

STATE OF NEW YORK
SUPREME COURT COUNTY OF SCHENECTADY

Shawn Zukoski,

Plaintiff,

vs.

COMPLAINT

FORBA, LLC n/k/a LICsAC, LLC; FORBA NY, LLC
n/k/a LICsAC NY, LLC; DD Marketing, Inc.; DeRose
Management, LLC; Small Smiles Dentistry of Albany,
LLC; Albany Access Dentistry, PLLC; Daniel E.
DeRose; Michael A. DeRose, D.D.S.; Edward J.
DeRose, D.D.S.; Adolph R. Padula, D.D.S.; William A.
Mueller, D.D.S.; Michael W. Roumph; Maziar Izadi,
D.D.S.; Evan Goldstein, D.D.S.; Judith Mori, D.D.S.,

Index No. _____

Defendants.

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Plaintiff, Shawn Zukoski, by and through his attorneys, as and for a complaint against the defendants, alleges that at all times hereinafter mentioned:

PRELIMINARY STATEMENT

1. In 2010, top law enforcement officials from the Department of Justice and representatives of numerous state governments (including New York), announced that they had uncovered a nationwide scheme directed at infant dental patients and the Medicaid system. A dental clinic chain known as "Small Smiles", operating in twenty-two states – including New York – performed unnecessary, inappropriate, unsafe and

excessive dental procedures on young children. It received hundreds of millions of taxpayer dollars.

2. This is an action by one individual residing in Schenectady County. Between 2005 and 2007 when the Plaintiff was a minor, he suffered damages and loss from the Small Smiles' scheme, and the resulting improper dental care he received, at a dental clinic in Colonie, New York ("the Colonie Clinic").

FEDERAL AND STATE ACTIONS AGAINST THE FRAUD

3. The Small Smiles dental clinic chain (hereinafter "Small Smiles") was, at all times, operated and directed by a unified and jointly controlled group of corporate entities. On or before September 26, 2006 these corporate entities were defendants FORBA, LLC, n/k/a LICSAAC, LLC, FORBA NY LLC, n/k/a LICSAAC NY LLC, DD Marketing, Inc., and DeRose Management, LLC, (collectively referred to here as "Old FORBA"). On or after September 26, 2006, these corporate entities were defendants FORBA Holdings, LLC n/k/a Church Street Health Management, LLC and FORBA NY, LLC (collectively referred to here as "New FORBA"). All six corporate entities are collectively referred to here as "FORBA".

4. In late 2007 and 2008, former employees at Small Smiles' clinics in Maryland, Virginia, and South Carolina filed whistleblower lawsuits in which each, independently and under seal, alleged that during

2007 and 2008 New FORBA was committing Medicaid fraud by abusing small children.

5. In late 2007, the United States Department of Justice, along with the Federal Bureau of Investigation and the National Association of Medicaid Fraud Control Units, commenced a nationwide investigation of the FORBA operation.

6. The New York Office of Medicaid Inspector General, with the New York State Attorney General and the New York Office of Professional Discipline, investigated the FORBA clinics operating in New York.

7. The United States Department of Justice and the State of New York alleged that FORBA billed Medicaid for dental services that were either unnecessary or performed in a manner that did not meet professionally recognized standards of care.

8. The government investigations took approximately two years. In January 2010, New FORBA agreed to pay \$24 million to the United States, including \$1.15 million for the State of New York, as a result of the fraud scheme. New FORBA also agreed to pay \$2.3 million directly to the State of New York, including a substantial sum for fraudulent billings that took place before September 2006.

9. The United States Department of Justice described FORBA's scheme by stating, "[i]llegal conduct like this endangers a child's well-being, distorts the judgments of health care professionals, and puts corporate profits ahead of patient safety" and "we will not tolerate

Medicaid providers who prey on vulnerable children and seek unjust enrichment at taxpayers' expense."

EARLIER FEDERAL AND STATE ACTIONS AGAINST FORBA AND ITS EXECUTIVES

10. FORBA, its owners, and dentists have regularly been charged by federal and state authorities with committing Medicaid fraud, violating dental standards of care, and breaching other state dental rules in connection with the treatment they provided to young children. Between 2003 and 2008, FORBA, and its management and dentists were disciplined for fraud or inappropriate dental care in, at least, the following matters:

11. In 2003, the Arizona Dental Board revoked the license of a FORBA dentist after a young child died while strapped down to a papoose board at a FORBA clinic. The dentist admitted that the clinic routinely restrained children under the age of five for the convenience of the clinic and not because restraints were medically necessary.

12. In 2003 or 2004, the Tennessee Dental Board investigated defendant William A. Mueller, D.D.S., one of the founders of FORBA and a company senior executive, for routinely and arbitrarily restraining young children without justification. The same board reprimanded him for engaging in false and misleading advertising on FORBA's behalf.

13. In 2004, the Colorado Dental Board disciplined defendants and FORBA Vice-Presidents Michael A. DeRose, D.D.S. and Edward J.

DeRose, D.D.S., for training unlicensed dentists in Colorado. The Colorado Dental Board ordered them to stop aiding and abetting dentists from practicing dentistry in Colorado without a license.

14. In 2005, North Carolina disciplined defendant Michael A. DeRose, D.D.S. for employing and training dentists who performed unnecessary dental procedures on children, and for establishing office policies causing such overtreatment. These treatments included unwarranted baby root canals and stainless steel crowns. The North Carolina Board of Dental Examiners suspended the dental license of defendant Michael A. DeRose, D.D.S.

15. In 2004, the Colorado Dental Board began a new investigation of defendants Michael A. DeRose, D.D.S. and William A. Mueller, D.D.S. It focused on the same conduct that subjected defendant Michael A. DeRose, D.D.S. to discipline in North Carolina. At the end of the investigation in 2009, defendants Michael A. DeRose D.D.S. and William A. Mueller, D.D.S. permanently surrendered their Colorado dental licenses.

16. In 2006, FORBA's lead dentist in its Rochester, New York clinic was convicted of Medicaid fraud, sentenced to six months in prison, and had his New York dental license revoked. FORBA repaid the Medicaid program hundreds of thousands of dollars for fraudulent billings.

17. Later in 2006, the Kansas Dental Board suspended defendant Michael A. DeRose, D.D.S.'s dental license for six months for the same wrongful acts that caused his suspension in North Carolina.

18. In 2008, the United States Department of Justice and North Carolina completed their investigations of defendant Michael A. DeRose, D.D.S., and his North Carolina dental clinics. The Assistant Attorney General of the United States concluded that defendant Michael A. DeRose, D.D.S. and the dentists at his clinics "subjected their child patients to invasive and sometimes painful procedures, often for the sake of obtaining money from the North Carolina Medicaid program." Defendant Michael A. DeRose, D.D.S. and his partner paid \$10 million to reimburse the United States government for money it paid for unnecessary root canals, stainless steel crowns and other dental procedures performed without informed consent.

THE GENESIS AND MOTIVE FOR THE SCHEME

19. FORBA began in Pueblo, Colorado. Until 1995, defendants Edward J. DeRose, D.D.S. and Michael A. DeRose, D.D.S. operated a single dental office there. Over the next five years, they opened four other dental clinics in Colorado and New Mexico treating children on Medicaid.

20. On or about 2001, they and defendants Daniel E. DeRose, Adolph R. Padula, D.D.S., William A. Mueller, D.D.S., and Michael W. Rounph, (collectively "the Individual Defendants"), created Old FORBA to operate and manage the existing clinics and expand them across the United States. Each Individual Defendant was also an officer of the corporate entities making up Old FORBA and was actively involved in its daily operations and management.

21. By 2004, Old FORBA was operating about twenty children's Medicaid dental clinics--more than any other company in the United States.

22. Knowing that the company's success was based on a fraudulent business model (that was later uncovered by the federal and state authorities), the Individual Defendants began trying to sell Old FORBA. They nearly did in June 2004, but the prospective purchaser broke off negotiations due to concerns about Old FORBA's management and operations.

23. In 2005, a lawyer hired by Old FORBA was already concerned that Old FORBA was going to be the subject of a full-scale fraud investigation by the government, a concern that he expressed to Old FORBA in a written memorandum. He also warned that then-pending investigations were merely the initial steps to an all-out investigation, and that Old FORBA should proceed with extreme caution. The Individual Defendants and Old FORBA ignored the lawyer's advice. Instead, they rapidly expanded the business, using the same fraudulent business model then under investigation. Between 2004 and 2006, Old FORBA opened 30 more children's Medicaid clinics across the United States.

24. By 2006, Old FORBA utilized its fraudulent business model to dominate the market for supplying dental services to Medicaid children. During that year, Old FORBA had three times more children visit its clinics than its nearest competitor.

25. In 2006, the Individual Defendants renewed their efforts to sell Old FORBA. In April 2006, some Individual Defendants met with

representatives of a new potential purchaser, New FORBA. At the meeting, the parties agreed on a purchase price based on a simple mathematic formula: ten times Old FORBA's 2006 EBITDA (Earnings Before Interest, Taxes, Depreciation and Amortization) forecast.

26. Old FORBA's EBITDA was tied directly to the revenues generated at its clinics. Under the purchase price formula, every dollar that the clinics made equaled ten dollars to the Individual Defendants.

27. On September 26, 2006, Old FORBA sold the business to New FORBA for \$435 million. New FORBA acquired substantially all of the assets held or used in the conduct of Old FORBA's business. This included "all of the properties and assets (whether tangible or intangible, whether real or personal, whether owned or leased, regardless of location) that are necessary to enable [New FORBA] to carry on the Business following the Closing in the same manner as it was operated immediately prior to the Closing."

28. New FORBA knew that the entire \$435 million proceeds of the sale, except for an escrow of \$27.5 million, would immediately be distributed to the Individual Defendants as owners of Old FORBA. And it was. On information and belief, defendant Daniel E. DeRose received approximately \$80 million, defendants Edward J. DeRose, D.D.S., Michael A. DeRose, D.D.S., William A. Mueller, D.D.S., and Adolph Padula, D.D.S. *each* received approximately \$58 million, and defendant Michael Rounph received approximately \$38 million.

29. Old FORBA immediately became a dormant shell, and remains that way today.

30. The owners of New FORBA were and are not dentists. They had no experience running dental clinics or treating children, and no desire to learn about these things. They were private equity funds and a Bahranian bank with one objective: to quickly and dramatically increase the company's EDITDA so they could re-sell the business for a sizeable profit on their \$435 million investment.

31. As soon as it purchased Old FORBA, New FORBA announced plans to triple the company's size. It believed that the company was well placed to continue the strategy that caused its revenues to grow at an annual compound rate of more than 40% from 2000 through 2006.

32. The new owners planned to continue the successful business operations at the existing 50 FORBA clinics and to expand the business into new markets. To do so, the new investors utilized Old FORBA's fraudulent business scheme.

33. After the sale in September 2006, New FORBA managed and operated the same clinics with the same dentists and the same employees as Old FORBA had used before the sale.

34. With the exception of the Old FORBA owners, Old FORBA employees continued as employees of New FORBA. Publicly, New FORBA emphasized that it was continuing the prior business, proclaiming that it had been serving the dental needs of children "for decades."

FORBA'S DIRECTION AND CONTROL OF THE CLINICS

35. The FORBA business model was the same under Old FORBA and New FORBA.

36. New York law prohibits the corporate practice of dentistry. Thus, New York law prohibits non-dentists from owning or controlling dental service companies. In addition, New York law requires that the owner of a dental service company practice at the company. FORBA organized each New York Small Smiles dental clinic, including the Colonie Clinic and those in Syracuse and Rochester, New York, (collectively referred to here as "the New York Clinics"), as a limited liability dental service company, purporting to be owned by an individual dentist licensed in the state.

37. In so doing, FORBA fraudulently organized the New York Clinics, including the Colonie Clinic, to make it look like the clinics were complying with state law. In the organizing papers filed with the State of New York, FORBA represented that Defendant Adolph Padula was the owner (known as the member of a limited liability company) and manager of all three of the New York Clinics.

38. In fact, Defendant Padula was not the owner of the New York Clinics. In addition, he did not practice at any of the New York Clinics. He was a founder and the Treasurer of FORBA. He was the brother-in-law of FORBA founder Edward DeRose and the uncle of FORBA founders Dan DeRose and Michael DeRose.

39. FORBA later removed Defendant Padula as the listed "owner" of the New York Clinics and designated Dr. Kenneth Knott, a FORBA officer, as the "owner." Knott was FORBA's Senior Vice President for its Central Region.

40. FORBA removed Knott as the listed "owner" of the Colonie Clinic in 2008 and designated Dr. Maziar Izadi as the "owner."

41. In addition, Knott falsified his dental licensure materials, and FORBA fired Knott and removed him as "owner" of the Syracuse and Rochester Clinics in 2008. FORBA designated Dr. Koury Bonds as the listed "owner" of the Syracuse and Rochester Clinics. FORBA later removed Izadi as the "owner" of the Colonie Clinic and designated Dr. Bonds as the "owner" of the Colonie Clinic as well.

42. None of the persons designated by FORBA as the "owners" of the New York Clinics provided the capital for the establishment or operation of the New York Clinics, nor did any of them assume the risk of loss of the New York Clinics, and none of them was entitled to nor did any of them receive the profit from the New York Clinics. None of them was the true owner of any of the New York Clinics.

43. At all times, FORBA was the true owner and manager of the Small Smiles Clinics, including the New York Clinics.

44. FORBA identified the locations and provided the capital to open and operate the clinics.

45. FORBA selected the "owners" of the clinics. All profit generated by the clinics went to FORBA. All of the revenues of the Small

Smiles clinics in excess of their expenses went to FORBA under management agreements.

46. FORBA established all operational policies and procedures necessary for establishing standards of patient care at the clinics.

47. FORBA recruited, interviewed, hired, and provided orientation and training to the dentists who were employed at the clinics.

48. FORBA recruited, employed, trained, promoted, directed, supervised, and terminated the employment of the clinics' staffs.

49. FORBA established and maintained the quality control programs at each clinic.

50. FORBA performed all of the business functions of the clinics.

51. FORBA acquired the clinics' assets, equipment and supplies.

52. FORBA made repairs, replacements and additions to the clinics and their equipment when and if it deemed necessary.

53. FORBA performed the bookkeeping, accounting, billing and collection, human resources, marketing, legal, government affairs, compliance, and IT support functions.

54. In short, FORBA was the true owner and manager of the New York Clinics in violation of New York law. FORBA established, operated, directed, controlled and managed the clinics in every respect, and all the clinics' profits went to FORBA. FORBA evaded New York law by fraudulently organizing the clinics to create the false appearance that licensed dentists were the owners and managers when in fact that was not the case.

FORBA'S SCHEME

55. At least as early as 2001 and continuing to the present, FORBA and the Individual Defendants have engaged in a course of conduct that was intended to and did create a culture at the clinics that put revenue generation as the top priority at the expense of quality of dental treatment.

56. FORBA dentists were required to – and did – treat patients with revenue generation as the primary goal rather than the medical needs of the patients.

57. This planned course of conduct was originally conceived and implemented by the Individual Defendants, Old FORBA, and the dentists working for Old FORBA.

58. New FORBA and its dentists, many of whom had participated in the conduct when working for Old FORBA, continued this course of conduct unabated.

59. FORBA indoctrinated its dentists by requiring new dentists to attend FORBA training sessions in Colorado. At the training sessions, FORBA made clear that production was more important than quality of patient care.

60. FORBA also made clear the conduct required of its dentists. They were expected to meet FORBA's set production goals. The dentists received bonuses if they produced revenue exceeding these goals.

61. FORBA trained the dentists how to achieve FORBA's production goals. Among those means were two that would inevitably

injure the victims of the scheme – the small children who came to the clinics for legitimate treatment.

62. To increase production, FORBA dentists were expected to, and did, perform unnecessary dental procedures.

63. FORBA's emphasis on meeting production goals sacrificed quality care and neglected the real dental needs of the children.

64. New FORBA has confirmed that the foundation of FORBA's business was fraudulent. As New FORBA states in a federal court filing: Old FORBA "created a culture within the Small Smiles Centers that emphasized production over quality care, in clear contravention of . . . accepted standards of dental care."

65. New FORBA has further admitted in the federal court filing that Old FORBA tracked the production of each dentist, and routinely exerted pressure on the dentists and staff to increase production through emails, conversations and salary negotiations. The scheme was fully operational when the Colonie Clinic opened in 2005. As New FORBA states, "Old FORBA's management, including, but not limited to, Dan DeRose and Michael Roumph, threatened and berated Small Smiles dentists in an effort to increase production. Old FORBA exerted significant pressure on Small Smiles dentists across the country, including dentists in. . . New York. . . ."

66. In addition, FORBA management pressured its dentists to increase "production per patient." As New FORBA admits, Old FORBA management "sent emails to Small Smiles Centers emphasizing that 'production per patient . . . [s]hould be an area to focus on with your

dentists; and '[a]s we have discussed, our focus needs to be on increasing production per patient.'"

67. As New FORBA also admits, Old FORBA management routinely prepared reports of "production per dentist", a red flag that revenue generation is the number one priority ahead of quality of care. As Individual Defendant Daniel E. DeRose has stated, tracking "production per dentist" is the "number one trigger point for fraud."

68. As New FORBA stated: "Old FORBA actively monitored production per dentist, and actively and repeatedly pressured dentists to keep their production up. For instance, Old FORBA generated spreadsheets tracking 'Dentist Efficiency' that specifically tracked individual dentist production. Old FORBA discussed these production metrics with Small Smiles dentists, and sent e-mails emphasizing the need for increased production."

69. As New FORBA admits in the federal court filing, FORBA was obligated under its Management Agreement with the Colonie Clinic to "establish . . . all operational policies and procedures reasonably necessary for establishing the appropriate standards of care at the [Colonie] Clinic" and to "maintain and update, as reasonably required, quality control programs for the [Colonie] Clinic."

70. As a result of the course of conduct described above, FORBA did not do so. As New FORBA states in the federal court filing, Old FORBA "did not have a sufficient compliance program, did not establish or promote clinical guidelines or quality assurance protocols, and did not establish guidelines regarding proper charting and documentation." As

New FORBA states in the federal court filing, Old FORBA “did not establish policies, procedures, or quality control measures to promote appropriate standards of care at the Small Smiles facilities.”

71. Instead, as set forth above, Old FORBA established policies and procedures that required its clinics, including the Colonie Clinic, to treat its patients with revenue generation as the primary goal to the detriment of quality care. As New FORBA states in the federal court filing, these policies and procedures were “in clear contravention of . . . accepted standards of dental care.”

72. When New FORBA bought Old FORBA’s business in late September 2006, the dentists who committed and benefited from these fraudulent practices kept working at the clinics.

73. The fraudulent practices, which grounded and made up the core of Old FORBA’s business, continued unabated and unchecked at the direction of New FORBA.

THE OLD FORBA DEFENDANTS

74. Defendant FORBA, LLC, (“FORBA LLC”) n/k/a LICSAAC LLC is a foreign limited liability company duly organized under the laws of Colorado. It transacted business in New York that is the subject of this case, and is otherwise subject to New York State jurisdiction. FORBA, LLC was owned and controlled by the Individual Defendants. Each Individual Defendant was an officer of the company. In October 2006, FORBA, LLC changed its name to LICSAAC, LLC.

75. Defendant FORBA NY, LLC n/k/a LICSAAC NY, LLC ("FORBA NY, LLC") is a limited liability company organized and existing according to the laws of the State of New York as of May 7, 2004. It transacted business in New York that is the subject of this case, and is otherwise subject to New York State jurisdiction. At all material times, Defendant FORBA, LLC owned and controlled FORBA NY, LLC. In October, 2006, FORBA NY, LLC changed its name to LICSAAC, NY, LLC.

76. Defendant DD Marketing, Inc. is a corporation organized under the laws of Colorado. It transacted business in New York that is the subject of this case, and is otherwise subject to New York State jurisdiction. DD Marketing, Inc. is owned by defendants Daniel E. DeRose and Michael W. Roumph. They are also the two senior executives at DD Marketing.

77. Defendant DeRose Management LLC is a foreign limited liability company duly organized under the laws of Colorado. It transacted business in New York that is the subject of this case, and is otherwise subject to New York State jurisdiction. Defendant Edward J. DeRose, D.D.S. is the president of DeRose Management and defendants Edward J. DeRose, D.D.S. and Michael A. DeRose are the owners of DeRose Management.

78. Until September 26, 2006, defendants FORBA LLC, FORBA NY, LLC, DD Marketing, Inc. and DeRose Management, Inc., developed, opened, operated, managed and supervised the clinics.

THE INDIVIDUAL DEFENDANTS

79. Defendant Daniel E. DeRose is the president of defendants FORBA, LLC, FORBA NY, LLC, and DD Marketing, Inc., and an owner of defendants DD Marketing, Inc., and FORBA, LLC.

80. Defendant Daniel E. DeRose is and was an owner, senior officer, and agent of Old FORBA.

81. Defendant Daniel E. DeRose participated in Old FORBA operations on a day-to-day basis. He was actively involved in the opening, operation and management of the clinics.

82. Defendant Daniel E. DeRose knew of, participated in, and benefited from the FORBA scheme described above.

83. Defendant Michael A. DeRose, D.D.S. is an owner, senior officer, and agent of Old FORBA. In that capacity, he was actively involved in the opening, operation and management of the clinics. He also trained the dentists working at the clinics.

84. Defendant Michael A. DeRose, D.D.S. knew of, participated in, and benefited from the FORBA scheme described above.

85. Defendant Edward J. DeRose, D.D.S. is an owner, senior officer and agent of Old FORBA. In that capacity, he was actively involved in the opening, operation and management of the clinics.

86. Defendant Edward J. DeRose, D.D.S. knew of, participated in, and benefited from the FORBA scheme described above.

87. Defendant Adolph R. Padula, D.D.S., is an owner, senior officer, and agent of Old FORBA. In that capacity, he was actively involved in the opening, operation and management of the clinics.

88. Defendant Adolph R. Padula, D.D.S. was licensed to practice dentistry in the State of New York, and was responsible in part for setting up and managing the Colonie Clinic and the other clinics in New York.

89. Defendant Adolph R. Padula, D.D.S. is Edward DeRose's brother-in-law. The documents by which Defendant Small Smiles Dentistry of Albany, LLC (the Colonie Clinic) was organized and authorized to practice dentistry represented that Adolph R. Padula was its member and manager.

90. Defendant Adolph R. Padula, D.D.S. was the original member and manager of defendant Small Smiles Dentistry of Albany, LLC.

91. Defendant Adolph R. Padula, D.D.S. knew of, participated in, and benefited from the FORBA scheme described above.

92. Defendant William A. Mueller, D.D.S. is an owner, senior officer, and agent of Old FORBA. In that capacity, he was actively involved in the opening, operation and management of the clinics.

93. Defendant William A. Mueller, D.D.S. also trained dentists working at the clinics.

94. Defendant William A. Mueller, D.D.S. knew of, participated in, and benefited from the FORBA scheme described above.

95. Defendant Michael W. Roumph is an owner, senior officer, and agent of Old FORBA. He participated in Old FORBA operations on a

day-to-day basis. He was actively involved in the opening, operation and management of the clinics.

96. Defendant Michael W. Rounph knew of, participated in, and benefited from the FORBA scheme described above.

97. At all material times, the Individual Defendants were the agents, employees, servants or associates of Old FORBA.

98. The Individual Defendants joined in the sale of Old FORBA to New FORBA and executed the contract for the sale. They agreed that they were responsible, with Old FORBA, for indemnifying New FORBA for Old FORBA'S acts or omissions occurring before the sale, and or any third party claims arising out of Old FORBA'S ownership and operation of FORBA before the sale.

THE NEW FORBA ENTITIES

99. FORBA Holdings, LLC n/k/a Church Street Health Management, LLC ("FORBA Holdings, LLC") is a foreign limited liability company duly organized under the laws of the State of Delaware, and authorized to conduct business in the State of New York. FORBA Holdings, LLC has been managing dental clinics in New York, including the Colonie clinic, since September 2006.

100. On December 31, 2010, defendant FOBRA Holdings, LLC changed its name to Church Street Health Management LLC.

101. FORBA NY, LLC ("FORBA NY") is a limited liability company organized and existing under the laws of the State of New York.

It was originally organized in New York State under the name SANUS NY, LLC on September 13, 2006. It assumed the name FORBA NY, LLC on October 25, 2006 by filing with the New York Secretary of State. Upon information and belief, FORBA NY, LLC is wholly-owned and controlled by FORBA Holdings, LLC.

102. Since September 2006, defendant FORBA NY has, through its sole member and agent, FORBA Holdings, LLC, managed several New York FORBA clinics, including the Colonie clinic.

103. In February 2012, New FORBA filed for protection under the federal bankruptcy laws. Before New FORBA can be named as a party to this action, Plaintiff must obtain relief from the automatic stay.

THE COLONIE CLINIC

104. In or about October 2004, Old FORBA organized Defendant Small Smiles Dentist of Albany, LLC ("Small Smiles Albany"). Small Smiles Albany held itself out as a professional limited liability company organized under the laws of New York that had its principal office in Colonie, New York. In or about May 2008, the New York State Office of the Medicaid Inspector General terminated Small Smiles Albany from the Medicaid program and the company ceased operations.

105. Old FORBA responded to the termination by organizing another company, Albany Access Dentistry, PLLC ("Albany Access"). Beginning in or about May 2008, Albany Access held itself out as a

professional limited liability company organized under the laws of New York that had its principal office in Colonie, New York.

106. Both Defendant Small Smiles Albany and Defendant Albany Access were fraudulently organized and operated. FORBA designated various licensed dentists as the member (owner) and manager of such Defendants. None of the "owners" designated by FORBA were the true members (owners) or managers.

107. At all times, FORBA was the true member ("owner") and manager of Defendants Small Smiles Albany and Albany Access.

108. Defendants Albany Access and Small Smiles Albany are referred to here collectively as "the Colonie Clinic."

THE DENTIST DEFENDANTS

109. Defendant Mazier Izadi, D.D.S. was, and is licensed to practice dentistry in the State of New York.

110. At all material times, FORBA and the Colonie Clinic held defendant Mazier Izadi, D.D.S. out to the plaintiff's parent and legal custodian, and all other parents in the community, as a dentist who was trained, competent and qualified to treat young children.

111. Defendant Mazier Izadi, D.D.S. provided dental services to plaintiff in this case at the Colonie Clinic.

112. At all material times, defendant Mazier Izadi, D.D.S. was the agent, employee, servant, and/or associate of FORBA and the Colonie Clinic.

113. Defendant Evan Goldstein, D.D.S. was and is licensed to practice dentistry in the State of New York.

114. At all material times, FORBA and the Colonie Clinic held defendant Evan Goldstein, D.D.S. out to the plaintiff's parents and legal custodian, and all other parents in the community, as a dentist who was trained, competent and qualified to treat young children.

115. Defendant Evan Goldstein, D.D.S. provided dental services to Plaintiff in this case at the Colonie Clinic.

116. At all material times, Defendant Evan Goldstein, D.D.S. was the agent, employee, servant or associate of FORBA and the Colonie Clinic.

117. Defendant Judith Mori, D.D.S. was and is licensed to practice dentistry in the State of New York.

118. At all material times, FORBA and the Colonie Clinic held defendant Judith Mori, D.D.S. out to the plaintiff's parents and legal custodian, and all other parents in the community, as a dentist who was trained, competent and qualified to treat young children.

119. Defendant Judith Mori, D.D.S. provided dental services to Plaintiff in this case at the Colonie Clinic.

120. At all material times, Defendant Judith Mori, D.D.S. was the agent, employee, servant or associate of FORBA and the Colonie Clinic.

THE PLAINTIFF'S CLAIMS

121. The victims of defendants' pursuit of hundreds of millions of dollars were the children who suffered injury from unnecessary, traumatic and improper dental procedures. The plaintiff in this case was between the ages of thirteen and fifteen at the time he received unnecessary, improper and harmful treatment.

122. The practice of making revenue production the top priority at the expense of quality of care was, as New FORBA admits, "in clear contravention of . . . accepted standards of dental care" and resulted in treatment below the standard of care in numerous ways.

123. The standard of care requires x-rays to diagnose the need for the dental procedures done in this case. But in FORBA's rush for dollars, the needed x-rays were often either not done or so poorly done as to be totally useless and non-diagnostic. The dental procedures proceeded anyway, without any justification.

124. On several occasions, Dentist Defendants performed dental procedures on the Plaintiff without taking any x-rays or with x-rays that were non-diagnostic. In some cases the x-rays that were done show that some procedures were unnecessary.

125. In addition, treatments that were needed, including steps to prevent decay or its spread, were ignored.

126. The Plaintiff has Asberger's and was thirteen through fifteen years old when he was a patient at the Colonie Clinic from December 2005 through July 2007. During that time, he had twelve fillings, 1 pulpotomy

and crown, two extractions, four temporary crowns and two root canal therapies. As a result of the wrongful conduct described in the above paragraphs, the Plaintiff received treatment from the Colonie Clinic, and Dentists Mori, Goldstein and Izadi that was below the applicable standard of care and caused him to suffer injuries. The Plaintiff asserts claims against Small Smiles Albany; Dentists Mori, Goldstein and Izadi; Old FORBA, and the Individual Defendants.

127. One or more of the exceptions set forth in CPLR Section Sixteen Hundred Two applies to this action or claim for damages.

128. To the extent deemed necessary, the Plaintiff pleads in the alternative as to causes of action asserted herein.

AS AND FOR A FIRST CAUSE OF ACTION SOUNDING IN FRAUD

129. Plaintiff repeats and re-alleges the allegations of the Complaint set forth herein at paragraphs 1 through 128 with the same force and effect as if here set forth at length and further alleges:

130. By offering their services, the Dentist Defendants and the Colonie Clinic misrepresented to the public and to the plaintiff (through his parent or custodian) that defendants intended to provide appropriate dental care at the clinic. In truth, they did not intend to provide appropriate care.

131. Instead, the Colonie Clinic and the Dentist Defendants intended to and did treat children, including the plaintiff, with the

primary goal being revenue generation rather than the medical needs of the children, with knowledge that such treatment was inappropriate.

132. In addition, by offering their services the Dentist Defendants and the Colonie Clinic misrepresented to the public and to the plaintiff (through his parents) that the Colonie Clinic was authorized under New York law to provide dentistry services when in fact, it was not.

133. Furthermore, such defendants knew at the time that they treated the plaintiff that his treatment was inappropriate, but misrepresented to such plaintiff (through his parents) that his treatment was appropriate.

134. The misrepresentations of the Dentist Defendants and the Colonie Clinic were done with the intent to induce the plaintiff (through his parents) to consent to the treatment, which these defendants knew his parents would not have done had they known the truth.

135. The parents of the plaintiff justifiably relied on the misrepresentations when they brought the plaintiff to the clinic and consented to what they believed to be legitimate dental treatment of the plaintiff by the Colonie Clinic and the Dentist Defendants.

136. The parents of the plaintiff would not have consented to the treatment of the plaintiff at the Colonie Clinic if these defendants had not engaged in such misrepresentations.

137. In addition to the misrepresentations described above, the Dentist Defendants and the Colonie Clinic committed fraud by concealing from the plaintiff (through his parents) material facts to persuade them to consent to treatment at the Colonie Clinic.

138. Specifically, the Dentist Defendants and the Colonie Clinic knew but concealed from the plaintiff (through his parents) that they were engaged in the course of conduct that placed revenue generation ahead of the medical needs of the plaintiff, that they intended to treat the plaintiff with their primary goal being revenue rather than the medical needs of the plaintiff, that they did not intend to provide the plaintiff appropriate care and that the treatment of the plaintiff was not appropriate,

139. The Dentist Defendants and the Colonie Clinic had a duty to disclose the concealed facts for two reasons. First, the plaintiff had either a fiduciary relationship with or a similar special relationship of trust and confidence with these defendants.

140. The plaintiff was in a vulnerable position, whose parents placed him in the care of these defendants with regard to matters about which they had far superior knowledge, and of necessity must and did reasonably place their trust and confidence in such defendants. The plaintiff (through his parents) reasonably expected that the Dentist Defendants and the Colonie Clinic would put the plaintiff's interests before their own.

141. Second, the Dentist Defendants and the Colonie Clinic possessed superior knowledge, not available the plaintiff (through his parents), which they fraudulently concealed because they knew the plaintiff (through his parents), did not have such knowledge and would not have consented to the dental treatment if they had.

142. The concealed facts set forth above were exclusively within the control of the defendants and were not available to the plaintiff

(through his parents) nor could they have discovered them through ordinary intelligence. These were special facts that the Dentist Defendants and the Colonie Clinic had a duty to disclose.

143. The concealed facts were material to the parents of the plaintiff and to any reasonable person in deciding whether to bring their child to the Colonie Clinic and consent to the dental treatment.

144. The Dentist Defendants and the Colonie Clinic concealed these facts from the plaintiff (through his parents) because the Dentist Defendants and the Colonie Clinic knew that his parents would not have consented to the dental treatment, if the information had been disclosed to them. The plaintiff (through his parents) would not have consented to the treatment at the Colonie Clinic if these defendants had not engaged in such concealment.

145. FORBA and the Individual Defendants managed, directed, caused, participated in, aided and abetted, ratified, had knowledge of and were the intended and actual beneficiaries of the fraud as set forth above. As such, they are jointly and severally liable along with the Colonie Clinic and the Dentist Defendants for the damages to the plaintiff caused by the fraud.

146. FORBA and the Individual Defendants fraudulently organized and operated the Colonie Clinic in violation of New York law. The Dentist Defendants participated in and aided and abetted FORBA and the Individual Defendants in the fraudulent operation of the Colonie Clinic in violation of New York law.

147. As a result of the fraudulent conduct of the defendants described above, the plaintiff has been damaged in a sum of money having a present value which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this matter.

AS AND FOR A SECOND CAUSE OF ACTION SOUNDING IN BATTERY

148. Plaintiff repeats and re-alleges the allegations of the Complaint set forth herein at paragraphs 1 through 147 with the same force and effect as if here set forth at length and further alleges:

149. The Dentist Defendants intentionally touched the plaintiff without consent and caused a harmful or offensive bodily contact. These acts were done with actual malice and were reckless, wanton and willful. At all times during such acts, the Dentist Defendants were acting within the scope of their employment and authority and as agents of FORBA and the Colonie Clinic.

150. FORBA, the Colonie Clinic, and the Individual Defendants directed, caused, participated in, aided and abetted, ratified and were the intended and actual beneficiaries of the battery as set forth above. As such, they are jointly and severally liable along with the Dentist Defendants for the damages caused by the battery.

151. FORBA, the Colonie Clinic and the Individual Defendants committed overt acts in furtherance of the battery, acted in concert to plan the battery and requested that the battery be committed.

152. Furthermore, FORBA, the Colonie Clinic, and the Individual Defendants assisted and encouraged the battery and such encouragement and assistance was a substantial factor in causing the battery.

153. As a result of the conduct of the defendants described above, the plaintiff has been damaged in a sum of money having a present value which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this matter.

**AS AND FOR A THIRD CAUSE OF ACTION SOUNDING IN
BREACH OF FIDUCIARY DUTY**

154. Plaintiff repeats and re-alleges the allegations of the Complaint set forth herein at paragraphs 1 through 153 with the same force and effect as if here set forth at length and further alleges:

155. The Dentist Defendants and Colonie Clinic were under a duty to act for or give advice for the benefit of the plaintiff upon matters related to their dental care. In addition, the plaintiff (through his parent), placed confidence in the Dentist Defendants and Colonie Clinic and reasonably relied on their superior expertise and knowledge in matters relating to dental health.

156. The plaintiff was in a vulnerable position, placed himself – (through his parent) in the care of the Dentist Defendants and Colonie Clinic with regard to matters about which such defendants had far superior knowledge, and of necessity must and did reasonably place his trust and confidence in such defendants.

157. The plaintiff (through his parents) reasonably expected that such defendants would put the plaintiff's interest before their own. As such, the Dentist Defendants and Colonie Clinic owed a fiduciary duty to the plaintiff. As fiduciaries, these defendants owed their patients undivided and unqualified loyalty. Moreover, these defendants were required to make truthful and complete disclosures to the parent or custodian of plaintiff and were forbidden from obtaining an improper advantage at the plaintiff's expense. By their conduct described above, these defendants breached their fiduciary duty to the plaintiff.

158. FORBA and the Individual Defendants knowingly caused, directed, induced, participated in, and were the intended and actual beneficiaries of, the breach of fiduciary duty by the Dentist Defendants and the Colonie Clinic. They knowingly encouraged and provided substantial assistance to the Dentist Defendants and the Colonie Clinic in their breach of fiduciary duty. As such, they are jointly and severally liable along with the Dentist Defendants and the Colonie Clinic for the damages caused by the breach of fiduciary duty.

159. FORBA and the Individual Defendants also assisted, helped conceal and failed to act when required to do so thereby enabling the breach of fiduciary duty to occur.

160. As a result of the conduct of the defendants described above, the plaintiff has been damaged in a sum of money having a present value which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this matter.

**AS AND FOR A FOURTH CAUSE OF ACTION SOUNDING
IN BREACH OF GBL §349-350**

161. Plaintiff repeats and re-alleges the allegations of the Complaint set forth herein at paragraphs 1 through 160 with the same force and effect as if here set forth at length and further alleges:

162. By offering their services, the Dentist Defendants and the Colonie Clinic misrepresented to the public that they intended to provide appropriate dental care at the Colonie Clinic and that the Colonie Clinic was authorized under New York law to provide dentistry services. In truth, the Colonie Clinic was not authorized to do so under New York law. In addition, these defendants did not intend to provide appropriate care but instead intended to and did treat children, including the plaintiff, with the primary goal being revenue generation rather than the medical needs of the children. These defendants concealed this from the public, including the plaintiff and the parents of the plaintiff.

163. The conduct described above was not uniquely directed to plaintiff only, but was routine practice, aimed at the consumer public at large, that deceived and misled state and federal governments and members of the public in the State of New York, and in 22 states. This conduct lured the plaintiff (through his parents), and other members of the public, to the Colonie Clinic and induced them to remain there for treatment.

164. The conduct described above by the Dentist Defendants and the Colonie Clinic was materially deceptive and misleading, consumer-

oriented, done in the conduct of their business and in the furnishing of their services and was likely to mislead a reasonable consumer and did mislead the plaintiff (through his parents) and other members of the public. By this practice, these defendants violated General Business Law §349.

165. FORBA and the Colonie Clinic also engaged in false advertising in the conduct of their business and in the furnishing of dental services at the Colonie Clinic in violation of General Business Law §350.

166. FORBA and the Colonie Clinic targeted children eligible for Medicaid or other public assistance and falsely advertised that the clinics would provide appropriate dental care to such children when in fact they had no such intent. Instead defendants were engaged in a course of conduct described above in which revenue generation was the primary goal at the expense of appropriate care. By their conduct FORBA and the Colonie Clinic also misrepresented that the Colonie Clinic was authorized under New York law to provide dental services.

167. FORBA and the Colonie Clinic's promotional materials and advertisements had the effect of deceiving and misleading members of the public at the Colonie Clinic.

168. Defendants deceptively lured the plaintiff (through his parent) and others, to the Colonie Clinic and induced them to remain there by deceiving and misleading them.

169. FORBA and the Individual Defendants knowingly caused, directed, induced, participated in, and were the intended and actual beneficiaries of, the breach of General Business Law §349 and §350 by the

Dentist Defendants and the Colonie Clinic. They knowingly encouraged and provided substantial assistance to the Dentist Defendants and the Colonie Clinic in their deceptive conduct. As such, they are jointly and severally liable along with the Dentist Defendants and the Colonie Clinic for the damages caused by the breach of General Business Law §§349 and 350.

170. The plaintiff suffered actual damages from the defendants' violation of General Business Law §§349 and 350.

171. As a result of the above conduct, the plaintiff has been damaged in a sum of money having a present value which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this matter.

172. Under General Business Law §§349 and 350, the plaintiff is entitled to, and seeks to recover his reasonable attorney's fees.

**AS AND FOR A FIFTH CAUSE OF ACTION SOUNDING
IN MALPRACTICE**

173. Plaintiff repeats and re-alleges the allegations of the Complaint set forth herein at paragraphs 1 through 172 with the same force and effect as if here set forth at length and further alleges:

174. The plaintiff received dental care, treatment, examinations, operative and other procedures from FORBA, the Colonie Clinic, and the Dentist Defendants, individually and/or jointly and severally and/or

collectively and/or through their respective agents, servants, employees, associates and contractors, as set forth above in paragraphs 121 to 126.

175. FORBA, the Colonie Clinic, and the Dentist Defendants, individually and/or jointly and severally and/or collectively and/or through their agents, servants, employees, associates and/or subcontractors, carelessly and negligently rendered dental care and treatment to the plaintiff. Such care and treatment was not in accordance with good and accepted dental practice.

176. In addition, FORBA and the Individual Defendants directed, caused, participated in, aided and abetted, ratified, and had knowledge of and were the intended and actual beneficiaries of the malpractice as set forth above. As such, they are jointly and severally liable along with the Colonie Clinic and the Dentist Defendants for the damages caused by the malpractice.

177. As a result of the above conduct, the plaintiff has been damaged in a sum of money having a present value, which exceeds the jurisdictional limits of all lower courts, which would otherwise have jurisdiction of this matter.

**AS AND FOR A SIXTH CAUSE OF ACTION SOUNDING
IN NEGLIGENCE**

178. Plaintiff repeats and re-alleges the allegations of the Complaint set forth herein at paragraphs 1 through 177 with the same force and effect as if here set forth at length and further alleges:

179. FORBA and the Colonie Clinic had a duty to provide appropriate and reasonable care, attention and protection to the plaintiff when such plaintiff presented for treatment.

180. FORBA and the Colonie Clinic failed to use reasonable care to furnish the plaintiff the care, attention, and protection ordinarily provided by dental clinics in the same or similar locality and under similar circumstances.

181. FORBA and the Colonie Clinic were also negligent in the selection of and periodic review of the staff at the Clinics.

182. FORBA and the Colonie Clinic also failed to use reasonable care in the selection, credentialing, monitoring and review of the Clinic's staff.

183. FORBA and the Colonie Clinic were further negligent in their failure to provide or enforce appropriate policies and procedures at the Colonie Clinic.

184. FORBA and the Individual Defendants managed the Colonie Clinic on a comprehensive and exclusive basis. By the conduct set forth above, FORBA and the Individual Defendants failed to use reasonable care and created an unreasonably dangerous condition which resulted in damage to the plaintiff.

185. FORBA owned and operated, and the Individual Defendants and Dentist Defendants participated in the operation of, the Colonic Clinic in violation of New York law. By such conduct, Defendants were negligent. Such conduct is negligent per se.

186. As a result of the conduct of defendants set forth above, the plaintiff has been damaged in a sum of money having a present value, which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this matter.

**AS AND FOR A SEVENTH CAUSE OF ACTION SOUNDING
IN INFORMED CONSENT**

187. Plaintiff repeats and re-alleges the allegations of the Complaint set forth herein at paragraphs 1 through 186 with the same force and effect as if here set forth at length and further alleges:

188. At no time during the aforesaid care and treatment rendered by the Defendant Dentists and the Colonie Clinic was the plaintiff or his parents ever advised, either orally or in writing, that the Colonie Clinic was not authorized under New York law to provide dental services, that the dentists that were treating the plaintiff were not pediatric dentists, that the dentists were seeking to enhance revenue rather than provide appropriate dental care, that the plaintiff would not be treated in an appropriate and legitimate manner of that required of a pediatric dental patient; and, had the defendants or their agents, servants, employees, associates, or subcontractors informed or advised the plaintiff of the possible risks and dangers involved, the plaintiff (through his parents) would not have been lulled into a false sense of security and would not have consented to the treatment rendered, which resulted in the damages described hereinabove.

189. A reasonably prudent person in the plaintiff's position (or that of the parent of the plaintiff) would not have undergone or allowed the treatment rendered if such person was fully informed, and such lack of informed consent was a proximate cause of the injuries and damages for which recovery is sought.

190. In addition, FORBA and the Individual Defendants directed, caused, participated in, aided and abetted, ratified, and had knowledge of and were the intended and actual beneficiaries of the failure to obtain informed consent by the Colonie Clinic and the Dentist Defendants as set forth above. As such, they are jointly and severally liable along with the Colonie Clinic and the Dentist Defendants for the damages caused by the failure to obtain informed consent.

191. As a result of the defendants' conduct described above, the plaintiff has incurred substantial damages.

192. By reason of the foregoing, the plaintiff has been damaged in a sum of money having a present value which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this matter.

CONCERTED ACTION LIABILITY

193. Plaintiff repeats and re-alleges the allegations of the Complaint set forth herein at paragraphs 1 through 193 with the same force and effect as if here set forth at length and further alleges:

194. Defendants pursued a common plan and scheme as described above. They acted in concert with one another, actively took

part in the scheme, furthered it by cooperation and requests to the Defendant Dentists and the Colonie Clinic, lent aid and encouragement for the scheme, and ratified and adopted the tortious acts of the Defendant Dentists and the Colonie Clinic from which they benefited.

195. The conduct of the Individual Defendants and FORBA described herein was a substantial factor in causing the torts that are alleged above and injury and damages to the plaintiff. Therefore, under the theory of concerted action liability, Defendants are jointly and severally liable to the plaintiff for each of the seven torts alleged above.

NEW FORBA AS SUCCESSOR

196. After purchasing the Old FORBA business in September 2006, New FORBA took over the entire business and carried it on in the same manner as Old FORBA had done before the purchase.

197. Old FORBA ceased doing business immediately and has been dormant ever since.

198. New FORBA continued operating under the FORBA and Small Smiles names, and continued managing and operating the same clinics with the same dentists and staff at the same locations as before the sale.

199. New FORBA assumed all of the agreements of Old FORBA necessary to continue the business as before (both the obligations and benefits of those agreements), including all management agreements with the dental clinics.

200. New FORBA continued operating with the same employees, excepting the individuals who sold their ownership interests.

201. New FORBA acquired the good will, customer lists and trade names of Old FORBA.

202. New FORBA paid over \$2 million dollars to the State of New York for FORBA conduct that occurred before the sale.

PUNITIVE DAMAGES

203. As to all causes of action, defendants' conduct described above was gross, wanton, reckless, outrageous and malicious, was actuated by evil and reprehensible motives sufficient to transcend the bounds of societal norms and involved a high degree of moral culpability such that punitive damages should be awarded by the jury.

204. As to all causes of action, defendants' conduct demonstrated a gross indifference to patient care and was a danger to the public.

205. As to all causes of action, defendants' conduct was so grossly and wantonly negligent, callous, and reckless, as to be the equivalent of a conscious disregard of the rights of others. It was a substantial factor in causing injury to the plaintiff.

206. As to all causes of action, defendants' conduct is deserving of punitive damages because it displayed an utter disregard for the safety and rights of the members of the public, including the plaintiff. The defendants' conduct was aimed at the public generally, including the plaintiff and his parents.

207. As to all causes of action, assessing punitive damages against the defendants will punish them for their conduct and discourage them, and others, from engaging in similar conduct in the future. It is also important to assess punitive damages to protect the underlying rights of the public, and the public policy of the State of New York against defrauding patients, and conducting unsafe and unnecessary procedures on them.

WHEREFORE, the plaintiff demands judgment against the defendants, jointly and severally:

a. On the First Cause of Action, in a sum of money having a present value which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction over this matter;

b. On the Second Cause of Action, in a sum of money having a present value which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction over this matter;

c. On the Third Cause of Action, in a sum of money having a present value which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction over this matter;

d. On the Fourth Cause of Action, in a sum of money having a present value which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction over this matter;

e. On the Fifth Cause of Action, in a sum of money having a present value which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction over this matter;

f. On the Sixth Cause of Action, in a sum of money having a present value which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction over this matter;

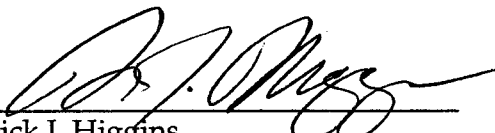
g. On the Seventh Cause of Action, in a sum of money having a present value which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction over this matter;

h. Together with the costs and disbursements of this action as well as the maximum interest permitted by law; and

i. Attorneys' fees as allowed by statute,

j. Punitive Damages in an amount that is constitutionally permissible, consistent with prevailing New York law and the trial record.

DATED: September 12, 2012.
Albany, New York


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