

**UNITED STATES COURT
DISTRICT OF NEW JERSEY (CAMDEN)**

BRIGITTE HOFFMAN, LUCAS
MINISTER, WANDA TAYLOR, DOROTHY
D. MYERS, WENDY SVOBODA, AND
CAROL FORCE, Individually, and on
behalf of a Class of all others
similarly situated,

Plaintiffs,

v.

MEDQUIST, INC. and MEDQUIST
TRANSCRIPTIONS, LTD.,

Defendants.

Civil Action Nos.

05-cv-4608-JBS-JBR

**CONSOLIDATED AMENDED
COMPLAINT – CLASS ACTION**

Plaintiffs Brigitte Hoffman, Lucas Minister, Wanda Taylor, Dorothy D. Myers, Wendy Svoboda, and Carol Force, current or former employees of MedQuist Inc. and MedQuist Transcriptions, Ltd. (hereinafter collectively “MedQuist”), on behalf of themselves and on behalf of a Class of all similarly situated persons, as described below, bring this action for damages and other relief against the above-named Defendants, demanding a trial by jury, and for their Consolidated Class Action Complaint (“Complaint”) allege and state, with knowledge of their own actions and conduct and events occurring in their presence, and upon information and belief as to other matters, which are likely to have evidentiary support after a reasonable opportunity for discovery, as follows:

INTRODUCTION

1. This case is brought as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of Plaintiffs and all persons who, from at least November 29, 1998 to no earlier than July 30, 2004 (“Class Period”) were paid by MedQuist for transcription services, whether as employees or independent contractors, on a per line basis, with the number of lines to be determined by the number of characters in the finished document (the “Class.”)
2. During the Class Period, as a result of Defendants’ wrongful conduct, Plaintiffs and the Class have been systematically and wrongfully underpaid for medical transcription services provided to MedQuist.
3. Defendants created and participated in a scheme of wrongful conduct to undercount the true number of characters and/or lines transcribed by Plaintiffs and the Class, with the purpose and effect of reducing compensation to Plaintiffs and the Class and increasing profits to MedQuist.
4. The misconduct of which Plaintiffs complain here occurred in connection with equally widespread overbilling by MedQuist of its customers, which MedQuist has admitted. The overbilling misconduct is the subject of an SEC investigation, an investigation by the United States Attorney’s office in Massachusetts, and two other lawsuits pending in this Court. MedQuist has also been delisted by the NASDAQ exchange.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2)(A), which provides this Court with original jurisdiction over civil actions where, as here, the Defendants are citizens of the State of New Jersey, the matter in controversy, upon information and belief and subject to discovery in Defendants' possession, custody and control, exceeds \$5,000,000.00 and this matter is a class action in which the members of the Class defined herein are citizens of States different from Defendants. This Court also has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. §1367, as the claims against Defendants are related to the claims upon which original jurisdiction is based.

6. Venue is proper in this District because Defendants reside and are found in this District within the contemplation of 28 U.S.C. §1391(b) and (c).

PARTIES

7. Plaintiffs Brigitte Hoffman, Wanda Taylor, Carol Force and Lucas Minister are residents of the State of Georgia. Brigitte Hoffman has worked for MedQuist since it acquired the MRC Group, her former employer, in September of 1998. Wanda Taylor has worked for MedQuist and its predecessor entities since 1989. Lucas Minister has worked for MedQuist since 2001, when it acquired his former employer, Lernout & Hauspie Medical Solutions Holding, Inc. Carol Force worked for MedQuist from its acquisition of Lernout & Hauspie until she voluntarily left MedQuist on June 28, 2004.

8. Plaintiffs Dorothy D. Myers and Wendy D. Svoboda are residents of the State of Nevada. Plaintiff Wendy Svoboda began work for MedQuist in 2002, while Plaintiff

Dorothy Myers worked for MedQuist from November 1, 2003 to approximately March 2005.

9. All Plaintiffs have been employed by MedQuist during the Class Period, and are and/or were paid on a per line basis for medical transcription services.

10. Plaintiffs Hoffman, Taylor, and Minister are still employed by MedQuist, and Plaintiffs Myers, Force and Svoboda no longer work for the Company.

11. Defendants MedQuist Inc. and MedQuist Transcriptions, Ltd. (collectively "MedQuist") are corporations formed under the laws of the State of New Jersey and headquartered in Mount Laurel, New Jersey. MedQuist Transcriptions, Ltd. is a wholly owned subsidiary of MedQuist Inc. and is totally controlled by MedQuist Inc. The wrongful conduct referenced throughout this Complaint was initiated primarily at MedQuist's offices in New Jersey.

FACTUAL ALLEGATIONS

A. MedQuist's Growth As The Leader in Medical Transcription Services

12. MedQuist is a leading national provider of medical transcription services. With a nationwide network of over 8,600 medical transcriptionists, MedQuist provides services to approximately 3,000 clients, primarily hospitals, nationwide.

13. MedQuist's transcription business grew primarily by acquisition. As the Company grew, pressure on senior management increased to magnify the Company's profitability.

14. This pressure increased in early 2000 when MedQuist entered into discussions with Koninklijke Philips Electronics N.V. ("Philips") for the latter to acquire a significant

share of MedQuist. On May 22, 2000, Philips agreed to acquire 60% of MedQuist. Philips not only agreed to pay a 30% premium for the shares purchased to acquire this majority interest in MedQuist, but it also directly purchased 3% of its shares from MedQuist corporate insiders. MedQuist Chief Executive Officer David Cohen received nearly \$40 million in connection with the tender offer from Philips. Other senior management, namely John Donohoe, Michael Scarpone and Ethan Cohen, collectively reaped an additional \$12 million in proceeds from their direct sale of MedQuist shares to Philips in the tender offer.

15. These individuals and other insiders who sold to Philips were precluded from selling any additional MedQuist stock for at least two years. In addition, MedQuist in 2002 amended its Incentive Stock Option Plan for Officers and Key Employees to issue an additional two million shares to key management, 50% with an exercise price of \$51.00 per share and 50% with an exercise price of \$70.00 per share. At the time MedQuist took this action, its shares were trading for the much lower range of \$17.00 - \$19.00 per share. With these shares severely "under water," MedQuist senior executives who stood to benefit from the Stock Option Plan were highly motivated to inflate MedQuist's stock price.

16. In June of 2000, Philips' ownership of MedQuist stock increased to 69%, and has increased over time to approximately 70.9% of MedQuist's common stock.

17. MedQuist's aggressive schedule of acquisitions and expansion required the Company to maintain the picture of profitability while financing this expensive growth. MedQuist decided that its profitability would be enhanced by the schemes described in

this Complaint, whereby the Company padded its profit margins at both ends, by underpaying its medical transcriptionists while overbilling its customers,.

B. The Transcription Process

18. To create the medical records necessary for patient care, medical facilities must transcribe the reports, notes and summaries dictated by health care professionals. As MedQuist has grown, the basic transcription process, as it involves the role of the medical transcriptionists, has remained fundamentally the same.

19. The MedQuist transcription process involves several steps. MedQuist's customers dictate their medical records and reports in free form into voice recorders. That dictation is forwarded electronically to a MedQuist medical transcriptionist, who pulls up a computer template for the particular type of report or account and then transcribes the medical report. The report is then transmitted electronically directly into MedQuist's computer system for purposes of client billing and payroll.

20. A variety of computer programs supporting the transcription of recorded dictation, called "platforms," were used by MedQuist during the class period. These platforms included "Cottage," "MT Shell," "MedRite," and an internet based platform called the New Transcription Platform (called variously "DEP," "NTP," "WebCorrect" and DocUScribe") which was developed internally by MedQuist. Beginning in 2001, MedQuist began an effort to convert many of its clients to its internally developed internet-based transcription platform. While the platforms and applications employed for medical transcription services may have varied, the basic transcription process and method of payment for transcription services has remained fundamentally the same.

C. The 65 Character Line

21. MedQuist paid its transcriptionists, the members of the Class, an agreed rate of pay per “line” transcribed. A line was universally understood to consist of 65 characters. The number of “lines” to be counted as transcribed is determined by taking the total number of characters contained in a document and dividing by 65.

22. Characters in a line include all letters, numbers, and symbols necessary for the final appearance and content of a document, including spaces and all characters contained within a macro, expander, header and footer. Macros, or expanders, are functions programmed into computer software which allows the transcriber to create a full word by entering a single keystroke or combination of prescribed keystrokes. If a transcriptionist has a shorthand expander or macro for a frequently occurring word like “hospital”, even if fewer than eight keystrokes are required to enter the word, eight characters were to be counted for compensation purposes.

23. The 65 character line was for all relevant times the industry standard and was the agreed basis of payment by MedQuist to its transcriptionists during the Class Period.

D. MedQuist’s Contracts With Plaintiffs and The Class

24. During the Class Period MedQuist contracted with Plaintiffs and the Class to compensate them a set amount for each line transcribed. The uniform understanding was that a line was to consist of 65 characters, regardless of the particular platform used.

25. The characters making up a line were to include all the characters typed by a transcriptionist and appearing in a document, including the blank spaces between words and the actual character count of words generated by macros and expanders. The final line count in the document for payroll purposes was made up of the total number of characters divided by 65.

26. MedQuist promised to pay Plaintiffs and the Class based on a 65 character line, such characters to include all those typed by a transcriptionist and appearing in a document, including the blank spaces between words and the actual character count of words generated by macros and expanders.

27. Over the years MedQuist has failed to comply with its promise to medical transcriptionists as it has manipulated its computer systems and records to underpay Plaintiffs and the Class and overbill its customers.

28. This understanding of a line is reflected in written contracts entered into by MedQuist with its customer health care facilities. According to such contracts between MedQuist and its customers,

“[a]n AAMT Line is defined as any line having 65 ‘characters.’ A character is defined as any letter, number, symbol or function key necessary for the final appearance and content of a document including, without limitation, the space bar, carriage return, underscore, bold and any characters contained within the macro, header or footer. A defined line is calculated by counting all characters contained within a document and simply dividing the total number of characters by 65 to arrive at the

number of defined lines. Client acknowledges that the charges set forth in this Agreement are based upon the fact that character counts shall be determined using [MedQuist's] software system and shall not be derived from any third party software or interface system.”

29. This understanding was incorporated into written notices to new medical transcriptionists, which read, “We pay on a 65 character defined line. This includes spaces between words and the two spaces after a sentence.” These standard documents, entitled “Issues to Mention And Discuss With Prospective Statutory Employees” were to be signed and dated by newly employed transcriptionists.

30. MedQuist recognizes the 65 character definition in contracts with Philips for speech processing equipment. In May of 2000, for example, MedQuist entered into a Licensing Agreement with Philips Speech Processing GmbH ("Philips"), a Philips subsidiary. The Licensing Agreement calculated the monies owed by MedQuist, in part, upon the payroll lines transcribed by MedQuist's transcriptionists. The Agreement defined payroll lines as follows: “PAYROLL lines are the lines that serve as basis to pay the transcriptionists (Payroll-Line is 65 black/white characters).” White characters refer to spaces.

31. MedQuist recognized and adopted the 65 character line in representations to transcriptionists:

- For example, in February 1999 Medquist's President and Chief Operating Officer John Donohoe assured employees that MedQuist was paying all of its medical transcriptionists upon a 65 character line and that the same counting methods were applied equally to both customers and employees. In an online chat addressed to all medical transcriptionists, Mr. Donohoe wrote as follows:

“All of our counts are measured by a 65-keystroke count. That means black and white characters (includes spaces) inputted by the transcriptionist in the text field. All transcriptionists are paid by the number of keystrokes divided by 65 to arrive at the number of MT lines that are created. Once again, if there is a macro or a text expander used, all of those characters that are brought in by that expansion are counted in the MT count as well...I can assure you, we will bill our customers using the same software, so we are very, very focused and certain they are counting correctly and we continue to do studies to verify that those counts are on a continual basis challenged and authenticated.”

- When MedQuist acquired new businesses, it represented to transcriptionists that it employed the industry standard 65 character line, including payment for spaces, for purposes of compensation.
- For example, on May 27, 1999, MedQuist Vice President and Director of National Recruiting Stephanie Golden posted an email on MTDaily.com, a medical transcriptionist chat board. Her email, posted in connection with one of MedQuist’s acquisitions, stated there would be “no reduction in pay, no change in line counting methods, no increase in phone expenses, change of statutory employee status only if person desires it, no change in past benefits (unless person likes new plan better) and no change in stock options.”
- In connection with the acquisition of Your Office Genie of Monrovia, California in 2001, manager Steve Allen stated in a conference call “there are no plans to change pay rates, no methodology, etc. I repeat: there are no plans to change the pay rates and counting methodology and bonus programs.” Mr. Allen followed up with the observation that he could not guarantee nothing would ever change, later stating that if policy changed a new policy manual would be sent out.
- MedQuist also employed the 65 character line definition on its website. In the FAQ (frequently asked questions) section, the hypothetical question “How will I be compensated?” was answered “MT’s are paid for their production. Typically, MedQuist pays by the line. A line consists of 65 characters, including word expansions.” MedQuist’s website contained this language as late as May, 2005.

32. Technology existed, and was employed by MedQuist during the Class Period, which could accurately count the number of characters in a document and calculate the number of lines per transcribed document with a high degree of accuracy.

E. MedQuist's Improper Compensation Practices

33. Despite MedQuist's agreement to pay on a 65 character line, MedQuist failed to adhere to these contracts and industry-wide understandings, and instead unilaterally undercounted and manipulated the number of characters and/or lines used to calculate payments to transcriptionists.

34. MedQuist's alteration of the method under which characters and/or lines were counted was done without disclosure to, or agreement by, Plaintiffs and the Class, who suffered reduced compensation as a result of these unilateral and secret manipulations by MedQuist.

35. MedQuist's actions were motivated by the wrongful desire to increase profits at the expense of Plaintiffs and the Class.

36. Senior MedQuist personnel directed others within the company to vary the methods of counting characters and/or lines with no disclosure to, or agreement from, medical transcriptionists that the basis for their compensation was changing.

37. MedQuist personnel knowingly inflated line counts for bills sent to customers, and deflated line count calculations for payment to its transcriptionists. These line counts were manipulated using a 2:1 line count ratio, wherein the true line count was lowered for purposes of payroll and inflated for purposes of billing, so that the amount of lines charged to a client for a transcribed report exceeded the amount of lines paid to

the transcriptionist by a 2:1 margin, and sometimes higher. The ratios and formulas employed in these manipulations were designed to create a 3:1 bill-to-pay ratio, where the dollar amount billed to a client exceeded the compensation paid to the transcriptionist by a multiplier of 3.

38. MedQuist's deliberate plan to overcharge customers and underpay transcriptionists to achieve the desired profit margins and revenue "results" became known among employees of MedQuist as "padding the file" or "burning the books" or "jacking up" formulas.

39. MedQuist's wrongful scheme was not disclosed to its customers, its transcriptionists, or the public. When customers who had been overbilled complained about their bills, MedQuist personnel gave standard responses that were designed to confuse and misdirect the clients with complex computer jargon. For example, one former MedQuist Technical Manager told customers who challenged their line counts that "there are invisible coefficients that are applied as a line shift justification," as a response intended basically to confuse the inquirer. Similarly, transcriptionists were also given misleading and evasive responses if they questioned the basis for their reduced pay.

40. MedQuist senior management instructed computer programmers and managers employed by the Company to manipulate the software to achieve the desired bill to pay ratios, and the desired profit margins rather than actually counting the number of relevant characters as agreed.

41. MedQuist failed correctly to count the characters in documents and failed correctly to count lines in documents, resulting in a failure to pay Plaintiffs and other members of the Class the agreed upon compensation.

42. For example, on a report in August of 2004, MedQuist reduced a medical transcriptionist's line count from the computed "MTS AAMT" count of 272.26 lines to the "MTS lines" of 208, and the medical transcriptionist who typed the report was credited with the lower number. This is a reduction of approximately 24%.

43. Medical transcriptionists found it difficult to make their required line counts, even though their levels of effort and quality did not change. When the transcriptionists inquired to their supervisors, they were met with evasions or excuses. For example, transcriptionists were told that their declining line counts were the result of their own work practices, their inability to transcribe certain words, known as "blanks," or their learning curve on new software platforms.

44. MedQuist used systems that made it difficult or impossible for Plaintiffs and the Class to discover the Company's wrongdoing. Class members were unable to determine if they had been underpaid, since the software MedQuist required its transcriptionists to use made it impossible to count the total number of characters in a transcribed report and compare it to the corresponding line count attributed to them by MedQuist. Plaintiffs and Class members could not manually count lines, and were not permitted to audit MedQuist and authenticate the validity of the MedQuist production line counts and corresponding compensation paid to them.

45. Due to the nature of this work, and the inability of Plaintiffs and Class members to independently verify line counts, MedQuist had a duty to disclose changes in methodology for making line counts, but failed to do so. Instead, MedQuist by act or omission effectively concealed that Plaintiffs and the Class were not being paid as contractually agreed.

46. As a direct and proximate result of MedQuist's acts and omissions, Plaintiffs and the Class were underpaid for their work and suffered damages in the amount of the underpayments (that is the difference between the compensation paid due to the artificially deflated line counts and the compensation that should have been paid pursuant to the agreed upon method for counting lines).

**F. MedQuist Has Admitted Billing Irregularities
Based Upon Line Count Manipulation**

47. In early 2004, MedQuist undertook a review of its billing practices "in response to assertions made by a company employee of potential improper billing practices." (March 24, 2004 press release "MedQuist Inc. Makes Announcement.") As a result of that review, conducted by outside counsel Debevoise & Plimpton LLP and independent auditor PriceWaterhouseCoopers LLP, MedQuist in a press release on July 30, 2004 acknowledged that "with respect to its contracts that called for billing based on the 'AAMT line,' it had used "ratios and formulas to determine the number of 'AAMT' transcription lines for which clients were billed rather than counting the number of relevant characters to determine a billable line as provided for in the contracts."

48. In the same press release, MedQuist admitted that “the ratios and formulas for certain client accounts were changed by the company, generally without disclosure to clients, ***in order to affect profit margins.***” (Emphasis added.)

49. On July 30, 2004, MedQuist also announced that the United States Securities and Exchange Commission had commenced a formal investigation of MedQuist.

50. On the same day, MedQuist announced disciplinary action against five senior executives, and the Board accepted the resignations of Brian Kearns, the Chief Financial Officer, and John Suender, the Chief Legal Officer. The Board also announced another change in its senior management, appointing Howard S. Hoffmann as interim Chief Executive Officer.

51. On July 15, 2004, MedQuist was delisted from NASDAQ because its previously submitted financial statements were inaccurate, and it was unable to submit required financial statements. This was directly related to the impropriety in the method by which MedQuist counted transcription lines.

52. Following these disclosures and investigations, on November 2, 2004 MedQuist announced that “the company's previously issued financial statements included in its Form 10-K for the fiscal year ended December 31, 2002, its Forms 10-Q filed during 2002 and 2003, and all earnings releases and similar communications relating to such periods, should no longer be relied upon.”

53. On January 5, 2005, MedQuist received an administrative subpoena for documents from the United States Attorney's Office for the District of Massachusetts in

connection with a governmental investigation into whether MedQuist violated federal laws regarding the provision of medical transcription services.

CLASS ACTION ALLEGATIONS

54. Plaintiffs bring this action as a Class action pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of themselves and all other persons who, from at least November 29, 1998 to no earlier than July 30, 2004 ("Class Period") were paid by MedQuist for transcription services, whether as employees or independent contractors, on a per line basis, with the number of lines to be determined by the number of characters in the finished document (the "Class.")

55. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of class members is unknown to Plaintiffs at this time, Plaintiffs, upon information and belief, estimate the Class to consist of more than 8,600 current and former medical transcriptionists throughout the United States. The identity of all members of the Class may be ascertained and identified through records maintained by MedQuist. Because of the size of the Class and the geographic dispersion of the Class members, it would be impracticable to join all members in this action.

56. Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting individual members of the Class. Common issues, include but are not limited to:

- a) Whether MedQuist used improper ratios, formulas and other measures, including the manipulation of computer software, systematically to deflate

the number of lines counted as transcribed by Plaintiffs and Class Members, contrary to the agreed-upon manner of calculating transcribed lines;

- b) The extent to which these improper ratios, formulas and other measures resulted in improper reduction in the compensation to Plaintiffs and the Class;
- c) Whether Plaintiffs and the Class are entitled to an accounting;
- d) Whether MedQuist breached its contracts with Plaintiffs and the members of the Class; and
- e) Whether Medquist breached the covenant of good faith and fair dealing implied in its agreements with Plaintiffs and the Class.

57. Plaintiffs' claims are typical of the claims of the members of the Class because Plaintiffs and the other members of the Class each sustained damages as a result of the Defendants' wrongful conduct as complained of herein.

58. Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in class action and complex litigation. Plaintiffs have no interests antagonistic to or in conflict with those of the Class.

59. Class action status is also warranted under Rule 23(b)(3) because questions of law or fact common to members of the Class predominate over any questions affecting only individual members and a class action is superior to the other available methods for the fair and efficient adjudication of this controversy.

COUNT I

**AGAINST MEDQUIST INC AND MEDQUIST TRANSCRIPTION, LTD
("MEDQUIST") FOR BREACH OF CONTRACT**

60. Plaintiffs, on behalf of themselves and the Class, reallege and incorporate the allegations contained in the previous paragraphs of this Consolidated Amended Complaint as if fully set forth herein.

61. MedQuist entered into contracts to compensate Plaintiffs and the Class based on a per line basis within each transcription. The agreed upon definition of a line was 65 "characters," including the blank spaces between words and the actual character count of words generated by macros and expanders. This definition of a line, and of a character, was common to Plaintiffs and the Class.

62. MedQuist did not, in fact, compensate Plaintiffs and the Class based upon the agreed to definition of a line.

63. MedQuist failed consistently and accurately to count characters in transcribed documents. In place of counting all characters, as agreed on, and dividing by 65 to obtain a line count, MedQuist used ratios, formulas and measures that undercounted, for purposes of payroll, the number of transcribed lines produced by Plaintiffs and the Class. In addition, MedQuist's methods of counting characters or approximating character counts failed consistently and accurately to count spaces, headers, footers, macros and expanders. As a result of these actions, MedQuist systematically counted fewer lines than Plaintiffs and the Class actually produced.

64. As a result of failing to count lines as promised, MedQuist failed to compensate Plaintiffs and the Class as promised.

65. MedQuist breached its contracts with Plaintiffs and the Class by failing to properly compensate them for their work, and Plaintiffs and the Class are entitled to compensatory damages for this breach of contract in the amount of the lost wages sustained by Plaintiffs and the Class.

COUNT II

AGAINST MEDQUIST INC AND MEDQUIST TRANSCRIPTION, LTD ("MEDQUIST") FOR BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING

66. Plaintiffs, on behalf of themselves and the Class, reallege and incorporate the allegations contained in the previous paragraphs of this Consolidated Amended Complaint as if fully set forth herein.

67. When MedQuist entered into the agreements with medical transcriptionists to pay them according to the standard 65 character line, it became bound by the covenant of good faith and fair dealing to conduct itself honestly and fairly in regards to the performance of these contracts. This duty bound MedQuist to act in a manner that was consistent with the justified expectations of Plaintiffs and the Class and not to take any action that injured the ability of Plaintiff and the class to receive the benefits of the contract.

68. Among other things, this duty of good faith and fair dealing bound Medquist to abide by the material terms of the contracts, particularly including the calculation of the 65 character line for compensation purposes; to advise Plaintiffs and the Class if a

change was proposed before any such change was effected; and not to alter its performance under the contract unilaterally for the purpose of reducing the compensation received by Plaintiffs and the Class.

69. Instead of fulfilling its obligation to act fairly and in good faith, MedQuist unreasonably and in bad faith manipulated its software and employed ratios, formulas and measures in order to undercount characters, thus altering the terms of compensation and its agreement to compensate medical transcriptionists based upon the standard 65 character transcribed line. MedQuist did this with no notice to Plaintiffs and the Class, and with the wrongful intention to underpay Plaintiffs and the Class and thus increase its own profits.

70. MedQuist's conduct as alleged herein constitutes a breach of the implied covenant of good faith and fair dealing in the performance of these contracts, and Plaintiffs and the Class are entitled to compensatory damages for this breach of this covenant in the amount of the lost wages sustained by Plaintiffs and the Class.

COUNT III

AGAINST MEDQUIST INC AND MEDQUIST TRANSCRIPTION, LTD ("MEDQUIST") FOR AN ACCOUNTING

71. Plaintiffs, on behalf of themselves and the Class, reallege and incorporate the allegations contained in the previous paragraphs of this Amended Complaint as if fully set forth herein.

72. Defendants know of the existence of corporate records that indicate the amounts of compensation unlawfully retained and not paid for medical transcription services provided by the Plaintiffs and the Class. Plaintiffs demand that Defendants reveal their

complete corporate records regarding same, and that a just and fair accounting be made of the compensation withheld from the Plaintiffs and the Class as a result of Defendants' improper counting of lines transcribed by the Plaintiffs and the Class.

COUNT IV

**AGAINST MEDQUIST INC AND MEDQUIST TRANSCRIPTION, LTD
("MEDQUIST") FOR UNJUST ENRICHMENT**

73. Plaintiffs, on behalf of themselves and the Class, reallege and incorporate the allegations contained in the previous paragraphs of this Consolidated Amended Complaint as if fully set forth herein.

74. MedQuist was unjustly enriched by withholding compensation from Plaintiffs and the Class by undercounting the lines of production for medical transcription services as set forth herein.

75. MedQuist has failed to account for and compensate Plaintiffs and the Class for the value of the benefits it unjustly derived from the scheme to undercount lines of production.

76. Plaintiffs and the Class therefore demand disgorgement, restitution and judgment against MedQuist for the amount of unjust enrichment that it has received as a result of wrongfully undercounting the lines of production by Plaintiffs and the Class.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court enter judgment and grant the following relief to Plaintiffs and the Class:

- a) That the Court certify this action as a Class action under Rule 23(b)(3) of the Federal Rules of Civil Procedure with respect to the Plaintiffs' claims for

damages and other relief, and declare Plaintiffs as representatives of the Class and their counsel as counsel for the Class;

- b) Damages on Counts I and II for Breach of Contract and Breach of the Covenant of Good Faith and Fair Dealing against the MedQuist Defendants, in an amount to be determined at trial, plus costs and interest thereon, as well as any other damages allowed by law.
- c) Relief on Count III for an Accounting against all Defendants.
- d) Disgorgement and restitution on Count IV for Unjust Enrichment against all Defendants, plus costs and interest, as well as any other damage allowed by law.
- e) All such other and further relief allowed by law and as the Court deems just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury.

This the 31st Day of January, 2006.

Respectfully submitted,

s/Stevan A. Miller

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**UNITED STATES COURT
DISTRICT OF NEW JERSEY (CAMDEN)**

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CERTIFICATE OF SERVICE

I hereby certify that I have served all counsel of record with the foregoing
Consolidated Amended Complaint electronically using the ECF filing system as
proscribed by the Court, to:

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[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

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