

NORTH CAROLINA
BUNCOMBE COUNTY

GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 12 Cvs 03088

STEPHEN HEFNER, on behalf of)
himself and all others similarly situated,)
Plaintiff,)
v.)
MISSION HOSPITAL, INC., a North)
Carolina Corporation, *et al.*,)
Defendants.)

AFFIDAVIT OF
LYNNETTE PERSONIUS

Lynnette Personius, being first duly sworn, deposes and says:

1. I am a citizen and resident of Guilford County, North Carolina. I am at least 18 years of age and am otherwise competent to make this Affidavit.
2. I am currently employed, and at all times relevant to this Affidavit was employed, by the law firm of Higgins Benjamin, PLLC, and I am a legal assistant to Plaintiff's counsel John Bloss.
3. On Friday, January 8, 2016, I called the Buncombe County Superior Court Clerk's office, advised the employee I was sending a FedEx package and that I wanted to verify the address. I addressed the FedEx package as directed by the employee. A true and correct copy of the documentation, which included the original Notice of Appeal, that I placed in the FedEx package and sent by FedEx Priority on January 8, 2016, is attached hereto as **Exhibit A**.
4. On January 12, 2016, I received an email confirmation from FedEx that the shipment had been delivered to "Receptionist/Front Desk," to recipient, "ATTN Civil Division, Buncombe Cty Courthouse, 60 Court Plaza, ASHEVILLE, NC, US 28801,"



and signed for by "R.HARRELL." A true and correct copy of the email confirmation is attached hereto as **Exhibit B**.

5. At approximately 2:18 p.m. on January 20, 2016, John Bloss forwarded me an email from defense counsel, Robert Fuller, which stated, "As a matter of routine, we checked the file in Buncombe County to confirm that you had filed your notice of appeal, and it isn't there. Can you check and see if you have a file-marked copy and let me know?"

6. Immediately after receiving Mr. Fuller's email from Mr. Bloss, I telephoned the Buncombe County Clerk's office. I spoke first with an employee of the Clerk's office who told me that Kathryn Hansen (upon information and belief, the Buncombe County Deputy Clerk of Courts) is the employee within the Clerk's office who handles FedEx packages. I was transferred to Ms. Hansen.

7. Ms. Hansen stated that she did not remember getting a FedEx package from our office, so I read her the email from FedEx stating that a "R. Harrell" signed for the envelope. Ms. Hansen informed me that no "R. Harrell" was employed in the Clerk's office. She put me on hold to locate the file.

8. When Ms. Hansen got back on the line after retrieving the file, she said that she was looking at my letter and the original Notice of Appeal, along with a Return of Service from the Buncombe County Sheriff's office. Ms. Hansen stated, in response to my question, that the notice of appeal had not been filed-stamped by the Clerk's office. She told me that it appeared from the documents that the Sheriff's office had clocked in the Notice of Appeal on January 13, 2016 and served the document on Mission Hospital on January 14, 2016. Ms. Hansen informed me that the Sheriff's Office is in the same

building as the Clerk's Office. She asked if I wanted her to clock in the Notice of Appeal and I said "Yes, please."

9. I also explained to Ms. Hansen in our January 20, 2016 telephone conversation that I had included a letter, the original Notice of Appeal and at least 3 copies, as well as an envelope for the return of the extra filed copies. Ms. Hansen said she had no idea where the copies were, and stated that I was lucky that the Sheriff's department brought the Clerk's office the original and not copies because she would not be able to clock in a photocopy; she would only be able to clock in an original.

10. Once Ms. Hansen clocked in the Notice of Appeal I asked her to fax or email me a copy for our file. Ms. Hansen agreed to fax me the Notice of Appeal, the Return of Service and my letter, which, she said, was everything she found relating to the notice of appeal in the court file. We received Ms. Hansen's fax between approximately 3:34 p.m. and 3:35 p.m. on January 20, 2016. The fax included a copy of the Notice of Appeal that had been clocked in by the Buncombe County Clerk of Superior Court at 2:42 p.m. on January 20, 2016—which is consistent with the time that I was on the telephone with Ms. Hansen. A true and correct copy of Ms. Hansen's fax is attached hereto as **Exhibit C**.

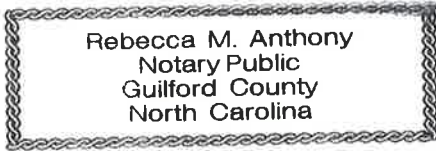
11. After receiving Ms. Hansen's fax, I called her back on the same date. Ms. Hansen provided me with the Sheriff's telephone number so that I could confirm that an R. Harrell was an employee of the Sheriff's Department. I called the Sheriff's department and confirmed that a Rosie Harrell was employed by the Buncombe County Sheriff's Department.

Further the affiant sayeth naught.

Sworn to and subscribed before me
this, the 12 day of February, 2016.

Lynnette Personius
Lynnette Personius

Rebecca M. Anthony
Notary Public
My commission expires: 7-21-2018



HIGGINS]·[BENJAMIN

♦ ATTORNEYS AT LAW ♦

101 W. Friendly Avenue, Suite 500, Greensboro, N.C. 27401
P.O. Box 20570, Greensboro, N.C. 27420-0570
Phone: 336-273-1600 ♦ Fax: 336-274-4650
www.greensborolaw.com

January 8, 2016

Via overnight FedEx

Buncombe County Courthouse
ATTN: Civil Division
60 Court Plaza
Asheville, NC 28801

Re: *Stephen Hefner, on behalf of himself and all others similarly situated v. Mission Hospital, Inc. et al*
Buncombe County Case # 12 CvS 03088

Dear Clerk:

Please find enclosed the Notice of Appeal for filing in Buncombe County in the above referenced matter. Please file the Notice of Appeal and return the extra filed copies to us in the enclosed self-addressed, stamped envelope.

Please feel free to contact me at (336) 273-1600 should you have any questions or concerns.

Thanking you in advance for your prompt attention to this matter.

Sincerely,



Lynn Personius
Secretary for John F. Bloss

Enclosure

cc: Robert W. Fuller, Esq.
Heyward H. Bouknight, III, Esq.

Higgins Benjamin, PLLC
Comprehensive Legal Solutions



NORTH CAROLINA
BUNCOMBE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
12 CvS 03088

STEPHEN HEFNER, on behalf of himself)
and all others similarly situated,)
)
Plaintiff,)
)
vs.)
)
MISSION HOSPITAL, INC.,)
a North Carolina Corporation; and)
MISSION HEALTH SYSTEM, INC.,)
a North Carolina Corporation, collectively)
doing business as MISSION HEALTH; and)
DOES 1 through 25, inclusive,)
)
Defendants.)

NOTICE OF APPEAL

Plaintiff, Stephen Hefner, gives notice of appeal to the North Carolina Court of Appeals from the following Orders of the trial court: (1) an Order, rendered on 8 December 2014 by the Honorable James L. Gale, Chief Special Superior Court Judge for Complex Business Cases, denying Plaintiff's motion for class certification; and (2) an Order, rendered on 15 December 2015 by Judge Gale, denying Plaintiff's Motion to Reconsider and to Amend Order Denying Class Certification and granting Defendants' Motion to Dismiss Plaintiff's Action as Moot and/or Defendants' Motion to Dismiss Plaintiff's Amended Complaint Pursuant to N.C.R.C.P. 12(b)(1).

Respectfully submitted, this, the 8th day of January, 2016.


OF COUNSEL:

Higgins Benjamin, PLLC
101 West Friendly Avenue, Suite 500
Greensboro, North Carolina 27401
(336) 273-1600 (phone); (336) 274-4650 (fax)
Email: jbloss@greensborolaw.com

Barry L. Kramer Law Offices
9550 South Eastern Ave #253
Las Vegas NV 89123
(Office) 702-778-6090
Email: kramerlaw@aol.com



John F. Bloss (N.C. Bar No. 23947)




Barry L. Kramer, Esq.
California State Bar No. 61772
Admitted *Pro Hac Vice*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served by email and by U.S. Mail, First Class postage prepaid, to the attorneys of record for Defendants as follows:

Robert W. Fuller
Heyward H. Bouknight, III
Robinson Bradshaw & Hinson, P.A.
101 North Tryon Street, Suite 1900
Charlotte, North Carolina 28246
Attorney for Defendants

This, the 8th day of January, 2016.



Attorney for Plaintiff

Lynn Personius

From: trackingupdates@fedex.com
Sent: Tuesday, January 12, 2016 11:14 AM
To: Lynn Personius
Subject: FedEx Shipment 775374684945 Delivered

This tracking update has been requested by:

Name: JOHN F. BLOSS ESQ
E-mail: lpersonius@greensborolaw.com

Our records indicate that the following shipment has been delivered:

Reference: JFB/Mission
Ship (P/U) date: Jan 8, 2016
Delivery date: Jan 12, 2016 11:12 am
Sign for by: R.HARRELL
Delivery location: ASHEVILLE, NC
Delivered to: Receptionist/Front Desk
Delivery date: Tue, 1/12/2016 11:12 am
Service type: FedEx Priority Overnight
Packaging type: FedEx Envelope
Number of pieces: 1
Weight: 0.50 lb.
Special handling/Services: Deliver Weekday

Tracking number: 775374684945

Shipper Information	Recipient Information
JOHN F. BLOSS ESQ	ATTN Civil Division
101 W FRIENDLY AVE STE 500	Buncombe Cty Courthouse
HIGGINS BENJAMIN PLLC	60 Court Plaza
Greensboro	ASHEVILLE
NC	NC
US	US
27401	28801

Please do not respond to this message. This email was sent from an unattended mailbox. This report was generated at approximately 10:14 AM CST on 01/12/2016.

To learn more about FedEx Express, please visit our website at fedex.com.

All weights are estimated.

To track the status of this shipment online, please use the following:



<https://www.fedex.com/insight/findit/nrp.jsp?tracknumbers=775374684945&language=en&opco=FX&clienttype=ivpoda>
lrt

This tracking update has been sent to you by FedEx on the behalf of the Requestor noted above. FedEx does not validate the authenticity of the requestor and does not validate, guarantee or warrant the authenticity of the request, the requestor's message, or the accuracy of this tracking update. For tracking results and fedex.com's terms of use, go to fedex.com.

Thank you for your business.



State of North Carolina
General Court of Justice

**CLERK OF SUPERIOR COURT
BUNCOMBE COUNTY
ASHEVILLE, NC**

STEVEN D. COGBURN
EX OFFICIO JUDGE OF PROBATE

ALAN Z. THORNBURG
SENIOR RESIDENT JUDGE

MARVIN P. POPE
RESIDENT JUDGE

FAX Cover Sheet

TO: <i>Lynn Peronius</i>	FAX #: 1-336-274-4650
	PHONE #:

FROM: <i>Kathryn Hansen</i>	DATE: 1-20-16
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Number of pages, including this cover sheet:	6
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If there are any problems with this transmission, please call me at
Phone: 828-259-3400 Fax: 828-259-3401

NOTES:



HIGGINS]·[BENJAMIN

919

♦ ATTORNEYS AT LAW ♦

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Sincerely,



Lynn Personius
Secretary for John F. Bloss

Enclosure

cc: Robert W. Fuller, Esq.
Heyward H. Bouknight, III, Esq.

Higgins Benjamin, PLLC
Comprehensive Legal Solutions

Respectfully submitted, this, the 8th day of January, 2016.

OF COUNSEL:

Higgins Benjamin, PLLC
101 West Friendly Avenue, Suite 500
Greensboro, North Carolina 27401
(336) 273-1600 (phone); (336) 274-4650 (fax)
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John F. Bloss (N.C. Bar No. 23947)



Barry L. Kramer, Esq.
California State Bar No. 61772
Admitted *Pro Hac Vice*

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Robert W. Fuller
Heyward H. Bouknight, III
Robinson Bradshaw & Hinson, P.A.
101 North Tryon Street, Suite 1900
Charlotte, North Carolina 28246
Attorney for Defendants

This, the 8th day of January, 2016.



Attorney for Plaintiff

I certify that this Summons and a copy of the complaint were received and served as follows:

DEFENDANT 1

Date Served: 1-14-16 Time Served: 12:25 AM PM Name Of Defendant: Mission Hospital, Inc.

- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copy Left (If Corporation, Give Title Of Person Copy Left With)

Ann Young (RA) 61 Hamilton St (Mission Hospital Legal Dept)

Other manner of service: (specify).

Defendant WAS NOT served for the following reason:

DEFENDANT 2

Date Served: Time Served: AM PM Name Of Defendant:

- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copy Left (If Corporation, Give Title Of Person Copy Left With)

Other manner of service: (specify).

Defendant WAS NOT served for the following reason:

FILED
2016 JAN 29 AM 11:21
CLERK OF SUPERIOR COURT

FOR USE IN SUMMARY EJECTMENT CASES ONLY

Service was made by mailing by first class mail a copy of the summons and complaint to the defendant(s) and by posting a copy of the summons and complaint at the following premises.

Date Served: Name(s) Of The Defendant(s) Served By Posting:

Address Of Premises Where Posted:

Service Fee \$: Signature Of Deputy Sheriff Making Return: B1220

Date Received: 1-13-16 Name Of Sheriff (Type Or Print): Van Dungen

Date Of Return: 1-14-16 County Of Sheriff: Buncombe

1-13-16 414936