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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA**

The States of Arizona; Arkansas; Florida;
Indiana; Iowa; Kansas; Kentucky; Louisiana;
Minnesota; Nebraska; North Carolina; and
Wisconsin,

Plaintiffs;

vs.

Medical Informatics Engineering, Inc. d/b/a
Enterprise Health, LLC and K&L Holdings, and
NoMoreClipboard, LLC,

Defendants.

Case No.:

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CONSENT JUDGMENT AND ORDER

This Consent Judgment and Order (“Consent Judgment” or “Order”) is entered into between the Plaintiff, [STATE; “Plaintiff”], and Defendants Medical Informatics Engineering, Inc., and NoMoreClipboard, LLC, including all of their subsidiaries, affiliates, agents, representatives, employees, successors, and assigns (collectively, “Defendants” and, together with the States, the “Parties”) in connection with a multistate investigation comprised of the States of Arizona, Arkansas, Florida, Indiana, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Nebraska, North Carolina, and Wisconsin (“Attorneys General” or “States”).

This Order resolves the Plaintiff’s investigation of events described in the accompanying Complaint regarding Defendants’ compliance with the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936, as amended by the Health Information Technology for Economic and Clinical Health Act, Pub. L. No. 111-5, 123 Stat. 226

1 (“HIPAA”); state Deceptive Trade Practices Acts; state Personal Information Protection Acts;
2 and state Breach Notification Acts as follows:

State	Deceptive Acts	Data Breach
Arizona:	Ariz. Rev. Stat. § 44-1521 et seq.	
Arkansas:	Ark. Code § 4-88-101 <i>et seq.</i>	Ark. Code § 4-110-105
Florida:	Chapter 501, Part II, Florida Statutes	Section 501.171, Florida Statutes
Indiana:	Ind. Code §§ 24-5-0.5-4(C), and 24-5-0.5-4(G)	
Iowa:	Iowa Code § 714.16	Iowa Code § 715c.2
Kansas:	Kan. Stat. §§ 50-632, and 50-636	Kan. Stat. § 50-7a02
Kentucky:	Ky. Rev. Stat. §§ 367.110-.300, and 367.990	
Louisiana:	La. Rev. Stat. § 51:1401 et seq.	La. Rev. Stat. 51:3071 et seq.
Minnesota:	Minn. Stat. §§ 325D.43 <i>et seq.</i> ; Minn. Stat. §§ 325F.68 <i>et seq.</i>	Minn. Stat. § 325E.61
Nebraska:	Neb. Rev. Stat. §§ 59-1602; 59-1608, 59-1614, and 87-301	Neb. Rev. Stat. § 87-806
North Carolina	N.C. Gen. Stat. § 75-1.1, <i>et seq.</i>	N.C. Gen. Stat. § 75-65
Wisconsin:	Wis. Stat. §§ 93.20, 100.18, and 100.26	Wis. Stat. § 134.98

21 **I. THE PARTIES**

22 1. The Plaintiff is charged with, among other things, enforcement of the Deceptive
23 Trade Practices Act, the Personal Information Protection Act, and the Breach Notification Act.
24 The Plaintiff, pursuant to 42 U.S.C. § 1320d-5(d), may also enforce HIPAA.

25 2. Defendant Medical Informatics Engineering, Inc. (“MIE”) is a domestic
26 corporation with headquarters located at 6302 Constitution Drive, Fort Wayne, Indiana, 46804.
27

1 any issue of fact or law, and without an admission of liability or wrongdoing with regard to this
2 matter.

3 9. The Court has reviewed the terms of this Consent Judgment and based upon the
4 Parties' agreement and for good cause shown

5
6 **IT IS HEREBY ORDERED, ADJUDGED AND AGREED AS FOLLOWS:**

7 **IV. EFFECTIVE DATE**

8 10. This Consent Judgment shall be effective on the date it is entered by a court of
9 jurisdiction. The Effective Date of this Consent Judgment shall be XXXX.

10
11 **V. DEFINITIONS**

12 11. "Administrative Safeguards" shall be defined in accordance with 45 C.F.R. §
13 164.304 and are administrative actions, and policies and procedures, to manage the selection,
14 development, implementation, and maintenance of security measures to protect Electronic
15 Protected Health Information and to manage the conduct of the covered entity's or business
16 associate's workforce in relation to the protection of that information.

17
18 12. "Business Associate" shall be defined in accordance with 45 C.F.R. § 160.103
19 and is a person or entity that provides certain services to or performs functions on behalf of
20 covered entities, or other business associates of covered entities, that require access to Protected
21 Health Information.

22
23 13. "Covered Entity" shall be defined in accordance with 45 C.F.R. § 160.103 and is
24 a health care clearinghouse, health plan, or health care provider that transmits health information
25 in electronic form in connection with a transaction for which the U.S. Department of Health and
26 Human Services has adopted standards.

1 14. “Data Breach” shall mean the data theft from MIE’s and NMC’s computer system
2 occurring in or about May 2015.

3 15. “Electronic Protected Health Information” or “ePHI” shall be defined in
4 accordance with 45 C.F.R. § 160.103.

5 16. “Generic account” shall be defined as an account assigned for a specific role that
6 can be used by unidentified persons or multiple persons. Generic account shall not include
7 service accounts.
8

9 17. “Minimum Necessary Standard” shall refer to the requirements of the Privacy
10 Rule that, when using or disclosing Protected Health Information or when requesting Protected
11 Health Information from another Covered Entity or Business Associate, a Covered Entity or
12 Business Associate must make reasonable efforts to limit Protected Health Information to the
13 minimum necessary to accomplish the intended purpose of the use, disclosure, or request as
14 defined in 45 C.F.R. § 164.502(b) and § 164.514(d).
15

16 18. “Privacy Rule” shall refer to the HIPAA Regulations that establish national
17 standards to safeguard individuals’ medical records and other Protected Health Information,
18 including ePHI, that is created, received, used, or maintained by a Covered Entity or Business
19 Associate that performs certain services on behalf of the Covered Entity, specifically 45 C.F.R.
20 Part 160 and 45 C.F.R. Part 164, Subparts A and E.
21

22 19. “Protected Health Information” or “PHI” shall be defined in accordance with 45
23 C.F.R. § 160.103.
24

25 20. “Security Incident” shall be synonymous with “Intrusion” and shall be defined as
26 the attempted or successful unauthorized access, use, disclosure, modification, or destruction of
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1 information or interference with system operations in an information system in accordance with
2 45 C.F.R. § 164.304.

3 21. “Security Rule” shall refer to the HIPAA Regulations that establish national
4 standards to safeguard individuals’ Electronic Protected Health Information that is created,
5 received, used, or maintained by a Covered Entity or Business Associate that performs certain
6 services on behalf of the Covered Entity, specifically 45 C.F.R. Part 160 and 45 C.F.R. Part 164,
7 Subparts A and C.
8

9 22. “Technical Safeguards” shall be defined in accordance with 45 C.F.R. § 164.304
10 and means the technology and the policy and procedures for its use that protect Electronic
11 Protected Health Information and control access to it.
12

13 **VI. FACTUAL BACKGROUND**

14 23. MIE is a third-party provider that licenses a web-based electronic health record
15 application, known as WebChart, to healthcare providers. NMC provides or has provided patient
16 portal and personal health records services to healthcare providers that enable patients to access
17 and manage their electronic health records.
18

19 24. At all relevant times, MIE and NMC were Business Associates within the
20 meaning of HIPAA.

21 25. As Business Associates, Defendants are required to comply with HIPAA’s
22 requirements governing the privacy and security of individually identifiable health information,
23 as set forth in the Privacy and Security Rules.
24

25 26. Plaintiff’s investigation determined that Defendants, as described in the
26 Complaint, engaged in multiple violations of the Deceptive Trade Practices Act, the Personal
27 Information Protection Act, and HIPAA and the regulations promulgated thereunder.
28

1 34. Defendants shall not employ the use of generic accounts that can be accessed via
2 the Internet.

3 35. Defendants shall ensure that no generic account on its information system has
4 administrative privileges.
5

6 36. Defendants shall require multi-factor authentication to access any portal they
7 manage in connection with their maintenance of ePHI.

8 37. Defendants shall implement and maintain a Security Incident and Event
9 Monitoring solution to detect and respond to malicious attacks. The Security Incident and Event
10 Monitoring solution may utilize a suite of different solutions and tools to detect and respond to
11 malicious attacks rather than a single solution.
12

13 38. Defendants shall implement and maintain reasonable measures to prevent and
14 detect SQL injection attacks that may impact any ePHI they maintain.

15 39. Defendants shall implement and maintain reasonable measures with respect to the
16 creation of accounts in systems under the administrative control of Defendants with respect to
17 their own employees with access to ePHI to limit and control their creation and ensure that
18 accounts with access to such ePHI are properly monitored. Defendants shall implement and
19 maintain a data loss prevention technology to detect and prevent unauthorized data exfiltration.
20 The data loss prevention technology may utilize a suite of different solutions and tools to detect
21 and prevent unauthorized data exfiltration.
22

23 40. Defendants shall require the use of multi-factor authentication by their employees
24 when remotely accessing their system(s) that store or permit access to ePHI.
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1 41. Defendants shall maintain reasonable policies and procedures to ensure that logs
2 of system activity are regularly and actively reviewed and analyzed in as close to real-time as
3 possible.

4 42. Defendants shall implement and maintain password policies and procedures
5 related to their employees requiring the use of strong, complex passwords, and ensuring the
6 stored passwords are protected from unauthorized access.

7 43. Defendants shall educate their clients on strong password policies and promote
8 the use of multi-factor authentication by their clients. Defendants shall make the use of multi-
9 factor authentication as well as Single Sign On (SSO) functions available to their clients.

10 44. Defendants shall implement and maintain appropriate policies and procedures to
11 respond to Security Incidents.

12 45. Defendants shall, at least annually, train relevant employees regarding their
13 information privacy and security policies, and shall document such training.

14 46. Defendants shall, within ninety (90) days of the Effective Date of this Consent
15 Judgment, and thereafter annually for a period of five (5) additional years, engage an
16 independent third-party professional who uses procedures and standards generally accepted in
17 the profession to conduct a current, comprehensive, and thorough risk analysis of security risks
18 and vulnerabilities to ePHI that they create, receive, maintain, or transmit, including a review of
19 the actions or deficiencies that are the subject of the Consent Judgment. A professional qualified
20 to conduct such risk analysis must be: (a) an individual qualified as a Certified Information
21 System Security Professional (CISSP) or as a Certified Information Systems Auditor (CISA); or
22 a similarly qualified person or organization; and (b) have at least five (5) years of experience
23 evaluating the effectiveness of computer systems or information system security. Defendants
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1 may utilize an independent third-party vendor with which they already have a contractual
2 relationship to conduct the risk analysis, so long as the contract between the parties provides that
3 the person or persons performing the analysis on behalf of the independent third-party vendor are
4 qualified as a CISSP or CISA. The independent third-party professional conducting the risk
5 analysis shall prepare a formal report (“Security Report”) including its findings and
6 recommendations, a copy of which shall be provided to the Indiana Attorney General no later
7 than one hundred eighty (180) days after the Effective Date of this Consent Judgment, which the
8 Indiana Attorney General may share with the States pursuant to paragraph 59. Each year
9 thereafter, a copy of the Security Report shall be provided to the Indiana Attorney General within
10 thirty (30) days of the anniversary of the completion of the first Security Report, until the
11 expiration of the five (5) year period.
12

14 47. Within ninety (90) days of their receipt of each Security Report, Defendants shall
15 review and, to the extent necessary, revise their current policies and procedures based on the
16 findings of the Security Report. Within one hundred eighty (180) days of Defendants’ receipt of
17 each Security Report, Defendants shall forward to the Indiana Attorney General a description of
18 any action they take, if no action is taken, a detailed description why no action is necessary, in
19 response to each Security Report. The document submitted to the Indiana Attorney General in
20 response to each Security Report shall be titled “MIE Security Action Report,” a copy of which
21 may be shared with the States pursuant to paragraph 59.
22

24 48. Each Defendant shall designate a Privacy Officer or other official to ensure
25 compliance with this Consent Judgment. The efforts of the Privacy Officer or other designated
26 official in this regard shall be documented in the MIE Security Action Report that is submitted to
27 the Indiana Attorney General and may be shared with the States pursuant to paragraph 59.
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1 **[Section VIII and IX subject to settlement discussions]**

2 **VIII. PAYMENT TO THE STATES**

3 49. To be determined.

4 **IX. Consumer Relief**

5 a. To be determined.

6 **X. RELEASE**

7
8 50. Following full payment of the amounts due by Defendants under this Consent
9 Judgment, the Plaintiff shall release and discharge Defendants from all civil claims that the
10 States could have brought under HIPAA, the Deceptive Trade Practices Act, Personal
11 Information Protection Act, and the Breach Notification Act, based on Defendants' conduct as
12 set forth in the Complaint. Nothing contained in this paragraph shall be construed to limit the
13 ability of the States to enforce the obligations that Defendants, their officers, subsidiaries,
14 affiliates, agents, representatives, employees, successors, and assigns, have under this Consent
15 Judgment. Further, nothing in the Consent Judgment shall be construed to create, waive, or limit
16 any private right of action.
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19 51. Notwithstanding any term of this Consent Judgment, any and all of the following
20 forms of liability are specifically reserved and excluded from the release in paragraph 52 as to
21 any entity or person, including Defendants:

22 a. Any criminal liability that any person or entity, including Defendants, has or may
23 have to the States.

24 b. Any civil liability or administrative liability that any person or entity, including
25 Defendants, has or may have to the States under any statute, regulation, or rule
26 not expressly covered by the release in paragraph 52 above, including but not
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1 limited to, any and all of the following claims: (i) State or federal antitrust
2 violations; (ii) State or federal securities violations; (iii) State insurance law
3 violations; or (iv) State or federal tax claims.
4

5 **X. CONSEQUENCES OF NONCOMPLIANCE**

6 52. Defendants represent that they have fully read this Consent Judgment and
7 understand the legal consequences attendant to entering into this Consent Judgment. Defendants
8 understand that any violation of this Consent Judgment may result in any signatory Attorney
9 General seeking all available relief to enforce this Consent Judgment, including an injunction,
10 civil penalties, court and investigative costs, attorneys' fees, restitution, and any other relief
11 provided by the laws of the State or authorized by a court. If Plaintiff is required to file a
12 petition to enforce any provision of this Judgment against one or more Defendants, the particular
13 Defendant(s) involved in such petition agrees to pay all court costs and reasonable attorneys'
14 fees associated with any successful petition to enforce any provision of this Judgment against
15 such Defendant(s).
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18 **XI. GENERAL PROVISIONS**

19 53. Any failure of the Plaintiff to exercise any of its rights under this Consent
20 Judgment shall not constitute a waiver of its rights hereunder.

21 54. Defendants hereby acknowledge that their undersigned representative or
22 representatives are authorized to enter into and execute this Consent Judgment. Defendants are
23 and have been represented by legal counsel and have been advised by their legal counsel of the
24 meaning and legal effect of this Consent Judgment.
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1 55. This Consent Judgment shall bind Defendants and their officers, subsidiaries,
2 affiliates, agents, representatives, employees, successors, future purchasers, acquiring parties,
3 and assigns.

4 56. Defendants shall deliver a copy of this Consent Judgment to, or otherwise fully
5 apprise, their executive management having decision-making authority with respect to the
6 subject matter of this Consent Judgment within thirty (30) days of the Effective Date.

7 57. Defendants assert that the Security Report and the MIE Security Action Report
8 required under this Consent Judgment contain confidential commercial information, confidential
9 financial information, and/or trade secrets, and the States who receive the Security Report or
10 MIE Security Action Report, whether from Defendants or another Attorney General, shall, to the
11 extent permitted under the laws of the States, treat each report as confidential and exempt from
12 disclosure under their respective public records laws.

13 58. The settlement negotiations resulting in this Consent Judgment have been
14 undertaken by Defendants and the States in good faith and for settlement purposes only, and no
15 evidence of negotiations or communications underlying this Consent Judgment shall be offered
16 or received in evidence in any action or proceeding for any purpose.

17 59. Defendants waive notice and service of process for any necessary filing relating to
18 this Consent Judgment, and the Court retains jurisdiction over this Consent Judgment and the
19 Parties hereto for the purpose of enforcing and modifying this Consent Judgment and for the
20 purpose of granting such additional relief as may be necessary and appropriate. No modification
21 of the terms of this Consent Judgment shall be valid or binding unless made in writing, signed by
22 the Parties, and approved by the Court in which the Consent Judgment is filed, and then only to
23 the extent specifically set forth in such Court's Order. The Parties may agree in writing, through
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1 counsel, to an extension of any time period specified in this Consent Judgment without a court
2 order.

3 60. Defendants do not object to ex parte submission and presentation of this Consent
4 Judgment by the Plaintiff to the Court, and do not object to the Court's approval of this Consent
5 Judgment and entry of this Consent Judgment by the clerk of the Court.
6

7 61. The Parties agree that this Consent Judgment does not constitute an approval by
8 the Plaintiff of any of Defendants' past or future practices, and Defendants shall not make any
9 representation to the contrary.
10

11 62. The requirements of the Consent Judgment are in addition to, and not in lieu of,
12 any other requirements of State or federal law. Nothing in this Order shall be construed as
13 relieving Defendants of the obligation to comply with all local, state, and federal laws,
14 regulations, or rules, nor shall any of the provisions of the Consent Judgment be deemed as
15 permission for Defendants to engage in any acts or practices prohibited by such laws,
16 regulations, or rules.
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18 63. This Consent Judgment shall not create a waiver or limit Defendants' legal rights,
19 remedies, or defenses in any other action by the Plaintiff, except an action to enforce the terms of
20 this Consent Judgment or to demonstrate that Defendants were on notice as to the allegations
21 contained herein.
22

23 64. This Consent Judgment shall not waive Defendants' right to defend themselves,
24 or make argument in, any other matter, claim, or suit, including, but not limited to, any
25 investigation or litigation relating to the subject matter or terms of the Consent Judgment, except
26 with regard to an action by the Plaintiff to enforce the terms of this Consent Judgment.
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1 65. This Consent Judgment shall not waive, release, or otherwise affect any claims,
2 defenses, or position that Defendants may have in connection with any investigations, claims, or
3 other matters not released in this Consent Judgment.

4 66. Defendants shall not participate directly or indirectly in any activity to form or
5 proceed as a separate entity or corporation for the purpose of engaging in acts prohibited in this
6 Consent Judgment or for any other purpose which would otherwise circumvent any part of this
7 Consent Judgment.

8 67. If any clause, provision, or section of this Consent Judgment shall, for any reason,
9 be held illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not
10 affect any other clause, provision, or section of this Consent Judgment and this Consent
11 Judgment shall be construed and enforced as if such illegal, invalid, or unenforceable clause,
12 section, or other provision had not been contained herein.

13 68. Unless otherwise prohibited by law, any signatures by the Parties required for
14 entry of this Consent Judgment may be executed in counterparts, each of which shall be deemed
15 an original, but all of which shall be considered one and the same Consent Judgment.

16 69. To the extent that there are any, Defendants agree to pay all court costs associated
17 with the filing of this Consent Judgment.

18
19 **XII. NOTICES UNDER THIS CONSENT JUDGMENT**

20 70. Any notices or other documents required to be sent to the Parties pursuant to the
21 Consent Judgment shall be sent by United States Mail, Certified Return Receipt Requested, or
22 other nationally recognized courier service that provides tracking services and identification of
23 the person signing for the documents. The notices and/or documents required to be submitted to:

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28 Douglas S. Swetnam (IN State Bar #15860-49)

1 Section Chief – Data Privacy & ID Theft Unit
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4 Wayne, PA 19087
5 Email: cmccarron@mullen.law
6 Telephone: (267) 930-4787

7 IT IS SO ORDERED, ADJUDGED AND DECREED, on the _____ day of

8 _____, 20____.

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12 _____
13 [JUDGE]
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1 **Distribution:**

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