

STATE OF NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO: 22-CvS-3616

COUNTY OF BUNCOMBE

2022 NOV 29 P 4: 17

STONE SMATHERS, by and through Richard)
Nordan, Esq. as Guardian ad Litem; BUNCOMBE CO., C.S.C.)
ASHLEY SMATHERS, individually and as)
parent and natural guardian of Stone Smathers,)
and ZEBULON SMATHERS, individually and)
as parent and natural guardian of Stone)
Smathers,)

Plaintiffs,

vs.

HCA HEALTHCARE, INC.; MH MASTER)
HOLDINGS, LLLP; MH HOSPITAL)
MANAGER, LLC; and MH MISSION)
HOSPITAL, LLLP,)
Defendants.)

**DEFENDANT MH MISSION
HOSPITAL, LLLP'S MOTION TO
STRIKE, MOTIONS TO DISMISS,
DEFENSES AND ANSWER TO
PLAINTIFFS' COMPLAINT**

NOW COMES Defendant **MH Mission Hospital, LLLP** (hereinafter "Answering Defendant"), by and through the undersigned counsel, and asserts the following Motions and defenses to the Plaintiffs' Complaint and responds to the Plaintiffs' Complaint as follows:

MOTION TO STRIKE

Now comes the Answering Defendant, MH Mission Hospital, LLLP, and moves the Court pursuant to Rule 12(f) of the Rules of Civil Procedure to strike paragraphs 160 through 180 (inclusive) of the Plaintiffs' Complaint. In support of this Motion the Answering Defendant shows the Court that the allegations in these paragraphs are not related to the transaction and occurrence that is the subject of the Plaintiffs' "First Claim for Relief", which is the only claim for relief stated in the Complaint. The allegations contained in paragraphs 160 through 180 of the Complaint are not relevant to the Plaintiffs' single claim for relief and should be stricken. Therefore, the Answering Defendant requests that the allegations contained in paragraphs 160 through 180 of the Complaint be stricken by the Court.

MOTION TO DISMISS
Rule 9(j) Compliance

If it is determined that Plaintiffs have failed to comply with Rule 9(j), Answering Defendant, MH Mission Hospital, LLLP, moves to dismiss the Complaint with prejudice under

This the 29th day of November, 2022.

ROBERTS & STEVENS, P.A.

BY: James W. K. Wilde

PHILLIP T. JACKSON
N.C. Bar No. 21134
JAMES W. K. WILDE
N.C. Bar No. 37483
DAVID C. HAWISHER
N.C. Bar No. 55502
P.O. Box 7647
Asheville, NC 28802
(828) 252-6600

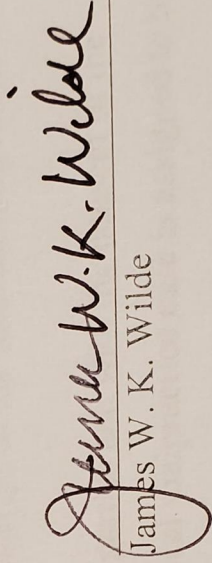
Counsel for Defendants

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served the foregoing *Defendants HCA Healthcare, Inc.; MH Master Holdings, LLLP; and MH Hospital Manager, LLC's Motion to Strike, Motions to Dismiss, Defenses and Answer to Plaintiffs' Complaint* upon all parties to this cause by depositing a copy hereof in a postpaid wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service, properly addressed to the attorney(s) of record as listed:

Matthew D. Ballew, Esq.
Robert Zaytoun, Esq.
John R. Taylor, Esq.
Clare F. Kurdys, Esq.
Zaytoun Ballew & Taylor, PLLC
3130 Fairhill Drive, Suite 100
Raleigh, NC 27612
Attorneys for Plaintiffs

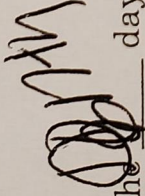
This the 29th day of November, 2022.


James W. K. Wilde

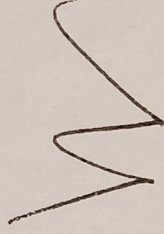
CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served the foregoing **Medical Malpractice Case Notification and Consultation** upon all parties to this cause by depositing a copy hereof in a postpaid wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service, properly addressed to the attorney(s) of record as listed:

Matthew D. Ballew, Esq.
Robert Zaytoun, Esq.
John R. Taylor, Esq.
Clare F. Kurdys, Esq.
Zaytoun Ballew & Taylor, PLLC
3130 Fairhill Drive, Suite 100
Raleigh, NC 27612
Attorneys for Plaintiffs



This the ___ day of November, 2022.



Phillip T. Jackson

ALIAS AND PLURIES SUMMONS (ASSESS FEE)

G.S. 1A-1, Rules 3 and 4

Name Of Defendant(s)
HCA HEALTHCARE, INC.,
MH MASTER HOLDINGS, LLLP,
MH HOSPITAL MANAGER, LLC,
MH MISSION HOSPITAL, LLLP,
Address
c/o Zaytoun Ballew & Taylor, PLLC; 3130 Fairhill Dr., Suite 100
City, State, Zip
Raleigh NC 27612

VERSUS

Date Original Summons Issued
Date(s) Subsequent Summons(es) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1
HCA Healthcare Inc.
c/o The Corporation Trust Company, Registered Agent
Corporation Trust Center, 1209 Orange Street
Wilmington, Delaware 19801

Name And Address Of Defendant 2
MH Master Holdings, LLLP
c/o CT Corporation System, Registered Agent
160 Mine Lake Ct., Suite 200
Raleigh, NC 27615



IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out! You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers!

¡IMPORTANTE! ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales. ¡NO TIRE estos papeles!
Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea inglés y que pueda traducir estos documentos! PLEASE NOTE: Plaintiffs' First Set of Interrogatories and Request for Production of Documents have been served on you with the Complaint.

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (if none, Address Of Plaintiff)

Matthew D. Ballew
Zaytoun Ballew & Taylor, PLLC
3130 Fairhill Drive, Suite 100
Raleigh, NC 27612

Date Issued: 9/13/2022
Time: 12:58 PM
Signature: [Handwritten Signature]
 Deputy CSC
 Assistant CSC
 Clerk Of Superior Court

Date Of Endorsement
Time: AM PM
Signature
 Deputy CSC
 Assistant CSC
 Clerk Of Superior Court

ENDORSEMENT (ASSESS FEE)

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

NOTE TO PARTIES: Many counties have **MANDATORY ARBITRATION** programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

(Over)

As the defendant is a corporation, 'incorporated' service was effected by delivering a copy of the summons and complaint to the person of suitable age and capacity residing therein.

CIVIL SUMMONS
 ALIAS AND PLURIES SUMMONS (ASSESS FEE)
Date Original Summons Issued: G.S. 1A-1, Rules 3 and 4

VERSUS
Name Of Defendant(s):
MH HEALTHCARE, INC.,
MH MASTER HOLDINGS, LLLP,
MH HOSPITAL MANAGER, LLC,
MH MISSION HOSPITAL, LLLP,
c/o Zaytoun Ballew & Taylor, PLLC; 3130 Fairhill Dr., Suite 100
Raleigh, NC 27612

To Each Of The Defendant(s) Named Below:
Name And Address Of Defendant 1
MH Hospital Manager, LLC
c/o CT Corporation System, Registered Agent
160 Mine Lake Ct., Suite 200
Raleigh, NC 27615
Name And Address Of Defendant 2
MH Mission Hospital, LLLP
c/o CT Corporation System, Registered Agent
160 Mine Lake Ct., Suite 200
Raleigh, NC 27615



IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out! You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers!
¡IMPORTANTE! ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales. ¡NO TIRE estos papeles!
Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea inglés y que pueda traducir estos documentos! **PLEASE NOTE: Plaintiffs' First Set of Interrogatories and Request for Production of Documents have been served on you with the Complaint.**

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You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (if none, Address Of Plaintiff)
Matthew D. Ballew
Zaytoun Ballew & Taylor, PLLC
3130 Fairhill Drive, Suite 100
Raleigh, NC 27612
Date Issued: 9/23/2022 12:38
Signature: [Handwritten Signature]
 Deputy CSC Assistant CSC Clerk Of Superior Court
Time: AM PM

ENDORSEMENT (ASSESS FEE)
This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.
Date Of Endorsement: _____ Time: _____
Signature: _____
 Deputy CSC Assistant CSC Clerk Of Superior Court
 AM PM

NOTE TO PARTIES: Many counties have **MANDATORY ARBITRATION** programs in which most cases where the amount in controversy is \$25,000 less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and so, what procedure is to be followed.

(Over)

2022 SEP 23 P 12:37

STONE SMATHERS, by and through Richard Nordan, Esq. as Guardian ad litem, ASHLEY SMATHERS, individually and as parent and natural guardian of Stone Smathers, and ZEBULON SMATHERS, as parent and natural guardian of Stone Smathers,

BUNCOMBE CO., C.S.C.



Plaintiffs,

v.

HCA HEALTHCARE, INC.,
MH MASTER HOLDINGS, LLLP,
MH HOSPITAL MANAGER, LLC,
MH MISSION HOSPITAL, LLLP,

Defendants.

COMPLAINT
Jury Trial Demanded

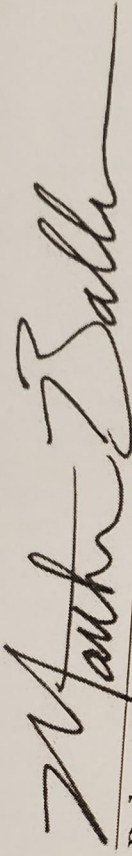
NOW COME Plaintiffs, complaining of Defendants, who allege and say the following upon good faith information and belief:

INTRODUCTION AND OVERVIEW

1. This case arises from egregious acts of medical and corporate negligence committed by the Defendants during the Plaintiffs' labor and delivery care experience at Mission Hospital in Asheville, North Carolina in March 2020.
2. As is explained in detail below, Ashley Smathers was admitted to the labor and delivery unit at Mission Hospital on March 19, 2020 for the labor and delivery of her first child, baby boy Stone Henson Smathers (hereinafter at times "Baby Stone" or "Minor Plaintiff").
3. Zebulon ("Zeb") Smathers, Ashley's husband and Stone's father, was present every step of the way as the two were excited to begin this new phase of their lives together as a family.
4. This labor and delivery of their son was meant to be a joyous occasion. At the time Ashley first discovered she was pregnant in July of 2019, she was a healthy 32-year-old with no

This the 23rd day of September, 2022.

ZAYTOUN BALLEW & TAYLOR, PLLC



Robert Zaytoun, Esq., NC Bar No. 6942
Matthew D. Ballew, Esq., NC Bar No. 39515
John R. Taylor, Esq., NC Bar No. 43248
Clare F. Kurdys, Esq., NC Bar No. 56986
3130 Fairhill Drive, Suite 100
Raleigh, NC 27612
Telephone: 919-832-6690
Facsimile: 919-831-4793

Attorneys for Plaintiffs

STATE OF NORTH CAROLINA

File No. **22CV 03616**

FILED In The General Court Of Justice
 District Superior Court Division

BUNCOMBE County

2022 SEP 23 P 12:36

Name And Address Of Plaintiff 1
 STONE SMATHERS, a minor, by and through Richard Nordan
 as Guardian Ad Litem
 c/o Zaytoun Ballew & Taylor, PLLC, 3130 Fairhill Dr., Ste. 100
 Raleigh, NC 27612

Name And Address Of Plaintiff 2
 Ashley Smathers
 c/o Zaytoun Ballew & Taylor, PLLC, 3130 Fairhill Dr., Ste. 100
 Raleigh, NC 27612

Name And Address Of Defendant 1
 HCA Healthcare, Inc.
 c/o The Corporation Trust Company, Registered Agent
 Corporation Trust Center, 1209 Orange Street
 Wilmington, Delaware 19801

Name And Address Of Defendant 2
 MH Master Holdings, LLLP
 c/o CT Corporation System, Registered Agent
 160 Mine Lake Ct., Suite 200
 Raleigh, NC 27615

BUNCOMBE COUNTY ACTION COVER SHEET
 GENERAL
 INITIAL FILING SUBSEQUENT FILING

Rule 5(b) of the General Rules of Practice for the Superior and District Courts
 (complete for initial appearance or party, if not represented
 Matthew Ballew, Esq.

Zaytoun Ballew & Taylor, PLLC
 3130 Fairhill Drive, Suite 100
 Raleigh, NC 27612
 Telephone No. 919-832-6690 Cellular Telephone No.
 NC Attorney Bar No. 39515 Attorney Email Address mballew@zaytounlaw.com

Initial Appearance in Case Change of Address
 Name Of Firm Zaytoun Ballew & Taylor, PLLC Fax No. 919-831-4793
 All Plaintiffs All Defendants Only: (list party(ies) represented)

Jury Demanded In Pleading Complex Litigation Stipulate to Arbitration

TYPE OF PLEADING

- (check all that apply)
- Amend (AMND)
 - Amended Answer/Reply (AMND-Response)
 - Amended Complaint (AMND)
 - Assess Costs (COST)
 - Answer/Reply (ANSW-Response) (see Note)
 - Change Venue (CHVN)
 - Complaint (COMP)
 - Confession Of Judgment (CNF-J)
 - Consent Order (CONS)
 - Consolidate (CNSL)
 - Contempt (CNTP)
 - Continue (CNTN)
 - Compel (CMPL)
 - Counterclaim (CTCL) Assess Court Costs
 - Crossclaim (list on back) (CRSS) Assess Court Costs
 - Dismiss (DISM) Assess Court Costs
 - Exempt/Waive Mediation (EXMD)
 - Extend Statute Of Limitations, Rule 9 (ESOL)
 - Extend Time For Complaint (EXCO)
 - Failure To Join Necessary Party (FJNP)

- Failure To State A Claim (FASC)
- Implementation Of Wage Withholding In Non-IV-D Cases (OTHR)
- Improper Venue/Division (IMVN)
- Including Attorney's Fees (ATTY)
- Intervene (INTR)
- Interplead (OTHR)
- Lack Of Jurisdiction (Person) (LJPN)
- Lack Of Jurisdiction (Subject Matter) (LJSM)
- Modification Of Child Support In IV-D Actions (MSUP)
- Notice Of Dismissal With Or Without Prejudice (VOLD)
- Petition To Sue As Indigent (OTHR)
- Rule 12 Motion In Lieu Of Answer (MDLA)
- Sanctions (SANC)
- Set Aside (OTHR)
- Show Cause (SHOW)
- Transfer (TRFR)
- Third Party Complaint (list Third Party Defendants on back) (TPCL)
- Vacate/Modify Judgment (VCMD)
- Withdraw As Counsel (WDCN)
- Other (specify and list each separately)

NOTE: All filings in civil actions shall include as the first page of the filing a cover sheet summarizing the critical elements of the filing in a format prescribed by the Administrative Office of the Courts, and the Clerk of Superior Court shall require a party to refile a filing which does not include the required cover sheet. For subsequent filings in civil actions, the filing party must include either a General Civil (AOC-CV-751), Motion (AOC-CV-752), or Court Report (AOC-CV-753) cover sheet.

(Over)