

STATE OF NORTH CAROLINA
BUNCOMBE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21CVS003276-100

WILLIAM ALAN DAVIS;
JONATHAN POWELL; FAITH C.
COOK, Psy.D.; and KATHERINE
BUTTON, on their own behalf and on
behalf of all others similar situated,

Plaintiffs,

v.

HCA HEALTHCARE, INC.; HCA
MANAGEMENT SERVICES, LP;
HCA, INC.; MH MASTER
HOLDINGS, LLLP; MH HOSPITAL
MANAGER, LLC; MH MISSION
HOSPITAL, LLLP; ANC
HEALTHCARE, INC. F/K/A
MISSION HEALTH SYSTEM, INC.;
and MISSION HOSPITAL, INC.,

Defendants.

**ORDER ON DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT AND
MOTION FOR ADJUSTMENT TO
THE CASE MANAGEMENT
SCHEDULE**

THIS MATTER is before the Court on Defendants HCA Healthcare, Inc.; HCA Management Services, LP; HCA, Inc.; MH Master Holdings, LLLP; MH Hospital Manager, LLC; and MH Mission Hospital, LLLP (collectively, the “HCA Defendants”); and ANC Healthcare, Inc. and Mission Hospital, Inc.’s (collectively, the “ANC Defendants,” and together with the HCA Defendants, “Defendants”) Motion for Summary Judgment (“SJ Motion,” ECF No. 167) and Motion for Adjustment to the Case Management Schedule to Allow the HCA Defendants to File a Separate Reply Brief in Support of Defendants’ Motion for Summary Judgment and to File a Motion to Exclude the Affidavits of Plaintiffs’ Proposed Experts (“Motion for Adjustment,” ECF No. 199).

1. A more detailed summary of the factual and procedural background of this case can be found in the Court’s 27 April 2023 Order and Opinion on Defendants’ Motion to Dismiss First Amended Class Action Complaint. *See Davis v. HCA Healthcare, Inc.*, 2023 NCBC LEXIS 63 (N.C. Super. Ct. Apr. 27, 2023).

2. In a nutshell, this putative class action lawsuit has been brought by a number of North Carolina residents alleging that Defendants—through their ownership and operation of Mission Hospital in Asheville—have violated various provisions of Chapter 75 of the North Carolina General Statutes by engaging in anticompetitive acts regarding the provision of inpatient and outpatient services in western North Carolina.

3. Following the Court’s entry of its Order and Opinion on Defendants’ Motion to Dismiss First Amended Class Action Complaint, Plaintiffs William Alan Davis, Jonathan Powell, Faith C. Cook, and Katherine Button (collectively, “Plaintiffs”) filed their Second Amended Class Action Complaint on 14 June 2023.¹

4. Since that time, the parties have been engaged in phased fact discovery. (See ECF Nos. 81, 101.)

5. On 24 December 2024, Defendants filed a Motion to Amend Second Supplemental Case Management Order (“Motion to Amend,” ECF No. 138). In the Motion to Amend, Defendants requested that the Court authorize—and set a briefing schedule for—them to file a preliminary motion for summary judgment prior to the

¹ Although originally named as a plaintiff in the Second Amended Class Action Complaint, Lorraine Nash—serving as the Administrator of the Estate of Richard Nash—subsequently filed a Notice of Partial Dismissal Without Prejudice on 6 June 2025, voluntarily dismissing all claims asserted on the Estate of Richard Nash’s behalf without prejudice.

close of all discovery to address “the narrow issue of whether Plaintiffs’ claims can survive when the challenged contractual provisions—the alleged ‘anticompetitive terms’ identified in the Complaint, including tying provisions, gag clauses, and antitiering or anti-steering provisions—are not found in Defendants’ managed care contracts with commercial health plans[.]” (Mot. to Amend, at 2.)

6. On 21 January 2025, Plaintiffs filed a brief in opposition to the Motion to Amend. (ECF No. 145.)

7. After conducting a status conference with all counsel of record, on 5 February 2025, the Court entered an Order on Defendants’ Motion to Amend authorizing Defendants to file such an early motion for summary judgment and setting out associated case management and briefing deadlines. (“5 February Order,” ECF No. 154.)

8. Pursuant to the 5 February Order, Defendants subsequently filed the present SJ Motion along with a supporting brief and other materials on 15 August 2025. (ECF Nos. 168–169, 177 [public]; ECF Nos. 170–172, 175–176 [sealed].)

9. Plaintiffs filed a brief in opposition to Defendants’ SJ Motion on 15 September 2025. (ECF Nos. 190, 201 [public]; ECF Nos. 191–192 [sealed].) Included within Plaintiffs’ materials in opposition to the SJ Motion were affidavits from two expert witnesses—Jill Brainard Wilson and Dr. Robert J. Town. (ECF Nos. 201.1, 201.24 [public]; ECF Nos. 191.16, 191.1 [sealed].)

10. In response, Defendants filed the present Motion for Adjustment on 22 September 2025, requesting that the Court (1) permit the HCA Defendants to file a

separate reply brief from the ANC Defendants; (2) allow the HCA Defendants to take the depositions of Plaintiffs' two expert witnesses; and (3) permit Defendants to file a motion to exclude Plaintiffs' expert witnesses.

11. Plaintiffs, in turn, filed a memorandum in opposition to the Motion for Adjustment.

12. The Court entered an Order on 26 September 2025 allowing the HCA Defendants and ANC Defendants to file separate reply briefs in support of the SJ Motion but deferring ruling on the remaining issues contained in the Motion for Adjustment. (ECF No. 207.)

13. On 6 October 2025, the Court held a status conference via Webex at which all parties were represented by counsel and heard arguments from all counsel with regard to the Motion for Adjustment.

14. In support of the Motion for Adjustment, Defendants contend that Plaintiffs' designation of expert witnesses is premature and that the contract interpretation issues raised in Defendants' SJ Motion are purely matters of law that do not require expert analysis. Defendants also assert that they should be allowed to depose Plaintiffs' expert witnesses and then file motions to exclude their testimony.

15. Plaintiffs, in turn, argue that nothing in the Court's 5 February Order prohibited them from offering expert affidavits in opposing Defendants' SJ Motion. Further, Plaintiffs contend that expert analysis is required for the Court's analysis of the SJ Motion, particularly as it relates to the *effects* in the relevant markets of certain contractual provisions utilized by Defendants.

16. The Court's decision in its 5 February Order permitting Defendants to file an "early" SJ Motion was based on its belief that principles of judicial economy would be furthered by allowing the Court to rule on a pure issue of law that lies at the heart of Plaintiffs' claims in this case.

17. However, in practice, the parties' current disputes about the SJ Motion, the need for associated expert testimony, and the ability of Defendants to seek the exclusion of Plaintiffs' expert witnesses have raised added complexities that the Court did not envision at the time of its 5 February Order.

18. The Court further notes that in briefing the SJ Motion, the parties have not limited their submissions to the contracts at issue. In addition to Plaintiffs' expert affidavits, the parties have filed a combined total of nearly 300 exhibits, including twenty-five deposition transcript excerpts and multiple excerpts of written communications between key witnesses in this case.

19. After careful consideration of the present record, the parties' briefs and other submissions, and the arguments of counsel, the Court concludes, in the exercise of its discretion, that the interests of justice would not be furthered by piecemeal summary judgment rulings in this case. Instead, the Court believes it would be desirable to await a more complete factual record (including admissible expert affidavits and/or deposition testimony offered by both sides) and the filing of dispositive motions (accompanied by supporting briefs) that will include *all* grounds for summary judgment that the parties seek to raise.

20. Therefore, Defendants' present Motion for Summary Judgment is **DENIED without prejudice** to their ability to raise these same arguments (along with any other arguments they deem appropriate) in a future motion for summary judgment, and the Motion for Adjustment is **DISMISSED as MOOT**.

CONCLUSION

ACCORDINGLY, THE COURT, in the exercise of its discretion, hereby **ORDERS** as follows:

1. Defendants' Motion for Summary Judgment is **DENIED without prejudice**;
2. Defendants' Motion for Adjustment is **DISMISSED as MOOT**;
3. All other deadlines contained in the Court's 5 February Order shall remain in full force and effect; and
4. The parties shall treat the date of this Order as the date of "denial of Defendants' MSJ" (as that phrase is used in the Court's 5 February Order) for purposes of calculating the upcoming deadlines listed in said Order.

SO ORDERED, this the 13th day of October 2025.

/s/ Mark A. Davis
Mark A. Davis
Special Superior Court Judge for
Complex Business Cases