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CHARLES D. SUSANO III
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IN THE SIXTH JUDICIAL DISTRICT FOR THE STATE OF TENNESSEE
KNOX COUNTY CIRCUIT COURT
SITTING AT KNOXVILLE

2019 DEC 19 PM 2:34

KNOX COUNTY CIRCUIT,
CIVIL, PROBATE
AND JUVENILE COURTS

GERALD WITT, for Himself and)
All Other Similarly Situated Individuals,)
M.T., for Himself and All Other Similarly)
Situated Individuals and C.I. for Himself)
and All Other Similarly Situated Individuals)
Plaintiffs,)

v.)

CLARENCE L. "BUZZ" NABERS, JR., DDS. d/b/a)
DENTAL STUDIO 304 and)
DENTAL STUDIO WEST,)
Individually and in his Official Capacity, and)
TRESA MARIA A. NABERS)
Individually and in her Official Capacity)
Jointly and Severally,)
Defendant(s).)

Docket No.: 1-446-19

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

COMES NOW, the Plaintiffs, Gerald Witt, M.T., and C.I. by and through undersigned counsel, and file this Compliant for Damages and for Class Action Certification pursuant to Rule 23, Tennessee Rules of Civil Procedure and would respectfully show that:

PARTIES

PLAINTIFFS

1. Plaintiffs, Gerald Witt, M.T., and C.I., ("Plaintiffs") were at all times material hereto residents of Knox County, Tennessee. In addition to their personal claims, Plaintiffs are seeking damages on their behalf and on behalf of others similarly situated for Defendants' negligent infliction of emotional distress and negligence. Upon information and belief all proposed Class members were residents of Tennessee at all times material to the allegations in the Class Action

Counts.

2. Plaintiffs allege that Defendants, Clarence L. "Buzz Nabers, Jr. DDS. d/b/a Dental Studio 304 and Dental Studio West ("Dr. Nabers"), and Teresa Maria A. Nabers ("Ms. Nabers") (collectively "Buzz Nabers Dental Studio" or "Defendants") are liable to the Plaintiffs for the negligent infliction of emotional distress and negligence caused by Defendants' systematic failure to properly sterilize dental instruments, reusing single-use dental tools from September 15, 2016 to September 15, 2019, and exposing Plaintiffs to numerous infectious diseases, including without limitation Hepatitis B, Hepatitis C, and Human Immunodeficiency Virus ("HIV").

3. Defendants used improperly sterilized dental instruments and reused single-use dental tools on more than eight Thousand (8,000) patients of Defendants, exposing them to numerous infectious diseases, including without limitation Hepatitis B, Hepatitis C, and Human Immunodeficiency Virus ("HIV").

4. Plaintiffs bring this proposed class action on behalf of themselves and a proposed Class defined below consisting of Buzz Nabers Dental Studio patients who underwent dental procedures at Buzz Nader Dental Studio from September 15, 2016 to September 15, 2019, and who were similarly exposed to infectious diseases.

5. Plaintiffs are seeking certification of a Plaintiff Class and a judgment in favor of that Class for the emotional trauma, medical expenses, and other injuries and damages that they and the Class have and will suffer as a result of Buzz Nabers Dental Studio's negligent acts.

6. Plaintiffs are seeking certification of one primary Class.

Class Allegations

7. Plaintiffs Gerald Witt, M.T., and C.I. seek relief pursuant to Rule 23 of the Tennessee Rules of Civil Procedure on behalf of the proposed Class of similarly situated persons

8. The "proposed Class" is defined as:

All patients of Buzz Nabers Dental Studio to whom Buzz Nabers Dental Studio sent a letter identical to, or substantially similar to, the letter it sent to Plaintiffs M.T. and C.I., or to whom Buzz Nabers Dental Studio did not send such a letter but who underwent dental procedures or other procedures that involved the use of dental instruments, during the period of time when one or more employees of Buzz Nabers Dental Studio did not complete all steps in the dental instrument sterilization process (approximately but not necessarily limited to September 15, 2016 to September 15, 2019).

9. Plaintiff reserves the right to alter or amend this proposed definition of Class as the lawsuit proceeds.

10. Joinder of all Plaintiffs is impractical for the following reasons:

A. Numerosity: Identifying and locating each potential plaintiff could not be done without the cooperation of the Defendants Buzz Nabers Dental Studio, and the potential plaintiffs are so numerous that it would be impractical and cripple the court systems to file a separate suit on behalf of each and every potential Plaintiff. Upon information and belief, the Proposed Class consists of more than Eight Thousand (8,000) people.

B. Commonality: There are questions of law and fact that are common to the members of the proposed Class. The predominant questions of law and fact in this litigation include, but are not limited to:

- i. Whether Buzz Nabers Dental Studio failed to properly sterilize dental instruments;
- ii. Whether Buzz Nabers Dental Studio failed to properly train employees on each step of the sterilization procedure;
- iii. Whether Buzz Nabers Dental Studio failed to properly supervise and monitor employees who were responsible for sterilizing dental instruments;
- iv. Whether Buzz Nabers Dental Studio failed to establish and implement appropriate and reliable policies and procedures to sterilize dental instruments;

- v. Whether Buzz Nabers Dental Studio established and implemented quality control procedures regarding the sterilization of its dental instruments;
- vi. Whether Buzz Nabers Dental Studio was negligent with respect to its sterilization of its dental instruments;
- vii. Whether Buzz Nabers Dental Studio's actions and the resulting injuries to the Proposed Class constitute negligent infliction of emotional distress;
- viii. Whether Buzz Nabers Dental Studio's actions and the resulting injuries to the class members constitute common law negligence;
- ix. The type and amount of relief to which the Plaintiff and class members are entitled.

C. Typicality: The claims of Plaintiffs are typical of the claims of the class in the following respects:

- i. Defendants' failure to properly sterilize its dental instruments was the direct and proximate result of a systematic and common course of conduct.
- ii. Defendants lacked protocols for dental bur sterilization, operatory disinfection and sterilization, and handpiece maintenance and sterilization.
- iii. Defendants reused disposable dental burs at both of their practice locations.
- iv. Defendants lacked protocols for documenting the sterilization of dental burs and the testing of its heat sterilization devices.
- v. Defendants failed to use a biological monitoring service to provide periodic spore testing for the autoclaves located at both of their practice locations.

Plaintiff's claims are based on the same nucleus of operative facts and legal theories as those of the other members of the proposed Class. As such, the claims of the Plaintiffs and those members of the Proposed Class are typical throughout the defined Class. Tenn. R. Civ. Pro. 23.01 (3). The proposed Class members' interests are aligned with the interests of the Plaintiffs named above such that their emotional trauma and medical expenses are due to Defendants' systematic failure to properly sterilize their dental instruments and the reuse of disposable dental instruments.

D. Adequacy of Representation: The named Plaintiffs will fairly and adequately protect the interest of the defined Proposed Class. Tenn. R. Civ. P. 23.01(4). The members of the Proposed Class do not have interests which are antagonistic to each other. The Plaintiffs shares common interests with the unnamed of this Proposed Class in pursuing the litigation, and Plaintiffs have retained competent legal counsel experienced in class actions and complex litigation. On information and belief, no other persons who fall within the Potential Class definition set forth above have initiated similar litigation, such that individual Proposed Class members do not wish to control the prosecution of separate actions. This class action does not present any unique management difficulties.

E. Maintaining the Class: This action is properly maintainable as a class action under Tenn. R. Civ. P. 23.01. because questions of law or fact common to the members of the Proposed Class predominate over any questions affecting only individual members. The questions of law and fact common to the Proposed Class predominate over any questions affecting only individual Proposed Class members, particularly because the focus of the litigation will be on the conduct of the Defendants. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, as the pursuit of thousands of individual lawsuits would not be economically feasible for individual class members and would cause a strain on judicial resources, yet each individual class member would be required to prove an identical set of facts in order to recover damages. The class action allows for all aggrieved parties to seek compensation regardless of the size of the claim or amount in controversy.

F. Failure to grant: Class Certification creates the potential for inconsistent or varying adjudications with respect to individual members of the Proposed Class, which would establish incompatible standards for the parties opposing the Proposed Class or adjudications with

respect to individual members of the Proposed Class, which would substantially impair or impeded their ability to protect their interests.

DEFENDANTS

11. The Defendant, Clarence L. “Buzz Nabers, Jr. DDS. d/b/a Dental Studio 304 and Dental Studio West (“Dr. Nabers”) is a dentist licensed by the Tennessee Board of Dentistry to practice dentistry in the State of Tennessee. Defendant Dr. Nabers owns and operates dental offices in Knoxville, Tennessee, including offices at: (1) 304 South Gay Street, Knoxville, TN 37902 (“Dental Studio 304”); and (2) 2061 Thunderhead Road, Knoxville, TN 37922 (“Dental Studio West”).

12. The Defendant, Teresa A. Maria Nabers (“Ms. Nabers”), was at all times material hereto a resident of the State of Tennessee and the Practice Manager at both Dental Studio 304 and Dental Studio West. At all times material hereto, Ms. Nabers supervised and directed employees at both of Dr. Nabers’ dental offices.

13. The Defendant, Dental Studio 304 is a business conducting business at 304 South Gay Street, Knoxville, TN 37902 (“Dental Studio 304”);

14. The Defendant Dental Studio West is a business conducting business at 2061 Thunderhead Road, Knoxville, TN 37922 (“Dental Studio West”).

JURISDICTION AND VENUE

15. The Defendants are subject to this Court's jurisdiction by virtue of their presence and activity in Knox County, Tennessee which is also the county in which the Plaintiffs’ injuries occurred. This is also a proper venue for all of the class members’ claims by virtue of the presence of Dr. Nabers’ dental offices in Knox County, Tennessee and the fact that it is believed that the Proposed Class members were all Tennessee residents at all times material to the allegations

contained in the Class Action Counts of this Complaint.

16. Plaintiffs are citizens of Tennessee, and the Plaintiff Class is comprised of residents of Tennessee and/or persons working in the State of Tennessee and the Defendants are individual residents of Tennessee and/or persons conducting business and practicing dentistry in the State of Tennessee.

17. At all times material hereto, the Defendants were doing business and in the State of Tennessee and all or part of the transactions which gave rise to this action took place in the State of Tennessee.

18. At all times material hereto, Dr. Nabers was practicing dentistry in the State of Tennessee.

19. Venue is proper in Knox County, Tennessee. The Defendants are subject to this Court's jurisdiction by virtue of their presence and activity in Knox County, which is also the county in which the Plaintiff's injuries occurred and where the injuries set out in the Class Action Counts occurred.

FACTUAL BACKGROUND

20. Plaintiff Gerald Witt had a dental procedure at Buzz Nabers Dental Studio on March 22, 2017. Due to Defendants' failure to properly sterilize its dental instruments, Plaintiff Witt may have been exposed to innumerable infectious diseases, many of which could be incurable and/or fatal.

21. Plaintiff M.T. had dental procedures at Buzz Nabers Dental Studio on May 3, 2108, June 5, 2018, November 2018, and June 2019. Due to Defendants' failure to properly sterilize its dental instruments, Plaintiff M.T. may have been exposed to innumerable infectious diseases, many of which could be incurable and/or fatal.

22. Plaintiff C.I. had dental procedures at Buzz Nabers Dental Studio on November and December 2018, as well as February and September 2019. Due to Defendants' failure to properly sterilize its dental instruments, Plaintiff C.I. may have been exposed to innumerable infectious diseases, many of which could be incurable and/or fatal.

23. In December 2019, Plaintiffs M.T. and C.I. received identical letters from Buzz Nabers Dental Studio notifying them that the dental instruments used during their dental procedures may not have been properly sterilized and questions have been raised regarding Buzz Nabers Dental Studio's sterilization techniques.¹ Plaintiff Witt has yet to receive a letter from Defendants

24. The dental instruments used during Plaintiffs' dental procedures, may not have been completely sterile.

25. The letters sent to Plaintiffs' M.T. and C. I. indicated that as a direct result of the Defendant Buzz Nabers Dental Studio's faulty sterilization of the dental instruments used, Plaintiffs may have been exposed to countless infectious diseases, including, without limitation, Hepatitis B, Hepatitis C and Human Immunodeficiency Virus ("HIV").

26. Learning of potential exposure to these and other diseases has caused Plaintiffs extreme emotional distress and trauma, which is and will be ongoing for months and years to come.

27. Plaintiffs will also be required to undergo medical testing and incur expenses related to that testing for months - or years - to come.

Hepatitis B

¹ On July 11, 2019, the Tennessee Board of Dentistry approved a Consent Order between the Division of Health-Related Boards of the Tennessee Department of Health and Dr. Nabers, in which Dr. Nabers stipulated that, among other violations of the Tennessee Dental Practice Act ("Act"), both of his dental practice locations had engaged in practices violating the Act involving the failure to properly clean, disinfect, and sterilize dental instruments. *In the Matter of: Clarence L. Nabers, Jr. DDS*, State of Tennessee Department of Health, Tennessee Board of Dentistry, Case No. 2018033521, *Consent Order* (July 11, 2019).

28. Hepatitis B is a liver infection caused by the hepatitis B virus. Hepatitis B can range from a mild illness with a short lifespan, to a serious, lifelong illness. Chronic Hepatitis B can cause serious health problems, including but not limited to liver damage, cirrhosis, liver cancer, and even death.

29. The Hepatitis B virus is spread when blood, semen, or another type of body fluid infected with the virus enters the body of a person who is not infected. One of the recognized means by which a person can become infected with the virus is through exposure to infected blood or other body fluids due to contact with medical dental equipment that has been previously used on an infected person and has not been properly sterilized.

30. A non-exhaustive list of symptoms of acute Hepatitis B include: fever; fatigue; loss of appetite; nausea; vomiting; abdominal pain; dark urine; clay-colored bowel movements; joint pain; and jaundice.

31. Symptoms of Hepatitis B often do not immediately manifest in the infected individual upon exposure. According to the Center for Disease Control, if symptoms occur, they begin an average of 90 days (or approximately three months) after exposure.

32. Many individuals who have acquired a Hepatitis B virus infection may not know they are infected, but they may still spread the virus to others.

33. Although some individuals infected with Hepatitis B may successfully treat the disease and clear the virus, many others will remain infected for life because they are unable to clear the virus from their bodies.

34. Chronic Hepatitis B can develop into serious disease resulting in long-term health problems. In 2016, there were at least 1,698 deaths related to the Hepatitis B virus reported to the Center for Disease Control, and this statistic likely underestimates the actual loss of lives.

35. According to the Center for Disease Control, people with chronic Hepatitis B should be monitored regularly by a doctor experienced in caring for people with Hepatitis B in order to check for signs of liver disease and evaluate for possible treatments, including medication.

36. Although not every person with chronic Hepatitis B will need to be on medication, once a person starts treatment, he or she will need to take medication for life.

37. For the wellbeing of the individual as well as the public, it is imperative that any individual who suspects a potential risk of exposure to the Hepatitis B virus undergo regular blood testing to determine the presence or absence of the disease.

Hepatitis C

38. Hepatitis C is a liver infection caused by the Hepatitis C virus.

39. Hepatitis C can range from a mild illness with a short lifespan to a serious, lifelong illness.

40. The Hepatitis C virus is most commonly spread when blood infected with the virus enters the body of a person who is not infected. One of the recognized means by which a person can become infected with the virus is through exposure to infected blood or other body fluids due to contact with medical dental equipment that has been previously used on an infected person and has not been properly sterilized.

41. Chronic Hepatitis C can cause serious health problems in the infected individual, including liver damage, cirrhosis, liver cancer, and even death.

42. A non-exhaustive list of symptoms of acute Hepatitis C include: fever; fatigue; loss of appetite; nausea; vomiting; abdominal pain; dark urine; clay-colored bowel movements; joint pain; and jaundice.

43. Many individuals who have acquired a Hepatitis C virus infection may not know they

are infected, but they may still spread the virus to others.

44. Chronic Hepatitis C can develop into serious disease resulting in long-term health problems. In 2017, there were at least 17,253 deaths related to the Hepatitis C virus reported to the Center for Disease Control, and this statistic likely underestimates the actual loss of lives.

45. According to the Center for Disease Control, people with chronic hepatitis B should be monitored regularly by a doctor experienced in caring for people with hepatitis B in order to check for signs of liver disease and evaluate for possible treatments if the infection should progress from acute to chronic in nature.

46. For the wellbeing of the individual as well as the public, it is imperative that any individual who suspects a potential risk of exposure to the Hepatitis C virus undergo regular blood testing to determine the presence or absence of the disease.

Human Immunodeficiency Virus (HIV)

47. HIV, the Human Immunodeficiency Virus, is the virus that causes Acquired Immunodeficiency Syndrome (“AIDS”).

48. The HIV virus spreads through certain body fluids that attack the human body’s immune system—specifically, the CD4 or “T” cells, which the immune system requires to combat infection. Left untreated, HIV reduces the number of CD4 / T-cells in the body.

49. Over time, the HIV virus weakens an affected individual’s immune system so that the body cannot fight off infection properly, making the individual more vulnerable to the development of various infections or cancers that take advantage of the body’s compromised condition.

50. Although HIV is most commonly transmitted from one affected individual to another through sexual contact, there are many other recognized means by which a person can become

infected with the virus, including exposure to infected blood due to contact with medical dental equipment that has been previously used on an infected person and have not been properly sterilized.

51. Unlike many other viruses, an individual affected with HIV cannot completely eliminate the presence of the virus, even though treatment. Once an individual acquires HIV, it remains with that person for life.

52. No effective cure currently exists for HIV. It can only be controlled through proper medical care, which most commonly includes antiretroviral therapy (ART).

53. For the wellbeing of the individual as well as the public, it is imperative that any individual who suspects a potential risk of exposure to the HIV virus undergo immediate and regular blood testing to determine the presence or absence of the disease as well as prevent the potential further transmission of the disease.

Upon Information and Belief, Over Eight thousand (8,000) Buzz Nabers Dental Studio Patients Were Exposed to Infectious Diseases

54. Plaintiffs are among more than Eight Thousand (8,000) dental patients of Buzz Nabers Dental Studio who were potentially exposed to Hepatitis B, Hepatitis C, HIV, and other infectious diseases due to Defendants' failure to properly sterilize their dental instruments.

55. Buzz Nabers Dental Studio sent letters to each of these dental patients that were identical or substantially similar to the letters it sent to Plaintiffs.

56. Multiple print and television news outlets also reported Buzz Nabers Dental Studio's failure to properly sterilize dental instruments, further notifying the more than Eight Thousand (8,000) other dental patients of their potential exposure to infectious diseases.

57. Like Plaintiffs, the other dental patients have and will undoubtedly suffer extreme emotional distress due to their exposure to infectious diseases.

58. Also like Plaintiffs, the other dental patients will incur medical testing and other expenses for months or years to come.

59. Defendants' failure to properly sterilize dental instruments was unreasonable, negligent, careless, reckless, and below the appropriate standard of care.

60. Defendants' wrongful acts are the direct and proximate result, without limitation, of its failures to properly train and monitor its employees, and its failures to establish and implement proper safety and sterilization policies and procedures.

61. The injuries sustained by Plaintiffs and the other dental patients were the direct and foreseeable consequences of Defendants' negligent acts.

COUNT I

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

62. Plaintiffs incorporate the allegations set forth in paragraphs 1-61 above as though set forth fully here.

63. Buzz Nabers Dental Studio performed dental and possibly other procedures involving dental instruments on the members of the Proposed Class from the period of approximately September 15, 2016 to September 15, 2019.

64. Buzz Nabers Dental Studio had a professional and legal duty to perform those procedures in a safe, sterile, reasonable, and professional manner.

65. Buzz Nabers Dental Studio breached those duties by using dental instruments that were not properly sterilized.

66. Buzz Nabers Dental Studio knew or should have known that by performing dental procedures on its patients using improperly sterilized dental instruments would potentially expose the patients to innumerable infectious diseases, including potentially incurable and fatal diseases,

resulting in severe emotional distress for Plaintiffs.

67. Buzz Nabers Dental Studio's actions constituted direct physical impact to Plaintiff and each member of the proposed Class.

68. As a direct and proximate result of Buzz Nabers Dental Studio's breaches of these duties, the members of the proposed Class were potentially exposed to innumerable infectious diseases, including potentially incurable and fatal diseases.

69. The members of the proposed Class each suffered extreme and serious emotional distress and trauma as the result of the negligent conduct of Buzz Nabers Dental Studio.

70. The injuries suffered by the members of the proposed Class were the direct and foreseeable consequences of Buzz Nabers Dental Studio's breaches of their professional and legal duties.

COUNT II NEGLIGENCE

71. Plaintiffs incorporate the allegations set forth in paragraphs 1-61 above as though set forth fully here.

72. Buzz Nabers Dental Studio performed dental and possibly other procedures involving dental instruments on the members of the proposed Class from the period of approximately September 15, 2016 to September 15, 2019.

73. Buzz Nabers Dental Studio had a professional and legal duty to perform those procedures in a safe, sterile, reasonable, and professional manner.

74. Buzz Nabers Dental Studio breached those duties by using dental instruments that may not have been properly sterilized.

75. As a direct and proximate result of Buzz Nabers Dental Studio's breaches of these duties, the members of the proposed Class were potentially exposed to innumerable infectious

diseases, including potentially incurable and fatal diseases.

76. The members of the proposed Class each suffered extreme and serious emotional distress and trauma, and will incur medical testing and other expenses as the result of the negligent conduct of Buzz Nabers Dental Studio.

77. The injuries suffered by the members of the proposed Class were the direct and foreseeable consequences of Buzz Nabers Dental Studio's breaches of their professional and legal duties.

WHEREFORE, the Plaintiffs, Gerald Witt, M.T., and C. I. on behalf of themselves and the proposed Class, respectfully request that the Court enter orders and/or judgments against the Defendants, and in favor of Plaintiffs and the proposed Class, in an amount that will fairly compensate them for those losses and damages they have, and will sustain, as a result of Defendant's wrongdoing and not less than fifty million dollars and no cents (\$50,000,000.00).

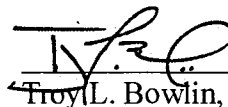
DEMAND FOR JURY TRIAL

Plaintiffs, Gerald Witt, M.T., and C. I. on their own behalf, and on behalf of the proposed Class members, demand a jury trial this action.

RESPECTFULLY SUBMITTED, this the **19th** day of **December**, 2019.

THE BOWLIN LAW FIRM P.C.

BY:



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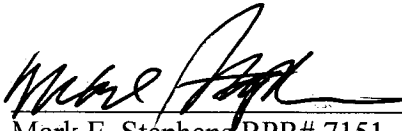
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