

STATE OF NEW YORK
SUPREME COURT COUNTY OF ONONDAGA

KELLY VARANO, as Parent and Natural Guardian of Infant JEREMY BOHN; SHANNON FROIO, as Parent and Natural Guardian of Infant SHAWN DARLING; BRENDA FORTINO, as Parent and Natural Guardian of Infant JULIE FORTINO; MARIE MARTIN, as Parent and Natural Guardian of Infant KENNETH KENYON; JENNY LYNN COWHER, as Parent and Natural Guardian of Infant WILLIAM MARTIN; HOLLEN CRIPPEN, as Parent and Natural Guardian of Infant DEVAN MATHEWS; JESSICA RECORE, as Legal Custodian of Infant SAMANTHA MCLOUGHLIN; LAURIE & DOMINICK RIZZO, as Legal Custodians of Infant JACOB MCMAHON; JASON MONTANYE, as Parent and Natural Guardian of Infant KADEM MONTANYE; and FRANCES SHELLINGS, as Parent and Natural Guardian of Infant RAYNE SHELLINGS,

Plaintiffs,

vs.

FORBA HOLDINGS, LLC n/k/a Church Street Health Management, LLC; FORBA N.Y., LLC; FORBA, LLC n/k/a LICSAAC, LLC; FORBA NY, LLC n/k/a LICSAAC NY, LLC; DD MARKETING, INC.; DEROSE MANAGEMENT, LLC; SMALL SMILES DENTISTRY OF ALBANY, LLC; ALBANY ACCESS DENTISTRY, PLLC; SMALL SMILES DENTISTRY OF SYRACUSE, LLC; 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.; LAURA KRONER, D.D.S.; JUDITH MORI, D.D.S.; LISSETTE VUU, D.D.S.; EDMISE FORESTAL, D.D.S.; EVAN GOLDSTEIN, D.D.S.; KEERTHI GOLLA, D.D.S.; NASSEF LANCEN, D.D.S.; WADIA HANNAN, D.D.S.; BERNICE LITTLE-MUNDLE, D.D.S.; NAVEED AMAN, D.D.S.; KOURY BONDS, D.D.S.; TAREK ELSAFTY, D.D.S.; DIMITRI FILOSTRAT, D.D.S.; YAQOOB KHAN, D.D.S.; DELIA MORALES, D.D.S.; JANINE RANDAZZO, D.D.S.; LOC VINH VUU, D.D.S.; and GRACE YAGHMAI, D.D.S.

Defendants.

**AFFIRMATION IN
OPPOSITION**

Index No.: 2011-2128
RJ: 33-11-1413

NYS Litigation Coordination
Panel No.: 0011/2011

STATE OF NEW YORK
SUPREME COURT COUNTY OF SCHENECTADY

TIMOTHY ANGUS, as Parent and Natural Guardian of Infant JACOB ANGUS; JESSALYNN PURCELL, as Parent and Natural Guardian of Infant ISAAH BERG; BRIAN CARTER, as Parent and Natural Guardian of Infant BRIANA CARTER; APRIL FERGUSON, as Parent and Natural Guardian of Infant JOSEPH FERGUSON; SHERAIN RIVERA, as Parent and Natural Guardian of Infant SHADAYA GILMORE; TONYA POTTER, as Parent and Natural Guardian of Infant ESIRAE HAGER; NANCY WARD, as Legal Custodian of Infant AALYIAROSE LABOMBARD-BLACK; NANCY WARD, as Legal Custodian of Infant MANUEL LABORDE JR.; JENNIFER BACON, as Parent and Natural Guardian of Infant ASHLEY PARKER; and COURTNEY CONRAD, as Parent and Natural Guardian of Infant ZAKARY WILSON,

Plaintiffs,

vs.

FORBA HOLDINGS, LLC n/k/a Church Street Health Management, LLC; FORBA N.Y., LLC; FORBA, LLC n/k/a LICSAAC, 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.; LAURA KRONER, D.D.S.; JUDITH MORI, D.D.S.; LISSETTE BERNAL, D.D.S.; EDMISE FORESTAL, D.D.S.; EVAN GOLDSTEIN, D.D.S.; KEERTHI GOLLA, D.D.S.; NASSEF LANCEN, D.D.S.; WADIA HANNAN, D.D.S.; and BERNICE LITTLE-MUNDLE, D.D.S.,

Defendants.

**AFFIRMATION IN
OPPOSITION**

Index No.: 2011-0562
RJI No.: 46-1-2011-0416

NYS Litigation Coordination
Panel No.: 0011/2011

CHRISTINA M. VERONE JULIANO, ESQ. under penalty of perjury, hereby affirms as follows:

1. I am an attorney-at-law duly licensed to practice in the State of New York and am a member of the law firm of Hancock Estabrook, LLP, attorneys for Janine Randazzo, D.D.S. ("Dr. Randazzo") and Loc Vinh Vuu, D.D.S. ("Dr. Vuu"), defendants in the above captioned Onondaga County action (hereinafter "Varano Action"); and for Lissette Bernal, D.D.S ("Dr. Bernal"), defendant in the above captioned Schenectady County action (hereinafter "Angus Action") (collectively, the "Defendant Dentists"). I am fully familiar with the facts and circumstances set forth below.
2. I make this Affirmation in Opposition to Plaintiffs motions for an order of coordination from the Litigation Coordination Panel (the "Panel").
3. The Varano Action was originally commenced by Plaintiffs against defendants Dr. Randazzo and Dr. Vuu by service of Summons and Complaint filed on April 4, 2011, a copy of which is annexed hereto as **Exhibit "1"**. On or around April 6, 2011, a Supplemental Summons was filed by Plaintiffs, a copy of which is also annexed hereto as a part of Ex. 1.
4. The Angus Action was originally commenced by Plaintiffs against defendant Dr. Bernal by service of Summons and Complaint filed on April 4, 2011, a copy of which is annexed hereto as **Exhibit "2"**.
5. In their respective Complaints, Plaintiffs assert a series of causes of action against various of the defendants for (1) Fraud; (2) Battery; (3) Breach of Fiduciary Duty; (4) Breach of GBL §349-350; (5) Malpractice; (6) Negligence; (7) Informed Consent; (8) Concerted Action Liability; (9) Successor Liability; and (10) Punitive Damages. See Exs. 1 and 2.

6. Dr. Vuu interposed his Answer on or about May 11, 2011, a copy of which is attached hereto as **Exhibit “3”**.

7. Dr. Randazzo interposed her Answer on or about May 17, 2011, a copy of which is annexed hereto as **Exhibit “4”**.

8. Dr. Bernal interposed her Answer on or about May 6, 2011, a copy of which is attached hereto as **Exhibit “5”**.

9. Along with interposing their respective Answers, Doctors Bernal, Randazzo and Vuu have each served a series of Discovery Demands upon Plaintiffs. However, a stay on the above pending actions was issued on May 16, 2011 by Justice Helen E. Freedman, Justice of the Litigation Coordination Panel, as part of Plaintiffs application for a motion of coordination, and therefore no response to these discovery requests has yet been exchanged.

10. Plaintiffs application for a motion of coordination requests, among other things, that the above pending Varano Action in Onondaga County and the Angus Action in Schenectady County should be coordinated pursuant to 22 NYCRR §202.69, *solely* in the Supreme Court, Onondaga County, before a Coordinating Justice of that County. (Higgins Aff. ¶3).

11. For the reasons set forth below, the Defendant Dentists oppose Plaintiffs request for coordination of the above Varano and Angus Actions to be venued in Onondaga County exclusively, and argues that, given the facts and circumstances of the instant matters, litigation coordination is more appropriate in separate venues within the Judicial Departments in which each respective case is currently pending, namely, the Appellate Division Third Department for Schenectady County, and the Appellate Division Fourth Department for Onondaga County.

It is Appropriate for the Panel to Designate Coordination Proceedings in Separate Venues Within the Judicial Department Where the Cases are Currently Pending

12. The standards for coordination established by this Panel in 22 NYCRR §202.69(4)(ii) do not favor Onondaga County as the sole venue for coordination proceedings; rather the facts support having coordinated proceedings and a Coordinating Justice(s) in separate venues within the respective Judicial Departments where each case is currently pending.

13. As an initial matter, the statute provides that the Panel “shall specify the *number of Coordinating Justices* and the *county or counties* in which the coordinated proceedings shall take place”, after considering, “the venues of origin of the cases to be coordinated; whether the actions arise out of an accident or events in a particular county; judicial caseloads in prospective venues; fairness to parties; the convenience of the parties and witnesses; the convenience of counsel; and whether the purposes of this section can best be advanced by coordination before more than one Coordinating Justice.” 22 NYCRR §202.69(4)(ii) (emphasis added).

14. With respect to the first factor above, the venues selected by Plaintiffs for the applicable cases are Schenectady County for the Angus Action and Onondaga County for the Varano Action.

15. Plaintiffs have identified Schenectady County as the appropriate venue for the Angus Action case because each of the ten named Plaintiffs reside in Schenectady county. (Ex.2, pg.2). Plaintiffs have identified Onondaga County as an appropriate venue for the Varano Action because one or more defendants reside in Onondaga County. (Ex. 1, pg 2).

16. As for the second factor above, the actions undeniably arise out of an accident or events in each respective county, as Plaintiffs in the Angus Action complain that their

causes of action arose out of the Small Smiles dental clinic in Colonie, New York (the “Colonie Clinic”), which is located in Schenectady County and Plaintiffs in the Varano Action complain that their causes of action arose out of the Small Smiles dental clinic in Syracuse, New York (the “Syracuse Clinic”), which is located in Onondaga County. Moreover, there does not appear to be any indication in Plaintiffs’ respective Complaints that Plaintiffs in the Angus Action received any improper treatment at the Syracuse Clinic, or *vice versa*, that Plaintiffs’ in the Varano Action received any improper treatment at the Colonie Clinic.

17. As for the third factor above, it appears as though the judicial caseloads in each prospective venue are largely comparable; with the exception that Plaintiff has conceded that Schenectady County has fewer cases. (Higgins Aff. ¶ 70).

18. As for the fourth factor above, appointing coordination proceedings in a venue within each respective Judicial Department would promote the most fairness to the parties, as each party would then maintain their right to appeal any pre-trial proceeding decisions to the respective Appellate Division for the county in which the case is venued. For example, the parties to the Angus Action would maintain their right to appeal and be heard before the Appellate Division, Third Department, while the parties to the Varano Action would retain its right to appeal and be heard in the Appellate Division, Fourth Department.

19. Likewise, the convenience of the parties, counsel and witnesses favor coordination proceedings in each respective venue. As stated above, all ten of the Plaintiffs in the Angus Action have each been identified to reside in Schenectady County, and at least three of the counsel who have since appeared in the Angus Action practice out of Albany offices. It is also assumed that most if not all of the witnesses expected to be called in that

action would be from or around the Schenectady County area considering the Colonie Clinic, at which the alleged improper treatment is argued to have taken place, is located in Schenectady County.

20. As for the Varano Action, while at least three of the counsel who have since appeared on behalf of the Defendants practice out of Syracuse offices, and it is assumed that most if not all of the witnesses expected to be called in the Varano Action would be from or around the Onondaga County area considering the Syracuse Clinic, at which the alleged improper treatment is argued to have taken place, is located in Onondaga County; it is not clear whether Onondaga County would in fact be most the convenient for the Plaintiffs and Defendants in this action, as, upon information and belief, not all Plaintiffs and Defendants in the Varano Action reside within Onondaga County.

21. Particularly, an internet search of the Plaintiffs in the Varano Action reveal that least four of the ten named Plaintiffs reside *outside* of Onondaga County. Kelly Varano, parent of Jeremy Bohn, resides in Rome, New York, which is located in Oneida County; Brenda Fortino, parent of Julie Fortino resides in West Monroe, New York, which is located in Oswego County; Marie Martin, parent of Kenneth Kenyon, resides in Hastings, New York, which is located in Oswego County; and Jessica Recore, parent of Samantha McLoughlin resides in Fulton, New York, which is located in Oswego County. Copies of the relevant internet search results are annexed hereto as **Exhibit "6"**. Of the remaining six Plaintiffs, only two are presumed to be located in Onondaga County (Laurie and Dominick Rizzo, custodians of Jacob McMahon and Jenny Lynn Cowher, parent of William Martin), while the remaining four Plaintiffs (Shannon Froio, parent of Shawn Darling; Hollan Crippen, parent of

Devan Mathews; Jason Montanye, parent of Kadem Montayne; and Frances Shellings, parent of Rayne Shellings) did not show up at all in a search of New York addresses. (Ex. 6).

22. Moreover, of the defendants named in the Varano Action, Dr. Adolph R. Padula lists an address in Pueblo, Colorado, and is listed as “Inactive” as of June 10, 2011 in the New York State Office of the Professions; Dr. Dimitri Filostrat lists an address of Panama City, Florida, and is listed as “Inactive” as of June 10, 2011 in the New York State Office of the Professions; Dr. Randazzo lists an address in Valley Stream, New York which is located in Nassau County; Dr. Vuu lists an address in Vancouver, Washington and is listed as “Not Registered” as of June 10, 2011 in the New York State Office of the Professions; attorneys for Dr. Delia Morales have confirmed she is in Albany, New York; attorneys for Dr. Daniel DeRose, Dr. Michael DeRose, Dr. Edward DeRose; Dr. William Mueller and Dr. Michael Roumph have confirmed they all reside in Colorado; and Dr. Grace Yaghmai is believed to reside in California. The remaining four defendants list addresses within Onondaga County (Dr. Naveed Aman lists an address in Camillus, New York; Dr. Koury Bonds lists an address in Baldwinsville, New York; Dr. Tarek Elsafty lists an address in Liverpool, New York; and Dr. Yaqoob Khan lists a Syracuse, New York address), however their attorneys were unaware of their current locations. Copies of the New York State Office of the Professions searches are annexed hereto as **Exhibit “7”**.

23. Lastly, the purposes of 22 NYCRR 202.69 can best be advanced by coordination before more than one Coordinating Justice in more than one venue because each action should ultimately be governed by the Department it sits in, and authorizing coordination proceedings in a venue that sits within the respective Judicial Department in which each case is presiding assures that this can be done.

24. For these reasons, the purposes of coordination are more aptly served by authorizing litigation coordination proceedings to be had in a venue within the respective Judicial Department in which the cases are currently pending, and the applicable Coordinating Justice(s) to be those who the Panel or the Administrative Judge of the local jurisdiction deems most appropriate pursuant to 22 NYCRR 202.69.

WHEREFORE, by reason of the foregoing, it is respectfully requested that the Panel authorize an order for coordination, designating a separate venue within the respective Judicial Departments in which the Angus and Varano Actions are currently pending, together with such other and further relief as the Panel deems just and proper.


CHRISTINA M. VERONE JULIANO, ESQ.

Dated: June 14, 2011
Syracuse, New York