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Attorneys for Plaintiff, meridianEMR, Inc.

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

meridianEMR, INC.

Plaintiff,

v.

INTUITIVE MEDICAL SOFTWARE, LLC  
d/b/a UROCHART and  
THE SHAPPLEY CLINIC

Defendants.

Civil Action No.

CIVIL ACTION

VERIFIED COMPLAINT

Plaintiff, meridianEMR, Inc. ("Meridian"), by way of Complaint against defendants, Intuitive Medical Software, LLC d/b/a UroChart and The Shappley Clinic, alleges as follows:

NATURE OF THE ACTION

1. This is an action for *inter alia* malicious interference with and conversion of Meridian's confidential and proprietary information. Meridian is the owner of certain confidential information for the commercialization of electronic medical records, providing services to more than 300 physician offices and hospitals nationwide in the field of urology.

2. Meridian brings this action to prohibit the defendants from unlawfully utilizing Meridian's confidential and proprietary information, from unlawfully interfering in Meridian's business and customer relationships, to obtain possession of its confidential data in defendants' custody and control and to prevent irreparable harm to Meridian's business.

THE PARTIES

3. Plaintiff, meridianEMR, Inc., is a New Jersey corporation, with its principal office located in Livingston, New Jersey.

4. Meridian is the lawful owner of certain confidential data, processes, algorithms and other intellectual properties relating to the creation and commercialization of unique software and business processes (known in the industry as an Electronic Medical Record or "EMR" or Electronic Health Record or "EHR") so as to provide a "paperless" office for urology specialists nationwide.

5. Defendant, Intuitive Medical Software, LLC d/b/a UroChart, Inc. ("UroChart") is, upon information and belief, a business entity formed under the laws of the State of Missouri, with an address of 1701 S. Enterprise, Ste. 104, Springfield, MO 65804. UroChart is a direct competitor of Meridian and has sought to unlawfully decipher Meridian's encrypted software, as set forth below, to gain an unfair competitive advantage in the

marketplace. UroChart regularly conducts business in the forum of New Jersey.

6. Defendant, The Shappley Clinic ("Shappley") is, upon information and belief, a Tennessee professional corporation, with an address of 7705 Poplar Avenue, Suite 310B, Germantown, TN. 38138. Shappley's business consists of a urological practice and Shappley has, together with UroChart, acted unlawfully to duplicate Meridian's confidential data. Shappley has agreed in writing to resolve any dispute with Meridian in the forum of New Jersey.

**JURISDICTION AND VENUE**

7. The Court has jurisdiction over this action under 28 U.S.C. §1332(a) (diversity of citizenship). The amount in controversy exceeds \$75,000, exclusive of interest and costs.

8. Venue is proper in this district under 28 U.S.C. §1391 in that UroChart and the Shappley Clinic are deemed to reside in this judicial district and are subject to personal jurisdiction in this judicial district at the time of the commencement of this action.

**FACTUAL ALLEGATIONS**

**A. Introduction.**

9. Since 2003, Meridian has expended substantial resources in establishing, developing and promoting its electronic medical records business, and has expended substantial resources in connection with the development of trade secrets, confidential data, including testing, monitoring technology, encrypted software, clinical urological templates, and related software applications to store and retrieve urological patient data in a proprietary format.

10. Meridian's confidential data also includes certain proprietary business processes for customer and prospective customer presentations, patient consultations, advertising, promoting and developing marketing strategies for electronic medical record keeping in the field of urology nationwide. With regard to the development of its business, Meridian has developed significant goodwill and confidential information in connection with its electronic medical records business.

11. Indeed, in connection with the operation of its business and in light of the Health Insurance Portability and Accountability Act ("HIPPA"), Meridian is required to maintain and has developed a secure platform by which the confidential data of millions of patients is securely placed upon its electronic data platforms.

12. Since in or about its inception, Meridian has become the recognized leader in the electronic medical records field for urologists and urology practices and has established certain proprietary technologies, clinical Urological templates, developed confidential and encrypted software technologies and significant customer relationships throughout the United States.

**B. Meridian Forms A Relationship With Shappley.**

13. Through its various sales and marketing efforts and beginning in or about 2005, Meridian became acquainted with and developed a relationship with Shappley. Indeed, on September 8, 2005, Meridian and Shappley entered into a business services agreement (the "Agreement") for Meridian to provide certain software applications and operational support services for urologically specific electronic medical records at Shappley's practice.

14. In accordance with §3(b) of the Agreement, Shappley obligated itself not to make Meridian's software or Meridian's applications or any related documentation "available to any other person, entity or business".

15. Additionally, Shappley agreed not to "reverse assemble, reverse compile, reverse engineer, modify, reproduce" Meridian's software applications in any fashion.

16. In connection with providing services to Shappley, Meridian installed a high speed local server (computer) at

Shappley's office, connecting that server via the internet to Meridian's master server in Newton, New Jersey.

17. On each instance that Shappley accesses or utilizes the local server, data is transmitted to Meridian's master server in Newton, New Jersey, where all of Shappley's data is stored in a redundant fashion, in real time, and Meridian's technology in this regard is unique, encompassing confidential protocols that provides non-stop, real time back-up to each customer, including Shappley, in the event of a local system failure.

18. Thus, Meridian's unique system and synchronization technology provides a failsafe back-up connection for its customers that alleviates the need for any customer to have an on-site copy of the Meridian system and/or any other back-up for data, and such reproduction is explicitly prohibited in the Agreement.

19. Shappley has never reported a synchronization error, nor has Meridian ever detected such an error, or back-up failure. Thus, not only did and does Shappley continue to have access to all of its patient data at its site, in an encrypted manner, but Shappley's data is also secured in an encrypted fashion at Meridian's secured facility in New Jersey, complying in all respects with all HIPPA regulations.

20. Shappley was provided with a username and password so as to access Meridian's local server and to access an account used to address certain functionality issues.

21. Shappley was neither provided with any other usernames or passwords, nor was it even advised of the existence of any other usernames or accounts or provided with access to Meridian's confidential encryption software or technology on the server.

**C. Shappley Provides Unpermitted and Unlawful Access to Meridian's Confidential Information.**

22. In connection with providing services to Shappley, Shappley's server was issued a client identifier of "mem1-1048-1" as a server name so as to be able to identify Shappley's server (the "Shappley Server") when it connects to and synchronizes with the Meridian server in Newton, New Jersey with the Shapley Server having an internet protocol address ("IP address") of 66.208.918.34.

23. On June 1, 2011, at 1:11 p.m. central time, an unidentified user logged onto the Shappley Server from a computer located at IP address 192.168.5.227. This IP address is internal to Shappley's office network and utilized the proper set up account password.

24. At 2:20 p.m. central time, on June 1, 2011, and after three failed attempts, the user successfully installed a

Microsoft System Center Virtual Machine Manager PS2V agent. This software product is designed to duplicate a running computer so as to create a "clone" copy of all of the data of that running computer for use on another distinct computer. At 6:53 p.m. central time, the user successfully uninstalled the Virtual Machine software.

25. Thereafter, a server claiming to be that of Shappley connected to Meridian's server in Newton, New Jersey, utilizing a previously unidentified host name of "UCMeridian" and an IP address of 1 digit off of that from the Shappley Server, bearing IP address of 66.208.918.33. The "UC Meridian" host name is not an authorized host name and not one familiar to Meridian or used in any fashion by Meridian at or for any customer.

26. The server that came online and sought data from Shappley's practice, utilizing the "UC Meridian" host name (the "Clone Server") was only able to do so having been configured in the exact same and replicated manner as that from the Shappley Server. This Clone Server, which has been identified as running from a location at Shappley's office, synchronized and ran from 10:28 a.m. central time to 11:42 p.m. central time.

27. On June 2, 2011 at 8:41 a.m. central time, an unidentified individual logged onto the Clone Server as username "UroChart" from an IP address internal to that of Shappley's



office, causing the Clone Server to begin communicating with Meridian's master server in Newton, New Jersey.

28. "UroChart" is not a username upon which Meridian has ever configured any server, software or any other computer device, and is not an authorized username.

29. On June 8, 2011 at 9:28 p.m. central time, an unidentified individual logged onto the Clone Server, utilizing a username which is attached to Meridian's disaster recovery account.

30. The disaster recovery account username is not a username provided to Shappley. Discovery of the disaster recovery account username is possible through a tool utilized on one of Meridian's accounts.

31. Significantly, an individual logging onto a server containing Meridian's confidential and proprietary data utilizing the disaster recovery account username may be able to access Meridian's encrypted data and other confidential information. At no time was Shappley or anyone else outside of Meridian ever provided with the password to obtain access to the disaster recovery account. Nor was the actual Meridian password utilized to obtain access.

32. The unidentified individual was able to log onto Meridian's disaster recovery account using a password obtained through a hacking methodology that has not yet been identified.

33. There is no, nor was there, any business reason for Shappley to log onto Meridian's disaster recovery account, particularly in light of Meridian's seamless back-up technology with synchronization to the Meridian master server in Newton, New Jersey, nor is Shappley authorized to access that account. Indeed, only a half dozen or so of Meridian's most senior level executives have access to the disaster recovery account or password and no one at Meridian has ever used the password for any purpose.

34. Meridian has been unable to determine the level of encrypted patient data, encrypted Meridian proprietary software and/or encrypted Urological clinical templates, or other confidential proprietary information to which defendants were able to afford themselves access after either Shappley or UroChart logged onto and availed themselves of unauthorized access to Meridian's disaster recovery account.

35. In light of the foregoing, and in particular, the access obtained to Meridian's disaster recovery account, Meridian placed a telephone call to Shappley's office on June 9, 2011 and spoke with an office manager and Dr. Shappley.

36. Meridian advised that it was concerned from a security standpoint that it appeared that unpermitted software was installed and that an unidentified individual had logged onto the machine locally from Shappley's office.

37. Dr. Shappley responded that "we've had some thefts in the office" and that he was "working with cleaning supervisors".

38. Shortly before advising Shappley's office and Dr. Shappley, individually, of the security concern, the settings within the Clone Server were altered in a manner which has resulted in it either no longer communicating with the Meridian server in Newton, New Jersey, or alternatively, communicating in a manner upon which Meridian is no longer able to detect such communication.

39. Unquestionably, in light of the level of sophistication required to identify Meridian's disaster recovery account, together with successfully obtaining access to that account through a yet to be identified hacking technology, as well as with the creation and use of a username "UroChart" and use of cloning software to replicate Meridian's encrypted database, there is little doubt that in actuality, UroChart, and not "office cleaning supervisors" were responsible for and are responsible together with Shappley for the unauthorized use, access and duplication of Meridian's data.

40. With Shappley and UroChart having access to Meridian's encrypted data through the disaster recovery account, defendants are able to not only replicate Meridian's confidential and proprietary business processes, but also identify and exploit security loopholes and can corrupt data to disrupt Meridian's

business and/or its master server resulting in a threatened loss of goodwill and irreparable harm.

41. Moreover, defendants' conduct has placed millions of patients in Meridian's system at risk through a risk of corrupted data or other loss, and by Shappley's conduct of providing access to patient data to UroChart, Shappley and/or UroChart have and have had unlawful access to patient information in violation of patient privacy rights.

42. Unless defendants are immediately restrained from further access and compelled to disclose and return all confidential data obtained at once, Meridian will suffer irreparable harm.

**FIRST COUNT**

43. Meridian repeats and reiterates the allegations contained in ¶¶1-42 as if set forth herein at length.

44. Notwithstanding the promises in the Agreement, Shappley breached the Agreement by, among other things, copying, duplicating or otherwise participating in or making available to UroChart the contents of the Shappley Server for copying, use and/or duplication.

45. As a direct and proximate result of Shappley's breaches of the Agreement, as aforesaid, Meridian has suffered and continues to suffer irreparable harm and damages.

WHEREFORE, plaintiff, meridianEMR, Inc. demands judgment against defendant, The Shappley Clinic, as follows:

- (a) For an Order enjoining and restraining defendants from using, disclosing, conveying, trading on or disposing of plaintiff's proprietary and/or confidential information and/or trade secrets at any time or in any manner whatsoever including, but not limited to such software or other data contained upon the Shappley Server and/or Clone Server and requiring defendants to disgorge themselves of an return all such data at once to Meridian;
- (b) For compensatory and consequential damages;
- (c) For interest and costs of suit;
- (d) For such other and further relief as this Court may deem equitable and just.

SECOND COUNT

46. Meridian repeats and reiterates the allegations contained in the First Count as if set forth herein at length.

47. Shappley breached its contractual obligations of good faith and fair dealing by willfully, wantonly and intentionally disclosing and otherwise providing access to Meridian's encrypted and/or confidential and proprietary information.

48. As a direct and proximate result of Shappley's breaches of the implied covenant of good faith and fair dealing, Meridian has suffered and continues to suffer irreparable harm and damages.

WHEREFORE, plaintiff, meridianEMR, Inc. demands judgment against defendant, The Shappley Clinic, as follows:

- (a) For an Order enjoining and restraining defendants from using, disclosing, conveying, trading on or disposing of plaintiff's proprietary and/or confidential information and/or trade secrets at any time or in any manner whatsoever including, but not limited to such software or other data contained upon the Shappley Server and/or Clone Server;
- (b) For compensatory and consequential damages;
- (c) For interest and costs of suit;
- (d) For such other and further relief as this Court may deem equitable and just.

THIRD COUNT

49. Meridian repeats and reiterates the allegations contained in the First and Second Counts as if set forth herein at length.

50. At relevant times hereto, Shappley and in particular, William Vance Shappley, M.D., represented to Meridian that he and Shappley would keep confidential and not disclose and proprietary and/or confidential information that they obtained in connection with their relationship with Meridian and, promised not to afford any third party with access to Meridian's information contained on the Meridian server.

51. Shappley made such representations so as to induce Meridian to enter into the Agreement, and Shappley represented

that it would comply with and faithfully undertake and perform all of its obligations, duties and responsibilities under the Agreement.

52. Shappley knew or should have known that its representations were false when made.

53. Meridian relied upon the foregoing representations by entering into the Agreement, by providing the Shappley Server and by otherwise developing and investing time, money, manpower and assets to pursue its business relationship with Shappley.

54. As a direct and proximate result of the misrepresentations by Shappley, as set forth above, Meridian has suffered and continues to suffer irreparable harm and damages.

**WHEREFORE**, plaintiff, meridianEMR, Inc. demands judgment against defendant, The Shappley Clinic, as follows:

- (a) For an Order enjoining and restraining defendants from using, disclosing, conveying, trading on or disposing of plaintiff's proprietary and/or confidential information and/or trade secrets at any time or in any manner whatsoever including, but not limited to such software or other data contained upon the Shappley Server and/or Clone Server;
- (b) For compensatory, consequential and punitive damages;
- (c) For interest and costs of suit;
- (d) For such other and further relief as this Court may deem equitable and just.

**FOURTH COUNT**

55. Meridian repeats and reiterates the allegations contained in the First through Third Counts as if set forth herein at length.

56. As a direct and proximate result of the negligent misrepresentations by Shappley, as set forth above, Meridian has suffered and continues to suffer irreparable harm and damages.

**WHEREFORE**, plaintiff, meridianEMR, Inc. demands judgment against defendant, The Shappley Clinic, as follows:

- (a) For an Order enjoining and restraining defendants from using, disclosing, conveying, trading on or disposing of plaintiff's proprietary and/or confidential information and/or trade secrets at any time or in any manner whatsoever including, but not limited to such software or other data contained upon the Shappley Server and/or Clone Server;
- (b) For compensatory and consequential damages;
- (c) For interest and costs of suit;
- (d) For such other and further relief as this Court may deem equitable and just.

**FIFTH COUNT**

57. Meridian repeats and reiterates the allegations contained in the First through Fourth Counts as if set forth herein at length.

58. UroChart knew or should have known of the Agreement, and other agreements between Meridian and third parties in



connection with Meridian's ability to provide services to Shappley and other customers.

59. Notwithstanding that knowledge, UroChart tortuously interfered with the aforesaid agreements.

60. UroChart's tortuous conduct was willful and intentional with malice for the purpose of enriching itself and at the expense of Meridian.

61. As a direct and proximate result of UroChart's willful and intentional interference with contractual relations, Meridian has suffered and continues to suffer irreparable harm and damages.

**WHEREFORE**, plaintiff, meridianEMR, Inc. demands judgment against defendant, Intuitive Medical Software, LLC d/b/a UroChart, as follows:

- (a) For an Order enjoining and restraining defendants from using, disclosing, conveying, trading on or disposing of plaintiff's proprietary and/or confidential information and/or trade secrets at any time or in any manner whatsoever including, but not limited to such software or other data contained upon the Shappley Server and/or Clone Server;
- (b) For compensatory, consequential and punitive damages;
- (c) For interest and costs of suit;
- (d) For such other and further relief as this Court may deem equitable and just.

SIXTH COUNT

62. Meridian repeats and reiterates the allegations contained in the First through Fifth Counts as if set forth herein at length.

63. Meridian had and has a reasonable expectation of benefits from its name, reputation, goodwill and technological expertise including, but not limited to, the confidential and proprietary information contained within the Meridian server.

64. Shappley and UroChart knew or should have known of the value of Meridian's assets, as set forth above, and without justification, willfully, intentionally and maliciously interfered with Meridian's interests.

65. Shappley's and UroChart's intentional interference directly caused the loss of prospective economic gain that Meridian will realize through continued relationships and through its use of its assets.

66. By intentionally, willfully and maliciously interfering and seizing upon Meridian's business assets, Shappley and UroChart have tortiously interfered with Meridian's prospective economic advantage.

67. Shappley's and UroChart's conduct was willful and intentional with malice for the purpose of enriching themselves and at the expense of Meridian.

68. As a direct and proximate result of Shappley's and UroChart's tortuous interference with Meridian's prospective economic advantage, Meridian has suffered and continues to suffer irreparable harm and damages.

WHEREFORE, plaintiff, meridianEMR, Inc. demands judgment against defendant, Intuitive Medical Software, LLC d/b/a UroChart, as follows, as follows:

- (a) For an Order enjoining and restraining defendants from using, disclosing, conveying, trading on or disposing of plaintiff's proprietary and/or confidential information and/or trade secrets at any time or in any manner whatsoever including, but not limited to such software or other data contained upon the Shappley Server and/or Clone Server;
- (b) For compensatory, consequential and punitive damages;
- (c) For interest and costs of suit;
- (d) For such other and further relief as this Court may deem equitable and just.

**SEVENTH COUNT**

69. Meridian repeats and reiterates the allegations contained in the First through Sixth Counts as if set forth herein at length.

70. By causing and participating in the misappropriation of Meridian's assets including, but not limited to, its confidential and proprietary data, encryption codes, software

and monitoring technologies, Shappley and UroChart have engaged in conversion.

71. As a direct and proximate result of Shappley's and UroChart's conversion, Meridian has suffered and continues to suffer irreparable harm and damages.

**WHEREFORE**, plaintiff, meridianEMR, Inc. demands judgment against defendant, Intuitive Medical Software, LLC d/b/a UroChart, as follows, as follows:

- (e) For an Order enjoining and restraining defendants from using, disclosing, conveying, trading on or disposing of plaintiff's proprietary and/or confidential information and/or trade secrets at any time or in any manner whatsoever including, but not limited to such software or other data contained upon the Shappley Server and/or Clone Server;
- (f) For compensatory, consequential and punitive damages;
- (g) For interest and costs of suit;
- (h) For such other and further relief as this Court may deem equitable and just.

**EIGHTH COUNT**

72. Meridian repeats and reiterates the allegations contained in the First through Seventh Counts as if set forth herein at length.

73. As a direct and proximate result of the foregoing, Shappley and UroChart have been unjustly enriched.

WHEREFORE, plaintiff, meridianEMR, Inc. demands judgment against defendants, The Shappley Clinic and Intuitive Medical Software, LLC d/b/a UroChart, jointly and severally, as follows:

- (a) For an Order enjoining and restraining defendants from using, disclosing, conveying, trading on or disposing of plaintiff's proprietary and/or confidential information and/or trade secrets at any time or in any manner whatsoever including, but not limited to such software or other data contained upon the Shappley Server and/or Clone Server;
- (b) For compensatory and consequential damages;
- (c) For interest and costs of suit;
- (d) For such other and further relief as this Court may deem equitable and just.

NINTH COUNT

74. Meridian repeats and reiterates the allegations contained in the First through Eighth Counts as if set forth herein at length.

75. Based upon the foregoing, Meridian created certain software, confidential software, encryption codes, monitoring tools, among other confidential and proprietary data with the expectation of being reasonably compensated for the use of same.

76. By failing to reasonably compensate Meridian for the use and/or duplication of its business assets, defendants are liable to Meridian in quantum meruit for the reasonable value of Meridian's business assets.

WHEREFORE, plaintiff, meridianEMR, Inc. demands judgment against defendants, The Shappley Clinic and Intuitive Medical Software, LLC d/b/a UroChart, jointly and severally, as follows, as follows:

- (a) For an Order enjoining and restraining defendants from using, disclosing, conveying, trading on or disposing of plaintiff's proprietary and/or confidential information and/or trade secrets at any time or in any manner whatsoever including, but not limited to such software or other data contained upon the Shappley Server and/or Clone Server;
- (b) For compensatory and consequential damages;
- (c) For interest and costs of suit;
- (d) For such other and further relief as this Court may deem equitable and just.

GREENBAUM, ROWE, SMITH & DAVIS LLP  
Attorneys for Plaintiff

By: Marc J. Gross/ARK  
MARC J. GROSS

Dated: June 16, 2011

JURY DEMAND

Plaintiff, Meridian EMC, Inc., hereby demands a trial by jury as to all issues so triable.

GREENBAUM, ROWE, SMITH & DAVIS LLP  
Attorneys for Plaintiff,

By: Marc J Gross / ARK  
MARC J. GROSS

Dated: June 16, 2011

CERTIFICATION PURSUANT TO L. CIV. R. 11.2

Pursuant to L. Civ. R. 11.2, I hereby certify that there is no other action pending in any Court or arbitration proceeding concerning the matter in controversy, none is contemplated, and further, I know of no other party who should be joined in this matter.

GREENBAUM, ROWE, SMITH & DAVIS LLP  
Attorneys for Plaintiff,

By: Marc J Gross / ABK  
MARC J. GROSS

Dated: June 16, 2011



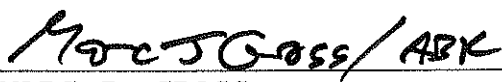
7.1 CERTIFICATION

MARC J. GROSS, of full age, under oath, hereby declares as follows:

I am a member of the Bar of the State of New Jersey and admitted to practice before the United States District Court for the District of New Jersey.

I serve as counsel for plaintiff, Meridian EMR, Inc. and certify that Meridian EMR, Inc., nor its subsidiaries, parent or affiliates are publicly traded or otherwise involve securities or other interests that are publicly held.

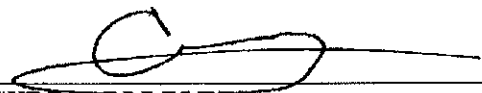
I declare that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

  
\_\_\_\_\_  
MARC J. GROSS

Dated: June 16, 2011

VERIFICATION

Chris Bartlett verifies under penalty of perjury pursuant to 28 U.S.C. § 1746 that the factual statements contained in the foregoing Verified Complaint are true and correct to the best of my knowledge, information, and belief.

  
\_\_\_\_\_  
CHRIS BARTLETT

Dated: 6/16/11


ATTORNEY CERTIFICATION

I am an attorney at law of the State of New Jersey and I am a member of the firm of Greenbaum, Rowe Smith & Davis LLP attorneys for plaintiff, Meridian EMR, Inc. in the within action.

Annexed hereto is a facsimile signature of Chris Bartlett. Mr. Bartlett has acknowledged the genuineness of his signature.

I am filing this Certification pursuant to R.1:4(c) so that the Court may accept Mr. Bartlett's facsimile signature on his Declaration. An original signature will be filed if requested by the Court or a party.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I may be subject to punishment.

  
MARC J. GROSS

Dated: June 16, 2011