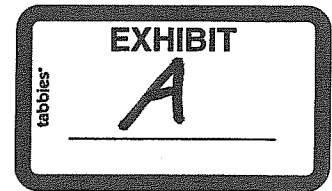


UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
OWENSBORO DIVISION



FORBA HOLDINGS, LLC,)
)
Plaintiff,)
)
v.)
)
DEBBIE HAGAN,)
)
Defendant.)

Civil Action No. 4:08-cv-00137-JHM-ERG

DECLARATION OF TODD CRUSE

Todd Cruse declares and states as follows:

1. I am Senior Vice President, Development, for the plaintiff in this action, Church Street Health Management, LLC (FORBA Holdings, LLC changed its name to Church Street Health Management, LLC effective December 31, 2010; hereinafter “Plaintiff” or “CSHM”), which manage approximately 70 dental centers under trade names including Small Smiles. The facts stated herein are based upon my personal knowledge unless otherwise indicated, including my review of the web log (“blog”) entries addressed below.

2. Since at least as early as May 2008, Plaintiff has had in place a Confidential Information policy to which its employees are subject, pursuant to which Plaintiff’s employees agree that they will not, during and after their employment by Plaintiff, directly or indirectly, use, disseminate, or disclose any confidential information concerning the business or patients of Plaintiff. Under this Confidential Information policy, Plaintiff’s “Confidential Information means information disclosed to Employee, not generally known in the profession about Employer’s services or processes, including information relative to patient lists, patient names and addresses, patient records, pricing policies, financial information and Employer’s

procedures, systems, and processes relating to its Medicaid practice. Employee agrees that Employer's Confidential Information is in the nature of trade secrets and should not be made available to any other dentist or dental professional, or any present or potential competitor, including Employee, without regard to whether or not said Confidential Information may or may not be defined as a trade secret pursuant to the Uniform Trade Secrets Act. In the event Employee misappropriates any of Employer's Confidential information, employer shall have all rights and remedies available to Employer pursuant to State law, including the Uniform Trade Secrets Act." In addition, since March 2009, Plaintiff has had an Internet Posting policy that prohibits its employees, applicants for employment, agents and contractors from engaging in communications that disclose any information that is confidential or proprietary to Plaintiff or its associated dental centers.

3. Since the Consent Injunction was entered in this action on November 17, 2008, Plaintiff has continued to monitor the websites of the defendant, Debbie Hagan ("Hagan"), which appear at the URL <http://www.dentistthemenace.com>, which page is redirected to <http://blog.dentistthemenace.com>, and <http://dentistthemenace.wordpress.com> (collectively, the "Hagan Blog"). Hagan has made several recent blog postings that: (a) blatantly violate the Consent Injunction's prohibition on posting internal and/or confidential documents or information of Plaintiff; and/or (b) are otherwise highly offensive and demonstrate Hagan's animus towards Plaintiff and why she should be sanctioned for continuing to violate the Consent Injunction. These postings, which demonstrate that Hagan is obtaining information concerning Plaintiff in violation of Plaintiff's Confidential Information and Internet Posting policies, and then posting that internal and/or confidential information of Plaintiff at the Hagan Blog, are

described below, in reverse chronological order. These postings are all at the <http://blog.dentistthemenace.com> site.

4. On June 26, 2011, Hagan posted a June 2011 bonus matrix document for CSHM staff that is clearly internal and confidential. The document is available as a separate link from the Hagan Blog as well. Hagan also referred by name to a particular section on compensation in CSHM's contract for new and current dentists.

5. On June 21, 2011, in a blog entry with the headline "I think Small Smiles Dental Centers and Church Street Health Management is on the verge of more sanctions," Hagan referred to hearing internal "chatter" about specific internal steps being taken by CSHM, and identifies those steps.

6. On June 18, 2011, Hagan invited former employees affiliated with competitor dental clinics Kool Smiles Dental, Ocean Dental, and Dental Dreams to contact her via email, stating "I would really like to hear from any of you."

7. On June 16, 2011, Hagan's headline and blog entry specifically requested internal information from one of CSHM's competitors: "Send me your Kool Smiles information or documentation its time they too stop torturing children and raping the Medicaid system in their illegal clinics." Even though she was specifically requesting information on one of CSHM's competitors, Hagan shows she has no respect for any dental company's internal and confidential corporate information with this blatant solicitation: "If you are a former employee please contact me, send me what evidence you have, your identity is strictly confidential. I couldn't know all I know if I didn't keep my informants [sic] identity a secret. Heck, just send me some documents anonymously, that's fine too." (emphasis added).

8. On June 13, 2011, Hagan posted a list of treatments received by a particular patient on August 6, 2010, at a specific Small Smiles dental center. The information published by Hagan is from an internal CSHM daily patient log for the dental center.

9. On June 9, 2011, Hagan posted a blog entry in which she specifically listed the names of two of Plaintiff's executives in the headline: "Michael G. Lindley and Al Smith of Church Street Health Management have let children die on his [*sic*] watch before." This blog entry links to two articles about a business in which these executives were previously involved, then states, "I doubt either are worried about your child dying...." On June 11, 2011, Hagan revised this blog entry's headline to read as follows: "Michael G. Lindley, Al J. Smith, Brad Gardner, Rodney Cawood and Mike McCulla of Church Street Health Management/Small Smiles Dental Centers have let children die on their watch before it appears." At the same time, Hagan revised her comment to read as follows: "I doubt any of the hoodlums are worried about your child dying...." Hagan also added that CSHM's patient advocate previously worked at the same previous business as the executives, stating that, "[She] came from yet another house of death and horrors operated by Church Street Health Management's Michael G. Lindley, Alfred (Al) J. Smiles, Brad Gardner and Rodney Cawood, Brad Williams and Mike McCulla."

10. On June 2, 2011, Hagan posted at her blog the names of two lawyers hired by Plaintiff (only one of which has started work at Plaintiff; to my knowledge the other has not made a public announcement regarding leaving her current firm) and directly quoted a sentence about the background of these lawyers taken from an internal CSHM email, which email Plaintiff sent only to its employees. In this blog posting, Hagan described the internal CSHM team that the new counsel would join and her start date at CSHM. Again, this is internal information of Plaintiff.

11. On May 31, 2011, Hagan reported at her blog that she was “being told” about steps CSHM management was taking in addressing a particular situation. Hagan stated, “One person told me that during meetings of the Corporate Liaisons” certain responses were given in the meetings. In one of her most blatant violations of the Consent Injunction, Hagan reported, “I actually have in my hands (well, in a safe keeping place) blank” internal CSHM medical forms. She even bragged about the timeliness of the confidential documents she obtained: “These forms are not two or three years old, they are weeks old!”, and included details of an internal scoring system for medical forms. (emphasis added). One of the headings in the entry is titled, “Back to the retrospective internal investigation,” in which Hagan describes and even directly quotes from internal CSHM emails between dentists and employees. In this blog entry she also provides a link to another blog entry describing confidential internal CSHM emails. Hagan goes on to describe the level of detail included in reports to CSHM’s internal “Patient Advocate” and gives an exact percentage of parent complaints about a particular subject made to Plaintiff in August 2010. This blog entry is categorized by Hagan as “internal” under the URL she uses for this posting, which is <http://blog.dentistthemenace.com/2011/05/small-smiles-dental-centers-internally.html>.

12. On May 29, 2011, Hagan extensively detailed an internal email exchange between the dentist for a CSHM-associated treatment center and CSHM executives. Hagan described the substance of the communication as follows: “During an exchange of emails ... which were heated” and directly quoted some of the content of the emails. She even provided running commentary on the substance and tone of the emails with comments such as, “That’s when it got ugly!” and that one participant “then removed the gloves and s**t hit the fan.” (This quotation is

edited to remove Hagan's typically offensive language; she frequently uses extremely coarse and offensive language in her blog postings.)

13. On May 29, 2011, Hagan reported internal information about the level of CSHM-associated clinics' Average Patient Charge for the quarter and for a particular geographic region. She also reported on new patient recruitment and the revenue of a particular CSHM-associated clinic.

14. On May 29, 2011, Hagan quoted directly from an internal CSHM document describing dental center performance bonuses. She also disclosed that CSHM is beginning a "pilot program" regarding pay in a particular center, which is also internal information of Plaintiff regarding its business operations.

15. On May 29, 2011, Hagan attributed the substance of a blog entry of this date to Plaintiff's former chief compliance officer and posted verbatim the contents of an internal CSHM document describing potential legal sanctions for violations of federal health care program requirements.

16. On May 5, 2011, Hagan listed three elements of a "reportable event" for CSHM compliance purposes, listing the three elements directly from an internal CSHM document.

17. On April 15, 2011, Hagan prompted readers of the Hagan Blog to guess the author of an internal CSHM article regarding a particular patient treatment practice.

18. On April 14, 2011, Hagan reported that Plaintiff's Chief Compliance Officer was no longer with the company. This news was reported at that time through an internal CSHM company email.

19. On April 7, 2011, Hagan disclosed that Plaintiff is rolling out a particular new product for consumers and that recruiting had commenced at a particular dentistry clinic, which information constitutes internal business information of Plaintiff.

20. On March 31, 2011, Hagan listed some of the cities in which Plaintiff has associated clinics and an estimated income per week for all the listed clinics. It appears that Hagan derived the confidential income estimate from confidential information of Plaintiff.

21. On March 31, 2011, Hagan reported the appointment of a new senior vice president of operations for CSHM, which information was only reported through an internal CSHM email. She also described the duties to which the previous senior vice president was being reassigned.

22. On March 8, 2011, Hagan posted another highly inflammatory and false headline regarding a civil case filed against one of the dentists affiliated with Plaintiff in Oklahoma: "Child Waterboarded at Small Smiles Dental Clinic in Oklahoma City." With no factual basis, Hagan also accused this dentist of doing "other frightening things" to children including "locking them in a pitch black room." Hagan also included an unrelated news photograph of protestors simulating waterboarding and links to news stories of people accused of waterboarding children, all completely unrelated to the civil case filed against the Oklahoma dentist.

23. On March 13, 2010, Hagan posted three separate internal and confidential CSHM documents: two pages of Small Smiles' manual of policies and procedures, an October 12, 2007 email from CSHM management to dentists and office managers in CSHM's central region, and a December 28, 2007 internal CSHM memo to all office managers concerning bonuses, along with an October 2007 bonus matrix for staff in a Colorado Springs, Colorado clinic.

24. Attached as **Exhibit 1** is a true and correct copy of a letter from Plaintiff's counsel to Hagan dated August 9, 2010.

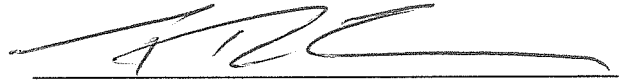
25. Attached as **Exhibit 2** is a true and correct copy of a letter from Plaintiff's counsel to an attorney who was at that time representing Hagan, Patrick Flaherty, dated August 19, 2010. I understand from Plaintiff's attorney, Thor Urness, that Mr. Flaherty failed to return Mr. Urness' phone calls, so I do not know if Mr. Flaherty represents Hagan at this time.

26. On October 7, 2010, in a further step to address Hagan's continuing violations of the Consent Injunction, I met with Hagan at a Starbucks in Bowling Green, Kentucky to discuss her issues with Plaintiff and to persuade her to stop further posting of Plaintiff's internal and confidential information on the Hagan Blog. With the exception of the complaint mentioned in the following paragraph, this effort was not successful, as evidenced by Hagan's continuing violations of the Consent Injunction described above.

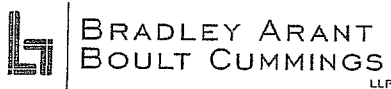
27. Attached as **Exhibit 3** is a true and correct copy of an email from me to Hagan dated February 11, 2011. Hagan did remove the postings concerning Plaintiff of which I complained in this email.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this the 2nd day of July, 2011.

A handwritten signature in black ink, appearing to read "T. Cruse", written over a horizontal line.

Todd Cruse

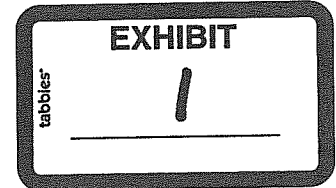


Thor Y. Urness
Direct: 615.252.2384
Fax: 615.252.6384
turness@babc.com

VIA FEDERAL EXPRESS AND E-MAIL (cckaddie@yahoo.com)

August 9, 2010

Ms. Debbie Hagan
4453 Strickland Drive
Owensboro, Kentucky 42301



Re: FORBA Holdings, LLC v. Debbie Hagan,
United States District Court for the Western District of Kentucky,
Civil Action No. 4:08-cv-00137-JHM-ERG

Dear Ms. Hagan:

As you know, this law firm represents FORBA Holdings, LLC ("FORBA"). We last communicated in the context of the above-referenced lawsuit, in which the United States District Court for the Western District of Kentucky permanently enjoined you from publishing, among other things, any internal or confidential information of FORBA by any means. The Court also ordered you to preserve all evidence of your use and dissemination of information of FORBA. We expect you are doing the latter.

Unfortunately, a review of recent postings on your website *dentistthemenace.com*, which is redirected to *debbiehagan.blogspot.com*, reveals that you are engaging in clear contempt of the Court's permanent injunction by publishing confidential and internal information about FORBA's contracts with its dentists. Without limitation, we direct you to your entries dated July 13 (<<http://debbiehagan.blogspot.com/2010/07/small-smiles-dentist-pay-to-be.html>>) and 20 (<<http://debbiehagan.blogspot.com/2010/07/warnings-and-pit-falls-for-dentists-at.html>>), 2010.

FORBA hereby demands that you remove these two posts and cease and desist from any and all additional publication of information in violation of the permanent injunction. If the posts are not removed by the close of business on August 12, 2010, we will have no choice but to file a motion seeking the Court to order you to show cause why you should not be held in contempt of Court for failing to comply with the permanent injunction. If we are forced to file such a motion, we will ask the Court to order all appropriate relief, including, without limitation, an award of the attorney's fees and expenses FORBA has incurred in addressing your violations of the Court's permanent injunction. We also will seek discovery to determine the extent to which you may have disseminated internal and/or confidential information of FORBA by means other than your website, e.g., through telephone calls and e-mails. Not only are you required to preserve such information under the Court's existing injunction order, but you also are obligated under applicable federal law to do so in anticipation of litigation. (In case this letter is not otherwise clear, you should anticipate further litigation unless you immediately cease and desist from publishing confidential and/or internal FORBA information.)

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Ms. Debbie Hagan
August 9, 2010
Page 2

Additionally, we write to express concern about your posting of confidential information about Jason Owen, a FORBA employee. We understand you have made it a crusade to harm FORBA (and apparently any other entity that accepts Medicaid payments for providing dental care to children) in any way you can. We acknowledge you are permitted to make public comment as to FORBA, but you may not do so in violation of the permanent injunction, nor are you permitted to violate the law or to publish confidential information about FORBA employees such as you have done with Jason Owen and in connection with the other character attacks and campaigns of personal destruction against FORBA employees and their families in which you have engaged.

We have sent this letter in an attempt to address the above issues in as economical and nonprovocative a manner as possible. We hope you will remove all internal and/or confidential FORBA information from your website, remove your post about Jason Owen and refrain from such postings in the future. Please do so by the close of business on Thursday, August 12, 2010. We will take the appropriate next steps if necessary, but we hope it will not come to that. Should you have any questions about the issues addressed in this letter, please contact me.

Very truly yours,

BRADLEY ARANT BOULT CUMMINGS LLP

By: 
Thor Y. Urness

FILE COPY

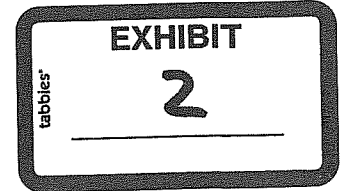


Thor Y. Urness
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VIA FACSIMILE (270-926-5053) and U.S. MAIL

August 19, 2010

Patrick T. Flaherty
Flaherty & Flaherty
608 Frederica Street, Second Floor
Owensboro, KY 42301



Re: FORBA Holdings, LLC v. Debbie Hagan,
United States District Court for the Western District of Kentucky,
Civil Action No. 4:08-cv-00137-JHM-ERG

Dear Mr. Flaherty:

In response to your letter of August 12, 2010, how Ms. Hagan obtained the information of which we have complained is not relevant to the issue of whether she has violated the terms of the injunction (although it may be relevant to the issue of whether she has committed other wrongs).

In addition to the blog entries addressed in our letter to Ms. Hagan of August 9, 2010, we direct your attention to the entry that appears at <http://debbiehagan.blogspot.com/2010/08/126-number-of-children-herded-thought.html>, which begins as follows: "I was looking through some papers today and found the patient appointment schedule for a New York Small Smiles clinic. Someone faxed these to me back in 2008...." This is obviously both internal and confidential information protected by federal law and Ms. Hagan is not permitted to use this information for her blog or otherwise. This entry must also be removed.

Please understand that if Ms. Hagan republishes the postings she removed last week (or continues to post information including confidential and/or internal information of FORBA), we will have no choice but to move forward in accordance with our letter to Ms. Hagan of August 9, 2010. We hope Ms. Hagan will not cause us to have to do so. Please confirm that Ms. Hagan will continue to refrain from republishing the blog entries addressed in our letter of August 9, 2010, and will remove the additional entry mentioned in the preceding paragraph. Thank you.

Very truly yours,

BRADLEY ARANT BOULT CUMMINGS LLP

By:
Thor Y. Urness

TYU/
cc Jonathan D. Rose

From: Todd Cruse <tcruse@cshm.com>
To: cckaddie@yahoo.com
Cc: Thor Urness <tturness@babco.com>
Sent: Fri, February 11, 2011 8:40:03 AM
Subject: recent posts

Debbie –

Once again you have misrepresented the truth on your site. Your recent post regarding care in Ft. Wayne does not mention the fact that services such as these are performed in an O/R setting under general anesthesia due to the amount of decay present and the number of restorative procedures that would be required. In order to undergo procedures in an O/R setting the center had to obtain parental consent and the parent was subsequently responsible for obtaining a history and physical exam before the procedures could even be performed. Therefore there is extensive parent involvement in the decision making process.

Additionally, your commentary re: “license rental payments” and dentist compensation is inappropriate, reveals financial information and is potentially libelous. Finally, soliciting the presentations given by both Drs. Adair and Casamassimo at *the Pedo at The Beach Seminar* is tantamount to soliciting privileged and protected intellectual property that belongs both to the institutions they were representing and to the individuals who created the presentations.

By way of this email, I am asked our legal counsel to review these posts and your entire site once again to see if you are in violation of the court agreement. If it is determined that you are in violation in any manner, we will pursue to the fullest extent.

Kindest Regards,

Todd R. Cruse
Senior Vice President
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tcruse@cshm.com



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