

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

**MDCARE GLOBAL LLC, DR. POOJA
BANERJEE AND DR. SUBHASH
BANERJEE,**

Plaintiffs,

v.

**ANALYTICAL MECHANICS
ASSOCIATES, INC. and DR. HANS
SEYWALD,**

Defendants.

Civil Action No. 3:12-CV-00038-K

JURY TRIAL DEMANDED

**FIRST AMENDED ORIGINAL COMPLAINT &
REQUEST FOR DECLARATORY JUDGMENT**

Pursuant to Federal Rule of Civil Procedure 15(a)(1)(B), Plaintiffs MDCare Global LLC (“MDCare”), Dr. Pooja Banerjee, and Dr. Subhash Banerjee (MDCare and the Banerjees are referred to collectively as “Plaintiffs”), for their First Amended Complaint against Defendants Analytical Mechanics Associates, Inc. (“AMA”) and Dr. Hans Seywald (“Seywald”) (AMA and Seywald are referred to collectively as “Defendants”) aver with knowledge as to their own acts and otherwise on information and belief as follows:

The Parties

1. Plaintiff MDCare is a limited liability company organized and existing under the laws of the state of Texas, with its principal place of business at 8220 Walnut Hill Lane, Suite 414, Dallas, TX 75231.
2. Plaintiff Dr. Pooja Banerjee is an individual residing at 6430 Pemberton Drive, Dallas, Texas 75230. Dr. Pooja Banerjee is the President of MDCare.

3. Plaintiff Dr. Subhash Banerjee is an individual residing at 6430 Pemberton Drive, Dallas, Texas 75230. Dr. Subhash Banerjee is a consultant for MDCare and has developed significant portions of the products and inventions at the center of the parties' dispute.

4. Upon information and belief, Defendant AMA is a corporation existing under the laws of the Commonwealth of Virginia with its principal place of business at 303 Butler Farm Road, Suite 104A, Hampton, Virginia 23666. Defendant AMA may be served through its registered agent, Renjith R. Kumar, at 303 Butler Farm Rd Suite 104A, Hampton, Virginia 23666.

5. Upon information and belief, Defendant Dr. Hans Seywald is an individual residing at 203 Colleen Dr., Yorktown, VA 23693-2407. Dr. Seywald is the President of AMA and, upon information and belief, registered the copyrights and patents at issue as the author and/or inventor.

Jurisdiction and Venue

6. Jurisdiction over the parties and subject matter of this action is proper in this Court pursuant to 28 U.S.C. § 1331 (actions arising under the laws of the United States), 28 U.S.C. §§ 1332(a) (diversity of citizenship between the parties), 1367 (a), 1338(a), 2201 and 2202.

7. This Court has personal jurisdiction over the Defendants because they do business and/or reside in the State of Texas.

8. Venue is properly founded in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400 (b) because Defendants reside in this District, may be found

in this District, and/or a substantial part of the events giving rise to the claims in this action occurred within this District.

Facts

9. MDCare is a global leader in medical/technical digital content production with that enhances the reach and scope of conventional promotion and educational forums using groundbreaking, customizable technology. MDCare provides a complete spectrum of accessible medical education, scientific communications, sales training, medical intelligence, advocacy, key opinion leader management and brand solution transmission options to its clients worldwide.

10. One of MDCare's key products in development is its DICOM Presenter. The DICOM Presenter is a groundbreaking software platform that converts complex medical image and video data formats into simple office-compatible formats for use in presentation and documentation. The DICOM Presenter is the product of more than a decade of concept development, refinement, business strategy, marketing, and advertising by Drs. Subhash and Pooja Banerjee and MDCare.

11. The DICOM Presenter was solely conceived of and conceptualized by the Banerjees.

12. In addition to the countless hours of conception and development of MDCare products, such as the DICOM Presenter, MDCare has invested significant time building relationships in the medical community. Indeed, the close business relationships that MDCare has built over time contribute extensively to MDCare's current and future success. To be sure, its success hinges on these relationships.

13. In October of 2010, Plaintiffs contracted with AMA, via a Memorandum of Understanding (the "MOU"), to assist them with the reduction to practice of an initial

limited and marketable version of the DICOM presenter. This initial version, called “Phase 1,” was contracted to have limited features for use on a Windows platform. Those limited features were: 1) the ability to open DICOM files and create an image directory; 2) the selection and exportation of dynamic or still image runs or frames as avi or jpegs; 3) the creation of PowerPoint or jpeg text slides; 4) the ability to merge the avi with the jpeg using any standard movie clip software, and ability to incorporate transitions, audio and annotation elements; and, 5) the ability to create a single compressed file.

14. Defendant Seywald was the key principal of AMA with whom the Banerjees and MDCare negotiated and discussed the MOU and the parties’ obligations thereunder. Further, upon information and belief, Defendant Seywald was a catalyst in AMA's breach and scheme to steal MDCare's intellectual property.

15. Upon information and belief, prior to its relationship with MDCare, AMA had no experience in the healthcare field, let alone DICOM or medical images of any sort. As such, Dr. Subhash and Pooja Banerjee invested countless hours of time and effort, and contributed their extensive medical knowledge, to guide AMA in its portion of the DICOM Presenter software development. Indeed, all conceptualization of the DICOM presenter was done by MDCare and Dr. Banerjee before MDCare approached AMA to assist in writing the software code.

16. The MOU clearly states that MDCare’s monetary compensation to AMA for their development efforts on Phase 1 will be limited to \$30,000 in cash, which MDCare promptly paid to AMA upon execution of the MOU and under the promise of the Phase 1 delivery. Further, the MOU provides that all of the intellectual property in

connection with this development effort is to be shared equally by both AMA and MDCare.

17. The MOU did not obligate the parties to develop, or specifically provide for development of, the DICOM Presenter past the clearly defined Phase 1.

18. For example, unbeknownst to MDCare and the Banerjees, Defendant Seywald knowingly misrepresented AMA's capabilities as they related to the work that AMA was contracting to do pursuant to the MOU. Indeed, in several meetings that occurred between Defendant Seywald and the Banerjees, Defendant Seywald oversold AMA's abilities to contribute to the software code which resulted in AMA's failure to ever deliver on its obligations under the MOU.

19. Indeed, at all times during these meetings, Defendant Seywald knew that the representations he was making about AMA's capabilities were false. He did so for multiple reasons. First, the misrepresentations were necessary for AMA to secure the contract with MDCare and get the benefits thereof. Further, Seywald and AMA knew that through this contractual relationship, AMA would be able to get insight into additional MDCare products that would allow them to take advantage of MDCare in an ultimate scheme to steal part of MDCare and its intellectual property.

20. Before Seywald and AMA's scheme came to light, while the Banerjees thought that AMA was going to fulfill its obligations for Phase I DICOM Presenter, MDCare sought additional services from AMA in the form of a work-for-hire relationship. Indeed, the Banerjees have conceived of and conceptualized many inventions and ideas in the medical field. Specifically, MDCare hired AMA for the development of a mobile device application (i.e., a "mobile app") that was not part of the

MOU and was not tied to the DICOM Presenter. Although MDCare contracted with third parties to deliver a working mobile app based on representations from Defendants AMA and Seywald, AMA in fact never provided MDCare with a working product.

21. Similar to the DICOM Presenter, MDCare and the Banerjees contributed conceptualization, testing, and development efforts to the mobile applications. This is in addition to extensive marketing and sales efforts that were done by MDCare with the encouragement and ratification of Defendants.

22. Upon information and belief, it was after getting insight—through its relationship with MDCare—into the inner workings of MDCare, the vast offerings of MDCare beyond the DICOM presenter, and the possibility of significant revenues for the MDCare offerings beyond the DICOM presenter, that Defendants began to finally execute their plan to strong-arm MDCare into giving half of all of MDCare to AMA.

23. The plan started after MDCare hired AMA, in the work-for-hire relationship, for the development of the mobile app that was not covered in, or part of, the MOU with AMA. First, Defendants inflated over ten-fold the price to MDCare for AMA's development efforts on these applications.

24. Next, Defendants Seywald and AMA sought to unilaterally alter the MOU by holding hostage the DICOM developed code, only releasing it to MDCare if it agreed to significantly compensate AMA above and beyond that which was contracted for in the MOU—including giving half of all of MDCare to AMA.

25. Indeed, to date, AMA has never delivered a fully functional version of Phase 1 of the DICOM Presenter to MDCare and it has not delivered any software code

for any version of the DICOM Presenter to MDCare after repeated requests by MDCare and the Banerjees.

26. Further, AMA has never delivered a fully functional mobile app.

27. After MDCare and the Banerjees declined Defendants' offer to unilaterally alter the MOU, AMA and its principals began to fraudulently represent to third parties that they in fact were part of MDCare and held titles at MDCare. Specifically, at least on one occasion, on September 23, 2011, Sanjay Gowda of AMA sent correspondence to a third party, AngioScore, representing to be the Chief Information Officer of MDCare Global. To the contrary, neither Gowda nor anyone else at AMA has ever held any positions at MDCare and own no interest in MDCare. To represent otherwise is clearly fraudulent and harms MDCare, its reputation and the close business relationships that MDCare and the Banerjees have built over the years.

28. Finally, in a last ditch attempt to strong-arm MDCare into turning over half of the company to AMA for absolutely no consideration, Defendants plotted to fraudulently claim that AMA solely owns various copyrights in works that AMA worked on jointly with, or as work-for-hire for, MDCare and the Banerjees. Indeed, on November 29, 2011, AMA's Counsel sent MDCare a letter alleging that it has breached the MOU with AMA, that MDCare has and continues to violate AMA's rights in its IP, as well as claim that MDCare is infringing on various AMA intellectual property. The letter specifically alleges that AMA solely owns the following copyrights that are allegedly being infringed by MDCare: "Phase I DICOM Presenter software" (eCO Case # 1-686934232); "Patent 2: Utilization of a Mobile CMS Platform for Healthcare, Rev. 1" (eCO Case # 1-686084990); "Patent 1: Utilization of a Platform-Independent, Device-

Independent, Interface independent, Multimedia Imaging Workflow Platform for Healthcare, Rev. 1” (eCO Case #1-686084912); “Patent 2 Slides: Utilization of a Mobile CMS Platform for Healthcare” (eCO Case #1-683661268); “Patent 1 Slides: Utilization of a Platform-Independent, Device-Independent, Interface-independent, Multimedia Imaging Workflow Platform for Healthcare” (eCO Case #1-683661142); “DICOM Studio software consisting of DICOM Presenter, Mobile Apps, and PACS” (eCO Case #1-680512083); “DICOM Presenter movie with MDCare logo” (eCO Case #1-680512028); “AngioSlide iPad App BETA slides” (eCO Case #1-680511972); “AngioScore iPad ALPHA Overview slides” (eCO Case #1-680443882); “AMA Conference App movie” (eCO Case #1-680395722); “AMA Mobile presentation with AMA logo” (eCO Case # 1-680361508); “MDC Services draft slides with MDCare logo” (eCO Case #1-680361433); “Medical IT and Visualization slides with MDCare logo” (eCO Case #1-680361378); “EZPak Deep Vein Thrombosis presentation” (eCO Case #1-680361333); “Method ist-presentation-2011-09-14” (eCO Case #1-680193278); “AMA multimedia movie” (eCO Case #1-680193202); “AMA Intellectual Property Inventory: Healthcare IT & Visualization” (eCO Case #1-680042771).

29. Further, the letter represents that Defendant Seywald, himself, registered the DICOM Software code with the U.S. Copyright Office and that AMA has filed for patent applications related to the DICOM presenter. Not only do these actions constitute fraud on the United States Copyright Office and Patent and Trademark Office (“PTO”) because AMA is not the sole inventor or author of any of the intellectual property referenced in the letter, they are also breaches of the MOU that clearly provides for joint ownership of the intellectual property jointly developed pursuant to the MOU.

30. The letter goes on to allege that MDCare has infringed AMA trade secrets, trademarks and that MDCare has breached its contracts with AMA. Specifically, AMA accuses MDCare of infringing its intellectual property rights by 1) unauthorized use and distribution of demo-copies of AMA proprietary software and copyrighted works; 2) entering into agreements for license and/or sale of AMA IP other than the DICOM Presenter Software developed under the MOU; 3) attaching the MDC name to the IP without AMA's consent, permission or license; and 4) fraudulently representation of authorship of the DICOM Presenter Software before the U.S. Copyright Office in a pre-registration dated May 31,2011. AMA also alleges that MDCare's actions are interfering with AMA's relationship with existing and prospective customers.

31. Indeed, contrary the AMA's assertions in its cease and desist letter, all of these copyrights and other intellectual property are either solely owned by MDCare or are jointly owned by MDCare and AMA. MDCare, therefore, is not infringing any AMA owned intellectual property.

32. Further, MDCare has not entered into any contracts for products covered under the contract with AMA for which it has failed to pay AMA any share of profits as provided for in the MOU. This is even though MDCare has paid conference fees and costs to do so, but were unable to attend because of AMA's actions.

33. Finally, MDCare has suffered harm as it was contractually obligated to provide a fully functioning mobile application to third parties. MDCare retained AMA to produce a working mobile application under a work-for-hire and AMA agreed to produce a working mobile app by August 3, 2011. AMA knew this deadline was critical to MDCare as MDCare had contractually agreed to produce a working mobile app to the third party by October 19, 2011. AMA nonetheless held the mobile app hostage while

attempting to change the parties MOU and get MDCare to give it half the company. Other than excuses, AMA never delivered anything to MDCare. Indeed to date, AMA has failed to deliver a working mobile application to MDCare. As would be expected, MDCare was unable to deliver to any third party a mobile app created by AMA and was thereby harmed financially.

34. In addition to the financial harm suffered by MDCare due to AMA's actions, MDCare and the Banerjees have irrevocably suffered reputational and business prospect damage.

Conditions Precedent

35. All conditions precedent have been performed or have occurred.

Claims for Relief

**COUNT I
Declaration of Rights
(Copyright Infringement)**

36. Plaintiffs repeat and reallege the allegations set forth above as if fully set forth herein.

37. An actual and justiciable controversy exists between Plaintiffs and Defendants as to whether MDCare or the Banerjees are infringing any copyrighted works of Defendants, as well as the ownership of said copyrights.

38. Plaintiffs have not infringed any copyrighted work of Defendants.

39. Plaintiffs own or have authorship and/or ownership rights in all copyrights that relate to the DICOM Presenter, and the mobile device application(s) developed for MDCare, including, but not limited to "Phase I DICOM Presenter software" (eCO Case # 1-686934232); "Patent 2: Utilization of a Mobile CMS Platform for Healthcare, Rev. 1"

(eCO Case # 1-686084990); “Patent 1: Utilization of a Platform-Independent, Device-Independent, Interface independent, Multimedia Imaging Workflow Platform for Healthcare, Rev. 1” (eCO Case #1-686084912); “Patent 2 Slides: Utilization of a Mobile CMS Platform for Healthcare” (eCO Case #1-683661268); “Patent 1 Slides: Utilization of a Platform-Independent, Device-Independent, Interface-independent, Multimedia Imaging Workflow Platform for Healthcare” (eCO Case #1-683661142); “DICOM Studio software consisting of DICOM Presenter, Mobile Apps, and PACS” (eCO Case #1-680512083); “DICOM Presenter movie with MDCare logo” (eCO Case #1-680512028); “AngioSlide iPad App BETA slides” (eCO Case #1-680511972); “AngioScore iPad ALPHA Overview slides” (eCO Case #1-680443882); “AMA Conference App movie” (eCO Case #1-680395722); “AMA Mobile presentation with AMA logo” (eCO Case # 1-680361508); “MDC Services draft slides with MDCare logo” (eCO Case #1-680361433); “Medical IT and Visualization slides with MDCare logo” (eCO Case #1-680361378); “EZPak Deep Vein Thrombosis presentation” (eCO Case #1-680361333); “Method ist-presentation-2011-09-14” (eCO Case #1-680193278); “AMA multimedia movie” (eCO Case #1-680193202); “AMA Intellectual Property Inventory: Healthcare IT & Visualization” (eCO Case #1-680042771).

40. Plaintiffs are entitled to a judgment declaring that they have never infringed, and are not infringing, any copyrights of Defendants.

41. Plaintiffs are entitled to a judgment declaring that they the authors of copyrights that relate to the DICOM Presenter, and the mobile device application(s) developed for MDCare, including, but not limited to “Phase I DICOM Presenter software” (eCO Case # 1-686934232); “Patent 2: Utilization of a Mobile CMS Platform

for Healthcare, Rev. 1” (eCO Case # 1-686084990); “Patent 1: Utilization of a Platform-Independent, Device-Independent, Interface independent, Multimedia Imaging Workflow Platform for Healthcare, Rev. 1” (eCO Case #1-686084912); “Patent 2 Slides: Utilization of a Mobile CMS Platform for Healthcare” (eCO Case #1-683661268); “Patent 1 Slides: Utilization of a Platform-Independent, Device-Independent, Interface-independent, Multimedia Imaging Workflow Platform for Healthcare” (eCO Case #1-683661142); “DICOM Studio software consisting of DICOM Presenter, Mobile Apps, and PACS” (eCO Case #1-680512083); “DICOM Presenter movie with MDCare logo” (eCO Case #1-680512028); “AngioSlide iPad App BETA slides” (eCO Case #1-680511972); “AngioScore iPad ALPHA Overview slides” (eCO Case #1-680443882); “AMA Conference App movie” (eCO Case #1-680395722); “AMA Mobile presentation with AMA logo” (eCO Case # 1-680361508); “MDC Services draft slides with MDCare logo” (eCO Case #1-680361433); “Medical IT and Visualization slides with MDCare logo” (eCO Case #1-680361378); “EZPak Deep Vein Thrombosis presentation” (eCO Case #1-680361333); “Method ist-presentation-2011-09-14” (eCO Case #1-680193278); “AMA multimedia movie” (eCO Case #1-680193202); “AMA Intellectual Property Inventory: Healthcare IT & Visualization” (eCO Case #1-680042771).

42. Plaintiffs are entitled to a judgment that they own or hold ownership in all copyrights that relate to the DICOM Presenter, and the mobile device applications, including, but not limited to “Phase I DICOM Presenter software” (eCO Case # 1-686934232); “Patent 2: Utilization of a Mobile CMS Platform for Healthcare, Rev. 1” (eCO Case # 1-686084990); “Patent 1: Utilization of a Platform-Independent, Device-Independent, Interface independent, Multimedia Imaging Workflow Platform for

Healthcare, Rev. 1” (eCO Case #1-686084912); “Patent 2 Slides: Utilization of a Mobile CMS Platform for Healthcare” (eCO Case #1-683661268); “Patent 1 Slides: Utilization of a Platform-Independent, Device-Independent, Interface-independent, Multimedia Imaging Workflow Platform for Healthcare” (eCO Case #1-683661142); “DICOM Studio software consisting of DICOM Presenter, Mobile Apps, and PACS” (eCO Case #1-680512083); “DICOM Presenter movie with MDCare logo” (eCO Case #1-680512028); “AngioSlide iPad App BETA slides” (eCO Case #1-680511972); “AngioScore iPad ALPHA Overview slides” (eCO Case #1-680443882); “AMA Conference App movie” (eCO Case #1-680395722); “AMA Mobile presentation with AMA logo” (eCO Case # 1-680361508); “MDC Services draft slides with MDCare logo” (eCO Case #1-680361433); “Medical IT and Visualization slides with MDCare logo” (eCO Case #1-680361378); “EZPak Deep Vein Thrombosis presentation” (eCO Case #1-680361333); “Method ist-presentation-2011-09-14” (eCO Case #1-680193278); “AMA multimedia movie” (eCO Case #1-680193202); “AMA Intellectual Property Inventory: Healthcare IT & Visualization” (eCO Case #1-680042771).

COUNT II
Declaration of Rights
(Patent Infringement)

43. Plaintiffs repeat and reallege the allegations set forth above as if fully set forth herein.

44. An actual and justiciable controversy exists between Plaintiffs and Defendants as to whether MDCare or the Banerjees are infringing any patents of AMA, as well as the inventorship and ownership of said patents.

45. Plaintiffs have not infringed any patents of Defendants.

46. Plaintiffs own or have inventorship and/or ownership rights in all patents that relate to the DICOM Presenter, and the mobile device application(s) developed for MDCare, including, but not limited to the patent applications with Serial Nos. 61/559487 and 61/559493.

47. Plaintiffs are entitled to a judgment declaring that they have never infringed, and are not infringing, any patents or patent applications of Defendants.

48. Plaintiffs are entitled to a judgment declaring that they the inventors of the patent applications with Serial Nos. 61/559487 and 61/559493.

49. Plaintiffs are entitled to a judgment that they own or hold ownership in all patents or patent applications that relate to the DICOM Presenter, and the mobile device applications, including but not limited to patent applications with Serial Nos. 61/559487 and 61/559493.

COUNT III
Declaration of Rights
(Trade Secret Misappropriation)

50. Plaintiffs repeat and reallege the allegations set forth above as if fully set forth herein.

51. An actual and justiciable controversy exists between Plaintiffs and Defendants as to whether MDCare or the Banerjees are infringing any trade secrets of Defendants, as well as the ownership of said trade secrets.

52. Plaintiffs have not infringed any trade secrets of Defendants that relate to the DICOM Presenter or any mobile device application that has been developed for any third party.

53. Plaintiffs are entitled to a judgment declaring that they have never misappropriated, and are not misappropriating, any trade secrets of Defendants.

54. Plaintiffs are entitled to a judgment that they own or hold ownership in all trade secrets that relate to the DICOM Presenter, and the mobile device applications.

COUNT IV
Declaration of Rights
(Breach of Contract)

55. Plaintiffs repeat and reallege the allegations set forth above as if fully set forth herein.

56. An actual and justiciable controversy exists between Plaintiffs and Defendants as to whether MDCare is in breach of the MOU with AMA; as to whether Plaintiffs are in any additional contractual relationship with AMA for the development of products above and beyond Phase 1 of the DICOM Presenter; whether Plaintiffs owe AMA any additional consideration under the MOU; and, as to whether the Plaintiffs are breaching any contract for the development of products beyond Phase 1 of the DICOM Presenter.

57. Plaintiffs are entitled to a judgment declaring that they have not breached any contract with AMA and that they are in no contractual relationship with AMA for any DICOM related product above and beyond Phase 1 of the DICOM Presenter.

COUNT V
Declaration of Rights
(Trademark Infringement)

58. Plaintiffs repeat and reallege the allegations set forth above as if fully set forth herein.

59. An actual and justiciable controversy exists between Plaintiffs and Defendant as to whether MDCare or the Banerjees are infringing any trademarks of Defendants as alleged by AMA in its cease and desist letter to MDCare.

60. Plaintiffs have not infringed any trademarks of Defendants. Indeed, any use of AMA's trademarks by Plaintiffs was done with the express permission of AMA.

61. Plaintiffs are entitled to a judgment declaring that they have never infringed any trademark of Defendants.

COUNT VI
Declaration of Rights
(Tortious Interference with Existing Contractual Relations)

62. Plaintiffs repeat and reallege the allegations set forth above as if fully set forth herein.

63. An actual and justiciable controversy exists between Plaintiffs and Defendants as to whether MDCare or the Banerjees have tortuously interfered with AMA's existing contractual relations because AMA asserts in its cease and desist letter that MDCare is interfering with current and future business prospects of AMA.

64. Plaintiffs know of no valid contractual relationships or business expectancies between AMA and any third party.

65. Therefore, Plaintiffs are entitled to a judgment declaring that they have never interfered, and are not interfering, with any of AMA's contractual relations.

COUNT VII
(Tortious Interference with Contracts)

66. Plaintiffs repeat and reallege the allegations set forth above as if fully set forth herein.

67. Plaintiffs had a valid contract with third parties.

68. Defendants, at all times relevant herein, knew or should have known of the valid contractual relationships and business expectancies between MDCare and third parties such as AngioSlide, AngioScore and Methodist Hospital..

69. Defendants induced or caused a breach or termination of the relationships and expectancies between the third parties intentionally, maliciously, and thorough the use of improper methods.

70. Such interference includes, but is not limited to, the failure to timely deliver to MDCare mobile device applications that MDCare had contracted for delivery to the third parties.

71. Plaintiffs have been damaged by the disruption of its existing contracts and expectancies, as their reputation with the third parties has been irrevocably harmed. Further MDCare has been monetarily harmed by failing to timely deliver third parties the contracted for mobile applications.

72. Plaintiffs are entitled to actual damages, exemplary damages, pre-judgment and post-judgment interest, and court costs

**COUNT VIII
(Breach of Contract)**

73. Plaintiffs repeat and reallege the allegations set forth above as if fully set forth herein.

74. MDCare and AMA are parties to a valid, enforceable contract for the development of Phase 1 of the DICOM Presenter. MDCare also had a valid, enforceable work-for-hire contract with AMA regarding a mobile app.

75. AMA is a proper party to sue for breach of the contract.

76. MDCare has performed its contractual obligations under these contracts.

77. AMA has materially breached those agreements by committing the acts described herein, for example, by failing to deliver jointly developed source code for Phase 1 of the DICOM presenter, failing to deliver a working mobile app, and claiming ownership of intellectual property either solely owned by MDCare or jointly owned by MDCare and AMA pursuant to the MOU.

78. As a result of this material breach, Plaintiffs have suffered both actual and consequential damages.

**COUNT IX
(Negligent Misrepresentation)**

79. Plaintiffs repeat and reallege the allegations set forth above as if fully set forth herein.

80. Defendants made numerous representations to Plaintiffs during the course of Defendants' business. Those representations were false and Defendants knew those representations were false or at least did not exercise reasonable care or competence in obtaining or communicating the information.

81. Plaintiffs justifiably relied on those representations.

82. Plaintiffs' reliance on those representations was reasonably foreseeable.

83. As a result of AMA's wrongful actions described above, Plaintiffs have been harmed reputationally and financially in an amount to be proven at trial.

**COUNT X
(Attorney Fees)**

84. Plaintiffs repeat and reallege the allegations set forth above as if fully set forth herein.

85. As a result of AMA's wrongful actions described above, Plaintiffs have been required to retain the law firm of Fish & Richardson P.C. to represent its claims in this action. Plaintiffs, therefore, are entitled to recover its reasonable and necessary attorney's fees and costs incurred in the prosecution of this lawsuit as provided by law.

DEMAND FOR JURY TRIAL

Plaintiffs request a trial by jury for all issues triable by jury.

PRAYER

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment against Defendants as follows:

A. Finding that Plaintiffs have not violated any United States copyright owned by AMA;

B. Finding that Plaintiffs own or hold authorship and/or ownership rights in "Phase I DICOM Presenter software" (eCO Case # 1-686934232); "Patent 2: Utilization of a Mobile CMS Platform for Healthcare, Rev. 1" (eCO Case # 1-686084990); "Patent 1: Utilization of a Platform-Independent, Device-Independent, Interface independent, Multimedia Imaging Workflow Platform for Healthcare, Rev. 1" (eCO Case #1-686084912); "Patent 2 Slides: Utilization of a Mobile CMS Platform for Healthcare" (eCO Case #1-683661268); "Patent 1 Slides: Utilization of a Platform-Independent, Device-Independent, Interface-independent, Multimedia Imaging Workflow Platform for Healthcare" (eCO Case #1-683661142); "DICOM Studio software consisting of DICOM Presenter, Mobile Apps, and PACS" (eCO Case #1-680512083); "DICOM Presenter movie with MDCare logo" (eCO Case #1-680512028); "AngioSlide iPad App BETA slides" (eCO Case #1-680511972); "AngioScore iPad ALPHA Overview slides" (eCO

Case #1-680443882); “AMA Conference App movie” (eCO Case #1-680395722); “AMA Mobile presentation with AMA logo” (eCO Case # 1-680361508); “MDC Services draft slides with MDCare logo” (eCO Case #1-680361433); “Medical IT and Visualization slides with MDCare logo” (eCO Case #1-680361378); “EZPak Deep Vein Thrombosis presentation” (eCO Case #1-680361333); “Method ist-presentation-2011-09-14” (eCO Case #1-680193278); “AMA multimedia movie” (eCO Case #1-680193202); “AMA Intellectual Property Inventory: Healthcare IT & Visualization” (eCO Case #1-680042771);

C. Finding that Plaintiffs have not violated any United States patents owned by AMA;

D. Finding that Plaintiffs own or hold inventorship and/or ownership rights in in all patents that relate to the DICOM Presenter, and the mobile device application(s) developed for MDCare, including, but not limited to the patent applications with Serial Nos. 61/559487 and 61/559493.

E. Finding that Plaintiffs have not violated any trademark rights of AMA;

F. Finding that Plaintiffs have not misappropriated any trade secrets of AMA;

G. Finding that Plaintiffs own or hold ownership rights in in all trade secrets that relate to the DICOM Presenter, and the mobile device application(s) developed for MDCare.

H. Finding that Plaintiffs have not breached any contract with AMA;

I. Finding that Plaintiffs have not tortuously interfered with any contract of AMA and any third party;

- J. Finding that AMA has breached the contracts with MDCare;
- K. Actual and consequential damages as a result of AMA's breach of its contracts with MDCare;
- L. Actual and consequential damages as a result of AMA's tortious interference with MDCare's contracts with third parties;
- M. Awarding Plaintiffs actual and punitive damages to which they are entitled under applicable federal and state laws;
- N. Reasonable attorneys' fees;
- O. Costs of suit;
- P. Awarding Plaintiffs pre-judgment and post judgment interest on any monetary award made part of the judgment against AMA; and
- Q. Awarding Plaintiffs such additional and further relief as the Court deems just and proper.

Dated: May 7, 2012

Respectfully submitted,

FISH & RICHARDSON P.C.

By: /s/ Victor C. Johnson

Victor C. Johnson
Attorney-in-Charge
vjohnson@fr.com
Texas Bar No. 24029640
Christopher G. Smith
Texas Bar No. 24061287
cgs@fr.com
1717 Main Street, Suite 5000
Dallas, Texas 75201
(214) 747-5070 Main
(214) 747-2091 Fax

**COUNSEL FOR PLAINTIFFS
MDCARE GLOBAL LLC, DR. SUBHASH
BANERJEE AND DR. POOJA BANERJEE**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on May 7, 2012, to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ Victor C. Johnson

Victor C. Johnson