

NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
2014-15 14-CV-5192

MEDFUSION, INC.,

Plaintiff,

v.

ALLSCRIPTS HEALTHCARE SOLUTIONS, INC.,

Defendant.

COMPLAINT

Plaintiff Medfusion, Inc., in complaining of Defendant Allscripts Health Care Solutions, Inc., states:

The Parties

1. Plaintiff Medfusion, Inc. (“Medfusion”) is a privately-held, health care software and internet technology company headquartered in Wake County, North Carolina that employs approximately 120 people.

2. Medfusion developed and offers patient portal messaging services to physicians and other health care providers. Medfusion’s services enable patients and physicians to communicate securely online. It allows patients to perform various tasks online, such as request appointments, pay bills, request prescription refills, and review lab results and other messages.

3. By allowing physicians to confidentially share medical information with their patients, Medfusion’s technology also enables physicians to meet “Meaningful Use” requirements under a federal program that gives doctors financial incentives for using certified electronic health records to improve patient care.

4. Defendant Allscripts Healthcare Solutions, Inc. (“Allscripts”) is a publicly-traded, medical software company headquartered in Chicago, Illinois that offers health care providers an

array of software solutions for creating and managing electronic health care records and providing practice management solutions.

5. Allscripts markets and sells its software solutions and other products and services in North Carolina and in other states, and maintains an office in Wake County.

The Parties Contracted to Develop and Offer a Patient Portal to Health Care Providers

6. On July 7, 2009, the parties entered into a “Patient Access Solution Agreement” (the “Agreement”). In the Agreement, the parties agreed to integrate Medfusion’s technology with Allscripts’ health care software solutions to create an online patient portal (the “Portal”), and to market the Portal to health care providers.

7. The Agreement gave Allscripts the ability to offer much more robust online patient-provider communication and transaction services to its health care provider customers.

8. Allscripts agreed to use commercially reasonable efforts to market and sell the Portal, *see* Agreement, ¶ 13.1, though Allscripts’ marketing and sales obligations for the Portal were heightened in two subsequent amendments to the Agreement referenced below.

9. Under the Agreement, Allscripts entered into “End User Agreements” (“EUA”) with health care providers. Per the EUA, the End User purchased the rights to the Portal for a specific term (typically 36 months), with automatic renewals unless cancelled upon proper notice, and committed to pay Allscripts monthly subscription fees over the term of the EUA for the Portal.

10. The parties agreed to a process by which Allscripts would submit and Medfusion would accept an order for each such End User. Each such order, once accepted by Medfusion, was a binding agreement by which Medfusion agreed to provide its services to the End User (via the Portal), and Allscripts agreed to pay Medfusion for those services pursuant to a fee schedule. *See* Agreement, ¶ 3.6.

11. The initial term of the Agreement was for five years (until July 17, 2014), with automatic renewal unless either party elected not to renew. *See* Agreement, ¶ 8.1.

12. In the Agreement, the parties agreed to a collaborative development program for creating and enhancing the Portal over time. As Medfusion enhanced its service offerings, Medfusion could not unilaterally integrate those enhancements into the Portal. Allscripts had to cooperate in order for such enhancements to be integrated into new releases of the Portal.

13. The parties subsequently entered into two amendments to the Agreement that in part incrementally clarified and expanded Allscripts' responsibilities to market Medfusion's services and the Portal, and to do its part in enhancing the Portal.

First Amendment and Addendum to the Agreement

14. In April 2010, the parties entered a First Amendment to the Agreement.

15. By that time, the federally sponsored Meaningful Use program was in effect that gave health care providers not just financial incentives to acquire and use certified electronic health records technology (including electronic communications with patients), but penalized them if they failed to do so by certain deadlines. The parties recognized the Meaningful Use program would spur a dramatic and unique spike in demand for services like the Portal. Government data at the time predicted that a large majority of physicians would participate in the Meaningful Use program, which proved to be accurate.

16. In the First Amendment, in order to address that unique marketing and sales opportunity, and for the benefit of both parties, Allscripts agreed to make available Medfusion's services to Allscripts' core customers, and to use commercially reasonable efforts to market the availability and value of Medfusion's services to those customers. Specifically, on a bi-annual basis, Allscripts agreed to certain targeted marketing of Medfusion's services among those customers.

17. In exchange, Medfusion agreed to contribute funds to a co-marketing fund used to market the Portal.

Second Amendment and Addendum to the Agreement

18. On August 1, 2011, the parties entered a Second Amendment and Addendum to the Agreement (the “Second Amendment”), which was meant to address several different issues that had arisen thus far over the term of the Agreement.

The Backlog

19. One of the issues that the Second Amendment was intended to address was the “backlog” of orders for the Portal caused by Allscripts. After Medfusion approved an order for the Portal for an End User, Allscripts was delaying the Portal implementation and billing process.

20. As a result, some End Users waited over a year after entering an EUA for the Portal before they actually received service.

21. This “backlog” had significant, negative financial consequences for Medfusion. By delaying the implementation process, Allscripts made it impossible for Medfusion to perform its part of that process, which then prevented Medfusion from being able to provide the End Users with access to the services and receive payment.

22. To address this “backlog” issue, in the Second Amendment, Allscripts agreed to use best efforts to include in all End User contracts terms that enabled the End User to accept implementation and delivery of the Portal *and begin the client billing process within 30 days of contract [EUA] signing*, with any exceptions made on a case-by-case basis and reviewed by the parties. *See* Second Amendment, Article I, ¶ 6 (emphasis added).

Allscripts' Heightened Marketing Responsibilities

23. Another issue addressed in the Second Amendment was an interest in accelerating sales of the Portal, particularly in light of the Meaningful Use program.

24. Allscripts agreed to include the Portal offering *by default* in every Allscripts “EHR Enterprise” and “EHR Pro” deal, which represented its core software offerings. *See* Second Amendment, ¶ 1 (emphasis added).

25. Allscripts also agreed to develop and execute a plan to embed the Portal in all net new “EHR/PM” deals for its “Professional” and “Enterprise” market segments, unless removed as needed on a case-by-case basis, and to provide an individual rationale for each exception to Medfusion. *See* Second Amendment, ¶ 5.

26. Allscripts also agreed to reinforce in sales word tracks and marketing messages that the Portal “developed in partnership with [Medfusion] is Allscripts’ *only preferred Patient Portal solution.*” *See* Second Amendment, ¶ 5 (emphasis added).

Enhancements to the Portal

27. Another issue the Second Amendment was intended to address was delays caused by Allscripts in including enhancements to the Portal, and integrating it with certain other Allscripts’ services to heighten the Portal’s marketability.

28. An example is “Forms.” Medfusion had developed the software so that information completed by patients in online forms (*e.g.*, health history) would automatically populate in a health care providers’ electronic records, eliminating the need to manually code that information for the provider. This was a highly-requested feature by End Users. Allscripts had repeatedly refused to integrate this feature into the Portal.

29. Consequently, the “earn out” provisions that were meant to give Allscripts an incentive to meet certain targets for enhancements or integration of services were also modified.

New Revenue Allocation Going Forward

30. In exchange for these commitments from Allscripts (*e.g.*, expediting the Portal implementation process, including the Portal by default in core offerings, marketing the Portal as the only preferred portal solution, eliminating delays in integrating enhancements in the Portal), Medfusion agreed to a revenue sharing allocation that was more favorable to Allscripts on new End User accounts secured after the Second Amendment. Specifically, the parties agreed that, effective as of the date of the Second Amendment, that Allscripts would receive 55% and Medfusion would receive 45% of all *net* revenues and recurring charges (*after* payment to Medfusion for its costs of goods) for Portal sales “carried out in adherence with the plan described in this Second Amendment.”

Allscripts Acquires a Competitor of Medfusion’s, and Shifts its Efforts from the Portal to its Own Service Offering

31. Upon information and belief, by the fall of 2012, Allscripts was in negotiations to acquire Jardogs LLC.

32. Jardogs had developed patient messaging services marketed as “FollowMyHealth,” and was a competitor of Medfusion.

33. FollowMyHealth included certain features that patients or physicians liked and that Medfusion had previously developed and were ready for use, but that Allscripts had failed or refused to include in the Portal.

34. In February 2013, Allscripts acquired Jardogs and the rights to FollowMyHealth.

35. Allscripts announced the acquisition at the start of the biggest national health care IT trade show of the year, gleaning significant publicity for FollowMyHealth, with virtually no advance notice to Medfusion, whose representatives were attending and prepared to jointly market the Portal with Allscripts at the show.

36. Shortly after this acquisition, Cliff Meltzer, responsible for solution development at Allscripts, told Reuters, “I would expect over a period of time, we will make the Jardogs’ portal [FollowMyHealth] available across all of our products.”

37. At the time of this acquisition, there were 18 months left in the initial term of the Agreement as amended, to expire in July 2014 absent an extension.

38. Allscripts did not wait until its contractual obligations owed to Medfusion (*e.g.*, marketing the Portal as Allscripts’ only preferred portal solution) ended in July 2014 before beginning to make FollowMyHealth available across its products. After Allscripts acquired the rights to FollowMyHealth, Allscripts’ priority and plan immediately shifted from the Portal (for which it shared sales revenue with Medfusion) to developing and marketing FollowMyHealth, *and converting End Users who were either using the Portal or were in the “backlog” waiting for the Portal to FollowMyHealth.*

39. As part of this plan, Allscripts provided only the most minimal support and resources to the Portal to allow for the time necessary to convert customers from the Portal to FollowMyHealth, stringing Medfusion out as long as possible in the process.

40. After Allscripts’ acquisition of FollowMyHealth, pre-existing problems with Allscripts’ performance that the Second Amendment was meant to address grew worse, and Allscripts generated multiple other new issues and problems for Medfusion.

The Backlog Only Got Worse

41. Upon information and belief, Allscripts never made any changes to the EUA’s to expedite the Portal implementation and billing process, despite its promise in the Second Amendment to use best efforts in that regard.

42. After Allscripts acquired FollowMyHealth, the backlog just got worse.

43. As of April 14, 2014, approximately 14 months after that acquisition, the negative financial consequences to Medfusion due to the backlog exceeded \$10,000,000.

The Portal No Longer Marketed as Allscripts' Only Preferred Portal, Resulting in a Sharp Reduction in Sales of the Portal

44. After the acquisition of FollowMyHealth, Allscripts breached its marketing and sales obligations for the Portal as set forth in the Second Amendment.

45. Rather than reinforcing in its marketing messages that the Portal was Allscripts' only preferred Portal Solution as promised in the Second Amendment, Allscripts among other things produced and circulated comparisons between Medfusion's services and FollowMyHealth, which were skewed toward FollowMyHealth as the better service.

46. At the same time, Allscripts instructed Medfusion to cease all direct contacts with Allscripts' prospective customers.

47. The result was an immediate and significant drop in sales of the Portal, resulting in lost income to Medfusion.

48. At the same time, Allscripts was realizing very significant revenue from the sale of FollowMyHealth, which it did not have to share with Medfusion.

Minimal Collaboration on the Portal

49. After Allscripts acquired FollowMyHealth, its resources were focused on that alternative service, and Allscripts was unwilling to provide its necessary assistance in adding any enhancements or functionality to the Portal that would enhance its marketability to new customers, other than the minimal requirements for certification under the Meaningful Use program.

Unilaterally Waive Fees Owed by End Users and Stop Billing Them, and Refuse to Pay Medfusion

50. Allscripts was typically the first point of contact for End User support for the Portal. An issue could arise either from the patient side of the Portal (for which Medfusion is responsible), or the physician side of the Portal (for which Allscripts was responsible). Support protocols were in place for when an issue arose for which Medfusion might be responsible.

51. Allscripts would commonly place the blame for an issue on its side of the Portal on Medfusion, and often not inform Medfusion that there was any End User issue or complaint regardless of the source of the problem.

52. Allscripts also unilaterally and without notice to Medfusion or any opportunity for Medfusion to address the End User's issue, began to reduce or waive the End User's subscription fees due under its EUA, stopped billing the End User in violation of Allcripts' duties under the Second Amendment, and/or allowed the End User to prematurely cancel their EUA; and then used that as a pretext for not paying Medfusion in full for its services the End User contracted for, telling Medfusion after-the-fact about it (or not at all).

Conversion of End Users from the Portal to FollowMyHealth

53. After its acquisition of FollowMyHealth, Allscripts did not just virtually ignore its contractual obligations to Medfusion, it also intentionally and deliberately marketed FollowMyHealth to End Users who were using the Portal, and End Users in the backlog who were waiting for long periods of time for installation of the Portal (due to delays caused by Allscripts).

54. After the acquisition, Allscripts would also use the opportunity when an End User called for support to make them aware of FollowMyHealth as an alternative service.

55. Allscripts also targeted End Users who had signed an EUA and were in the backlog (caused by Allscripts) waiting for implementation of the Portal to switch to FollowMyHealth as an alternative service.

56. Allscripts also used the opportunity when End Users upgraded their other services with Allscripts to suggest they should use FollowMyHealth as a better option than the Portal.

After-the-Fact, Allscripts' New Interpretation of the Second Amendment Revenue Share Allocation

57. Well after the Second Amendment was entered into, and upon information and belief after its negotiations to acquire Jardogs commenced, Allscripts took a new interpretation of the revised revenue share allocation agreed to in the Second Amendment. The result was a “double-whammy” against Medfusion.

58. First, up until that time, and per the fee arrangement in the original Agreement, Allscripts first paid Medfusion for its cost of goods sold, and then the remaining *net* revenue was shared by the parties based upon an agreed formula. The orders for new End User services that Allscripts prepared and sent to Medfusion and that Medfusion accepted reflected these terms. Nevertheless, Allscripts for the first time took the position that, contrary to the terms of the original Agreement and those accepted orders, Medfusion was no longer entitled to payment for its costs of goods sold *before* revenue was allocated between the parties, but instead it was *gross* revenue from an End User account that was allocated between them, with Medfusion bearing the burden of its costs of goods sold.

59. Secondly, Allscripts took the position that the revised 55-Allscripts/45-Medfusion revenue sharing formula applied not just to new customers signed up after the effective date of the Second Amendment and to sales carried out under the marketing plan set forth in the Second Amendment, as that amendment reads, but also applied to *pre-existing* End User accounts.

60. The result of just these two unilateral changes by Allscripts was an approximate 25% reduction in the payments Allscripts made to Medfusion for its ongoing services to End Users.

Allscripts Never Gave Any Notice of Dispute of an Invoice from Medfusion

61. The Agreement provides that, in the event either party asserts that there exists a dispute or breach by the other party, such party shall deliver a written notice to the other party specifying the nature of the asserted dispute or breach and requesting a meeting to attempt to resolve the same. Such notice, if given, then triggered a 30 day discussion and cure period. *See* Agreement, ¶ 15.14. The means for providing any notice under the Agreement was also specified. *See* Agreement, ¶ 15.8.

62. Allscripts never provided any such notice to Medfusion, including any pertaining to any invoice Medfusion sent to Allscripts. Instead, Allscripts simply delayed payment, refused to pay or short paid Medfusion's invoices.

The Agreement Terminated When Allscripts Failed to Cure Payment Defaults

63. By April 2014, 14 months after Allscripts' acquisition of FollowMyHealth, Medfusion had had enough.

64. By that point, the difference between what Medfusion had billed Allscripts for services and what Allscripts had paid exceeded \$5,460,000.

65. Pursuant to the Agreement, Medfusion may terminate the Agreement if Allscripts fails to make timely payments for any amounts not disputed in good faith and any such failure is not remedied within 10 days of receipt of written notice from Medfusion. *See* Agreement, ¶ 8.1.

66. On April 14, 2014, Medfusion served Allscripts with a formal notice of breach, pursuant to the Agreement. Medfusion gave Allscripts notice of its failure to make timely payments due in the amount of the \$5,460,627.64.

67. In response, Allscripts sent payments totaling \$993,540.80 to Medfusion, thereby partially acknowledging it had failed to make timely payments.

68. Even though it had never disputed any of the relevant invoices, and provided no explanation, Allscripts claimed in a letter dated April 16, 2014 that the remaining \$4,467,086.84 was disputed in “good faith.”

69. Having never disputed any of Medfusion’s invoices pursuant to the dispute resolution provision the parties agreed to, Allscripts could not after-the-fact claim there was a “good faith” dispute over those invoices, as communicated to Allscripts’ counsel in a letter dated April 17, 2014. In that letter, Medfusion via counsel indicated it expected Allscripts to pay the remaining balance due in the 10 day cure period.

70. Exhaustive discussions occurred during the 10 day period, but Allscripts made no further payment in that cure period. Consequently, the Agreement terminated due to Allscripts’ failure to cure its payment defaults 10 days after Medfusion’s notice of breach, on April 24, 2014.

Events Post-Termination of Agreement

Medfusion Continues Service to End Users Without Charge During Transition Period

71. Although it is under no obligation to do so, Medfusion is continuing to provide support for its part of the Portal through May 31, 2014, so that there is no disruption in the End User’s use of the Portal and communications with their patients. This provides End Users with time to contract either directly with Medfusion, or with Allscripts or some other service provider, provided that Allscripts continues to meet its user support obligations, as Medfusion is doing. Medfusion is not charging Allscripts for this service, since the Agreement has terminated.

72. Anticipating Allscripts would not cure its payment defaults, Medfusion told Allscripts in advance that Medfusion would provide this post-termination support for its part of the Portal. In its letter dated April 17, 2014, Medfusion's counsel stated:

Absent that payment [of the \$4,467,086.84], and upon the resulting termination of the [Agreement] for non-payment pursuant to Section 8.2.1, and contrary to your assertion, Medfusion does have the right to cease providing services to end users Notwithstanding termination of the [Agreement] and Medfusion's right to stop providing services to end users . . . under such circumstances, Medfusion will continue to provide services to Allscripts' end users for a period of at least 30 days after termination of the [Agreement] to enable the end users to connect to, and provide the best care for their patients.

Allscripts' False Statements and Coercive Tactics

73. After termination of the Agreement, Allscripts has made various false and misleading statements to End Users in an effort to coerce them into entering long-term (e.g., 3 year) contracts with Allscripts for FollowMyHealth. For instance, End Users, many of whom have had persistent frustration in dealings with Allscripts, have shared with Medfusion the following:

A. Allscripts has communicated to the End Users that Allscripts is the one that terminated the Agreement, because of multiple issues with service from the current "portal provider," Medfusion. (While Allscripts gave notice in early April 2014 that it elected not to renew the Agreement when it expired in July 2014, it did not terminate the Agreement, but did cause the premature termination due to its uncured payment defaults.)

B. Allscripts has falsely communicated that it had no advance warning or notice of termination of the Agreement;

C. At least one other End User who called Allscripts to confirm the Portal will continue to receive/send messages was told it was "all up in the air" and they would be happy to quote them for FollowMyHealth. This statement was made despite Medfusion's

advance statement to Allscripts and the public that it would continue to support its side of the Portal.

D. Another End User/health care group called Allscripts several times to re-arrange the Portal to accommodate several departments that did not have access. Allscripts' falsely told them there was not a way to accommodate that with the Portal.

E. Another End User was told by Allscripts that Medfusion was going out of business and the money they paid to Allscripts for the Portal could not be refunded.

F. Another End User was falsely told by Allscripts that it could not receive an updated version of the Portal needed for meeting the Meaningful Use requirements, and would need to wait until October and install FollowMyHealth.

G. Another End User was told that if they went with Medfusion they would be screwed and would never comply with the Meaningful Use requirements;

74. To further create confusion, Allscripts is also telling End Users they will be billed for the Portal service for the month of May, even though Medfusion has publicly and consistently said it will not bill Allscripts for providing services during May.

75. For End Users that decide to contract directly with Medfusion for Medfusion's portal going forward, Allscripts is preventing the End User from being able to complete the installation process.

76. Allscripts is continuing to use support issues with the Portal as an opportunity to market FollowMyHealth to the End User.

FIRST CAUSE OF ACTION
BREACH OF CONTRACT

77. The allegations in paragraphs 1-76 of this Complaint are incorporated herein by reference.

78. The Agreement constituted a binding and enforceable contract, as did each of the amendments to the Agreement.

79. At all relevant times, Medfusion met its material obligations in the Agreement as amended.

80. Allscripts materially breached the Agreement, both the original and as amended, by its failure to make timely payments to Medfusion for its services when due.

81. Allscripts also materially breached the Agreement by failing to meet its portion of the parties' joint collaboration obligations, and the various versions of Allscripts' sales and marketing responsibilities as set forth in the Agreement and the two amendments. Allscripts' obligations that it failed to meet in this regard included:

A. Using commercially reasonable efforts and assigning appropriate resources to perform its assigned tasks set forth in the collaborative development program the parties developed under the Agreement; *see* Agreement, ¶ 2.1, 2.3;

B. Execution of "product road maps" to get service enhancements into use; *see* Agreement, ¶ 2.2;

C. Using commercially reasonable efforts to ensure the Portal was competitively distinguishable from its competitors (*e.g.*, refusing to utilize features customers requested and Medfusion developed), *see* Agreement, Exhibit C- Collaborative Program, ¶ 2(c);

D. Working with Medfusion to meet product integration deadlines, *see* Agreement, Exhibit C-1, Section C, which was a root cause of the "backlog;"

E. Using commercially reasonable efforts with Medfusion to make services available, and providing training and project management for implementation for the "iHealth Customers, *see* Agreement, Exhibit C-1, Section B;

F. Making available Medfusion's services to substantially all Allscripts Professional EHR, Professional PM and Enterprise EHR customers; *see* First Amendment, ¶ 5;

G. On a bi-annual basis, notifying targeted Allscripts "Core Solutions Customers" regarding the availability, features and value of Medfusion's services, *see* First Amendment, ¶ 5;

H. Developing and executing a plan to embed the Portal in all new service agreements in the "Professional" and "Enterprise" market segments, unless removed on a case-by-case basis, and failing to provide Medfusion with an individual rationale for any exceptions; *see* Second Amendment, ¶ 5;

I. Reinforcing in sales and marketing messages that the Portal developed in partnership with Medfusion "is Allscripts' only preferred Patient Portal solution;" *see* Second Amendment, ¶ 5;

J. Failing to add and maintain dedicated sales resources to help accelerate sales of the Portal, the focus being selling the Portal in the Allscripts customer base, etc. *see* Second Amendment, ¶ 5;

K. Integrating the Portal with Allscripts' MyWay product by December 31, 2011; *see* Second Amendment, ¶ 6.

82. Medfusion has suffered damages as a result of Allscripts' material breaches of the Agreement, both the original and as amended. These damages include but are not limited to those resulting from the significant and unique lost opportunity for fully marketing and selling the Portal and Medfusion's services spurred by the federal Meaningful Use program.

SECOND CAUSE OF ACTION
FRAUDULENT INDUCEMENT

83. The allegations in paragraphs 1-82 of this Complaint are incorporated herein by reference.

84. The Second Amendment was negotiated at a time when health care providers were making significant purchasing decisions to secure certified technology (including patient messaging) needed for compliance with the Meaningful Use program.

85. In negotiating the Second Amendment, Allscripts represented to Medfusion that it would:

A. Use best efforts to include in all new EUAs terms that would enable the End User to accept implementation and delivery of the Portal and begin the billing process within 30 days of contract (EUA) signing, with exceptions made following a review by the parties; and

B. Develop and execute a plan to embed the Portal in all net new "EHR/PM" deals for Allscripts' "Professional" and "Enterprise" market segments, unless removed on a case-by-case basis with an individual rationale provided to Medfusion for each exception.

86. At the time these representations were made, upon information and belief, they were false, as evidenced by the lack of any effort to meet these obligations after the Second Amended was entered into.

87. These representations were reasonably calculated to deceive Medfusion into agreeing to the new revenue sharing formula in the Second Amendment that was more favorable to Allscripts than the parties' prior revenue sharing arrangement, at a critical time in the Meaningful Use program.

88. These representations did in fact deceive Medfusion, and proximately caused injury to Medfusion.

THIRD CAUSE OF ACTION
FRAUD

89. The allegations in paragraphs 1-88 of this Complaint are incorporated herein by reference.

90. Allscripts intentionally concealed from Medfusion material information about reports of issues with use of the Portal from End Users. Rather than follow agreed upon protocols for communicating such issues to Medfusion and giving Medfusion an opportunity to address any issues with its part of the Portal, Allscripts unilaterally either: (i) waived or reduced fees owed by the End User for the Portal, (ii) stopped billing the End User for the Portal, and/or (iii) allowed the End User to prematurely cancel its EUA. Allscripts then refused to pay Medfusion after-the-fact for service to the End User, or after the acquisition of FollowMyHealth used those opportunities to market the alternative FollowMyHealth service to the End User.

91. These omissions were reasonably calculated to deceive, were made with the intent to deceive, and in fact did deceive Medfusion, and proximately caused damages for Medfusion.

92. After its acquisition of FollowMyHealth, Allscripts also made false statements or concealed material facts in communicating to End Users about performance of the Portal, both before and after termination of the Agreement.

93. These false statements and concealment of material facts were reasonably calculated to deceive the End User, were made with the intent to deceive them, and in many cases in fact did deceive the End User, and proximately caused damages for Medfusion.

FOURTH CAUSE OF ACTION
UNFAIR METHODS OF COMPETITION IN VIOLATION OF G.S. 75-1.1 *et seq.*

94. The allegations in paragraphs 1-93 of this Complaint are incorporated herein by reference.

95. Allscripts' conduct after it acquired Jardogs and the right to market FollowMyHealth as described herein was in and affected commerce.

96. After it acquired the rights to market FollowMyHealth, Allscripts has engaged in unfair methods of competition in violation of N.C. Gen. Stat. § 75-1.1.

97. After it acquired FollowMyHealth, and notwithstanding the fact that its commitments to Medfusion (*e.g.*, marketing the Portal as Allscripts' only preferred portal solution, including the Portal by default in new sales) remained in effect for 18 more months, Allscripts immediately engaged in a concerted plan to use its position as the party primarily responsible for sales and support of the Portal to suppress sales of that service (for which it shared revenues with Medfusion), and as a means to instead promote its alternative service, FollowMyHealth (for which it did not share revenue with Medfusion). As alleged above, Allscripts' intentional actions taken pursuant to this plan included:

A. Preventing Medfusion from including enhancements in the Portal to meet consumer demands;

B. Providing insufficient End User support for the Portal, just enough to keep it alive long enough to convert End Users to FollowMyHealth, and creating significant frustration with the Portal among End Users;

C. Using various opportunities to suggest that existing End Users of the Portal might want to switch to FollowMyHealth (*e.g.*, when End User called for support of the Portal or new software releases);

D. Marketing FollowMyHealth to End Users who were in the “backlog,” having signed valid and binding EUAs, with binding orders for service accepted by Medfusion, and were waiting for Allscripts to implement their use of the Portal, which Allscripts had delayed;

E. Publishing and using misleading marketing information comparing the Portal to FollowMyHealth;

F. Cancelling Medfusion’s participation at Allscripts’ End User conferences and touting FollowMyHealth instead of the Portal at such conferences;

G. All the while paying Medfusion as little as possible, by, among other things unilaterally: (i) exacerbating the “backlog,” (ii) excusing End Users from payments due, stop billing End Users and/or allowing End Users to prematurely cancel their EUAs, without notice to Medfusion and using that as a pretext to not pay Medfusion, (iii) stop paying Medfusion for costs of goods sold in contradiction to Allscripts’ purchase orders for Medfusion’s services, and (iv) applying the 45/55 revenue share allocation in the Second Amendment to pre-existing accounts.

98. At a time when there were very significant sales and marketing opportunities for patient messaging services as a result of the Meaningful Use program, Allscripts’ conduct as described herein substantially increased its own revenue and accelerated the point at which it could begin to realize returns from acquiring FollowMyHealth, while at the same time proximately causing significant injury to Medfusion.

99. Allscripts’ conduct after termination of the Agreement also constitutes unfair methods of competition in violation of N.C. Gen. Stat. § 75-1.1. That conduct includes making false and misleading statements to End Users about the Portal, continued service, and about

Medfusion, and Allscripts' failure to provide the necessary cooperation to End Users who have decided to contract directly with Medfusion for services.

100. Pursuant to N.C. Gen. Stat. §§ 75.-1.1 and 75-16, Medfusion is entitled to recover its damages from Allscripts, the amount to be proven at trial, and to have those damages trebled.

FIFTH CAUSE OF ACTION
UNFAIR OR DECEPTIVE TRADE PRACTICES IN VIOLATION OF G.S. 75-1.1 *et seq.*

101. The allegations in paragraphs 1-100 of this Complaint are incorporated herein by reference.

102. Allscripts' conduct as described herein, both before and after termination of the Agreement, also constitutes unfair or deceptive trade practices in violation of N.C. Gen. Stat. § 75-1.1.

103. Allscripts' conduct as described herein has proximately caused injury to Medfusion.

104. Pursuant to N.C. Gen. Stat. §§ 75-1.1 and 75-16, Medfusion is entitled to recover its damages from Allscripts, the amount to be proven at trial, and to have those damages trebled.

WHEREFORE, Medfusion respectfully prays to the Court for the following relief:

1. Entry of judgment in its favor on each cause of action asserted in this Complaint, finding that Allscripts: (i) materially breached the parties' Agreement as amended, (ii) fraudulently induced Medfusion into entering the Second Amendment, (iii) otherwise committed fraud over the course of the Agreement as amended and afterward, and (iv) violated Chapter 75 of the North Carolina General Statutes by engaging in unfair methods of competition, and unfair or deceptive trade practices;

2. Compensatory damages, the amount to be proven at trial, for Allscripts' material breaches of the Agreement as amended;

3. Damages sustained as a result of Allscripts' fraud, the amount to be proven at trial;
4. Damages for injuries sustained as a result of Allscripts' unfair methods of competition, and unfair or deceptive trade practices, in violation of N.C. Gen. Stat. § 75-1.1, the amount to be proven at trial;
5. Medfusion's damages or injuries include:
 - A. The lost value to Medfusion of the Agreement for the remainder of the terms of the EUAs;
 - B. Payments due for services rendered and invoiced but not paid for;
 - C. The contractual value of the "backlog;"
 - D. Operational expenses incurred to meet unfulfilled implementation commitments;
 - E. Lost sales; and
 - F. Diminution of brand value.
6. Punitive damages pursuant to N.C. Gen. Stat. §§ 1D-1 *et seq.*;
7. Treble damages pursuant to N.C. Gen. Stat. § 75-16;
8. An award of attorneys fees pursuant to N.C. Gen. Stat. § 75-16.1 or other applicable law;
9. Costs to be taxed against Allscripts; and
10. For such further relief that the Court deems to be just and proper.

This the 15th day of May, 2014.

POYNER SPRUILL LLP

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ATTORNEYS FOR PLAINTIFF
MEDFUSION, INC

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing **COMPLAINT** by depositing a copy thereof in an envelope bearing sufficient postage in the United States mail, certified mail-return receipt required, addressed to the following person at the following address which is the last address known to me:

Officer, Director or Managing Agent
Allscripts Healthcare Solutions, Inc.
222 Merchandise Mart Plaza, Suite 2024
Chicago, IL 60654-1010

This the 15th day of May, 2014.

POYNER SPRUILL LLP

By: s/ Keith H. Johnson
Keith H. Johnson