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Attorneys for Defendant, Families Thru International Adoption, Inc.

MASHA ALLEN, by her
Guardian ad Litem Timothy J. Sloan
Johnstown, PA 15907

Plaintiff (s)

v.

FAMILIES THRU INTERNATIONAL
ADOPTION, INC.

400 Bentee Wes Court
Evansville, IN 47715

and

CHILD PROMISE, INC. (formerly known as
Reaching Out Through International Adoption,
Inc.) *and* REACHING OUT THROUGH
INTERNATIONAL ADOPTION, INC.

c/o Joseph P. Hudrick, Registered Agent
4 Ridge Road
Southampton, NJ 08088

and

JEANNENE SMITH
312 South Lincoln Avenue
Cherry Hill, NJ 08002

Defendants

and

FRIENDS THRU INTERNATIONAL
ADOPTION, INC.

Third Party Plaintiff

v.

ADAGIO HEALTH, INC. (formerly known as
Family Health Council, Inc. and trading as
Family Adoption Center)
960 Penn Avenue, Suite 600
Pittsburgh, PA 15222

Third Party Defendant

**UNITED STATES
DISTRICT COURT**

DISTRICT OF NEW JERSEY

CIVIL ACTION NO. 08cv4614(JHR)

**ANSWER OF DEFENDANT,
FAMILIES THRU INTERNATIONAL
ADOPTION, INC. TO PLAINTIFF'S
AMENDED COMPLAINT WITH
CROSSCLAIMS**

Defendant, FAMILIES THRU INTERNATIONAL ADOPTION, INC., by of Answer to plaintiff's Complaint says:

FACTS

1. Admitted.

2. Admitted.

3. Admitted that FTIA acts through its agents, servants, and/or employees, but denies that any acts complained of in this Complaint were performed by any such agents, servants, and/or employees of FTIA.

4. Admitted.

5. Admitted.

6. Neither admitted nor denied as this defendant is without sufficient information in order to form a belief, and plaintiff is left to her proofs.

7. Neither admitted nor denied as this defendant is without sufficient information in order to form a belief, and plaintiff is left to her proofs.

8. Admitted.

9. Admitted.

10. Admitted that at one time Jeannene Smith was an agent of FTIA, but denied that she was an agent, servant, and/or employee of FTIA at the time of the acts complained of in plaintiff's Complaint were alleged to have occurred. The balance of the allegations of this paragraph are neither admitted nor denied, and plaintiff is left to her proofs.

11. Admitted.

12. Admitted.

13. Neither admitted nor denied as this defendant is without sufficient information in order to form a belief, and plaintiff is left to her proofs.

14. Admitted that beginning in or about the summer of 1996 defendant Smith was an independent contractor for FTIA to provide education and information to the public to raise awareness of international adoption and of FTIA. The balance of the allegations are neither admitted nor denied as defendant is without sufficient information in order to for a belief, and plaintiff is left to her proofs.

15. Admitted that an application was submitted to Jeannene Smith. The balance of the allegations are neither admitted nor denied as defendant is without sufficient information in order to for a belief, and plaintiff is left to her proofs.

16. Neither admitted nor denied as this defendant is without sufficient information in order to form a belief, and plaintiff is left to her proofs. The application speaks for itself.

17. Admitted that Mancuso requested a homestudy be prepared by Adagio Health, Inc. (formerly known as Family Adoption Center) in or about August or September of 1997.

18. Neither admitted nor denied as this calls for a legal conclusion. Further, the aforesaid statutes speak for themselves.

19. No answer is required. The statute speaks for itself.

20. No answer is required. The statute speaks for itself.

21. Denied. The homestudy prepared by Adagio speaks for itself, and the conclusions advanced by the plaintiff are neither admitted nor denied and plaintiff is left to her proofs.

22. Admitted.

23. Admitted.

24. Admitted.

25. Denied that there were specific "red flags" as alleged by plaintiff. The balance of plaintiff's allegations with regard to FTIA are denied.

26. Admitted that Mancuso forwarded a letter to Jeannene Smith. The balance of the allegations of this paragraph are either denied or are neither admitted nor denied as this defendant is without sufficient information in order to form a belief, and plaintiff is left to her proofs.

27. Denied as to this defendant. The balance of the allegations of this paragraph are neither admitted nor denied as this defendant is without sufficient information in order to form a belief, and plaintiff is left to her proofs.

28. Denied that there were "red flags" but in any event denied as to this defendant.

29. Denied as to this defendant.

30. Admitted that FTIA was not the agency that placed the minor child with Mancuso. The balance of the allegations in this paragraph are denied.

31. Denied as stated. Admitted that the independent contractor relationship between defendant Smith and FTIA was terminated in or about January or February of 1998. Admitted that Smith formed ROTIA.

32. Neither admitted nor denied as this defendant is without sufficient information in order to form a belief, and plaintiff is left to her proofs.

33. Neither admitted nor denied as this defendant is without sufficient information in order to form a belief, and plaintiff is left to her proofs.

34. Neither admitted nor denied as this defendant is without sufficient information in order to form a belief, and plaintiff is left to her proofs.

35. Admitted.

36. Neither admitted nor denied as this defendant is without sufficient information in order to form a belief, and plaintiff is left to her proofs.

37. Neither admitted nor denied as this defendant is without sufficient information in order to form a belief, and plaintiff is left to her proofs.

38. Neither admitted nor denied as this defendant is without sufficient information in order to form a belief, and plaintiff is left to her proofs.

39. Neither admitted nor denied as this defendant is without sufficient information in order to form a belief, and plaintiff is left to her proofs.

40. Neither admitted nor denied as this defendant is without sufficient information in order to form a belief, and plaintiff is left to her proofs.

41. Neither admitted nor denied as this defendant is without sufficient information in order to form a belief, and plaintiff is left to her proofs.

42. Neither admitted nor denied as this defendant is without sufficient information in order to form a belief, and plaintiff is left to her proofs.

43. Neither admitted nor denied as this defendant is without sufficient information in order to form a belief, and plaintiff is left to her proofs.

44. Denied.

45. Neither admitted nor denied as this defendant is without sufficient information in order to form a belief, and plaintiff is left to her proofs.

46. Neither admitted nor denied as this defendant is without sufficient information in order to form a belief, and plaintiff is left to her proofs.

47. Neither admitted nor denied as this defendant is without sufficient information in order to form a belief, and plaintiff is left to her proofs.

48. Neither admitted nor denied as this defendant is without sufficient information in order to form a belief, and plaintiff is left to her proofs.

49. Neither admitted nor denied as this defendant is without sufficient information in order to form a belief, and plaintiff is left to her proofs.

COUNT I

Minor Plaintiff v. FTIA

50. Defendant, FTIA, hereby repeats and incorporates its answers to Paragraphs 1 through 49 as it set forth herein at length.

51. (a-q) Denied.

52. Denied that this defendant was negligent. The balance of the allegations are neither admitted nor denied as this defendant is without sufficient information in order to form a belief, and plaintiff is left to her proofs.

53. Denied that this defendant was negligent. The balance of the allegations are neither admitted nor denied as this defendant is without sufficient information in order to form a belief, and plaintiff is left to her proofs.

54. Denied that this defendant was negligent. The balance of the allegations are neither admitted nor denied as this defendant is without sufficient information in order to form a belief, and

plaintiff is left to her proofs.

55. Denied that this defendant was negligent. The balance of the allegations are neither admitted nor denied as this defendant is without sufficient information in order to form a belief, and plaintiff is left to her proofs.

COUNT II

Minor Plaintiff v. Child Promise, Inc.

56.-61. The allegations in Count II, Paragraph 56 through 61, are not addressed to FTIA and as such they are neither admitted nor denied as this defendant is without sufficient information in order to form a belief, and plaintiff is left to her proofs.

COUNT III

Minor Plaintiff v. ROTIA

62.-67. The allegations in Count III, Paragraph 62 through 67, are not addressed to FTIA and as such they are neither admitted nor denied as this defendant is without sufficient information in order to form a belief, and plaintiff is left to her proofs.

COUNT IV

Minor Plaintiff v. Jeannene Smith

68.-73. The allegations in Count IV, Paragraph 68 through 73, are not addressed to FTIA and as such they are neither admitted nor denied as this defendant is without sufficient information in order to form a belief, and plaintiff is left to her proofs.

COUNT V

Minor Plaintiff v. Adagio

74.-82. The allegations in Count V, Paragraph 74 through 82, are not addressed to FTIA and as such they are neither admitted nor denied as this defendant is without sufficient information in order to form a belief, and plaintiff is left to her proofs.

COUNT VI

Minor Plaintiff v. Defendants FTIA, Child Promise, ROTIA, and Smith

83. Defendant, FTIA, hereby repeats and incorporates its answers to Paragraph 1-83 as if fully set forth here and at length.

84. Neither admitted nor denied as this calls for a legal conclusion. The statute speaks for itself.

85. Neither admitted nor denied as this calls for a legal conclusion. The statute speaks for itself.

86. Neither admitted nor denied as this calls for a legal conclusion. The statute speaks for itself.

87. Neither admitted nor denied as this defendant is without sufficient information in order to form a belief, and plaintiff is left to her proofs.

88. Neither admitted nor denied as this defendant is without sufficient information in order to form a belief, and plaintiff is left to her proofs.

89. Denied as to defendant FTIA.

90. Denied.

91. Denied as to defendant FTIA.

92. Denied as to defendant FTIA.

93. Denied as to defendant FTIA

COUNT VII

Minor Plaintiff v. Adagio

94.-102. The allegations in COUNT VII, Paragraph 94-107, are not addressed to FTIA and as such they are neither admitted nor denied as this defendant is without sufficient information in order to form a belief, and plaintiff is left to her proofs.

COUNT VIII (Improperly designated as COUNT VI)

Minor Plaintiff v. All Defendants

103. Defendant, FTIA, hereby repeats and incorporates its answers to paragraphs 1-93, as if fully set forth here and at length.

104. Denied as to defendant FTIA.

AFFIRMATIVE DEFENSES

1. Plaintiff fails to state a claim against FTIA for which relief can be granted.
2. Plaintiff's Complaint is barred by the applicable statute of limitations and/or the Entire Controversy Doctrine.
3. This Court lacks jurisdiction over this defendant, FTIA.
4. This Court is the improper venue for the institution of this action and should therefore be dismissed.

5. The plaintiff has failed to join an indispensable party and/or indispensable parties to this action who were responsible for damages, if any, to the plaintiff, and as such plaintiff's Complaint should be dismissed.

6. Damages, if any, sustained by the plaintiff were caused or contributed to by third parties over whom this defendant had no control.

7. FTIA, a licensed non-profit charitable organization, is not liable for damages as it is entitled to the protection of Charitable Immunity under New Jersey statutes as made and provided.

8. This defendant, FTIA, never approved the adoption plan for the adopting father, Mancuso.

9. This defendant, FTIA, never placed the child with the adopting father, Mancuso.

10. This defendant, FTIA, never approved nor forwarded the dossier of the adopting father, Mancuso, to Russia for an adoptive match.

11. This defendant, FTIA, had no information or knowledge that the adopting father, Mancuso, ever had a child placed with him for purposes of adoption, nor did this defendant ever participate in any such adoption.

12. Defendant, Jeannene Smith, was never an employee of FTIA, nor was she an agent or servant of this defendant, FTIA, when any and all acts as complained of in plaintiff's Complaint were alleged to have occurred.

13. This defendant, FTIA, was not guilty of any negligence nor did it breach any duty to the plaintiff.

14. Any claims against this answering defendant are barred, and/or should be mitigated by the principles of contributory and/or comparative negligence.

15. Negligence, if any, on the part of this answering defendant was not the proximate cause of any injuries which may have been sustained by the plaintiff.

16. Plaintiff's claims are barred or limited by the equitable doctrines of laches, unclean hands, and/or waiver.

17. Plaintiff's claims, if any, are barred by the doctrine and/or defense of intervening and/or superceding cause.

18. This defendant asserts that if damages are found, defendant is entitled to a credit or setoff with respect to all collateral payments to plaintiff for injuries or damages arising from the damages alleged by the plaintiff.

19. This Court lacks *in personam* jurisdiction over the answering defendant, and defendant reserves the right to quash service of the Summons and Complaint.

20. Plaintiff has already been compensated for the damages from other third parties and as such there can be no further monetary recovery.

21. Damages, if any, assessed against this defendant are subject to reduction by way of comparative negligence of the other defendants named in this lawsuit.

22. Answering defendant, FTIA, hereby reserves the right to interpose such other defenses and objections as continuing investigation and discovery may disclose.

23. Plaintiff's complaint is procedurally and substantively defective as it does not set forth the basis for federal jurisdiction, specifically lacking allegations as to diversity of citizenship pursuant to 28 U.S.C. Section 1332, that the amount in controversy is in excess of \$75,000.00, and how venue is properly placed in the District Court of New Jersey pursuant to 28 U.S.C. Section 1391, and as a result thereof this filing must be dismissed.

WHEREFORE, defendant, FAMILIES THRU INTERNATIONAL ADOPTION, INC., hereby demands judgment in its favor and against the plaintiff, dismissing the Complaint, plus attorneys fees, and costs of suit.

COFSKY & ZEIDMAN, LLC

BY:

/s/

DONALD C. COFSKY, ESQUIRE
Attorney for Defendant, Families Thru
International Adoption, Inc.

DATED: 6/2/10

CROSSCLAIM

Answering defendant, FTIA, by way of crossclaim against all co-defendants, Child Promise, Inc. (formerly known as Reaching Out Through International Adoption, Inc.), Reaching Out Through International Adoption, Inc., Jeannene Smith, and Adagio, says:

FIRST COUNT

Without admitting any liability herein, answering defendant, FTIA, asserts that should liability be found against it, FTIA is entitled to and hereby claims contribution from the aforementioned co-defendants, pursuant to the provisions of the New Jersey Joint Tort Feasors Contribution Act, N.J.S.A. 2A:53a-1, et. seq., and the Comparative Negligence Act, N.J.S.A. 2A:15-5.1, et. seq., and N.J.S.A. 59:9-4, as well as any and all other statutes as made and provided whether in New Jersey or any other jurisdiction.

SECOND COUNT

While answering defendant, FTIA, denies that it was negligent in any regard, answering defendant asserts that its negligence, if any, was passive, vicarious, and/or imputed, whereas the negligence of the aforementioned co-defendants was active and primary, and answering defendant is entitled to indemnity at common law, or contract from said co-defendants.

WHEREFORE, answering defendant, FAMILIES THRU INTERNATIONAL ADOPTION, INC., demands judgment by way of indemnity and/or contribution against the co-defendants, Child Promise, Inc. (formerly known as Reaching Out Through International Adoption, Inc.) Reaching Out Through International Adoption, Inc.), Jeannene Smith, and Adagio, for any sums judged due and owing to plaintiff herein.

REPLY TO ALL CROSSCLAIMS

Defendant, FTIA, hereby denies all allegations contained in the cross claims, if any, of any other party.

COFSKY & ZEIDMAN, LLC

BY:


/s/

DONALD C. COFSKY, ESQUIRE
Attorney for Defendant, Families Thru
International Adoption, Inc.

DATED: 6/8/10

CERTIFICATE OF SERVICE

Donald C. Cofsky, Esquire, of full age, hereby certifies that the within Answer and Crossclaims, has been electronically filed with the Clerk of the United States District Court for the District of New Jersey within the time and in the manner prescribed by the Rules of Court and as extended by agreement of plaintiff's counsel, and that a copy of the within pleading has been served this date by regular mail, postage prepaid, upon:

JEANNENE SMITH
312 South Lincoln Avenue
Cherry Hill, NJ 08002

ALAN J. BARATZ, ESQUIRE
BRAD WEINTRAUB, ESQUIRE
629 Parsippany Road
Parsippany, NJ 07054

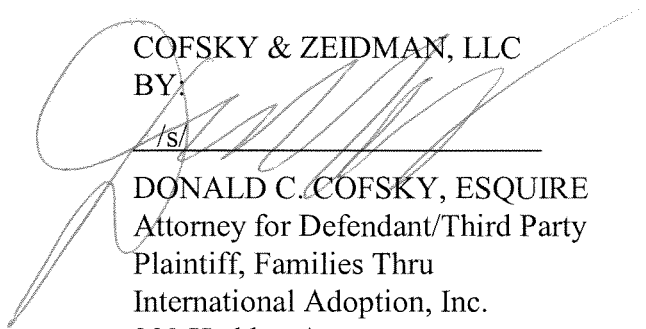
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REACHING OUT THROUGH INTERNATIONAL
ADOPTION, INC.
c/o Joseph P. Hudrick, Registered Agent
4 Ridge Road
Southampton, NJ 08088

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment as per the Rules of Court.

Dated: 6/8/10

COFSKY & ZEIDMAN, LLC
BY: 
/s/ _____
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Attorney for Defendant/Third Party
Plaintiff, Families Thru
International Adoption, Inc.
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