

STATE OF NORTH CAROLINA  
MADISON COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
22 CVS 19

CHARLES SANDERS MCNEW, for  
himself & on behalf of all others  
similarly situated,

Plaintiff,

v.

FLETCHER HOSPITAL, INC. d/b/a  
ADVENTHEALTH  
HENDERSONVILLE, INC.,

Defendant.

**ORDER ON DEFENDANT'S MOTION  
FOR APPROVAL OF DISMISSAL OF  
PLAINTIFF'S ALLEGED CLASS  
ACTION CLAIMS AND  
DISMISSAL OF ALL CLAIMS AND  
COUNTERCLAIMS**

1. **THIS MATTER** is before the Court upon Defendant Fletcher Hospital, Inc. d/b/a AdventHealth Hendersonville, Inc.'s ("Defendant") Motion for Approval of Dismissal of Plaintiff Charles Sanders McNew's ("Plaintiff") Alleged Class Action Claims (the "Motion") filed in the above-captioned case.<sup>1</sup>

2. Having considered the Motion and supporting brief, the Court hereby **GRANTS** the Motion, **APPROVES** the dismissal of this action as set forth below, and **DISMISSES** all claims in this action with prejudice.

I.

BACKGROUND

3. Plaintiff, an individual proceeding pro se, initiated this action on 11 February 2022, alleging claims both individually and on behalf of all others similarly

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<sup>1</sup> (ECF No. 45.)

situated pursuant to Rule 23 of the North Carolina Rules of Civil Procedure (“Rule(s)”) against Defendant, a hospital.<sup>2</sup>

4. On 14 April 2022, Defendant moved the Court to dismiss the action pursuant to Rule 12(b)(6) for failure to state a claim.<sup>3</sup> Plaintiff filed an Amended Complaint on 27 April 2022,<sup>4</sup> and the Court subsequently denied as moot Defendant’s Motion to Dismiss.<sup>5</sup>

5. On 25 May 2022, Defendant moved the Court to dismiss Plaintiff’s Amended Complaint pursuant to Rules 9 and 12(b)(6).<sup>6</sup> The Court granted Defendant’s motion as to Plaintiff’s claims for breach of fiduciary duty, constructive fraud, fraud, and unfair and deceptive trade practices under N.C.G.S. § 75-1.1 and dismissed those claims with prejudice.<sup>7</sup> The Court denied Defendant’s motion as to Plaintiff’s claim for breach of contract and permitted that claim to proceed to discovery.<sup>8</sup>

6. Defendant filed its Answer to the Amended Complaint, Defenses, & Counterclaims on 7 October 2022.<sup>9</sup>

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<sup>2</sup> (Compl., ECF No. 3.)

<sup>3</sup> (Def.’s Mot. Dismiss, ECF No. 8.)

<sup>4</sup> (Am. Compl., ECF No. 11.)

<sup>5</sup> (*See* Order Denying Def.’s Mot. Dismiss as Moot, ECF No. 12.)

<sup>6</sup> (Def.’s Mot. Dismiss Am. Compl., ECF No. 15.)

<sup>7</sup> (*See* Order & Op. Def.’s Mot. Dismiss Am. Compl. ¶ 36 [hereinafter “Op. Mot. Dismiss”], ECF No. 42.)

<sup>8</sup> (*See* Op. Mot. Dismiss ¶ 36.)

<sup>9</sup> (Def.’s Answer Am. Compl., Defenses, & Countercls., ECF No. 43.)

7. In response to an e-mail inquiry from the Court dated 17 November 2022 and copying all counsel of record, Defendant represented that the parties had reached an agreement to settle their dispute. The parties' agreement provides for, among other terms, dismissal of the parties' respective claims, with prejudice.<sup>10</sup> Further, the parties' agreement is binding only as to Plaintiff and Defendant; it is not binding as to any other member of the putative class in this action.<sup>11</sup>

8. To date, no class has been certified in this action.

9. On 13 March 2023, Defendant filed the Motion indicating that the parties had reached an agreement to settle this action and requesting that the Court approve the voluntary dismissal of this action pursuant to the North Carolina Court of Appeals' decision in *Moody v. Sears Roebuck & Co. (Moody I)*, 191 N.C. App. 256 (2008). Plaintiff did not file a response within the statutory response period, so the Court will consider and decide the Motion as an uncontested motion as directed by the Business Court Rules.<sup>12</sup> See BCR 7.6. The Court also elects to rule on the Motion without a hearing, see BCR 7.4, so the Motion is now ripe for resolution.

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<sup>10</sup> (See Br. Supp. Def.'s Mot. Approval Dismissal Pl.'s Alleged Class Action Claims ¶ 8 [hereinafter "Def.'s Br. Supp."], ECF No. 46.)

<sup>11</sup> (See Def.'s Br. Supp. ¶ 9.)

<sup>12</sup> Although McNew did not file a response, the Court notes that by e-mail to the Court's law clerks and all counsel of record dated 14 February 2023, McNew advised the Court as follows:

So far as I am concerned, the litigation is concluded. The parties have signed a binding settlement agreement. I would ask that the Court dismiss the matter from its docket with prejudice, each side to bear its costs and fees. If a formal motion is required, by this email I stipulate to the entry of any form of order the Hospital might present for dismissal with prejudice, each side to bear its fees and expenses, consistent with the terms of the settlement.

## II.

### ANALYSIS

10. As this action was filed as a putative class action, the provisions of Rule 23(c) of the North Carolina Rules of Civil Procedure apply. Rule 23(c) provides that “[a] class action shall not be dismissed or compromised without the approval of the judge. In an action under this rule, notice of a proposed dismissal or compromise shall be given to all members of the class in such manner as the judge directs.”

11. Where, as here, dismissal is sought before a class is certified, the North Carolina Court of Appeals has held that, while Rule 23(c) does not require a party “to obtain judicial approval . . . before obtaining a voluntary dismissal of [a] class-action complaint[.]” *Moody I*, 191 N.C. App. at 267, the Rule nonetheless requires the trial court to conduct a limited inquiry into the circumstances of a proposed pre-certification dismissal 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.* at 269. This limited inquiry ensures that “putative class members will not be prejudiced, procedurally or otherwise[.]” *Id.* In applying this inquiry to pre-certification class actions before this Court, the Court has required that counsel submit the following:

- (1) a statement of the reason for dismissal,
- (2) a statement of the personal gain received by the 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 plaintiff's counsel by defendants, and
- (5) a statement of any agreement by plaintiff(s) restricting their ability to file other litigation against any defendant.

*Rickenbaugh v. Power Home Solar, LLC*, 2022 NCBC LEXIS 57, at \*6 (N.C. Super. Ct. June 10, 2022) (cleaned up).

12. The Court has also required counsel to submit “a statement either detailing any potential prejudice to putative class members or representing to the Court that no prejudice exists[,]” and observed that the Court will consider any “issues related to tolling of the statute of limitations.” *Id.* at \*6–7 (quoting *Moody v. Sears, Roebuck & Co. (Moody II)*, 2008 NCBC LEXIS 14, at \*4 (N.C. Super. Ct. Aug. 6, 2008)).

13. The Court has required this information where, as here, “the factual record has not been developed beyond the Amended Complaint’s allegations” because the Court’s review of these submissions is “necessary to ‘provide the supervision and transparency encouraged by the Court of Appeals with respect to class action litigation.’” *Bennett v. Com. Coll. of Asheboro, Inc.*, 2016 NCBC LEXIS 24, at \*5 (N.C. Super. Ct. Mar. 22, 2016) (quoting *Moody II*, 2008 NCBC LEXIS 14, at \*10–11). The Court thus turns to this required inquiry here.

14. In an e-mail to the Court’s law clerk on 6 April 2023, Defendant presented the executed Settlement Agreement and Release (the “Agreement”) to the Court for *in camera* review. Based on its review of the Agreement, the record, and the Motion, the Court concludes that the parties have litigated this dispute in good faith since its filing on 11 February 2022, a period of more than one year, and that the parties have not abused the class-action mechanism for personal gain. “Abusive practices in class action litigation include defendants avoiding class action certification by buying off

named plaintiffs or plaintiffs coercing unusually generous individual settlements from defendants.” *Id.* at \*5–6. The Court does not find these circumstances here.

15. To the extent that the parties have received any benefit (e.g., dismissal of all pending claims and counterclaims), those benefits do not appear to have resulted from any abuse of the class-action mechanism. Although the terms of the parties’ agreement are confidential, Defendant’s counsel has certified in the Motion, and the Court has confirmed upon its *in camera* review of the settlement agreement, that the settlement does not personally enrich Plaintiff.<sup>13</sup>

16. The Court also concludes from its review that dismissal will not prejudice absent class members. Defendant’s counsel has certified in the Motion, and the Court has confirmed upon its *in camera* review, that the parties’ agreement does not bind any persons other than the parties to that agreement. No claim of any putative class member other than Plaintiff will be affected in any way by the dismissal of this action, except that any limitations period tolled by the commencement of this action will begin to run again as of the date of this Order.

17. For these reasons, the Court concludes that it is appropriate to approve the dismissal under Rule 23(c) and the North Carolina Court of Appeals’ decision in *Moody I.*

18. Further, the parties’ having provided their consent as discussed above, the Court concludes that is appropriate to dismiss this action with prejudice pursuant to Rule 41(a)(2).

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<sup>13</sup> (See Def.’s Br. Supp. ¶ 12.)

III.

CONCLUSION

19. **WHEREFORE**, for the reasons set forth above, the Court hereby:
- a. **CONCLUDES** that the settlement agreement is properly entered and not prejudicial to absent putative class members;
  - b. **APPROVES** the voluntary dismissal of this action; and
  - c. **HEREBY DISMISSES** all claims pending in this action with prejudice pursuant to Rule 41(a)(2).

**SO ORDERED**, this the 6th day of April, 2023.

/s/ Louis A. Bledsoe, III  
Louis A. Bledsoe, III  
Chief Business Court Judge