

**IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA**

MARIA LORENA HERNANDEZ,)
Individually and As Mother and Next)
Friend of AALIYAH ESPARZA, a minor,)
**ON BEHALF OF HERSELF AND)
OTHERS SIMILARLY SITUATED,**)

Plaintiff,)

vs.)

Case No.: CJ-2010-1632

FORBA HOLDINGS, LLC; FORBA)
SERVICES, INC.; SMALL SMILES)
HOLDING COMPANY, LLC; SMALL)
SMILES HOLDING COMPANY, LLC)
d/b/a SMALL SMILES DENTAL CLINIC)
of OKLAHOMA CITY; SMALL SMILES)
DENTAL CLINIC of TULSA;)
CHILDREN’S DENTAL CLINIC of)
OKLAHOMA CITY, PLLC;)
OKLAHOMA SMILES DENTAL)
CENTER OF SOUTH OKLAHOMA)
CITY, CHILDREN’S DENTAL CLINIC)
of OKLAHOMA CITY at PORTLAND)
PLAZA, PLLC; MONICA DEAUN)
SWITZER, D.D.S.; MEGANN WAKELEE)
SCOTT, D.D.S; RONALD BOSTON)
QUADE, D.D.S.; GIANG BINH)
PHAM, D.D.S.; EUNA KYONG)
CHANG, D.D.S.; DOUGLAS DAVID)
DURST, D.D.S; JUSTIN KENNETH)
MARRIOTT, D.D.S; ROBERT BRUCE)
WATSON, D.D.S.; ERIN BETH)
HEATHCOCK, D.D.S; JIMEMA)
POITEVIEN, D.D.S.; STEPHEN ROSS)
CASH, D.D.S.; JOSEPH PAUL)
SEBOURN, D.D.S; LENA NICOLE)
TURNER, D.D.S.; MICHAEL HUDSON,)
D.D.S.; ROSA ORTEGA, D.D.S.; and)
MATHEW ARNOLD BERG, D.M.D.,)

CLASS ACTION

Defendants.

THIRD AMENDED PETITION

COMES NOW the Plaintiff, Maria Lorena Hernandez, Individually and as Mother and Next Friend of Aaliyah Esparza, a minor, and for her complaint against the Defendants, FORBA Holdings, LLC, FORBA Services, Inc., Small Smiles Holding Company, LLC; Small Smiles Holding Company, LLC, d/b/a Small Smiles Dental Clinic of Oklahoma City, Small Smiles Dental Clinic of Tulsa, Children's Dental Clinic of Oklahoma City, PLLC, Oklahoma Smiles Dental Clinic of South Oklahoma City, Children's Dental Clinic of Oklahoma City at Portland Plaza, PLLC, Monica DeAun Switzer, D.D.S., Megann Wakelee Scott, D.D.S., Ronald Boston Quade, D.D.S., Giang Binh Pham, D.D.S., and Euna Kyong Chang, D.D.S., Douglas David Durst, D.D.S., Justin Kenneth Marriott, D.D.S., Robert Bruce Watson, D.D.S., Erin Beth Heathcock, D.D.S., Jimema Poitevien, D.D.S., Stephen Ross Cash, D.D.S., Joseph Paul Sebourn, D.D.S., Lena Nicole Turner, D.D.S., Michael Hudson, D.D.S., Rosa Ortega, D.D.S. and Mathew Arnold Berg, D.M.D., alleges and states as follows:

PARTIES

1. Plaintiff is the mother and next friend of Aaliyah Esparza, a minor.
2. Defendant FORBA Holdings, LLC, is a limited liability corporation organized under the laws of the State of Delaware, with its principle place of business in Colorado, and is registered and authorized to do business within the State of Oklahoma.
3. Defendant FORBA Holdings, LLC owns, operates, develops, manages and supervises its nationwide chain of clinics, including Defendants, Small Smiles Dental Clinics of Oklahoma City, Small Smiles Dental Clinic of Tulsa, Children's Dental Clinic

of Oklahoma City, PLLC, Oklahoma Smiles Dental Clinic of South Oklahoma City and Children's Dental Clinic of Oklahoma City at Portland Plaza, PLLC.

4. Defendant FORBA Services, Inc. is a limited liability corporation organized under the laws of the State of Delaware, with its principle place of business in Tennessee.

5. Defendant FORBA Services, Inc., is a wholly owned and/or controlled subsidiary or affiliate company to Defendant FORBA Holdings, LLC.

6. Defendant Small Smiles Holding Company, LLC is a limited liability corporation organized under the laws of the State of Delaware, with its principle place of business in Tennessee.

7. Defendant Small Smiles Holding Company, LLC is the 100% owner of FORBA Holdings, LLC.

8. Defendants Small Smiles Dental Clinic of Oklahoma City, Small Smiles Dental Clinic of Tulsa, Children's Dental Clinic of Oklahoma City, PLLC, Oklahoma Smiles Dental Clinic of South Oklahoma City, are all for-profit professional limited liability companies owned and operated by Defendants Small Smiles Holding Company, LLC, FORBA Services, Inc. and FORBA Holdings, LLC organized and existing under the laws of the State of Oklahoma with the sole purpose of rendering professional services of dentistry.

9. Defendant Monica DeAun Switzer, D.D.S. is an Oklahoma dentist licensed to practice dentistry in the State of Oklahoma. At all times mentioned herein, Defendant Monica DeAun Switzer, D.D.S. was an agent, servant and employee of FORBA Holdings, LLC, FORBA Services, Inc., Small Smiles Holding Company, LLC;

Small Smiles Holding Company, LLC, d/b/a Small Smiles Dental Clinic of Oklahoma City, Small Smiles Dental Clinic of Tulsa, Children's Dental Clinic of Oklahoma City, PLLC, Oklahoma Smiles Dental Clinic of South Oklahoma City, Children's Dental Clinic of Oklahoma City at Portland Plaza, PLLC, and was acting within the course and scope of her employment.

10. Defendant Megann Wakelee Scott, D.D.S. is an Oklahoma dentist licensed to practice dentistry in the State of Oklahoma. At all times mentioned herein, Defendant Megann Wakelee Scott, D.D.S. was an agent, servant and employee of FORBA Holdings, LLC, FORBA Services, Inc., Small Smiles Holding Company, LLC; Small Smiles Holding Company, LLC, d/b/a Small Smiles Dental Clinic of Oklahoma City, Small Smiles Dental Clinic of Tulsa, Children's Dental Clinic of Oklahoma City, PLLC, Oklahoma Smiles Dental Clinic of South Oklahoma City, Children's Dental Clinic of Oklahoma City at Portland Plaza, PLLC, and was acting within the course and scope of her employment.

11. Defendant Ronald Boston Quade, D.D.S. is a dentist licensed to practice dentistry in the State of Oklahoma. At all times mentioned herein, Defendant Ronald Boston Quade, D.D.S. was an agent, servant and employee of FORBA Holdings, LLC, FORBA Services, Inc., Small Smiles Holding Company, LLC; Small Smiles Holding Company, LLC, d/b/a Small Smiles Dental Clinic of Oklahoma City, Small Smiles Dental Clinic of Tulsa, Children's Dental Clinic of Oklahoma City, PLLC, Oklahoma Smiles Dental Clinic of South Oklahoma City, Children's Dental Clinic of Oklahoma City at Portland Plaza, PLLC, and was acting within the course and scope of his employment.

12. Defendant Giang Binh Pham, D.D.S. is an Oklahoma dentist licensed to practice dentistry in the State of Oklahoma. At all times mentioned herein, Defendant Giang Binh Pham, D.D.S. was an agent, servant and employee of FORBA Holdings, LLC, FORBA Services, Inc., Small Smiles Holding Company, LLC; Small Smiles Holding Company, LLC, d/b/a Small Smiles Dental Clinic of Oklahoma City, Small Smiles Dental Clinic of Tulsa, Children's Dental Clinic of Oklahoma City, PLLC, Oklahoma Smiles Dental Clinic of South Oklahoma City, Children's Dental Clinic of Oklahoma City at Portland Plaza, PLLC, and was acting within the course and scope of her employment.

13. Defendant Euna Kyong Chang, D.D.S. is an Oklahoma dentist licensed to practice dentistry in the State of Oklahoma. At all times mentioned herein, Defendant Euna Kyong Chang, D.D.S. was an agent, servant and employee of FORBA Holdings, LLC, FORBA Services, Inc., Small Smiles Holding Company, LLC; Small Smiles Holding Company, LLC, d/b/a Small Smiles Dental Clinic of Oklahoma City, Small Smiles Dental Clinic of Tulsa, Children's Dental Clinic of Oklahoma City, PLLC, Oklahoma Smiles Dental Clinic of South Oklahoma City, Children's Dental Clinic of Oklahoma City at Portland Plaza, PLLC, and was acting within the course and scope of her employment.

14. Defendant Douglas David Durst, D.D.S. is an Oklahoma dentist licensed to practice dentistry in the State of Oklahoma. At all times mentioned herein, Defendant Douglas David Durst, D.D.S. was an agent, servant and employee of FORBA Holdings, LLC, FORBA Services, Inc., Small Smiles Holding Company, LLC; Small Smiles Holding Company, LLC, d/b/a Small Smiles Dental Clinic of Oklahoma City,

Small Smiles Dental Clinic of Tulsa, Children's Dental Clinic of Oklahoma City, PLLC, Oklahoma Smiles Dental Clinic of South Oklahoma City, Children's Dental Clinic of Oklahoma City at Portland Plaza, PLLC, and was acting within the course and scope of his employment.

15. Defendant Justin Kenneth Marriott, D.D.S. is an Oklahoma dentist licensed to practice dentistry in the State of Oklahoma. At all times mentioned herein, Defendant Justin Kenneth Marriott, D.D.S. was an agent, servant and employee of FORBA Holdings, LLC, FORBA Services, Inc., Small Smiles Holding Company, LLC; Small Smiles Holding Company, LLC, d/b/a Small Smiles Dental Clinic of Oklahoma City, Small Smiles Dental Clinic of Tulsa, Children's Dental Clinic of Oklahoma City, PLLC, Oklahoma Smiles Dental Clinic of South Oklahoma City, Children's Dental Clinic of Oklahoma City at Portland Plaza, PLLC, and was acting within the course and scope of his employment.

16. Defendant Robert Bruce Watson, D.D.S. is an Oklahoma dentist licensed to practice dentistry in the State of Oklahoma. At all times mentioned herein, Defendant Robert Bruce Watson, D.D.S. was an agent, servant and employee of FORBA Holdings, LLC, FORBA Services, Inc., Small Smiles Holding Company, LLC; Small Smiles Holding Company, LLC, d/b/a Small Smiles Dental Clinic of Oklahoma City, Small Smiles Dental Clinic of Tulsa, Children's Dental Clinic of Oklahoma City, PLLC, Oklahoma Smiles Dental Clinic of South Oklahoma City, Children's Dental Clinic of Oklahoma City at Portland Plaza, PLLC, and was acting within the course and scope of his employment.

17. Defendant Erin Beth Heathcock, D.D.S. is an Oklahoma dentist

licensed to practice dentistry in the State of Oklahoma. At all times mentioned herein, Defendant Erin Beth Heathcock, D.D.S. was an agent, servant and employee of FORBA Holdings, LLC, FORBA Services, Inc., Small Smiles Holding Company, LLC; Small Smiles Holding Company, LLC, d/b/a Small Smiles Dental Clinic of Oklahoma City, Small Smiles Dental Clinic of Tulsa, Children's Dental Clinic of Oklahoma City, PLLC, Oklahoma Smiles Dental Clinic of South Oklahoma City, Children's Dental Clinic of Oklahoma City at Portland Plaza, PLLC, and was acting within the course and scope of her employment.

18. Defendant Jimema Poitevien, D.D.S. is an Oklahoma dentist licensed to practice dentistry in the State of Oklahoma. At all times mentioned herein, Defendant Jimema Poitevien, D.D.S. was an agent, servant and employee of FORBA Holdings, LLC, FORBA Services, Inc., Small Smiles Holding Company, LLC; Small Smiles Holding Company, LLC, d/b/a Small Smiles Dental Clinic of Oklahoma City, Small Smiles Dental Clinic of Tulsa, Children's Dental Clinic of Oklahoma City, PLLC, Oklahoma Smiles Dental Clinic of South Oklahoma City, Children's Dental Clinic of Oklahoma City at Portland Plaza, PLLC, and was acting within the course and scope of his employment.

19. Defendant Stephen Ross Cash, D.D.S. is an Oklahoma dentist licensed to practice dentistry in the State of Oklahoma. At all times mentioned herein, Defendant Stephen Ross Cash, D.D.S. was an agent, servant and employee of FORBA Holdings, LLC, FORBA Services, Inc., Small Smiles Holding Company, LLC; Small Smiles Holding Company, LLC, d/b/a Small Smiles Dental Clinic of Oklahoma City, Small Smiles Dental Clinic of Tulsa, Children's Dental Clinic of Oklahoma City, PLLC,

Oklahoma Smiles Dental Clinic of South Oklahoma City, Children's Dental Clinic of Oklahoma City at Portland Plaza, PLLC, and was acting within the course and scope of his employment.

20. Defendant Joseph Paul Sebourn, D.D.S. is an Oklahoma dentist licensed to practice dentistry in the State of Oklahoma. At all times mentioned herein, Defendant Joseph Paul Sebourn, D.D.S. was an agent, servant and employee of FORBA Holdings, LLC, FORBA Services, Inc., Small Smiles Holding Company, LLC; Small Smiles Holding Company, LLC, d/b/a Small Smiles Dental Clinic of Oklahoma City, Small Smiles Dental Clinic of Tulsa, Children's Dental Clinic of Oklahoma City, PLLC, Oklahoma Smiles Dental Clinic of South Oklahoma City, Children's Dental Clinic of Oklahoma City at Portland Plaza, PLLC, and was acting within the course and scope of his employment.

21. Defendant Lena Nicole Turner, D.D.S. is an Oklahoma dentist licensed to practice dentistry in the State of Oklahoma. At all times mentioned herein, Defendant Lena Nicole Turner, D.D.S. was an agent, servant and employee of FORBA Holdings, LLC, FORBA Services, Inc., Small Smiles Holding Company, LLC; Small Smiles Holding Company, LLC, d/b/a Small Smiles Dental Clinic of Oklahoma City, Small Smiles Dental Clinic of Tulsa, Children's Dental Clinic of Oklahoma City, PLLC, Oklahoma Smiles Dental Clinic of South Oklahoma City, Children's Dental Clinic of Oklahoma City at Portland Plaza, PLLC, and was acting within the course and scope of her employment.

22. Defendant Michael Hudson, D.D.S. was an Oklahoma dentist

licensed to practice dentistry in the State of Oklahoma. At all times mentioned herein, Defendant Michael Hudson, D.D.S. was an agent, servant and employee of FORBA Holdings, LLC, FORBA Services, Inc., Small Smiles Holding Company, LLC; Small Smiles Holding Company, LLC, d/b/a Small Smiles Dental Clinic of Oklahoma City, Small Smiles Dental Clinic of Tulsa, Children's Dental Clinic of Oklahoma City, PLLC, Oklahoma Smiles Dental Clinic of South Oklahoma City, Children's Dental Clinic of Oklahoma City at Portland Plaza, PLLC, and was acting within the course and scope of his employment.

23. Defendant Rosa Ortega, D.D.S. was an Oklahoma dentist licensed to practice dentistry in the State of Oklahoma. At all times mentioned herein, Defendant Rosa Ortega, D.D.S. was an agent, servant and employee of FORBA Holdings, LLC, FORBA Services, Inc., Small Smiles Holding Company, LLC; Small Smiles Holding Company, LLC, d/b/a Small Smiles Dental Clinic of Oklahoma City, Small Smiles Dental Clinic of Tulsa, Children's Dental Clinic of Oklahoma City, PLLC, Oklahoma Smiles Dental Clinic of South Oklahoma City, Children's Dental Clinic of Oklahoma City at Portland Plaza, PLLC, and was acting within the course and scope of her employment.

24. Defendant Mathew Arnold Berg, D.M.D. is an Oklahoma dentist licensed to practice dentistry in the State of Oklahoma. At all times mentioned herein, Defendant Mathew Arnold Berg, D.M.D. was an agent, servant and employee of FORBA Holdings, LLC, FORBA Services, Inc., Small Smiles Holding Company, LLC; Small Smiles Holding Company, LLC, d/b/a Small Smiles Dental Clinic of Oklahoma City, Small Smiles Dental Clinic of Tulsa, Children's Dental Clinic of Oklahoma City, PLLC,

Oklahoma Smiles Dental Clinic of South Oklahoma City, Children's Dental Clinic of Oklahoma City at Portland Plaza, PLLC, and was acting within the course and scope of his employment.

25. At all times relevant herein, Defendants, each of them, performed medically substandard and painful dental procedures on Aaliyah Esparza, and others, for the sole purpose of obtaining additional compensation from the parents and/or third party payors. Defendants committed an assault and battery, dental malpractice/negligence, fraud, intentional/negligent infliction of emotional distress upon Aaliyah Esparza and others. Moreover, Defendants violated the Oklahoma Consumer Protection Act.

CLASS ACTION ALLEGATIONS

26. Plaintiff brings this class action, on behalf of herself and other similarly situated individuals who are members of the proposed Plaintiff class.

27. The proposed Plaintiff class is defined as any child who received medically substandard/negligent and/or excessive treatment at any of Defendant's Oklahoma clinics.

28. The exact number of children who received substandard, unnecessary or excessive treatment is not presently known, but upon information and belief, exceeds hundreds, if not thousands, of individuals. The Plaintiff class is so numerous that joinder of individual members is impracticable.

29. There are questions of law or fact common to all members of the Plaintiff class.

30. The relief sought is common to the entire class.

31. The named Plaintiff is a member of the class that she seeks to represent

and her claims are typical of the claims of the members of the class.

32. Plaintiff will adequately represent and protect the interests of the Plaintiff class. Plaintiff has hired counsel experienced in the conduct of complex litigation.

33. The prosecution of separate actions by individual members of the class would create a risk of inconsistent adjudications with respect to individual members of the class that could establish incompatible standards of conduct for Defendants, or which could, as a practical matter, be dispositive of the interest of non-parties.

34. Questions of law or fact are common to all members of the class and predominate over any questions affecting only individual members, such that a class action is superior to other available methods for the fair and efficient adjudication of this controversy. Because the damage suffered by each individual class member may be relatively small, the burden and expense of individual class members to seek redress for the wrongful conduct alleged here. Absent a class action, Defendant likely would retain the benefits of its wrongdoing. In addition, individual litigation would increase the delay and expense to all parties and to the court system. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale and comprehensive supervision by a single court.

35. Plaintiff anticipates no unusual difficulties in the management of this litigation as a class action.

36. Class certification is appropriate under Title 12 O.S. § 2023 because there is no indication that individual claimants wish to be excluded from the Plaintiff class or to individually control this litigation, there are no other Oklahoma actions known to Plaintiff regarding this controversy, concentration of this action in this forum will

facilitate the comprehensive resolution of all the claims relating to Defendant's improper practices and no manageability problems are presented by maintaining this suit as a class action.

COMMON FACTUAL ALLEGATIONS

37. This case involves a substantial number of common questions of law and fact including, but not limited to, the following:

(a) Whether Defendants FORBA entities and Small Smiles Holding Company own, operate, develop, manage and supervise a chain of dental clinics, including Defendants Small Smiles Dental Clinic of Oklahoma City, Small Smiles Dental Clinic of Tulsa, Children's Dental Clinic of Oklahoma City, PLLC, Oklahoma Smiles Dental Clinic of South Oklahoma City, and Children's Dental Clinic of Oklahoma City at Portland Plaza, PLLC.

(b) Whether Defendant FORBA entities and Small Smiles Holding Company handles the recruiting, hiring and training of dentist and/or other employees employed by its clinics.

(c) Whether Defendant FORBA entities and Small Smiles Holding Company also issues policies and procedures that its clinics follow and directs the clinics' compensation of their dentists and employees.

(d) Whether, Defendant FORBA entities and Small Smiles Holding Company issued and enforced guidelines, policies, procedures, practices and "billing production goals" for Small Smiles Dental Clinic of Oklahoma City, Small Smiles Dental Clinic of Tulsa, Children's Dental Clinic of Oklahoma City, PLLC, Oklahoma Smiles Dental Clinic of South Oklahoma City and Children's Dental

Clinic of Oklahoma City at Portland Plaza, PLLC, that were specifically designed to provide substandard care, commit malpractice and a battery upon minor children and defraud their parents/guardians and third party payors by performing medically substandard/negligent, unnecessary and painful dental procedures upon the children, including, but not limited to, baby root canals, fillings, crowns and improperly using physical restraints and/or behavior management techniques on the children during surgery in order to obtain additional compensation from the parent/guardians and/or third party payors.

(e) Whether Defendants FORBA entities and Small Smiles Holding Company, Small Smiles Dental Clinic of Oklahoma City, Small Smiles Dental Clinic of Tulsa, Children's Dental Clinic of Oklahoma City, PLLC, Oklahoma Smiles Dental Clinic of South Oklahoma City and Children's Dental Clinic of Oklahoma City at Portland Plaza, PLLC violated the provisions of Title 15 O.S. § 751, *et seq.*

(f) Whether Defendant FORBA entities and Small Smiles Holding Company, Small Smiles Dental Clinic of Oklahoma City, Small Smiles Dental Clinic of Tulsa, Children's Dental Clinic of Oklahoma City, PLLC, Oklahoma Smiles Dental Clinic of South Oklahoma City and Children's Dental Clinic of Oklahoma City at Portland Plaza, PLLC, routinely employed unqualified dentists and assistants.

(g) Whether defendants' Monica DeAun Switzer, D.D.S., Megann Wakelee Scott, D.D.S., Ronald Boston Quade, D.D.S., Giang Binh Pham, D.D.S., Euna Kyong Chang, D.D.S., Douglas David Durst, D.D.S., Justin Kenneth Marriott,

D.D.S., Robert Bruce Watson, D.D.S., Erin Beth Heathcock, D.D.S., Jimema Poitevien, D.D.S., Stephen Ross Cash, D.D.S., Joseph Paul Sebourn, D.D.S., Lena Nicole Turner, D.D.S., Michael Hudson, D.D.S., Rosa Ortega, D.D.S., and Mathew Arnold Berg, D.M.D.'s care and treatment fell below acceptable dental practice.

MINOR ESPARZA

38. Aaliyah Esparza was a patient at Small Smiles Dental Clinic of Oklahoma City for approximately 3 years.

39. During those years, Aaliyah Esparza underwent numerous substandard, negligent, improper, unnecessary and/or excessive dental procedures, sedation and physical restraining methods.

40. Plaintiff Maria Lorena Hernandez was unaware that said dental procedures, sedation and/or physical restraining methods was improper, substandard, unnecessary and/or excessive.

41. Plaintiff became aware of the substandard/negligent care, fraud, conspiracy, assault and battery and dental negligence when she saw several news reports in 2009.

42. Defendants' conduct constitutes malice, oppressive, aggravated or egregious fraud, and reckless disregard for the safety of others having a great probability of causing substantial harm.

43. Plaintiff is entitled to punitive damages.

WHEREFORE, premises considered, Plaintiff Maria Lorena Hernandez,

Individually and as Mother and Next Friend of Aaliyah Esparza, a minor, and on behalf of all other similarly situated, respectfully requests that the Court certify this matter as a class action pursuant to Title 12 O.S. § 2023; award actual and punitive damages in excess of \$75,000.00; and award costs of this action and reasonable attorney's fees of counsel.

Respectfully submitted,

Steven T. Horton, OBA# 14589
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-and-

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Attorneys for Plaintiff

CERTIFICATE OF MAILING

This is to certify that on this the _____ day of _____, 2010, a true, correct and exact copy of the above and foregoing instrument was sent by facsimile and mailed with proper postage thereon to:

Allen Campbell
Jim Chaney

KIRK & CHANEY
101 Park Ave., Suite 800
Oklahoma City, OK 73102
Attorneys for Defendants

Steven T. Horton