

Act” or “TMFPA”), TEX. HUM. RES. CODE ANN. chapter 36. The State has primary responsibility for prosecuting this action under section 36.107(a) of the TMFPA.

I. DISCOVERY CONTROL PLAN

1.1 The State designates this case as a Level 3 case requiring a discovery control plan tailored to the circumstances of this specific suit.

II. THE PARTIES

PLAINTIFFS

2.1 Plaintiff **THE STATE OF TEXAS**, represented by the Attorney General, is authorized to bring this action under section 36.052 of the Texas Human Resources Code.

DEFENDANTS

2.2 Defendant **DR. BEHZAD NAZARI D/B/A ANTOINE DENTAL CENTER** is an individual and may be served with process by serving Behzad Nazari, at 6906 Airline Drive, Suite 106, Houston, Texas 77076.

2.3 Defendant **DR. BEHZAD NAZARI** is a dentist licensed by the Texas State Board of Dental Examiners and may be served with process at his principal place of business, 6906 Airline Drive, Suite 106, Houston, Texas 77076.

2.4 Defendant **DR. WAEL KANAAN** is a dentist licensed by the Texas State Board of Dental Examiners and may be served with process at his principal place of business, 6906 Airline Drive, Suite 106, Houston, Texas 77076.

2.5 Defendant **HARLINGEN FAMILY DENTISTRY, P.C.**, is a professional corporation that was converted and is now known as **PRACTICAL BUSINESS**

SOLUTIONS, SERIES LLC and may be served with process by serving its registered agent, Juan Villarreal, at 1214 Dixieland Road, #4, Harlingen, Texas 78552.

2.6. Defendant **JUAN D. VILLARREAL, D.D.S., SERIES PLLC D/B/A HARLINGEN FAMILY DENTISTRY GROUP** is a Texas professional limited liability corporation and may be served with process by serving its registered agent, Juan Villarreal, at 1214 Dixieland Road, #4, Harlingen, Texas 78552.

2.7 Defendant **DR. JUAN D. VILLARREAL** is a dentist licensed by the Texas State Board of Dental Examiners and may be served with process at his principal place of business, 1214 Dixieland Road, #4, Harlingen, Texas 78552.

2.8 Defendant **DR. VIVIAN TEEGARDIN** is a dentist licensed by the Texas State Board of Dental Examiners and may be served with process at her principal place of business, 1214 Dixieland Road, #4, Harlingen, Texas 78552.

2.9 Defendant **RICHARD F. HERRSCHER, D.D.S., M.S.D., P.C.** is a Texas professional corporation and may be served with process by serving its registered agent, William T. Herrscher, at 218 E. Louisiana, McKinney, Texas 75069.

2.10 Defendant **DR. RICHARD F. HERRSCHER** is a dentist licensed by the Texas State Board of Dental Examiners and may be served with process at 1001 S. Palestine Street, Athens, Texas 75751.

2.11 Defendant **M&M ORTHODONTICS, PA** is a Texas professional association and may be served with process by serving its registered agent, Diana Malone, at 9820 Braun Road, Suite 101, San Antonio, Texas 78254.

2.12 Defendant **DR. SCOTT MALONE** is a dentist licensed by the Texas State Board of Dental Examiners and may be served with process at his principal place of business, 9820 Braun Road, Suite 101, San Antonio, Texas 78254.

2.13 Defendant **DR. DIANA MALONE** is a dentist licensed by the Texas State Board of Dental Examiners and may be served with process at her principal place of business, 9820 Braun Road, Suite 101, San Antonio, Texas 78254.

2.14 Defendant **MICHELLE SMITH** is the Regional Manager of M&M Orthodontics, PA and may be served with process at her principal place of business, 9820 Braun Road, Suite 101, San Antonio, Texas 78254.

2.15 Defendant **NATIONAL ORTHODONTIX, MGMT, PLLC** is a Texas professional limited liability company with its principal place of business at 1620 South Padre Island Drive, Suite 230B, Corpus Christi, Texas 78416. It may also be served with process by serving its registered agent, Anthony Goodall, at Three Cielo Center, Suite 601, 1250 S. Capital of Texas Highway, Austin, Texas 78746.

2.16 Defendant **DR. JOHN VONDRAK** is a dentist licensed by the Texas State Board of Dental Examiners and may be served with process at his principal place of business, 1620 South Padre Island Drive, Suite 230B, Corpus Christi, Texas 78416.

2.17 Defendant **RGV SMILES BY ROCKY L. SALINAS, D.D.S. PA** is a Texas professional association and with its principal place of business at 3001 N. 23rd St., McAllen, Texas 78501. It may be served with process by serving its registered agent, Rocky Salinas, at 805 North Cage Blvd., Suite D, Pharr, TX 78577.

2.18 Defendant **DR. ROCKY SALINAS** is a dentist licensed by the Texas State Board of Dental Examiners and may be served with process at 805 North Cage Blvd., Suite D, Pharr, TX 78577.

2.19 The named Defendants in this action are either dental providers enrolled in Medicaid (“Defendant providers”) or persons associated with the dental providers (“non-provider Defendants”) in the provision of dental services to Medicaid clients. The Defendants are collectively all referred to below as “Defendants.” All Defendants are persons who have committed unlawful acts under the TMFPA, as described below.

III. JURISDICTION & VENUE

3.1 This Court has subject-matter jurisdiction over this case pursuant to section 36.052(d) of the TMFPA, which provides statutory remedies to redress Defendants’ conduct. The TMFPA provides authority for this action to be brought by the Attorney General. TEX. HUM. RES. CODE § 36.052.

3.2 This Court has jurisdiction over each of the Defendants named in this Petition because each Defendant does business in the State of Texas and committed the unlawful acts alleged in whole or in part in the State.

3.3 Venue is proper in Travis County under section 36.052(d) of the Texas Human Resources Code and because Defendants committed many of the unlawful acts in Travis County, including the making of the false statements and misrepresentations of material fact to the Texas Medicaid Program.

IV. PRELIMINARY STATEMENT AND NATURE OF THIS ACTION

4.1 This is a law enforcement action brought under the TMFPA for unlawful acts committed by Defendants.

4.2 Defendants knowingly made false statements and/or misrepresentations of material facts to the Texas Medicaid Program about general dental and/or orthodontic services for which Defendants submitted prior authorization requests and/or claims for payment to Texas Medicaid.

4.3 As a result of Defendants' unlawful acts, benefits were provided and payments were made that either were not authorized or were greater than what were authorized by Medicaid. The Defendants' unlawful acts have cost the State of Texas and its taxpayers millions of dollars.

4.4 The State seeks to recover: (1) the amount of any Texas Medicaid payments to Defendants or the value of any monetary or in-kind benefits provided under the Medicaid program, directly or indirectly, as a result of the Defendants' unlawful acts; (2) pre-judgment interest on the amount or value of such payments as listed above; (3) two times the amount or the value of such payments as listed above; (4) civil penalties in an amount not less than \$5,500 or more than \$11,000 for each unlawful act committed by the Defendants (for violations which occurred between September 1, 2011 and February 29, 2012), civil penalties in an amount not less than \$5,000 or more than \$10,000 for each unlawful act committed by the Defendants (for violations which occurred between September 1, 2007 and August 31, 2011), and civil penalties in an amount not less than \$1,000 or more than \$10,000 for each unlawful act committed by the Defendants (for

violations which occurred between September 1, 1999 and August 31, 2007); (5) the costs, attorneys' fees, and expenses incurred by the State in obtaining relief under the TMFPA; and (6) any and all other remedies that may be allowed under chapter 36 of the TEXAS HUMAN RESOURCES CODE.

V. BACKGROUND

5.1 The federal government enacted the Medicaid program in 1965 as a cooperative undertaking between the federal and state governments to help the states provide medical care to lower income individuals. Each state administers its own Medicaid program. Medicaid is funded jointly by the federal and state governments. 42 U.S.C. § 1396.

5.2 Texas provides dental services to qualifying children under the federal Early and Periodic Screening, Diagnosis, and Treatment ("EPSDT") program, known in Texas as Texas HealthSteps. 25 TEX. ADMIN CODE § 33.71. As part of its EPSDT dental benefit, Texas Medicaid provides limited coverage for orthodontic services. Patients must meet strict criteria specified by Medicaid policy. *Id.*; see, e.g., *Texas Medicaid Provider Procedure Manual ("TMPPM") in effect for the years 2004-2012.*

5.3 The orthodontic services can only be reimbursed if the providers obtained prior approval from Medicaid to perform those services. 25 TEX. ADMIN CODE § 33.71. Orthodontic services that are medically necessary to correct a severe handicapping malocclusion that causes dysfunction in the patient are reimbursable under this limited coverage. *Id.* Orthodontic services for cosmetic purposes are not covered by Medicaid, and are not reimbursable. *Id.*

5.4 Defendant providers voluntarily and affirmatively sought and attained participation in the Medicaid program. To become a Texas Medicaid Provider, dental providers must submit a Provider Enrollment Application and enter into a Medicaid Provider Agreement with HHSC (“Provider Agreement”). As a condition for participating in Texas Medicaid, a provider must represent to Texas Medicaid that they will comply with all the requirements of the Texas Medicaid Provider Procedures Manual (“Provider Manual”). Providers must further acknowledge their duties to be familiar with the Provider Manual and ensure that employees acting on behalf of the providers also comply with the requirements set forth in the Provider Manual. Providers further agree under the Provider Agreement that they will comply with applicable state and federal laws governing and regulating Medicaid, and all state and federal laws and regulations related to fraud, waste and abuse. Texas Medicaid Providers have an on-going duty to Texas Medicaid to comply with the Provider Manual and comply with state and federal laws when providing medical services and treatment to Texas Medicaid patients.

5.5 As a matter of law, by becoming participants in the Medicaid program, Defendants are charged with the duty to know the statutes, rules, and regulations of the United States and of the State of Texas pertinent to the Medicaid program. 1 TEX. ADMIN. CODE § 371.1615(a) (effective January 9, 2005 – October 13, 2012) (“Participation in the Medicaid and other HHS programs charges all providers and persons . . . with knowledge of the federal and state law that governed Medicaid or other HHS programs during the period of time that the program was billed.”); *see also Heckler v. Cmty Health Servs. of Crawford*

County, Inc., 467 U.S. 51, 64-5 (1984); *N. Mem'l Med. Ctr. v. Gomez*, 59 F.3d 735 (8th Cir. 1995).

ANTOINE DENTAL CENTER DEFENDANTS

5.6 Defendant Dr. Behzad Nazari (“Dr. Nazari”) established Antoine Dental Center (“Antoine”) in 2000 to provide general dentistry and orthodontic services. Antoine holds Texas Medicaid Provider Identification (“TPI”) numbers 1905432, 1952657, and 2187031. Dr. Nazari holds TPI number 0908162 and all its attendant suffixes.

5.7 Dr. Nazari hired Defendant Dr. Wael Kanaan (“Dr. Kanaan”) in 2008 to provide orthodontic services to Medicaid patients (Dr. Nazari, Dr. Kanaan, and Antoine hereinafter referred to as “the Antoine Defendants”). Dr. Kanaan holds TPI number 1787004 and all its attendant suffixes.

HARLINGEN FAMILY DENTISTRY, PLLC DEFENDANTS

5.8 Defendant Dr. Juan D. Villarreal (“Dr. Villarreal”) established Harlingen Family Dentistry P.C. in 1986. Harlingen Family Dentistry, P.C. is now known as Practical Business Solutions, Series LLC. Dr. Villarreal has since restructured his business, converting the clinic to its current corporate state, Juan D. Villarreal D.D.S., Series, PLLC. d/b/a Harlingen Family Dentistry Group (“Harlingen Family”). Dr. Villarreal has continuously owned these entities, collectively doing business as Harlingen Family Dentistry and has provided dental and orthodontic services to Medicaid-eligible patients under that name since establishing the original entity in 1986. Harlingen holds TPI number 0096471. Dr. Villarreal holds TPI number 0096471.

5.9 Dr. Villarreal hired Defendant Dr. Vivian Teegardin (“Dr. Teegardin”) in 1989 to provide dental services to Medicaid patients (Dr. Villarreal, Dr. Teegardin, and Harlingen Family hereinafter collectively referred to as “the Harlingen Family Defendants”). Dr. Teegardin and Dr. Villarreal as partners in Villarreal-Teegardin Partnership, LP, own the real property where Harlingen Family Dentistry is located. Dr. Teegardin started providing orthodontic services to Medicaid patients full time in 2004. Dr. Teegardin holds TPI number 1109571.

HERRSCHER, P.C. DEFENDANTS

5.10 Defendant Dr. Richard Herrscher (“Herrscher”) established Richard F. Herrscher, D.D.S., M.S.D., P.C. (“Herrscher, P.C.”) in 1997. Dr. Herrscher has provided dental and orthodontic services to Medicaid-eligible patients since 2000. (Dr. Herrscher and Herrscher, P.C. hereinafter collectively referred to as “the Herrscher Defendants”).

5.11 Dr. Herrscher is the sole owner, shareholder, officer and director of Defendant Herrscher, P.C., a professional corporation. The Herrscher Defendants hold TPI number 1332876 and all its attendant suffixes.

M&M ORTHODONTICS, PA DEFENDANTS

5.12 Defendants Drs. Scott and Diana Malone (“the Malones”) established M&M Orthodontics, PA (“M&M Ortho”) in 2003. M&M Ortho has provided dental and orthodontic services to Medicaid-eligible patients since that time.

5.13 Dr. Scott Malone and Dr. Diana Malone are the sole owners, officers and directors of M&M Ortho. Dr. Scott Malone is the president of M&M Ortho. Dr. Diana Malone is the secretary, vice-president, and treasurer of M&M Ortho.

5.14 Defendants the Malones and M&M Ortho are former Medicaid providers. M&M Ortho held TPI numbers 1971640, 1981110, 2163420, and 1749517. Dr. Scott Malone held TPI number 1749525 and all its attendant suffixes. Dr. Diana Malone held TPI 1425399 and all its attendant suffixes.

5.15 The Malones hired Defendant Michelle Smith (“Smith”) in 2007. As regional manager of M&M Ortho, Smith was instrumental in the management and execution of office policies, billing practices, and other Medicaid-related duties pursuant to orthodontic services for orthodontic patients of M&M Ortho. (M&M Ortho, the Malones, and Smith are hereinafter collectively referred to as “the M&M Ortho Defendants”).

NATIONAL ORTHODONTIX, MGMT, PLLC DEFENDANTS

5.16 Defendant Dr. John Vondrak (“Dr. Vondrak”) established National Orthodontix, MGMT, PLLC (“National Ortho”) in 2002. Since that time, National Ortho has provided dental and orthodontic services to Medicaid-eligible patients (Dr. Vondrak and National Ortho hereinafter collectively referred to as “the National Ortho Defendants”).

5.17 Dr. Vondrak holds TPI number 0092975 and all its attendant suffixes. Defendant National Ortho holds TPI numbers 1597718, 2147340, 2144602, 2126096 and all their attendant suffixes.

RGV SMILES BY ROCKY L. SALINAS, D.D.S. PA DEFENDANTS

5.18 Defendant Dr. Rocky Salinas (“Dr. Salinas”) established RGV Smiles by Rocky L. Salinas, D.D.S. PA (“RGV Smiles”) in 2007. Since 2008, Dr. Salinas and RGV Smiles have provided dental and orthodontic services to Medicaid-eligible patients (Dr. Salinas and RGV Smiles hereinafter collectively referred to as “the RGV Smiles Defendants”).

5.19 Dr. Salinas holds TPI number 1112054 and all its attendant suffixes. RGV Smiles holds TPI numbers 1892531, 2069031, 2168619 and all their attendant suffixes.

VI. ACTIONABLE CONDUCT OF ANTOINE DENTAL CENTER DEFENDANTS

6.1 On or about January 1, 2004 through February 29, 2012, the Antoine Defendants submitted or caused to be submitted false statements, information or misrepresentations of material facts, or omitted pertinent facts to Texas Medicaid to obtain Medicaid prior authorization and payment for orthodontic services and appliances. Specifically, the Antoine Defendants submitted, or caused to be submitted, to Texas Medicaid prior authorization (“PA”) forms and corresponding Handicapping Labio-Lingual Deviation (“HLD”) score sheets misrepresenting the severity of patients’ dental conditions, filed claims based on those score sheets, and was paid by Texas Medicaid for services for which the patients were not qualified to receive.

The above acts and/or omissions constitute violations of TEX. HUM. RES. CODE §§ 32.039(b), 36.002(1), 36.002(2); 36.002(4)(B), 36.002(13).

6.2 Defendants, Dr. Behzad Nazari, D.D.S. d/b/a Antoine Dental Center, Dr. Behzad Nazari, and Dr. Wael Kanaan, are jointly and severally liable for the damages which arose either directly or indirectly, as a result of each Defendant’s unlawful acts.

VII. ACTIONABLE CONDUCT OF HARLINGEN FAMILY DENTISTRY DEFENDANTS

7.1 On or about January 1, 2004 through February 29, 2012, the Harlingen Family Defendants submitted or caused to be submitted false statements, information or misrepresentations of material facts, or omitted pertinent facts to Texas Medicaid to obtain

Medicaid prior authorization and payment for orthodontic services and appliances. Specifically, the Harlingen Family Defendants submitted, or caused to be submitted, to Texas Medicaid prior authorization (“PA”) forms and corresponding Handicapping Labio-Lingual Deviation (“HLD”) score sheets misrepresenting the severity of patients’ dental conditions, filed claims based on those score sheets, and was paid by Texas Medicaid for services for which the patients were not qualified to receive.

The above acts and/or omissions constitute violations of TEX. HUM. RES. CODE §§ 32.039(b), 36.002(1), 36.002(2); 36.002(4)(B), 36.002(13).

7.2 On or about January 1, 2004 through February 29, 2012, the Harlingen Family Defendants submitted or caused to be submitted claims for payment to Texas Medicaid for products and services that were never provided to Texas Medicaid recipients.

The above acts or omissions constitute violations of TEX. HUM. RES. CODE §§ 32.039(b), 36.002(1), 36.002(2), and 36.002(4)(B), 36.002(13).

7.3 On or about January 1, 2004 through February 29, 2012, the Harlingen Family Defendants submitted or caused to be submitted claims for payment to Texas Medicaid for products and services that were more costly than the products and services actually provided to Texas Medicaid recipients.

The above acts or omissions constitute violations of TEX. HUM. RES. CODE §§ 32.039(b), 36.002(1), 36.002(2), 36.002(4)(B), and 36.002(13).

7.4 On or about January 1, 2004 through February 29, 2012, the Harlingen Family Defendants, per contractual agreement, engaged in an unlawful “kickback” scheme involving the referral of Texas Medicaid patients to a third party/parties for the provision

of oral and maxillofacial surgery services. In exchange for these referrals, the third party/parties paid the Harlingen Family Defendants a percentage of Texas Medicaid payments resulting from the third party/parties' provision of oral and maxillofacial surgery services.

The above acts or omissions constitute violations of TEX. HUM. RES. CODE §§ 32.039(b)(1-b), 32.039(b)(1-c), and 32.039(b)(1-d); 36.002(5), 36.002(9), and 36.002(13).

7.5 Defendants, Harlingen Family Dentistry, P.C., n/k/a, Practical Business Solutions, Series LLC, Juan D. Villarreal D.D.S., Series PLLC d/b/a Harlingen Family Dentistry Group, Dr. Juan Villarreal and Dr. Vivian Teegardin, are jointly and severally liable for the damages which arose either directly or indirectly, as a result of each Defendant's unlawful acts.

VIII. ACTIONABLE CONDUCT OF HERRSCHER DEFENDANTS

8.1 On or about January 1, 2004 through February 29, 2012, the Herrscher Defendants submitted or caused to be submitted false statements, information or misrepresentations of material facts, or omitted pertinent facts to Texas Medicaid to obtain Medicaid prior authorization and payment for orthodontic services and appliances. Specifically, the Herrscher Defendants submitted, or caused to be submitted, to Texas Medicaid prior authorization ("PA") forms and corresponding Handicapping Labio-Lingual Deviation ("HLD") score sheets misrepresenting the severity of patients' dental conditions, filed claims based on those score sheets, and was paid by Texas Medicaid for services for which the patients were not qualified to receive.

The above acts and/or omissions constitute violations of TEX. HUM. RES. CODE §§ 32.039(b), 36.002(1), 36.002(2); 36.002(4)(B), 36.002(13).

8.2 On or about January 1, 2004 through February 29, 2012, the Herrscher Defendants submitted or caused to be submitted claims for payment to Texas Medicaid for products and services that were never provided to Texas Medicaid recipients.

The above acts or omissions constitute violations of TEX. HUM. RES. CODE §§ 32.039(b), 36.002(1), 36.002(2), 36.002(4)(B), and 36.002(13).

8.3 Defendants, Richard F. Herrscher, D.D.S., M.S.D., P.C. and Dr. Richard Herrscher, are jointly and severally liable for the damages which arose either directly or indirectly, as a result of each Defendant's unlawful acts.

IX. ACTIONABLE CONDUCT OF M&M ORTHODONTICS, PA DEFENDANTS

9.1 On or about January 1, 2004 through February 29, 2012, the M&M Ortho Defendants submitted or caused to be submitted false statements, information or misrepresentations of material facts, or omitted pertinent facts to Texas Medicaid to obtain Medicaid prior authorization and payment for orthodontic services and appliances. Specifically, the M&M Ortho Defendants submitted, or caused to be submitted, to Texas Medicaid prior authorization ("PA") forms and corresponding Handicapping Labio-Lingual Deviation ("HLD") score sheets misrepresenting the severity of patients' dental conditions, filed claims based on those score sheets, and was paid by Texas Medicaid for services for which the patients were not qualified to receive.

The above acts and/or omissions constitute violations of TEX. HUM. RES. CODE §§ 32.039(b), 36.002(1), 36.002(2); 36.002(4)(B), 36.002(13).

9.2 On or about January 1, 2004 through February 29, 2012, the M&M Ortho Defendants submitted or caused to be submitted claims for payment to Texas Medicaid for products and services that were never provided to Texas Medicaid recipients.

The above acts or omissions constitute violations of TEX. HUM. RES. CODE §§ 32.039(b), 36.002(1), 36.002(2), 36.002(4)(B), and 36.002(13).

9.3 On or about January 1, 2004 through February 29, 2012, the M&M Ortho Defendants submitted or caused to be submitted claims for payment to Texas Medicaid for products and services that were more costly than the products and services actually provided to Texas Medicaid recipients.

The above acts or omissions constitute violations of TEX. HUM. RES. CODE §§ 32.039(b), 36.002(1), 36.002(2), 36.002(4)(B), and 36.002(13).

9.4 On or about January 1, 2004 through February 29, 2012, the M&M Ortho Defendants submitted false statements, information or misrepresentations, or omitted pertinent facts to obtain Medicaid prior authorization and payment for orthodontic services and appliances. Specifically, the M&M Ortho Defendants submitted prior authorization requests misrepresenting that patients had a “crossbite” in order to obtain prior authorization, filed claims based on those false diagnoses, and were paid by Texas Medicaid for services for which the patients were not qualified.

The above acts or omissions constitute violations of TEX. HUM. RES. CODE §§ 32.039(b), 36.002(1) and 36.002(4)(B).

9.5 Defendants, M & M Orthodontics, PA, Dr. Scott Malone, Dr. Diana Malone, and Michelle Smith, are jointly and severally liable for the damages which arose either directly or indirectly, as a result of each Defendant's unlawful acts.

**X. ACTIONABLE CONDUCT OF NATIONAL ORTHODONTIX,
MGMT, PLLC DEFENDANTS**

10.1 On or about January 1, 2004 through February 29, 2012, the National Ortho Defendants submitted or caused to be submitted false statements, information or misrepresentations of material facts, or omitted pertinent facts to Texas Medicaid to obtain Medicaid prior authorization and payment for orthodontic services and appliances. Specifically, the National Ortho Defendants submitted, or caused to be submitted, to Texas Medicaid prior authorization ("PA") forms and corresponding Handicapping Labio-Lingual Deviation ("HLD") score sheets misrepresenting the severity of patients' dental conditions, filed claims based on those score sheets, and was paid by Texas Medicaid for services for which the patients were not qualified to receive.

The above acts and/or omissions constitute violations of TEX. HUM. RES. CODE §§ 32.039(b), 36.002(1), 36.002(2); 36.002(4)(B), 36.002(13).

10.2 On or about January 1, 2004 through February 29, 2012, the National Ortho Defendants submitted or caused to be submitted claims for payment to Texas Medicaid for products and services that were never provided to Texas Medicaid recipients.

The above acts or omissions constitute violations of TEX. HUM. RES. CODE §§ 32.039(b), 36.002(1), 36.002(2), 36.002(4)(B), and 36.002(13).

10.3 On or about January 1, 2004 through February 29, 2012, the National Ortho Defendants permitted unqualified and inappropriately trained “Treatment Coordinators” who were not licensed orthodontists to perform the orthodontic measurements for conditions such as overjet, mandibular protrusion, ectopic eruption, overbite, labio-lingual spread, and other orthodontic abnormalities and make diagnoses on the HLD Score Sheet. Further, National Ortho Defendants allowed non-licensed staff to take appliance impressions, prescribe work authorizations and make the final placement and intraoral adjustment of fixed or removable appliances. In filing claims for payment for these services to Texas Medicaid, the National Ortho Defendants represented that proper, licensed employees performed the tasks listed above. The National Ortho Defendants misrepresented material facts which permitted them to receive Medicaid payments they should not have received.

The above acts and/or omissions constitute violations of TEX. HUM. RES. CODE §§ 32.039(b), 36.002(1), 36.002(2), 36.002(4)(B), 36.002(6), 36.002(13).

10.4 Defendants, National Orthodontix, MGMT, PLLC and Dr. John Vondrak, are jointly and severally liable for the damages which arose either directly or indirectly, as a result of each Defendant’s unlawful acts.

XI. ACTIONABLE CONDUCT OF RGV SMILES DEFENDANTS

11.1 On or about January 1, 2008 through February 29, 2012, the RGV Smiles Defendants submitted or caused to be submitted false statements, information or misrepresentations of material facts, or omitted pertinent facts to Texas Medicaid to obtain Medicaid prior authorization and payment for orthodontic services and appliances.

Specifically, the RGV Smiles Defendants submitted, or caused to be submitted, to Texas Medicaid prior authorization (“PA”) forms and corresponding Handicapping Labio-Lingual Deviation (“HLD”) score sheets misrepresenting the severity of patients’ dental conditions, filed claims based on those score sheets, and was paid by Texas Medicaid for services for which the patients were not qualified to receive.

The above acts and/or omissions constitute violations of TEX. HUM. RES. CODE §§ 32.039(b), 36.002(1), 36.002(2); 36.002(4)(B), 36.002(13).

11.2 Defendants, RGV Smiles by Rocky L. Salinas, D.D.S. PA and Dr. Rocky Salinas, are jointly and severally liable for the damages which arose either directly or indirectly, as a result of each Defendant’s unlawful acts and/or omissions.

XII. CIVIL REMEDIES UNDER THE TMFPA

12.1 Under the TMFPA, each Defendant is liable to the State of Texas for the amount of any payment provided under the Medicaid program, directly or indirectly, as a result of their unlawful acts, plus interest from the date of the payment, plus two times the amount of the payment, and a civil penalty for each unlawful act committed, in addition to the fees, expenses, and costs of the Attorney General in investigating and obtaining civil remedies in this matter. TEX. HUM. RES. CODE §§ 36.052, 36.007.

12.2 Texas invokes, in the broadest sense, all relief possible under § 36.052, whether specified in this pleading or not. Texas will seek an amount as civil penalties that will be justified and appropriate under the facts and the law.

12.3 Texas seeks to recover: (1) the amount of any Texas Medicaid payments to Defendants or the value of any monetary or in-kind benefits provided under the Medicaid

program, directly or indirectly, as a result of the Defendants' unlawful acts; (2) pre-judgment interest on the amount or value of such payments as listed above; (3) two times the amount or the value of such payments as listed above; (4) civil penalties in an amount not less than \$5,500 or more than \$11,000 for each unlawful act committed by the Defendants (for violations which occurred between September 1, 2011 and February 29, 2012), civil penalties in an amount not less than \$5,000 or more than \$10,000 for each unlawful act committed by the Defendants (for violations which occurred between September 1, 2007 and August 31, 2011), and civil penalties in an amount not less than \$1,000 or more than \$10,000 for each unlawful act committed by the Defendants (for violations which occurred between September 1, 1999 and August 31, 2007); (5) the costs, attorneys' fees, and expenses incurred by the State in obtaining relief under the TMFPA; and (6) any and all other remedies that may be allowed under chapter 36 of the TEXAS HUMAN RESOURCES CODE.

12.4 The TMFPA is a statute of absolute liability. There are no statutory, equitable, or common law defenses for any violation of its provisions. *State v. Durham*, 860 S.W.2d 63, 67 (Tex. 1993). Further, Texas jurisprudence provides that the defenses of estoppel, laches, and limitations are not available against the State of Texas, as a Sovereign. *Id.*

XIII. RECOVERY OF COSTS, FEES, AND EXPENSES

13.1 The State may recover fees, expenses, and costs reasonably incurred in obtaining injunctive relief or civil remedies or in conducting investigations pursuant to Chapter 36 of TEXAS HUMAN RESOURCES CODE, including court costs, reasonable attorney's fees, witness fees, and deposition fees. TEX. HUM. RES. CODE § 36.007.

XIV. JURY DEMAND

14.1 The State respectfully requests a trial by jury pursuant to Texas Rule of Civil Procedure 216.

XV. REQUESTS FOR DISCLOSURE

15.1 Defendants are requested to disclose all of the information or material described in Texas Rule of Civil Procedure 194.2(a)-(l).

XVI. PRAYER

16.1 The State asks that the Court issue citations for the Defendants to appear and answer.

16.2 The State asks that judgment be entered upon trial of this case in favor of the State against Defendants to the maximum extent allowed by law.

16.3 The State asks that it recover from Defendants:

- (1) the amount of any payments provided under the Medicaid program, directly or indirectly, as a result of each Defendant's unlawful acts,
- (2) prejudgment interest on the amount of the payments or the value of such payments,
- (3) two times the amount of any payment provided under the Medicaid program, directly or indirectly, as a result of each Defendant's unlawful acts,
- (4) civil penalties, and
- (5) expenses, costs and attorneys' fees.

16.4 The State prays for such other and further relief to which it may show itself entitled.

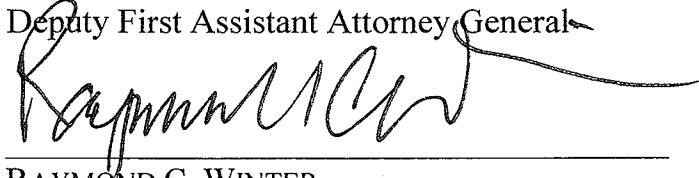
Respectfully submitted,

GREG ABBOTT

Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

JOHN B. SCOTT
Deputy First Assistant Attorney General



RAYMOND C. WINTER
State Bar No. 21791950
Chief, Civil Medicaid Fraud Division

REYNOLDS B. BRISSENDEN
State Bar No. 24056969
(512) 936-2158 direct dial

DAVID DREW WRIGHT
State Bar No. 00789965
(512) 936-1486 direct dial

MATTHEW MILLER
State Bar No. 24051959
(512) 936-1420 direct dial

BRADEN CIVINS
State Bar No. 24080836
(512) 463-7975 direct dial

NATE DANKO
State Bar No. 24087378
(512) 936-6638 direct dial

NOAH REINSTEIN
State Bar No. 24089769
(512) 463-3457 direct dial

EAMON REILLY
State Bar No. 24085548
(512) 936-1304 direct dial

SARA CASEY
State Bar No. 24040478
(512) 463-2931 direct dial

ANGELA LIPSCOMB
State Bar No. 24089762
(512) 936-1772 direct dial

Assistant Attorneys General
P.O. Box 12548

Austin, Texas 78711-2548
(512) 499-0712 fax

ATTORNEYS FOR THE STATE OF TEXAS