

**STATE OF NEW YORK
SUPREME COURT COUNTY OF ONONDAGA**

In Re: SMALL SMILES LITIGATION

**Index No: 2011-2128
RJI No: 33-11-1413
Hon. John C. Cherundolo
(Including all cases in
Attachment A)**

**PLAINTIFFS' COMBINED DISCOVERY DEMANDS
AND NOTICE FOR DISCOVERY AND INSPECTION**

To: Defendants, FORBA HOLDINGS LLC n/k/a Church Street Health Management, LLC; FORBA NY LLC; SMALL SMILES DENTISTRY OF ALBANY, LLC; ALBANY ACCESS DENTISTRY PLLC; SMALL SMILES DENTISTRY OF ROCHESTER, LLC; and SMALL SMILES DENTISTRY OF SYRACUSE, LLC.

NOTICE TO PRODUCE

PLEASE TAKE NOTICE, that the undersigned demands that you produce, on a date set by the coordinating justice after expiration of any stays now in effect, at the offices of Powers & Santola, LLP, 39 N. Pearl St., 2nd Floor, Albany, New York, for copying, scanning, testing or photographing by the plaintiffs, or someone acting on the plaintiffs' behalf, the following documents or items that are in the possession, custody or control of said defendant:

Definitions

1. "Corporate Integrity Agreement" means the agreement between the Office of Inspector General of the Department of Health and Human Services and FORBA Holdings, LLC signed on or about January 14, 2010.
2. "Dentist Defendant" means a dentist who is a defendant in this case.
3. "Document" includes any written, recorded or graphic matter, applications,

summaries, data, electronic mail, compilations, and information of any kind or description however made, produced, or reproduced, or stored whether by hand or by any electronic, photographic, magnetic, optical, mechanical, computer, or other process technology. Documents include but are not limited to: papers, books, records, catalogs, pamphlets, periodicals, letters, correspondence, memoranda, contracts, agreements, leases, reports, notes, sound and tape recordings, video recordings, videotapes, audiotapes, calendar or desk pads, and appointment books. A document can take the form of any medium on which information can be stored, including without limitation, computer memory, computer disk, film, paper, tape recordings, video tapes, and video disks, hard drives, servers, CDs, DVDs, zip discs, jump drives, iPods, iPads, MP3 players, CD-ROM disks, magnetic tapes, and back-up tapes. A Document also includes computerized data, i.e., a data compilation from which information can be obtained and translated by the responding party, if necessary, through detection devices in reasonably usable form, and meta data, system data, backup data, files deleted by a computer user, residual data, on line storage media, and near line storage media.

4. "Medicaid Investigation" means the investigation by the United States and various states that resulted in the Medicaid Settlement Agreement.
5. "Medicaid Settlement Agreement" means the settlement agreement executed in January 2010, entered among the United States, acting through the United States Department of Justice and on behalf of the Office of Inspector General of the Department of Health; FORBA Holdings, LLC; and John Haney, Angela Crawford, and Deborah McDaniel.

6. “National Union Case” means the case of *National Union Fire Insurance Company of Pittsburgh, Pa. v. Small Smiles Holding Co., LLC*, Civil Action No. 3:10-cv-00743, U.S. District Court for the Middle District of Tennessee.
7. “New FORBA Amended Complaint” means the Amended Complaint dated January 22, 2010 in *FORBA Holdings, LLC v. LICsAC LLC, et al* in the United States District Court for the District of Colorado, Civil Action 09-cv-02305-CMA-MJW (Exhibit A).
8. “New York Clinics” means Small Smiles Dentistry of Albany, LLC; Albany Access Dentistry, PLLC; Small Smiles Dentistry of Syracuse, LLC; and Small Smiles Dentistry of Rochester, LLC.
9. “Qui Tam Actions” means the *qui tam* actions referred to in the Medicaid Settlement Agreement.
10. “Wisconsin Escrow Case” means the case of *LICSAC, LLC, et al. v. Small Smiles Holding Co., et al.*, Case No. 08-CV-2215, Dane County Circuit Court, State of Wisconsin.
11. “Old FORBA” means FORBA, LLC n/k/a LICsAC, LLC; FORBA NY LLC n/k/a LICsAC NY LLC; DD Marketing, Inc.; and DeRose Management, LLC.
12. “New FORBA” means FORBA Holdings, LLC n/k/a Church Street Health Management LLC; Small Smiles Dentistry of Albany, LLC; Albany Access Dentistry PLLC; Small Smiles Dentistry of Syracuse, LLC; and Small Smiles Dentistry of Rochester, LLC.
13. “FORBA” means Old FORBA and New FORBA.

14. "The Old FORBA Defendants" means Old FORBA; Daniel D. DeRose; Adolph R. Padula, DDS; William A. Mueller, DDS; Edward J. DeRose, DDS; Michael A. DeRose, DDS; and Michael Roumph.

Instructions

1. The answering party shall produce any and all drafts and copies of each document responsive to any of the requests, and all copies of such documents that are not identical in any respect, including but not limited to copies containing handwritten notes, markings, stamps or interlineations. Plaintiffs specifically call for any and all electronically stored information that is responsive to these requests. Electronically stored information shall be produced in .tiff format, OCRd, with the extracted text and all metadata attached electronically, provided however, that the answering party shall produce all Excel spreadsheets in native format with all metadata attached. To the extent it exists, the answering party shall produce the following fields of metadata: (1) bates ranges, (2) family associations, (3) document address information, (4) document author, (5) document title or subject, (6) document dates (including creation, modification and sent dates), (7) custodian and (8) for non-redacted documents, text searchable files on the document's content.
2. The documents responsive to these requests are to be produced either as they are kept in the regular course of business or organized and labeled to correspond to the categories in the request.
3. If answering party withholds one or more documents that appear to be within the category of the documents required by the requests on the basis of a claim of privilege, the answering party shall comply with CPLR 3122(b).

4. Unless otherwise stated, these requests cover the time period October 1, 2001 to the present.
5. When policies and procedures are requested, please produce the original policy and procedures and all amendments and revisions.
6. Words used in this Notice To Produce in the plural shall be construed to include the singular, and vice versa.
7. The words “and” and “or” shall be construed conjunctively or disjunctively as necessary to make the Notice To Produce inclusive rather than exclusive.

Documents

Documents Related to Allegations in the New FORBA Amended Complaint

1. The following Documents referred to in the New FORBA Amended Complaint (Attached as Exhibit A) (paragraph references are to the paragraph in the New FORBA Amended Complaint):
 - (a) the communications by Dan DeRose referred to in ¶ 16;
 - (b) the communications by Richard Lane referred to in ¶ 19;
 - (c) the communications by Michael Roumph referred to in ¶ 20;
 - (d) the Document in which Old FORBA went so far as to “creatively suggest opportunities to increase production” to the dentists at the Small Smiles Centers referred to in ¶ 33;
 - (e) the emails Old FORBA sent to the Small Smiles Centers “urging them to increase production” referred to in ¶ 36;
 - (f) the emails sent by Michael Roumph to Small Smiles Centers referred to in ¶ 38;
 - (h) the communications that Old FORBA personnel had “with the Lead Dentist and Office Manager in each of the Small Smiles Centers regarding production” referred to in ¶ 38;

- (i) ¶ 38 refers to a series of reports run by Old FORBA, including “Dentist Efficiency Reports” and “Dentist Daily Average Reports.” Please produce all such reports;
- (j) the Document in which Dan DeRose suggested that certain reports were the “number one trigger point for fraud” as alleged in ¶ 38;
- (k) the emails and other communications between Old FORBA and the Small Smiles Centers referred to in ¶ 46;
- (l) the emails in which Old FORBA exerted pressure on dentists within its network of clinics to increase production levels referred to in ¶ 52;
- (m) the Documents by which Old FORBA tracked dentists’ production as alleged in ¶ 52;
- (n) the June 20, 2006 email from Dan DeRose to New FORBA referred to in ¶ 56;
- (o) the internal communications and Documents that “show that Old FORBA actively monitored production per dentist, and actively and repeatedly pressured dentists to keep their production up” referred to in ¶ 57;
- (p) the spreadsheets tracking “Dentist Efficiency” that tracked individual dentist production referred to in ¶ 57;
- (q) the emails emphasizing the need for increased production referred to in ¶ 57;
- (r) the May 6, 2004 email from Dan DeRose referred to in ¶ 57;
- (s) the emails from Michael Roumph referred to in ¶ 57;
- (t) the production emails referred to in ¶ 57;
- (u) the August 24, 2005 email from Richard Lane referred to in ¶ 73;
- (v) the December 29, 2004 email referred to in ¶ 74;
- (w) the Management Agreements for Albany, Rochester, and Syracuse referred to in ¶ 68;
- (x) the memorandum referred to in ¶ 80; and
- (y) the internal email of Dr. William Mueller referred to in ¶ 82.

2. The Documents that provided the factual support for the following statements in the New FORBA Amended Complaint (paragraph references are to the paragraph number in the New FORBA Amended Complaint):

- (a) the statement in ¶ 32 that Old FORBA interviewed and hired the dentists and staff at the New York Clinics, and provided them orientation and training;
- (b) the statement in ¶ 32 that Old FORBA provided the capital to open the New York Clinics;
- (c) the statement in ¶ 36 that “Old FORBA redoubled its efforts to increase the performance of the Small Smiles Centers, sending regular emails to the centers urging them to increase production, and having regular conversations with the dentists and staff regarding ways to increase production”; and all Documents which reflect or refer to such conduct;
- (d) the statement in ¶ 38 that Old FORBA pressured the Small Smiles dentists to increase production levels;
- (e) the statement in ¶ 39 that “the proceeds of the sale, other than amounts remaining in escrow, were distributed to the members of Old FORBA; none of the proceeds of the sale were retained by LICsAC, LLC, DD Marketing, DeRose Management, LLC, or LICsAC NY, LLC.”;
- (f) the statement in ¶ 39 that “Old FORBA and LICsAC did not pursue any new business enterprises, and have become dormant”;
- (g) the statement in ¶ 51 that “Old FORBA took steps and implemented methods designed to overstate its income”;
- (h) the statement in ¶ 52 that Old FORBA’s management exerted pressure on dentists and staff within its network of clinics to increase production levels; and all Documents which refer to or mention such conduct;
- (i) the statement in ¶ 52 that the “push for production became especially intense after Old FORBA’s attempt to sell the business failed in the Summer of 2004”; and all Documents which reflect, refer to, or mention such conduct;
- (j) the statement in ¶ 52 that Old FORBA’s management tracked dentists’ production at the Small Smiles Centers;
- (k) the statement in ¶ 53 that “Old FORBA pressured its dentists to increase production even more in 2006”; and all Documents which reflect, refer to, or mention such conduct;

- (l) the statement in ¶ 53 that Old FORBA knew that government investigators were concerned about the possibility that pressure to produce could lead to over-treatment, substandard quality of care and poor charting; and all Documents which reflect, refer to or mention such knowledge;
- (m) the statement in ¶ 54 that Old FORBA management, including Dan DeRose and Michael Routh, threatened and berated Small Smiles dentists in order to increase production; and all Documents that refer to or mention such conduct;
- (n) the statement in ¶ 54 that “Old FORBA exerted significant pressure on Small Smiles dentists across the country, including dentists in Colorado, Georgia, New York and Ohio”; and all Documents that refer to or mention such conduct;
- (o) the statement in ¶ 55 that Old FORBA instituted a contest to encourage greater production in order to artificially increase revenue; and all Documents which mention or refer to such conduct;
- (p) the statement in ¶ 58 that Old FORBA engaged in an “inappropriate push for production”;
- (q) the statement in ¶ 58 that there was a reasonable possibility of government action to recover payments for unnecessary or improperly documented services;
- (r) the statement in ¶ 64 that there was falsification of licensure materials; the falsified documents; and all Documents that refer to, mention or discuss such falsification;
- (s) the statement in ¶ 65 that Old FORBA had knowledge of the falsification of licensing information;
- (t) the statement in ¶ 68 that Old FORBA did not establish policies, procedures, or quality control measures to promote appropriate standards of care at the Small Smiles facilities; and all Documents which refer or relate to such conduct;
- (u) the statement in ¶ 68 that Old FORBA conducted periodic chart audits for which the centers themselves selected the charts; and all Documents which reflect, refer to or mention such conduct;
- (v) the statement in ¶ 69 that Old FORBA personnel falsified certain licensure information relating to Small Smiles dentists and Center owners Drs. Andrus and Knott; and all Documents which reflect, refer to or mention such conduct;

- (w) the statement in ¶ 72 that Old FORBA and certain Small Smiles practices under its management did not comply with applicable laws and accepted standards of dental care; and all Documents which reflect, refer to or mention such conduct;
 - (x) the statement in ¶ 76 that Old FORBA had a practice of pressuring dentists to produce in order to inflate revenues; and all Documents which reflect, refer to or mention such conduct;
 - (y) the statement in ¶ 76 that Old FORBA created a culture within the Small Smiles Centers that emphasized production over quality care, in clear contravention of the applicable Laws and accepted standards of dental care; and all Documents which reflect, refer to or mention such conduct;
 - (z) the statement in ¶ 77 that Old FORBA was responsible for providing orientation and training to dental center dentists and staff;
 - (aa) the statement in ¶ 77 that the orientation and training of dental center dentists and staff by Old FORBA was inadequate; and all Documents which reflect, refer to or mention such conduct;
 - (bb) the statement in ¶ 77 that the orientation and training of dental center dentists and staff by Old FORBA did not ensure that all dentists and staff were sufficiently familiar with the guidelines of the American Academy of Pediatric Dentistry; and all documents which reflect, refer to or mention such conduct; and
 - (cc) the statement in ¶ 83 that, by the time of the Asset Purchase Agreement, Dr. Michael DeRose, Dan DeRose, and Joe Bower were aware that the government investigation of the North Carolina Centers was serious, likely to result in a settlement in the millions of dollars, and that government investigations were focusing on practices that the North Carolina centers shared with the Old FORBA centers.
3. The Documents that evidence, mention, or refer to the “concerns about Old FORBA’s management and operation of the Small Smiles Centers” referred to in ¶ 33 of the New FORBA Amended Complaint.
4. The Documents in which Old FORBA pressured the Small Smiles dentists to increase production levels as stated in ¶ 38 of the New FORBA Amended Complaint, or which refer to or mention such conduct.

5. The Documents in which Old FORBA's management tracked dentists' production at the Small Smiles Centers as stated in ¶ 52 of the New FORBA Amended Complaint; or which refer to or mention such conduct.
6. The Documents in which Old FORBA's management exerted pressure on dentists and staff within its network of clinics to increase production levels as stated in ¶ 52 of the New FORBA Amended Complaint; or which refer to or mention such conduct.
7. The Documents in which Old FORBA's management, including Dan DeRose and Michael Roumph, threatened and berated Small Smiles dentists in order to increase production as stated in ¶ 54 of the New FORBA Amended Complaint; or which refer to or mention such conduct.
8. The Documents in which Old FORBA's management, including Dan DeRose and Michael Roumph exerted pressure on Small Smiles dentists across the country, including in New York, as stated in ¶ 54 of the New FORBA Amended Complaint; or which refer to or mention such conduct.
9. The selected literature relating to pediatric dentistry practices that Old FORBA provided to dentists as stated in ¶ 68 of the New FORBA Amended Complaint.

Documents Related to the Medicaid Investigation

10. The Documents sent to and received from the federal government in the Medicaid Investigation.
11. Documents sent to and received from the states in connection with the Medicaid Investigation.
12. All internal communications referring or relating to the Medicaid Investigation.

13. The Medicaid Settlement Agreement and the documents referring or relating to the Medicaid Settlement Agreement.
14. The witness statements (whether written or recorded) and depositions taken in connection with the Medicaid Investigation.

Documents Produced In The National Union Case

15. The Documents you produced in the National Union Case.

Documents Related To The Wisconsin Escrow Case

16. Documents from the Wisconsin Escrow Case, including without limitation, the depositions, the deposition exhibits, the hearing transcripts and exhibits, the trial transcripts and exhibits, the pleadings including exhibits, the orders, the settlement agreements, the final judgment, the discovery, and the documents you produced in the National Union Case, including without limitation, disk SSSHC005 and documents SSHC00035302-00044973.

Documents Referred To In the Wisconsin Escrow Case

17. The following Documents referred to in the Wisconsin Escrow Case trial transcript (Exhibit B):
 - (a) the Dentist Orientation Manuals (p. 43)
 - (b) the monthly board meeting packets (p. 49)
 - (c) the files for the Albany, Syracuse and Rochester Clinics (p. 49)
 - (d) the subpoenas issued to DD Marketing in connection with the government Medicaid fraud investigation (p. 129) and all documents produced in response to such subpoenas.
18. The management presentation referred to on the eighth page of Trial Exhibit 79 (Exhibit C).
19. Documents from and referring to the disciplinary actions in Colorado against Edward DeRose, Michael DeRose and William Mueller referred to in Trial Exhibit

79 (25th page, which is page 4 of “Sanus Holdings, LLC Additional Due Diligence Request”) (Exhibit C).

20. The following Documents referred to in the deposition of Richard Lane in the Wisconsin Escrow Case (Exhibit D):

- (a) The PowerPoint presentation referred to on page 19;
- (b) The templates for the spreadsheets used to evaluate charts referred to on page 43;
- (c) The presentation with the model referred to on page 50;
- (d) The agendas for monthly calls with the clinics (referred to on page 52-3);
- (e) The notes from the monthly calls with the clinics, including without limitation, all of Richard Lane’s notes (referred to on page 53);
- (f) The Documents related to Old FORBA on Richard Lane’s computer (referred to on pages 54-55);
- (g) The operations manuals referred to on page 55; and
- (h) The daily reports referred to on page 131 for the last workday of each month from the Syracuse, Albany and Rochester clinics.

21. The following Documents referred to in the deposition of Michael Lindley in the Wisconsin Escrow Case (Exhibit E):

- (a) The emails that suggested that Dr. Knott and Dr. Andrus falsified license applications referred to on page 48;
- (b) The operating plans approved on an annual basis (referred to on page 92); and
- (c) The report issued by Dr. Feinglass referred to on pages 111-12 and all Documents which refer to such report.

22. The Monthly Provider Reports and all monthly reports tracking production by dentist (referred to at page 139 of Dan DeRose’s deposition in the Wisconsin Escrow Case) (Exhibit F).

Regular Reports

23. The White papers or webinars prepared by Dr. Stephen Adair since he became New FORBA's Chief Dental Officer.
24. The end of day reports for each New York Clinic prepared as of the last day of each month from 2004 to the present.
25. The weekly status worksheet reports for the New York Clinics from 2004 to the present.
26. The Provider Productivity Reports and the other Documents that evaluate the financial performance of each provider at the New York Clinics for each month between 2004 and the present.
27. The Daily Production Reports for each New York Clinic for the last day of each month between 2004 and the present.
28. The bonus worksheets or other Documents that refer to, discuss, or contain information about the bonus structure used at the New York Clinics. If the bonus criteria changed, then plaintiffs request the Documents that describe, refer to, discuss, set forth, and reflect the criteria used for every month between 2004 and the present.
29. The reports that compare the monthly financial goals at the New York Clinics with their actual performance for the period 2004 through the present.

Special Reports

30. The quality improvement goals for FORBA and the New York Clinics that were required to be provided to the FORBA Board of Directors under section IIIA5 of FORBA's Corporate Integrity Agreement.

31. The Annual Reports that have been submitted to OIG as required by section V.B of FORBA's Corporate Integrity Agreement.
32. The Implementation Report submitted to OIG as required by section V.A of FORBA's Corporate Integrity Agreement.
33. The quarterly reports prepared by the Monitor as required by section III.E4 of FORBA's Corporate Integrity Agreement.
34. The reports issued by the New York Dental Director to the OMIG regarding dental practices at the New York Clinics as required by the New York Corporate Integrity Agreement.

Dentist Information

35. The lead dentist manual or handbook used from 2003 to the present.
36. The Documents evidencing or related to the termination of each of the following:
(1) Dr. Kenneth Knott (2) Dr. Robert Andrus (3) Kallene West.
37. The personnel files (including but not limited to performance reviews) of each dentist named as a defendant in this case.
38. The personnel files of Dr. Kenneth Knott, Dr. Robert Andrus, and Dr. Sean Barnwell.
39. The complaints received regarding each Defendant Dentist.

Agreements

40. The employment agreements with each of the Defendant Dentists.
41. The agreements between FORBA NY, LLC and any of the other defendants.
42. The agreements between DD Marketing and any of the other defendants.
43. The agreements between FORBA LLC and any of the other defendants.

44. The agreements between any of the New York Clinics and any of the other defendants.
45. The agreements between any of the Old FORBA Defendants.
46. The agreements which discuss, refer to, describe, incorporate, set forth, or otherwise relate to the management of the New York Clinics.
47. The agreements that include any FORBA entity and relate to the New York Clinics, including without limitation the Management Services Agreements.
48. The agreements concerning any of the New York Clinics to which Adolph Padula, Robert Andrus, Kenneth Knott, Maziar Izadi or Koury Bonds was or is a party.
49. The agreements between two or more of the Defendants and pertaining to FORBA.

Additional Prior Investigations and Litigation

50. The Documents, other than patient dental records, provided to the New York State Office of the Medicaid Inspector General (OMIG) by the answering defendants.
51. The Documents of and/or containing, referring to, or discussing interviews or witness statements made to investigators from New York OMIG.
52. The answering defendants' correspondence with the New York OMIG, the New York Medicaid Fraud Control Unit and the New York State Office of Professional Discipline regarding these entities' investigation of FORBA's dental practice in New York.
53. The settlement agreement with New York in connection with the investigations referred to in Paragraph 52 above.

54. The reports or other Documents discussing the results of FORBA's internal investigation undertaken beginning in or about October 2007 regarding charges of excessive, unnecessary and improper dental care.
55. The settlement agreement in the litigation styled *FORBA Holdings, LLC v. LICsac LLC, et al.*
56. The Documents from the Arizona Dental board's investigation of Dr. Matthew Nolen and the death of Jonathon Barrera at a FORBA clinic in Arizona, and the Documents which discuss and/or refer to such investigation.
57. The Documents from and/or which refer to and discuss investigations or disciplinary proceedings by the Colorado dental board as to each of the following (1) Dr. Edward DeRose (2) Dr. Michael DeRose (3) Dr. William Mueller, including without limitation all charges, complaints, orders and other Documents issued by the dental board, and all responses, filings, submissions and testimony by the named individuals.
58. The Documents from and/or which refer to and discuss the investigation and criminal prosecution of Dr. Doug Gardner for Medicaid fraud committed while working at a New York clinic.
59. The Documents from and/or which refer to and discuss the investigations of Dr. Michael DeRose and Medicaid Dental Center in North Carolina.
60. The document requests served in *FORBA Holdings LLC v. LICsac LLC, et al.* and the written responses to those requests.
61. The Documents produced in *FORBA Holdings LLC v. LICsac LLC, et al.*
62. The Documents produced by any of the Relators in the Qui Tam Actions, including but not limited to all exhibits attached to the Qui Tam complaints.

63. The audit reports received from the New York Medicaid offices that reflect that FORBA overbilled Medicaid.
64. The January 20, 2010 Department of Justice Press Release (Exhibit G) states that FORBA was providing to the government “information about dentists who may have violated professional standards.” Produce all such information that was provided to the government.
65. The Documents of, and from the termination of Small Smiles of Albany from the New York Medicaid Program, and/or the Documents that refer to and/or describe and/or discuss that termination.

Marketing Information

66. The agreements with Don Meyer, Hill & Knowlton or Rubin Meyer Communications.
67. The Documents, including Power Point presentations, used to recruit dentists to work for FORBA or one of the Small Smiles Clinics.
68. The marketing plans for any of the New York Clinics from 2004 to the present, and Documents that refer to, set forth, describe, and/or discuss such marketing plans.
69. The advertisements, commercials, videos, flyers, promotional materials, still photographs, press releases, press submissions for any of the New York Clinics, and the Documents that refer to, set forth, describe and/or discuss such items.
70. The marketing materials and Documents for any of the New York Clinics.

Ownership/Management Information

71. The Ownership Documents for each of the New York Clinics from 2004 to the present.
72. Sale or transfer of ownership Documents of the New York Clinics from 2004 to the present.
73. The New FORBA ownership Documents and Documents which discuss or refer to the ownership of New FORBA.
74. Documents showing the entities' and/or individuals who have invested in or funded any of the New York Clinics.
75. Documents that mention, refer to or discuss the ownership of any of the New York Clinics.
76. Documents showing, listing, describing, setting forth, and/or containing the names and addresses of FORBA's officers and management from October 1, 2001 to today.
77. Documents sufficient to show DD Marketing's officers and management from October 1, 2001 to today.
78. Documents sufficient to show the officers and management of FORBA NY, LLC from 2004 to today.
79. Documents showing, listing, describing, setting forth, and/or containing the names and addresses of the officers and management of each of the New York Clinics from 2004 to today.
80. The Documents that identify the New York State Dental Director and the duties of such person.

Corporate/Business Documents

81. The budgets and business plans for each of the New York Clinics.
82. The budgets and business plans for FORBA.
83. The minutes of and Documents provided to board members for each of the New York Clinic's Board of Directors meetings.
84. The minutes of and Documents provided to board members for FORBA's Board of Directors meetings.
85. Each New York Clinic's audited annual financial statements from inception to the present.
86. The annual reports prepared by FORBA.
87. FORBA's audited annual financial statements.
88. Records of and Documents containing communications with investors of New FORBA regarding financial performance of the company, government investigations, or changes in company policies.
89. The leases for the New York Clinics.
90. The tax returns for the corporate entities operating the New York Clinics from 2004 through present.

Training materials

91. The training and orientation Documents for Small Smiles dentists, and the Documents that were prepared for, used in, refer to or mention the orientation and training of Small Smiles dentists.
92. The training and orientation Documents for Small Smiles staff, and the Documents that were prepared for, used in, refer to or mention the orientation and training of Small Smiles staff.

93. The Documents prepared for, used in, and/or handed out at the FORBA training session on protective stabilization in Vail, Colorado in 2005.

Documents from the Purchase and Sale of the Company

94. The Asset Purchase and Sale Agreement signed on or about September 26, 2006, including all exhibits and attachments.
95. The management books, presentations, or memoranda provided by Old FORBA to prospective purchasers of the company.
96. Documents evidencing New FORBA's valuation and/or analysis of Old FORBA prepared in connection with either (1) the potential purchase of Old FORBA or its assets, or (2) the solicitation of investors to finance such purchase.

Guidelines, Policies and Procedures

97. The dental care quality assurance protocols used at any time at the New York Clinics.
98. The dental care compliance guidelines used at any time at the New York Clinics.
99. The four-part series of webinars and the "guidelines for treating the 'high risk' pediatric dental population" referred to in Exhibit H.
100. The clinical practice guidelines used from 2004 through the present at the New York Clinics for dentists, dental assistants, and dental hygienists for including without limitation those regarding:
- (a) the use of nitrous oxide;
 - (b) the use of local anesthetics before beginning dental procedures;
 - (c) the referral of cases to board certified pediatric dentists;
 - (d) the referral of cases to surgical centers or hospitals;
 - (e) the circumstances in which a patient should have dental procedures performed under general anesthesia;

- (f) patient safety;
- (g) appropriate patient assessment and treatment planning;
- (h) documentation of dental records, including radiographs or digital photos;
- (i) appropriate anesthesia care for pediatric dental patients;
- (j) appropriate behavior guidance approaches for pediatric dental patients;
- (k) advanced behavior guidance techniques for the pediatric dental patient including protective stabilization, sedation, general anesthesia and contraindications of each technique;
- (l) appropriate management of dental patients with special health care needs;
- (m)time management;
- (n) the appropriate amount of treatment in an individual visit;
- (o) the time to be spent with individual patients;
- (p) parental accompaniment;
- (q) informed consent;
- (r) periodic audits of clinical quality;
- (s) the ethical responsibility to treat or refer patients;
- (t) the appropriate use of medications for pediatric dental patients;
- (u) promotion of adherence to the compliance and quality of care standards set forth in the applicable statutes, regulations, Federal health care program and state dental board requirements and AAPD guidelines;
- (v) ensuring that financial incentives do not motivate dentists or staff to engage in improper conduct or provide excessive or substandard services;
- (w) employee performance objectives and evaluation;
- (x) linking employee compensation to clinical quality.
- (y) discipline for violations of the policies and procedures, including policies relating to professionally recognized standards of health care, Federal health care program requirements, and state dental board requirements;

- (z) termination of any employee who violates professionally recognized standards of dental care.
101. The internal audit procedures used at any time at the New York Clinics.
 102. The document retention policies at any time, including policies regarding back-up of electronic data.
 103. The Code of Conduct used at any time.
 104. The records of mandatory CME required for the dentists at the New York Clinics pursuant to Education Law §6604-a and 8 NYCRR 61.15.
 105. Any conditional registrations issued by the New York State Education Department to any dentist at the New York State Clinics.
 106. The affidavit of supervision presented to the State of New York Education Department or its representatives required under 8 NYCRR 61.3(d) for any limited permit dentists.
 107. Records showing the attendance of the dentists at the New York Clinics at the New York State dental jurisprudence and ethics course required after January 1, 2008.
 108. Records of the suspension, revocation, annulment, termination, or other limitations on the dental licenses of any of the dentists at the New York Clinics.
 109. The documents filed with the State of New York for and on behalf of the New York Clinics from 2004 through the present.
 110. Limited permits granted to any dentist in the New York Clinics under Education Law §6605 and 8 NYCRR 61.3.
 111. The dental anesthesia certificates issued by the Education Department pertaining to any dentist at the New York Clinics and/or the New York Clinics under Education Law §6605-a.

112. The dental hygiene restricted local infiltration anesthesia/nitrous oxide analgesia certificates for dental hygienists at the New York Clinics as required under Education Law 6605-b and 8 NYCRR 61.17.
113. The New York Clinics practice and policy manuals and procedures which set forth, and described the level of general and personal supervision that dentists in the New York Clinics had to exercise over dental hygienists pursuant to Education Law §6606 and 8 NYCRR 61.9.
114. Licenses and registrations for the dental assistants at the New York Clinics as required by Education Law §6608 and Education Law §6608-a.
115. Limited permits issued by the Education Department under Education Law §6608-d and 8 NYCRR 61.14 in certified dental assisting for any dental assistants in the New York Clinics.
116. Mandatory continuing education courses offered by the answering defendants for dental hygienists to meet their requirements for such education under Education Law §6609-a and 8 NYCRR 61.16.

Quality of Care

117. The Documents that contain information on, refer to or discuss any of the following practices or events at a Small Smiles Dental Clinic: (1) the use of crowns and pulpotomies over other procedures and treatments (2) performing all planned procedures in a single clinic visit (3) a dentist following a patient treatment plan prepared by another dentist (4) denying parents access to their children during treatment (5) refraining from referring patients outside the FORBA clinics.

118. The Documents received by the answering defendants from patients that complain about, and report improper patient care practices, and Documents that contain and/or refer such patient complaints and reports as to the New York Clinics.
119. Records of the investigations, findings, fines, suspensions, license surrenders, and determinations taken by the New York State Education Department's Office of Professions, and/or the New York State Board of Regents, as to any defendant in this case, and any dentist at any of the New York Clinics, and the Documents that discuss, contain information about or refer to such matters.
120. The requests for information, notifications, correspondence, process, reports and/or complaints received from dentists, staff, state or federal government agencies, or state dental boards, including the New York State Education Department Office of Professions and the New York State Board of Regents, and all similar state and federal agencies, which allege any of the following, and/or requested information on the following: (1) the misuse of papoose boards or other forms of restraints (2) a high pulp to crown ratio (3) procedures performed without x-rays or with non-diagnostic x-rays (4) pressure to perform procedures in an inadequate amount of time (5) pressure to convert hygiene patients to operative patients (6) failure to obtain informed consent (7) preferring FORBA's interest to those of the patients (8) the misuse of nitrous oxide (9) unnecessary dental procedures (10) overtreatment (11) the lack of training of dentists or staff or (12) the lack of clinical quality of control (13)

denying parents access to their children during treatment; and the Documents referring to or discussing such reports or complaints.

121. The Documents that refer to or discuss, or contain allegations of FORBA clinics, and/or dentists, and/or dentist staff engaging in (1) the performance of medically unnecessary pulpotomies, crowns, extractions, or fillings (2) pulpotomies, crowns, extractions, or fillings performed in a manner that did not meet professionally recognized standards of care.
122. The Documents alleging that FORBA clinics, and/or dentists, and/or dentist staff treated patients without taking sufficient x-rays, and Documents referring to discussing and/or evaluating such allegations.
123. The Documents that refer to or discuss, or contain, refer to or discuss allegations of, FORBA clinics, and/or dentists, and/or dentist staff using papoose boards or restraints when not medically necessary or in a manner that did not meet professionally recognized standards of dental care.
124. The Documents that refer to or discuss, or contain, refer to or discuss allegations of, the use of local anesthesia by FORBA clinics, and/or dentists, and/or dentist staff in a manner that did not meet professionally recognized standards of dental care.
125. The Documents that refer to or discuss, or contain, refer to or discuss allegations of, the performance of pain management by FORBA clinics, and/or dentists, and/or dentist staff in a manner that did not meet professionally recognized standards of dental care.

Production Goals, Quotas and Bonuses

126. The Documents that discuss or refer to increasing production in any or all FORBA clinics.
127. The Documents in which FORBA urged or pressured any clinics or dentists to increase production, and all Documents that refer to or discuss such conduct.
128. The Documents in which FORBA threatened or berated dentists in order to increase production, and all Documents that refer to such conduct.
129. The answering defendants' production emails sent to the New York Clinics, and/or which discuss, contain information about, or refer to production in the New York Clinics.
130. The performance evaluations and reports of the dentists in the New York Clinics, including without limitation all Dentist Efficiency Reports and Dentist Daily Average Reports, and the Documents which refer to, discuss, and/or contain information about such evaluations and reports.
131. The Documents which tracked the production of individual dentists at the New York Clinics by the answering defendants, and any entity or individual working with them, or employed by them.
132. The Documents by and in which the FORBA had contests between its clinics, including but not limited to one called "The Road to the Super Bowl", and the Documents which refer to, describe, contain information about, and refer to all such contests.
133. The compensation structure Documents for dentists in place at any of the New York Clinics from 2004 to the present, and the Documents that set forth, describe, list, refer to, contain, and evaluate such compensation structure.

134. The Documents of and from the bonus program in place at any time for any of the New York Clinics' dentists, and the Documents that refer to, discuss or mention such program.
135. The Documents of and from the bonus program in place at any time for any of the New York Clinics' staff, and the Documents that refer to, discuss or mention such program.
136. The Bonus Documents and the Documents that evidence the bonuses that each Defendant Dentist and each New York Clinic office manager received during each year that he or she was employed at one of the New York Clinics.
137. The Documents that evidence the total amount of compensation that each Defendant Dentist and each New York Clinic office manager received from the clinic or FORBA during each year that he or she was employed at one of the New York Clinics.
138. The quota and/or production goal Documents for any of the New York Clinics, or any of the dentists or staff at any of the New York Clinics, including without limitation all Documents which evidence the method of establishing such quotas or production goals, and the Documents evidencing, referring to or relating to such quotas and/or production goals.
139. The Documents of and concerning production per patient at any of the New York Clinics, including without limitation, all reports of production per patient, and the Documents that refer to, measure, contain information about, or discuss production per patient.
140. The Documents of and concerning production per dentist at any of the New York Clinics, including without limitation, all reports of production per dentist,

and all Documents that refer to, measure, contain information about, or discuss production per dentist.

141. The Documents that set forth conversion rate goals for any of the New York Clinics, or refer to, discuss or mention conversion rates or conversion rate goals.

Patient Specific Records

142. Documents for each plaintiff, including but not limited to dental records, charts and notes, x-rays, billing records, account summaries, appointment records, office notes, correspondence, history sheets, prescriptions, insurance forms, referral slips, consent forms, letters and appointment notices, discharge or follow-up instructions, wet reads of x-rays, referral letters, telephone contact notes, patient identification and intake sheets, chart reviews and treatment summaries.
143. The letters sent to any plaintiff (adult or infant) from any Small Smiles clinic including without limitation the New York Clinics.
144. The Documents of and concerning recall notices sent or communicated to any plaintiff by any New York Clinic.
145. The Documents including invoices, billing records and data for each patient plaintiff, including billing sheets, billing codes, invoices and request for payment sent to Medicaid, and/or any other entity paying for the dental treatment, and confirmation of payment received as to the plaintiffs' from Medicaid and/or any entity.
146. The electronic paper, hard copy and imaged patient schedules and calendars for each Defendant Dentist for each day on which such Defendant Dentist

treated a plaintiff, and documents showing the number of patients treated by such Defendant Dentist and by the New York Clinics on each such day, including without limitation clinic patient schedules, patient log, office scheduling calendar, appointment books, add-ons, and weekly and monthly schedules. Patient names other than the plaintiffs may be redacted to protect patient confidentiality.

Dental Clinic Documents

- 147. Every version of a consent form for dental treatment or protective immobilization used at any time at the New York Clinics.
- 148. The reports from or to FORBA of and concerning any of the New York Clinics.
- 149. The quality control audits performed by any answering defendant at any of the New York Clinics.
- 150. The office manager manual or handbook and the lead dentist manual or handbook used at any time by each of the New York Clinics.
- 151. The e-mails or other written communications between any of the Individual Defendants and any of the office managers, dentists or other persons who worked at any of the New York Clinics.
- 152. The e-mails or other written communications between any of the Individual Defendants and any regional manager or other corporate employee responsible for overseeing the New York Clinics.
- 153. The Documents sent to or from or that mention any of the Individual Defendants and pertain to the selection of the location, negotiation of the lease, construction, and initial staffing, of each of the New York Clinics.

154. The Documents that refer to or discuss the exclusion of parents or guardians from the exam or treatment rooms, including without limitation complaints by guardians, parents or others about such exclusion.
155. The Documents discussing or referring to non-certified or unlicensed employees taking x-rays of patients.
156. The Documents that discuss or refer to the use of illegal drugs by employees at any of the New York Clinics while on duty.
157. The Documents the Identification of which is requested in the Interrogatories to FORBA HOLDINGS LLC n/k/a Church Street Health Management, LLC; FORBA NY LLC SMALL SMILES DENTISTRY OF ALBANY, LLC; ALBANY ACCESS DENTISTRY PLLC; SMALL SMILES DENTISTRY OF ROCHESTER, LLC; and SMALL SMILES DENTISTRY OF SYRACUSE, LLC.

Additional Documents

158. The pleadings in any other action filed against any dentist in the New York Clinics by a patient alleging damages as a result of dental treatment.
159. The pleadings in any other action filed against the answering defendants of and concerning lack of acceptable care at FORBA clinics.
160. Documents other than medical records that discuss or refer to the use of Papoose boards or other forms of restraints at FORBA clinics.
161. The Documents that relate or refer to the creation, wording of, or decision to use the consent form for protective immobilization, attached as Exhibit I, including but not limited to all drafts of such form.

162. The Documents that relate or refer to the creation, wording of, or decision to use the consent form for protective stabilization attached as Exhibit J, including but not limited to all drafts of such form.
163. The documents that relate or refer to, or discuss the switch from the consent form attached as Exhibit I to the form attached as Exhibit J.
164. The documents by which the New York Clinics were advised of the switch from the consent form attached as Exhibit I to the form attached as Exhibit J.
165. The Documents that refer, relate, discuss or evidence FORBA's internal audit program, policies or procedures.
166. The videotape taken at the Langley Park and Washington, D.C. clinics during the time Roberta Baskin and other representatives of WJLA were at the clinics.
167. The Documents that refer to Roberta Baskin, WJLA-TV, or Dr. Aldred Williams.
168. The Documents that refer to Dr. Robert Barsley.
169. Any films, images, photographs, video and audio tapes, including transcripts or memoranda thereof, involving a person referred to in paragraph one of subdivision (a) of CPLR Section 3101. There shall be disclosure of all portions of such material, including out-takes, rather than just those portions which a party intends to use. This demand shall not apply to materials compiled for law enforcement purposes, which are exempt from disclosure under section eighty-seven of the Public Officers Law. This is a continuing demand. Should any such material come into your possession, custody or control, or into the possession, custody or control of any party you represent in this action, after the date of this demand, demand is hereby made that you produce such material at the undersigned's office for inspection and copying on the aforesaid date or twenty

(20) days after you, or said party, obtain possession, custody or control of same, whichever is later (See: Tran v. New Rochelle Hospital Medical Center, 99 NY2d 383 (2003)). Should any such material come into your possession, custody or control, or into the possession, custody or control of any party you represent in this action, after the date of this demand and less than twenty (20) days before the scheduled deposition of any party or witness in this action, or less than twenty (20) days before the trial of this action is scheduled to commence, demand is hereby made that you immediately notify the attorneys making this demand, by a means and method that is calculated to provide actual and meaningful notice before the date of the scheduled deposition or trial, of the existence of all such material.

170. Any written report of any of the incidents that are the subject of this action prepared in the regular course of business operations or practices of any person, firm, corporation, association or other public or private entity, unless prepared by a police or peace officer for a criminal investigation or prosecution and disclosure would interfere with a criminal investigation or prosecution.
171. Any statements of any plaintiff, or any plaintiff's agents, servants, or employees, now in your possession, custody or control, or in the possession, custody or control of any party you represent in this action, whether signed or unsigned, written, transcribed or otherwise recorded and whether obtained by investigation made after the date of the occurrence and regardless of how made.
172. Any films, photographs or video tapes depicting any of the plaintiffs.
173. Any films, photographs or video tapes depicting the scene of any of the events or the individuals or instrumentality that are the subject of this action.

PLEASE TAKE NOTE that a statement by the defendant, or defendant's counsel, indicating that the plaintiff may already be in possession of the requested records **WILL NOT BE CONSIDERED RESPONSIVE TO THIS DEMAND.** The records itemized above must be produced by the defendants, irrespective of whether plaintiff(s) may have independently secured or requested copies of the same information.

PLEASE TAKE FURTHER NOTICE:

- ◆ IF THE ORIGINAL OF ANY OF THE PRECEDING ITEMS WAS AT ONE TIME IN YOUR POSSESSION, CUSTODY, OR CONTROL BUT IS NO LONGER IN YOUR POSSESSION, CUSTODY OR CONTROL, PRODUCE ALL COPIES OF SAME, TOGETHER WITH A STATEMENT SETTING FORTH THE DATE THAT THE ORIGINAL OF SAID ITEM WAS LAST IN YOUR POSSESSION, CUSTODY OR CONTROL AND THE NAME OF THE PERSON OR ENTITY TO WHOM YOU TRANSFERRED POSSESSION, CUSTODY OR CONTROL ON THAT DATE.
- ◆ IF THE ORIGINAL OF ANY OF THE PRECEEDING ITEMS WAS NEVER IN YOUR POSSESSION, CUSTODY, OR CONTROL BUT A COPY WAS IN YOUR POSSESSION, CUSTODY OR CONTROL, PRODUCE ALL COPIES OF SAME.
- ◆ IF THE ORIGINAL OF ANY OF THE PRECEDING ITEMS WAS NEVER IN YOUR POSSESSION, CUSTODY, OR CONTROL BUT A COPY WAS IN YOUR POSSESSION, CUSTODY OR CONTROL, BUT THAT COPY IS NO LONGER IN YOUR POSSESSION, CUSTODY OR CONTROL, PRODUCE A STATEMENT SETTING FORTH THE DATE THAT THE COPY OF SAID ITEM WAS LAST IN YOUR POSSESSION, CUSTODY OR CONTROL AND THE NAME OF THE PERSON OR ENTITY TO WHOM YOU TRANSFERRED POSSESSION,

CUSTODY OR CONTROL ON THAT DATE.

DEMAND FOR EXPERT WITNESSES

PLEASE TAKE FURTHER NOTICE, that pursuant to Article 31, subdivision (d) of Section 3101 of the Civil Practice Law and Rules, the undersigned hereby demand that, at the date and time stated above, you:

- 1) Disclose in reasonable detail the qualifications of each expert witness whom you expect to call at trial.
- 2) Disclose in reasonable detail the subject matter on which each expert is expected to testify.
- 3) Disclose in reasonable detail the substance of the facts and opinion on which each expert is expected to testify.
- 4) Disclose in reasonable detail a summary of the grounds for each expert's opinions.

DEMAND FOR CONTENTS OF INSURANCE AGREEMENT

PLEASE TAKE FURTHER NOTICE that, pursuant to Section 3101(f) of the CPLR, at the date and time stated above, you are hereby required to disclose the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in this action or to indemnify or reimburse for payments made to satisfy the judgment by delivering to the offices of the undersigned, at the date and time stated above, a complete and accurate copy of all such insurance agreements, including all declaration pages, coverage sheets or face sheets pertaining thereto and all forms and endorsements that are a part of the insurance agreement. This demand is not limited to primary insurance agreements and specifically includes, but is not limited to, all insuring


agreements in excess of, or which supplement, the primary insurance agreement.

DEMAND FOR WITNESSES

PLEASE TAKE FURTHER NOTICE, that the undersigned demands that, at the date and time stated above, you:

- 1) Identify the names and addresses of all persons who:
 - a) were witnesses to any of the occurrences(s) or to any of the events surrounding any of the occurrence(s) that are the subject of this action; or
 - b) were witnesses to any of the condition(s) that are the subject of this action; or
 - c) were witnesses to any of the plaintiff's injuries; or
 - d) were employed at the New York Clinics while the infant plaintiffs underwent treatment there; have been fired by the defendants for clinical performance issues, illegal drug use or suspicion of same, during the time periods when the infant plaintiffs were treated
- whether or not obtained by investigation made after the date of the occurrence and regardless of how you learned of the identity of such witnesses.

Dated: October 20, 2011



POWERS & SANTOLA, LLP
Attorneys for Plaintiffs
Office and P.O. Address
39 North Pearl Street
Albany, New York 12207
(518) 465-5995

Attachment “A”

560001/11
Sub # 6

**STATE OF NEW YORK
LITIGATION COORDINATING PANEL**

X

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 DESIRAE
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

- against -

FORBA HOLDINGS, LLC N/K/A CHURCH STREET HEALTH
MANAGEMENT, LLC; FORBA N.Y., LLC; FORBA, LLC, N/K/A
LICSAC, LLC; FORBA NY, LLC N/K/A LICSAC 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 LITTLE-
MUNDLE, D.D.S

Panel Case No. 0011/2011

Index No. 000562/2011

Pending in the

Fourth Judicial District

Assigned Justice

Hon. Barry D. Kramer

Filed: Schenectady Supreme Court

FILED

SEP - 1 2011

COUNTY CLERK'S OFFICE
NEW YORK

-----X
AND OTHER MATTERS LISTED ON THE ATTACHED APPENDIX

APPENDIX

<u>CASE</u>	<u>INDEX NO.</u>	<u>COUNTY</u>	<u>JUSTICE ASSIGNED</u>
Varano v Forba Holdings.	002128/11	Onondaga	Hon. John C. Cherundolo
Johnson v Forba Holdings	007100/11	Monroe	Unknown

EXHIBIT “A”

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

FORBA HOLDINGS, LLC, a Delaware
limited liability company,

Plaintiff,

v

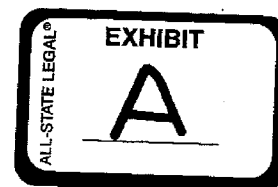
LICSAC, LLC, a Colorado limited liability
company; DD MARKETING, INC., a
Colorado corporation; DEROSE
MANAGEMENT, LLC, a Colorado limited
liability company; LICSAC NY, LLC, a New
York limited liability company; DANNY E
DEROSE; EDWARD J DEROSE;
MICHAEL A DEROSE; MICHAEL W
ROUMPH; RICHARD B. LANE;
WILLIAM A. MUELLER; ADOLPH R.
PADULA; and PADULA FAMILY
PARTNERSHIP, LLLP

Defendants.

Civil Action No 09-cv-02305-CMA-MJW

AMENDED COMPLAINT

Plaintiff FORBA Holdings, LLC ("New FORBA") for its Amended Complaint against defendants LICSAC, LLC; DD Marketing, Inc ; DeRose Management, LLC; LICSAC NY, LLC, (collectively, "Old FORBA") and Danny E DeRose; Edward J. DeRose; Michael A DeRose, Michael W. Roumph; Richard B. Lane, William A. Mueller, Adolph R. Padula, and Padula Family Partnership, LLLP (collectively, "Individual Defendants") avers as follows:



NATURE AND BASIS OF ACTION

1 This is an action seeking damages and declaratory relief resulting from Old FORBA's breaches of the Asset Purchase Agreement, as amended, ("the APA") with New FORBA and from Old FORBA's and the Individual Defendants' breach of their indemnification obligations. (A copy of the APA, including Amendment No. 1 thereto, is attached to this Amended Complaint as Exhibit A.)

2 Old FORBA and its partners, the Individual Defendants, managed 50 dental centers across the country that provided dental care to underprivileged children on Medicaid. Many of the dental centers used the name "Small Smiles." Among other things, Old FORBA provided its affiliated dental centers with services relating to dentist recruitment, orientation, human resources, marketing, legal, government affairs, compliance, procurement, IT support, finance and book keeping pursuant to Management Services Agreements. In carrying out their obligations under the Management Services Agreements, Old FORBA partners and personnel interacted closely with the Small Smiles dental centers on a daily basis.

3 Pursuant to the Management Services Agreement, Old FORBA received a monthly fee from each of its affiliated dental centers of "the greater of (i) forty percent (40%) of the Gross Revenues of the Clinic or (ii) One Hundred Seventy-Five Thousand Dollars (\$175,000) per month, or (iii) one hundred percent (100%) of the Residual during such calendar month but not less than One Hundred Fifty-Eight Thousand Four Hundred Dollars (\$158,400) annually during the term of this Agreement." (A sample Management Services Agreement is attached to this Amended Complaint as Exhibit B.) Over the course of its management of the dental centers, Old FORBA earned tens of millions of dollars in management fees. Old FORBA regularly distributed the management fees to the Individual Defendants.

4. Beginning in 2004, Old FORBA, acting through the Individual Defendants, launched efforts to sell its assets, including its Management Services Agreements with the Small Smiles dental centers. After two failed attempts with other bidders, Old FORBA entered into the APA with Sanus Holdings, LLC ("Sanus") (which later became New FORBA) in 2006.

5. On September 26, 2006, New FORBA closed on the APA with Old FORBA. Pursuant to the APA, New FORBA paid Old FORBA \$435 million for Old FORBA assets. Old FORBA distributed the proceeds of the sale to the Individual Defendants immediately upon the closing of the transaction.

6. The APA was premised on a series of representations and warranties by Old FORBA that, among other things, it had disclosed all material facts about the business, that it had complied with all applicable laws, and that its financial statements fairly reflected its financial condition. APA, §§4.1 through 4.24. The representations and warranties were based not only on the knowledge of Old FORBA as an entity, but also on the actual knowledge of the Individual Defendants and their related corporate entities. APA, §4.23.

7. The APA also provided for certain indemnification obligations, stating that Old FORBA shall:

[I]ndemnify and hold harmless [New FORBA] from, against and for any damages, claims, costs, loss, liabilities, expenses or obligations (including, without limitation, reasonable attorneys' fees and associated expenses, but not including time spent by employees of such party), whether or not involving a third-party claim (collectively "losses"), incurred or suffered by any of them as a result of or arising from (a) any breach of or inaccuracy in any representation or warranty made by FORBA in this Agreement or any other Transaction Agreement; (b) any breach of a covenant or agreement made by FORBA in this Agreement or any other Transaction Agreement; (c) Excluded Assets and Excluded Liabilities; (d) FORBA's ownership or operation of the Assets or the Business prior to the Effective Time; and (e) FORBA's acts or omissions prior to the Effective Time.

APA, §10.1.

8. Because it was anticipated that Old FORBA would distribute the proceeds of the asset sale to the Individual Defendants, each of the Individual Defendants signed a Joinder to the APA providing that "[t]o facilitate the consummation of the transactions contemplated in this Agreement and in consideration of the substantial economic and other benefits inuring to the undersigned as a member of FLLC, DMLLC or NYLLC or a shareholder of DDM, the undersigned hereby joins this Agreement for the sole purpose of being responsible, on a pro-rata basis, with FORBA for the obligations of FORBA pursuant to Article 10 of this Agreement" APA, p. 41 ("Joinder").

9. As described in detail below, the APA contains a number of representations and warranties by Old FORBA that were not accurate. In addition, Old FORBA and the Individual Defendants have failed and refused to honor their obligations to indemnify New FORBA as required under §10.1 of the APA.

10. As a result of Old FORBA's inaccurate representations and warranties in the APA, as detailed below, and Old FORBA and the Individual Defendants' failure to honor the indemnification obligations under the APA, New FORBA has sustained damages in excess of \$50,000,000, including but not limited to damages sustained from overpaying Old FORBA for the Old FORBA assets described in the APA (based on Old FORBA's improperly inflated EBITDA), damages sustained in defending and paying claims (*e.g.*, claims made by government agencies in New York and Georgia) relating to payments received by Old FORBA while Old FORBA owned the assets, and legal fees incurred by New FORBA in connection with government requests for documents and information relating to Old FORBA's management and operation of the dental centers.

PARTIES

11 New FORBA, formerly known as Sanus, is a limited liability company and a wholly owned subsidiary of Small Smiles Holding Company, LLC. New FORBA is incorporated in Delaware and maintains its principal place of business at 618 Church Street, Nashville, TN 37219. Sanus was a signatory to the APA.

12. Defendant LICSAAC, LLC ("LICSAAC") is a Colorado limited liability company, formerly known as FORBA, LLC. LICSAAC's registered agent is Danny E. DeRose, and its registered office is located at 504 N. Grand Avenue, Pueblo, Colorado 81003. The members of LICSAAC are Danny E. DeRose, Edward J. DeRose, Michael A. DeRose, Michael W. Rounph, Richard B. Lane, William A. Mueller, Adolph R. Padula, and Padula Family Partnership. Danny E. DeRose is the President of LICSAAC, Edward J. DeRose and Michael A. DeRose are Vice Presidents, Adolph R. Padula is the Treasurer, and William A. Mueller is the Secretary. LICSAAC provided management services to the Small Smiles Centers, and was a signatory to the APA.

13. Defendant DD Marketing, Inc. ("DD Marketing") is a corporation organized under the laws of the State of Colorado. Its registered agent is Danny E. DeRose, the President of DD Marketing, and its registered office is located at 504 N. Grand Avenue, Pueblo, Colorado 81003. The Shareholders of DD Marketing are Danny E. DeRose and Michael W. Rounph. Michael W. Rounph is the Vice President of DD Marketing. DD Marketing entered into Services Agreements with the Small Smiles Centers and was a signatory to the APA.

14. Defendant DeRose Management, LLC is a Colorado limited liability company. Its registered agent is Edward J. DeRose, and its registered office is located at 504 N. Grand Avenue, Pueblo, Colorado 81003. DeRose Management provided management services to certain Small Smiles Centers and was a signatory to the APA.

15. Defendant LICSA NY, LLC, formerly known as FORBA NY, LLC, is a New York limited liability company. LICSA NY, LLC does not have a registered agent for service of process in New York. The President of LICSA NY, LLC is Danny E. DeRose. LICSA NY, LLC provided management services to the New York Small Smiles Centers pursuant to Management Services Agreements and was a signatory to the APA.

16. Defendant Danny E. DeRose is a Member of LICSA, LLC, a Shareholder of DD Marketing and is the President of DD Marketing, LICSA, LLC, and LICSA NY, LLC. His business address is 504 N. Grand Avenue, Pueblo, Colorado 81003. Danny DeRose personally received approximately \$80 million from the proceeds of the sale to New FORBA. Mr. DeRose communicated daily with the Small Smiles Centers prior to the sale to New FORBA.

17. Defendant Dr. Edward J. DeRose is the President of DeRose Management, LLC, and a Vice President and Member of LICSA, LLC. He practiced in the Small Smiles Centers in Pueblo, Colorado, Colorado Springs, Colorado, and Denver, Colorado, and managed centers in Pueblo, Colorado Springs, Denver, Albuquerque and Santa Fe. His address is 1615 Augusta Place, Pueblo, Colorado. Dr. Edward DeRose personally received approximately \$58 million from the proceeds of the sale to New FORBA. Dr. Edward DeRose is the father of defendants Danny and Michael DeRose.

18. Defendant Dr. Michael A. DeRose is a Vice President and Member of LICSA, LLC. Dr. Michael DeRose practiced in the Small Smiles Centers in Pueblo, Colorado, Colorado Springs, Colorado, Aurora, Colorado, Santa Fe, New Mexico, and Gary, Indiana. His address is 183 East Greenway, Pueblo West, Colorado. Dr. Michael DeRose personally received approximately \$58 million from the proceeds of the sale to New FORBA. In addition to his interest in Old FORBA, Dr. Michael DeRose also owned several Medicaid dental clinics in

North Carolina that were the subject of state and federal Medicaid fraud investigations that began well before the sale of Old FORBA's assets to New FORBA, and that ultimately resulted in a \$10 million settlement with the Department of Justice, the Office of the Inspector General of the Department of Health and Human Services, the State of North Carolina and the North Carolina Division of Medical Assistance. This settlement resolved claims involving four of the North Carolina clinics for the period of 2001 to 2003. Dr. Michael DeRose also entered into Consent Orders with the North Carolina Board of Dental Examiners and the Kansas Dental Board. Dr. Michael DeRose did not renew these dental licenses or his licenses in Indiana, Oklahoma, Colorado, and New Mexico.

19. Defendant Richard B. Lane is a Member of LICSAAC, LLC, and the Chief Operating Officer of DD Marketing. His address is 4208 St. Andrews Drive, Pueblo, Colorado 80011. Mr. Lane personally received approximately \$6 million from the proceeds of the sale to New FORBA. Mr. Lane communicated daily with the Small Smiles Centers prior to the sale to New FORBA.

20. Defendant Michael W. Rounph is a Member of LICSAAC, LLC and a shareholder and Vice President of DD Marketing, LLC. His address is 184 East Saddlewood Court, Pueblo West, Colorado, 81007. Mr. Rounph personally received approximately \$37 million from the proceeds of the sale to New FORBA. Mr. Rounph communicated daily with the Small Smiles Centers prior to the sale to New FORBA.

21. Defendant William A. Mueller is a Member of LICSAAC, LLC and the Corporate Secretary. His address is 120 South Marion Parkway, Denver, Colorado, 80209. On information and belief, Dr. Mueller personally received approximately \$58 million from the proceeds of the sale to New FORBA. Dr. Mueller also provided dental services at Small Smiles Centers.

22. Defendant Adolph R. Padula is a Member of LICSAAC, LLC and its Treasurer. His address is 4202 St. Andrews Drive, Pueblo, Colorado 81001. On information and belief, Dr. Padula personally received approximately \$58 million from the proceeds of the sale to New FORBA. Dr. Padula also provided dental services at Small Smiles Centers. Dr. Padula is an uncle to defendants Danny and Michael DeRose.

23. Defendant Padula Family Partnership, LLLP ("Padula Family Partnership") is a Colorado limited liability limited partnership and is a Member of LICSAAC, LLC. Adolph R. Padula is the General Partner of Padula Family Partnership. Padula Family Partnership maintains its principal place of business at 4202 St. Andrews Drive, Pueblo, Colorado 81001.

JURISDICTION AND VENUE

24. This action seeks damages for breach of contract in connection with the sale of Old FORBA's assets to New FORBA on September 26, 2006, and Old FORBA's and the Individual Defendants' indemnification obligations in the APA and the Joinder thereto. This action also seeks declaratory relief in connection with (1) Old FORBA's and the Individual Defendants' indemnification obligations in the APA; and, (2) the obligations of the Individual Defendants pursuant to the Joinder to the APA.

25. This Court has jurisdiction over New FORBA's claims under 28 U.S.C. § 2201 and 28 U.S.C. § 1332. New FORBA and the Defendants are citizens of different states and this dispute involves an amount in controversy in excess of \$75,000.

26. This Court has personal jurisdiction over the Defendants because all of the Defendants other than LICSAAC NY are citizens of Colorado. This Court has personal jurisdiction over LICSAAC NY because it was a party to the APA, and its President, Danny E.

DeRose, a Colorado resident, conducted extensive APA negotiations with New FORBA in Colorado.

27 Venue in this Court is proper under 28 U.S.C. § 1391 because a substantial portion of the events giving rise to this litigation occurred in this District.

28 Under the terms of the APA, the parties have agreed that this dispute is governed by Colorado law and they have waived their right to a jury trial.

GENERAL ALLEGATIONS

29 Prior to the sale of its assets to New FORBA, Old FORBA provided management services to 50 dental centers across the country serving Medicaid and SCHIP (State Children's Health Insurance Program) children. Many of the dental centers do business under the name "Small Smiles." Because Medicaid and SCHIP are funded by the state and federal governments, the Small Smiles Centers and Old FORBA were subject to continuous state and federal governmental scrutiny.

30 The Small Smiles Dental Centers trace their roots to a dental clinic in Pueblo, Colorado founded in 1928 by Dr. Bruno DeRose. In 1961, Dr. Bruno DeRose's son, Defendant Dr. Edward J. DeRose, joined the Pueblo dental clinic. Nine years later, the Pueblo clinic began treating children covered by Medicaid.

31 Beginning in the mid-1990s, Dr. Edward DeRose, his son Dr. Michael DeRose, and other family members, including Dr. Padula, opened additional Small Smiles Centers in Colorado and New Mexico, focusing on providing dental care to Medicaid children.

32 In 2001, another of Dr. Edward DeRose's sons, Dan DeRose, formed Old FORBA to manage the Small Smiles Centers and to open and manage additional Small Smiles Centers throughout the country. By the end of 2002, Old FORBA managed 12 Small Smiles

Centers By 2003, the number rose to 16 Centers. By 2004, Old FORBA managed 26 Small Smiles Centers. In 2005, the number of Small Smiles Centers under Old FORBA management jumped to 38, and by the time of the transaction in September 2006, Old FORBA managed 50 Small Smiles Centers. Old FORBA provided the capital to open new Small Smiles Centers, interviewed and hired the dentists and staff for the Centers, provided orientation and training, and provided additional management services to the Centers under the Management Services Agreements.

33. In June 2004, Old FORBA was negotiating to sell the company to a third party. However, on the brink of closing the deal, the prospective purchaser raised certain concerns about Old FORBA's management and operation of the Small Smiles Centers, and, as a result, the talks broke off. Old FORBA had discussions with another potential purchaser in 2005 that also ended unsuccessfully. Old FORBA continued its efforts to sell the company and focused intensely on the production of the Small Smiles Centers -- going so far as to "creatively suggest opportunities to increase production" to the dentists at the Centers -- to ensure a profitable transaction in the future.

34. In April 2006, Old FORBA representatives, including Defendants Dan DeRose and Michael Roumph, met with representatives of Sanus/New FORBA in Denver, Colorado to discuss the parties' interest in a sale of Old FORBA's assets to New FORBA. At the meeting, the parties agreed to a purchase price based on a simple mathematic formula: New FORBA would pay ten times Old FORBA's 2006 EBITDA (Earnings Before Interest, Taxes, Depreciation and Amortization) Forecast. Old FORBA's EBITDA was based on the production of the Small Smiles Centers.

35 On June 14, 2006, New FORBA entered into an Asset Purchase Agreement with Old FORBA to purchase Old FORBA's assets, including its Management Services Agreements with Small Smiles Dental Centers, for \$470 million. This purchase price was based on Old FORBA's 2006 EBITDA budget of \$47 million.

36 Based on their prior unsuccessful efforts to sell the business, and based on the fact that the purchase price in the Asset Purchase Agreement was tied directly to Old FORBA's EBITDA, Old FORBA and the Individual Defendants were concerned that New FORBA would seek to lower the purchase price if the performance of the Small Smiles Centers in any way did not meet projections, and that New FORBA could even walk away. Old FORBA redoubled its efforts to increase the performance of the Small Smiles Centers, sending regular emails to the Centers urging them to increase production, and having conversations with the dentists and staff regarding ways to increase production.

37 On July 28, 2006, the parties executed Amendment No. 1 to the APA. Among other things, the amendment lowered the purchase price of the transaction from \$470 million to \$435 million. The lower purchase price reflected a lowered projection of Old FORBA's 2006 EBITDA as of July 28, 2006. According to financial information provided by Old FORBA purporting to reflect actual results for January through May, 2006, Old FORBA was not meeting its EBITDA budget of \$47 million. Using the EBITDA reported in Old FORBA's financial results for January through May, 2006, and Old FORBA's estimated results for June 2006, New FORBA made certain adjustments and re-calculated a 2006 EBITDA forecast of approximately \$43.5 million (the "Re-calculated 2006 EBITDA Forecast"). Based on the Re-calculated 2006 EBITDA Forecast, New FORBA agreed to pay \$435 million to buy the Old FORBA assets.

38. Old FORBA continued to manage the Small Smiles Centers and continued to pressure the dentists to increase production levels fearing that New FORBA would continue to lower the purchase price or walk away from the transaction prior to the anticipated September 2006 closing. Old FORBA instituted a "contest" to encourage greater production by the dental centers, and Old FORBA personnel continued to have regular communications with the Lead Dentist and Office Manager in each of the Small Smiles Centers regarding production. For example, defendant Michael Rounph sent emails to Small Smiles Centers emphasizing that "production per patient . . . [s]hould be an area to focus on with your dentists;" and "[a]s we have discussed, our focus needs to be on increasing production per patient." Old FORBA personnel also ran a series of reports for Old FORBA's use in managing the Small Smiles Centers, including "Dentist Efficiency Reports" and "Dentist Daily Average Reports." Dan DeRose recognized the sensitivity of certain of these reports, denying the existence of these reports to Sanus and suggesting that such reports were the "number one trigger point for fraud."

39. The asset purchase transaction closed on September 26, 2006. On information and belief, the proceeds of the sale, other than amounts remaining in escrow, were distributed to the members of Old FORBA; none of the proceeds of the sale were retained by LICsAC, LLC, DD Marketing, DeRose Management, LLC or LICsAC NY, LLC. Old FORBA and LICsAC did not pursue any new business enterprises, and have become dormant. On information and belief, the Old FORBA entities do not have the financial resources to compensate New FORBA for the damages incurred as a result of Old FORBA's breach of contract and failure to honor its indemnification obligations.

40. The APA was signed by Dan DeRose on behalf of FORBA, LLC (now known as LICsAC, LLC), DD Marketing, Inc., and FORBA NY, LLC (now known as LICsAC NY,

LLC), and by Edward DeRose on behalf of DeRose Management, LLC. In addition, the Members of FORBA, LLC (now known as LICSA, LLC) -- Dan DeRose, Michael Rounph, William Mueller, Edward DeRose, Adolph Padula, Michael DeRose, Richard Lane, and the Padula Family Partnership -- signed a Joinder to the APA providing that "[t]o facilitate the consummation of the transactions in this Agreement and in consideration of the substantial economic and other benefits inuring to the undersigned as a member of FLLC, DMLLC or NYLLC or a shareholder of DDM, the undersigned hereby joins this Agreement for the sole purpose of being responsible, on a pro-rata basis, with FORBA for the obligations of FORBA pursuant to Article 10 of this Agreement." APA, p. 41

41 As noted above, the APA includes detailed representations and warranties. Among other things, the representations and warranties relate to Old FORBA's Financial Statements (§ 4.5); Licensure and Compliance (§ 4.6); Assumed Contracts, Contract Practices (§ 4.7); Associated Practices, Dentists and Professionals (§ 4.8); Litigation, Actions and Orders (§ 4.11); Compliance with Laws (§ 4.14); No Undisclosed Liabilities (§ 4.18); and Disclosure (§4.24).

42 Under the terms of the APA, Old FORBA warranted and represented, among other things, that:

a. the "Financial Statements present fairly (and those delivered pursuant to Section 6.7, will present fairly) the financial condition and the results of operations of [Old FORBA] at the respective dates of and for the periods referred to in such Financial Statements, all in accordance with GAAP The Financial Statements have been prepared from and are in accordance with the books and records of FLLC, DDM, and DMLLC as applicable. The Financial Statements reflect (and those delivered pursuant to Section 6.7 will reflect) the

consistent application of such accounting principles throughout the periods involved, except as disclosed in the notes thereto" (APA §4.5);

b. "[Old] FORBA and each of the Practices possess all permits, licenses, consents, authorizations, certificates, variances, exemptions, orders and approvals of and from all, and has made all declarations and filings with, Governmental Authorities necessary for the lawful conduct of their respective businesses. . ." (APA §4.6(a));

c. the "activities and business of [Old] FORBA and each of the Practices are being and have been conducted in compliance with the Applicable Laws. Neither [Old] FORBA nor any Practice has received any notice of any investigation by any Governmental Authority with respect to the Business or any Practice and, to the knowledge of [Old] FORBA, no such investigation is pending or threatened" (APA §4.6(b));

d. "[Old] FORBA has performed its obligations, and is not in breach or default, nor do any circumstances exist which with or without notice or lapse of time, or both, would result in breach or default, nor is there any claim of such breach or default with respect to any obligation to be performed, under any Assumed Contract, which breach or default, if not cured, would, individually or in the aggregate, have a Material Adverse Effect [Old] FORBA has performed its obligations, and is not in breach or default, nor do any circumstances exist which with or without notice or lapse of time, or both, would result in breach or default, nor is there any claim of such breach or default with respect to any obligation to be performed, under any Management Agreement " (APA §4.7(b));

e. "[e]ach Associated Dentist now employed by or contracting with any Practice engages in dental practice only for the corresponding Practice . . . has graduated from an accredited school of dentistry or its equivalent in the case of certain foreign Associated Dentists,

is fully accredited as, and has all permits or a pending application for all permits, licenses, consents, authorizations, certificates, variances, exemptions, orders and approvals of and from all, and has made all declarations and filings with, Governmental Authorities and other governmental authorizations necessary to practice dentistry in each state in which such Associated Dentist engages in dental practice. To the extent required by Applicable Law, each Practice Owner is fully accredited, and has all necessary Governmental Permits, in each state (i) in which such Practice Owner engages in dental practice or (ii) where any professional corporation or other entity through which any Practice operates in which the Practice Owner has any interest conducts its operations" (APA §4.8(c));

f. "each Governmental Permit required to be maintained by an Associated Dentist, Associated Professional or Practice Owner is valid and in full force and effect and each Associated Dentist, Associated Professional or Practice Owner is in compliance in all respects with all of the terms and requirements thereof" and that "no event has occurred or circumstance exists that may (with or without notice or lapse of time) constitute or result directly or indirectly in a violation of or a failure to comply with any term or requirement of any Governmental Permit maintained by any Associated Dentist, Associated Professional or Practice Owner, or result directly or indirectly in the revocation, withdrawal, suspension, cancellation or termination of, or any modification to, any Governmental Permit maintained by any Associated dentist, Associated Professional or Practice Owner" (APA §4 8(e));

g. "each Practice is and has been, with respect to conduct of its operations, in compliance with all Applicable Laws" and "no Practice has been charged with or given notice of, and to the knowledge of FORBA, is not under investigation with respect to any violation of any Applicable Law" (APA §§ 4 8(f));

h. except as specifically disclosed in schedules to the APA, "there are no Actions pending or, to the knowledge of [Old] FORBA, threatened against, affecting, or relating to FORBA, any Practice, the Assets or the Business." (APA §4.11);

i. "[Old] FORBA is and has been, with respect to the operation of the Business, in compliance with guidelines of the American Academy of Pediatric Dentistry and all Applicable laws," that "[Old] FORBA has not been charged with or given notice of, and to the knowledge of FORBA, is not under investigation with respect to any violation of any Applicable Law," that "each Practice is and has been, with respect to the operation of its respective business, in compliance with all Applicable Laws," and that "no Practice has been charged with or given notice of, and to the knowledge of [Old] FORBA is not under investigation with respect to any violation of any Applicable Law" (APA §4.14); and

j. "[e]xcept for those listed on any Schedule to this Agreement or reflected or reserved against in the Financial Statements and current liabilities incurred in the ordinary course of business since the Balance Sheet Date, [Old] FORBA has no liabilities or obligations of any nature (whether absolute, accrued, contingent, or otherwise) Since the Balance Sheet Date, there has not been any material adverse change in the business, operations, prospects, assets, results of operations or condition (financial or otherwise) of [Old] FORBA, and no event has occurred or circumstance exists that may result in such a material adverse change Since the Balance Sheet Date, there has not been any material adverse change in the business, operations, prospects, assets, results of operations or condition (financial or other) of a Practice, whether individually or in the aggregate, and no event has occurred or circumstance exists that may result in such a material adverse change." (APA §4.18)

43 The APA also contains a Disclosure provision reflecting Old FORBA's obligation to disclose all material facts:

4.24 Disclosure No representation or warranty made by [Old] FORBA in this Agreement contains any untrue statement of a material nature or omits to state a material fact necessary to make any of them, in light of the circumstances in which it was made, not misleading.

44 The APA provides that the representations and warranties are made by all of Old FORBA's members. To the extent that any of the APA's provisions refer to the "knowledge of [Old] FORBA" or use "similar terms," they are intended to refer not only to the corporate entity but also to the "actual knowledge of . . . any officer of DeRose Management, LLC, DD Marketing, Inc., FORBA, LLC, or FORBA NY, LLC." APA, §4.23.

45 New FORBA reasonably relied on these representations and warranties, and other representations and warranties made by Old FORBA, when it agreed to purchase the assets from Old FORBA and executed the APA. In APA §10.6, "[t]he parties expressly agree and acknowledge that each is relying upon the representation or warranties of the other made in this Agreement and that neither [Old FORBA] nor [New FORBA] would be willing to execute and deliver this Agreement if any limitations were placed on such reliance."

46 New FORBA's reliance on Old FORBA's warranties is not limited by any due diligence that was conducted or that could have been conducted: "The right to indemnification, reimbursement or other remedy based upon the representations, warranties, covenants and obligations in this Agreement shall not be affected by any investigation conducted with respect to, or any information or knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the Closing date, with respect to the accuracy or inaccuracy of or compliance with any such representation, warranty, covenant or obligation. The waiver of any condition based upon the accuracy of any representation or

warranty, or on the performance of or compliance with any covenant or obligation, will not affect the right to indemnification, reimbursement or other remedy based upon such representations, warranties, covenants and obligations” APA, §10.6. New FORBA did not have access to many of the emails and other communications between Old FORBA and the Small Smiles Centers prior to the closing of the APA. Many of these emails and other communications remain in the possession of Old FORBA personnel.

47. The representations and warranties contained in APA §§4.5, 4.6, 4.7, 4.8, 4.11, 4.14, 4.18 and 4.24 include untrue statements of a material nature and/or omit a material fact necessary to make the representations and warranties contained in each of the above-referenced paragraphs, in light of the circumstances in which they were made, not misleading

Breach of APA §§4.5 and 4.18 - Financial Statements

48. The warranties in APA §4.5 provide that:

The Financial Statements present fairly (and those delivered pursuant to Section 6.7, will present fairly) the financial condition and the results of operations of [Old FORBA] at the respective dates of and for the periods referred to in such Financial Statements, all in accordance with GAAP. The Financial Statements have been prepared from and are in accordance with the books and records of FLLC, DDM, and DMLLC as applicable. The Financial Statements reflect (and those delivered pursuant to Section 6.7 will reflect) the consistent application of such accounting principles throughout the periods involved, except as disclosed in the notes thereto.”

49. The warranties in APA §4.18 provide that:

Except for those listed on any Schedule to this Agreement or reflected or reserved against in the Financial Statements and current liabilities incurred in the ordinary course of business since the Balance Sheet Date, FORBA has no liabilities or obligations of any nature (whether absolute, accrued, contingent, or otherwise). Since the Balance Sheet Date, there has not been any material adverse change in the business, operations, prospects, assets, results of operations or condition (financial or otherwise) of FORBA, and no event has occurred or circumstance exists that may result in such a material adverse change. Since the Balance Sheet Date, there has not been any material adverse change in the business, operations, prospects, assets, results of operations or condition (financial or other) of a

Practice, whether individually or in the aggregate, and no event has occurred or circumstance exists that may result in such a material adverse change.

50. Old FORBA breached the warranties set forth in APA §§4.5 and 4.18 because its financial statements contained untrue statements of a material nature in that they did not present fairly or accurately the financial condition of Old FORBA. Old FORBA also breached these warranties because its financial statements failed to properly recognize revenue and/or did not disclose or account for certain loss contingencies, and were therefore not in accordance with GAAP (Generally Accepted Accounting Principles).

51. Old FORBA's financial statements were false and misleading. Specifically, Old FORBA took steps and implemented methods designed to overstate its income, and thereby to artificially inflate the value of the business. Old FORBA increased its 2006 EBITDA and thereby increased the price under the APA. For every dollar the EBITDA was overstated, the price under the APA was increased by ten dollars.

52. While representing to New FORBA that it did not track dentists' production or discuss production with the dentists or staff at the Small Smiles Centers, Old FORBA's management in fact tracked such production and exerted increased pressure on dentists and staff within its network of clinics to increase production levels through regular emails, conversations, and salary negotiations. Increased production levels would result in higher revenue and a higher EBITDA. This push for production became especially intense after Old FORBA's attempt to sell the business failed in the Summer of 2004.

53. Old FORBA pressured its dentists to increase production even more in 2006 because it understood that increases in production would help sell the business at a high price by artificially inflating revenue and thus inflating its EBITDA. Old FORBA took these steps despite its knowledge that government investigators were concerned about the possibility that pressure to

produce could lead to over-treatment, substandard quality of care, poor charting, and improper claims for payment, and lead to requests for repayment, denial of claims, and fines and penalties.

54. Old FORBA's management, including, but not limited to, Dan DeRose and Michael Rounph, threatened and berated Small Smiles dentists in an effort to increase production. Old FORBA exerted significant pressure on Small Smiles dentists across the country, including dentists in Colorado; Georgia; New York and Ohio.

55. In addition, Old FORBA instituted a "contest" to encourage greater production by the Small Smiles Centers in order to artificially and improperly increase revenue, and thereby EBITDA.

56. Old FORBA concealed the fact that it was pressuring dentists to increase production. For example, during negotiations with New FORBA, Dan DeRose falsely represented that Old FORBA "never used" data regarding "production per dentist." In a June 20, 2006 email to New FORBA, Dan DeRose stated: "We will not be forwarding production per dentist as it is an irrelevant calculation. Never used it never will. Meaningless and dangerous (number one trigger point for fraud) "

57. In fact, internal communications and documents show that Old FORBA actively monitored production per dentist, and actively and repeatedly pressured dentists to keep their production up. For instance, Old FORBA generated spreadsheets tracking "Dentist Efficiency" that specifically tracked individual dentist production. Old FORBA discussed these production metrics with Small Smiles dentists, and sent emails emphasizing the need for increased production. For example, in a May 6, 2004 email, Dan DeRose instructed senior management to "creatively suggest opportunities [for Atlanta dentists] to increase production" and noted that the Atlanta clinic "is dead last out of all 18 clinics." In a June 23, 2006 email, Michael Rounph

praised senior managers for pressuring dentists to produce: "Excellent job this week on the production emails. Let's keep the pressure on. It will make a difference." Mr. Rounph sent emails directly to the Centers emphasizing that "production per patient . . . [s]hould be an area to focus on with your dentists;" and "[a]s we have discussed, our focus needs to be on increasing production per patient."

58 After entering into the Asset Purchase Agreement, Old FORBA continued to pressure dentists to produce specifically to ensure that the purchase price would not decrease. In fact, in July 2006, the purchase price was reduced from \$470 million (which had been based on Old FORBA's budgeted EBITDA for 2006), to \$435 million (based on the Re-calculated 2006 EBITDA Forecast). Old FORBA was concerned that any further decrease in production would reduce revenue, which would lower EBITDA and further reduce the purchase price. The pressure to produce continued, continuing to improperly inflate Old FORBA's EBITDA.

59 Contrary to the representations and warranties in the APA, Old FORBA's financial statements did not reflect the true financial condition of Old FORBA, nor did they disclose the reasonable possibility of government action to recover payments for unnecessary or improperly documented services resulting from Old FORBA's inappropriate push for production.

60 New FORBA agreed to close on the transaction in reliance on all of the financial information provided up to the Closing. Because the financial information provided to New FORBA was inflated, New FORBA's purchase price was inflated.

61 Old FORBA's financial statements were also inaccurate, in breach of the warranties in §§4.5 and 4.18 of the APA, because they included amounts received from certain states (including Georgia -- \$216,216, and New York -- \$2.3 million), that have been reclaimed

by those states as improper overpayments. The inclusion of this revenue in Old FORBA's financial statements had the direct effect of inflating New FORBA's purchase price.

62. As a direct and proximate cause of the material inaccuracies in Old FORBA's financial statements, New FORBA overpaid substantially in purchasing Old FORBA's assets.

Breach of APA §§4.6(a), 4.8(c), and 4.8(e) - Licenses and Permits

63. Old FORBA breached the warranties contained in APA §§4 6(a), 4.8(c), and 4.8(e), which provide that:

FORBA and each of the Practices possess all permits, licenses, consents, authorizations, certificates, variances, exemptions, orders and approvals of and from all, and has made all declarations and filings with, Governmental Authorities necessary for the lawful conduct of their respective businesses. . . (APA §4.6(a)).

* * *

Each Associated Dentist now employed by or contracting with any Practice engages in dental practice only for the corresponding Practice . . . has graduated from an accredited school of dentistry or its equivalent in the case of certain foreign Associated Dentists, is fully accredited as, and has all permits or a pending application for all permits, licenses, consents, authorizations, certificates, variances, exemptions, orders and approvals of and from all, and has made all declarations and filings with, Governmental Authorities and other governmental authorizations necessary to practice dentistry in each state in which such Associated Dentist engages in dental practice . . . To the extent required by Applicable Law, each Practice Owner is fully accredited, and has all necessary Governmental Permits, in each state (i) in which such Practice Owner engages in dental practice or (ii) where any professional corporation or other entity through which any Practice operates in which the Practice Owner has any interest conducts its operations. (APA §4 8(c)).

* * *

Each Governmental Permit required to be maintained by an Associated Dentist, Associated Professional or Practice Owner is valid and in full force and effect and each Associated Dentist, Associated Professional or Practice Owner is in compliance in all respects with all of the terms and requirements thereof" and that "no event has occurred or circumstance exists that may (with or without notice or lapse of time) constitute or result directly or indirectly in a violation of or a failure to comply with any term or requirement of any Governmental Permit maintained by any Associated Dentist, Associated Professional or Practice Owner, or result

directly or indirectly in the revocation, withdrawal, suspension, cancellation or termination of, or any modification to, any Governmental Permit maintained by any Associated dentist, Associated Professional or Practice Owner. (APA §4.8(e)).

64. Old FORBA breached these warranties by, for example, omitting material facts regarding the falsification of licensure materials during Old FORBA's management of the Small Smiles Centers. After the closing of the transaction, New FORBA learned that an Old FORBA employee, Kallene West, had taken certain continuing education courses and exams on behalf of Small Smiles dentists and Practice Owners Robert Andrus and Kenneth Knott during the period that Old FORBA managed the Centers. With the knowledge of Drs. Andrus and Knott, Ms. West fraudulently obtained certificates of completion purporting to show that Dr. Andrus and Dr. Knott had completed required continuing education courses and had used those certificates to obtain state licenses in, at least, New York and Nevada. In addition, Ms. West provided an Associated Dentist in the Toledo Small Smiles Center, Dr. Swapna Kakarla, with the answers to the Ohio Jurisprudence exam on or about March 15, 2006.

65. In breach of the APA, Old FORBA had knowledge of the falsification of licensing information but did not disclose such information to New FORBA.

66. New FORBA suffered losses as a direct and proximate result of Old FORBA's breach of these warranties.

Breach of APA §4.7(b) - Performance of Contractual Obligations

67. Old FORBA breached the APA's warranties, including §4 7(b), providing that Old FORBA had satisfied its contractual obligations under the Assumed Contracts. Section 4 7(b) of the APA provides that:

FORBA has performed its obligations, and is not in breach or default, nor do any circumstances exist which with or without notice or lapse of time, or both, would

result in breach or default, nor is there any claim of such breach or default with respect to any obligation to be performed, under any Assumed Contract, which breach or default, if not cured, would, individually or in the aggregate, have a Material Adverse Effect. FORBA has performed its obligations, and is not in breach or default, nor do any circumstances exist which with or without notice or lapse of time, or both, would result in breach or default, nor is there any claim of such breach or default with respect to any obligation to be performed, under any Management Agreement

68. Old FORBA breached the APA's warranties in §4.7(b) by omitting material facts regarding its breach of its obligations under certain Assumed Contracts and Management Agreements. For example, in its Management Agreements with a number of Small Smiles Centers, including Albany, Albuquerque, Atlanta, Augusta, Baltimore, Boise, Charleston, Cincinnati, Columbia, Columbus, Dayton, East Albuquerque, Florence, Gary, Greenville, Indianapolis, Lawrence, Lynn, Macon, Mattapan, Myrtle Beach, Oklahoma City, Omaha, Phoenix, Richmond, Roanoke, Rochester, Roselawn, Spartanburg, Springfield, Syracuse, Thornton, Toledo, Tucson, Tulsa, Washington, D.C. and Worcester, Old FORBA agreed to "establish all operational policies and procedures reasonably necessary for establishing the appropriate standards of patient care at the Clinic," and to "maintain and update, as reasonably required, quality control programs for the Clinic, including written procedures for handling patient complaints." However, Old FORBA did not comply with these contractual obligations. Old FORBA provided dentists with selected literature relating to pediatric dentistry practices, and conducted periodic chart audits, for which the centers themselves selected the charts. Old FORBA did not have a sufficient compliance program, did not establish or promote clinical guidelines or quality assurance protocols, and did not establish guidelines regarding proper charting and documentation. Contrary to its contractual obligations, Old FORBA did not establish policies, procedures, or quality control measures to promote appropriate standards of

care at the Small Smiles facilities. As a result, Old FORBA breached the warranties in §4 7(b) of the APA.

69 Another example of Old FORBA's breach of its obligations under the Management Services Agreements relates to Old FORBA's contractual duty to "use its reasonable efforts to obtain and maintain in the name and at the expense of [the Center] all licenses, permits, and Medicare and applicable Medicaid provider numbers required or appropriate in connection with the operation of the Business." As described above, Old FORBA personnel falsified certain licensure information relating to Small Smiles dentists and Center owners Drs. Andrus and Knott, and Toledo Center dentist Swapna Kakarla, in breach of Old FORBA's contractual obligation under the Management Services Agreements. As a result, Old FORBA breached the warranties in §4 7(b) of the APA.

70 Small Smiles Centers have been the subject of federal and state investigations relating to the standard of care and quality control procedures at the Centers. As a direct and proximate cause of Old FORBA's breach of §4 7(b), New FORBA has suffered losses, including legal fees and costs already incurred and to be incurred in responding to government requests for documents and information regarding Old FORBA's pre-sale conduct, as well as losses resulting from requests by certain states for repayment of amounts previously paid by the states for services performed at the dental centers.

Breach of APA §§4.6(b), 4.8(f) and 4.14 -- Compliance with Applicable Laws

71 Pursuant to APA §§ 4 6(b), 4.8(f) and 4 14, Old FORBA provided warranties that Old FORBA and the Small Smiles Practices have complied with Applicable Laws and the standards of the American Academy of Pediatric Dentistry:

"The activities and business of FORBA and each of the Practices are being and have been conducted in compliance with the Applicable Laws. . . ." (APA §4 6(b)).

* * *

"[E]ach Practice is and has been, with respect to conduct of its operations, in compliance with all Applicable Laws. . ." (APA §§ 4 8(f))

* * *

"FORBA is and has been, with respect to the operation of the Business, in compliance with guidelines of the American Academy of Pediatric Dentistry and all Applicable laws," and "each Practice is and has been, with respect to the operation of its respective business, in compliance with all Applicable Laws." (APA §4.14).

72. Old FORBA breached the warranties in the APA, including §§4 6(b), 4 8(f) and 4.14, by omitting material facts regarding the failure of Old FORBA and certain Small Smiles practices under its management to comply with applicable laws and accepted standards of dental care

73. For example, Old FORBA knew that certain Small Smiles Centers did not comply with accepted standards for documentation, or "charting," of dental procedures. As reflected in an August 24, 2005 email from Defendant Richard Lane, Old FORBA understood that certain of the centers under its management were not properly documenting their procedures, and that "poor charting will cause problems in the future." Nevertheless, Old FORBA did not disclose these charting deficiencies to New FORBA, in breach of the APA

74. Old FORBA executives were aware of other operational issues at the Small Smiles Centers under their management that they did not disclose to New FORBA. For example, Dan DeRose acknowledged in an internal email dated December 29, 2004, that the Atlanta center "is a mess, a disappointment, a total disaster." He continued:

I have looked the other way and allowed it to happen. Our employees don't care; our Dr's have no leadership and no professional conduct. Our [Office Manager] is a train wreck immature little girl with a huge mouth. Our systems are not in place. Medical Histories are not being sign[ed], x-rays suck, referrals are being made daily this is not a FORBA clinic and no one to blame but myself. This email is not to be forwarded to anyone printed or duplicated in any way without my permission.

75 In addition, as described above, Old FORBA did not comply with Applicable Laws relating to the licensure of its Associated Dentists and Practice Owners with regard to Small Smiles dentists Andrus, Knott, and Kakarla.

76 As described above, another example of Old FORBA's and the Practices' non-compliance with Applicable Laws and standards, and the resultant breach of these warranties, relates to Old FORBA's practice of pressuring dentists to produce in order to inflate revenues. This practice created a culture within the Small Smiles Centers that emphasized production over quality care, in clear contravention of the Applicable Laws and accepted standards of dental care.

77 Old FORBA also was responsible for providing orientation and training to dental center dentists and staff. This training was inadequate, and did not ensure that all dentists and staff were sufficiently familiar with the guidelines of the American Academy of Pediatric Dentistry and Medicaid billing guidelines.

78 As a direct and proximate cause of Old FORBA's breach of APA §§4.6(b), 4.8(f) and 4.14, New FORBA has suffered losses, including legal fees and costs already incurred and to be incurred in responding to government requests for documents and information regarding Old FORBA's pre-sale conduct, as well as losses resulting from requests by certain states for repayment of amounts previously paid by the states for services performed at the dental centers.

Breach of §§4.6(b), 4.8(f), 4.11, and 4.14 - No Investigations, Actions or Litigation

79. Pursuant to APA §§4.6(b), 4.8(f), 4.11 and 4.14, Old FORBA provided warranties that, to its knowledge, no governmental investigations or other actions were pending or threatened against Old FORBA or any Practices:

“Neither FORBA nor any Practice has received any notice of any investigation by any Governmental Authority with respect to the Business or any Practice and, to the knowledge of FORBA, no such investigation is pending or threatened” (APA §4.6(b)).

* * *

“Except as set forth in Schedule 4.8(f), no Practice has been charged with or given notice of, and to the knowledge of FORBA, is not under investigation with respect to any violation of any Applicable Law.” (APA §§ 4.8(f)).

* * *

“Except as disclosed on Schedule 4.11 there are no Actions pending or, to the knowledge of FORBA, threatened against, affecting, or relating to FORBA, any Practice, the Asserts or the Business.” (APA §4.11)

* * *

“FORBA has not been charged with or given notice of, and to the knowledge of FORBA, is not under investigation with respect to any violation of any Applicable Law,” and “no Practice has been charged with or given notice of, and to the knowledge of FORBA is not under investigation with respect to any violation of any Applicable Law.” (APA §4.14).

80 Old FORBA breached these warranties by omitting material facts, that it had knowledge of, regarding increasing regulatory scrutiny of certain of its affiliated dental centers and its own business model, and the threat of government investigations. In 2005, Old FORBA sought and received advice from a trusted lawyer in connection with then-pending government investigations. The lawyer, who represented Old FORBA, and also represented Mark DeRose, the son and brother of Defendants Edward DeRose, Dan DeRose and Michael DeRose, warned Old FORBA in a memorandum that the pending regulatory actions facing Old FORBA were merely the “initial steps to a full investigation of [Old FORBA’s] dentists and clinics” and that

the “ultimate target” of the investigations was Old FORBA “from a Medicaid reimbursement perspective.” The memorandum noted that the investigation would likely “proceed in a slow and deliberate fashion against what” the regulators “perceive as the weak links in [Old] FORBA’s defense ”

81. The legal memorandum concluded with a warning to Old FORBA: “Although the status of the investigations appears relatively benign at this time, it is not. FORBA, the clinics and the dentists need to treat this situation as an *all out investigation* to ultimately shut down FORBA and the clinics and discipline the dentists” (emphasis added). The memorandum demonstrates that Old FORBA’s lawyer (in consultation with others in his firm who “were formerly in charge of investigations at the AG’s office”) believed that “the current actions follow the typical pattern leading to full-scale fraud and other investigations,” and recommended that Old FORBA “proceed with extreme caution under the assumption that the investigations will continue and intensify over the next several months.” Old FORBA ignored the advice

82. Old FORBA had other information indicating the potential for investigations or other legal action, but did not share it with New FORBA, in breach of the APA. For example, in an internal email, Defendant Dr. William Mueller warned of certain “things we do which have caused concern on the part of parents, dental boards or media.” His list included: (1) “Parents [in the] back”; (2) patient “Immobilization”; (3) use of “Stainless steel crowns”; and (4) “Amount of work done at one time.” These very topics were ultimately the subject of a joint federal-state government investigation into the Small Smiles Centers, Old FORBA and New FORBA, coordinated by the United States Department of Justice

83. In addition, Old FORBA knowingly provided incomplete and misleading information concerning the investigation into Dr. Michael DeRose’s Medicaid Dental Centers in

North Carolina (the "North Carolina Centers") The investigation of Dr. Michael DeRose and the North Carolina Centers began prior to the APA, and by the time of the APA, Dr. Michael DeRose and his brother Danny, as well as the Old FORBA General Counsel, Joe Bower, were aware that the investigation was serious and likely to result in a settlement in the millions of dollars, and that government investigations were focusing on practices that the North Carolina centers shared with the Old FORBA centers.

84. Old FORBA failed to disclose to New FORBA the seriousness of the North Carolina investigation and its probable impact on the Small Smiles Centers given the practices under investigation and the role of Dr. Michael DeRose and Dr. Bob Andrus in both sets of centers.

85. In April 2008, the North Carolina Centers entered into a Settlement Agreement with the U.S. Department of Justice on behalf of the Office of Inspector General of the United States Department of Health and Human Services, the State of North Carolina, and the North Carolina Division of Medical Assistance. The North Carolina Centers paid \$10,050,000 to settle its potential civil liability for allegedly "submitting [certain] claims for reimbursement . . . that were not medically necessary and/or were performed in a manner that did not meet professionally recognized standards of care" and "failing, in some cases, to obtain informed consent for medical procedures and services."

86. New FORBA suffered damages as a result of Old FORBA's failure to disclose to New FORBA its knowledge that a government investigation of the Small Smiles Centers and the management company was likely. In late 2007, New FORBA learned that it, Old FORBA, and the Small Smiles Centers were the subject of a nationwide government investigation involving many of the issues previously identified by Old FORBA's counsel and partners prior to the

September 2006 closing, but not disclosed to New FORBA. New FORBA expended significant attorneys' fees and other costs in responding to the investigation. In January 2010, New FORBA entered into a settlement agreement with the Department of Justice, the Office of the Inspector General of the Department of Health and Human Services and a number of states in order to avoid the distraction and further costs associated with the investigation and any possible litigation. There were no findings that New FORBA violated the law. The amount of the settlement, which relates only to claims submitted to the government for payment after September 26, 2006, was \$24 million.

87. In its press release announcing the settlement, the State of New York, Office of the Medicaid Inspector General ("OMIG") stated that "New York State and the federal government took action after hearing complaints that the previous FORBA management [Old FORBA] allowed alleged improper practices in treating children, specifically Medicaid recipients, by restraining them during lengthy dental visits, performing root canals and placing crowns on baby teeth, and not allowing parents to accompany children during dental treatment."

Breach of APA §4.24 -- Disclosure

88. APA §4.24 provides that "[n]o representation or warranty made by FORBA in this Agreement contains any untrue statement of a material nature or omits to state a material fact necessary to make any of them, in light of the circumstances in which it was made, not misleading."

89. Old FORBA breached APA §4.24 because, as detailed above, a number of warranties made by Old FORBA contained untrue statements or omitted material facts, including APA §§4.5, 4.6, 4.7, 4.8, 4.11, 4.14, 4.18.

90. Misleading representations, omissions, and other wrongful conduct by Old FORBA have caused New FORBA to suffer substantial injury

Breach of APA §10.1 -- Indemnification

91. As Old FORBA's wrongful conduct and misleading and inaccurate representations and omissions came to light, and as various states began to conduct investigations and reclaim alleged overpayments relating to the time period of Old FORBA's management of the Centers, New FORBA exercised its rights under the APA to enforce Old FORBA's indemnification obligations.

92. Pursuant to the APA, notices of indemnification claims against Old FORBA were to be sent to "FORBA, LLC, 415 N. Grand Ave, Pueblo, CO 81003, Attn: Dan DeRose, President." APA § 11.9

93. On March 21, 2008, New FORBA sent a claims notice to Old FORBA informing Old FORBA that various federal and state government authorities were investigating the dental management business purchased from Old FORBA, and notified Old FORBA that New FORBA sought indemnification under APA §10.1 for any losses relating to Old FORBA's pre-sale conduct, including legal fees and costs already incurred and to be incurred in responding to government requests relating to Old FORBA and to pre-sale conduct of the centers, and any losses resulting from breaches of warranties revealed during the course of the investigations. New FORBA has incurred considerable attorneys' fees and expenses, in excess of \$1 million, in responding to government inquiries relating to Old FORBA and Old FORBA's management of the centers (APA §10.1 specifically provides that New FORBA is entitled to indemnification "for any damages, claims, costs, loss, liabilities, expenses or obligations (including, without limitation, reasonable attorneys' fees and associated expenses)"). As stated above, New FORBA

also suffered losses and damages as a result of Old FORBA's breaches of warranties. Old FORBA has denied New FORBA's claim for indemnification, in breach of its indemnification obligation. In denying the claim, Old FORBA stated that it did not require any further information from New FORBA.

94. On June 24, 2008, New FORBA sent a second claims notice to Old FORBA for losses arising from the falsified credentialing of Old FORBA employees and affiliated dentists, including Dr. Robert Andrus, Dr. Kenneth Knott and Dr. Swapna Kakarla. The letter reiterated Old FORBA's obligation under §10 1 (d) of the APA "to indemnify us for 'any damages, claims, costs, loss, liabilities, expenses, or obligations' we incur 'as a result of or arising out of [your] ownership or operation of the Assets or Business prior to the Effective Time,'" and under §10 1(e) "to indemnify us 'for any damages, claims, costs, loss, liabilities, expenses, or obligations' we incur 'as a result of or arising out of [your] acts or omissions prior to the Effective Time.'" Old FORBA has denied this second claim for indemnification in breach of its indemnification obligations.

95. On September 4, 2008, New FORBA sent a third claims notice to Old FORBA seeking indemnification for losses resulting from a civil RICO suit filed against New FORBA and its affiliates, and from a search warrant executed at one of the Small Smiles Centers in Tucson, Arizona. The civil suit sought damages relating to alleged conduct occurring in July and August 2004, and the search warrant sought documents dating back to May 16, 2005 — before New FORBA purchased the business. New FORBA incurred attorneys' fees and other costs in responding to these actions. Old FORBA has denied this third claim for indemnification, in breach of its indemnification obligations.

96 On September 24, 2008, New FORBA sent a fourth claims notice to Old FORBA seeking indemnification for losses, including legal fees, relating to federal and state investigations of Small Smiles Centers in Arizona, Colorado, Georgia, Idaho, Indiana, Kansas, Maryland, Massachusetts, Nebraska, New Mexico, New York, Oklahoma, Ohio, South Carolina, Virginia, and Washington, D.C. dating back to 2002. Old FORBA has denied this fourth claim for indemnification, in breach of its indemnification obligations.

97 On March 11, 2009, New FORBA provided an update on its earlier claims notices. In particular, New FORBA noted that an investigation by the Georgia Department of Community Health determined that the State of Georgia made overpayments, from 2005 through 2007, in the amount of \$408,199.51, of which at least \$290,749.00 was for services rendered prior to September 26, 2009, during the time when Old FORBA managed the Georgia Small Smiles clinics. New FORBA was compelled to pay the State of Georgia \$216,216 for amounts the state claims were improperly paid to the Georgia centers during Old FORBA's management. Old FORBA has denied the claim for indemnification and refused to indemnify New FORBA for payments made to Georgia, in breach of its indemnification obligations.

98 The March 11, 2009 letter also noted that the New York Office of Medicaid Inspector General ("OMIG") had asserted that the state overpaid Small Smiles of Syracuse an amount between \$1,300,233 and \$1,632,080 for the time period January 1, 2005 through December 31, 2006. During 21 of the 24 months covered by OMIG's audit, the Syracuse center was managed by Old FORBA.

99 On November 13, 2009, New FORBA notified Old FORBA that New York OMIG had asserted an estimated overpayment to Small Smiles of Rochester in the amount of \$2,000,347, covering the time period from January 1, 2006 through December 31, 2007.

100 New FORBA has agreed to pay the State of New York \$2.3 million to resolve the audit findings from the Syracuse and Rochester centers for periods prior to September 26, 2006. Old FORBA has denied the claim for indemnification and refused to indemnify New FORBA for payments to New York, in breach of its indemnification obligations.

101. Old FORBA and the Individual Defendants have refused to indemnify New FORBA for any of the indemnification claims noticed by New FORBA and breached the indemnification provisions of the APA.

102. All conditions precedent to the institution of this action by New FORBA have been satisfied, waived, or otherwise excused.

CAUSES OF ACTION

COUNT I

(Breach of Contract Against Old FORBA -- APA Representations and Warranties)

103. New FORBA re-alleges and incorporates by reference the allegations of paragraphs 1 through 102 of this Amended Complaint as if fully set forth herein.

104. Old FORBA and New FORBA entered into an APA.

105. The APA contains representations and warranties in §§4.5, 4.6, 4.7, 4.8, 4.11, 4.14, 4.18, and 4.24.

106. Pursuant to the APA (as amended), New FORBA paid \$435 million to purchase certain Old FORBA assets, based on and in reliance on these warranties and representations made by Old FORBA.

107. Old FORBA breached the APA because the representations and warranties in §§4.5, 4.6, 4.7, 4.8, 4.11, 4.14, 4.18, and 4.24 contained untrue statements of a material nature or omitted to state a material fact necessary to make all of the representations and warranties

contained in each of the above-referenced sections, in light of the circumstances in which they were made, not misleading.

108. As a direct and proximate cause of Old FORBA's breach of contract, New FORBA has suffered damages in excess of \$50,000,000.00.

109. New FORBA is entitled to damages arising out of Old FORBA's breach of contract.

COUNT II
(Breach of Contract against Old FORBA -- Indemnification Obligations Under APA §10.1(a))

110. New FORBA re-alleges and incorporates by reference the allegations of paragraphs 1 through 102 of this Amended Complaint as if fully set forth herein.

111. Old FORBA and New FORBA entered into an APA.

112. The APA contains representations and warranties in §§4.5, 4.6, 4.7, 4.8, 4.11, 4.14, 4.18, and 4.24.

113. Pursuant to the APA (as amended), New FORBA paid \$435 million to purchase certain Old FORBA assets, based on and in reliance on these warranties and representations made by old FORBA.

114. Old FORBA breached the APA because the representations contained in APA §§4.5, 4.6, 4.7, 4.8, 4.11, 4.14, 4.18, and 4.24 contained untrue statements of a material nature or omitted to state a material fact necessary to make all of the representations and warranties contained in each of the above-referenced sections, in light of the circumstances in which they were made, not misleading.

115. The APA contains an indemnification provision which provides that Old FORBA shall:

[I]ndemnify and hold harmless [New FORBA] from, against and for any damages, claims, costs, loss, liabilities, expenses or obligations (including, without limitation, reasonable attorneys' fees and associated expenses, but not including time spent by employees of such party), whether or not involving a third-party claim (collectively "losses"), incurred or suffered by any of them as a result of or arising from (a) any breach of or inaccuracy in any representation or warranty made by FORBA in this Agreement or any other Transaction Agreement; (b) any breach of a covenant or agreement made by FORBA in this Agreement or any other Transaction Agreement; (c) Excluded Assets and Excluded Liabilities; (d) FORBA's ownership or operation of the Assets or the Business prior to the Effective Time; and (e) FORBA's acts or omissions prior to the Effective Time.

APA, §10.1.

116. New FORBA provided notice to Old FORBA of its claims for indemnification, as required by the APA, in letters dated March 21, 2008, June 24, 2008, September 4, 2008, and March 11, 2009.

117. New FORBA is entitled to indemnification from Old FORBA pursuant to the APA.

118. Old FORBA breached APA §10.1(a) because it has refused to indemnify New FORBA for losses incurred as a result of Old FORBA's "breach of or inaccuracy in any representation or warranty made by FORBA in this Agreement or any other Transaction Agreement."

119. As a direct and proximate cause of Old FORBA's contractual breach, New FORBA has suffered damages in excess of \$50,000,000.00.

120. New FORBA is entitled to damages arising out of Old FORBA's contractual breach.

COUNT III
(Breach of Contract against Old FORBA -- Indemnification Obligations Under APA
§§10.1(d) and 10.1(e))

121. New FORBA re-alleges and incorporates by reference the allegations of paragraphs 1 through 102 of this Amended Complaint as if fully set forth herein.

122. Old FORBA and New FORBA entered into an APA

123. The APA contains an indemnification provision which provides that Old FORBA shall:

[I]ndemnify and hold harmless [New FORBA] from, against and for any damages, claims, costs, loss, liabilities, expenses or obligations (including, without limitation, reasonable attorneys' fees and associated expenses, but not including time spent by employees of such party), whether or not involving a third-party claim (collectively "losses"), incurred or suffered by any of them as a result of or arising from (a) any breach of or inaccuracy in any representation or warranty made by FORBA in this Agreement or any other Transaction Agreement; (b) any breach of a covenant or agreement made by FORBA in this Agreement or any other Transaction Agreement; (c) Excluded Assets and Excluded Liabilities; (d) FORBA's ownership or operation of the Assets or the Business prior to the Effective Time; and (e) FORBA's acts or omissions prior to the Effective Time.

APA, §10.1.

124. New FORBA provided notice to Old FORBA of its claims for indemnification, as required by the APA, in letters dated March 21, 2008, June 24, 2008, September 4, 2008, and March 11, 2009.

125. New FORBA is entitled to indemnification from Old FORBA pursuant to the APA.

126. Old FORBA breached APA §§10.1(d) and 10.1(e) because it has refused to indemnify New FORBA for losses incurred as a result of Old FORBA's "ownership or operation of the Assets or the Business prior to the Effective Time," and Old FORBA's "acts or omissions prior to the Effective Time."

127. As a direct and proximate cause of Old FORBA's contractual breaches, New FORBA has suffered damages in excess of \$5,000,000.00, including legal fees and costs incurred in responding to government requests relating to Old FORBA and to pre-sale conduct of the Centers.

128. New FORBA is entitled to damages arising out of Old FORBA's contractual breaches.

COUNT IV
(Breach of Contract against Individual Defendants -- All Indemnification Obligations)

129. New FORBA re-alleges and incorporates by reference the allegations of paragraphs 1 through 102 of this Amended Complaint as if fully set forth herein.

130. Old FORBA and New FORBA entered into an APA.

131. Article 10 of the APA contains an indemnification provision which provides that Old FORBA shall:

[I]ndemnify and hold harmless [New FORBA] from, against and for any damages, claims, costs, loss, liabilities, expenses or obligations (including, without limitation, reasonable attorneys' fees and associated expenses, but not including time spent by employees of such party), whether or not involving a third-party claim (collectively "losses"), incurred or suffered by any of them as a result of or arising from (a) any breach of or inaccuracy in any representation or warranty made by FORBA in this Agreement or any other Transaction Agreement; (b) any breach of a covenant or agreement made by FORBA in this Agreement or any other Transaction Agreement; (c) Excluded Assets and Excluded Liabilities; (d) FORBA's ownership or operation of the Assets or the Business prior to the Effective Time; and (e) FORBA's acts or omissions prior to the Effective Time.

APA, §10.1.

132. The Individual Defendants signed a "Joinder" to the APA, agreeing to be "responsible, on a pro-rata basis, with FORBA for the obligations of FORBA pursuant to Article 10 of this Agreement."

133. New FORBA provided notice of its claims for indemnification, as required by the APA, in letters dated March 21, 2008, June 24, 2008, September 4, 2008, and March 11, 2009

134. New FORBA is entitled to indemnification from the Individual Defendants pursuant to § 10.1 of the APA and the Joinder to the APA.

135. The Individual Defendants have refused to indemnify New FORBA for any of the indemnification claims noticed by New FORBA, in breach of the APA.

136. As a direct and proximate cause of the Individual Defendants' failure and refusal to indemnify New FORBA, New FORBA has suffered damages in excess of \$50,000,000.00

137. New FORBA is entitled to damages arising out of the Individual Defendants' breach of their contractual obligation to indemnify New FORBA.

COUNT V
(Declaratory Judgment Act, 28 U.S.C. §2201(a)- Against All Defendants)

138. New FORBA re-alleges and incorporates by reference the allegations of paragraphs 1 through 102 of this Amended Complaint as if fully set forth herein.

139. Old FORBA and New FORBA entered into an APA.

140. The APA contains an indemnification provision which provides that Old FORBA shall:

[I]ndemnify and hold harmless [New FORBA] from, against and for any damages, claims, costs, loss, liabilities, expenses or obligations (including, without limitation, reasonable attorneys' fees and associated expenses, but not including time spent by employees of such party), whether or not involving a third-party claim (collectively "losses"), incurred or suffered by any of them as a result of or arising from (a) any breach of or inaccuracy in any representation or warranty made by FORBA in this Agreement or any other Transaction Agreement; (b) any breach of a covenant or agreement made by FORBA in this Agreement or any other Transaction Agreement; (c) Excluded Assets and Excluded Liabilities; (d) FORBA's ownership or operation of the Assets or the Business prior to the Effective Time; and (e) FORBA's acts or omissions prior to the Effective Time.

APA, §10.1.

141. The Individual Defendants signed a "Joinder" to the APA, agreeing to be "responsible, on a pro-rata basis, with FORBA for the obligations of FORBA pursuant to Article 10 of this Agreement."

142. New FORBA provided notice of its claims for indemnification, as required by the APA, in letters dated March 21, 2008, June 24, 2008, September 4, 2008, and March 11, 2009.

143. Old FORBA and the Individual Defendants have refused to indemnify New FORBA and its affiliated Small Smiles Centers for any of the indemnification claims noticed by New FORBA, in breach of the APA.

144. There is a justiciable controversy as to whether Old FORBA and the Individual Defendants must indemnify New FORBA for claims New FORBA has made pursuant to the terms of the APA, as well as any additional costs and losses New FORBA might sustain related to indemnifiable claims in the future, including legal fees and costs incurred in connection with New FORBA's successful defense of claims brought by Old FORBA in state court in Wisconsin relating to the APA and the Escrow Agreement (*LICSAC, LLC, et al v. Small Smiles Holding Company, et al.*, Case No. 08-CV-2215).

145. New FORBA is entitled to a declaration of its rights to indemnification for such claims made by New FORBA in its notices dated March 21, 2008, June 24, 2008, September 4, 2008, and March 11, 2009, in amounts to be determined, and a declaration of its right to indemnification for ongoing costs incurred relating to Old FORBA's conduct, and future claims arising out of the breaches of warranties and breaches of contract outlined above.

COUNT VI
(Declaratory Judgment Act, 28 U.S.C. §2201(a)- Against Individual Defendants)

146. New FORBA re-alleges and incorporates by reference the allegations of paragraphs 1 through 102 of this Amended Complaint as if fully set forth herein.

147. Old FORBA and New FORBA entered into an APA

148. Article 10 of the APA contains the parties' obligations with respect to "Indemnification and Remedies "

149. The Individual Defendants signed a "Joinder" to the APA, providing that "[t]o facilitate the consummation of the transactions in this Agreement and in consideration of the substantial economic and other benefits inuring to the undersigned as a member of FLLC, DMLLC or NYLLC or a shareholder of DDM, the undersigned hereby joins this Agreement for the sole purpose of being responsible, on a pro-rata basis, with FORBA for the obligations of FORBA pursuant to Article 10 of this Agreement." APA, p. 41.

150. There is a justiciable controversy as to whether the Individual Defendants are liable, on a pro-rata basis, pursuant to the Joinder to the APA, for any portion of any judgment against Old FORBA. In addition, there is a justiciable controversy as to whether the Individual Defendants are liable, on a pro-rata basis, pursuant to the Joinder for any costs or expenses that New FORBA may incur in the future as a result of any breach of the contract or the representations and warranties in the APA

151. New FORBA is entitled to a declaratory judgment that the Individual Defendants are liable, on a pro-rata basis, for any judgment against Old FORBA.

PRAYER FOR RELIEF

WHEREFORE, for the foregoing reasons, New FORBA respectfully requests that the Court enter Judgment in favor of New FORBA granting the following relief:

- A. A declaratory judgment that New FORBA is entitled to indemnification from Old FORBA and the Individual Defendants for those claims in its letters dated March 21, 2008, June 24, 2008, September 4, 2008, and March 11, 2009, and ongoing and future claims arising out of Old FORBA's breaches of warranties and breaches of contract;
- B. That Old FORBA be found liable to New FORBA for monetary damages to which New FORBA is entitled for breach of contract, in an amount to be shown at trial in excess of \$50,000,000.00;
- C. That Old FORBA be found liable to New FORBA for monetary damages to which New FORBA is entitled for breach of §10.1(a) of the APA, in an amount to be shown at trial in excess of \$50,000,000.00;
- D. That Old FORBA be found liable to New FORBA for monetary damages to which New FORBA is entitled for breach of §§10.1(d) and 10.1(e) of the APA, in an amount to be shown at trial in excess of \$5,000,000.00;
- E. That the Individual Defendants be found liable to New FORBA for monetary damages to which New FORBA is entitled for breach of contract, in an amount to be shown at trial in excess of \$50,000,000.00;
- F. A declaratory judgment that the Individual Defendants are liable, on a pro-rata basis, for the judgment against Old FORBA;
- G. That pursuant to APA §11.16, and in addition to any other relief or award to which New FORBA may be entitled, New FORBA be awarded the legal expenses it incurred to enforce the APA, including reasonable attorneys' fees, costs, and necessary disbursements; and
- H. Such other and further relief available that the Court may deem just and proper.

Dated: January 22, 2010

Respectfully submitted,

/s/ Christopher J. Dawes

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Counsel for FORBA Holdings, LLC

CERTIFICATE OF SERVICE

I hereby certify that on January 22, 2010, I electronically filed the foregoing **AMENDED COMPLAINT** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Randall H. Miller, Esq
Stephen D. Rynerson, Esq
Stephen P. Nash, Esq
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s/ Ed Wesselhoff
Ed Wesselhoff

EXHIBIT “B”

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STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

Branch 9

LICSAC, LLC, et al.,

Plaintiffs,

-vs-

Case No. 08-CV-2215

SMALL SMILES HOLDING
COMPANY, LLC, et al. and
ASSOCIATED IRUSI COMPANY,
NATIONAL ASSOCIATION, et al.,

Defendants.

PRESIDING: HONORABLE RICHARD G. NIESS

PROCEEDINGS: Court Trial

DATE: December 22, 2009

APPEARANCES: KIM GRIMMER:
Attorney at Law, appearing on
behalf of the Plaintiffs.

JAMES A. FRIEDMAN, L. JOSEPH
LOVELAND, SIMEON SCHOPF:
Attorneys at Law, appearing on
behalf of the Defendants.



1 you had to have the ability to provide service to
2 those kids at the time they came in because if they
3 didn't return, their teeth would go untreated. Again
4 all the work that we did we received consent and
5 approval from the parent or guardian.

6 Q Okay. Did -- you say you never dictated treatment.
7 Did Old FORBA, prior to the sale to new FORBA, have
8 manuals where you had if this happens in terms of a
9 patient, you find this condition in their teeth, this
10 is what we recommend you do? Did you have manuals
11 like that?

12 A We had what we call a Dentist Orientation Manual, and
13 in that manual Dr. Mueller would select guidelines
14 that were from the American Academy of Pediatric
15 Dentistry. They might be White Papers from a dental
16 publication, but they would all be guidelines or
17 directives from, you know, certified dental practices
18 that would say, you know, for underserved children,
19 high risk population, here's the restorative
20 treatment of choice. So they would all have their --
21 they would have their orientation manual that would
22 direct them to that, but at the end of the day, every
23 dentist had to make their own decision based on their
24 training that they received at their dental school.

25 Q And was that made clear to all of your dentists?

1 headquartered, and there were actually multiple
2 locations within the office, but the main one would
3 be in my office where I had a series of file cabinets
4 for every clinic. The way we set everything up was
5 based on clinic, so there would be four drawers in
6 each file cabinet for each clinic, and then down in
7 the basement of the office we had a room with all of
8 the archived information, and the archived
9 information also included past years of all the
10 clinic information as well as our monthly board
11 meeting packets.

12 Q Did you make clear to the people from New FORBA that
13 all of these documents were available to them in the
14 offices?

15 A Yes. And the person that I made sure that was very
16 well aware of all that was Al Smith because Al was
17 going to be transitioning into my role, so I made it
18 very clear to Al. I know Rodney Cawood, who was
19 going to be taking over the CFO responsibilities,
20 also knew of that because he spent some time with
21 Ryan Root, who was also in our office.

22 So Al Smith and Rodney Cawood were very
23 well aware of where the documents were.

24 Q All right. What I'd like to do is look at this
25 memorandum from King & Spalding again, the first

1 Q Sure. And by the way, March 21 wasn't the first time
2 Old FORBA knew that there were subpoenas out there,
3 was it?
4 A First time I saw it in writing was March 21st.
5 Q Well, you know, we talked about Mr. Bower. Didn't
6 you know that Mr. Bower had gotten a phone call from
7 Ms. Rodriguez of King & Spalding on or about March 1
8 in which she told him that she had been asked by HHS
9 if she could accept service of a subpoena on DD
10 Marketing?
11 A I did hear about that.
12 Q DD Marketing is this side of the table of the room,
13 right?
14 A Correct.
15 Q Okay. So you knew that by March 1 at least that
16 there seems to be subpoenas coming to DD Marketing as
17 well as to New FORBA?
18 A Right. And we didn't receive it for a period of
19 time.
20 Q Yeah. A couple months later you actually got it?
21 A Correct.
22 Q Did you know that there had been a subpoena issued to
23 FORBA, LLC, which is also on this side of the table,
24 but had been sent over here to New FORBA?
25 A I don't think I was aware of that.

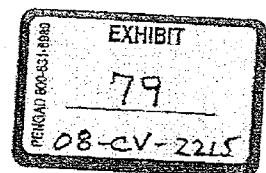
EXHIBIT “C”

Preliminary Request List

Project Lombardi



Preliminary Request List



Preliminary Request List

The following is a preliminary request listing for financial and tax due diligence procedures to be performed with respect to FORBA, LLC and subsidiaries and DD Marketing (collectively, the "Company").

"*Historical period*" refers to the fiscal years ended on December 31, 2004 and 2005, and the three month periods ended March 31, 2005 and 2006.

"*Forecast period*" refers to the years ending on December 31, 2006 and 2009.

"*Historical balance sheet dates*" refers to December 31, 2004 and 2005 and March 31, 2006.

General

1. Coordinate access to the audited workpapers prepared in connection with the most recently completed two audits (i.e. two sets of papers – 2005 and 2004).
2. Provide all management letter comments or other reports produced by the independent auditors during the last three audits.
3. Provide (electronically) monthly financial statements (income statement and balance sheet) during the historical period at a consolidating (including 'DD Marketing') and consolidated level.
4. Provide clinic level financials statements (no consolidating/consolidated statements required) for 2003.
5. Provide copies of operational statistics reports by clinic, by month during the historical period (i.e., procedures, procedure by type (top 10 only), number of dentists, hygienists, (and other FTEs (e.g. administrative employees) and chairs).
6. Provide access to comparative trial balances for the historical period for all consolidated entities.
7. Provide a listing of all non-recurring or unusual items occurring during the historical period.
8. Provide support for the Company's proposed "add-back" adjustments to EBITDA for the historical period.
9. If applicable, provide a reconciliation of the Company's internal consolidating financial statements (statements of operations and balance sheets) to the audited financial statements for each period in the historical period, including DD Marketing and other operations.

10. Provide budget to actual results (i.e., management's internal financial reporting package), including any narrative discussions, on a consolidated basis and on a location basis for each period in the historical period.

11. Provide the Company's accounting policy manual.

12. Discuss with management the following during the historical period including (i) significant and/or unusual accounting policies, (ii) accounts that involve a significant amount of management judgment (e.g. provision for contractual adjustments, provisions for uncollectible accounts, accruals for uninsured malpractice claims, medical claims liabilities, deferred revenue, etc.), (iii) changes in accounting principles, policies, procedures or practices, (iv) nature and extent of year-end closing adjustments, (v) transactions that represent "soft" income or income generated from outside normal operations, and (vi) changes in business strategies, policies, procedures or practices.

13. Summarize any differences between interim and year-end accounting close procedures.

14. Where applicable, provide the status of any open Medicaid cost reports or similar retrospective settlement mechanisms.

15. Summarize the process used for patient chart audits and provide a summary of the results of chart audits performed during the historical period by clinic.

Historical income statement analysis

Revenues

16. Provide overview of the patient billing (revenue recognition) and collection systems as well as the Company's methodology for establishing contractual allowances for third party receivables (i.e. gross to net revenue procedures).

17. By clinic, provide a schedule of gross and net revenues by service (procedure) type for the historical period.

18. Provide a matrix of Medicaid rates in effect (by major procedure) by state during the historical period.

19. Provide an analysis of any out-of-period or retroactive Medicaid revenue settlements or recoupments.

20. By clinic, by month, provide cash collections for the historical period.

21. Provide trends (revenues and volumes) in the top 10 procedures by clinic.
22. Provide percent of broken and rescheduled appointments by location.

Operating Expenses

23. Provide detailed breakdown of operating expenses (direct and indirect) by clinic and for the overhead function (and 'DD Marketing') for the historical period.
24. Provide an analysis of dental supply rebates received during the historical period, including the date earned, the date accounted for and the manner in which the rebate was accounted for (i.e. reduction of supply expense versus revenue).
25. Provide a monthly FTE analysis of administrative headcount for the overhead function (and DD Marketing) during the historical period.
26. Provide a schedule of any severance arrangements entered into and related charges incurred during the historical period.
27. Provide a schedule of other income and expense for the historical period.
28. Provide a detail of start-up costs associated with new clinics during each year in the historical period.

Forecasted results of operations

29. For the forecast period, provide the complete financial projections, including key assumptions and growth rates used to build the projections. Provide access to clinic level projected results.
30. Provide an analysis of projected start-up costs during the projected periods
31. Provide an analysis of projected working capital and capital expenditure needs to support projected clinic additions and equipment replacements/upgrades (i.e. segregate capital expenditures by maintenance versus growth capital).

Historical balance sheet

General

32. Provide overview of the cash receipts and disbursement policies and procedures, including use of lockbox, authorized controls, segregation of duties, requirements for letters of credit, or other unusual credit facilities.

33. Provide all bank reconciliations for the most recent balance dates.

Accounts Receivables / Other receivables

34. Provide copies of accounts receivable aging by clinic as of the historical balance sheet dates.
35. Provide a roll forward analysis of the reserve for uncollectible accounts for the historical period, which presents bad debt expense, write-offs and recoveries for each period in the historical period.
36. Provide the bad debt allowance model used to establish reserves as of the historical balance sheet dates.
37. Provide an analysis of states with Medicaid patient co-pay/deductibles. Provide statistics on upfront collections of these amounts and historical collection rates and aging considerations.
38. If applicable, provide a rollforward of any Medicaid cost report or other retrospective settlement receivables/payables during the historical period.
39. Provide a schedule of other accounts receivable as of the historical balance sheet dates.

Prepaid expenses and other assets

40. Provide a schedule of prepaid expenses and other current assets as of the historical balance sheet dates.
41. Provide a schedule of insurance coverages, carriers, premiums and claims by policy type for each year in the historical period.

Equipment and leasehold improvements

42. By clinic, provide a roll forward of equipment and leasehold improvements (including additions, disposals, etc) and accumulated depreciation for the historical period. Discuss the capitalization policy used during the historical period.

Accounts payable and accrued expenses

43. Provide a schedule of accounts payable and accrued expenses by significant component as of the historical balance sheet dates.
44. Provide copies of the accounts payable aged trial balance as of the historical balance sheet dates, as reconciled to the general ledger.
45. Provide a schedule of accrued compensation as of the historical balance sheet dates. Discuss significant fluctuations.
46. Provide an analysis of the accrual for the self-insured employee health exposures, including access to average claims history and the related claims lag for the most recent year.

Debt, contracts, commitments and contingencies

47. Provide a summary of existing lease agreements and lease commitments (key terms such as beginning and ending lease date, escalator clauses, extension terms and rental commitments by year for each of the next five years and beyond.)
48. Summarize the existence of any exposures with the respective state regulatory agencies which may result in additional liabilities to the Company.
49. Summarize any debt prepayment or change of control payments.

Taxes

50. Copies of state (and any federal (i.e. DD Marketing) tax returns filed during the last three years.
51. Provide a schedule of all tax jurisdictions applicable to the Company's operations.
52. Provide copies of any returns currently under audit.
53. State income tax apportionment workpapers for the last year.
54. Policies and procedures with respect to sales and use taxes. Sales tax returns for the last three years.
55. Property tax returns for the last year.

MEMORANDUM

VIA ELECTRONIC MAIL

TO: FORBA, LLC
c/o Sanus Holdings, LLC

FROM: King & Spalding LLP

DATE: June 20, 2006

RE: Healthcare Regulatory Supplemental Due Diligence Request List for the Proposed Arcapita Inc. Investment in Sanus Holdings, LLC for the Acquisition of FORBA, LLC.

The following is a list of certain documents that we request for review in connection with the above mentioned proposed transaction that are not currently available in the online data room. We ask that the documents be furnished with respect to FORBA, LLC ("FORBA"), its subsidiaries and affiliates, and each of the legal entities owning or operating the dental clinics managed by FORBA or its affiliates (collectively, the "Company").

- (a) Description of utilization of any billing or collection agencies and copies of all relevant agreements.
- (b) Joint or group purchasing agreements to which the Company is a party.
- (c) All sales agency, marketing, or other commission agreements to which the Company is a party.
- (d) Documents that relate to any oral or written arrangements between the Company and any manufacturer, wholesaler or distributor of drugs, biologicals, medical supplies or medical devices, including, but not limited to, endorsement, promotional or educational arrangements.
- (e) A description of any referral service in which the Company, or any affiliated health care professional associated with the Company, participates.
- (f) All patient or customer referral agreements to which the Company is a party.
- (g) A description of the Company's referral sources and how the Company develops business sources.
- (h) A description of any reimbursement appeal currently pending before any governmental agency or authority or any third-party payor program, the results of which could materially effect the Company's revenues.
- (i) All manuals, handbooks, policies and procedures used in connection with the billing of goods and services by the Company (including policies and procedures relating to refunds).

- (j) All marketing materials, such as public relations pamphlets, newspapers, advertisements or public seminar material regarding the Company, its services or its personnel.
- (k) Company policy and procedure manuals.
- (l) Company policies regarding marketing and sales, customer discounts, rebates, gratuities and professional courtesies.
- (m) Copies of all documents that describe compensation to the Company's sales and marketing agents, including employment or independent contractor agreements and a description of recruitment arrangements and practices (to the extent not already provided in response to another request).
- (n) A description of the Company's compliance with, or plans to comply with, as applicable, the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and regulations promulgated thereunder, including final privacy, electronic transaction and security regulations.
- (o) All Company documents relating to the determination of whether Company personnel, affiliated healthcare providers or vendors with which the Company does business have been excluded from participation in federal government programs.
- (p) The Company's corporate compliance manual, along with descriptions of related training programs, implementation schedules and audits, and minutes from meetings of the compliance committee minutes.
- (q) To the extent not already provided, all agreements (whether written or oral) between the Company and any person entity in a position to refer business to the Company.
- (r) All reports of audits done by or on behalf of the Company's fiscal intermediaries in the past three (3) years.
- (s) Documents that describe the Company's involvement in the selection or recommendation of vendors to supply items or services ancillary to dental services, such supplies and drugs and biologicals.
- (t) All documents that relate to compensation or payment, in cash or in kind, to sources or producers of patient referrals to the Company.
- (u) All documents relating to any financial relationship (including an investment interest or compensation arrangement) between any health care provider (including dentists) and FOBRA or any of the dental clinics managed by FORBA or its affiliates.
- (v) To the extent not already provided, any audits or surveys of the Company or its operations (or any segment thereof) performed by any third party (including any governmental agency or its contractor).
- (w) Description of compensation and bonus plan for all dentists employed by FORBA or the dental clinics managed by FORBA or its affiliates.

* * * * *

Project Lombardi

Due Diligence Questions

Due Diligence Questions:

- 1) Medicaid Reimbursement [p.14-15 in mgmt. presentation]
 - a. Medicaid reimbursement levels by state
 - b. Trends affecting those reimbursement rates
- 2) Compliance
 - a. Procedures in place
 - b. Issues
- 3) De Novo site selection process [p.39 in mgmt. presentation]
 - a. Describe process / factors considered
 - b. How many remaining sites still available?
 - c. Ability to cluster de novo sites vs. new states
- 4) Utilization data
 - a. Visit statistics
 - b. Capacity utilization data
 - c. % cancellations
 - d. % of new patients vs. returning patients
- 5) Calculate as of December 31, 2003, 2004 and 2005 revenue per:
 - a. Dentists employed (full-time equivalents)
 - b. Number of chairs
 - c. Number of visits [p.52 of mgmt. presentation]
- 6) Dentist Analysis
 - a. Dentist turnover (by dentist category – lead, associate, etc) for 2003 through March 31, 2006
 - b. Dentists' compensation analysis
 - i. Discuss bonus program that is currently in place and restructuring [p. 46 of mgmt presentation]
 - c. Dentist recruitment / hiring process
 - d. Dentist training program
 - e. # of dentist and ancillary providers per office [p.25 of mgmt. presentation]
- 7) Distribution of revenue mix (general, hygiene, orthodontics, periodontics, etc.) for 2003 – 2005
 - a. Hygiene (60%) vs. Operative (40%) [p.23 of mgmt. presentation]
- 8) Operating expenses for 2003 – 2005:
 - a. Advertising Expense
 - b. Occupancy Expense
 - c. Lab Fees & Supplies
- 9) Collection / production (net of bad debt expense)
- 10) Discuss profitability analysis of *de novo* unit openings
- 11) Discuss analysis of pro forma adjustments
- 12) Credit patient balances (orthodontics, crowns & bridges, patient over-payments)

- 13) Senior management team
 - a. Effect of previous senior management team leaving?
 - b. How important were their relationships with customers, vendors and employees at the site level?
- 14) Exit Strategy
 - a. What is contemplated exit strategy? Sale to another private buyer?
 - b. What will the growth drivers be when we write the CIM at exit? Will it still be opening more de novo offices?
- 15) What are the potential pitfalls that the management team is concerned with?

Ernst & Young Due Diligence Questions

- 1) Discuss revenue per patient declining (p. 38 of E&Y)
 - a. Volume is driving revenue growth
- 2) Discuss denied participation in TennCare (p. 10 of E&Y)
- 3) Discuss billing fraud at Rochester facility (p. 13 of E&Y)
- 4) Discuss U.S. Department of Labor investigation of employee overtime laws (p. 14 of E&Y)
- 5) Revenue quality deterioration (p. 17 of E&Y)
- 6) Self-insured entity (p. 19 of E&Y)
- 7) Additional financial staff – are the appropriate controls in place? (p. 21 of E&Y)
- 8) Same-store growth rates
 - a. Most mature clinics (pre-FY03A) are budgeted to grow at 4%.
 - b. Will other classes trend toward this 4% level?
- 9) Performance by class
 - a. Why is FY04A clinics the strongest performers? (p. 25 of E&Y)
 - b. Why has FY05A clinics settled below other classes? (p. 37 of E&Y)
- 10) Trends of the EBITDA margin by de novo class (p. 26 of E&Y)
 - a. Prior to FY04A = 85%
 - b. FY04A = 68%
 - c. FY05A = 52%
 - d. FY06 = 19%
- 11) Discuss de novo success factors (p. 27 of E&Y)
 - a. Underlying market attractiveness
 - b. State-specific rate environment
 - c. Competitive forces
 - d. Market penetration
 - e. Clinic location
 - f. Ability to staff the clinic with quality staff
- 12) Adjustments per site (p. 29)
 - a. 12 sites with potential to under perform
 - b. 11 sites with potential to over perform

SANUS HOLDINGS, LLC
ADDITIONAL DUE DILIGENCE REQUEST

SELLER – FORBA, LLC and its affiliates

I FINANCIAL INFORMATION – THE FOLLOWING FINANCIAL INFORMATION IS NEEDED IMMEDIATELY. A SUPPLEMENTAL REQUEST WILL BE PROVIDED BASED ON THIS INFORMATION

- A Furnish a copy of the audited financial statements of SELLER (including, without limitation, DD Marketing) for the last three fiscal years.
Satisfied [E&Y to confirm].
- B Furnish a copy of SELLER'S internal financial/operating tracking reports by clinic and consolidating information, if available, for the last three fiscal years and for the latest period available.
Satisfied [E&Y to confirm].
- C Furnish a copy of the 2006 detailed budgets for SELLER and SELLER'S projections for 2006 as well as prior and subsequent years.
Satisfied [E&Y to confirm].

II. GENERAL CORPORATE MATERIALS OF SELLER

A. SELLER Corporate Data

1. Articles of Organization or their equivalent and all amendments of SELLER.
Partially satisfied – need for DD Marketing, FORBA NY, LLC and for clinics not marked with an "X" on the attached Due Diligence Documents Received chart.
2. Operating Agreement or its equivalent and all amendments of SELLER.
Partially satisfied - need for DD Marketing, FORBA NY, LLC and for clinics not marked with an "X" on the attached Diligence Documents Received chart. Also need a copy of the First Amendment to the FORBA LLC Operating Agreement dated 12/1/2002.
3. List of trade names, if any, under which SELLER has transacted business during the past three years, and jurisdictions in which such trade names are registered
Satisfied.
4. Copy of all minutes and resolutions reflected in SELLER'S minute book for past three years
Satisfied – FORBA has confirmed no minutes or resolutions for past three years other than those provided.
5. An organizational chart showing the manner in which SELLER fits within its corporate organization
Satisfied.
6. List of locations of all affiliated dental offices
Satisfied.
7. Provide a detailed ownership/capitalization table outlining ownership structure of both SELLER and operating entities

Partially satisfied. Please provide detailed capitalization table (i.e., 10 authorized units of which 9 are issued and outstanding) for each entity.

B Organization

1. Provide a description of the organizational structure of SELLER, including the names, ages and hierarchy of officers and key managers.

Satisfied.

2. Conflict of interest policy, procedures for personnel staff.

Satisfied.

3. Provide access to a copy of all documentation with respect to any completed corporate acquisition, merger, reorganization, exchange, readjustment or succession, including any presentations or acquisition agreement (including any exhibits or schedules thereto) relating to SELLER.

Satisfied.

4. Furnish a list and a copy of all documents evidencing joint ventures or partnerships in which SELLER has an investment or partnership interest

Satisfied.

III HEALTH CARE MATTERS

- A. Copies of (i) of any licenses, permits, registrations or certifications held by SELLER or its employees with respect to SELLER'S operations, (ii) any Medicaid or other similar provider number, and (iii) a list of licensed employees or independent contractors (and description of the applicable license) at each of SELLER'S facilities

FORBA indicated not applicable.

- B Copies of healthcare accreditations

FORBA indicated not applicable.

- C Copy of corporate Ethics and Compliance program.

FORBA indicated not applicable.

- D Copy of any corporate integrity agreements.

FORBA indicated not applicable.

- E Copies of non-proprietary policy and procedure manuals.

Not satisfied.

- F Provide notices as to violations of law relating to any alleged violations, orders or deficiencies with respect to any license, permit, registration or certification, or provider agreement or with respect to SELLER'S reimbursement practices, whether with governmental programs or private third-party payors or self-payors

Satisfied.

- G Access to dentist/surgeon attitude surveys, employee, community and patient surveys for the past three years

Satisfied.

- H Notices of investigations from Medicaid, carrier, HCFA, OIG, DOJ, FTC, U.S. Attorney, Department of Health, Attorneys General, other agencies as to specific issues EMTALA, anti-kickback, Stark, False Claims, investigational devices, lab unbundling, or otherwise.

Satisfied. Note: FORBA indicated there are no notices from CMS or OIG.

- I. Copies of any written policies, procedures, processes and methods for quality review, assessment, improvement and assurance.
Not satisfied.
- J. Information regarding current dentists/surgeons at each of SELLER'S facilities: including Birth date; Status (i.e., active, courtesy, etc.); specialty, Board certified (yes or no); and Practice location
Not satisfied.
- K. Copies of licensure survey reports for the last two surveys.
FORBA indicated there have been no licensure survey reports for the last two surveys. They have not performed any licensure surveys for any of their dentists.
- L. Copies of Core Coding Report
FORBA indicated none exist.
- M. Copies of Trend Screening Report
FORBA indicated none exist.
- N. Copies of Coding Compliance review reports.
FORBA indicated none exist.
- O. Copies of market share data for the past three years
FORBA indicated none exist.
- P. Provide utilization (surgeries, procedures, etc.) by dentist/surgeon for the past three years.
FORBA indicated none exist.
- Q. Copies of medical staff bylaws, if any.
FORBA indicated none exist.
- R. Medical staff development plan and procedures, if applicable.
FORBA indicated none exist.
- S. If applicable, copies of any certificates of need currently pending, challenged or otherwise in litigation.
FORBA indicated none exist.
- I. If applicable, documents relied on in claiming an exemption from CON requirements regarding major capital expenditures program changes.
FORBA indicated none exist.

IV. LITIGATION

- A. List and give a description of any claims, charges, arbitrations, grievances, actions, suits, investigations, proceedings involving SELLER or the officers and directors of SELLER (in their capacity as officers and directors) currently outstanding or outstanding at any time.
Satisfied.
- B. Provide information on judgments, writs, injunctions, decrees, awards or orders of any court or other governmental agency or body relating to or affecting SELLER, its employees or the assets comprising the SELLER which contain continuing obligations for the SELLER not described in IV(A) above.
FORBA indicated none exist.
- C. Give a brief description of all pending, threatened or contemplated disputes, claims, actions, suits or proceedings, arbitrations or investigations, involving SELLER'S assets, including any workers compensation, environmental or infringement claims not described in Item IV(A) above.
Satisfied.

- D. Provide a copy of counsel letters to independent public accountants concerning pending or threatened litigation that were furnished to SELLER (unless there are privilege considerations).

Satisfied.

Relate?

V COMPLIANCE WITH LAWS.

- A. Furnish a copy of all notices of any citations, violations or claimed violations received by SELLER involving any laws, ordinances, rules, regulations or orders, and any zoning, environmental, health, safety, wage and hour, equal opportunity and anti-discrimination, food and drug or price control laws, ordinances, rules, regulations or orders.

Satisfied.

- B. Copies of all governmental permits, licenses or authorizations required for the SELLER'S conduct of business, including, but not limited to, all business licenses, government licenses, permits and consents currently held by SELLER not provided in III(A) above.

Not satisfied.

- C. Provide copies of all reports to and correspondence with governmental agencies (including, without limitation, state dental boards or departments of insurance) involving non-compliance with laws involving SELLER or its employees.

FORBA indicated none exist.

- D. Provide copies of all matters of violations of employee health and safety laws related to the SELLER arising in connection with OSHA or other inspections for last three years.

FORBA indicated none exist.

VI LABOR AND EMPLOYEE MATTERS.

- A. Furnish a copy or a description of all employee policies and/or employee policy manuals relating to employees associated with or employed by SELLER.

Not satisfied.

- B. Furnish a list of all present full time, part-time and temporary employees employed or engaged by SELLER, showing names, date of birth, dates of hire, location, titles, total remuneration for the year ended December 31 of the previous year, and their annual remuneration, including a description of all perquisites, fringe benefits and commissions (or expected compensation, if more appropriate)

1. Provide biographies of executives and board of directors.

Satisfied.

2. Summary of key management and employees including salary and total compensation.

Partially satisfied — please indicate if the key managers receive salaries or if they are compensated through distributions and provide the amounts of such compensation.

The term "part-time" employees means an employee who is employed for an average of fewer than 20 hours per week or who has been employed for fewer than six of the 12 months preceding the anticipated date of the closing. This term includes workers who will traditionally be understood as short-term, "seasonal" employees.

The period to be used of calculating whether a worker has worked "an average of fewer than 20 hours per week" is the shorter of the actual time the worker has been employed for the most recent 90 days.

- C. If applicable, provide any information or document relating to any strike, slowdown, picketing or work stoppage by any union or other group of employees against the SELLER, any secondary boycott with respect to its or their boycotts, any lockouts by them of any of their employees or any other similar occurrence, that affects or could affect the operations of SELLER.

FORBA indicated none exist.

D. If applicable, furnish a copy or a description of the following as they relate to SELLER:

1. Any organizational activity among any employees;
FORBA indicated none exist.
2. Any charges or threatened charges of unfair labor practices;
FORBA indicated none exist.
3. Any documents evidencing non-compliance with all applicable federal and state laws and regulations concerning the employer/employee relationship and with all agreements relating to the employment of employees, including, without limitation, provisions thereof relating to wages, bonuses, hours of work and payment of social security taxes;
FORBA indicated none exist with the exception of documents produced pursuant to V.A. above and VI.E.1. below.
4. Practices regarding testing (including blood, drug, alcohol and polygraph testing); and
Satisfied.
5. Practices regarding pre-employment and post-employment medical examinations.
FORBA indicated none exist.

E List and give a description of any threatened or pending claims related to SELLER regarding:

1. Wage and Hour claims under the Fair Labor Standards Act or any comparable state law, and any other Wage and Hour investigations or litigation;
Satisfied.
2. Equal Employment or Human Rights related charges, investigations, litigation or consent decrees concerning race, color, religion, sex, national origin, age, handicap, veterans status, marital status or disability;
Satisfied.
3. Representation petitions or unfair labor practice charges, investigations, litigation or current notices of compliance;
FORBA indicated none exist.
4. Grievances, arbitrations or litigation to enforce or overturn awards;
FORBA indicated none exist.
5. OSHA investigations, citations, complaints or litigation;
FORBA indicated none exist.
6. Employee benefits, related claims or litigation;
FORBA indicated none exist.
7. State labor law claims, investigations or litigation including, but not limited to, worker's compensation;
FORBA indicated none exist.
8. Claims or litigation concerning wrongful termination, negligent hiring, invasion of privacy or defamation; and
FORBA indicated none exist with the exception of documents produced pursuant to IV. above.

9. Investigations, violations or fine notices or litigation by the Immigration and Naturalization Service or the U.S. Department of Labor Employment and Training Administration.

FORBA indicated none exist.

- F. If applicable, submit copies of any "material" correspondence regarding SELLER'S labor matters.

FORBA indicated not applicable.

- G. List all employees of SELLER who are not citizens or resident aliens ("Greencard Holders") of the United States and submit copies of each such person's I-9 Form and I-94 Arrival/Departure Card.

Partially satisfied - please provide copies of each such person's I-9 Form and I-94 Arrival/Departure Card.

- H. The following information on dentists/surgeons covered by recruiting agreements for the past three years:

1. Specialty, if applicable;

FORBA indicated not applicable.

2. When provider numbers were obtained;

FORBA indicated not applicable.

3. Guarantee payments by month; and

FORBA indicated not applicable.

4. Total collections by month

FORBA indicated not applicable.

- I. Provide revenue by recruited dentist/surgeon for the past two years and budgeted revenue by recruited dentist/surgeon for the current year.

FORBA indicated not applicable.

- J. Provide list of all current employees showing current time off balances (hours and dollars), including vacation, holiday and sick, regardless if payable at termination of employment or not.

Not satisfied.

VII. EMPLOYEE BENEFIT PLANS.

- A. Does SELLER have any employee benefit plans covering SELLER'S employees, including the following types of plans, if so, provide a copy of the summary plan description:

1. Defined benefit plan subject to Title IV (also include latest actuarial report and 5500);

FORBA indicated not applicable.

2. Nonqualified retirement plan, including estimates of liabilities, funding requirements and expected distribution dates;

FORBA indicated not applicable.

3. Health and welfare plan (life, health, severance, disability, etc.), including latest monthly employee contribution rates;

Satisfied.

- 4 Cafeteria plan and flexible spending accounts; and

FORBA indicated not applicable.

5. Current bonus plan.

Satisfied.

- B. For all self-insured health and welfare plans, provide latest actuarial estimate of incurred but not reported (IBNR) claims, reserves held on SELLER'S general ledger, most recent 12 months claim history and stop loss policy.

Satisfied.

VIII. **[Intentionally omitted.]**

IX. **REAL PROPERTY**

Furnish a list and description of all real property (including the location thereof and a description of any structures located thereof) ("Property") owned or leased by SELLER. As to owned Property, please provide updated title commitments, surveys, and a list of title exceptions for each parcel of owned property. Property should include, but is not limited to, Owned Properties, Leased Properties, Medical Directorships, and Exclusives.

Satisfied.

X. **ENVIRONMENTAL MATTERS**

- A. Furnish copies of all notices of violation of requests for information from any federal, state or local governmental agency or authority ("Agency"), notifications or reports submitted to any Agency relating to the SELLER, and material correspondence with any Agency in connection with matters relating to pollution, protection of the environment, human health and safety, underground storage tanks ("USTs"), asbestos, or pesticides or agricultural chemicals ("environmental matters"), as well as any permits, licenses, certificates, authorizations or approvals with respect to environmental matters.

FORBA indicated none exist.

- B. Furnish a list and description of any hazardous, toxic or regulated materials which are or have been stored, treated, placed, held, located, released or disposed of on, under or at the Property, including, but not limited to, materials in USTs and any pesticides, herbicides or agricultural chemicals applied or released to the land, or the transportation of any such materials from the Property to any off-site location, as well as any related manifests, permits, certificates, authorizations or approvals.

FORBA indicated none exist.

- C. Furnish a copy of any available reports, soil, water or asbestos sampling or analytical data, UST testing data and closure or release notifications and reports, or other written documents or materials regarding environmental matters which relate to SELLER or Property.

FORBA indicated none exist.

XI. **TANGIBLE PERSONAL PROPERTY**

- A. List all machinery, vehicles, equipment and tangible personal property owned and/or leased by SELLER to be sold to Purchaser.

Partially satisfied –please provide information for all clinics and properties.

- B. Provide copies of all matters of violations of employee health and safety laws-related to the SELLER arising in connection with OSHA or other inspections for last three years.

FORBA indicated none exist.

XII. **RELATED PARTY TRANSACTIONS**

- A Provide a list of all loans and guarantees to directors, officers or employees of SELLER
Satisfied.

XIII CONTRACTS AND OTHER AGREEMENTS

- A Managed Care/Health Care Matters
1. Copies of management services agreements and payor agreements.

Partially satisfied – still need Management Services Agreements and Services Agreements for clinics not marked with an “X” on the attached Due Diligence Documents Received chart.

Please provide any payor agreements.
 2. Copies of managed care agreements.
Not satisfied.
 3. Copies of any third-party administrator agreements.
Not satisfied.
 4. Copies of provider network agreements and description of affiliation relationships with other healthcare providers and service agencies.
Not satisfied.
- B. Professional Services Agreement (all dentist/surgeon-related contracts, including Recruitment, Directorships, etc.)
1. Copies of any agreements with referral sources, including dentists/surgeons and other medical professionals.
Satisfied.
 2. Copies of agreements between SELLER and any individual providers, such as medical director agreements or consulting agreements.
Satisfied.
- C. Employment Agreements (including dentists/surgeons).
Not satisfied – a form employment agreement was provided; please provide an executed copy of all employment agreements currently in effect.
- D. Leased and Real Property
1. If any Property is leased, please provide a copy of all such leases, including all amendments and subleases.

Partially satisfied – Please provide leases for DD Marketing, FORBA NY, DeRose Children's Dental Clinic, P.C. and Children's Medicaid Dental Clinic of Columbia, LLC. We received copies of the following leases that were incomplete copies (please resend complete copies of these leases):
 - 6th Street of Denver Dental Clinic, P.C. [Bottom of each page cut off]
 - Children's Dental Clinic of Gary LLC [Bottom of each page cut off]
 - Children's Dental Clinic of Thornton LLC [Bottom of each page cut off]
 - Children's Dental Clinic of Charleston LLC [Bottom of each page cut off]
 - Children's Dental Clinic of Indianapolis at Eagledale Plaza, LLC [Bottom of each page cut off]
 - Small Smiles of Atlanta, Inc. [Bottom of each page cut off]
 - Small Smiles of Macon, Inc. [Bottom of each page cut off]

•Small Smiles of Boise PLLC [A lot of information is blacked out on our copy (such as rent amount); however, we do not believe these are strikeouts but rather highlight marks on the original that copied too darkly]

Additional Questions:

•Received two leases with respect to Children's Dental Clinic of Tulsa PLLC. Under the lease dated 4/30/04, The DePew Family Trust is the landlord and the property is located at 401 South Utica, Tulsa (this lease is executed). Under the lease dated 3/15/03, Triple "S" Operating Co. LLC is the landlord and the property is located at 1602 N. Lewis, Tulsa (this copy was not executed). Are both leases currently in effect?

•We possibly are missing the First Amendment for the Small Smiles Dentistry for Children PC (Colorado Springs) lease. We have the Second Amendment, the Lease and an Addendum to Lease addressing extension options. Please advise if the Addendum was considered the first amendment, or if there is a separate document called "The First Amendment" (in which case please provide).

•Small Smiles of Toledo subleases space. We received the sublease but not the underlying lease. Please provide the underlying lease.

•Please provide Exhibits A & B to the Sublease Agreement and Building Lease between Eckerd Corporation (Sublandlord) and Forba, Inc. (Subtenant) for property located at 415 North Grand Avenue, Pueblo, Colorado and please provide the underlying lease agreement between Margaret B. Shelburg (Landlord) and Rite Aid of South Carolina, Inc., predecessor-in-interest of Eckerd (Tenant).

2 If SELLER is the Lessor under any agreement, please provide such agreement and any amendments.

Not satisfied.

E. Equipment

1. All equipment leases, rental agreements, purchase contracts, service agreements, etc

Not satisfied.

F. Performance of Services

1 Transfer Agreements, Consultant Agreements, Training Courses, Teaching, Residency Training

FORBA indicated no contracts/agreements; training is included in arrangement.

G. Utility Agreements

1. Furnish a copy of all utility contracts that relate to SELLER.

Not satisfied.

H. National Agreements

1. Furnish a copy of all agreements that are "national" in scope

Satisfied. FORBA indicated only one national agreement with Patterson.

I. Labor and Employee Matters

1. Furnish a copy of (or a complete description of the terms of such arrangement if not reduced to writing) all agreements between SELLER and any individuals or entities employed by or

associated with SELLER involving employment, severance, change in control, non-competition, consulting, agency, representation, commission or other arrangements or commitments, whether written or oral.

FORBA indicated not applicable.

2. Furnish a copy of all collective bargaining agreements.

FORBA indicated not applicable.

3. Furnish a copy of separation or release agreements, including but not limited to any such agreements executed by any present or former employee or applicant for employment of SELLER for the past year.

FORBA indicated not applicable.

J. All Other Contracts/Agreements

1. If applicable, provide copies of any and all agreements, arrangements and understandings with SELLER, including, without limitation, any agreement, arrangement or understanding having to do with management or other services rendered, overhead payment or reimbursement, payment of dividends, borrowing of funds, cash management, managed care and network participation.

Received Management Agreements (see A.1. above). Please provide a copy of any other agreements not already provided, including FORBA's Credit Agreement.

2. Any other material contracts, agreements, arrangements or commitments, whether fully executed or in the negotiation stage or not made in the ordinary course of business.

Not satisfied.

3. Provide copies of all contracts or agreements, oral (if applicable, attach a list) or written, to which SELLER is a party or by which SELLER or any of its assets or properties are bound, which are not described in any other section contained in this memorandum including any of the following:

- i. Agreements, contracts or commitments for the future purchase of, or payment for, supplies or products, or for the performance of services by a third party;

Satisfied. FORBA indicated all purchases are done under open purchase orders.

- ii. Agreements, contracts or commitments to perform services;

Satisfied.

- iii. Agreements, contracts, or commitments, including operating or capitalized leases, not otherwise described in another item;

Satisfied.

- iv. Distribution, dealer, representative, license or sales agency agreements, arrangements, contracts or commitments;

Satisfied.

- v. Agreements, contracts, or commitments for any charitable or political contribution;

Satisfied.

- vi. License agreements and arrangements.

Satisfied.

4. Furnish a copy of all marketing and advertising agreements, or other "material" relationship agreements that relate to SELLER.

Satisfied. FORBA indicated no contract/agreement; verbal arrangement.

5. Furnish a copy of all commission, brokerage and agency agreements that relate to SELLER.

FORBA indicated none exist.

XIV. INTELLECTUAL PROPERTY MATTERS.

- A. Trademarks and Service Marks. Furnish a list of all registered and unregistered trademarks, service marks, trade names, trademark and service mark registrations and renewals and pending registrations for all intellectual property related to the business conducted by SELLER.

FORBA indicated none exist.

- B. Copyrights. Furnish a list of all copyrights owned by or related to the business conducted by SELLER.

FORBA indicated none exist.

- C. Patents. Furnish a list of all patents owned by or related to the business conducted by SELLER.

Satisfied.

- D. Information Systems.

As related to SELLER'S business:

1. Furnish a list of all software products owned or licensed by SELLER;
2. List of inventory of telephone system: make, model, age, etc.;
3. Describe planned capital expenditures for I/S, telecommunications, phone systems.

Partially satisfied [E&Y to confirm].

XV. INSURANCE.

As relates to SELLER'S business:

- A. Furnish a list of (1) the material insurance policies covering SELLER, its directors and officers and its assets and properties (owned and leased), (2) the agency issuing the policy, (3) the expiration date of any such policy, (4) the risk insured against under each such policy, (5) the maximum and minimum amounts which may be collected under each such policy and (6) fidelity, surety, performance and other bonds;

Satisfied.

- B. List and give a description of any insurance claims made or pending with respect to the insurance policies listed in Item XV(A) above;

Satisfied.

XVI. BUSINESS OF SELLER.

- A. Provide business plans and strategic plans for the current period and for the past three years including dentist/surgeon staffing development plan and succession information.

Partially satisfied - [E&Y to confirm].

- B. Industry information including current and expected future competitors, market size and statistics, general landscape trends and any consulting studies or independent/third-party industry research.

Not satisfied. [E&Y to confirm].

- C. All previous offering memorandum, management presentations, or selling and marketing documents generated by SELLER or its representatives.

Not satisfied. Please provide a copy complete copy of previously made CIBC marketing books. [E&Y to confirm]

- D. Furnish a copy of the form of contract, or contracts, used by SELLER with respect to patients and clients.

Satisfied.

- E. Provide reasonable access to management information systems.

Not satisfied.

XVII. SERVICES PROVIDED AND UTILIZATION PATTERNS.

- A. Volume statistics and associated operating results by product line and by payor..

FORBA indicated does not apply.

- B. Payor utilization by Gross and Net Revenues and patient days for last three years and year to date

FORBA indicated does not apply.

- C. Revenue by Insurance Plan (HMO, PPO, Commercial) days for last three years and year to date

FORBA indicated does not apply.

- D. Dollars billed and paid by insurance plan for the past three years.

FORBA indicated does not apply.

XVIII. ADDITIONAL GENERAL ITEMS

- A. Revenue mix by payor per state.

Not satisfied. [E&Y to confirm].

- B. Materials surrounding new market opportunities including research, projections, demographics and trends.

Not satisfied. [E&Y to confirm].

- C. Relevant dental practice management industry reports, statistics and trends.

Not satisfied. [E&Y to confirm].

- D. Competitive landscape and trends

Not satisfied. [E&Y to confirm].

SANUS HOLDINGS, LLC
ADDITIONAL DUE DILIGENCE REQUEST

SELLER – FORBA, LLC and its affiliates

I. FINANCIAL INFORMATION – THE FOLLOWING FINANCIAL INFORMATION IS NEEDED IMMEDIATELY. A SUPPLEMENTAL REQUEST WILL BE PROVIDED BASED ON THIS INFORMATION.

- A. Furnish a copy of the audited financial statements of SELLER (including, without limitation, DD Marketing) for the last three fiscal years.
Satisfied [E&Y to confirm].
- B. Furnish a copy of SELLER'S internal financial/operating tracking reports by clinic and consolidating information, if available, for the last three fiscal years and for the latest period available.
Satisfied [E&Y to confirm].
- C. Furnish a copy of the 2006 detailed budgets for SELLER and SELLER'S projections for 2006 as well as prior and subsequent years.
Satisfied [E&Y to confirm].

II. GENERAL CORPORATE MATERIALS OF SELLER

A. SELLER Corporate Data

1. Articles of Organization or their equivalent and all amendments of SELLER.
Partially satisfied – still need for DD Marketing and DeRose Management, LLC.
2. Operating Agreement or its equivalent and all amendments of SELLER.
Partially satisfied - still need for DD Marketing and DeRose Management, LLC.
Also need a copy of the First Amendment to the FORBA LLC Operating Agreement dated 12/1/2002.
3. List of trade names, if any, under which SELLER has transacted business during the past three years, and jurisdictions in which such trade names are registered.
Satisfied.
4. Copy of all minutes and resolutions reflected in SELLER'S minute book for past three years.
Satisfied – FORBA has confirmed no minutes or resolutions for past three years other than those provided.
5. An organizational chart showing the manner in which SELLER fits within its corporate organization.
Satisfied.
6. List of locations of all affiliated dental offices.
Satisfied.
7. Provide a detailed ownership/capitalization table outlining ownership structure of both SELLER and operating entities.
Partially satisfied. Please provide detailed capitalization table (i.e., 10 authorized units of which 9 are issued and outstanding) for each entity.

B. Organization

1. Provide a description of the organizational structure of SELLER, including the names, ages and hierarchy of officers and key managers.

Satisfied.

2. Conflict of interest policy, procedures for personnel staff.

FORBA indicated none exist.

3. Provide access to a copy of all documentation with respect to any completed corporate acquisition, merger, reorganization, exchange, readjustment or succession, including any presentations or acquisition agreement (including any exhibits or schedules thereto) relating to SELLER.

FORBA indicated none exist.

4. Furnish a list and a copy of all documents evidencing joint ventures or partnerships in which SELLER has an investment or partnership interest.

FORBA indicated none exist.

III. HEALTH CARE MATTERS

- A. Copies of (i) of any licenses, permits, registrations or certifications held by SELLER or its employees with respect to SELLER'S operations, (ii) any Medicaid or other similar provider number, and (iii) a list of licensed employees or independent contractors (and description of the applicable license) at each of SELLER'S facilities.

FORBA indicated not applicable.

- B. Copies of healthcare accreditations.

FORBA indicated not applicable.

- C. Copy of corporate Ethics and Compliance program

FORBA indicated not applicable.

- D. Copy of any corporate integrity agreements

FORBA indicated not applicable.

- E. Copies of non-proprietary policy and procedure manuals

Not satisfied.

- F. Provide notices as to violations of law relating to any alleged violations, orders or deficiencies with respect to any license, permit, registration or certification, or provider agreement or with respect to SELLER'S reimbursement practices, whether with governmental programs or private third-party payors or self-payors.

Satisfied.

- G. Access to dentist/surgeon attitude surveys, employee, community and patient surveys for the past three years

Satisfied.

- H. Notices of investigations from Medicaid, carrier, HCFA, OIG, DOJ, FTC, U S. Attorney, Department of Health, Attorneys General, other agencies as to specific issues EMTALA, anti-kickback, Stark, False Claims, investigational devices, lab unbundling, or otherwise.

Satisfied. Note: FORBA indicated there are no notices from CMS or OIG.

- I. Copies of any written policies, procedures, processes and methods for quality review, assessment, improvement and assurance

Not satisfied.

- J. Information regarding current dentists/surgeons at each of SELLER'S facilities: including Birth date; Status (i.e., active, courtesy, etc.); specialty, Board certified (yes or no); and Practice location.

Partially satisfied. Please provide credentialing packets for dentists listed in email dated 5/29/2006.

- K. Copies of licensure survey reports for the last two surveys.

FORBA indicated there have been no licensure survey reports for the last two surveys. They have not performed any licensure surveys for any of their dentists.

- L. Copies of Core Coding Report.

FORBA indicated none exist.

- M. Copies of Trend Screening Report.

FORBA indicated none exist.

- N. Copies of Coding Compliance review reports.

FORBA indicated none exist.

- O. Copies of market share data for the past three years.

FORBA indicated none exist.

- P. Provide utilization (surgeries, procedures, etc.) by dentist/surgeon for the past three years.

FORBA indicated none exist.

- Q. Copies of medical staff bylaws, if any.

FORBA indicated none exist.

- R. Medical staff development plan and procedures, if applicable.

FORBA indicated none exist.

- S. If applicable, copies of any certificates of need currently pending, challenged or otherwise in litigation.

FORBA indicated none exist.

- T. If applicable, documents relied on in claiming an exemption from CON requirements regarding major capital expenditures program changes.

FORBA indicated none exist.

IV. LITIGATION.

- A. List and give a description of any claims, charges, arbitrations, grievances, actions, suits, investigations, proceedings involving SELLER or the officers and directors of SELLER (in their capacity as officers and directors) currently outstanding or outstanding at any time.

Satisfied.

- B. Provide information on judgments, writs, injunctions, decrees, awards or orders of any court or other governmental agency or body relating to or affecting SELLER, its employees or the assets comprising the SELLER which contain continuing obligations for the SELLER not described in IV(A) above.

FORBA indicated none exist.

- C. Give a brief description of all pending, threatened or contemplated disputes, claims, actions, suits or proceedings, arbitrations or investigations, involving SELLER'S assets, including any workers compensation, environmental or infringement claims not described in Item IV(A) above.

Partially satisfied. Please provide copies of the complaints in connection with the lawsuits for which you provided summaries.

- D Provide a copy of counsel letters to independent public accountants concerning pending or threatened litigation that were furnished to SELLER (unless there are privilege considerations).

Satisfied.

V. COMPLIANCE WITH LAWS.

- A Furnish a copy of all notices of any citations, violations or claimed violations received by SELLER involving any laws, ordinances, rules, regulations or orders, and any zoning, environmental, health, safety, wage and hour, equal opportunity and anti-discrimination, food and drug or price control laws, ordinances, rules, regulations or orders

Partially satisfied. Please provide additional information regarding the US Department of Labor investigation.

Please provide (i) a copy of the Consent Order involving Michael DeRose dated 12/10/2005 with the North Carolina State Board of Dental Examiners and information regarding the complaint in North Carolina and (ii) a copy of the underlying complaint in Colorado and any additional information regarding the Colorado complaint.

Please provide additional information regarding the investigative subpoena in Augusta, Georgia. Was this in relation to a complaint or claim made by a patient? If so, please provide information regarding such complaint or claim.

Please provide additional information regarding the disciplinary actions in Colorado against Edward DeRose, Michael DeRose and William Mueller that have been turned over to the Attorney General (i.e. - original complaints, etc.).

Please provide information regarding the following summaries contained in the Risk Management Response to this request: (i) Colorado - 50 chart audit/supervision by CO licensed dentist & chart countersign and (ii) NY - Rochester Excellus: MCO claim for reimbursement for Dr. Gardner billings.

Please provide us with the results from the New York Department of Health audits at Albany and Syracuse.

- B. Copies of all governmental permits, licenses or authorizations required for the SELLER'S conduct of business, including, but not limited to, all business licenses, government licenses, permits and consents currently held by SELLER not provided in III(A) above.

Not satisfied.

- C. Provide copies of all reports to and correspondence with governmental agencies (including, without limitation, state dental boards or departments of insurance) involving non-compliance with laws involving SELLER or its employees.

FORBA indicated none exist.

- D. Provide copies of all matters of violations of employee health and safety laws related to the SELLER arising in connection with OSHA or other inspections for last three years.

FORBA indicated none exist.

VI. LABOR AND EMPLOYEE MATTERS.

- A. Furnish a copy or a description of all employee policies and/or employee policy manuals relating to employees associated with or employed by SELLER.

Not satisfied.

- B. Furnish a list of all present full time, part-time and temporary employees employed or engaged by SELLER, showing names, date of birth, dates of hire, location, titles, total remuneration for the year ended December 31 of the previous year, and their annual remuneration, including a description of all

perquisites, fringe benefits and commissions (or expected compensation, if more appropriate).

- 1 Provide biographies of executives and board of directors

Satisfied.

2. Summary of key management and employees including salary and total compensation.

Partially satisfied – please indicate if the key managers receive salaries or if they are compensated through distributions and provide the amounts of such compensation.

The term "part-time" employees means an employee who is employed for an average of fewer than 20 hours per week or who has been employed for fewer than six of the 12 months preceding the anticipated date of the closing. This term includes workers who will traditionally be understood as short-term, "seasonal" employees.

The period to be used of calculating whether a worker has worked "an average of fewer than 20 hours per week" is the shorter of the actual time the worker has been employed for the most recent 90 days.

- C. If applicable, provide any information or document relating to any strike, slowdown, picketing or work stoppage by any union or other group of employees against the SELLER, any secondary boycott with respect to its or their boycotts, any lockouts by them of any of their employees or any other similar occurrence, that affects or could affect the operations of SELLER.

FORBA indicated none exist.

- D. If applicable, furnish a copy or a description of the following as they relate to SELLER:

1. Any organizational activity among any employees;

FORBA indicated none exist.

2. Any charges or threatened charges of unfair labor practices;

FORBA indicated none exist.

3. Any documents evidencing non-compliance with all applicable federal and state laws and regulations concerning the employer/employee relationship and with all agreements relating to the employment of employees, including, without limitation, provisions thereof relating to wages, bonuses, hours of work and payment of social security taxes;

FORBA indicated none exist with the exception of documents produced pursuant to V.A. above and V.I.E.1. below.

4. Practices regarding testing (including blood, drug, alcohol and polygraph testing); and

Satisfied.

5. Practices regarding pre-employment and post-employment medical examinations

FORBA indicated none exist.

- E. List and give a description of any threatened or pending claims related to SELLER regarding:

1. Wage and Hour claims under the Fair Labor Standards Act or any comparable state law, and any other Wage and Hour investigations or litigation;

Satisfied.

2. Equal Employment or Human Rights related charges, investigations, litigation or consent decrees concerning race, color, religion, sex, national origin, age, handicap, veterans status, marital status or disability;

Satisfied.

3. Representation petitions or unfair labor practice charges, investigations, litigation or current

notices of compliance;

FORBA indicated none exist.

4. Grievances, arbitrations or litigation to enforce or overturn awards;

FORBA indicated none exist.

5. OSHA investigations, citations, complaints or litigation;

FORBA indicated none exist.

6. Employee benefits, related claims or litigation;

FORBA indicated none exist.

7. State labor law claims, investigations or litigation including, but not limited to, worker's compensation;

FORBA indicated none exist.

8. Claims or litigation concerning wrongful termination, negligent hiring, invasion of privacy or defamation; and

FORBA indicated none exist with the exception of documents produced pursuant to IV. above.

9. Investigations, violations or fine notices or litigation by the Immigration and Naturalization Service or the U.S. Department of Labor Employment and Training Administration.

FORBA indicated none exist.

- F. If applicable, submit copies of any "material" correspondence regarding SELLER'S labor matters

FORBA indicated not applicable.

- G. List all employees of SELLER who are not citizens or resident aliens ("Greencard Holders") of the United States and submit copies of each such person's I-9 Form and I-94 Arrival/Departure Card.

Partially satisfied – please provide copies of each such person's I-9 Form and I-94 Arrival/Departure Card.

- H. The following information on dentists/surgeons covered by recruiting agreements for the past three years:

1. Specialty, if applicable;

FORBA indicated not applicable.

2. When provider numbers were obtained;

FORBA indicated not applicable.

3. Guarantee payments by month; and

FORBA indicated not applicable.

4. Total collections by month.

FORBA indicated not applicable.

- I. Provide revenue by recruited dentist/surgeon for the past two years and budgeted revenue by recruited dentist/surgeon for the current year.

FORBA indicated not applicable.

- J Provide list of all current employees showing current time off balances (hours and dollars), including vacation, holiday and sick, regardless if payable at termination of employment or not

Not satisfied.

VII EMPLOYEE BENEFIT PLANS

- A Does SELLER have any employee benefit plans covering SELLER'S employees, including the following types of plans, if so, provide a copy of the summary plan description:

1. Defined benefit plan subject to Title IV (also include latest actuarial report and 5500);
FORBA indicated not applicable.
2. Nonqualified retirement plan, including estimates of liabilities, funding requirements and expected distribution dates;
FORBA indicated not applicable. Please provide a copy of the 401(K) plan for DD Marketing.
3. Health and welfare plan (life, health, severance, disability, etc), including latest monthly employee contribution rates;
Satisfied.
4. Cafeteria plan and flexible spending accounts; and
FORBA indicated not applicable.
5. Current bonus plan.
Satisfied.

- B For all self-insured health and welfare plans, provide latest actuarial estimate of incurred but not reported (IBNR) claims, reserves held on SELLER'S general ledger, most recent 12 months claim history and stop loss policy.

Satisfied.

VIII [Intentionally omitted.]

IX REAL PROPERTY

Furnish a list and description of all real property (including the location thereof and a description of any structures located thereof) ("Property") owned or leased by SELLER. As to owned Property, please provide updated title commitments, surveys, and a list of title exceptions for each parcel of owned property. Property should include, but is not limited to, Owned Properties, Leased Properties, Medical Directorships, and Exclusives.

Satisfied.

X ENVIRONMENTAL MATTERS

- A Furnish copies of all notices of violation of requests for information from any federal, state or local governmental agency or authority ("Agency"), notifications or reports submitted to any Agency relating to the SELLER, and material correspondence with any Agency in connection with matters relating to pollution, protection of the environment, human health and safety, underground storage tanks ("USTs"), asbestos, or pesticides or agricultural chemicals ("environmental matters"), as well as any permits, licenses, certificates, authorizations or approvals with respect to environmental matters.

FORBA indicated none exist.

- B. Furnish a list and description of any hazardous, toxic or regulated materials which are or have been

stored, treated, placed, held, located, released or disposed of on, under or at the Property, including, but not limited to, materials in USTs and any pesticides, herbicides or agricultural chemicals applied or released to the land, or the transportation of any such materials from the Property to any off-site location, as well as any related manifests, permits, certificates, authorizations or approvals.

FORBA indicated none exist.

- C. Furnish a copy of any available reports, soil, water or asbestos sampling or analytical data, UST testing data and closure or release notifications and reports, or other written documents or materials regarding environmental matters which relate to SELLER or Property.

FORBA indicated none exist.

XI. TANGIBLE PERSONAL PROPERTY

- A. List all machinery, vehicles, equipment and tangible personal property owned and/or leased by SELLER to be sold to Purchaser.

Partially satisfied --please provide information for all clinics and properties.

- B. Provide copies of all matters of violations of employee health and safety laws related to the SELLER arising in connection with OSHA or other inspections for last three years.

FORBA indicated none exist.

XII. RELATED PARTY TRANSACTIONS

- A. Provide a list of all loans and guarantees to directors, officers or employees of SELLER.

Satisfied.

XIII. CONTRACTS AND OTHER AGREEMENTS

- A. Managed Care/Health Care Matters

1. Copies of management services agreements and payor agreements.

Satisfied.

2. Copies of managed care agreements

Not satisfied.

3. Copies of any third-party administrator agreements

Not satisfied.

4. Copies of provider network agreements and description of affiliation relationships with other healthcare providers and service agencies.

Not satisfied.

- B. Professional Services Agreement (all dentist/surgeon-related contracts, including Recruitment, Directorships, etc)

1. Copies of any agreements with referral sources, including dentists/surgeons and other medical professionals

FORBA indicated none exist.

2. Copies of agreements between SELLER and any individual providers, such as medical director agreements or consulting agreements.

FORBA indicated none exist.

- C. Employment Agreements (including dentists/surgeons)

Partially satisfied -- please provide employment agreements listed in email dated 5/30/2006.

D. Leased and Real Property

1. If any Property is leased, please provide a copy of all such leases, including all amendments and subleases.

Partially satisfied – Please provide (i) master lease for Toledo, (ii) First Amendment for the Small Smiles Dentistry for Children PC (*Colorado Springs*) lease, (iii) any lease between Dan DeRose and Mike Rounph and DD Marketing for the lease of DD Marketing's headquarters, and (iv) lease for DeRose Management, LLC.

In Greenville, is there a master lease that the Landlord has for McAlister Square (lease was not called a sublease but mentioned a master lease once and gave no other details)? If so, please provide master lease.

2. If SELLER is the Lessor under any agreement, please provide such agreement and any amendments.

Not satisfied

E. Equipment

1. All equipment leases, rental agreements, purchase contracts, service agreements, etc.

Not satisfied.

F. Performance of Services

1. Transfer Agreements, Consultant Agreements, Training Courses, Teaching, Residency Training

FORBA indicated no contracts/agreements; training is included in arrangement.

G. Utility Agreements

1. Furnish a copy of all utility contracts that relate to SELLER.

Not satisfied.

H. National Agreements

1. Furnish a copy of all agreements that are "national" in scope

Satisfied. FORBA indicated only one national agreement with Patterson.

I. Labor and Employee Matters

1. Furnish a copy of (or a complete description of the terms of such arrangement if not reduced to writing) all agreements between SELLER and any individuals or entities employed by or associated with SELLER involving employment, severance, change in control, non-competition, consulting, agency, representation, commission or other arrangements or commitments, whether written or oral.

FORBA indicated not applicable.

2. Furnish a copy of all collective bargaining agreements.

FORBA indicated not applicable.

3. Furnish a copy of separation or release agreements, including but not limited to any such agreements executed by any present or former employee or applicant for employment of SELLER for the past year.

FORBA indicated not applicable.

J. All Other Contracts/Agreements

1. If applicable, provide copies of any and all agreements, arrangements and understandings with SELLER, including, without limitation, any agreement, arrangement or understanding having to do with management or other services rendered, overhead payment or reimbursement, payment of dividends, borrowing of funds, cash management, managed care and network participation.

Partially satisfied. Please provide a copy of any other agreements not already provided, including FORBA's Credit Agreement dated October 29, 2004.

2. Any other material contracts, agreements, arrangements or commitments, whether fully executed or in the negotiation stage or not made in the ordinary course of business.

Not satisfied.

3. Provide copies of all contracts or agreements, oral (if applicable, attach a list) or written, to which SELLER is a party or by which SELLER or any of its assets or properties are bound, which are not described in any other section contained in this memorandum including any of the following:

- i. Agreements, contracts or commitments for the future purchase of, or payment for, supplies or products, or for the performance of services by a third party;

Satisfied. FORBA indicated all purchases are done under open purchase orders.

- ii. Agreements, contracts or commitments to perform services;

FORBA indicated none exist.

- iii. Agreements, contracts, or commitments, including operating or capitalized leases, not otherwise described in another item;

FORBA indicated none exist.

- iv. Distribution, dealer, representative, license or sales agency agreements, arrangements, contracts or commitments;

FORBA indicated none exist.

- v. Agreements, contracts, or commitments for any charitable or political contribution;

FORBA indicated none exist.

- vi. License agreements and arrangements.

FORBA indicated none exist.

4. Furnish a copy of all marketing and advertising agreements, or other "material" relationship agreements that relate to SELLER.

Satisfied. FORBA indicated no contract/agreement; verbal arrangement.

5. Furnish a copy of all commission, brokerage and agency agreements that relate to SELLER.

FORBA indicated none exist.

XIV. INTELLECTUAL PROPERTY MATTERS

- A. Trademarks and Service Marks. Furnish a list of all registered and unregistered trademarks, service marks, trade names, trademark and service mark registrations and renewals and pending registrations for all intellectual property related to the business conducted by SELLER.

FORBA indicated none exist.

- B. Copyrights. Furnish a list of all copyrights owned by or related to the business conducted by SELLER.

FORBA indicated none exist.

- C. Patents. Furnish a list of all patents owned by or related to the business conducted by SELLER.

FORBA indicated none exist.

D. Information Systems

As related to SELLER'S business:

1. Furnish a list of all software products owned or licensed by SELLER;
2. List of inventory of telephone system: make, model, age, etc.;
3. Describe planned capital expenditures for I/S, telecommunications, phone systems.

Partially satisfied [E&Y to confirm].

XV. INSURANCE

As relates to SELLER'S business:

- A. Furnish a list of (1) the material insurance policies covering SELLER, its directors and officers and its assets and properties (owned and leased), (2) the agency issuing the policy, (3) the expiration date of any such policy, (4) the risk insured against under each such policy, (5) the maximum and minimum amounts which may be collected under each such policy and (6) fidelity, surety, performance and other bonds;

Satisfied.

- B. List and give a description of any insurance claims made or pending with respect to the insurance policies listed in Item XV(A) above;

Satisfied.

XVI. BUSINESS OF SELLER

- A. Provide business plans and strategic plans for the current period and for the past three years including dentist/surgeon staffing development plan and succession information

Partially satisfied – [E&Y to confirm].

- B. Industry information including current and expected future competitors, market size and statistics, general landscape trends and any consulting studies or independent/third-party industry research

Not satisfied. [E&Y to confirm].

- C. All previous offering memorandum, management presentations, or selling and marketing documents generated by SELLER or its representatives

Not satisfied. Please provide a copy complete copy of previously made CIBC marketing books [E&Y to confirm]

- D. Furnish a copy of the form of contract, or contracts, used by SELLER with respect to patients and clients.

FORBA indicated none exist.

- E. Provide reasonable access to management information systems.

Not satisfied.

XVII. SERVICES PROVIDED AND UTILIZATION PATTERNS

- A. Volume statistics and associated operating results by product line and by payor.

FORBA indicated does not apply.

- B. Payor utilization by Gross and Net Revenues and patient days for last three years and year to date.

FORBA indicated does not apply.

- C. Revenue by Insurance Plan (HMO, PPO, Commercial) days for last three years and year to date.

FORBA indicated does not apply.

- D. Dollars billed and paid by insurance plan for the past three years.

FORBA indicated does not apply.

XVIII ADDITIONAL GENERAL ITEMS

- A. Revenue mix by payor per state.

Not satisfied. [E&Y to confirm].

- B. Materials surrounding new market opportunities including research, projections, demographics and trends.

Not satisfied. [E&Y to confirm].

- C. Relevant dental practice management industry reports, statistics and trends.

Not satisfied. [E&Y to confirm].

- D. Competitive landscape and trends.

Not satisfied. [E&Y to confirm].

EXHIBIT “D”

STATE OF WISCONSIN CIRCUIT COURT

DANE COUNTY

BRANCH 2

Case No. 08-CV-2215

Case Code: 30701

LICSAC, LLC, et al.,

Plaintiffs,

v.

SMALL SMILES HOLDING COMPANY, LLC, et al.,

Defendants,

and

ASSOCIATED TRUST COMPANY, NATIONAL ASSOCIATION,

Interpleading Defendant.

VIDEOTAPE DEPOSITION OF: RICHARD B. LANE
December 2, 2009

PURSUANT TO NOTICE, the deposition of
RICHARD B. LANE was taken on behalf of the Defendants
at 633 17th Street, Suite 2700, Denver, Colorado
80202, on December 2, 2009, at 8:03 a.m., before
Diane M. Overstreet, Registered Professional Reporter,
Certified Realtime Reporter, and Notary Public within
Colorado.



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<p>08:13:19 1 going? Is there anything you need?" You know, 08:13:22 2 "Anything we need to be aware of?" If there were any 08:13:24 3 HR issues, I would be notified by them, and if we had 08:13:27 4 to generate corrective action, we would generate 08:13:29 5 corrective action, send it to them, counsel them on 08:13:32 6 how to go through the corrective action process 08:13:35 7 You know, we also did performance 08:13:37 8 reviews, six-month and yearly reviews. So the first 08:13:40 9 year that they were hired we did a six-month review, 08:13:42 10 and then we would do a 12-month review, and after that 08:13:45 11 it would be a yearly review. 08:13:47 12 Q. And you mentioned a moment ago some 08:13:49 13 audits that were done. Can you tell me a little bit 08:13:51 14 more about those? 08:13:52 15 A. What we would do is we would randomly 08:13:54 16 select, you know, ten audits, ten charts, and ask him 08:13:57 17 to send down the entire file, obviously, make copies; 08:14:00 18 we have to maintain the originals in the clinic. And 08:14:02 19 we would review the billing. We would review the 08:14:04 20 charting accuracy. We would look at the x-rays. Just 08:14:08 21 make sure everything is -- per the documentation 08:14:10 22 that's required, just to make sure that everything 08:14:12 23 was, you know, up to speed. And knowing that, you 08:14:16 24 know, we were going to be audited in the future by any 08:14:18 25 agency that wanted to, we just wanted to make sure</p>	<p>08:15:22 1 based on the number of clinics. 08:15:25 2 Q. At some point during your time with Old 08:15:29 3 FORBA did discussions with a company called Sanus 08:15:32 4 begin? 08:15:33 5 A. It did. And it was about -- and I'm not 08:15:36 6 real clear on, you know, did it start in April or May 08:15:39 7 of 2006, but it was in that time frame of mid 2006. 08:15:43 8 Q. Okay. Were you involved in those 08:15:44 9 discussions? 08:15:44 10 A. I wasn't involved in the very first 08:15:47 11 discussion, but I was involved in the discussions from 08:15:50 12 that point on. 08:15:52 13 Q. Who was involved in the first discussion? 08:15:53 14 A. To the best of my knowledge, it was Dan 08:15:56 15 DeRose and Mike Rounph. And I'm not sure who all was 08:16:00 16 involved on the Sanus side. 08:16:03 17 Q. Did you have discussions with Mr. DeRose 08:16:05 18 and Mr. Rounph about those discussions with Sanus? 08:16:08 19 A. The level of discussion was that, you 08:16:11 20 know, Sanus was interested in looking into our 08:16:13 21 company, and we're going to start the due diligence 08:16:16 22 process with them. 08:16:18 23 Q. Did you talk about Sanus's interest with 08:16:21 24 anybody else at Old FORBA? 08:16:22 25 A. Not at that time.</p>
Page 15	Page 17
<p>08:14:21 1 that we were, you know, aware if there were any issues 08:14:23 2 we needed to resolve, that we could do that on a 08:14:25 3 monthly basis. 08:14:26 4 Q. When you say "We reviewed the charts," 08:14:28 5 can you tell me specifically who looked at those 08:14:30 6 charts? 08:14:31 7 A. Initially, it was myself, and then we 08:14:32 8 would have -- from time to time I would have 08:14:35 9 Dr. Padula look at it. Dr. Mueller, who was the lead 08:14:38 10 dentist in the Aurora clinic at the time, would look 08:14:40 11 at them as well if I had a question. And then once we 08:14:42 12 started to grow at DD Marketing there were other 08:14:45 13 people that assisted me and actually took over the 08:14:47 14 chart audit process as well. 08:14:51 15 Q. Over time did your responsibilities 08:14:53 16 evolve in any way? 08:14:54 17 A. You know, it got bigger, obviously, with 08:14:57 18 the number of clinics. And also, you know, like I 08:14:59 19 said, I did payroll at the start, and as we got bigger 08:15:02 20 we hired somebody else to do payroll to do all the 08:15:05 21 clinics. HR, we then transferred it to another person 08:15:09 22 to handle all the HR. As far as the initial 08:15:11 23 interviewing process, we developed a team to do that. 08:15:16 24 I would say it didn't evolve into anything much 08:15:18 25 different. It just was -- you know, the scope was big</p>	<p>08:16:24 1 Q. Did you have any discussions at that time 08:16:25 2 with anybody at Sanus? 08:16:27 3 A. Not until the first meeting here in 08:16:30 4 Denver. 08:16:31 5 Q. Okay. When was that first meeting in 08:16:33 6 Denver? 08:16:33 7 A. Again, my time frame isn't real clear, 08:16:35 8 but it -- you know, either April or May of 2006. 08:16:44 9 Q. Who attended that meeting? 08:16:45 10 A. I know that on the Sanus side it was Mike 08:16:50 11 Lindley, Rodney Cawood, Al Smith, and from Old FORBA 08:16:57 12 it was Dan DeRose, Mike Rounph, myself. And I'm not 08:17:02 13 sure if -- at that first meeting if the other partners 08:17:06 14 were there, Dr. DeRose, Dr. DeRose, Dr. Mueller, and 08:17:09 15 Dr. Padula. I'm not sure if they were at that first 08:17:12 16 meeting. 08:17:13 17 Q. Were you a partner of Old FORBA? 08:17:16 18 A. Yes, I was. 08:17:16 19 Q. Were you -- when did you become a partner 08:17:18 20 of Old FORBA? 08:17:20 21 A. I think it was around August of 2004. 08:17:26 22 I'd have to look at the documents to clarify, but I 08:17:30 23 think it was August of 2004. 08:17:31 24 Q. So what was your status, then, from the 08:17:33 25 time you started in '01 until you became a partner?</p>

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<p>Page 18</p> <p>08:17:37 1 A. You know, I was an employee of</p> <p>08:17:39 2 DD Marketing, and I was still an employee of</p> <p>08:17:41 3 DD Marketing when I became a partner of FORBA. And</p> <p>08:17:45 4 really, in my mind, and I'm sure in everybody else's</p> <p>08:17:48 5 mind, there was really no change in status. I kept</p> <p>08:17:51 6 doing everything I was doing day to day. The interest</p> <p>08:17:53 7 was I now became a partner of FORBA.</p> <p>08:17:56 8 Q. What was the purpose of the Denver</p> <p>08:17:58 9 meeting?</p> <p>08:18:00 10 A. You know, just to initiate the</p> <p>08:18:03 11 discussion. And I think there was also a</p> <p>08:18:04 12 representative from CIT, Greg Park, the investment</p> <p>08:18:09 13 banker. He may have been there as well. So to me it</p> <p>08:18:12 14 was the kickoff meeting to say, "Hey, we're interested</p> <p>08:18:15 15 in your company, you know, please share with us, you</p> <p>08:18:17 16 know, what you do, how you do it." Kind of the, you</p> <p>08:18:21 17 know, "Here's how we run our business."</p> <p>08:18:24 18 Q. Where did the meeting occur?</p> <p>08:18:25 19 A. It occurred at Dan DeRose's brother's</p> <p>08:18:29 20 office in Denver, and it was off of Orchard Road.</p> <p>08:18:33 21 Q. Is that his brother Mark?</p> <p>08:18:34 22 A. His brother Mark, yes. Thank you. I'm</p> <p>08:18:37 23 sorry.</p> <p>08:18:39 24 Q. Do you recall whether there were any --</p> <p>08:18:41 25 excuse me -- any lawyers present?</p>	<p>Page 20</p> <p>08:20:02 1 were going to go and then, you know, projected growth</p> <p>08:20:07 2 by clinic and, you know, potential new states</p> <p>08:20:12 3 Q. And do you recall what specifically --</p> <p>08:20:14 4 what future plans you discussed at this meeting?</p> <p>08:20:17 5 A. You know, we had talked about growing 12</p> <p>08:20:20 6 to 15 clinics per year and then the different states</p> <p>08:20:24 7 that we were looking at.</p> <p>08:20:33 8 Q. Do you recall any discussions with the</p> <p>08:20:35 9 Sanus representatives about that point, the future</p> <p>08:20:38 10 plans?</p> <p>08:20:38 11 A. Oh, absolutely. Because, you know, what</p> <p>08:20:41 12 we would show them is where we started, where we were</p> <p>08:20:44 13 and what was expected to go forward for us as far as</p> <p>08:20:47 14 the number of clinics we were going to build each</p> <p>08:20:51 15 year.</p> <p>08:20:51 16 Q. Were there any next steps that were</p> <p>08:20:53 17 discussed at this meeting?</p> <p>08:20:55 18 A. You know, the one thing that I will</p> <p>08:20:57 19 always know is, you know, the due diligence part of</p> <p>08:21:00 20 it. And they came up with a list of things like we</p> <p>08:21:04 21 need to create a data room. And that was the next big</p> <p>08:21:08 22 step is, you know, we need to get the data room. They</p> <p>08:21:11 23 gave us a complete list of things that they needed in</p> <p>08:21:14 24 the data room, and there was a lot of discussion</p> <p>08:21:15 25 whether it was going to be a virtual data room or if</p>
<p>Page 19</p> <p>08:18:43 1 A. I do not recall if there were any</p> <p>08:18:47 2 lawyers.</p> <p>08:18:47 3 Q. Okay. Did anybody from Old FORBA make</p> <p>08:18:51 4 any presentations at this meeting?</p> <p>08:18:53 5 A. I think we did make the presentation. I</p> <p>08:18:58 6 know we had provided Greg Park and his group with, you</p> <p>08:19:02 7 know, our presentation of the company, and I can't</p> <p>08:19:06 8 recall if it was that meeting that we actually did the</p> <p>08:19:08 9 presentation of the business or if it was at a future</p> <p>08:19:10 10 meeting. But at some point we did present to them our</p> <p>08:19:15 11 overview of the company.</p> <p>08:19:16 12 Q. And was this a written presentation?</p> <p>08:19:18 13 A. We had a PowerPoint presentation.</p> <p>08:19:26 14 Q. What was discussed at this meeting?</p> <p>08:19:27 15 A. You know, basically how the company</p> <p>08:19:30 16 started going all the way back to, you know, Dr. Bruno</p> <p>08:19:32 17 DeRose in 1928, evolving into Dr. Eddie when he</p> <p>08:19:36 18 started in Pueblo and then basically, you know, where</p> <p>08:19:39 19 we were at today, how the model of the clinics work,</p> <p>08:19:41 20 how many clinics we have, you know, what does each</p> <p>08:19:44 21 clinic look like, what is the cash flow, you know,</p> <p>08:19:47 22 what is the financial statements, how do we market the</p> <p>08:19:50 23 clinic, how do we hire -- we had an org chart of, you</p> <p>08:19:55 24 know, each clinic, a basic generic org chart for each</p> <p>08:19:59 25 clinic. We also discussed future plans of where we</p>	<p>Page 21</p> <p>08:21:18 1 it was going to be a hard-copy data room.</p> <p>08:21:21 2 In addition, the next steps were, you</p> <p>08:21:22 3 know, they wanted to go look at some of our clinics.</p> <p>08:21:25 4 They wanted to talk to some of our current employees.</p> <p>08:21:30 5 And when I say "current employees," not only of</p> <p>08:21:33 6 DD Marketing but they also wanted to talk to current</p> <p>08:21:35 7 employees at some of the clinics.</p> <p>08:21:41 8 Q. You said before, and correct me if I'm --</p> <p>08:21:43 9 if I'm wrong about this, that -- you said something to</p> <p>08:21:46 10 the effect that you'll always know that due diligence</p> <p>08:21:49 11 part --</p> <p>08:21:50 12 A. Right.</p> <p>08:21:50 13 Q. Explain what you mean by that.</p> <p>08:21:51 14 A. It's just a cumbersome process. There's</p> <p>08:21:54 15 a complete list, and we would have to go to the asset</p> <p>08:21:56 16 purchase agreement to look at the complete catalog of</p> <p>08:21:58 17 what they required, but it's everything from the lease</p> <p>08:22:01 18 of every clinic, management services agreement, a</p> <p>08:22:04 19 services agreement, doctors' contracts, you know,</p> <p>08:22:07 20 insurance contracts for each clinic. It's just a lot</p> <p>08:22:09 21 of data to, you know, put together. And I'm glad it</p> <p>08:22:14 22 was a virtual data room, because it's a lot of</p> <p>08:22:16 23 paperwork.</p> <p>08:22:17 24 Q. And who was responsible for the due</p> <p>08:22:19 25 diligence?</p>

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<p>Page 42</p> <p>08:47:17 1 internally in response to those concerns?</p> <p>08:47:19 2 A. You know, we -- like I said before, we</p> <p>08:47:21 3 were doing chart audits, so we wrapped up the chart</p> <p>08:47:25 4 audits and we obviously measured monthly and started,</p> <p>08:47:28 5 you know, to look at it more closely, the usage of</p> <p>08:47:31 6 stainless steel crowns?</p> <p>08:47:37 7 We had what we would call monthly</p> <p>08:47:39 8 meetings, teleconference calls, with each clinic, and</p> <p>08:47:43 9 it would include the lead dentist and the office</p> <p>08:47:46 10 manager. And, you know, we would just make sure and</p> <p>08:47:48 11 reiterate that, you know, when you're making your</p> <p>08:47:50 12 treatment decisions make sure, again, the treatment</p> <p>08:47:52 13 plan is filled out, signed, and, you know, understand</p> <p>08:47:56 14 that there is, you know, a concern out there. But,</p> <p>08:48:00 15 again, you know, when you look at the clinics that we</p> <p>08:48:04 16 had and the range of usage of crowns, we feel very</p> <p>08:48:07 17 comfortable it. And we did do increased chart audits</p> <p>08:48:10 18 as well. We pulled more charts on a monthly basis.</p> <p>08:48:12 19 Q. How many more charts did you pull?</p> <p>08:48:14 20 A. You know, we might go from 10 to 20, or</p> <p>08:48:17 21 we might do -- if I went to a clinic specifically, I</p> <p>08:48:19 22 might pull 50 charts and, you know, look at them in</p> <p>08:48:23 23 the clinic rather than have them sent to me.</p> <p>08:48:26 24 Q. Was there any formal protocol within Old</p> <p>08:48:30 25 FORBA for how chart audits were to be done?</p>	<p>Page 44</p> <p>08:49:36 1 If there were any HR issues, you know, our HR person</p> <p>08:49:40 2 would do that. So we would just go down by groups and</p> <p>08:49:42 3 just have topics that we would discuss.</p> <p>08:49:45 4 Q. Was this -- was this done telephonically?</p> <p>08:49:47 5 A. Yes.</p> <p>08:49:47 6 Q. And were all the centers on at the same</p> <p>08:49:50 7 time?</p> <p>08:49:50 8 A. Yes. All clinics.</p> <p>08:49:52 9 Q. Okay. And who else besides Dan DeRose</p> <p>08:49:55 10 participated?</p> <p>08:49:55 11 A. Mike Roumph, myself. Dr. Mueller would</p> <p>08:50:01 12 usually be on the call. We would have Dr. Eddie and</p> <p>08:50:04 13 -- I'll call him Dr. Eddie, Dr. Edward DeRose, and</p> <p>08:50:08 14 Dr. Mike as they were available. They were still, you</p> <p>08:50:10 15 know, practicing dentistry. And Dr. Padula from time</p> <p>08:50:14 16 to time would be on the call as well.</p> <p>08:50:16 17 Q. And what were the topics that were</p> <p>08:50:21 18 discussed?</p> <p>08:50:22 19 A. You know, again, we would just go down</p> <p>08:50:24 20 from "How is everything going? Are there any issues</p> <p>08:50:26 21 we need to be aware of? How is marketing going? How</p> <p>08:50:29 22 is HR going?" If it were around the holiday time, you</p> <p>08:50:32 23 know, we would talk about the holiday policy that you</p> <p>08:50:35 24 had to work the day before and the day after to get</p> <p>08:50:37 25 your holiday pay, just to reiterate those things. If</p>
<p>Page 43</p> <p>08:48:33 1 A. We had a spreadsheet that we used on all</p> <p>08:48:35 2 the criteria that we were looking for, and that's how</p> <p>08:48:39 3 we would evaluate each of the charts.</p> <p>08:48:41 4 Q. And at this time, after the FFL deal, who</p> <p>08:48:45 5 was responsible for the chart audits?</p> <p>08:48:46 6 A. I was.</p> <p>08:48:49 7 Q. And who was responsible for populating</p> <p>08:48:51 8 the spreadsheet?</p> <p>08:48:53 9 A. As far as the results?</p> <p>08:48:54 10 Q. Yes.</p> <p>08:48:55 11 A. I was initially, and then as our staff</p> <p>08:48:59 12 grew, I had one or two other people that would help me</p> <p>08:49:01 13 on a consistent basis.</p> <p>08:49:02 14 Q. And who were they?</p> <p>08:49:03 15 A. Maria Grossman and Tom Hillebrand.</p> <p>08:49:11 16 Q. And you mentioned, I think, monthly</p> <p>08:49:14 17 meetings with the clinics?</p> <p>08:49:15 18 A. Right.</p> <p>08:49:15 19 Q. Who conducted those meetings?</p> <p>08:49:18 20 A. Dan was usually the leader of it. And</p> <p>08:49:23 21 then each of us would have a section that we would</p> <p>08:49:25 22 discuss, whether it be, you know, marketing, how are</p> <p>08:49:27 23 we doing on marketing? Hey, we're going to roll this</p> <p>08:49:30 24 new flyer out. That would be, like -- Kirk</p> <p>08:49:34 25 Kochenberger was in charge of marketing at the time.</p>	<p>Page 45</p> <p>08:50:40 1 we rolled out a new timekeeping system, we would</p> <p>08:50:43 2 explain how it's coming out, what's expected, just to</p> <p>08:50:46 3 be able to make sure that we were all on the same page</p> <p>08:50:48 4 if there were any changes that were coming.</p> <p>08:50:52 5 Q. Was there anything that came up in the</p> <p>08:50:55 6 FFL discussions or in the concerns raised by FFL that</p> <p>08:51:00 7 was addressed in these monthly meetings?</p> <p>08:51:01 8 A. I wouldn't say that it was directly</p> <p>08:51:05 9 discussed that, hey, these came from FFL, but there</p> <p>08:51:08 10 are things that -- for example, I talked about it, the</p> <p>08:51:10 11 usage of stainless steel crowns appeared to be high in</p> <p>08:51:13 12 one clinic. We would just make the comment, you know,</p> <p>08:51:17 13 make sure that you have the proper documentation to</p> <p>08:51:19 14 support everything that you're doing.</p> <p>08:51:26 15 Q. Anything else you can recall about the</p> <p>08:51:28 16 FFL transaction?</p> <p>08:51:29 17 A. Probably the one that I think that sticks</p> <p>08:51:32 18 out in my mind is, you know, after they tried to</p> <p>08:51:35 19 renegotiate the price, they came forward with this</p> <p>08:51:38 20 finding from this doctor. You know, we cut off the</p> <p>08:51:41 21 negotiations, and then they go and buy Kool Smiles,</p> <p>08:51:46 22 which was our competitor. So it was like they got</p> <p>08:51:49 23 what they needed, the information they needed to take</p> <p>08:51:53 24 Kool Smiles to where they wanted to go. And I think</p> <p>08:51:56 25 Kool Smiles has over 30 clinics now. And at the time</p>

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<p>08:51:59 1 they had two</p> <p>08:52:02 2 Q. Were there documents about the Bear</p> <p>08:52:05 3 Stearns and FFL transactions included in the virtual</p> <p>08:52:08 4 data room for the Sanus transaction?</p> <p>08:52:10 5 A. To the best of my knowledge, there was no</p> <p>08:52:17 6 request for -- you know, if you look at the list of</p> <p>08:52:20 7 documents that were requested, there was no request</p> <p>08:52:21 8 for either one of those. I know the FFL discussion</p> <p>08:52:24 9 did come up in that -- and I'm sure it came up, you</p> <p>08:52:27 10 know, when we first met in Denver, but I know it came</p> <p>08:52:30 11 up when we all met at the Marriott about, you know,</p> <p>08:52:33 12 why did the FFL deal break up?</p> <p>08:52:36 13 And I'm pretty sure that they got a copy</p> <p>08:52:39 14 of that document at that time if they didn't have it</p> <p>08:52:41 15 before.</p> <p>08:52:43 16 Q. What was the discussion at the Denver</p> <p>08:52:45 17 meeting?</p> <p>08:52:45 18 A. Again, you know, "Have you been through</p> <p>08:52:48 19 this process before?" You know, "How far did you get</p> <p>08:52:52 20 What happened?" So it was basically --</p> <p>08:52:58 21 MR. GRIMMER: Just so we're clear,</p> <p>08:52:59 22 though, he's talking about a meeting at the Marriott</p> <p>08:53:01 23 in Pueblo.</p> <p>08:53:03 24 MR. SCHOPF: Okay. My mistake.</p> <p>08:53:05 25 THE DEPONENT: Sorry.</p>	<p>09:07:23 1 an outlier, you know, there would be a discussion here</p> <p>09:07:28 2 with Dr. Mueller, who was one of the FORBA partners.</p> <p>09:07:34 3 Dr. DeRose, Mike, or Dr. Eddie, you know, might give</p> <p>09:07:37 4 the dentist or the clinic a call. But I wasn't part</p> <p>09:07:39 5 of those discussions. But I know as a group we</p> <p>09:07:41 6 discussed, here's the range of clinics. If this is a</p> <p>09:07:44 7 concern, you know, Dr. Eddie, make the call,</p> <p>09:07:47 8 Dr. Mueller, you make the call, and just have the</p> <p>09:07:49 9 discussion, we'll make sure that they're properly</p> <p>09:07:51 10 documenting, you know, why the crown was used.</p> <p>09:07:54 11 Q. Did -- were these concerns from FFL, were</p> <p>09:07:58 12 these in writing?</p> <p>09:07:59 13 A. The letter that -- yeah.</p> <p>09:08:03 14 Q. So there was a letter?</p> <p>09:08:04 15 A. Yeah.</p> <p>09:08:04 16 Q. Did you provide a copy of that letter to</p> <p>09:08:06 17 anyone at Sanus?</p> <p>09:08:07 18 A. It was my recollection that at one of the</p> <p>09:08:09 19 meetings at the Marriott Hotel in Pueblo when we were</p> <p>09:08:12 20 having that discussion that the letter was given to</p> <p>09:08:14 21 them at that time.</p> <p>09:08:16 22 Q. Did you personally?</p> <p>09:08:17 23 A. I did not personally give it to them.</p> <p>09:08:19 24 Q. Do you know who did?</p> <p>09:08:20 25 A. I don't know.</p>
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<p>08:53:06 1 MR. GRIMMER: Okay.</p> <p>08:53:08 2 A. Again, just the whole conversation of,</p> <p>08:53:10 3 "You went through this whole process; what happened</p> <p>08:53:12 4 with FFL?" So just kind of the same discussion I had</p> <p>08:53:15 5 with you, you know, here are the concerns. They</p> <p>08:53:17 6 wanted to change the price, we didn't agree to it</p> <p>08:53:19 7 Move forward.</p> <p>08:53:22 8 MR. SCHOPF: I want to take a short</p> <p>08:53:24 9 break. We've been going for about an hour. Take</p> <p>08:53:26 10 about a five-minute break.</p> <p>08:53:27 11 THE VIDEOGRAPHER: We're going off the</p> <p>08:53:28 12 record at 8:53.</p> <p>08:53:31 13 (Recess taken, 8:53 a.m. to 9:07 a.m.)</p> <p>09:06:42 14 THE VIDEOGRAPHER: We are back on the</p> <p>09:06:44 15 record at 9:07.</p> <p>09:06:47 16 Q. (BY MR. SCHOPF) Mr. Lane, we were</p> <p>09:06:49 17 talking before about some findings of a gentleman who</p> <p>09:06:53 18 was working with FFL; Dr. Barnsley, I believe we said</p> <p>09:07:00 19 his name is. Did Old FORBA, in response to his</p> <p>09:07:05 20 findings, do any sort of investigation or review of</p> <p>09:07:08 21 individual dentists?</p> <p>09:07:10 22 A. Again, what we looked at more as a whole</p> <p>09:07:14 23 is, you know, what is the usage of crowns, you know,</p> <p>09:07:18 24 clinic by clinic. And if there was what I would call</p> <p>09:07:20 25 a doctor who -- or a clinic that looked like there was</p>	<p>09:08:40 1 Q. What is your basis for your belief that</p> <p>09:08:43 2 the letter was given at that meeting?</p> <p>09:08:46 3 A. Well, I think through the discussion of,</p> <p>09:08:48 4 you know, when we were talking about, like I said, we</p> <p>09:08:50 5 were going clinic by clinic. Then when it came to</p> <p>09:08:53 6 that discussion, you know, I know the discussion was</p> <p>09:08:56 7 discussed about that, and I think that they had</p> <p>09:08:59 8 requested it, and I'm positive that the letter was</p> <p>09:09:02 9 given to them. I just don't know who did it.</p> <p>09:09:06 10 Q. Who was the letter given to?</p> <p>09:09:06 11 A. Again, I don't know.</p> <p>09:09:13 12 Q. Is it possible that there was a</p> <p>09:09:14 13 discussion that the letter was not provided?</p> <p>09:09:15 14 A. It could be possible. I know the request</p> <p>09:09:18 15 was made to get the letter.</p> <p>09:09:21 16 Q. So is it fair to say that you don't know</p> <p>09:09:23 17 whether the letter was provided?</p> <p>09:09:23 18 A. I personally did not give it to them, so</p> <p>09:09:26 19 I don't know if they actually did get it or not.</p> <p>09:09:31 20 Q. And in connection with these discussions</p> <p>09:09:36 21 with potential purchasers, you mentioned an entity, I</p> <p>09:09:39 22 think, called -- you mentioned an auction process.</p> <p>09:09:42 23 And how was that handled?</p> <p>09:09:43 24 A. You know, again, CIBC was the investment</p> <p>09:09:46 25 banking group out of New York that was in charge of</p>

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<p>Page 50</p> <p>09:09:49 1 that And so, you know, they went out and looked at</p> <p>09:09:51 2 potential buyers based on the dollar amount that, you</p> <p>09:09:54 3 know, we had projected, and they, you know, sent out a</p> <p>09:09:59 4 -- I guess they call it a teaser to the company</p> <p>09:10:02 5 saying, "Here's a business that's possibly for sale.</p> <p>09:10:05 6 Are you interested?" And then those that responded</p> <p>09:10:07 7 back, you know, CIBC evaluated them, came back to us</p> <p>09:10:11 8 and said, "Okay, here's 10 or 12, you know, let's put</p> <p>09:10:15 9 a presentation today with the model, what the</p> <p>09:10:18 10 projections are going forward, and then we'll have,</p> <p>09:10:20 11 you know, meetings with them face to face."</p> <p>09:10:21 12 Q. So did Old FORBA actually hire CIBC to</p> <p>09:10:25 13 represent it in this effort?</p> <p>09:10:26 14 A. I don't know if "hire" would be the right</p> <p>09:10:29 15 word, but they were the investment banker in charge of</p> <p>09:10:32 16 the process.</p> <p>09:10:32 17 Q. Did Old FORBA pay them?</p> <p>09:10:34 18 A. I think the only way they were going to</p> <p>09:10:36 19 get paid was if a transaction consummated.</p> <p>09:10:41 20 Q. And was there any continuing relationship</p> <p>09:10:44 21 with CIBC after the FFL transaction or discussion?</p> <p>09:10:49 22 A. To the best of my knowledge, it may have</p> <p>09:10:53 23 just been phone calls, you know, "Anything new?</p> <p>09:10:55 24 Anybody interested?" But nothing major.</p> <p>09:11:01 25 Q. I want to go back for a moment to the --</p>	<p>Page 52</p> <p>09:12:02 1 one clinic had an idea that they could share with</p> <p>09:12:04 2 another clinic on the phone, it was a way to</p> <p>09:12:06 3 communicate to all clinics and, you know, get</p> <p>09:12:09 4 everybody on the phone at once.</p> <p>09:12:10 5 Q. And who participated on behalf of the</p> <p>09:12:12 6 clinics?</p> <p>09:12:12 7 A. Typically, it was the lead dentist and</p> <p>09:12:15 8 the office manager.</p> <p>09:12:18 9 Q. What was the purpose of having the office</p> <p>09:12:20 10 manager on the call?</p> <p>09:12:21 11 A. Again, a lot of it would be related to</p> <p>09:12:23 12 the day-to-day operations, you know, any billing</p> <p>09:12:26 13 issues, any HR issues. Because the office manager was</p> <p>09:12:30 14 an instrumental, right-hand person for the lead</p> <p>09:12:33 15 dentist, you know, to handle all of the correspondence</p> <p>09:12:35 16 with us. Even though we would correspond with the</p> <p>09:12:39 17 lead dentist, most of our correspondence on a</p> <p>09:12:43 18 day-to-day basis was with the office manager.</p> <p>09:12:47 19 Q. Were there any minutes kept of these</p> <p>09:12:48 20 monthly calls?</p> <p>09:12:51 21 A. The only thing we had was an agenda, and</p> <p>09:12:54 22 so there were no formal minutes kept.</p> <p>09:12:56 23 Q. Were notes kept?</p> <p>09:12:57 24 A. Somebody might have kept notes on, you</p> <p>09:13:00 25 know, their particular topic, but there was no formal</p>
<p>Page 51</p> <p>09:11:05 1 in the context of the FFL report. You mentioned that</p> <p>09:11:10 2 there were some -- you mentioned that there were some</p> <p>09:11:13 3 chart audit changes, and you also mentioned some</p> <p>09:11:16 4 monthly calls.</p> <p>09:11:17 5 A. Right.</p> <p>09:11:18 6 Q. Just to clarify, monthly calls with all</p> <p>09:11:21 7 the centers at the same time?</p> <p>09:11:22 8 A. Yes. It was a monthly all-clinic</p> <p>09:11:24 9 conference call. Now, those calls didn't start as a</p> <p>09:11:27 10 result of that, but, you know, some of the things that</p> <p>09:11:30 11 we would discuss were, you know, production-related</p> <p>09:11:34 12 activities. And if there was a concern about the</p> <p>09:11:36 13 usage of stainless steel crowns, you know, we</p> <p>09:11:39 14 mentioned it at one of the meetings.</p> <p>09:11:40 15 Q. When did those monthly meetings start?</p> <p>09:11:43 16 A. You know, I'm not -- I couldn't recall</p> <p>09:11:46 17 the date.</p> <p>09:11:47 18 Q. Did they start after the FFL?</p> <p>09:11:50 19 A. No, I think they started before that</p> <p>09:11:52 20 time.</p> <p>09:11:53 21 Q. Do you know why --</p> <p>09:11:55 22 A. Why we had the monthly conference call?</p> <p>09:11:57 23 Q. Yes.</p> <p>09:11:57 24 A. As we were growing, you know, to make</p> <p>09:12:00 25 sure that all clinics were on the same page. And if</p>	<p>Page 53</p> <p>09:13:03 1 notes filed anywhere. But the agendas were, you know,</p> <p>09:13:06 2 created by me and, you know, distributed to each of</p> <p>09:13:09 3 the clinics.</p> <p>09:13:10 4 Q. Did you personally keep notes, that you</p> <p>09:13:13 5 recall?</p> <p>09:13:13 6 A. You know, if there were concerns that</p> <p>09:13:16 7 came out that I needed to address, I would take notes,</p> <p>09:13:19 8 yes.</p> <p>09:13:19 9 Q. What about Dan DeRose? Do you know if he</p> <p>09:13:22 10 kept notes?</p> <p>09:13:23 11 A. Typically, you know, as Dan, you know,</p> <p>09:13:26 12 being the leader of the group, would make sure he</p> <p>09:13:29 13 delegated responsibility. So I think if something</p> <p>09:13:31 14 came up and it was my action item, you know, kind of</p> <p>09:13:33 15 like make sure you're taking a note. So I think it</p> <p>09:13:36 16 would be more of, you know, who was in charge of that</p> <p>09:13:38 17 area.</p> <p>09:13:40 18 Q. Were the agendas for these meetings</p> <p>09:13:45 19 included in the virtual data room?</p> <p>09:13:47 20 A. Again, I would have to look at the list</p> <p>09:13:49 21 They may have requested a sample, but I don't think</p> <p>09:13:51 22 they requested all of them. But they did have access</p> <p>09:13:53 23 to them, you know, when they were in Pueblo if they</p> <p>09:13:56 24 wanted.</p> <p>09:14:01 25 Q. After the Sanus transaction, did -- or as</p>

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<p>09:14:05 1 a result of the Sanus transaction, what happened to 09:14:06 2 your electronic documents? 09:14:08 3 A. My computer? 09:14:10 4 Q. Yeah. 09:14:10 5 A. I still have it at my office 09:14:13 6 Q. Okay. So is it fair to say that there 09:14:16 7 are documents that exist on your system from -- that 09:14:19 8 related to your time at Old FORBA? 09:14:22 9 A. There are, you know, obviously, the 09:14:24 10 emails, and then there are some documents that I had 09:14:25 11 created that are still on my computer or that were 09:14:28 12 given to me, you know, like the chart audit template, 09:14:41 13 Excel spreadsheet templates, performance review 09:14:41 14 templates. 09:14:44 15 Q. How many emails would you say you had 09:14:46 16 from your time at old FORBA that are on your system? 09:14:49 17 A. Well, when I started in 2001 -- my 09:14:52 18 computer crashed in May of 2005, and we spent about 09:14:58 19 \$5,000 trying to recover my hard drive, because I 09:15:01 20 about had a meltdown. Weren't able to recover it. So 09:15:05 21 I got a new computer in May of 2005. Until the sale 09:15:10 22 date of September 26, 2006, there's probably 70,000 09:15:16 23 emails. I don't know if that's -- it's a lot of 09:15:18 24 emails 09:15:19 25 Q. And so for the period before May 2005, is</p>	<p>09:16:42 1 Q. You mentioned earlier -- do you have any 09:16:47 2 handwritten notes in your possession from your time at 09:16:51 3 Old FORBA? 09:16:52 4 A. I do not. 09:16:52 5 Q. Okay. You mentioned earlier that you had 09:16:57 6 -- that there was a contact that -- you thought, from 09:17:00 7 Waller who worked with you on the due diligence; is 09:17:04 8 that correct? 09:17:04 9 A. Yes. 09:17:04 10 Q. Do you recall who that was? 09:17:05 11 A. If I saw a list of names I could tell you 09:17:11 12 right away. There was quite a few. 09:17:17 13 Q. There was more than one? 09:17:17 14 A. Yes. 09:17:18 15 Q. More than one contact? 09:17:19 16 A. But there was one main contact. Brian -- 09:17:23 17 if I saw a list, I could tell you. 09:17:28 18 MS. RODRIGUEZ: Browder? 09:17:29 19 THE DEPONENT: Browder, yes, he was one 09:17:31 20 of them. 09:17:41 21 Q. (BY MR. SCHOPF) We were talking about 09:17:42 22 the chart audits earlier. When did Old FORBA start 09:17:46 23 doing chart audits? 09:17:47 24 A. Good question. I don't know the actual 09:17:51 25 time frame. I could go back and look at, you know,</p>
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<p>09:15:26 1 it your testimony that no data survived that crash? 09:15:29 2 A. My computer did not survive. 09:15:31 3 Q. Okay. 09:15:34 4 A. Like I said, we spent about \$5,000. We 09:15:36 5 actually sent the hard drive up to a specialist in 09:15:40 6 Denver that took it into, like, a lab, environmentally 09:15:43 7 controlled lab, trying everything he could to get 09:15:47 8 it. 09:15:47 9 Q. And in addition to emails, do you also 09:15:50 10 have on your computer other electronic documents from 09:15:55 11 your -- from the time at FORBA? Or in this case it 09:15:59 12 would have been from May '05 through September '06? 09:16:04 13 A. Yeah, like, I have some of the templates 09:16:05 14 that were created for chart audits, I have, you know, 09:16:05 15 some pdf files that were scanned, chart audit 09:16:08 16 results, you know, performance review templates. I 09:16:15 17 mean, I do have a lot of files. Not nearly as many 09:16:18 18 files as I have emails. 09:16:21 19 Q. Do you have any hard-copy documents from 09:16:24 20 your time at Old FORBA? 09:16:25 21 A. We gave everything to New FORBA at the 09:16:27 22 time of the sale. So, you know, things like I created 09:16:31 23 were the -- we talked about the state Medicaid 09:16:33 24 manuals; they have all those. The HR manual, the 09:16:37 25 operations manual; they have all of that.</p>	<p>09:17:55 1 some of the results, but ... 09:17:57 2 Q. When you started in 2001, were they doing 09:17:59 3 chart audits at that time? 09:18:00 4 A. We did informal chart audits, you know. 09:18:03 5 After the first clinic opened, we would go up, look at 09:18:06 6 it. I didn't have anything structured for the first 09:18:09 7 one or two clinics. It was more, you know, just 09:18:14 8 sampling through them. And as we started to grow, I 09:18:16 9 created the template, and then as we grew bigger, we 09:18:20 10 modified the template. 09:18:24 11 Q. So in the early -- in your early days, 09:18:29 12 did you actually go to the -- to visit the center? 09:18:32 13 A. Yes, yes. 09:18:33 14 Q. And you would look at charts? 09:18:34 15 A. Yes. 09:18:34 16 Q. Did someone come with you? 09:18:36 17 A. Typically, if I went by myself, you know, 09:18:41 18 I would just go in as a -- as a visit to the front 09:18:44 19 office, you know, meet with the employees, do a random 09:18:47 20 audit. Not necessarily that there would be anybody 09:18:49 21 with us. Or with me. 09:18:51 22 Q. And how many charts would you look at? 09:18:55 23 A. Depending on the time that I had, you 09:18:57 24 know, typically 10, sometimes 20. 09:19:01 25 Q. And what were you looking for in these</p>

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<p>Page 130</p> <p>11:12:36 1 cases he identified, nothing happened. There was no</p> <p>11:12:38 2 big investigation that we ever underwent. Any</p> <p>11:12:42 3 complaint that came our way, request for information,</p> <p>11:12:44 4 audit, we took care of it. We handled it. The states</p> <p>11:12:48 5 never stopped paying us. They never kicked us out of</p> <p>11:12:52 6 the network.</p> <p>11:12:53 7 Q. But the items he mentioned were actual</p> <p>11:12:58 8 legitimate items, were they not?</p> <p>11:13:01 9 A. In his mind, they were</p> <p>11:13:02 10 Q. Well, so you didn't agree, then, that</p> <p>11:13:04 11 these were cause for any kind of alarm?</p> <p>11:13:07 12 A. No.</p> <p>11:13:08 13 Q. So is it -- did you believe it was</p> <p>11:13:11 14 solicitation simply because you disagreed with what he</p> <p>11:13:13 15 said?</p> <p>11:13:13 16 A. I think in his mind he thought because of</p> <p>11:13:20 17 the complaints that he had in front of him or</p> <p>11:13:23 18 knowledge he had, that he thought that we needed to be</p> <p>11:13:26 19 prepared for something. And in our mind, it was</p> <p>11:13:29 20 everyday business. The issues that were at hand, we</p> <p>11:13:32 21 took care of them. And like I said, you know, if</p> <p>11:13:35 22 there was an audit, we took care of it. If there was</p> <p>11:13:37 23 a request for information, we took care of it. There</p> <p>11:13:39 24 were no major findings, nobody lost their licenses,</p> <p>11:13:42 25 nobody got excluded from Medicaid. And to us, that's</p>	<p>Page 132</p> <p>11:14:57 1 times X one day? I mean, help us understand the</p> <p>11:15:00 2 dynamics of that.</p> <p>11:15:01 3 Q. And what were the expectations?</p> <p>11:15:03 4 A. Well, we had internally -- one of the</p> <p>11:15:08 5 interesting things that came out of trying to do this</p> <p>11:15:10 6 transaction in June with FFL in 2004 and then again</p> <p>11:15:14 7 with Sanus in 2006 is we never set budgets. We knew,</p> <p>11:15:20 8 you know, based on our model what it would take ever</p> <p>11:15:24 9 day to make a clinic successful. And each state had</p> <p>11:15:28 10 their own fee schedule. So Colorado might be, you</p> <p>11:15:31 11 know, 80 percent of what Indiana pays. So we knew</p> <p>11:15:34 12 that if you could make the model work in Colorado at</p> <p>11:15:40 13 this level we could make it work in Indiana. But we</p> <p>11:15:43 14 had never set up formal budgets to say, "You have to</p> <p>11:15:47 15 do \$150,500 a day to break even." We knew what it</p> <p>11:15:50 16 would take based on, you know, each clinic</p> <p>11:15:53 17 And so we never really published any</p> <p>11:15:56 18 budgets until we started, you know, the FFL process.</p> <p>11:15:59 19 They wanted to see it. And the same thing with Sanus.</p> <p>11:16:02 20 They wanted to see, you know, what does your budget</p> <p>11:16:04 21 look like? So we never -- we just knew internally,</p> <p>11:16:07 22 you know, if a clinic looked like it was going south</p> <p>11:16:10 23 of where we thought they should be, you know, let's</p> <p>11:16:13 24 make a phone call. Let's find out.</p> <p>11:16:35 25 Q. Do you know whether the lead dentist</p>
<p>Page 131</p> <p>11:13:47 1 the proof for us is that he thought there was</p> <p>11:13:50 2 something going on or could go on, and it never</p> <p>11:13:52 3 happened.</p> <p>11:13:53 4 Q. You mentioned before that production was</p> <p>11:13:58 5 not discussed at -- with the clinics. What's your</p> <p>11:14:04 6 basis for saying that?</p> <p>11:14:05 7 A. What I mean by that is in the staff</p> <p>11:14:06 8 meeting -- I mean, to the extent that he was in that</p> <p>11:14:09 9 staff meeting with all of the employees saying that</p> <p>11:14:12 10 we're not meeting our daily expectations, we're not --</p> <p>11:14:15 11 you know, we're going to have to lay people off, I</p> <p>11:14:18 12 mean, we never had that discussion. The discussions</p> <p>11:14:20 13 we would have would be with the lead dentist or office</p> <p>11:14:23 14 manager and, you know, we get daily reports from them</p> <p>11:14:26 15 that would indicate, you know, what they did each day.</p> <p>11:14:29 16 And, you know, if we felt that they weren't meeting</p> <p>11:14:32 17 expectations, you know, ask questions of the lead doc</p> <p>11:14:37 18 and the office manager.</p> <p>11:14:39 19 Q. I'm sorry?</p> <p>11:14:40 20 A. "What happened? Was it snowy? Was it,</p> <p>11:14:42 21 you know, an ice day? Was the school testing?" You</p> <p>11:14:46 22 know, you had to get information from them, because we</p> <p>11:14:48 23 had to run the business. And so you have to</p> <p>11:14:49 24 communicate with them to just understand why was today</p> <p>11:14:52 25 X and yesterday was Y? And, you know, why was it two</p>	<p>Page 133</p> <p>11:16:39 1 talked with the other dentists or members of the staff</p> <p>11:16:42 2 about production issues?</p> <p>11:16:43 3 A. Oh, I'm sure they did. It was part of</p> <p>11:16:47 4 their performance review as well, you know, how well</p> <p>11:16:49 5 are they doing as a team? Obviously, each dentist has</p> <p>11:16:53 6 two dental assistants working with them and, you know,</p> <p>11:16:56 7 if a -- if a dentist is having problems with an</p> <p>11:17:00 8 assistant and their abilities, you know, we would have</p> <p>11:17:03 9 to get people that could all do what was needed every</p> <p>11:17:05 10 day.</p> <p>11:17:07 11 Q. Okay. You mentioned before that the</p> <p>11:17:14 12 price of the Sanus transaction went from 470, I think,</p> <p>11:17:20 13 to 435. Was there any concern that Sanus would seek a</p> <p>11:17:25 14 further price reduction?</p> <p>11:17:28 15 A. Not that I can recall.</p> <p>11:17:34 16 MR. SCHOFF: I have nothing further</p> <p>11:17:35 17 MR. GRIMMER: Okay. Thanks.</p> <p>11:17:39 18 MS. RODRIGUEZ: Thanks very much.</p> <p>11:17:41 19 THE VIDEOGRAPHER: This marks the end of</p> <p>11:17:42 20 tape 2 of 2 in the deposition of Richard Lane. We're</p> <p>11:17:45 21 going off the record at 11:18</p> <p>11:17:49 22 WHEREUPON, the within proceedings were</p> <p>23 concluded at the approximate hour of 11:18 a.m. on the</p> <p>24 2nd day of December, 2009.</p> <p>25 * * * *</p>

EXHIBIT “E”

LICCSAC, LLC, et al.,
 Plaintiffs,
 vs.
 SMALL SMILES HOLDING
 COMPANY, LLC, et al ,
 Defendants,
 and
 ASSOCIATED TRUST COMPANY,
 NATIONAL ASSOCIATION,
 Interpleading
 Defendant.

DEPOSITION OF MICHAEL G. LINDLEY
DECEMBER 10, 2009
2:20 P.M.

PREMIER REPORTING

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1 Rodney and I. I'm not -- or Rodney and I and Al
 2 I'm not sure if Greg was there. It would have
 3 been consistent for him to have been there.
 4 And we met at the time, I know we
 5 met Sean Barnwell. We met Bob Andrus. We met
 6 Ken Knott. We met Todd Cruse. We may have met
 7 Ryan Root, although I'm not sure. We may have
 8 met Kevin Reilly, who not the Kevin Reilly I
 9 referred to earlier, but a different Kevin
 10 Reilly.
 11 Q Right.
 12 A We may have met him as well. I'm
 13 not -- the three doctors and Cruse were the ones
 14 that stick in my mind.
 15 Q And the three doctors were Knott,
 16 Andrus and Barnwell?
 17 A Correct.
 18 Q And what did you understand their
 19 role was with old FORBA?
 20 A As to Barnwell, he was a, I guess a
 21 mini regional for the state of South Carolina and
 22 the state of Georgia was what I recall.
 23 Knott was a, he had been the lead
 24 dentist in Tucson, I believe, originally and then
 25 had come to Pueblo. And I believe his primary

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1 role was one of filling in for doctors who were
 2 on P.T.O. in states where he was licensed. So he
 3 was a bit of a road warrior.
 4 And Andrus's role was to work in
 5 the Pueblo clinic, to train all of the new
 6 doctors coming through the system and to own the
 7 Georgia clinics for the company.
 8 Q As a dentist licensed in Georgia, I
 9 take it?
 10 A That's correct.
 11 Q All three of them transitioned to
 12 new FORBA at the time of closing?
 13 A They did.
 14 Q And how many of them are still
 15 employed?
 16 A None of them.
 17 Q And when did Mr. Barnwell leave?
 18 A Sometime in 2007, I believe.
 19 Q How about Mr. Knott?
 20 A That would have been in 2008.
 21 Q When?
 22 A I can't recall the specific date.
 23 Q Can you ballpark it in terms of
 24 first six months? Second six months?
 25 A I don't recall. We can get his

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1 H.R. record and get the exact date.
 2 Q All right. How about Mr. Andrus?
 3 A He departed on the same day.
 4 Q As Knott?
 5 A Yes.
 6 Q And were they terminated?
 7 A They were.
 8 Q And what was the reason for their
 9 being terminated?
 10 A We had E-mail traffic that
 11 suggested that they had both falsified license
 12 applications to the state of New York and the
 13 state of I believe Arizona respectively and the
 14 state of Nevada and that they were having,
 15 essentially having their assistants take their
 16 C.E., required C.E. courses for them in order to
 17 maintain licensure.
 18 And when we brought them to
 19 Nashville and asked them about it, they told us
 20 that, yes, they, in fact, had done that, and we
 21 terminated them on the spot.
 22 Q Do you know when that had occurred,
 23 the use of assistants to attend C.E. courses?
 24 A Yeah. I know. It's ridiculous,
 25 isn't it?

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1 No, I don't know. I don't remember
 2 at what period that happened.
 3 Q Well, I mean, my question is, was
 4 this something that happened on new FORBA's watch
 5 or was it while they were still employed by old
 6 FORBA?
 7 A I think it's both, but I'm not
 8 sure.
 9 Q All right. How about Mr. Barnwell,
 10 or Dr. Barnwell, why did he leave?
 11 A His skill set was not complementary
 12 to the job we were asking him to do.
 13 Q All right. And did you replace
 14 Mr. Barnwell?
 15 A Yes.
 16 Q Did new FORBA have dentists that
 17 were in charge of overseeing clinics in multiple
 18 states?
 19 Do you understand the question?
 20 A Yes. That's what Barnwell, Knott
 21 and Andrus were charged with doing.
 22 Q All right. And when Barnwell left,
 23 what areas were being supervised by him?
 24 A Oh, I believe it was Maryland,
 25 Virginia, South Carolina, Georgia and Alabama I

13 (Pages 46 to 49)

PREMIER REPORTING

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<p>Page 90</p> <p>1 had any method of monitoring what documents had 2 been accessed on what days?</p> <p>3 A I believe so.</p> <p>4 Q And have you ever seen any reports 5 on what documents were accessed as to the virtual 6 data room?</p> <p>7 A I don't think I've seen any of the 8 reports. I do believe I got verbal reports from 9 the bankers as to general levels of activity from 10 prospective investors.</p> <p>11 Q Who was it that was monitoring what 12 documents were being accessed? Was it C.I.T.?</p> <p>13 A Someone within C.I.T. would have 14 been talking to somebody at IntraLinks about 15 that.</p> <p>16 Q How much money did you personally 17 bring to the table on this deal?</p> <p>18 A 3.125 million dollars.</p> <p>19 Q And did you also front some of the 20 due diligence expenses?</p> <p>21 A I was on the hook for them. I 22 don't know -- we spent a small amount of money, 23 and I would characterize that as, you know, less 24 than 20,000 dollars or 30,000 dollars, I believe, 25 out of pocket. Maybe it's a little more.</p>	<p>Page 92</p> <p>1 today.</p> <p>2 Q All right. Are there any 3 restrictions placed on your spending authority by 4 any of your partners?</p> <p>5 A I'm not sure I understand the 6 question.</p> <p>7 Q Well, I mean, as the C.E.O. of 8 FORBA, L.L.C., do you have any restrictions on 9 how you spend money?</p> <p>10 A I don't think that there's anything 11 in writing. But as a practical matter, 12 certainly.</p> <p>13 Q What, as a practical matter, what's 14 the limit?</p> <p>15 A Again, there's no dollar limit. 16 It's, the operation of the company is such that 17 we approve on an annual basis an operating plan 18 that involves both operating dollars, overhead 19 dollars, staffing plans, maintenance cap ex 20 dollars and new growth cap ex dollars.</p> <p>21 And to the extent that our 22 operations or activities fall within that plan, 23 there's no further reporting to the board 24 necessary. If we are outside the bounds of that, 25 then we go back to the board.</p>
<p>Page 91</p> <p>1 The vast majority of that, as you 2 can see from the closing statement, was paid at 3 the closing, but it would have been my obligation 4 to pay had the deal not closed.</p> <p>5 Q Do you have any sense of how big 6 that obligation would have been had the deal not 7 closed? Are we talking more than a million? Are 8 we talking less than a million?</p> <p>9 A No. It was more than a million. 10 And I actually take that back, sort of. It was 11 my obligation until we selected an equity 12 partner. And at the time that we signed our 13 agreement with Arcapita, Arcapita then became 14 liable for the due diligence expenses.</p> <p>15 Q And when was that deal signed?</p> <p>16 A I believe either July or August of 17 2006, but I'm not certain.</p> <p>18 Q Are those documents that we can 19 find in the A.P.A.?</p> <p>20 A No. I don't think so.</p> <p>21 Q I'm just recalling that there are 22 some letters from Arcapita in the A.P.A., 23 attached to the A.P.A.</p> <p>24 A Well, no. It may be. They may be. 25 I'm not certain. I didn't review the A.P.A. for</p>	<p>Page 93</p> <p>1 Q Are you aware of a document that 2 was written to old FORBA by an attorney named 3 Kellogg?</p> <p>4 A The name doesn't ring a bell.</p> <p>5 Q Were board packages provided to you 6 in either the virtual data room or in a document 7 room at Pueblo, board packages of old FORBA?</p> <p>8 A I believe so.</p> <p>9 Q Which was it, both in the V.D.R. 10 and hard copies in Pueblo, or do you recall?</p> <p>11 A I don't recall.</p> <p>12 Q After the transaction closed, my 13 understanding is that Dan and Mike Rounph and 14 Rich Lane were obligated under a transition 15 agreement to answer questions about the business?</p> <p>16 A Sounds reasonable. I don't 17 remember that specifically, but I think that's 18 probably right.</p> <p>19 Q Do you recall whether any of the 20 three of them were ever contacted for information 21 or advice about the business after the closing?</p> <p>22 A I don't recall.</p> <p>23 Q Do you recall that the A.P.A. 24 obligated you as the buyer to operate the 25 individual clinics in full compliance with</p>

24 (Pages 90 to 93)

PREMIER REPORTING

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<p style="text-align: right;">Page 110</p> <p>1 get</p> <p>2 There were sporadic reports of</p> <p>3 undertreatment. There were sporadic reports of</p> <p>4 differences of opinion as to what the treatment</p> <p>5 plan should have been, meaning whether it was,</p> <p>6 you know, should it have been a filling, a</p> <p>7 two-surface restoration, a crown, should a</p> <p>8 pulpotomy have been done, pretty standard</p> <p>9 run-of-the-mill disagreements among dental</p> <p>10 professionals.</p> <p>11 I don't remember any information</p> <p>12 that came to us through an investigation, and we</p> <p>13 looked at a lot of charts, that suggested that</p> <p>14 any doctor was doing work on healthy teeth.</p> <p>15 Q What about information that would</p> <p>16 lead to a conclusion that there was overtreatment</p> <p>17 as opposed to working on healthy teeth?</p> <p>18 A By whose definition?</p> <p>19 Q By Medicaid's definition, I guess.</p> <p>20 A Medicaid doesn't --</p> <p>21 MS. RODRIGUEZ: Objection to form.</p> <p>22 BY MR. GRIMMER:</p> <p>23 Q Well, we'll use your definition.</p> <p>24 You know, given that you heard what</p> <p>25 you heard in this report, the WJLA report, and I</p>	<p style="text-align: right;">Page 112</p> <p>1 Park?</p> <p>2 A He looked at charts at a number of</p> <p>3 places.</p> <p>4 Q Did he issue any kind of report?</p> <p>5 A I believe that he did.</p> <p>6 Q Who has that report?</p> <p>7 A I don't know, but I would think</p> <p>8 King & Spalding would have a copy of that</p> <p>9 Q All right. Does your compliance</p> <p>10 officer, Ms. Luke --</p> <p>11 A Luke.</p> <p>12 Q -- have a copy of that?</p> <p>13 A I don't think so.</p> <p>14 Q And that's the report that you have</p> <p>15 indicated was not conclusive of any finding of --</p> <p>16 that was not conclusive as to overtreatment,</p> <p>17 undertreatment, is that the report you were</p> <p>18 talking about earlier when you said that some</p> <p>19 charts reflected undertreatment, some reflected</p> <p>20 overtreatment by some people's standards?</p> <p>21 A Yes.</p> <p>22 Q At any time prior to April 14th,</p> <p>23 2008, and I use that date because that's the date</p> <p>24 of Mr. Hester's second letter laying out facts</p> <p>25 supporting the notice of claim, at any time by</p>
<p style="text-align: right;">Page 111</p> <p>1 know that you promptly responded to it a couple</p> <p>2 of days later, did you bring in outside</p> <p>3 consultants, dentists, pediatric dentists to go</p> <p>4 in and check the charts at Langley Park?</p> <p>5 A Prior to issuing the statement?</p> <p>6 Q No, not prior to issuing the</p> <p>7 statement. After the -- at any time after,</p> <p>8 immediately after the WJLA report</p> <p>9 A Yes.</p> <p>10 Q Who did you hire as an outside</p> <p>11 consultant?</p> <p>12 A Navigant.</p> <p>13 Q And did they bring in pediatric</p> <p>14 dentists?</p> <p>15 A Yes, they did.</p> <p>16 Q Any of those folks still associated</p> <p>17 with you, any of the pediatric dentists that came</p> <p>18 in?</p> <p>19 A There was only one, and Navigant</p> <p>20 continues to do work for us as we develop and</p> <p>21 continue to make more robust our compliance plan.</p> <p>22 But Dr. Feinglass, as far as I know, has not</p> <p>23 billed us in a number of months.</p> <p>24 Q All right. Well, he was the person</p> <p>25 that went in and looked at the charts at Langley</p>	<p style="text-align: right;">Page 113</p> <p>1 April 14th, 2008 had any outside third-party</p> <p>2 consultants reported to you that there was</p> <p>3 concerns as to overtreatment of Medicaid patients</p> <p>4 by old FORBA?</p> <p>5 A Not third-party consultants. And</p> <p>6 I'm trying to think if there were third-party</p> <p>7 payers. I'm not sure.</p> <p>8 Q You just don't know one way or the</p> <p>9 other?</p> <p>10 A I don't know.</p> <p>11 Q All right. Did you have a chance</p> <p>12 to review both the March 21st notice of claim</p> <p>13 from Mr. Hester and the April 14th follow-up</p> <p>14 letter by Mr. Hester before they were sent out?</p> <p>15 A Yes, I did.</p> <p>16 Q And did you approve them being sent</p> <p>17 out?</p> <p>18 A I did.</p> <p>19 Q And did you believe them to be</p> <p>20 factually accurate?</p> <p>21 A I did.</p> <p>22 Q Did you believe that they failed to</p> <p>23 lay out factual reasons for making a claim under</p> <p>24 the escrow agreement that were available to new</p> <p>25 FORBA either on March 21st or on April 14th?</p>

29 (Pages 110 to 113)

PREMIER REPORTING

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EXHIBIT “F”

STATE OF WISCONSIN CIRCUIT COURT
DANE COUNTY
BRANCH 2

Case No. 08-CV-2215
Case Code: 30701

LICSAC, LLC, et al.,

Plaintiffs,

v

SMALL SMILES HOLDING COMPANY, LLC, et al.,

Defendants,

and

ASSOCIATED TRUST COMPANY, NATIONAL ASSOCIATION,

Interpleading Defendant.

VIDEOTAPE DEPOSITION OF: DANNY E. DeROSE
October 15, 2009

PURSUANT TO NOTICE, the videotape deposition of DANNY E. DeROSE was taken on behalf of the Defendants at 633 17th Street, Suite 2700, Denver, Colorado 80202, on October 15, 2009, at 8:38 a.m., before Tracy C. Masuga, Registered Professional Reporter, Certified Realtime Reporter, and Notary Public within Colorado.



<p>Page 138</p> <p>11:45:18 1 MS. RODRIGUEZ: If you would like to, we</p> <p>11:45:19 2 can take a break now. I'm probably about 40 minutes</p> <p>11:45:22 3 from finishing.</p> <p>11:45:23 4 THE DEPONENT: I'm fine</p> <p>11:45:24 5 MR. GRIMMER: I wouldn't mind taking a</p> <p>11:45:27 6 five-minute break and then go ahead and finishing</p> <p>11:45:30 7 MS. RODRIGUEZ: Okay. Let's do that</p> <p>11:45:31 8 MR. GRIMMER: How many exhibits do you</p> <p>11:45:33 9 think you're going to have?</p> <p>11:45:34 10 THE DEPONENT: 50</p> <p>11:45:34 11 MR. GRIMMER: No, if she's 40 minutes</p> <p>11:45:36 12 from being done, she's only got a few more.</p> <p>11:45:39 13 MS. RODRIGUEZ: Yeah, I would say like</p> <p>11:45:39 14 five or six.</p> <p>11:45:41 15 MR. GRIMMER: Okay, excellent.</p> <p>11:45:43 16 THE VIDEOGRAPHER: We're going off the</p> <p>11:45:44 17 record at 11:46</p> <p>11:54:41 18 (Recess taken, 11:46 a.m. to 11:56 a.m.)</p> <p>11:54:41 19 THE VIDEOGRAPHER: We're back on the</p> <p>11:55:14 20 record at 11:56.</p> <p>11:55:16 21 Q. (BY MS. RODRIGUEZ) Mr. DeRose, do you</p> <p>11:55:19 22 recall that FORBA had monthly provider reports that it</p> <p>11:55:23 23 ran?</p> <p>11:55:24 24 A. Provider reports? Can you show me one?</p> <p>11:55:31 25 Q. No.</p>	<p>Page 140</p> <p>11:56:41 1 Arcarpita, but anyway.</p> <p>11:56:43 2 Q. And when was that?</p> <p>11:56:43 3 A. I don't know the dates. It was probably</p> <p>11:56:45 4 a year before, year and a half before.</p> <p>11:56:49 5 Q. Roughly 2004?</p> <p>11:56:50 6 A. I was contacted in February of 2006 by</p> <p>11:56:57 7 Sanus through Greg Park, so, yeah, it was probably</p> <p>11:57:04 8 2004. It took about that long to get the taste out of</p> <p>11:57:07 9 our mouth.</p> <p>11:57:07 10 Q. Okay. And who was the potential</p> <p>11:57:11 11 acquirer in 2004?</p> <p>11:57:13 12 A. They did an auction, and there was a</p> <p>11:57:15 13 bunch, and the final one that we signed an agreement</p> <p>11:57:17 14 with to just work with them was FFL.</p> <p>11:57:20 15 Q. And what did that stand for?</p> <p>11:57:22 16 A. I think it stands for Friedman, the</p> <p>11:57:25 17 middle guy is Flesheim [sic], and Lowe. I know the</p> <p>11:57:29 18 third one is Lowe. He's the guy I dealt with, David</p> <p>11:57:32 19 Lowe.</p> <p>11:57:32 20 Q. And why did FFL ultimately decide not to</p> <p>11:57:37 21 go forward with the transaction?</p> <p>11:57:38 22 A. Well, it depends who you talk to. If</p> <p>11:57:41 23 you're asking me, which you are, they tried to -- they</p> <p>11:57:47 24 offered not enough money, and the offer they made,</p> <p>11:57:49 25 they took away, and they tried to reoffer, they tried</p>
<p>Page 139</p> <p>11:55:34 1 A. You can't? Provider reports, huh?</p> <p>11:55:36 2 Q. I'm choosing not to.</p> <p>11:55:38 3 A. Okay. Well, I'm not sure what you're</p> <p>11:55:40 4 referring to.</p> <p>11:55:40 5 Q. The title "Monthly Provider Reports"</p> <p>11:55:43 6 doesn't mean anything to you?</p> <p>11:55:44 7 A. No, I'm -- no, I can't think if it --</p> <p>11:55:47 8 who the providers, like the different --</p> <p>11:55:50 9 Q. Dentists.</p> <p>11:55:51 10 A. -- managed care companies? Oh</p> <p>11:55:53 11 Q. No, dentists?</p> <p>11:55:55 12 A. Production, like production reports from</p> <p>11:55:59 13 dentists? Are you asking if we had those?</p> <p>11:56:02 14 Q. Yes, monthly reports.</p> <p>11:56:04 15 A. I just saw one from Rounph, so there was</p> <p>11:56:05 16 one that existed, obviously</p> <p>11:56:07 17 Q. Do you recall that there were monthly</p> <p>11:56:08 18 reports tracking production by dentist at least as far</p> <p>11:56:13 19 back as 2005?</p> <p>11:56:14 20 A. There may have been. They don't stand</p> <p>11:56:21 21 out in my mind</p> <p>11:56:22 22 Q. Did there come a time when you and your</p> <p>11:56:27 23 partners decided that you wanted to sell FORBA?</p> <p>11:56:31 24 A. Early on, yeah. We went through the</p> <p>11:56:34 25 process once before Sanus, Arcarpita, I call it</p>	<p>Page 141</p> <p>11:57:52 1 to retrade us, and very politely told them to fly a</p> <p>11:57:59 2 kite.</p> <p>11:57:59 3 Q. And if I asked them, what would they</p> <p>11:58:01 4 say?</p> <p>11:58:01 5 A. They would say that --</p> <p>11:58:03 6 MR. GRIMMER: Don't speculate --</p> <p>11:58:03 7 THE DEPONENT: Yeah.</p> <p>11:58:04 8 MR. GRIMMER: -- but if you think you</p> <p>11:58:05 9 know</p> <p>11:58:05 10 A. They would say -- well, you can tell by</p> <p>11:58:06 11 what they did. They loved the business, completely</p> <p>11:58:10 12 enthralled with it, stole all of our information and</p> <p>11:58:13 13 went and bought a competitor. So that tells you what</p> <p>11:58:16 14 they thought about the business: They loved it. But</p> <p>11:58:18 15 they thought we wanted too much money. It was all</p> <p>11:58:22 16 about money.</p> <p>11:58:23 17 Q. (BY MS. RODRIGUEZ) Okay. And after</p> <p>11:58:27 18 FFL, was there another potential purchaser that you</p> <p>11:58:29 19 talked to?</p> <p>11:58:30 20 A. Yeah, we talked -- I didn't really talk</p> <p>11:58:32 21 to them much. I had Reilly dealing with -- Bear</p> <p>11:58:35 22 Stearns was interested in buying us.</p> <p>11:58:36 23 Q. And what happened with Bear Stearns?</p> <p>11:58:40 24 A. They wouldn't offer a price that was</p> <p>11:58:42 25 anywhere near what I was interested in.</p>

EXHIBIT “G”

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Department of Justice Press Release

For Immediate Release

January 20, 2010

U.S. Department of Justice

Office of Public Affairs

(202) 514-2007/TDD (202) 514-1888

National Dental Management Company Pays \$24 Million to Resolve Fraud Allegations

Medically Unnecessary Dental Services Allegedly Performed on Children

WASHINGTON—The United States today announced that it has settled False Claims Act allegations against FORBA Holdings LLC, a dental management company that provides business management and administrative services to 69 clinics nationwide known as "Small Smiles Centers." Under the agreement, FORBA will pay the United States and participating states \$24 million, plus interest, to resolve allegations that it caused bills to be submitted to state Medicaid programs for medically unnecessary dental services performed on children insured by Medicaid, which is funded jointly by the federal and state governments. FORBA has further agreed to put in place various remedial measures designed to prevent similar unlawful conduct from occurring in the future. The government's investigation of individual dentists is ongoing, and FORBA is cooperating with that investigation by providing information about dentists who may have violated professional standards.

The United States alleged that FORBA was liable for causing the submission of claims for reimbursement for a wide range of dental services provided to low-income children that were either medically unnecessary or performed in a manner that failed to meet professionally-recognized standards of care. These services included performing pulpomies (baby root canals), placing crowns, administering anesthesia (including nitrous oxide), performing extractions, and providing fillings and/or sealants.

"We have zero tolerance for those who break the law to exploit needy children," said Tony West, Assistant Attorney General for the Civil Division of the Department of Justice. "Illegal conduct like this endangers a child's well-being, distorts the judgments of health care professionals, and puts corporate profits ahead of patient safety."

Assistant Attorney General West praised the collaborative efforts of the federal and state agencies that made this result possible. The Justice Department's Civil Division and the U.S. Attorneys' Offices for the District of Maryland, the Western District of Virginia, the District of South Carolina, and the District of Colorado handled these cases. The Civil Division led the nationwide investigation, which was conducted by the Office of Inspector General for the Department of Health and Human Services, the Federal Bureau of Investigation, and the National Association of Medicaid Fraud Control Units.

To resolve the allegations against it, FORBA will pay \$24 million, plus interest. The federal share of the civil settlement is \$14,285,645, and the states' Medicaid share is \$9,714,355.25. In addition, as part of the settlement, FORBA has agreed to enter into an expansive five-year Corporate Integrity Agreement with the Office of Inspector General of the Department of Health and Human Services. The agreement provides for procedures and reviews to be put in place to avoid and promptly detect conduct similar to that which gave rise to this matter. Specifically, FORBA must engage external reviewers to monitor its quality of care and reimbursement processes. In addition, the chief dental officer must develop and implement policies and procedures to ensure that the Small Smiles clinics provide services consistent with professionally recognized standards of care. FORBA has also agreed to cooperate in the government's continuing investigation of individual



dentists.

"We will not tolerate Medicaid providers who prey on vulnerable children and seek unjust enrichment at taxpayers' expense," said Daniel R. Levinson, Inspector General of the U.S. Department of Health and Human Services. "This settlement reaffirms our commitment to protect the health and well-being of Medicaid beneficiaries and to ensure the integrity of this essential health care program."

"Health care providers must be held accountable when they mistreat patients and overcharge insurers," said Rod J. Rosenstein, U.S. Attorney for the District of Maryland. "We are committed to using our affirmative civil enforcement authority to protect patients from inadequate care and protect governmental health coverage programs from fraudulent charges."

The government's investigation was initiated by three lawsuits filed under the *qui tam*, or whistleblower, provisions of the False Claims Act, which permit private citizens to sue on behalf of the United States and share in any recovery. These actions are pending in the U.S. District Courts for the District of Maryland, the Western District of Virginia, and the District of South Carolina. As part of today's resolution, the three whistleblowers will receive payments totaling more than \$2.4 million from the federal share of the settlement. "In this case, FORBA put greed and profits before the well-being of children," said Timothy J. Heaphy, U.S. Attorney for the Western District of Virginia. "It endangered the health and safety of innocent children and defrauded the taxpayer of millions of dollars. Today's settlement addresses these egregious acts and sends a clear message that Medicaid fraud will be expeditiously addressed by this Department."

This settlement with FORBA is part of the government's emphasis on combating health care fraud. One of the most powerful tools in that effort is the False Claims Act, which the Department of Justice has used to recover approximately \$2.2 billion since January 2009 in cases involving fraud against federal health care programs. The Justice Department's total recoveries in False Claims Act cases since January 2009 have topped \$3 billion.

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EXHIBIT “H”

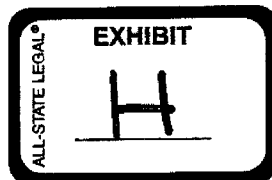


Safeguarding Children's Dental Health: *FORBA Quality Initiatives Since 2006*

Since an ownership change in 2006, wide-ranging initiatives have been launched to ensure that FORBA-associated dental centers provide children with the highest quality dental care. While the following includes a snapshot of current and ongoing policies and improvements, FORBA continues to work with employees, its Pediatric Dental Advisory Board, independent experts in pediatric dentistry, and parents to identify new and innovative ways to monitor and improve care.

Initiatives to Ensure Quality Care

- ✓ **Chief Dental Officer.** We created the position of Chief Dental Officer and hired Dr. Steven Adair, a nationally recognized expert in pediatric dentistry. Dr. Adair is a former professor of Pediatric Dentistry at the Medical College of Georgia. He is certified by the American Board of Pediatric Dentistry; has served as editor-in-chief of the American Academy of Pediatric Dentistry Journal and is a member of the AAPD Board of Trustees. Dr. Adair is leading initiatives to ensure high-quality patient care; overseeing efforts to improve the care experience for children and parents at our dental centers nationwide; and is enhancing the educational component of a dental visit.
- ✓ **Pediatric Dental Advisory Board.** We established a Pediatric Dental Advisory Board that assists our Chief Dental Officer and focuses on quality of care initiatives. The board members are:
 - **Dr. Joe Bernat**, Chair, Department of Pediatric and Community Dentistry at the State University of New York-Buffalo School of Dental Medicine.
 - **Dr. Paul Casamassimo**, Chair, Department of Pediatric Dentistry, The Ohio State University and Chief of Dentistry at Nationwide Children's Hospital in Columbus.
 - **Dr. Arthur Nowak**, Professor Emeritus, University of Iowa Colleges of Dentistry and Medicine.
 - **Dr. Anupama Tate**, Director, Pediatric Dentistry, Children's National Medical Center in Washington, D.C. and Assistant Professor at The George Washington University.
- ✓ **Clinical Guidelines.** Formulated by our Chief Dental Officer and Pediatric Dental Advisory Board, our clinical guidelines were developed in accordance with the recommendations of the American Academy of Pediatric Dentistry with regard to treatment for high-risk populations.
- ✓ **Enhanced Training.** We have undertaken several steps to ensure that Small Smiles Dentists and Assistants benefit from the latest training in pediatric dental care, including:
 - **Continuing Education.** FORBA-associated dentists regularly attended continuing education courses to learn about the latest in treatment techniques and care. Our continuing education sessions offer the latest information and guidance on topics such as preventative dentistry, behavior management, trauma patients, and specific dental procedures.





- **High-Risk Population Training.** Dentists are required to take a four-part series of webinars, developed by pediatric dentists, on guidelines for treating the "high risk" pediatric dental population. The series covered topics such as correct oral hygiene instruction, risk assessment, treatment planning, guidelines for high quality dental care, continuity of care and compliance.
- **Tuition Assistance.** For dentists with more than two years of service, FORBA sponsors a competitive program to help support their education goals. Each year, we offer tuition assistance for up to three dentists who apply to a pediatric or orthodontic dental school program.

Ongoing Communication With Parents

- ✓ **Feedback and Communication with Parents** Several initiatives ensure that parents are involved with their child's care, including:
 - **800 Number.** We established a feedback line -- 1-877-302-KIDS -- for parents to share experiences directly with the management company, and have posted the number in our dental centers. We investigate any concerns raised by parents and take appropriate action immediately.
 - **Parent Feedback.** Parent satisfaction with care is monitored through comment cards and an automated survey system called NPS. We follow up on specific survey comments, as appropriate, and also analyze the survey results for each dental center and across the company to identify trends and opportunities to improve care company-wide.
 - **Patient Advocate.** Our appointed patient advocate is an important liaison for dental center patients and their parents. The advocate receives comments and concerns from parents and in turn helps ensure that parents are informed of the dental center's care and quality initiatives. The patient advocate is also a key member of the FORBA compliance department and a member of FORBA's compliance committee.
 - **"Pledge to Patients, Families, and Communities."** A pledge is clearly posted in our centers to ensure that Small Smiles' practices and standards are clear and understood by parents and employees alike.

High Standards for Employees

- ✓ **Quality and Compliance Training.** Employees are required to participate in orientation and training programs that ensure adherence to Quality Assurance Protocols and Compliance Guidelines across all FORBA-associated dental centers. FORBA's quality assurance protocols address issues such as chart documentation, X-ray guidelines, treatment planning, time management, patient accompaniment, treatment time limits, same-day treatments and anesthesia. Protocols are examined through regular internal audits, and are reviewed by an independent organization and monitor.
- ✓ **Employee Code of Conduct.** We require all employees to sign a new code of ethics and business conduct that emphasizes quality of care, professionalism and the duty of every employee to report any type of wrongdoing observed in the workplace.
- ✓ **Employee feedback.** We provide employees with feedback cards and an employee hotline that enables us to quickly identify potential concerns.



Compliance Measures to Ensure Public Trust

Driven by new leadership at the executive level and increased transparency among its associated dental centers, FORBA's compliance program is rigorous and effective. FORBA is committed to the responsible stewardship of public resources dedicated to the dental care of underserved children. Compliance initiatives include:

- ✓ **A Comprehensive Compliance Program.** FORBA maintains a detailed compliance program, employs an experienced Chief Compliance Officer, and runs an expanded Compliance Department to train, monitor, identify, formally track and follow up on all compliance-related issues. Our compliance, quality of care, and training efforts are reviewed by an independent review organization and monitor.
 - ✓ **Compliance Training** We operate a comprehensive training and education program regarding compliance and quality of care issues for new employees and conduct ongoing training for more experienced staff.
 - ✓ **Compliance Leadership** FORBA's compliance department is staffed by an experienced team of professionals who -- with assistance from the Chief Dental Officer -- are responsible for auditing, licensing and credentialing. The team is led by Allison Luke, a legal and compliance expert with 18 years of experience. Ms. Luke heads FORBA's Compliance Committee, which includes representatives of several associated dental centers.
 - ✓ **A Top-to-Bottom Approach** FORBA's compliance efforts are prevalent at all levels. Every FORBA-associated dental center has a compliance liaison, and the FORBA Board of Directors includes a Compliance Committee that meets at least quarterly and certifies FORBA's compliance with the Corporate Integrity Agreement and with its quality of care and compliance mandates.
-

EXHIBIT “I”

Small Smiles Dentistry
of Albany, LLC

SERVING MEDICAID CHILDREN

1839 Central Avenue
Albany, NY 12205

518-464-0402 Fax: 518-464-0409



CONSENT FOR PROTECTIVE IMMOBILIZATION

I, Pamela Wheeler have discussed the use of protective immobilization with my dentist and agree to the use of immobilization in order to complete needed dental care for my child, Jacob Angus

I understand the reason my child needs immobilization is the following: (check one)

- ☐ 1 He/she requires immediate diagnosis and/or limited treatment and cannot cooperate, due to a lack of maturity.
☐ 2 He/she requires immediate diagnosis and/or limited treatment and cannot cooperate, due to mental or physical disability.
☐ 3 Either, my child and/or the dentist and staff would be at risk without the protective use of immobilization.

I understand the benefits of this procedure are:

1. Reduction or elimination of untimely movement.
2. Protection of the child and dental staff from injury.
3. Facilitate the delivery of quality dental treatment.

I understand there are no known risks to the immobilization procedure.

I understand that the alternative management procedures are sedation or general anesthesia, both of which have an increased risk of injury.

Pamela Wheeler
Parent/Guardian Signature

12/5/05
Date

Doctor Signature

Date

Charlene Bailey
Witness Signature

12-5-2005
Date

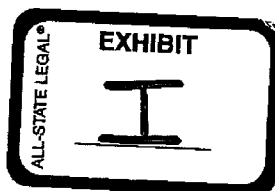


EXHIBIT “J”

Small Smiles

DENTISTRY OF ALBANY

SERVING MEDICAID CHILDREN

1839 CENTRAL AVENUE

ALBANY, NY 12205

PH 518-464-0402 FAX 518-464-0409

Consent for Protective Stabilization

I, Andrea Commarts, have discussed the use of protective stabilization with my dentist and agree to the use of stabilization in order to complete needed dental care for my child Zakary Wilson

After discussion with the dentist, I agree to the use of the following protective stabilization procedure:

Protective Stabilization: This is a device for limiting the disruptive child's movements to prevent injury and to enable the dentist to provide the necessary treatment. The child is wrapped in the device and placed in a reclined dental chair. I understand I have the right to be with the patient during this procedure.

I understand that the reason my child needs stabilization is the following: (check one):

- ☐ 1 He/she requires immediate diagnosis and/or limited treatment and cannot cooperate due to a lack of maturity
- ☐ 2 He/she requires immediate diagnosis and/or limited treatment and cannot cooperate due to mental or physical disability
- ☒ 3 Either, my child and/or the dentist and staff would be at risk without the protective use of stabilization

I understand that the benefits of this procedure are the following:

- 1 Reduction or elimination of untimely movement
- 2 Protection of the child and dental staff from injury
- 3 Facilitation of the delivery of quality dental treatment

I understand that the use of protective stabilization should not occur with patients:

- 1 Who cannot be immobilized safely due to associated medical or physical conditions
- 2 Who have experienced previous physical or psychological trauma from protective stabilization (unless no other alternatives are available)
- 3 Cooperative nonsedated patients
- 4 Nonsedated patients with nonemergent treatment requiring lengthy appointments

Note: Stabilization and any treatment will be terminated whenever a patient is experiencing severe stress or hysterics to prevent possible physical or psychological trauma.

I understand that the use of protective stabilization has the potential to produce serious consequences, such as physical or psychological harm, loss of dignity, violation of a patient's rights, and even death. I understand that the alternative management procedures are sedation and general anesthesia.

Andrea Commarts
Parent/Guardian Signature

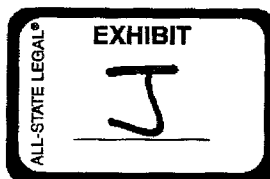
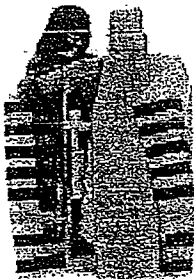
3.7.08
Date

[Signature]
Witness Signature

3/7/08
Date

[Signature]
Doctor Signature

3.7.08
Date



SHEET # 4
STCEN 1/1 Revised 01/31/08