

79089-10

IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY, FLORIDA

Sarah Phillips on behalf of M.P. a Minor
Child; and Shatonia Miller on behalf of
I.S. a Minor Child; and Sarah Shaw on
behalf of Q.P. a Minor Child; and
Kimberly Gmelin on behalf of A.G. a
Minor Child:

CASE NO. 16-2015-CA-2890
Division CV-H

And other's similarly situated,

Plaintiff/Class Representatives,

v.

DR. HOWARD S. SCHNEIDER,
D.D.S., P.A. and DR. HOWARD S.
SCHNEIDER,

Defendants.

**DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' CLASS ACTION
SECOND AMENDED COMPLAINT AND INCORPORATED MOTION FOR
SANCTIONS**

COME NOW, Defendants, HOWARD S. SCHNEIDER, D.D.S., P.A. and
HOWARD S. SCHNEIDER, D.D.S., by and through the undersigned counsel and
pursuant to Rule 1.140 of the Florida Rules of Civil Procedure, hereby file this Motion to
Dismiss Plaintiffs' Class Action Second Amended Complaint and Incorporated Motion
for Sanctions. In furtherance thereof, Defendants respectfully show this Court as follows:

INTRODUCTION

By way of brief background, Plaintiffs first filed their "Class Action Complaint"
on or about May 6, 2015. Since the filing of this initial Complaint, Plaintiffs have
amended not once, but twice, ostensibly in an effort to perfect their otherwise inadequate
pleading. Rather than make meaningful use of the multiple opportunities to amend,

however, Plaintiffs' Class Action Second Amended Complaint is materially indifferent from Plaintiffs' prior Complaints. Indeed, Plaintiffs have not yet complied with Chapter 766; the pleading is rife with offensive and superfluous personal opinions; and despite Plaintiffs' unsupported insistence, this matter is inappropriate for class treatment. (See Pl.'s Second Am. Comp., attached hereto was Exhibit "A").

Plaintiffs' Class Action Second Amended Complaint, which despite being grounded in medical negligence, purports to allege the following causes of action: Count I – Assault; Count II – Battery; Count III – False Imprisonment; Count IV – Intentional Infliction of Emotional Distress; Count V - Negligent Infliction of Emotional Distress; Count VI – Fraud; Count VII - Vicarious Liability; Count VIII – Negligence; and Count VI - Breach of Contract.¹ The law does not, nor has it ever, commended those who are willfully blind to the applicable authorities. Accordingly, for the reasons set forth below, Plaintiffs' Class Action Second Amended Complaint should be dismissed and sanctions should be imposed upon Plaintiffs' counsel.

Specifically, the Second Amended Complaint fails as a matter of law and must be dismissed because: 1) Plaintiffs allege dental malpractice, but failed to comply with the mandatory presuit requirements set forth in Chapter 766, Florida Statutes, which also requires the imposition of sanctions; 2) Plaintiffs' Complaint fails to state a cause of action, as it is filled with vitriolic personal opinions masquerading as ultimate facts, in violation of Rule 1.110 of Florida's Rules of Civil Procedure; 3) Plaintiffs failed to properly allege sufficient facts to support a class action proceeding, in violation of Rule

¹ The Counts within Plaintiffs' Second Amended Complaint are incorrectly numbered.

1.220 of Florida's Rules of Civil Procedure; 4) Plaintiffs wrongly demand an award of attorneys' fees and costs as part of their claimed damages in each count alleged; 5) Plaintiffs' allege a breach of contract, but failed to attach a copy of the same, in violation of Rule 1.130(a) of Florida's Rules of Civil Procedure; and 6) Count VI fails to allege fraud with the "particularity" required by Florida Rule of Civil Procedure 1.120(b).

In addition to an order of dismissal and the imposition of sanctions upon Plaintiffs' counsel, Defendants request this Court enter an Order requiring the clerk to remove all three of Plaintiffs' Complaints from the docket to deter future and continuing disparagement.

I. PLAINTIFFS FAILED TO COMPLY WITH THE PRESUIT REQUIREMENTS SET FORTH IN CHAPTER 766, REQUIRING DISMISSAL OF THE SECOND AMENDED COMPLAINT.

Plaintiffs' Second Amended Complaint is ripe for dismissal as a result of their complete and patent failure to comply with Chapter 766's mandatory presuit notice and screening requirements, which apply with equal force to claims of dental malpractice. See generally, Fla. Stat. §§ 766.106, 766.203; see also Joel R. Hord, D.D.S. M.S., P.A. v. Lillian Taibi, 801 So. 2d 1011 (Fla. 1st DCA 2001) (finding the presuit notice required in medical malpractice cases applies to dentists).

Florida Statute § 766.106 sets forth the requirements of presuit notice and investigation. Specifically, pursuant to Chapter 766, *no medical negligence action shall be filed* "unless the attorney filing the action has made a reasonable investigation as permitted by the circumstances to determine that there are grounds for a good faith belief that there has been negligence in the care or treatment of the claimant." Fla. Stat.

§ 766.104(1). After completing this presuit investigation and *prior* to filing a complaint alleging medical negligence, the claimant *must* notify the prospective defendant of her intent to initiate litigation and allow the prospective defendant to similarly investigate the claim. Fla. Stat. §§ 766.106(2)-(3).

Along with the foregoing, § 766.203(2) require a claimant to conduct an investigation to ascertain whether there are reasonable grounds to believe: a) the prospective defendant was negligent in the care or treatment of the claimant; and b) such negligence resulted in injury to the claimant. Furthermore, this section requires that “corroboration of reasonable grounds to initiate medical negligence...be provided by the claimant’s submission of a verified written medical expert opinion...at the time the notice of intent to initiate litigation is mailed, which statement shall corroborate reasonable grounds to support the claim of medical negligence.” Fla. Stat. § 766.203(2).

If a court finds a claimant’s notice of intent to initiate litigation does not comply with the presuit investigation requirements of the statute, it *shall dismiss the claim*. Fla. Stat. § 766.206(2); see also S. Miami Hosp., Inc. v. Perez, 38 So. 3d 809, 811 (Fla. 3d DCA 2010) (finding the statutes requiring presuit notice and screening cannot be meaningfully enforced post judgment because the purpose of the presuit screening is to avoid the filing of the lawsuit in the first instance); Omni Healthcare, Inc. v. Moser, 106 So. 3d 474 (Fla. 5th DCA 2012) (finding the trial court departed from the essential requirements of the law in refusing to dismiss a complaint alleging medical malpractice, where the statutory presuit requirements were not fulfilled). While it is true the procedures set forth in Chapter 766 are not intended to deny access to the courts, they are

far more than “mere technicalities.” Largie v. Gregorian, 913 So. 2d 635, 638 (Fla. 3d DCA 2005); Correa v. Robertson, 693 So.2d 619, 621 (Fla. 2d DCA 1997); Apostolico v. Orlando Reg’l Health Care Sys., Inc., 871 So. 2d 283, 286 (Fla. 5th DCA 2004). In fact, the above requirements are deemed to be conditions precedent to filing a medical or dental malpractice action. See Goldfarb v. Urciuoli, 858 So. 2d 397 (Fla. 1st DCA 2003) (“If the required presuit notice is not given to a health care provider, the complaint is properly dismissed”); Puentes v. Tenet Hialeah Healthsystem, 843 So. 2d 356, 358 (Fla. 3d DCA 2003) (affirming trial court’s dismissal of medical malpractice claims against the hospital due to failure to comply with statutory notice requirements).

The above-described presuit requirements of Chapter 766 apply to all claims “arising out of the rendering of, or the failure to render, medical care or services.” Fla. Stat. § 766.106(1)(a). Thus, a claim is subject to Chapter 766’s presuit screening requirements if “[t]he wrongful act [is] directly related to the improper application of medical services...and the use of professional judgment or skill.” See Stubbs v. Surgi-Staff, Inc., 78 So. 3d 69, 70 (Fla. 4th DCA 2012) (citing, Corbo v. Garcia, 949 So. 2d 366, 368 (Fla. 2d DCA 2007)).

Despite Plaintiffs’ conclusory comments to the contrary (i.e., “**This is not a case of medical malpractice.**” (Pl.’s Second Am. Compl.¶ 12) (emphasis in original)), the allegations of injury undoubtedly arise from the provision of pediatric dental care and related services. In particular, the claimed injuries, as alleged in the Second Amended Complaint, arise from the performance of “excruciatingly painful *medical procedures*,” “*non-medically necessary dental procedures*,” and Dr. Schneider’s overall professional

judgment in performing pediatric dentistry. (See Pl.'s Second Am. Compl. ¶¶ 38(d); 39-85) (emphasis added). Thus, in order for Plaintiffs to prove their claims, they must rely upon the medical negligence standard of care, as set forth in Florida Statute § 766.102. Plaintiffs, however, did not allege they provided a notice of intent or corroborating expert affidavit, nor have they taken any conceivable action in an attempt to comply with the requirements of Chapter 766.

As Plaintiffs' Second Amended Complaint is presently pled (which is again materially indifferent from prior Complaints), it essentially requests this Court to imagine a scenario in which each Plaintiff was: 1) within a treatment room for the performance of dental care; 2) under the custody and control of medical personnel; and 3) actively undergoing dental treatment, but somehow not in the process of undergoing medical care or services as defined by Chapter 766. Such a request flies in the face of logic, as the allegations of injury in the present matter, much unlike Buchanan v. Lieberman, 526 So. 2d 969, 972 (Fla. 5th DCA 1988) and its progeny, are causally connected to and arise from the provision of professional services and the use of medical judgment, rather than a false pretense of medical care.

By way of example, "class representative," M.P., alleges the improper placement of partials, the improper placement of other dental apparatuses, and the failure to use anesthetic or sedation as follows:

- "39. On April 15, 2015, Class representative M.P. was brought to the offices of Schneider to be treated for partials, as the child M.P. had recently been injured in a fall and two baby teeth had become non-vital (died).

40. The child M.P. was supposed to be sedated, simply so that the 2 non-vital teeth could be removed, and small hooks could be inserted onto his back teeth, which would allow partials to be fitted and replace his lost front baby teeth.
45. ...Upon arriving back at the house, M.P.'s parents discovered that the child had been cut on the bottom front outer gum line, from ear to ear, apparently by some sort of scalpel or other medical device, two additional teeth had been pulled, and some mystery wiring had been placed on the back side of his bottom teeth (which wiring was eventually explained by Schneider as something necessary to prevent cavities)...
46. All of this was done without anesthetic or sedation, and can be easily surmised by the photos M.P.'s parent took of the child immediately upon getting the child away from Schneider's office. The photos show a wide awake and very much scared two (2) year old child, despite the fact that M.P. was allegedly (according to Schneider) completely sedated less than ten (10) minutes prior to the photos being taken."

(See Pl.'s Second Am. Compl. ¶ 39-46).

"Class representative," I.S., alleges the improper extraction of teeth, the improper placement of crowns, a lack of informed consent, and the improper use of sedatives as follows:

50. On March 20, 2014, Class representative I.S. first visited Schneider PA for a cleaning and consultation. A dental plan was created by Schneider for I.S. and signed by the mother Ms. Miller.
51. At the beginning of the visit the nurse gave a small glass of some liquid referred to as "Gatorade" which contained a sedative. I.S. spit out most of the fluid but was reassured by the nurse that, 'as long as she drank some of it.' It is unknown how much if any was ingested by I.S.
52. On March 28, 2014 they returned to have 4 caps installed by Schneider. The mother realized that Schneider had already strapped 2 ½ year old I.S. to a papoose board without consent. Although in the same room Schneider's back blocked the mother

- view [sic]. She was instructed if she said 'anything' she would have to leave...
54. During the work a tooth was ejected out of young I.S.'s mouth which landed near the mother.
 55. Upon leaving the premises the mother was able to see that 8 caps were installed. From the angle where the mother was told she must sit; she was unaware of the additional work.
 56. Schneider PA billed for 9 caps and 4 root canals including a root canal to one adult tooth. This information was only made available to the mother after the chart was obtained for purposes of litigation. According to the billing tooth number 55 was ejected and received a stainless steel crown. It is unknown by the American Dental Association which tooth this may be or how a crown could be placed on a tooth that was not in I.S.'s mouth.
 57. Shortly thereafter an infection formed forcing the mother to take I.S. to the emergency room. The hospital referred her back to Schneider.
 58. The visit was specifically to deal with the infected tooth. Schneider informed the mother that, 'it was her fault that her child had such bad teeth.'...
 60. Within 2 weeks the mother was awakened to hear I.S. screaming and choking on one of the caps which fell off and became lodged in I.S.'s throat.
 61. After reviewing the chart the sedation record was found to be blank as to the details of the procedure but was billed in full to Medicaid.
 62. I.S. now has severe issues with going to any health care provider especially dentists despite desperately needing aftercare."

(Pl.'s Second Am. Compl. ¶ 50-62).

"Class representative," Q.P., alleges the improper extraction of a tooth, a lack of informed consent, and inappropriate sedation techniques as follows:

- “64. Class representative Q.P. first saw Schneider PA on June 30, 2014. This was for an initial cleaning and x-rays. A treatment plan was created and signed. A second treatment plan was made on July 1, 2014, which was never signed. The mother doesn’t believe that she saw this plan which was contained in the chart.
65. Q.P. was seen on July 1, 2014 in which she was allowed to go back with her child Q.P. who appeared to be very scared. The chart which was later obtained showed that sedation was billed for but the mother observed no such procedure. No sedation record exists despite the billing. Only one tooth was extracted during this visit.
66. Previous to the next visit the mother called to inform Schneider PA that Q.P. had cold sores all over his lips. She was told that was not an issue and to come on in for the appointment. Schneider PA instructed the mother they would use a special crème to take care of the issue [sic].
67. On July 8, 2014, another visit occurred. A treatment plan was created according to the chart but the mother did not sign or receive a copy of the plan. The mother was able to see Q.P. strapped down to the papoose board but then was asked to leave...
69. During this visit they did not perform ANY of the work that was planned. However, Q.P. upon being returned had a fat lip and a black eye. It is unknown what was done to his lips. A co-worker had suggested that the lip was swollen as a result of ‘injecting his lips with something.’”

(Pl.’s Second Am. Compl. ¶ 64-72).

“Class representative,” A.G., alleges the failure to properly install caps, leading to “rapid” tooth decay, in tandem with a lack of informed consent, improper sedation techniques, and the performance of unnecessary dental work as follows:

- “73. Class representative A.G. first visited Schneider PA on April 8, 2014. The visit was based on Economy Dental requesting A.G. see Schneider as sedation would be required to perform the capping procedure of 4 teeth.

74. On April 11, 2014 prior to working on A.G.'s teeth he was given a small cup of "Gatorade." Within several minutes Schneider called him back to perform work on A.G.'s teeth.
75. The mother was allowed back into the room but was unaware of what work was actually performed but understood that 4 caps were to be installed in the front upper teeth.
76. The mother observed several injections being administered but does not recall any other sedation or nitrous oxide.
77. The entire purpose for seeing Schneider was to have caps installed. The teeth were drilled but no caps were placed on teeth. This procedure caused his teeth to begin to rapidly decay. It appears the 'purpose' of this was documented in a dental plan that was never seen or signed by the mother. The dental plan contemplated 4 root canals to the four teeth that were specifically supposed to receive crowns.
78. Shortly after work began (less than 5 minutes from consuming the Gatorade) it was clear the A.G. was squirming so badly that the nurse assisted in holding him down. When the mother tried to express her concern and rub his leg to calm him she was told by Schneider, 'Shut the F**k up or you can leave.' The mother now became concerned the procedure would be stopped midway through had to sit there and watch her child cry in pain.
79. Prior to completion of the work, A.G. was in so much pain clearly kicking and screaming that Schneider was forced to stop in mid procedure and told the mother, 'I can't do this just schedule a surgical consult,' as he threw down his tools and walked out.
80. After the care was completed the mother was surprised to find that no caps were installed. After the chart was obtained for litigation purposes it was determined that Schneider PA billed for 4 abscesses. The mother was never told of this procedure and was unaware of its necessity or that such abscesses ever existed.
81. The mother refused to return to Schneider after discovering holes drilled in the center of these teeth and instead chose to drive to Orlando for the post care. Unfortunately, during the time delay one tooth had to be pulled leaving A.G. with a gap smile and needing more dental care.

82. Since the holes had already been drilled into A.G.'s teeth causing severe decay the remaining portion of the root canal had to be performed by his new dentist in Orlando.
83. In looking at the chart, a form did exist granting permission to Schneider, PA to do the '...following procedure or medical treatment:' the remainder of the form stating what procedure was left blank despite telling the mother she must sign the form. This blank form could be modified as the mother never received a copy of the documentation.
84. The mother was and still is severely upset over the lack of sedation and performing the unnecessary medical treatments. She has concerns that A.G. will have long term issues with his teeth and need additional care that will not be provided by Medicaid. She was told by her new dentist that orthodontic care would be necessary.

(Pl.'s Second Am. Compl. ¶ 73-85).

Moreover, in Count VIII, which purports to allege general negligence of Dr. Schneider's practice, Plaintiffs state: "At all material times, Schneider P.A. owed a duty to Plaintiff/Class representatives to use reasonable care to ensure their safety, care and well-being *while they were in the office to obtain dental services from Schneider.*" (Pl.'s Second Am. Compl. ¶ 124) (emphasis added). Plaintiffs go on to allege this duty was breached as a result of the conduct described in the above-cited allegations. Further still, within Plaintiffs' "Class Representation Allegations," they actually allege Dr. Schneider's "abuse" was in the form of "non-medically necessary dental procedures, especially tooth extractions." (Pl.'s Second Am. Compl. ¶ 38(d)). Again, Plaintiffs' very own contentions belie their claim that this case is not grounded in dental malpractice.

Similarly, in support of Count VI, which attempts to allege "fraud," Plaintiffs state as follows:

111. ...These services were billed without the required chart documentation. Specifically, anesthesia was often charged to Medicaid. However, the required notations such as the child's height, weight, blood pressure, time of procedure, quantity of drug, type of drug and duration were never charted. Thus the anesthesia was either given without regard to dosage or quantity or never provided."

(Pl.'s Second Am. Compl. ¶ 111).

Though termed by Plaintiffs as "fraud," this Court does little more than allege dental negligence in the form of insufficient charting and/or the inappropriate use of anesthesia.

Allegations such as those identified above and included within the Second Amended Complaint are only subject to being proven by way of the applicable standard of care and compliance with Chapter 766's presuit requirements. See e.g., Paulk v. Nat'l Med. Enter., Inc., 679 So. 2d 1289 (Fla. 4th DCA 1996) (stating, "Plaintiffs' argument on appeal that the claims are not predicated on a breach of the professional standards of care...is belied by the allegations of their own complaint. Among others, plaintiffs allege that decedent 'was in need of psychiatric treatment' ...and that the treatment provided was 'without proper regard for...medical needs.' In light of these allegations, the *conclusion that the cause of action sounds in medical malpractice is inescapable.*") (emphasis added). Merely labeling acts of alleged dental negligence as "assault" or "battery" and claiming this "is not a case of medical malpractice" as Plaintiffs have done here is meaningless, as the claimed injuries arise from the provision of professional services and use of medical judgment. Even Plaintiffs' counsel concedes his clients "may also have an underlying malpractice claim as the work that was performed was below any standard of

care which may need to be dealt with in accordance with Chapter 766.” (Pl.’s Second Am. Compl. ¶ 27). Given the foregoing, dismissal of Plaintiffs’ Second Amended Complaint is required. Fla. Stat. § 766.206(2).

II. PLAINTIFFS FAILED TO COMPLY WITH THE PRESUIT REQUIREMENTS SET FORTH IN CHAPTER 766, REQUIRING THE IMPOSITION OF SANCTIONS.

In addition to dismissal, Chapter 766 calls for the imposition of sanctions upon the offending party in cases where there is a finding of noncompliance with the statutory presuit procedure. The sanctions available under the statute are twofold. To begin, pursuant to Florida Statute § 766.206(2), if the court finds a notice of intent (or lack thereof) does not comport with the provisions of §§ 766.201-212, not only shall the court dismiss the claim, but the attorney who mailed the notice of intent (or failed to do so) “...is personally liable for all attorney’s fees and costs incurred in the investigation and evaluation of the claim, including the reasonable attorney’s fees and costs of the Defendant or Defendant’s insurer.”

Plaintiffs’ counsel, as an attorney licensed to practice in the State of Florida, is charged with being aware of all statutory provisions that may impact the representation of his clients and govern claims against parties he intends to sue—this is a requirement that includes a familiarity with Chapter 766. Moreover, in this action, Plaintiffs’ counsel did not merely serve a defective notice of intent, but rather, proceeded to file suit for injuries arising out of the provision of dental care without ever serving a notice of intent. To date, now several months after the filing of the original Complaint and after being afforded an

opportunity to change his course of action, Plaintiffs' counsel blindly insists "[t]his is not a case of medical malpractice."

Likewise, Plaintiffs' counsel violated Florida Statute § 766.104(1), which states the complaint or initial pleading shall contain a certificate of counsel that reasonable investigation gave rise to a good faith belief that grounds exist for an action against each named Defendant. According to this statutory provision, if the court determines the certificate (or logically, the failure to provide one) was not done in good faith, the court "shall" award fees and costs against the claimant's counsel. The purposes of the presuit screening requirements include weeding out claims that are not meritorious and providing parties the opportunity to mutually evaluate and resolve claims prior to suit being filed. Williams v. Campagnulo, 588 So. 2d 982, 983 (Fla. 1991). Plaintiffs' failure to comply with the statutory presuit procedure undercuts the legislature's clear intent and deprives Defendants of otherwise available remedies and protections.

The second component of sanctions to be considered under Chapter 766 is the requirement that the court submit its findings as to an attorney's noncompliance with the statutory presuit procedure to the Florida Bar for disciplinary review. Specifically, Florida Statute § 766.206(4) states as follows:

"If the court finds that an attorney...filed a medical negligence claim without first mailing [a] notice of intent which complies with the reasonable investigation requirement...**the court shall submit its finding in the matter to The Florida Bar for disciplinary review of the attorney**...If such committee finds probable cause to believe that an attorney has violated this section, such committee shall forward to the Supreme Court a copy of its finding." [emphasis added]

Here, it is beyond reasonable dispute Plaintiffs' counsel filed a dental negligence claim (i.e., one "arising out of the provision of dental services"), without first mailing a notice of intent or otherwise making any attempt to engage the procedure set forth in Chapter 766. As such, acting in concert with the plain language of the above-cited statute, this Court must submit its findings to the Florida Bar for disciplinary review.

III. THE SECOND AMENDED COMPLAINT REQUIRES DISMISSAL BECAUSE IT FAILS TO STATE A CAUSE OF ACTION. IN ADDITION, AN AWARD OF MONETARY SANCTIONS IS APPROPRIATE.

Rule 1.110(b) of Florida's Rules of Civil Procedure requires that a pleading set forth:

"1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it; 2) a short and plain statement of the ultimate facts showing that the pleader is entitled to relief; and 3) a demand for judgment for the relief to which the pleader deems himself or herself entitled."

Without regard for the Rule above and despite being cautioned by this Court at the hearing on Defendants' Motion to Dismiss, Plaintiffs' Second Amended Complaint is rife with conclusions of the pleader, intertwined with disparaging personal opinions, rather than ultimate issuable facts. For example, Plaintiffs Second Amended Complaint inappropriately and unnecessarily includes the following allegations:

- "This is easily the most egregious case of serial child abuse the undersigned has ever encountered in his many years practicing law. What appeared initially as a potential malpractice case turned into an elaborate process of intentional abuse that defrauded Medicaid and provided Schneider PA with a one million dollar (\$1,000,000.00) per year stream of revenue from Medicaid alone." (Pl.'s Second Am. Complaint ¶ 13).

- “It is inconceivable that the Florida malpractice statutes (Chapter 766) could have ever contemplated intentional acts or should provide an exclusive right to hide behind for any ‘professional’ from intentional and fraudulent acts. It is incomprehensible that any statute would require an ‘Expert’ to determine that intentionally pulling extra teeth, or having a 3 year old child injured with a black eye, or a child with a bruise in the shape of a hand on a child’s throat could be the result of any proper standard of care performed by a dentist. If Chapter 766 had to be followed then a professional pediatric dentist would be required to ‘testify’ that punching a child or choking someone falls below a ‘standard of care.’ (Pl.’s Second Am. Complaint ¶ 15).
- “ ...Malpractice insurance does not provide coverage for intentional and illegal acts. The acts alleged in this complaint are clearly intentional acts that were not mistakes, inexperience or on a lack of knowledge, but based on the desire to inflict pain, profits and greed.” (Pl.’s Second Am. Complaint ¶ 16).
- “...Although the patients may have entered the office under the guise of dental treatment, the intentional acts were calculated to increase the profitability of Schneider PA at the expense of children while defrauding Medicaid.” (Pl.’s Second Am. Complaint ¶ 17).
- “Since the initial filing of this lawsuit, a criminal investigation was launched by Jacksonville Sheriff’s Office for child abuse. In addition, Schneider PA and/or Schneider are being investigated by the Attorney General’s Medicaid Fraud Control Unit for the overbilling of Procedures and/or performing unnecessary services.” (Pl.’s Second Am. Complaint ¶ 20).
- As equally strange as this case is, Schneider’s wife filed a petition for dissolution of marriage on May 15, 2015 in less than 3 weeks; on June 4, 2015 a Final Consent Judgment was entered. The pleadings indicate over \$2,000,000.00+ was transferred to a trust by the ex-wife without Schneider’s knowledge. Ironically the funds were never ‘requested’ to be returned and upon information and belief they still live together. Should a final judgment awarding damages be granted a proceedings supplementary will be requested for the ex-wife to pursue the funds.” (Pl.’s Second Am. Complaint ¶ 24).
- “While it is true that Schneider was licensed to practice dentistry, his so-called ‘practice’ had little to do with dentistry, but much to do with the Doctor’s intentional illegal acts and greed. Almost every parent interviewed was not aware of the extensive work that had been performed, nor had they given consent to Schneider to exceed the scope of work. Schneider’s scheme of intentional and blatant ‘overworking’ will likely cause his Malpractice Insurance provider to refuse coverage for these intentional and illegal acts and thus gives rise to these

intentional tort claims. Sadly, many of these victims may also have an underlying malpractice claim as the work that was performed was below any standard of care which may need to be dealt with in accordance with Chapter 766. Schneider has three million dollars \$3,000,000.00 of malpractice insurance.” (Pl.’s Second Am. Complaint ¶ 27).

- “Schneider’s greed motivated him to inflict pain, torture, mutilate and humiliate his defenseless patients. This greed has driving him to create a specialized dental ‘practice’, which, by its very design and structure, provided him with a constant supply of especially defenseless, indigent, children to victimize while lining his pockets.” (Pl.’s Second Am. Complaint ¶ 28).
- “The child victims of Schneider come mostly from families where the parents are indigent, often uneducated, immigrants, disabled, non-English speaking, and/or otherwise compromised or challenged, in such a manner as to limit the ability of these initially unsuspecting parents and families to protect their children from the deviant and violent practices of ‘Doctor’ Schneider.” (Pl.’s Second Am. Complaint ¶ 29).
- “What has appeared from the outside to be an unremarkable pediatric dentistry practice, on the inside atrocities occurred; where the most defenseless members of our society, indigent children who receive Florida Medicaid, are regularly assaulted, humiliated, tortured, and oftentimes mutilated, in circumstances that show cold, calculated, deranged, and premeditated planning on the part of Schneider and his associates.” (Pl.’s Second Am. Complaint ¶ 30).
- “The evidence indicates that this horrific situation at the offices of ‘Doctor’ Schneider has been going on for decades. Allegations exist from patients who remember what he did to them 39+ years ago, ex-employees how witnessed atrocities, other dentists who performed post-care, and parents’ of the victims [sic].” (Pl.’s Second Am. Complaint ¶ 31).
- “Schneider engaged in similar and repeated patterns of abuse of his child patients that were entrusted to his office for dental care which similar and repeated behaviors include but are not limited to: 1) choking children to the point of unconsciousness rather than using appropriate anesthetic prior to doing tooth extractions; 2) Performing excruciatingly painful medical procedures on children without anesthetic; 3) Performing non-medically necessary dental procedures, especially tooth extractions, often without anesthetic, on his child patients, which served the double purpose of both creating a pretext for Schneider to fraudulently bill Medicaid for said unnecessary procedures, and of gratifying his disgusting impulse to torture and mutilate innocent children; 4) Taking special steps to scare and frighten children by wearing masks and other costume paraphernalia during

treatment sessions, with the intent to horrify and frighten the children he treats; 5) Using fear and threats to scare and thereby silence his victims, including threats not limited to saying things like ‘Your mom will die’ if you tell her what happened and other similar tactics; 6) Refusing to allow parents to be present during medical treatment of their own children, and berating and humiliating parents who insist on watching the procedures performed on their children; 7) Threatening to make fraudulent reports to the Department of Children (DCF) against innocent parents, when said parents start to catch on and questions what goes on behind the treatment room doors of the offices of Schneider.” (Pl.’s Second Am. Complaint ¶ 38(d)).

- “After the visit the mother felt very bad that her child looked as if he was in a UFC fight and lost.” (Pl.’s Second Am. Complaint ¶ 70).

These inappropriate references are pervasive and reoccurring throughout the entirety of Plaintiffs’ Second Amended Complaint. Words such as “torture,” “abuse,” “mutilation” and the like, are routinely inserted without any reasonable need under Florida’s Rules of Civil Procedure specific to pleading. Moreover, as shown above, there are numerous instances throughout the Complaint in which Plaintiffs’ counsel does nothing more than allege his personal and degrading opinions of Dr. Schneider and his practice..

In addition to warranting dismissal, the personal accusations in the Second Amended Complaint warrant the imposition of sanctions. As a member of the Florida Bar, Plaintiffs’ counsel is required, by the Rules Regulating the Florida Bar, to “use the law’s procedures only for legitimate purposes and not to harass or intimidate others.” R. Regulating Fla. Bar 4, Preamble. As the Second Amended Complaint is pled, however, its apparent purpose is to intimidate and harass Dr. Schneider, while at the same time, draw attention by prospective clients and the media. When conduct such as this is undertaken and an attorney abuses his professional capacity to the detriment of another

by making gratuitous allegations of opinion misrepresented as fact, sanctions are appropriate and recognized at both the State and Federal level. See Fla. Stat. § 57.105; Fed. R. Civ. P. 11.

Although court filings are typically afforded a privilege, “the absolute privilege [does] not extend to statements sharing ‘no relation to, or connection with, the cause in hand or the subject-matter of inquiry.’” DelMonico v. Traynor, 116 So. 3d 1205, 1213 (Fla. 2013) (citing, Myers v. Hodges, 53 Fla. 197 (Fla. 1907)). Likewise, courts “can and will protect the aggrieved party by expunging defamatory statements from the pleadings and punishing the defamer with contempt of court.” Id. Finally, the Court has the “inherent power to do those things necessary to enforce its orders, to conduct its business in a proper manner, and to protect the court from acts obstructing the administration of justice.” Id. at 1217. To that end, Defendants request that in addition to dismissing Plaintiffs’ Second Amended Complaint and sanctioning Plaintiffs’ counsel, that Plaintiffs’ prior Complaints be removed from the docket so as to prevent continuing and future disparagement relative to the same.

IV. THE COMPLAINT REQUIRES DISMISSAL BECAUSE PLAINTIFFS FAILED TO ALLEGE SUFFICIENT FACTS TO SUPPORT A CLASS ACTION PROCEEDING.

Class actions are an exception to the usual rule that litigation is conducted by and on behalf of the individually named parties. Gen. Tel. Co. of Sw. v. Falcon, 457 U.S. 147, 155 (1982); Kia Motors Am. Corp. v. Butler, 985 So. 2d 1133, 1135-36 (Fla. 3d DCA 2008). Class certification is only proper after the court undertakes a “rigorous analysis” of the issues raised by Florida Rule of Civil Procedure 1.220. Miami Auto Retail, Inc. v.

Baldwin, 97 So. 3d 846, 851 (Fla. 3d DCA 2012). “[T]he decision to certify a class should be made carefully on the basis of sufficient information, because the granting of class certification considerably expands the dimensions of the lawsuit and commits the court and the parties to much additional labor, over and above that entailed in an ordinary private lawsuit.” Seminole Cnty. v. Tivoli Orlando Associates Ltd., 920 So. 2d 818, 824 (Fla. 5th DCA 2006) (internal citations omitted). Plaintiffs must prove, by substantial evidence, each of the following requirements have been met:

1. The members of the class are so numerous that separate joinder of each member is impracticable;
2. The claim or defense of the representative party raises questions of law or fact common to the questions of law or fact raised by the claim or defense of each member of the class;
3. The claim or defense of the representative party is typical of the claim or defense of each member of the class;
4. The representative party can fairly and adequately protect and represent the interests of each member of the class;
5. Questions of law or fact common to members of the class predominate over any questions affecting only individual members; and
6. The proposed class action is superior to other available methods for the fair and efficient adjudication of the controversy.

The above analysis is often intertwined with the merits and will necessarily entail some overlap with the merits of the Plaintiffs’ underlying claim. Wyeth, Inc. v. Gottlieb, 930 So. 2d 635, 640 (Fla. 3d DCA 2006); Wal-Mart Stores, Inv. v. Dukes, 131 S. Ct. 2541, 2551-52 (2011). Notably, “*where no one set of operative facts establishes liability, where no single proximate cause applies to each defendant, and where individual issues*

outnumber common issues, trial courts should be hesitant to certify class actions.” Kia Motors Am. Corp., 985 So. 2d at 1141 (emphasis added).

The touchstone of class certification, dating to the origins of the device is that the class representatives, by proving their own individual cases, necessarily will prove the cases for each one of the thousands of other members who may be members of the class. Kia Motors Am. Corp., 985 So. 2d at 1136. By way of contrast, in complex cases such as this, where no one set of operative facts establishes liability, where no single proximate cause applies to each defendant, and where individual issues outnumber common issues, class certification is inappropriate. Because each putative class member was provided treatment based upon his/her unique presenting condition, the alleged injury, wrongdoing, and damages (if any), must be assessed on an individual and particularized basis. Said otherwise, even if a class representative could prove his/her own claim, such a showing will have no legal effect upon the claims of each putative class member, rendering class certification improper as a matter of law. See Terry L. Braun, P.A. v. Campbell, 827 So. 2d 261 (Fla. 5th DCA 2002) (finding dental patients failed to satisfy the requirements necessary to maintain a class action suit, as the patients suffered varying injury, had disparate interests in the outcome of the litigation, and a resolution of claims would require mini-trials).

A. The proposed class definition is overbroad, improperly defined, and not clearly ascertainable.

“A court should deny class certification where the class definitions are overly broad, amorphous, and vague, or where the number of individualized determinations

required to determine class membership becomes too administratively difficult.” Perez v. Metabolife Int’l, Inc., 218 F.R.D. 262, 269 (S.D. Fla. 2003). Likewise, where a detailed individual inquiry is required to determine if individuals should be within the class, class certification is improper. Kelecseny, 262 F.R.D. at 668 (holding class certification was improper where the court would need to determine a number of questions unique to each putative class member before knowing whether a potential class member was a proper member of the class).

Plaintiffs’ proposed class definition is as follows:

“(a) All persons residing in the State of Florida who; (b) were under the age of majority or otherwise disabled at the time that they; (c) sought pediatric dental treatment from Schneider; and thereby (d) became the victims of Schneider’s sadistic and systematic scheme.” (Pl.’s Second Am. Complaint ¶ 34).

When Plaintiffs’ proposed class definition is considered in connection with the allegations set forth in the Second Amended Complaint, it is clear this matter is fraught with individualized issues that are unsuitable for a class action. Most notably, each individual case would need to be evaluated to determine whether there was in fact some form of dental malpractice. Each such case would need the support of an expert affidavit, as required by Chapter 766. Moreover, to the extent each class member would make a claim of “abuse” or “assault,” this would need to be evaluated on a particularized and individual basis. *Under no set of circumstances—and even if the representatives claims are accepted as true—would physical and/or psychological abuse to one equate to abuse to all.*

In light of the foregoing, the alleged class definition belies Plaintiffs' contention that this case is suitable for certification as a class action proceeding. The treatment rendered to each putative class member, which is indisputably unique, is relevant to the determination of Plaintiffs' claims and will require a highly individualized inquiry into each class member's treatment. Absent such an inquiry, Plaintiffs' proposed definition invites this Court to speculate and infer the treatment rendered to each class member was improper or "abusive" based solely upon the inflammatory and unsubstantiated allegations of the named few. See e.g., Nielsen v. City of Sarasota, 117 So. 2d 731, 733 (Fla. 1960) (stating, "if a party to a civil action depends upon the inferences to be drawn from circumstantial evidence as proof of one fact, it cannot construct a further inference upon the initial inference in order to establish a further fact unless it can be found that the original, basic inference was established to the exclusion of all other reasonable inferences"); Voelker v. Combined Ins. Co. of America, 73 So. 2d 403, 407 (Fla. 1954) (the rule against stacking inferences is to protect litigants from verdicts or judgments based on speculation). Given Dr. Schneider's practice is in pediatric dentistry and the proposed class definition is to include all minors he treated, the proposed class could theoretically include all patients treated over the past several decades, based upon nothing more than conjecture.

B. Numerosity

As alleged, the proposed class is overly broad and not clearly ascertainable. In this respect, Defendants contend the class is not sufficiently numerous and/or appropriately defined such that it could meet the numerosity requirements of Rule 1.220.

Rather than sufficiently plead numerosity, Plaintiffs vaguely contend they are “aware” of “at least one hundred (100+) victims.” (Pl.’s Second Am. Compl. ¶ 35). Such a contention is insufficient as a matter of law, which further evidences the need for dismissal. See Ramon v. Aries Ins. Co., 769 So. 2d 1053 (Fla. 3d DCA 2000) (Plaintiff in a class action should allege the existence of and describe the class with some degree of certainty, to include alleging the members are so numerous as to make it impracticable to bring them all before the court: “*the statement of a gut feeling or impression that something is amiss will not suffice.*”) (emphasis added); Hendler v. Rogers House Condominium, Inc., 234 So.2d 128 (Fla. 4th DCA 1970) (Where one brings a class action alleging that persons constituting class are so numerous as to make it impractical to bring them all before court, more is required than merely pleading language of rule, and it is necessary that facts be alleged showing with a fair degree of certainty that such is the case.).

C. Plaintiffs failed to properly allege the existence of common questions of law or fact.

Rule 1.220(a)(2) requires Plaintiffs to show there are “questions of law or fact common to...the class.” Fla. R. Civ. P. 1.220(a)(2). This “commonality” requirement is “[e]asy to misread, since ‘[a]ny competently crafted class complaint literally raises common ‘questions.’” Wal-Mart Stores, Inc., 131 S. Ct. at 2551 (internal citations omitted).

“What matters to class certification...is not the raising of common ‘questions’—even in droves—but, rather the capacity of a class wide proceeding to generate common answers apt to drive the resolution of the

litigation. Dissimilarities with the proposed class are what have the potential to impede the generation of common answers.”

Wal-Mart Stores, Inc., 131 S. Ct. at 2551 (2011). The common question “[m]ust be of such a nature that it is capable of class-wide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” Id. A question is not common if its resolution turns on a consideration of the individual circumstances of each class member. Thorn v. Jefferson-Pilot Life Ins. Co., 445 F.3d 311, 319 (4th Cir. 2006) (citations omitted).

Based on the allegations within Plaintiffs’ Second Amended Complaint, it is again clear a determination as to the individual circumstances and treatment of each class member will be required in the prosecution and defense of each claim asserted. This fact is further evidenced by the alleged “issues to be litigated,” which Plaintiffs identify as follows: 1) “whether the class members sought pediatric dental services from Schneider in Duval County, Florida;” 2) “whether Schneider intentionally performed unnecessary procedures without consent to increase profitability;” 3) “whether the class members were in fact victims of Schneider’s systematic and continuous torture, confinement and abuse of innocent children causing fear and regret in both parents and children;” and 4) “what damages the victims of Schneider’s torture and abuse did the class member’s incur.” (Pl.’s Second Am. Compl. ¶ 37).

As with the preceding, Plaintiffs’ allegations belie their very own claims—the “issues to be litigated” cannot in fact be litigated without an individualized determination as to each class member. For example, Plaintiffs argue whether “the class members were

in fact victims” is one of the issues to be litigated. How would Plaintiffs propose such a determination be made absent individualized discovery and analysis? Is the Court to assume each and every minor patient treated over the past several decades is a “victim?” Is one to simply assume each class member incurred the same alleged injury and damages? Such assumptions would lead to an absurd result, further evidencing why this case is unfit for class treatment. Likewise, it is established that where both liability and damages depend upon individual factual determinations, resolution of these claims can only be decided on an individual basis, which is inconsistent with the commonality requirement for class actions. Olen Properties Corp. v. Moss, 981 So. 2d 515, 520 (Fla. 4th DCA 2008).

D. Plaintiffs have not sufficiently alleged typicality.

The claims of class representatives must be typical of the claims possessed by the other class members pursuant to Rule 1.220(a)(3). “The class should consist only of those who stand in the same position as plaintiff[s].” Thomson v. T.F.I. Companies, Inc., 64 F.R.D. 140, 145 (N.D. Ill. 1974). The key inquiry for a trial court when it determines whether a proposed class satisfies the typicality requirement is whether the class representative possesses the same legal interest and has endured the same legal injury as the class members. Sosa v. Safeway Premium Finance Co., 73 So 3d. 91 (Fla. 2011). If a class representative cannot necessarily prove the claims of other class members by proving its own claim, the class cannot be certified. Atlanta Cas. Co. v. Open MRI of Pinellas, Inc., 911 So. 2d 135, 138 (Fla. 2d DCA 2005).

When it comes to typicality, Plaintiffs set forth a series of inflammatory allegations, not one of which bears remote relevance to a finding of typicality. Specifically, Plaintiffs allege as follows:

“Schneider engaged in similar and repeated patterns of abuse of his child patients that were entrusted to his office for dental care which similar and repeated behaviors include but are not limited to: 1) Choking children to the point of unconsciousness rather than using appropriate anesthetic prior to doing tooth extractions; 2) Performing excruciatingly painful medical procedures on children without anesthetic; 3) Performing non-medically necessary dental procedures, especially tooth extractions, often without anesthetic, on his child patients, which served the double purpose of both creating a pretext for Schneider to fraudulently bill Medicaid for said unnecessary procedures, and of gratifying his disgusting impulse to torture and mutilate innocent children; 4) Taking special steps to scare and frighten children by wearing masks and other costume paraphernalia during treatment sessions, with the intent to horrify and frighten the children he treats; 5) Using fear and threats to scare and thereby silence his victims, including threats not limited to saying things like “Your mom will die” if you tell her what happened and other similar tactics; 6) Refusing to allow parents to be present during medical treatment of their own children, and berating and humiliating parents who insist on watching the procedures performed on their children; 7) Threatening to make fraudulent reports to the Department of Children (DCF) against innocent parents, when said parents start to catch on and question what goes on behind the treatment rooms doors of the offices of Schneider.” (Pl.’s Second Am. Complaint ¶ 38(d)).

Conspicuously absent from the foregoing is the presence of even a single allegation capable of suggesting that proof of the representatives’ claims will result in proof of the class members’ claims. One cannot correctly assume, even if a representative’s allegations are accepted as true, each member of the class has a valid claim. Rather, a particularized evaluation of each class member’s treatment visit(s) must be evaluated and the resultant damages, if any, must be independently assessed. Even as alleged within the Second Amended Complaint, the claims of M.P., I.S., Q.P., and A.G.,

lack typicality and will require individualized proof. Where the facts required to prove the claims are distinct between class members, merely pointing to common issues of law is insufficient to meet the typicality requirement for class certification. Olen Properties Corp., 981 So. 2d at 520.

Consistent with the concerns raised by the court in the factually analogous matter of Terry L. Braun, P.A. v. Campbell, 827 So. 2d 261 (Fla. 5th DCA 2002), some potential class members in this case may be satisfied with the care provided by Dr. Schneider, while others may claim a variety of injuries of differing severities. The presence of this variability is the very antithesis of typicality.

E. Plaintiffs failed to sufficiently allege the predominance requirements of Rule 1.220(b)(2) and/or Rule 1.220(b)(3).

Plaintiffs seek certification under Rule 1.220(b)(2) and/or 1.220(b)(3), however, they have failed to appropriately plead entitlement to either. (Pl.'s Second Am. Compl. ¶ 38). With respect to 1.220(b)(2), Plaintiffs must demonstrate:

“the party opposing the class has acted or refused to act on grounds generally applicable to all the members of the class, thereby making final injunctive relief or declaratory relief concerning the class as a whole appropriate.”

Fla. R. Civ. P. 1.220(b)(2). Yet, class certification cannot be maintained pursuant to this subsection when the predominant form of relief sought is monetary damages. Execu-Tech Business Sys., 743 So. 2d 19, 22 n. 3 (Fla. 4th DCA 1999) (noting class status cannot be maintained pursuant to Rule 1.220(b)(2), when the predominate relief sought is monetary damages). In this case, Plaintiffs do not even purport to seek declaratory or injunctive relief, requiring dismissal of the Complaint.

Certification under 1.220(b)(3) raises two issues: 1) whether common questions predominate over questions of law or fact affecting individual members; and 2) whether a class action is superior to litigating individual actions. “[I]n determining whether class or individual issues predominate in a putative class action suit, [the Court] must take into account the claims, defenses, relevant facts, and applicable substantive law.” Coastal Neurology, Inc. v. State Farm Mut. Auto. Ins. Co., 458 F. App’x 793, 794 (11th Cir. 2012). In order to meet this requirement, Plaintiffs bear the burden of demonstrating, through substantial evidence, that issues subject to generalized proof predominate over issues requiring individualized proof. Rollins, Inc., 951 So. 2d at 871. Similar to the “commonality” requirement, issues of generalized proof predominate when, considering both the rights and duties of the class members, the proof offered by the class representatives will necessarily prove or disprove the cases of the absent class members. Sosa v. Safeway Premium Fin. Co., 73 So.3d 91, 105 (Fla.2011). “If Plaintiffs must still present a great deal of individualized proof or argue individualized legal points to establish most or all of the elements of their claims, class certification is not appropriate.” The St. Joe Co. v. Leslie, 912 So. 2d 21, 24 (Fla. 1st DCA 2005).

With respect to each cause of action alleged, Plaintiffs seek to have the Court assume that, because four former patients purport to be the “victims” or recipients of unsuitable dental care, each of Dr. Schneider’s minor patients over the course of 45 years are also “victims.” Plaintiffs have not alleged any facts (nor could such facts be alleged) that would allow this Court to accept such a sweeping and far-reaching conclusion. Rather, individual issues unquestionably predominate, as Plaintiffs must prove each

member of the putative class was the recipient of unnecessary or improper dental care, which will require expert corroboration as described above, and at the very least, independent discovery and analysis relative to the many aspersions cast throughout Plaintiffs' Second Amended Complaint. As stated above, even if one were to assume the class representatives are able to support their respective claims, this will quite literally have no impact upon the absent class members ability to prove their claims. For this reason, certification is inappropriate and Plaintiffs' Second Amended Complaint fails for want of pleading.

F. Plaintiffs failed to sufficiently allege a class action is superior to individual litigation.

To satisfy Rule 1.220(b)(3), the class representatives must prove class representation is superior to other available methods of fairly and efficiently adjudicating the claims presented. Black Diamond Properties, Inc. v. Haines, 940 So. 2d 1176, 1178 (Fla. 5th DCA 2006). In other words, certification of a class action does not merely turn on whether it is possible to certify the class, but also, whether class certification is the superior method of dealing with the claims.

“Three factors for courts to consider when deciding whether a class action is the superior method of adjudicating a controversy are (1) whether a class action would provide the class members with the only economically viable remedy; (2) whether there is a likelihood that the individual claims are large enough to justify the expense of separate litigation; and (3) whether a class action cause of action is manageable.”

Sosa v. Safeway Premium Fin. Co., 73 So. 3d 91, 116 (Fla. 2011).

Plaintiffs allege class certification is appropriate due to financial concerns and the apparent “risk of non-success in the individual cases.” (Pl.’s Second Am. Comp. at ¶

38(f)). Such “hurdles” are present in any case and do nothing to further Plaintiffs’ contentions relative to certification. Indeed, a class action suit is not the only economically viable option, as the claims of each patient are certainly large enough to justify the expense of separate litigation. Compare Morgan v. Coats, 33 So. 3d 59, 66 (Fla. 2d DCA 2010) (holding a class action suit was superior in claim with 1000 prospective class members and claim seeking payment for 2.5 hours of work each week.); Sosa, 73 So. 3d at 116 (finding class treatment was inappropriate where there were small individual claims involving a \$20.00 overcharge).

In addition, class treatment would present significant manageability concerns, given each and every putative class member would have an individualized injury and a varying amount of damages, if any at all. In turn, a determination as to damages would require mini-trials for each and every putative class member. Gibbs Properties Corp. v. CIGNA Corp., 196 F.R.D. 430, 441 (M.D. Fla. 2000) (holding the superiority requirement was not met where every underwriting file would need to be evaluated to calculate each class members’ damages.). With regard to liability issues, the evidence relevant to each putative class member’s claim will differ, which will again cause this matter to degenerate into a series of mini-trials, as it will be necessary to determine the circumstances of each alleged injury. See Campbell, 827 So. 2d at 269 (noting individual claims may require “mini-trials” where injuries and damages vary.). Thus, the fact that individual issues predominate further demonstrates a class action is an inferior means of adjudicating Plaintiffs’ claims. Sacred Heart Health Sys., Inc., 601 F.3d at 1184 (“[t]he

lack of predominance belies any suggestion that a fair administration of the class claims could save the resources of both the court and the parties.”).

The fair and efficient adjudication of the claims asserted by the putative class members can only be achieved through separate litigation when and where a particular class member believes he/she has been aggrieved and is entitled to compensation. Few experiences are more individualized than a particular patient’s medical or dental treatment, as this is dictated by the individual patient’s presenting condition. As a result, any claims arising from such treatment must be afforded the same individualized scrutiny. Therefore, Plaintiffs’ Second Amended Complaint must be dismissed.

G. Plaintiffs failed to sufficiently allege they can fairly and adequately protect and represent the interests of each member of the class.

Rule 1.220(a)(4) requires Plaintiffs to demonstrate they can “fairly and adequately protect and represent the interests of each member of the class.” See Fla. R. Civ. P. 1.220(a)(4). An inquiry into adequacy is typically two-pronged: the first prong concerns the qualifications, experience, and ability of class counsel to conduct the litigation, and the second prong pertains to whether the class representative’s interests are antagonistic to the interests of the class members. CVE Master Management Co., Inc. v. Ventnor B Condominium Ass’n, Inc., 140 So. 3d 1074 (Fla. 4th DCA 2014). With regard to the first prong, Plaintiffs’ counsel alleges he is an “experienced attorney, with more than ten years of complex civil litigation experience.” (Pl.’s Second Am. Compl. ¶ 36). Yet, the prevalence of individual issues, along with the haphazard and sanctionable manner in

which the Complaint is pled (even after two attempts to amend and being cautioned by the Court at the hearing on Defendants' Motion to Dismiss), suggest otherwise.

Moreover, the Complaint is silent as to any whether any class representative's interests are antagonistic to the interests of the class members. Of particular relevance in this regard, given the predominance of individual issues, Plaintiffs have failed to sufficiently allege a means by which they will preserve/protect the interest of each member of the class. See Courtesy Auto Group, Inc., v. Garcia, 778 So. 2d 1000, 1003 (Fla. 5th DCA 2001) (finding that where a proposed representative plaintiff has individual claims against the defendant not shared by the class, that representative plaintiff is potentially antagonistic to the class); see also Terry L. Braun, P.A. v. Campbell, 827 So. 2d 261 (Fla. 5th DCA 2002) (finding appellees failed to establish the class representatives will adequately represent the class where the members suffered varying injury, causing them to hold disparate interests); see also Rollins, Inc. v. Butland, 951 So. 2d 860, 874 (Fla. 2d DCA 2006) ("...Florida courts may not certify a class action under Rule 1.220 if the effect of class certification is to deprive one or more of the parties of their right to substantive due process of law."). Accordingly, dismissal is appropriate.

V. THE COMPLAINT REQUIRES DISMISSAL BECAUSE PLAINTIFFS IMPROPERLY DEMAND "COSTS OF SUIT" AS PART OF THEIR ALLEGED DAMAGES.

In each Count of Plaintiffs' Second Amended Complaint, Plaintiffs demand the recovery of attorneys' fees and costs, termed "cost of suit," as part of their alleged damages. Such a demand is incompatible with Florida law, as attorneys' fees incurred while prosecuting or defending a claim are not recoverable in the absence of a statute or

contractual agreement authorizing their recovery. Price v. Tyler, 890 So. 2d 246 (Fla. 2004); Bidon v. Dep't of Prof'l Regulation, 596 So. 2d 450, 452 (Fla. 1992); see also Pepper's Steel & Alloys, Inc. v. United States, 850 So. 2d 462, 465 (Fla. 2003) ("Under Florida law, each party generally bears its own attorneys' fees unless a contract or statute provides otherwise."). In the present matter, Plaintiffs have not alleged (nor could they allege) entitlement to the recovery of attorneys' fees for breach of a contract or statute which permits the recovery. Accordingly, the Second Amended Complaint must be dismissed and all such demands stricken therefrom.

VI. COUNT VI (BREACH OF CONTRACT) REQUIRES DISMISSAL BECAUSE PLAINTIFFS FAILED TO ATTACH THE PURPORTED CONTRACT.

It is well-established that a party asserting a claim or defense based upon a written instrument must attach a copy of that instrument to the pleading in which the claim or defense is raised. Fla. R. Civ. P. 1.130(a). Rule 1.130(a) of the Florida Rules of Civil Procedure plainly states that "[a]ll bonds, notes, bills of exchange, contracts, accounts, or documents upon which action may be brought or defense made, or a copy thereof or a copy of the portions thereof material to the pleadings, shall be incorporated in or attached to the pleading."

Where a complaint based upon another written document is submitted without the accompanying document, it properly becomes the subject of dismissal. Safeco Ins. Co. of Am. v. Ware, 401 So. 2d 1129, 1130 (Fla. 2d DCA 1981). The appropriate reason for such a dismissal is that the complaint fails to state a cause of action upon which relief can be granted until the instrument is attached thereto. See Walters v. Ocean Gate Phase I

Condominium, 925 So. 2d 440 (Fla. 5th DCA 2006) (affirming an order dismissing a count for specific performance with prejudice for failing to attach the contract upon which the action was based). While a relied upon document may ultimately be discoverable, the discovery process was never intended or interpreted to alter Florida's specific pleading requirements. Romans v. Warm Mineral Springs, Inc., 155 So. 2d 183, 184 (Fla. 2d DCA 1963). Neither party is to be burdened with resorting to discovery in order to be apprised of the essentials of the charge made against him. Id.

In the present matter, Plaintiffs' claim they "allowed Schneider and Schneider PA to perform a service as per a dental plan which can be considered a contract." (Pl.'s Sec. Am. Compl. ¶ 134). Plaintiffs, however, failed to attach a copy of this purported contract. As a result, Count VI must be dismissed.

VI. COUNT VI (FRAUD) REQUIRES DISMISSAL BECAUSE PLAINTIFFS FAILED TO ALLEGE FRAUD WITH THE PARTICULARITY REQUIRED BY RULE 1.120(B).

Florida law requires a plaintiff alleging fraud to plead the same "with all such particularity as the circumstances may permit." Fla.R.Civ.P., 1.120(b). The facts giving rise to the claimed fraud must be set forth with particularity and all allegations made must be clear, positive, and specific. Ocala Loan Co. v. Smith, 155 So. 2d 711, 716 (Fla. 1st DCA 1963). This requirement is an exception to the general rule that a claim for relief must contain a short plain, statement of the ultimate facts. As noted by the Third District Court of Appeal, "[f]raud is never presumed and where it is the basis of a pleading, the essential facts, and not legal conclusions, which constitute fraud must be set out clearly, concisely and with sufficient particularity to apprise the opposite party of what he is

called upon to answer.” Reina v. Gingerale Corp., 472 So. 2d 530, 531-32 (Fla. 3d DCA 1985). The purpose of this heightened standard of pleading is to allow the court to determine whether the plaintiff can establish a *prima facie* case. See Smith, 155 So. 2d at 716; see also Schopler v. Smilovits, 689 So. 2d 1189 (Fla. 4th DCA 1997) (“Due process requires that the defendant know what he is accused of having misrepresented.”).

To allege fraud with particularity, a party must identify the representation of fact allegedly made, explain how it is false, and the pleading must contain a statement of the underlying facts upon which the claim of fraud is based. It is Plaintiffs that bear the burden of explaining why the circumstances do not permit a more specific allegation. Smilovits, 689 So. 2d at 1190.

Consistent with the foregoing, Count VI requires dismissal because it is legally incomprehensible and lacking in sufficient factual support. Specifically, Plaintiffs conclude, without any ultimate facts in support thereof, Defendants engaged in “fraud” by: 1) billing for services that “were not provided or in excess of the dental plan” (Pl.’s Sec. Am. Compl. ¶ 110); 2) billing for services without “required chart documentation” (Pl.’s Sec. Am. Compl. ¶ 111); and 3) “[o]ften the dental plan and the billing do not resemble what post-care dentists have observed.” (Pl.’s Sec. Am. Compl. ¶ 112). Because the applicable law dictates “fraud is never presumed” and Rule 1.120(b) imposes a heightened standard of pleading to matters of fraud, Count VI should be dismissed for Plaintiffs’ failure to include the requisite factual support. In its present state, Count VI includes nothing more than bare legal conclusions and assertions of counsel.

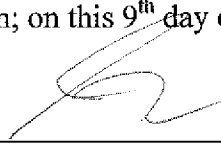
CONCLUSION

As set forth above, Plaintiffs' Second Amended Complaint must be dismissed because: 1) Plaintiffs allege dental malpractice, but failed to comply with the presuit requirements set forth in Chapter 766, which also requires the imposition of sanctions; 2) Plaintiffs' Complaint fails to state a cause of action because it is filled with personal opinions masquerading as ultimate facts, in violation of Florida Rule of Civil Procedure 1.110; 3) Plaintiffs failed to properly allege sufficient facts to support a class action proceeding, in violation of Florida Rule of Civil Procedure 1.220; 4) Plaintiffs wrongly demand an award of attorneys' fees and costs as part of their claimed damages in each count alleged; 5) Plaintiffs' allege a breach of contract, but failed to attach a copy of the same, in violation of Florida Rule of Civil Procedure 1.130(a); and 6) Count VI lacks the particularity required by Florida Rule of Civil Procedure 1.120(b).

WHEREFORE, Defendants, HOWARD S. SCHNEIDER, D.D.S., P.A. and HOWARD S. SCHNEIDER, D.D.S., respectfully request this Court to enter an Order dismissing Plaintiffs' Class Action Second Amended Complaint, expunging it from the record, and sanctioning Plaintiffs' counsel as described herein, along with such other relief this Court deems necessary and proper.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a copy hereof has been electronically served via Florida ePortal to: Gust G. Sarris, Esquire, pleadings@adsumlawfirm.com; John M. Phillips, Esquire, jphillips@floridajustice.com, dmalone@floridajustice.com, tc@floridajustice.com, linda@floridajustice.com; on this 9th day of October 2015.



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**IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY, FLORIDA**

Sarah Phillips on behalf of M.P. a Minor Child; and
Shatonia Miller on behalf of I.S. a Minor Child; and
Sarah Shaw on behalf of Q.P. a Minor Child; and
Kimberly Gmelin on behalf of A.G. a Minor Child;

And other's similarly situated,

Plaintiff/ Class Representatives,

CASE NO.: 16-2015-CA-002890
DIVISION: CV-H

v.

Dr. Howard S. Schneider D.D.S., P.A.
A Florida Corporation; and DR.
Howard S. Schneider, an individual

CLASS REPRESENTATION
JURY TRIAL DEMAND

Defendants.

CLASS ACTION SECOND AMENDED COMPLAINT

COMES NOW, the Plaintiff/ Class Representatives, Sarah Phillips ("Phillips"), by and through her undersigned counsel, and brings this Class Action Complaint against the Defendants, Dr. Howard S. Schneider D.D.S., P.A., ("Schneider PA") a Florida Corporation, and Dr. Howard S. Schneider D.D.S., ("Schneider") and would show the court as follows:

JURISDICTION

1. This is an action for individual damages, class damages, injunctive relief and/or declaratory relief in a principal amount that far exceeds the jurisdictional minimum of this Court of fifteen-thousand dollars (\$15,000.00), exclusive of interest, costs, and attorney's fees.
2. The Plaintiff/ Class Representatives all are parents of minor individuals, who reside in Duval County, Jacksonville, Florida or have had "Services" performed in Jacksonville

EXHIBIT "A"

Florida by Schneider and/or Schneider PA. Due to the potential class form shifting and several previous clients switching representation, the class has several new representatives.

3. Defendant, Dr. Howard S. Schneider D.D.S., P.A., is a Florida Corporation of medical professionals and doing business providing pediatric dental care for Medicaid patients in Duval County, Jacksonville, Florida.
4. At all times material to this lawsuit Dr. Howard Schneider, D.D.S., P.A. operated a pediatric dental care practice and employed Schneider to perform pediatric dental services under its supervision in Duval County.
5. At all times material to this lawsuit, Defendants engaged in substantial and not isolated activity in the State of Florida and Duval County.
6. The incidents of battery and other tortuous conduct that are the subject of this lawsuit all occurred in Duval County. This is a separate and distinct claim despite some of the members of this lawsuit may also have a malpractice claims.
7. Defendant, Dr. Howard Schneider, D.D.S., is an individual having a homestead in Duval County, Jacksonville, Florida.
8. Venue is proper in this court.
9. All conditions precedent, to the Plaintiff and Class bringing this suit has occurred, have been performed, or have been waived.
10. The Plaintiff/ Class Representatives and the Class have obligated themselves to pay a reasonable attorney's fee to bring this suit and the Defendants are liable for the same.
11. The Plaintiff/ Class Representatives reasonably anticipates that she and the class will seek punitive damages in this suit, and hereby reserves the right to amend this pleading

to add a count for punitive damages and attorney fees, either prior or subsequent to moving for class certification.

INTRODUCTORY STATEMENT

12. **This is not a case of medical malpractice.** The tortuous conduct alleged herein far exceeded the treatment plans and the scope of the consent given from the parents. In particular, Plaintiff/Class Representatives do not allege in this action that Defendants violated any *professional* standard of care, but rather the Plaintiff/Class Representatives were the victims of intentional battery and abuse by Schneider while on Schneider P.A.'s premises.
13. This is easily the most egregious case of serial child abuse the undersigned has ever encountered in his many years practicing law. What appeared initially as a potential malpractice case turned into an elaborate process of intentional abuse that defrauded Medicaid and provided Schneider PA with a one million dollar (\$1,000,000.00) per year stream of revenue from Medicaid alone.
14. The parent(s) were systematically manipulated and almost every patient's teeth were greatly overworked or had unnecessary procedures performed without consent of the parent(s) or their knowledge.
15. It is inconceivable that the Florida malpractice statutes (Chapter 766) could have ever contemplated intentional acts or should provide an exclusive right to hide behind for any "professional" from intentional and fraudulent acts. It is incomprehensible that any statute would require an "Expert" to determine that intentionally pulling extra teeth, or having a 3 year old child injured with a black eye, or a child with a bruise in the shape of a hand on a child's throat could be the result of any proper standard of care performed by a dentist. If Chapter 766 had to be followed then a professional pediatric

dentist would be required to “testify” that punching a child or choking someone falls below a “standard of care.”

16. Additionally, malpractice insurance does not provide coverage for intentional and illegal acts. The acts alleged in this complaint are clearly intentional acts that were not mistakes, inexperience or on a lack of knowledge, but based on the desire to inflict pain, profits and greed.
17. In many instances children were put through procedures without sedation or any analgesia despite being billed for the sedation. In many of the medical records the sedation record is blank and contain none of the required information such as the weight of the child, blood pressure, heart rate, time of procedure or even what drug was given or in what quantity. Although the patients may have entered the office under the guise of dental treatment, the intentional acts were calculated to increase the profitability of Schneider PA at the expense of children while defrauding Medicaid.
18. Schneider PA should have had a policy and procedure manual to see that all dental services were billed properly and that an accurate chart should reflect the care given to the patient.
19. When this complaint was initially filed in May approximately 15 families gave a very detailed history of their experiences with Schneider PA and Schneider. As to date, approximately 100 families have been interviewed all of which have many common experiences.
20. Since the initial filing of this lawsuit, a criminal investigation was launched by Jacksonville Sheriff's Office for child abuse. In addition, Schneider PA and /or Schneider are being investigated by the Attorney General's Medicaid Fraud Control Unit for the overbilling of procedures and/or performing unnecessary services.

21. As of the date of this pleading, Schneider has voluntarily surrendered his license to practice dentistry in the state of Florida as well as Georgia.
22. Upon information and belief, Dr. Schneider's practice located on University Boulevard that is the subject of this litigation is now closed.
23. As of the date of this pleading, the Agency for Health Care Administration ("AHCA") who manages all Medicaid funding is actively participating in allowing Schneider's patients to get additional care as a direct result of their investigation.
24. As equally strange as this case is, Schneider's wife filed a petition for dissolution of marriage on May 15, 2015 in less than 3 weeks; on June 4, 2015 a Final Consent Judgment was entered. The pleadings indicate over \$2,000,000.00+ was transferred to a trust by the ex-wife without Schneider's knowledge. Ironically the funds were never "requested" to be returned and upon information and belief they still live together. Should a final judgment awarding damages be granted a proceedings supplementary will be requested for the ex-wife to pursue these funds.
25. The Defendant, Schneider, is an individual who has held himself out to the public of Duval County, as a Pediatric Dentist for more than forty seven (47) years; and has been the only licensed Pediatric Dentist that takes; 1) Florida Medicaid, 2) provides sedation, 3) works on disabled patient who are 4) children and is in Duval County.
26. Within Region 4 as defined by AHCA, which consists of well over 1,000,000+ people, Schneider was the ONLY choice if your child required sedation, was handicapped and on Medicaid. This single choice forced the indigent parents to utilize Schneider's services or have no dental care. One other provider did offer services in Gainesville but only saw Medicaid patients one day per week being booked up for more than 6 months

for the earliest appointment. Sadly, as of the date of filing this pleading there is no dental choice for children needing all these specialized services.

27. While it is true that Schneider was licensed to practice dentistry, his so-called “practice” had little to do with dentistry, but much to do with the Doctor’s intentional illegal acts and greed. . Almost every parent interviewed was not aware of the extensive work that had been performed, nor had they given consent to Schneider to exceed the scope of work. Schneider’s scheme of intentional and blatant “overworking” will likely cause his Malpractice Insurance provider to refuse coverage for these intentional and illegal acts and thus gives rise to these intentional tort claims. Sadly, many of these victims may also have an underlying malpractice claim as the work that was performed was below any standard of care which may need to be dealt with in accordance to Chapter 766. Schneider has three million dollars \$3,000,000.00 of malpractice insurance.
28. Schneider’s greed motivated him to inflict pain, torture, mutilate and humiliate his defenseless patients. This greed has driven him to create a specialized dental “practice”, which, by its very design and structure, provided him with a constant supply of especially defenseless, indigent, children to victimize while lining his pockets.
29. The child victims of Schneider come mostly from families where the parents are indigent, often uneducated, immigrants, disabled, non-English speaking, and/or otherwise compromised or challenged, in such a manner as to limit the ability of these initially unsuspecting parents and families to protect their children from the deviant and violent practices of “Doctor” Schneider.
30. What has appeared from the outside to be an unremarkable pediatric dentistry practice, on the inside atrocities occurred; where the most defenseless members of our society,

indigent children who receive Florida Medicaid, are regularly assaulted, humiliated, tortured, and oftentimes mutilated, in circumstances that show cold, calculated, deranged, and premeditated planning on the part of Schneider and his associates.

31. The evidence indicates that this horrific situation at the offices of “Doctor” Schneider has been going on for decades. Allegations exist from patients who remember what he did to them 39+ years ago, ex-employees who witnessed atrocities, other dentists who performed post-care, and parents’ of the victims.
32. Statute of limitations issues are going to arise for many victims as the parent(s) were often unaware of the procedures that were billed and/or performed. Some of the parents are only now finding out that “root canals,” “sealants” and other procedures were performed without their knowledge and consent or alternatively were billed to Medicaid and not performed.

CLASS REPRESENTATION ALLEGATIONS

33. The Plaintiffs/ Class Representatives bring this lawsuit pursuant to Rule 1.220 of the Florida Rules of Civil Procedure.
34. The Plaintiff(s) proposes the class be defined as follows: (a) All persons residing in the State of Florida who; (b) were under the age of majority or otherwise disabled at the time that they; (c) sought Pediatric Dental treatment from Schneider; and thereby (d) became the victims of Schneider's sadistic and systematic scheme. The Defendants and their employees, agents, and/or assigns are excluded from the class.
35. The undersigned is presently aware of at least one hundred (100+) victims of Schneider’s who would be members of the class as defined above. As of the date of this

writing, some of victims are now adults with vivid memories of the torture and abuse they suffered at the hands of Schneider.

36. The undersigned is an experienced attorney, with more than ten years (10) of complex civil litigation experience, and whose firm is staffed with counsel that is versed and experienced in all phases of civil litigation and class action litigation. Further, the undersigned and his firm possess the resources to litigate this matter to the extent necessitated by this case, including post-class certification and any necessary appellate work. Thus, the undersigned is more than qualified to represent the class as set forth herein, and neither the Plaintiffs nor their counsel have any interest which might cause them not to vigorously pursue this action.
37. The claims of the Plaintiffs/ Class Representatives are typical of the claims of the class. The primary class issues to be litigated are: (a) Whether the class members sought pediatric dental services from Schneider PA and Schneider in Duval County, Florida; (b) Whether Schneider intentionally performed unnecessary procedures without consent to increase profitability; (c) Whether the class members were in fact victims of Schneider's systematic and continuous torture, confinement and abuse of innocent children causing fear and regret in both the parents and children; and (d) What damages the victims of Schneider's torture and abuse did the class member's incur.
38. The questions of law and fact raised by the Plaintiffs'/Class Representatives' claims against the Defendants are typical and common to each of the members of the class as defined herein, and common questions of law and fact in this matter predominate over any individual issues specific to the individual members of the class. The particular facts and circumstances that support the Plaintiffs and Class Representatives' position

that this claim may be maintained as a class action pursuant to subdivisions (b)(2) and (b)(3) of Rule 1.220 of the Florida Rules of Civil Procedure are as follows:

- a. Schneider, being the only pediatric dentist in Duval County that uses sedation and takes Florida Medicaid patients, has engaged in a systematic and continuous pattern of sadistic torture and abuse of defenseless minor children going back more than forty-five (45) years in Duval County;
- b. The Defendant has continually abused his position of power and authority as a licensed dentist to facilitate his greed to torture and mutilate innocent minor children;
- c. All of the class members as proposed herein were tortured, humiliated, and mutilated by Schneider while ostensibly being “treated” with various dental procedures at his office, during regular business hours;
- d. Schneider engaged in similar and repeated patterns of abuse of his child patients that were entrusted to his office for dental care which similar and repeated behaviors include but are not limited to: (1) Choking children to the point of unconsciousness rather than using appropriate anesthetic prior to doing tooth extractions; (2) Performing excruciatingly painful medical procedures on children without anesthetic; (3) Performing non-medically necessary dental procedures, especially tooth extractions, often without anesthetic, on his child patients, which served the double purpose of both creating a pretext for Schneider to fraudulently bill Medicaid for said unnecessary procedures, and of gratifying his disgusting impulse to torture and mutilate innocent children; (4) Taking special steps to scare and frighten children by wearing masks and other costume paraphernalia during treatment sessions, with the intent to horrify and frighten the children he treats; (5) Using fear and threats to scare and thereby silence his victims, including threats not limited to saying things like “Your mom will die” if you

tell her what happened and other similar tactics; (6) Refusing to allow parents to be present during medical treatment of their own children, and berating and humiliating parents who insist on watching the procedures performed on their children; (7) Threatening to make fraudulent reports to the Department of Children (DCF) against innocent parents, when said parents start to catch on and question what goes on behind the treatment rooms doors of the offices of Schneider;

- e. Thus, the class as proposed shares a commonality of: (1) victimization; (2) by a person in authority over the victims; (3) the victims were all minor children; (4) the victims were all injured intentionally under the guise of legitimate medical treatment; (5) The victims and their families were all threatened by Schneider to maintain silence or were unaware of the additional procedures performed; and (6) the victims of Schneider were all injured in the same manner, pursuant to the same scheme, and **with the same common goal**- Schneider's greed. by the torture, mutilation and humiliation of innocent and defenseless children for profit;
- f. Furthermore, class certification is especially appropriate in this matter due to the fact(s) that: (1) this abuse happened to mostly poor and/or economically and socially disadvantaged children, who; (2) received public assistance including Medicaid, and are therefore stigmatized; (3) unable in nearly every case to pay an hourly fee to an attorney to bring their claim; and (4) unable to get any attorney to take their cases on any contingent basis due to the circumstantial nature of the available evidence in most of the individual cases. Also, additional hurdles stopped most attorneys from accepting these cases due to the fact that child testimony about events that allegedly occurred before, during or after alleged sedation would be necessary to forward this litigation to trial. Lastly, the risk of non-success in the individual cases was too great for many

attorneys, who might otherwise consider taking one of Schneider's victims as a contingent case, to bear alone.

- g. Although damages may be difficult to enumerate as to what an individual tooth is worth to a child who ultimately will grow another; the damages are clear that all the victims will need future care, have orthodontic issues, have fear of dentists, and suffered pain. This type of damage must be estimated as no expert could truly testify an actual damage as each child will grow up differently, have different emotional scars and need additional dental work. These damages could never be calculated as to an exact damage other than a monetary settlement which the child could use for their specialized needs when the time is right.

Facts as to the case of Class Representative M.P.
by an through Sarah Phillips

39. On April 15, 2015, Class representative M.P. was brought to the offices of Schneider to be treated for partials, as the child M.P. had recently been injured in a fall and two front baby teeth had become non-vital (died).
40. The child M.P. was supposed to be sedated, simply so that the 2 non-vital teeth could be removed, and small hooks could be inserted onto his back teeth, which would allow partials to be fitted and replace his lost front baby teeth.
41. The child M.P. was removed to the back room of the offices of "Doctor" Schneider, without parents present; and was abused by Schneider for about forty-five (45) minutes, before the child's Mother heard him screaming, approached the receptionist counter, and demanded that her child be released to her immediately.
42. When the small window was finally opened M.P. was sitting on a counter bleeding profusely, and hyperventilating /crying.

43. The child M.P. was literally handed back to his parent, through the tiny reception area glass window. At this point the parent was horrified and bewildered as the child M.P. was crying profusely and covered in blood and bruises.
44. The cause of the blood and bruises were never addressed or explained by Schneider, and the child was rushed home by the parent.
45. Upon arriving back at the house, M.P.'s parents discovered that the child had been cut on the bottom front outer gum line, from ear to ear, apparently by some sort of scalpel or other medical device, two additional teeth had been pulled, and some mystery wiring had been placed on the back side of his bottom teeth (which wiring was eventually explained by Schneider as something necessary to prevent cavities); the child had a large bruise on his face, and visible hand marks, consistent with choking, all over his face and neck area.
46. All of this was done without anesthetic or sedation, and can be easily surmised by the photos M.P.'s parent took of the child immediately upon getting the child away from Schneider's office. The photos show a wide awake and very much scared two (2) year old child, despite the fact that M.P. was allegedly (according to Schneider) completely sedated less than ten (10) minutes prior to the photos being taken.
47. M.P. parent's immediately contacted DCF about this incident; DCF documented the scene, and attempted to contact Schneider, who repeatedly refused to make an appointment to give a statement to DCF. In the process of trying to get Schneider to make a statement to DCF, Schneider's wife stated repeatedly to the DCF agents that the child M.P. had injured himself during the procedure and this type of thing happens all the time.

48. A pediatrician documented the bruises the following day concurring that they occurred at the hands of Dr. Schneider.
49. The office of the undersigned is in possession of photos, medical records, after care records, and other documentation to support these claims, and has chosen not to attach any of said documentation to this Complaint as exhibits in the interest of protecting the privacy of the child victim.

Facts as to the case of Class Representative I.S.
By and through Shatonia Miller

50. On March 20, 2014, Class representative I.S. first visited Schneider PA for a cleaning and consultation. A dental plan was created by Schneider for I.S. and signed by the mother Ms. Miller.
51. At the beginning of the visit the nurse gave a small glass of some liquid referred to as "Gatorade" which contained a sedative. I.S. spit out most of the fluid but was reassured by the nurse that, "as long as she drank some of it." It is unknown how much if any was ingested by I.S.
52. On March 28, 2014 they returned to have 4 caps installed by Schneider. The mother realized that Schneider had already strapped 2½ year old I.S. to a papoose board without consent. Although in the same room Schneider's back blocked the mother view. She was instructed if she said "anything" she would have to leave.
53. The mother not wanting to leave watched while her daughter cried and was treated roughly by Schneider.
54. During the work a tooth was ejected out of young I.S.'s mouth which landed near the mother.

55. Upon leaving the premises the mother was able to see that 8 caps were installed. From the angle where the mother was told she must sit; she was unaware of the additional work.
56. Schneider PA billed for 9 caps and 4 root canals including a root canal to one adult tooth. This information was only made available to the mother after the chart was obtained for purposes of litigation. According to the billing tooth number 55 was ejected and received a stainless steel crown. It is unknown by the American Dental Association which tooth this may be or how a crown could be placed on a tooth that was not in the I.S.'s mouth.
57. Shortly thereafter an infection formed forcing the mother to take I.S. to the emergency room. The hospital referred her back to Schneider.
58. The visit was specifically to deal with the infected tooth. Schneider informed the mother that, "It was her fault that her child had such bad teeth."
59. The mother believed that it was her fault crying in front of Schneider and his staff.
60. Within 2 weeks the mother was awakened to hear I.S. screaming and choking on one of the caps which fell off and became lodged in I.S.'s throat.
61. After reviewing the chart the sedation record was found to be blank as to the details of the procedure but was billed in full to Medicaid.
62. I.S. now has severe issues with going to any health care provider especially dentists despite desperately needing aftercare.
63. The office of the undersigned is in possession of photos, medical records, after care records, and other documentation to support these claims, and has chosen not to attach any of said documentation to this Complaint as exhibits in the interest of protecting the privacy of the child victim.

Facts as to the case of Class Representative Q.P.
By and through Sarah Shaw

64. Class representative Q.P. first saw Schneider PA on June 30, 2014. This was for an initial cleaning and x-rays. A treatment plan was created and signed. A second treatment plan was made on July 1, 2014 which was never signed. The mother doesn't believe that she saw this plan which was contained in the chart.
65. Q.P. was seen on July 1, 2014 in which she was allowed to go back with her child Q.P. who appeared to be very scared. The chart which was later obtained showed that sedation was billed for but the mother observed no such procedure. No sedation record exists despite the billing. Only one tooth was extracted during this visit.
66. Previous to the next visit the mother called in to inform Schneider PA that Q.P. had cold sores all over his lips. She was told that was not an issue and to come on in for the appointment. Schneider PA instructed the mother they would use a special crème to take care of the issue.
67. On July 8, 2014, another visit occurred. A treatment plan was created according to the chart but the mother did not sign or receive a copy of the plan. The mother was able to see Q.P. strapped down to the papoose board but then was asked to leave.
68. The mother observed Q.P. crying as the dentist approached him. She was unable to see more as she was requested to leave and had to sit in the waiting room behind a locked metal door.
69. During this visit they did not perform ANY of the work that was planned. However, Q.P. upon being returned had a fat lip and a black eye. It is unknown how either of these incidents occurred, why no work was performed, or what was done to his lips. A

co-worker had suggested that the lip was swollen as a result of “injecting his lips with something.”

70. After the visit the mother felt very bad that her child looked as if he was in a UFC fight and lost.
71. Today Q.P. cannot visit any dentist without full sedation and will not participate in any procedure despite desperately needing after care. Unfortunately, no dentist will see him because he needs a pediatric dentist who will provide IV sedation and takes Medicaid. His choice is limited to waiting 6-8 months to go to Gainesville or finding transportation to Orlando.
72. The office of the undersigned is in possession of photos, medical records, after care records, and other documentation to support these claims, and has chosen not to attach any of said documentation to this Complaint as exhibits in the interest of protecting the privacy of the child victim.

Facts as to the case of Class Representative A.G.
By and through Kimberly Gmelin

73. Class representative A.G. first visited Schneider PA on April 8, 2014. The visit was based on Economy Dental requesting A.G. see Schneider as sedation would be required to perform the capping procedure of 4 teeth.
74. On April 11, 2014 prior to working on A.G.’s teeth he was given a small cup of “Gatorade.” Within several minutes Schneider called him back to perform work on A.G.’s teeth.
75. The mother was allowed back into the room but was unaware of what work was actually performed but understood that 4 caps were to be installed in the front upper teeth.

76. The mother observed several injections being administered but does not recall any other sedation or nitrous oxide.
77. The entire purpose for seeing Schneider was to have caps installed. The teeth were drilled but no caps were placed on the teeth. This procedure caused his teeth to begin to rapidly decay. It appears the "purpose" of this was documented in a dental plan that was never seen or signed by the mother. The dental plan contemplated 4 root canals to the four teeth that were specifically supposed to receive crowns.
78. Shortly after work began (less than 5 minutes from consuming the Gatorade) it was clear the A.G. was squirming so badly that the nurse assisted in holding him down. When the mother tried to express her concern and rub his leg to calm him she was told by Schneider, "Shut the F**k up or you can leave." The mother now became concerned the procedure would be stopped midway through had to sit there and watch her child cry in pain.
79. Prior to the completion of the work, A.G. was in so much pain clearly kicking and screaming that Schneider was forced to stop in mid procedure and told the mother, "I can't do this just schedule a surgical consult," as he threw down his tools and walked out.
80. After the care was completed the mother was surprised to find that no caps were installed. After the chart was obtained for litigation purposes it was determined that Schneider PA billed for 4 abscesses. The mother was never told of this procedure and was unaware of its necessity or that such abscesses ever existed.
81. The mother refused to return to Schneider after discovering holes drilled in the center of these teeth and instead chose to drive to Orlando for the post care. Unfortunately

during the time delay one tooth had to be pulled leaving A.G. with a gap smile and needing more dental care.

82. Since the holes had already been drilled into A.G.'s teeth causing severe decay the remaining portion of the root canal had to be performed by his new dentist in Orlando.
83. In looking at the chart, a form did exist granting permission to Schneider, PA to do the "...following procedure or medical treatment." The remainder of the form stating what procedure was left blank despite telling the mother she must sign the form. This blank form could be modified as the mother never received a copy of the documentation.
84. The mother was and still is severely upset over the lack of sedation and performing the unnecessary medical treatments. She has concerns that A.G. will have long term issues with his teeth and need additional care that will not be provided by Medicaid. She was told by her new dentist that orthodontic care would be necessary.
85. The office of the undersigned is in possession of photos, medical records, after care records, and other documentation to support these claims, and has chosen not to attach any of said documentation to this Complaint as exhibits in the interest of protecting the privacy of the child victim.

Count I: Assault
as to Schneider

86. The Plaintiffs and Class Representatives hereby re-allege and incorporate in to this count by reference each and every factual allegation of these pleading paragraphs 1-38.
87. The Schneider, as set forth hereinabove, have perpetrated an unlawful offer of corporal injury directed to the person of another; *to wit*, the Defendant Schneider has engaged in a continuous pattern of torture, abuse, and mutilation of their child patients as detailed herein. Many victims were strapped to a papoose board which is a device that

immobilized the persons head, arms and legs. From information and belief very few practitioners of any kind use this device for any reason.

88. The Defendant did so under such circumstances as would create fear of imminent peril in their victims, coupled with the apparent ability to carry out the threat of physical harm. In most cases the parent(s) were separated from the child by a large metal locked door.
89. The Plaintiffs and Class Representatives incurred significant damages as a direct and proximate result of the actions of the Defendant detailed herein.

WHEREFORE, The Plaintiffs and Class Representatives pray that this court certify the Class, and enter judgment in the favor of the Class and against the Defendant, award damages in the principle sum greater than \$15,000.00, damages for pain and suffering, prejudgment interest, post judgment interest, cost of suit, and award such other relief that this court deems necessary and proper.

**Count II: Battery
as to Schneider**

90. The Plaintiffs and Class Representatives hereby re-allege and incorporate in to this count by reference each and every factual allegation of these pleading paragraphs 1-38.
91. Schneider perpetrated an unlawful touching against the Plaintiffs and Class members; *to wit*, the Defendant has engaged in a continuous pattern of torture, abuse, and mutilation of their child patients as detailed herein. In no case was the “service” providing any medical or dental purpose or consented to by anyone.
92. As a direct and proximate result of the actions of the Defendant detailed herein the Plaintiff and Class representatives have and will continue to suffer physical, psychological and emotional injury and mental anguish.

WHEREFORE, The Plaintiffs and Class Representatives pray that this court certify the Class, and enter judgment in the favor of the Class and against the Defendant, award damages in the principle sum greater than \$15,000.00, damages for pain and suffering, prejudgment interest, post judgment interest, cost of suit, and award such other relief that this court deems necessary and proper.

Count III: False Imprisonment
as to Schneider

93. The Plaintiffs and Class Representatives hereby re-allege and incorporate in to this count by reference each and every factual allegation of these pleading paragraphs 1-38.
94. The Defendants perpetrated an unlawful restraint of a person, against their will, the gist of which action amounted to the unlawful detention of the Plaintiffs and Class Representatives, and a deprivation of their liberty; *to wit*, the Defendants have engaged in a continuous pattern of torture, abuse, and mutilation of their child patients as detailed herein.
95. The Plaintiffs and Class Representatives have incurred significant damages as a direct and proximate cause of the unlawful detention perpetrated by the Defendants.

WHEREFORE, The Plaintiffs and Class Representatives pray that this court certify the Class, and enter judgment in the favor of the Class and against the Defendants, award damages in the principle sum greater than \$15,000.00, damages for pain and suffering, prejudgment interest, post judgment interest, cost of suit, and award such other relief that this court deems necessary and proper.

Count IV: Intentional Infliction of Severe Emotional Distress
as to Schneider

96. The Plaintiffs and Class Representatives hereby re-allege and incorporate in to this count by reference each and every factual allegation of these pleading paragraphs 1-38.
97. The Defendants engaged in a pattern of conduct that was intentional and reckless, knowing that said behavior would likely result in extreme emotional distress; *to wit*, Schneider had engaged in a continuous pattern of torture, abuse, and mutilation of their child patients as detailed herein.
98. Schneider's conduct was outrageous, beyond all bounds of decency, atrocious, and utterly intolerable in a civilized community.
99. Schneider's conduct detailed herein directly and proximately caused severe emotional distress to the Plaintiffs and Class Representatives.
100. The Plaintiffs and Class Representatives incurred significant damages as a result of the Defendant's behavior herein.

WHEREFORE, The Plaintiffs and Class Representatives pray that this court certify the Class, and enter judgment in the favor of the Class and against the Defendants, award damages in the principle sum greater than \$15,000.00, damages for pain and suffering, prejudgment interest, post judgment interest, cost of suit, and award such other relief that this court deems necessary and proper.

Count V: Negligent Infliction of Severe Emotional Distress
as to Schneider

101. The Plaintiffs and Class Representatives hereby re-allege and incorporate in to this count by reference each and every factual allegation of these pleading paragraphs 1-38.

102. Schneider knew or should have know that the parent(s) of the minor children would ultimately find out that medically unnecessary procedures were performed without the consent of the parent(s).
103. These unnecessary procedures caused the child to experience fear, anxiety and pain as a direct and proximate cause of the additional work. In addition, Medicaid will not pay for future care as the teeth have already been worked on and payment received.
104. Schneider had a duty to act as a professional and only perform medically necessary work.
105. Schneider breached his duty by putting the child victims in discomfort and pain for personal gain and satisfaction.
106. The parent(s) had to experience their child's pain and discomfort causing them to regret the choice of dentist.
107. Each parent(s) experienced anxiety and frustration over the additional work performed caused by Schneider.
108. Each parent(s) was damaged by the stress of watching their child's consequences knowing that long term treatment such as orthodontic care will be necessary.

WHEREFORE, The Plaintiffs and Class Representatives pray that this court certify the Class, and enter judgment in the favor of the Class and against the Defendants, award damages in the principle sum greater than \$15,000.00, damages for pain and suffering, prejudgment interest, post judgment interest, cost of suit, and award such other relief that this court deems necessary and proper.

Count VI: Fraud
as to Schneider PA

109. The Plaintiffs and Class Representatives hereby re-allege and incorporate in to this count by reference each and every factual allegation of these pleading paragraphs 1-38.
110. Plaintiffs were billed for services that Medicaid paid Schneider PA for to perform services that were not provided or in excess of the prescribed dental plan.
111. These services were billed without the required chart documentation. Specifically, anesthesia was often charged to Medicaid. However, the required notations such as the child's height, weight, blood pressure, time of procedure, quantity of drug, type of drug and duration were never charted. Thus the anesthesia was either given without regard to dosage or quantity or never provided.
112. Teeth were capped or removed or worked on without authorization of the parents. These procedures increased billing at the cost of the child having painful and unnecessary procedures. Often the dental plan and the billing do not resemble what post-care dentists have observed. In more than one case the dental billing was for root canals but the teeth were intact and not worked on. In some cases other dentists were unable to bill for treatment to a tooth that was "removed" and billed by Schneider PA but is intact in the child's mouth.

WHEREFORE, The Plaintiffs and Class Representatives pray that this court certify the Class, and enter judgment in the favor of the Class and against the Defendant Schneider PA, award damages in the principle sum greater than \$15,000.00, damages for pain and suffering, prejudgment interest, post judgment interest, cost of suit, and award such other relief that this court deems necessary and proper.

Count VII: Respondent Superior/ Vicarious Liability
as to Schneider PA

113. The Plaintiffs and Class Representatives hereby re-allege and incorporate in to this count by reference each and every factual allegation of these pleading paragraphs 1-38.
114. Schneider was at all times an employee, appointee and or agent of Schneider PA.
115. Schneider committed acts of assault, battery, false imprisonment, intentional and negligent infliction of severe emotional distress without the consent of the parents of the victims.
116. Schneider was authorized by Schneider, P.A. to be alone with the Plaintiff/Class representatives, and to have unfettered and unsupervised control and access to the Plaintiff/Class representatives while they were at Schneider P.A. for dental appointments.
117. The acts of assault, battery, false imprisonment, intentional and negligent infliction of severe emotional distress perpetrated by Schneider occurred in Schneider P.A.'s patient rooms where Schneider was required to perform his employment duties, and his initial contact with the Plaintiff/Class representatives was within the course and scope of Schneider's performance of those duties.
118. The acts of assault, battery, false imprisonment, intentional and negligent infliction of severe emotional distress described above occurred during Schneider's working hours while he was there to examine the Plaintiff/Class representatives at Schneider P.A.
119. Schneider's *initial* contact and relationship with the Plaintiff/Class representatives was in furtherance of Schneider P.A.'s business interests.

120. In addition, Schneider was authorized by Schneider P.A. to touch the Plaintiff/Class representatives. Schneider extended and converted this authorized touching into acts of assault, battery, false imprisonment, intentional and negligent infliction of severe emotional distress of the Plaintiff/Class representatives as described above.
121. As a direct and proximate cause of the foregoing, Plaintiff/Class representatives have and will continue to suffer physical, psychological and emotional injury and mental anguish.
122. Under the doctrine of respondeat superior, Schneider P.A. is responsible for the negligent, reckless and intentional actions of its servant, Schneider.

WHEREFORE, The Plaintiffs and Class Representatives pray that this court certify the Class, and enter judgment in the favor of the Class and against the Defendant Schneider PA, award damages in the principle sum greater than \$15,000.00, damages for pain and suffering, prejudgment interest, post judgment interest, cost of suit, and award such other relief that this court deems necessary and proper.

Count VIII: Negligence
as to Schneider PA

123. The Plaintiffs and Class Representatives hereby re-allege and incorporate in to this count by reference each and every factual allegation of these pleading paragraphs 1-38.
124. At all material times, Schneider P.A. owed a duty to Plaintiff/Class representatives to use reasonable care to ensure their safety, care and well-being while they were in the office to obtain dental services from Schneider.
125. These duties encompassed the hiring, retention and supervision of Schneider.
126. Schneider had inappropriate and unprofessional contact with the Plaintiff/Class representatives as a result of his employment by Schneider P.A.

127. Schneider breached its duty of care to Plaintiff/Class representatives by failing to protect them from the acts of assault, battery, false imprisonment, intentional and negligent infliction of severe emotional distress committed by its agent, Schneider.
128. Prior to the acts of assault, battery, false imprisonment, intentional and negligent infliction of severe emotional distress perpetrated by Schneider on Plaintiff/Class representatives, Schneider P.A. knew or in the exercise of reasonable care should have known that Schneider was unfit for the duties assigned and posed a risk of perpetrating assault, battery, false imprisonment, intentional and negligent infliction of severe emotional distress on its patients, including Plaintiff/Class representatives.
129. Despite having such information, Schneider P.A. retained Schneider without any limitations on his employment, failed to provide additional supervision of Schneider, and took no action to protect any of its patients including Plaintiff/Class representatives.
130. At all relevant times, Schneider P.A. knew or in the exercise of reasonable care should have known that Schneider was unfit, dangerous, and/or a threat to the safety and welfare of the patients entrusted to him for dental services.
131. Despite such actual or constructive knowledge, Schneider P.A. retained Schneider and failed to exercise adequate supervision.
132. As a direct and proximate cause of the foregoing, Plaintiff/Class representatives have and will continue to suffer physical, psychological and emotional injury and mental anguish.

WHEREFORE, The Plaintiffs and Class Representatives pray that this court certify the Class, and enter judgment in the favor of the Class and against the Defendant Schneider PA, award damages in the principle sum greater than \$15,000.00, damages for pain and suffering,

prejudgment interest, post judgment interest, cost of suit, and award such other relief that this court deems necessary and proper.

Count VI: Breach of Contract
as to Schneider PA and Schneider

133. The Plaintiffs and Class Representatives hereby re-allege and incorporate in to this count by reference each and every factual allegation of these pleading paragraphs 1-38.
134. Plaintiffs allowed Schneider and Schneider PA to perform a service as per a dental plan which can be considered a contract.
135. These services may or may not have been performed. However, “work” outside the scope of the dental plan had been provided without consent that had nothing to do with a medically necessary procedure.
136. This intentional and material breach was the direct and proximate cause of damaging each patient .

WHEREFORE, The Plaintiffs and Class Representatives pray that this court certify the Class, and enter judgment in the favor of the Class and against the Defendant Schneider PA, award damages in the principle sum greater than \$15,000.00, damages for pain and suffering, prejudgment interest, post judgment interest, cost of suit, and award such other relief that this court deems necessary and proper.

Dated this 29th day of July, 2015.

Respectfully Submitted,

ADSUM LAW FIRM, P.L.

/s/ Gust G. Sarris

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the forgoing has been furnished to Richard E. Ramsey, Esquire, Wicker, Smith, O'Hara, McCoy & Ford, P.A. 50 N. Laura Street, Suite 2700, Jacksonville, Florida 32202 via email transmission to jaxcrtpleadings@wickersmith.com on the 29th day of July, 2015.

/s/ Gust G. Sarris

Attorney