

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

BALJOT SINGH BAINS,	§	
	§	
Plaintiff,	§	C.A. No. 11-2077
	§	
vs.	§	
	§	
DENTISTRY OF BROWNSVILLE, P.C. d/b/a KOOL SMILES AND DIAA ZORA	§	
	§	
Defendants.	§	(JURY TRIAL DEMANDED)
	§	

FIRST AMENDED COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT COURT:

COMES NOW Plaintiff, BALJOT SINGH BAINS (“DR. BAINS”) filing this First Amended Complaint complaining of Defendants, DENTISTRY OF BROWNSVILLE, P.C. d/b/a KOOL SMILES, (“KOOL SMILES”) and DIAA ZORA (“DR. ZORA”) (collectively “DEFENDANTS”) and in support thereof would show as follows:

**I.
JURISDICTION, PARTIES AND VENUE**

1. Jurisdiction against KOOL SMILES is founded on 31 U.S.C. § 3730(h), the False Claims Act and 28 U.S.C. § 1331, federal question.
2. Additionally, this Court has supplemental jurisdiction over PLAINTIFF, DR. BAINS’ state law causes of action pursuant to 28 U.S.C. § 1367.
3. Venue is correctly placed in the Southern District of Texas, Houston Division under 31 U.S.C. § 3730(h) because the discrimination and unlawful practices that are the subject of this action occurred within this jurisdiction.

4. Baljot Singh Bains is an individual who is now a resident and citizen of Harris County, Texas.

5. Defendant, DENTISTRY OF BROWNSVILLE, P.C. d/b/a KOOL SMILES is duly authorized to conduct business in Texas and may be served with process by and through its Registered Agent, CT Corporation, 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201-4234.

6. Upon information and belief, Defendant, DIAA ZORA is an individual who is a resident and citizen of Harris County, Texas who may be served personally with process.

7. At all relevant times to this action, KOOL SMILES operated the facility known as KOOL SMILES of Bryan, Texas under contracts with the U.S., TEXAS, and the state and federally funded Medicaid and Medicare programs.

8. Whenever in this First Amended Complaint it is alleged that Defendant KOOL SMILES did any act or thing, it is meant that Defendant KOOL SMILES, its officers, agents, servants, employees or representatives, did such act or thing, and that at the time such act or thing was done, it was done with the full authority or ratification of Defendant KOOL SMILES, or was done in the normal and routine course and scope of employment of Defendant KOOL SMILES, its officers, agents servants, employees or representatives; or was done in accordance with the policies and/or procedures of the Defendant KOOL SMILES.

II. FACTUAL BACKGROUND

9. About September 2010, DR. BAINS was offered and accepted employment by KOOL SMILES at KOOL SMILES' Bryan, Texas location. That employment included responsibilities that called for DR. BAINS' expertise in dentistry. To accept KOOL SMILES' offer of employment, DR. BAINS moved himself and his family from the state of California to the state of Texas.

10. DR. BAINS' work at KOOL SMILES' Bryan, Texas location brought him into the company of other KOOL SMILES' employees.

11. Although DR. BAINS was initially excited by his opportunity to join KOOL SMILES, early in the course of his employment, he learned that certain of KOOL SMILES' employees, including but not limited to DR. DIAA ZORA, was conspiring to and was committing fraud and making false claims against the U.S. and TEXAS in violation of the FALSE CLAIMS ACT, 31 U.S.C. § 3729 and the TEXAS MEDICAID FRAUD PREVENTION ACT, Tex. Hum. Res. Code §§ 36.001 *et. seq.*. The fraud was being carried out in DR. BAINS' work place.

12. Specifically, DR. BAINS learned of and observed patients being misdiagnosed and over-diagnosed so that KOOL SMILES could charge the U.S. and TEXAS fees for its service, above and beyond that which was required to completely and effectively treat KOOL SMILES' patients.

13. DR. BAINS witnessed patients being diagnosed by KOOL SMILES' dentists in KOOL SMILES' Bryan, Texas location for medical procedures they did not medically require.

14. DR. BAINS also witnessed KOOL SMILES' staff deliberately using poor quality x-rays; unqualified staff members taking x-rays; the administration of unnecessary medical

procedures; and the use of papoose boards (a device used to immobilize children for dental work) when such restraints were unnecessary.

15. Further, DR. BAINS observed patients being diagnosed for medical work based on their Medicaid and/or Medicare insurance. DR. BAINS witnessed medical work being approved and planned based on the availability of a patient's insurance and without examination of the patient.

16. In the course of DR. BAINS' employment, specifically throughout October and November 2010, DR. BAINS reported the unethical and unlawful practices he witnessed to KOOL SMILES' Regional Dental Director Dr. Jim Schmidt.

17. DR. BAINS specifically reported that DR. ZORA—who ran KOOL SMILES' Bryan, Texas office and distributed assignments to KOOL SMILES' staff including but not limited to DR. BAINS—was over-treating and misdiagnosing KOOL SMILES' patients to induce fraudulent Medicare and Medicaid payments.

18. DR. BAINS also reported that the charts and diagnosis of former-employee, Dr. Reagor, were incorrect as, upon information and belief, Dr. Reagor notoriously mis-diagnosed and over-diagnosed KOOL SMILES' patients.

19. Dr. Schmidt's response to DR. BAINS' reports was incredulous. He told DR. BAINS, —“**I know.** I am more like you. I treat patients like you but. . .”

20. Dr. Schmidt made comments such as these to DR. BAINS throughout DR. BAINS' employment. The first time Dr. Schmidt admitted to knowing of the unethical and fraudulent practices occurring at KOOL SMILES and by KOOL SMILES' dentists was during DR. BAINS' training in Laredo, Texas when DR. BAINS complained that treatment was excessive. In response, Dr. Schmidt told DR. BAINS, —I'm more like you.

21. Dr. Schmidt also told DR. BAINS that he would inform KOOL SMILES' Texas

Human Resources representative, Jennifer MacDougall, of DR. BAINS' reports.

22. Dr. Schmidt even told Dr. BAINS that he had heard the **same concerns** expressed by others about DR. ZORA.

23. Thus, DR. BAINS learned that Dr. Jim Schmidt was familiar with, at least, DR. ZORA's unethical and fraudulent practices, the extent of the fraud, how long it had been going on and many of its particular details.

24. Upon information and belief, the fraudulent activities and false claims for medically unnecessary services were known and directed by KOOL SMILES' executives.

25. For example, in the dentist industry, it was widely agreed upon and the standard of treatment, to treat —caries only once the lesion is at or beyond the dentin-enamel junction. Dentists at KOOL SMILES, however, often performed treatment much before this point in order to file for more Medicaid and/or Medicare claims. In addition, the treatment would usually be stainless steel crowns rather than fillings based only on the insurance payment being greater for stainless steel crowns and also that they can be done more quickly in most cases.

26. KOOL SMILES' company structure rewards staff who performs multiple treatments on their patients – whether necessary or not.

27. KOOL SMILES' dentists' and staff performance is evaluated, in part, based on the revenue they generate for KOOL SMILES.

28. Daily, weekly, and monthly, production reports could be viewed by any doctor, showing the production of all dentists employed by all KOOL SMILES' locations. There was constant talk about production. Doctors at KOOL SMILES' Laredo and Bryan location told DR. BAINS that they had gotten calls from corporate regarding boosting their production and advised him to boost his production to avoid getting calls.

29. Too, upon information and belief, upper management knew that the financial

incentive that accompanied multiple treatments on patients drove staff to great lengths of internal competition at the peril of patients and those few staff members who found the misconduct illegal and immoral.

30. Nonetheless, KOOL SMILES simply turned a blind eye to the workplace hostilities in favor of turning huge profits.

31. Moreover, although Dr. Schmidt told DR. BAINS that he had previously received reports regarding DR. ZORA's fraudulent practices, and he would investigate same; after DR. BAINS' report, DR. ZORA's misconduct only worsened. DR. ZORA began to threaten DR. BAINS.

32. DR. BAINS was threatened that if he reported his complaints outside the work place, he would be fired!

33. Thus, DR. BAINS was afraid for his job. DR. BAINS also became increasingly fearful of his safety based on DR. ZORA's increasingly aggressive behavior towards him.

34. Nonetheless, DR. BAINS was unable to sit back and allow the unethical and unlawful practices to continue, and DR. BAINS continued to report DR. ZORA's wrong doings against patients, and his hostilities toward KOOL SMILES' employees to Dr. Schmidt.

35. It became obvious that DR. BAINS' reports had made their way back DR. ZORA's attention and knowledge.

36. DR. ZORA began to openly threaten Dr. BAINS, including but not limited to, DR. ZORA's promise to make DR. BAINS' life —hell!

37. Several reliable sources also told DR. BAINS that he was the subject of hate and scorn by DR. ZORA for his complaints. DR. BAINS complained to Dr. Schmidt about DR. ZORA's threats to no avail.

38. DR. ZORA had always interfered with DR. BAINS' work but after DR. BAINS' reports, DR. ZORA's interferences increased and worsened. He would constantly manipulate which

patients DR. BAINS would treat, leaving the most difficult and time consuming patients for DR. BAINS and hand-selecting those patients that posed no behavioral problems yet multiple easy medical procedures for himself.

39. DR. BAINS' loss of regular job responsibilities was a grievous personal and professional lost. He lost all work place dignity and status and all that he had worked for since pursuing his career with KOOL SMILES.

40. Over the course of the investigation, DR. BAINS became increasingly anxious, depressed, and suffered profound emotional and mental distress.

41. DR. BAINS requested that he be transferred to a different KOOL SMILES location because of DR. ZORA's conduct towards him. KOOL SMILES refused to transfer DR. BAINS.

42. Yet, DR. ZORA, aware of DR. BAINS' continuous reports and complaints about his immoral and unlawful conduct, became more and more aggressive towards DR. BAINS.

43. Consequently, DR. BAINS would continue to report DR. ZORA's abuse to Dr. Schmidt.

44. In or about November 2010, one particular case of patient abuse by DR. ZORA reached DR. BAINS' attention and, as was typical, DR. BAINS reported the matter.

45. When DR. ZORA received word of DR. BAINS' report against him, DR. ZORA told others that he was going to put DR. BAINS —through hell.

46. On or about November 27, 2010, a few days after DR. BAINS had reported DR. ZORA's unethical and illegal abuse of a patient to Dr. Schmidt, DR. ZORA became loud and abrasive towards DR. BAINS.

47. Without provocation, DR. ZORA encroached on DR. BAINS' personal space in a threatening matter and shouted, —Oh, you are saying I don't care for my patients!

48. Sensing and fearing DR. ZORA's rage, DR. BAINS began backing away from DR.

ZORA in an effort to avoid confrontation. But DR. ZORA was undeterred. He pushed DR. BAINS into a wall and grabbed him by the throat.

49. With his hands wrapped around DR. BAINS' neck, DR. ZORA yelled at DR. BAINS, —I will knock every tooth out and break every fucking bone in your neck.

50. DR. BAINS pleaded for DR. ZORA to stop. But, DR. ZORA was enraged and would not stop until a third-party intervened.

51. Ultimately, a KOOL SMILES' employee telephoned the Bryan Police Department for help for DR. BAINS.

52. The Bryan Police Department responded to the disturbance call and accepted DR. BAINS' report against DR. ZORA.

53. A KOOL SMILES' employee who had witnessed DR. ZORA's assault of DR. BAINS also provided a witness statement to the Bryan Police in support of DR. BAINS'.

54. When DR. BAINS contacted Dr. Schmidt to discuss and report DR. ZORA's assault on him, KOOL SMILES terminated DR. BAINS' employment.

III. CAUSES OF ACTION

Count 1 RETALIATION UNDER THE FALSE CLAIMS ACT ("FCA") AND THE TEXAS MEDICAID FRAUD PREVENTION ACT ("TMFPA") AS TO KOOL SMILES

55. PLAINTIFF repeats and realleges each and every allegation of the above paragraphs of this First Amended Complaint, and incorporates them by reference here as if set forth at length.

56. As demonstrated by the facts set forth in this First Amended Complaint, KOOL SMILES violated the retaliation provisions of the FCA and the TMFPA by harassing, denigrating, and discharging DR. BAINS for refusing to engage in unlawful activities and/or for engaging in lawful activities in an effort to cease violations of the FCA and the TMFPA.

Count 2 WRONGFUL TERMINATION AS TO KOOL SMILES

57. Reasserting the foregoing and pleading further, PLAINTIFF asserts that Defendant KOOL SMILES wrongfully terminated him for his refusal to commit an illegal act. *See Sabine Pilot Serv. v. Hauck*, 687 S.W.2d. 733, 735 (Tex. 1985). Specifically, Defendant KOOL SMILES discharged PLAINTIFF for failing to misdiagnose, over-diagnose patients and engage in fraudulent unlawful conduct to obtain unearned government funds.

Count 3 ASSAULT AND BATTERY AS TO KOOL SMILES AND DR. ZORA

58. Defendant DR. ZORA intentionally, knowingly, or recklessly made contact with PLAINTIFF's person against his will, without legal justification, causing bodily injury to PLAINTIFF. Defendants KOOL SMILES and DR. ZORA are responsible for DR. ZORA's intentional, knowing or reckless acts of physical assault against PLAINTIFF under theories of assault and battery and respondeat superior.

Count 4 NEGLIGENCE AS TO KOOL SMILES

59. Defendant KOOL SMILES breached its duty to PLAINTIFF to use ordinary care in providing a reasonably safe workplace for PLAINTIFF to work. PLAINTIFF notified Defendant KOOL SMILES on multiple occasions that DR. ZORA was threatening his well-being and his safety. Defendant KOOL SMILES did nothing. As a result of Defendant KOOL SMILES' actions and inactions, DR. ZORA was allowed to commit assault and battery against PLAINTIFF, and consequently, Defendant KOOL SMILES breached its duty to PLAINTIFF to use ordinary care in providing him with a reasonably safe workplace.

Count 5 NEGLIGENT SUPERVISION AND RETENTION AS TO KOOL SMILES

60. Defendant KOOL SMILES breached its duty which it owed to PLAINTIFF to supervise and retain competent employees through its failure to effectively supervise DR. ZORA and its decision to retain DR. ZORA after PLAINTIFF repeatedly notified Defendant KOOL SMILES of

DR. ZORA's propensities to engage in illegal and immoral conduct. As a consequence of Defendant KOOL SMILES' breach of duty, PLAINTIFF was injured.

Count 6 GROSS NEGLIGENCE AS TO KOOL SMILES

61. Pleading further, PLAINTIFF also alleges that KOOL SMILES' conduct was malicious as that term is known in law and was the proximate cause of Plaintiff's damages. PLAINTIFF is entitled to exemplary damages against DEFENDANT KOOL SMILES based on its gross negligence.

Count 7 FALSE IMPRISONMENT AS TO KOOL SMILES AND DR. ZORA

62. Defendant DR. ZORA willfully detained PLAINTIFF against PLAINTIFF's will and without PLAINTIFF's consent. Further Defendant DR. ZORA did not have legal authority or justification to detain PLAINTIFF and Defendants KOOL SMILES and DR. ZORA are responsible for DR. ZORA's tortious conduct under claims of false imprisonment and respondeat superior.

Count 8 TORTIOUS INTERFERENCE WITH CONTRACT AS TO DR. ZORA

63. PLAINTIFF had a valid employment contract with Defendant KOOL SMILES of which DR. ZORA willfully and intentionally interfered thereby proximately causing injury to PLAINTIFF. As a result of Defendant DR. ZORA's interference with PLAINTIFF's contract, PLAINTIFF has suffered actual loss and damage. DR. ZORA is, therefore, liable for tortious interference with contract.

Count 9 INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS AS TO KOOL SMILES AND DR. ZORA

64. PLAINTIFF asserts Defendants KOOL SMILES and DR. ZORA acted intentionally or recklessly to inflict severe emotional distress on PLAINTIFF by their extreme and outrageous conduct which proximately caused PLAINTIFF's severe emotional distress. Plaintiff asserts that Defendants' conduct is actionable under a claim for intentional infliction of emotional distress.

**IV.
JURY DEMAND**

65. PLAINTIFF requests that this action be heard before a jury.

**V.
DAMAGES**

66. DR. BAINS seeks statutory, actual, exemplary, economic and mental anguish damages as allowed by law and within the jurisdictional limits of the court.

67. As a result of Defendants' actions, DR. BAINS has suffered losses and injuries, and seeks damages for those losses and injuries. All conditions precedent to bring this suit has occurred.

**VI.
REQUEST FOR INJUNCTIVE RELIEF**

68. To the extent Defendants are found to be engaged in illegal and/or immoral conduct, PLAINTIFF requests that an injunction be issued to enjoin Defendants from further illegal and/or immoral conduct. Plaintiff requests exemplary damages for such conduct.

**VII.
PRAYER**

WHEREFORE, PREMISES CONSIDERED, PLAINTIFF sues Defendants as named herein and requests damages within the jurisdictional limit of the Court, punitive damages, pre- and post-judgment interest, cost of court, and attorney's fees, as allowed by law. PLAINTIFF also requests other and further relief to which he may be justly entitled.

Respectfully submitted,

PATRICK & MURPHY

/s/ Marjorie Murphy

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