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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
(Louisville Division)**

SEALED

Plaintiff,

vs.

SEALED

Defendants.

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Civil Action No. 3:13-cv-222-H

JURY TRIAL DEMAND

**Filed in Camera and Under Seal
Pursuant to Under Seal Pursuant
to 31 U.S.C. §3730(B)(2)**

**Do not enter on PACER/ECF
Do not serve Defendants
Do not place in Press Box**

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
(Louisville Division)**

UNITED STATES OF AMERICA ex rel.
Dr. Jihaad Abdul-Majid, DDS, Relator, and

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§ **Civil Action No.** _____
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STATE OF INDIANA ex rel.
Dr. Jihaad Abdul-Majid, DDS, Relator,

§ **JURY TRIAL DEMAND**
§
§

vs.

§ **Filed in Camera and Under Seal**
§ **Pursuant to Under Seal**
§ **Pursuant to 31 U.S.C.**
§ **§3730(B)(2)**

IMMEDIADENT SPECIALTY, P.C.
SAMSON DENTAL PRACTICE
MANAGEMENT, LLC, d/b/a IMMEDIADENT
k/f/a RDR MANAGEMENT, LLC, AND
IMMEDIADENT MANAGEMENT, LLC,
IMMEDIADENT OF INDIANA, P.C.,
DENTAL SERVICES OF KENTUCKY, PSC
d/b/a IMMEDIADENT – LEXINGTON,
DENTAL SERVICES OF KENTUCKY, PSC
d/b/a IMMEDIADENT – LOUISVILLE,
DENTAL SERVICES OF OHIO, DANIEL
JOLLY, D.D.S., INC., Individually and as
Successor-in-Interest to ImmediaDent of Ohio,
P.C., FERRELL CAPITAL, INC., FERRELLGAS
PARTNERS, L.P., and JOHN DOES

§ **Do not enter on PACER/ECF**
§ **Do not serve Defendants**
§ **Do not place in Press Box**
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Defendants

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**RELATOR’S ORIGINAL COMPLAINT PURSUANT TO THE FEDERAL FALSE
CLAIMS ACT, 31 U.S.C. §§ 3729 et seq., AND DEMAND FOR JURY TRIAL**

TO THE HONORABLE JUDGE OF THE COURT:

This is an action for the United States of America and the State of Indiana brought by *qui tam* Relator Dr. Jihaad Abdul-Majid, DDS to recover all damages, civil penalties, and other recoveries for violations of the FEDERAL FALSE CLAIMS ACT, 31 U.S.C. §§3729 *et seq.*, and the FALSE CLAIMS ACT of the State of Indiana, INDIANA CODE 5-11-5.5-4.

I.
INTRODUCTION

1.01 While working as a dentist at ImmediaDent Urgent Dental Care (“ImmediaDent”) clinics, Dr. Jihaad Abdul-Majid, DDS (“Relator) discovered that ImmediaDent was operating its dental practices in a manner that perpetrated dental Medicaid fraud against the federal TRICARE program and the Medicaid programs of Indiana, Kentucky, and Ohio. ImmediaDent currently operates over 20 dental clinics in these three states. Dr. Abdul-Majid observed and suspected various types of fraud, including fraudulent billing, excessive and unnecessary treatments of unsuspecting patients, and a sustained pressure by non-dentists in management positions to place corporate profits over patient care by exerting undue influence on dental care decisions. Dr. Abdul-Majid refused to participate in the fraud and tried to stop it or speak out against it internally on numerous occasions. In the end, Dr. Abdul-Majid’s anti-fraud efforts caused ImmediaDent to fire him.

II.
JURISDICTION AND VENUE

2.01 This *qui tam* action is brought under the federal FALSE CLAIMS ACT and is filed in camera and under seal pursuant to 31 U.S.C. §§3729-3733. This *qui tam* action is also brought under the INDIANA FALSE CLAIMS ACT, INDIANA CODE 5-11-5.5-4.

2.02 This Court has subject matter jurisdiction over this action under 28 U.S.C. §§1341, 1345; 31 U.S.C. §3732(a); and its general equity jurisdiction.

2.03 Venue is proper in the Western District of Kentucky under 28 U.S.C. §1391(b) and 31 U.S.C. §3732(a) as a place where false claims arose or were made. This action is properly filed in the Louisville Division because a substantial number of the false claims submitted by

defendants were generated in dental offices within this Division (in addition to false claims generated by Defendants' offices in Indiana and Ohio).

2.04 This action is not based upon any public disclosure, as that term is defined in 31 U.S.C. §3730(e)(4)(A). Even if it were, Relator is nonetheless an original source, as that term is defined in 31 U.S.C. §3730(e)(4)(B).

2.05 The court has supplemental jurisdiction over the state *qui tam* actions under 28 U.S.C. §1367 because the claims are so related to the claim within the Court's original jurisdiction that they form part of the same case or controversy. 28 U.S.C. §1332 also provides jurisdiction over the state *qui tam* actions because they are actions between citizens of different states and the amount in controversy exceeds \$75,000.00, excluding interest and costs.

III. PROCEDURE

3.01 This Complaint has been filed under seal as required by 31 U.S.C. §3730(b)(2).

3.02 In accordance with 31 U.S.C. §3730(b)(2) and applicable state law, Relator served this complaint and substantially all material evidence and information in his possession upon: The Attorney General of the United States; the United States Attorney for the Western District of Kentucky; and the Attorney General for the State of Indiana.

IV. PARTIES

4.01 Relator / Plaintiff DR. JIHAAD ABDUL-MAJID, DDS is an individual who resides in Louisville, Jefferson County, Kentucky. He is licensed to practice dentistry in Indiana and Kentucky. Defendants employed Dr. Abdul-Majid as a dentist from July 2011 to March 2012. In that capacity, Dr. Abdul-Majid observed first-hand the defendants' fraudulent scheme, which, in addition to bilking Medicaid and TRICARE, was harming children and adult patients. Dr.

Abdul-Majid attempted to stop the defendants' fraud, but his anti-fraud efforts (e.g., recommending and instituting less invasive, and less costly, procedures, standing up for coworkers who were also unwilling to commit fraud, etc.) caused Defendants to fire him.

4.02 THE UNITED STATES OF AMERICA partially cost shares the Medicaid programs of the States of Indiana, Ohio, and Kentucky, which are administered by the states, and fully pays the cost of the TRICARE program (minus de minimis patient co-pays and deductibles for some beneficiaries). Service upon the United States is to be made upon The Honorable Eric Holder, Attorney General, U.S. Department of Justice, 950 Pennsylvania Ave., NW, Washington, DC 20530-0001 and David J. Hale, U.S. Attorney for the Western District of Kentucky, U.S. Attorney's Office, 717 West Broadway, Louisville, Kentucky 40202.

4.03 THE STATE OF INDIANA administers and partially funds its Indiana Health Policy Programs (IHPP), including its Medicaid services, through its Family and Social Services Administration's (FSSA) Office of Medicaid Policy & Planning (OMPP). The Indiana Care Select and traditional Medicaid programs, which are funded by both federal and state funds, are the defrauded government health care programs in this action. Service upon the State of Indiana is to be made upon Greg Zoeller, Attorney General, Indiana Government Center South, 302 West Washington Street, 5th Floor, Indianapolis, Indiana 46204.

4.04 Defendant SAMSON DENTAL PRACTICE MANAGEMENT, LLC D/B/A IMMEDIADENT F/K/A RDR MANAGEMENT, LLC, AND IMMEDIADENT MANAGEMENT, LLC is an Indiana limited liability corporation. Samson Dental was created in 2003. The listed organizer for this Defendant is Mr. James E. Ferrell, with two members: 3G Dental, LLC, and AAA Development and Consulting, LLC. Defendant may be served with

process upon its registered agent National Corporate Research, LTD., 828 Lane Allen Road, Suite 219, Lexington, Kentucky 40504.

4.05 Defendant IMMEDIADENT SPECIALTY, P.C. is a professional corporation registered in State of Indiana and with a principal place of business in Indianapolis, Indiana. The principal for Defendant ImmediaDent Specialty is Dr. Raymond W. Lee, DDS. Defendant may be served with process upon its registered agent: National Registered Agents, Inc., 320 N. Meridian Street, Indianapolis, Indiana 46204.

4.06 Defendant IMMEDIADENT OF INDIANA, P.C. is a professional corporation registered in the State of Indiana. The principals of this Defendant are Brian Stratman, DDS (incorporator), and Thomas Frank, President. Defendant may be served with process upon its registered agent: National Corporation Research, LTD., 5217 Palisade Court, Indianapolis, IN 46237.

4.07 Defendant DENTAL SERVICES OF KENTUCKY, PSC D/B/A IMMEDIADENT – LEXINGTON is a professional services corporation registered in Kentucky. The incorporator for this Defendant is Dr. Ryan Kloboves, DDS. Defendant may be served with process upon its registered agent: National Corporate Research, LTD., 828 Lane Allen Road, Suite 219, Lexington, Kentucky 40504.

4.08 Defendant DENTAL SERVICES OF KENTUCKY, PSC D/B/A IMMEDIADENT – LOUISVILLE is a professional services corporation registered in Kentucky. The incorporator for this Defendant is Dr. Ryan Kloboves, DDS. Defendant may be served with process upon its registered agent: National Corporate Research, LTD., 828 Lane Allen Road, Suite 219, Lexington, Kentucky 40504.

4.09 Defendant DENTAL SERVICES OF OHIO, DANIEL JOLLY, DDS, INC., individually and as Successor-in-Interest to ImmediaDent of Ohio, P.C. is a professional corporation registered in Ohio, incorporated by Daniel Jolly, DDS. The professional association or partner of this Defendant is Samson Dental Practice Management. Defendant may be served with process upon its registered agent: National Corporate Research, LTD., 4568 Mayfield Road, Suite 204, Cleveland, Ohio 44121.

4.10 Defendant FERRELL CAPITAL, INC. is a Kansas corporation with its principal place of business in Leawood, Kansas. This Defendant is the owner of Samson Dental Practice Management, LLC. Defendant may be served with process upon its registered agent: The Corporation Company, Inc., 112 S.W. 7th Street, Suite 3C, Topeka, Kansas 66603.

4.11 Defendant FERRELLGAS PARTNERS, L.P. is a Delaware corporation with its principal place of business in Liberty, Missouri. Upon information and belief, the Chairman of this Defendant is James E. Ferrell, whose revocable trust owns Defendant Ferrell Capital, Inc. Defendant may be served with process upon its registered agent: The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington Delaware 19801.

4.12 In the event any parties are misnamed or not included herein, such was a “misnomer” and/or such parties are/were “alter egos” of parties named herein. In the event the true parties are misidentified, Relator asserts reliance upon the doctrine of misidentification. Relator hereby brings suit against all partnerships, unincorporated associations, individuals, entities, and private corporations doing business under the assumed names of or including the word ImmediaDent or ImmediaDent Urgent Dental Care, and various iterations of those business names.

4.13 Hereinafter, the defendants will be collectively referred to as “**ImmediaDent**” unless otherwise noted.

V.
BACKGROUND AND FACTS

A. Dr. Abdul-Majid discovers Defendants were using their patients to commit Medicaid fraud and gets fired for blowing the whistle

5.01 Dr. Abdul-Majid is a dentist licensed to practice in the State of Indiana and Commonwealth of Kentucky. Shortly after earning his Doctor of Dental Medicine degree from the University of Kentucky in 2011, he began working at ImmediaDent in July 2011. ImmediaDent owns and operates over 20 dental urgent care clinics in Kentucky, Indiana, and Ohio; during his employment, Dr. Abdul-Majid worked at various offices in both Indiana and Kentucky. Dr. Abdul-Majid was interviewed by ImmediaDent Regional Director Kathy Lamont and subsequently hired as a PRN (as-needed) dentist. Dr. Abdul-Majid was told at the interview that the ImmediaDent chain was looking for a full-time dentist; if he were to be hired on a full-time basis, he would not be permitted to work outside the company. At the time he was hired, Dr. Abdul-Majid believed he was hired as a full-time dentist (even turning down another private practice opportunity), although he later learned that he was hired only on a PRN basis.¹ The vast majority of his work was at the clinics in New Albany and Clarksville, Indiana, and in Louisville, Kentucky.

5.02 While Dr. Abdul-Majid was working at ImmediaDent, he witnessed firsthand ImmediaDent's business model, which placed corporate profits through excessive billing and treatment over the best interests of the patients. In particular, the ImmediaDent business model thrived on: (1) "upcoding," or billing Medicaid for services that were not rendered, i.e., by applying for a higher reimbursement rate than appropriate for the work that was actually

¹ ImmediaDent's contract with its PRN dentists contained a clause prohibiting work at other urgent care clinics within a 12-mile radius from a dentist's primary office. Dr. Abdul-Majid began working at Urgent Dental Care on November 11, 2011; this side work was outside the ImmediaDent's geographic restriction.

performed; (2) unnecessary or excessive treatment to maximize Medicaid billing, such as “deep cleanings” on patients on whom such treatments were not necessary; (3) inappropriately empowering non-dental office staff to generate billable work related to dentistry, such as ordering comprehensive x-rays without initially seeking a dentist’s approval; and (4) constant production pressure on dentists to maximize patient billing, even at the expense of patient care. Relator can provide specific examples of each of these practices below.

5.03 Soon after his orientation, Dr. Abdul-Majid was assigned to “shadow” other ImmediaDent dentists for six days. Not surprisingly, the dentists from which he was encouraged to learn were: (1) Dr. G■■■■ H■■■■, at the time the highest producer at ImmediaDent; (2) Dr. R■■■■ C■■■■, a recent dental graduate who was nevertheless featured in ImmediaDent training videos for her billing prowess; and (3) Dr. M■■■■ B■■■■, who was the highest producer at the four clinics in the Lexington and Louisville area.

5.04 Because of the severe pressure placed upon dentists to increase production, dentists and non-dental staff that placed values such as integrity, conservative treatment plans, and patient health above corporate profits were constantly operating in an atmosphere of fear. It was not uncommon for ImmediaDent to fire dentists and nondental staff for failure to meet production targets; this led ImmediaDent to have an unusually high rate of turnover among its providers.²

5.05 Even as a new dental graduate, Dr. Abdul-Majid became suspicious of the ImmediaDent business model and refused to participate in Defendants’ fraud. After seeing fraudulent records and billing practices by other dentists, including Dr. S■■■■ (described in Section VI., *infra*), Dr. Abdul-Majid sent an email to Ms. Lamont, ImmediaDent’s Regional Director, Ms. Allison

² Upon information and belief, each ImmediaDent office employed two full-time dentists; this meant ImmediaDent employed approximately 40 full-time dentists and another 10 PRN dentists at any time.

Cleveland, the clinic's office manager, and Dr. Dean Stratman, the Defendants' Chief Dental Officer. He never received a response from Ms. Lamont regarding his specific complaints.

5.06 Dr. Abdul-Majid was harassed by ImmediaDent's nondental staff, particularly Regional Director Lamont, for refusing to "blackball" other dental and nondental staff who were labeled as "not team players" for their refusal, like Dr. Abdul-Majid, to participate in Defendants' scheme. About a month before he was terminated, Relator was ostracized and cut out of production reports, with other doctors told that he was "trouble." Dr. Abdul-Majid ultimately was fired for his refusal to participate in Defendants' fraud. While his employer originally claimed his termination was due to an alleged breach of contract (relating to a non-compete zone around specific ImmediaDent locations where Dr. Abdul-Majid worked), Dr. Abdul-Majid's termination letter specifically stated it was "without cause."

5.07 This action is not based upon allegations or transactions that are the subject of a civil suit or administrative civil money penalty proceeding in which the Government is already a party. The allegations alleged in this action have not been publicly disclosed.³ Even assuming there has been a public disclosure in this case, Dr. Abdul-Majid is an original source of the information alleged. Prior to bringing this action, he voluntarily disclosed that information to the Government. Dr. Abdul-Majid has direct and independent knowledge on which the allegations are based. Alternatively, Dr. Abdul-Majid has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions and voluntarily provided that information before filing this action.

³ In May 2012, Relator wrote a letter of complaint regarding ImmediaDent's potential Medicaid fraud to the General Counsel of the Kentucky Board of Dentistry.

B. Background on the Affected Government Health Care Programs

1. The TRICARE Program

The United States of America created the TRICARE Management Activity (TRICARE), which is the health care program administered by the Department of Defense that serves active duty military service members, National Guard and Reserve members, retirees, their dependents, survivors and certain former spouses worldwide. *See* 10 U.S.C. §§1079, 1086; 32 C.F.R. Part 199; *see also* Dept. of Defense Directive 5136.12 (May 31, 2001). As a major component of the Military Health System, TRICARE brings together the health care resources of the uniformed services and supplements them with networks of civilian health care professionals, institutions, pharmacies, and suppliers to provide access to health care services while maintaining the capability to support military operations. TRICARE serves approximately 9.7 million beneficiaries worldwide. In fiscal year 2012, the cost of TRICARE and the military health care system is over \$54 billion, almost one-tenth of the Department of Defense's budget.⁴ As discussed below, Relator alleges ImmediaDent submitted bills and claims to DeltaDental, which administers TRICARE's dental program for military reserve servicemembers, retirees, and their dependents.

2. The Indiana Medicaid Program – Background

5.08 The Office of Medicaid Policy and Planning (OMPP), of the Indiana Family & Social Services Administration, is responsible for the Indiana Medicaid program. The Indiana Medicaid program was implemented under the provisions of Title XIX of the FEDERAL SOCIAL

⁴ *See* TRICARE, *Evaluation of the TRICARE Program: Access, Cost, and Quality, Fiscal Year 2012 Report to Congress* at 17 – 18 (Feb. 28, 2012) available at <<http://www.tricare.mil/hpae/docs/2012eval/index.html>> (last visited Feb. 5, 2013).

SECURITY ACT and Title 405 of the Indiana Administrative Code. Indiana and the federal government share the cost of Medicaid; e.g., the Federal Medical Assistance Percentage (FMAP) contribution for Indiana was 67% to 77% for FY2012.

5.09 The administration of the program is accomplished through contracts and agreements with medical providers, claims administrators (claims reimbursement processors), contractors, enrollment brokers, various managed care organizations, and state agencies. Medicaid providers choose to be enrolled into the Medicaid program through an application process. This process includes completing legally binding forms and meeting specific eligibility requirements. In general, their professional licensing authority must authorize all licensed professionals, such as dentists. Rules regarding the applicable licensure and certification requirements for dental hygienists and dentists are found in INDIANA CODE 25-13-1-1, *et seq.*, (The Dental Hygienist Act of Indiana) and INDIANA CODE 25-14-1-1, *et seq.* (governing the practice of dentistry). Indiana Medicaid providers are reimbursed on a fee-for-service basis. The schedule of fees is published in the Indiana Medicaid Provider Procedures Manual, published on an annual basis.⁵

3. The Kentucky Medicaid Program – Background

5.10 The Department of Medicaid Services, of the Kentucky Cabinet for Health and Family Services, is the single state agency responsible for administering the Kentucky Medicaid program. The Kentucky Medicaid program was implemented under the provisions of Title XIX of the FEDERAL SOCIAL SECURITY ACT and Kentucky Revised Statute 194.030. Kentucky and the federal government share the cost of Medicaid. For reference, the Federal Medical Assistance Percentage (FMAP) contribution for Kentucky was 71% to 80% for FY2012.

⁵ The Indiana Health Coverage Programs Provider Manual is available on the internet at <<http://provider.indianamedicaid.com/general-provider-services/manuals.aspx>> (last visited Dec. 11, 2012).

5.11 The administration of the program is accomplished through contracts and agreements with medical providers, claims administrators (claims reimbursement processors), contractors, enrollment brokers, various managed care organizations, and state agencies. Medicaid providers choose to be enrolled into the Medicaid program through an application process. This process includes completing legally binding forms and meeting specific eligibility requirements. In general, their professional licensing authority must authorize all licensed professionals, such as dentists. Rules regarding the applicable licensure and certification requirements for dental hygienists and dentists are found in Title 201, Chapter 8 of the Kentucky Administrative Regulations (KAR). *See* 201 KY. ADMIN. REGS. 8:562 (licensure of dental hygienists); 201 KY. ADMIN. REGS. 8:532, 8:540 (licensure of dentists and governance of dental practices). Kentucky Medicaid providers are reimbursed on a fee-for-service basis. The schedule of fees is published in the Kentucky Medicaid Provider Manual.⁶

4. The Ohio Medicaid Program – Background

5.12 The Ohio Department of Job and Family Services is the single state agency responsible administering the Ohio Medicaid program. The Ohio Medicaid program was implemented under the provisions of Title XIX of the FEDERAL SOCIAL SECURITY ACT and Chapter 5111 of the Ohio Revised Code. The State of Ohio and the federal government share the cost of Medicaid. Ohio and the federal government share the cost of Medicaid. For reference, the Federal Medical Assistance Percentage (FMAP) contribution for Ohio was 64% to 75% for FY2012.

5.13 The administration of the program is accomplished through contracts and agreements with medical providers, claims administrators (claims reimbursement processors), contractors,

⁶ The Kentucky Medicaid Provider Manual is available at < <http://www.chfs.ky.gov/dms/incorporated.htm>> (last visited, Dec. 10, 2012). The portions specific to the Medicaid Dental program are found in 907 KY. ADMIN. REGS. 1:026 < <http://www.lrc.state.ky.us/kar/907/001/026.htm>> (last visited, Dec. 10, 2012). Similarly, the dental fee schedule, as of April 2009, is available at < <http://www.chfs.ky.gov/dms/fee.htm>> (last visited, Dec. 10, 2012), or 907 KY. ADMIN. REGS. 1:626.

enrollment brokers, various managed care organizations, and state agencies. Medicaid providers choose to be enrolled into the Medicaid program through an application process. This process includes completing legally binding forms and meeting specific eligibility requirements. In general, their professional licensing authority must authorize all licensed professionals, such as dentists. Rules regarding the applicable licensure and certification requirements for dental hygienists and dentists are found in OHIO REVISED CODE Chapter 4715-9 (governing dental hygienists) and Chapters 4715-5, *et seq.* (governing the practice of dentistry). Ohio Medicaid providers are reimbursed on a fee-for-service basis. The schedule of fees is published in the Ohio Medicaid Provider Manual; the Dental Services Handbook “e-Manual” contains the relevant administrative regulations and fee schedules.⁷

C. Samson Dental developed a business model to exploit the Medicaid Dental programs

5.14 Defendant ImmediaDent was founded by Dr. Dean Stratman in 2003. In 2007, James Ferrell formed Samson Dental Practice Management, which owns or operates the ImmediaDent clinics. Upon information and belief, Samson receives approximately \$60,000/month from each ImmediaDent clinic, ostensibly for dental management services.

5.15 According to Relator, ImmediaDent dentists were paid a base salary of \$700 per 12-hour day. If a dentist was able to reach a daily production goal of billing \$2,800 in dental procedures, he received 25% in compensation. Other internal documents obtained by Relator, however, show that ImmediaDent dentists were told their daily production goal was \$5,000 per day. Any bonus was paid based on production higher than the day’s production goal (e.g., 25% bonus for

⁷ The Ohio Medicaid Provider E-Manual is available at <<http://emanuals.odjfs.state.oh.us/emanuals> > (last visited, Dec. 11, 2012). Its Dental Services handbook is available at <[http://emanuals.odjfs.state.oh.us/emanuals/GetTocDescendants.do?nodeId=%23nodeid\(535\)&maxChildrenInLevel=100&version=8.0.0](http://emanuals.odjfs.state.oh.us/emanuals/GetTocDescendants.do?nodeId=%23nodeid(535)&maxChildrenInLevel=100&version=8.0.0)> (last visited, Dec. 11, 2012). *See also* Ohio Admin. Code Ch. 5101:3-5 (Dental Program). The Medicaid fee schedule is Exhibit DD to Ohio Administrative Code Ch. 5101:3-60 (also available at <http://jfs.ohio.gov/ohp/bhpp/FeeSchdRates.stm>) (last visited, Dec. 11, 2012).

every dollar billed over the production target). Defendants' business model was designed to generate thousands of dollars each month in Medicaid reimbursements. Relator estimates 40-45% of ImmediaDent's patients were on Medicaid.

5.16 Because of the financial pressure created by this model, each clinic sets a target quota for its dentists – every morning at 7:00 a.m., ImmediaDent dentists were emailed a production report with a spreadsheet with all the regions in which a dentist worked. The production report listed: (1) the amount billed the previous day; (2) the amount billed the previous year on the same day; (3) the goal for the current day; (4) the goal for the current month; (5) the progress report in relation to the monthly target; and (6) the percentage of the monthly goal achieved. The targets from these production reports were re-emphasized during “morning huddle” meetings, in which the office manager discussed production totals, production goals, and what could be done to increase production. All staff was required to sign off on this sheet every morning. Similarly, each day's production goal was posted in the dental office's break room.

5.17 If a dentist failed to meet a production goal, he would receive an email or phone call from the corporate office. In Relator's region, it was typically Ms. Lamont who handled these communications with dentists. Dr. Abdul-Majid shared the frustrations of other ImmediaDent dentists, most of whom learned that “the patient didn't need treatment” was an unsatisfactory explanation for low production numbers. In fact, dentists were reminded there were “no excuses” for not meeting production goals.

5.18 All told, Defendants' corporate masters operated, controlled, set policies, and orchestrated the business affairs of their subsidiaries and employees in such a way to maximize revenue through the use of providing excessive or unnecessary care to beneficiaries or submitting false or fraudulent bills to the various TRICARE or Medicaid programs. There was

no question the nondental personnel were setting policy and giving the “marching orders” of the ImmediaDent business model, even to the point of controlling and directing dental personnel and interfering or influencing treatment decisions. Moreover, according to Dr. Abdul-Majid, it was not uncommon for the dentists who nominally owned or controlled an individual ImmediaDent office to be absent, thereby ceding decision-making control to nondental administrative personnel such as Regional Director Lamont.⁸

D. Restrictions on the Corporate Practice of Dentistry

5.19 The corporate control of dental practices is a growing nationwide concern, both in terms of substandard patient care and public policy. The facts alleged by Relator in this case, highlighting Defendants’ fraudulent scheme of providing patients unnecessary or excessive services or treatment and submitting bills for these services, including for services never even rendered, highlight the dangers of corporate dental practice to the TRICARE and Medicaid systems. Each of the states in which ImmediaDent operated either prohibit or disfavor the corporate control of dentistry.

5.20 Indiana law prohibits the corporate practice of dentistry to “to insulate dental practitioners from obtrusive influences so as to preserve the traditional ethical precepts of the profession.” *Orthodontic Affiliates, P.C., v. OrthAlliance, Inc.*, 210 F.Supp.2d 1054, 1059 (N.D. Ind. 2002). Specifically, a person (or entity) violates the prohibition against unlicensed practice of dentistry if he (or it):

- (2) directs and controls the treatment of patients within a place where dental services are performed...
- (10) is the employer of a dentist who is hired to provide dental services.

⁸ For example, Dr. Abdul-Majid never met saw Dr. Thomas Frank, the dentist who supposedly hired or fired him.

- (11) directs or controls the use of dental equipment or dental material while the equipment or material is being used to provide dental services...
- (12) directs, controls, or interferes with a dentist's clinical judgment.
- (13) exercises direction or control over a dentist through a written contract concerning the following areas of dental practice:
 - (A) The selection of a patient's course of treatment.
 - (B) Referrals of patients, except for requiring referrals to be within a specified provider network, subject to the exceptions under IND. CODE 27-13-36-5...
 - (E) The clinical content of advertising.
 - (F) Final decisions relating to the employment of dental office personnel.

See IND. CODE § 25-14-1-23; see also *id.* § 25-14-1-1 (licensing requirement); *State ex rel. Indiana State Bd. of Dental Exam'rs v. Boston Sys. Dentists*, 19 N.E.2d 949, 950 (Ind. 1939) (company's employment of dentists, ownership of equipment and payment of operating expenses constituted illegal corporate practice of dentistry); 828 IND. ADMIN. CODE 1-1-15(8)-(9) (defining "dental incompetence or improper conduct of a dentist" to include "practicing or offering to practice beyond the scope permitted by law" and "permitting or delegating the performance of a procedure to one not qualified by education, training, or licensure to undertake [it]").

5.21 Similarly, Kentucky law disallows the corporate practice of professional trades. See *Am. Ins. Ass'n v. Ky. Bar Ass'n*, 917 S.W.2d 568, 570 (Ky. 1996) (referring to "long-standing Kentucky case law which proscribes a corporation from being licensed to practice a learned profession"); see KY. REV. STAT. ANN. § 313.080(1)(b) ("No person shall... [o]perate, offer to operate, or represent or advertise the operation of a dental practice of any type unless licensed by or employing individuals licensed by the board" (emphasis added)); KY. REV. STAT. ANN. § 313.010 (defining practice of dentistry and dental hygiene).

5.22 Finally, Ohio law allows dentists to form a professional association or corporation through which they can practice dentistry. *See* OHIO REV. CODE ANN. § 1701.03, § 1785. Notably, while corporations may employ dentists, the entities cannot themselves practice dentistry. *See Natl. Union Fire Ins. Co. of Pittsburgh, PA v. Wuerth*, 913 N.E.2d 939, 943 (Ohio 2009)(holding that the corporation may still be held liable for the acts of its agents or employees based on vicarious liability or the doctrine of *respondeat superior*).

5.23 Accordingly, while a state's law may permit a corporation to employ dentists, Relator alleges Defendants did much more than merely employ dentists; Defendant's nondental personnel, who were not licensed in dentistry or dental hygiene, exerted undue influence on ImmediaDent's dental professionals by controlling and dictating diagnostic and treatment protocols for ImmediaDent patients. Defendants may contend that the dentists retained their own independence and that the nondental personnel only provided management and administrative services, but the evidence will show Defendant's unlicensed administrators created and implemented policies and procedures that usurped control of ImmediaDent's dental practices from its licensed professionals.

E. The cost of the Medicaid program is skyrocketing and fraud is rampant

5.24 The cost of health care, including the costs paid through the Medicaid program, is one of the largest public policy challenges at the state and federal level. The PATIENT PROTECTION AND AFFORDABLE CARE ACT (PPACA) will cost states conservatively at least \$118 billion through 2023, according to a congressional report.⁹ Medicaid currently covers nearly 54 million Americans, but CMS's chief actuary has estimated that expansions included in the PPACA could

⁹ *See* Jt. Cong. Rpt., U.S. Sen. Fin. Comm., *Medicaid Expansion in the New Health Law: Costs to the States* (2010) (on file with the undersigned counsel).

increase the nation's Medicaid rosters by at least 20 million beginning in 2014.

5.25 Experts estimate Medicaid fraud comprises between 10 to 20 percent of the program's total cost. Such an endemic misuse of taxpayer dollars is incongruous with each state's duties to its citizens. Fraud schemes like this are causing a fiscal crisis for every state – including the states which are parties to this lawsuit – and their respective Medicaid programs. Of additional concern, Defendants' fraud has caused harm to thousands of patients because of the unnecessary, redundant, inefficient, and substandard services they received. Medicaid fraud is a national problem that is becoming the largest line item in states' budgets.¹⁰

F. Defendants targeted and exploited a vulnerable patient population

5.26 Health care fraud most often targets vulnerable patient populations, such the elderly, the indigent, immigrants, and children. The Medicaid population is an especially vulnerable population and easily exploited because this group's only source of health care is usually Medicaid. The Medicaid population also has a higher percentage of clients whose primary language is other than English. ImmediaDent targeted this population.

5.27 A dentist must disclose the risks or hazards that could have influenced a reasonable person in making a decision to give or withhold consent. However, Dr. Abdul-Majid noticed

¹⁰ See, e.g., Joint Hearing – Is Government Adequately Protecting Taxpayers from Medicaid Fraud, April 25, 2012. Video and transcripts available at < <http://oversight.house.gov/hearing/joint-hearing-is-government-adequately-protecting-taxpayers-from-medicaid-fraud/> > (last visited June 6, 2012); see also *Staff Report, Uncovering Waste, Fraud, and Abuse in the Medicaid Program*, stating:

More than 50 million Americans are currently enrolled in Medicaid, a joint federal-state health care program for poor and disabled Americans that is projected to cost American taxpayers \$457 billion this year. To put the size of the program in context, annual Medicaid spending now exceeds Wal-Mart's worldwide annual revenue and annual Medicaid spending is 40 percent larger than Greece's entire economy. Because of its enormous size and complexity, Medicaid is susceptible to substantial amounts of waste, fraud, abuse and mismanagement. No one knows how much of Medicaid's budget consists of waste, fraud, and abuse, but it may exceed \$100 billion a year.

U.S. House of Rep., 112th Congress, Comm. on Oversight & Government Reform (April 25, 2012).

that ImmediaDent dentists never discussed costs or treatment options with its patients, at least not with those patients whose services were being paid by Medicaid.

VI.
DEFENDANTS' FALSE CLAIMS AND UNLAWFUL ACTS

A. Rules of the Indiana, Kentucky, and Ohio Medicaid programs

Rules of the Indiana Medicaid Program

6.01 The policies and procedures of the Indiana Medicaid program are governed by the Indiana Health Coverage Program (IHCP) Providers Manual as well as Title 405 of the Indiana Administrative Code (IAC). Rule 14 is specifically covers dental services. For adult (21 years of age and over) Medicaid patients, a provider must obtain prior authorization for dental work other than: (1) Diagnostic and preventative services; (2) Direct restorations; (3) Treatment of lesions; (4) periodontal services for transplant patients, pregnant women, and diabetic patients; (5) extractions, and (6) emergency or trauma dental care. 405 IAC 5-14-1.¹¹

6.02 Any provider who accepts payment submitted under the Medicaid program is deemed to have agreed to comply with the statutes and regulations governing the Medicaid program. *See* IND. CODE 12-15-21-1. The State is authorized to recover monies paid to a Medicaid provider as a result of overpayment, including those resulting from a lack of documentation, inaccurate description of services provided or use of procedure codes, duplicate billing, and *claims for services or materials deemed to be not medically reasonable or necessary*. 405 IND. ADMIN. CODE 1-1-5 (emphasis added). When submitting claims for reimbursement, Medicaid dental providers must use the appropriate Current Dental Terminology (CDT) codes published by the

¹¹ This provision was subject to a \$1,000 annual cap for Medicaid dental services for adult patients, but is subject to pending litigation. At the time this petition was filed, implementation of the cap was preliminarily enjoined by the U.S. District Court for the Northern District of Indiana.

American Dental Association. *See* 405 IND. ADMIN. CODE 5-1-5; *see also* IHCP Provider Manual, at Ch. 8, §5 (Dental Claim Form Billing Instructions).

6.03 Indiana law provides rules regarding the licensure and certification of dentists and dental hygienists, and prohibits the practice of dentistry or dental hygiene by providers who are not qualified, licensed, or certified. Specific to Medicaid, every participating provider must ensure that he is licensed, registered, or certified by the appropriate professional regulatory association. *See* IHCP Provider Manual, Ch. 4, § 4-7. If a provider violates a Medicaid statute or related rule, the State of Indiana may impose one or more of these sanctions: (1) denial of payment for Medicaid services for a specified time; (2) rejection of a prospective provider's application for participation in the Medicaid program; (3) termination of a provider's participation in the Medicaid program; (4) a civil penalty in an amount not to exceed 3 times the amount paid to the provider in excess of the legally due amount, including interest on any judgment for overpayment. *See* IND. CODE 12-15-22-1.

Rules of the Kentucky Medicaid Program:

6.04 The policies and procedures of the Kentucky Medicaid Program are governed by the Commonwealth of Kentucky Medicaid Provider Billing Instructions for Dental Services, Chapter 205 of the Kentucky Revised Statutes ("Medical Assistance Act"), and Title 907, Chapter 1 of the Kentucky Administrative Regulations. 907 KY. ADMIN. REGS. 1:026 specifically covers dental services. The Medicaid Dental program in Kentucky covers many routine preventive and restorative services for Medicaid-eligible children under 21, as well as some dental care for Medicaid-eligible adults. Any provider who accepts payment submitted under the Medicaid program is deemed to have agreed to comply with the statutes and regulations governing the Medicaid program. *See* 907 KY. ADMIN. REGS. 1:026, §2.

6.05 The Commonwealth is authorized to recover monies paid to a Medicaid provider as a result of overpayment, including those resulting from a lack of documentation, inaccurate description of services provided or use of procedure codes, duplicate billing, and claims for services or materials deemed to be “mutually exclusive,” or not medically reasonable or necessary. *See id.*; 907 KY. ADMIN. REGS. 3:130 (defining medical necessity); 907 KY. ADMIN. REGS. 1:672 (outlining requirements for provider participation). When submitting reimbursement claims, Medicaid dental providers must use the appropriate Current Dental Terminology (CDT) codes published by the American Dental Association. *See* 907 KY. ADMIN. REGS. 1:626 (identifying reimbursement rates).

6.06 Kentucky law provides rules regarding the licensure and certification of dentists and dental hygienists, and prohibits the practice of dentistry or dental hygiene by providers who are not qualified, licensed, or certified. Specific to Medicaid, every participating provider must ensure that he is licensed, registered, or certified by the appropriate professional regulatory association. 907 KY. ADMIN. REGS. 1:026; 907 KY. ADMIN. REGS. 1:671.¹² If a provider violates

¹² 907 KY. ADMIN. REGS. 1:671, §1(40) defines “unacceptable practice” by Kentucky Medicaid providers to include:

- (a) Knowingly submitting, or causing the submission of false claims, or inducing, or seeking to induce, a person to submit false claims;
- (b) Knowingly making, or causing to be made, or inducing, or seeking to induce, a false, fictitious or fraudulent statement or misrepresentation of material fact in claiming a Medicaid payment, or for use in determining the right to payment;
- (c) Having knowledge of an event that affects the right of a provider to receive payment and concealing or failing to disclose the event or other material omission with the intention that a payment be made or the payment is made in a greater amount than otherwise owed;
- (f) Failing to maintain or to make available, for purposes of audit or investigation, administrative and medical records necessary to fully disclose the medical necessity for the nature and extent of the medical care, services and supplies furnished, or to comply with other requirements established in 907 KY. ADMIN. REGS. 1:673, Section 2;
- (g) Knowingly submitting a claim or accepting payment for medical care, services, or supplies furnished by a provider who has been terminated or excluded from the program;
- (h) Seeking or accepting additional payments, for example, gifts, money, donations, or other consideration, in addition to the amount paid or payable under the Medicaid Program for covered medical care, services, or supplies for which a claim is made;
- (j) Engaging in conspiracy, complicity, or criminal syndication;

a Medicaid statute or related rule, the Commonwealth may impose one or more of these sanctions: (1) denial of payment for Medicaid services for a specified time; (2) rejection of a prospective provider's application for participation in the Medicaid program; (3) termination of a provider's participation in the Medicaid program; (4) a civil penalty in an amount not to exceed 3 times the amount paid to the provider in excess of the legally due amount, including interest on any judgment for overpayment; (5) restitution of any Medicaid overpayments; (6) a civil penalty of \$500 for each false or fraudulent claim; and (7) payment of legal fees and costs associated with investigation and enforcement of civil payments. *See* 907 KY. ADMIN. REGS. 1:671; KY. REV. STAT. ANN. 205.8467.

Rules of the Ohio Medicaid Program:

6.07 The Ohio Medicaid dental program is governed by Chapter 5101:3-5 of the Ohio Administrative Code, as well as the manuals and regulations promulgated by the Ohio Department of Job and Family Services. Ohio's Medicaid dental program provides eligible participants regular dental examinations and cleanings, fillings and extractions, root canals (with certain restrictions for adults), and – in limited circumstances requiring prior authorization – braces or dentures. *See* OHIO ADMIN. CODE Ch. 5101:3-5-02 to 5101:3-5-11. A Medicaid provider in Ohio must “render, authorize, or prescribe” medically necessary services within the scope of her and based on her professional judgment. *See* OHIO ADMIN. CODE Ch. 5101:3-1-01 (incorporating the concepts of “generally accepted standards of medical practice,” appropriateness to the injury or illness, and that the service be “the lowest cost alternative that

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- (k) Furnishing medical care, services, or supplies that fail to meet professionally recognized standards ...for health care or which are beyond the scope of the provider's professional qualifications or licensure;
 - (p) Unbundling as defined under subsection (40) of this section; or
 - (q) An act committed by a nonprovider on behalf of a provider which, if committed by a provider, would result in the termination of the provider's enrollment in the program.

effectively addresses and treats the medical problem”). In addition, each provider must execute and agree to be bound by the Ohio Medicaid provider agreement. OHIO ADMIN. CODE Ch. 5101:3-1-17.2.

6.08 To be eligible for reimbursement, Ohio law requires eligible providers to comply with Medicaid program rules and be within the scope of the provider’s practice, as defined by federal, state, and local laws and regulations. OHIO ADMIN. CODE Ch. 5101:3-1-02; *see also* OHIO REV. CODE ANN. 5111.02. The reimbursement fee schedule for Medicaid services is enumerated in Appendix DD to Chapter 5101:3-1-60 of the Ohio Administrative Code. The applicable regulations specifically state that dental providers must possess the relevant licensures (i.e., to practice dentistry or dental hygiene) to be eligible to participate in the Medicaid program. *See* OHIO ADMIN. CODE Ch. 5101:3-5-01; *see also* OHIO ADMIN. CODE Ch. 4715-1-5 (enumerating the standards for practice, eligibility requirements, and limitations for dentists), Ch. 4715-1-9 (dental hygienists).

6.09 Specifically, Medicaid providers in Ohio are barred from engaging in waste, fraud, or abuse, which includes conduct such as: (1) engaging in pattern of duplicate billing to obtain reimbursement to which a provider is not entitled; (2) misrepresentation as to the quantity or type of service provided, or the identity of the recipient or date provided; (3) billing for services not provided; (4) billing, certifying, ordering services which are not medically necessary; or billing for services outside the scope of one’s practice. OHIO ADMIN. CODE Ch. 5101:1-29. Dental providers participating in the Medicaid program who submit false claims or engage in fraudulent conduct with regard to their provision of Medicaid-funded services are subject to both civil and criminal liability. *See, e.g.*, OHIO REV. CODE ANN. §2913.40. The penalties for obtaining – or attempting to obtain – Medicaid payments to which a provider is not entitled include: (1) interest

payments on the excess payments; (2) a penalty of up to three times the excess payments; (3) a penalty of \$5,000 to \$10,000 for each false or deceptive claim; and (4) reasonable expenses incurred by the State in enforcement. OHIO REV. CODE ANN. §5111.03.

B. Defendants' Business Model Was Premised on Fraud

6.10 In violation of the applicable state and federal laws, Defendant submitted thousands of false or fraudulent claims to TRICARE or Medicaid for services that were based on: (1) "upcoding" i.e., applying for reimbursements for services not rendered, or for lesser services than billed; or (2) treatment that was medically unnecessary, excessive, or which failed to meet the applicable standard of care. The following paragraphs set out in what ways ImmediaDent committed unlawful acts.

Upcoding / Billing for Services Not Rendered

6.11 Relator alleges ImmediaDent billed for services never rendered to the Medicaid patient or engaged in "upcoding," i.e., billing for a more expensive treatment than was actually rendered.

Examples of upcoding or billing for services not rendered include the following:

- Dr. B■■■■, an ImmediaDent dentist in the Louisville, Kentucky office, performed a simple extraction on a patient's tooth. However, the service was billed as a "surgical extraction," which carries a higher reimbursement rate, on the basis that the surgical kit was out (even though it was not used);
- While Relator was shadowing Dr. B■■■■ in August or September 2011, they performed a two-surface filling on a patient in the Louisville office. He later learned from Dr. B■■■■ that she had "upcoded" the treatment to a five-surface filling even if this was the incorrect code. Dr. Abdul-Majid surmised that the upcoding was due to the fact that all staff received a \$50 bonus if the office reached \$8,000 in production in a 12-hour day; the upcoded treatment (from a five-surface from a two-surface filling) allowed the office to reach that production target.

In addition to these specific examples for which Relator has personal knowledge, Relator alleges that these types of events occurred on a regular basis, based on his conversations with other dentists and staff, as well as his observations.

Medically Unnecessary or Excessive Treatment

6.12 Relator alleges ImmediaDent routinely billed TRICARE or Medicaid for medically unnecessary or excessive treatment. In fact, Defendants' business model required dentists to "overtreat" to generate the revenue required to support the individual clinics' payments to the defendants. Moreover, the incentive structure for salary and bonuses for dentists was based on production, with new or young dentists such as Dr. Abdul-Majid instructed to "shadow" dentists who could show them how to generate high billing totals per patient. The following are examples of excessive or unnecessary treatment Dr. Abdul-Majid found at ImmediaDent.

Deep cleanings

6.13 Dr. Abdul-Majid recalled treating a patient for a 3-month recall for a deep cleaning based on a diagnosis of periodontal disease by Dr. S [REDACTED], another ImmediaDent dentist. The two criteria for periodontal disease are: (1) deep pockets, or (2) bone loss. This patient did not present with bone loss. Dr. Abdul-Majid found that the patient's Periodontal Screening and Reporting (PSR) incorrectly stated he had 5-6mm pocket depths (when the first page of the PSR indicated the evaluation showed healthy pocket depths of < 3mm). Moreover, the patient's x-rays indicated the patient's gums were healthy. While Medicaid paid for the initial deep cleaning, it did not cover the cost of the recall appointment after there was a diagnosis of periodontal disease.¹³ Growing frustrated with the disparity between the patient's (healthy) gums and the false diagnosis used to bill Medicaid, Dr. Abdul-Majid asked staff regarding the inconsistency. He was informed this was a common practice for Dr. S [REDACTED]; worse yet, Dr. Abdul-Majid later discovered numerous other ImmediaDent patients who were subjected to deep

¹³ According to Dr. Abdul-Majid, a regular cleaning would cost around \$100 and should be performed every six months. In contrast, a full mouth deep cleaning would cost at least \$1,000; the follow-up maintenance cleanings are every three months and cost approximately \$200.

cleanings based on a false diagnosis of periodontal disease to justify the Medicaid reimbursement.¹⁴

6.14 In fact, Dr. C [REDACTED] – who was lauded by ImmediaDent for her high production totals – was known to complete deep cleanings in approximately 10 minutes, while Relator estimated that a thorough deep cleaning should take closer to 40 to 60 minutes. In fact, the process of numbing the mouth – which requires approximately eight injections – could take 10 minutes by itself. This deviation from the standard of care was enough even for ImmediaDent to notice, with Ms. Lamont later discussing Dr. C [REDACTED]'s work with more senior dentists. Other dentists observed and expressed similar concerns with Dr. C [REDACTED]'s work, including surgical extractions, which demonstrated the types of outcomes to be expected when production goals were stressed over quality patient care.

“Straight Elevator” Use

6.15 Another example of an excessive or unnecessary treatment or billing procedure was the use of a “straight elevator,” used to manipulate a tooth during an extraction, when it was not required. According to Relator, Dr. S [REDACTED] widely claimed his use of this device during extractions allowed him to charge (and therefore, bill Medicaid) for a surgical extraction when even a simple extraction would have sufficed. In fact, Relator noticed that some of Defendants’ dentists in the Indianapolis area billed *all* extractions as surgical – rather than simple – extractions; this practice struck him as unusual given that the majority of extractions he performed were simple and did not require bone removal, which is a prerequisite for a surgical extraction.

¹⁴ Dr. Abdul-Majid was not the only ImmediaDent dentist who discovered this practice; he recalls discussing this matter with another dentist, Dr. Stacey Graden, who was also troubled when she found numerous charts of patients diagnosed with periodontal disease and subjected to deep cleanings when such treatment was not warranted.

C. Defendants submitted false claims by having unqualified providers perform dental services for which they were not legally allowed to perform because they lacked the requisite qualifications, certification, or credentials

6.16 Another troubling – and fraudulent – aspect of Defendants’ business model that Dr. Abdul-Majid observed was Defendant’s practice of ordering comprehensive x-rays for every new patient. Despite the fact that these x-rays should be prescribed by dentists, they routinely were ordered by nondentists – in fact, it was part of ImmediaDent’s standard operating practice. This practice benefitted ImmediaDent in two ways: (1) the x-rays would be reimbursed by Medicaid, and (2) the x-rays themselves could generate additional treatment (and billing) opportunities for unsuspecting patients.¹⁵

6.17 In fact, ImmediaDent’s practice was for assistants to take patients immediately from the waiting room directly for x-rays, even before they were seen by dentists. Moreover, if a patient were not given a comprehensive oral exam (COE) and set of x-rays, the “offending” dentist was required to provide a written explanation and was questioned by an ImmediaDent corporate representative, thereby exerting influence or control over what should be a dentist’s decision as to diagnosis and treatment.

6.18 Furthermore, upon information and belief, Relator alleges ImmediaDent’s dental assistants administered dental treatment or services for which they were not licensed or certified, such as administration of nitrous oxide or sedation, prophylaxis (cleaning), and application of sealants.¹⁶ Relator has reason to believe most dental assistants employed at ImmediaDent did not possess the proper certifications to obtain reimbursement from Medicaid for these services.

6.19 To the extent these services, performed by unlicensed or uncertified individuals, were

¹⁵ Given that Defendants’ clinics serve patients who may need only emergency care, Relator alleges a more conservative, and fiscally responsible, approach would be one with a limited oral examination and spot-specific (rather than comprehensive) x-rays.

¹⁶ See IND. CODE 25-13-1-10.6 (permitting a licensed dental hygienist to administer local anesthetics, but not nitrous oxide or similar analgesics); IND. CODE 25-13-1-11 (listing the acts constituting the practice of dental hygiene).

billed by Defendants for Medicaid reimbursement, such application for reimbursement would be in violation of the individual states' Medicaid Waste, Abuse, or Fraud policies.

VII.

RELATOR'S FIRST CAUSE OF ACTION AGAINST DEFENDANTS
(Violations of the federal CIVIL FALSE CLAIMS ACT)

7.01 At various times in the past, and continuing through the present, Defendants knowingly or intentionally made false statements or misrepresentations to TRICARE and Medicaid Programs of Indiana, Kentucky, and Ohio regarding dental services they provided to TRICARE or Medicaid beneficiaries.

7.02 Defendants committed unlawful acts, in violation of the FALSE CLAIMS ACT, by:

- A. knowingly presenting, or causing to be presented, a false or fraudulent claims for payment or approval by Medicaid or TRICARE, or both. 31 U.S.C. §3729(a)(1)(A).
- B. knowingly making, using, or causing to be made or used, a false record or statement material to a false or fraudulent claim. 31 U.S.C. §3729(a)(1)(B).
- C. Conspiring to commit a violation of the FALSE CLAIMS ACT, 31 U.S.C. §§3729(a)(1). 31 U.S.C. §3729(a)(1)(C).
- D. knowingly making, using, or causing to be made or used, a false record or statement material to an obligation to pay or transmit money to the Government false or fraudulent claim. 31 U.S.C. §3729(a)(1)(G).

7.03 As a result, the United States paid these claims, resulting in damage to the United States, in an amount to be determined at trial. As Defendants' violations of the FALSE CLAIMS ACT are ongoing, the United States continues to be damaged by Defendants. This amount is to be trebled. 31 U.S.C. §3729(a). Defendants are also liable for a penalty of \$11,000.00 for each separate false or fraudulent claim. *Id.*

7.04 Relator is entitled to the statutory percentage of the amount received by the United States, reasonable expenses that have been incurred, attorney's fees, and costs. 31 U.S.C. §3730(d).

VIII.
RELATOR'S SECOND CAUSE OF ACTION AGAINST DEFENDANTS
(Violations of INDIANA FALSE CLAIMS ACT)

8.01 At various times in the past, and continuing through the present date, Defendants knowingly or intentionally made false statements or misrepresentations to the Indiana Medicaid Program regarding dental services they provided to Medicaid clients.

8.02 Defendants committed unlawful acts, in violation of the INDIANA FALSE CLAIMS ACT (IFCA), INDIANA CODE 5-11-5.5-1, *et seq.*, by knowingly or intentionally:

- (1) presenting a false claim to the state;
- (2) making or using a false record or statement to obtain payment or approval of a false claim from the state;
- (3) with an intent to defraud the state, delivering less money or property to the state than the amount recorded on the certificate or receipt received by the Defendant;
- (4) with an with intent to defraud the state, authorizing issuance of a receipt without knowing that the information on the receipt was true; or ...
- (6) making or using a false record or statement to avoid an obligation to pay or transmit property of the state.

IND. CODE 5-11-5.5-2. In the alternative, Defendants conspired, caused, or induced another person to perform any of the fraudulent acts enumerated above. *Id.*

8.03 The Defendants' unlawful acts have cost the State of Indiana many millions of dollars. Relator and the State are unable, pending full discovery, to determine the total extent of the overpayments caused by Defendants' fraudulent conduct.

8.04 Under INDIANA CODE 5-11-5.5-2, each Defendant is liable for:

- (1) a civil penalty of \$5,000 per violation;
- (2) damages not to exceed three (3) times the damages sustained by the State of Indiana;
- (3) reasonable costs incurred in prosecuting this action.

8.05 Similarly, pursuant to INDIANA CODE 12-15-23-8, each Defendant is liable for: (1) damages not to exceed three times the amount paid to Defendant in excess of the amount legally due; (2) a civil penalty of not more than \$500 for each instance of overpayment; and/or (3) reasonable costs incurred by the attorney general's office for investigation and enforcement. The court may impose any combination of these three remedies; for (2) and (3), *supra*, the evidence must show Defendant knew or had reason to know an item or service was not provided as claimed.

8.06 Relator pleads for these additional remedies:

- (1) disgorgement by Defendants of all interests, earnings, monies, benefits, salaries, and profits obtained by Defendants from their Medicaid fraud scheme; and
- (2) imposition of a constructive trust on all funds or property that can be demonstrated to be proceeds made by Defendants through reimbursements obtained by their unlawful acts, as equitable property of The State of Indiana and Relator.

8.07 Under INDIANA CODE 5-11-5.5-6(a)(1), Relator is entitled to receive 15 to 25 percent of the proceeds of this action.

8.08 Relator is also entitled to receive from Defendants an amount for reasonable expenses, reasonable attorney's fees, and costs that the court finds to have been necessarily incurred. IND.

CODE 5-11-5.5-6(a)(1).¹⁷

¹⁷ In addition, it is a criminal violation for a person to knowingly or intentionally: (1) file a Medicaid claim in violation of IND. CODE 12-15; (2) obtain payment from the Medicaid program by means of a false or misleading oral or written statement (or other fraudulent means); (3) acquire a provider number under the Medicaid program, except as authorized by law; (4) alter, with the intent to defraud, or falsify a provider's documents or records that are required to be kept under the Medicaid program; or (5) conceal information for the purpose of applying for or receiving unauthorized payments from the Medicaid program. IND. CODE 35-43-5-7.1. Such a violation is a class D felony or, if the fair market value of the offense is at least \$100,000, a class D felony. *Id.* A provider convicted of Medicaid fraud is barred from participation in the Medicaid program for ten years. IND. CODE 12-15-22-1.5. Additional sanctions are outlined in IND. CODE 12-15-22-8.

IX.
PLAINTIFF'S THIRD CAUSE OF ACTION AGAINST
DEFENDANT IMMEDIADENT OF INDIANA, P.C.
(Retaliation in violation of the federal FALSE CLAIMS ACT
and the INDIANA FALSE CLAIMS ACT)

9.01 Relator was employed by Defendant, ImmediaDent of Indiana, P.C., from approximately July 2011 to March 2012. Defendant retaliated against Dr. Abdul-Majid because he took efforts to stop fraud being committed by Defendants. These defendants requested he perform illegal acts, and assist with others committing similar illegal acts, as a condition of keeping his job. Some of these illegal acts included: submitting false claims to Medicaid; billing Medicaid for services not rendered; upcoding to more expensive services; performing unnecessary dental procedures on Medicaid beneficiaries; not reporting abuse committed by defendants and their employees; among other illegal acts. Dr. Abdul-Majid would have subjected himself to criminal sanctions had he agreed to perform the illegal acts requested by these defendants. Defendant terminated Dr. Abdul-Majid's employment because of his opposition to these fraudulent acts committed by Defendants.

9.02 Defendant's retaliation was in violation of Section 3730(h) of Title 31 of the UNITED STATES CODE. Specifically, Defendant retaliated against Dr. Abdul-Majid because he was attempting to stop ImmediaDent from committing health care fraud. Consequently, Dr. Abdul-Majid is entitled to the following relief: two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. 31 U.S.C. §3730(h).

9.03 Defendants' retaliation also violated INDIANA CODE 5-11-5.5-8. Defendants retaliated against Dr. Abdul-Majid because of lawful acts taken by him in furtherance of an action under the Indiana False Claims Act, INDIANA CODE 5-11-5.5-1, *et seq.* As a result of Defendants'

retaliatory acts, Dr. Abdul-Majid has suffered and continues to suffer harm and damages. Consequently, he is entitled to the following relief: (1) back pay – doubled and with interest; (2) compensatory damages (in amount to be determined by the jury); and (3) attorney’s fees, litigation expenses, and costs.

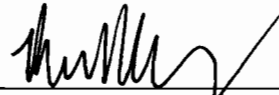
X.
DEMAND FOR JURY TRIAL

10.01 Dr. Abdul-Majid hereby requests trial by jury.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Dr. Abdul-Majid respectfully prays that upon a final hearing of the cause, judgment be entered against Defendants, jointly and severally, for damages in an amount within the jurisdictional limits of the Court, together with pre-judgment interest (from the date of injury through the date of judgment) at the maximum rate allowed by law; post-judgment interest at the legal rate; penalties; costs of court; and such other and further relief to which the United States of America, the State of Indiana, and Relator Dr. Abdul-Majid, may be entitled at law or in equity.

Attorneys for Relator/Plaintiff Dr. Abdul-Majid

By 

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CERTIFICATE OF SERVICE

I certify that Relator has served a copy of the complaint he possesses upon all applicable Government counsel by certified mail, return receipt requested on the 20th day of February, 2013.



Paul Kelley