

STATE OF NORTH CAROLINA
FORSYTH COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
13-CVS-2595

SUSAN SYKES d/b/a ADVANCED
CHIROPRACTIC AND HEALTH CENTER,
DAWN PATRICK, TROY LYNN,
LIFEWORCS ON LAKE NORMAN, PLLC,
BRENT BOST, and BOST CHIROPRACTIC
CLINIC, P.A.

Plaintiffs,

vs.

HEALTH NETWORK SOLUTIONS, INC.
F/K/A CHIROPRACTIC NETWORK OF
THE CAROLINAS, INC., MICHAEL
BINDER, STEVEN BINDER, ROBERT
STROUD, JR., LARRY GROSMAN,
MATTHEW SCHMID, RALPH RANSONE,
JEFFREY K. BALDWIN, IRA RUBIN,
RICHARD ARMSTRONG, BRAD
BATCHELOR, JOHN SMITH, RICK
JACKSON, and MARK HOOPER,

Defendants.

**DEFENDANTS' MOTION TO DISMISS
AMENDED COMPLAINT**

Pursuant to Rules 12(b)(1) and 12(b)(6) of the North Carolina Rules of Civil Procedure, Defendants Health Network Solutions, Inc. ("HNS"), Michael Binder, Steven Binder, Robert Stroud, Jr., Larry Grosman, Matthew Schmid, Ralph Ransone, Jeffrey K. Baldwin, Ira Rubin, Richard Armstrong, Brad Batchelor, John Smith, Rick Jackson, and Mark Hooper (collectively "Defendants") hereby move to dismiss Plaintiffs' Amended Complaint for lack of subject matter jurisdiction and for failure to state a claim upon which relief may be granted. In support of this Motion, Defendants show the Court the following:

1. Plaintiffs lack standing. Plaintiffs possess no private right of action, and they have otherwise failed to state a claim for declaratory relief for Defendants' alleged licensing

violations under Chapter 58 of the North Carolina General Statutes, as Plaintiffs allege in the First Claim for Relief;

2. Plaintiffs lack antitrust standing. Their antitrust claims are barred in part by the relevant statute of limitations, and Plaintiffs have otherwise failed to state any cognizable claim for relief arising under North Carolina's antitrust laws, as alleged in the Second Claim for Relief;

3. Plaintiffs have failed to state a claim for relief under Section 75-1.1 of the General Statutes, as alleged in the Third Claim for Relief, and any such claims are barred in part by the relevant statute of limitations;

4. Plaintiffs have failed to state a claim for breach of fiduciary duty, as alleged in the Fourth Claim for Relief, and any such claims are barred in part by the relevant statute of limitations; and

5. Plaintiffs' derivative punitive damages claim, as alleged in the Fifth Claim for Relief, fails since all other claims on which that claim depends fail.

WHEREFORE, Defendants respectfully request that the Court enter an order dismissing with prejudice Plaintiffs' Amended Complaint in its entirety or, alternatively, in part, for the reasons set forth above.

Respectfully submitted this the 11th day of September, 2013.

/s/ Jennifer K. Van Zant

Jennifer K. Van Zant
N.C. State Bar No. 21280
Benjamin R. Norman
N.C. State Bar No. 32852
W. Michael Dowling
N.C. State Bar No. 42790

*Attorneys for Defendants Health Network Solutions,
Inc./f/k/a Chiropractic Network of the Carolinas,
Inc., Michael Binder, Steven Binder, Robert Stroud,
Jr., Larry Grosman, Matthew Schmid, Ralph*

*Ransone, Jeffrey K. Baldwin, Ira Rubin, Richard
Armstrong, Brad Batchelor, John Smith, Rick
Jackson and Mark Hooper*

BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, LLP
P. O. Box 26000
Greensboro, NC 27420-6000
Telephone: 336.373.8850
Facsimile: 336.378.1001
jvanzant@brookspierce.com
bnorman@brookspierce.com
mdowling@brookspierce.com

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the foregoing document with the North Carolina Business Court, which will send notification of filing to the following:

Robert E. Fields III
Samuel Piñero II
Oak City Law LLP
702 North Blount Street
Raleigh, NC 27604

William A. Blancato
Doughton Rich Blancato PLLC
633 W. 4th Street, Suite 150
Winston-Salem, NC 27101

Ellis B. Drew III
Wells Jenkins Lucas & Jenkins
155 Sunnynoll Court, Suite 200
Winston-Salem, NC 27106

Counsel for Plaintiffs

Counsel for Plaintiffs

Counsel for Plaintiffs

This 11th day of September, 2013.

/s/ Jennifer K. Van Zant

Jennifer K. Van Zant

BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, LLP

P. O. Box 26000
Greensboro, NC 27420-6000
Telephone: 336.373.8850
Facsimile: 336.378.1001
jvanzant@brookspierce.com