

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

ASSOCIATION OF AMERICAN
MEDICAL COLLEGES,

Plaintiff,

v.

GABRIEL ANYANWU,

Defendant.

Civil Action No.:

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Association of American Medical Colleges (“AAMC”), by and through its undersigned counsel, brings this Complaint against Defendant Gabriel Anyanwu (“Defendant”), and alleges as follows:

NATURE OF THE ACTION

1. AAMC sponsors, develops and administers the Medical College Admission Test® (“MCAT”®). The MCAT exam is a secure, standardized, computer-based examination that has been part of the medical school admissions process for more than 80 years (computer-based since 2007). Virtually all medical schools in the United States, and many in Canada, require applicants to submit all MCAT scores as part of their application process, and many health professions and

graduate programs now accept MCAT scores in lieu of other standardized tests. AAMC brings this action to assert claims against Defendant for computer fraud in violation of the Computer Fraud and Abuse Act (“CFAA”), 18 U.S.C. § 1030 *et seq.*, and the Georgia Computer Systems Protection Act (“GCSPA”), O.C.G.A. § 16-9-93; copyright infringement in violation of the Copyright Act, 17 U.S.C. § 501 *et seq.*; misappropriation of trade secrets in violation of the Defend Trade Secrets Act of 2016 (“DTSA”), 18 U.S.C. § 1836, and the Georgia Trade Secrets Act, O.C.G.A. § 10-1-760 *et seq.*; and breach of contract in violation of Georgia common law. AAMC brings these claims to seek redress for Defendant’s willful and intentional misrepresentation of his purpose in taking the MCAT exam, which enabled him to improperly gain access to the MCAT content to facilitate his true objective, which, upon information and belief, was to access the MCAT exam so that he could record copyrighted MCAT test content and trade secrets with spy glasses and use AAMC’s stolen intellectual property for his own benefit and the benefit of others, thereby damaging AAMC and compromising its ability to serve as a trusted provider of educational resources to the medical community.

PARTIES, JURISDICTION AND VENUE

2. AAMC is a not-for-profit corporation organized and existing under the laws of Illinois, with its principal place of business located at 655 K Street NW, Suite 100, Washington, D.C. 20001-2399.

3. Upon information and belief, Defendant is an adult individual who resides at 2496 Madison Commons, Atlanta, Georgia 30360. Upon further information and belief, Defendant can be served with process through personal service at the same address.

4. Upon information and belief, Defendant is subject to personal jurisdiction in this District because Defendant resides in this District and has engaged in tortious conduct in this District by infringing Plaintiff's copyrights, misappropriating Plaintiff's trade secrets, and engaging in computer fraud in this District.

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, § 1338(a), and § 1367(a).

6. Venue is proper in the Northern District of Georgia under 28 U.S.C. § 1391 and 1400(a) because, upon information and belief, Defendant resides in this District, and a substantial part of the acts and omissions giving rise to the claims set forth below occurred in this District.

FACTS COMMON TO ALL COUNTS

AAMC and the MCAT Exam

7. Founded in 1876 and based in Washington, D.C., AAMC is a not-for-profit association representing all 147 accredited United States and 17 accredited Canadian medical schools; nearly 400 major teaching hospitals and health systems, including 51 Department of Veterans Affairs medical centers; and nearly 80 academic and scientific societies. Through these institutions and organizations, AAMC represents approximately 167,000 faculty members, 88,000 medical students, and 124,000 resident physicians.

8. AAMC sponsors, develops, and administers the MCAT exam. The MCAT exam is a secure, standardized, computer-based examination that has been part of the medical school admissions process for more than 80 years. Virtually all medical schools in the United States, and many in Canada, require applicants to submit all MCAT scores as part of their application process, and many health professions and graduate programs now accept MCAT scores in lieu of other standardized tests. More than 78,000 students sit for the MCAT exam each year. As a result, the computer-based MCAT exam has a substantial effect on interstate commerce.

9. Admission to medical schools and other health sciences graduate degree programs is highly competitive. Applicants to medical schools and other health sciences graduate degree programs with high MCAT scores can use their scores to gain admission to the most competitive schools in North America. MCAT examinees (“Examinees”) derive significant economic value from high MCAT scores, in terms of the educational and career opportunities made available to them in proportion to their level of achievement on the MCAT exam.

10. The MCAT exam tests skills and knowledge that medical educators and physicians have identified as key prerequisites for success in medical school and the practice of medicine. Specifically, the MCAT exam tests for mastery of basic concepts in biology, general chemistry, organic chemistry, biochemistry, psychology, sociology, and physics. Additionally, it serves to assess Examinees’ capacity for problem solving and critical thinking in a timed environment.

11. AAMC compiles a variety of MCAT exam forms, consisting of passages and questions selected to achieve a specific balance of question attributes in each form. From item writing, item field testing, item bias testing, and form creation, AAMC invests significant resources into the development and production of MCAT forms, a process that can take several years and cost several hundred thousand dollars for each form. Accordingly, each MCAT form has substantial

value, and AAMC would suffer substantial harm if any MCAT form was misappropriated and used or disclosed to others without MCAT's authorization.

12. AAMC complies with the Copyright Act following the development of each new MCAT exam form by filing all required information and documents with the Register of Copyrights at the United States Copyright Office in accordance with the procedures set forth in 37 C.F.R. § 202.20, in order to secure the exclusive rights in and to the copyrights in its MCAT exam forms.

13. The secure contents of each MCAT exam are trade secrets, and AAMC goes to great lengths to protect the security and confidentiality thereof. In addition to other security measures designed to keep MCAT exam content secret that are described in greater detail below, all AAMC employees, contractors, and vendors who either develop or are exposed to MCAT exam content in the course of carrying out their respective duties on behalf of AAMC, enter into confidentiality agreements with AAMC that require them to maintain the confidentiality of all MCAT exam content in perpetuity. Each Examinee also enters into a confidentiality agreement with AAMC, described in greater detail below that requires him or her to keep MCAT exam content secret in perpetuity.

14. To promote fairness and protect the predictive validity of the MCAT exam, AAMC has created policies and practices to prevent an Examinee from

being exposed to the same exam content twice, and to ensure that Examinees do not copy or share MCAT exam content or otherwise obtain advance access to exam questions.

15. Each Examinee, testing under standard conditions, has 95 minutes to complete each of the four sections (except Critical Analysis and Reasoning, which is 90 minutes), for a total of six (6) hours and fifteen (15) minutes of seat time. According to AAMC data, 99.99% of Examinees use 95% or more of the time allotted. At the end of each test, the Examinee has the option to void his or her exam score, which will prevent the exam from being scored. If an Examinee believes that he or she did not perform as hoped on the MCAT exam, the Examinee must exercise his or her option to void the exam score at the conclusion of the test to ensure that the score will not be reported to a medical school or health sciences graduate degree program to which the Examinee may apply.

16. AAMC administers the MCAT exam multiple times each year from January through September, at hundreds of testing sites operated by AAMC's test delivery agent on behalf of AAMC throughout the United States and Canada, as well as selected locations across the globe.

17. One of these testing sites is located at 5909 Peachtree Dunwoody Rd., Suite 120, Atlanta, GA 30328 (the "Peachtree Dunwoody Test Center"). The

MCAT exam was administered at this location on numerous occasions in 2016 and 2017, including on April 1, 2016, July 9, 2016, and May 13, 2017.

18. AAMC operates and administers the online electronic registration system that all Examinees must use to register for the MCAT exam.

19. During the MCAT registration and scheduling process, Examinees are required to execute certain “consents” on the AAMC web site by checking an “agree” box, indicating acceptance of certain terms and conditions that AAMC requires Examinees to agree to as a condition to registering for the MCAT exam. Examinees must also affirm that they have read the *MCAT Essentials*—the official policy and procedure guide to the MCAT exam—and that they agree to its terms and conditions. See AAMC, *MCAT® Essentials for Testing Year 2016* (2015), https://aamcorange.global.ssl.fastly.net/production/media/filer_public/b9/c3/b9c382ef-5746-4da1-9265-ae570bb655e1/mcat_essentials_2016_-_final2.pdf (Attached to the Complaint as “Exhibit 1”) and *MCAT® Essentials for Testing Year 2017* (2017) https://aamcorange.global.ssl.fastly.net/production/media/filer_public/d5/81/d581106b-7e42-433f-b3ff-4a25ec12888c/essentials_2017_-_final_03282017.pdf (Attached to the Complaint as “Exhibit 2”).

20. Examinees must further acknowledge that they have read, accepted, and agreed to AAMC’s *Examinee Agreement*. The *Examinee Agreement* is made

available to Examinees in advance of test registration in the *MCAT Essentials*. On test day, the Examinee is shown the *Examinee Agreement* again and must click “accept,” indicating his or her acceptance to the terms of the *Examinee Agreement* prior to the exam launching and the Examinee being exposed to the MCAT content. The *Examinee Agreement* includes the following terms, in pertinent part:

The following items and behaviors are strictly prohibited during the MCAT exam and during lunch or any other break:

- Possessing, accessing or using electronic devices, including cellular phones, at any time after check-in and prior to completing the exam;
- Possessing, accessing or using cameras, or recording equipment of any kind;
- Giving or receiving aid on the MCAT exam;

* * * *

Possessing, accessing, using or attempting to possess, access or use any prohibited item or engaging or attempting to engage in any prohibited behavior shall be considered an intentional and willful breach of the Agreement and will subject me to one or more of the consequences provided herein for violations of the Agreement.

I am aware that the MCAT exam is a confidential exam and that its contents are being disclosed to me today in a limited context to permit me to test and for no other purpose. I understand that the AAMC is the exclusive owner of all rights in the MCAT exam, for which it holds a series of registered copyrights under U.S. and international laws. I understand that I have no license or permission to copy, adapt, or use any part of the MCAT exam. I understand that the registered copyrights for the MCAT exam include all MCAT exam questions, passages, graphics, incorrect responses, and correct

answers. I agree that disclosure, reconstruction, and/or copying of the confidential contents of the MCAT exam would destroy the value and defeat the purpose of the MCAT exam and irreparably harm the AAMC. In addition, I understand and agree that the following confidential contents of the MCAT exam constitute trade secrets that I am bound to keep confidential indefinitely: MCAT exam topic selection, frequency and order of exam topics, exam questions, passages, incorrect responses, correct answers, and graphics, as described in greater or more specific detail in the AAMC MCAT Content Outline. I understand and agree that protecting and preserving the confidentiality and security of the MCAT exam ensures the validity of exam results and the integrity of the admissions process.

I agree that I will not discuss or share with anyone any information about the questions, answer choices, or other content appearing on the MCAT exam after I take the exam. I agree that I will not discuss or disclose any MCAT content orally, in writing, on the Internet, or through any other means, nor will I assist anyone else in doing so. I further agree that I will not reconstruct any portion of the exam from memory — whether orally or in writing — for the purpose of sharing that information with any other individual or entity. I understand that I may comment on my general exam experience; however, I understand that discussing or disclosing MCAT content, by any means, is a violation of this Examinee Agreement. I understand that I cannot share information about what I saw on the exam, or discuss exam content, with anyone. Prohibited sharing includes, but is not limited to, describing any passage or exam topic, question, incorrect response, correct answer, or graphic in greater or more specific detail than described in the AAMC MCAT Content Outline, to include discussing or disclosing a topic list, or describing the frequency or order in which such topics appear.

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I agree that I will fully cooperate with any investigation by the AAMC related to my receipt or access to information believed or

represented to contain confidential MCAT exam content, as set forth in *The MCAT Essentials*.

* * * *

Unless I have applied for and received special permission to take the MCAT exam as set out in *The MCAT Essentials*, I am taking the MCAT exam solely for the purpose of applying to and attending an eligible health-professions school and program.

* * * *

I understand and agree that any alleged violation of this Examinee Agreement or any alleged activity that may compromise the validity, integrity, or security of the MCAT exam will be investigated. If I violate the terms of this Examinee Agreement, including the additional terms or conditions stated in *The MCAT Essentials*, or any test center rules and regulations, or if I engage in any activity that may compromise the validity, integrity, or security of the MCAT exam, or fail to fully cooperate in any investigation of a violation of the Examinee Agreement or the terms and conditions of *The MCAT Essentials*, I may face the following consequences:

- The AAMC may issue a report of the factual findings of the investigation to legitimately interested parties;
- I may be subject to a civil lawsuit and/or criminal charges;
- My scores may be canceled, before or after the scores are reported, without a refund; and
- I may be banned from taking the MCAT exam for a limited time or permanently.

* * * *

I have read, and agree to comply with, the terms of this Examinee Agreement, including all additional terms and policies set forth in *The MCAT Essentials*, and I understand the consequences for failing to comply.

See Exhibit 1 at 29-30 and Exhibit 2 at 30-31.

21. AAMC's registration system electronically prohibits a candidate from completing a registration or making scheduling changes if the candidate fails to execute any of the above consents. AAMC requires Examinees to execute these consents to protect the integrity of the MCAT exam and prevent the dissemination of its copyrighted, confidential exam content to others who may misuse the content to gain an unearned advantage on the MCAT exam, or to assist others in doing so.

22. AAMC utilizes additional security measures to ensure fairness and protect the security, confidentiality and integrity of the MCAT exam on exam days that include: ensuring that all testing sites are staffed by no less than two professional test center administrators trained in the MCAT security rules ("Test Center Administrator" or "TCA"); verifying identity using government-issued identification documents before admitting Examinees to the exam room; confirming the Examinee's MCAT registration through AAMC's registration system; requiring Examinees to provide handwriting and fingerprint biometrics prior to every entrance to the exam room, including following all breaks; taking an exam-day photo of each examinee; requiring Examinees to remove all physical items such as phones, notes, and other prohibited items and store them in their lockers prior to entering the exam room; inspecting Examinees with a metal-

detecting wand to make sure they are not bringing unauthorized items into the exam room; inspecting any large or unusual jewelry, watches, or eyeglasses; regularly monitoring the conduct of Examinees inside the exam room; and conducting video surveillance of the check-in area and exam room.

23. The MCAT exam is delivered to Examinees on protected computers operated by AAMC's test delivery partner at each of the testing sites. Each computer is connected to a server at the testing site that hosts various forms of the MCAT exam to be delivered to registered Examinees on scheduled examination dates. Examinee access to the computer-based MCAT exam at the testing site is conditioned on the Examinee's acknowledgement and acceptance, for at least the second time, of all of the terms of the Examinee Agreement set forth in relevant part in Paragraph 20 above. Access to the MCAT exam is not granted to Examinees who refuse to accept the terms of the Examinee Agreement immediately prior to the test.

24. The servers and computers that AAMC's test delivery partner uses to host and deliver the MCAT exam forms to registered Examinees on scheduled test dates are "protected computers" as defined in 18 U.S. Code § 1030(e)(2) because such servers and computers are used in or affect interstate commerce when they are used by Examinees to take the MCAT exam.

Defendant's Conduct at the Peachtree Dunwoody Test Center on May 13, 2017

25. On or about April 21, 2017, Defendant entered into a transaction with AAMC by registering to take the MCAT exam on May 13, 2017, at the Peachtree Dunwoody Test Center. At the time of registration, he agreed to the Examinee Agreement.

26. On May 13, 2017, Defendant appeared at the Peachtree Dunwoody Test Center wearing eyeglasses and signed in to take the MCAT exam at 8:25 a.m., only five minutes before the exam was scheduled to start. Examinees are instructed to arrive at the test center at least thirty minutes prior to the scheduled start of the exam to allow ample time for checking in with the Test Center Administrator, placing personal belongings in a locker, and completing test center security screening. Examinees are generally prohibited entrance to the exam room after the scheduled start time for the test.

27. Although a Test Center Administrator screened Defendant in accordance with AAMC security policies prior to admitting him to the exam room, the security screening was conducted under time constraints because the Defendant was required to be seated in the exam room at 8:30 a.m. in order to be permitted to take the exam. During the initial security screening, when the TCA asked to see the Defendant's eyeglasses, Defendant took the eyeglasses off his face and held them

in such a way that it was difficult to inspect them. The TCA did not initially notice anything unusual about Defendant's eyeglasses.

28. Following the first scheduled break in the exam, as part of routine security screening of Defendant before re-admitting him to the exam room, the Test Center Administrator asked Defendant to place his eyeglasses on the table for inspection. When Defendant complied, this time the TCA observed that Defendant's eyeglasses were peculiarly-shaped, the frames bent in a concave shape at the bridge of the nose, and had unusually thick temples. Upon closer inspection, the TCA saw that the lenses had the appearance of a rainbow when looking through them, there were buttons on the inside temples of the glasses, and two holes on either side of the face of the frames near where the temples connect to the frames. The TCA asked another test center administrator (the "Second TCA") to look at Defendant's eyeglasses, and both the TCA and the Second TCA concluded that Defendant's eyeglasses were "spy glasses" with a video recording capability of which they had previously seen examples in training.

29. When the TCAs asked Defendant about the glasses, he denied that they were spy glasses and pressured the TCAs to allow him to resume taking the exam. Defendant was temporarily permitted to return to the testing room with his eyeglasses on while the TCA escalated the issue for further guidance.

30. Only minutes after Defendant was re-admitted to the exam room with his eyeglasses on, the TCA asked him to leave the exam room so that test center staff could retrieve the eyeglasses and confiscate them. Although Defendant complied with the request to leave the exam room, he refused to allow the TCA to confiscate the eyeglasses. Defendant insisted that his eyeglasses were not spy glasses and that he needed them to see. The TCAs had no doubt that the eyeglasses were spy glasses capable of video recording test content. Accordingly, the TCAs refused to allow Defendant to resume taking the test unless he placed the eyeglasses in his locker, which he ultimately did. Defendant then went back into the exam room and resumed taking the exam without the eyeglasses, and left the Test Center well before the expiration of the maximum time allotted for taking the MCAT exam. Defendant retrieved the eyeglasses from his locker and left the Test Center with the spy glasses in his possession.

AAMC's Investigation of Defendant's Conduct and MCAT Testing History

31. Upon receiving the above information about Defendant's conduct on May 13, 2017, AAMC began an investigation to determine the complete scope of Defendant's conduct, the nature and extent of the security breach, and the likelihood of whether Defendant was in possession of copyrighted MCAT exam material that included trade secrets of AAMC.

32. Test center security camera footage from the Peachtree Dunwoody Test Center on May 13, 2017, shows Defendant carefully manipulating his Test Center-supplied headphones around his glasses, using both hands to adjust the left side of the glasses, and frequently touching his glasses on the left side throughout the first section of the MCAT exam.

33. In addition, a review of the contents of Defendant's scratch paper from his May 13, 2017 exam preserved by test center staff shows that Defendant wrote equations on the paper that are completely irrelevant to the MCAT exam, including " $E = mc^2$ ", which he wrote on the paper twice, as well as figures and/or equations copied from the exam, but unnecessary to answer any question on the exam. Defendant's notes are not consistent with an individual earnestly attempting to answer MCAT exam questions.

34. AAMC determined that Defendant had taken the MCAT exam twice before, on April 1, 2016, and July 9, 2016, both times at the Peachtree Dunwoody Test Center.

35. The photo of Defendant taken at the Peachtree Dunwoody Test Center on April 1, 2016, appears to show Defendant wearing the same spy glasses on that test date that he wore on May 13, 2017.

36. The photo of Defendant taken at the Peachtree Dunwoody Test Center on July 9, 2016, also appears to show Defendant wearing the same spy glasses on that test date that he wore on May 13, 2017.

37. Defendant's MCAT testing behavior on each of the three dates that he tested is not consistent with an individual who took the MCAT exam in good faith for the authorized purpose of applying to medical school or a graduate health professional education program.

38. On average, Defendant used 70% of the allotted time to take each of the three MCAT exams, including the time in which he was interrupted by test center staff investigating his eyeglasses during the exam on May 13, 2017. The amount of exam time Defendant used to take each of the three MCAT exams is substantially less than the amount of time the test is designed to take to read and contemplate the questions and do the necessary work to answer the questions, as

demonstrated by AAMC data showing that 99.99% of examinees use 95% of the allotted testing time for the MCAT exam.

39. Defendant correctly answered 25% or fewer of the questions in each of the MCAT exams that he took, which is statistically consistent with random guessing. Defendant elected to have his exams scored rather than voiding his score, notwithstanding the negative impact such low scores would have on his medical school admissions prospects. He took the exam three times in a two-year period without improving his score at all, an exceedingly unusual pattern of behavior for an MCAT examinee.

40. Defendant has not opened an account with the American Medical College Application Service (“AMCAS”®) operated by AAMC – the common application service provider for medical schools in the United States. Without such an account, he cannot apply for admission to most medical schools in the United States.

41. Upon information and belief, the glasses worn by Defendant during his April 1, 2016, July 9, 2016, and May 13, 2017 test days (“Defendant’s Test Dates”) were equipped with a recording device, and Defendant’s behavior is consistent with his having used, or attempted to use, these glasses to record and copy copyrighted MCAT exam content that includes AAMC trade secrets.

Defendant has had access to three different MCAT exam forms over the course of the three test dates, and, upon information and belief, is in possession of a large quantity of copyrighted MCAT test content and AAMC trade secrets.

42. According to AAMC records, a second person known to AAMC (“Defendant’s Associate”) logged in to AAMC MCAT registration systems from the same IP address as Defendant and used the same credit card used by Defendant to register for the MCAT exam on at least one occasion. In contrast with Defendant, Defendant’s Associate opened an AMCAS account in 2011, a first step in completing the common application for most medical schools in the United States, and has requested at the point of MCAT registration that his MCAT scores be made available to medical schools. Defendant’s Associate has taken the MCAT exam on a number of occasions, including once in 2010, twice in 2014, and once in 2016 — on July 22, 2016. While the MCAT exam scores of Defendant’s Associate on each of the tests he completed demonstrates knowledge and effort beyond guessing, this individual has not yet achieved a score high enough to be reasonably considered for admission to any U.S. medical school. However, Defendant’s Associate has not yet taken an MCAT form that Defendant took on any of the three dates that Defendant took the MCAT exam. Defendant’s Associate

would derive an unfair advantage from having access to MCAT exam content copied by Defendant.

43. Upon information and belief, Defendant has used and/or intends to use the MCAT exam content that he viewed and recorded with spy glasses for his own benefit and/or profit, and/or to provide an unfair advantage to Defendant's Associate and/or other Examinees, by copying it and/or distributing or making it available, either directly or through a third party, to Defendant's Associate and/or other Examinees who have taken and/or will take the MCAT exam, to enable them to achieve higher scores on the MCAT exam than they would otherwise achieve based upon their actual knowledge and abilities.

44. AAMC delivered a letter to Defendant, dated May 14, 2017, that advised him that AAMC was conducting an investigation of his conduct at the Peachtree Dunwoody Test Center because he "engaged in irregular behavior that may have compromised the integrity of the MCAT examination" and further advised Defendant to "preserve all evidence that could relate to [its] investigation, including the eyeglasses that [he] wore to the test center, as well as the device attached to [his] eyeglasses," and "all data files, recordings, communications, emails, text messages, and documents that might contain MCAT exam content." AAMC has made repeated attempts to interview Defendant and inspect his

eyeglasses and related evidence as part of its investigation of this matter, to no avail. Defendant's decision not to participate in an interview with AAMC remained constant notwithstanding his agreement to "fully cooperate" in any AAMC investigation, as provided in the plain language of the Examinee Agreement. Although Defendant initially agreed to meet with AAMC representatives in Atlanta on June 8, 2017, he did not appear for the interview at the scheduled time, and only later informed AAMC that he decided not to participate in the interview. AAMC then offered to pay for Defendant to travel to its headquarters in Washington, D.C. to hold the interview there and allow AAMC to examine the glasses and other evidence in Defendant's possession, but Defendant declined the offer.

45. Since receiving notice of Defendant's activities on May 13, 2017, AAMC has spent more than ten thousand dollars to conduct an internal investigation to determine the nature and extent of Defendant's unauthorized recording of AAMC's copyrighted exam content and trade secrets, and to mitigate any harm arising out of such recording.

COUNT I
FRAUD AND RELATED ACTIVITY IN CONNECTION WITH
COMPUTERS IN VIOLATION OF 18 U.S.C. § 1030 ET SEQ.

46. AAMC hereby repeats and incorporates each and every allegation of Paragraphs 1-45 of this Complaint as though fully set forth herein.

47. On each of the three occasions on which Defendant registered to take the MCAT exam and on each of Defendant's Test Dates, prior to being granted access to the MCAT exam on the computer at the testing site, Defendant represented and agreed in the Examinee Agreement that he was taking the MCAT exam "solely for the purpose of applying to and attending an eligible health-professions school and program" ("Defendant's Representations"). Accordingly, Defendant had authorization to access the computer at the testing site solely for such purpose and no other purpose.

48. Upon information and belief, Defendant's Representations on each of Defendant's Test Dates were false and were made to facilitate his unauthorized access to the computer that contained the MCAT exam, for the purpose of obtaining the intellectual property of AAMC.

49. Upon information and belief, on each of Defendant's Test Dates, Defendant knowingly and with intent to defraud, accessed a computer containing

the MCAT exam without authorization and/or exceeded his authorized access to such computer.

50. Upon information and belief, on each of Defendant's Test Dates, Defendant used his unauthorized access to a computer containing the MCAT exam to obtain information of significant value, namely, a copy of the MCAT exam.

51. The computer used by Defendant to take the MCAT exam on Defendant's Test Dates at the testing site is used in or affects interstate commerce and was used in or affected interstate commerce on Defendant's Test Dates and is therefore a "protected computer" under 18 U.S.C. § 1030(e)(2)(B).

52. Defendant's conduct constitutes computer fraud and abuse in violation of 18 U.S.C. § 1030(a)(2)(C) and (a)(4).

53. Upon further information and belief, Defendant attempted to commit computer fraud and abuse in violation of 18 U.S.C. § 1030(a)(2)(C) and (a)(4). Such attempt constitutes attempted computer fraud and abuse in violation of 18 U.S.C. § 1030(b).

54. AAMC has suffered damage or loss by reason of Defendant's violations of 18 U.S.C. § 1030. Specifically, in the course of investigating the matters described in Paragraphs 25-45 and taking steps to mitigate the damage therefrom, AAMC has incurred and will continue to incur substantial costs.

55. The damage or loss suffered by AAMC as a direct result of Defendant's violations of 18 U.S.C. § 1030 will exceed \$10,000 in value within one year from the date that AAMC discovered said violation.

56. By reason of Defendant's violations of 18 U.S.C. § 1030(a)(2)(C), AAMC is entitled to damages, injunctive relief and other equitable relief pursuant to 18 U.S.C. § 1030(g).

COUNT II
COPYRIGHT INFRINGEMENT IN VIOLATION OF 17 U.S.C. § 501 ET
SEQ.

57. AAMC hereby repeats and incorporates each and every allegation of Paragraphs 1-45 of this Complaint as though fully set forth herein.

58. Each MCAT exam form developed by AAMC is an original work of authorship, which is copyrightable subject matter pursuant to 17 U.S.C. § 102.

59. On March 30, 2016, AAMC filed an application to register the copyright in its Medical College Admissions Test Form S0205V4 040116 ("MCAT Form 1"), with the United States Copyright Office. U.S. Copyright Registration No. TXu 1-994-788 was subsequently issued, effective as of March 30, 2016, and a true and correct copy of such registration is attached as Exhibit 3.

60. Upon information and belief, on or about April 1, 2016, Defendant recorded and copied MCAT Form 1 at the Peachtree Dunwoody Test Center without authorization or license from AAMC.

61. On June 1, 2016, AAMC filed an application to register the copyright in its Medical College Admissions Test Form S0215V2 070916 (“MCAT Form 2”), with the United States Copyright Office. U.S. Copyright Registration No. TXu 2-006-129 was subsequently issued, effective as of June 1, 2016, and a true and correct copy of such registration is attached as Exhibit 4.

62. Upon information and belief, on or about July 9, 2016, Defendant recorded and copied MCAT Form 2 at the Peachtree Dunwoody Test Center without authorization or license from AAMC.

63. On March 15, 2017, AAMC filed an application to register the copyright in its Medical College Admissions Test Form S0306V2 051317 (“MCAT Form 3”), with the United States Copyright Office. U.S. Copyright Registration No. TXu 2-032-573 subsequently issued, effective March 15, 2007, and a true and correct copy of such registration is attached as Exhibit 5.

64. Upon information and belief, on or about May 13, 2017, Defendant recorded and copied MCAT Form 3 at the Peachtree Dunwoody Test Center without authorization or license from AAMC.

65. Upon information and belief, Defendant had full knowledge of AAMC's rights in and to MCAT Form 1, MCAT Form 2, and MCAT Form 3 when he recorded and copied such works.

66. Defendant's unauthorized copying of MCAT Form 1, MCAT Form 2 and MCAT Form 3, upon information and belief, constitutes direct copyright infringement in violation of 17 U.S.C. § 501 in each instance by virtue of Defendant reproducing the copyrighted work and/or preparing one or more derivative works based upon the copyrighted work and/or distributing an unauthorized copy of the copyrighted work.

67. Defendant's unauthorized conduct described above constitutes willful copyright infringement in each instance because the Defendant acknowledged AAMC's exclusive ownership rights in MCAT exam content and the explicit prohibition on copying it each time that he acknowledged his acceptance of the Examinee Agreement.

68. Defendant's copyright infringements have caused AAMC to sustain substantial damages that it is entitled to recover.

69. Defendant's copyright infringements have caused AAMC to suffer irreparable harm for which no adequate remedy at law exists.

70. Pursuant to 17 U.S.C. § 502, AAMC seeks an injunction to permanently restrain Defendant's direct infringement of AAMC's copyrighted MCAT exam content.

COUNT III
MISAPPROPRIATION IN VIOLATION OF THE DEFEND TRADE
SECRETS ACT
18 U.S.C. § 1836

71. AAMC hereby repeats and incorporates each and every allegation of Paragraphs 1-45 of this Complaint as though fully set forth herein.

72. Each MCAT exam form contains trade secrets that consist of passages, graphic images, questions, incorrect answer choices, and correct answers that include chemical, physical, biological, biochemical, psychological, sociological, and scientific research information and psychometric techniques used for evaluating and assessing the competency of a candidate to study medicine or other graduate health professions, which are not generally known to the public (the "MCAT Trade Secrets").

73. MCAT exam forms containing the MCAT Trade Secrets are used by AAMC and Examinees in interstate and/or foreign commerce, as the MCAT exam is administered throughout the United States and in as many as twenty other

countries and territories, and MCAT scores are accepted by schools throughout the United States and Canada.

74. Examinees derive significant economic value from high MCAT scores, in terms of the educational and career opportunities made available to them in proportion to their level of achievement on the MCAT exam.

75. If an Examinee had advance knowledge of the contents of the MCAT exam, the Examinee would achieve a higher score on the MCAT exam that would not be a valid indicator of the Examinee's knowledge or competency, but would improve the Examinee's standing in the applicant pool, thereby increasing the probability that the Examinee would gain admission to an institution that would not otherwise have granted admission if the Examinee had submitted a lower, valid MCAT score.

76. The MCAT Trade Secrets derive actual and/or potential independent economic value from not being generally known to and not being readily ascertainable by proper means by another person who can obtain economic value from the disclosure or use of the information.

77. AAMC takes extensive measures to maintain the secrecy of the MCAT Trade Secrets.

78. Each and every Examinee agrees to the MCAT Examinee Agreement twice – when registering to take the MCAT exam and just before taking the exam. Such Agreement imposes upon the Examinee a continuing duty to keep the contents of the MCAT exam a secret. The Examinee Agreement also identifies the detailed contents of the MCAT exam as “trade secrets.”

79. Defendant entered into and accepted the terms of the Examinee Agreement, including the confidentiality and trade secret provisions, on multiple occasions, including but not limited to each of Defendant’s Test Dates.

80. Upon information and belief, on each of Defendants’ Test Dates, Defendant took the MCAT exam for an unauthorized purpose and used spy glasses to record MCAT exam content, and thus knowingly, willfully, and maliciously acquired the MCAT Trade Secrets through improper means and knew that he had used improper means to do so.

81. Upon information and belief, on each of Defendant’s Test Dates, Defendant knowingly used improper means to acquire the MCAT Trade Secrets and thereafter, including after May 16, 2016, disclosed and/or used the trade secrets for his own benefit and/or the benefit of the Defendant’s Associate and/or others.

82. The foregoing acts of Defendant constitute willful and malicious misappropriation of the MCAT Trade Secrets under 18 U.S.C. § 1836.

83. As a direct and proximate result of Defendant's willful and malicious misappropriation of trade secrets, AAMC has sustained and, if Defendant is not enjoined, will continue to sustain substantial damages.

COUNT IV
MISAPPROPRIATION IN VIOLATION OF THE GEORGIA TRADE
SECRETS ACT
GA CODE § 10-1-760 ET SEQ.

84. AAMC hereby repeats and incorporates each and every allegation of Paragraphs 1-45 and 72-83 of this Complaint as though fully set forth herein.

85. The foregoing acts of Defendant constitute willful and malicious misappropriation of the MCAT Trade Secrets under O.C.G.A. § 10-1-760 et seq.

86. As a direct and proximate result of Defendant's willful and malicious misappropriation of trade secrets, AAMC has sustained and, if Defendant is not enjoined, will continue to sustain substantial damages.

COUNT V
COMPUTER THEFT IN VIOLATION OF THE GEORGIA COMPUTER
SYSTEMS PROTECTION ACT
O.C.G.A. § 16-9-93 ET SEQ.

87. AAMC hereby repeats and incorporates each and every allegation of Paragraphs 1-45 and 47-56 of this Complaint as though fully set forth herein.

88. On each of Defendant's Test Dates, Defendant used a computer operated on behalf of AAMC with knowledge that his use of the computer on each date was without authority and with the intention of taking and/or appropriating the intellectual property of AAMC, including copyrighted MCAT exam forms and the MCAT Trade Secrets.

89. On each of Defendant's Test Dates, Defendant intentionally misrepresented his purpose to AAMC in taking the MCAT exam, and thereby used deceitful means to gain access to each of the computers that contained the intellectual property of AAMC, and obtained the intellectual property of AAMC, including copyrighted MCAT exam forms and the MCAT Trade Secrets.

90. The aforesaid conduct of Defendant constitutes computer theft in violation of O.C.G.A. § 16-9-93(a).

91. AAMC has been damaged by reason of Defendant's repeated thefts of its intellectual property in violation of O.C.G.A. § 16-9-93(a) and, if Defendant is not enjoined, AAMC will continue to sustain substantial damages.

COUNT VI
BREACH OF CONTRACT

92. AAMC hereby repeats and incorporates each and every allegation of Paragraphs 1-45 of this Complaint as though fully set forth herein.

93. Defendant entered into a legally binding contract with AAMC – the MCAT Examinee Agreement – when he registered for each MCAT exam, and again when he took each MCAT exam.

94. In consideration of and in order to register for the MCAT exam, Defendant agreed to comply with the terms of the Examinee Agreement.

95. By acknowledging and accepting the Examinee Agreement, Defendant agreed to the following, *inter alia*:

- a. That he was taking the MCAT exam “solely for the purpose of applying to and attending an eligible health-professions school and program;”
- b. That he was prohibited from “possessing, accessing, or using cameras, or recording equipment of any kind” during the MCAT exam;
- c. That AAMC is the “exclusive owner of all rights in the MCAT exam,” that he had “no license or permission to copy, adapt, or

use any part of the MCAT exam” and that any “disclosure, reconstruction, and/or copying of the confidential contents of the MCAT exam would destroy the value and defeat the purpose of the MCAT exam and irreparably harm AAMC;”

- d. That the MCAT exam contained Trade Secrets that he was “bound to keep confidential indefinitely;” and
- e. That if he engaged in any activity that might compromise the validity, security, or integrity of the MCAT exam, that he was required to “fully cooperate” in AAMC’s investigation of that activity. *See* Exhibits 1 and 2.

96. Upon information and belief, on each of Defendant’s Test Dates, Defendant took the MCAT exam for a purpose other than applying to and attending an eligible health-professions school and program.

97. Upon information and belief, on each of Defendant’s Test Dates, Defendant brought a recording device into the MCAT exam.

98. Upon information and belief, on each of Defendant’s Test Dates, Defendant recorded and/or photographed and/or copied the MCAT exam during the administration of the exam.

99. Upon information and belief, at some point after one or more of Defendant's Test Dates, Defendant adapted, copied, disclosed, or shared MCAT exam content with Defendant's Associate or others.

100. From May 14, 2017 through June 19, 2017, Defendant willfully refused to cooperate in AAMC's investigation of his activity.

101. By engaging in all of the above described conduct, Defendant repeatedly breached the terms of the Examinee Agreement.

102. As a direct and proximate result of the Defendant's breach of the Examinee Agreement, AAMC has suffered, and will continue to suffer, damages in an amount to be proved at trial.

PRAYER FOR RELIEF

WHEREFORE, AAMC respectfully prays for the following relief:

(a) That judgment on all claims of the Complaint be entered for Plaintiff and against Defendant;

(b) That Defendant, his heirs, agents, attorneys, representatives, assigns, and anyone acting in concert with any of them, be permanently enjoined and restrained from:

(1) Accessing any computer for taking the MCAT exam for any purpose other than for applying to and attending an eligible health-professions school or program;

(2) Using any recording device in any MCAT exam;

(3) Using any deceitful means to access the MCAT exam;

(4) Disclosing any of the MCAT Trade Secrets to anyone;

(5) Using any of the MCAT Trade Secrets in any manner;

(6) Reproducing, distributing copies of, or preparing derivative works based on any portion of any MCAT exam or otherwise infringing any of AAMC's copyrights in the MCAT exam forms; and

(7) Using or disclosing any information obtained about the MCAT exam when Defendant took the MCAT exam on any of Defendant's Test Dates in any manner;

(c) That Defendant be ordered to surrender for impounding by Plaintiff all documents, whether in hardcopy or electronic format, that contain any MCAT Trade Secrets or copyrighted materials of AAMC;

(d) That Defendant be ordered to identify all persons to whom he has disclosed or distributed any MCAT Trade Secrets or copyrighted materials

belonging to AAMC and to specify the information and/or materials disclosed or distributed to each such person;

(e) That pursuant to 17 U.S.C. § 504, Defendant be ordered to pay to Plaintiff, at Plaintiff's election, either (1) statutory damages of up to \$150,000 for each of Plaintiff's copyrighted works willfully infringed by Defendant, as specified in 17 U.S.C. § 504(c)(2), or (2) the actual damages suffered by AAMC as a result of the infringement of its copyrights in its works, and any of Defendant's profits resulting from Defendant's infringement of the copyrights in AAMC's works that are not taken into account in computing actual damages;

(f) That Plaintiff be awarded all damages and losses sustained as a result of Defendant's misappropriation of trade secrets, computer theft, computer fraud and abuse, and breach of contract;

(g) That Plaintiff be awarded its costs and reasonable attorney's fees;

(h) That Plaintiff be awarded punitive damages as a result of Defendant's willful, intentional and wrongful acts; and

(i) That Plaintiff be awarded any further relief that the Court deems to be just and proper.

JURY DEMAND

AAMC respectfully requests a trial by jury on all issues triable thereby.

This 14th day of August, 2017.

Respectfully submitted:

/s/ Elizabeth G. Borland

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