IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

Drive Thru Doc, PLLC; Hop Medical	§
Services, M.D.P.A.; and Courtney Morgan,	§
Plaintiffs,	§
	§
v.	§
	§
Scott Freshour, in his official capacity, as Interim	§
Executive Director of the Texas Medical Board;	§
Mary Chapman and John Kopacz, in their	§
individual capacities,	§
Defendants.	§
_____	/

COMPLAINT

COMES NOW, Plaintiffs, DRIVE THRU DOC, PLLC; HOP MEDICAL SERVICES, M.D.P.A.; and COURTNEY MORGAN, by and through undersigned counsel, and seeks money damages in excess of $10,000.00, exclusive of costs, interest and attorneys' fees and sues SCOTT FRESHOUR, in his official capacity, as Interim Executive Director of the Texas Medical Board; MARY CHAPMAN and JOHN KOPACZ in their individual capacities, and states:

JURISDICTIONAL ALLEGATIONS

1. This is an action in excess of the Court's jurisdictional threshold.

2. DRIVE THRU DOC, PLLC; HOP MEDICAL SERVICES, M.D.P.A.; and COURTNEY MORGAN's claims are made pursuant to 42 U.S.C. Sections 1983 and 1988; 4th and 14th Amendments to the Constitution of the United States of America; and Texas Constitution, Article 1, Sections 9.

3. DRIVE THRU DOC, PLLC; HOP MEDICAL SERVICES, M.D.P.A.; and COURTNEY MORGAN also hereby invoke supplemental jurisdiction of the United States District Court to adjudicate state tort claims arising under Texas law pursuant to 28 U.S.C. Section 1367

and further invoke the jurisdiction of the United States District Court pursuant to 42 U.S.C. 1983; 28 U.S.C. Sections 1331 and 1343.

PARTIES

4. Plaintiff, COURTNEY MORGAN [hereinafter, MORGAN] is an adult resident of the State of Texas domiciled in Victoria County, Texas.

5. Plaintiff, DRIVE THRU DOC, PLLC [hereinafter, DTD] is a Texas limited liability corporation with Courtney Morgan as its sole owner, officer, director and only shareholder at all times material to the present action. The office's principle place of business is 1402 Village Drive, Suite B, Victoria, Texas.

6. Plaintiff, HOP MEDICAL SERVICES, M.D.P.A., [hereinafter, HOP] is a Texas professional corporation with Courtney Morgan as its sole owner, officer, director and only shareholder at all times material to the present action. The office's principle place of business at 1402 Village Drive, Suite A, Victoria, Texas.

7. Defendant, SCOTT FRESHOUR [hereinafter, FRESHOUR] is sued, in his official capacity as Interim Executive Director of the Texas Medical Board. In this cause, Defendant, FRESHOUR acted through his predecessor, agents, employees and servants.

8. Defendant, MARY CHAPMAN [hereinafter, CHAPMAN] is, or was an adult employee of the Texas Medical Board at the time that the present cause of action arose and is sued herein in her individual capacity.

9. Defendant, JOHN KOPACZ [hereinafter, KOPACZ] is, or was an adult employee of the Texas Department of Public Safety at the time that the present cause of action arose and is sued herein in his individual capacity.

10. All acts and occurrences material to this cause of action were committed in Victoria County, Texas.

CONDITIONS PRECEDENT

11. All conditions precedent to the prosecution of this action have occurred, or have been performed, excused or waived.

GENERAL ALLEGATIONS & FACTS COMMON TO ALL COUNTS

12. MORGAN is a family medicine physician licensed to practice in the State of Texas.

13. In 2013, MORGAN owned, operated and served as the officer, director and sole shareholder for Drive Thru Doc (DTD) and Hop Medical Services (HOP).

14. Defendant, CHAPMAN, served as an investigator involving MORGAN's alleged operation of a "pill mill."[1]

15. CHAPMAN was given the authority and assigned the duty by Former Executive Director of the Texas Medical Board [hereinafter, TMB] to issue administrative "instanter" subpoenas, which according to CHAPMAN, requires immediate compliance and production of documents by its recipient.

16. An instanter subpoena does not authorize warrantless searches.

17. Under Tex. Occ. Code, Section 153.007(a), the TMB may issue a subpoena or subpoena duces tecum to compel the attendance of a witness and the production of books, records, and documents. The TMB Administrative Rule, Section 179.4 states that the licensee is afforded "a reasonable time period" to comply with the subpoena, where "reasonable time"

[1] A pill mill is not statutorily defined because it is not a legitimate entity. It is a determination made based upon an investigation that reveals certain characteristics, most of which are not based on medical records, such as on site pharmacies with the dispensation of narcotics, on-site diagnostic testing or patients going to the same facility for diagnostic testing, cash only business, presence of armed guards, excessively long lines of patients, high percentage of patients car-pooling, volumes of vehicular traffic, where the only treatment provided are prescriptions for narcotics.

means "fourteen calendar days or a shorter time if required by the urgency of the situation or the possibility that the records may be lost, damaged, or destroyed."

18. On or about July 17, 2013, Defendant CHAPMAN contacted Defendant KOPACZ, a law enforcement officer with the Department of Public Safety [hereinafter, DPS], as well as other law enforcement agencies and agents, and ensured their presence while she served an administrative instanter subpoenas upon MORGAN for HOP and DTD.

19. KOPACZ works with the TMB more frequently than any other agency. He attributes fifty percent (50%) of his case load and investigative time to his liaison with the TMB.

20. The presence of several law enforcement officers during the service of the administrative subpoenas forced compliance with unfettered access to confidential medical information and evidence without a warrant.

21. The scope of the subpoenas targeted DTD and HOP, seeking business contracts, lease agreements, partnership documents, employee personnel files, patient sign-in sheets, billing records and prescription logs for the time frame of January 1, 2013, through July 18, 2013, and all medical notes created for the month of March 2013. The subpoenas also demanded relinquishment of entire medical files for selected patients, from the date they were admitted into the practice until the date of the subpoena's execution.

22. On July 18, 2013, at or about 9:00 a.m., CHAPMAN and (2) two additional TMB agents accompanied Defendant, KOPACZ, and at least two Drug Enforcement Administration [hereinafter, DEA] agents and one local Victoria, Texas, police officer in order to serve subpoenas upon MORGAN for DTD and HOP. All of the law enforcement agents were visibly armed and dressed in clothing with large agency insignia.

23. All (7) seven agents arrived at and entered the DTD practice location. CHAPMAN served two instanter subpoenas upon an administrative assistant.

24. The assistant was not permitted to contact MORGAN, or her immediate supervisor. CHAPMAN restricted the assistant from answering or making outgoing calls on her cell phone and the office landline. The assistant's movement were also restricted in that she was not permitted to leave the DTD location alone and was escorted to her vehicle to retrieve identification.

25. The assistant was threatened with imprisonment and forced to comply with the TMB's subpoena. CHAPMAN forced the assistant to provide the medical records listed in the subpoenas, which included all patient sign-in sheets, billing records, consent forms, intake forms and prescription records for the entire year as well all March 2013 medical records, and complete medical files for several patients. CHAPMAN also seized medical records that were not listed in the subpoenas, and related to an out of state medical practice. CHAPMAN, KOPACZ and other agents searched and photographed the contents of the DTD premises, including closed and or locked drawers, cabinets and boxes.

26. The assistant was in extreme fear, as exhibited by her constant sobbing and eventual hyperventilation. The assistant was pressured and manipulated into writing an inaccurate witness statement, as portions were dictated to her by CHAPMAN.

27. After completing the search at DTD, CHAPMAN, KOPACZ and the same consortium of agents drove immediately to HOP.

28. All (7) seven agents entered the HOP patient waiting room simultaneously.

29. The patients present that day in the waiting room departed upon observing multiple armed law enforcement officers and TMB agents enter the office. In addition, patients who

arrived for their appointments also departed upon observing the officers and TMB agents in the office.

30. CHAPMAN provided (2) two different subpoenas to MORGAN and insisted that the documents listed be given immediately to the agents.

31. CHAPMAN, accompanied by KOPACZ, stated that she and the other agents and law enforcement officers would not leave until they received all the documents and materials. CHAPMAN would not allow MORGAN and his staff members to communicate. MORGAN and his staff were told that they could not refuse to comply with the instanter subpoena.

32. CHAPMAN, accompanied by KOPACZ, intimidated the staff members and MORGAN, threatened them with penalties and adverse consequences if they did not provide the documents listed in the subpoena.

33. CHAPMAN accompanied by KOPACZ, isolated and forced MORGAN to enter and remain in an examination room, where the door was blocked. CHAPMAN would not allow his exit or the employee's entrance into the room. CHAPMAN confined MORGAN in the examination for over (40) forty minutes, while KOPACZ and TMB agents searched the entire HOP premises including additional examination rooms, MORGAN's private office, files, cabinets and drawers. Moreover, staff cell phones were confiscated by CHAPMAN, or, at her direction. CHAPMAN repeatedly stated, "We're the medical board, we can do whatever we want."

34. CHAPMAN seized medical, office and personnel records, specifically: all patient sign-ins, intakes, and billing records for the entire calendar year of 2013, all patient medical records (notes and prescription logs) generated in March 2013, several complete medical charts for

patients since their admission to the practice, all personnel files, employee records and corporate documents. CHAPMAN, KOPACZ and the TMB agents searched the premises for over (6) six hours under CHAPMAN's direction.

35. The TMB compiled an investigative report from the seized medical records obtained during the search of DTD and HOP.

36. The warrantless search of MORGAN's premises is not unique in that the TMB conducts warrantless searches as a matter of practice. This routine practice has occurred on numerous occasions in Texas following the same pattern and scheme, in violation of the 4th Amendment, to wit:

a. In 2015, CHAPMAN, while accompanied by law enforcement agents, served an instanter subpoena upon a medical office staff member. CHAPMAN used intimidation tactics to gain compliance. CHAPMAN and the accompanying agents physically blocked the staff from the only exit in the office. CHAPMAN repeatedly threatened the staff with arrest if the staff did not comply and provide the subpoenaed documents. CHAPMAN also physically removed and copied documents from the office.[2]

b. In 2014, TMB agents served instanter subpoenas at a medical office of an internal medicine physician in Corpus Christi, where agents conducted a warrantless search of the premise. The physician and staff were threatened with adverse consequences if they failed to comply.[3]

c. In 2013, (2) two TMB investigators served an instanter subpoena upon a medical office. The staff members were intimidated for failure to comply. Without the staff member's consent, the agents searched the premises and copied medical records.[4]

37. Following the search and seizure of DTD and HOP, KOPACZ requested dissemination of, and access to, privileged and confidential protected medical information from the TMB without a court order or legal process.

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[2] *Betty Spaugh v. Mary Chapman*, USDC Southern District of Texas, Houston Division 4:15-CV-00906; *Cotropia v. Mary Chapman, et. al*, 4:16-CV-00742 USDC Southern District of Texas, Houston Division.

[3] This case is presently pending in Nueces County, Texas.

[4] *Zadeh v. Mari Robinson, et. al.*, USDC Western District of Texas, Austin Division 1-15-CV-00598-RP.

38. KOPACZ received the investigative file from the TMB, which consisted of the seized documents and a report compiled by the TMB. KOPACZ received over 14,500 documents from the TMB, including prescription histories and patient names. The TMB's compiled report was the sole evidence relied upon in KOPACZ's decision to cause the criminal prosecution of MORGAN through the Victoria County District Attorney's Office.

39. On August 21, 2014, the State of Texas filed its indictment against MORGAN for the Third Degree Felony of operating DTD in Violation of the Tex. Occ. Code, Section 162.152 (Non-certification of a Pain Management Clinic).

40. MORGAN was arrested in Victoria County, Texas, and prosecuted in the 24th Judicial District Court, in Victoria County, Texas, under case number 14-08-28128-A.

41. The 24th Judicial District Court of Victoria County, Texas, granted MORGAN's *Motion to Suppress* the documents seized on July 18, 2013, and found the search and seizure of MORGAN's premises and property unreasonable and in violation of the U.S. and Texas Constitutions.

42. On January 20, 2013, the court entered its order dismissing the charge of Practicing Medicine in Violation of the Tex. Occ. Code, Section 162.152 (Non-certification of a Pain Management Clinic).

COUNT I (ONE)
PLAINTIFF, MORGAN'S CLAIM OF MALICIOUS PROSECUTION AGAINST DEFENDANT KOPACZ, INDIVIDUALLY

For MORGAN's cause of action against Defendant, KOPACZ, individually in Count I, MORGAN re-alleges and adopts, as if fully set forth, the allegations contained in paragraphs 1-22, 27-28 and 37-42, and would further state as follows:

43. On July 18, 2013, Defendant, KOPACZ, did participate in the execution of a search of MORGAN's medical premises and the acquisition of medical records and other documents along with TMB investigators who served administrative instanter subpoenas upon MORGAN, DTD and HOP.

44. On or about August 27, 2013, KOPACZ requested TMB's investigative case file pertaining to DTD and HOP which included all records obtained during the July 18, 2013, seizure and the TMB's compiled report.

45. KOPACZ relied solely and entirely upon the TMB's report to initiate a criminal proceeding by delivering said materials to, and collaborating with, the Victoria County District Attorney's Office for criminal prosecution of MORGAN in relation to his medical practices at DTD and HOP.

46. On or about August 14, 2014, an Indictment was presented, and filed with the 24th Judicial District Court, charging MORGAN with Practicing Medicine in Violation of Tex. Occ. Code, Section 165.152, specifically, practicing medicine as an uncertified pain management clinic.

47. MORGAN was physically arrested August 28, 2014, in Victoria County, Texas.

48. The prosecution was instituted by KOPACZ without probable cause that a criminal violation had occurred. KOPACZ provided sworn testimony in furtherance of MORGAN's prosecution as a material state witness which was docketed in Case No. 14-08-28128-A.

49. The matters known to KOPACZ before instituting the aforementioned prosecution would not have warranted a reasonable person to believe that the cited criminal offense in the

indictment had been committed by MORGAN. In the alternative, the prosecution of MORGAN was instituted by KOPACZ with no reasonable likelihood of success.

50. KOPACZ acted with malice in instituting the aforesaid prosecution which is implied by the lack of probable cause and/or with express malice as shown by his reckless disregard for the rights of MORGAN and his personal animosity and hostility towards MORGAN. Further, KOPACZ made material misstatements of fact and/or material omissions of material facts in support of the prosecution.

51. No criminal prosecution would have occurred or continued but for the actions of KOPACZ.

52. The criminal proceeding was resolved in favor of the MORGAN by the entry of an order of dismissal for the criminal charge on January 20, 2016.

53. The fact of MORGAN's prosecution became known to many persons as a result of being made part of the public records of Victoria County, Texas, and its appearance in media, court documents and publications available for public scrutiny.

54. As a result of the aforementioned actions MORGAN suffered anxiety, embarrassment, humiliation, mental anguish, emotional suffering, past and future earnings, employment hardship, physical discomfort, loss of enjoyment of life, all of which continue to this day and is likely to continue in the future. He also incurred attorney's fees, associated legal expenses, and incidental monetary costs for her defense and present legal cause, incidental monetary costs and legal expenses.

WHEREFORE, MORGAN demands judgment against Defendant, KOPACZ, for compensatory damages and costs of this action and demands a jury trial of all issues triable.

COUNT II (TWO)
PLAINTIFF, MORGAN'S CLAIM OF MALICIOUS PROSECUTION AGAINST DEFENDANT KOPACZ, INDIVIDUALLY, COGNIZABLE UNDER 42 U.S.C. § 1983

For MORGAN's cause of action against Defendant, KOPACZ, individually in Count II, MORGAN re-alleges and adopts, as if fully set forth, the allegations contained in paragraphs 1-22, 27-28, 31-33 and 37-42, and would further state as follows:

55. On July 18, 2013, Defendant, KOPACZ, while acting under color of law, did participate in the execution of a search of MORGAN's medical premises and the acquisition of medical records and other documents along with TMB investigators who served administrative instanter subpoenas upon MORGAN, DTD and HOP. Defendant KOPACZ's actions constituted an unreasonable search and seizure in violation of the 4th Amendment of the U.S. Constitution and Texas State Constitution, Art. 1, Sec. 9.

56. Defendant KOPACZ's lawless and non-consensual entry into MORGAN's medical offices, to wit: DTD and HOP, constituted a search in violation of the 4th Amendment of the U.S. Constitution and Texas State Constitution, Art. 1, Sec. 9.

57. Defendant KOPACZ confined and restricted the liberty and free movement of MORGAN by forcing him to enter and remain inside HOP medical examination room resulting in a seizure in violation of the 4th Amendment of the U.S. Constitution and Texas State Constitution, Art. 1, Sec. 9.

58. The conduct of KOPACZ towards MORGAN, as more fully set forth above, was objectively unreasonable and constituted an unreasonable search and seizure in violation of MORGAN's clearly established constitutional rights under the 4th and 14th Amendments of the U.S. Constitution and 42 U.S.C. § 1983.

59. On or about August 27, 2013, KOPACZ requested TMB's investigative case file pertaining to MORGAN, which included all records obtained during the July 18, 2013, seizure and TMB's compiled report.

60. KOPACZ relied solely and entirely upon the TMB's report to initiate a criminal proceeding by delivering said materials to the Victoria County District Attorney's Office for criminal prosecution of MORGAN in relation to his medical practices at DTD and HOP.

61. On or about August 14, 2014, an Indictment was presented, and filed with the 24th Judicial District Court, charging MORGAN with Practicing Medicine in Violation of Tex. Occ. Code, Section 165.152, specifically, practicing medicine as an uncertified pain management clinic.

62. MORGAN was physically arrested August 28, 2014, in Victoria County, Texas.

63. The prosecution was instituted by KOPACZ without probable cause that a criminal violation had occurred. KOPACZ provided sworn testimony in furtherance of MORGAN's prosecution as material state witness which was docketed in Case No. 14-08-28128-A.

64. The matters known to KOPACZ before instituting the aforementioned prosecution would not have warranted a reasonable person to believe that the cited criminal offense in the indictment had been committed by MORGAN. In the alternative, the prosecution of MORGAN was instituted by KOPACZ with no reasonable likelihood of success.

65. KOPACZ acted with malice in instituting the aforesaid prosecution which is implied by the lack of probable cause and/or with express malice as shown by his reckless disregard for the rights of MORGAN and his personal animosity and hostility towards MORGAN.

Further, KOPACZ made material misstatements of fact and/or material omissions of material facts in support of the prosecution.

66. No criminal prosecution would have occurred or continued but for the actions of KOPACZ.

67. The criminal proceeding was resolved in favor of the MORGAN by the entry of an order of dismissal for the criminal charge on January 20, 2016.

68. The fact of MORGAN's prosecution became known to many persons as a result of being made part of the public records of Victoria County, Texas, and its appearance in media, court documents and publications available for public scrutiny.

69. As a result of the aforementioned actions MORGAN suffered anxiety, embarrassment, humiliation, mental anguish, emotional suffering, loss of earnings, employment hardship, loss of enjoyment of life, physical discomfort, all of which continue to this day and is likely to continue in the future. He also incurred attorney's fees, associated legal expenses, and incidental monetary costs for her defense and present legal cause, incidental monetary costs and legal expenses.

WHEREFORE, MORGAN demands judgment against Defendant, KOPACZ, for compensatory damages and exemplary damages and costs of this action and demands a jury trial of all issues triable.

COUNT III (THREE)
VIOLATION OF PLAINTIFF, DTD'S 4TH AMENDMENT RIGHTS AGAINST UNREASONABLE SEARCH AND SEIZURE AGAINST DEFENDANT CHAPMAN, INDIVIDUALLY, COGNIZABLE UNDER 42 U.S.C. § 1983

For DTD's cause of action, brought by MORGAN on its behalf, against Defendant, CHAPMAN, individually, in Count III, DTD re-alleges and adopts, as if fully set forth, the allegations contained in paragraphs 1-26 and 41-42, and would further state as follows:

70. MORGAN brings suit on behalf of DTD as owner, officer, director and sole shareholder, also asserting injury and breach of an expectation of privacy by CHAPMAN's actions.

71. On July 18, 2013, Defendant CHAPMAN, under color of law, did knowingly and intentionally search the premises and seize the property of DTD by partnering with Defendant KOPACZ, coordinating the presence of other law enforcement agents and orchestrating intimidation tactics used when interacting with MORGAN and MORGAN's staff, in order to conduct a warrantless search and seizure.

72. More specifically, CHAPMAN, while acting under color of law, did knowingly and intentionally search the premises and seize the property of DTD by entering the DTD premises, restricting the liberty and free movement of DTD personnel, threatening arrest and imprisonment, then searching DTD medical offices (including secured areas and items, drawers, cabinets and boxes), seizing documents and photographing private areas within the facility, all without a search warrant, lawful authority or consent.

73. The entry and warrantless seizure by CHAPMAN was done unlawfully by the erroneous reference to an instanter subpoena, rather than by means of a search warrant, legal authorization or consent.

74. The conduct of CHAPMAN, constituted a search and seizure, as more fully set forth above, was objectively unreasonable, and was in violation of DTD's clearly established constitutional rights proscribing unreasonable searches and seizures pursuant to the Texas Constitution, Article 1, Section 9 and the 4th and 14th Amendments to the U.S. Constitution.

75. As a direct and proximate result of the actions of Defendant CHAPMAN, in violation of 42 U.S.C. §1983, DTD suffered damages which included: damage to reputation;

diminished earnings and lost profits; legal costs and fees, all in violation of DTD's civil rights.

WHEREFORE, DTD demands judgment against the Defendant, CHAPMAN, for any and all damages allowable by law, including but not limited to compensatory and exemplary damages, award of payment of all costs related thereto, reasonable attorney's fees pursuant to 42 U.S.C. §1988, together with any post-judgment interest, any and all equitable relief allowed by law, and further demands trial by jury.

COUNT IV (FOUR)
VIOLATION OF PLAINTIFF, HOP'S 4TH AMENDMENT RIGHTS AGAINST UNREASONABLE SEARCH AND SEIZURE AGAINST DEFENDANT CHAPMAN, INDIVIDUALLY, COGNIZABLE UNDER 42 U.S.C. § 1983

For HOP's cause of action, brought by MORGAN on its behalf, against Defendant, CHAPMAN, individually, in Count IV, HOP re-alleges and adopts, as if fully set forth, the allegations contained in paragraphs 1-22, 27-35 and 41-42, and would further state as follows:

76. MORGAN brings suit on behalf of HOP as owner, officer, director and sole shareholder, also asserting injury and breach of an expectation of privacy by CHAPMAN's actions.

77. On July 18, 2013, Defendant CHAPMAN, under color of law, did knowingly and intentionally search the premises and seize the property of HOP by partnering with Defendant KOPACZ, coordinating the presence of other law enforcement agents and orchestrating intimidation tactics used when interacting with MORGAN and MORGAN's staff, in order to conduct a warrantless search and seizure.

78. More specifically, CHAPMAN, while acting under color of law, did knowingly and intentionally search the premises and seize the property of HOP by entering HOP's premises, prohibiting HOP personnel from speaking with corporate counsel, prohibiting communication among staff, threatening penalties if staff personnel failed to provide the

documents listed in instanter subpoenas, then searching HOP premises (including examination rooms, MORGAN's private office, drawers, cabinets, boxes and other secured areas and items), seizing documents and photographing private areas within the facility, all without a search warrant, lawful authority or consent.

79. The entry and warrantless seizure by CHAPMAN was done unlawfully by the erroneous reference to an instanter subpoena, rather than by means of a search warrant, legal authorization or consent.

80. The conduct of CHAPMAN, constituted a search and seizure, as more fully set forth above, was objectively unreasonable, and was in violation of HOP's clearly established constitutional rights proscribing unreasonable searches and seizures pursuant to the Texas Constitution, Article 1, Section 9 and the 4th and 14th Amendments to the U.S. Constitution.

81. As a direct and proximate result of the actions of Defendant CHAPMAN, in violation of 42 U.S.C. §1983, HOP suffered damages which included: injury to reputation; diminished earnings and lost profits; legal costs and fees, all in violation of HOP's civil rights.

WHEREFORE, HOP demands judgment against the Defendant, CHAPMAN, for any and all damages allowable by law, including but not limited to compensatory and exemplary damages, award of payment of all costs related thereto, reasonable attorney's fees pursuant to 42 U.S.C. §1988, together with any post-judgment interest, any and all equitable relief allowed by law, and further demands trial by jury.

COUNT V (FIVE)
VIOLATION OF PLAINTIFF, MORGAN'S 4TH AMENDMENT RIGHTS AGAINST UNREASONABLE SEARCH AND SEIZURE AGAINST DEFENDANT CHAPMAN, INDIVIDUALLY, COGNIZABLE UNDER 42 U.S.C. § 1983

For MORGAN's cause of action against Defendant, CHAPMAN, individually, in Count V, MORGAN re-alleges and adopts, as if fully set forth, the allegations contained in paragraphs 1-23, 25, 27-35 and 41-42, and would further state as follows:

82. On July 18, 2013, Defendant CHAPMAN, under color of law, did knowingly and intentionally search and seize the property of MORGAN located at DTD and HOP, for which MORGAN either possessed an individual expectation of privacy and or sustained injury as owner, officer, director and sole shareholder of DTD and HOP.

83. More specifically, CHAPMAN, while acting under color of law, did also knowingly and intentionally search MORGAN's medical offices located at DTD and HOP.

84. CHAPMAN partnered with Defendant KOPACZ, coordinating the presence of other law enforcement agents and orchestrated intimidation tactics used to interact with MORGAN, DTD and HOP staff members, in order to conduct a warrantless search and seizure.

85. MORGAN's DTD and HOP's property was seized from the medical offices, by entering the premises, prohibiting communication from and/or between MORGAN, DTD and HOP staff members, prohibiting communication between MORGAN and his attorney, DTD's and HOP's contact and communication with corporate counsel, relocating MORGAN into and forcing him to remain inside the HOP examination room, threatening MORGAN and his staff with penalties and consequences for failure to provide subpoenaed documents, then searching the HOP and DTD premises (including examination rooms, MORGAN's private office, drawers, cabinets, boxes and other secured areas and items on the HOP and DTD premises), seizing documents and photographing private areas within the facilities, all without a search warrant, lawful authority or consent.

86. The entry and warrantless seizure by FRESHOUR's agent, CHAPMAN was done unlawfully by the erroneous reference to an instanter subpoena, rather than by means of a search warrant, legal authorization or consent.

87. The conduct of CHAPMAN, constituted a search and seizure, as more fully set forth above, was objectively unreasonable, and in violation of MORGAN's clearly established constitutional rights proscribing unreasonable searches and seizures pursuant to the Texas Constitution, Article 1, Section 9 and the 4th and 14th Amendments to the U.S. Constitution.

88. As a direct and proximate result of the actions of Defendant CHAPMAN, in violation of 42 U.S.C. §1983, MORGAN suffered damages which included: physical inconvenience; physical discomfort; mental and emotional suffering, distress and anxiety; embarrassment; loss of reputation or status; diminished earnings and lost profits; legal costs and fees, all in violation of MORGAN's civil rights.

WHEREFORE, MORGAN demands judgment against the Defendant, CHAPMAN, for any and all damages allowable by law, including but not limited to compensatory and exemplary damages, award of payment of all costs related thereto, reasonable attorney's fees pursuant to 42 U.S.C. §1988, together with any post-judgment interest, any and all equitable relief allowed by law, and further demands trial by jury.

COUNT VI (SIX)
VIOLATION OF PLAINTIFF, DTD'S 4TH AMENDMENT RIGHTS AGAINST UNREASONABLE SEARCH AND SEIZURE AGAINST DEFENDANT KOPACZ, INDIVIDUALLY, COGNIZABLE UNDER 42 U.S.C. § 1983

For DTD's cause of action, brought by MORGAN on its behalf, against Defendant, KOPACZ, individually, in Count VI, DTD re-alleges and adopts, as if fully set forth, the allegations contained in paragraphs 1-26 and 41-42 and would further state as follows:

89. MORGAN brings suit on behalf of DTD as owner, officer, director and sole shareholder, also asserting injury and breach of an expectation of privacy by KOPACZ's actions.

90. On July 18, 2013, Defendant KOPACZ, under color of law, did knowingly and intentionally search the premises and seize the property of DTD by partnering with Defendant CHAPMAN, coordinating the presence of other law enforcement agents and orchestrating intimidation tactics used when interacting with MORGAN and MORGAN's staff, in order to conduct the warrantless search and seizure.

91. More specifically, KOPACZ, while acting under color of law, did knowingly and intentionally search the premises and seize the property of DTD by entering the DTD premises, then searching DTD medical office (including secured areas and items, drawers, cabinets and boxes), seizing documents and photographing private areas within the facility, all without a search warrant, lawful authority or consent.

92. The entry and warrantless seizure by KOPACZ was done unlawfully by the erroneous reference to TMB's instanter subpoena, rather than by means of a search warrant, legal authorization or consent.

93. The conduct of KOPACZ, constituted a search and seizure, as more fully set forth above, was objectively unreasonable, and was in violation of DTD's clearly established constitutional rights proscribing unreasonable searches and seizures pursuant to the Texas Constitution, Article 1, Section 9 and the 4th and 14th Amendments to the U.S. Constitution.

94. As a direct and proximate result of the actions of Defendant KOPACZ, in violation of 42 U.S.C. §1983, DTD suffered damages which included: injury to reputation; diminished earnings and lost profits; legal costs and fees, all in violation of DTD's civil rights.

WHEREFORE, DTD demands judgment against the Defendant, KOPACZ, for any and all damages allowable by law, including but not limited to compensatory and exemplary damages, award of payment of all costs related thereto, reasonable attorney's fees pursuant to 42 U.S.C. §1988, together with any post-judgment interest, any and all equitable relief allowed by law, and further demands trial by jury.

COUNT VII (SEVEN)
VIOLATION OF PLAINTIFF, HOP'S 4TH AMENDMENT RIGHTS AGAINST UNREASONABLE SEARCH AND SEIZURE AGAINST DEFENDANT KOPACZ, INDIVIDUALLY, COGNIZABLE UNDER 42 U.S.C. § 1983

For HOP's cause of action, brought by MORGAN on its behalf, against Defendant, KOPACZ, individually, in Count VII, HOP re-alleges and adopts, as if fully set forth, the allegations contained in paragraphs 1-22, 27-34 and 41-42, and would further state as follows:

95. MORGAN brings suit on behalf of HOP as owner, officer, director and sole shareholder, also asserting injury and breach of an expectation of privacy by KOPACZ's actions.

96. On July 18, 2013, Defendant KOPACZ, under color of law, did knowingly and intentionally search the premises and seize the property of HOP by partnering with Defendant CHAPMAN, coordinating the presence of other law enforcement agents and orchestrating intimidation tactics used when interacting with MORGAN and MORGAN's staff, in order to conduct a warrantless search and seizure.

97. More specifically, KOPACZ, while acting under color of law, did knowingly and intentionally search the premises and seize the property of HOP by entering HOP's premises, prohibiting HOP personnel from speaking with HOP corporate counsel, prohibiting communication among staff, searching HOP premises (including examination rooms, MORGAN's private office, drawers, cabinets, boxes and other secured areas and

items), seizing documents and photographing private areas within the facility, all without a search warrant, lawful authority or consent and against his will.

98. The entry and warrantless seizure by KOPACZ was done unlawfully by the erroneous reference to TMB's instanter subpoena, rather than by means of a search warrant, legal authorization or consent.

99. The conduct of KOPACZ, constituted a search and seizure, as more fully set forth above, was objectively unreasonable, and in violation of HOP's clearly established constitutional rights proscribing unreasonable searches and seizures pursuant to the Texas Constitution, Article 1, Section 9 and the 4th and 14th Amendments to the U.S. Constitution.

100. As a direct and proximate result of the actions of Defendant KOPACZ, in violation of 42 U.S.C. §1983, HOP suffered damages which included: injury to reputation; diminished earnings and lost profits; legal costs and fees, all in violation of HOP's civil rights.

WHEREFORE, HOP demands judgment against the Defendant, KOPACZ, for any and all damages allowable by law, including but not limited to compensatory and exemplary damages, award of payment of all costs related thereto, reasonable attorney's fees pursuant to 42 U.S.C. §1988, together with any post-judgment interest, any and all equitable relief allowed by law, and further demands trial by jury.

COUNT VIII (EIGHT)
VIOLATION OF PLAINTIFF, MORGAN'S 4TH AMENDMENT RIGHTS AGAINST UNREASONABLE SEARCH AND SEIZURE AGAINST DEFENDANT KOPACZ, INDIVIDUALLY, COGNIZABLE UNDER 42 U.S.C. § 1983

For MORGAN's cause of action against Defendant, KOPACZ, individually, in Count VIII, MORGAN re-alleges and adopts, as if fully set forth, the allegations contained in paragraphs 1-23, 25, 27-35 and 41-42, and would further state as follows:

101. On July 18, 2013, Defendant KOPACZ, under color of law, did knowingly and intentionally search and seize the property of MORGAN located at DTD and HOP, for which MORGAN either possessed an individual expectation of privacy and or sustained injury as owner, officer, director and sole shareholder of DTD and HOP.

102. More specifically, KOPACZ, while acting under color of law, did also knowingly and intentionally search MORGAN's medical offices located at DTD and HOP.

103. KOPACZ partnered with Defendant CHAPMAN, coordinating the presence of other law enforcement agents and orchestrated intimidation tactics to interacting with MORGAN, DTD and HOP staff members, in order to conduct a warrantless search and seizure.

104. MORGAN's DTD and HOP's property was seized from the medical offices, by entering the premises, prohibiting communication from and/or between MORGAN, DTD and HOP staff members, prohibiting communication between MORGAN and his attorney, DTD's and HOP's contact and communication with corporate counsel, relocating MORGAN into and forcing him to remain inside the HOP examination room, then searching the HOP and DTD premises (including examination rooms, MORGAN's private office, drawers, cabinets, boxes and other secured areas and items on the HOP and DTD premises), seizing documents and photographing private areas within the facilities, all without a search warrant, lawful authority or consent.

105. The entry and warrantless seizure by KOPACZ was done unlawfully by the erroneous reference to TMB's instanter subpoena, rather than by means of a search warrant, legal authorization or consent.

106. The conduct of KOPACZ, constituted a search and seizure, as more fully set forth above, was objectively unreasonable, and in violation of MORGAN'S clearly established

constitutional rights proscribing unreasonable searches and seizures pursuant to the Texas Constitution, Article 1, Section 9 and the 4th and 14th Amendments to the U.S. Constitution.

107. As a direct and proximate result of the actions of Defendant KOPACZ, in violation of 42 U.S.C. §1983, MORGAN suffered damages which included: physical inconvenience; physical discomfort; mental and emotional suffering, distress and anxiety; embarrassment; loss of reputation or status; diminished earnings and lost profits; legal costs and fees, all in violation of MORGAN's civil rights.

WHEREFORE, MORGAN demands judgment against the Defendant, KOPACZ, for any and all damages allowable by law, including but not limited to compensatory and exemplary damages, award of payment of all costs related thereto, reasonable attorney's fees pursuant to 42 U.S.C. §1988, together with any post-judgment interest, any and all equitable relief allowed by law, and further demands trial by jury.

COUNT IX (NINE)
VIOLATION OF PLAINTIFF DTD'S 4TH AMENDMENT RIGHTS AGAINST UNREASONABLE SEARCH AND SEIZURE AGAINST DEFENDANT FRESHOUR, IN HIS OFFICIAL CAPACITY, COGNIZABLE UNDER 42 U.S.C. § 1983

For DTD's cause of action, brought by MORGAN on its behalf, against Defendant, FRESHOUR, in his official capacity, in Count IX, DTD re-alleges and adopts, as if fully set forth, the allegations contained in paragraphs 1-26, 36 and 41-42, and would further state as follows:

108. MORGAN brings suit on behalf of DTD as owner, officer, director and sole shareholder, also asserting injury and/or breach of an expectation of privacy by CHAPMAN's actions.

109. On July 18, 2013, Defendant FRESHOUR's agent or employee, CHAPMAN, along with (2) additional TMB agents, while acting under the color of law, accompanied by KOPACZ, did knowingly and intentionally enter into, search the premises and seize the property of

DTD, to wit: patient sign-in sheets, billing records, consent and intake forms, medical records, training documentation and prescription logs with associated records.

110. The entry and seizure was warrantless, without lawful authority or consent.

111. In addition, FRESHOUR's agent and employee, CHAPMAN, along with (2) additional TMB agents, while acting under color of law, accompanied by KOPACZ, did knowingly and intentionally restrict the liberty and free movement of employees at the premises, confiscate cellular phones, prohibited communication and threatened employees for failure to cooperate with the warrantless search of the premises.

112. The entry and warrantless seizure by FRESHOUR's agent, CHAPMAN was done unlawfully by the erroneous reference to an instanter subpoena, rather than by means of a search warrant, legal authorization or consent.

113. The search and seizure was the consequence of, and resulted from the FRESHOUR's customs, policies, practices or procedures, or occasioned by the explicit authorization or acquiescence of an individual or agent with final decision making authority, and was the moving force behind the 4th Amendment constitutional violation.

114. The practice of warrantless and nonconsensual premises entry without a warrant by FRESHOUR, acting through his agents, has occurred on numerous occasions in Texas by the TMB following the same pattern and scheme, as more fully set forth, adopted and re-alleged in paragraph 36(a)-(c).

115. As a direct and proximate result of the actions of FRESHOUR's agents and employees, in violation of 42 U.S.C. §1983, DTD suffered damages to its business reputation, lost profits, legal costs and fees.

WHEREFORE, DTD demands judgment against the Defendant, FRESHOUR, for any and all damages allowable by law, including but not limited to compensatory damages, award of payment of all costs related thereto, reasonable attorney's fees pursuant to 42 U.S.C. §1988, together with any post-judgment interest, any and all equitable relief allowed by law, and further demands trial by jury.

COUNT X (TEN)
VIOLATION OF PLAINTIFF HOP'S 4TH AMENDMENT RIGHTS AGAINST UNREASONABLE SEARCH AND SEIZURE AGAINST DEFENDANT FRESHOUR, IN HIS OFFICIAL CAPACITY, COGNIZABLE UNDER 42 U.S.C. § 1983

For HOP's cause of action, brought by MORGAN on its behalf, against Defendant, FRESHOUR, in his official capacity, in Count X, HOP re-alleges and adopts, as if fully set forth, the allegations contained in paragraphs 1-22, 27-36 and 41-42, and would further state as follows:

116. MORGAN brings suit on behalf of HOP as owner, officer, director and sole shareholder, also asserting injury and/or breach of an expectation of privacy by CHAPMAN's actions.

117. On July 18, 2013, Defendant FRESHOUR's agent or employee, CHAPMAN, along with (2) additional TMB agents, while acting under the color of law, accompanied by KOPACZ, did knowingly and intentionally enter into, search the premises and seize the property of HOP, to wit: all patient sign-ins, intake forms, and billing records for the entire calendar year of 2013, all patient medical records (notes and prescription logs) generated in March 2013, several complete medical charts of patients since their admission to the practice, all personnel files, employee records and corporate documents.

118. The entry and seizure was warrantless, without lawful authority or consent.

119. In addition, FRESHOUR's agent and employee, CHAPMAN, along with (2) additional TMB agents, while acting under color of law, accompanied by KOPACZ, did knowingly and intentionally restrict the liberty and free movement of employees at the premises,

confiscated cellular phones, prohibited communication and threatened employees for failure to cooperate with the warrantless search of the premises.

120. The entry and warrantless seizure by FRESHOUR's agent, CHAPMAN was done unlawfully by the erroneous reference to an instanter subpoena, rather than by means of a search warrant, legal authorization or consent.

121. The search and seizure was the consequence of, and resulted from the FRESHOUR's customs, policies, practices or procedures, or occasioned by the explicit authorization or acquiescence of an individual or agent with final decision making authority, and was the moving force behind the 4th Amendment constitutional violation.

122. The practice of warrantless and nonconsensual premises entry without a warrant by FRESHOUR, acting through his agents, has occurred on numerous occasions in Texas by the TMB following the same pattern and scheme, as more fully set forth, adopted and re-alleged in paragraph 36(a)-(c).

123. As a direct and proximate result of the actions of FRESHOUR's agents and employees, in violation of 42 U.S.C. §1983, HOP suffered damages to its business reputation, lost profits, legal costs and fees.

WHEREFORE, HOP demands judgment against the Defendant, FRESHOUR, for any and all damages allowable by law, including but not limited to compensatory damages, award of payment of all costs related thereto, reasonable attorney's fees pursuant to 42 U.S.C. §1988, together with any post-judgment interest, any and all equitable relief allowed by law, and further demands trial by jury.

COUNT XI (ELEVEN)
VIOLATION OF PLAINTIFF, MORGAN'S 4TH AMENDMENT RIGHTS AGAINST UNREASONABLE SEARCH AND SEIZURE AGAINST DEFENDANT FRESHOUR, IN HIS OFFICIAL CAPACITY, COGNIZABLE UNDER 42 U.S.C. § 1983

For MORGAN's cause of action against Defendant, FRESHOUR, in his official capacity, in Count XI, MORGAN re-alleges and adopts, as if fully set forth, the allegations contained in paragraphs 1-23, 25, 27-35 and 41-42, and would further state as follows:

124. On July 18, 2013, Defendant FRESHOUR's agent or employee, CHAPMAN, along with (2) additional TMB agents, while acting under the color of law, did knowingly and intentionally entered into DTD and HOP without a warrant, lawful authority or consent and searched the premises and seized documents and property of MORGAN located at DTD and HOP, for which MORGAN either possessed an individual expectation of privacy and or sustained injury as owner, officer, director and sole shareholder of DTD and HOP.

125. CHAPMAN and the TMB agents, along with Defendant, KOPACZ, intimidated MORGAN to force the warrantless search of DTD and HOP.

126. More specifically, FRESHOUR acting through CHAPMAN, along with (2) additional TMB agents, under color of law, did knowingly and intentionally seize MORGAN to search HOP. The agents also seized documents at HOP and DTD.

127. CHAPMAN, with KOPACZ, along with (2) additional TMB agents, confined and restricted the liberty and free movement of MORGAN by forcing him to enter and remain inside a HOP medical examination room resulting in his seizure in violation of the 4th Amendment of the U.S. Constitution and 42 U.S.C. § 1983.

128. MORGAN's seizure was the consequence of, and resulted from the FRESHOUR's customs, policies, practices or procedures, or were occasioned by the explicit authorization or acquiescence of an individual or agent with final decision making authority, and was the moving force behind the 4th Amendment constitutional violation.

129. The practice of warrantless and nonconsensual premises entry then seizing occupants for the purpose of searching without a warrant by FRESHOUR, acting through his agents, has occurred on numerous occasions in Texas by the TMB following the same pattern and scheme, as more fully set forth, adopted and re-alleged in paragraphs 36(a)-(c).

130. FRESHOUR, acting through his agents, prohibited communication from and or between MORGAN and his staff and/or attorney, threatened penalties against MORGAN for failure to cooperate with the search, then searched MORGAN's private office, drawers, cabinets, boxes and other secured areas and items without his consent and against his will resulting in a violation of the 4th Amendment of the U.S. Constitution and 42 U.S.C. § 1983.

131. These restrictions and actions were a seizure and the consequence of, and resulted from FRESHOUR's customs, policies, practices or procedures, or were occasioned by the explicit authorization or acquiescence of an individual or agent with final decision making authority, and was the moving force behind the 4th Amendment constitutional violation.

132. This practice has also occurred on numerous occasions in Texas by the TMB following the same pattern and scheme, as more fully set forth, adopted and re-alleged in paragraphs 36(a)-(c).

133. The entry and warrantless seizure by FRESHOUR's agent, CHAPMAN was done unlawfully by the erroneous reference to an instanter subpoena, rather than by means of a search warrant, legal authorization or consent.

134. As a direct and proximate result of the actions of FRESHOUR's agents and employees, in violation of 42 U.S.C. §1983, MORGAN suffered damages which include physical inconvenience; physical discomfort; mental and emotional suffering, distress and anxiety;

embarrassment; loss of reputation or status; loss of enjoyment of life; lost or diminished earnings; and lost profits, legal costs and fees.

WHEREFORE, MORGAN demands judgment against the Defendant, FRESHOUR, for any and all damages allowable by law, including but not limited to compensatory damages, award of payment of all costs related thereto, reasonable attorney's fees pursuant to 42 U.S.C. §1988, together with any post-judgment interest, any and all equitable relief allowed by law, and further demands trial by jury.

Dated: January 20, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by electronic mail on the date below upon counsel on the incorporated service list.

DATED this 20th **day of** January, 2017.

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