

United States District Court for the Middle District of Florida-  
Orlando Division

DAVID VOGEL,  
Plaintiff,

v.

ELSEVIER INC., a New York Corp.,  
and DOES 1 through 10,  
Defendants. \_\_\_\_\_/

Case No.

COMPLAINT and  
DEMAND FOR JURY TRIAL

Complaint for: 1. Breach of Contract  
2. Unpaid Wages  
3. Action for Accounting  
4. Rescission  
5. Fraud  
6. Tortious Interference with Business  
Relationships

DAVID VOGEL ("Vogel"), through attorney, complains against  
ELSEVIER INC ("Elsevier") and DOES 1 through 10 ("Does"),  
(collectively, "Defendants"), alleging:

JURISDICTION AND VENUE

1. This is a civil action for damages brought by Vogel against Elsevier, the successor-in-interest to his former employer, MEDai, Inc. ("MEDai"), and Does 1 through 10.
2. Damages arise out of MEDai's breach of its employment agreement with Vogel and its pretextual termination of Vogel's employment with MEDai in order to avert payment of wages, compensation, and ownership interest including but not limited to stock options owned by Vogel and due upon Vogel's termination and shortly thereafter, with Elsevier's acquisition of MEDAI days after Vogel's baseless termination.

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(a)(1) on the grounds that (a) the matter in controversy exceeds, exclusive of interest and costs, the sum of \$75,000; and (b) is between citizens of different States (Florida and New York).
4. Defendants are subject to the personal jurisdiction of this Court and venue is proper in this District under 28 U.S.C. § 1391(b) and 28 U.S.C. § 1400(a) in that the acts alleged occurred in this Judicial District and the Defendants may be found and/or transact business in this Judicial District.

PARTIES

5. Plaintiff Vogel is a Florida resident living in Orange County, Florida.
6. Defendant Elsevier is a New York corporation with its principal place of business at 360 Park Avenue, New York, New York 10010-1710 and with offices in Florida at 4901 Vineland Road, Suite number 450, Orlando, Florida, 32811.
7. Elsevier is the owner, operator, successor-in-interest, and/or parent company of MEDai, having wholly acquired MEDai on or about December 28, 2007.
8. Through the acquisition, Elsevier assumed all rights and the liabilities of MEDai detailed herein.
9. The true names or capacities, whether individual, corporate or otherwise, of the Defendants named herein as DOES 1

through 10, inclusive, are unknown to Plaintiff, who sues them by such fictitious names. Plaintiff will ask leave of Court to amend this Complaint and insert the true names and capacities of those Defendants when they have been determined through discovery.

10. Each of the Defendants designated herein as a "DOE" is responsible for some events alleged, and Plaintiff's damages were proximately caused by such Defendants.

#### FACTS

#### VOGEL'S EXEMPLARY RECORD OF SERVICE WITH MEDai

11. MEDai operates a health information company in Orlando, Florida, which specializes in the use of computer artificial intelligence to forecast health care outcomes. Inter alia, the computer forecasting systems would predict the future cost to medical providers, such as, for example, MediCare, to help it determine the next year's budget for an entire state.
12. On or about February 1, 1998, Plaintiff began his employment with MEDai as a software engineer.
13. Plaintiff performed admirably in his role, receiving nothing but exemplary reviews and, by MEDai's own words at the time, playing an "instrumental [role] in the development of the systems used" by the company.

14. On or about November 6, 1999, Plaintiff received a promotion to the position of Senior AI Specialist. He was simultaneously appointed as a corporate officer of AI Trader, Inc., a subsidiary of MEDai, where he held the position of Vice President of the corporation. Throughout his time with MEDai, Vogel served as an outstanding employee, regularly receiving exemplary job evaluations and his record was free of any major discipline. A copy of the Employment Agreement entered into by Vogel and MEDai on November 6, 1999 is attached as Exhibit A.

15. Between 1999 and 2006, Plaintiff's significant contributions to MEDai included:

A. Designing and himself typing in more than 50,000 lines of code for the predictive modeling program know as "MITCH" which served as the toolbox for all of MEDai's proprietary models developed for their clients. The program includes algorithms for Neural Networks, Model Trees, linear regression, polynomial regression, ridge regression, logistic regression, decision trees, K-Nearest Neighbors, Principal Component Analysis, feature selection, interaction detection as well as many other features making the program interactive and user-friendly. MEDai's perception of this software is high enough such that they filed for a patent on MITCH in 2007, for which Vogel is listed as an inventor;

B. Designing and creating the analytical process for "Risk Navigator" software, now the core product for MEDai;

C. Designing and implementing the statistics behind MEDai's clinical decision support system;

D. Estimating, managing and overseeing the 2005/2006 and 2006/2007 Medicaid project budgets contracted by the State of Florida in the amount of approximately \$15 billion; and

E. Creating the models which earned all eight of MEDai's international awards in the field of predictive modeling. MEDai still boasts of these awards on their web site. Screen captures of MEDai's website referencing these awards in the field of predictive modeling are attached as Exhibits B and C. The official KDD Cup web sites recognize Vogel as the individual responsible for those awards. A Screen capture of the official KDD Cup website recognizing Vogel as the individual responsible for these awards is attached as Exhibit D.

16. On or about January 19, 2006, based on Vogel's outstanding work and his invaluable contributions to the financial well-being of the company, Vogel was promoted to the position of Director of Research and Lead Scientist—a position he held until October 5, 2007. A copy of the Amendment to Employment Agreement entered into by Vogel and MEDai on January 19, 2006 is attached as Exhibit E.

17. During this time period, Vogel continued to make significant contributions to MEDai including:

A. Working with patent attorneys to submit for MEDai their one and only patent for the predictive methodology he created, MITCH, for which Vogel is the principal inventor;

B. Continuing to create models for clients; and

C. Traveling to assist in making key sales, including giving a lauded presentation at the 2007 Disease Management Leadership Forum in mid-September, also listed on MEDai's website, only two weeks before his termination.

18. MEDai purchased and held onto a \$1,000,000 "key person" life insurance policy on Vogel up until his final day of employment, evidencing the high perceived value of his work.

19. All told, Vogel worked for MEDai for over 9 years and, during the entire course of his employment, received nothing but outstanding reviews for his work and always served the company ably, faithfully and at the highest level. His achievements were not only recognized by the company but by the industry at large. In short, he was a model employee and had no reason to believe his position with MEDai would ever be in jeopardy.

PRIOR POTENTIAL BUYER'S REQUEST TO INSURE VOGEL'S WORK

20. MEDai had previously conducted negotiations for its acquisition. Vogel viewed the potential acquisition of

MEDai by a new company as an opportunity to obtain an infusion of capital into the business to further support, inter alia, Vogel's research activities improving software and statistical methods.

21. In the Summer of 2007, MEDai entered into negotiations with Insurance Services Office, Inc. (ISO) a company that was interested in purchasing MEDai. Negotiations increased to where Vogel was directly involved. ISO was particularly interested in Vogel's contributions to the company and, as such, required the retention of Vogel as a part of any deal to purchase MEDai.
22. Recognizing, in the words of MEDai, that retention of Vogel was "important to the continued success of" the company and that execution of a Retention Agreement with Vogel was "a condition precedent to the closing under the Security Purchase agreement" between MEDai and ISO, on about August 23, 2007, Vogel was offered a \$250,000 incentive to contractually obligate himself to remain with the company for at least an additional year, should ISO purchase the company. A copy of a draft of this Retention Agreement is attached as Exhibit F.
23. For reasons unknown to Plaintiff, the ISO deal fell through at the last minute and was never consummated.

ELSEVIER'S ACQUISITION OF MEDai AND TERMINATION OF VOGEL

24. On or about September 26, 2007, Steve Epstein, the Chief Executive Office of MEDai at all relevant times, called a meeting with his scientist team, including Vogel, and announced that the pending deal with ISO had fallen through.
25. At this meeting, Epstein mentioned, for the first time, that another suitor for the company had entered the picture. Specifically, he revealed that he was in the process of negotiating a \$35,000,000 buy-out of MEDai with that company. That company turned out to be Elsevier.
26. On October 5, 2007, Steve Epstein requested a meeting with Vogel in Steve Epstein's office. At this meeting, he shocked Vogel by summarily informing Vogel that his employment with MEDIA was terminated, effective immediately.
27. Although Epstein would not provide a reason for the termination in writing, he asserted that the termination was a result of two factors: (1) Vogel's alleged failure to perform his job duties satisfactorily; and (2) Steve Epstein's misguided belief that Vogel was somehow behind Senior Scientist Ognian Asparouhov's recent and persistent negotiation for more stock options. Vogel contested the validity of the two claims, both verbally and, later, in writing in his letter dated October 26, 2007, a copy of which is attached as Exhibit G.
28. The grounds for the termination of Vogel's employment



provided by MEDai are fabrications, pretextual and without merit.

29. At the same meeting, Epstein, told Vogel, "I own you" and warned Vogel if he should "ever create a predictive modeling tool again, I will sue you."
30. Before leaving his meeting with Epstein, Vogel asked Epstein—in the presence of MEDai's General Counsel at the time, Frank Krieger—whether the termination was considered "for cause." Epstein replied that it did not matter in the State of Florida.
31. The termination letter dated October 5, 2007 and given to Vogel, a copy of which is attached as Exhibit H, does not state that the termination was considered "for cause."
32. MEDai did not contest the unemployment benefits later received by Vogel—benefits that are only available when termination is not "for cause."
33. Following his termination, Vogel formally requested remuneration for the stock options he had accumulated over the past nine years according to the terms of his contractual arrangements with MEDai. Copies of Vogel's letters to Epstein dated October 26, 2007 and October 31, 2007 are attached as Exhibit G and I, respectively. Vogel's letters attempted to quantify all vested shares to which he was entitled at the time. He did not attempt to quantify

non-vested shares—to which he would be entitled in the event of an acquisition—because he was unaware that a formal deal was in place for Elsevier to acquire MEDai in whole. Vogel called and confirmed with Frank Krieger the receipt of those letters, but received no response.

34. MEDai entered into negotiations for the purchase of the company by Elsevier substantially prior to September 26, 2007, the date upon which Steve quoted the purchase price of \$35,000,000 to the scientist team.
35. Elsevier formally consummated its acquisition of MEDai on December 28, 2007. The purchase price was exactly \$35,000,000—the same amount quoted by Epstein on September 26, 2007 in his meeting with the scientist team.
36. Prior to Vogel's termination date, MEDai was, by its own admission, deep in negotiations with Elsevier for the complete buy-out of the company—to the point that a purchase price had been agreed upon.
37. MEDai had every reason to know and believe that they were on the brink of acquisition by Elsevier. As such, MEDai's termination of Vogel on the eve of the acquisition by Elsevier was nothing more than a thinly veiled attempt to avoid paying Vogel the vested and non-vested shares to which he was entitled.
38. Following Vogel's termination, and cognizant of the threat

of litigation stemming from its actions, MEDai attempted to cajole Vogel into signing a "Separation Agreement" that, among other things, would waive all legal claims Vogel might have against MEDai. MEDai demanded that the terms of the Separation Agreement were good only until December 26, 2007 at 5:00 p.m. Eastern time. That time was just a couple of days before the closing of MEDai's acquisition by Elsevier. Vogel refused to sign the Separation Agreement.

39. Despite repeated requests, Vogel has been denied, among other things, both his vested shares to which he is entitled by virtue of his service with MEDai and his non-vested shares to which he is entitled by virtue of the acquisition of MEDai by Elsevier.
40. Vogel's entitlement to the vested shares stems from the Employment Agreement of November 6, 1999 and the Amendment thereto of January 19, 2006, which have provided Vogel with a total of at least 20,500 vested shares in MEDai and at least 29,500 vested shares in AI Insight (MEDai's previous parent corporation).
41. Vogel's entitlement to the non-vested shares stems from the Employment Agreement of November 6, 1999 and the Amendment thereto of January 19, 2006, which have provided Vogel with a total of at least 50,000 non-vested shares in MEDai and AI Insight. MEDai and AI Insight's stock option plans provided

for cashing out of all non-vested shares upon an acquisition of the company. Steve Epstein made repeated verbal representations and confirmations in group meetings assuring all relevant employees that they would be able to cash in on all vested and non-vested shares upon acquisition of the company.

42. As a proximate cause of Defendants actions, Plaintiff has lost income, been denied the ability to exercise, that is, cash out, his stock options, and denied fringe benefits, and other valuable job rights.
43. Accordingly, Plaintiff requests recovery of the sum determined by proof in damages, punitive damages, and for his litigation expenses and costs.

END OF ALLEGATIONS

COUNT 1 BREACH OF CONTRACT

44. Plaintiff realleges allegations.
45. Despite Vogel's exceptional job performance for over 9 years, Defendants have fabricated grounds to terminate his employment in an attempt to deny him benefits to which he was entitled.
46. Defendants have thereby materially breached the terms of the Vogel's Employment Agreement and Amendment thereto, which entitle him to, inter alia, stock options earned but unpaid and vacation time earned but unpaid.

47. Defendants repeatedly refused to cure the breach of the duty to pay their obligations under the Employment Agreement and its Amendment.
48. As a result, Vogel has been damaged, which damages include but are not limited to, the compensation and benefits provide for in the Employment Agreement and Amendment thereto, including but not limited to the exercise of stock options and the cashing in of earned vacation time.
49. Wherefore, Vogel requests judgment for damages and costs for the breach of contract and requests jury trial.

COUNT 2 UNPAID WAGES - Fla. Stat. § 448.08

50. Plaintiff realleges allegations.
51. Defendants have materially defaulted on its contractual obligations under the Employment Agreement and its Amendment by failing to pay Vogel the severance, wages, bonuses and/or benefits due him as compensation under the Employment Agreement and its Amendment, including without limitation his stock options earned but unpaid and vacation time earned but unpaid, in violation of Fla. Stat. § 448.08.
52. As a result of the breach of contract by Defendants as alleged herein, Vogel has been harmed in an amount to be determined at trial and which exceeds the jurisdictional minimum of this court.
53. Vogel is entitled to recover his attorneys' fees and costs

pursuant to terms and conditions of the Employment Agreement and pursuant to Fla. Stat. § 448.08 as a claim for unpaid wages.

54. Wherefore, Vogel requests judgment for damages, fees and costs for unpaid wages and request jury trial.

COUNT 3 ACTION for ACCOUNTING

55. Plaintiff realleges allegations.

56. Under the Employment Agreement, Vogel's wages and stock options were based upon the application of a point system ratio described as the "Stock Option Bonuses" which is known to have been inaccurate during Vogel's employment.

57. The Employment Agreement describes the "Stock Option Bonuses" as "determined on the basis of ...annually-assessed bonus point system, which measures the degree to which [Vogel has] contributed to the Company's prestige, revenues and technology profile for the bonus year."

58. Vogel cannot ascertain the exact amount of the unpaid wages due him under the Employment Agreement without a full and complete accounting of its: (a) total corporate receipts for each month, (b) total revenues for each month, ©) technology profile and (d) total corporate billings for each month including all detailed reports and supporting documentation underlying the totals, from the date Vogel was hired until October 5, 2007.

59. Vogel is entitled to recover his attorneys' fees and costs for an action for accounting pursuant to terms and conditions of the Employment Agreement and pursuant to Fla. Stat. §448.08 as a claim for unpaid wages.
60. Because the amount owned in not known by Plaintiff, Plaintiff's remedy at law for damages is inadequate, and would not be as expeditious as it is in equity.
61. Wherefore, Plaintiff requests judgment for an accounting of the amounts due from Defendants to Plaintiff and requiring defendants to pay the amount found to be due in the accounting, costs, and attorneys fees and requests jury trial.

#### COUNT 4 RESCISSION

62. Plaintiff Vogel realleges allegations.
63. Defendants made misrepresentations of material fact with respect to the grant of stock options to Vogel.
64. At the time that Defendants made the foregoing misrepresentations, they knew that the same were not true and made such representations with the intent that Vogel rely thereon.
65. Vogel justifiably relied upon the misrepresentations to his detriment and entered into his Employment Agreement and Amendment, developing, inter alia, the MITCH program.
66. Had Vogel known the truth regarding the illusory grant of

stock options, he would not have entered into the Employment Agreement and Amendment thereto and he would not have agreed to their terms.

67. Vogel has no adequate legal remedy at law save and except for a rescission of the Employment Agreement and Amendment.

68. Wherefore, Vogel requests a judicial declaration that all intellectual property developed by Vogel during the course of his employment with Defendants, the MITCH program and all of its derivatives, belongs solely and exclusively to Vogel and requests jury trial.

COUNT 5 FRAUD

69. Plaintiff Vogel realleges allegations.

70. Defendants made false misrepresentations of material fact with respect to the grant of stock options to Vogel. Among other things, as a material inducement to accept the position of Senior AI Specialist in November of 1999 and Director of Research and Lead Scientist in January of 2006, and to continue in that position through October 5, 2007.

71. Defendants assured Vogel, both orally and in writing, that he would be provided and could exercise stock options, both vested and, if the MEDai were acquired by a buyer, non-vested.

72. Defendants also, as described above, fabricated grounds for Vogel's wrongful termination and deprivation of benefits



- under his Employment Agreement and Amendment thereto.
73. At the time that Defendants made the foregoing misrepresentations, they knew said statements were false and that they did not intend to perform as represented.
74. Vogel reasonably relied on the foregoing misrepresentations to his detriment, including, but not limited to, by accepting the Senior AI Specialist and Director of Research and Lead Scientist positions, working diligently to increase the value of MEDai throughout the term of his employment, substantially increasing the value of MEDai throughout the term of his employment and remaining dedicated to MEDai in lieu of pursuing other lucrative and alternative career opportunities.
75. Vogel has fulfilled his end of the bargain but has not received the value of the stock options from Defendants as promised.
76. As a direct and proximate result, Vogel has been damaged as a result of the loss of value of the stock options he was repeatedly promised and believed were forthcoming. Vogel was further damaged because had the repeated false promises of stock options not been made, he may have terminated his relationship with Defendants and secured opportunities elsewhere.
77. Defendants' misconduct was committed willfully, maliciously,

in bad faith, and with express malice, which warrants the imposition of punitive damages against each of them.

78. Wherefore, Vogel requests judgment for damages, punitive damages, and costs for the fraud and requests jury trial.

COUNT 6 TORTIOUS INTERFERENCE WITH BUSINESS RELATIONSHIPS

79. Plaintiff Vogel realleges allegations.

80. As a result of Vogel's discussions with future employers, Vogel had a reasonable expectation of a future, advantageous economic relationship with future employers.

81. Defendants knew of this expectation of an economic relationship between Vogel and future employers and made intentional efforts to subvert those relationships, including by threatening Vogel with oppressive, bad-faith and taxing litigation aimed at subverting any future business opportunities should he ever work in the field of predictive modeling ever again.

82. As a result of Defendants' interference, Vogel has lost the opportunity to do business with future employers, a lost opportunity that will, inter alia, likely lead to a delay in the release of Vogel's new work in the predictive modeling field.

83. As a result of Defendants' interference, Vogel has been damaged in an amount to be proven at trial, but believed to be well in excess of the jurisdictional limit of this Court.

84. Defendants' actions were done with the requisite oppression, fraud and malice such that Vogel is entitled to an award of exemplary damages.
85. Wherefore, Vogel requests judgment for damages, punitive damages, and costs for the interference and requests jury trial.

---

/s/Thomas Hockman, Esq.

Florida Bar No.: 0057710  
Law Offices of Thomas Hockman  
2670 West Fairbanks Avenue  
Winter Park, FL 32789  
Tel. (407) 647-3200  
Fax (407) 647-3252  
[thomashockan@earthlink.net](mailto:thomashockan@earthlink.net)  
Attorney for Plaintiff

---

/s/John Tehranian, Esq.

California Bar No.: 211616  
Turner Green Afrasiabi & Arledge, LLP  
535 Anton Blvd., Ste 850  
Costa Mesa, California 92626  
Tel. (714) 434-8750  
Fax (714) 434-8756  
[Jtehranian@turnergreen.com](mailto:Jtehranian@turnergreen.com)  
Trial Counsel Attorney for Plaintiff,  
Pro Hac Vice application concurrent

EXHIBITS INDEX

- A. 1<sup>st</sup> Employment Contract
- B. Screen capture of MEDai website showing Vogel's award
- C. Screen capture of MEDai website discussing Vogel's award
- D. Screen capture of official website recognizing Vogel
- E. 2<sup>nd</sup> Employment Contract
- F. \$250,000 retention contract to keep Vogel employed for 1 yr
- G. Vogel's letter denying Steve Epstein's allegations
- H. Termination letter handed to Vogel