

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 11th day of March, two thousand nineteen.

Present:

Robert D. Sack,
Reena Raggi,
Susan L. Carney,
Circuit Judges.

Scott Maione, Tasha Ostler,

Plaintiffs-Appellants,

v.

18-3205

Medical Answering Services, LLC, et al.,

Defendants-Appellees.

Appellants, pro se, move for leave to proceed in forma pauperis, appointment of counsel, and an extension of time. Upon due consideration, it is hereby ORDERED that the motions are DENIED and the appeal is DISMISSED because it "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see also* 28 U.S.C. § 1915(e).

However, dismissal of any claims brought on behalf of Appellants' minor children should have been without prejudice. *Berrios v. New York City Housing Auth.*, 564 F.3d 130, 134-35 (2d Cir. 2009). Accordingly, we REMAND for the district court to modify its judgment to reflect that any claims brought on behalf of the children are dismissed without prejudice.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

Catherine O'Hagan Wolfe
