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October 22, 2008

VIA ECF AND HAND DELIVERY

United States District Court Judge Jerome B. Simandle
United States District Court for the District of New Jersey
Mitchell H. Cohen U.S. Courthouse, Room 2010
One John F. Gerry Plaza
Fourth and Cooper Street
Camden, NJ 08101

**RE: Myers, et al. v. MedQuist, Inc.
Civil Action No. 05-cv-4608 (JBS)**

Dear Judge Simandle:

Counsel for Plaintiffs and Defendants in the above noted matter offer this joint response to your letter of October 17, 2008.

Your Honor posed two questions: (1) why have the parties elected to direct the settlement fund to the Association for Healthcare Documentation Integrity ("AHDI")?; and (2) is it in the best interests of the absent class members to accept a payment to AHDI as opposed to a direct distribution of funds? The answers to these questions are interrelated.

The proposed settlement is best understood by first turning to the second question. Plaintiffs believe that the proposed settlement is in the best interests of the absent class members because they do not believe that a better outcome is possible were this litigation – or any individual litigation – to proceed any further. Plaintiffs did not reach this decision lightly, but only after (1) an exhaustive investigation that encompassed, among other things, numerous interviews with former MedQuist employees; (2) taking and defending more than two dozen depositions of, among others, MedQuist senior executives, recruiters, supervisors, and technical experts; (3) propounding and responding to

multiple rounds of interrogatories and document requests; and (4) reviewing approximately one million pages of documents. This considerable effort by Plaintiffs spanned more than three years and entailed thousands of lawyer work hours, as well as the assistance of multiple experts and consultants. Ultimately, however, Plaintiffs concluded that their prospects were adversely impacted by factual developments that diminished the likelihood of being able to carry their burden of proof at trial. In short, Plaintiffs have not been able to develop the case that they believed to exist at the outset of the litigation.

Given their concerns about the viability of the claims, Plaintiffs initiated settlement discussions with MedQuist. Initially, Plaintiffs sought to negotiate a substantial monetary settlement to be distributed directly to class members. MedQuist, however, was resistant to the magnitude of Plaintiffs' demand. Further, because MedQuist did not believe it had engaged in any inappropriate conduct and was confident it would prevail on the merits, it was unwilling to agree to any settlement including a direct distribution to class members. After extensive arm's length negotiations, the parties were able ultimately to reach an agreement entailing certain injunctive relief and a payment of \$1.5 million, minus Plaintiffs' costs, that would inure to the benefit of the class. Given the modest size of the negotiated settlement, Plaintiffs decided to forgo a fee request in order to maximize the benefit to the class. Thus, to answer the Court's question as to why no direct payment is being made: the best settlement that Plaintiffs were able to negotiate was a payment to benefit the class indirectly, and injunctive relief aimed at improving MedQuist's hiring practices to eliminate the confusion that Plaintiffs believe prompted this litigation.

Once the parties had come to agree on a \$1.5 million payment, we turned to the question of where the payment should be directed. Plaintiffs consulted with their industry expert, as did MedQuist. Our objective was to identify an organization dedicated to benefiting medical transcriptionists individually and collectively. In response to the Court's question as to why the parties elected AHDI: AHDI is the only organization that meets these requirements.

Although MedQuist was unwilling to make any direct payments to class members, Plaintiffs continued to advocate for a direct benefit of some sort. The parties eventually agreed and negotiated with AHDI for direct services to be provided to absent class members in the form of educational and professional development programs. This proposal enjoys two advantages. First, it allows the settlement value to be amplified: AHDI – an entity dedicated to improving the welfare of class members – obtains a substantial *cy pres*-like payment. The class members obtain not only the indirect benefit of this award, but direct benefits in the form of educational and professional development courses. Second, given the modest size of the settlement, the proposed structure minimizes administration costs. Even if Plaintiffs could have negotiated a direct payment (terms MedQuist was not willing to accept given the facts developed through extensive litigation), the administrations costs involved – *e.g.*, calculating damages for each individual class member, cutting and mailing checks – would swallow a large percentage of the \$1.5 million settlement fund. In contrast, the proposed settlement structure maximizes the value of class members' claims.

In sum, based on their considerable experience in litigating class actions, Plaintiffs do not believe that continued litigation will obtain a better outcome for the class. MedQuist, on the other

hand, recognizes the inherent risks and costs of litigation. Accordingly, the parties believe that the proposed settlement is in the best interest of all parties.

Respectfully submitted,

s/ Lisa J. Rodriguez

Lisa J. Rodriguez

cc: All Counsel (*via ECF and email*)