

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

United States Courts
Southern District of Texas
FILED

DEC 20 2011

David J. Bradley, Clerk of Court

UNITED STATES OF AMERICA AND
THE STATE OF TEXAS
EX REL. ABBY KRISTEN JOHNSON,

Plaintiff,

§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§

Case No. CV-H-cv-3496

**FILED EX PARTE AND
UNDER SEAL**

v.

PLANNED PARENTHOOD
GULF COAST, formerly
known as PLANNED PARENTHOOD
OF HOUSTON AND SOUTHEAST
TEXAS, INC.,

Defendant.

SECOND AMENDED COMPLAINT

ABBY KRISTEN JOHNSON (herein "Plaintiff-Relator" or "Ms. Johnson") brings this action as Plaintiff-Relator on behalf of the United States of America (herein "United States") and the State of Texas (herein "State of Texas") and against Planned Parenthood Gulf Coast, formerly known as Planned Parenthood of Houston and Southeast Texas, Inc. (herein "Planned Parenthood Gulf Coast"), pursuant to the federal False Claims Act, 31 U.S.C. §§ 3729 *et seq.*, and TEX. HUM. RES. CODE ANN. §§ 32.039 *et seq.* and 36.002 *et seq.* for civil penalties, treble damages, and attorney's fees and costs. In support hereof, Plaintiff-Relator states as follows:

INTRODUCTION

1. This action arises from false statements and false claims knowingly made and presented by Planned Parenthood Gulf Coast to the United States, the State of Texas, and/or their respective fiscal intermediaries for reimbursement from the Texas Women's Health Program (herein "Texas WHP"), funds for which were, at all times relevant herein, provided from the federal Title XIX-Medicaid program and/or the State of Texas, for products and services which Planned Parenthood Gulf Coast knew, or should have known, at the time the claims were made or presented, were false, fraudulent, and/or ineligible for reimbursement under the Texas WHP program.

2. All such false, fraudulent, and/or ineligible claims were knowingly made and presented by Planned Parenthood Gulf Coast in violation of the federal False Claims Act, 31 U.S.C. §§ 3729 *et seq.* (herein the "FCA") and the Texas Medicaid Fraud Prevention Act, TEX. HUM. RES. CODE ANN. §§ 36.001 *et seq.* (herein the "TMFPA") for reimbursement from the Texas WHP program for products and services not properly reimbursable under the Texas WHP program.

3. In the alternative, upon discovery of the reimbursement for such false, fraudulent, and/or ineligible claims to Planned Parenthood Gulf Coast by the United States, the State of Texas, and/or their respective fiscal intermediaries, Planned Parenthood Gulf Coast failed, as it was legally obligated to do, to report the receipt of such wrongfully received reimbursements and/or to repay the United States and/or the State of Texas the amounts of the false, fraudulent, and/or ineligible claims for reimbursements fraudulently received and wrongfully retained by Planned Parenthood Gulf Coast.

4. Planned Parenthood Gulf Coast has knowingly made and presented such false, fraudulent, and/or ineligible claims to the United States and the State of Texas since at least

January 1, 2007. Upon information and belief, Planned Parenthood Gulf Coast has continued to submit such false, fraudulent, and/or ineligible claims to the United States and the State of Texas to the present date.

5. In violation of its duty to report such false, fraudulent, and/or ineligible claims and/or to reimburse the United States and/or the State of Texas for monies wrongfully received by Planned Parenthood Gulf Coast, Planned Parenthood Gulf Coast knowingly and willfully concealed the making of such false, fraudulent, and/or ineligible claims and knowingly and fraudulently retained funds which Planned Parenthood Gulf Coast knew it was not entitled to retain.

6. The FCA provides that any person who knowingly submits or causes to be submitted a false, fraudulent, or ineligible claim to the federal government for payment or approval or knowingly makes, uses, or causes to be made or used a false record or statement material to a false, fraudulent, or ineligible claim is liable for civil penalty up to \$11,000 for each such claim submitted or paid, plus three times the amount of the damages sustained by the government, plus attorney's fees and costs. Liability attaches both when a defendant knowingly seeks payment that is unwarranted from the government and when false records or statements are knowingly created or caused to be used to conceal, avoid, or decrease an obligation to pay or transmit money to the government or when a defendant retains such amounts.

7. The TMFPA provides that any person who knowingly makes, or causes to be made, a false statement or misrepresentation of a material fact that would allow a person to receive a benefit or payment under the Texas WHP program and/or the Title XIX-Medicaid program that is not authorized to receive such a benefit or payment is liable to The State of Texas for damages, penalties, and attorney's fees and costs. These damages and penalties include the amount of any payment or the value of any monetary benefit provided under the Texas WHP

program and/or Title XIX-Medicaid program, as well as the interest compounded thereupon, and a civil penalty of up to \$11,000 for each unlawful act committed, plus a penalty equal to twice the amount of the payment(s) made by the State of Texas.

PARTIES

8. Ms. Johnson is a resident of Round Rock, Texas, and, until October 2009, was an employee of Planned Parenthood of Houston and Southeast Texas, Inc., now known as Planned Parenthood Gulf Coast. Ms. Johnson brings this action for violations of the FCA, 31 U.S.C. §§ 3717 *et seq.*, for herself and on behalf of the United States pursuant to 31 U.S.C. § 3730(b)(1), and for herself and on behalf of the State of Texas pursuant to the TMFPA, TEX. HUM. RES. CODE ANN. §§ 36.001 *et seq.*

9. Ms. Johnson has personal knowledge of the false, fraudulent, and/or ineligible claims by Planned Parenthood Gulf Coast for reimbursements presented to the United States and received and wrongfully retained by Planned Parenthood Gulf Coast. With regard to such personal knowledge, Ms. Johnson is an original source with non-public, direct, personal, and independent knowledge of the facts and information upon which the allegations contained in this Complaint are based.

10. As required by the FCA, 31 U.S.C. § 3730(b)(2), Ms. Johnson provided, in advance of filing her initial complaint, the Attorney General of the United States, the United States Attorney for the Eastern District of Texas, and, after this case was transferred to this District, the United States Attorney for the Southern District of Texas with a confidential disclosure statement of all material evidence and information related to this Complaint. Ms. Johnson understands that this confidential disclosure statement and related communications to the U.S. Justice Department and related government representatives are privileged communications.

11. As required by TMFPA, Ms. Johnson also provided, in advance of filing her initial complaint, the Attorney General of the State of Texas and related State of Texas government representatives with a confidential disclosure statement of all material evidence and information related to this Complaint. Ms. Johnson understands that this confidential disclosure statement and related communications to the Texas Attorney General and related State of Texas government representatives are privileged communications.

12. Planned Parenthood Gulf Coast is an IRC 501(c)(3) exempt, Texas non-profit corporation with its principal, corporate offices located at 3601 Fannin Street, Houston, TX 77004 (herein the "Fannin Street Corporate Office"). Planned Parenthood Gulf Coast, previously known as Planned Parenthood of Houston and Southeast Texas, Inc., is and, at all relevant times herein, was engaged in providing abortions and other medical services and supplies to members of the general public and, as is relevant to this complaint, to purportedly eligible clients for reimbursement pursuant to statutes, regulations, and policies of the federal Title XIX-Medicaid program and/or the Texas WHP program.

JURISDICTION AND VENUE

13. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and 31 U.S.C. § 3732, which specifically confers jurisdiction on this Court for actions brought pursuant to the FCA, 31 U.S.C. §§ 3729 and 3730.

14. This Court has personal jurisdiction over Planned Parenthood Gulf Coast pursuant to 31 U.S.C. § 3732(a). Planned Parenthood Gulf Coast, during all relevant times herein, has resided in and/or transacted business in the Southern District of Texas.

15. This Court has pendant or supplemental jurisdiction over the claims brought on behalf of the State of Texas, which claims are brought pursuant to the TMFPA, TEX. HUM. RES. CODE ANN. §§ 36.001 *et seq.*, and 28 U.S.C. § 1367(a) and 31 U.S.C. § 3732(b).

16. Venue is proper in this district pursuant to 31 U.S.C. § 3732(a) because Planned Parenthood Gulf Coast can be found in, resides in, and/or transacts business in this district and because some or all of the violations of 31 U.S.C. § 3729 described herein occurred within this district.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF

The Title XIX-Medicaid Program

17. The federal Title XIX-Medicaid program (herein the “Texas Medicaid Program”) is a jointly funded federal-state health care program which was implemented in the State of Texas in 1967 under the provisions of Title XIX of the federal Social Security Act and Chapter 32 of the Texas Human Resources Code.

18. As is relevant to this complaint, the Texas Medicaid Program is designed to enable delivery of reimbursable family planning services and supplies to eligible clients who may not have adequate resources to otherwise obtain these services and supplies.

19. The Texas Health and Human Services Commission (herein “Texas HHSC”) is the single state Medicaid agency responsible for the administration of the Texas Medicaid Program.

20. Family planning services and supplies are delivered pursuant to the Texas Medicaid Program through providers which have entered into provider contracts and agreements with, among others, the Texas Medicaid & Healthcare Partnership (herein “TMHP”).

21. TMHP is the claims administrator for the Texas Medicaid Program.

22. A provider, such as Planned Parenthood Gulf Coast, which seeks to become an eligible Texas Medicaid Program provider must, among other things, complete the required Texas Medicaid Program provider enrollment applications and enter into written provider contracts and agreements with Texas HHSC and/or TMHP.

23. Thereafter, a Texas Medicaid Program service provider may submit claims for Texas Medicaid Program services and products delivered to clients to TMHP.

24. In the submission of claims to TMHP, a Texas Medicaid Program service provider certifies, among other things, the following:

- A. Services were personally rendered by the billing provider or under the personal supervision of the billing provider, if allowed for that provider type, or under the substitute physician arrangement.
- B. The information on the claim form is true, accurate, and complete.
- C. Medical records document all services billed and the medical necessity of those services.

The Texas WHP Program

25. Effective January 1, 2007, Texas HHSC implemented a new family planning program called the Texas Women's Health Program (herein the "Texas WHP program") to provide limited family planning services to an expanded client base with the goal of reducing unintended pregnancies in the eligible population.

26. As a federal Medicaid Section 1115 "waiver" program, funds for reimbursement of family planning services covered by the Texas WHP program are and at all relevant times herein have been derived from the federal Title XIX-Medicaid program and/or the State of Texas.

27. Texas WHP-eligible clients do not receive full Title XIX-Medicaid benefits. Thus, not all Title XIX-Medicaid family planning benefits are eligible for coverage by the Texas WHP program. Specifically, the Texas WHP program covers one annual family planning examination per client, per state fiscal year,¹ certain limited family planning counseling and education services, and contraception management services for eligible women who:

- A. Are Texas-resident U.S. citizens and legal immigrants from the ages of 18 to 44.
- B. Do not currently receive full Title XIX-Medicaid benefits (including Title XIX-Medicaid for pregnant women).
- C. Are not pregnant.
- D. Are not sterile, infertile, or unable to get pregnant because of medical reasons.

28. Texas WHP-eligible family planning services must be provided by a physician or under the direction of a physician.

29. A provider, such as Planned Parenthood Gulf Coast, may provide each Texas WHP-eligible client with not more than one family planning examination each state fiscal year. The primary purpose of an annual family planning examination is to implement an appropriate contraceptive management plan. Texas WHP regulations provide that each annual family planning examination of an eligible client is to consist of a comprehensive health history and physical examination that includes medical laboratory evaluations as indicated, an assessment of the client's problems and needs, and implementation of an appropriate contraceptive management plan.

¹ The Texas State Fiscal Year (herein "SFY") runs from September 1 to the following August 31. The Federal Fiscal Year (herein "FY") runs from October 1 to the following September 30.

30. In billing the Texas WHP program for an annual family planning examination, a provider must use only Texas WHP authorized diagnosis codes, to wit: V2509; and Texas WHP authorized procedure codes, to wit: 99204 or 99214.

31. Any subsequent visit to a provider within the same state fiscal year by a Texas WHP-eligible client who has been provided with an authorized annual family planning examination by the provider must, pursuant to Texas WHP regulations, be billed as an “office visit or other outpatient visit.”

32. The Texas WHP program covers any such subsequent office visit or other outpatient visit **only** if the “primary purpose of the visit is related to contraceptive management.”

33. The Texas WHP program **does not** cover such subsequent office visits or other outpatient visits “when the primary purpose of the [client’s] visit is not related to contraceptive management.” Thus, visits for the primary purpose of, for example, pregnancy testing, sexually transmitted infection or disease (STI/STD) testing, or repeat Pap test after an abnormal result, are not covered by the Texas WHP program.

34. Moreover, the Texas WHP program does not cover the costs of treatment for any medical conditions the provider identifies during an office or other outpatient visit. If a provider, such as Planned Parenthood Gulf Coast, identifies, during an office or other outpatient visit, a health problem such as an STI/STD or diabetes, the provider “is required” to refer the client to another physician or clinic that can treat the client. Any such referrals of medical problems for Texas WHP-eligible clients are limited only to health practitioners who do not perform or promote elective abortions, nor contract or affiliate with entities that perform or promote elective abortions. Texas HHSC, *Medicaid Women’s Health Program Implementation Report*, December 2008 at 6.

Texas WHP Program Providers

35. Providers, such as Planned Parenthood Gulf Coast, which deliver family planning services and products pursuant to the Texas WHP program and which are reimbursed through the Texas WHP program must go through a provider enrollment process with the Texas Medicaid and Healthcare Partnership (herein "TMHP").

36. Providers, such as Planned Parenthood Gulf Coast, who are thereupon enrolled with TMHP must agree to follow laws, regulations, policies and procedures as established by the federal Centers for Medicaid and Medicare Services (herein "CMS") and/or the State of Texas as established in the applicable Texas Medicaid Provider Procedures Manual.

37. Among other requirements, enrolled providers who deliver family planning services and products to eligible clients, such as Planned Parenthood Gulf Coast, and are reimbursed through the Texas WHP program must:

- A. Execute provider agreements by which the provider agrees to "abide by the policies and procedures of Medicaid, published regulations, and the information and instructions in manuals, bulletins, and other instructional material furnished to the provider." 2009 Texas Medicaid Provider Procedures Manual, "Introduction."
- B. Agree that "[p]articipation in the Medicaid and other United States Government programs charges all providers and persons, including managed care organizations, with knowledge of the federal and state laws that govern Medicaid or other United States Government programs during the period of time in which the United States Government program was billed. This includes knowledge of the Texas Medicaid Provider Procedures Manual, United States Government Health and Human Services program and procedure manuals, and other official

program manuals and publications, including all official interpretations or explanations given to the provider or person regarding the services that they provide.” Title 1, TEXAS ADMINISTRATIVE CODE §371.1615(a).

- C. Agree to be responsible for such enrolled provider’s acts and omissions, as well as for the acts and omissions of the enrolled provider’s employees, contractors, and agents. *Id.*, §371.1615(c).
- D. Agree, to keep fiscal and clinical records for all services provided pursuant to Texas Administrative Code. 25 TEX. ADMIN. CODE § 56.8.
- E. Agree that, as “[r]ecipients of funds administered through the state’s health and human services programs, including the Medicaid program, [such enrolled providers] have an ethical and legal duty to insure the integrity of their dealings with such programs. This duty includes an obligation to take measures to detect and prevent fraudulent, abusive, and wasteful activities, as well as circumstances that result in the incorrect payment of funds, and to report those activities when discovered.” *See* TEXAS HHSC Office of Inspector General, “Provider Self-Reporting Guidance,” Oct. 26, 2009 (citation omitted) (available online).
- F. Agree, when health issues not covered under the Texas WHP program were identified in a patient, to refer such Texas WHP-eligible patient to another physician or clinic for primary care, which physician or clinic does “not perform or promote elective abortions” or does “not contract or affiliate with entities that perform or promote elective abortions.”

Planned Parenthood Gulf Coast

38. At all times relevant herein to, upon information and belief, the present date, as required by the Texas DSHS and/or TMHP, Planned Parenthood Gulf Coast had executed, was a party to, was subject to, and had agreed to be bound by, as described in more detail herein, one or more provider agreements between it and the United States and/or the State of Texas, which provider agreements governed both the delivery of family planning products and services by Planned Parenthood Gulf Coast to Texas WHP-eligible clients and the amounts which could properly and lawfully be claimed by Planned Parenthood Gulf Coast as reimbursement from the Texas WHP program for the delivery of such family planning products and services.

39. Pursuant to these provider agreements, Planned Parenthood Gulf Coast agreed, at all times relevant herein, among other things, that:

- A. Planned Parenthood Gulf Coast would, at all times, “abide by the policies and procedures of Medicaid, published regulations, and the information and instructions in manuals, bulletins, and other instructional material furnished to the provider.” 2009 Texas Medicaid Provider Procedures Manual, “Introduction.”
- B. Planned Parenthood Gulf Coast knew and would, at all time, abide by “the federal and state laws that govern Medicaid or other United States Government programs during the period of time in which the United States Government program was billed. This includes knowledge of the Texas Medicaid Provider Procedures Manual, United States Government Health and Human Services program and procedure manuals, and other official program manuals and publications, including all official interpretations or explanations given to the provider or person regarding the services that they provide.”

- C. Planned Parenthood Gulf Coast would, at all times, be responsible for its acts and omissions, as well as for the acts and omissions of its employees, contractors, and agents in the event of false, fraudulent, and/or ineligible billings or reimbursements.
- D. Planned Parenthood Gulf Coast would, at all times, keep fiscal and clinical records for all services provided pursuant to Texas Administrative Code.
- E. Planned Parenthood Gulf Coast would, at all times, deliver Texas WHP reimbursable family planning products and services only to Texas WHP-eligible clients.
- F. Planned Parenthood Gulf Coast would only submit claims to the United States and/or the State of Texas for reimbursement from Texas WHP funds to which Planned Parenthood Gulf Coast was lawfully entitled.
- G. Planned Parenthood Gulf Coast had, at all times, verified prior to the receipt of any Texas WHP funds that such family planning products and services were delivered to Texas WHP-eligible clients and that such products and services were properly reimbursable from such funds.
- H. Planned Parenthood Gulf Coast would, at all times, ensure the integrity of its dealings with “the state’s health and human services programs, including the Medicaid program” and “take measures to detect and prevent fraudulent, abusive, and wasteful activities, as well as circumstances that result in the incorrect payment of funds, and to report those activities when discovered.”
- I. Planned Parenthood Gulf Coast would, when health issues not covered under the Texas WHP program were identified in a patient, refer all such Texas WHP-

eligible patients to another physician or clinic for primary care, which physician or clinic does “not perform or promote elective abortions” and does “not contract or affiliate with entities that perform or promote elective abortions.”

40. On and after January 1, 2007, and at all times relevant herein to, upon information and belief, the present date, Planned Parenthood Gulf Coast was, pursuant to one or more agreements Planned Parenthood Gulf Coast had executed with the United States and/or the State of Texas, approved as a provider to participate in the Texas WHP program and, as such, had agreed to comply with the provisions of all such agreements as set forth herein.

41. On and after January 1, 2007, and at all times relevant herein to, upon information and belief, the present date, Planned Parenthood Gulf Coast, pursuant to such agreements, submitted claims to the Texas WHP program for reimbursement for the delivery of products and services, including family planning products and services, to purportedly Texas WHP-eligible clients.

42. As is described in more detail herein and as was known or should have been known to Planned Parenthood Gulf Coast, a substantial portion, estimated to be forty (40) percent, of the claims submitted by Planned Parenthood Gulf Coast during this period of time to the United States and/or the State of Texas for reimbursement from the Texas WHP program were false, fraudulent, and/or ineligible for reimbursement.

43. Notwithstanding the foregoing, Planned Parenthood Gulf Coast failed to reimburse the United States and/or the State of Texas any of the funds it had received during this period of time from such false, fraudulent and/or ineligible claims though it had a statutory duty to do so.

The Specific Frauds By Planned Parenthood Gulf Coast from January 1, 2007

44. On and after January 1, 2007, and at all times relevant herein, Planned Parenthood Gulf Coast's authorized officers, managers, and agents (referred to herein as "Planned Parenthood's Key Management Team") included:

- A. Melaney Linton, Chief Operating Officer, Planned Parenthood Gulf Coast's Fannin Street Corporate Office.
- B. Laurie McGill, Vice President, Planned Parenthood Gulf Coast's Fannin Street Corporate Office.
- C. Bonnie Smith, Vice President of Medical Services, Planned Parenthood Gulf Coast's Fannin Street Corporate Office.
- D. Sandra Smolensky, Regional Director of Medical Services, Planned Parenthood Gulf Coast's Fannin Street Corporate Office.
- E. Dyann Santos, Regional Director of Medical Services, Planned Parenthood Gulf Coast's Fannin Street Corporate Office.

45. On and after January 1, 2007, and at all times relevant herein, Planned Parenthood Gulf Coast owned, managed, and operated ten clinics in Texas,² to wit:

- A. Planned Parenthood Gulf Coast's Fannin Clinic, 3601 Fannin Street, Suite 100, Houston, TX. At all times relevant herein, the director or manager of Planned Parenthood Gulf Coast's Fannin Clinic was Planned Parenthood Gulf Coast employee Sarah Beth Limon.

² Prior to its merger into Planned Parenthood Gulf Coast, Ms. Johnson's was employed by Planned Parenthood of Houston and Southeast Texas, Inc. At all relevant times during Ms. Johnson's employment with Planned Parenthood of Houston and Southeast Texas, Inc., Planned Parenthood of Southeast Texas, Inc. operated ten clinics. Since its merger with Planned Parenthood Gulf Coast, two additional clinics, to wit: a Baton Rouge, LA, clinic and a New Orleans, LA, clinic are a part of the Planned Parenthood Gulf Coast system.

- B. Planned Parenthood Gulf Coast's Stafford or Greenbriar Clinic, 3727 Greenbriar, Suite 118, Stafford, TX. At all times relevant herein, the director or manager of Planned Parenthood Gulf Coast's Stafford Clinic was Planned Parenthood Gulf Coast employee Marilyn Chosed.
- C. Planned Parenthood Gulf Coast's 1960 Clinic, 3995 F.M. 1960, Houston, TX. At all times relevant herein, the director or manager of Planned Parenthood Gulf Coast's 1960 Clinic was Planned Parenthood Gulf Coast employee Patty Richardson.
- D. Planned Parenthood Gulf Coast's Southwest Clinic, 6121 Hillcroft, Suite O, Houston, TX. At all times relevant herein, the director or manager of Planned Parenthood Gulf Coast's Southwest Clinic was Planned Parenthood Gulf Coast employee Maria (Last Name Presently Unknown).
- E. Planned Parenthood Gulf Coast's Lufkin Clinic, 205 Shands Drive, Lufkin, TX. At all times relevant herein, the director or manager of Planned Parenthood Gulf Coast's Lufkin Clinic was Planned Parenthood Gulf Coast employee Michelle Greene.
- F. Planned Parenthood Gulf Coast's Bryan Clinic, 4112 E. 29th Street, Suite 100, Bryan, TX. At all times relevant herein, the director or manager of Planned Parenthood Gulf Coast's Bryan Clinic was Planned Parenthood Gulf Coast employee Plaintiff-Relator Abby Kristen Johnson.
- G. Planned Parenthood Gulf Coast's Huntsville Clinic, 2405 Avenue I, Suite C, Huntsville, TX. At all times relevant herein, the director or manager of Planned

Parenthood Gulf Coast's Huntsville Clinic was Planned Parenthood Gulf Coast employee Brandi Hutchins.

H. Planned Parenthood Gulf Coast's Greenspoint Clinic, 11834 Airline Drive, Houston, TX. At all times relevant herein, the director or manager of Planned Parenthood Gulf Coast's Greenspoint Clinic was Planned Parenthood Gulf Coast employee Jo Gayle Wilkinson.

I. Planned Parenthood Gulf Coast's Dickinson Clinic, 33151 I-45, Dickinson, TX. At all times relevant herein, the director or manager of Planned Parenthood Gulf Coast's Dickinson Clinic was Planned Parenthood Gulf Coast employee Aracely Ramirez.

J. Planned Parenthood Gulf Coast's Rosenberg Clinic, 4203 Avenue H, Suite 7, Rosenberg, TX. At all times relevant herein, the director or manager of Planned Parenthood Gulf Coast's Rosenberg Clinic was Planned Parenthood Gulf Coast employee Marilyn Chosed.

46. Each of Planned Parenthood Gulf Coast's clinic managers set forth above was, at all times relevant herein, supervised by one or more of the members of Planned Parenthood's Key Management Team.

47. The control exercised by Planned Parenthood Gulf Coast and the members of Planned Parenthood's Key Management Team included the establishment and enforcement of (a) all clinic policies, (b) all claim and billing procedures, including claims filed with the Texas WHP program, (c) all financial and accounting procedures, and (d) all policies for the hiring and termination of employees.

48. Pursuant to instructions from received from members of Planned Parenthood's Key Management Team and others, managers of each of Planned Parenthood Gulf Coast's ten clinics as set forth above were responsible for the delivery of products and services, including family planning products and services, to purportedly Texas WHP-eligible clients and for inputting information relating to the delivery of all such products and services into Planned Parenthood Gulf Coast's centralized billing system maintained at Planned Parenthood Gulf Coast's Fannin Street Corporate Office.

49. Acting pursuant to instructions from members of Planned Parenthood's Key Management Team, information relating to the delivery of all such products and services to purportedly Texas WHP-eligible clients was, using procedure codes created by Planned Parenthood Gulf Coast, collected for each client during a client's visit on what Planned Parenthood Gulf Coast referred to as its "Superbill."

50. Information relating to the delivery of products and services to purportedly Texas WHP-eligible clients was then submitted by the managers (or others under the direction of the managers) of each of Planned Parenthood Gulf Coast's ten clinics on a regular, usually daily, basis to Planned Parenthood Gulf Coast's centralized billing system maintained at Planned Parenthood Gulf Coast's Fannin Street Corporate Office and, under the direction of Planned Parenthood's Key Management Team and other Planned Parenthood Gulf Coast officials thereupon submitted to the Texas WHP program for reimbursement.

51. Such claims for the delivery of products and services, including family planning products and services, to purportedly Texas WHP-eligible clients as were submitted by Planned Parenthood Gulf Coast to the United States and/or the State of Texas were, apparently without verification by the United States and/or the State of Texas that Planned Parenthood Gulf Coast

had submitted Texas WHP-eligible claims and had otherwise fully complied with the policies and procedures of the Texas WHP program, thereupon paid or reimbursed to Planned Parenthood Gulf Coast by the United States and/or the State of Texas.

52. On occasion, when a discrepancy in a patient's identifying billing information or some other billing issue arose which would delay reimbursement of a claim to Planned Parenthood Gulf Coast, members of Planned Parenthood's Key Management Team would direct the managers of Planned Parenthood Gulf Coast's ten clinics, including the clinic managed by Ms. Johnson, to take steps to correct the problem and to directly submit the claim from Planned Parenthood Gulf Coast's Bryan Clinic or another of Planned Parenthood Gulf Coast's ten clinics to the United States, the State of Texas, and/or their respective fiscal intermediaries.

53. In this manner and in compliance with the instructions of Planned Parenthood's Key Management Team, between January 1, 2007 and at least October 6, 2007, Ms. Johnson and the managers of Planned Parenthood Gulf Coast's ten clinics submitted thousands of claims to Planned Parenthood Gulf Coast which, in turn, were processed through Planned Parenthood Gulf Coast's centralized billing system maintained at Planned Parenthood Gulf Coast's Fannin Street Corporate Office and thereupon submitted by Planned Parenthood Gulf Coast to the United States, the State of Texas, and/or their respective fiscal intermediaries for reimbursement from the Texas WHP program.

54. As is described in more detail below, claims that Ms. Johnson later learned were false, fraudulent, and/or ineligible made or filed by Planned Parenthood Gulf Coast with the United States, the State of Texas, and/or their respective fiscal intermediaries for reimbursement from the Texas WHP program.

55. As was known to, or should have been known by, Planned Parenthood Gulf Coast, approximately forty (40) percent of all such claims thereupon submitted by Planned Parenthood Gulf Coast to the United States, the State of Texas, and/or their respective fiscal intermediaries for reimbursement from the Texas WHP program were false, fraudulent and/or ineligible for reimbursement.

56. Notwithstanding the foregoing, all such false, fraudulent, and/or ineligible claims as were submitted by Planned Parenthood Gulf Coast to the United States, the State of Texas, and/or their respective fiscal intermediaries were, without knowledge of their falsity, paid to Planned Parenthood Gulf Coast by the United States, the State of Texas, and/or their respective fiscal intermediaries and not reimbursed or otherwise returned by Planned Parenthood Gulf Coast to the United States, the State of Texas, and/or their respective fiscal intermediaries.

Ms. Johnson's Experience with Planned Parenthood Gulf Coast

57. Ms. Johnson, who has been associated with or employed by Planned Parenthood Gulf Coast since September 2001, was, beginning in April 2005 to July 2006, employed by Planned Parenthood Gulf Coast as a Health Center Assistant in Planned Parenthood Gulf Coast's Bryan Clinic located at 4112 E. 29th Street, Suite 100, Bryan, TX 77802 (herein "Planned Parenthood Gulf Coast's Bryan Clinic"). In this position, Ms. Johnson's responsibilities, as assigned by members of Planned Parenthood's Key Management Team, included interviewing clients, patient intake, lab work, patient testing, assisting examinations, and performing billing functions.

58. From July 2006 to September 2007, Ms. Johnson was employed by Planned Parenthood Gulf Coast as Community Services Specialist in Planned Parenthood Gulf Coast's Bryan Clinic. In this position, Ms. Johnson's responsibilities, as assigned by Planned Parenthood's Key Management Team, included public affairs, public outreach, health education, and fundraising.

59. From September 1, 2007 to October 6, 2009, when she resigned her position with Planned Parenthood Gulf Coast, Ms. Johnson was employed by Planned Parenthood Gulf Coast as the Health Center Director of Planned Parenthood Gulf Coast's Bryan Clinic.

60. By virtue of her various positions with Planned Parenthood Gulf Coast, Ms. Johnson had learned about and was knowledgeable of such matters as (a) a purportedly Texas WHP-eligible client's primary complaint upon presentation at Planned Parenthood Gulf Coast's Bryan Clinic and the other Planned Parenthood Gulf Coast clinics, (b) what products and services were actually delivered to purportedly Texas WHP-eligible clients by Planned Parenthood Gulf Coast's Bryan Clinic and the other Planned Parenthood Gulf Coast clinics, (c) what billings for purportedly Texas WHP-eligible clients, pursuant to codes on Planned Parenthood Gulf Coast's "Superbill" form, were regularly transmitted, usually daily, by Planned Parenthood Gulf Coast's Bryan Clinic and the other Planned Parenthood Gulf Coast clinics to Planned Parenthood Gulf Coast's Fannin Street Corporate Office, and (d) what billings for purportedly Texas WHP-eligible clients, using Texas WHP authorized diagnosis codes and procedure codes, were thereupon regularly transmitted by Planned Parenthood Gulf Coast's Fannin Street Corporate Office to the United States, the State of Texas, and/or their respective fiscal intermediaries for reimbursement from the Texas WHP program.

61. From and after September 1, 2007, in her position as Health Center Director of Planned Parenthood Gulf Coast's Bryan Clinic, Ms. Johnson was, at all times relevant herein, directly supervised by Dyann Santos, Planned Parenthood Gulf Coast's Regional Director of Medical Services based at Planned Parenthood Gulf Coast's Fannin Street Corporate Office, and indirectly supervised by all other members of Planned Parenthood's Key Management Team.

62. Under the supervision of and as instructed by Planned Parenthood Gulf Coast's Regional Director of Medical Services Dyann Santos, Ms. Johnson was, as Health Center Director of Planned Parenthood Gulf Coast's Bryan Clinic, responsible for managing the center's budget, for hiring, training and supervising the center's twelve employees; and for managing the center's three programs: family planning, abortion services, and dysplasia services.

63. Under the supervision of and as instructed by Planned Parenthood Gulf Coast's Regional Director of Medical Services Dyann Santos, Ms. Johnson was, as Health Center Director of Planned Parenthood Gulf Coast's Bryan Clinic, responsible for overseeing data entry for every visit by each client which data described the products and services rendered and included any pills, drugs, medications and/or items prescribed and supplied to each client as products and services which were purportedly eligible for reimbursement by the United States, the State of Texas, and/or their respective fiscal intermediaries from Texas WHP funds.

64. Data entered at Planned Parenthood Gulf Coast's Bryan Clinic for products and services which were purportedly Texas WHP-eligible for reimbursement by the United States, the State of Texas, and/or their respective fiscal intermediaries were transmitted daily by Planned Parenthood Gulf Coast's Bryan Clinic to Planned Parenthood Gulf Coast's centralized computer network system maintained at Planned Parenthood's Fannin Street Corporate Office.

65. Ms. Johnson, as Health Center Director of Planned Parenthood Gulf Coast's Bryan Clinic, had system-wide access to and was able to view all patient charts and records, all patient billing records, and all insurance information, including records of claims for all products and services which were delivered by all of Planned Parenthood Gulf Coast's ten clinics and of the actual amounts in fact reimbursed to Planned Parenthood Gulf Coast by the United States, the State of Texas, and/or their respective fiscal intermediaries.

66. The balance shown in a particular client's computer records would reflect whether claims submitted by Planned Parenthood Gulf Coast to the United States, the State of Texas, and/or their respective fiscal intermediaries for reimbursement from Texas WHP funds had been paid or whether additional documentation or follow-up by Ms. Johnson or other managers of Planned Parenthood Gulf Coast's ten clinics was required.

Planned Parenthood Gulf Coast's Other Clinics

67. Each of the Planned Parenthood Gulf Coast clinic managers set forth above were, at all times relevant herein, responsible, under the supervision of one or more of the members of Planned Parenthood's Key Management Team, for overseeing data entry relating to products and services delivered to clients which were covered by the Texas WHP program into the centrally-based billing, accounting and record-keeping system maintained at Planned Parenthood Gulf Coast's Fannin Street Corporate Office.

68. Data entered by each of Planned Parenthood Gulf Coast's ten clinic managers was, under the supervision of one or more of the members of Planned Parenthood's Key Management Team, transmitted daily by each of Planned Parenthood Gulf Coast's ten clinics to Planned Parenthood Gulf Coast's centralized computer network system maintained at Planned Parenthood's Fannin Street Corporate Office

69. Planned Parenthood Gulf Coast thereupon submitted to the United States and/or the State of Texas all such information as claims for reimbursement from the Texas WHP program.

70. Each of the Planned Parenthood Gulf Coast clinic managers set forth above had, upon information and belief and at all times relevant herein, system-wide access to all patient charts and records and to all patient billing records, including records of amounts reimbursed to Planned Parenthood Gulf Coast for Texas WHP claims submitted by Planned Parenthood Gulf

Coast to the United States and/or the State of Texas for products and services, including family planning products and services.

Planned Parenthood Gulf Coast's Frauds

71. Each month, from and after January 1, 2007 to at least October 6, 2009 and, upon information and belief, to the present date, Planned Parenthood Gulf Coast conducted monthly management meetings at Planned Parenthood Gulf Coast's Fannin Street Corporate Office.

72. All Planned Parenthood Gulf Coast management personnel, including Planned Parenthood Gulf Coast's ten clinic managers, were required to attend these monthly management meetings at Planned Parenthood Gulf Coast's Fannin Street Corporate Office.

73. Prior to these monthly management meetings, members of Planned Parenthood's Key Management Team and other Planned Parenthood Gulf Coast officers prepared monthly management meeting agenda materials, including, under the supervision of Jeffrey Palmer, CFO of Planned Parenthood Gulf Coast, or his predecessor, a Billing Matrix document which provided policy instructions on, among other things, the billing for products and services delivered to purportedly Texas WHP-eligible clients by Planned Parenthood Gulf Coast's clinics.

74. These agenda materials, including Planned Parenthood Gulf Coast's monthly Billing Matrix documents, were distributed to management meeting attendees, including each manager of Planned Parenthood Gulf Coast's ten clinic's, either prior to or at each monthly management meeting.

75. Planned Parenthood Gulf Coast's Billing Matrix document contained, among other things, instructions from members of Planned Parenthood's Key Management Team and other Planned Parenthood Gulf Coast officers on the billing of family planning products and services to the Texas WHP program and thus what amounts Planned Parenthood Gulf Coast would

thereupon claim from the United States, the State of Texas, and/or their respective fiscal intermediaries for reimbursement for such family planning products and services.

76. In addition to the information in Planned Parenthood Gulf Coast's Billing Matrix document, at each monthly management meeting, all management attendees, including managers of each of Planned Parenthood Gulf Coast's ten clinics, received oral and written instructions from members of Planned Parenthood's Key Management Team and other officials of Planned Parenthood Gulf Coast, including instructions on billing the Texas WHP program for products and services.

77. After each of these monthly management meetings, each of the managers of Planned Parenthood Gulf Coast's ten clinics were required by members of Planned Parenthood's Key Management Team to brief the employees of such manager's clinic on, among other things, Planned Parenthood Gulf Coast's then-current billing practices and procedures.

78. From January 1, 2007, to September 1, 2007, Adele Vorse served as manager of Planned Parenthood Gulf Coast's Bryan Clinic and attended these monthly management meetings at Planned Parenthood Gulf Coast's Fannin Street Corporate Office. After each management meeting, Adele Vorse briefed Ms. Johnson and other employees of Planned Parenthood Gulf Coast's Bryan Clinic on the instructions, including Texas WHP program billing instructions, which had been decreed by members of Planned Parenthood's Key Management Team during the preceding monthly management meeting.

79. When Ms. Johnson became Health Center Director for Planned Parenthood Gulf Coast's Bryan Clinic on September 1, 2007, she began to attend these monthly management meetings and, from September 1, 2007, to October 6, 2009, Ms. Johnson directly received written and oral instructions, including billing instructions, from members of Planned Parenthood's Key

Management Team and thereupon, as instructed by members of Planned Parenthood's Key Management Team, briefed employees of Planned Parenthood Gulf Coast's Bryan Clinic on the instructions, including Texas WHP program billing instructions, received from members of Planned Parenthood's Key Management Team.

80. After these monthly management meetings, all other managers of Planned Parenthood Gulf Coast's clinics were likewise required to and did brief the Planned Parenthood Gulf Coast employees at each of such clinic on the new protocols and procedures, including Texas WHP program billing instructions, imposed upon them by members of Planned Parenthood's Key Management Team.

81. Specifically, from and after January 1, 2007, the effective date of the Texas WHP program, to at least October 6, 2009, members of Planned Parenthood's Key Management Team, including, in the case of Ms. Johnson, Planned Parenthood Gulf Coast's Regional Director of Medical Services Dyann Santos, instructed the managers of each of Planned Parenthood Gulf Coast's ten clinics to maximize revenues to Planned Parenthood Gulf Coast by billing, as was later learned by Ms. Johnson, products and services which were not, in fact, eligible for reimbursement under the Texas WHP program at the time such products and services were billed.

82. At many of these monthly management meetings, Planned Parenthood Gulf Coast, through members of Planned Parenthood's Key Management Team, noting that Planned Parenthood Gulf Coast was suffering financial losses, imposed burdensome and unrealistic financial goals and objectives on Planned Parenthood Gulf Coast clinic managers, including Ms. Johnson after September 1, 2007, knowing that such burdensome and unrealistic financial expectations would result in and, in fact, had resulted in, the submission to the Texas WHP

program of false, fraudulent and/or ineligible claims for reimbursement by Planned Parenthood Gulf Coast.

83. In addition to these burdensome and unrealistic financial expectations, from and after September 1, 2007, Planned Parenthood Gulf Coast's Regional Director of Medical Services Dyann Santos and other members of Planned Parenthood's Key Management Team pressured Ms. Johnson to increase the per patient amount billed to the Texas WHP program at Planned Parenthood Gulf Coast's Bryan Clinic and observed that Planned Parenthood Gulf Coast's Bryan Clinic was billing less per patient to the Texas WHP program than were the other Planned Parenthood Gulf Coast's clinics.

84. Prior to September 1, 2007, Planned Parenthood Gulf Coast's Bryan Clinic manager Adele Vorse communicated to Ms. Johnson and other staff at Planned Parenthood Gulf Coast's Bryan Clinic that members of Planned Parenthood's Key Management Team had imposed similar unrealistic billing goals on her and all other clinic managers.

85. At several of these management meetings, the continued employment of Ms. Johnson and other Planned Parenthood Gulf Coast clinic managers and staff was threatened if such clinics failed to enhance revenues to Planned Parenthood Gulf Coast by raising the number of billable client files.

86. During 2009, Planned Parenthood Gulf Coast laid off 13 workers or 5% of its work force. Members of Planned Parenthood's Key Management Team used these work force layoffs as examples of what could happen to other employees of Planned Parenthood Gulf Coast if more revenues were not received from the Texas WHP program and other government programs.

87. On and after September 1, 2007, Ms. Johnson and other managers of Planned Parenthood Gulf Coast's ten clinics were told at these monthly management meetings by members of

Planned Parenthood's Key Management Team that "We have to keep these people as patients"; "We must generate multiple visits by each client"; and "We must turn every call and visit into a revenue-generating client" so as to bill all such clients, products, and services, including clients, products, and services which were not Texas WHP reimbursement eligible, to the Texas WHP program.

88. On and after January 1, 2007, Dyann Santos, Regional Director of Medical Services based at Planned Parenthood Gulf Coast's Fannin Street Corporate Office and a member of Planned Parenthood's Key Management Team and other Planned Parenthood Gulf Coast officers, using, among other documents, Planned Parenthood Gulf Coast's Billing Matrix documents, instructed managers of Planned Parenthood Gulf Coast's ten clinics, including Ms. Johnson's predecessor at Planned Parenthood Gulf Coast's Bryan Clinic Adele Vorse, to bill every product and service provided by Planned Parenthood Gulf Coast to a client to the Texas WHP program even though, as Ms. Johnson later learned, many such products and services were not eligible for reimbursement from Texas WHP funds.

89. As is known to Ms. Johnson with respect to Planned Parenthood Gulf Coast's Bryan Clinic, and, with respect to all Planned Parenthood Gulf Coast clinics, all such false, fraudulent, and/or ineligible claims as were submitted by Planned Parenthood Gulf Coast were, in fact, reimbursed to Planned Parenthood Gulf Coast by the United States and/or the State of Texas and improperly retained by Planned Parenthood Gulf Coast.

90. Specifically, on a daily basis on and after January 1, 2007, to at least October 6, 2009 and, upon information and belief, to the present date, in violation of relevant laws and regulations relating to the Texas WHP program and in breach of its provider agreements and in order to offset its operating losses, Planned Parenthood Gulf Coast presented false, fraudulent,

and/or ineligible claims to the United States, the State of Texas, and/or their respective fiscal intermediaries for office or other outpatient visits when the primary purpose of the visit was not related to contraceptive management, but rather, was for, among other products or services:

- A. Testing for pregnancy and/or products and services rendered to clients who were pregnant.
- B. Testing for STI/STDs.
- C. A Pap test, including a repeat Pap test after an abnormal result.

91. In addition, in violation of relevant laws and regulations relating to the Texas WHP program and in breach of its provider agreements and in order to offset its operating losses, Planned Parenthood Gulf Coast billed the Texas WHP program for more than one family planning examination in a state fiscal year provided to clients with “problems” and characterized these visits as “follow-up family planning visits.”

92. In further violation of relevant laws and regulations relating to the Texas WHP program and in breach of its provider agreements and in order to offset its operating losses, rather than refer such clients to another physician or clinic for treatment as required by the Texas WHP program regulations, Planned Parenthood Gulf Coast, a provider which does, in fact, perform and/or promote elective abortions and/or is affiliated with a provider which does perform and/or promote elective abortions, treated all such clients and required the clients to pay for products and services provided to such clients in connection with such services.

93. In addition to the foregoing, on a daily basis on and after January 1, 2007, to at least October 6, 2009, and, upon information and belief, to the present date, Planned Parenthood Gulf Coast presented false, fraudulent, and ineligible claims to the United States, the State of Texas, and/or their respective fiscal intermediaries for reimbursement from Texas WHP funds for

products and services delivered to female clients with infections, for general obstetrical care, and for follow-up examinations, which products, services, and examinations were not rendered in connection with Texas WHP-reimbursable family planning services. In this regard,

- A. At the instructions of Planned Parenthood Gulf Coast, the Planned Parenthood Gulf Coast staff person who had made the fraudulent notation in the patient's chart would thereupon notify Planned Parenthood Gulf Coast employee Stephanie Shetler of the false chart notation and Planned Parenthood Gulf Coast employee Stephanie Shetler would further document the fraud by making an additional false notation reflecting a family planning purpose, such as, "Discussed birth control with patient – patient decided to retain current method."
- B. Planned Parenthood Gulf Coast would then bill the examination to the Texas WHP program, as well as non-family planning services, such as STI/STD screenings, provided in conjunction with the falsified family planning examination.

94. Members of Planned Parenthood's Key Management Team and other Planned Parenthood Gulf Coast officers knew or should have known that all such products and services which were ineligible for reimbursement and were in fact billed by Planned Parenthood Gulf Coast on a regular, usually daily, basis to the Texas WHP program from at least January 1, 2007, to at least October 6, 2009 and, upon information and belief, to the present date, could not, in fact, be legally reimbursed to Planned Parenthood Gulf Coast by the United States, the State of Texas, and/or their respective fiscal intermediaries from Texas WHP program funds.

95. From January 1, 2007 to October 6, 2009, and, upon information and belief, to the present date, Planned Parenthood Gulf Coast's Bryan Clinic provided products and services to an

average of 10 purportedly Texas WHP-eligible clients per day, five days a week. Each client visit resulted in at least five (5) procedures billed to the Texas WHP program in connection with the visit.

96. Based upon the later acknowledgement by members of Planned Parenthood's Key Management Team of the false and fraudulent billing of products and services not covered by the Texas WHP program, Ms. Johnson later became aware that forty (40) percent of these clients were provided with products and services which were not legally reimbursable from Texas WHP funds and for which reimbursement was sought and received by Planned Parenthood Gulf Coast from the Texas WHP program.

97. Thus, with respect to Planned Parenthood Gulf Coast's Bryan Clinic, from January 1, 2007, to October 6, 2009, Planned Parenthood Gulf Coast fraudulently billed to the United States, the State of Texas and/or their designated intermediaries, including TMHP and/or Texas HHSC, products and services rendered to at least 650 clients for at least 3,900 procedures in each state fiscal year which were not covered by the Texas WHP program.

98. With respect to Planned Parenthood Gulf Coast's other nine clinics, on and after January 1, 2007 to at least October 6, 2009, Planned Parenthood Gulf Coast fraudulently billed to the United States, the State of Texas and/or their designated intermediaries, including TMHP and/or Texas HHSC products and services not covered by the Texas WHP program rendered to at least 4,500 clients and for at least 13,500 products or services.

99. In SFY 2007, Planned Parenthood Gulf Coast provided products and services to clients participating in 82,513 patient visits or procedures from which Planned Parenthood Gulf Coast received Texas WHP reimbursements in the amount of \$9,230,230. *See* Planned Parenthood Gulf Coast IRS Form 990 2007, p.1, l.2.

100. Ms. Johnson later learned that forty (40) percent of these patient visits or procedures and such SFY 2007 revenues, or 33,005 claims and \$3,692,092, were derived from false, fraudulent and/or ineligible reimbursements to Planned Parenthood Gulf Coast from Texas WHP program funds.

101. In SFY 2008, Planned Parenthood Gulf Coast provided products and services to 9,029 clients participating in 66,687 patient visits or procedures from which Planned Parenthood Gulf Coast received Texas WHP reimbursements in the amount of \$1,950,669, as follows:

<u>PPGC Clinic</u>	<u>Clients Served</u>	<u>Procedures Performed</u>	<u>Amount Reimbursed</u>
Fannin Clinic	2,771	19,823	\$595,738.20
Stafford/Greenbriar Clinic	450	3,450	\$92,394.99
1960 Clinic	723	5,420	\$160,374.61
Southwest Clinic	880	7,014	\$194,742.26
Lufkin Clinic	858	7,695	\$211,907.35
Bryan Clinic	684	3,556	\$124,947.92
Huntsville Clinic	591	4,096	\$126,536.10
Greenspoint Clinic	749	5,609	\$164,778.74
Dickinson Clinic	765	5,393	\$155,603.92
Rosenburg Clinic	558	4,631	\$123,645.39
Totals	<u>9,029</u>	<u>66,687</u>	<u>\$1,950,669.20</u>

102. Ms. Johnson later learned that forty (40) percent of these patient visits or procedures and such SFY 2008 revenues, or 26,675 claims and \$780,268, were derived from false, fraudulent and/or ineligible reimbursements to Planned Parenthood Gulf Coast from Texas WHP program funds.

103. In SFY 2009, Planned Parenthood Gulf Coast, provided products and services to 10,137 clients participating in 68,488 patient visits or procedures from which Planned Parenthood Gulf Coast received Texas WHP reimbursements in the amount of \$3,071,727.

104. Ms. Johnson later learned that forty (40) percent of these patient visits or procedures and such SFY 2009 revenues, or 27,395 claims and \$1,228,695, were derived from false, fraudulent and/or ineligible reimbursements to Planned Parenthood Gulf Coast from Texas WHP program funds.

105. Based on the foregoing numbers of patient visits or procedures and the revenues received in SFY 2007, 2008 and 2009, on and after January 1, 2007 to at least October 6, 2009 and, upon information and belief, to the present date, Planned Parenthood Gulf Coast has filed 87,075 or more false, fraudulent, and/or ineligible claims with the United States, the State of Texas and/or their designated intermediaries, including TMHP and/or Texas HHSC, from which Planned Parenthood Gulf Coast wrongfully received and retained reimbursements from Texas WHP funds totaling at least \$5,701,055.

106. Such false, fraudulent, and/or ineligible claims for reimbursement were not eligible for reimbursement to Planned Parenthood Gulf Coast from Texas WHP funds. Moreover, in violation of applicable laws and regulations, Planned Parenthood Gulf Coast did not refer such patients to another physician or clinic that could treat the patient, but rather collected for products and services delivered to clients whose primary purpose for a visit was not related to contraceptive management.

107. At least as of October 6, 2009 and, upon information and belief, to the present date, Planned Parenthood Gulf Coast has failed and/or refused to reimburse any of the funds it had

wrongfully received from the United States and/or the State of Texas from the Texas WHP program.

Planned Parenthood Gulf Coast Covers Up Its Frauds

108. At a monthly management meeting in late 2008 or early 2009, members of Planned Parenthood's Key Management Team disclosed to Planned Parenthood Gulf Coast's ten clinic managers, including Ms. Johnson, that, since January 1, 2007, Planned Parenthood Gulf Coast acknowledged that it had been billing for and receiving reimbursements from the United States, the State of Texas, and their respective fiscal intermediaries for false, fraudulent, and/or ineligible claims for Texas WHP reimbursement relating to the delivery of products and services to clients for visits when the primary purpose of the visit was not related to contraceptive management.

109. At this late 2008/early 2009 management meeting, members of Planned Parenthood's Key Management Team gave those present, including Ms. Johnson and the other managers of each of Planned Parenthood Gulf Coast's ten clinics, a new, revised Planned Parenthood Gulf Coast Billing Matrix and other related billing instructions that sought to rectify these false, fraudulent, and/or ineligible claims for Texas WHP reimbursement by providing for changes in the way each of Planned Parenthood Gulf Coast's clinics were to thereafter submit billings through Planned Parenthood's Fannin Street Corporate Office centralized accounting system for claims for reimbursement from Texas WHP program funds.

110. Planned Parenthood Gulf Coast's ten clinic managers, including Ms. Johnson, were uniformly shocked by this disclosure by Planned Parenthood Gulf Coast and by members of Planned Parenthood's Key Management Team.

111. Ms. Johnson thereupon asked members of Planned Parenthood's Key Management Team, "What are we going to do about the monies" Planned Parenthood had received from such false, fraudulent and/or ineligible claims over the past nearly three years and retained?

112. Ms. Johnson's supervisor Dyann Santos, Regional Director of Medical Services, Planned Parenthood Gulf Coast's Fannin Street Corporate Office and a member of Planned Parenthood's Key Management Team, immediately responded "Well, we are going to hope we don't get caught."

113. Several Planned Parenthood Gulf Coast clinic managers thereupon asked members of Planned Parenthood's Key Management Team, "What will happen if we get audited?" Members of Planned Parenthood's Key Management Team, including Laurie McGill, informed the managers of Planned Parenthood Gulf Coast's ten clinic managers that they "would not be personally liable if the auditors learn of the problem."

114. As Planned Parenthood Gulf Coast, being aware of audits in advance, had historically pre-selected and purged client files to ensure that the files appeared to be compliant with federal and state laws and regulations, this did not appear to be of concern to members of Planned Parenthood's Key Management Team.

115. At this late 2008/early 2009 management meeting and at monthly management meetings thereafter, other Planned Parenthood Gulf Coast's clinic managers discussed with Ms. Johnson and with one another in her presence their overall concern that these new billing instructions on services which could be properly billed to the Texas WHP program would make it much more difficult to meet the financial goals still being imposed upon them by members of Planned Parenthood's Key Management Team.

116. In addition, at about the same time as this late 2008/early 2009 management meeting at which members of Planned Parenthood's Key Management Team acknowledged the ongoing Texas WHP program reimbursement frauds, members of Planned Parenthood's Key Management Team instructed Planned Parenthood Gulf Coast's clinic managers, including Ms. Johnson, to continue to seek Texas WHP-eligible reimbursements by falsely notating the patient charts of women with infections to indicate that Texas WHP-eligible services had been provided, when, in fact, Texas WHP-eligible services had not been provided to such women. In this manner, Planned Parenthood Gulf Coast "transformed" an otherwise non-reimbursable service into a Texas WHP reimbursable product or service, as, for example, female clients with infections, general obstetrical care, or follow-up examinations, which products, services, and examinations were not rendered in connection with Texas WHP reimbursable family planning services.

117. Although Planned Parenthood Gulf Coast required Ms. Johnson and the managers of Planned Parenthood Gulf Coast's other clinics to audit only ten percent of their patient files, Ms. Johnson initially monitored one hundred percent of the patient files for Planned Parenthood Gulf Coast's Bryan Clinic.

118. Ms. Johnson and the other managers of Planned Parenthood Gulf Coast's ten clinics sent monthly chart audit forms to Planned Parenthood Gulf Coast's Quality Assurance Manager, Brooke McFadden. At Planned Parenthood's Fannin Street Corporate Office.

119. Texas HHSC personnel annually, usually in late November, visited Planned Parenthood Gulf Coast's Bryan Clinic to audit selected billings by comparing the clinic's billings to its charts.

120. Because the Texas HHSC audit visits were announced in advance and Planned Parenthood Gulf Coast was provided by Texas HHSC with a list of categories of charts Texas HHSC personnel wished to audit, Planned Parenthood Gulf Coast's staff were instructed to and did provide charts that had been "fixed" – *i.e.*, charts that Planned Parenthood Gulf Coast's staff, at the instruction of members of Planned Parenthood's Key Management Team, had gone through to conceal fraudulent billings and to ensure that required documentation, especially with regard to parental consent and non-coercion, was included in each client file.

121. Ms. Johnson and other Planned Parenthood Gulf Coast personnel were instructed by members of Planned Parenthood's Key Management Team, including Bonnie Smith, Sandra Smolensky and Dyann Santos, to "make it right" by fixing charts before auditors arrived.³

122. As an example of such "chart-fixing," Ms. Johnson had access to a computer spreadsheet that would show all laboratory tests ordered for clients in all of Planned Parenthood Gulf Coast's ten clinics. On numerous occasions, the laboratory work ordered for STI/STD screenings would be billed as if the tests had been conducted, but on an in-house audit the tests would show as "open/pending" – *i.e.*, not performed.

³ See Planned Parenthood Gulf Coast Medicaid Provider Agreement, § I.1.2.3, at 8-2:

As required by 42 C.F.R. § 431.107, Provider agrees to keep any and all records necessary to disclose the extent of services provided by the Provider to individuals in the Medicaid program and any and all information relating to payments claimed by the Provider for furnishing Medicaid services. Provider also agrees to provide, on request, access to records required to be maintained under 42 C.F.R. § 431.107 and copies of those records free of charge to TDH, TDH's agent, the Texas Health and Human Services Commission, the Texas Attorney General's Medicaid Fraud Control Unit, and/or the United States Department of Health and Human Services. The records must be retained in the form in which they are regularly kept by the Provider for five (5) years from the date of service... or until all audit or audit exceptions are resolved, whichever period is longest.

123. These laboratory test orders would be deleted, but the billing was left charged, and no reimbursement was provided to the United States, the State of Texas, or their respective fiscal intermediaries by Planned Parenthood Gulf Coast for the billed, but unperformed services.

124. At one management meeting, members of Planned Parenthood's Key Management Team, including Bonnie Smith and Sandra Smolensky, informed Ms. Johnson and others that syphilis laboratory tests had been "cleared" from the record but that no reimbursement had been or would be provided to the United States, the State of Texas, and/or their fiscal intermediaries, and that with regard to such fraudulent billings "sometimes that happens, we really should be sending back a refund but it's such a hassle we try not to do that."

125. The implementation of electronic charting in summer of 2008 made performing the auditing task in the manner expected of Ms. Johnson and other Planned Parenthood Gulf Coast clinic managers by members of Planned Parenthood's Key Management Team more difficult, because the electronic charting system included a time stamp and notation of the user making the alteration, making after-the-fact alteration of records traceable.

126. Nonetheless, Ms. Johnson continued to audit approximately sixty (60) percent of patient files for Planned Parenthood Gulf Coast's Bryan Clinic.

127. Even after the late 2008/early 2009 management meeting, in order to meet the financial goals imposed upon them by members of Planned Parenthood's Key Management Team and as instructed by Dyann Santos, Regional Director of Medical Services located at Planned Parenthood Gulf Coast's Fannin Street Corporate Office, Planned Parenthood Gulf Coast's Bryan Clinic and, upon information and belief, all other Planned Parenthood Gulf Coast clinics continued to characterize office or other outpatient visits that were not Texas WHP-covered as

“contraceptive visits” so as to be able to bill such otherwise non-reimbursable services to the Texas WHP program.

128. Even after the late 2008/early 2009 management meeting at which Planned Parenthood Gulf Coast admitted it had submitted false, fraudulent, and or ineligible claims for Texas WHP-reimbursement to the United States, the State of Texas, and/or their fiscal intermediaries, Planned Parenthood Gulf Coast continued to transmit to the United States, the State of Texas, and/or their respective fiscal intermediaries false, fraudulent, and/or ineligible claims for products and services which were not legally reimbursable under the Texas WHP program.

129. Upon the acknowledgment of the false and fraudulent billing of Texas WHP-ineligible products and services, Planned Parenthood Gulf Coast was obligated by applicable laws, regulations, and provider agreement to notify the United States, the State of Texas, and/or their respective fiscal intermediaries to reimburse or credit said authorities in the amount of such false, fraudulent, and/or ineligible claims. In spite of said obligations, Planned Parenthood Gulf Coast failed and/or refused to notify the United States, the State of Texas, and/or their respective fiscal intermediaries of the false, fraudulent, and/or ineligible claims and/or to reimburse or credit said authorities for the reimbursements received by Planned Parenthood Gulf Coast for such false, fraudulent, and/or ineligible claims.

130. From at least January 1, 2007, to at least October 6, 2009, and, upon information and belief, to the present date, Planned Parenthood Gulf Coast, acting through Planned Parenthood’s Key Management Team and other Planned Parenthood Gulf Coast officials combined, conspired, and agreed together and with each other to defraud the United States, the State of Texas, and/or their respective fiscal intermediaries by knowingly submitting and causing to be submitted to agencies of the United States, the State of Texas, and/or their respective fiscal intermediaries,

including TMHP and/or Texas HHSC, false, fraudulent and/or ineligible claims for Texas WHP reimbursement which Planned Parenthood Gulf Coast knew or should have known were false, fraudulent and/or ineligible for reimbursement when made.

131. The United States, the State of Texas, and their respective fiscal intermediaries, unaware of the falsity of the records, statements, and claims made or submitted by Planned Parenthood Gulf Coast and its agents and employees – or of its failure to disclose material facts which would have reduced government obligations – have reimbursed Planned Parenthood Gulf Coast from Texas WHP funds for products and services which Planned Parenthood Gulf Coast knew, at the time the claims were made or submitted, were false.

132. Knowing that it had received reimbursements for false, fraudulent and/or ineligible claims submitted to the United States, the State of Texas, and their respective fiscal intermediaries, Planned Parenthood Gulf Coast failed to reimburse the United States, the State of Texas, and their respective fiscal intermediaries and improperly retained all such reimbursements.

133. The United States, the State of Texas, and their respective fiscal intermediaries, unaware of the falsity of the records, statements, and claims made or submitted by Planned Parenthood Gulf Coast during this time paid and continue to pay Planned Parenthood Gulf Coast for claims that would not be paid if the truth were known.

FIRST CLAIM FOR RELIEF

Violation of the False Claims Act, U.S.C. § 3729(a)(1)(A), (B), and (G) and the Texas Medicaid Fraud Prevention Act, TEX. HUM. RES. CODE ANN. § 36.002(1)-(2), (9), (12)

134. Plaintiff-Relator hereby incorporates and re-alleges as fully as if set forth herein all prior factual allegations.

135. Through the acts described above and herein, from and after January 1 ,2007, to at least October 6, 2009, and, upon information and belief, to the present date, Planned Parenthood Gulf Coast and its agents and employees, including members of Planned Parenthood's Key Management Team, knowingly presented and caused to be presented to the United States, to the State of Texas, and/or to their respective fiscal intermediaries, false, fraudulent and/or ineligible claims for reimbursement from Texas WHP funds for non-reimbursable products and services which Planned Parenthood Gulf Coast knew or should have known, when submitted or made, were false, fraudulent, and/or ineligible, all in violation of applicable United States laws and regulations and State of Texas laws and regulations.

136. The acts of Planned Parenthood Gulf Coast and its officers and employees, including members of Planned Parenthood's Key Management Team, as described herein, constituted the knowing presentment of false, fraudulent and/or ineligible claims for reimbursement and/or the knowing making and/or using of false records or statements material to false or fraudulent claims in violation of 31 U.S.C. § 3729(a)(1)(A) and (B) respectively and TEX. HUM. RES. CODE ANN. § 36.002(1), (2) and (4)(B), and/or conspiracy to commit violations of said provisions in violation of 31 U.S.C. § 3729(a)(1)(C) and TEX. HUM. RES. CODE ANN. § 36.002(9).

137. Through the acts described above and otherwise, Planned Parenthood Gulf Coast and its agents and employees, including members of Planned Parenthood's Key Management Team, knowingly made, used, and/or caused to be made or used false records and statements to conceal, avoid, and/or decrease Planned Parenthood Gulf Coast's obligations to repay money to the United States, to the State of Texas, and to their respective fiscal intermediaries, that Planned Parenthood Gulf Coast improperly and/or fraudulently received, in violation of 31 U.S.C. § 3729(a)(1)(G) and TEX. HUM. RES. CODE ANN. § 36.002(12). Planned Parenthood Gulf Coast

also failed to disclose to the United States, to the State of Texas, and/or to their respective fiscal intermediaries material facts that would have resulted in substantial repayments by Planned Parenthood Gulf Coast to the United States, to the State of Texas, and/or to their respective fiscal intermediaries, all in violation of 31 U.S.C. § 3729(a)(1)(G) and TEX. HUM. RES. CODE ANN. § 36.002(12).

138. By reason of Planned Parenthood Gulf Coast's false records, statements, claims and omissions, the United States and the State of Texas have been substantially damaged in an amount to be proven at trial.

SECOND CLAIM FOR RELIEF
Violation of the False Claims Act, U.S.C. § 3729(a)(1)(G) and the Texas Medicaid Fraud Prevention Act, TEX. HUM. RES. CODE ANN. § 36.002(1)-(2), (9), (12)

139. Plaintiff-Relator hereby incorporates and re-alleges as fully as if set forth herein all prior allegations.

140. Upon the inauguration of the Texas WHP program, Planned Parenthood Gulf Coast billed all products and services delivered to purportedly Texas WHP-eligible clients to the Texas WHP program, regardless of whether said products and services were covered by the Texas WHP program.

141. Planned Parenthood Gulf Coast knew or reasonably should have known that such claims for products and services were not covered by the Texas WHP program and that the submission of and reimbursement for such claims was a violation of federal and state laws and regulations and in breach of its provider agreements.

142. At the late 2008/early 2009 monthly management meeting, Planned Parenthood Gulf Coast, through members of Planned Parenthood's Key Management Team, openly acknowledged to Ms. Johnson and others attending this management meeting that Planned

Parenthood Gulf Coast had, in fact, been fraudulently billing the Texas WHP program for non-reimbursable products and services but would hope not to get caught and would hide these facts from the United States, the State of Texas, and/or their respective fiscal intermediaries and not provide any reimbursement of monies received from the United States, the State of Texas, and/or their respective fiscal intermediaries for such false, fraudulent, and/or ineligible claims.

143. Additionally, members of Planned Parenthood's Key Management Team acknowledged that Planned Parenthood Gulf Coast had improperly billed the Texas WHP program and had received payments for laboratory tests that had not been performed or completed but had elected not to refund funds wrongfully received from the Texas WHP program because of the "hassle."

144. Upon the acknowledgment of the fraudulent billing of uncovered products and services to the United States, to the State of Texas, and/or to their respective fiscal intermediaries, Planned Parenthood Gulf Coast was obligated by applicable federal and state laws, regulations, and provider agreement provisions to notify the United States, the State of Texas, and/or their respective fiscal intermediaries, including the Texas HHSC, that overbillings had occurred and to reimburse or credit said authorities in the amount of the overbillings. In spite of said obligation, Planned Parenthood Gulf Coast failed and/or refused to notify the United States, the State of Texas, and/or their respective fiscal intermediaries, including the Texas HHSC, of the overbillings and to reimburse or credit said authorities in the amount of the monies received from the United States, the State of Texas, and/or their respective fiscal intermediaries for such false, fraudulent, and/or ineligible claims.

145. The acts of Planned Parenthood Gulf Coast and its officers and employees, as described herein, constituted the knowing presentment of false or fraudulent claims for payment or approval in violation of 31 U.S.C. § 3729(a)(1)(A) and (B) and TEX. HUM. RES. CODE ANN. §

36.002(1) and (2), and the concealment and/or improper avoidance of an obligation to pay or transmit money to the United States government in violation of 31 U.S.C. § 3729(a)(1)(G) and the State of Texas under TEX. HUM. RES. CODE ANN. § 36.002(12).

146. By reason of Planned Parenthood Gulf Coast's false records, statements, claims and omissions, the United States and the State of Texas have been substantially damaged in an amount to be proven at trial.

WHEREFORE, Plaintiff-Relator Abby Kristen Johnson respectfully requests that this honorable Court enter judgment against Defendant Planned Parenthood Gulf Coast, formerly known as Planned Parenthood of Houston and Southeast Texas, Inc. pursuant to the laws of the United States and the State of Texas as follows:

1. Pursuant to 31 U.S.C. § 3729 *et seq.*
 - a. For damages in an amount equal to three times the amount of actual damages the United States has sustained as a result of the acts and conduct of Planned Parenthood Gulf Coast, formerly known as Planned Parenthood of Houston and Southeast Texas, Inc.
 - b. For civil penalties against Defendant Planned Parenthood Gulf Coast formerly known as Planned Parenthood of Houston and Southeast Texas, Inc., for the maximum possible amount per claim for each violation of 31 U.S.C. § 3729.
 - c. For an order that Planned Parenthood Gulf Coast, formerly known as Planned Parenthood of Houston and Southeast Texas, Inc., cease and desist from violating 31 U.S.C. § 3729 *et seq.*
 - d. For an award to the Plaintiff-Relator of the maximum amounts allowed pursuant to 31 U.S.C. § 3730(d).

- e. For the Plaintiff-Relator's attorney's fees and costs.
 - f. For such other and further relief to the United States of America and/or to the Plaintiff-Relator as the Court deems just and proper.
2. Pursuant to TEX. HUM. RES. CODE ANN. § 36.001 *et seq.*
- a. For damages pursuant to TEX. HUM. RES. CODE ANN. § 36.001 *et seq.*, including interest, consistent with TEX. HUM. RES. CODE ANN. § 36.052(a).
 - b. For a penalty equal to twice the amount paid consistent with TEX. HUM. RES. CODE ANN. § 36.052(a)(4).
 - c. For a civil penalty equal to the maximum possible amount per claim for each violation of TEX. HUM. RES. CODE ANN. § 36.001 *et seq.*
 - d. For an order that Planned Parenthood Gulf Coast, formerly known as Planned Parenthood of Houston and Southeast Texas, Inc., cease and desist from violating TEX. HUM. RES. CODE ANN. § 36.001 *et seq.*
 - e. For an award to the Plaintiff-Relator of the maximum possible amounts allowed pursuant to TEX. HUM. RES. CODE ANN. § 36.110.
 - f. For the Plaintiff-Relator's attorney's fees and costs consistent with TEX. HUM. RES. CODE ANN. §§ 36.052(a)(3)(B), 36.007.
 - g. For such other and further relief to the State of Texas and/or to the Plaintiff-Relator as the Court deems just and proper.

JURY DEMAND

Pursuant to F.R.C.P. 38, Plaintiff-Relator Abby Kristen Johnson hereby demands trial by jury of all issues so triable.

Dated this 20th day of December, 2011.

COUNSEL FOR PLAINTIFF-RELATOR
ABBY KRISTEN JOHNSON:



s/ Michael J. Norton
Michael J. Norton, Esq.
Colorado Bar No. 6430
ALLIANCE DEFENSE FUND
Greenwood Corporate Plaza, Bldg. 3
7951 E. Maplewood Avenue, Suite 100
Greenwood Village CO 80111
Tel.: 480-388-8163
mjnorton@telladf.org



s/ M. Casey Mattox
M. Casey Mattox, Esq.
Virginia Bar No. 47148
Senior Counsel
ALLIANCE DEFENSE FUND
801 G Street, N.W., Suite 509
Washington, DC 20001
Tel.: 202-393-8690
Fax: 202-347-3622
cmattox@telladf.org

Joshua W. Carden, Esq.
Texas Bar No. 24050379
THE CARDEN LAW FIRM
545 E. John Carpenter Freeway, Suite 300
Irving, TX 75062
Tel: 972-674-3885
Fax: 817-596-4269
Joshua@cardenlawfirm.com

Steven H. Aden, Esq.
District of Columbia Bar No. 466777
Senior Counsel
ALLIANCE DEFENSE FUND
801 G Street, N.W., Suite 509
Washington, DC 20001
Tel.: 202-393-8690
Fax: 202-347-3622
saden@telladf.org

Catherine Glenn Foster, Esq.
Virginia Bar No. 82109
Litigation Counsel
ALLIANCE DEFENSE FUND
801 G Street, N.W., Suite 509
Washington, DC 20001
Tel.: 202-393-8690
Fax: 202-347-3622
cfoster@telladf.org

Reference: <http://www.adfmedia.org/files/JohnsonComplaint.pdf>