

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

UNITED STATES OF AMERICA, §  
§  
Plaintiff, §  
§  
v. § Civ. A. No. 1:17-cv-1125  
§  
BRIAN D. HANEY, § **COMPLAINT**  
DAVID K. HANEY, §  
HANEY & HANEY, LLC, §  
VIDOR PHARMACY, LLC, §  
KEVIN M. GRAY, and §  
FAMILY PHARMACY, INC., §  
§  
Defendants. §

1. Defendants Brian D. Haney and Kevin M. Gray perpetrated a multimillion dollar kickback scheme against the federal workers' compensation program ("FECA program"), a federal health care program administered by the United States Department of Labor, Office of Workers' Compensation Programs ("DOL-OWCP") pursuant to the Federal Employees' Compensation Act, 5 U.S.C. §§ 8101 to 8152 ("FECA").

2. In just over three years, Haney, Gray, and their companies submitted and conspired with others to submit thousands of false claims to the FECA program.

3. DOL-OWCP reimbursed these defendants roughly \$3.5 million for tainted prescriptions that were not eligible for reimbursement and should not have been paid.

4. The United States brings this action under the False Claims Act, 31 U.S.C. §§ 3729 to 3733, for treble damages and civil penalties to hold Brian Haney, Kevin Gray, and their companies accountable for the false claims they caused DOL-OWCP to pay.

5. Alternatively, the United States asserts common law claims for payment by mistake and unjust enrichment to recover payments these defendants were not entitled to receive.

6. The United States also asserts a fraudulent transfer claim under the Federal Debt Collection Procedure Act, 28 U.S.C. §§ 3001 to 3308, to avoid the transfer of Brian Haney's ownership stake in Haney & Haney, LLC – a pharmacy management and holding company – for no consideration, which gave full ownership and control to his father, David K. Haney.

7. Alternatively, the United States seeks judgment against Haney & Haney, LLC and David Haney for the value of the transferred asset.

## **I. JURISDICTION AND VENUE**

8. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1345 and 1367(a) and 31 U.S.C. § 3730(a).

9. The Court may exercise personal jurisdiction over defendants pursuant to 31 U.S.C. § 3732(a) because they transacted business and committed acts in the Western District of Texas that violated 31 U.S.C. § 3729.

10. This district is a proper venue under 28 U.S.C. § 1391(b) and 31 U.S.C. § 3732(a) because a substantial part of the events giving rise to the United States' claims occurred in the Western District of Texas.

## **II. PARTIES**

### **A. The United States of America**

11. The United States of America is the plaintiff in this case.

12. DOL is an agency of the United States government.

13. DOL-OWCP is the component of DOL that administers the FECA program on behalf of other federal agencies and instrumentalities – including the United States Postal Service – that ultimately bear the cost of the program.

**B. The Haney Defendants**

14. Defendant Brian D. Haney (“Brian Haney”) is a pharmacist licensed to practice under Texas Pharmacist License #43956.

15. Brian Haney is the son of defendant David K. Haney.

16. Defendant David K. Haney (“David Haney”) is a pharmacist licensed to practice under Texas Pharmacist License #20281.

17. David Haney is the father of defendant Brian D. Haney.

18. Defendant Haney & Haney, LLC (“H&H”) is a Texas limited liability company that owns and manages pharmacies in Texas, including defendant Vidor Pharmacy, LLC.

19. From on or about November 18, 2004, through on or about January 6, 2017, Brian Haney and David Haney each owned 50% of H&H.

20. From on or about November 18, 2004, through on or about January 6, 2017, Brian Haney was a director and managing member of H&H.

21. Brian Haney controlled and operated H&H at all relevant times.

22. On or about January 11, 2017, H&H filed a Certificate of Amendment with the Texas Secretary of State that removed Brian Haney as a manager and transferred ownership and control of the company to his father, David Haney.

23. David Haney is now the sole member and director of H&H.

24. Vidor Pharmacy, LLC (“Vidor Pharmacy”) is a Texas limited liability company that operates a pharmacy in Vidor, Texas under Texas Pharmacy License #25444.

25. Haney & Haney has owned and managed Vidor Pharmacy since at least 2009.

26. From on or about June 27, 2006, through on or about January 6, 2017, Brian Haney was a director and managing member of Vidor Pharmacy.

27. Brian Haney controlled and operated Vidor Pharmacy at all relevant times.
28. On or about January 11, 2017, Vidor Pharmacy filed a Certificate of Amendment with the Texas Secretary of State that removed Brian Haney as a manager and transferred control of the pharmacy to his father, David Haney.
29. David Haney is now the sole member and director of Vidor Pharmacy.
30. On or about December 14, 2016, Brian Haney pleaded guilty to paying kickbacks for prescription referrals in violation of the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b, and filing a false federal tax return.

### **C. The Gray Defendants**

31. Defendant Kevin Michael Gray (“Kevin Gray”) is a pharmacist licensed to practice under Texas Pharmacist License #35899.
32. Defendant Family Pharmacy, Inc. (“Family Pharmacy”) is a Texas corporation that operates a pharmacy in Pasadena, Texas under Texas Pharmacy License #22808.
33. Corporate records list Annick Rodriguez Gray (“Annick Gray”), Kevin Gray’s wife, as the owner and President of Family Pharmacy.
34. Annick Gray is a proxy for Kevin Gray.
35. The Gray defendants put Family Pharmacy in Annick Gray’s name to avoid disclosing Kevin Gray’s criminal history to the Texas Board of Pharmacy.
36. Kevin Gray controlled and operated Family Pharmacy at all relevant times.
37. On or about April 13, 2017, Kevin Gray pleaded guilty to paying kickbacks for prescription referrals in violation of the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b, and filing a false federal tax return.

### **III. LEGAL FRAMEWORK**

#### **A. The FECA Program**

38. The FECA program provides workers' compensation benefits to civilian employees of the United States government who suffer job-related injuries. 5 U.S.C. §§ 8101 to 8152; 20 C.F.R. § 10.0. The program covers roughly three million federal workers, including postal employees. 5 U.S.C. § 8101(1); 39 U.S.C. § 1005(c); 20 C.F.R. § 10.5(h).

39. FECA covers an injured worker's medical and rehabilitation expenses, including prescription medications. 5 U.S.C. §§ 8102, 8103; 20 C.F.R. §§ 10.0(b), 10.310.

40. DOL-OWCP administers the FECA program and uses federal funds to pay enrolled providers for treating covered workers. 5 U.S.C. § 8147(a); 20 C.F.R. § 10.1.

41. When a provider bills the FECA program, the provider must certify that the services or items reflected on its claim form were medically indicated, necessary for the health of the patient, and actually rendered. 20 C.F.R. § 10.801(d).

42. DOL-OWCP relies on the accuracy of the billing information and certifications on the claim form to determine if the provider's services are reimbursable and the amount of reimbursement that is due.

43. The claim form specifically warns the billing provider of the consequences of submitting false claims and making false statements to DOL-OWCP.

#### **B. The False Claims Act**

44. The False Claims Act ("FCA") prohibits the submission of false claims, statements, and records to federal health care programs, like FECA.

45. The statute provides, in pertinent part, that any person who:

(A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;

(B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;

(C) conspires to commit a violation of [the statute];

\* \* \*

is liable to the United States Government for a civil penalty . . . plus 3 times the amount of damages which the Government sustains because of the act of that person.

31 U.S.C. § 3729(a)(1)(A)-(C).

46. The FCA defines “knowing” and “knowingly” as follows:

(1) the terms “knowing” and “knowingly” –

(A) mean that a person, with respect to information—

(i) has actual knowledge of the information;

(ii) acts in deliberate ignorance of the truth or falsity of the information; or

(iii) acts in reckless disregard of the truth or falsity of the information;

(B) require no proof of specific intent to defraud;

31 U.S.C. § 3729(b)(1).

47. The FCA defines the term “claim” as:

any request or demand, whether under a contract or otherwise, for money or property and whether or not the United States has title to the money or property, that – (i) is presented to an officer, employee, or agent of the United States; or (ii) is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the Government’s behalf or to advance a Government program or interest, and if the United States Government – (I) provides or has provided any portion of the money or property requested or demanded; or (II) will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

31 U.S.C. § 3729(b)(2).

48. A request for payment submitted to DOL-OWCP is a claim under the FCA.

49. The civil penalty for violating the FCA is \$5,500 to \$11,000 per violation. 31 U.S.C. § 3729(a); 28 C.F.R. § 85.3(9).

50. A criminal judgment involving fraud or false statements, whether based on a trial verdict or guilty plea, estops a defendant from denying liability for the same conduct in a suit under the FCA. 31 U.S.C. § 3731(e).

### **C. The Anti-Kickback Statute**

51. The Anti-Kickback Statute (“AKS”) makes it a crime to offer or pay kickbacks to induce the referral of patients covered by a federal health care program.

52. The statute provides in pertinent part as follows:

whoever knowingly and willfully offers or pays any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person—

(A) to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program . . .

shall be guilty of a felony and upon conviction thereof, shall be fined not more than \$25,000 or imprisoned for not more than five years, or both.

42 U.S.C. § 1320a-7b(b)(2)(A).

53. Actual knowledge of the AKS or specific intent to violate the statute is not required. 42 U.S.C. § 1320a-7b(h).

54. The AKS applies to federal health care programs, defined as “any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States Government (other than the health insurance program under chapter 89 of Title 5).” 42 U.S.C. § 1320a-7b(f).

55. FECA is a federal health care program under and subject to the AKS.

56. A claim for payment submitted to a federal health care program that includes services or items resulting from a kickback is a false claim and subjects the billing provider to liability for treble damages and civil penalties under the FCA. 42 U.S.C. § 1320a-7b(g).

#### **IV. FACTS**

57. Beginning in September 2011 and continuing until January 2014, Brian Haney and Kevin Gray coordinated the operation of Vidor Pharmacy and Family Pharmacy (collectively, “Pharmacies”) to (a) make cash payments to Garry Craighead, a chiropractor in Austin, Texas, to induce Craighead to refer FECA patient prescriptions to the Pharmacies, (b) submit claims to DOL-OWCP for the medications the Pharmacies allegedly dispensed to the referred patients, and (c) split the profits of the scheme.

58. The referral agreement among Brian Haney, Kevin Gray, Garry Craighead, and their respective companies violated the Anti-Kickback Statute. 42 U.S.C. § 1320a-7b(b).

59. The resulting claims the Pharmacies submitted to DOL-OWCP were false under the False Claims Act. 42 U.S.C. § 1320a-7b(g).

##### **A. Garry Craighead and the UTC Companies**

60. Craighead operated a group of health care companies that did business under the name “Union Treatment Center” or “UTC.”

61. The UTC companies included (a) medical and rehabilitation clinics located in Austin, Killeen, San Antonio, Corpus Christi, Dallas, and Fort Worth, (b) a surgical practice known as Creekside Surgical, and (c) a specialty diagnostic practice called Creekside Diagnostic.

62. Craighead also operated CCM&D Consulting, LLC (“CCM&D”), a marketing and management company.

63. Craighead ran UTC and CCM&D from his corporate headquarters located at 8900 Shoal Creek Boulevard, Austin, TX 78757.

64. UTC specialized in treating injured workers and the vast majority of its patients were unionized federal employees covered by FECA, including postal workers and civilian employees of the United States Army and other defense agencies.

65. Craighead used his control of UTC and its patients to enrich himself.

66. He directed and caused the referral of UTC patients to third-party health care providers that agreed to pay him.

67. In return for the referrals, Craighead received remuneration in the form of cash kickbacks, typically through CCM&D.

68. On December 4, 2015, Craighead pleaded guilty to money laundering and kickback charges and he is now serving a 14-year term of imprisonment for those offenses.

*United States v. Garry Wayne Craighead, no. 1:15-cr-00348-SS (W.D. Tex.) (Doc. #76.)*

## **B. The Kickback Scheme**

69. In September 2011, Brian Haney and Kevin Gray traveled to UTC's Austin headquarters to meet with Craighead.

70. Brian Haney, Kevin Gray, Craighead, and others present discussed a prescription referral arrangement under which Craighead agreed to direct FECA patients from UTC to the Pharmacies to have their prescriptions filled.

71. In return for the prescription referrals, Brian Haney and Kevin Gray, for themselves and for their companies, expressly and through their actions, agreed to pay Craighead a percentage of the funds DOL-OWCP paid the Pharmacies for the medications they dispensed to the referred patients.

72. The object of the agreement among Brian Haney, Kevin Gray, Garry Craighead, and their respective companies was to enrich themselves by maximizing the number and value of the FECA prescriptions that would be presented to and paid for by DOL-OWCP.

73. Upon reaching this agreement, the parties put the scheme into action.

**i. Illegal Payments to Craighead**

74. Brian Haney and Kevin Gray caused the Pharmacies to make payments to Craighead, typically through CCM&D.

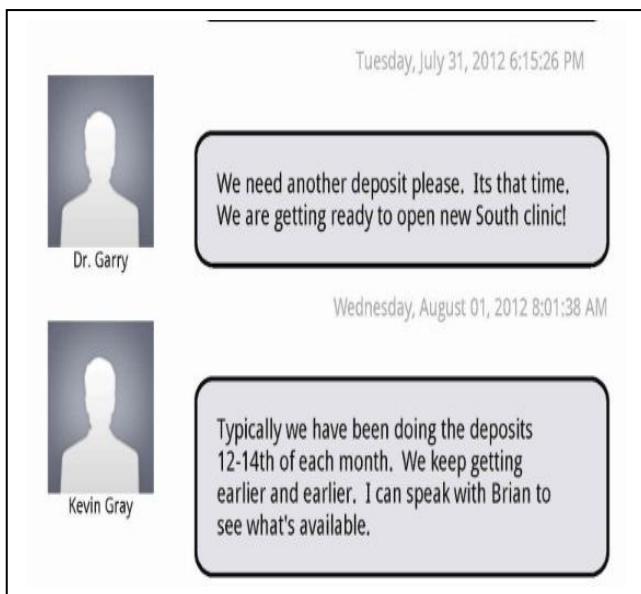
75. Craighead and CCM&D did not provide services to the Pharmacies, other than the prescription referrals.

76. Craighead and CCM&D did not issue invoices to the Pharmacies.

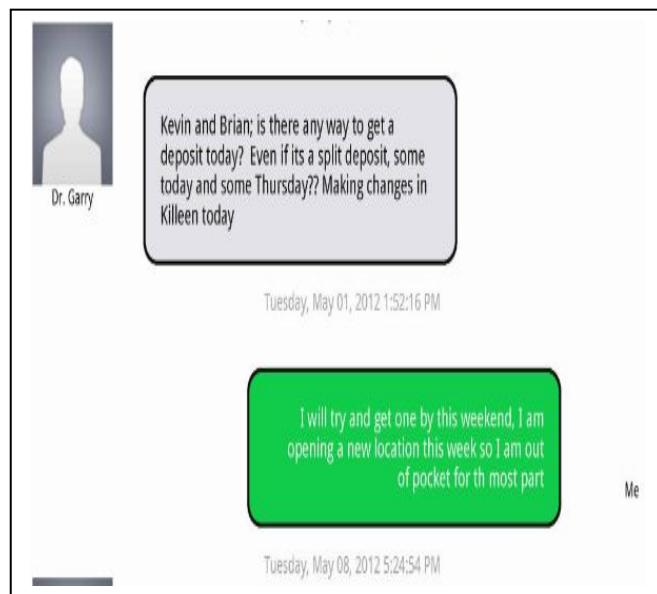
77. Craighead periodically requested that Brian Haney or Kevin Gray deposit funds into CCMD's account.

78. The requests were typically made by text or email:

**Example #1 (request to Gray)**



**Example #2 (request to Haney and Gray)**



79. The Pharmacies made the following payments to Craighead and CCM&D between November 30, 2011 and January 2, 2014:

<b>PHARMACY</b>	<b>DATE</b>	<b>METHOD</b>	<b>AMOUNT</b>
Vidor Pharmacy	11/30/2011	Wire transfer	\$25,226.41
Vidor Pharmacy	12/21/2011	Check #20130	\$18,072.47
Vidor Pharmacy	1/18/2012	Check #20144	\$16,615.77
Vidor Pharmacy	2/17/2012	Check #20157	\$21,307.02
Vidor Pharmacy	3/9/2012	Cashier's Check	\$7,908.55
Vidor Pharmacy	3/19/2012	Cashier's Check	\$10,313.61
Vidor Pharmacy	4/12/2012	Check #20182	\$18,059.38
Vidor Pharmacy	5/15/2012	Check #3003	\$17,493.01
Vidor Pharmacy	6/12/2012	Check #20202	\$18,694.39
Vidor Pharmacy	7/11/2012	Check #20211	\$23,492.93
Vidor Pharmacy	8/8/2012	Check #20222	\$23,578.36
Family Pharmacy	9/12/2012	Check #1092	\$31,686.09
Family Pharmacy	10/17/2012	Check #1062	\$40,236.09
Family Pharmacy	11/19/2012	Check #1067	\$19,408.26
Family Pharmacy	12/12/2012	Check #1073	\$35,033.31
Family Pharmacy	1/10/2013	Check #1007	\$29,089.09
Family Pharmacy	2/14/2013	Check #1077	\$43,364.89
Vidor Pharmacy	3/15/2013	Check #3118	\$36,362.69
Family Pharmacy	4/16/2013	Wire transfer	\$33,050.68
Family Pharmacy	5/17/2013	Wire transfer	\$42,743.68
Family Pharmacy	6/14/2013	Wire transfer	\$44,794.88
Family Pharmacy	7/10/2013	Wire transfer	\$40,359.20
Family Pharmacy	8/15/2013	Wire transfer	\$42,682.73
Family Pharmacy	9/16/2013	Wire transfer	\$50,979.34
Family Pharmacy	10/16/2013	Wire transfer	\$49,989.02
Family Pharmacy	11/15/2013	Wire transfer	\$47,442.04
Family Pharmacy	1/2/2014	Wire Transfer	\$25,576.78
<b>TOTAL =</b>			<b>\$813,560.67</b>

80. Brian Haney and Kevin Gray directed the above payments to bank accounts located in Austin, Texas.

81. The amount the Pharmacies paid to Craighead varied each month based on the volume and revenue generated by the referrals.

82. Brian Haney and/or Kevin Gray counted the prescriptions Craighead referred to the Pharmacies; determined how much DOL-OWCP paid for the prescriptions; and calculated the Pharmacies' profit or "margin" on the referred prescriptions after netting out shipping costs.

83. Brian Haney and/or Kevin Gray then caused the Pharmacies to disburse to CCM&D a percentage of the Pharmacies' monthly net profit.

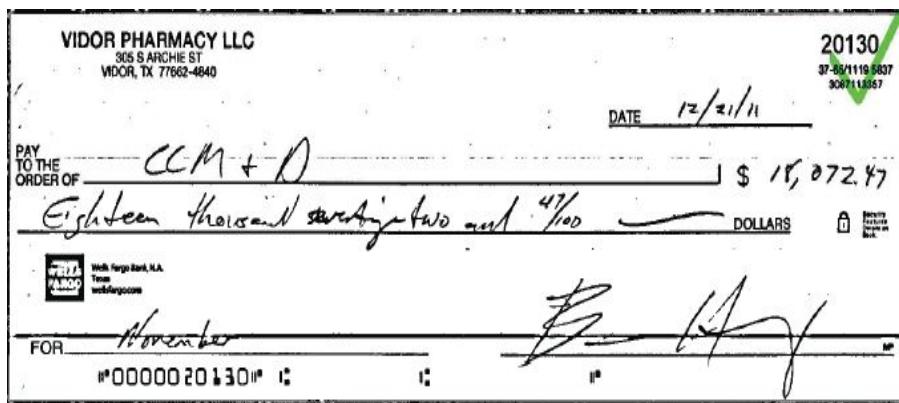
84. For example, in November 2011, Craighead caused 263 UTC patient prescriptions to be referred to the Pharmacies.

85. The Pharmacies billed DOL-OWCP for filling the FECA prescriptions.

86. DOL-OWCP paid the Pharmacies for the medications they allegedly dispensed.

87. Defendants' net profit for November was \$36,144.95.

88. By check dated December 21, 2011, Vidor Pharmacy paid CCM&D 50% of the net profit, which equated to \$18,072.47, as a kickback for the November prescription referrals:



## ii. Illegal Referrals to the Pharmacies

89. In return for the payments, Craighead caused the UTC companies and their health care providers to refer thousands of FECA patient prescriptions to the Pharmacies.

90. The Pharmacies in turn billed DOL-OWCP for the prescription items they allegedly dispensed to the referred patients.

91. The following are examples of the claims the Pharmacies submitted to DOL-OWCP for reimbursement of prescription items they allegedly furnished to the referred patients:

Patient	UTC Clinic	Pharmacy	Service Date	Billed	Paid
JV	San Antonio	Vidor	4/19/12	\$3,035.89	\$2,801.30
LW	Dallas	Vidor	6/6/12	\$1,447.24	\$1,342.15
LM	Fort Worth	Vidor	7/25/12	\$2,328.59	\$2,252.77
CS	Corpus Christi	Vidor	8/9/12	\$331.80	\$319.21
DN	Creekside Surgical	Vidor	10/5/12	\$620.47	\$601.45
KJ	Austin	Vidor	11/27/12	\$1,509.60	\$1,111.31
FS	Austin	Vidor	1/15/13	\$1,125.31	\$1,085.05
TR	Killeen	Family	2/26/13	\$442.26	\$428.15
FS	Austin	Vidor	4/10/13	\$120.89	\$118.85
MP	Austin	Vidor	5/23/13	\$126.60	\$124.27

92. As part of their criminal plea agreements, Brian Haney and Kevin Gray admitted that, between September 1, 2011 and January 2, 2014, DOL-OWCP paid the Pharmacies \$3,478,208.15 for filling the prescriptions Craighead referred.

93. The amount DOL-OWCP paid to the Pharmacies on the tainted claims actually exceeded \$3.6 million. The data reflecting the claims the Pharmacies submitted to DOL-OWCP for Craighead's patients and the amounts DOL-OWCP paid the Pharmacies are voluminous, exceeding 290 pages, and contain patient health information. The United States will produce the data to defendants simultaneously with service of the Summons and Complaint.

94. The Pharmacies shared responsibility for disbursing the cash remuneration to Craighead and for submitting claims for payment to DOL-OWCP.

95. Although most of the referrals were made to and allegedly filled by Vidor Pharmacy, the Pharmacies shared the prescriptions and Brian Haney and Kevin Gray split the related revenue between themselves.

**iii. Other Overt Acts**

96. Brian Haney and Kevin Gray, for themselves and their companies, committed additional overt acts to advance the parties' unlawful agreement.

97. Brian Haney and Kevin Gray monitored the prescription referrals from UTC and informed Craighead when the UTC clinics were not supplying a sufficient volume.

98. In March and April of 2012, for example, Brian Haney complained to Craighead that the Killeen, Dallas, and Fort Worth locations had not sent any prescriptions.

99. Craighead responded that he would make staffing changes and train new personnel, and promised Brian Haney that the Dallas/Fort Worth locations would soon "outperform" the San Antonio clinic, a more established location.

100. In May 2013, Brian Haney encouraged UTC's providers to begin prescribing compounded pain medications.

101. Compounding refers to the process of preparing a drug or mixing drug ingredients based on a personalized formula that a physician has prescribed for the treatment of a patient.

102. Compounded drugs can be and often are substantially more expensive than conventional medications.

103. Brian Haney pushed UTC's providers to start prescribing two compounded pain creams that the Pharmacies had developed for muscle and joint conditions.

104. Brian Haney provided prescription forms, tailored for each UTC clinic and its providers, with the formulas for the desired compounded medications pre-printed on them.

105. The following form, for the Austin clinic, is exemplary:

	<b>Worker's Comp Fax Prescription</b> Austin Clinic	
<input type="checkbox"/> Hail Chen, DO DEA# FC2277552 DPS# 20109425 NPI# 1780491047	<input type="checkbox"/> Thomas E. Martens, DO DEA# BM9536434 DPS# K0132312 NPI# 1144333055	<input type="checkbox"/> _____ DEA# _____ DPS# _____ NPI# _____
Patient's Name _____ D.O.B. _____ Date _____ Address _____ Phone _____		
Formula 1: <input type="checkbox"/> Gabapentin 6% / Diclofenac 8% / Cyclobenzaprine 2% / Bupivacaine 1% / Baclofen 2% in Lipomax Sig: Apply 4-8 grams to affected area 2-4 times daily Qty: <input type="checkbox"/> 100 gm <input type="checkbox"/> 200 gm    Refills _____		
Formula 2: <input type="checkbox"/> Diclofenac 8% / Bupivacaine 1% in Lipoderm Sig: Apply 4-8 grams to affected area 2-4 times daily Qty: <input type="checkbox"/> 100 gm <input type="checkbox"/> 200 gm    Refills _____		
_____ Signature		

106. On or about June 12, 2013, Kevin Gray texted Craighead for “help” because the Pharmacies were not getting the number of compounded prescriptions they desired.

107. In response, Craighead directed his staff to refer prescriptions to the Pharmacies, instructed his medical directors to work with Kevin Gray to establish protocols to ensure prescriptions would be routed to the Pharmacies instead of their competitors, and ordered an audit to determine whether prescriptions had been diverted.

108. Brian Haney and Kevin Gray also took steps to disguise and prevent detection of the kickback scheme.

109. For the years 2011, 2012, and 2013, Vidor Pharmacy reported its income on H&H’s partnership income return, IRS Form 1065.

110. Brian Haney caused H&H to file false returns for these years with the IRS, which mischaracterized the payments that Vidor Pharmacy made to Craighead as “professional consulting fees,” even though neither Craighead nor CCM&D provided any services to H&H or Vidor Pharmacy.

111. The false returns that H&H filed obscured the true nature of the kickback scheme and prevented its detection.

112. For the years 2012 and 2013, Family Pharmacy reported its income on a corporate income tax return, IRS Form 1120S.

113. For the year 2012, Kevin Gray caused Family Pharmacy to file a false return with the IRS by failing to disclose and report the financial details of the kickback scheme, including the payments the pharmacy made to Craighead and the income derived from those payments.

114. For the year 2013, Kevin Gray caused Family Pharmacy to file a false return with the IRS by misclassifying the kickback payments as expenditures for supplies, which were then included in the pharmacy’s cost of goods sold.

115. The false returns that Family Pharmacy filed obscured the true nature of the kickback scheme and prevented its detection.

116. On or about December 14, 2016, Brian Haney pleaded guilty to offering and paying kickbacks to Craighead and to filing a false tax return. *United States v. Brian David Haney*, 1:16-cr-324-SS (W.D. Tex.) (Doc. #14.)

117. On or about April 13, 2017, Kevin Gray pleaded guilty to offering and paying kickbacks to Craighead and to filing a false tax return. *United States v. Kevin Michael Gray*, 1:17-cr-84-SS (W.D. Tex.) (Doc. #13.)

### C. The Fraudulent Transfer

118. On August 27, 2014, the United States Postal Service Office of Inspector General (“USPS OIG”) interviewed Brian Haney and informed him that he was under investigation for paying kickbacks for prescription referrals.

119. On September 9, 2014, the USPS OIG served a subpoena on Vidor Pharmacy for documents related to its referral arrangement with Craighead and claims to DOL-OWCP.

120. In December 2014, attorneys for Brian Haney and Kevin Gray indicated that their clients wanted to pursue global settlement discussions to resolve the criminal, civil, and administrative aspects of the government’s investigation.

121. From December 2014 until February 2015, the United States and attorneys for Brian Haney and Kevin Gray negotiated the terms of a civil settlement agreement to resolve the defendants’ liability for submitting false claims to DOL-OWCP.

122. The United States informed opposing counsel regarding the debt Brian Haney and Kevin Gray owed the FECA program as a result of the kickback scheme and the resulting false claims they submitted.

123. On November 10, 2015, the parties agreed to a civil settlement amount and subsequently exchanged draft settlement documents.

124. The parties finalized the draft settlement documents on or about January 4, 2016, but Brian Haney would not sign the agreement.

125. Brian Haney hired new civil and criminal defense attorneys, who attempted to reopen the settlement negotiations.

126. On January 11, 2017, while the United States was negotiating with Brian Haney’s new attorneys, H&H filed a Certificate of Amendment with the Texas Secretary of State that

removed Brian Haney as a manager of H&H and struck him from the company's Articles of Organization.

127. On or about January 11, 2017, Brian Haney relinquished his ownership interest in H&H for no or inadequate consideration, which transferred full control and 100% ownership of the company to David Haney.

128. Brian Haney is no longer listed as a member, executive, or director of H&H.

129. Corporate records now list David Haney as the sole member and director of H&H.

130. When Brian Haney relinquished and transferred his ownership interests in H&H, H&H owned several pharmacy companies in Texas, including: Vidor Pharmacy; Mauriceville Pharmacy, LLC; Bridge City Pharmacy, LLC; Beaumont Pharmacy, LLC; Dayton Pharmacy, LLC; and H&H China Pharmacy, LLC; and Archie Pharmacy, LLC.

**COUNT ONE**

**31 U.S.C. § 3729(a)(1)(A)**  
**False Claims**  
**[All Defendants Except David Haney]**

131. The United States incorporates the preceding paragraphs.

132. Defendants knowingly presented and caused others to present to an officer, employee, agent, or contractor of the United States false claims for payment from the FECA program in violation of 31 U.S.C. § 3729(a)(1)(A), namely, false claims for prescriptions resulting from the kickback scheme among defendants and Craighead.

133. The United States incurred damages because of defendants' misconduct in that DOL-OWCP paid defendants for kickback-tainted prescription items that were not eligible for reimbursement and should not have been paid.

134. Defendants are jointly and severally liable to the United States under the False Claims Act for treble damages, in an amount to be determined at trial, plus a civil penalty for each false claim they presented and caused to be presented for payment.

**COUNT TWO**

**31 U.S.C. § 3729(a)(1)(B)**  
**False Statements and Records**  
**[All Defendants Except David Haney]**

135. The United States incorporates the preceding paragraphs.

136. Defendants made and used, and caused others to make and use, false records and statements that were material to their false claims in violation of the 31 U.S.C. § 3729(a)(1)(B), namely, false claim forms transmitted to DOL-OWCP to obtain payment from the FECA program for prescriptions resulting from the kickback scheme among defendants and Craighead.

137. The United States incurred damages because of defendants' misconduct in that DOL-OWCP paid defendants for kickback-tainted prescription items that were not eligible for reimbursement and should not have been paid.

138. Defendants are jointly and severally liable to the United States under the False Claims Act for treble damages, in an amount to be determined at trial, plus a civil penalty for each false statement or record defendants submitted or caused to be submitted.

**COUNT THREE**

**31 U.S.C. § 3729(a)(1)(C)**  
**Conspiracy**  
**[All Defendants Except David Haney]**

139. The United States incorporates the preceding paragraphs.

140. Defendants conspired with each other and with Craighead, his companies, and his personnel to present to an officer, employee, agent, or contractor of the United States false claims for payment from the FECA program in violation of 31 U.S.C. § 3729(a)(1)(C).

141. The United States incurred damages because of defendants' misconduct in that DOL-OWCP paid defendants for kickback-tainted prescription items that were not eligible for reimbursement and should not have been paid.

142. Defendants are jointly and severally liable to the United States under the False Claims Act for treble damages, in an amount to be determined at trial, plus a civil penalty for each violation they committed or caused others to commit.

#### **COUNT FOUR**

##### **Payment by Mistake [All Defendants Except David Haney]**

143. The United States incorporates the preceding paragraphs.

144. DOL-OWCP paid defendants based on a mistaken and erroneous understanding of material fact, namely, that the claims and statements defendants presented and caused to be presented for payment were true, complete, and eligible for reimbursement.

145. DOL-OWCP, acting in reasonable reliance on the truthfulness, completeness, and eligibility of the claims, records, and statements defendants presented and caused to be presented to the FECA program, paid defendants for kickback-tainted claims that were ineligible for reimbursement and should not have been paid.

146. Defendants must account for and repay to the United States all funds paid to them by mistake, in an amount to be determined at trial.

**COUNT FIVE**

**Unjust Enrichment  
[All Defendants Except David Haney]**

147. The United States incorporates the preceding paragraphs.
148. Defendants unlawfully obtained and benefited from FECA program payments they were not entitled to receive.
149. Defendants would be unjustly enriched if there were permitted to retain the FECA program funds.
150. Defendants must account for and disgorge to the United States all payments by which they have been unjustly enriched, in an amount to be determined at trial.

**COUNT SIX**

**28 U.S.C. § 3404  
Fraudulent Transfer  
[Brian Haney, H&H, and David Haney]**

151. The United States incorporates the preceding paragraphs.
152. By relinquishing his interest in H&H, Brian Haney transferred full ownership of the company to his father, David Haney, for no or inadequate consideration.
153. At the time Brian Haney transferred his interest in H&H, he owed the United States a minimum of \$3,478,208.15 in single damages for the ineligible claims that he caused DOL-OWCP to pay.
154. Brian Haney knew or should have known of his debt to the United States at the time he made the transfer.
155. Brian Haney did not receive reasonably equivalent value in exchange for his interest in H&H and was insolvent or became insolvent because as a result of the transfer, rendering the transfer fraudulent under 28 U.S.C. § 3304(a)(1).

156. Alternatively, Brian Haney knew of his debt and nonetheless transferred his interest in H&H with intent to hinder, delay, or defraud the United States, rendering the transfer fraudulent under 28 U.S.C. § 3304(b)(1)(A).

157. Alternatively, Brian Haney transferred his interest in H&H without receiving reasonably equivalent value and reasonably should have believed that he would incur and be unable to pay his debts, including his debt to the United States, as they came due, rendering the transfer fraudulent under 28 U.S.C. § 3304(b)(1)(B).

**PRAYER FOR RELIEF**

WHEREFORE, the United States requests judgment in its favor and against defendants as follows:

158. On Count One, under the False Claims Act, for treble the damages sustained by the United States, plus a civil penalty of \$5,500 to \$11,000 for each violation, plus interest and costs, together with all such further relief as may be just and proper.

159. On Count Two, under the False Claims Act, for treble the damages sustained by the United States, plus a civil penalty of \$5,500 to \$11,000 for each violation, plus interest and costs, together with all such further relief as may be just and proper.

160. On Count Three, under the False Claims Act, for treble the damages sustained by the United States, plus a civil penalty of \$5,500 to \$11,000 for each violation, plus interest and costs, together with all such further relief as may be just and proper.

161. On Count Four, for judgment in the amount by which defendants were paid by mistake, plus interest and costs, together with all such further relief as may be just and proper.

162. On Count Five, for judgment in the amount by which defendants were unjustly enriched, plus interest and costs, together with all such further relief as may be just and proper.

163. On Count Six, to avoid the transfer of Brian Haney's interest in H&H under 28 U.S.C. § 3306(a)(1) or, alternatively, for judgment against H&H and David Haney for the value of Brian Haney's transferred interest under 28 U.S.C. § 3306(a)(2)-(3), plus interest and costs, together with all such further relief as may be just and proper.

Respectfully submitted,

RICHARD L. DURBIN, JR.  
United States Attorney

By: */s/ John J. LoCurto*

---

JOHN J. LoCURTO  
Assistant United States Attorney  
Texas Bar No. 24073750  
601 N.W. Loop 410, Suite 600  
San Antonio, Texas 78216  
Tel: (210) 384-7362  
Fax: (210) 384-7322  
Email: [john.locurto@usdoj.gov](mailto:john.locurto@usdoj.gov)

*Attorneys for the United States of America*