

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

JAMES CROWL, on Behalf of Himself and  
All Others Similarly Situated  
P.O. Box 8601  
Mansfield, Ohio 44906

and

GABRIEL WILLIAMS, on Behalf of  
Himself and All Others Similarly Situated  
67 East Maplewood Avenue  
Dayton, Ohio 45405

Plaintiffs

vs.

ALLCARE DENTAL AND DENTURES,  
INC. OF OHIO-BATES  
c/o Statutory Agent  
NATIONAL CORPORATE RESEARCH  
L.T.D.  
4568 Mayfield Road, Suite 213  
Cleveland, Ohio 44121

and

ALLCARE DENTAL & DENTURES  
OF N.Y., P.C.  
P.O. Box 316  
Williamsville, New York 14231

and

ALLCARE DENTAL MANAGEMENT,  
L.L.C.  
P.O. Box 316  
Williamsville, New York 14231  
c/o Statutory Agent  
NATIONAL CORPORATE RESEARCH  
L.T.D.  
4568 Mayfield Road, Suite 213  
Cleveland, Ohio 44121

) CASE NO.

) JUDGE

) **COMPLAINT – CLASS ACTION**

) ***[Trial By Jury Is Hereby Requested]***

and )  
 )  
 ROBERT BATES, D.D.S., )  
 P.O. Box 316 )  
 Williamsville, New York 14231 )  
 )  
 Defendants )  
 \_\_\_\_\_ )

Plaintiffs James Crowl and Gabriel Williams (collectively, "Plaintiffs"), by and through counsel, bring this Class Action on behalf of themselves individually and on behalf of all others similarly situated against the above-captioned Defendants, and allege and aver as follows:

**INTRODUCTION**

1. Plaintiffs bring this Class Action individually and on behalf of the Classes defined herein, against Allcare Dental and Dentures, Inc. of Ohio-Bates, Allcare Dental and Dentures of N.Y., P.C., and Allcare Dental Management, L.L.C. (collectively "Allcare"), and Robert Bates, D.D.S. (together with Allcare, "Defendants") to obtain relief, including, among other things, damages and injunctive relief.

2. This action is brought to remedy violations of law in connection with Defendants' demand and acceptance of consumer patients' payments for dental services and/or equipment that Defendants' have not provided and have refused to provide, and for Defendants' wrongful retention of such payments and/or equipment.

3. Plaintiffs assert claims for breach of contract, conversion, and unjust enrichment.

**PARTIES**

4. At all times relevant, Plaintiff James Crowl was and is a citizen of the State of Ohio residing in Mansfield. Plaintiff Crowl entered into a contract and/or agreement with Allcare whereby he paid for specific dental services and/or equipment pursuant to an individualized Treatment Plan. Allcare failed to provide the services and/or equipment for which Plaintiff Crowl paid, and has refused to refund Plaintiff Crowl his money.

5. At all times relevant, Plaintiff Gabriel Williams was and is a citizen of the State of Ohio residing in Dayton. Plaintiff Williams entered into a contract and/or agreement with Allcare whereby he paid for specific dental services and/or equipment pursuant to an individualized Treatment Plan. Allcare failed to provide the services and/or equipment for which Plaintiff Williams paid, and has refused to refund Plaintiff Williams his money.

6. At all times relevant, Defendant Allcare Dental and Dentures, Inc. of Ohio-Bates was and is an Ohio corporation with its principal place of business located in Boardman, Ohio in the Northern District of Ohio. On information and belief, Defendant Allcare Dental and Dentures, Inc. of Ohio-Bates provided dental services and products/equipment at several locations located throughout the Northern District of Ohio.

7. At all times relevant, Defendant Allcare Dental and Dentures of N.Y., P.C., was and is a New York corporation with its principal place of business located in Williamsville, New York. On information and belief, Defendant Allcare Dental and Dentures of N.Y., P.C. provided dental services and products/equipment at several

locations throughout the country, including Illinois, Indiana, Iowa, Massachusetts, Michigan, New Hampshire, New York, North Dakota, Nebraska, Ohio, Pennsylvania, Tennessee, West Virginia, and Wisconsin. At all times relevant, Defendant Allcare Dental and Dentures of N.Y., P.C. transacted business in the State of Ohio within the Northern District of Ohio and/or contracted to supply services and/or goods in the State of Ohio within the Northern District of Ohio and/or regularly solicited business in the State of Ohio within the Northern District of Ohio and/or engaged in other persistent courses of action or derived substantial revenue from goods used and/or services rendered in the state of Ohio within the Northern District of Ohio.

8. At all times relevant, Defendant Allcare Dental Management, L.L.C. was and is a Pennsylvania corporation with its principal place of business located in Williamsville, New York. On information and belief, Defendant Allcare Dental Management, L.L.C. provided dental services and products/equipment at several locations throughout the country, including Illinois, Indiana, Iowa, Massachusetts, Michigan, New Hampshire, New York, North Dakota, Nebraska, Ohio, Pennsylvania, Tennessee, West Virginia, and Wisconsin. At all times relevant, Defendant Allcare Dental Management, L.L.C. transacted business in the State of Ohio within the Northern District of Ohio and/or contracted to supply services and/or goods in the State of Ohio within the Northern District of Ohio and/or regularly solicited business in the State of Ohio within the Northern District of Ohio and/or engaged in other persistent courses of action or derived substantial revenue from goods used and/or services rendered in the state of Ohio within the Northern District of Ohio.

9. On Information and belief, at all times relevant, Defendant Robert Bates, D.D.S. was and is the President, Chairman, Chief Executive Officer and/or Owner of Allcare residing in the State of New York.

### **JURISDICTION AND VENUE**

10. This Court has subject matter jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2), because, on information and belief, the amount in controversy exceeds \$5,000,000.00, exclusive of interests and costs, and this is a class action in which at least one Plaintiff's citizenship is diverse from at least one of the Defendants' citizenship.

11. Venue is proper in this judicial district under 28 U.S.C. § 1391, because at least one of the Defendants is domiciled in the Northern District of Ohio and at all times relevant, Defendants did substantial business throughout this District and a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this District, and because Defendants are authorized to conduct business in this District and have intentionally availed themselves of the laws and markets within this District through the promotion, advertising, and selling of its products and services, including those that form the basis of this Complaint, throughout this judicial District.

### **FACTS COMMON TO ALL CAUSES OF ACTION**

12. At all times relevant, Allcare held itself out to the public as a reputable, national provider of low-cost dental services and equipment.

13. At all times relevant, Defendants provided dental services and/or equipment at Allcare's several locations in Illinois, Indiana, Iowa, Massachusetts,

Michigan, New Hampshire, New York, North Dakota, Nebraska, Ohio, Pennsylvania, Tennessee, West Virginia, and Wisconsin.

14. Plaintiffs and the putative Class members entered into contractual arrangements and/or agreements, whereby Plaintiffs and the putative Class members made payments, ranging from hundreds to thousands of dollars, to Allcare for specific dental services and/or equipment set forth in individualized Treatment Plans.

15. Allcare demanded, accepted and retained payments for specific dental services and/or equipment from Plaintiffs and the putative Class members.

16. On information and belief, Defendants continued to demand, accept and retain payments from Plaintiffs and the putative Class members for future services and/or equipment despite knowing that Allcare would not render those services and/or equipment.

17. In or about late-December 2010, and early-January 2011, Defendants, unilaterally and without notice or explanation to Plaintiffs or the putative Class members, closed each and every one of Allcare's locations throughout the country.

18. By letter via a website, Defendants directed Allcare customers seeking dental services to locate another dentist at the customer's expense.

19. Defendants have refused and continue to refuse to provide Plaintiffs and the putative Class members with the services and/or equipment for which Plaintiffs and the putative Class members paid.

20. Defendants have refused and continue to refuse to refund Plaintiffs and the putative Class members' the payments made for services and/or equipment that has not been rendered by Defendants.

**CLASS ALLEGATIONS**

21. Plaintiffs bring this action on behalf of themselves individually and on behalf of all others similarly situated, pursuant to Federal Rule of Civil Procedure 23(b)(2) and 23(b)(3). Plaintiffs seek certification of the Class defined herein under Federal Civil Rules 23(b)(2) and 23(b)(3).

22. Plaintiffs seek to represent the following Classes:

- a) All persons in Ohio who have made payments to Allcare for dental services and/or equipment that has not been rendered or provided (“Ohio Class”); and
- b) All persons in Illinois, Indiana, Iowa, Massachusetts, Michigan, New Hampshire, New York, North Dakota, Nebraska, Pennsylvania, Tennessee, West Virginia, and Wisconsin who have made payments to Allcare for dental services and/or equipment that has not been rendered or provided (“National Class”).

23. Subject to additional information obtained through further investigation and discovery, the foregoing definitions of the Classes may be expanded or narrowed by amendment or amended complaint. Specifically excluded from the proposed Classes is Allcare, Defendant Bates, Allcare officers, directors, agents, trustees, affiliates, trusts, representatives, employees, principals, servants, partners, joint venturers, or entities controlled by it, and its heirs, successors, or other persons or entities related to or affiliated with Defendants and/or their officers and/or directors, or any of them, any Judge assigned to this action, and any member of the Judge's immediate family.

24. **Numerosity/Impracticability of Joinder:** The members of the Classes are so numerous that joinder of all members would be impracticable. The proposed Classes include thousands of members. The precise numbers of members can be ascertained through discovery, which will include Allcare's sales, service, and other records.

25. **Commonality and Predominance:** There are common questions of law and fact that predominate over any questions affecting individual members of the Classes. The common legal and factual questions, include, but are not limited to, the following:

- a) Whether Allcare breached its contracts and/or agreements to provide dental services and/or equipment by demanding and collecting advance payments and thereafter refusing to provide services and/or equipment for which Plaintiffs and the putative Class members' paid;
- b) Whether Defendants have been unjustly enriched by accepting and retaining payment for services and/or equipment that they have not provided and refused to refund;
- c) Whether Allcare materially misrepresented its ability to provide the services and/or equipment for which it demanded prepayment by omitting and concealing material facts from its communications and disclosures to customers;



- d) Whether Allcare has engaged in unfair and deceptive methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in connection with the sale of its services and/or equipment;
- e) Whether Defendants have wrongfully exercised dominion over property to the exclusion of the rights of the owners by accepting payment for services and/or equipment and thereafter refusing to provide the services and/or equipment or return the payments;
- f) Whether as a result of Defendants' conduct, Plaintiffs and the putative Class members have suffered damages; and if so, the appropriate amount thereof; and
- g) Whether as a result of Defendants' alleged misconduct, Plaintiffs and the putative Class members are entitled to equitable relief and/or other relief, and if so, the nature of such relief.

26. **Typicality**: The representative Plaintiffs' claims are typical of the claims of the members of the Classes. Plaintiffs and all putative Class members have been injured by the same practices of Defendants. Plaintiffs' claims arise from the same practices and course of conduct that give rise to the claims of the putative Class members and are based on the same legal theories.

27. **Adequacy of Representation**: Plaintiffs are representatives who will fully and adequately assert and protect the interests of the Classes, and have retained class

counsel who are experienced and qualified in litigating class actions. Neither Plaintiffs nor their attorneys have any interests contrary to or conflicting with the Classes.

28. **Superiority**: A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of the Class members is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the Classes are substantial, the individual damages incurred by each putative Class member are too small to warrant the expense of individual suits. The likelihood of individual Class members prosecuting their own separate claims is remote, and even if every putative Class member could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases. Further, individual putative Class members do not have a significant interest in individually controlling the prosecution of separate actions, and individual actions would also result in varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and the court system because of the multiple trials of the same factual and legal issues. Plaintiffs know of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action. In addition, Defendants have acted or refused to act on grounds generally applicable to the Classes and, as such, final injunctive relief or corresponding declaratory relief with regard to the members of the Classes as a whole is appropriate.

29. Plaintiffs do not anticipate any difficulty in the management of this litigation.

30. Defendants have access to identifying information for the Class members, which may be used for the purpose of providing notice of the pendency of this action.

**FIRST CAUSE OF ACTION**  
**(Breach of Contract)**

31. Plaintiffs incorporate by reference the allegations contained in all preceding paragraphs of this Complaint as though set forth fully herein.

32. Plaintiffs assert this cause of action on behalf of themselves individually and on behalf of all other members of the Classes.

33. Plaintiffs and the putative Class members entered into an express and/or implied agreement with Allcare, whereby the Plaintiffs and Class members agreed to make advance payments for specific dental services and/or equipment pursuant to individualized Treatment Plans, and Allcare, in return, agreed to provide those specific services and/or equipment.

34. As consideration, Plaintiffs and the Class members made monetary payments to Allcare, in return for which Allcare was to provide services and equipment.

35. Plaintiffs and the putative Class members have performed or were performing all terms of the agreement by making payments as scheduled by the agreement.

36. Allcare breached the agreement by unilaterally, and without notice or explanation to Plaintiffs or the putative Class members, closing its offices and thereby failing to provide the contracted for services and/or equipment.

37. Further, in all contracts there is an implied covenant of good faith and fair dealing that no party will do anything that will have the effect of impairing, destroying, or injuring the rights of the other party to receive the benefits of their agreement. As alleged herein, Defendants engaged in objectively unreasonable conduct and breached the covenant of good faith and fair dealing.

38. As a direct and proximate result of Defendants' breach, Plaintiffs and the putative Class members have suffered damages in liquidated, discernible amounts.

**SECOND CAUSE OF ACTION**  
**(Conversion)**

39. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs of the Complaint as if fully set forth herein.

40. Defendants demanded, accepted and retained funds, in the form of advance payments, from Plaintiffs and the putative Class members for services and/or equipment with the intent of exercising dominion over and depriving them of possession of these funds and/or equipment.

41. Without any legal right whatsoever, Defendants continue to exercise dominion over funds paid by Plaintiffs and the Class members and to the equipment rightfully purchased by Plaintiffs and Class members.

42. The payments made by Plaintiffs and the putative Class members and/or equipment purchased by Plaintiffs and the Class members are specific and identifiable according to Allcare's own business records.

43. Plaintiffs and the putative Class members have a property right to these funds and/or equipment.

44. Plaintiffs and the putative Class members have demanded the return of their property through numerous channels, but Defendants have refused to return the Plaintiffs' and Class members' property or funds.

45. Defendants are obligated as a matter of law to remit these unearned funds and/or equipment to Plaintiffs and the putative Class members.

46. As a direct and proximate result of Defendants' continuing course of conduct, Plaintiffs and Class members have sustained damages.

**THIRD CAUSE OF ACTION**  
**(Unjust Enrichment)**

47. Plaintiffs incorporate by reference the allegations contained in all preceding paragraphs of this Complaint as though set forth fully herein.

48. This Claim is asserted by Plaintiffs on behalf of themselves individually and on behalf of the members of the Classes, to the extent that the breach of contract claim does not govern all of Plaintiffs and Class members' claims or there is any determination that the Plaintiffs or other members of the Class do not have standing to assert any contractual claims against Allcare because of any alleged absence of contractual privity or otherwise.

49. Defendants have been unjustly enriched by the advance payments for dental services and/or equipment made by Plaintiffs and the members of the Classes.

50. Plaintiffs and the members of the Classes unknowingly conferred a benefit on Defendants of which Defendants had knowledge, since Defendants were aware of its impending nationwide closure of all locations, but failed to disclose this knowledge and misled the Plaintiffs and the other members of the Classes regarding the status of the payment and prospect of providing services and equipment while profiting from this deception.

51. The circumstances are such that it would be inequitable, unconscionable, and unjust to permit Defendants to retain the benefit of profits that they unfairly obtained from Plaintiffs and the other members of the Classes.

52. Plaintiffs and the other members of the Classes, having been damaged by Defendants' misconduct, are entitled to restitution of, disgorgement of, and/or the imposition of a constructive trust upon all profits, benefits, and other compensation obtained by Defendants from their deceptive, misleading, and unlawful conduct.

**REQUEST FOR RELIEF**

Plaintiffs, individually and on behalf of all others similarly situated, and the Ohio Class and the National Class, pray for judgment against Defendants, jointly and severally, as follows:

- a) For an order certifying the Ohio Class under Federal Rule of Civil Procedure 23(b)(2) and 23(b)(3), and appointing Plaintiffs as representatives of the Ohio Class, and appointing the lawyers and law firm representing Plaintiffs as counsel for the Ohio Class;
- b) For an order certifying the National Class under Federal Rule of Civil Procedure 23(b)(2) and 23(b)(3), and appointing Plaintiffs as representatives of the National Class, and appointing the lawyers and law firm representing Plaintiffs as counsel for the National Class;
- c) For all recoverable compensatory, statutory, and other damages sustained by Plaintiffs and the Classes;
- d) For costs;
- e) For both pre-judgment and post-judgment interest on any amounts awarded;
- f) For appropriate injunctive and declaratory relief;

- g) For payment of attorneys' fees and expert fees as may be allowable under applicable law; and
- h) For such other relief as the Court may deem just and proper.

**JURY DEMAND**

Plaintiffs, individually, and in their capacity as Class Representatives on behalf of the aforescribed Classes, hereby demand a trial by jury.

s/ Nicholas A. DiCello  
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NICHOLAS A. DICELLO (0075745)  
***Counsel for Plaintiffs***

OF COUNSEL:

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