

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**UNITED STATES SECURITIES  
AND EXCHANGE COMMISSION,**

**Plaintiff,**

v.

**JOHN A. DONOHOE, JR.,**

**Defendants.**

CIVIL ACTION NO. \_\_\_\_\_

COMPLAINT

The Securities and Exchange Commission (“Commission”) alleges the following against Defendant John A. Donohoe, Jr.:

**SUMMARY OF ALLEGATIONS**

1. From 1999 until 2004, Defendant and other former officers and employees at MedQuist Inc. (“MedQuist” or “the Company”), a New Jersey-based medical transcription company, claimed in SEC filings, press releases and earnings calls that the Company’s strong financial performance was due to its disciplined and conservative business practices, while at the same time it was systematically and secretly inflating customer bills to increase revenues and profit margins. From late 1998 until March 2002, Defendant was a Director, President, and Chief Operating Officer of MedQuist. Beginning in about 1999, Defendant and others caused MedQuist to fraudulently overbill customers by increasing the number of lines of medical text it purportedly transcribed. The scheme was able to continue for several years because the unit of measure upon which bills to many customers were based—known as an “AAMT” line—included invisible characters and computer keystrokes that

could not be verified by customers. Knowing that customers were unable to verify line counts on bills, Defendant and others in the Company directed it to stop counting AAMT lines and secretly use formulas to increase line counts on customer bills to reach specific revenue and margin targets.

2. Defendant and others within the Company misled customers and independent auditors into believing that the Company's bills were based on AAMT line counts as required by customer contracts. At the same time, Defendant and others within the Company misled shareholders and the public by stating in Commission filings, press releases and earnings calls, that the Company's revenues were based primarily on contracted rates and that its strong financial performance was the result of conservative and disciplined business practices.

3. Since the billing scheme came to light in 2004, the Company has set aside approximately \$83 million to resolve customer billing issues.

### **VIOLATIONS**

4. By engaging in the conduct described below, Defendant violated Section 17(a) of the Securities Act and Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5, 13b2-1, and 13b2-2 [ 15 U.S.C. §§ 77q(a), 78j(b), and 78m(b)(5) and 17 C.F.R. §§ 240.10b-5, 204.13b2-1, and 240.13b-2-2], and aided and abetted violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 [15 U.S.C. §§ 78m(a), 78m(b)(2)(A), and 78m(b)(2)(B) and 17 C.F.R. §§ 204.12b-20, 204.13a-1, 240.13a-11, and 240.13a-13].

## JURISDICTION AND VENUE

5. The Commission brings this action pursuant to Sections 20(b), 20(d), and 20(e) of the Securities Act and Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 77t(b), 77t(d), 77t(e), 78u(d), and 78u(e)], seeking a judgment:

a. Permanently restraining and enjoining the Defendant from further violations of the relevant provisions of the securities laws;

b. Requiring Defendant to pay a civil money penalty pursuant to Section 20(d) of the Securities Act and Section 21(d) of the Exchange Act [15 U.S.C. §§ 77t(d)] and §78u(d); and

c. Prohibiting Defendant from acting as an officer or director of any issuer that has a class of securities registered under Section 12 of the Exchange Act [15 U.S.C. §78l] or that is required to file reports by Section 15(d) of the Exchange Act [15 U.S.C. §78o(d)].

6. The Court has jurisdiction over this action pursuant to Sections 20(b), 20(d), 20(e) and 22 of the Securities Act [15 U.S.C. §§ 77t(b), 77t(d), 77t(e) and 77v] and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa]. Venue is proper under Section 22 of the Securities Act [15 U.S.C. § 77v] and Section 27 of the Exchange Act [15 U.S.C. § 78aa].

7. Defendant, directly or indirectly, made use of the means and instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange in connection with the acts, practices, and courses of business alleged herein. Certain of these transactions, acts, practices and courses of business occurred in the Southern District of New York, including, among other things, public sales of MedQuist stock on the NASDAQ stock market based in New York City.

## DEFENDANT

8. **John A. Donohoe, Jr.**, age 54, was President, Chief Operating Officer, and a Director of MedQuist from about August 1998 until March 2002. Donohoe resides in the Commonwealth of Pennsylvania.

## STATEMENT OF FACTS

9. MedQuist performs medical transcription services by receiving dictated medical records from customers, usually hospitals, and keying them into computer programs called transcription platforms. MedQuist has contracts with its customers governing how MedQuist will measure and bill the work. Each contract specifies the unit (such as word, line, or report) MedQuist uses to measure the work, the definition of the unit of measure (such as how many characters constitute a "line"), and the price per unit. The contracts require that MedQuist bill the customer an amount equal to the number of units transcribed multiplied by the price per unit.

10. From 1998 through 2002, many of MedQuist's contracts required MedQuist to use a unit of measure called the AAMT line. MedQuist's contracts defined an AAMT line as follows:

any line having 65 'characters,' [where 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 character 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.

11. Because MedQuist's contracts specifically stated that AAMT lines would be calculated by "counting all characters" and "simply dividing . . . by 65", MedQuist was required to count AAMT characters in order to bill in accordance with contracts.

12. Because AAMT lines include invisible characters and formatting codes peculiar to the transcription platforms, MedQuist's customers could not independently verify the AAMT line totals in their bills by looking at their transcribed documents.

13. MedQuist calculated transcriptionist pay by a unit of measure called a "payroll line," which was not equal to an AAMT line.

14. By 1999, Defendant directed that the Company stop actual counting of AAMT characters and lines. He directed Company officials to derive the number of AAMT lines billed to customers by applying multiples to the number of payroll lines in the customer's work.

15. Also by 1999, Defendant directed that Company officials adjust the line count multiples on customer accounts to reach desired revenue and margin targets. Defendant routinely monitored the effect of changes to line count multiples to ensure that the Company met its desired revenue and margin targets.

16. The Company's use of and increases to line count multiples, instead of counting AAMT characters and lines as called for in customer contracts, resulted in overbilling of certain customers.

17. Neither Defendant nor other MedQuist officials told customers or shareholders about the use of line count multiples for billing purposes. Because the changed methodology had the potential to increase billed lines counts enough to be noticed by customers, Defendant directed or authorized Company officials to increase the line count multiples of some customers gradually over time. Defendant directed or authorized Company officials to sometimes secretly increase a customer's line multiple after agreeing to a decrease in line price, in order to maintain revenues and profit margins.

18. Defendant knew, or was reckless in not knowing, that the Company was not billing in accordance with customer contracts and that the Company was increasing its billed line counts to meet revenue and margin targets.

19. Defendant knew, or was reckless in not knowing, that certain customers, including those who had left MedQuist for other transcription providers, complained of billing irregularities, unjustifiable bill totals, and billing fraud on the part of the Company.

20. Defendant failed to ensure the accuracy of billed AAMT line counts or the adequacy of the Company's internal controls surrounding its billing systems.

21. Defendant knew, or was reckless in not knowing, that the Company's external auditors believed incorrectly that Company transcription platforms actually counted AAMT characters and lines, and that the auditors relied on that incorrect belief in performing their audit. Defendant failed to tell Company external auditors that no Company transcription platforms actually counted AAMT characters and lines. Defendant knew, or was reckless in not knowing, that the Company had inadequate controls on its billing processes but did not tell the Company's external auditors. Defendant knew, or was reckless in not knowing, that the Company was using line count multiples to reach revenue and margin targets but did not tell the Company's external auditors. Defendant knew that certain customers had complained of billing irregularities and fraud but did not tell the auditors of these complaints. Defendant knew, or was reckless in not knowing, that these omitted disclosures were material to the auditors' work and public statements about the Company. In addition, Defendant signed written representations to the auditors that he knew, or was reckless in not knowing, were

misleading as to the completeness of the information that the Company provided and as to the quality of the records underlying Company transactions and revenues.

22. Defendant and others at MedQuist told shareholders and other public investors that the Company's strong financial performance was due to disciplined and conservative business practices and that revenues were based primarily on contracted rates, while at the same time it was secretly not billing in accordance with contracts and was manipulating billed line counts to reach desired revenue and margin targets. He knew, or was reckless in not knowing, that these statements and omissions were misleading and material in that a reasonable investor would consider them important to an investment decision about the Company.

23. From 1999 to his departure from the Company in 2002, Donohoe signed public filings and participated in quarterly investor conference calls that he knew, or was reckless in not knowing, contained material misleading statements and omissions about the Company. Defendant signed misleading Forms 10-K stating that the Company's revenues were based primarily on contracted rates, and that its improved financial and revenue performance was due to legitimate business practices such as increased sales to existing and new customers. Defendant participated in misleading quarterly investor conference calls in which Company officials stated that its good performance was due to "back-to-basics management discipline," "disciplined business practices," and the experience and "discipline" of the Company's management team. In truth, the Company's improved revenues and financial performance largely were based on and due to the Company's secret increases to billed line counts, in violation of the terms of its customer contracts.

**FIRST CLAIM FOR RELIEF**

**Violations of the Antifraud Provisions Contained in  
Section 17(a) of the Securities Act**

24. The Commission realleges and incorporates by reference every allegation contained in paragraphs 1 through 23 herein.

25. By reason of the foregoing, Defendant, directly or indirectly, singly or in concert, by use of the means or instruments of transportation or communication in interstate commerce or by the use of the mails, in the offer or sale of securities: (a) knowingly or recklessly employed devices, schemes and artifices to defraud; (b) obtained money or property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and/or (c) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon the purchasers of MedQuist securities and upon other persons, in violations of Section 17(a) of the Securities Act [15 U.S.C. §§ 77q(a)].

**SECOND CLAIM FOR RELIEF**

**Violations of the Antifraud Provisions  
Contained in Section 10(b) of the Exchange Act and Rule 10b-5**

26. The Commission realleges and incorporates by reference every allegation contained in paragraphs 1 through 23 herein.

27. By reason of the foregoing, Defendant, directly or indirectly, singly or in concert, by use of the means or instrumentalities of interstate commerce or of the mails, knowingly or recklessly, in connection with the purchase or sale of securities: (a) employed devices, schemes and artifices to defraud; (b) made untrue statements of material fact, or omitted to state material facts necessary in



order to make statements made, in light of the circumstances under which they were made, not misleading; and/or (c) engaged in acts, practices and courses of business which operated or would have operated as a fraud or deceit upon purchasers of MedQuist securities and upon other persons, in violations of Section 10(b) of the Exchange Act and Rule 10b-5 [15 U.S.C. § 78j(b) and 17 C.F.R. 240.10b-5].

### **THIRD CLAIM FOR RELIEF**

#### **Violations of the Prohibition on False Records and False Statements Contained in Section 13(b)(5) of the Exchange Act and Rules 13b2-1 and 13b2-2**

28. The Commission realleges and incorporates by reference every allegation contained in paragraphs 1 through 23 herein.

29. By reason of the foregoing, Defendant:

a. knowingly circumvented or knowingly failed to implement a system of internal accounting controls or knowingly falsified books, records, or accounts;

b. directly or indirectly, falsified or caused to be falsified, books, records, or accounts subject to Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A); and

c. directly or indirectly made or caused to be made a materially false or misleading statement to an accountant, or omitted to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading, to an accountant, in connection with an audit, review or examination of MedQuist's financial statements, or in connection with preparation of a document or report required to be filed with the Commission;

in violation of Section 13(b)(5) of the Exchange Act and Rules 13b2-1 and 13b2-2 [15 U.S.C. § 78m(b)(5) and 17 C.F.R. §§ 240.13b2-1 and 240.13b2-2].

#### **FOURTH CLAIM FOR RELIEF**

##### **Aiding and Abetting of the Company's Violations of the Reporting Provisions Contained in Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13**

30. The Commission realleges and incorporates by reference every allegation contained in paragraphs 1 through 23 herein.

31. MedQuist failed to file with the Commission such financial reports as the Commission has prescribed, and failed to include, in addition to the information expressly required to be stated in such reports, such further material information as was necessary to make the statements made therein, in light of the circumstances in which they were made, not misleading, in violation of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 [15 U.S.C. § 78m(a) and 17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13].

32. Defendant knowingly provided substantial assistance to MedQuist in the commission of these violations.

33. By reason of the foregoing, Defendant aided and abetted violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 [15 U.S.C. § 78m(a) and 17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13].

## **FIFTH CLAIM FOR RELIEF**

### **Aiding and Abetting the Company's Violations of the Books and Records and Internal Control Provisions Contained in Sections 13(b)(2)(A) and 13(b)(2)(B) of the Securities Exchange Act**

34. The Commission realleges and incorporates by reference every allegation contained in paragraphs 1 through 23 herein.

35. MedQuist failed to:

a. make and keep books, records, and accounts, which in reasonable detail, accurately and fairly reflected the transactions and dispositions of its assets;

b. devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that:

i. transactions were executed in accordance with management's general or specific authorizations;

ii. transactions were recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and to maintain accountability for assets;

iii. access to assets was permitted only in accordance with management's general or specific authorization; and

iv. the recorded accountability for assets was compared with the existing assets at reasonable intervals and appropriate actions was taken with respect to any differences;

in violation of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A), and 78m(b)(2)(B)].

36. Defendant knowingly provided substantial assistance to MedQuist in the commission of these violations.

37. By reason of the foregoing, Defendant aided and abetted violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A), and 78m(b)(2)(B)].

**PRAYER FOR RELIEF**

**WHEREFORE**, the Commission respectfully requests that this Court:

(a) permanently restrain and enjoin Defendant, and his agents, servants, employees, attorneys-in-fact, and assigns and those persons in active concert or participation with them, and each of them, from further violations of the relevant provisions of the securities laws;

(b) order Defendant to pay civil money penalties pursuant to Section 20(d) of the Securities Act and Section 21(d) of the Exchange Act [15 U.S.C. §§ 77t(d)] and §78u(d)];

(c) Enter an order against Defendant pursuant to Section 20(e) of the Securities Act and Section 21(d) of the Exchange Act [15 U.S.C. §§ 77t(e) and 78u((d)], prohibiting him from acting as an officer or director of any issuer that has a class of securities registered under Section 12 of the Exchange Act [15 U.S.C. §78l] or that is required to file reports by Section 15(d) of the Exchange Act [15 U.S.C. §78o(d)]; and

(d) grant such other relief as the Court deems just and proper.

Dated: March 12, 2009

Respectfully submitted,



John J. Bowers (JB8515)  
SECURITIES AND EXCHANGE COMMISSION  
100 F Street, NE  
Washington, DC 20549  
Tel. (202) 551-4645  
[BowersJ@sec.gov](mailto:BowersJ@sec.gov)

Attorney for Plaintiff

Of Counsel:

Gerald W. Hodgkins  
Moira T. Roberts  
Sharan K.S. Custer  
SECURITIES AND EXCHANGE COMMISSION  
100 F Street, NE  
Washington, DC 20549