

STATE OF NORTH CAROLINA  
GUILFORD COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
15 CVS 7444

AMANDA BENNETT and ERNEST  
BROOKS on behalf of themselves and all  
others similarly situated,

Plaintiffs,

v.

COMMERCIAL COLLEGE OF  
ASHEBORO, INC. d/b/a BROOKSTONE  
COLLEGE OF BUSINESS, F. JACK  
HENDERSON III, and MARLENE  
HENDERSON,

Defendants.

**ORDER**

1. **THIS MATTER** is before the Court upon the Stipulation for Order of Dismissal (“Stipulated Dismissal”) filed by Plaintiffs and consented to by Defendants in the above-captioned case.

2. Plaintiffs’ Amended Complaint asserted class action claims against Defendants. With a decision on Defendants’ Partial Motion to Dismiss pending, the parties engaged in a mediated settlement conference, reached a settlement on all issues, and filed the Stipulated Dismissal, purporting to dismiss all claims with prejudice. This arrangement is different from most pre-certification settlements of class actions in the Business Court; often, the Court certifies a class for settlement purposes and contemporaneously approves the terms of a settlement under the guidance of N.C. R. Civ. P. 23. *See, e.g., In re PokerTek Merger Litig.*, 2015 NCBC LEXIS 10 (N.C. Super. Ct. Jan. 22, 2015); *In re Harris Teeter Merger Litig.*, 2014 NCBC LEXIS 47 (N.C. Super Ct. Sep. 24, 2014). *See also Ehrenhaus v. Baker*, 216 N.C. App. 59, 717 S.E.2d 9 (2011) (affirming in part and reversing in part Business Court’s class certification and settlement approval order, reversing only for further factual findings as to attorney’s fees).

3. Although this matter never reached the stage of class certification, at which point Rule 23(c) operates to ensure the fairness of and give notice to all class members of any settlement, our appellate case law nevertheless places certain limits on voluntary dismissals of purported class action complaints. Because a plaintiff filing a class action demonstrates a willingness to take on the responsibilities of a class representative, “putative class members may rely on the named plaintiff’s stated intentions to represent the class. Under such circumstances, trial courts have a duty to assure that putative class members will not be prejudiced, procedurally or otherwise, by voluntary dismissal of the class-action complaint.” *Moody v. Sears, Roebuck & Co.*, 191 N.C. App. 256, 269–70, 664 S.E2d 569, 578–79 (2008). The Court therefore must make a limited inquiry to determine “(a) whether the parties have abused the class-action mechanism for personal gain, and (b) whether dismissal will prejudice absent putative class members.” *Id.* Plaintiffs will be entitled to a voluntary dismissal if neither of these concerns is present. *Id.*

4. In implementing this mandate, this Court (Tennille, J.) has previously set forth the “procedures that counsel must follow in pre-certification class actions assigned to Special Superior Court Judges for Complex Business Cases when a plaintiff who has assumed a fiduciary duty by filing a class action subsequently files a voluntary dismissal.” *Moody v. Sears, Roebuck & Co.*, 2008 NCBC LEXIS 14, at \*3 (N.C. Super. Ct. Aug. 6, 2008) (“*Moody II*”). See also *Thomas Cook Printing Co. v. Subtle Impressions, Inc.*, 2008 NCBC LEXIS 18 (N.C. Super. Ct. Oct. 24, 2008) (applying *Moody II* to a pre-certification voluntary dismissal); Order on Joint Motion for Approval of Pre-Certification Voluntary Dismissal, *Keister v. Nat’l Council of the YMCA of the U.S.*, No. 12 CVS 1137 (N.C. Super. Ct. Apr. 12, 2013). The Court follows those same procedures, which are necessary here where the record is scant regarding the potential class

and the value of the claims, to “provide the supervision and transparency encouraged by the Court of Appeals with respect to class action litigation.” *Moody II*, 2008 NCBC LEXIS 14, at \*10–11.

5. **WHEREFORE**, the Court hereby **ORDERS** Plaintiffs to file with the Court a statement of (1) the reason for dismissal, (2) the personal gain received by Plaintiffs in any settlement, (3) a statement of any other material terms of the settlement, specifically including any terms which have the potential to impact class members, (4) a statement of any counsel fees paid to Plaintiffs’ counsel by Defendants, and (5) a statement of any agreement by Plaintiffs restricting their ability to file other litigation against any Defendant. Plaintiffs’ counsel shall also file a statement either detailing any potential prejudice to putative class members or representing to the Court that no prejudice exists. *Id.*, at \*3.

6. Plaintiffs shall have through and including March 17, 2016 to file such a statement. Should Plaintiffs wish to file these documents under seal or submit them for *in camera* review, they must file an appropriately supported motion seeking leave to file under seal or submit for *in camera* review prior to or contemporaneously with the statement. The stay issued by the Court’s February 4, 2016 Order is hereby **EXTENDED** for thirty days.

**SO ORDERED**, this the 7th day of March, 2016.

/s/ Louis A. Bledsoe, III  
Louis A. Bledsoe, III  
Special Superior Court Judge  
for Complex Business Cases