



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. )

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, JOHN/JANE DOES 1 THROUGH )  
50 (Identities and addresses unknown), )

Defendants.

FILED IN THE DISTRICT COURT  
OKLAHOMA COUNTY, OKLA.

JUN -7 2010

PATRICIA PRESLEY, COURT CLERK  
  
DEPUTY

Case No.: CJ-2010-1632

**CLASS ACTION**

**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, and John/Jane Does 1-50, 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 and Oklahoma Smiles Dental Clinic of South Oklahoma City.
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. Defendants John/Jane Does 1 through 50 are dentists or other dental professionals (actual identities unknown) who have provided or currently provide services at Defendants Small Smiles Dental Clinic of Oklahoma City, Small Smiles Dental Clinic of Tulsa, d/b/a Children's Dental Clinic of Oklahoma City, PLLC, Oklahoma Smiles Dental Clinic of South Oklahoma City.

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

#### **CLASS ACTION ALLEGATIONS**

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

12. The proposed Plaintiff class is defined as any child and/or the parents/guardian of any child who received medically unnecessary or excessive treatment at any of Defendant's Oklahoma clinics.

13. The exact number of children who received 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.

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

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

16. 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.

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

18. 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.

19. 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 devise

presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale and comprehensive supervision by a single court.

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

21. 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**

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

- (a) Whether Defendant FORBA owns, operates, develops, manages and supervises 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, and Oklahoma Smiles Dental Clinic of South Oklahoma City.
- (b) Whether Defendant FORBA handles the recruiting, hiring and training of dentist and/or other employees employed by its clinics.
- (c) Whether Defendant also issues policies and procedures that its clinics follow and directs the clinics' compensation of their dentists and employees.

(d) Whether, Defendant FORBA 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, and Oklahoma Smiles Dental Clinic of South Oklahoma City that were specifically designed to commit battery upon minor children and defraud their parents/guardians and third party payors by performing medically unnecessary and painful dental procedures upon the children, including, but not limited to, 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 violated the provisions of Title 15 O.S. § 751, *et seq.*

(f) Whether Defendants conspired to defraud the minor patients’ parents/guardians and third party payors.

(g) Whether defendants’ routinely employed unqualified dentists and assistants.

(h) Whether defendants’ committed an assault and battery upon the minor patients.

### **MINOR ESPARZA**

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

23. During those years, Aaliyah Esparza underwent numerous improper,

unnecessary and/or excessive dental procedures, sedation and physical restraining methods.

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

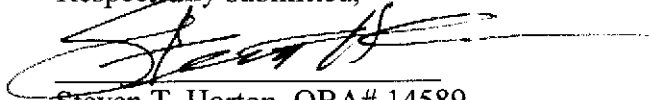
25. Plaintiff became aware of the fraud, conspiracy, assault and battery and negligence when she saw several news reports in 2009.

26. 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.

27. 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  
Brent L. Neighbors, OBA# 15910  
HORTON & NEIGHBORS, P.C.  
114 N.W. 6<sup>th</sup> Street, Suite 201  
Oklahoma City, OK 73102  
(405) 606-8080 – Telephone  
(405) 606-8088 – Fax

-and-

Michael Brooks-Jimenez, OBA#16351  
Greg Dark, OBA# 22120  
MICHAEL BROOKS-JIMENEZ, P.C.  
5708 S. Western Ave.  
Oklahoma City, OK 73109  
(405) 272-9393 - Telephone  
(405) 272-9398 - Fax  
*Attorneys for Plaintiff*

**ATTORNEY'S LIEN CLAIMED**