

STATE OF NEW YORK
SUPREME COURT COUNTY OF ONONDAGA

ORDER DENYING MOTION TO
RECUSE

IN Re: SMALL SMILES LITIGATION

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

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.

Defendants Maziar Izadi, D.D.S., Judith Mori, D.D.S., Edmise Forestal, D.D.S., Evan Goldstein, D.D.S., Keerthi Golla, D.D.S., Nassef Lancen, D.D.S., Naveed Aman, D.D.S., Koury Bonds, D.D.S., Tarek Elsafty, D.D.S., Yaqoob Khan, D.D.S., Grace Yaghamai, D.D.S., Shilpa Agadi, D.D.S., Ismatu Kamara, D.D.S., Sonny Khanna, D.D.S., and Kim Pham, D.D.S., by their attorneys Wilson, Elser, Moskowitz, Edelman and Dicker ("the Wilson Elser Dentist Defendants") by notice of motion dated October 19, 2011 served and filed a motion to (1) recuse this Court from presiding over the above-referenced proceedings as the Coordinated Justice, (2) requesting that Administrative Judge James C. Tormey III appoint a new coordinating justice, (3) staying all coordinated proceedings pending determination of the motion, as well as costs, attorneys fees, and disbursements, and such, other, and further relief as this

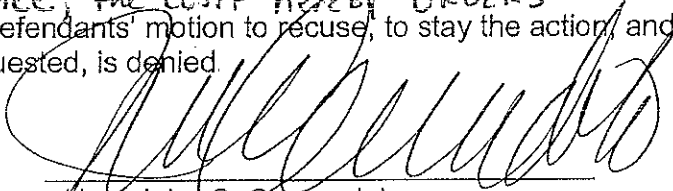
Court deemed just and proper. The Wilson Elser Defendants served the affirmation of Thomas M. Witz, Esq. executed on October 19, 2011 with attached exhibits in support of the motion. Plaintiffs in the coordinated proceedings, by their attorneys Powers & Santola, LLP, Hackerman Frankel, P.C. and Moriarty Leyendecker, P.C., opposed the motion by duly filing and serving the affirmation of Patrick J. Higgins, Esq., sworn to on November 3, 2011 with attached exhibits, with affidavit of service. The Wilson Elser Dentist Defendants filed and served the reply affirmation of Thomas W. Witz, Esq., with attached exhibits, sworn to on November 7, 2011 in further support of the motion.

The Court reviewed and considered the papers submitted by the parties as set forth above, and held oral argument on the motion on November 17, 2011 at 11:00 a.m. on the record. At that time, this Court heard counsel for the Wilson Elser Dentist Defendants (Thomas M. Witz, of Counsel) in support of the motion, and counsel for the Plaintiffs (Patrick J. Higgins, of Counsel) in opposition to the motion. The Court asked if any of the other counsel wished to be heard and none did. Now, after duly hearing and considering the arguments of counsel and after duly deliberating and

reviewing the papers submitted, *and a copy of the transcript of the bench decision of Hon. John C. Cherundolo being attached hereto and incorporated herein by reference, the Court hereby* **ORDERS**

1. The Wilson Elser Dentist Defendants' motion to recuse, to stay the action, and for the remaining relief requested, is denied.

DATED: December 5, 2011


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