

1 F. Christopher Austin (Bar No. 6559)  
austinc@gtlaw.com  
2 Laraine M. I. Burrell (Bar No. 8771)  
burrelll@gtlaw.com  
3 GREENBERG TRAURIG, LLP  
3773 Howard Hughes Parkway  
4 Suite 400 North  
Las Vegas, Nevada 89169  
5 Telephone: (702) 792-3773  
Facsimile: (702) 792-9002

6 *Counsel For Plaintiffs*

7  
8 **UNITED STATES DISTRICT COURT**  
9 **DISTRICT OF NEVADA**

10 MEDTRAK VNG, INC., a Nevada corporation,  
11 Plaintiff,  
12  
13 v.  
14 ACUNETX, INC., a Nevada corporation, and  
CHAPIN HUNT, an individual,  
15 Defendants.

CASE NO. 2:12-CV-853  
**COMPLAINT**

16  
17 Plaintiff, MEDTRAK VNG, INC. (“Plaintiff,” “MedTrak” or “MedTrak VNG”), a  
18 Nevada corporation, by and through the undersigned counsel of record, alleges as follows:

19 **NATURE OF THE ACTION**

20 This is an action for copyright infringement under 17 U.S.C §101 *et seq.*; and ancillary  
21 claims for declaratory judgment, breach of contract, misappropriation of trade secrets, deceptive  
22 trade practices, intentional interference with contractual relations, commercial defamation, fraud  
23 and related claims. Plaintiff seeks preliminary and permanent injunctive relief, damages,  
24 attorneys’ fees, and costs.

25 **PARTIES**

26 1. MedTrak is a Nevada corporation and the exclusive owner of proprietary medical  
27 technology and related copyrights designed to assist in the diagnoses of balance and equilibrium  
28 disorders.

2. ACUNETX, INC. (“AcuNetx”), is a Nevada corporation, the successor in interest to Eye Dynamics, Inc., a Nevada corporation, and a prior MedTrak licensed manufacturer.

3. On information and belief, CHAPIN HUNT (“Hunt”) is an individual residing in California, the chairman of the AcuNetx board of directors and its chief executive officer.

### JURISDICTION

4. This Court has original jurisdiction over the Parties and the subject matter of this action under 28 U.S.C. §§1331 and 1338, because it is an action arising under the laws of the United States and specifically under the provisions of the Copyright Act, 17 U.S.C. §101 *et seq.*

5. This Court has supplemental jurisdiction under 28 U.S.C. §1367 over Plaintiff’s state and common law claims.

6. This Court has personal jurisdiction over the Defendants, because AcuNetx resides in this jurisdiction, and the transactions or occurrences giving rise to this action and/or the foreseeable harm caused by Defendants’ actions occurred within and/or to Plaintiff in this jurisdiction such that the exercise of jurisdiction over Defendants in this jurisdiction is foreseeable, fair, and reasonable.

7. Venue is proper in the United States District Court for the District of Nevada under 28 U.S.C. §§1391(b) and 1400. Venue lies in the unofficial Southern District of this Court.

### ALLEGATIONS COMMON TO ALL COUNTS

#### A. Shadowens and MedTrak Create the VNG Market

8. Mel Shadowens (“Shadowens”), a founder of Plaintiff, materially contributed to the development of the science, technology and medical equipment related to the diagnosis and treatment of dizziness, balance and equilibrium disorders.

9. The medical equipment used to diagnose balance and equilibrium disorders at issue in this matter is referred to as either an electron or video nystagmographic (“ENG” or “VNG”) device.

10. As balance and dizziness disorders are manifested by the certain known and reflexive eye movements of the patient, VNG devices employ goggles connected to a computer

1 that can monitor and analyze such movements. The data so gathered is then processed by  
 2 custom software that isolates the movements characteristic of certain disorders to assist the  
 3 medical professional or technician in diagnosis and treatment.

4 **(1) FDA Section 510(k) Registration of VNG Medical Devices**

5 11. The VNG device at issue here is a medical device subject to Section 510(k) of the  
 6 Federal Food, Drug, and Cosmetic Act (21 CFR 807, the “Act”). To obtain an FDA order  
 7 clearing the device for commercial distribution, the party seeking to market the device must  
 8 make a “510(k)” premarket submission to the FDA to demonstrate that the device meets certain  
 9 safety and effectiveness standards as set forth in the Act. Once cleared, the submitter is issued a  
 10 “510(k) Number” registering the device (“510(k) Registration”) and listing it and the submitting  
 11 party in the FDA’s 510(k) database of medical devices.

12 12. A FDA 510(k) Registration has value and can be bought, sold, or transferred.  
 13 While the FDA is not involved in such transfers of ownership, upon such a transfer, the new  
 14 owner should list the device in accordance with the Act, and the prior owner should delete its  
 15 device listing. The FDA will then issue a new 510(k) Registration Number to the new owner.

16 13. Additionally, 510(k) Registrations must be renewed or re-registered annually.  
 17 Failure to renew the registration annually will invalidate the registration and can result in the  
 18 removal of device establishment and listing information from the FDA database. Absent a  
 19 current 510(k) Registration, the product lacks clearance for commercial distribution and cannot  
 20 be marketed or sold as an FDA approved medical device.

21 14. On or about March 23, 1994, the FDA issued a 510(k) Registration (FDA 510(k)  
 22 Number K925111) for the VNG device of Defendant AcuNetx’s predecessor in interest, Eye  
 23 Dynamics, Inc. (“EDI”). A copy of the 510(k) K925111 registration is attached hereto as  
 24 **Exhibit 1.**

25 15. Shadowens has approximately 40 years of experience in the diagnosis and  
 26 treatment of dizziness, balance and equilibrium disorders. He holds a Ph.D. from Kent State  
 27 University, served as the Executive Director, Biomedical Sciences Corps, for the United States  
 28 Air Force, an Associate Professor at Eastern Washington University, and as a Consultant for the

1 Unites States Navy Hospital, Department of Otolaryngology, Head Neck Surgery, among  
2 numerous other positions and honors. He has also written and published extensively on the  
3 subject.

4 **(2) MedTrak's 2001 Contract with AcuNetx's Predecessor**

5 16. In or around 1997, Shadowens started having EDI build FDA cleared VNG  
6 devices for distribution by his business to better diagnose and treat such disorders.

7 17. Shadowens company, and the predecessor in interest to Plaintiff in this action,  
8 MedTrak Technologies, Inc. (herein collectively identified with MedTrak VNG as "MedTrak")  
9 even loaned EDI \$50,000.00 to facilitate the production of such devices to the specifications  
10 ordered by Shadowens.

11 18. As part of the consideration for this loan, on March 19, 2001, EDI granted  
12 MedTrak the right to be the exclusive distributor of certain VNG systems, and entered into an  
13 "Exclusive Distribution Agreement" with MedTrak, formalizing the agreement.

14 19. In accordance with the terms of that 2001 agreement, MedTrak contracted with  
15 EDI to manufacture VNG products exclusively for MedTrak.

16 20. Over the course of the next several years, Shadowens and MedTrak successfully  
17 created a market for the VNG products manufactured by EDI/AcuNetx, deployed a trained,  
18 national sales force to sell such products, and teamed up with a company owned by Scott  
19 Auerbach ("Auerbach"), co-founder and owner of Plaintiff, to create training materials and to  
20 train medical personnel and sales agents in the use of the VNG equipment and in the treatment of  
21 equilibrium disorders.

22 21. In the course of the successful creation of this VNG market, Shadowens,  
23 MedTrak and Auerbach made millions of dollars for EDI/AcuNetx.

24 **(3) AcuNetx Purpetual Financial Difficulties Threaten MedTrak Market**

25 22. Despite the success of the VNG products, EDI/AcuNetx was not able to long  
26 remain financially stable. EDI/AcuNetx often had difficulty meeting MedTrak's sales  
27 requirements or required additional capital in order to manufacture products ordered by  
28 MedTrak.

23. Shadowens even purchased 125,000 shares of EDI/AcuNetx stock in an effort to help raise capital for the company.

24. After having invested years and hundreds of thousands of dollars in the development of the market, the relationships, training and systems necessary to market and sell the EDI/AcuNetx VNG systems, Shadowens became concerned that his business and investment could be severely harmed if EDI/AcuNetx continued to have difficulty in timely meeting MedTrak's sales requirements or if it could no longer produce VNG devices.

25. Accordingly, MedTrak expressed these concerns to EDI/AcuNetx and started looking for alternative VNG manufacturers upon the expiration of the 2001 Exclusive Distribution Agreement.

**(4) MedTrak Acquires VNG Software Copyright in 2004**

26. In order to avoid the loss of its key, and likely sole, source of income from the sale of its VNG systems, EDI/AcuNetx offered assurances to MedTrak that it would meet its sales requirements.

27. EDI/AcuNetx also assigned its copyright in the custom software (the "VNG Software") necessary to run the VNG systems to MedTrak and agreed to disclose, and permit MedTrak to use, the technical know-how and intellectual property necessary to manufacture the VNG device (its "Confidential Information") should EDI/AcuNetx prove unable to do so. The agreement formalizing this transaction was executed on March 22, 2004 and is identified as the "Exclusive Manufacturing, Sales, Licensing and Software Ownership Agreement" (the "2004 Software Ownership Agreement"). A copy of this agreement is attached hereto as **Exhibit 2**.

28. Under the terms of the 2004 Software Ownership Agreement, the VNG Software was assigned and sold to MedTrak and licensed back to EDI/AcuNetx to facilitate continued manufacture of the systems.

29. Plaintiff, MedTrak VNG, has subsequently filed two United States Copyright applications for the VNG Software: an application for the original computer program, "VNG Software 1.0" (Application Number 1-757251911) and a derivative application for the latest version of the VNG Software in Plaintiff's possession, "VNG Software V2.41" (Application

1 Number 1-757283281), the version currently used by MedTrak. Copies of these applications are  
2 attached hereto as **Exhibit 3** and **Exhibit 4**, respectively.

3 30. The 2004 agreement also required EDI/AcuNetx to place in escrow all of its  
4 confidential and proprietary information (referred in the agreement variously as “Confidential  
5 Information” and “Proprietary Information” and herein as “Confidential Information”) necessary  
6 to manufacture and sell the systems, including the full VNG Software code, together with any  
7 improvements to that code.

8 31. In the event EDI/AcuNetx was not capable of meeting MedTrak’s sales  
9 requirements, the 2004 agreement ultimately required the delivery to MedTrak of the  
10 EDI/AcuNetx Confidential Information in escrow and permitted MedTrak to use that  
11 information to manufacture the VNG systems.

12 32. Also in 2004, MedTrak and EDI/AcuNetx signed an “Addendum” to the Software  
13 Ownership Agreement granting MedTrak the exclusive right to market and sell all VNG  
14 products manufactured by EDI/AcuNetx. This agreement stopped the practice of EDI/AcuNetx  
15 directly selling its products to end users (through the Internet or by its own employees/agents)  
16 and referred and required all sales to be processed exclusively by MedTrak. In fact, the dormant  
17 website for EDI to this day still lists only MedTrak as the contact for sales.

18 33. In 2006, EDI merged with OrthoNetx, Inc. and formed AcuNetx.

19 **(5) MedTrak 2006 Agreements with AcuNetx**

20 34. In order to facilitate the merger, AcuNetx sought to re-negotiate with MedTrak  
21 the 2004 Software Ownership Agreement and Addendum even though those agreements would  
22 not otherwise have terminated on their terms until 2014 or 2015 at the earliest.

23 35. On May 18, 2006, AcuNetx and MedTrak entered into a new “Marketing and  
24 Distribution Agreement” (the “2006 Marketing Agreement”). A copy of the 2006 Marketing  
25 Agreement is attached hereto as **Exhibit 5**.

26 36. At the same time, and as part of the same negotiation, AcuNetx entered into a  
27 separate “Consulting Agreement” with Shadowens (the “2006 Consulting Agreement”). A copy  
28 of this Consulting Agreement is attached hereto as **Exhibit 6**.

1           37.     The 2006 Marketing Agreement gave MedTrak the exclusive right to market and  
2 sell MedTrak branded VNG products manufactured by AcuNetx.

3           38.     Importantly, the 2006 Marketing Agreement also reaffirmed: (i) that MedTrak is  
4 the owner of the VNG Software and the copyrights in and to the VNG Software, and (ii) that  
5 MedTrak has the right to receive and use the previously escrowed Confidential Information in  
6 order to produced the VNG systems in the event that AcuNetx is not capable of meeting  
7 MedTrak's sales requirements.

8           39.     The 2006 Consulting Agreement provided that Shadowens was to be compensated  
9 for his consultation services in the development of VNG technology, manufacturing and  
10 marketing with shares of AcuNetx common stock and "per diem compensation" at a set daily  
11 rate.

12           40.     Upon executing the Consulting Agreement, Shadowens received AcuNetx stock  
13 in an amount then valued at \$100,000.00, and AcuNetx promised to deliver to Shadowens an  
14 additional \$100,000.00 worth of AcuNetx stock each year for the subsequent seven (7) years.

15     **B.     AcuNetx Breach of the 2006 Agreements**

16           41.     Despite the merger, AcuNetx continued to have financial troubles and continued  
17 to fail to timely meet MedTrak's sales requirements.

18           42.     In addition, AcuNetx was unable to comply with either the per diem requirement  
19 or the stock transfer requirements of the 2006 Consulting Agreement and failed to transfer any  
20 additional stock or per diem as required.

21           **(1)     2009 Amendments to the 2006 Agreements**

22           43.     In an effort to resolve AcuNetx's breach of the 2006 Consulting Agreement, on  
23 April 27, 2009, AcuNetx and Shadowens entered into the "First Amendment to Consulting  
24 Agreement" (the "2009 Consulting Agreement"). A copy of the 2009 Consulting Agreement, is  
25 attached hereto as **Exhibit 7**.

26           44.     Under the terms of the 2009 Consulting Agreement, AcuNetx acknowledged that  
27 it then owed Shadowens 4,194,451 shares of AcuNetx common stock and agreed to issue stock  
28 warrants entitling Shadowens to purchase such shares at a set price within the next ten years.



Greenberg Traurig  
3773 Howard Hughes Parkway, Suite 500 North  
Las Vegas, Nevada 89169  
(702) 792-3773  
(702) 792-9002 (fax)

1           45. The 2009 Consulting Agreement also transferred legal ownership to “Shadowens  
2 and/or MedTrak Technologies, Inc.” of AcuNetx’s products, “including but not limited to,  
3 proprietary and confidential source codes, all intellectual property associated with the Products . .  
4 . schematics, lists of contractors, proprietary information and trade secrets, algorithms, any and  
5 all information needed to manufacture, maintain, and repair the Products, and lists of all past and  
6 current vendors and suppliers for the Products.”

7           46. In furtherance of the promises made in the 2009 Consulting Agreement, AcuNetx  
8 issued and delivered to Shadowens a signed “Warrant to Purchase Shares of Common Stock”  
9 (attached as Exhibit B to the 2009 Consulting Agreement), and a “Bill of Sale” (attached as  
10 Exhibit D to the 2009 Consulting Agreement), transferring to Shadowens the property and assets  
11 of AcuNetx as described in the agreement and delivering to Shadowens the AcuNetx  
12 Confidential Information originally claimed to have been placed in escrow pursuant to the terms  
13 of the 2004 Software Ownership Agreement and reaffirmed in the 2006 Marketing Agreement.

14           47. Concurrent with the execution of the 2009 Consulting Agreement, on April 27,  
15 2009, AcuNetx and MedTrak, signed the “First Amendment to Marketing and Distribution  
16 Agreement” (the “2009 Marketing Agreement”). A copy of the 2009 Marketing Agreement is  
17 attached hereto as **Exhibit 8**.

18           48. The 2009 Marketing Agreement reaffirmed MedTrak’s ownership of the VNG  
19 Software and its right, “in its sole and absolute discretion, to have any and all Products  
20 manufactured by other manufactures” should AcuNetx fail to meet MedTrak’s sales  
21 requirements.

## 22                           (2)     **Breach of the 2009 Amendments to the 2006 Agreements**

23           49. Despite continual efforts by MedTrak, Shadowens, Auerbach, and affiliates to  
24 work with AcuNetx and to endure continuing failures by AcuNetx to meet MedTrak’s sales  
25 requirements, including even loaning and advancing to AcuNetx funds to facilitate the  
26 manufacture of the very products MedTrak was purchasing, AcuNetx failed to properly apply the  
27 funds received from MedTrak, to timely produce and/or to produce the units MedTrak was  
28 ordering, or to repay the loans.



1           50. In January 2011, AcuNetx failed to renew the FDA 510(k) Registration and list  
2 MedTrak as a 510(k) device distributor as required. This failure jeopardized MedTrak's ability  
3 to continue to operate. AcuNetx did not renew the 510(k) Registration until April 4<sup>th</sup> or 5<sup>th</sup> of  
4 2011, and did not list MedTrak until September 2011.

5           51. In February 2011, AcuNetx informed MedTrak that it could not fulfill its  
6 purchase orders.

7                   **(3) Hunt Takeover of AcuNetx and Withdrawal of AcuNetx Funds**

8           52. In October 2011, as part of an internal takeover of AcuNetx's management,  
9 Defendant Hunt improperly and illegally removed all the funds in the AcuNetx account, closed  
10 the AcuNetx account, and transferred the funds to an account exclusively under his personal  
11 control.

12           53. Among the funds taken by Hunt, were approximately \$19,500.00 advanced to  
13 AcuNetx by MedTrak for prepaid VNG device orders.

14           54. On November 15, 2011, after AcuNetx again failed to meet MedTrak's purchase  
15 orders, Shadowens, on behalf of MedTrak, sent an email to Hunt, notifying AcuNetx that it was  
16 in default of the 2006 and 2009 Marketing Agreements. A copy of this November 15, 2011 email  
17 is attached hereto as **Exhibit 9**.

18           55. AcuNetx failed to cure their defaults of the 2006 and 2009 Marketing  
19 Agreements, so on December 5, 2011, MedTrak sent a letter to AcuNetx, declaring the failure to  
20 cure and demanding the return of the funds advanced for non-delivered VNG systems and the  
21 Confidential Information to which it was entitled under the 2006 and 2009 Marketing  
22 Agreements and Consultation Agreements. A copy of this December 5, 2011 Letter is attached  
23 hereto as **Exhibit 10**.

24           56. Also in accord with the 2006 and 2009 Marketing and Consultation Agreements,  
25 MedTrak demanded that AcuNetx transfer to it ownership of the FDA 510(k) K925111  
26 Registration so MedTrak could immediately take steps to mediate its losses by manufacturing the  
27 VNG device itself.

28       ///

1                                   (4)     **2011 Agreements & Assignment to MedTrak of 510(k) Registration**

2           57.     On or around December 7, 2011, AcuNetx CEO and Chairman of the Board,  
3 Defendant Hunt, traveled to Arizona to meet with MedTrak in an effort to preserve the  
4 relationship.

5           58.     To secure an agreement with MedTrak to continue to do business with AcuNetx,  
6 on December 7, 2011, Hunt on behalf of AcuNetx signed a letter assigning exclusive ownership  
7 of the FDA 510(k) K925111 Registration to MedTrak (the “510(k) Registration Assignment”).<sup>1</sup>  
8 A copy of the 510(k) Registration Assignment is attached hereto as **Exhibit 11**.

9           59.     The following day, on December 8, 2011, AcuNetx entered into an “Agreement”  
10 with MedTrak (the “2011 Agreement”) acknowledging the default by AcuNetx of the 2006 and  
11 2009 Marketing and Consultation Agreements and acknowledging that MedTrak had exercised  
12 its rights to the exclusive ownership of the FDA 510(k) K925111 Registration. A copy of the  
13 2011 Agreement is attached hereto as **Exhibit 12**.

14           60.     In the 2011 Agreement, AcuNetx reaffirmed the transfer to MedTrak of all rights  
15 in and to the FDA 510(k) K925111 Registration and acknowledged that AcuNetx “will have no  
16 future rights or title” to the K925111 Registration.

17           61.     AcuNetx further recognized in the 2011 Agreement that MedTrak owns all  
18 intellectual property and confidential information related to the AcuNetx VNG systems and  
19 MedTraks has the right in its “sole and absolute discretion to have any and all products related to  
20 VNG manufactured by other manufacturers.”

21           62.     AcuNetx further agreed to provide any and all “confidential source codes, all  
22 intellectual property associated with the VNG products, schematics, lists of contractors,  
23 proprietary information and trade secrets, algorithms, and any and all information needed to  
24 manufacture, maintain, and repair the products” to MedTrak.

25           63.     In exchange MedTrak agreed to continue to have AcuNetx manufacture  
26 MedTrak’s VNG products and to enter into an agreement to license to AcuNetx the copyrights  
27

28                                   

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<sup>1</sup> The 510(k) Registration Assignment was actually signed on or about December 7, 2011, but because it was  
originally created on November 5, 2011, it erroneously bears the earlier date.

1 and intellectual property rights necessary to do so. This "License Agreement" was also executed  
 2 on December 8, 2011 (the "2011 License Agreement") and was attached as Exhibit A to the  
 3 2011 Agreement.

4 **(5) AcuNetx Breach of the 2011 Agreements**

5 64. Pursuant to the 2011 License Agreement, MedTrak had the right to revoke the  
 6 agreement "at its sole discretion, by giving AcuNetx five (5) days notice of such a revocation for  
 7 which AcuNetx specifically agrees that there will be no ability to cure" and which shall be  
 8 "unchallengeable and final after said five (5) day period."

9 65. Within a few weeks, AcuNetx breached the 2011 Agreement and License  
 10 Agreement. AcuNetx's counsel even had the gall to claim that neither agreement was approved  
 11 by the AcuNetx Board and were therefore unenforceable even though Hunt was Chairman of the  
 12 Board at the time that he signed the agreements and the 2011 Agreement contains an express  
 13 representation and warranty immediately above Hunt's signature stating that "[t]he parties hereto  
 14 "warrant and represent that each party has full right, power and authority to enter into this  
 15 Agreement and any related agreements referred to herein [such as the 2011 License Agreement]  
 16 and to consummate the transactions contemplated hereby and thereby."

17 66. As the authority to enter into the 2011 Agreement and the 2011 License  
 18 Agreement is expressly stated and unambiguous, a court is not permitted under the law to even  
 19 entertain AcuNetx's after-the-fact false and manufactured excuse.

20 67. AcuNetx then failed to de-list itself from the FDA 510(k) Registration as required  
 21 and continued to fraudulently claim that it was the owner of the 510(k) Registration it had  
 22 assigned to MedTrak.

23 68. On December 27, 2011, MedTrak Technologies, Inc., assigned all the agreements  
 24 it had with AcuNetx, and all rights and titles it had in and to the VNG systems, including the  
 25 510(k) Registration, to MedTrak VNG, making MedTrak VNG its successor in interest herein.

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27 ///

28 ///

1                                   (6)    Termination of AcuNetx License to Manufacture

2           69.    On January 23, 2012, MedTrak Technologies, Inc., sent a letter to AcuNetx  
3 notifying it of the transfer of MedTrak Technologies' rights, including its rights under the 2011  
4 License Agreement, to MedTrak VNG. A copy of this January 23, 2012 letter is attached hereto  
5 as **Exhibit 13**.

6           70.    Thereafter and on the same day, January 23, 2012, MedTrak VNG notified  
7 AcuNetx that it had terminated the 2011 License Agreement ("License Termination"). A copy  
8 of this License Termination, together with the email/efax transmitting the same, is attached  
9 hereto as **Exhibit 14**.

10          71.    Pursuant to the License Termination and the 2011 License Agreement, the 2011  
11 License Agreement terminated on January 28, 2012, and AcuNetx was prohibited from that day  
12 forward from representing itself as a listed FDA 510(k) manufacturer of a 510(k) K925111 VNG  
13 devise, from holding itself out as a manufacturer of such VNG devices or from manufacturing,  
14 producing, or marketing such devices.

15          72.    Because the FDA does not involve itself in the sale or transfer of 510(k)  
16 registrations, leaving that to the parties, the original 510(k) K925111 Registration will continue  
17 to show EDI as the owner.

18          73.    Nevertheless, in accordance with FDA regulation, assignees of 510(k) devices  
19 may be registered as the owners and authorized manufacturer of such devices provided they can  
20 demonstrate lawful title to the same. The FDA then will issue a new 510(k) registration number  
21 in connection with the registration of the new owner.

22          74.    As set forth hereinabove, MedTrak is and can demonstrate lawful ownership to  
23 the VNG device at issue. Accordingly, MedTrak successfully secured registration of the VNG  
24 ("Nystagmograph") medical device in 2012. The new 510(k) Registration Number is  
25 3009391819 ("MedTrak's New 510(k) Registration"). A copy of this "Establishment  
26 Registration and Device Listing" is attached hereto as **Exhibit 15**.

27          75.    As a consequence of AcuNetx's default under the 2011 License Agreement,  
28 AcuNetx lacks any authority, license, right or privilege to manufacture, market, or sell VNG

1 devices under either the 510(k) K925111 Registration Number or any other FDA Registration  
2 based thereon, including MedTrak's New 510(k) Registration.

3 **C. AcuNetx Fraudulent Registration of 510(k) Registration**

4 76. Despite lacking any lawful right or title to do so, in or around January 2012,  
5 AcuNetx fraudulently secured its own new 510(k) registration number for the same VNG device  
6 ("AcuNetx's Fraudulent Registration"). A copy of AcuNetx's and Hunt's email correspondence  
7 dating from January 5, 2012, with the FDA is attached hereto as **Exhibit 16**. In this email  
8 correspondence, Hunt fraudulently represent that AcuNetx still owns the 510(k) K925111  
9 Registration well after he personally signed the 510(k) Registration Assignment to MedTrak and  
10 the 2011 Agreement assigning and transferring all right, title and ownership of the 510(k)  
11 Registration to MedTrak.

12 77. Thus, in order to secure its Fraudulent Registration, AcuNetx and Hunt lied to the  
13 FDA, telling this federal agency that it continued to be the owner of the 510(k) 925111  
14 Registration when it was not, having assigned that registration to MedTrak well prior to such  
15 false representations.

16 **D. AcuNetx Interference with MedTrak Customers, Distributors & Vendors**

17 78. In addition, AcuNetx then forwards this email correspondence with the FDA to  
18 Mr. Brahmbhatt, counsel for a vendor of MedTrak, in an unlawful effort to cause that vendor to  
19 not produce computer board parts for MedTrak. In the forwarded email, dated February 10,  
20 2012, counsel for AcuNetx represented to Mr. Brahmbhatt that Hunt and AcuNetx it had  
21 informed officials at the FDA that MedTrak and/or its principals had engaged in criminal  
22 conduct in an effort to have MedTrak listed as the 510(k) Registration owner when, in fact, no  
23 such criminal conduct had occurred.

24 **(1) AcuNetx Infringement & False Representations of VNG Ownership**

25 79. At the time that Hunt and AcuNetx intentionally made these false representations  
26 to the FDA and MedTrak's vendor they knew the representations to be false, They made these  
27 knowingly false representations with the intention of defrauding the FDA and harming MedTrak  
28 and its officers so that AcuNetx could then lie to its customers by telling its customers that

1 | AcuNetx was the owner of a 510(k) registered device when it was not.

2 |       80. Despite lacking any authority to manufacture, market or sell VNG devices,  
3 | AcuNetx and Hunt not only unlawfully and fraudulently continue to claim AcuNetx owns the  
4 | 510(k) Registration, when it does not, they have continued to manufacture, market and sell such  
5 | devices without any right or authority to do so, and they have personally and through their agents  
6 | intentionally and knowingly interfered with MedTrak's efforts to exercise its rights to  
7 | manufacture, market and sale MedTrak's VNG products.

8 |       81. As evidenced by the February 10, 2012 email forwarding the fraudulent  
9 | correspondence with the FDA, AcuNetx and Hunt have commenced unlawfully contacting  
10 | vendors of MedTrak, and clients and prospective clients of MedTrak's distributors with the  
11 | intent to cause them to cancel any pending contract or to cease further discussions regarding the  
12 | sale of MedTrak products.

13 |       82. MedTrak distributor, Innovative Healthcare Systems ("Innovative") confirmed  
14 | from one client, an medical group, who cancelled its purchase of a VNG system, that the group  
15 | had been told by AcuNetx and or its distributors/agents that MedTrak was no longer supported  
16 | by the manufacturer or otherwise authorized to manufacture or distribute. A copy of  
17 | Innovative's April 13, 2012 email with this medical group is attached hereto as **Exhibit 17**.

18 |       83. Innovative Healthcare Systems then further looked into the matter and learned  
19 | that an unlawful distributor of AcuNetx, inBalance & Vestibular Systems, LLC ("inBalance"),  
20 | Hunt, and others were falsely telling prospective customers that MedTrak "didn't have a 510(k),"  
21 | and could not get product. A copy of Innovative's April 13, 2012 email correspondence  
22 | regarding this interference is attached hereto as **Exhibit 18**.

23 |       84. As a result of this unlawful interference, AcuNetx and Hunt wrongfully have  
24 | caused the cancellation or loss of hundreds of thousands of dollars in sales to MedTrak.

25 |       85. In addition, AcuNetx and Hunt not only have refused to provide all the vendor  
26 | and intellectual property information required under the 2011 Agreement, they have intentionally  
27 | prevented vendors and suppliers of the parts of the VNG system from doing business with  
28 | MedTrak.

Greenberg Traurig  
3773 Howard Hughes Parkway, Suite 500 North  
Las Vegas, Nevada 89169  
(702) 792-3773  
(702) 792-9002 (fax)

1           86. They have done this by wrongfully and fraudulently telling such vendors that  
2 MedTrak does not have the right to the technology, the right to manufacture and/or the requisite  
3 ownership of the 510(k) Registration.

4           87. After securing the rights to manufacture the VNG systems, MedTrak sought to  
5 have former AcuNetx circuit board manufacturer, American Circuit Technology, Inc. ("ACT")  
6 make the circuit boards for MedTrak's VNG devices.

7           88. ACT refused, saying it had been contacted by Hunt and AcuNetx and told that  
8 MedTrak did not have the right to manufacture and that if ACT did so, it would be subject to a  
9 lawsuit from AcuNetx.

10           89. In response, John Brewer, counsel for MedTrak and MedTrak sent a letter to Mr.  
11 Brahmbhatt, counsel for ACT, and provided him with the agreements set forth herein  
12 establishing MedTrak's right to have former AcuNetx vendors manufacture VNG parts for it. A  
13 copy of a February 6, 2012 letter from ACT's counsel to AcuNetx's counsel setting forth the  
14 interference by Hunt and AcuNetx and confirming receipt of the agreements from MedTrak's  
15 counsel is attached hereto as **Exhibit 19**.

16           90. Such efforts were ultimately unsuccessful, however, in persuading ACT to  
17 contract with MedTrak under the threat of a lawsuit from AcuNetx, damaging MedTrak.  
18 A copy of email correspondence dated April 4, 2012, between ACT counsel and counsel for  
19 AcuNetx setting forth AcuNetx's threats of litigation and ACT's decision not to proceed with  
20 either AcuNetx or MedTrak is attached hereto as **Exhibit 20**.

21                   (2)    **AcuNetx Defamatory Statements**

22           91. Finally, as exemplified in Exhibit 16, attached hereto, in a bizarre effort to prevent  
23 MedTrak from either manufacturing or marketing its VNG systems, AcuNetx, Hunt and its  
24 agents, including outside counsel, Cathy Jones, manufactured a story claiming MedTrak and its  
25 principals, Shadowens and Auerbach, engaged in criminal conduct to steal AcuNetx property and  
26 unlawfully delist AcuNetx from the FDA 510(k) Registration and List MedTrak.

27           92. In response to the harm caused by these actions of AcuNetx and Hunt, on January  
28 25, 2012, counsel for MedTrak sent a letter to AcuNetx's counsel demanding she, AcuNetx and



1 Hunt cease such interference. Mr. Brewer particularly noted that MedTrak was aware, for  
 2 example, that AcuNetx was calling another of MedTrak's business partners, Atmos, Inc., and  
 3 telling Atmos that Shadowens "is a crook and a criminal" in an effort to intimidate Atmos from  
 4 doing business with MedTrak. A copy of Mr. Brewer's January 25, 2012, letter is attached  
 5 hereto as **Exhibit 21**.

6 93. AcuNetx and Hunt refused and belligerently doubled down on their unlawful,  
 7 defamatory and interfering conduct. On February 7, 2012, AcuNetx's counsel sent an email to  
 8 ACT counsel again falsely claiming that "MedTrak attempted to use a fraudulent 'agreement'  
 9 and stolen information to file the 510(k) in its name". A copy of this email is attached hereto as  
 10 **Exhibit 22**.

11 94. Neither AcuNetx nor Hunt have ceased their efforts to unlawfully damage  
 12 MedTrak by interfering in MedTrak's existing or prospective contractual relations.

13 95. Additionally, AcuNetx continues to falsely claim that it owns the copyrights to  
 14 the VNG Software when it does not.

15 96. AcuNetx also has refused to tender to MedTrak as required all of the property  
 16 necessary to the manufacture of the VNG systems, including the latest version of the VNG  
 17 Software code, which MedTrak understands to be "Version 3.0".

18 97. Finally, AcuNetx has refused to cease infringing MedTrak's copyrights in and to  
 19 the VNG Software.

20 98. Accordingly, MedTrak alleges the following claims against Defendants:

21 **FIRST CLAIM FOR RELIEF**  
 22 (Copyright Infringement)

23 99. Plaintiff realleges and incorporates each and every allegation of the preceding  
 24 paragraphs as if fully set forth herein.

25 100. MedTrak owns the full and exclusive right, title and interest in United States  
 26 Copyright Application Number 1-757251911 for the content of the VNG Software 1.0, a true and  
 27 correct copy of such application, sans deposit, is attached hereto as Exhibit 3.  
 28

1 101. MedTrak owns the full and exclusive right, title and interest in the United States  
2 Copyright Application Number 1-757283281 for the content of the VNG Software V2.41.

3 102. Defendants are copying the VNG Software to manufacture VNG devices without  
4 license or authorization from MedTrak.

5 103. Defendants' unauthorized copying and use of the VNG Software and any  
6 derivatives or version of the VNG Software, including without limitation "Version 3.0" is an  
7 infringement of MedTrak's copyrights and a violation of 17 U.S.C. § 501.

8 104. MedTrak will suffer and is suffering irreparable harm from Defendants'  
9 infringement of MedTrak's copyrights.

10 105. Pursuant to 17 U.S.C. § 502, MedTrak is entitled to an injunction restraining  
11 Defendants or any of their affiliates, subsidiaries, vendors, suppliers, distributors, agents and  
12 assigns from engaging in any further acts in violation of the copyright laws of the United States.

13 106. Pursuant to 17 U.S.C. § 504, MedTrak is further entitled to actual and  
14 consequential damages, which are in excess of \$75,000.00, and Defendants' profits as a result of  
15 their infringement, or statutory damages, costs and attorneys' fees.

16 107. As Defendants unlawful infringing conduct was and is willful and malicious,  
17 MedTrak is entitled to punitive damages and statutory damages of \$50,000.00 for each  
18 infringement.

19  
20 **SECOND CLAIM FOR RELIEF**  
*(Deceptive Trade Practices)*

21 108. Plaintiff realleges and incorporates each and every allegation of the preceding  
22 paragraphs as if fully set forth herein.

23 109. Defendants' intentional, willful and unlawful use of MedTrak's copyrighted  
24 software, MedTrak's Confidential Information, Proprietary Information, and FDA 510(k)  
25 925111 Registration to develop, manufacture, market and sale VNG devices incorporating the  
26 same and that are substantially similar to MedTrak's VNG products constitutes a violation of  
27 NRS § 598.0915 in that it uses deceptive representations in connection with the provision of  
28 goods and/or services.

110. Defendants intentional, willful and unlawful claim that MedTrak does not own the VNG Software, Confidential Information, Proprietary Information, and FDA 510(k) K925111 Registration necessary to manufacture, market and sale its VNG devices, when MedTrak does in fact own all such rights to the exclusion of all others including AcuNetx, is a violation of NRS § 598.0915 in that it uses deceptive representations in connection with the provision of goods and/or services.

111. MedTrak is entitled to injunctive relief, the recovery of its attorney's fees and expenses pursuant to NRS § 598.0999, statutory and punitive damages for each violation.

**THIRD CLAIM FOR RELIEF**  
*(Common Law Unfair Competition)*

112. Plaintiff realleges and incorporates each and every allegation of the preceding paragraphs as if fully set forth herein.

113. Defendants' infringing use of MedTrak's copyrighted materials violates MedTrak's rights with full knowledge of MedTrak's rights for the purpose of trading upon MedTrak's goodwill and reputation and the passing off of Defendants' goods as those of MedTrak.

114. Defendants' deceptive business practices, infringement, and unfair competition have been committed with the intent to cause confusion, to cause mistake, and to deceive.

115. Defendants' actions constitute infringement of MedTrak's common law rights and improper and unfair competition.

116. As a result, MedTrak is suffering irreparable injury and has no adequate remedy at law.

117. MedTrak is entitled to injunctive relief, actual and consequential damages, which are in excess of \$75,000.00, the disgorgement of any and all profits from the willful and unlawful acts of Defendants, and punitive damages for these unlawful actions.

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**FOURTH CLAIM FOR RELIEF**  
***(Misappropriation of Trade Secrets)***

118. Plaintiff realleges and incorporates each and every allegation of the preceding paragraphs as if fully set forth herein.

119. MedTrak's Confidential Information and Proprietary Information (as defined herein) are protectable trade secrets under the Uniform Trade Secrets Act, NRS § 600A.010 *et seq.* This information derives independent economic value from not being generally known or ascertainable to the public by proper means, and also is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

120. As set forth above, MedTrak disclosed this information, identified as Confidential Information and Proprietary Information, in connection with certain licenses to Defendant AcuNetx for the manufacture of MedTrak's VNG devices.

121. Defendants were and are under a duty to maintain the secrecy of this information and not to disclose, misappropriate or use it.

122. Defendants wrongfully and intentionally misappropriated MedTrak's trade secrets and are using these trade secrets to unfairly compete against MedTrak by using these trade secrets to manufacture, market and sell VNG devices employing MedTrak's trade secrets.

123. Defendants willful actions are in violation of the Uniform Trade Secrets Act, NRS § 600A.035.

124. Defendants' misappropriation has caused and will continue to cause irreparable injury to MedTrak for which there is no adequate remedy at law.

125. MedTrak seeks injunctive relief, the recovery of its attorney's fees and expenses pursuant to NRS § 600A.060, actual and consequential damages, which are in excess of \$75,000.00, and the maximum amount of exemplary damages permitted by Nevada law.

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**FIFTH CLAIM FOR RELIEF**  
*(Misappropriation of Intellectual Property)*

126. Plaintiff realleges and incorporates each and every allegation of the preceding paragraphs as if fully set forth herein.

127. MedTrak is the lawful and exclusive owner by assignment of the FDA 510(k) K925111 Registration as set forth above. Under the law, only MedTrak is authorized to seek and obtain a new FDA 510(k) listing for this 510(k) Registration.

128. Only MedTrak owns all the right, title and interest necessary to manufacture, market, and sale the VNG device registered and listed on the FDA 510(k) register.

129. Defendant AcuNetx owns no right title or interest in the FDA 510(k) K925111 Registration.

130. Defendant AcuNetx has not lawful right to register or list itself as an owner or manufacture of the FDA 510(k) K925111 device.

131. Defendant AcuNetx's listing of itself as the owner and manufacture of this FDA 510(k) device under FDA 510(k) registration number 2028047 was wrongful and unlawfully obtained or renewed by lying to a federal agency.

132. The FDA 510(k) K925111 Registration has independent economic value, which value and good will is exclusively the intellectual property and right of MedTrak.

133. Defendant AcuNetx's actions in wrongfully claiming ownership of, failing to delist itself as the owner or manufacture of, and in registering or renewing the registration of the FDA 510(k) K925111 Registration under its own name constitutes a misappropriation of MedTrak's intellectual property.

134. AcuNetx's misappropriation has caused and will continue to cause irreparable injury to MedTrak for which there is no adequate remedy at law.

135. MedTrak seeks injunctive relief, the recovery of its attorney's fees and expenses, actual and consequential damages, which are in excess of \$75,000.00, and the maximum amount of punitive damages permitted by Nevada law.

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**SIXTH CLAIM FOR RELIEF**  
*(Declaratory Judgment)*

136. Plaintiff realleges and incorporates each and every allegation of the preceding paragraphs as if fully set forth herein.

137. Defendant AcuNetx has alleged that it is the lawful owner of the FDA 510(k) 925111 Registration.

138. AcuNetx further alleges that it is the lawful owner of the intellectual property, including that identified herein as the Confidential Information and Proprietary Information, necessary to manufacture, market, sale and service the VNG devices at issue herein

139. As set forth here, AcuNetx owns no interest, right, or title in or to any of the intellectual property necessary to manufacture, market, sale or service the VNG devices at issue herein, as all such intellectual property rights have long been acquired by contract by MedTrak.

140. The entirety of AcuNetx' final rights consisted merely of the right to manufacture such products under a revocable, no recourse, license from MedTrak.

141. The final license issued from MedTrak to AcuNetx to permit it to manufacture such products was the 2011 License Agreement.

142. The 2011 License was revoked on January 23, 2012, leaving AcuNetx with no ownership or license rights at all in and to the VNG device.

143. Nevertheless, AcuNetx not only continues to infringe intellectual property to which it has no rights, it continues to claim it owns property and has rights it does not have.

144. These false claims and allegations of AcuNetx have harmed and are harming MedTrak. These allegations have caused MedTrak to lose customers and vendors.

145. These false allegations arise from questions regarding the construction and applicability of the agreements at issue in this matter as set forth above.

146. These allegations constitute an actual and justifiable controversy that is ripe for adjudication by this Court under Nevada's Uniform Declaratory Judgment Act, NRS 30.010 *et seq.*

147. MedTrak, therefore, seeks a declaratory judgment that it is the sole and exclusive

1 owner of the intellectual property at issue herein necessary to manufacture, market, distribute,  
2 sale and service VNG devices under the FDA 510(k) K925111 Registration.

3 148. MedTrak has been required to retain the services of counsel to prosecute this  
4 action and is seeks the recovery of its attorneys fees and costs incurred herein.

5 **SEVENTH CLAIM FOR RELIEF**

6 *(Fraud in the Inducement)*

7 149. Plaintiff realleges and incorporates each and every allegation of the preceding  
8 paragraphs as if fully set forth herein.

9 150. Hunt and AcuNetx falsely represented to MedTrak on numerous occasions that  
10 they would agree to the assignment of the intellectual property necessary to manufacture the  
11 VNG devices if AcuNetx could not meet MedTrak's sales requirements.

12 151. Hunt and AcuNetx falsely represented to MedTrak on or around December 7<sup>th</sup>  
13 and 8<sup>th</sup>, 2011, that AcuNetx would assign and transfer the FDA 510(k) K925111 Registration to  
14 MedTrak if MedTrak would yet again agree to use AcuNetx as its manufacturer of such devices.

15 152. Hunt and AcuNetx knew or believed that their representations to MedTrak were  
16 false at the time the representations were made.

17 153. Hunt and AcuNetx made these false representations with the intent to induce  
18 MedTrak to act in reliance upon these false representations by agreeing to continue or to re-  
19 engage in business dealings with AcuNetx.

20 154. MedTrak justifiably relied upon these knowingly false representations.

21 155. As a direct, proximate, legal result of these misrepresentations, MedTrak has been  
22 damaged.

23 156. MedTrak seeks the recovery of its attorney's fees and expenses, actual and  
24 consequential damages, which are in excess of \$75,000.00, and as the unlawful actions of  
25 Defendants were willful and malicious, MedTrak seeks the recovery the maximum amount of  
26 punitive damages permitted by Nevada law.

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**EIGHTH CLAIM FOR RELIEF**  
*(Commercial Defamation)*

157. Plaintiff realleges and incorporates each and every allegation of the preceding paragraphs as if fully set forth herein.

158. As set forth above, Defendants and their agents have made statements to third parties regarding MedTrak.

159. These statements are derogatory and false and concern the reputation and goodwill of MedTrak and the reputation of the principals of MedTrak (which was imputed to MedTrak and was intended by Defendants to be imputed to MedTrak).

160. The statements of Defendants were defamatory per se as the false statements were of alleged criminal activity by MedTrak and/or its principals; namely, a conspiracy with an alleged AcuNetx "mole" to engage in criminal conduct against AcuNetx and an allegation that such criminal activities were being investigated by the FBI, all with the intent to injure the trade or business of MedTrak and its principals.

161. The third parties to whom Defendants made and/or published these false statements understood that the statements were both derogatory and about the MedTrak business.

162. Defendants knowing and intentional defamatory statements have caused MedTrak to lose business, to lose vendors and to suffer irreparable harm to its good will and reputation and to that of its principals for which there is not adequate remedy at law.

163. MedTrak seeks injunctive relief, the recovery of its attorney's fees and expenses, actual and consequential damages, which are in excess of \$75,000.00, and the maximum amount of punitive damages permitted by Nevada law.

**NINTH CLAIM FOR RELIEF**  
*(Intentional Interference with Contractual Relations)*

164. MedTrak realleges and incorporates each and every allegation of the preceding paragraphs as if fully set forth herein.

165. As set forth above, MedTrak had valid and existing contracts with third parties.

166. Defendants knew of these contracts.

1 167. Defendant committed intentional acts and made defamatory statements intended  
2 or designed to disrupt the contractual relationship between MedTrak and these third parties.

3 168. There was an actual disruption of these contracts.

4 169. Defendants had no privilege or justification for their actions.

5 170. As a result of the intentional interference of Defendants, MedTrak has sustained  
6 damages and as suffered irreparable harm to its good will and reputation for which there is no  
7 adequate remedy at law.

8 171. MedTrak seeks injunctive relief, the recovery of its attorney's fees and expenses,  
9 actual and consequential damages, which are in excess of \$75,000.00, and the maximum amount  
10 of punitive damages permitted by Nevada law.

11 **TENTH CLAIM FOR RELIEF**

12 *(Intentional Interference with Prospective Economic Relations)*

13 172. MedTrak realleges and incorporates each and every allegation of the preceding  
14 paragraphs as if fully set forth herein.

15 173. As set forth above, MedTrak had existing prospective contractual relationships  
16 with third parties.

17 174. Defendants knew of these prospective relationships.

18 175. Defendants intended to harm MedTrak by preventing the relationship from  
19 becoming a contractual relationship.

20 176. Defendants had no privilege or justification for their actions.

21 177. As a result of the intentional interference of Defendants with MedTrak's  
22 prospective contractual relationships, MedTrak has sustained damages and as suffered  
23 irreparable harm to its good will and reputation for which there is no adequate remedy at law.

24 178. MedTrak seeks injunctive relief, the recovery of its attorney's fees and expenses,  
25 actual and consequential damages, which are in excess of \$75,000.00, and the maximum amount  
26 of punitive damages permitted by Nevada law.

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**ELEVENTH CLAIM FOR RELIEF**  
*(Breach of Contract 2011 Agreement)*

179. MedTrak realleges and incorporates each and every allegation of the preceding paragraphs as if fully set forth herein.

180. As set forth above, a valid and existing contract was entered into between MedTrak and Defendants; namely, the 2011 Agreement (which includes the 2011 License Agreement).

181. MedTrak fully performed in accordance with the 2011 Agreement, or was excused from performance by the actions or omissions of Defendants.

182. As set forth above, Defendants breached the 2011 Agreement.

183. The breaches by Defendants were willful and malicious.

184. As a direct, proximate, and legal result of these breaches of contract, MedTrak sustained damages.

185. MedTrak seeks the recovery of its attorney's fees and expenses, actual and consequential damages, which are in excess of \$75,000.00, and the maximum amount of punitive damages permitted by Nevada law

**TWELFTH CLAIM FOR RELIEF**

*(Breach of Covenant of Good Faith and Fair Dealing Re 2011 Agreement)*

186. MedTrak realleges and incorporates each and every allegation of the preceding paragraphs as if fully set forth herein.

187. Under applicable law, the 2011 Agreement between MedTrak and AcuNetx contained an implied covenant of good faith and fair dealing.

188. Through their actions, omissions, and false representations Defendants breached their covenant of good faith and fair dealing.

189. As a direct, proximate, and legal result of these breaches of the implied covenant of good faith and fair dealing, MedTrak has been injured in an amount exceeding \$75,000.00.

190. MedTrak seeks the recovery of its attorney's fees and expenses, actual and

1 consequential damages and the maximum amount of punitive damages permitted by Nevada law.

2 **THIRTEENTH CLAIM FOR RELIEF**

3 *(Breach of Contract Re 2006 and 2009 Marketing Agreements)*

4 191. MedTrak realleges and incorporates each and every allegation of the preceding  
5 paragraphs as if fully set forth herein.

6 192. As set forth above, a valid and existing contract was entered into between  
7 MedTrak and Defendants; namely, the 2006 Marketing Agreement and its amendment, the 2009  
8 Marketing Agreement.

9 193. MedTrak fully performed in accordance with the 2006 Marketing Agreement and  
10 its amendment, the 2009 Marketing Agreement, or was excused from performance by the actions  
11 or omissions of Defendants.

12 194. As set forth above, Defendants breached the 2006 Marketing Agreement and its  
13 amendment, the 2009 Marketing Agreement.

14 195. The breaches by Defendants were willful and malicious.

15 196. As a direct, proximate, and legal result of these breaches of contract, MedTrak  
16 sustained damages.

17 197. MedTrak seeks the recovery of its attorney's fees and expenses, actual and  
18 consequential damages, which are in excess of \$75,000.00, and the maximum amount of punitive  
19 damages permitted by Nevada law.

20 **FOURTEENTH CLAIM FOR RELIEF**

21 *(Breach of Covenant of Good Faith and Fair Dealing Re 2006 and 2009 Marketing Agreements)*

22 198. MedTrak realleges and incorporates each and every allegation of the preceding  
23 paragraphs as if fully set forth herein.

24 199. Under applicable law, the 2006 Marketing Agreement and its amendment, the  
25 2009 Marketing Agreement, between MedTrak and AcuNetx contained an implied covenant of  
26 good faith and fair dealing.

27 200. Through their actions, omissions, and false representations Defendants breached  
28 their covenant of good faith and fair dealing.

1           201. As a direct, proximate, and legal result of these breaches of the implied covenant  
2 of good faith and fair dealing, MedTrak has been injured in an amount exceeding \$75,000.00.

3           202. MedTrak seeks the recovery of its attorney's fees and expenses, actual and  
4 consequential damages and the maximum amount of punitive damages permitted by Nevada law.

5  
6                                   **FIFTEENTH CLAIM FOR RELIEF**

6                                   *(Breach of Contract 2006 and 2009 Consulting Agreements)*

7           203. MedTrak realleges and incorporates each and every allegation of the preceding  
8 paragraphs as if fully set forth herein.

9           204. As set forth above, a valid and existing contract was entered into between  
10 MedTrak and Defendants; namely, the 2006 Consulting Agreement and its amendment, the 2009  
11 Consulting Agreement.

12           205. MedTrak fully performed in accordance with the 2006 Consulting Agreement and  
13 its amendment, the 2009 Consulting Agreement, or was excused from performance by the  
14 actions or omissions of Defendants.

15           206. As set forth above, Defendants breached the 2006 Consulting Agreement and its  
16 amendment, the 2009 Consulting Agreement.

17           207. The breaches by Defendants were willful and malicious.

18           208. As a direct, proximate, and legal result of these breaches of contract, MedTrak  
19 sustained damages.

20           209. MedTrak seeks the recovery of its attorney's fees and expenses, actual and  
21 consequential damages, which are in excess of \$75,000.00, and the maximum amount of punitive  
22 damages permitted by Nevada law.

23  
24                                   **SIXTEENTH CLAIM FOR RELIEF**

24                                   *(Breach of Covenant of Good Faith and Fair Dealing Re 2006 and 2009 Consulting Agreements)*

25           210. MedTrak realleges and incorporates each and every allegation of the preceding  
26 paragraphs as if fully set forth herein.

27           211. Under applicable law, the 2006 Consulting Agreement and its amendment, the  
28 2009 Consulting Agreement, between MedTrak and AcuNetx contained an implied covenant of

1 good faith and fair dealing.

2 212. Through their actions, omissions, and false representations Defendants breached  
3 their covenant of good faith and fair dealing.

4 213. As a direct, proximate, and legal result of these breaches of the implied covenant  
5 of good faith and fair dealing, MedTrak has been injured in an amount exceeding \$75,000.00.

6 214. MedTrak seeks the recovery of its attorney's fees and expenses, actual and  
7 consequential damages and the maximum amount of punitive damages permitted by Nevada law.

8  
9 **SEVENTEENTH CLAIM FOR RELIEF**  
*(Alter Ego - Chapin Hunt)*

10 215. MedTrak realleges and incorporates each and every allegation of the preceding  
11 paragraphs as if fully set forth herein.

12 216. On information and belief, Defendant Hunt is an equitable owner of Defendant  
13 AcuNetx.

14 217. Hunt is also an officer of Defendant AcuNetx and chairman of its board; however,  
15 Hunt's actions, including without limitation, the unauthorized withdrawal of funds from the  
16 AcuNetx bank account and the transfer of those funds into an account solely under Hunts  
17 personal control, evidence such a unity of interest and ownership between AcuNetx and Hunt  
18 that the separate personalities of the corporation and Hunt do not in reality exist.

19 218. If the actions of Hunt as alleged herein are treated as those of the corporation  
20 AcuNetx alone, the results would be inequitable, as the corporation has lost control of its funds  
21 and will likely lack the assets necessary to restore the damage it has caused MedTrak by Hunt's  
22 hand.

23 219. Accordingly, MedTrak seeks to hold Hunt and AcuNetx jointly and severally  
24 liable for the damages alleged in each and every claim herein.

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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff MedTrak prays for relief as follows:

1. Preliminary and Permanent Injunctive Relief enjoining Defendants, their officers, agents, servants, employees, directors, representatives, successors, assigns, related companies, and those in privity with Defendants or in active concert or participation with Defendants (“Affiliates”):

(A) from using the copyrighted material of MedTrak or any derivative thereof, including without limitation that VNG Software known as “Version 3.0”;

(B) from representing in any manner or in any media that Defendants or their Affiliates have any rights in and to the copyrighted VNG Software or are authorized or licensed by MedTrak or any other party to use the copyrighted VNG Software;

(C) from retaining an FDA 510(k) registration of the 510(k) K925111 Registration, and requiring Defendants to delist AcuNetx or any Affiliates as owners or manufacturers of the FDA 510(k) K925111 device, and requiring AcuNetx and any Affiliates to delist FDA 510(k) registration 2028047;

(D) from representing in any manner or in any media that Defendants or their Affiliates have any rights in and to the FDA 510(k) K925111 Registration;

(E) from representing in any manner or in any media that Defendants or their Affiliates have any right or title to any of the intellectual property necessary to manufacture, market, distribute, sale or service any VNG device under the FDA 510(k) K925111 Registration (or related listings, including the 2028047 registration);

(F) from representing in any manner or in any media that MedTrak does not have full right and title to all intellectual property necessary to manufacture, market, distribute, sale and service any VNG device under the FDA 510(k) K925111 Registration, or that MedTrak is not the sole and exclusive owner of the FDA 510(k) K925111 Registration;

(G) from defaming MedTrak, Shadowens, Auerbach, or MedTrak’s officers, agents, servants, employees, directors, representatives, successors, assigns, related companies;



1 (H) from interfering with either the existing contractual relationships of MedTrak  
2 or its prospective relationships;

3 (I) from retaining any intellectual property of MedTrak, and requiring Defendants  
4 to deliver "Version 3.0" of the VNG Software code, and all improvements to the VNG  
5 devices; and

6 (J) from letting Defendants or any party in privity with Defendants (including any  
7 distributor, customer, vendor or client aware of this action or of the pendency of this  
8 action) from retaining any VNG device received from Defendants or any of its Affiliates  
9 after January 23, 2012, and requiring the delivery of all such devices to Plaintiff,  
10 MedTrak.

11 2. An award of statutory copyright infringement damages in an amount of \$50,000  
12 for each VNG device containing an unauthorized copy of the copyrighted VNG Software since  
13 the commencement of this action and for attorney fees and costs;

14 3. An award of Award to MedTrak of statutory damages for Defendants' deceptive  
15 trade practices pursuant to NRS § 598.0999;

16 4. An award to MedTrak of its attorney's fees and expenses pursuant to NRS §  
17 598.0999 and NRS §600A.60;

18 5. An award to MedTrak of the disgorgement of any and all proceeds from the sale  
19 of any VNG device, component or related service, after January 23, 2012, by Defendants, its  
20 Affiliates, and any and all distributors, customers, vendors or clients aware of this action or of  
21 the pendency of this action at the time of such transaction;

22 6. An award to MedTrak of exemplary damages for Defendants' willful and wanton  
23 misappropriation of MedTrak's trade secrets and intellectual property;

24 7. A requirement that Defendants pay the costs of this action together with  
25 MedTrak's attorney's fees

26 8. An award to MedTrak of its pre-judgment and post judgment interest; and

27 ///

28 ///

DATED this 18th day of May, 2012.

*/s/ F. Chris Austin*

F. Christopher Austin (Bar No. 6559)  
Laraine M. I. Burrell (Bar No. 8771)  
3773 Howard Hughes Parkway  
Suite 400 North  
Las Vegas, Nevada 89169  
Counsel For Plaintiff: MedTrak VNG, Inc.

Greenberg Traurig  
3773 Howard Hughes Parkway, Suite 500 North  
Las Vegas, Nevada 89169  
(702) 792-3773  
(702) 792-9002 (fax)

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**CERTIFICATE OF SERVICE**