

STATE OF NEW YORK
SUPREME COURT COUNTY OF ONONDAGA

ORDER DENYING MOTIONS TO
SEVER

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 Keerthi Golla, D.D.S. and Judith Mori (in the *Angus* action), Naveed Aman, D.D.S. and Tarek Elsafty, D.D.S. (in the *Verano* action) and Koury Bonds, D.D.S., Shilpa Agadi, D.D.S., Ismatu Kamara, D.D.S., and Sonny Khanna, D.D.S. (in the *Johnson* action) (collectively the "Moving Defendant Dentists"), by their attorneys Wilson Elser, Moskowitz, Edelman & Dicker LLP, served and filed three identical motions (1) to sever each of the three cases into ten separate actions pursuant to CPLR §603; (2) directing plaintiffs to proceed separately with their respective claims by commencing separate actions, respectively and serving separate complaints; (3) extending each defendants' time to serve an Answer to plaintiffs' Complaint until 20 days after service of the separate Complaints or, 20 days after service with Notice of Entry of an order denying the requested relief; (4) staying disclosure in this action

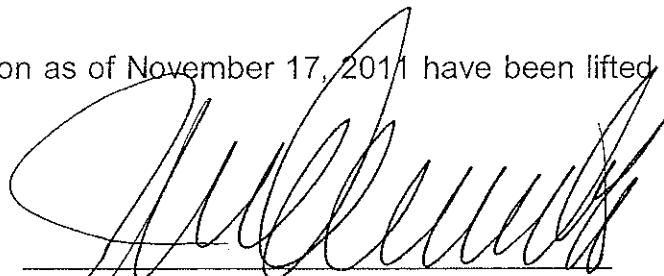
pending determination of the motions to sever; and (5) such other and further relief as this Court deemed just and proper. The Moving Defendant Dentists filed and served two affirmations of Thomas Witz, Esq., executed on May 4, 2011, with attached exhibits in support of the motions and a third affirmation of Thomas Witz, Esq., executed on October 26, 2011, with attached exhibits, in support of the motions. Plaintiffs in the coordinated proceedings, by their attorneys Powers & Santola, LLP, Hackerman Frankel, P.C. and Moriarty Leyendecker, P.C., opposed the motions by duly filing and serving the affirmation of Patrick J. Higgins, Esq., sworn to on November 1, 2011 with attached exhibits, with affidavit of service. Defendants FORBA Holdings, LLC, FORBA NY, LLC, Small Smiles Dentistry of Albany LLC and Albany Access Dentistry, PLLC, by their attorneys Smith, Sovik, Kendrick & Sugnet, P.C., filed and served a letter brief dated November 7, 2011 opposing the motions to sever.

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 Moving Defendant Dentists (Theresa B. Marangas, Esq. of Counsel) in support of the motions to sever and counsel for the Plaintiffs (Stephen M. Hackerman, Esq. of Counsel) in opposition to the motions. Counsel for FORBA Holdings, LLC, FORBA N.Y, LLC, , Small Smiles Dentistry of Albany LLC, Albany Access Dentistry PLLC, Small Smiles Dentistry of Syracuse, LLC and Small Smiles Dentistry of Rochester, LLC (Kevin Hulslander, Esq. of Counsel), counsel for FORBA LLC, FORBA NY LCC, DD Marketing, Inc., DeRose Management LLC, Daniel E. DeRose, Michael A. DeRose, DDS, Edward J. DeRose D.D.S, Adolph R. Padula D D S., William A. Mueller D D.S., and Michael Rourmph (Dennis First, Esq. of Counsel), and counsel for Laura Kroner, D.D.S. and

Wadia Hanna, D.D.S. (Stephen T. Helmer, Esq. of Counsel) were heard in opposition to the motions to sever. The parties stipulated that all of the severance motions would be heard and decided as one at oral argument and on the papers submitted as of that time and date. 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 the Hon. John C. Cherundolo being attached hereto and incorporated herein by reference; the Court hereby **ORDERS**

1. The Moving Defendant Dentists' motions to sever, are denied without prejudice to renew as to any defendant after discovery is complete;
2. The Moving Defendant Dentists' remaining requests for relief set forth above are denied;
3. All stays in effect in this action as of November 17, 2011 have been lifted as of that date.

DATED: December 5, 2011



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