IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 11-CV-00520-PAB

HEALTH GRADES, INC.,

Plaintiff,

v.

MDX MEDICAL, INC. d/b/a VITALS.COM,

Defendant.

DECLARATION OF ERIKA BOYER

ERIKA BOYER, being of full age, hereby declares and states as follows:

1. I make this declaration in support of Defendant MDx Medical, Inc.'s Motion For A Determination That Nine MDx Licensing Agreements Are Subject To The Terms Of The Protective Order In This Case As Properly Designated As Highly Confidential – Attorneys' Eyes Only. Unless otherwise noted, the statements made herein are based on my personal knowledge.

2. I am one of the founding individuals of MDx Medical, Inc. ("MDx"), and currently my title with MDx is Vice President, Data Operations. MDx is a private company, based in Lyndhurst, New Jersey. I helped start MDx in 2006, to fill what the founding partners perceived as a need in the industry.

3. MDx is a leading provider of technology that enables users to search for and obtain information on healthcare providers. This information includes, among other things, the names of doctors, their education, specialties, hospital affiliations and the insurance that they accept. Users can access this information at the MDx www.vitals.com website (the "MDx Website"). Since January 2008, MDx has owned and operated the MDx Website.

4. Regarding the nine MDx licensing agreements at issue: (1) Software & Data Utilization Agreement with Health Advice Networks, LLC, MDX0104300-MDX0104309; (2) Data Licensing & Utilization Agreement with Castlight Health, Inc., MDX0104159-MDX0104178; (3) Data Pages & Data Utilization Agreement with Emblem Health Services Co., MDX0104195-MDX0104205; (4) Data Utilization Agreement with Expert Consensus, LLC., MDX0104206-MDX0104212; (5) License Agreement with Health Care Service Corporation, MDX0104236-MDX0104271; (6) Data Utilization Agreement with Private Health Management, Inc., MDX0104366-MDX0104372; (7) Statement of Work with Health Care Service Corporation, MDX0104213-MDX0104225; (8) IPF Product Development Statement of Work with Health Care Service Corporation, MDX0104226-MDX0104235; and (9) Master Services Agreement for Professional Services with Health Care Service Corporation, MDX0104272-MDX0104299; each agreement relates to a continuing and ongoing relationship between MDx and its business partners. Each of the agreements is dated from mid-2008 or more recently, such as 2009, 2010, 2011 and 2012, and each of the agreements, except one, is either still in its initial term, has been renewed such that it is still in force, or relates to an ongoing relationship. The one that has ended, did so only last year and was for data licensing that is the same subject as the other agreements. The terms of these agreements are competitively sensitive to MDx and its business partners in the same manner as MDx's agreement (and its terms) with Aetna.

5. Regarding MDx's agreements with its business partners such as the non-parties in these nine agreements, MDx does not disclose the specific terms of its agreements to persons or entities outside of MDx, and has not disclosed the specific terms of these agreements to entities or persons outside MDx.

6. Only those individuals with the need to know the specific terms of any such agreement – a small group of senior executives necessary for the contract's successful execution – know the specific terms of the agreement(s) or are given access to the actual contract document(s).

7. As a small, privately held company, MDx's normal procedures are to limit the disclosure of such specific contract terms within the company to only those management and operational employees with a need to know.

8. There are several competitors, including Health Grades, that compete with MDx for the licensing and sale of data and other information, as well as development services, to entities such as these non-parties, and the companies compete vigorously for such business, such that disclosure of the specific terms of MDx's relationship with these non-parties would severely negatively impact MDx's future negotiating position with other potential business partners and against its competitors.

9. Each such bidding process and contract negotiation requires extensive time and effort by MDx's management and sales and marketing teams to secure such business at a significant cost of time and financial resources for a small, privately held company such as MDx, especially in comparison to its larger, better-funded competitors such as Health Grades.

10. Allowing MDx's competitors to know the specific terms of its agreements with its business partners, such as the price and end date of such agreements, would unfairly provide

such competitors with a significant advantage against MDx in competing for such future business, and thereby severely damage MDx's negotiating position and business prospects.

11. Each of the terms and conditions found in MDx's agreement documents, including those in the nine agreements at issue here, which relate to ongoing relationships, are material and confidential.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on September 28, 2012

ERIKA BOYER