

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; HOLLAN CRIPPEN, as parent and natural guardian of infant DEVAN MATHEWS; JESSICA RECORE, as parent and natural guardian of infant SAMANTHA MCLOUGHLIN; LAURIE AND 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,

-against-

FORBA HOLDINGS, LLC n/k/a Church Street Health Management, LLC; FORBA N.Y., LLC; FORBA, LLC n/k/a LICASAC, LLC; FORBA NY, LLC n/k/a LICASC NY, LLC; DD MARKETING, INC. DEROSE MANAGEMENT, LLC; 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; 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 VIN VUU, D.D.S.; and GRACE YAGHAMAI, D.D.S.

Defendants.

**NYS Litigation
Coordinating Panel**

No. 0011/2011

**AFFIDAVIT IN
SUPPORT OF
COORDINATION FOR
PURPOSES OF PRE-
TRIAL DISCOVERY
ONLY**

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

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 ISAIAH 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 AALYAROSE 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,

Index No. 2011-562
RJI No. 46-1-2011-0562

Plaintiffs,

-vs-

FORBA Holdings, LLC n/k/a Church Street Health Management, LLC; FORBA N.Y., LLC; FORBA, LLC n/k/a LICSAAC, LCC; 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; 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 HANNA, D.D.S.; and BERNICE LITTE-MUNDLE, D.D.S.,

Defendants.

STATE OF NEW YORK
SUPREME COURT

COUNTY OF MONROE

SHANTEL JOHNSON, as parent and natural guardian of infant Kevin Butler; VERONICA ROBINSON, as parent and natural guardian of infant Ariana Flores; DEMITA GARRETT, as parent and natural guardian of infant I'Yana Garcia Santos; KATHRYN JUSTICE, as parent and natural guardian of infant BreYonna Howeward; ELIZABETH LORRAINE, as parent and natural guardian of infant Shiloh Lorraine Jr.; LAPORSHA SHAW, as parent and natural guardian of infant Alexis Parker; ROBERT RALSTON, as parent and natural guardian of infant Brandie Ralston; KATRICE MARSHALL, as parent and natural guardian of infant Lesana Roass; TIFFANY HENTON, as parent and natural guardian of infant Corey Smith; JANET TABER, as parent and natural guardian of infant Jon Taber

Index No.: 2011-_____

Plaintiffs,

-against-

FORBA HOLDINGS, LLC n/k/a Church Street Health Management, LLC; FORBA N.Y., LLC; FORBA, LLC n/k/a LICASAC, LLC; FORBA NY, LLC n/k/a LICASC NY, LLC; DD MARKETING, INC. DEROSE MANAGEMENT, LLC; SMALL SMILES DENTISTRY OF ROCHESTER, LLC; DANIEL E. DEROSE; MICHAEL A. DEROSE, D.D.S.; EDWARD J. DEROSE, D.D.S.; ADOLPH R. PADULA, D.D.S.; WIL LIAM A. MUELLER, D.D.S.; MICHAEL W. ROUMPH; SHILPA AGADI, D.D.S.; KOURY BONDS, D.D.S.; ISMATU KAMARA, D.D.S.; KEIVAN ZOUFAN, D.D.S.; KATHLEEN POLEON, D.D.S.; SONNY KHANNA, D.D.S.; KIM PHAM, D.D.S.; DOUG GARDNER, D.D.S.; GARY GUSMEROTTI, D.D.S.; EILEEN NAM, D.D.S. AND LAWANA FUQUAY, D.D.S.

Defendants.

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss:

KEVIN E. HULSLANDER, being duly sworn, deposes and says:

1. I am an attorney duly licensed to practice law in the State of New York and a Partner in the law firm of Smith, Sovik, Kendrick & Sugnet, P.C., attorneys for defendants, FORBA Holdings, LLC n/k/a Church Street Health Management, LLC; FORBA N.Y., LLC; Albany Access Dentistry, PLLC; Small Smiles Dentistry of Syracuse, LLC, Small Smiles Dentistry of Albany, LLC, and Small Smiles Dentistry of Rochester, LLC, (collectively “Small Smiles”). As such, I am fully familiar with the facts and circumstances of these matters brought in Onondaga County, Schenectady County, and Monroe County (the “Small Smiles actions”).

2. Small Smiles supports plaintiffs’ Order to Show Cause to the extent it seeks an Order from the Litigation Coordinating Panel, pursuant to 22 NYCRR § 202.69, to coordinate all pre-trial discovery in the Small Smiles actions, and any subsequent actions, before a single Coordinating Justice in Onondaga County. Small Smiles opposes any coordination which would extend beyond the filing of the Note of Issue. Once coordination has terminated after the completion of discovery, each action should be remanded to its respective county and tried individually and separately from all other actions. Finally, Small Smiles further requests that the Litigation Coordinating Panel and the Administrative Judge for the Fifth Judicial District consider appointing a Coordinating Justice who has experience with coordinated litigation as this is a multiple-party action with complex issues ranging from allegations of concerted Medicaid fraud activity to individual claims of dental malpractice.

3. Indeed, a Coordinating Justice handling pre-trial discovery matters will not only set out procedures and standards to move all parties through discovery expeditiously; the

Coordinating Justice will also institute master pleadings, discovery demands, and responses; create case management orders in consultation with the parties; enlist uniform procedures for physical examinations of plaintiffs; and deliver consistent rulings on discovery disputes that may arise.

4. Further, Onondaga County is the appropriate county to coordinate the Small Smiles actions as one action is already pending there and Onondaga County is centrally-located between Schenectady County and Monroe County. As such coordination in Onondaga County will save travel-time for appearances and depositions while allowing the parties, witnesses and counsel to travel to-and-from Onondaga County in the matter of a day without having to stay overnight in either Rochester or Schenectady.

5. As stated previously, Small Smiles favors coordination of pre-Note of Issue activity only; and requests that all dispositive motions should be heard by the assigned Judge in the county where the each case is venued. The rule clearly states, “[c]oordination pursuant this section shall apply to *pre-trial proceedings*, . . .” with no mention of trial. 22 NYCRR §202.69(a).

6. The Small Smiles actions should return to their respective counties once pre-trial discovery has completed and coordination has been terminated pursuant to §202.69(d). Small Smiles suggests that the severance motions be held in abeyance by each assigned Judge in Onondaga, Schenectady and Monroe counties until discovery has concluded; at which time each severance motion should be decided by the assigned Judge in each county before hearing dispositive motions.

7. Severance is proper in the Small Smiles actions in order to avoid the likely prejudice that defendants would experience if the fact-finder were exposed to factual evidence and expert testimony offered by a plaintiff that is wholly unrelated and irrelevant to the evidence related to other plaintiffs.

8. The merits of each plaintiff's claims will inevitably turn on the unique facts and circumstances surrounding the reasonableness and medical necessity of the dental procedures. The defendants in these actions were not involved in the treatment of every patient and any liability against these defendants should be assessed on the very limited basis of the care and treatment of a particular plaintiff so as to avoid prejudice. Otherwise, the defendants with meritorious defenses against particular plaintiffs will be subject to undue prejudice by the alleged malpractice claims against other defendants.

9. Furthermore, the only commonality among the infant-plaintiffs in the Small Smiles actions is that they received dental treatment from Small Smiles and they are currently represented by the same attorney. Indeed, individual issues predominate the merits of each case. See generally, Soule v. Norton, 299 A.D.2d 827, 828 (4th Dept. 2002); Bender v. Underwood, 93 A.D.2d 747, 748 (1st Dept. 1983); Reid v. Hafer, 88 A.D.2d 873-74 (1st Dept. 1982); and DeAngelis v. New York University Medical Center, 738 N.Y.S.2d 671 (1st Dept. 2002).

10. In particular, each infant-plaintiff presented at distinctively different stages in their dental development and with his/her own medical histories and conditions; in fact, one infant-plaintiff is autistic and another has Down's Syndrome. Each of these infant-plaintiffs received different dental treatments from different combinations of dentists. Some of these children allegedly received only fillings, while others received fillings, root canals, crowns, and

extractions. Some of these children were allegedly restrained while it's alleged that others did not receive local anesthesia. Among the named defendant-dentists, some only treated one out of the ten infant-plaintiffs in each case, and others treated only two infant-plaintiffs in each case.

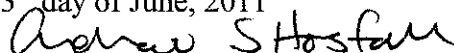
11. Therefore, Small Smiles favors severance of each plaintiff's case for the purposes of assessing each case on its own distinct merits through dispositive motion practice and trial after coordination is terminated.

12. The Small Smiles actions involve complex issues ranging from allegations of Medicaid fraud to individual issues of dental malpractice and lack of informed consent. Therefore, a Justice with experience in coordinated litigation would be better equipped to serve the purpose of 22 NYCRR §202.69 through prior experience with instituting case management orders, streamlining discovery among the parties, and moving all pre-trial proceedings forward in a uniform and expeditious manner.

WHEREFORE, the defendants, FORBA Holdings, LLC n/k/a Church Street Health Management, LLC; FORBA N.Y., LLC; Albany Access Dentistry, PLLC; Small Smiles Dentistry of Syracuse, LLC, Small Smiles Dentistry of Albany, LLC, and Small Smiles Dentistry of Rochester, LLC, respectfully request that the Litigation Coordinating Panel grant plaintiffs' request to coordinate all pre-trial proceedings in the pending Small Smiles actions filed in Onondaga County, Schenectady County, Monroe County, and any subsequent actions, before a Coordinating Justice in Onondaga County.


Kevin E. Hulslander

Sworn to before me this
13th day of June, 2011


Notary Public

ANDREW S. HORSFALL
Notary Public, State of New York
No. 02HO6237920
Qualified in Onondaga County
Commission Expires 03/28/2015