

STATE OF NEW YORK  
SUPREME COURT      COUNTY OF ONONDAGA

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CASE MANAGEMENT ORDER  
NUMBER ONE

IN Re: SMALL SMILES LITIGATION

Index No: 2011-6084  
Index No. 2011-2128  
Index No. 2011-6223  
Hon. John C. Cherundolo

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The Litigation Coordinating Panel by Order dated August 25, 2011 ("The Coordinating Order") coordinated in Onondaga County certain Small Smiles actions ("the Coordinated Actions"), and directed the Hon. James C. Tormey, III, Chief Administrative Judge for the Fifth Administrative District to designate a coordinated justice for the Coordinated Actions. Justice Tormey designated this Court as the coordinating justice for the Coordinated Actions.

Pursuant to §202.8 and 202.12 of the Uniform Trial Rules and 22 NYCRR §202.69(c)(2)(3), the Court held a preliminary conference on November 17, 2011 at 11:00 a.m. to address all pending issues relative to the coordinated cases, and to institute an initial case management system for the coordinated cases. Powers and Santola LLP (Patrick J. Higgins, Esq. of counsel), Hackerman Frankel, P.C. (Stephen M. Hackerman, Esq. and Richard Frankel, Esq. of counsel) and Moriarty Leyendecker, P.C. (James Moriarty, Esq. and P. Kevin Leyendecker, Esq. of counsel) appeared for the Plaintiffs. Wilson, Elser, Moskowitz, Edelman & Dicker, LLP (Thomas M. Witz, Esq. and Theresa B. Marangas, Esq. of counsel), O'Connor, O'Connor, Bresee & First, P.C. (Dennis A. First, Esq. of counsel), Smith, Sovik, Kendrick & Sugnet, P.C. (Kevin E. Huslander, Esq. and Andrew S. Horsfall, Esq. of counsel), McKenzie Hughes (Stephen

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T. Helmer, Esq. of counsel), Feldman Kieffer, LLP (Gordon D. Tresch, Esq. of counsel), Damon Morey (Kathleen M. Reilly, Esq. of counsel), Hiscock & Barclay (Michelle K. Venezia, Esq. of counsel), Scolaro, Shulman, Cohen, Fetter & Burnstein, P.C. (Andrew Knoll, Esq. of counsel), Hancock Estabrook, LLP (Christina J. Verone Juliano, Esq. of counsel) appeared for the Defendants. A copy of the transcript of the bench decision of the Hon. John C. Cherundolo being attached hereto and incorporated herein by reference, the Court hereby ORDERS:

## **ORGANIZATION**

Each side shall form a Steering Committee that shall be authorized to speak for all parties on its side of the case. The Plaintiffs' Steering Committee shall consist of Patrick J. Higgins, Stephen M. Hackerman, Richard Frankel, P. Kevin Leyendecker and James Moriarty. The Defendants shall form a Defendants' Steering Committee consisting of no more than six lawyers. The Defendants shall identify the members of the Defendants' Steering Committee by December 19, 2011. Each Steering Committee shall designate, by December 23, 2011, two representatives who, when necessary, will be authorized to speak on behalf of their committees to the Court on discovery issues.

## **CASE MANAGEMENT CONFERENCES**

There shall be monthly case management conferences held in this case at the Onondaga County Courthouse located at 480 Montgomery Street, Syracuse, New York, to discuss and rule on any issues relative to the case. If the parties notify the Court in advance that there are no issues that need the Court's attention during a particular

month, the Court may cancel the conference. The next such case management conference shall be held on February 9, 2012 at 11:00 a.m. at the Onondaga County Courthouse.

### **CAPTION OF THE CASE**

To reduce the time and expense of duplicate filings of documents, the clerk will maintain a master docket and case file under the style *In re Small Smiles Litigation*, with a lead reference case number of 2011-2128. All future pleadings, motions, orders, correspondence with the Court and other documents shall bear a caption similar to this order and will, when filed in the master case, be deemed to have been docketed and filed in each individual case to the extent applicable and will not ordinarily be separately docketed or physically filed in such individual cases.

### **ANSWERS OR OTHER RESPONSIVE PLEADINGS**

All Defendants shall serve their answer or other responsive pleading to the Amended Complaints by December 16, 2011. Any motions filed in lieu of an answer shall have a return date of February 9, 2012. The Plaintiffs' opposition papers to such motions shall be served on or before January 13, 2012, and Defendants' reply papers shall be served by January 27, 2012.

### **ELECTRONIC SERVICE OF PAPERS**

Those parties who wish to may serve each other electronically using either the LexisNexis File and Serve system or traditional e-mail. All agreements between parties regarding electronic service shall be in writing. Any agreements between parties

regarding electronic service shall not change the manner in which papers are filed with the Court. All papers filed with the Court shall be filed in the regular manner as provided for by the NYCRR and the rules for Onondaga County.

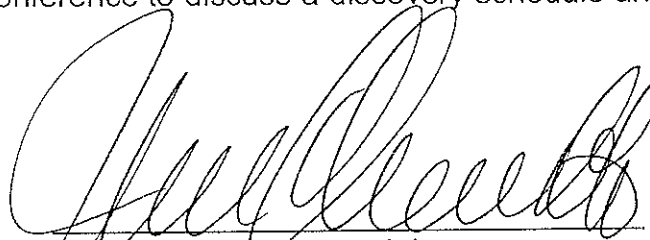
## **DISCOVERY**

On or before December 16, 2011, Defendants shall serve their initial discovery demands on Plaintiffs. Before those discovery demands are sent, the parties shall meet and confer regarding the creation of an agreed set of common discovery directed to each Plaintiff. If necessary, the Court will be available for a telephone conference with the Steering Committees before December 16, 2011. By January 13, 2012, the Steering Committees for each side shall meet and confer on a discovery schedule. Following their meet and confer, the parties shall submit a discovery status report to the Court, including a proposed schedule, by January 27, 2012.

## **FEBRUARY HEARING AND CONFERENCE**

On February 9, 2012 at 11:00 a.m., the Court will hear arguments on all motions filed by Defendants on or before December 16, 2011, in lieu of answers. Following the argument, the Court will conduct a conference to discuss a discovery schedule and any other outstanding discovery issues.

DATED: December 13, 2011



Hon. John C. Cherundulo  
Supreme Court Coordinating Justice  
For Small Smiles Coordinated Litigation