

STATE OF NEW YORK
SUPREME COURT COUNTY OF ONONDAGA

Kelly Varano, as parent and natural guardian of infant Jeremy Bohn; Shannon Froio, as parent and natural guardian of infant Shawn Darling; Brenda Fortino, as parent and natural guardian of infant Julie Fortino; Marie Martin, as parent and natural guardian of infant Kenneth Kenyon; Jenny Lynn Cowher, as parent and natural guardian of infant William Martin; Hollan Crippen, as parent and natural guardian of infant Devan Mathews; Jessica Recore, as parent and natural guardian of infant Samantha McLoughlin; Laurie and Dominick Rizzo, as legal custodians of infant Jacob McMahon; Jason Montanye, as parent and natural guardian of infant Kadem Montanye; and Frances Shellings, as parent and natural guardian of infant Rayne Shellings,

Plaintiffs,

vs.

FORBA Holdings, LLC n/k/a Church Street Health Management, LLC; FORBA N.Y., LLC; FORBA, LLC n/k/a LICSAAC, LLC; FORBA NY, LLC n/k/a LICSAAC NY, LLC; DD Marketing, Inc.; DeRose Management, LLC; Small Smiles Dentistry of Syracuse, LLC; Daniel E. DeRose; Michael A. DeRose, D.D.S.; Edward J. DeRose, D.D.S.; Adolph R. Padula, D.D.S.; William A. Mueller, D.D.S.; Michael W. Roumph; Naveed Aman, D.D.S.; Koury Bonds, D.D.S.; Tarek Elsafty, D.D.S.; Dimitri Filostrat, D.D.S.; Yaqoob Khan, D.D.S.; Delia Morales, D.D.S.; Janine Randazzo, D.D.S.; Loc Vin Vuu, D.D.S.; and Grace Yaghmai, D.D.S,

Defendants.

COMPLAINT

Index No. 2011-2128

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Plaintiffs, by and through their attorneys, as and for a complaint against the defendants, allege that at all times hereinafter mentioned:

PRELIMINARY STATEMENT

1. In 2010, top law enforcement officials from the Department of Justice and representatives of numerous state governments (including New York), announced that they had uncovered a nationwide scheme directed at infant dental patients and the Medicaid system. A dental clinic chain known as "Small Smiles", operating in twenty-two states – including New York – performed unnecessary, inappropriate, unsafe and excessive dental procedures on young children. It received hundreds of millions of taxpayer dollars.

2. This is an action by ten infants who received dental treatment at a Small Smiles clinic in Syracuse, New York ("the Syracuse Clinic"). Beginning in 2005, they suffered damages and loss from the Small Smiles' scheme, and the resulting improper dental care they received.

3. Because plaintiffs are infants, their parents or legal custodians bring this case for them. The parents or legal custodians seek no damages for themselves.

FEDERAL AND STATE ACTIONS AGAINST THE FRAUD

4. The Small Smiles dental clinic chain (hereinafter "Small Smiles") was, at all times, operated and directed by a unified and jointly controlled group of corporate entities. On or before September 26, 2006 these corporate entities were defendants FORBA, LLC, n/k/a LICCSAC, LLC, FORBA NY LLC, n/k/a LICCSAC NY LLC, DD Marketing, Inc., and DeRose Management, LLC, (collectively referred to here as "Old FORBA"). On or after September 26, 2006, these corporate entities were defendants FORBA Holdings, LLC n/k/a Church Street Health Management, LLC and FORBA NY, LLC (collectively referred to here as "New FORBA"). All six corporate entities are collectively referred to here as "FORBA".

5. In late 2007 and 2008, former employees at Small Smiles' clinics in Maryland, Virginia, and South Carolina filed whistleblower lawsuits in which each, independently and under seal, alleged that during 2007 and 2008 New FORBA was committing Medicaid fraud by abusing small children.

6. In late 2007, the United States Department of Justice, along with the Federal Bureau of Investigation and the National Association of Medicaid Fraud Control Units, commenced a nationwide investigation of the FORBA operation.

7. The New York Office of Medicaid Inspector General, with the New York State Attorney General and the New York Office of

Professional Discipline, investigated the FORBA clinics operating in New York.

8. The United States Department of Justice and the State of New York alleged that FORBA billed Medicaid for dental services that were either unnecessary or performed in a manner that did not meet professionally recognized standards of care.

9. The government investigations took approximately two years. In January 2010, New FORBA agreed to pay \$24 million to the United States, including \$1.15 million for the State of New York, as a result of the fraud scheme. New FORBA also agreed to pay \$2.3 million directly to the State of New York, including a substantial sum for fraudulent billings that took place before September 2006.

10. The United States Department of Justice described FORBA's scheme by stating, "[i]llegal conduct like this endangers a child's well-being, distorts the judgments of health care professionals, and puts corporate profits ahead of patient safety" and "we will not tolerate Medicaid providers who prey on vulnerable children and seek unjust enrichment at taxpayers' expense."

EARLIER FEDERAL AND STATE ACTIONS AGAINST FORBA AND ITS EXECUTIVES

11. FORBA, its owners, and dentists have regularly been charged by federal and state authorities with committing Medicaid fraud, violating dental standards of care, and breaching other state dental rules

in connection with the treatment they provided to young children. Between 2003 and 2008, FORBA, and its management and dentists were disciplined for fraud or inappropriate dental care in, at least, the following matters:

12. In 2003, the Arizona Dental Board revoked the license of a FORBA dentist after a young child died while strapped down to a papoose board at a FORBA clinic. The dentist admitted that the clinic routinely restrained children under the age of five for the convenience of the clinic and not because restraints were medically necessary.

13. In 2003 or 2004, the Tennessee Dental Board investigated defendant William A. Mueller, D.D.S, one of the founders of FORBA and a company senior executive, for routinely and arbitrarily restraining young children without justification. The same board reprimanded him for engaging in false and misleading advertising on FORBA's behalf.

14. In 2004, the Colorado Dental Board disciplined defendants and FORBA Vice-Presidents Michael A. DeRose, D.D.S and Edward J. DeRose, D.D.S., for training unlicensed dentists in Colorado. The Colorado Dental Board ordered them to stop aiding and abetting dentists from practicing dentistry in Colorado without a license.

15. In 2005, North Carolina disciplined defendant Michael A. DeRose, D.D.S. for employing and training dentists who performed unnecessary dental procedures on children, and for establishing office policies causing such overtreatment. These treatments included unwarranted baby root canals and stainless steel crowns. The North

Carolina Board of Dental Examiners suspended the dental license of defendant Michael A. DeRose, D.D.S.

16. In 2004, the Colorado Dental Board began a new investigation of defendants Michael A. DeRose, D.D.S and William A. Mueller, D.D.S. It focused on the same conduct that subjected defendant Michael A. DeRose, D.D.S. to discipline in North Carolina. At the end of the investigation in 2009, defendants Michael A. DeRose D.D.S. and William A. Mueller, D.D.S. permanently surrendered their Colorado dental licenses.

17. In 2006, FORBA's lead dentist in its Rochester, New York clinic was convicted of Medicaid fraud, sentenced to six months in prison, and had his New York dental license revoked. FORBA repaid the Medicaid program hundreds of thousands of dollars for fraudulent billings.

18. Later in 2006, the Kansas Dental Board suspended defendant Michael A. DeRose, D.D.S.'s dental license for six months for the same wrongful acts that caused his suspension in North Carolina.

19. In 2008, the United States Department of Justice and North Carolina completed their investigations of defendant Michael A. DeRose, D.D.S., and his North Carolina dental clinics. The Assistant Attorney General of the United States concluded that defendant Michael A. DeRose, D.D.S. and the dentists at his clinics "subjected their child patients to invasive and sometimes painful procedures, often for the sake of obtaining money from the North Carolina Medicaid program." Defendant Michael A. DeRose, D.D.S. and his partner paid \$10 million to

reimburse the United States government for money it paid for unnecessary root canals, stainless steel crowns and other dental procedures performed without informed consent.

THE GENESIS AND MOTIVE FOR THE SCHEME

20. FORBA began in Pueblo, Colorado. Until 1995, defendants Edward J. DeRose, D.D.S and Michael A. DeRose, D.D.S. operated a single dental office there. Over the next five years, they opened four other dental clinics in Colorado and New Mexico treating children on Medicaid.

21. On or about 2001, they and defendants Daniel E. DeRose, Adolph R. Padula, D.D.S., William A. Mueller, D.D.S., and Michael W. Rounph, (collectively "the Individual Defendants"), created Old FORBA to operate and manage the existing clinics and expand them across the United States. Each Individual Defendant was also an officer of the corporate entities making up Old FORBA and was actively involved in its daily operations and management.

22. By 2004, Old FORBA was operating about twenty children's Medicaid dental clinics--more than any other company in the United States.

23. Knowing that the company's success was based on a fraudulent business model (that was later uncovered by the federal and state authorities), the Individual Defendants began trying to sell Old FORBA. They nearly did in June 2004, but the prospective purchaser

broke off negotiations due to concerns about Old FORBA's management and operations.

24. In 2005, a lawyer hired by Old FORBA was already concerned that Old FORBA was going to be the subject of a full-scale fraud investigation by the government, a concern that he expressed to Old FORBA in a written memorandum. He also warned that then-pending investigations were merely the initial steps to an all-out investigation, and that Old FORBA should proceed with extreme caution. The Individual Defendants and Old FORBA ignored the lawyer's advice. Instead, they rapidly expanded the business, using the same fraudulent business model then under investigation. Between 2004 and 2006, Old FORBA opened 30 more children's Medicaid clinics across the United States.

25. By 2006, Old FORBA utilized its fraudulent business model to dominate the market for supplying dental services to Medicaid children. During that year, Old FORBA had three times more children visit its clinics than its nearest competitor.

26. In 2006, the Individual Defendants renewed their efforts to sell Old FORBA. In April 2006, some Individual Defendants met with representatives of a new potential purchaser, New FORBA. At the meeting, the parties agreed on a purchase price based on a simple mathematic formula: ten times Old FORBA's 2006 EBITDA (Earnings Before Interest, Taxes, Depreciation and Amortization) forecast.

27. Old FORBA's EBITDA was tied directly to the revenues generated at its clinics. Under the purchase price formula, every dollar that the clinics made equaled ten dollars to the Individual Defendants.

28. On September 26, 2006, Old FORBA sold the business to New FORBA for \$435 million. New FORBA acquired substantially all of the assets held or used in the conduct of Old FORBA's business. This included "all of the properties and assets (whether tangible or intangible, whether real or personal, whether owned or leased, regardless of location) that are necessary to enable [New FORBA] to carry on the Business following the Closing in the same manner as it was operated immediately prior to the Closing."

29. New FORBA knew that the entire \$435 million proceeds of the sale, except for an escrow of \$27.5 million, would immediately be distributed to the Individual Defendants as owners of Old FORBA. And it was. On information and belief, defendant Daniel E. DeRose received approximately \$80 million, defendants Edward J. DeRose, D.D.S., Michael A. DeRose, D.D.S., William A. Mueller, D.D.S., and Adolph Padula, D.D.S. *each* received approximately \$58 million, and defendant Michael Rounph received approximately \$38 million.

30. Old FORBA immediately became a dormant shell, and remains that way today.

31. The owners of New FORBA were and are not dentists. They had no experience running dental clinics or treating children, and no desire to learn about these things. They were private equity funds and a Bahranian bank with one objective: to quickly and dramatically increase the company's EDITDA so they could re-sell the business for a sizeable profit on their \$435 million investment.

32. As soon as it purchased Old FORBA, New FORBA announced plans to triple the company's size. It believed that the company was well placed to continue the strategy that caused its revenues to grow at an annual compound rate of more than 40% from 2000 through 2006.

33. The new owners planned to continue the successful business operations at the existing 50 FORBA clinics and to expand the business into new markets. To do so, the new investors utilized Old FORBA's fraudulent business scheme.

34. After the sale in September 2006, New FORBA managed and operated the same clinics with the same dentists and the same employees as Old FORBA had used before the sale.

35. With the exception of the Old FORBA owners, Old FORBA employees continued as employees of New FORBA. Publicly, New FORBA emphasized that it was continuing the prior business, proclaiming that it had been serving the dental needs of children "for decades."

FORBA'S DIRECTION AND CONTROL OF THE CLINICS

36. The FORBA business model was the same under Old FORBA and New FORBA.

37. FORBA set up each Small Smiles dental clinic, including the Syracuse Clinic and those in Colonie, and Rochester, New York, (collectively referred to here as "the clinics"), as a separate corporation owned by an individual dentist licensed in the state. This was for

appearances only. It made it look like the clinics were complying with state laws that prohibited the corporate practice of dentistry. In fact, Old FORBA (and the Individual Defendants) before late September 2006 and New FORBA afterwards, established, managed, and operated the clinics.

38. FORBA identified the locations and provided the capital to open the clinics.

39. FORBA selected the "owners" of the clinics. All profit generated by the clinics went to FORBA.

40. FORBA established all operational policies and procedures necessary for establishing standards of patient care at the clinics.

41. FORBA recruited, interviewed, hired, and provided orientation and training to the dentists who were employed at the clinics.

42. FORBA recruited, employed, trained, promoted, directed, supervised, and terminated the employment of the clinics' staffs.

43. FORBA established and maintained the quality control programs at each clinic.

44. FORBA performed all of the business functions of the clinics.

45. FORBA acquired the clinics' assets, equipment and supplies.

46. FORBA made repairs, replacements and additions to the clinics and their equipment when and if it deemed necessary.

47. FORBA performed the bookkeeping, accounting, billing and collection, human resources, marketing, legal, government affairs, compliance, and IT support functions.

48. In short, FORBA operated, directed, controlled and managed the clinics in every respect, and all the clinics' profits went to FORBA.

FORBA'S SCHEME

49. At least as early as 2001 and continuing to the present, FORBA and the Individual Defendants have engaged in a course of conduct that was intended to and did create a culture at the clinics that put revenue generation as the top priority at the expense of quality of dental treatment.

50. FORBA dentists were required to – and did – treat patients with revenue generation as the primary goal rather than the medical needs of the patients.

51. This planned course of conduct was originally conceived and implemented by the Individual Defendants, Old FORBA, and the dentists working for Old FORBA.

52. New FORBA and its dentists, many of whom had participated in the conduct when working for Old FORBA, continued this course of conduct unabated.

53. FORBA indoctrinated its dentists by requiring new dentists to attend FORBA training sessions in Colorado. At the training sessions, FORBA made clear that production was more important than quality of patient care.

54. FORBA also made clear the conduct required of its dentists. They were expected to meet FORBA's set production goals. The dentists received bonuses if they produced revenue exceeding these goals.

55. FORBA trained the dentists how to achieve FORBA's production goals. Among those means were two that would inevitably

injure the victims of the scheme – the small children who came to the clinics for legitimate treatment.

56. First, to increase production, FORBA dentists were expected to, and did, perform unnecessary dental procedures.

57. Second, to also increase production, FORBA dentists were expected to and did reduce the time spent with each child without regard for the health and welfare of the child. To do so, FORBA dentists commonly placed a child in restraints to perform dental work. This FORBA “common practice” was not the common practice of accepted pediatric dental medicine. It is highly unusual, and appropriate in only very limited circumstances. It terrifies young children and can significantly and permanently harm them.

58. At FORBA clinics, however, children were commonly improperly restrained in order to speed up treatment in an effort to meet and exceed FORBA’s production goals. The dentists routinely fraudulently represented to parents and custodians, including the infant plaintiffs’, that restraints were necessary when they knew they were not. Each of the children in this case was improperly restrained as a part of defendants’ fraudulent pursuit of hundreds of millions of dollars.

59. The fraudulent conduct utilized to obtain “consent” from parents and guardians to place their children in restrains was scripted by FORBA. It knew that parents and custodians who were told that advanced behavior management might be necessary for their child might be reluctant to consent to restraints and would likely prefer that their child receive sedation or general anesthesia.

60. The FORBA clinics, including the Syracuse Clinic, were not able to handle sedation or general anesthesia cases and so they would have to refer them elsewhere. FORBA therefore implemented a patently fraudulent procedure for overcoming this natural reluctance to restraints.

61. Under the fraudulent script prepared by FORBA, the dentists were required by FORBA and did fraudulently represent as a routine practice that the use of restraints had "no known risks", when in fact defendants knew that it had very significant risks. The dentists were also required by FORBA and did represent that the alternative was sedation or general anesthesia, which they represented did "have an increased risk of injury."

62. Faced with what they believed to be a choice between no risk (restraints) and risk (sedation or general anesthesia), many parents and custodians including those in this case, chose what they believed to be the no risk option for their children. The fraudulent misrepresentations that restraints had no risk and that sedation or general anesthesia would involve more risk than restraints, made at FORBA's direction, were part of an effort that was intended to and did fraudulently induce parents and custodians, including plaintiffs', to "consent" to the restraints and remain at Small Smiles for treatment.

63. FORBA's emphasis on meeting production goals sacrificed quality care and neglected the real dental needs of the children.

64. New FORBA has confirmed that the foundation of FORBA's business was fraudulent. As New FORBA states in a federal court filing: Old FORBA "created a culture within the Small Smiles Centers that

emphasized production over quality care, in clear contravention of . . . accepted standards of dental care.”

65. New FORBA has further admitted in the federal court filing that Old FORBA tracked the production of each dentist, and routinely exerted pressure on the dentists and staff to increase production through emails, conversations and salary negotiations. The scheme was fully operational when the Syracuse Clinic opened in 2004. As New FORBA states, “Old FORBA’s management, including, but not limited to, Dan DeRose and Michael Roumph, 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 . . . New York”

66. In addition, FORBA management pressured its dentists to increase “production per patient.” As New FORBA admits, Old FORBA management “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.’”

67. As New FORBA also admits, Old FORBA management routinely prepared reports of “production per dentist”, a red flag that revenue generation is the number one priority ahead of quality of care. As Individual Defendant Daniel E. DeRose has stated, tracking “production per dentist” is the “number one trigger point for fraud.”

68. As New FORBA stated: “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 e-mails emphasizing the need for increased production."

69. As New FORBA admits in the federal court filing, FORBA was obligated under its Management Agreement with the Syracuse Clinic to "establish . . . all operational policies and procedures reasonably necessary for establishing the appropriate standards of care at the [Syracuse] Clinic" and to "maintain and update, as reasonably required, quality control programs for the [Syracuse] Clinic."

70. As a result of the course of conduct described above, FORBA did not do so. As New FORBA states in the federal court filing, 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." As New FORBA states in the federal court filing, Old FORBA "did not establish policies, procedures, or quality control measures to promote appropriate standards of care at the Small Smiles facilities."

71. Instead, as set forth above Old FORBA established policies and procedures that required its clinics, including the Syracuse clinic, to treat its patients with revenue generation as the primary goal to the detriment of quality care. As New FORBA states in the federal court filing, these policies and procedures were "in clear contravention of . . . accepted standards of dental care."

72. When New FORBA bought Old FORBA's business in late September 2006, the dentists who committed and benefited from these fraudulent practices kept working at the clinics.

73. The fraudulent practices, which grounded and made up the core of Old FORBA's business, continued unabated and unchecked at the direction of New FORBA.

THE OLD FORBA DEFENDANTS

74. Defendant FORBA, LLC, ("FORBA LLC") n/k/a LICSAAC LLC is a foreign limited liability company duly organized under the laws of Colorado. It transacted business in New York that is the subject of this case, and is otherwise subject to New York State jurisdiction. FORBA, LLC was owned and controlled by the Individual Defendants. Each Individual Defendant was an officer of the company. In October 2006, FORBA, LLC changed its name to LICSAAC, LLC.

75. Defendant FORBA NY, LLC n/k/a LICSAAC NY, LLC ("FORBA NY, LLC") is a limited liability company organized and existing according to the laws of the State of New York as of May 7, 2004. It transacted business in New York that is the subject of this case, and is otherwise subject to New York State jurisdiction. At all material times, Defendant FORBA, LLC owned and controlled FORBA NY, LLC. In October, 2006, FORBA NY, LLC changed its name to LICSAAC, NY, LLC.

76. Defendant DD Marketing, Inc. is a corporation organized under the laws of Colorado. It transacted business in New York that is the

subject of this case, and is otherwise subject to New York State jurisdiction. DD Marketing, Inc. is owned by defendants Daniel E. DeRose and Michael W. Rounph. They are also the two senior executives at DD Marketing.

77. Defendant DeRose Management LLC is a foreign limited liability company duly organized under the laws of Colorado. It transacted business in New York that is the subject of this case, and is otherwise subject to New York State jurisdiction. Defendant Edward J. DeRose, D.D.S. is the president of DeRose Management and defendants Edward J. DeRose, D.D.S. and Michael A. DeRose are the owners of DeRose Management.

78. Until September 26, 2006, defendants FORBA LLC, FORBA NY, LLC, DD Marketing, Inc. and DeRose Management, Inc., developed, opened, operated, managed and supervised the clinics.

THE INDIVIDUAL DEFENDANTS

79. Defendant Daniel E. DeRose is the president of defendants FORBA, LLC, FORBA NY, LLC, and DD Marketing, Inc., and an owner of defendants DD Marketing, Inc, and FORBA, LLC.

80. Defendant Daniel E. DeRose is and was an owner, senior officer, and agent of Old FORBA.

81. Defendant Daniel E. DeRose participated in Old FORBA operations on a day-to-day basis. He was actively involved in the opening, operation and management of the clinics.

82. Defendant Daniel E. DeRose knew of, participated in, and benefited from the FORBA scheme described above.

83. Defendant Michael A. DeRose, D.D.S. is an owner, senior officer, and agent of Old FORBA. In that capacity, he was actively involved in the opening, operation and management of the clinics. He also trained the dentists working at the clinics.

84. Defendant Michael A. DeRose, D.D.S. knew of, participated in, and benefited from the FORBA scheme described above

85. Defendant Edward J. DeRose, D.D.S. is an owner, senior officer and agent of Old FORBA. In that capacity, he was actively involved in the opening, operation and management of the clinics.

86. Defendant Edward J. DeRose, D.D.S. knew of, participated in, and benefited from the FORBA scheme described above.

87. Defendant Adolph R. Padula, D.D.S., is an owner, senior officer, and agent of Old FORBA. In that capacity, he was actively involved in the opening, operation and management of the clinics.

88. Defendant Adolph R. Padula, D.D.S. was licensed to practice dentistry in the State of New York, and was responsible in part for setting up and managing the Syracuse Clinic and the other clinics in New York.

89. Defendant Adolph R. Padula, D.D.S. knew of, participated in, and benefited from the FORBA scheme described above.

90. Defendant Adolph R. Padula, D.D.S. was the original member and manager of defendant Small Smiles Dentistry of Syracuse, LLC.

91. Defendant William A. Mueller, D.D.S is an owner, senior officer, and agent of Old FORBA. In that capacity, he was actively involved in the opening, operation and management of the clinics.

92. Defendant William A. Mueller, D.D.S. also trained dentists working at the clinics.

93. Defendant William A. Mueller, D.D.S. knew of, participated in, and benefited from the FORBA scheme described above.

94. Defendant Michael W. Roumph is an owner, senior officer, and agent of Old FORBA. He participated in Old FORBA operations on a day-to-day basis. He was actively involved in the opening, operation and management of the clinics.

95. Defendant Michael W. Roumph knew of, participated in, and benefited from the FORBA scheme described above.

96. At all material times, the Individual Defendants were the agents, employees, servants or associates of Old FORBA.

97. The Individual Defendants joined in the sale of Old FORBA to New FORBA and executed the contract for the sale. They agreed that they were responsible, with Old FORBA, for indemnifying New FORBA for Old FORBA'S acts or omissions occurring before the sale, and or any third party claims arising out of Old FORBA'S ownership and operation of FORBA before the sale.

THE NEW FORBA DEFENDANTS

98. Defendant FORBA Holdings, LLC n/k/a Church Street Health Management, LLC ("FORBA Holdings, LLC") is a foreign limited liability company duly organized under the laws of the State of Delaware, and authorized to conduct business in the State of New York. FORBA Holdings, LLC has been managing dental clinics in New York, including the Syracuse Clinic, since September 2006. FORBA Holdings, LLC has its principal New York office and its residence in Onondaga County.

99. On December 31, 2010, defendant FORBA Holdings, LLC changed its name to Church Street Health Management LLC.

100. Defendant FORBA NY, LLC ("FORBA NY") is a limited liability company organized and existing under the laws of the State of New York. It was originally organized in New York State under the name SANUS NY, LLC on September 13, 2006. It assumed the name FORBA NY LLC on October 25, 2006 by filing with the New York Secretary of State. Upon information and belief, FORBA NY, LLC is wholly- owned and controlled by FORBA Holdings, LLC.

101. Since September 2006, defendant FORBA NY has, through its sole member and agent, FORBA Holdings, LLC, managed several New York FORBA clinics, including the Syracuse clinic.

THE SYRACUSE CLINIC

102. Defendant Small Smiles Dentistry of Syracuse, LLC, ("the Syracuse Clinic") is a professional limited liability company organized under the laws of New York that has its principal office and residence in Syracuse, Onondaga County, New York.

103. At all material times, Old FORBA and the Individual Defendants and then New FORBA controlled and managed the Syracuse Clinic.

THE DENTIST DEFENDANTS

104. Defendant Naveed Aman, D.D.S. was, and is licensed to practice dentistry in the State of New York.

105. At all material times, FORBA and the Syracuse Clinic held defendant Naveed Aman, D.D.S. out to the infant plaintiffs' parents and legal custodians, and all other parents in the community, as a dentist who was trained, competent and qualified to treat young children.

106. Defendant Naveed Aman, D.D.S. provided dental services to infant plaintiffs in this case at the Syracuse Clinic.

107. At all material times, defendant Naveed Aman, D.D.S. was the agent, employee, servant, and/or associate of FORBA and the Syracuse Clinic.

108. Defendant Koury Bonds, D.D.S. was and is licensed to practice dentistry in the State of New York.

109. At all material times, FORBA and the Syracuse Clinic held defendant Koury Bonds, D.D.S. out to the infant plaintiffs' parents and legal custodians, and all other parents in the community, as a dentist who was trained, competent and qualified to treat young children.

110. Defendant Koury Bonds, D.D.S. provided dental services to infant plaintiffs in this case at the Syracuse Clinic.

111. At all material times, Defendant Koury Bonds, D.D.S. was the agent, employee, servant or associate of FORBA and the Syracuse Clinic.

112. Defendant Tarek Elsafty, D.D.S. was and is licensed to practice dentistry in the State of New York.

113. At all material times, FORBA and the Syracuse Clinic held defendant Tarek Elsafty, D.D.S. out to the infant plaintiffs' parents and legal custodians, and all other parents in the community, as a dentist who was trained, competent and qualified to treat young children.

114. Defendant Tarek Elsafty, D.D.S. provided dental services to infant plaintiffs in this case at the Syracuse Clinic.

115. At all material times, Defendant Tarek Elsafty, D.D.S. was the agent, employee, servant or associate of FORBA and the Syracuse Clinic.

116. Defendant Dimitri Filostrat, D.D.S. was and is licensed to practice dentistry in the State of New York.

117. At all material times, FORBA and the Syracuse Clinic held defendant Dimitri Filostrat, D.D.S. out to the infant plaintiffs' parents and

legal custodians, and all other parents in the community, as a dentist who was trained, competent and qualified to treat young children.

118. Defendant Dimitri Filostrat, D.D.S. provided dental services to infant plaintiffs in this case at the Syracuse Clinic.

119. At all material times, Defendant Dimitri Filostrat, D.D.S. was the agent, employee, servant or associate of FORBA and the Syracuse Clinic.

120. Defendant Yaqoob Khan, D.D.S. was and is licensed to practice dentistry in the State of New York.

121. At all material times, FORBA and the Syracuse Clinic held defendant Yaqoob Khan. out to the infant plaintiffs' parents and legal custodians, and all other parents in the community, as a dentist who was trained, competent and qualified to treat young children.

122. Defendant Yaqoob Khan, D.D.S. provided dental services to infant plaintiffs in this case at the Syracuse Clinic.

123. At all material times, Defendant Yaqoob Khan, D.D.S. was the agent, employee, servant or associate of FORBA and the Syracuse Clinic.

124. Defendant Delia Morales, D.D.S. was and is licensed to practice dentistry in the State of New York.

125. At all material times, FORBA and the Syracuse Clinic held defendant Delia Morales, D.D.S. out to the infant plaintiffs' parents and legal custodians, and all other parents in the community, as a dentist who was trained, competent and qualified to treat young children.

126. Defendant Delia Morales, D.D.S. provided dental services to infant plaintiffs in this case at the Syracuse Clinic.

127. At all material times, Defendant Delia Morales, D.D.S. was the agent, employee, servant or associate of FORBA and the Syracuse Clinic.

128. Defendant Janine Randazzo, D.D.S. was and is licensed to practice dentistry in the State of New York.

129. At all material times, FORBA and the Syracuse Clinic held defendant Janine Randazzo, D.D.S. out to the infant plaintiffs' parents and legal custodians, and all other parents in the community, as a dentist who was trained, competent and qualified to treat young children.

130. Defendant Janine Randazzo, D.D.S. provided dental services to infant plaintiffs in this case at the Syracuse Clinic.

131. At all material times, Defendant Janine Randazzo, D.D.S. was the agent, employee, servant or associate of FORBA and the Syracuse Clinic.

132. Defendant Loc Vin Vuu, D.D.S. was and is licensed to practice dentistry in the State of New York.

133. At all material times, FORBA and the Syracuse Clinic held defendant Loc Vin Vuu D.D.S. out to the infant plaintiffs' parents and legal custodians, and all other parents in the community, as a dentist who was trained, competent and qualified to treat young children.

134. Defendant Loc Vin Vuu, D.D.S. provided dental services to infant plaintiffs in this case at the Syracuse Clinic.

135. At all material times, Defendant Loc Vin Vuu, D.D.S. was the agent, employee, servant or associate of FORBA and the Syracuse Clinic.

136. Defendant Grace Yaghmai, D.D.S. was and is licensed to practice dentistry in the State of New York.

137. At all material times, FORBA and the Syracuse Clinic held defendant Grace Yaghmai D.D.S. out to the infant plaintiffs' parents and legal custodians, and all other parents in the community, as a dentist who was trained, competent and qualified to treat young children.

138. Defendant Grace Yaghmai, D.D.S. provided dental services to infant plaintiffs in this case at the Syracuse Clinic.

139. At all material times, Defendant Grace Taghmai, D.D.S. was the agent, employee, servant or associate of FORBA and the Syracuse Clinic.

140. Defendants Naveed Aman, D.D.S., Koury Bonds, D.D.S., Tarek Elsafty, D.D.S., Dimitri Filostrat, D.D.S., Yaqoob Khan, D.D.S., Delia Ramos, D.D.S., Janine Randazzo, D.D.S., Loc Vinh Vuu, D.D.S., and Grace Yaghmai, D.D.S. are collectively referred to here as "Dentist Defendants."

THE INFANT PLAINTIFFS' CLAIMS

141. The victims of defendants' pursuit of hundreds of millions of dollars were the children who suffered injury from unnecessary, traumatic, and improper dental procedures. Ten of those children are plaintiffs in this case. They ranged in age from one to seven years old at the time of treatment. Five were just two years old. All were defenseless and vulnerable.

142. All ten of these young children were unlawfully restrained. The use of restraints in every case was unjustified, and the "consent" of their parents or custodians was fraudulently obtained. These children were subjected to an emotional and physical nightmare. They were terrified and distraught, often struggling, screaming, and crying as the dentists performed extensive dental procedures including root canals, extractions, and fillings. One infant plaintiff endured nine root canals while in restraints; four other infant plaintiffs were restrained and forced to endure four or more root canals.

143. In addition to the traumatic and unjustified use of restraints, the practice of making revenue production the top priority at the expense of quality of care was, as New FORBA admits, "in clear contravention of . . . accepted standards of dental care" and resulted in treatment below the standard of care in numerous ways.

144. The standard of care requires x-rays to diagnose the need for the dental procedures done in this case. But in FORBA's rush for dollars, the needed x-rays were often either not done or so poorly done as to be totally useless and non-diagnostic. The dental procedures proceeded anyway, without any justification.

145. In some cases the x-rays that were done show that some procedures were unnecessary. In other cases where the treatment was needed, x-rays done subsequent to the treatment show it was incomplete or otherwise done improperly.

146. In addition, treatments that were needed, including steps to prevent decay or its spread, were ignored.

147. Jeremy Bohn was three to five years old when he was a patient at the Syracuse Clinic from May 2006 through January 2008. During that time, he had four root canals and crowns, seven fillings, two extractions, and one crown without a root canal. He was restrained on at least two occasions and on three occasions the dentist gave him fillings without the use of any local or other anesthesia. As a result of the wrongful conduct described in the above paragraphs, Jeremy received treatment from the Syracuse Clinic and Dentists Bonds, Aman and Kahn that was below the applicable standard of care and caused him to suffer injuries. Kelly Varano, as parent and natural guardian of infant Jeremy Bohn, asserts claims on Jeremy's behalf against the Syracuse Clinic; Dentists Bonds, Aman and Kahn; Old FORBA, New FORBA and the Individual Defendants.

148. Shawn Darling was one and two years old when he was a patient at the Syracuse Clinic from March 2007 through July 2008. During that time, he had seven root canals, three fillings, a crown re-cemented twice, and was restrained on at least three occasions. As a result of the wrongful conduct described in the above paragraphs, Shawn received treatment from the Syracuse Clinic and Dentists Kahn, Bonds and Morales that was below the applicable standard of care and caused him to suffer injuries. Shannon Froio, as parent and natural guardian of infant Shawn Darling, asserts claims on Shawn's behalf against the Syracuse Clinic; Dentists Kahn, Bonds and Morales; and New FORBA.

149. Julie Fortino was four to six years old when she was a patient at the Syracuse Clinic from August 2005 through February 2007.

During that time, she had nine root canals and crowns, two fillings, two crowns without root canals and one extraction. She was restrained on at least four occasions. As a result of the wrongful conduct described in the above paragraphs, Julie received treatment from the Syracuse Clinic and Dentists Kahn, Vuu, Aman, Bonds, Filostrat and Elsafty that was below the applicable standard of care and caused her to suffer injuries. Brenda Fortino, as parent and natural guardian of infant Julie Fortino, asserts claims on Julie's behalf against the Syracuse Clinic; Dentists Kahn, Vuu, Aman, Bonds, Filostrat and Elsafty; Old FORBA, New FORBA and the Individual Defendants.

150. Kenneth Kenyon was four to seven years old when he was a patient at the Syracuse Clinic from June 2005 through September 2008. During that time, he had six root canals and crowns and seven fillings. He was restrained on at least three occasions and on one occasion the dentist gave him three fillings without the use of any local or other anesthesia. As a result of the wrongful conduct described in the above paragraphs, Kenneth received treatment from the Syracuse Clinic and Dentists Aman, Randazzo and Bonds that was below the applicable standard of care and caused him to suffer injuries. Marie Martin, as parent and natural guardian of infant Kenneth Kenyon, asserts claims on Kenneth's behalf against the Syracuse Clinic; Dentists Aman, Randazzo and Bonds; Old FORBA, New FORBA and the Individual Defendants.

151. William Martin was two years old when he was a patient at the Syracuse Clinic from August 2007 through May 2008. During that time, he received nine fillings and on four occasions the dentist gave him

one or more fillings without the use of any local or other anesthesia. As a result of the wrongful conduct described in the above paragraphs, William received treatment from the Syracuse Clinic and Dentists Khan, Aman, and Yaghmai that was below the applicable standard of care and caused him to suffer injuries. Jenny Lynn Cowher, as parent and natural guardian of infant William Martin, asserts claims on William's behalf against the Syracuse Clinic; Dentists Khan, Aman and Yaghmai; and New FORBA.

152. Devan Mathews was three and four years old when he was a patient at the Syracuse Clinic from June 2005 through May 2006. During that time, he had five fillings, two teeth extractions and one root canal and crown. On five occasions he was restrained and twice he had fillings without the use of any local or other anesthesia. As a result of the wrongful conduct described in the above paragraphs, Devan received treatment from the Syracuse Clinic and Dentists Khan, Aman and Bonds that was below the applicable standard of care and caused him to suffer injuries. Hollan Crippen, as parent and natural guardian of infant Devan Mathews, asserts claims on Devan's behalf against the Syracuse Clinic; Dentists Khan, Aman and Bonds; Old FORBA, New FORBA and the Individual Defendants.

153. Samantha McLoughlin was four years old when she was a patient at the Syracuse Clinic from September 2007 through October 2007. During that time, she had nine root canals and crowns, four extractions, one filling and was restrained on three occasions. As a result of the wrongful conduct described in the above paragraphs, Samantha received

treatment from the Syracuse Clinic and Dentists Bonds, Morales and Yaghmai that was below the applicable standard of care and caused her to suffer injuries. Jessica Recore, as parent and natural guardian of infant Samantha McLoughlin, asserts claims on Samantha's behalf against the Syracuse Clinic; Dentists Bonds, Morales and Yaghmai; and New FORBA.

154. Jacob McMahan was one to three years old when he was a patient at the Syracuse Clinic from October 2006 through November 2007. During that time, he had four root canals and crowns, four fillings, and was restrained on at least two occasions. As a result of the wrongful conduct described in the above paragraphs, Jacob received treatment from the Syracuse Clinic and Dentists Aman, Elsafty and Morales that was below the applicable standard of care and caused him to suffer injuries. Laurie and Dominick Rizzo, as legal custodians of infant Jacob McMahan, assert claims on Jacob's behalf against the Syracuse Clinic; Dentists Aman, Elsafty and Morales; and New FORBA

155. Kadem Montanye was two and three years old when he was a patient at the Syracuse Clinic from June 2006 through September 2007. During that time, he had four root canals and crowns and five fillings. He was restrained on at least three occasions and on three occasions the dentist gave him fillings without the use of any local or other anesthesia. As a result of the wrongful conduct described in the above paragraphs, Kadem received treatment from the Syracuse Clinic and Dentists Khan, Filostrat, Bonds, Aman and Yaghmai that was below the applicable standard of care and caused him to suffer injuries. Jason Montanye, as parent and natural guardian of infant Kadem Montanye, asserts claims on

Kadem's behalf against the Syracuse Clinic; Dentists Khan, Filostrat, Bonds, Aman and Yaghmai Old FORBA, New FORBA and the Individual Defendants.

156. Rayne Shellings is autistic. She was two and five years old when she was a patient at the Syracuse Clinic in May 2007 and in 2009. She received four fillings on one occasion during which she was restrained, all of which occurred without the use of any local or other anesthesia. As a result of the wrongful conduct described in the above paragraphs, Rayne received treatment from the Syracuse Clinic and Dentist Aman that was below the applicable standard of care and caused her to suffer injuries. Frances Shellings, as parent and natural guardian of infant Rayne Shellings, asserts claims on Rayne's behalf against the Syracuse Clinic; Dentist Aman; and New FORBA.

157. To the extent deemed necessary, plaintiffs plead in the alternative as to causes of action asserted herein.

158. One or more of the exceptions set forth in CPLR Section Sixteen Hundred Two applies to this action or claim for damages.

**AS AND FOR A FIRST CAUSE OF ACTION SOUNDING
IN FRAUD**

159. Plaintiffs repeat and re-allege the allegations of the Complaint set forth herein at paragraphs 1 through 158 with the same force and effect as if here set forth at length and further allege:

160. By offering their services, the Dentist Defendants and the Syracuse Clinic misrepresented to the public and to each infant plaintiff (through their parent or custodian) that defendants intended to provide appropriate dental care at the clinic. In truth, they did not intend to provide appropriate care.

161. Instead, the Syracuse Clinic and the Dentist Defendants intended to and did treat children, including the infant plaintiffs, with the primary goal being revenue generation rather than the medical needs of the children, with knowledge that such treatment was inappropriate.

162. Furthermore, such defendants knew at the time that they treated each plaintiff that his or her treatment was inappropriate, but misrepresented to such infant plaintiff (through their parent or custodian) that his or her treatment was appropriate.

163. By offering their services, the Dentist Defendants and the Syracuse Clinic also misrepresented to the parents and custodians of the infant plaintiffs that the dentists at the Syracuse Clinic who treated the infant plaintiffs were qualified to perform advanced behavior management techniques, such as physical restraints. In fact, the Dentist Defendants and the Syracuse Clinic knew they were not.

164. The Dentist Defendants and the Syracuse Clinic also misrepresented to the parents or custodians of the infant plaintiffs that restraints were appropriate when they knew restraints were inappropriate. The Dentist Defendants and the Syracuse Clinic fraudulently represented to the parents and custodians of the plaintiffs that the use of restraints had no risk and that the alternatives of sedation

or general anesthesia would involve more risks than restraints. These representations were false.

165. The misrepresentations of the Dentist Defendants and the Syracuse Clinic were done with the intent to induce the infant plaintiffs (through their parent or custodian) to consent to the treatment, which these defendants knew the parent or custodian would not have done had they known the truth.

166. The parent or custodian of each of the infant plaintiffs justifiably relied on the misrepresentations when they brought the infant plaintiffs to the clinic and consented to what they believed to be legitimate dental treatment of the infant plaintiffs by the Syracuse Clinic and the Dentist Defendants.

167. The parent or custodian of each of the infant plaintiffs would not have consented to the treatment of the infant plaintiffs at the Syracuse Clinic if these defendants had not engaged in such misrepresentations.

168. In addition to the misrepresentations described above, the Dentist Defendants and the Syracuse Clinic committed fraud by concealing from the infant plaintiffs and their parents or custodian material facts to persuade them to consent to treatment at the Syracuse Clinic, including the physical restraint of their children.

169. Specifically, the Dentist Defendants and the Syracuse Clinic knew but concealed from the infant plaintiffs and their parents or custodians that they were engaged in the course of conduct that placed revenue generation ahead of the medical needs of the infant plaintiffs, that they intended to treat the infant plaintiffs with their primary goal being

revenue rather than the medical needs of the infant plaintiffs, that they did not intend to provide the infant plaintiffs appropriate care, that the treatment of each infant plaintiff was not appropriate, that they were not qualified to perform advanced behavior management techniques, that each infant plaintiff should not have been physically restrained, that physical restraints had substantial risks and that the risks of sedation or general anesthesia were not greater than those of physical restraints.

170. The Dentist Defendants and the Syracuse Clinic had a duty to disclose the concealed facts for two reasons. First, the infant plaintiffs had either a fiduciary relationship with or a similar special relationship of trust and confidence with these defendants.

171. Each infant plaintiff was in a vulnerable position, placed himself or herself in the care of these defendants with regard to matters about which they had far superior knowledge, and of necessity must and did reasonably place his or her trust and confidence in them. Each infant plaintiff through his or her parent or custodian reasonably expected that the Dentist Defendants and the Syracuse Clinic would put the infant plaintiffs' interests before their own.

172. Second, the Dentist Defendants and the Syracuse Clinic possessed superior knowledge, not available to the parent or custodian of the infant plaintiffs, which they fraudulently concealed because they knew the infant plaintiffs (through their parent or custodian), did not have such knowledge and would not have consented to the dental treatment if they had.

173. The concealed facts set forth above were exclusively within the control of the defendants and were not available to the infant plaintiffs or their parents and custodians nor could they have discovered them through ordinary intelligence. These were special facts that the Dentist Defendants and the Syracuse Clinic had a duty to disclose.

174. The concealed facts were material to the parents and custodians of the plaintiffs and to any reasonable person in deciding whether to bring their child to the Syracuse Clinic and consent to the dental treatment, including physical restraints.

175. The Dentist Defendants and the Syracuse Clinic concealed these facts from the infant plaintiffs and their parents or custodians because the Dentist Defendants and the Syracuse Clinic knew that the parents or custodians would not have consented to the dental treatment, including physical restraints, if the information had been disclosed to them. The infant plaintiffs (through their parent or custodian) would not have consented to the treatment at the Syracuse Clinic if these defendants had not engaged in such concealment.

176. FORBA and the Individual Defendants managed, directed, caused, participated in, aided and abetted, ratified, had knowledge of and were the intended and actual beneficiaries of the fraud as set forth above. As such, they are jointly and severally liable along with the Syracuse Clinic and the Dentist Defendants for the damages to the infant plaintiffs caused by the fraud.

177. As a result of the fraudulent conduct of the defendants described above, each infant plaintiff has been damaged in a sum of

money having a present value which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this matter.

**AS AND FOR A SECOND CAUSE OF ACTION SOUNDING
IN BATTERY**

178. Plaintiffs repeat and re-allege the allegations of the Complaint set forth herein at paragraphs 1 through 177 with the same force and effect as if here set forth at length and further allege:

179. The Dentist Defendants intentionally touched the infant plaintiffs without consent and caused a harmful or offensive bodily contact. These acts were done with actual malice and were reckless, wanton and willful. At all times during such acts, the Dentist Defendants were acting within the scope of their employment and authority and as agents of FORBA and the Syracuse Clinic.

180. FORBA, the Syracuse Clinic, and the Individual Defendants directed, caused, participated in, aided and abetted, ratified and were the intended and actual beneficiaries of the battery as set forth above. As such, they are jointly and severally liable along with the Dentist Defendants for the damages caused by the battery.

181. FORBA, the Syracuse Clinic and the Individual Defendants committed overt acts in furtherance of the battery, acted in concert to plan the battery and requested that the battery be committed.

182. Furthermore, FORBA, the Syracuse Clinic, and the Individual Defendants assisted and encouraged the battery and such

encouragement and assistance was a substantial factor in causing the battery.

183. As a result of the conduct of the defendants described above, each infant plaintiff has been damaged in a sum of money having a present value which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this matter.

**AS AND FOR A THIRD CAUSE OF ACTION SOUNDING
IN BREACH OF FIDUCIARY DUTY**

184. Plaintiffs repeat and re-allege the allegations of the Complaint set forth herein at paragraphs 1 through 183 with the same force and effect as if here set forth at length and further allege:

185. The Dentist Defendants and Syracuse Clinic were under a duty to act for or give advice for the benefit of the infant plaintiffs upon matters related to their dental care. In addition, the infant plaintiffs, through their parent or custodian, placed confidence in the Dentist Defendants and Syracuse Clinic and reasonably relied on their superior expertise and knowledge in matters relating to dental health.

186. Each infant plaintiff was in a vulnerable position, placed himself or herself – through a parent or custodian -- in the care of the Dentist Defendants and Syracuse Clinic with regard to matters about which such defendants had far superior knowledge, and of necessity must and did reasonably place his or her trust and confidence in such defendants.

187. Each infant plaintiff – through a parent or custodian -- reasonably expected that such defendants would put the infant plaintiff's interest before their own. As such, the Dentist Defendants and Syracuse Clinic owed a fiduciary duty to the infant plaintiffs. As fiduciaries, these defendants owed their patients undivided and unqualified loyalty. Moreover, these defendants were required to make truthful and complete disclosures to the parent or custodian of each infant plaintiff and were forbidden from obtaining an improper advantage at the infant plaintiff's expense. By their conduct described above, these defendants breached their fiduciary duty to each infant plaintiff.

188. FORBA and the Individual Defendants knowingly caused, directed, induced, participated in, and were the intended and actual beneficiaries of, the breach of fiduciary duty by the Dentist Defendants and the Syracuse Clinic. They knowingly encouraged and provided substantial assistance to the Dentist Defendants and the Syracuse Clinic in their breach of fiduciary duty. As such, they are jointly and severally liable along with the Dentist Defendants and the Syracuse Clinic for the damages caused by the breach of fiduciary duty.

189. FORBA and the Individual Defendants also assisted, helped conceal and failed to act when required to do so thereby enabling the breach of fiduciary duty to occur.

190. As a result of the conduct of the defendants described above, each infant plaintiff has been damaged in a sum of money having a present value which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this matter.

**AS AND FOR A FOURTH CAUSE OF ACTION SOUNDING
IN BREACH OF GBL §349-350**

191. Plaintiffs repeat and re-allege the allegations of the Complaint set forth herein at paragraphs 1 through 190 with the same force and effect as if here set forth at length and further allege:

192. By offering their services, the Dentist Defendants and the Syracuse Clinic misrepresented to the public that they intended to provide appropriate dental care at the Syracuse Clinic. In truth, these defendants did not intend to provide appropriate care but instead intended to and did treat children, including the infant plaintiffs, with the primary goal being revenue generation rather than the medical needs of the children. These defendants concealed this from the public, including the infant plaintiffs and the parents and custodians of the infant plaintiffs.

193. The Dentist Defendants and the Syracuse Clinic routinely fraudulently misrepresented that children, including the infant plaintiffs, should be placed in restraints when they knew restraints were inappropriate for such infant plaintiffs. The Dentist Defendants and the Syracuse Clinic as a matter of regular and routine practice fraudulently represented to custodians and parents, including plaintiffs', that the use of restraints had no risk and that the alternatives of sedation or general anesthesia would involve more risks than restraints.

194. This conduct was not uniquely directed to each infant plaintiff only, but was routine practice, aimed at the consumer public at large, that deceived and misled state and federal governments and

members of the public in the State of New York, and in twenty-two states. This conduct lured the infant plaintiffs through their parents and custodians, and other members of the public, to the Syracuse Clinic and induced them to remain there for treatment.

195. The conduct described above by the Dentist Defendants and the Syracuse Clinic was materially deceptive and misleading, consumer-oriented, done in the conduct of their business and in the furnishing of their services and was likely to mislead a reasonable consumer and did mislead plaintiffs (through their parents and custodians) and other members of the public. By this practice, these defendants violated General Business Law §349.

196. FORBA and the Syracuse Clinic also engaged in false advertising in the conduct of their business and in the furnishing of dental services at the Syracuse Clinic – and the clinics -- in violation of General Business Law §350.

197. FORBA and the Syracuse Clinic targeted children eligible for Medicaid or other public assistance and falsely advertised that the clinics would provide appropriate dental care to such children when in fact they had no such intent. Instead defendants were engaged in a course of conduct described above in which revenue generation was the primary goal at the expense of appropriate care.

198. FORBA and the Syracuse Clinic's promotional materials and advertisements had the effect of deceiving and misleading members of the public at the Syracuse Clinic.

199. Defendants deceptively lured the infant plaintiffs (through their parents and custodians) and others to the Syracuse Clinic by deceiving and misleading them.

200. FORBA and the Individual Defendants knowingly caused, directed, induced, participated in, and were the intended and actual beneficiaries of, the breach of General Business Law §349 and §350 by the Dentist Defendants and the Syracuse Clinic. They knowingly encouraged and provided substantial assistance to the Dentist Defendants and the Syracuse Clinic in their deceptive conduct. As such, they are jointly and severally liable along with the Dentist Defendants and the Syracuse Clinic for the damages caused by the breach of General Business Law §349 and §350.

201. The infant plaintiffs have suffered actual damages from the defendants' violation of General Business Law § 349 and 350.

202. As a result of the above conduct, each infant plaintiff has been damaged in a sum of money having a present value which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this matter.

203. Under General Business Law §§349 and 350, each infant plaintiff is entitled to, and seeks to recover his or her reasonable attorney's fees.

**AS AND FOR A FIFTH CAUSE OF ACTION SOUNDING
IN MALPRACTICE**

204. Plaintiffs repeat and re-allege the allegations of the Complaint set forth herein at paragraphs 1 through 203 with the same force and effect as if here set forth at length and further allege:

205. Each infant plaintiff received dental care, treatment, examinations, operative and other procedures from FORBA, the Syracuse Clinic, and the Dentist Defendants, individually and/or jointly and severally and/or collectively and/or through their respective agents, servants, employees, associates and contractors, as set forth above in paragraphs 141 through 156.

206. FORBA, the Syracuse Clinic, and the Dentist Defendants, individually and/or jointly and severally and/or collectively and/or through their agents, servants, employees, associates and/or subcontractors, carelessly and negligently rendered dental care and treatment to each infant plaintiff. Such care and treatment was not in accordance with good and accepted dental practice.

207. In addition, FORBA and the Individual Defendants directed, caused, participated in, aided and abetted, ratified, and had knowledge of and were the intended and actual beneficiaries of the malpractice as set forth above. As such, they are jointly and severally liable along with the Syracuse Clinic and the Dentist Defendants for the damages caused by the malpractice.

208. As a result of the above conduct, each infant plaintiff has been damaged in a sum of money having a present value, which exceeds

the jurisdictional limits of all lower courts, which would otherwise have jurisdiction of this matter.

**AS AND FOR A SIXTH CAUSE OF ACTION SOUNDING
IN NEGLIGENCE**

209. The infant plaintiffs repeat and re-allege the allegations of the Complaint set forth herein at paragraphs 1 through 208 with the same force and effect as if here set forth at length and further allege:

210. FORBA and the Syracuse Clinic had a duty to provide appropriate and reasonable care, attention and protection to the infant plaintiffs when such infant plaintiffs presented for treatment.

211. FORBA and the Syracuse Clinic failed to use reasonable care to furnish each infant plaintiff the care, attention, and protection ordinarily provided by dental clinics in the same or similar locality and under similar circumstances.

212. FORBA and the Syracuse Clinic were also negligent in the selection of and periodic review of the staff at the Clinics.

213. FORBA and the Syracuse Clinic also failed to use reasonable care in the selection, credentialing, monitoring and review of the Clinic's staff.

214. FORBA and the Syracuse Clinic were further negligent in their failure to provide or enforce appropriate policies and procedures at the Syracuse Clinic.

215. FORBA and the Individual Defendants managed the Syracuse Clinic on a comprehensive and exclusive basis. By the conduct set forth above, FORBA and the Individual Defendants failed to use reasonable care and created an unreasonably dangerous condition which resulted in damage to the plaintiffs.

216. As a result of the conduct of defendants set forth above, each infant plaintiff has been damaged in a sum of money having a present value, which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this matter.

**AS AND FOR A SEVENTH CAUSE OF ACTION SOUNDING IN
INFORMED CONSENT**

217. Plaintiffs repeat and re-allege the allegations of the Complaint set forth herein at paragraphs 1 through 216 with the same force and effect as if here set forth at length and further allege:

218. At no time during the aforesaid care and treatment rendered by the Defendant Dentists and the Syracuse Clinic were the infant plaintiffs or their parents or custodians ever advised, either orally or in writing, that the dentists that were treating the infant plaintiffs were not pediatric dentists, that they were not trained in behavior therapy, that the dentists were seeking to enhance revenue rather than provide appropriate dental care, that the infant plaintiffs would not be treated in an appropriate and legitimate manner of that required of a pediatric dental patient, and that the infant plaintiff would be restrained when not necessary, or of the dangerous

risks of restraints, or that unnecessary, excessive, and unsafe procedures would be done on the infant plaintiffs; and, had the defendants or their agents, servants, employees, associates, or subcontractors informed or advised the infant plaintiffs of the possible risks and dangers involved, the plaintiffs would not have been lulled into a false sense of security and would not have consented to the treatment rendered, which resulted in the damages described hereinabove.

219. A reasonably prudent person in the infant plaintiff's position (or that of the parent or custodian of the infant plaintiff) would not have undergone or allowed the treatment rendered if such person was fully informed, and such lack of informed consent was a proximate cause of the injuries and damages for which recovery is sought.

220. In addition, FORBA and the Individual Defendants directed, caused, participated in, aided and abetted, ratified, and had knowledge of and were the intended and actual beneficiaries of the failure to obtain informed consent by the Syracuse Clinic and the Dentist Defendants as set forth above. As such, they are jointly and severally liable along with the Syracuse Clinic and the Dentist Defendants for the damages caused by the failure to obtain informed consent.

221. As a result of the defendants' conduct described above, the infant plaintiffs have incurred substantial damages.

222. By reason of the foregoing, the infant plaintiffs have been damaged in a sum of money having a present value which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this matter.

CONCERTED ACTION LIABILITY

223. Plaintiffs repeat and re-allege the allegations of the Complaint set forth herein at paragraphs 1 through 222 with the same force and effect as if here set forth at length and further allege:

224. Defendants pursued a common plan and scheme as described above. They acted in concert with one another, actively took part in the scheme, furthered it by cooperation and requests to the Defendant Dentists and the Syracuse Clinic, lent aid and encouragement for the scheme, and ratified and adopted the tortious acts of the Defendant Dentists and the Syracuse Clinic from which they benefited.

225. The conduct of the Individual Defendants and FORBA described herein was a substantial factor in causing the torts that are alleged above and injury and damages to the infant plaintiffs. Therefore, under the theory of concerted action liability, Defendants are jointly and severally liable to the infant plaintiffs for each of the seven torts alleged above.

SUCCESSOR LIABILITY

226. After purchasing the Old FORBA business in September 2006, New FORBA took over the entire business and carried it on in the same manner as Old FORBA had done before the purchase.

227. Old FORBA ceased doing business immediately and has been dormant ever since.

228. New FORBA continued operating under the FORBA and Small Smiles names, and continued managing and operating the same clinics with the same dentists and staff at the same locations as before the sale.

229. New FORBA assumed all of the agreements of Old FORBA necessary to continue the business as before (both the obligations and benefits of those agreements), including all management agreements with the dental clinics.

230. New FORBA continued operating with the same employees, excepting the individuals who sold their ownership interests.

231. New FORBA acquired the good will, customer lists and trade names of Old FORBA.

232. New FORBA paid over \$2 million dollars to the State of New York for FORBA conduct that occurred before the sale.

233. New FORBA is jointly and severally liable to the infant plaintiffs as the successor to Old FORBA for the Old FORBA conduct occurring before the September 2006 sale.

PUNITIVE DAMAGES

234. As to all causes of action, defendants' conduct described above was gross, wanton, reckless, outrageous and malicious, was actuated by evil and reprehensible motives sufficient to transcend the bounds of societal norms and involved a high degree of moral culpability such that punitive damages should be awarded by the jury.

235. As to all causes of action, defendants' conduct demonstrated a gross indifference to patient care and was a danger to the public.

236. As to all causes of action, defendants' conduct was so grossly and wantonly negligent, callous, and reckless, as to be the equivalent of a conscious disregard of the rights of others. It was a substantial factor in causing injury to the infant plaintiffs.

237. As to all causes of action, defendants' conduct is deserving of punitive damages because it displayed an utter disregard for the safety and rights of the members of the public, including the infant plaintiffs. The defendants' conduct was aimed at the public generally, including the infant plaintiffs and their parents and legal custodians.

238. As to all causes of action, assessing punitive damages against the defendants will punish them for their conduct and discourage them, and others, from engaging in similar conduct in the future. It is also important to assess punitive damages to protect the underlying rights of the public, and the public policy of the State of New York against defrauding patients, and conducting unsafe and unnecessary procedures on them.

WHEREFORE, each plaintiff demands judgment against the defendants, jointly and severally:

a. On the First Cause of Action, in a sum of money having a present value which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction over this matter;

b. On the Second Cause of Action, in a sum of money having a present value which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction over this matter;

c. On the Third Cause of Action, in a sum of money having a present value which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction over this matter;

d. On the Fourth Cause of Action, in a sum of money having a present value which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction over this matter;

e. On the Fifth Cause of Action, in a sum of money having a present value which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction over this matter;

f. On the Sixth Cause of Action, in a sum of money having a present value which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction over this matter;

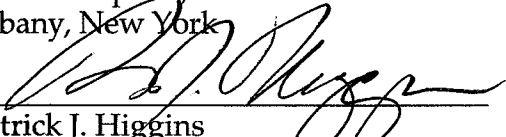
g. On the Seventh Cause of Action, in a sum of money having a present value which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction over this matter;

h. Together with the costs and disbursements of this action as well as the maximum interest permitted by law; and

i. Attorneys' fees as allowed by statute,

j. Punitive Damages in an amount that is constitutionally permissible, consistent with prevailing New York law and the trial record.

DATED: April 4, 2011
Albany, New York



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