

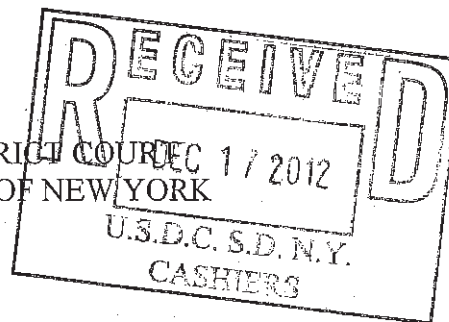
**JUDGE SWAIN**

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MEDAI, INC.

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK



MEDai, Inc.,

Plaintiff,

v.

Case No.: \_\_\_\_\_

**JURY TRIAL DEMANDED**

American Health Holding, Inc.,

Defendant.

**COMPLAINT**

Plaintiff, MEDai, Inc. ("MEDai" or "Plaintiff"), through its attorneys Paul Hastings LLP, as and for its complaint against Defendant, American Health Holding, Inc. ("Defendant" or "AHH"), alleges the following:

PARTIES, JURISDICTION, VENUE & NATURE OF THE ACTION

1. MEDai is a corporation organized and existing under the laws of the State of Florida with its principal place of business in Orlando, Florida.

2. Defendant AHH is a corporation organized and existing under the laws of the State of Ohio, with its principal place of business in Worthington, Ohio. AHH may be served with process by serving CT Corporation System, its registered agent, at 1300 East 9th St., Cleveland, OH 44114.

3. Jurisdiction is proper in this Court. Pursuant to the Software License and Services Agreement (the "Agreement") entered into by the parties on March 14, 2012 at § 13.3, the parties agreed in writing that:

This Agreement shall be governed by, and construed in accordance with, the laws of the state of New York without regard to conflicts of laws principles. The parties agree to submit to the jurisdiction of a court of competent jurisdiction in New York State, and each party hereby waives any claim that such court is an inconvenient forum.

4. The venue of this action is proper in the United States District Court for the Southern District of New York. The parties by contract included a forum selection clause requiring actions arising under their agreement to be filed only in courts located in New York State.

5. This action is within the original subject-matter jurisdiction of this Court because it involves a controversy between citizens of different states, and it seeks damages in an amount that exceeds \$75,000.00, exclusive of interest, costs and attorneys' fees.

6. More specifically, this action seeks damages as a result of AHH's termination of all of its customer and sub-licensee contracts for the license, service, and use of MEDai's licensed software in breach of the Agreement entered into between the parties. AHH also breached the Agreement by failing to offer MEDai's licensed software to its customers, sub-

licensees and potential customers and sub-licensees. At the same time AHH terminated every customer and sub-licensee contract for license, use, and service of MEDai's licensed software and ceased offering MEDai's licensed software to its customers, sub-licensees and potential customers and sub-licensees, AHH directed its customers and sub-licensees to license and utilize competitive, similar software offered by Aetna Health, Inc. ("Aetna"),<sup>1</sup> its parent company as a result of its acquisition of AHH in April 2011.

7. All conditions precedent to the commencement of this action have occurred.

### **GENERAL ALLEGATIONS**

8. MEDai is engaged in the business of providing healthcare providers and payers with solutions that support population health management, physician and facility performance management, incorporate predictive modeling, disease focused severity adjustment, benchmarking, evidence-based processes of care to improve outcomes in a hospital and payer-based setting, improve patient care, improve physician patient management practices, reduce unnecessary cost to both patient and provider, and promote efficient management practices to meet reimbursement requirements.

9. MEDai licenses a suite of its software products -- the primary product being its Risk Navigator® product -- (the "Products") to AHH via the Agreement.

10. The Agreement between MEDai and AHH was signed, executed, and made effective March 14, 2012. According to its terms, the Agreement runs for a period of five (5) years from the March 14, 2012 effective date. A true and correct copy of the Agreement is attached hereto as Exhibit 1.

11. Pursuant to the Agreement, AHH has the right to license MEDai's Products to

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<sup>1</sup>Aetna Health, Inc. ("Aetna") as it is referenced in this Complaint includes Aetna and all of Aetna's subsidiary and affiliated companies, with the exception of AHH, which is addressed separately.

AHH's own customers directly or to sub-license MEDai's Products to its customers.

12. Pursuant to the terms of the Agreement, license of MEDai's Products to AHH's customers and sub-licensee results in a payment made to MEDai in the form of a monthly license fee paid to MEDai by AHH. The amount of such fee is determined by the number of AHH customers and sub-licensees who contract for license of the service with AHH, as well as by such customers and sub-licensees monthly usage of the Products. *See* Exhibit 1, at Licensed Software and Fees (Exhibit A).

13. On March 15 2012, the day after the Agreement was made effective, a total of twenty-three (23) AHH customers and sub-licensees licensed MEDai's Products through AHH.

14. On March 26, 2012, AHH notified MEDai that it would be terminating nine (9) of AHH's customers and sub-licensees from the Agreement.

15. On April 26, 2012, AHH notified MEDai that it would be terminating an additional four (4) of AHH's customers and sub-licensees from the Agreement.

16. On June 12, 2012, AHH notified MEDai that it would be terminating an additional five (5) of AHH's customers and sub-licensees from the Agreement.

17. On July 27, 2012, AHH notified MEDai that it would be terminating an additional three (3) of AHH's customers and sub-licensees from the Agreement.

18. On August 8, 2012, AHH notified MEDai that it would be terminating the final two (2) AHH customers and sub-licensees that licensed MEDai's Product through AHH via the Agreement.

19. From August 8, 2012 to the present, no AHH customer or sub-licensee has licensed or utilized MEDai's Products.

20. In 2012, AHH discontinued offering MEDai's Products to AHH's customers, sub-licensees, and potential customers and sub-licensees.

21. From August 8, 2012 to the present, MEDai has received no revenue whatsoever from AHH's license of MEDai's Products or as a result of the Agreement.

22. AHH and MEDai have enjoyed a continuous contractual and business relationship from 2005 to the present.

23. In 2005, AHH entered into a contractual agreement for the license of a suite MEDai's software products – including the Risk Navigator® product – similar to the list of products licensed to AHH by the Agreement (the "2005 Agreement"). The products subject to the 2005 Agreement were licensed by AHH to its customers and sub-licensees.

24. The 2005 Agreement was in place and effective until the Agreement was made effective between the parties in March 2012.

25. All of the twenty-three (23) AHH customers and sub-licensees who licensed and utilized MEDai's Products via the Agreement, also licensed and utilized similar MEDai software products via the 2005 Agreement prior to the March 14, 2012 effective date of the Agreement.

26. In June 2011 and prior to the effective date of the Agreement (March 14, 2012), AHH was purchased by and became a subsidiary of Aetna.

27. Upon information and belief, Aetna is a healthcare company that offers and sells many healthcare products, including products that are similar and competitive with the MEDai Products that are the subject of the Agreement.

28. Despite the purchase of AHH by Aetna, the presence of Aetna's competitive products, and AHH's knowledge of Aetna's competitive products, during negotiations of the

Agreement, AHH made representations to MEDai personnel and representatives that AHH did not plan to transition all of its customers and sub-licensees to Aetna's competitive products.

29. After the effective date of the Agreement and even after the termination of some AHH customers and sub-licensees from the Agreement, AHH made representations to MEDai personnel that it would not terminate all of its customers and sub-licensee licensing and utilizing MEDai's Products pursuant to the Agreement.

30. During negotiations of the Agreement, after the effective date of the Agreement and even after the termination of some AHH customers and sub-licensees under the Agreement, AHH represented to MEDai personnel that AHH would continue to offer MEDai's Products to its customers, sub-licensees and potential customers and sub-licensees.

31. Soon after the effective date of the Agreement, AHH began directing its customers and sub-licensees to license and utilize competitive, similar software offered by Aetna.

32. Upon information and belief, all twenty-three (23) of AHH's customers and sub-licensees that formerly licensed MEDai's Products via the Agreement, now license and utilize competitive, similar software offered by Aetna, AHH's parent company.

33. Through its actions and misrepresentations, AHH has breached its Agreement with MEDai.

34. AHH's actions and misrepresentations have had the effect of destroying MEDai's right to receive the benefits of the Agreement.

35. AHH's actions and misrepresentations served no legitimate business purpose of AHH, and were taken solely for the purpose of diverting license and utilization of MEDai's Products to similar, competitive products offered by Aetna, AHH's new parent company.

36. AHH's actions and misrepresentations to divert license and utilization of MEDai's Products to similar, competitive products offered by Aetna were carried out as part of a concerted plan to benefit Aetna and at the direction of Aetna.

37. All of the aforesaid actions and misrepresentations of AHH were or are being done intentionally and in bad faith, entitling MEDai to expenses of litigation.

**COUNT I – BREACH OF CONTRACT**

38. Plaintiff re-alleges ¶¶ 1- 37 as if fully stated herein.

39. This is an action for damages for breach of contract against Defendant including but not limited to, breach of the implied covenant of good faith and fair dealing.

40. The implied covenant of good faith and fair dealing is a recognized term of every commercial contract under New York law.

41. A valid and enforceable contract in the form of the Agreement was signed, executed, and made effective between Defendant and Plaintiff on March 14, 2012.

42. Plaintiff and Defendant have enjoyed and continued to enjoy a contractual relationship subject to the implied covenant of good faith and fair dealing.

43. In demanding and effecting AHH's customers and sub-licensees' termination of their license and utilization of MEDai's Products via the Agreement and directing such customers and sub-licensees to license and utilize Aetna's competitive and similar software product – which acted as a replacement for MEDai's Products – for Aetna's own commercial gain and to MEDai's detriment, AHH has acted unfairly and in bad faith.

44. AHH's representations – made during negotiations of and prior to the effective date of the Agreement, after the effective date of the Agreement, and even after the termination of some AHH customers and sub-licensees under the Agreement – to MEDai personnel that it

would not terminate all of its customers and sub-licensee licensing and utilizing MEDai's Products pursuant to the Agreement despite Aetna's acquisition of AHH and the presence of its competitive software were inaccurate and made in bad faith.

45. AHH's representations – made during negotiations of and prior to the effective date of the Agreement, after the effective date of the Agreement and even after the termination of some AHH customers and sub-licensees under the Agreement – to MEDai personnel that AHH would continue to offer MEDai's Products to its customers, sub-licensees and potential customers and sub-licensees were inaccurate and made in bad faith.

46. AHH's representations that it would continue to offer MEDai's Products to AHH's customers, sub-licensees and potential customers and sub-licensees despite the existence of Aetna's similar and competitive products were inaccurate and made in bad faith.

47. AHH's actions and misrepresentations served no legitimate business purpose, were part of a concerted plan to benefit Aetna and were undertaken at the direction of Aetna, and were taken solely for the purpose of diverting license and utilization of MEDai's Products to similar, competitive products offered by Aetna, AHH's new parent company.

48. As a direct and proximate result of Defendant's breaches of the Agreement, Plaintiff has and continues to suffer damages.


WHEREFORE, Plaintiff demands judgment granting to Plaintiff a trial of all issues so triable and judgment against Defendant for all appropriate actual, direct, consequential and incidental damages, interest, costs and any other relief this Court deems appropriate.

#### **STATEMENT OF DEMAND FOR RELIEF**

Having set forth its claims against Defendant, Plaintiff demands a trial by jury and a judgment be entered in its favor against the Defendant as follows:

- (a) Plaintiff seeks judgment in its favor against Defendant on each Count of this Complaint as requested therein;
- (b) actual, direct, consequential and incidental damages, including interest, costs and expenses of litigation;
- (c) granting Plaintiff its costs and expenses of litigation;
- (d) granting Plaintiff such other, further and different relief as this Court may deem just, equitable and proper.

Dated: December 17, 2012

By:   
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