusion[s] couched as . . . factual allegation[s]," need not be accepted as true for the purposes of this motion, *Ashcroft*, 556 U.S. at 678 (citation and internal quotation marks omitted). Indeed, "solely conclusory statements must be disregarded." *Philips Elecs. N. Am. Corp. v. BC Tech., Inc.*, No. 2:08-cv-639, 2009 WL 2381333, at *1 (D. Utah Aug. 3, 2009) (Waddoups, J.) (unpublished). In addition, and of particular relevance to this case, "[t]he use of antitrust buzz words does not supply the factual circumstances necessary to support . . . conclusory allegations." *Tal v. Hogan*,

453 F.3d 1244, 1261 (10th Cir. 2006) (modification in original) (citation and internal quotation marks omitted).

I. ENTRATA FAILS TO PLEAD NON-CONCLUSORY FACTS MAKING PLAUSIBLE THE ALLEGATIONS OF HARM TO COMPETITION NECESSARY FOR ITS MONOPOLIZATION CLAIM.

Entrata's claim that Yardi monopolized an Accounting Product Market fails as a matter of law because even Entrata's well-pleaded factual allegations do not plausibly support a claim of harm to competition in an Accounting Product Market.

To state a claim for monopolization of a particular market, Entrata must plead non-conclusory facts making plausible that Yardi willfully acquired or maintained monopoly power in that market by engaging in anticompetitive conduct. *See Novell, Inc. v. Microsoft Corp.*, 731 F.3d 1064, 1070 (10th Cir. 2013) ("[T]he plaintiff must show that the defendant achieved or maintained . . . market power through the use of anticompetitive conduct.") (citing *Verizon Commc'ns Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398 (2004)), *cert. denied*, 134 S. Ct. 1947 (2014). "In this lexicon, a practice ultimately judged anticompetitive is one which harms competition, not a particular competitor." *SCFC ILC, Inc. v. Visa USA, Inc.*, 36 F.3d 958, 963 (10th Cir. 1994) (citation omitted).

In furtherance of its monopolization claim, Entrata alleges that Yardi committed the following anticompetitive acts: (i) "disseminating false statements intended to damage Entrata [sic] reputation in the market"; (ii) "impair[ing] the functionality of Entrata's Integration Products"; (iii) "forcing its mutual [*i.e.*, joint Yardi and Entrata] customers into intentionally anticompetitive agreements through coercion"; and (iv) "discontinu[ing] the use of all custom integrations [with Voyager] for *all* participants in the market" (First Am. Compl. ¶¶ 139-141 (emphasis in original)). However, none of these allegedly anticompetitive acts, even if accepted as true, could plausibly harm competition in an Accounting Product Market.

With respect to the alleged false statements, Entrata claims that Yardi disseminated the following messages to mutual customers: (i) Entrata's Point Solution Products "could not functionally integrate" with Yardi's Voyager (*id.* ¶ 43); (ii) Entrata engaged in "SQL Injection" while integrating with Voyager (*id.*); and (iii) Entrata's Integration Products created security issues for customers' data (*id.* ¶ 48, 62-64). Even accepting these alleged facts as true, the statements do not plausibly support the notion that Yardi caused harm to competition in an Accounting Product Market, or even that Yardi affected Entrata's participation in that market.

On their face, the alleged statements relate only to issues attending the specific interaction of Entrata's Integration Products with Voyager. The statements do not relate to the functionality of Entrata's Integration Products with respect to any other Accounting Product, nor do they relate to Entrata's Accounting Products generally. Entrata also does not advance facts plausibly leading to the conclusion that Yardi's statements about Entrata's Integration Products impacted Entrata's ability to participate in an Accounting Product Market. Entrata further does not allege facts plausibly leading to the conclusion that Yardi's comments would impair ***other*** competitors' ability to compete in an Accounting Product Market (as would be required to state a claim for monopolization of that market). Indeed, Entrata's Third Complaint acknowledges that there are "a number of other companies" that develop and sell Accounting Products. (*See id.* ¶ 100.)

Entrata's conclusory claim that Yardi willfully acquired or maintained its alleged monopoly in an Accounting Product Market by "impair[ing] the functionality of Entrata's Integration Products" is similarly flawed. As an initial matter, Entrata does not plead non-conclusory facts sufficient to make it plausible that Yardi's hindering Entrata's Integration Products' ability to interface with Voyager affected even Entrata's ability to sell its own

Accounting Product. Nor does Entrata allege that any other producer of Accounting Products was affected by Yardi's alleged conduct, precluding a plausible allegation of harm to competition in that market as a result of that conduct.

Also inadequate is Entrata's claim that Yardi acquired or maintained a monopoly by "forcing [Entrata's and Yardi's] mutual customers into intentionally anticompetitive agreements through coercion." (*Id.* ¶ 141.) The allegation is wholly conclusory and should be disregarded in its entirety; Entrata has neither pointed to any specific agreements in support of its claim nor pleaded facts sufficient to make plausible that customers were coerced into signing such agreements. Labeling an agreement "anticompetitive" and claiming that it was "coerced" (*i.e.*, using "buzz words"), without pleading sufficient supporting facts, cannot sustain a monopolization claim.

Finally, Entrata claims that Yardi will acquire or maintain a monopoly in the alleged Accounting Product Market by "discontinu[ing] the use of all custom integrations [with Voyager] for *all* participants in the [Integration Products] market." But Entrata never explains how Yardi's purported conduct with respect to its competitors in an Integration Product Market will harm competition in the Accounting Product Market. Ostensibly to make a connection between the two distinct harms, Entrata alleges that Yardi is seeking to "impair the functionality of Entrata's Integration Products" because Entrata "offers a unique competitive threat" to Yardi in the Accounting Product Market due to the "widespread market acceptance of Entrata's Integration Products." (*Id.* ¶ 139.) This "widespread market acceptance" allegedly allows Entrata "to offer customers a more seamless and risk-free transition away from Yardi['s Accounting Products]." (*Id.*) But even if these allegations are accepted as true, they do not actually address how Yardi's conduct with respect to Entrata's Integration Products caused

any harm either to Entrata's Accounting Products or to competition generally in an Accounting Product Market. In fact, given Entrata's allegation that it "offers a *unique* competitive threat" to Yardi (*id*. (emphasis added)), even assuming that Yardi's alleged efforts to damage Entrata's products in an Integration Product Market could somehow harm Entrata's competitiveness in an Accounting Product Market, Entrata still cannot plausibly claim that similar harm to other Integration Product suppliers will impact either those suppliers' participation in an Accounting Product Market or the competitiveness of an Accounting Product Market as a whole. Entrata's Third Complaint further belies the plausibility of equating harm to the competitiveness of its Accounting Product with harm to competition in an Accounting Product Market because Entrata explicitly acknowledges the presence of a number of other companies that compete with Yardi, some of which hold a substantially greater share of that market than itself (*e.g.*, Real Page (26%) and MRI (9%)). (*Id.* ¶ 100.)

Entrata does make another factual allegation of harm, which is altogether new to its Third Complaint. The allegation is untethered to any specific claim, but as it is similar in nature to the immediately preceding allegation, it is addressed in this context. The allegation reads as follows:

> On information and belief, Yardi will also discontinue hosting custom third-party applications owned and created by companies other than Entrata after August 31, 2018, and other third-party vendors are also being barred from joining Yardi's Standard Interface Program.

(*Id.* ¶ 87.) In other words, where in its First and Second Complaints Entrata only alleged that Yardi would not allow third-party vendors of Integration Products to link to Voyager *using a custom interface*, Entrata now claims that Yardi also will not allow third-party vendors to link to Voyager *using Yardi's standard interface*. This new allegation cannot save Entrata's monopolization claim. The only apparent basis for this new allegation, save for Entrata's statement of "information and belief," is a selectively excerpted letter that in fact demonstrates

the very opposite proposition: that Yardi's competitors in the alleged Integration Product Market *may* continue to use Yardi's standard interface. (*Compare* First Am. Compl. ¶ 87 *with* Letter from Arnold Brier, Vice President, General Counsel, Yardi Systems, Inc. (Nov. 18, 2015), *infra* and appended as Exhibit A.) In addition, Entrata should not be permitted to plead its allegation "on information and belief" in order to manufacture a non-conclusory allegation, particularly when the underlying facts are not uniquely within Yardi's knowledge and are directly contradicted by the letter upon which Entrata has apparently formed its belief.

In paragraphs 85 through 87 of its Third Complaint, Entrata strongly implies[6] a connection between a letter written by Yardi to its custom interface customers in November 2015 and Entrata's "belief" that Yardi will bar third-party vendors from joining Yardi's Standard Interface Program. (First Am. Compl. ¶¶ 85-87.) For ease of reference, paragraphs 85 through 87 are re-printed in their entirety here:

> 85. In November 2015, Yardi sent another letter to its customers, notifying them that after August 31, 2018, Yardi would "no longer host, with respect to multifamily portfolios the custom Third Party Application(s) described in [client] Agreement[s]." The letter also stated that Yardi "work[s] closely with many exceptional vendors that use [Yardi's] standard interface rather than a custom interface" and that clients "may choose one of these vendors or a solution that does not require a custom interface" prior to August 31 2018.
>
> 86. On December 1, 2015, Mr. Brier emailed Mr. Hunsaker, notifying him that Yardi has no plans to allow Entrata to join the Yardi Standard Interface Program.
>
> 87. On information and belief, Yardi will also discontinue hosting custom third-party applications owned and created by companies other than Entrata after August 31, 2018, and other third-party vendors are also being barred from joining Yardi's Standard Interface Program.

[6] Yardi notes that the connection is not explicit, further buttressing its view that there are *no* facts pled that plausibly support Entrata's allegations of harm to competition.

Entrata draws the connection between the allegations in paragraph 87 and the November 2015 letter in two ways. ***First,*** Entrata uses the date of August 31, 2018, in both paragraphs, suggesting that such use is not coincidental. But ***second,*** and more subtly, Entrata's selective quotation from the November 15 letter indicates or suggests that August 31, 2018, constitutes a "cut-off date" for third-party Integration Product vendors that use a standard interface.

Below is the full text of the form letter that Yardi sent to all custom interface customers in November 2015, as referenced by Entrata in paragraph 85 of its Third Complaint.[7] The letter is also appended as Exhibit A.

> Dear [customer]:
>
> Pursuant to terms of your Agreement with Yardi, as may be amended, we are writing to notify you that **after August 31, 2018**, Yardi will no longer host, with respect to multifamily portfolios, the custom Third Party Application(s) described in your Agreement.
>
> Between now and August 31, 2018, Yardi will continue to host and update your custom Third Party Application(s), subject to Yardi's standard terms, conditions, policies and procedures.
>
> This decision was not taken lightly, but hosting certain third-party software in the Yardi Cloud is simply not sustainable. For example:
>
> • Yardi's planned encryption of selected sensitive data in Voyager 7S databases is not compatible with custom interface applications;
>
> • Certain custom interface applications are known to cause errors, data corruption and other serious issues, such as out-of-balance conditions in the general ledger; and
>
> • Hosted third-party software that accesses the data in your Voyager database can present serious potential risks unless thoroughly tested and validated, which Yardi cannot reasonably ensure or control.
>
> We work closely with many exceptional third-party vendors that use our standard interface rather than a custom interface. You may choose one of these vendors or a

[7] The Court is permitted to take notice of the full contents of a document referenced in a complaint from which truncated quotations in the complaint were drawn. *See Twombly*, 550 U.S. at 568 n.13.

> solution that does not require a custom interface, but it is important to complete the transition by August 31, 2018. Whatever choice you make, we will continue to provide you with the same high level of customer service and support that you have always received from us.
>
> Please feel free to contact us with any questions you may have.
>
> Very truly yours,
>
> Arnold Brier
> Vice President, General Counsel

Upon taking notice of the full text above, the Court can readily see that there is only one credible interpretation of this letter with respect to the standard interface, and that is that customers will have the option to continue using third-party Integration Products that interact with Voyager through a standard interface.

Entrata tries to put forward a different and wholly implausible interpretation by characterizing the letter as stating that "clients 'may choose one of these vendors or a solution that does not require a custom interface' ***prior to*** August 31 2018." (First Am. Compl. ¶ 85) (emphasis added). In this way, Entrata attempts to treat the August 31 date as a deadline for the cut-off of the standard interface. However, the letter actually states that "[Customers] may choose one of these vendors [using a standard interface] or a solution that does not require a custom interface, but it is important to complete the transition ***by*** August 31, 2018." (emphasis added). Thus, it is *implausible* that Yardi would allow a customer to complete a "transition" to a standard interface vendor ***by*** August 31, 2018, and then cut off that vendor's access to the standard portal on the very same (or next) day.

Furthermore, Entrata has alleged no other factual support for the notion that "other third-party [Integration Product] vendors are also being barred from joining Yardi's Standard Interface Program." While *Twombly* "does not prevent a plaintiff from 'pleading facts alleged "upon

information and belief,"'" *Arista Records, LLC v. Doe 3*, 604 F.3d 110, 120 (2d Cir. 2010), the mere addition of this language cannot transform a demonstrably implausible conclusory statement into a non-conclusory factual allegation capable of plausibly supporting a claim of harm to competition. *Cf. Berkowitz v. Metwest Inc.*, No. 10-cv-02291-REB-CBS, 2010 WL 5395777, at *3 n.6 (D. Colo. Dec. 23, 2010) (unpublished) ("Plaintiff asserts this allegation 'on information and belief.' In light of *Twombly* as interpreted in this circuit, however, this type of allegation still must be buttressed by sufficient factual detail to suggest that a plausible claim exists. The amended complaint lacks such supporting facts, and therefore is deficient."). A plaintiff also cannot plead facts "on information and belief" when "the matter is within the personal knowledge of the pleader or 'presumptively' within his knowledge, unless he rebuts that presumption." *Nielsen v. Van Leuven*, No. 3:15-CV-1154 (MPS), 2016 WL 1664737, at *2 (D. Conn. Apr. 26, 2016) (unpublished) (further stating that "matters of public record or matters generally known in the community should not be alleged on information and belief inasmuch as everyone is held to be conversant with them.") (citation and internal quotation marks omitted); *cf. Installed Bldg. Prods., LLC v. Cottrell*, No. 13-CV-1112-A(Sc), 2014 WL 3729369, at *4 (W.D.N.Y. July 25, 2014) (unpublished) (opining that the instant was "not a case where 'the facts are peculiarly within the possession and control of the defendant'" and that "[t]he Plaintiff ha[d] identified no barrier that would prevent it from simply asking the customers or employees it allege[d] Cottrell ha[d] solicited whether Cottrell *ha*[*d*], in fact, solicited them.") (emphasis in original) (citation omitted). Here, the letter on which Entrata apparently bases its "belief" must be accessible to Entrata because Entrata quotes from it (*see* First Am. Compl. ¶ 85). Thus, Entrata's attempt to strengthen its antitrust claim with an implausible theory of competitive harm

cannot be credited by this Court just because Entrata pleaded the allegation on "information and belief."

In sum, Entrata's monopolization claim must be dismissed because Entrata has not alleged non-conclusory facts plausibly supporting its assertions that Yardi has engaged in anticompetitive conduct affecting an Accounting Product Market.

II. ENTRATA FAILS TO PLEAD NON-CONCLUSORY FACTS MAKING PLAUSIBLE THE REQUISITE ELEMENTS OF ATTEMPTED MONOPOLIZATION.

Although Entrata claims that Yardi attempted to monopolize both alleged Accounting and Integration Product Markets, Entrata still fails to plead non-conclusory facts that make plausible the required elements of those claims. "To successfully plead an attempted monopolization claim, a plaintiff must show: (1) relevant geographic and product markets; (2) specific intent to monopolize; (3) anticompetitive conduct in furtherance of an attempt to monopolize; and (4) a dangerous probability of success." *Philips Electronics N. Am. Corp.*, 2009 WL 2381333, at *1 (internal quotation marks omitted) (quoting *TV Commc'ns Network v. Turner Network Television*, 964 F.2d 1022, 1025 (10th Cir. 1992)). In its Third Complaint, Entrata fails to plead non-conclusory facts making plausible its allegations of anticompetitive conduct in an Accounting Product Market and thus also fails to show a specific intent to monopolize. Entrata also fails to plead non-conclusory facts making plausible its allegations of anticompetitive conduct in an Integration Product Market and further fails to plead non-conclusory facts making plausible a dangerous probability of Yardi's successfully monopolizing that market.

A. Entrata fails to plead non-conclusory facts making plausible its allegations of anticompetitive conduct affecting an Accounting Product Market or specific intent to monopolize that market.

The infirmities that plague Entrata's monopolization claim are the same infirmities that doom its claim that Yardi attempted to monopolize an Accounting Product Market. Specifically, and as discussed above, Entrata fails to plead non-conclusory facts making plausible its allegations of anticompetitive conduct affecting an Accounting Product Market. Without anticompetitive conduct in a relevant market, there can be no dangerous probability of success in monopolizing that market. *Multistate Legal Studies, Inc. v. Harcourt Brace Jovanovich Legal & Prof'l Publ'ns, Inc.*, 63 F.3d 1540, 1554 (10th Cir. 1995).

To adequately state a claim for attempted monopolization, Entrata must also plead non-conclusory facts that make plausible the allegation that Yardi had the "specific intent to destroy *competition* or build monopoly." *Times–Picayune Publ'g Co. v. United States*, 345 U.S. 594, 626 (1953) (emphasis added). This it does not do. Intent to "undo," "hurt," or even "destroy" a competitor to promote a company's own position, by itself, is not actionable. *Novell*, 731 F.3d at 1078. As the Tenth Circuit has aptly stated, "[w]ere intent to harm a competitor alone the marker of antitrust liability, the law would risk retarding consumer welfare by deterring vigorous competition." *Id.* Nor is there any basis to infer specific intent to monopolize the Accounting Product Market in the absence of anticompetitive conduct. *See Digital Sun v. The Toro Co.*, No. 10-CV-4567-LHK, 2011 WL 1044502, at *5 (N.D. Cal. Mar. 22, 2011) (unpublished) ("The allegation of specific intent . . . is conclusory in the absence of anticompetitive conduct from which such specific intent may be inferred.") (internal quotation marks omitted) (quoting *Rutman Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 735-36 (9th Cir. 1987)).

For these reasons, Entrata's claim that Yardi attempted to monopolize an Accounting Product Market must be dismissed.

B. Entrata fails to plead non-conclusory facts making plausible its allegations of anticompetitive conduct affecting an Integration Product Market or a dangerous probability of monopolizing that market.

1. Entrata fails to plead non-conclusory facts making plausible its allegations of anticompetitive conduct affecting an Integration Product Market.

In its Third Complaint, Entrata alleges that Yardi is engaging in the following anticompetitive conduct affecting the Integration Product Market: (i) requiring its new Accounting Product clients and pushing its existing Accounting Product clients to move to a "SaaS" model (Software-as-a-Service, or web-based, rather than installed, model); (ii) spreading false information; (iii) coercing customers to purchase Yardi's products; and (iv) interfering with the performance of competitive products. (First Am. Compl. ¶¶ 147-149.) These allegations, and the conclusory statements of anticompetitive harm attached to them, fail to state a claim.

First, Entrata does not allege non-conclusory facts rendering plausible a connection between Yardi's moving its Accounting Product clients to a cloud-based "SaaS" model and harm to competition in an Integration Product Market (specifically, "stifling competition, controlling pricing," or "forcing its customers . . . to choose products only from the Yardi portfolio") (*id.* ¶ 147). Entrata in fact extols the virtues of cloud-based models, including its own "PaaS" Accounting Product (*see id.* ¶ 17). Conclusory tack-ons (*e.g.*, that Yardi's use of a SaaS model "stifl[es] competition") cannot alone make this allegation plausible.

Second, and as discussed previously, the alleged "false information" that Yardi disseminated to the market and its customers relates only to issues attending the specific interaction of Entrata's Integration Products with Voyager. At most, this is an alleged harm to one competitor, not to competition. *See Brooke Grp. Ltd. v. Brown & Williamson Tobacco*

Corp., 509 U.S. 209, 225 (1993) ("Even an act of pure malice by one business competitor against another does not, without more, state a claim under the federal antitrust laws; those laws do not create a federal law of unfair competition or 'purport to afford remedies for all torts committed by or against persons engaged in interstate commerce.'") (quoting *Hunt v. Crumboch*, 325 U.S. 821, 826 (1945)). Entrata does not plead that Yardi has made false statements about other competitors' Integration Products, or that other competitors in an Integration Product Market were harmed by Yardi's allegedly false statements about Entrata's Integration Products.

Third, and also as previously addressed, Entrata's conclusory statement that Yardi "coerced" customers into purchasing its Integration Products is inadequate to state a claim. Entrata simply has not pleaded non-conclusory facts sufficient to make its allegation plausible, and labeling conduct "coercive" (*i.e.*, using "buzz words"), without more, cannot remedy this infirmity.

Finally, Entrata alleges that Yardi interfered with the performance of competitive Integration Products by discontinuing the custom interface functionality of Voyager for all Integration Products vendors.[8] However, Entrata does not allege that Integration Products vendors cannot be competitive using Yardi's standard interface or that they cannot compete using the custom or standard interfaces of other Accounting Products. Further, U.S. antitrust doctrine and enforcement policy since at least the mid-1980s has consistently narrowed the range of single-firm conduct that is subject to condemnation.[9] "'[A]s a general rule . . . purely unilateral conduct' does not run afoul of section 2 [of the Sherman Act] – 'businesses are free to

[8] As previously explained, the related allegation that Yardi will cut off all non-Yardi Integration Products from its Standard Interface Program is rendered implausible by Entrata's pleaded facts and is not entitled to a presumption of truth. *Supra* § I.

[9] *See* William E. Kovacic, *The Intellectual DNA of Modern U.S. Competition Law for Dominant Firm Conduct: The Chicago/Harvard Double Helix*, 2007 Colum. Bus. L. Rev. 1, 3 (2007), *available at* https://www.ftc.gov/sites/default/files/documents/public_statements/intellectual-dna-modern-u.s.competition-law-dominant-firm-conduct-chicago/harvard-double-helix/2007dna_0.pdf.

choose' whether or not to do business with others . . . ." *Novell*, 731 F.3d at 1072 (quoting *Pac. Bell Tel. Co. v. Linkline Commc'ns*, 555 U.S. 438, 448 (2009)). This is true even though Yardi previously allowed custom integrations, as Entrata has not pleaded facts plausibly supporting the notion that Yardi's actions lack business justification or are "irrational" but for their alleged anticompetitive effect. *See id.* at 1075-76; *see also Christy Sports, LLC v. Deer Valley Resort Co.*, 555 F.3d 1188, 1196-97 (10th Cir. 2009) (affirming dismissal for failure to state a claim in *Christy Sports, LLC v. Deer Valley Resort Co.*, No. 2:06-cv-00964-DAK (D. Utah Aug. 28, 2007) (Kimball, J.), where defendant, the owner of a ski resort, excluded plaintiff, a ski-rental competitor, from defendant's resort after 15 years, because defendant "expect[ed] to increase (not forsake) short-term profits" by operating its own ski rental facility).

2. Entrata fails to plead non-conclusory facts making plausible its allegation of Yardi's having a dangerous probability of monopolizing an Integration Product Market.

Even if this Court were to find that Yardi engaged in anticompetitive conduct impacting an Integration Product Market, Entrata's attempted monopolization claim must still fail because Entrata has not pleaded non-conclusory facts making plausible the allegation that Yardi would have a dangerous probability of success in its efforts to monopolize that market.

"To establish the dangerous probability of success element of an attempted monopolization claim, the plaintiff must show that there was a dangerous probability the defendant would achieve monopoly status ***as the result of*** the predatory conduct alleged by the plaintiff." *Multistate Legal Studies, Inc.*, 63 F.3d at 1554 (citations and internal quotation marks omitted) (emphasis added). In other words, Entrata must plausibly allege "that there was a dangerous probability that the defendant's conduct would propel it from a non-monopolistic share of the market to a share that would be large enough to constitute a monopoly for purposes

of the monopolization offense." *Colo. Interstate Gas Co. v. Nat. Gas Pipeline Co. of Am.*, 885 F.2d 683, 694 (10th Cir. 1989); *see also Spectrum Sports, Inc. v. McQuillan*, 506 U.S. 447, 457 (1993) ("[T]he notion that proof of unfair or predatory conduct alone is sufficient to make out the offense of attempted monopolization is contrary to the purpose and policy of the Sherman Act.").

Entrata has not alleged that Yardi's share of the alleged Integration Product Market has increased as a result of Yardi's conduct, nor has Entrata alleged any non-conclusory facts making it plausible that Yardi's conduct is likely to increase its share of that market. Entrata also has not alleged that any of its customers switched to Yardi's Integration Products or planned to do so as a result of Yardi's conduct. Entrata has, in fact, previously admitted that third-party vendors avidly compete to provide Integration Products to Voyager customers. Those competitors are as likely as Yardi to take any Integration Product Market share lost by Entrata or other vendors using custom interfaces. In Entrata's First Complaint, it alleged that, in 2015, some of those competitors received "word" that Entrata would no longer be providing Integration Products to Yardi and had "been in contact with [several of Entrata's customers], . . . offering their competing services to fill the upcoming void." (Compl. ¶ 57.) Although Entrata deleted that paragraph in both its Second Complaint and its Third Complaint, Entrata may not disavow facts previously pled in an attempt to avoid dismissal. *See People ex rel. Gallegos v. Pac. Lumber Co.*, 70 Cal. Rptr. 3d 501, 507 (Cal. Ct. App. 2008), *as modified* (Feb. 1, 2008) ("A plaintiff may not discard factual allegations of a prior complaint, or avoid them by contradictory averments, in a superseding, amended pleading.") (citation and internal quotation marks omitted). Further, the aforementioned example of robust competition to provide Integration Products for Voyager customers happened three years after Yardi allegedly began charging third-party vendors to use its standard interfaces. Thus, Yardi's charging its vendors to use its

standard interface also does not plausibly support the existence of any anticompetitive effect in an Integration Product Market, and thus does not make plausible a dangerous probability that Yardi will monopolize an Integration Product Market. (*See* First Am. Compl. ¶ 49.)

Even assuming that Yardi could or would gain *some* market share as a result of its business decisions, Entrata alleges that Yardi currently holds only 10% of the alleged Integration Product Market and fails to allege any facts that could possibly (much less, plausibly) support a dangerous probability of Yardi's share leaping to presumptive monopoly levels. *Cf. Colo. Interstate Gas Co.*, 885 F.2d at 694 n.18 ("[L]ower courts generally require a minimum market share of between 70% and 80%" for monopolization.); *see also, e.g., Rebel Oil Co. v. Atl. Richfield Co.*, 51 F.3d 1421, 1438 (9th Cir. 1995) (citing precedent to show that a market share below 30% is, in general, presumptively insufficient for an attempted monopolization claim); *Cohen v. Primerica Corp.*, 709 F. Supp. 63, 66 (E.D.N.Y. 1989) ("The law in the Second Circuit is clear that a 19% market share cannot sustain a monopolization or attempt to monopolize claim.").

Thus, and due to the pleading failures noted above, Entrata's claim regarding attempted monopolization of the alleged Integration Product Market must be dismissed.

III. ENTRATA FAILS TO PLEAD NON-CONCLUSORY FACTS MAKING PLAUSIBLE THE REQUISITE ELEMENTS OF MONOPOLY LEVERAGING.

To the extent that this Court recognizes monopoly leveraging as a claim independent of monopolization and/or attempted monopolization,[10] Entrata would have to sufficiently allege, on Yardi's part: (1) possession of monopoly power in one market; (2) use of that power to gain a

[10] The law in this circuit remains unclear as to whether "monopoly leveraging" constitutes a stand-alone claim. *Compare City of Chanute, Kan. v. Williams Nat. Gas Co.*, 743 F. Supp. 1437, 1461 (D. Kan. 1990) (stating that "this court believes that this circuit would not recognize monopoly leveraging as a separate offense under Section 2 of the Sherman Act") *with Four Corners Nephrology Associates, P.C. v. Mercy Medical Ctr. of Durango*, 582 F.3d 1216, 1222 (10th Cir. 2009) (acknowledging that "leveraging [like, we might add, any other Section 2 claim] presupposes anticompetitive conduct" without addressing or analyzing leveraging claim) (alteration in original) (citation and internal quotation marks omitted).

competitive advantage in another distinct market (*i.e.*, anticompetitive conduct); and (3) cause of antitrust injury by that anticompetitive conduct, which (4) creates a dangerous probability of success in monopolizing the second market. *See Law Offices of Curtis V. Trinko, L.L.P. v. Bell Atl. Corp.*, 305 F.3d 89, 108 (2d Cir. 2002), *as amended* (Aug. 14, 2002), *as amended* (Aug. 30, 2002) (listing first three elements), *rev'd and remanded sub nom. Verizon Commc'ns Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398 (2004); *Trinko*, 540 U.S. at 415 n.4 (recognizing fourth element).

However, even if this Court chooses to recognize a stand-alone claim of monopoly leveraging, Entrata's claim ultimately must fail for the same reasons its claim of attempted monopolization of the alleged Integration Product Market fails – Entrata does not plead non-conclusory facts making plausible its allegations of anticompetitive conduct affecting an Integration Product Market. *See supra* Argument § II.B.1. Thus, Entrata has still failed, after three attempts, to state its claim of monopoly leveraging.

IV. ENTRATA FAILS TO PLEAD NON-CONCLUSORY FACTS MAKING PLAUSIBLE AN UNLAWFUL TYING ARRANGEMENT.

To plead unlawful tying under § 1 of the Sherman Act (15 U.S.C. § 1) and § 3 of the Clayton Act (15 U.S.C. § 14), a plaintiff must allege "(1) two separate products, (2) a tie—or conditioning of the sale of one product on the purchase of another, (3) sufficient economic power in the tying market, and (4) a substantial volume of commerce affected in the tied product market." *Philips Elecs. N. Am. Corp.*, 2009 WL 2381333, at *1 (citation and internal quotation marks omitted) (Sherman Act); *Smith Mach. Co., Inc. v. Hesston Corp.*, 878 F.2d 1290, 1299 (10th Cir. 1989) (Sherman and Clayton Act standards identical); *SolidFX, LLC v. Jeppesen Sanderson, Inc.*, 935 F. Supp. 2d 1069, 1078-80 (D. Colo. 2013) (granting summary judgment for failure to show conditioned sale after applying same elements under *per se* and rule of reason

analyses); *but see Times–Picayune Publ'g Co.*, 345 U.S. at 608-09 ("When the seller enjoys a monopolistic position in the market for the 'tying' product, *or* if a substantial volume of commerce in the 'tied' product is restrained, a tying arrangement violates the narrower standards expressed in § 3 of the Clayton Act because from either factor the requisite potential lessening of competition is inferred.") (emphasis in original).

"[W]here the buyer is free to take either product by itself there is no tying problem even though the seller may also offer the two items as a unit at a single price." *Systemcare, Inc. v. Wang Labs. Corp.*, 117 F.3d 1137, 1139 (10th Cir. 1997) (alteration in original) (citation and internal quotation marks omitted). "[I]t is critical to a tying claim that the seller forced a buyer to purchase the tied product in order to get the tying product . . . ." *Abraham v. Intermountain Health Care Inc.*, 461 F.3d 1249, 1265 (10th Cir. 2006).

Entrata's tying claim must fail because Entrata does not allege non-conclusory facts plausibly supporting the notion that Yardi required any customer to purchase *any* Integration Product in order to purchase an Accounting Product, let alone forced a customer to purchase one of *Yardi's* Integration Products in order to purchase Voyager or any other Yardi Accounting Product. In other words, Entrata simply does not allege a tie. Instead, Entrata accuses Yardi of: (i) refusing to certify or allow the use of Integration Products; (ii) refusing to install Entrata Integration Products, (iii) discontinuing the allowance of Entrata Integration Products, and (iv) causing and coercing customers in the Accounting Product Market to purchase Yardi Integration products or abstain from purchasing Integration Products from any other provider. (First Am. Compl. ¶ 155.) But even if the Court credits these allegations to the full extent that they are well-pleaded through non-conclusory factual allegations, they still do not plausibly support the existence of a tie.

Entrata first alleges that Yardi effectuates a tie by refusing to certify or allow the use of Integration Products, refusing to install Entrata Integration Products, and discontinuing the allowance of Entrata Integration Products. As explained above, at most Entrata has alleged facts making plausible that Yardi will no longer allow third-party Integration Products to interface with Voyager using a custom interface, and that it has no plans to allow Entrata's Integration Products to interface with Voyager on either a custom or standard interface.[11] This means that Voyager customers would remain free to purchase Integration Products from Yardi, from any third-party vendor using a standard interface, or from no vendor at all.

Entrata then alleges that Yardi is "coercing" its customers in the Accounting Product market to also purchase its Integration Products, instead of the Integration Products of its competitors. However, this is simply another attempt to substitute a conclusory statement for facts making plausible the allegation of a conditioned sale. *See, e.g.*, *Rockbit Indus. U.S.A., Inc. v. Baker Hughes, Inc.*, 802 F. Supp. 1544, 1549-50 (S.D. Tex. 1991) (finding no conditioned sale despite conclusory allegation that "[Defendant] is requiring customers wishing to purchase [Defendant's] horizontal drilling technology to use only [Defendant's] [products]").

Indeed, Entrata has not pleaded non-conclusory facts plausibly supporting its claims of coercion, averring only that Yardi was coercing or, even more equivocally, "seek[ing] to coerce," its customers. (First Am. Compl. ¶ 155.) Even Entrata's allegation that Yardi offers its own Integration Products for free to its Accounting Product customers cannot constitute an act of coercion or an unlawful tie where there has been no allegation that Yardi's Integration Products must be purchased in order to purchase Yardi's Accounting Product. *Compare* First Am. Compl. ¶ 155 *with SolidFX, LLC*, 935 F. Supp. 2d at 1079 (offering allegedly tied product for free

[11] Further, and as previously noted, the related allegation that Yardi will cut off all non-Yardi Integration Products from its Standard Interface Program is rendered implausible by Entrata's pleaded facts and is not entitled to a presumption of truth.

indicates no tie because "Defendant does not require anyone to *purchase* its [product]") (emphasis in original). Nor does Entrata allege that in such circumstances, Yardi raises the price of its Accounting Product in order to offset the revenue lost from giving away its Integration Products for free. *Compare SolidFX, LLC*, 935 F. Supp. 2d at 1079 (finding no tying when "[t]here is also no evidence showing that Defendant has raised the prices of its [tying good] to reflect the cost of its [tied good]") *with Multistate Legal Studies*, 63 F.3d at 1548 ("Where the price of a bundled product reflects any of the cost of the tied product, customers are purchasing the tied product, even if it is touted as being free.").

Thus, Entrata's tying claim is fundamentally a red herring. For the reasons cited above, it must also be dismissed.

CONCLUSION

At every turn, Entrata fails to allege non-conclusory facts sufficient to make plausible its claims of monopolization and attempted monopolization of an Accounting Product Market, attempted monopolization of an Integration Product Market, monopoly leveraging, and tying. The primary, although by no means only, infirmity underlying these claims is the failure to plead facts that make plausible the type of harm to competition that the antitrust laws were meant to remedy. Yardi therefore urges this Court to decline Entrata's attempt to transform its single-damages commercial torts case into a treble-damages antitrust case and respectfully requests that the Court dismiss the Fifth, Sixth, and Seventh Claims of Entrata's Third Complaint with prejudice.

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Dated: May 19, 2016

Respectfully submitted,

/s/ John DeQ. Briggs
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Attorneys for Defendant Yardi Systems, Inc.

EXHIBIT A

Via FedEx

November 18, 2015

LR1First LR1Last
Company1
LR1Add
LR1City LR1ST LR1Zip

Dear LR1First:

Pursuant to terms of your Agreement with Yardi, as may be amended, we are writing to notify you that **after August 31, 2018**, Yardi will no longer host, with respect to multifamily portfolios, the custom Third Party Application(s) described in your Agreement.

Between now and August 31, 2018, Yardi will continue to host and update your custom Third Party Application(s), subject to Yardi's standard terms, conditions, policies and procedures.

This decision was not taken lightly, but hosting certain third-party software in the Yardi Cloud is simply not sustainable. For example:

- Yardi's planned encryption of selected sensitive data in Voyager 7S databases is not compatible with custom interface applications;
- Certain custom interface applications are known to cause errors, data corruption and other serious issues, such as out-of-balance conditions in the general ledger; and
- Hosted third-party software that accesses the data in your Voyager database can present serious potential risks unless thoroughly tested and validated, which Yardi cannot reasonably ensure or control.

We work closely with many exceptional third-party vendors that use our standard interface rather than a custom interface. You may choose one of these vendors or a solution that does not require a custom interface, but it is important to complete the transition by August 31, 2018. Whatever choice you make, we will continue to provide you with the same high level of customer service and support that you have always received from us.

Please feel free to contact us with any questions you may have.

Very truly yours,

Arnold Brier
Vice President, General Counsel

LR2First LR2Last
Company2
LR2Add
LR2City LR2ST LR2Zip