

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE  
COUNTY OF ALAMANCE ALAMANCE COUNTY, C.S.C. SUPERIOR COURT DIVISION  
BY                     *ab*                     BEFORE THE NORTH CAROLINA  
BUSINESS COURT

00 CVS 2789

HOMER WILBANKS,  
On Behalf of Himself and  
All Others Similarly Situated,

Plaintiffs,

v.

LABORATORY CORPORATION  
OF AMERICA,

Defendant.

**ORDER GRANTING PLAINTIFF'S MOTION FOR VOLUNTARY DISMISSAL OF  
ALL CLAIMS WITH PREJUDICE**

THIS MATTER is before the Court on Plaintiff Homer Wilbanks' ("Plaintiff") motion for a voluntary dismissal of all claims with prejudice pursuant to Rules 41(a) and 23(c) of the North Carolina Rules of Civil Procedure. The Court GRANTS plaintiff's motion.

The class alleged before this Court is essentially the same as the class alleged in *Sherman Kasso, et al., v. National Health Laboratories*, a California class action filed in Alameda County Superior Court ("California Class Action"). If Plaintiff had not included class allegations in his complaint, he would be able to voluntarily dismiss the complaint pursuant to Rule 41(a) of the North Carolina Rules of Civil Procedure. However, since Plaintiff alleged a class of similarly situated individuals, his right to voluntarily dismiss is limited by Rule 23(c). *See Lupton v. BlueCross and BlueShield of North Carolina*, 1999 NCBC 3 (No. 98 CVS 633, Orange County Super. Ct. June 14, 1999) (Tennille, J.). In *Alexander v. DaimlerChrysler*, this Court held that "where a complaint is filed containing class action allegations and claims, those class claims may

not be withdrawn, whether by voluntary dismissal, amendment to the complaint or simple failure to pursue class certification without court approval under rule 23(c)." *Alexander v. DaimlerChrysler* at ¶ 18 (No. 01 CVS 3390, Wake County Super. Ct. Feb. 14, 2001) (Tennille, J.).

In this case, a class has not been certified. The Court finds that, because class members have been granted court-approved relief in the California Class Action, dismissal at this pre-certification stage will not prejudice class members. Where the rights of class members are not compromised, and where judicial economy favors voluntary dismissal rather than litigation on the merits, dismissal would be appropriate. *See Lupton v. BlueCross and BlueShield of North Carolina*, 1999 NCBC 3 (No. 98 CVS 633, Orange County Super. Ct. June 14, 1999) (Tennille, J.).

Rule 23(c) provides: "A class action shall not be dismissed or compromised without the approval of the judge. In any 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." N.C.G.S. § 1A-1, Rule 23(c) (2002). Unlike the plaintiff in *DaimlerChrysler*, Plaintiff Wilbanks is not seeking to continue his individual claim. The Court finds that Plaintiff and any other class members would necessarily fall within the class definition of the California Class Action. The class is bound by the California Class Action settlement terms and cannot maintain a separate action. Sending a class notice regarding dismissal of this action would be costly, time-consuming, and confusing.

Having found that class members are not prejudiced by dismissal and having found that class members are protected by other litigation where they have received notice, dismissal with prejudice is allowed without notice to class members.

SO ORDERED this the 15th day of April 2003.



Ben F. Tennille  
Special Superior Court Judge  
for Complex Business Cases