APPENDIX

APPENDIX

TABLE OF CONTENTS

Appendix A Summary Order in the United States Court of Appeals for the Second Circuit (September 9, 2020) . . . . . App. 1

Appendix B Memorandum of Decision Granting Defendants' Motions for Judgment on the Pleadings and to Dismiss and Granting in Part and Denying in Part Defendants' Motion for Sanctions (September 17, 2018) . . . . . App. 19

Appendix C Memorandum of Decision Granting Defendants' Motion to Dismiss the *Frazier* Action and Granting Defendant's Motion to Dismiss the *Osborne* Action in the United States District Court District of Connecticut (November 10, 2016). . . . . App. 64

Appendix D Decision Granting the Motion to Dismiss Appeals of Orders in the United States Court of Appeals for the Second Circuit (September 27, 2016) . . . . . App. 95

Appendix E Memorandum of Decision Granting in Part and Denying in Part Defendant's Motion to Dismiss the Second Amended Complaint Brought by Plaintiff's Singleton and Lograsso, Granting Defendant's Motion to Dismiss the Amended Complaint Brought by Plaintiff Haynes and Granting the Defendant's Motion to Dismiss the Amended Complaint Brought by Plaintiffs McCullough, Sakoda, and Weise in the United States District Court District of Connecticut (March 21, 2016) . . . . . App. 104

Appendix F Order in the United States Court of Appeals for the Second Circuit (October 15, 2020) . . . . . App. 182

Appendix G Statutes and Rules Involved . . . . . App. 184

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[Filed: September 9, 2020]

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 9th day of September, two thousand twenty.

PRESENT: BARRINGTON D. PARKER,
MICHAEL H. PARK,
WILLIAM J. NARDINI,
Circuit Judges.

- -x

Haynes, et al. v. World Wrestling Entertainment, Inc.

William Albert Haynes, III, Rodney Begnaud, AKA Rodney Mack, Russ McCullough, individually and on behalf of all others similarly situated, AKA Big Russ McCullough, Ryan Sakoda, individually and on behalf of all others similarly situated, Matthew Robert Wiese, individually and on behalf of all others similarly situated, AKA Luther Reigns, Evan Singleton, Vito Lograsso, Cassandra Frazier, Individually and as next of kin to her deceased husband, Nelson Lee Frazier, Jr. a/k/a Mabel a/k/a Viscera a/k/a Big Daddy V a/k/a King Mabel and as personal representative of The Estate of Nelson Lee Frazier, Jr., Deceased, Shirley Fellows, on behalf of Estate of Timothy Alan Smith a/k/a Rex King, Joseph M. Laurinaitis, AKA Road Warrior Animal, Paul Orndorff, AKA Mr. Wonderful, Anthony Norris, AKA Ahmed Johnson, James Harris, AKA Kamala, Chris Pallies, AKA King Kong Bundy, Ken Patera, Barbara Marie Leydig, Terry Brunk, AKA Sabu, Barry Darsow, AKA Smash, Bill Eadie, AKA Ax, John Nord, Jonathan Hugger, AKA Johnny the Bull, James Brunzell, Susan Green, Angelo Mosca, AKA King Kong Mosca, James Manley, AKA Jim Powers, Michael Enos, AKA Mike, AKA Blake Beverly, Bruce Reed, AKA Butch, Sylain Grenier, Omar Mijares, AKA Omar Atlas, Don Leo Heaton, AKA Don Leo Jonathan, Troy Martin, AKA Shane Douglas, Marc Copani, AKA Muhammad Hassan, Mark Canterbury, AKA Henry Godwin, Victoria Otis, AKA Princess Victoria, Judy Hardee, Judy Martin, Bernard Knighton, as Personal

Representative of Estate of Brian Knighton, a.k.a. Axl Rotten, Marty Jannetty, Terry Szopinski, AKA Warlord, Sione Havia Vailahi, AKA Barbarian, Timothy Smith, AKA Rex King, Tracy Smothers, AKA Freddie Joe Floyd, Michael R. Halac, AKA Mantaur, Rick Jones, AKA Black Bart, Ken Johnson, AKA Slick, George Gray, AKA One Man Gang, Ferrin Jesse Barr, AKA J.J. Funk, Rod Price, Donald Driggers, Ronald Scott Heard, on behalf of estate of Ronald Heard also known as Outlaw Ron Bass, Boris Zhukov, David Silva, John Jeter, AKA Johnny Jeter, Gayle Schecter, as Personal Representative of Estate Jon Rechner a.k.a. Balls Mahoney, Ashley Massaro, AKA Ashley, Charles Wicks, AKA Chad Wicks, Perry Satullo, AKA Perry Saturn, Charles Bernard Scaggs, AKA Flash Funk, Carole M. Snuka, on behalf of Estate of James W. Snuka,

Consolidated Plaintiffs-Appellants,

Kyros Law P.C., Konstantine W. Kyros,

Appellants,

Michelle James, as mother and next friend of M.O., a Minor Child and T.O, a Minor Child, Jimmy Snuka, "Superfly," by and through his guardian, Carole Snuka, Salvador Guerrero, IV, AKA Chavo Guerrero, Jr., Chavo Guerrero, Sr., AKA Chavo Classic, Bryan Emmett Clark, Jr., AKA Adam Bomb, Dave Hebner, Earl Hebner, Carlene B. Moore-Begnaud, AKA Jazz, Mark Jindrak, Jon Heidenreich, Larry Oliver, AKA Crippler, Bobbi Billard, Lou Marconi, Bernard Knighton, Kelli Fujiwara Sloan, on behalf of estate of Harry Masayoshi Fujiwara,

Consolidated Plaintiffs,

	18-3278 (L)
	18-3322 (Con)
	18-3325 (Con)
v.	18-3326 (Con)
	18-3327 (Con)
	18-3328 (Con)
	18-3330 (Con)

World Wrestling Entertainment, Incorporated,

Consolidated Plaintiff-Defendant-Appellee,

Vincent K. McMahon, Individually and as the Trustee of the Vincent K. McMahon Irrevocable Trust U/T/A dtd. June 24, 2004, as the Trustee of the Vincent K. McMahon 2008, and as Special Trustee of the Vincent K. McMahon 2013 Irrev. Trust U/A dtd. December 5, 2013 and as Trust,

Consolidated Defendant-Appellees,

Robert Windham, Thomas Billington, James Ware, Oreal Perras, John Doe's, Various,

Consolidated-Defendants.

- -x

FOR PLAINTIFF-APPELLANTS:

Kyros Law P.C. and Pro Se Appellant Konstantine W. Kyros	Konstantine W. Kyros Anthony M. Norris KYROS LAW, P.C. Hingham, MA.

FOR CONSOLIDATED PLAINTIFFS-APPELLANTS:

William Albert Haynes, III, Russ McCullough, Ryan Sakoda, Matthew Robert Weise, Evan Singleton, Cassandra Frazier, Joseph M. Laurinaitis, Paul Orndorff, James Harris, Chris Pallies and Ken Patera, et al.	Erica C. Mirabella MIRABELLA LAW, LLC Boston, MA.

FOR CONSOLIDATED PLAINTIFFS-APPELLANTS:

Cassandra Frazier, Joseph M. Laurinaitis, Anthony Norris, James Harris, Chris Pallies and Ken Patera, et al.	R. Christopher Gilreath GILREATH & ASSOCIATES One Memphis Place Memphis, TN.

FOR CONSOLIDATED PLAINTIFFS-APPELLANTS:

Joseph M. Laurinaitis, Paul Orndorff, Anthony Norris, James Harris, Chris Pallies and Ken Patera, et al.	S. James Boumil BOUMIL LAW OFFICES Lowell, MA.

FOR CONSOLIDATED PLAINTIFFS-APPELLANTS:

Joseph M. Laurinaitis, Paul Orndorff, Anthony Norris, James Harris, Chris Pallies and Ken Patera, et al.	Brenden P. Leydon WOCL LEYDON, LLC Stamford, CT.

FOR DEFENDANTS-APPELLEES:

World Wrestling Entertainment Inc. Vincent K. McMahon	Jerry S. McDevitt Curtis B. Krasik K&L GATES LLP Pittsburgh, PA. Jeffrey P. Mueller DAY PITNEY LLP Hartford, CT.

Appeal from the United States District Court for the District of Connecticut (Bryant, *J.*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the appeals of sanctions orders are **DISMISSED**, the merits appeals of the dismissal of all claims in *Haynes*

v. World Wrestling Entertainment, Inc., McCullough v. World Wrestling Entertainment, Inc., Frazier v. World Wrestling Entertainment, Inc., and *Singleton v. World Wrestling Entertainment, Inc.* are **DISMISSED**, and the judgment of the district court on all other claims is **AFFIRMED**.[1]

This appeal arises from seven cases consolidated in the United States District Court for the District of Connecticut.[2] The cases were brought against World Wrestling Entertainment Inc. by former WWE wrestlers. The plaintiffs-appellants allege that, as a

---

[1] This summary order resolves appeals from the following five District of Connecticut cases: *Haynes v. World Wrestling Entm't, Inc.*, No. 3:15-cv-1156 (VLB); *Singleton v. World Wrestling Entm't, Inc.*, No. 3:15-cv-425 (VLB); *Frazier v. World Wrestling Entm't, Inc.*, No. 3:15-cv-1305 (VLB); *McCullough v. World Wrestling Entm't, Inc.*, 172 F. Supp. 3d 528 (2016), *reconsideration denied*, No. 3:15-cv-10704 (VLB), 2016 WL 3962779 (July 21, 2016); and *Laurinaitis v. World Wrestling Entm't, Inc.*, No. 3:16-cv-1209 (VLB).

[2] Two of the seven consolidated cases have not been appealed. The first was brought by World Wrestling Entertainment, Inc. ("WWE") in June 2015 in the District of Connecticut. *World Wrestling Entm't, Inc. v. Windham et al.*, No. 3:15-cv-994 (VLB). In *Windham*, WWE sought a declaratory judgment after appellant Konstantine W. Kyros threatened to pursue litigation on behalf of four previously unrepresented wrestlers. In that case, WWE was granted relief in the form of a declaration stating that the claims of those four wrestlers were time-barred. The second case that was a part of the consolidation below but is not appealed here was originally filed by Kyros in June 2015 in the Northern District of Texas. *James v. World Wrestling Entm't, Inc.*, No. 3:15-cv-1229 (VLB). The district court dismissed *James* in November 2016 for Plaintiffs' lack of standing.

result of physical trauma they experienced while performing, they suffered neurological damage resulting in diseases such as chronic traumatic encephalopathy ("CTE"), in addition to other significant physical and mental health impairments. In each of the cases, the plaintiffs-appellants were represented by the same attorney, Konstantine W. Kyros of Kyros Law P.C. We assume the parties' familiarity with the underlying pleadings and their factual allegations, the procedural and substantive rulings below, and the issues on appeal.

I.

The first complaint in the consolidated cases was a putative class action filed in the District of Oregon in October 2014 on behalf of William Albert Haynes III, better known as Billy Jack. *Haynes v. World Wrestling Entm't, Inc.*, No. 3:15-cv-1156 (VLB).[3] Several months later, in January 2015, former wrestlers Vito LoGrasso and Evan Singleton filed a putative class action in the Eastern District of Pennsylvania. *Singleton v. World Wrestling Entm't, Inc.*, No. 3:15-cv-425 (VLB). Both wrestlers had forum selection clauses in their contracts with WWE providing that litigation arising from the contract be brought in the District of Connecticut, where WWE is headquartered. The Pennsylvania court enforced the forum selection clauses and transferred the *Singleton* action to the District of Connecticut. In February 2015, the estate of Nelson Lee Frazier Jr., a

[3] Unless otherwise noted, when quoting from published judicial decisions, all internal quotation marks, brackets, and citations have been omitted.

deceased wrestler, commenced a wrongful death action in the Western District of Tennessee. *Frazier v. World Wrestling Entm't Inc.*, No. 3:15-cv-1305 (VLB). In April 2015, wrestlers Russ McCullough, Ryan Sakoda, and Matthew Wiese commenced another putative class action, this time in the Central District of California. *McCullough v. World Wrestling Entm't Inc.*, No. 3:15-cv-1074 (VLB).

Around June 2015, the district court in Connecticut presiding over the *Singleton* action became aware of the pending actions in Oregon, Tennessee, and California. The contracts with WWE signed by the wrestlers in each case contained forum selection clauses requiring litigation in the District of Connecticut. All of the actions were eventually transferred to Connecticut where they were consolidated before the district court.

In March 2016, the district court dismissed all claims in the *Haynes*, *Singleton*, and *McCullough* actions for failure to state a claim, with the exception of fraudulent omission claims on behalf of Singleton and LoGrasso. *McCullough v. World Wrestling Entm't, Inc.*, 172 F. Supp. 3d 528 (D. Conn.).

In November 2016, the district court granted WWE's motion to dismiss the wrongful death claim asserted in *Frazier*. Frazier, who died in 2014, had been cremated without having any of his brain tissue examined. Frazier's counsel had argued to the district court that CTE can be diagnosed only through a post-mortem examination of brain tissue. Because no examination had been done on Frazier, the court concluded that his estate could not plausibly allege that

he had CTE. The court also concluded that Frazier's estate failed to plead any non-conclusory allegations linking Frazier's death to injuries sustained while wrestling. Frazier had died of a heart attack, and the operative pleading contained no allegations that heart failure could result from CTE.

In a decision filed on March 28, 2018, the district court granted summary judgment on the remaining fraudulent omission claims in *Singleton*. The district court concluded that the plaintiffs had not produced evidence establishing that WWE knew of a risk of permanent degenerative neurological conditions prior to September 2007, when a widely publicized report on CTE (the "Benoit report") discussed those conditions. The court concluded that no reasonable jury could find that WWE concealed the dangers allegedly associated with wrestling.

II.

After the district court dismissed all claims in the *Haynes* and *McCullough* actions and dismissed all but the fraud-by-omission claim for each plaintiff in the *Singleton* action, the *Haynes* and *McCullough* plaintiffs filed notices of appeal in this Court. WWE moved to dismiss those appeals on the grounds that the appeals were not taken from a final judgment that disposed of all the consolidated cases. *See Hageman v. City Investing Co.*, 851 F.2d 69 (2d Cir. 1988). A panel of this Court, applying the then-current law of this Circuit, agreed that the final judgments in *Haynes* and *McCullough* could not be appealed until final judgments had been entered in all the consolidated cases. Accordingly, the panel dismissed the *Haynes* and

McCullough appeals without prejudice. *See McCullough v. World Wrestling Entm't, Inc.*, 838 F.3d 210, 214 (2d Cir. 2016).

More than a year later, on March 27, 2018, the Supreme Court held that in consolidated cases such as these, a final judgment in one of the cases is immediately appealable even where final judgments have not been entered in each of the consolidated cases. *Hall v. Hall*, 138 S. Ct. 1118, 1131 (2018) ("[Federal Rule of Civil Procedure] 42(a) did not purport to alter the settled understanding of the consequences of consolidation. That understanding makes clear that when one of several consolidated cases is finally decided, a disappointed litigant is free to seek review of that decision in the court of appeals.").

Following the decision in *Hall*, neither the appellants in *Haynes* and *McCullough,* nor any plaintiff in *Singleton* or *Frazier* sought relief from this Court or in the district court. This inaction was fatal. Arguments as to *Hall*'s applicability or as to any "work-arounds" have been waived. *Hall* controls and renders the notices of appeal in *Haynes*, *Singleton*, *Frazier*, and *McCullough* untimely. Untimely notices of appeal are jurisdictional bars to this Court's review. *See Bowles v. Russell*, 551 U.S. 205, 209 (2007) ("This Court has long held that the taking of an appeal within the prescribed time is 'mandatory and jurisdictional.'"). Accordingly, we lack appellate jurisdiction over the appeals in *Haynes*, *McCullough*, *Frazier*, and *Singleton* and, for that reason, those appeals are dismissed.

III.

In July 2016, *Laurinaitis v. World Wrestling Entm't, Inc.*, No. 3:16-cv-1209 (VLB), a suit brought by fifty former WWE wrestlers, was commenced in the District of Connecticut. The complaint included a number of tort claims and, in addition, sought relief under various statutes on the ground that, in its contracts with the wrestlers, WWE had misclassified them as independent contractors. WWE moved to dismiss the action and the district court granted the motion, holding that the claims were either time-barred, barred by prior rulings, or frivolous.

Connecticut law requires tort claims to be brought "within three years from the date of the act or omission complained of." Conn. Gen. Stat. § 52-577. The three-year period "begins with the date of the act or omission complained of, not the date when the plaintiff first discovers an injury." *Collum v. Chapin*, 40 Conn. App. 449, 451–52 (1996) (citing *Fichera v. Mine Hill Corp.*, 207 Conn. 204, 212–13 (1988)). The complaint in *Laurinaitis* alleges that WWE concealed the risk that concussive blows to the head could cause permanent degenerative neurological conditions with the aim of inducing the wrestlers to continue performing. The district court dismissed the complaint, reasoning that any concealment of information alleged to have occurred must have occurred at a time when the wrestlers were still performing, and because it was not disputed that none had wrestled later than 2011, their tort claims were time-barred. We find no error in the district court's conclusion.

Under Connecticut law, wrongful death claims must be brought "within two years from the date of death" except that "no such action may be brought more than five years from the date of the act or omission complained of." Conn. Gen. Stat. § 52-555(a). Section 52-555 may "serve as a bar to a wrongful death claim" even if "an injured victim could not have known that he or she had a claim against the alleged tortfeasor until after the limitation period had expired." *Greco v. United Techs. Corp.*, 277 Conn. 337, 353 (2006). The district court correctly determined that none of the plaintiffs in the *Laurinaitis* action had wrestled for WWE within five years of the filing of that complaint and thus the wrongful death claims were also time-barred. Again, we find no error.

The remaining claims are also time-barred. The misclassification claims allege that the wrestlers' classification as independent contractors was a part of a scheme to defraud. Even assuming the longer six-year statute of limitations for contract claims applies, *compare* Conn. Gen. Stat. § 52-577 *with* Conn. Gen. Stat. § 52-576, none of the wrestlers plausibly alleged that they were first misclassified within six years of the filing of the *Laurinaitis* complaint. Finally, we affirm the dismissal of plaintiff's Occupational Safety and Health Act ("OSHA"), Employee Retirement Income Security Act ("ERISA"), Racketeer Influenced and Corrupt Organizations Act ("RICO"), Family and Medical Leave Act ("FMLA"), and unconscionable contracts claims for the reasons stated by the district court.

Connecticut statutes of repose may, under appropriate circumstances, be tolled under what its courts term the 'continuing course of conduct' doctrine. *Watts v. Chittenden*, 301 Conn. 575, 583–84 (2011) (recognizing that a period of repose may be tolled in the proper circumstances, reflecting the "policy that, during an ongoing relationship, lawsuits are premature because specific tortious acts or omissions may be difficult to identify and may yet be remedied"). Appellants contend that it applies in this case. Pursuant to that doctrine, a plaintiff must show that a defendant: "(1) committed an initial wrong upon the plaintiff; (2) owed a continuing duty to the plaintiff that was related to the alleged original wrong; and (3) continually breached that duty." *Witt v. St. Vincent's Med. Ctr.*, 252 Conn. 363, 370 (2000). Where Connecticut courts have found a duty "continued to exist after the cessation of the act or omission relied upon, there has been evidence of either a special relationship between the parties giving rise to such a continuing duty or some later wrongful conduct of a defendant related to the prior act." *Macellaio v. Newington Police Dep't*, 145 Conn. App. 426, 435 (2013). The existence of a special relationship "will depend on the circumstances that exist between the parties and the nature of the claim at issue." *Saint Bernard Sch. of Montville, Inc. v. Bank of Am.*, 312 Conn. 811, 835 (2014).

The district court concluded that the *Laurinaitis* plaintiffs failed plausibly to allege a special or continuing relationship between themselves and WWE, in part because "a mere contractual relationship does not create a fiduciary or confidential relationship," *Id.*

at 836. There were no plausible allegations in the complaint that could lead the court reasonably to conclude that WWE had a continuing duty to provide comprehensive health care to the wrestlers after they stopped performing. Likewise, the district court was unpersuaded by the allegation that continuing royalty payments somehow gave rise to a duty on the part of WWE with respect to the alleged misclassification as independent contractors. We agree with the district court and we similarly conclude that the continuing-course-of-conduct doctrine did not cause the otherwise applicable statutes of limitation or repose to be tolled.

The district court was also correct that the statutes of limitation and repose should not be tolled under the fraudulent concealment doctrine. For the doctrine to apply, the wrestlers were required plausibly to allege that WWE "(1) had actual awareness, rather than imputed knowledge, of the facts necessary to establish the plaintiffs' cause of action; (2) intentionally concealed these facts from the plaintiffs; and (3) concealed the facts for the purpose of obtaining delay on the plaintiffs' part in filing a complaint on their cause of action." *Falls Church Grp., Ltd. v. Tyler, Cooper & Alcorn, LLP*, 281 Conn. 84, 105 (2007). Proof of fraudulent concealment requires "clear, precise, and unequivocal evidence." *Id.*

We agree with the district court that the complaint in *Laurinaitis* contained no plausible allegations that WWE fraudulently concealed any causes of action from its wrestlers. We therefore affirm the district court's grant of WWE's motion to dismiss the *Laurinaitis* action.

IV.

During the course of the actions discussed above, WWE moved under Rules 11 and 37 for sanctions against plaintiffs-appellants' counsel in the *Singleton* and *Laurinaitis* actions. The district court referred the motions to Magistrate Judge Robert A. Richardson who, in a Report and Recommendation dated February 22, 2018, recommended that monetary sanctions be awarded. The district court adopted the Recommendation. The district court wrote that "this case has been characterized by [counsel's] repeated failures to comply with the clear and unambiguous provisions of the Federal Rules of Civil Procedures and this Court's repeated instructions and admonitions, which has resulted in a considerable waste of the Court's and the Defendants' time and resources."

While sanctions have been awarded, the amount of sanctions has not been determined; consequently, this Court lacks appellate jurisdiction over the sanctions appeal. *See Pannonia Farms, Inc. v. USA Cable*, 426 F.3d 650, 652 (2d Cir. 2005) (per curiam); *see also Discon, Inc. v. NYNEX Corp.*, 4 F.3d 130, 133 (2d Cir. 1993) ("[A] sanction order that leaves the amount of the sanction for later determination is not final and, therefore, not appealable under [28 U.S.C.] § 1291."). We therefore dismiss appellant Kyros's appeal of the Rule 37 and Rule 11 sanctions orders. We have considered the plaintiffs-appellants' remaining arguments and conclude that they are either waived or without merit.

In sum, the appeals in *Haynes v. World Wrestling Entertainment, Inc.*, No. 3:15-cv-1156 (VLB), *Singleton*

v. World Wrestling Entertainment, Inc., No. 3:15-cv-425 (VLB), *Frazier v. World Wrestling Entertainment, Inc.*, No. 3:15-cv-1305 (VLB), and *McCullough v. World Wrestling Entertainment, Inc.*, 172 F. Supp. 3d 528 (D. Conn. 2016) (VLB), are dismissed because the notices of appeal were untimely and we therefore lack appellate jurisdiction.

We also lack appellate jurisdiction over the appeal of sanctions orders in *Singleton* and *Laurinaitis v. World Wrestling Entertainment, Inc.*, No. 3:16-cv-1209 (VLB) because the amount of the sanctions has not been set and thus the order is not yet final. Finally, we affirm the district court's dismissal of all claims in *Laurinaitis*. Those claims are time-barred, and the plaintiffs-appellants have failed to plausibly allege that the applicable limitations period should be tolled.

CONCLUSION

Accordingly, the appeals of the merits orders in *Haynes*, *McCullough*, *Frazier*, and *Singleton* are **DISMISSED** for lack of appellate jurisdiction. The appeal of sanctions ordered in *Laurinaitis* and *Singleton* is **DISMISSED** for lack of appellate jurisdiction. The judgment of the district court in all other respects is **AFFIRMED**.[4]

---

[4] WWE's motions to amend the captions are DENIED. *See* Fed. R. App. P. 12(a) ("Upon receiving the copy of the notice of appeal . . . the circuit clerk must docket the appeal under the title of the district-court action.").

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

/s/ Catherine O'Hagan Wolfe
[SEAL]

APPENDIX B

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

[Filed: September 17, 2018]

CIVIL ACTION NO. 3:15-CV-1074 (VLB)
LEAD CASE

RUSS MCCULLOUGH, et al.
Plaintiffs,

v.

WORLD WRESTLING ENTERTAINMENT, INC.,
Defendant.

- -

CIVIL ACTION NO. 3:15-CV-994 (VLB)
CONSOLIDATED CASE

WORLD WRESTLING ENTERTAINMENT, INC.,
Plaintiff,

v.

ROBERT WINDHAM, THOMAS BILLINGTON, JAMES WARE, and OREAL PERRAS,
Defendants.

- -

CIVIL ACTION NO. 3:16-CV-1209 (VLB)
CONSOLIDATED CASE

JOSEPH M. LAURINAITIS, et al.,
Plaintiffs,

v.

WORLD WRESTLING ENTERTAINMENT, INC. and VINCENT K. MCMAHON
Defendants.

September 17, 2018

MEMORANDUM OF DECISION GRANTING DEFENDANTS' MOTIONS FOR JUDGMENT ON THE PLEADINGS [DKT. NO. 205] AND TO DISMISS [DKT. NOS. 266, 269] AND GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION FOR SANCTIONS [DKT, NO. 262]

I. Introduction

On September 29, 2017, this Court issued an order (the "Order") regarding a motion for judgment on the pleadings and motions to dismiss and for sanctions filed by World Wrestling Entertainment, Inc. ("WWE") and Vincent McMahon (collectively, Defendants). The Order directed counsel for the Plaintiffs in the *Laurinaitis* action ("*Laurinaitis* Plaintiffs") and declaratory judgment Defendants in the *Windham* action ("DJ Defendants" or "*Windham* Defendants") (collectively, "Plaintiffs" or the "Wrestlers") to "file amended pleadings which comply with Federal Rules of Civil Procedure 8 and 9 and which set forth the factual basis of their claims or defenses clearly and concisely in separately numbered paragraphs." [Dkt. No. 362 at 20]. In order to assist Plaintiffs' counsel to meet their theretofore unsatisfied pleading obligation–as noted in the Court's prior rulings–and to mitigate any potential further prejudice to the Defendants, the Court also required the Wrestlers' counsel to demonstrate that they had conducted factual due diligence in preparation for filing an amended complaint by:

> submitting for *in camera* review affidavits signed and sworn under penalty of perjury, setting forth facts within each plaintiff's or [declaratory judgment] defendant's personal knowledge that form the factual basis of their claim and defense, including without limitation:
>
> 1. the date or dates on which they wrestled for WWE or any or its agents or affiliates (including the first and last date);

2. if they wrestled for more than one person and or entity, for whom they wrestled, and for what period of time;
3. whether they ever signed any agreement or other document in connection with their engagement to wrestle by or for WWE or any of its agents or affiliates;
4. whether they were ever or are now in possession of any document relating to their engagement to wrestle by or for WWE or any of its agents or affiliates, including without limitation W-4s, W-2s or 1099s; and
5. what specific WWE employees or agents said or did that forms the basis of each and every one of the claims or defenses in the wrestler's pleading, including:
   a. a reference to the specific paragraph of the complaint;
   b. when and where such act occurred or such statement was made;
   c. the identities of any and all the persons present at the time of the act or statement; and
   d. any and all other facts personally known to the affiant that form the basis of their belief that WWE or any or its agents or affiliates knew or should have known that wrestling caused any traumatic brain injuries, including CTE.

Id. at 20-21. The Court reserved its judgment on pending motions to dismiss, for judgment on the

pleadings, and for sanctions, to give the Wrestlers a final opportunity to file pleadings that complied with both the Federal Rules of Civil Procedure and the Order.

The Wrestlers filed a Second Answer in the *Windham* action [Dkt. No. 364] and a Second Amended Complaint ("SAC") in the *Laurinaitis* action [Dkt. No. 363] on November 3, 2017. The Wrestlers' counsel also submitted for *in camera* review affidavits from each Wrestler. After reviewing each of these submissions, and for the reasons that follow, the Court finds that Wrestlers' counsel did not comply with the Order and that declaratory judgment, dismissal, and sanctions are warranted.

II. Background

On January 16, 2015, Plaintiff's counsel, Konstantine Kyros filed the first of six lawsuits on behalf of former WWE wrestlers, alleging they are either suffering from symptoms of permanent degenerative neurological conditions resulting from traumatic brain injuries sustained during their employment, or are at increased risk of developing such conditions. As set forth below, this case has been characterized by Attorney Kyros' repeated failures to comply with the clear, and unambiguous provisions of the Federal Rules of Civil Procedure and this Court's repeated instructions and admonitions, which has resulted in a considerable waste of the Court's and the Defendants' time and resources.

A. Attorney Kyros' Attempts to Evade the Court's Jurisdiction

The first of the consolidated cases, with lead plaintiffs Evan Singleton and Vito LoGrasso, purported to be a class action and was transferred to this Court from the Eastern District of Pennsylvania pursuant to a forum selection clause in contracts signed by each of the plaintiffs. [Dkt. No. 6]. Thereafter, Attorney Kyros filed several purported class actions in districts other than Connecticut, each seeking the same or similar redress for the same alleged conduct as the purported class action pending before this Court. Each of these cases was subsequently transferred to this Court, with the District of Oregon noting that counsel's choice of forum showed evidence of forum shopping. Attorney Kyros them filed the *Laurinitis* action in this district but which was randomly assigned to Judge Eginton, thereupon Attorney Kyros attempted to prevent the case from being transferred to this Court, despite the clear and unambiguous language of this district's related case rule.

WWE sought sanctions against Kyros due to his persistence in filing suit in courts outside of this district. In the exercise of utmost restraint the Court denied this motion, but noted Kyros' actions appeared to be "part of a vexatious and transparent attempt to circumvent two prior decisions by district courts in Oregon and California either enforcing the forum-selection clauses or nonetheless transferring WWE concussion litigation to this district." [Dkt. No. 253 at 25]. The Court also noted that "Plaintiffs' forum-shopping has forced multiple district courts to exert

needless effort to corral these cases to the proper forum." *Id.* Nevertheless, the Court denied WWE's motion for sanctions because Kyros had filed the most recent of the consolidated cases in the correct district. *Id.* at 25-26. The Court noted, however, that it was "open to reconsidering this finding at a later date should Kyros revert to bad habits." *Id.* at 26.

B. Attorney Kyros Repeatedly Files Complaints Rife with Irrelevant, Inflammatory, and Inaccurate Information

The complaints in the initial actions consolidated before this Court were nearly identical. They were exceedingly long and consisted of paragraphs asserting generalities, legal conclusions and facts unrelated to the plaintiffs' claims. The Court repeatedly instructed Attorney Kyros on his professional obligations under Federal Rules of Civil Procedure 8, 9, and 11. For example, in a June 8, 2015 scheduling conference, the Court admonished Plaintiffs that "[t]he defendant shouldn't have to write a motion to dismiss, nor should the Court have to read, research, and write a decision on a motion to dismiss when it's patently clear to the parties prior to the filing of the motion, that the claim should be dismissed." [Case No. 15-cv-425, Dkt. No. 73 at 49]. The Court went on to explain that:

> "[A] complaint should be a compilation of facts - facts. I'd really, really like you to read the Federal rule, give it some close consideration, perhaps read some cases on the pleadings standards, and then file this complaint again in a week without any scrivener errors, without a

> lot of superfluous, hyperbolic, inflammatory opinions and references to things that don't have any relevance."

Id. at 60. The Court specifically noted that the *Singleton* complaint referenced a report that became public in 2014, claimed that the plaintiffs were deceased when they were not, and referenced events that transpired in the lives of wrestlers who were not parties to the lawsuit. *Id.* at 60-64. The Court asked,

> "What does that have to do with either of your clients? They had both stopped wrestling before 2014. I see no reason to include that in the complaint, other than to inflame. It's argumentative. A complaint should be clear and concise statement of the facts that form the basis of your claim. So you need to identify what claim you're asserting, do the research to find out what facts have to be proven in order to establish that claim and allege the facts that are necessary to prove each claim. Because the rest of that is just window dressing. And that's where you get into the trouble that you're in where you're asserting that someone's dead who's not because the complaint is full of hyperbolic stuff . . . . [I]t may be clear, but . . . it's not concise and it's not accurate.

Id. at 61. The Court then granted the plaintiffs leave to amend their complaint, which they did.

Despite deficiencies in the amended complaints filed in the *Singleton* case and others, the Court considered WWE's motions to dismiss the complaints on their

merits, and dismissed claims (1) for negligence for failure to state a claim under Connecticut law; (2) for negligent misrepresentation and fraudulent deceit, for failure to identify with any specificity any false representation by WWE upon which the plaintiffs relied; (3) and for fraudulent concealment and medical monitoring, because neither stated a separate and independent cause of action under Connecticut law. [Dkt. No. 116 at 70]. The ruling also stated that the complaints were "excessively lengthy, including large numbers of paragraphs that offer content unrelated to the Plaintiffs' causes of action and appear aimed at an audience other than this Court." [Dkt. No. 116 at 4].

A fraudulent omission claim as to plaintiffs Singleton and LoGrasso survived the summary judgment stage, on the ground that these plaintiffs had adequately alleged that WWE knew of the risk that repeated concussions or subconcussive blows could cause permanent degenerative neurological conditions like CTE as early as 2005 and fraudulently failed to disclose this risk.

C. Attorney Kyros' Conduct During the Discovery and Summary Judgment Phases of *Singleton*

The parties conducted discovery into Singleton's and Lograsso's claims, during which WWE attempted to uncover, among other things, the basis for plaintiffs' allegations that (1) Singleton experienced symptoms associated with a traumatic brain injury from which he suffered while wrestling for WWE; (2) WWE made "deceptive public statements" which "downplayed known long-term health risks of concussions"; (3) WWE

attempted to criticize or discredit studies relating to brain trauma or CTE; (4) individuals associated with WWE stated "wrestlers diagnosed with brain trauma did not receive these injuries as a result of wrestling for WWE." [*See* Dkt. No. 198 at 22-35]. WWE also sought information regarding the specific fraudulent omissions or misrepresentations that formed the basis of the plaintiffs' claims. *Id.* at 36. Plaintiffs were unable or failed to do so. When the plaintiffs served deficient interrogatory responses relating to these issues, WWE filed a motion to compel, which the Court granted in part. With respect to interrogatories asking Plaintiff to identify a person or statement, the Court noted that "[w]here Plaintiff is unable to identify a statement or speaker in response to an interrogatory, Plaintiff must state that fact." [Dkt. No. 144].

Plaintiffs supplemented their responses. However, WWE judged these responses insufficient, and filed a motion for Rule 37 sanctions, arguing that plaintiffs failed to comply with the Court's ruling on WWE's motion to compel. [*See* Dkt. No. 198]. WWE specifically asked the Court to dismiss the case with prejudice and to award attorney's fees. On February 22, 2018, Magistrate Judge Robert A. Richardson issued a ruling recommending that the Court order further supplementation of these six interrogatories, and that the Court order Attorney Kyros and his law offices to pay WWE all of the legal fees that it incurred in connection with its motion for sanctions. [Dkt. No. 371 at 17]. While Judge Richardson recommended deniying WWE's motion to the extent it sought dismissal with prejudice, he noted that "plaintiffs and their counsel are now on notice that any further noncompliance

during the remainder of this litigation may result in dismissal of the case." *Id.* at 18. The Court adopted this recommended ruling on July 22, 2018. [*See* Dkt. No. 376].

Shortly after Judge Richardson issued his recommended ruling, on March 28, 2018, the Court granted summary judgment as to Singleton's and LoGrasso's claims on the grounds that (1) Plaintiffs failed to present any evidence that WWE knew of the risk that concussions could cause permanent degenerative neurological conditions prior to 2007, which was after LoGrasso's retirement from wrestling; and (2) WWE offered undisputed evidence that it warned Singleton of the risk before he sustained his career-ending injury in 2012. [Dkt. No. 374 at 18-19]. The Court also noted that Plaintiffs' counsel had once again "asserted facts and advanced legal theories for which there is no reasonable evidentiary and legal basis" and again "caution[ed] that such conduct subjects counsel to Rule 11 sanctions." [Dkt. No. 374 at 21]. The Court then advised Plaintiffs' attorneys to discharge their ethical duty to the court by "read[ing] the record in its entirety before filing anything with the Court to assure their reasonable belief in any and all future assertions of fact and law." *Id.*

D. ***Windham*** **Procedural History**

WWE filed a complaint for declaratory judgment ("DJ") against the *Windham* Defendants, arguing that the potential claims raised in demand letters sent by these Defendants were barred by Connecticut's statutes of limitations and repose. The *Windham* Defendants filed a motion to dismiss the DJ action. In

their motion, the *Windham* Defendants argued that the Court lacked subject matter jurisdiction to issue a declaratory judgment, because the anticipated lawsuits that WWE identified were too remote and speculative to create a justiciable case or controversy. The Court granted the *Windham* Defendants' motion to dismiss on the grounds that it had denied WWE's motion to dismiss LoGrasso's complaint.

WWE filed a motion for reconsideration of this dismissal, arguing in part that the Court erred when it presumed that the tolling doctrines which permitted LoGrasso's suit to move forward also applied to the declaratory judgment action. In particular, WWE argued:

> "The Court's conclusion that Plaintiff LoGrasso plausibly alleged a basis for tolling under the continuing course of conduct and fraudulent concealment exceptions was based on his allegations that WWE knew of information concerning a link between repeated head trauma and permanent neurological conditions *in 2005 or later*. By 2005, all of the tort claims threatened by the named Defendants in the *Windham* action would have been foreclosed for years because none of them had performed for WWE *since at least 1999*."

[Dkt. No. 119-1 at 15 (citations omitted)]. The Court granted WWE's motion for reconsideration in part, holding that a case or controversy existed with respect to the named DJ Defendants, and holding that the application of Connecticut procedural law was appropriate given that several related cases were

already pending in Connecticut, and that even if the *Windham* Defendants filed their cases in different districts, they would likely be transferred to Connecticut. [Dkt. No. 185 at 39-42]. The Court did not decide whether tolling the statutes of limitation or repose would be appropriate as to the *Windham* Defendants.

In the Order, the Court stated:

> [T]he DJ answer does not articulate any facts suggesting that discovery will uncover of facts which would support the defenses asserted. The Court cannot consider WWE's motion for judgment on the pleadings in a vacuum; the Court must consider the motion in the context of the sufficiency of the allegations of the complaints in all of the consolidated cases. In that regard, counsel for the *Windham* Defendants has been involved in the filing of six separate actions, some of which named plaintiff wrestlers who had ceased performing for WWE well before 2005. Despite being hundreds of pages long, in none of the complaints filed before Defendants filed the DJ action did the wrestlers' counsel plausibly allege that before 2005, WWE knew of a link between repeated head trauma and permanent degenerative neurological conditions and fraudulently failed to disclose this link to its performers. Nor do the *Windham* Defendants.
>
> . . . .

> Because (1) the Court has already thoroughly evaluated the issues presented in the consolidated cases, determining that the claims of wrestlers who had stopped performing for WWE prior to 2005 are barred; (2) the *Windham* Defendants have not offered any indication in their answer to WWE's declaratory judgment complaint that their anticipated claims would deviate from the claims asserted by the plaintiffs in the earlier consolidated cases; and (3) because additional discovery would be wasteful and unnecessary, the Court is inclined to grant WWE's Motion for Judgment on the Pleadings.

[Dkt. No. 362 at 17-19]. Nevertheless, the Court deferred judgment on WWE's Motion for Judgment on the Pleadings, to give the DJ Defendants the opportunity to amend their answer to specifically allege known facts or "facts *likely* to be discovered on further investigation" that would show that their claims were not time-barred and to submit affidavits from each of the DJ Defendants consistent with the Order.

E. ***Laurinaitis*** **Procedural History**

On July 18, 2016, Attorney Brenden Leydon filed the *Laurinaitis* complaint, which was also signed by Attorney Kyros, Anthony M. Norris, Erica C. Mirabella and Sylvester J. Boumil. This complaint named 53 plaintiffs, was 213 pages long, featured 667 separate paragraphs, and was accompanied by twelve exhibits totaling 208 pages. [Case No. 3:16-cv-1209, Dkt. No. 1]. The case was initially assigned to U.S. District Judge Warren W. Eginton, who ordered the case transferred to this Court under the District's related case policy on

September 27, 2016, following motion practice. [Case No. 3:16-cv-1209, Dkt. Nos. 28, 35, 39]. On October 3, 2016, this Court consolidated the case with the other WWE concussion cases pending before this Court. [Case No. 3:16-cv-1209, Dkt. No. 45]. Defendants WWE and Vincent McMahon filed motions for sanctions and to dismiss on October 17 and October 19, respectively. [Dkt. Nos. 228-236]. The Court referred the sanctions motion to Judge Richardson on November 4, 2016. [Dkt. No. 249].

In the first sanctions motion, the Defendants stated that, pursuant to Federal Rule of Civil Procedure 11(c)(2), they served motions for sanctions on Plaintiffs on August 5, 2016 and August 19, 2016, "advising them that the Complaint made patently false allegations, asserted time-barred and frivolous legal claims . . . [and that] at least 19 of the Plaintiffs executed releases covering the claims in the Complaint." [Dkt. No. 229 at 21]. Specifically, the motion alerted Plaintiffs that their complaints contained "patently false and nonsensical allegations" resulting from Plaintiffs' counsel's decision to "plagiarize extensive portions" of the compliant filed in the National Football League ("NFL") concussion litigation. [Dkt. No. 229 at 23-24]. These allegations included, for example, the name NFL rather than WWE, the assertion that "wrestler" Mike Webster "sustained repeated and disabling head impacts while a player for the Steelers," despite the facts that Mr. Webster was a football player, not a wrestler, and that the Steelers are an NFL team unaffiliated with the WWE. [Dkt. No. 229 at 24 (citing Compl. ¶ 249)]. Although Defendants identified several other obviously false allegations, Plaintiffs' counsel did not withdraw or

amend their complaint within 21 days of service of the sanctions motion. *See* Fed. R. Civ. P. 11(c)(2) (permitting a party on whom a sanctions motion is served 21 days to withdraw or amend their submission before the party seeking sanctions can file the sanctions motion before the Court). Nearly three months after the sanctions motion was filed, Plaintiffs' counsel had not withdrawn or amended any allegations. Not until November 9, 2016–and only after the Court referred the sanctions motion to Judge Richardson–did Plaintiffs withdraw or amend their allegations by filing their First Amended Complaint ("FAC"). [Dkt. No. 252].

While the FAC removed or edited some of the most egregiously false allegations, it still fell well short of the requirements set forth in Rules 8, 9, and 11. Defendants filed motions to dismiss the FAC and for sanctions on December 23, 2016, which the Court addressed in the Order. [Dkt. Nos. 262-270, 362]. The Court noted that the FAC had ballooned to 335 pages and 805 paragraphs. [Dkt. No. 362 at 7]. The Court also cited several examples of "inaccurate, irrelevant, or frivolous" allegations,[1] and noted:

---

[1] The Court's opinion cited the following paragraphs of the FAC: ¶¶ 51 (referencing a study published in October 2015 despite the fact that none of the *Laurinaitis* Plaintiffs were still performing at that time), 108 (noting that WWE instructed a female wrestler not to report a sexual assault she endured while on a WWE tour despite the fact that this has no relevance to her claims about neurological injuries or the enforceability of her booking contract), 130 (noting that WWE is a monopoly that earns $500 million annually), 157 (quoting general observations from the book of a wrestler who is not a party to this lawsuit), 159-161 (noting that

> "Despite repeatedly requesting that plaintiffs' counsel exclude irrelevant allegations and ensure that each claim in each consolidated case have a reasonable factual and legal basis, this Court has, in an abundance of deference to the wrestler plaintiffs and to the detriment of WWE, applied a liberal pleading standard more suited to a *pro se* plaintiff than to a licensed attorney asserting claims on behalf of an entire class."

Id. at 19. Nevertheless, the Court granted Plaintiffs one final opportunity to file a complaint that complied with the Federal Rules of Civil Procedure, giving notice that failure to do so would result in dismissal with prejudice and the imposition of sanctions.

The *Laurinaitis* Plaintiffs filed the SAC on November 3, 2017. The SAC is 225 pages long and contains 669 paragraphs. The Court indicated in the Order that the parties need not file any briefs or motions relating to the SAC, in an attempt to minimize

---

the WWE does not provide wrestlers with health insurance), 289-93 (describing a fictional storyline in which a doctor claimed on television that a wrestler who is not a *Laurinaitis* Plaintiff suffered a serious concussion, when in fact he "did not have post concussion syndrome" and the storyline was intended only to "create dramatic impact for the fans"), and 302 (stating that "100% of the four wrestlers studied to date" showed signs of chronic traumatic encephalopathy ("CTE") when a publicly available study published by Bennet Omalu, a neuropatholgist mentioned elsewhere in the complaint, stated that he examined the brains of four wrestlers and founds signs of CTE in only two of them and therefore Plaintiffs knew that only 50% of a statistically insignificant number of former wrestlers were found to have had CTE).

the costs to the parties and the Court, and because the Court had reserved judgment on Defendants' fully briefed motions to dismiss, for judgment on the pleadings, and for sanctions. Nevertheless, Defendants filed an informal response with a list of allegations that they asserted were still irrelevant or frivolous. [*See* Dkt. No. 365]. Plaintiff filed a responsive brief, which primarily criticized Defendants' brief for failing to conform to the requirements for a formal motion to dismiss, and which did not attempt to explain why the allegations that the Defendants identified were relevant or non-frivolous, and did not attempt to explain why sanctions should not be imposed. [*See* Dkt. No. 366].

I. Legal Standard

A. Motion for Judgment on the Pleadings

"After the pleadings are closed, but early enough not to delay trial, a party may move for judgment on the pleadings." Fed. R. Civ. P. 12(c). "A motion for judgment on the pleadings is decided on the same standard as a motion to dismiss under Fed. R. Civ. P. 12(b)(6)." *Barnett v. CT Light & Power Co.*, 900 F. Supp. 2d 224, 235 (D. Conn. 2012) (citing *Hayden v. Paterson*, 594 F.3d 150, 159 (2d Cir. 2010)).

B. Motion to Dismiss

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Sarmiento v. U.S.*, 678 F.3d 147, 152 (2d Cir. 2012) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). While Rule 8 does not require detailed factual

allegations, "[a] pleading that offers 'labels and conclusion' or 'formulaic recitation of the elements of a cause of action will not do." Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Iqbal*, 556 U.S. 662, 678 (2009) (citations omitted). "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it stops short of the line between possibility and plausibility of 'entitlement to relief.'" *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (internal citations omitted).

In general, the Court's review on a motion to dismiss pursuant to Rule 12(b)(6) "is limited to the facts as asserted within the four corners of the complaint, the documents attached to the complaint as exhibits, and any documents incorporated in the complaint by reference." *McCarthy v. Dun & Bradstreet Corp.*, 482 F.3d 184, 191 (2d Cir. 2007). The Court may also consider documents of which the Plaintiffs had knowledge and relied upon in bringing suit, *Brass v. American Film Technologies, Inc.*, 987 F.2d 142, 150 (2d Cir. 1993), so long as these documents are "integral" to the complaint and the record is clear that no dispute exists regarding the documents' authenticity or accuracy, *Faulkner v. Beer*, 463 F.3d 130, 133-35 (2d Cir. 2006).

Defendants also moved to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1), on the grounds that all of the Plaintiffs' claims are time-

barred. "A federal court has subject matter jurisdiction over a cause of action only when it 'has authority to adjudicate the cause' pressed in the complaint." *Arar v. Ashcroft*, 532 F.3d 157, 168 (2d Cir. 2008), *vacated on other grounds*, 585 F.3d 559 (2d Cir. 2009), *cert. denied*, 560 U.S. 978 (2010) (quoting *Sinochem Int'l Co. v. Malay. Int'l Shipping Corp.*, 549 U.S. 422, 425 (2007)). "Determining the existence of subject matter jurisdiction is a threshold inquiry and a claim is properly dismissed for lack of subject matter jurisdiction under Rule 12(b)(1) when the district court lacks the statutory or constitutional power to adjudicate it." *Id.* (internal citations and quotation marks omitted). "When jurisdiction is challenged, the plaintiff bears the burden of showing by a preponderance of the evidence that subject matter jurisdiction exists, and the district court may examine evidence outside of the pleadings to make this determination." *Id.* (internal citations and quotation marks omitted). "[T]he court must take all facts alleged in the complaint as true and draw all reasonable inferences in favor of plaintiff, but jurisdiction must be shown affirmatively, and that showing is not made by drawing from the pleadings inferences favorable to the party asserting it." *Morrison v. Nat'l Austl. Bank Ltd.*, 547 F.3d 167, 170 (2d Cir. 2008) (internal citations and quotation marks omitted) (alteration in original).

C. Motion for Sanctions

Federal Rule of Civil Procedure 11 states that 'an attorney who presents 'a pleading, written motion, or other paper' to the court thereby 'certifies' that to the best of his knowledge, information, and belief formed

after a reasonable inquiry, the filing is (1) not presented for any improper purpose, 'such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation'; (2) 'warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law'; and (3) supported in facts known or *likely* to be discovered on further investigation." *Lawrence v. Richman Grp. of CT LLC*, 620 F.3d 153, 156 (2d Cir. 2010) (emphasis added) (quoting Fed. R. Civ. P. 11(b)). "If . . . the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation." Fed. R. Civ. P. 11(c)(1). "[D]istrict courts generally have wide discretion in deciding when sanctions are appropriate." *Morley v. Ciba-Geigy Corp.*, 66 F.3d 21, 24 (2d Cir. 1995) (quoting *Sanko Steamship Co., Ltd. v. Galin*, 835 F.2d 51, 53 (2d Cir. 1987)). However, "Rule 11 sanctions should be imposed with caution," *Knipe v. Skinner*, 19 F.3d 72, 78 (2d Cir. 1994), and "district courts [must] resolve all doubts in favor of the signer," *Rodick v. City of Schenectady,* 1 F.3d 1341, 1350 (2d Cir. 1993).

"[N]ot all unsuccessful arguments are frivolous or warrant sanction," and "to constitute a frivolous legal position for purposes of Rule 11 sanction, it must be clear under existing precedents that there is no chance of success and no reasonable argument to extend, modify or reverse the law as it stands." *See Mareno v. Rowe,* 910 F.2d 1043, 1047 (2d Cir. 1990). With regard to factual contentions, "sanctions may not be imposed unless a particular allegation is utterly lacking in support." *Storey v. Cello Holdings, L.L.C.*, 347 F.3d

370, 388 (2d Cir. 2003) (quoting *O'Brien v. Alexander,* 101 F.3d 1479, 1489 (2d Cir. 1996)). "[T]he standard for triggering the award of fees under Rule 11 is objective unreasonableness and is not based on the subjective beliefs of the person making the statement." *Star Mark Mgmt., Inc. v. Koon Chun Hing Kee Soy & Sauce Factory, Ltd.*, 682 F.3d 170, 177 (2d Cir. 2012) (quoting *Storey*, 347 F.3d at 388). This objective standard is "intended to eliminate any 'empty-head pure-heart' justification" for patently unsupported factual assertions or frivolous arguments. *See Hochstadt v. New York State Educ. Dep't*, 547 F. App'x 9, 11 (2d Cir. 2013) (quoting *Gurary v. Winehouse*, 235 F.3d 792, 797 (2d Cir. 2000)).

Dismissal of a complaint with prejudice and monetary penalties "are among the permissible sanctions allowed under Rule 11." *Miller v. Bridgeport Bd. of Educ.*, No. 3:12-CV-01287 JAM, 2014 WL 3738057, at *10 (D. Conn. July 30, 2014). "Rule 11 also allows for the Court to refer the misconduct of an attorney for consideration by disciplinary authorities." *Id.* at *11. However, "[a] sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated." Fed. R. Civ. P. 11(c)(4).

II. ***Windham*** **Action**

The Court first addresses whether the *Windham* Defendants' amended answer sets forth sufficient facts to toll the Connecticut statutes of limitation and

repose.[2] The DJ Defendants' Second Affirmative Defense addresses WWE's claim that the statutes of limitation and repose bar the DJ Defendants' claims. Specifically, it asserts that WWE fraudulently concealed the cause of action from the DJ Defendants until 2015. However, the Second Affirmative Defense does *not* allege that WWE knew of a link between concussive or subconcussive blows and permanent degenerative neurological conditions like chronic traumatic encephalopathy ("CTE"). Rather, it provides a summary of the injuries and claimed injustices DJ Defendants suffered during their tenures as wrestlers, many of which, such as James Ware's "snapped" collarbone and Thomas Billington's inability to buy health insurance, have nothing to do with WWE's claims or the DJ Defendants' defenses. [Dkt. No. 364 at 25-26]. The Court also reviewed Mr. Ware's and Mr. Billington's affidavits. Neither sets forth any facts suggesting that WWE knew of the risks of CTE or any other permanent degenerative neurological condition before either wrestler retired and failed to disclose this risk, either fraudulently or despite a continuing duty to either wrestler to warn him of these risks. Nor do the Wrestlers point to anything in the record to support this claim in opposition to the Defendants' motion. The Wrestlers therefore have not set forth any facts that would justify tolling Connecticut's statutes of limitation and repose–either in their original or amended answers. The Court therefore enters judgment on the

---

[2] The Court refers to pages 12-18 of the Order for a description of the law governing the statutes of limitation and repose and the ways in which the prior answer was deficient.

pleadings in favor of WWE as to DJ Defendants Ware and Billington.

Counsel for the two remaining DJ Defendants has represented that they are deceased. WWE has not sought to substitute executors or administrators of their estates. Pursuant to Federal Rule of Civil Procedure 25(a),

> "If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If a motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed."

The DJ Defendants have failed to file a formal suggestion of death with this Court, nor have they offered any indication that they have served such suggestion of death on the executors or representatives of the estates of DJ Defendants Windham and Perras, in accordance with Rule 25(a). *See Gothberg v. Town of Plainville*, 305 F.R.D. 28, 29-30 (D. Conn. 2015) (holding that service of a suggestion of death on counsel for the parties, and not on the executors or administrators of the decedents estates was insufficient to trigger the 90-day period within which a motion for substitution may be filed); *George v. United States,* 208 F.R.D. 29, 31 (D. Conn. 2001) (stating that death must be "formally" suggested "upon the record.").

If Windham or Perrasis is deceased, the Court cannot enter judgment against him unless an

opportunity to file a suggestion of death is afforded. The Court therefore dismisses these two Defendants. If either party wishes to substitute the executor or administrator of either estates, it must file a a formal suggestion of death filed and served on all interested parties within 30 days, and a proper motion for substitution must be filed within 90 days of service of the suggestion of death. If no party seeks to substitute a duly authorized representative for Windham or Perras within the time period allotted, all claims against them shall be dismissed with prejudice without further order of the Court.

III. The *Laurinaitis* Action

The Court next addresses Defendants' Motions to Dismiss [Dkt. Nos. 263, 266, and 269]. Defendants sought dismissal pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), and as a Rule 11(c) sanction. The Court finds that dismissal with prejudice is warranted because the *Laurinaitis* claims are either barred by this Court's prior rulings, time-barred, or frivolous, and that amendment would be futile.

A. Plaintiffs' Fraudulent Concealment and Medical Monitoring Claims are Barred by the Court's Prior Rulings

Plaintiffs assert separate counts of "fraudulent concealment" and "medical monitoring" despite this Court's clear holding, in the very first of the WWE concussion cases that Attorney Kyros filed, that neither constitute causes of action under Connecticut law. [*See* Dkt. No. 116 at 54 (stating that "fraudulent" concealment is not a separate cause of action"); Dkt.

No. 116 at 69 (stating that "[a] particular type of measure of damages and a cause of action entitling a person to a particular type or measure of damages are separate and distinct legal principles" and dismissing the medical monitoring claim because "plaintiffs have failed to articulate any authority supporting the proposition that plaintiffs can bring a cause of action of 'medical monitoring' separate and apart from their cause of action for fraudulent omission under Connecticut law")]. Nor has he filed or prevailed on an appeal of the Court's rulings or filed a motion for reconsideration pointing out any error in the Court rulings. Attorney Kyros simply ignores the Court's rulings in violation of the law-of-the-case doctrine. *See United States v. Carr*, 557 F.3d 93, 102 (2d Cir. 2009) ("[W]hen a court has ruled on an issue, that decision should generally be adhered to by that court in subsequent stages in the same case . . . . [T]he law-of-the-case doctrine [is] driven by considerations of fairness to the parties, judicial economy, and the societal interest in finality"). These claims must therefore be DISMISSED once again.

B. Plaintiffs Have Asserted Numerous Patently Time-Barred Claims

The first complaint in this action was filed on July 18, 2016. The SAC does not allege that any Plaintiff wrestled for WWE and suffered a head injury while wrestling later than 2011. Similarly, with limited exceptions, the Complaint does not state when each Plaintiff first entered into a contract classifying him or her as an independent contractor. However, the wrestler who retired most recently, Salvador Guerrero,

signed a booking contract in which he was classified as an independent contractor in 2001, when he first started wrestling for WWE. [SAC, Exh. A.]. It is therefore reasonable to assume that booking contracts were signed when each wrestler began wrestling for WWE. Terry Brunk began wrestling for WWE most recently–in 2006. [SAC ¶ 63].

1. Tort Claims

It is not subject to challenge that the statute of limitations for tort claims set forth in Conn. Gen. Stat. 52-577 applies to Plaintiff's claims for fraud, fraudulent nondisclosure, and civil conspiracy to commit fraudulent concealment. Section 52-577 provides that "[n]o action founded upon a tort shall be brought but within three years from the date of the act or omission complained of." "The three year limitation period of § 52-577 begins with the date of the act or omission complained of, not the date when the plaintiff first discovers an injury." *Collum v. Chapin*, 40 Conn. App. 449, 451-52 (1996) (citing *Fichera v. Mine Hill Corp.*, 207 Conn. 204, 212-13 (1988)). "The relevant date of the act or omission complained of, as that phrase is used in § 52-577, is the date when the negligent conduct of the defendant occurs and not the date when the plaintiffs first sustain damage . . . . Ignorance of his rights on the part of the person against whom the statute has begun to run, will not suspend its operation." *Kidder v. Read*, 150 Conn. App. 720, 726-27 (2014).

Plaintiffs' tort claims arise out of their allegation that WWE concealed the risk that concussions or subconcussive blows could cause permanent

degenerative neurological conditions in order to induce Plaintiffs to continue to continue wrestling. This omission must have occurred at a time when the Plaintiffs were still wrestling and could still suffer head injuries while wrestling. With the possible exception of Plaintiff James Snuka, discussed in the next section, no Plaintiff has alleged that he or she wrestled for WWE later than 2011.

2. Wrongful Death and Survival Actions

The estates of five wrestlers–James Snuka, John Matthew Rechner, Brian David Knighton, Timothy Alan Smith, Ronald Heard, and Harry Masayoshi Fujiwara–also assert wrongful death and survival claims. Wrongful death claims must be brought "within two years from the date of death" except that "no such action may be brought more than five years from the date of the act or omission complained of." Conn. Gen. Stat. § 52-555(a). "Section 52-555 may "serve as a bar to a wrongful death claim" even if "an injured victim could not have known that he or she had a claim against the alleged tortfeasor until after the limitation period had expired." *Greco v. United Techs. Corp.*, 277 Conn. 337, 353 (2006). Conn. Gen. Stat. § 52-594 provides that if the time for bringing an action has not elapsed at the time of a person's death, the executor of that person's estate may bring an action within a year of the death.

Fujiwara last wrestled in 1996, [SAC ¶ 55], Rechner last wrestled in 2008, [SAC ¶ 85], Knighton last wrestled in 2005 [SAC ¶ 86], and Heard last wrestled in 1989 [SAC ¶ 109]. The Complaint alleges that Snuka appeared in WWE performances between 2005 and

2015. [SAC ¶ 52]. However, the affidavit of the executor of Mr. Snuka's estate, submitted for in camera review, stated that 1996 was "[t]oward the end of his career," that "most of Jimmy's full-time wrestling was at the height of the 1980s," and that he was "inactive" or "largely semi-retired" between 1996 and 2015. The complaint does not allege, and the affidavit does not support any allegations, that Mr. Snuka suffered any head injuries or risked incurring such injuries later than 1996. All these wrestlers, with the possible exception of Mr. Snuka, retired more than five years before this lawsuit was filed. And Mr. Snuka has not alleged that any of his alleged injuries were incurred during WWE appearances post-dating 1996. Wrongful death actions are therefore barred by Section 52-555. Survival actions are barred because the statutes of limitation or repose for each of the deceased Plaintiffs' other claims have elapsed.

3. Misclassification Claims

Plaintiffs assert misjoined claims that they were misclassified as independent contractors and thereby denied the benefits and protections of the Occupational Safety and Health Act, the National Labor Relations Act, the Employee Retirement Income Security Act, and the Family and Medical Leave Act. Because Plaintiffs assert that the misclassification was part of a "scheme to defraud the Plaintiffs" and "achieved by the presentation to the Plaintiffs of boilerplate Booking Contracts," the misclassification claims are governed either by the three-year statute of repose for tort actions, Conn. Gen. Stat. § 52-577, or the six-year

statute of limitations for contract actions, Conn. Gen. Stat. § 52-576.

The District of Connecticut has previously considered the statute of limitations for misclassification claims relating to WWE booking contracts. In *Levy v. World Wrestling Entertainment, Inc.*, No. CIV.A.308-01289(PCD), 2009 WL 455258, at *1 (D. Conn. Feb. 23, 2009), Judge Dorsey held that misclassification claims arose "at the inception" of the booking contracts. Plaintiff has not offered this Court any compelling justification for disregarding Judge Dorsey's holding. As noted above, it appears that booking contracts were entered into when each wrestler joined WWE. To the extent any of the Plaintiffs did not sign a booking contract, but instead made "handshake deals" or worked as "jobbers," these wrestlers must have known of their classification as independent contractors either when these deals were first made, or when each of these wrestlers received tax paperwork within the year of making that deal. Plaintiffs also would have been aware throughout their employment that they were not being awarded the same benefits as individuals classified as employees of WWE. Indeed, Plaintiffs expressly state in their complaint that they were not given retirement or health benefits.

The Plaintiff who most recently joined WWE did so in 2006–approximately ten years before this case was filed. Therefore, none of the Plaintiffs can establish that they were first misclassified as independent contractors within six years of the date they filed the complaint in this action. Plaintiffs' ERISA and OSHA

reporting claims are predicated on this misclassification claim, and Plaintiff has not offered the Court any authority to suggest that these claims may survive after the misclassification claim is dismissed.

4. RICO Claims

Plaintiffs' claims under the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1132(a)(3) are also time-barred. Civil RICO actions have a four-year limitations period. *In re Trilegiant Corp., Inc.*, 11 F. Supp. 3d 82, 104 (D. Conn. 2014), *aff'd sub nom.*, *Williams v. Affinion Grp., LLC*, 889 F.3d 116 (2d Cir. 2018) (citing *Agency Holding Corp. v. Malley-Duff & Assocs., Inc.*, 483 U.S. 143, 156-57 (1987)). This limitations period "begins to run when the plaintiff discovers or should have discovered the RICO injury." *Id.* (quoting *In re Merrill Lynch P'ship Litig.*,154 F.3d 56, 58 (2d Cir. 1998)). "The four-year limitation period begins anew [for a civil RICO claim] each time a plaintiff discovers or should have discovered a new and independent injury." *Id.* However, "actual knowledge of the fraudulent scheme is not necessary; an objective standard is used to impute knowledge to the victim when sufficient 'storm clouds' are raised to create a duty to inquire." *Id.* at 106. Plaintiffs acknowledge that CTE was only diagnosable by an autopsy performed after death.

Because Plaintiffs' RICO claims are predicated on Plaintiffs' alleged misclassification as independent contractors, and such misclassification must have taken place when each Plaintiff was first hired, the limitations period runs from when each Plaintiff signed

a booking contract, began working for WWE, first received a tax statement classifying him or her as an independent contractors, or noticed he or she was not receiving the benefits to which WWE employees were entitled. No Plaintiff has alleged that he or she did so less than ten years before this action was filed. Plaintiffs' RICO claims are therefore time-barred.

5. FMLA Claims

The Family and Medical Leave Act provides that "an action may be brought under this section not later than 2 years after the date of the last event constituting the alleged violation for which the action is brought." 29 U.S.C. § 2617(c)(1). For a willful violation, the limitations period is three years. 29 U.S.C. § 2617(c). With the exception of Mr. Snuka, each Plaintiff stopped working for WWE more than three years before this case was filed. They therefore cannot establish that their FMLA claims arose within the limitations period. Plaintiff Snuka has not alleged that he even asked for family or medical leave between 2013 and 2016. He also has not alleged that he was improperly denied such leave or punished for taking such leave within the limitations period. The Plaintiffs' FMLA claims are therefore time-barred.

6. Successor Liability

Because all of the substantive claims against WWE are time-barred, and all the claims that arise out of Plaintiffs' work for ECW or WCW predate their WWE claims, these ECW and WCW claims are also time-barred. The Court therefore need not specifically

address whether WWE should be liable for claims arising out of its relationship with ECW or WCW.

C. Plaintiffs' "Unconsionable Contracts" Claims are Frivolous

Plaintiffs claim that their booking contracts were void as unconscionable, but they attach the contracts of only two wrestlers to their complaint, and identify no particular unconscionable terms. Rather, Plaintiffs allege generally that they were coerced into signing unfavorable "boilerplate" contracts without the assistance of their own attorney or under threat that they would be fired or not hired if they refused to sign, and that these contracts misclassified the wrestlers as independent contractors. The Court has already established that misclassification claims are time-barred. The remaining allegations regarding the condition under which these contracts were signed are not claims that the contracts were unconscionable.

Even if the Court were to liberally construe these claims as undue influence claims, they would not be actionable and are therefore frivolous. The Connecticut Supreme Court has held that "ratification results, as a matter of law, 'if the party who executed the contract under duress accepts the benefits flowing from it or remains silent or acquiesces in the contract for any considerable length of time after opportunity is afforded to annul or avoid it.'" *Young v. Data Switch Corp.*, 231 Conn. 95, 103 (1994) (quoting *Gallon v. Lloyd-Thomas Co.*, 264 F.2d 821, 826 (8th Cir. 1959)). This reasoning also applies when a contract is voidable for undue influence. *See Gengaro v. City of New Haven*, 118 Conn. App. 642, 653 (2009) (holding that "the

reasoning set forth in *Young* can be applied" to actions to void a contract because of undue influence). And the Connecticut Supreme Court has held that a delay of 17 months constitutes a "considerable length of time." *See Young*, 231 Conn. at 103. Each Plaintiff who signed a booking contract with WWE enjoyed the benefits of those contracts without seeking legal intervention for years following the execution of the contracts, and indeed, years following the termination of each Plaintiff's employment with WWE. Binding Connecticut precedent bars these claims, and Plaintiff's counsel has set forth no non-frivolous argument for modifying or reversing this law.

D. The Statutes of Limitation Should Not Be Tolled Under the Continuing Course of Conduct Doctrine

Under appropriate circumstances, the Connecticut statutes of repose may be tolled under the continuing course of conduct doctrine. The plaintiff must show the defendant: "(1) committed an initial wrong upon the plaintiff; (2) owed a continuing duty to the plaintiff that was related to the original wrong; and (3) continually breached that duty." *Witt v. St. Vincent's Med. Ctr.*, 252 Conn. 363, 370 (2000).

Where Connecticut courts have found a duty "continued to exist after the act or omission relied upon: there has been evidence of either a special relationship between the parties giving rise to such a continuing duty or some later wrongful conduct of a defendant related to the prior act." *Macellaio v. Newington Police Dep't*, 145 Conn. App. 426, 435 (2013). The existence of a special relationship "will

depend on the circumstances that exist between the parties and the nature of the claim at issue." *Saint Bernard Sch. of Montville, Inc. v. Bank of Am.*, 312 Conn. 811, 835 (2014). Connecticut courts examine each unique situation "in which there is a justifiable trust confided on one side and a resulting superiority and influence on the other." *Alaimo v. Royer*, 188 Conn. 36, 41 (1982). Specifically, a "'special relationship' is one that is built upon a fiduciary or otherwise confidential foundation characterized by a unique degree of trust and confidence between the parties, one of whom has superior knowledge, skill or expertise and is under a duty to represent the interests of the other." *Saint Bernard Sch.*, 312 Conn. at 835.

However, "a mere contractual relationship does not create a fiduciary or confidential relationship," *id.* at 835-36, and employers do necessarily not owe a fiduciary duty to their employees, *Grappo v. Atitalia Linee Aeree Italiane, S.P.A.*, 56 F.3d 427, 432 (2d Cir. 1995); *Bill v. Emhart Corp.*, No. CV 940538151, 1996 WL 636451, at *3-4 (Conn. Super. Ct. Oct. 24, 1996). The law will imply [fiduciary responsibilities] only where one party to a relationship is unable to fully protect its interests [or where one party has a high degree of control over the property or subject matter of another] and the unprotected party has placed its trust and confidence in the other." *Hi-Ho Tower, Inc. v. Com-Tronics, Inc.*, 255 Conn. 20, 41 (2000).

Plaintiffs have not established that WWE had any continuing duty with respect to their health or their employment status after they left WWE. For example, Plaintiffs allege that WWE "sends substance

dependency letters annually to its former performers offering free treatment, as well as community updates and quarterly royalty payments" and maintains a "Talent helpline." [SAC ¶¶ 270, 271]. It is reasonable to infer, based on WWE's offer to provide substance abuse treatment, that the hotline is related to substance abuse prevention or treatment. It is not reasonable to conclude from the allegations in the complaint that WWE has a continuing duty to keep itself apprised of former wrestlers' health or to provide comprehensive health care to these wrestlers. It is similarly unreasonable to infer that retired wrestlers would not seek medical treatment from sources outside of WWE after their retirement. Indeed, Plaintiffs do not allege that WWE purported to be their primary health care provider, or that WWE diagnosed, treated, monitored, or advised the Plaintiffs regarding their health, including their mental health, after they retired. Similarly, the Court is at a loss to imagine how continuing royalty payments give rise to any duty to the Plaintiffs regarding their alleged misclassification as independent contractors decades earlier.

E. The Statutes of Limitation and Repose Should Not Be Tolled Under the Fraudulent Concealment Doctrine

Connecticut has codified the doctrine of fraudulent concealment in Conn. Gen. Stat. § 52-595, which provides: "[i]f any person, liable to an action by another, fraudulently conceals from him the existence of the cause of such action, such cause of action shall be deemed to accrue against such person so liable therefor at the time when the person entitled to sue thereon

first discovers its existence." In order to rely on Section 52-595 to toll the statutes of limitations and repose, a plaintiff must demonstrate that "the defendant: (1) had actual awareness, rather than imputed knowledge, of the facts necessary to establish the cause of action, (2) intentionally concealed those facts from the plaintiff and (3) concealed those facts for the purpose of obtaining delay on the part of the plaintiff in filing a cause of action against the defendant." *Falls Church Grp., Ltd. v. Tyler, Cooper & Alcorn, LLP*, 281 Conn. 84, 105 (2007).

Fraudulent concealment under Section 52-595 must be pled with sufficient particularity to satisfy the requirements Fed. R. Civ. P. 9(b) with regard to fraud claims, because a claim that the statute of limitations should be tolled because of fraud, is "obviously, a claim for fraud." *In re Publ'n Paper Antitrust Litig.*, No. 304MD1631SRU, 2005 WL 2175139, at *5 (D. Conn. Sept. 7, 2005). In addition, a plaintiff must show that due diligence "did not lead, and could not have led, to discovery" of the cause of action. *Martinelli v. Bridgeport Roman Catholic Dioceses*, 196 F.3d 409, 427 (2nd Cir. 1999). "Typically, a plaintiff will prove reasonable diligence either by showing that: (a) the circumstances were such that a reasonable person would not have thought to investigate, or (b) the plaintiff's attempted investigation was thwarted." *OBG Tech. Servs., Inc. v. Northrop Grumman Space & Mission Sys. Corp.*, 503 F. Supp. 2d 490, 509 (D. Conn. 2007). Affirmative acts of concealment are not always necessary to satisfy the requirements of Section 52-595. *McCullough v. World Wrestling Entm't, Inc.*, 172 F. Supp. 3d 528, 555 (D. Conn.), *reconsideration denied*,

No. 3:15-CV-001074 (VLB), 2016 WL 3962779 (D. Conn. July 21, 2016), and *appeal dismissed*, 838 F.3d 210 (2d Cir. 2016). "[M]ere nondisclosure may be sufficient when the defendant has a fiduciary duty to disclose material facts." *Id.*

Plaintiff's counsel has not had the opportunity to conduct extensive discovery on this issue in prior consolidated cases. He was unable to uncover any evidence showing that WWE has or had actual knowledge that concussions or subconcussive blows incurred during professional wrestling matches cause CTE. The earliest evidence they were able to uncover is the fact that WWE learned from public news reports that one wrestler, Christopher Benoit, was diagnosed with CTE in 2007. Plaintiffs' counsel therefore lacks any good faith basis for asserting that WWE was aware of any association between professional wrestling and CTE prior to 2007, which was after most of the Plaintiffs retired.

The Court is also unwilling to find that the diagnosis of one wrestler with CTE is sufficient to imbue WWE with actual awareness of a probable link between wrestling and CTE. Further, counsel lacks a good faith basis for asserting that Plaintiffs who retired after 2007 could not on their own, in the exercise of due diligence, uncover information timely about CTE or the risks that concussions or subconcussive blows could cause CTE. For example, the circumstances surrounding Mr. Benoit's death were so tragic and so horrifying that it would have been reasonable for his fellow wrestlers to follow news developments about him and about CTE, through which they could have

deduced that they were at risk of developing CTE and sought medical opinions about risks to their own health. This information was widely available in public news sources, such that WWE did not have superior access to it, and could not have thwarted any attempted investigation. Tolling on the basis of fraudulent concealment is therefore baseless.

F. Amendment Would Be Futile

As noted above, Plaintiffs have asserted numerous patently time-barred claims that have nothing to do with Plaintiffs' alleged head trauma, any long-term consequences of such trauma, or WWE's concealment of the risk that such trauma could cause permanent degenerative neurological conditions. The Court has also repeatedly admonished the Wrestlers' counsel, Attorney Kyros and his appearing co-counsel regarding his inclusion of irrelevant and inflammatory facts in its pleadings. [*See, e.g.*, Dkt. No. 362 at 7, 20 (stating that the *Laurinaitis* complaint included "numerous allegations that a reasonable attorney would know are inaccurate, irrelevant, or frivolous"); Dkt. No. 263-2 at 60 (noting that prior complaint included "superfluous, hyperbolic, inflammatory opinions and references to things that don't have any relevance"); Dkt. No. 116 at 13 (criticizing counsel for including in pleadings "content unrelated to the Plaintiffs' causes of action")].

In addition, the Court has repeatedly criticized Attorney Kyros for filing "excessively lengthy" complaints, [Dkt. No. 116 at 13], including the FAC in the *Laurinaitis* action, which the Order noted was 335 pages long, and included 805 paragraphs. The Court clearly instructed Attorney Kyros that if he failed to

file an amended complaint that complied with Federal Rules of Civil Procedure 8, 9, and 11, the case would be dismissed with prejudice. In addition, the Court reminded Attorney Kyros and his appearing co-counsel of the due diligence required to be undertaken to assure compliance with the rules, and ordered them to file evidence that the process of reaching a good faith belief in the facts asserted had been conducted. They have persistently ignored this Court's orders and persisted in filing complaints, including filing a mark-up of a previously critiqued deficient complaint, which fail to remotely satisfy the pleading standards.

Rule 8(a)(2) states that a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Rule 9 requires the Wrestlers to "state with particularity the circumstances constituting fraud or mistake," which is of particular relevance to claims that WWE fraudulently failed to disclose the risks that concussions and subconcussive blows could cause permanent degenerative neurological conditions like CTE, or fraudulently concealed any causes of action.

The SAC remains unreasonably long, asserts claims that this Court has previously dismissed, and continues to assert facts which Plaintiffs' counsel has no reason to believe are true. While the SAC has now been reduced to 225 pages and 669 paragraphs, counsel accomplished this by single spacing roughly 54 pages, and through the liberal use of subparagraphs. While it is clear that Attorney Kyros made some revisions to the prior complaint, he made no effort to present a short and plain statement of the Plaintiffs' entitlement to

relief, as required by Rule 8. Nor have Attorney Kyros and his appearing co-counsel demonstrated that they have conducted due diligence sufficient to have a good faith belief in the facts asserted in the SAC. Moreover, the SAC is rife with allegations: (1) that this Court has previously considered and dismissed; (2) that are patently irrelevant to the issues present in this lawsuit (including those the Court previously identified as being irrelevant); and (3) that any reasonable attorney would know are frivolous.

For example, its order regarding WWE's motions to dismiss the first two of the *Laurinaitis* Plaintiffs' complaints, the Court specifically noted that a reference to a study published in October 2015 was irrelevant because none of the Plaintiffs were still wrestling in 2015. [Dkt. No. 362 at 7]. Nevertheless, in the SAC, Plaintiffs cite several news reports and studies published between 2013 and 2017 in support of its claim that "it is not plausible that the WWE is unaware of the risks of CTE in its performers." [SAC ¶¶ 284-94]. What is really at issue in this case is whether WWE knew of the risk that repeated head trauma could cause permanent degenerative neurological conditions, fraudulently failed to disclose these risks to wrestlers, and then fraudulently concealed facts which it had a legal duty to disclose that would have given rise to legal claims between each Plaintiff's retirement and the date that this action was filed. Whether WWE *currently* is or could be in possession of evidence that concussions can cause CTE is immaterial.

The Court also previously identified as irrelevant the assertion that "WWE is a monopoly that earns $500 million annually," "general observations from . . . a wrestler who is not a party to this lawsuit," and the fact that "WWE does not provide wrestlers with health insurance." [Dkt. No. 362 at 7-8]. This non-exhaustive list of irrelevant allegations seems to have had little to no effect on Attorney Kyros' decision-making, because the SAC still lists WWE's revenues, observations that former wrestler and non-party Jesse Ventura made on a television show, and the fact that WWE did not provide wrestlers with health insurance. [SAC ¶¶ 11, 114, 263, 387-88, 328, 379, 462]. In addition to these irrelevant allegations are numerous others, including a list of physical injuries that have nothing to do with concussions or head trauma, incurred by several Plaintiffs in the ring. [*See* SAC ¶ 37 (alleging that "Plaintiff Jon Heidenreich sustained serious shoulder injuries requiring multiple surgeries" and that "Plaintiff Marty Jannetty sustained a severe broken ankle"].

Attorney Kyros' decision to assert frivolous claims has required the Court to waste considerable judicial resources sifting through three unreasonably long complaints filed in the *Laurinaitis* action, with the vague hope that some claim, buried within a mountain of extraneous information, might have merit. "The function of the pleadings is to give opposing parties notice of the facts on which the pleader will rely." *Van Alstyne v. Ackerley Grp., Inc.*, 8 Fed. App'x 147, 154 (2d Cir. 2001). Counsel's inclusion of numerous allegations which are unrelated to any non-frivolous claim, and do nothing more than paint WWE as a villain, does not

provide Defendants with such notice. Instead, it needlessly increases the cost of litigation by, for example, burdening Defendants with the task of drafting and prosecuting multiple motions to dismiss and for sanctions, none of which prompted Attorney Kyros to withdraw factually unsupportable allegations or frivolous claims during the safe harbor period set forth in Rule 11(c)(2). Furthermore, if the Court required the Defendants to engage with a complaint comprised primarily of irrelevant and inflammatory factual allegations, it would be shirking its responsibility to employ the Federal Rules of Civil Procedure to "secure the just, speedy, and inexpensive" disposition of this action. *See* Fed. R. Civ. P. 1.

The Court has been extremely forgiving of Attorney Kyros' and his appearing co-counsels' highly questionable practices throughout this case, in an effort to give each wrestler a fair hearing. However, despite second, third, and fourth chances to submit pleadings that comply with Rules 8, 9, and 11, Attorney Kyros has persisted in asserting pages and pages of frivolous claims and allegations for which he lacked any factual basis. He was warned that if he continued to do so this case would be dismissed, and he ignored this warning. Attorney Kyros has offered the Court no reason to believe that if given a fifth, sixth, or seventh chance, he would prosecute this case in a manner consistent with the Federal Rules of Civil Procedure.

Accordingly, the Court finds that further amendment would be futile and that only the award of attorney's fees and costs would deter Attorney Kyros from committing future violations of Rule 11. Attorney

Kyros and his Law Offices shall pay all of the legal fees that the Defendants reasonably incurred in connection with both of their Motions for Sanctions [Dkt. Nos. 262 and 228]. All fees paid pursuant to this order are to be paid by the law firm and not by the client. Further, in order to protect the public, Attorney Kyros is ordered to send by a receipted mail delivery service a copy of this ruling to his appearing co-counsel and to each of the *Laurinaitis* Plaintiffs and any other future, current, or former WWE wrestler who has retained or in the future does retain his legal services to file suit against WWE alleging an injury sustained during their wrestling contract with WWE.

IV. Conclusion

For the foregoing reasons:

1. WWE's Motion for Judgment on the Pleadings [Dkt. No. 205] is GRANTED and declaratory judgment will enter as to DJ Defendants Ware and Billington.

2. The action against DJ Defendants Windham and Perras is DISMISSED without prejudice to reopening upon the filing and service within 28 days of a formal suggestion of death and the filing within 90 days thereafter of a motion to substitute the administrators or executors of Windham's and Perras' estates.

3. The Court GRANTS Defendants' Motions to Dismiss [Dkt. Nos. 266, 269].

4. The Court GRANTS IN PART Defendants' Motion for Sanctions [Dkt. No. 262] to the extent it sought the award of attorney's fees and costs.

5. Nothing in this decision shall preclude Attorney Kyros from seeking contribution from other appearing co-counsel.

6. The Court does not retain jurisdiction for purpose of resolving sanction-sharing disputes among the attorneys.

The Clerk is directed to enter judgment for the Defendants, close this case and to terminate all pending motions in this consolidated case.

IT IS SO ORDERED.

/s/

Hon. Vanessa L. Bryant
United States District Judge

Dated at Hartford, Connecticut: September 17, 2018

APPENDIX C

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

[Filed: November 10, 2016]

CIVIL ACTION NO. 3:15-cv-001074 (VLB)
Lead Case

RUSS McCULLOUGH, a/k/a "Big Russ McCullough", *et al*,
Plaintiffs,

v.

WORLD WRESTLING ENTERTAINMENT, INC.,
Defendant.

- -

CIVIL ACTION NO. 3:15-cv-01305 (VLB)
Consolidated Case

MICHELLE JAMES, as mother and next Friend of MATTHEW OSBORNE, a Minor Child and TEAGAN OSBORNE, a Minor Child,
Plaintiffs,

v.)
)
WORLD WRESTLING)
ENTERTAINMENT, INC.,)
Defendant.)
_____)

- -

CIVIL ACTION NO. 3:15-cv-01229 (VLB)
Consolidated Case

_____

CASSANDRA FRAZIER,)
individually and as next of kin to)
her deceased husband, NELSON)
LEE FRAZIER, JR., and as)
personal representative of THE)
ESTATE OF NELSON)
LEE FRAZIER, JR, DECEASED,)
Plaintiffs,)
)
v.)
)
WORLD WRESTLING)
ENTERTAINMENT, INC.)
Defendant.)
_____)

November 10, 2016

MEMORANDUM OF DECISION GRANTING DEFENDANTS' MOTION TO DISMISS THE *FRAZIER* ACTION [Dkt. 103] AND GRANTING DEFENDANT'S MOTION TO DISMISS THE *OSBORNE* ACTION [Dkt. 104].

MEMORANDUM OF DECISION DENYING DEFENDANTS' MOTION FOR SANCTIONS [Dkt. 80]

Plaintiffs in the *Frazer* and *James* cases in this consolidated wrestling concussion litigation are the decedents of former wrestlers who performed for compensation for World Wrestling Entertainment Inc. ("WWE"), a Connecticut entertainment company which produces televised wrestling programming. Plaintiffs have brought wrongful death claims alleging that the decedents' deaths resulted from traumatic brain injuries sustained during their employment as wrestlers for WWE, and that the negligence and/or fraudulent conduct of WWE caused those injuries.

In a memorandum of opinion and accompanying Order dated March 21, 2016 (the "March 21 Opinion"), this Court dismissed similar claims brought by other retired former wrestlers alleging that they were injured as a result of WWE's negligence in scripting violent conduct and failing to properly educate, prevent, diagnose and treat them for concussions. Prior to the entry of the Court's March 21 Opinion, WWE separately moved to dismiss the Complaints in both of the instant wrongful death actions, arguing that the Plaintiffs' claims are time-barred and fail to state a claim under Connecticut's wrongful death statute. [Dkt. 103, 104]. WWE also previously filed a motion to

impose sanctions against Plaintiffs' counsel, Konstantine Kyros ("Kyros"), Erica Mirabella ("Mirabella"), and R. Christopher Gilreath ("Gilreath") for their conduct, and in particular the conduct of attorney Kyros, in the filing of the *James* matter in Texas. [Dkt. 80].

Currently before the Court are WWE's motions to dismiss the two wrongful death actions in *Frazier* and *James*, as well as WWE's motion for sanctions related to the filing of the *James* matter. For the reasons stated below, WWE's motions to dismiss [Dkt. 103, 104] are GRANTED and the *Frazier* [3:15-cv-1229] and *James* [3:15-cv-1305] actions are DISMISSED. WWE's Motion for Sanctions [Dkt. 80] is DENIED.

I. Factual Background

The facts and allegations in the Amended Complaint in the action brought by Michelle James [3:15-cv-01305-VLB, Dkt. 99] (hereinafter "JAC")] are nearly identical to the facts and allegations in the Amended Complaint brought by Cassandra Frazier, *et al*. [3:15-cv-01229, Dkt. 98] (hereinafter "FAC")]. Both amended complaints are also nearly identical to the amended complaints brought by several other former WWE wrestlers against WWE in this consolidated action, including those brought by Russ McCullough [3:15-cv-01074, Dkt. 73], and Evan Singleton [3:15-cv-00425, Dkt. 67]. All of the wrestlers alleged that they were injured as a result of WWE's negligence in scripting violent conduct and failing to properly educate, prevent, diagnose and treat them for concussions.

In its March 21, 2016 Opinion, the Court exhaustively reviewed the factual allegations asserted against WWE in the complaints brought by Plaintiffs *McCullough* and *Singleton*. As those complaints are nearly identical to the complaints brought by Plaintiffs in *Frazier* and *James* the Court incorporates that portion of its earlier Opinion describing the factual allegations against WWE. Relevant to the instant motions are the following facts concerning the named decedents in *Frazier* and *James*, which are taken from the Amended Complaints in those respective actions.

a. Nelson Lee Frazier

Plaintiff Cassandra Frazier is the widow of Nelson Lee Frazier ("Frazier"), a deceased former WWE wrestler. Frazier performed in at least 289 matches while affiliated with WWE between June 14, 1993 and March 11, 2008, which was the date of his last performance. [FAR ¶¶ 117-406]. Frazier maintained a weight of approximately 500 pounds while wrestling for WWE. [*Id.* ¶ 172]. Frazier had an admittedly "complicated medical history" that included "weight issues and heart conditions." [*Id.* ¶ 156]. Frazier vaguely alleges that he sustained "countless head injuries" while wrestling in addition to "numerous other physical injuries." [*Id.*]. The Complaint does allege that Frazier "had large knots on his head, as the scar tissue on his skull formed into permanent lumps" and also "evidenced indentations in his skull," but does not describe how Frazier acquired those injuries or their medical significance. [*Id.* ¶ 157]. On six specific dates in 1993, 1995, 1999 and 2005 and 2006, Frazier is vaguely alleged to have "sustained head injuries."

[Id. ¶¶ 184-190]. Plaintiff's complaint does not identify the injuries suffered. Like many of the other named Plaintiffs in this consolidated action, Frazier generally describes the physical contact in each of the alleged incidents – a fall to the mat, for example, or a blow to the head – without alleging any specific or medically-diagnosed physical injury or even alleging that he ever sought medical treatment after the incident.

The Complaint alleges that toward the end of Frazier's WWE wrestling career, he sought medical treatment from his own physician. Frazier's personal physician told him he was an "idiot" for choosing to wrestle for a living and encouraged WWE to release him from employment. [*Id.* at ¶¶ 168, 170]. Prior to his death, Frazier sought medical attention from for severe depression and severe migraines. [*Id.* ¶¶ 113, 114].

Frazier died of a heart attack on February 18, 2014, nearly six years after he last performed for WWE. The official records of Tennessee identified the immediate cause of death as "Hypertensive cardiovascular disease" and "[m]orbid obesity, diabetes mellitus" as other significant contributing conditions.[1] Nonetheless, Frazier alleges in conclusory fashion that "[a]s a direct and proximate result of the WWE's negligence, Nelson Frazier was put in a worse-off state of well-being as evidenced by the above complications, which to a

---

[1] A certified copy of Frazier's death certificate was attached to WWE's Motion to Dismiss as Exhibit A. The Court takes judicial notice of it with respect to this motion to dismiss. *See G-I Holdings, Inc. v. Baron & Budd*, No. 01 Civ. 0216 (RWS), 2003 WL 193502, at *8 (S.D.N.Y. Jan. 29, 2003); *Johnson v. Morgenthau*, 160 F.3d 897, 898 (2d Cir. 1998).

reasonable degree of medical certainty, more likely than not attributed [*sic*] to Nelson Frazier's heart attack and his inability to survive the heart attack." [FAR ¶ 302]. This is the sole allegation raised by Plaintiff linking Frazier's heart attack with any wrongful act by WWE.

The official death certificate of Tennessee shows that no autopsy was performed and that Frazier was cremated. Notably, unlike all of the other complaints filed in the TBI cases against WWE, including the *James* Amended Complaint, the Amended Complaint in *Frazier* omitted the allegation that CTE can only be diagnosed post-mortem by direct tissue examination of the brain. [*See, e.g.*, Dkt. 73, McCullough Amended Complaint ¶ 35]

b. Matthew Osborne

Plaintiff Michelle James ("James") brought suit as mother and next friend of two of the children of a deceased former wrestler named Matthew Osborne ("Osborne"). James does not allege facts suggesting that she has standing to bring this action. She does not claim to have ever been married to Osborne or that she is the executor of Osborne's estate.

The Complaint alleges that Osborne had an "approximately 30 year association as a wrestler with WWE" ending in 2007. [Dkt. 99, JAC ¶ 17]. WWE argues, and Plaintiff did not contest, that publicly-available information establishes that Osborne performed for WWE during two one-year stints from 1985-86 and again from 1992-93 and subsequently made a single 'special guest' appearance at a WWE

program in 2007 "for a few minutes." [Def.'s Mem. at 4, n. 4]. WWE therefore argues that the Complaint is misleading in suggesting that Osborne had a thirty-year wrestling career with WWE and that Osborne's employment relationship with WWE was terminated in 1993.

In or around September 2007, WWE established a wellness program, described in the Court's March 21 Opinion. As part of the new wellness program, WWE offered to pay for rehabilitation services if any former wrestler needed help for drug or alcohol abuse. WWE acknowledges that Osborne "sought such help," and that WWE paid for Osborne to obtain drug rehabilitation services from a third party in 2008, which "he successfully completed." [Def.'s Mem. at 5]. The Complaint alleges that Osborne died of a drug overdose on June 28, 2013 at his home in Plano, Texas. [JAC ¶¶ 4, 187, 277]. The official conclusion of the Assistant County Medical Examiner for Collins County Texas was that his death was accidental and caused by the toxic effects of high levels of opiates.[2]

---

[2] An autopsy report concerning the death of Matthew Osborne was attached to WWE's Motion to Dismiss as Exhibit 1. The Court takes judicial notice of this document as an official record. *See Johnson v. Morgenthau*, 160 F.3d 897, 898 (2d Cir. 1998) (holding that the court could take judicial notice of a party's death when provided with a death certificate); *Valley Surgical Ctr. LLC v. Cty. of Los Angeles*, No. CV 13-02265 DDP AGRX, 2015 WL 3825310, at *6 n.1 (C.D. Cal. June 18, 2015) (taking judicial notice of a coroner's report and its contents, where the complaint alleged facts from the report, and where no party questioned the report's authenticity).

The Plaintiffs allege that CTE can only be diagnosed post-mortem by direct tissue examination of the brain, [JAC ¶ 58, 93]. While James suggests that "any tissue samples of [Osborne's] brain tissue collected during his autopsy can be studied for the presence of Tau protein for a definitive diagnosis," [id. ¶ 33] she has not alleged that the medical examiner actually collected or examined such samples. Consequently, James has failed to allege facts that would indicate on what information she relied to determine that Osborne had CTE, or that Osborne's death from a drug overdose was caused by CTE.

II. Procedural History

Frazier and *James* are the fourth and fifth carbon-copy concussion cases against WWE, respectively, to be transferred to this District after originally having been filed in other jurisdictions. In the first of these five cases to be filed, *Singleton*, Plaintiffs did not oppose transfer on the basis of a binding forum-selection clause in the employment contracts WWE signs with its wrestlers. [Dkt 6, 11]. In the second-filed case, *McCullough*, Plaintiffs argued that the forum selection clauses were unconscionable under California law and therefore unenforceable. [Dkt. 21]. *McCullough* was transferred to this District after a court in the Central District of California found that the forum selection clauses were valid and enforceable. [Dkt. 24].

Plaintiffs also opposed transfer of the third-filed case, *Haynes*, on the basis that the named plaintiff in that action had not signed a contract with WWE containing a forum-selection clause. A district court in the District of Oregon nonetheless granted WWE's

motion to transfer the *Haynes* action to this District pursuant to 28 U.S.C. § 1404(a) after finding that the plaintiff's choice of forum was entitled to little weight given obvious forum-shopping by Plaintiffs' counsel and considerations of *forum non conveniens*. [Dkt. 59].

On June 8, 2015, this Court ordered WWE and Plaintiffs' lead and local counsel to appear for a status conference in the *Singleton / LoGrasso* and *McCullough* cases. Among other admonitions of counsel for inflammatory and unprofessional conduct, the Court referred Plaintiff's counsel, Konstantine Kyros, to Rule 8 of the Federal Rules of Civil Procedure, which requires a complaint to consist of a short and plain statement of the facts which form the plaintiff's claims, and specifically instructed him to "read the Federal Rule, give it some close consideration, perhaps read some cases on the pleading standard, and then file this complaint again in a week without any scrivener errors, without a lot of superfluous, hyperbolic, inflammatory opinions and references to things that don't have any relevance." [Dkt. 73 at 60].

Haynes was subsequently transferred to this Court on June 25, 2015. [*Id.*] *The very next day*, Attorney Kyros filed the last of the five consolidated wrestling cases, *James*, in the Northern District of Texas. Kyros and the numerous other counsel co-signing the James complaint on behalf of the Plaintiffs declined to heed the Court's admonition to edit the unnecessary verbiage, irrelevant allegations, conclusory statements and inflammatory language in the original complaints.

After numerous communications between various counsel for both parties concerning the veracity of

several assertions repeatedly included in the carbon-copy wrestling complaints, WWE ultimately filed the instant Rule 11 motion while the *James* case was pending in Texas. WWE did not serve a copy of the exact Rule 11 motion ultimately filed in Texas twenty-one days in advance of filing that motion – instead, a prior iteration of the motion was served on Kyros' firm bearing the case caption of the *Haynes* matter while that case was pending in Oregon. Nonetheless, the instant Rule 11 motion seeks the imposition of sanctions against Kyros on the basis of alleged falsehoods in the *James* complaint, that WWE claims to have repeatedly pointed out to Plaintiffs' counsel,l as well as on the basis of Plaintiffs' pattern of forum shopping. [Dkt. 80].

The *James* case was transferred to this Court from Texas after Plaintiffs withdrew their objection to transfer. WWE argues that Plaintiffs' counsel, however, failed to remove allegedly false assertions from the complaint when, after lengthy delay, Plaintiffs finally filed amended complaints in both *Frazier* and *James*, therefore underlining WWE's case for the imposition of sanctions. Moreover, in filing amended complaints in *Frazier* and *James*, Kyros and numerous other co-signing counsel declined to heed this Court's admonition to edit the complaints to reduce their unnecessary length and irrelevant, inflammatory allegations.

In its March 21 Opinion, the Court dismissed the negligence claims asserted in *McCullough*, *Singleton*, and *Haynes*, and held that Plaintiffs' only plausible claim against WWE under Connecticut law was a

single count of fraud by omission for WWE's alleged failure to disclose information linking wrestling with long-term brain damage in the face of a plausible duty to disclose such information. The Court found that such claims could only be brought by wrestlers who performed for WWE after WWE was alleged to have acquired the knowledge which it allegedly failed to disclose – which Plaintiffs alleged was on or about the year 2005. The Court further found that it was plausible that this fraud claim may not be barred by the operation of Connecticut's statutes of limitations and repose with respect to wrestlers who performed after 2005.

III. Legal Standard

"'To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.'" *Sarmiento v. U.S.*, 678 F.3d 147 (2d Cir. 2012) (*quoting Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). While Rule 8 does not require detailed factual allegations, "[a] pleading that offers 'labels and conclusions' or 'formulaic recitation of the elements of a cause of action will not do.' Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Iqbal*, 556 U.S. at 678 (citations and internal quotations omitted). "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of 'entitlement to relief.'" *Id.* (*quoting Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to

draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citations omitted).

In considering a motion to dismiss for failure to state a claim, the Court should follow a "two-pronged approach" to evaluate the sufficiency of the complaint. *Hayden v. Paterson*, 594 F.3d 150, 161 (2d Cir. 2010). "A court 'can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth.'" *Id.* (*quoting Iqbal*, 556 U.S. at 679). "At the second step, a court should determine whether the 'well-pleaded factual allegations,' assumed to be true, 'plausibly give rise to an entitlement to relief.'" *Id.* (*quoting Iqbal*, 556 U.S. at 679). "The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678 (quotations omitted).

In general, the Court's review on a motion to dismiss pursuant to Rule 12(b)(6) "is limited to the facts as asserted within the four corners of the complaint, the documents attached to the complaint as exhibits, and any documents incorporated in the complaint by reference." *McCarthy v. Dun & Bradstreet Corp.*, 482 F.3d 184, 191 (2d Cir. 2007). The Court may also consider "matters of which judicial notice may be taken" and "documents either in Plaintiffs' possession or of which Plaintiffs had knowledge and relied on in bringing suit." *Brass v. Am. Film Techs.*, Inc., 987 F.2d 142, 150 (2d Cir.1993); *Patrowicz v. Transamerica*

HomeFirst, Inc., 359 F. Supp. 2d 140, 144 (D. Conn. 2005).

IV. Discussion

a. Connecticut Law Applies to the Claims of Both Decedents

The *Frazier* and *James* Plaintiffs have not challenged WWE's assertion that Connecticut law applies to their claims by virtue of the forum-selection clauses in the contracts between both wrestlers and WWE; and Plaintiffs in both cases have submitted opposition briefing relying exclusively on Connecticut law. Moreover, in the Court's March 22, 2016 Opinion, the Court had previously determined that Connecticut law applied to the claims brought by plaintiff William Haynes III, an Oregon resident who had urged application of Oregon law to his negligence claims against WWE. For the reasons stated in that opinion, the Court applies Connecticut law to the claims of the respective decedents in the two wrongful death actions.

b. Wrongful Death Is the Exclusive Remedy for Both Plaintiffs Under Connecticut Law

Connecticut's wrongful death statute provides the exclusive remedy for claims alleging injuries resulting in death. *See Ladd v. Douglas Trucking Co.*, 203 Conn. 187, 195 (1987) ("Since its enactment our wrongful death statute has been regarded as the exclusive means by which damages resulting from death are recoverable."). WWE therefore argues that all other counts of the *James* and *Frazier* Amended Complaints must be dismissed.

Plaintiffs argue, without citation to relevant Connecticut authority, that "multiple counts may be necessary to provide adequate relief, especially where punitive and special damages are separate and distinct from statutory claims." [Pl.'s Mem. at 27, citing *Caulfield v. Amica Mutual Ins. Co.,* 31 Conn. App. 781, 785, n. 3 (Conn. App. 1993)]. *Caulfield*, in which a Connecticut appellate court found that statutory multiple damages were not recoverable under Connecticut's uninsured motorist statute, was not a wrongful death action brought under Section 52-555, *and does not even mention* Section 52-555 or discuss the availability of alternative causes of action thereunder.

Connecticut law is clear that because Section 52-555 provides the exclusive remedy for injuries where death is a result of the wrongful act, administrators are therefore precluded from pleading alternative common law causes of action arising from the alleged wrongful act. *Lynn v. Haybuster Mfg., Inc.*, 226 Conn. 282, 295 (1993) (holding that Section 52-555 "is the sole basis upon which an action that includes as an element of damages a person's death or its consequences can be brought."); *Floyd v. Fruit Indus., Inc.*, 144 Conn. 659, 669 (1957) ("[T]here cannot be a recovery of damages for death itself . . . in one action and a recovery of ante-mortem damages, flowing from the same tort, in another action brought under [the survival statute]."); *Marsala v. Yale-New Haven Hosp., Inc.*, No. AANCV126010861S, 2013 WL 6171307, at *14 (Conn. Super. Ct. Oct. 30, 2013) (striking common law causes of action for assault and battery in action brought under Section 52-555); *Herbert v. Frontier of Northeast*

Conn., Inc., 2004 Conn. Super. LEXIS 229, at *8-11 (Conn. Super. Ct. 2004) (striking claims for punitive damages and attorney's fees). Plaintiffs make clear throughout their opposition to the motions to dismiss that each decedent's death is alleged to be the direct result of the tortious acts of WWE, whether those acts constituted fraud or negligence. Alternative causes of action arising from those wrongful acts directly resulting in death are therefore barred. The common law claims asserted by both Plaintiffs in Counts I-V of both Amended Complaints are DISMISSED.

c. The James Action Must Be Dismissed for Lack of Standing Under Conn. Gen. Stat. 52-555

Under Connecticut law, "[s]tanding to bring a wrongful death action is . . . conferred only upon either an executor or administrator." *Isaac v. Mount Sinai Hosp.*, 210 Conn. 721, 725-26 (1989) (citations omitted); *see also Ellis v. Cohen*, 118 Conn. App. 211, 216 (2009) ("§ 52-555 creates a cause of action for wrongful death that is maintainable on behalf of the estate only by an executor or administrator."). Where, as in the case of Michelle James, the plaintiff is neither the executor nor administrator of the decedent's estate the plaintiff lacks standing to bring a wrongful death action.

Plaintiffs do not contest Michelle James' lack of standing. On the contrary, Plaintiffs repeatedly request that this Court "out of equity and in the interests of judicial economy and justice . . . permit the constructive refiling of the action within a reasonable period of time after an estate has been established, an administrator appointed, and Plaintiff serves WWE anew under the

accidental failure of suit statute, Conn. Gen. Stat. § 52-592." [Pl.'s Mem. at 4, 42, 44]. In the alternative, Plaintiffs request "an extension of time under Rule 6(b) to remedy any procedural inadequacies which might affect Plaintiff's pursuit of her valid, substantive claims." [*Id.*].

After the *James* action was filed in Texas, Plaintiffs had nearly six months to address these "procedural inadequacies" prior to the filing of WWE's motion to dismiss. Plaintiffs also had the opportunity to file an Amended Complaint, and an extension of time was provided to plaintiffs' counsel to accommodate the filing of that Amended Complaint. At no time did counsel for Plaintiffs invest the minimal effort and expense necessary to establish an estate and appoint an administrator in order to confer standing to bring the instant suit.

Nonetheless, in the interests of equity and justice to the families of the decedents, the Court might have been inclined to dismiss the action without prejudice to re-filing notwithstanding the conduct of the Kyros firm and its co-counsel, described above. However, for the reasons stated below, the Court finds that leave to re-file would be futile as Plaintiffs have not pled a plausible cause of action under the wrongful death statute. The *James* action is DISMISSED.

d. Plaintiffs Fail to Allege A Plausible Causal Relationship Between the Decedents' Deaths and the Wrongful Acts Alleged

To state a claim under Connecticut's wrongful death statute, the plaintiff bears the burden "to prove an unbroken sequence of events that tied [his] injuries to the [defendant's conduct] . . . This causal connection must be based upon more than conjecture and surmise." *Alexander v. Town of Vernon,* 101 Conn. App. 477, 485 (2007) (citations omitted).

True to form, in over forty pages of briefing submitted in opposition to WWE's motion to dismiss, counsel for Plaintiffs could identify only four vague and conclusory assertions of 'fact' to link Frazier's death with the more than one hundred pages of alleged wrongful conduct on the part of WWE detailed in the prolix Amended Complaint. These four assertions are listed below:

I. "WWE created and maintained a dangerous work environment that caused Mr. Frazier to suffer serious injuries . . ."
II. "Mr. Frazier incurred many of these injuries. . . ."
III. "These injuries, *along with the poor lifestyle Mr. Frazier was forced to maintain throughout his employment*, directly caused his death." (emphasis added)
IV. "WWE continued, until Mr. Frazier's death, to act and omit [sic] information regarding Mr. Frazier's injuries, health,

> and well-being which prevented Mr. Frazier from receiving necessary medical treatment and which ultimately led to his death."

[Pl.'s Mem. at 33]. The Court notes that Plaintiffs cited the exact same four 'facts' with respect to causation in opposition to WWE's motion to dismiss the *James* case. [Pl.'s Mem. at 34].

The bare requirements of *Iqbal* and *Twombly*, however, demand more than these bald assertions, unsupported specific facts, that an individual was 'injured' many times and that those undetermined 'injuries' led to that individual's death. *See Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1957 (2007) ("a district court must retain the power to insist upon some specificity in pleading before allowing a potentially massive factual controversy to proceed"), *citing Associated Gen. Contractors of Cal., Inc. v. Carpenters,* 459 U.S. 519, 528, n. 17 (1983).

The Court notes, in particular, the facially specious assertions by Plaintiffs' counsel that, "upon information and belief," both Frazier and Osborne "had CTE." [FAC ¶ 35]. The complaints contain no information from which such a belief could be derived. In the first three carbon-copy wrestling complaints filed by Kyros and his numerous co-counsel in these consolidated cases, Kyros specifically alleged that CTE could *only* be diagnosed post-mortem through an autopsy of the subject's brain. There, the allegation that CTE could only be diagnosed post-mortem was included to *bolster* the claims of the other named Plaintiffs, who had to allege that they have been 'injured' due to being at

greater risk of developing CTE, because, by its very nature, the disease could not be diagnosed without an autopsy. It is no wonder, then, as WWE points out, that Plaintiffs chose to remove the allegation regarding the diagnosis of CTE from the *Frazier*'s complaint. Frazier's brain has been destroyed and cremated, and James has alleged no facts to indicate that Osborne's autopsy included the relevant analysis of his brain tissue or that any brain tissue samples from this autopsy have been preserved. It is impossible to plausibly allege, much less prove that either wrestler had CTE. Kyros and his co-counsels' assertion that either wrestler had the condition "upon information and belief" must therefore be knowingly false.

Not only have Plaintiffs failed to plausibly allege that their decedent had CTE, neither Plaintiff has alleged facts linking their decedent's death with CTE. In a wrongful death action under Connecticut law, a plaintiff must allege specific facts tending to show a plausible connection between the death of the decedent and the wrongful conduct alleged against the defendant. *See, e.g.*, *Rose v. City of Waterbury*, Civil Action No. 3:12cv291 (VLB), 2013 WL 1187049, at *10 (D. Conn. Mar. 21, 2013) (granting Rule 12(b)(6) motion where wrongful death Plaintiffs failed "to allege any causal relationship between the Hospital's conduct and [plaintiff's] death"). Here, yet again, counsel for Plaintiffs resort only to rank speculation, alleging without any factual support that:

> As a direct and proximate result of the WWE's negligence, Nelson Frazier was put in a worse-off state of well-being as evidenced by the above

> complications, which to a reasonable degree of medical certainty, more likely than not attributed [*sic*] to Nelson Frazier's heart attack and his inability to survive the heart attack."

[FAC ¶ 302]. By Plaintiffs' own admission, Frazier was a six-foot-nine-inch, nearly 500-pound man who "suffered from diabetes, an enlarged heart, and obesity" and suffered a heart attack in the shower. [FAC ¶ 50, 160]. Even if the Court assumes for the purposes of this motion that Plaintiffs' unprovable allegation that Frazier "had CTE" were true, the Amended Complaint does not contain a single allegation that heart failure can be a symptom or consequence attributable to a neurologically degenerative condition like CTE. Thus, counsel's allegation that Frazier's "inability to survive the heart attack" can be "more likely than not attributed" to his CTE is yet another bald and baseless allegation, unprovable and unsupportable, which the Court deems unworthy of the barest measure of credibility.

In sum, Plaintiffs have not pled specific facts tending to show that Frazier's death resulted from specific injuries sustained while wrestling for the WWE much less that his death was the result of fraudulent conduct on the part of WWE but for which Frazier would not have contracted CTE. The *Frazier* action is DISMISSED.

e. The Court Denies WWE's Request for Sanctions

Rule 11 sanctions may be properly assessed against (1) any attorney who "present[s] to the court a

pleading, written motion, or other paper – whether by signing, filing, submitting, or later advocating it" that violates the requirements of Rule 11, or (2) any attorney who is responsible for such violation. Fed. R. Civ. P. 11(b). An attorney violates Rule 11 when he "mak[es] false, misleading, improper, or frivolous representations to the court." *Housatonic Habitat for Humanity, Inc. v. General Real Estate Holdings, LLC*, 3:13-01888, 2015 WL 3581242 at *2 (D. Conn. June 5, 2015) (quoting *Williamson v. Recovery Ltd. P'ship*, 542 F.3d 43, 51 (2d Cir. 2008)).

Rule 11 sanctions are also appropriate "when court filings are used for an 'improper purpose.'" *Ipcon Collections LLC v. Costco Wholesale Corp.*, 698 F.3d 58 (2d Cir. 2012). A pleading is filed for an improper purpose if it is used to "harass, cause unnecessary delay, or needlessly increase the cost of litigation." Fed. R. Civ. P. 11(b)(1). Similarly, the Court may impose sanctions under 28 U.S.C. § 1927 on "[a]ny attorney or other person admitted to conduct cases in any court of the United States . . . who so multiplies the proceedings in any case unreasonably and vexatiously." 28 U.S.C. § 1927. "Although the decision to impose sanctions . . . is uniquely within the province of a district court . . . any such decision must be made with restraint and discretion. *Mantell v. Chassman*, 512 Fed. Appx. 21, at *1 (2d. Cir. 2013) (citations omitted).

Fed. R. Civ. P. Rule 11(c)(1) provides a twenty-one day "safe harbor" provision to Rule 11 and reads as follows:

> (2) Motion for Sanctions. A motion for sanctions must be made separately from any other motion

> and must describe the specific conduct that allegedly violates Rule 11(b). The motion must be served under Rule 5, but it must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. If warranted, the court may award to the prevailing party the reasonable expenses, including attorney's fees, incurred for the motion.

Fed. R. Civ. P. Rule 11(c)(1). The safe harbor provision is "a strict procedural requirement" to the enforcement of Rule 11. *Star Mark Mgmt. v. Koon Chun Hing Kee Soy & Sauce Factory, Ltd.*, 682 F.3d. 170, 175 (2d. Cir. 2012). "[T]he plain language of the rule states explicitly that service of the motion itself is required to begin the safe harbor clock," and informal warnings or letters are insufficient to trigger proper notice. *Gal v. Viacom Int'l., Inc.*, 403 F. Supp. 2d 294, 309 (S.D.N.Y. 2005).

WWE first served Kyros with a Rule 11 motion in the *Haynes* action (the "*Haynes* Motion") on July 17, 2015, while that action was still pending in the District of Oregon. After some, but not all, of the allegations that gave rise to the *Haynes* Motion were removed following a pre-filing conference, the parties agreed to delay WWE's filing of a Rule 11 motion until WWE's motion to dismiss the *Haynes* case in its entirety was decided. It is undisputed that after Kyros caused the *James* action to be filed in Texas, WWE filed the instant Rule 11 Motion without serving it on Kyros and

co-counsel for the purposes of satisfying the 21 day safe harbor period. Kyros thus argues that "WWE has failed to properly serve Plaintiffs' Counsel with the as filed Motion for Sanctions" and therefore "the safe harbor period has not yet begun to run and this Motion should be denied." [Pls.' Opp. at 10].

WWE responds that "the motion served by WWE fully disclosed the grounds for the motion filed by WWE, which WWE argues "merely added some procedural history." [Def.'s Rep. at 1, n. 2]. WWE cites no authority for the proposition that a substantially similar Rule 11 motion, identifying the allegedly improper conduct at issue, but served in a case pending in the District of Oregon and bearing the Oregon case caption, with at least some noticeable changes to text, can satisfy Rule 11's safe harbor provision with respect to another Rule 11 motion filed in a separate case pending in the Northern District of Texas. On the contrary, prior courts have strictly enforced Rule 11's safe harbor provision even where the allegedly offending party was served with a substantially similar motion putting that party on notice of the conduct at issue. *See, e.g.*, *Intravaia v. Rocky Point Union Free School Dist.*, 2014 U.S. Dist. LEXIS 176235, at *9 (E.D.N.Y. Dec. 22, 2014) (holding that Rule 11 motion that was not prepared as a separate motion did not satisfy Rule 11's safe harbor provision even if it was served more than 21 days prior to the filing of a separate motion for sanctions and put counsel on notice of the improper conduct alleged).

Even if the Court were inclined to overlook the failure to serve an exact copy of the instant Rule 11

motion, the Court finds that such relief is not warranted on the grounds presented. "'[D]istrict courts generally have wide discretion in deciding when sanctions are appropriate.'" *Morley v. Ciba-Geigy Corp.*, 66 F.3d 21, 24 (2d Cir. 1995) (quoting *Sanko Steamship Co. v. Galin*, 835 F.2d 51, 53 (2d Cir. 1987)). However, "courts may issue Rule 11 sanctions only in extraordinary circumstances," and they should "always be a (very) last resort." *Jackson v. Connecticut Dep't of Pub. Health*, No. 3:15-CV-750 (CSH), 2016 WL 1531431, at *4 (D. Conn. Apr. 15, 2016) (citations omitted). Sanctionable conduct is, therefore, often willful and the product of bad faith. *Id.* (denying motion for sanctions where "no facts suggest [party] acted in bath faith" and party's "behavior fails to indicate the willful misconduct implicated by Rule 11.") The Court observes that there often exists a fine line between bad faith, willful misconduct and overly zealous advocacy. At this stage of the litigation, it is difficult to determine on which side of the divide Kyros' actions fall. WWE presents five grounds for the imposition of Rule 11 sanctions, each of which provide examples of Kyros' habit of deceptive and inflammatory rhetoric in Plaintiffs' filings throughout these consolidated wrestling cases. However, none of the five grounds presented merit further use of judicial resources for the purpose of imposing a sanction.

First, WWE argues that Kyros misled the Court by alleging that Osborne wrestled for WWE "beginning in 1985 and ending in 2007" as part of "an approximately twenty-two year career and until his untimely death." [JAC ¶ 2]. WWE argues that Osborne only performed for WWE from 1985-86 and from October 1992 to

October 1993. Osborne did not wrestle again for WWE until a one-time appearance, literally for a few minutes, at a special anniversary show in 2007." [Def.'s Mem. at 27]. Kyros' allegation of a twenty two-year career is deceptive and misleading – it suggests that Osborne wrestled for WWE for twenty-two years as opposed to approximately two years. At best, the statement is a half-truth, in that Osborne likely wrestled for other employers and events not sponsored by WWE between 1993 and 2007. As discussed above, however, the length of Osborne's career does not impact the Court's determination that the wrongful death claim asserted by Michelle James must be dismissed. Kyros' half-truths undermine his credibility and the credibility of the filings submitted by Plaintiffs' counsel. However, the Court does not deem this particular allegation worthy of sanction because the duration of his career is superfluous—it is a collateral matter not probative of his claim.

WWE next argues that Kyros misled the Court with respect to the allegation that WWE executive Stephanie McMahon concealed the concussion risks involved in WWE wrestling in testimony before Congress. [JAC ¶¶ 59, 64-65]. In its March 22 Opinion, the Court examined this allegation and found it to be without merit, rebuking Kyros for "repeatedly misrepresent[ing] the substance and meaning of [McMahon's] testimony." [Op. at 58]. WWE also argues that Kyros misled the Court with respect to his allegation that WWE "attempted to discredit" studies linking the deaths of two former NFL players with CTE. [JAC ¶¶ 70-73]. At the time of 2005 comments made by Dr. Joseph Maroon regarding these studies,

Dr. Maroon was not in the employ of WWE. Nonetheless, Kyros goes on to allege that WWE "responded" to the studies on ESPN, quoting a WWE statement contained in a ESPN article published in 2009, four years later. [JAC ¶ 73]. Once again, Kyros' deliberately misleading language suggesting that WWE directly contested a specific CTE study in 2005 further undermines his and Plaintiffs' credibility, but does not merit the imposition of sanctions.

WWE argues that Kyros "instituted this case in violation of the valid, enforceable mandatory forum-selection clause that Osborne agreed" in his 1992 contract with WWE. WWE cites to several cases in which prior courts have sanctioned attorneys under Rule 11 for patently frivolous filings in jurisdictions other than those named in presumptively valid forum-selection clauses. *See, e.g.*, *Smith v. Martin*, 02-1624, 2004 WL 5577682 at *4 (D.D.C. Jan. 28, 2004) (imposing Rule 11 sanctions for "patently frivolous" claims that were barred by forum-selection and arbitration clauses); *Freeman v. Bianco*, 02 Civ. 7525, 2003 WL 179777 at *5-6 (S.D.N.Y. Jan. 24, 2003) (holding complaint filed in violation of presumptively valid choice of forum clause violated Rule 11); *Jayhawk Investments, L.P. v. Jet USA Airlines, Inc.*, 98-2153, 1999 WL 588195 at *1 (D. Kan. June 8, 1999) (imposing sanctions under Rule 11 where Plaintiffs filed suit in Kansas despite a presumptively valid forum- selection clause mandating filing in New York).

It is clear that Kyros filed the *James* action in Texas as part of a vexatious and transparent attempt to circumvent two prior decisions by district courts in

Oregon and California either enforcing the forum-selection clauses or nonetheless transferring WWE concussion litigation to this district. Kyros and co-counsel apparently believed that they could convince a district court that because the *James* action was a wrongful death action filed by a survivor of the wrestler-decedent who, obviously, never signed their own contract with WWE, the claims alleged in *James* were "extra-contractual." [Dkt. 22 at 1]. Kyros was wrong; Plaintiffs' argument was not convincing, and the *James* action was transferred to this district.

Ten months later, in July of 2016, Kyros filed a new action on behalf of fifty named wrestlers against WWE in the District of Connecticut. It therefore appears that Kyros and co-counsel have finally given up on their obvious and unsupportable attempts to circumvent the jurisdiction of this Court. Although Plaintiffs' forum-shopping has forced multiple district courts to exert needless effort to corral these cases to the proper forum, sanctions are not needed at this time to prevent Plaintiffs from venturing into vexatious forum shopping with respect to future claims against WWE. The Court is open to reconsidering this finding at a later date should Kyros revert to prior bad habits.

Finally, WWE notes that, contrary to this Court's instructions at the June 8 status conference, Kyros and co-counsel declined to remove numerous paragraphs from the Amended Complaint that bear little to no relevance to the Osborne's death. In particular, WWE points to "thirty-nine separate paragraphs of allegations and color pictures" depicting former performers who have died but which have no relevance

or connection to the place, time or events surrounding Osborne's death. One such paragraph describes the death of a former wrestler, Owen Hart, during a wrestling stunt that went awry in 1999. Plaintiffs have not provided any explanation for how Hart's death relates to Osborne's or to CTE or concussions generally. To the extent such pictures and specific prior injuries sustained by other wrestlers are included to offer visual evidence that wrestling involves violent contact and risk of injury, they are unnecessary and unduly inflammatory.

Baseless claims that are included in a complaint as part of a media campaign to pressure the defendant with negative public relations have been found to evidence bad faith and improper purpose on the part of filing counsel. *See Galonsky v. Williams*, 96 CIV. 6207, 1997 WL 759445 at *6 (S.D.N.Y. Dec. 10, 1997) (noting "baseless claims as part of a public relations campaign in order to embarrass the defendants and thereby coerce a settlement"*).* And at least one other district court has sanctioned counsel for the deliberate inclusion of inflammatory content in a pleading after receiving a prior warning against doing so. *See Marceaux v. Lafayette City-Parish Consol. Gov't*, Nos. 14-31043, 14-31213, 2015 WL 3544648, at *1-3 (5th Cir. 2015) (affirming imposition of Rule 11 sanctions where counsel because asserted in an amended complaint "the same impertinent, immaterial, and scandalous allegations . . . which they had been warned" by the district court not to include).

The Court would be well within its broad discretion to sanction counsel for their failure to adhere to the

Court's instructions and trim the inflammatory content and unnecessary length of the carbon-copy complaints in these consolidated cases. Their failure to do so forced the Court to needlessly expend resources combing through hundreds of paragraphs of allegations, to find a single shred of relevant factual content indicating whether Plaintiffs asserted a plausible claim. In doing so, however, the Plaintiffs only further underlined for the Court the lack of substantive factual content actually contained in these complaints. Although it is perhaps a close question, the Court finds that no Rule 11 sanction is merited for counsel's disregard of the Court's comments at the June 8 conference.

Kyros' false and misleading statements, identified by WWE above, together with other statements the Court has examined – including Kyros' unprovable claim that deceased and, in at least one case, cremated former wrestlers had CTE "upon information and belief" – are highly unprofessional. These misleading, deceptive, and baseless allegations are precisely the types of statements that many state bar associations have targeted in promulgating rules of professional conduct which demand that admitted attorneys speak with candor to the trier of fact. The Court admonishes Kyros and his co-counsel to adhere to the standards of professional conduct and to applicable rules and court orders lest they risk future sanction or referral to the Disciplinary Committee of this Court.

V. Conclusion

For the reasons stated above, WWE's motions to dismiss [Dkt. 103, Dkt. 104] are GRANTED and the *Frazier* [3:15-cv-1229] and *James* [3:15-cv-1305] actions

are DISMISSED. WWE's Motion for Sanctions [Dkt. 80] is DENIED.

IT IS SO ORDERED.

/s/
Hon. Vanessa L. Bryant
United States District Judge

Dated at Hartford, Connecticut: November 10, 2016

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket Nos. 16-1231(L), 16-1237(Con)

[Filed: September 27, 2016]

August Term 2016

Submitted: August 30, 2016
Decided: September 27, 2016

Russ McCullough, Ryan Sakoda, and Matthew Robert Wiese, individually and on behalf of all others similarly situated; William Albert Haynes, III,	)
Plaintiffs-Appellants,	)
v.	)
World Wrestling Entertainment, Incorporated,[1]	)
Movant-Defendant-Appellee.	)

Before: NEWMAN, WINTER, and RAGGI, Circuit Judges.

[1] This caption, altered for purposes of this opinion, does not change the official caption.

Motion to dismiss appeals of orders dismissing two of several cases consolidated in the District Court for the District of Connecticut (Vanessa L. Bryant, District Judge).

Motion granted.

David R. Fine, K&L Gates LLP, Harrisburg, PA (Jerry S. McDevitt, Curtis B. Krasik, K&L Gates LLP, Pittsburgh, PA, Jeffrey Mueller, Day Pitney LLP, Hartford, CT, on the motion), for Movant-Defendant-Appellee World Wrestling Entertainment, Incorporated.

William M. Bloss, Koskoff, Koskoff & Bieder, P.C., Bridgeport, CT (Konstantine W. Kyros, Kyros Law Offices, Hingham, MA, Charles J. LaDuca, Cuneo Gilbert & LaDuca, LLP, Bethesda, MD, Michael J. Flannery, Cuneo Gilbert & LaDuca, LLP, St. Louis, MO, Robert K. Shelquist, Scott Moriarity, Lockridge Grindal Nauen P.L.L.P., Minneapolis, MN, Harris L. Pogust, Pogust Braslow & Millrood, LLC, Conshohocken, PA, Erica Mirabella, Mirabella Law, LLC, Boston, MA, on the memorandum in opposition), for Plaintiffs-Appellants Russ McCullough, Ryan Sakoda, Matthew Robert Wiese, and William Albert Haynes, III.

JON O. NEWMAN, Circuit Judge:

The pending motion to dismiss two appeals merits a brief opinion to clarify the circumstances under which judgments entered in some, but not all, cases that have been consolidated are final for purposes of appellate jurisdiction. Clarification is needed in the aftermath of the Supreme Court's decision in *Gelboim v. Bank of America Corp.*, 135 S. Ct. 897 (2015).

The appeals arise from cases in the District Court for the District of Connecticut. That Court (Vanessa L. Bryant, District Judge) consolidated six cases, five of which were brought against Defendant-Appellee World Wrestling Entertainment, Inc. ("WWE"). *See McCullough v. WWE*, No. 3:15-cv-01074-VLB (D. Conn.), Dkt. Nos. 41 (July 23, 2015), 49 (Aug. 4, 2015), 79 (Oct. 5, 2015). On WWE's motion to dismiss, the District Court later entered an order dismissing two of the cases, one brought by Plaintiffs-Appellants Russ McCullough and others, and one brought by Plaintiff-Appellant William Albert Haynes III. *Id.* Dkt. No. 116 (Mar. 21, 2016). From the order entered in favor of WWE in these two cases, Plaintiffs-Appellants filed timely notices of appeal. *Id.* Dkt. Nos. 123, 124 (Apr. 20, 2016).

WWE, relying on our decision in *Hageman v. City Investing Co.*, 851 F.2d 69 (2d Cir. 1988), moved to dismiss these appeals on the ground that other consolidated cases remained pending in the District Court. The Plaintiffs-Appellants oppose dismissal, urging us to reconsider *Hageman* in light of the Supreme Court's decision in *Gelboim*. Although only an in banc court can reject a prior decision of this Court,

see United States v. Wilkerson, 361 F.3d 717, 732 (2d Cir. 2004), a panel that believes an intervening Supreme Court decision has abrogated a prior decision can present that view to the active judges, and, in the absence of objection, disregard the prior decision.[2] We therefore proceed to consider the effect, if any, of *Gelboim* on *Hageman*.

Hageman concerned two employment discrimination cases that a district court had consolidated. Like the consolidation in the pending matter, this was a district court consolidation for all purposes, not a consolidation by the Multi-District Litigation Panel ("MDL") for "coordinated or consolidated pretrial proceedings" authorized by 28 U.S.C. ¶ 1407. The district court in *Hageman* dismissed the sole claim in one of the consolidated cases. The plaintiff appealed the order of dismissal, and the defendants moved to dismiss the appeal because claims in the other consolidated case remained pending.

The opinion in *Hageman* identified three possible approaches to the issue presented by the motion to dismiss the appeal: (1) a judgment disposing of any claim in a consolidated action could be appealed, (2) an "absolute rule" that a judgment in a consolidated action could be appealed only if it disposed of all claims, and (3) "a flexible approach, examining the type of consolidation and the relationship between the

---

[2] A recent example of that procedure is *Doscher v. Sea Port Group Securities, LLC*, No. 15-2814, 2016 WL 4245427, at *4-5 & *5 n.9 (2d Cir. Aug. 11, 2016) (circulation to active judges prior to filing opinion that considered effect of intervening Supreme Court decision).

consolidated actions in order to determine whether the actions could be appealed separately absent Rule 54(b) certification." *Hageman*, 851 F.2d at 71. *Hageman* adopted a variant of the flexible approach. We stated:

> [T]he best way to weigh these competing benefits of an absolute rule and a more flexible approach is to hold that when there is a judgment in a consolidated case that does not dispose of all claims which have been consolidated, there is a strong presumption that the judgment is not appealable absent Rule 54(b) certification. In highly unusual circumstances, a litigant may be able to overcome this presumption and convince us that we should consider the merits of the appeal immediately, rather than waiting for a final judgment.

Id. Concluding that the presumption had not been overcome, we dismissed the appeal.

Several years later we again considered the appealability of an order dismissing a complaint in a consolidated action. The consolidation involved a large group of cases transferred by the MDL Panel to the Southern District of New York "for coordinated or consolidated pretrial proceedings." *In re: Libor-Based Financial Instruments Antitrust Litigation*, No. 1:11-md-02262-NRB (S.D.N.Y.) ("*Libor I*") Dkt. No. 1 (Aug. 12, 2011), *reported at* 802 F. Supp. 2d 1380, 1381 (J.P.M.L. 2011). The District Court entered an order dismissing the complaint of Ellen Gelboim and Linda Zacher, which had made one claim, an antitrust violation. *Libor I*, 935 F. Supp. 2d 666, 738 (S.D.N.Y.

2013).[3] On appeal from that order, this Court dismissed "the appeals" because all claims in the consolidated action had not been dismissed. *In re Libor-Based Financial Instruments Antitrust Litigation*, Nos. 13-3565, 13-3636, 2013 WL 9557843 (2d Cir. Oct. 30, 2013) ("*Libor II*").[4] *Libor II* did not cite *Hageman*, but did cite *Houbigant, Inc. v. IMG Fragrance Brands, LLC*, 627 F.3d 497 (2d Cir. 2010), *see* 2013 WL 9557843, at *1, which had relied on *Hageman*, *see Houbigant*, 627 F.3d at 498.

---

[3] The District Court dismissed the Gelboim-Zacher complaint in an order entered March 29, 2013. *See Libor I*, Dkt. No. 286. The Plaintiffs-Appellants' timely notice of appeal ("NOA") from that order states that they "believe" a judgment was later "entered on or about August 26, 2013 by operation of Federal Rule of Civil Procedure 58(c)(2)(B). *Id*. Dkt. No. 409 at 2 n.1 (Sept. 17, 2013). That subsection of Rule 58 provides that judgment "is entered" for rulings that are required to be set forth in a separate document when the ruling is so set forth or "150 days have run from the entry in the civil docket." Presumably, this subsection means that a judgment is *deemed* to be entered 150 days after entry of the ruling in the civil docket. *See Mora v. United States*, 323 F. App'x 18, 19-20 (2d Cir. 2009) ("If a separate judgment is not entered, it is deemed to have been entered 150 days after entry of the dispositive order."). The docket in *Libor I* does not reflect a judgment dismissing the Gelboim-Zacher complaint.

[4] This Court's dismissal order refers to "appeals" and bears two docket numbers, Nos. 13-3565 and 13-3636. No. 13-3565 is the appeal brought by Ellen Gelboim and Linda Zacher. No. 13-3636 is an appeal brought by several Charles Schwab entities whose case was included in the consolidated MDL action. Those two appeals were administratively consolidated by our Clerk's Office, an action implicitly reflected by Dkt. No. 11 in No. 13-3565.

The Supreme Court reversed this Court's decision in *Libor II*. *Gelboim v. Bank of America Corp.*, 135 S. Ct. 897 (2015).[5] The Court, citing *Hageman*, noted that our Court "does not differentiate between all-purpose consolidations . . . and . . . § 1407 consolidations for pretrial proceedings only." *Id.* at 904 n.2. The Court ruled that the Gelboim-Zacher appeal should not have been dismissed because it was an appeal from a judgment dismissing one case that had been consolidated only for MDL purposes. As the Court explained:

> Cases consolidated for MDL pretrial proceedings ordinarily retain their separate identities, so an order disposing of one of the discrete cases in its entirety should qualify under § 1291 as an appealable final decision.

Id. at 904 (footnote omitted).

Relevant to the pending matter, the Court added, "We express no opinion on whether an order deciding one of multiple cases combined in an all-purpose consolidation qualifies under § 1291 as a final decision appealable of right." *Id.* at 904 n.4. Because the *McCullough* and *Haynes* cases, the subjects of the

---

[5] The Supreme Court understood this Court to have dismissed only "the appeal filed by Gelboim and Zacher," *Gelboim*, 135 S. Ct. at 902, *see also id.* at 904, although our order had dismissed both the Gelboim-Zacher appeal and the appeal of the Schwab entities. *See* footnote 4, *supra*. Only Gelboim and Zacher filed a petition for certiorari seeking review of our Court's order. Petition for Writ of Certiorari, *id.* (No. 13-1174) (Mar. 26, 2014). The Supreme Court granted their petition. 134 S. Ct. 2876 (2014). The Schwab entities did not file a petition for certiorari.

pending motion, were consolidated with other cases in the District Court for all purposes,[6] and because the Supreme Court in *Gelboim* explicitly declined to express an opinion on the appealability of a dismissal of one of multiple cases in such a consolidation, *Gelboim* does not oblige us to reconsider the continuing validity of *Hageman*. Applying *Hageman*, we see nothing in the Plaintiffs-Appellants' papers that overcomes the "strong presumption that the judgment is not appealable." *Hageman*, 851 F.2d at 71.

Accordingly, the motion to dismiss the appeals in 16-1231 and 16-1237 is granted, without prejudice to renewal of these appeals upon entry of a final judgment in the District Court disposing of all the cases with which the *McCullough* and *Haynes* cases have been consolidated.

---

[6] The Plaintiffs-Appellants dispute that the cases were consolidated for all purposes. *See* Plaintiffs' Memorandum of Law in Opposition to Motion to Dismiss 3. They call our attention to *Katz v. Realty Equities Corp.*, 521 F.2d 1354 (2d Cir. 1975), and *Greenberg v. Giannini,* 140 F.2d 550 (2d Cir. 1944). In *Katz*, the district court explicitly consolidated cases "for all pretrial purposes." 521 F.2d at 1356. In *Greenberg*, the consolidation "was only a convenience, accomplishing no more than to obviate the duplication of papers and the like." 140 F.2d at 552. The consolidation orders in the pending cases give no indication that consolidation was accomplished for anything less than all purposes. *See* Fed. R. Civ. P. 42(a)(2).

A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit

/s/ Catherine O'Hagan Wolfe
[SEAL]

APPENDIX E

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

[Filed: March 21, 2016]

CIVIL ACTION NO. 3:15-cv-001074 (VLB)
Lead Case

RUSS McCULLOUGH, a/k/a "Big Russ McCullough", RYAN SAKODA, and MATTHEW R. WEISE, a/k/a "Luther Reigns," individually and on behalf of all Others similarly situated,	)
Plaintiffs,	)
v.	)
WORLD WRESTLING ENTERTAINMENT, INC.,	)
Defendant.	)

- -

CIVIL ACTION NO. 3:15-cv-00425 (VLB)
Consolidated Case

EVAN SINGLETON and	)
VITO LOGRASSO	)
Plaintiffs,	)
	)
v.	)
	)
WORLD WRESTLING	)
ENTERTAINMENT, INC.,	)
	)
Defendant.	)
	)

- -

CIVIL ACTION NO. 3:15-cv-01156 (VLB)
Consolidated Case

WILLIAM ALBERT HAYNES III,	)
Individually and on behalf of all	)
Others similarly situated,	)
Plaintiffs,	)
	)
v.	)
	)
WORLD WRESTLING	)
ENTERTAINMENT, INC.	)
	)
Defendant.	)
	)

March 21, 2015

MEMORANDUM OF DECISION GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION TO DISMISS THE SECOND AMENDED COMPLAINT BROUGHT BY PLAINTIFFS SINGLETON AND LOGRASSO [Dkt. 43], GRANTING DEFENDANT'S MOTION TO DISMISS THE AMENDED COMPLAINT BROUGHT BY PLAINTIFF HAYNES [Dkt. 64] AND GRANTING THE DEFENDANT'S MOTION TO DISMISS THE AMENDED COMPLAINT BROUGHT BY PLAINTIFFS MCCULLOUGH, SAKODA, AND WEISE [Dkt. 95].

Plaintiffs in this consolidated action are former wrestlers for World Wrestling Entertainment Inc. ("WWE"), a Connecticut entertainment company which produces televised wrestling programming. Plaintiffs allege that they are either suffering from symptoms of permanent degenerative neurological conditions resulting from traumatic brain injuries sustained during their employment as wrestlers for WWE or are at increased risk of developing such conditions. Plaintiffs claim that they were injured as a result of WWE's negligence in scripting violent conduct and failing to properly educate, prevent, diagnose and treat them for concussions. Plaintiffs also claim that WWE had knowledge of evidence suggesting a link between repeated head trauma that could be sustained during WWE events and permanent degenerative neurological conditions such as CTE and either concealed such evidence, fraudulent or negligently denied that it existed, or failed to disclose it in the face of a duty to disclose. Plaintiffs allege that they relied on such fraudulent statements or omissions to their detriment

in making decisions regarding their health. In total, plaintiffs have asserted six claims against WWE in their Complaints, including: "Fraudulent Concealment"; (Count II) "Fraud by Omission"; (Count III) Negligent Misrepresentation; (Count IV) Fraudulent Deceit; (Count V) Negligence; and (Count VI) Medical Monitoring.

Currently before the Court are WWE's Motions to Dismiss the Second Amended Complaint brought by plaintiffs Singleton and LoGrasso, in its entirety, for failure to state a claim, as well as WWE's similar Motions to Dismiss the Amended Complaints brought by Plaintiff William Albert Haynes III and Plaintiffs Russ McCullough, Ryan Sakoda and Matthew Wiese, both of which are purported class actions. [Dkt. # 74, Dkt. 95].

Specifically, WWE argues that the claims of all of the plaintiffs except Singleton must be dismissed because they are all time-barred by the applicable Connecticut statutes of limitations and repose, Conn. Gen. Stat. § 52-584 and § 52–577. [Dkt. 43-1, Def.'s Mem. at 1]. WWE also argues that Plaintiffs' negligence-based claims must be dismissed because WWE owed no duty of care to protect Plaintiffs from injuries resulting "from the inherent risks of professional wrestling and within the normal expectations of professional wrestlers." [Id. at 2]. Finally, WWE argues that the plaintiffs' fraud claims, negligent misrepresentation claims and deceit claims must be dismissed either because they fail to comply with the heightened pleading requirements of Rule 9(b)

or because they fail to state a cognizable cause of action under Connecticut law. [Id.].

Plaintiffs respondby arguing that the statutes of limitation and repose are subject to tolling based on the continuous course of conduct tdoctrine and because of fraudulent concealment pursuant to Conn. Gen. Stat. § 52-595. Plaintiffs argue that they have stated claims for negligence because WWE owed a duty of care to protect the Plaintiffs from the long term neurological effects that may result from sustaining multiple concussions and have stated claims for fraud because WWE failed to disclose that Plaintiffs were at risk for such neurological conditions.

For the reasons that follow, WWE's Motion to Dismiss the *Singleton* action [Dkt. 43] is GRANTED IN PART AND DENIED IN PART, and WWE's Motions to Dismiss the *McCullough* and *Haynes* actions [Dkt. 95, Dkt. 64] are GRANTED.

I. Factual Background

The following facts and allegations are taken from the Second Amended Complaint in the action brought by Evan Singleton and Vito LoGrasso [3:15-cv-00425-VLB, Dkt. #73] (hereinafter "SAC")] as well as the Amended Complaint in the purported class action brought by Russ McCullough [Dkt. 73] (hereinafter "MAC")] and the Amended Complaint in the purported class action brought by William Albert Haynes [3:15-cv-01156-VLB, Dkt. #43] (hereinafter "HAC")]. All three Complaints contain nearly identical factual allegations with the exception of certain paragraphs alleging facts particular to each named plaintiff. The Complaints are

also excessively lengthy, including large numbers of paragraphs that offer content unrelated to the Plaintiffs' causes of action and appear aimed at an audience other than this Court.

a) World Wrestling Entertainment, Inc.

The WWE is an "organizer and purveyor of professional wrestling events, programs, and matches." [SAC ¶ 19]. WWE events are alleged to be an "action soap opera" in that the events are scripted, both as to dialogue between the wrestlers as well as the actual physical wrestling stunts, and the events have preordained winners and losers. [Id. ¶ 20]. Plaintiffs allege that WWE creates scripts for its performances that require its wrestlers to perform "activities that are exceedingly dangerous." [Id. ¶¶ 40, 44]. Plaintiffs allege that WWE adds what it calls "heat" to its scripts in order to ensure that there is "extra physicality" in its matches, including the use of weapons or chairs in its stunts. [Id. ¶ 44]. Plaintiffs allege that they have sustained "thousands of hits to their heads as part of scripted and choreographed moves." [Id. ¶ 50]. As a result, Plaintiffs "believe they are at greater risk for developing long-term brain diseases such as dementia, Alzheimer's disease, ALS, and CTE." [Id. ¶ 2].

The WWE employs trainers and doctors to oversee its wrestling events and to treat and monitor its wrestlers for injuries they sustain from participation in the events or practices. [Id. ¶¶ 86, 129, 131]. Specifically, the WWE created a "Wellness Program," launched on February 27, 2006, which provides "[c]omprehensive medical and wellness staffing, cardiovascular testing and monitoring, ImPACT

concussion testing, substance abuse and drug testing, annual physicals, [and] health care referrals" to current and former WWE wrestlers. [Id. ¶ 78]. The WWE also is alleged to collect injury reports concerning injuries sustained by WWE talent in the ring. [Id. ¶ 89].

b) Concussions and CTE

Plaintiffs define a "concussion" as a type of mild traumatic brain injury ("MTBI") caused by a 'bump, blow, or jolt to the head or body.' A blow to the head that does not cause a concussion, or that has not been diagnosed to cause a concussion, is commonly referred to as a sub-concussive blow." [Id. ¶ 26]. Concussions cause numerous symptoms including: "headaches and problems with concentration, memory, balance coordination, loss of consciousness, confusion, disorientation, nausea, vomiting, fatigue or drowsiness, difficulty sleeping, sleeping more than usual, and seizures." [Id. ¶ 28].

Chronic traumatic encephalopathy ("CTE") is defined in the Complaints as a permanent change to brain structure caused by repeated blows to the head. [SAC ¶¶ 32-33]. CTE is usually caused by repeated minor traumatic brain injuries that "often occur[] well before the development of clinical manifestations," rather than from a single injury. [Id. ¶ 34]. Concussions can cause CTE, but are not the only cause: repeated sub-concussive head trauma can also cause CTE." [Id. ¶ 25]. Furthermore, sustaining repeated mild traumatic brain injuries without taking sufficient time to recover may significantly increase the risk of developing CTE. [Id. ¶ 30]. Symptoms of CTE include

"depression, dementia, cognitive impairment, Parkinsonism, personality change, speech and gait abnormalities." [SAC ¶ 33]. Whereas a concussion's symptoms "are often sensory and manifest immediately," CTE can manifest much later, and "can be caused by blows which have no accompanying symptoms." [Id. ¶¶ 35-36]. Unlike concussions, CTE can only be diagnosed *post mortem* with a "direct tissue examination, which can detect an elevated level of Tau protein in brain tissue." *Id.*

c) Concussion Training, Education and Prevention at WWE

Each of the six named plaintiffs alleges that they were "never educated about the ramifications of head trauma and injury and never received any medical information regarding concussion or sub-concussive injuries while employed by the WWE." [SAC ¶¶ 138-139]. Rather, Plaintiffs claim that they "relied on WWE's superior knowledge and position of authority." [Id. at ¶140].

Beyond that sole allegation, the Complaints devote large portions of their overall length alleging various injuries and slights sustained by WWE wrestlers other than the named plaintiffs. In fact, despite the length of the Complaints, the Court's prior admonishment of plaintiffs' counsel and the Court's provision of additional time to file a Second Amended Complaint in the *Singleton* action, there are precious few allegations which detail specific instances of conduct that have wronged any of the five plaintiffs. The Complaints are replete with theoretical allegations of conditions from which a hypothetical person could suffer without

alleging that any particular Plaintiff actually suffers from such a condition which has been causally connected by an expert to such Plaintiff's performance at WWE events.

For example, the Complaints allege that the WWE did not adequately train "its wrestlers" to execute "their moves," [SAC ¶88], and that WWE created "complicated and dangerous stunts" which it directed "its wrestlers" to perform. [SAC ¶ 91]. Some allegations single out a former WWE trainer, Bill Demott, who is alleged to have ordered "wrestlers who complained of injuries" to "sit in time out," and to have assaulted or verbally humiliated those wrestlers. [Id. ¶ 98]. Nowhere do the Complaints allege that any of the named Plaintiffs were subjected to such conduct. Other allegations are patently vague. As an example, WWE is accused of having "continuously permeate[d] (sic) an environment of humiliation and silence." [Id. ¶ 124]. Demott is accused of having "fostered a brutal culture" and of having forced unnamed wrestlers into "dangerous drills that led to many injuries." [Id. ¶ 98].

Some allegations do not seem to fit plaintiffs' own timeline of events. The Complaints allege that "WWE's Wellness Program served to deceive Plaintiffs by providing a false sense of security and assurance that their health and safety were being adequately monitored, both in the ring and as former wrestlers." [MAC ¶ 83]. The Wellness Program, however, was created after McCullough, Sakoda and Wiese had retired, and plaintiffs do not allege that WWE has ever claimed its Wellness Program was intended to monitor former talent.

Other allegations are patently false.[1] They are simply copied and pasted in whole cloth from one Complaint to another. For example, the McCullough Complaint parrots *verbatim* the allegation that "LoGrasso, wrestling on average five times a week, sustained repeated concussions day after day over many years," without bothering to change the name of the plaintiff. [MAC ¶ 43]. Even LoGrasso's allegation that he suffered concussions "day after day" is contradicted by the fact that LoGrasso never alleges that he was diagnosed with a concussion during his entire tenure with WWE. Rather, his Complaint speculatively alleges only that "upon information and belief" a WWE doctor "would on numerous occasions" witness LoGrasso suffer head trauma *extremely likely* to cause concussions." [SAC ¶ 135 (emphasis added]. Further, it is unclear what LoGrasso's basis is for alleging *daily* concussions would be, given that he also alleges that while he was wrestling for WWE he was never educated "regarding concussion or sub-concussive injuries" and "never knew that he could sustain a concussion while remaining awake." [SAC ¶ 137].

d) WWE's Alleged Knowledge and Concealment of Risks

Plaintiffs allege that WWE "concealed important medical information, including the effects of multiple head traumas" from the plaintiffs, in a campaign of misinformation and deception to prevent Plaintiffs from understanding the true nature and consequences

---

[1] The Court notes that a Motion for Sanctions pursuant to Rule 11 has been filed by WWE in the instant case. [Dkt. 80].

of the injuries they have sustained." [Id. ¶ 60-61]. Specifically, the *Singleton* and *McCullough* Complaints allege that WWE was aware "in 2005 and beyond" that wrestling for the WWE and suffering head trauma "would result in long-term injuries." [SAC ¶ 57, MAC ¶ 57]. It is unclear how plaintiffs arrive precisely at the year 2005 – the paragraph containing this allegation cites a link to an internet article on the website of the Mayo Clinic regarding the causes of concussions that is no longer available. Elsewhere, the Complaints cite to studies conducted in 2009 and 2010 and findings in 2007 that former wrestlers may have suffered from CTE. [SAC ¶ 34, 35, 58]. The Complaints also contain allegations undermining the claim that WWE "was aware" of the medical information allegedly concealed, as they later allege only that "WWE knew, *or should have known*, of developments in medical science during the last decade," citing to a "large body of medical and scientific studies that date as far back to the 1920's that link head trauma to long term neurological problems." [Id. ¶ 3 (emphasis added)].

Plaintiffs allege that "WWE had superior special [sic] knowledge of material medical information that WWE wrestlers did not have access to," although the only specific allegation regarding specialized knowledge is that the WWE allegedly had exclusive access to a "repository of substantial concussion and other head injury information," because the WWE "[u]pon information and belief, [] regularly collected and continues to collect wrestler injury reports, including during [the] Plaintiffs' careers with WWE[.]" [Id. ¶ 89].

The WWE is alleged to have "published articles and . . . downplayed known long-term health risks of concussions." [Id. ¶ 72]. Specifically, WWE is alleged to have issued a statement to ESPN questioning the veracity of a report suggesting a former wrestler, Chris Benoit, suffered from CTE. [Id. ¶ 70]. WWE is alleged to have stated that it was:

> "unaware of the veracity of any of these tests . . . Dr. Omalu claims that Mr. Benoit had a brain that resembled an 85 year-old with Alzheimer's, which would lead one to ponder how Mr. Benoit would have found his way to an airport, let alone been able to remember all the moves and information that is required to perform in the ring . . . ." [Id.].

The Complaints allege that WWE CEO Vincent K. McMahon and former WWE CEO Linda McMahon further attacked those findings in a joint interview on CNN in 2007. [Id. ¶ 74]. Plaintiffs cite Dr. Joseph Maroon's statements to the NFL Network, Total Access in March of 2015 that "[t]he problem of CTE, although real, is its being overexaggerated." [Id. ¶ 56]. Plaintiffs also allege that WWE Executive Stephanie McMahon Levesque's testified in 2007 to the Committee on Oversight and Government Reform of the U.S. House of Representatives that there were "no documented concussions in WWE's history."[2] [Id. ¶ 64]. Plaintiff LoGrasso further alleges that he has received pamphlets and e-mails from the WWE Wellness

---

[2] As the Court notes in Part 3(a), *supra*, the Defendant has also called into question the veracity of this allegation.

Program offering support to former wrestlers struggling with drug and alcohol abuse, but that he has not received any communication from the WWE Wellness Program regarding long-term neurological disorders resulting from wrestling activities. [Id. ¶76].

Finally, plaintiffs allege that the WWE did not "properly assess, diagnose, and treat their wrestlers," although, as described below, none of the five named plaintiffs brings any allegation that on any specific date they complained to a specific WWE employee about concussion-like symptoms and were wrongfully diagnosed as having not suffered a concussion or medically cleared to wrestle without adequate rest.

e) The Named Plaintiffs

i) Plaintiff Vito LoGrasso

Plaintiff Vito LoGrasso began to wrestle for the WWE in 1990 as an extra, eventually signing a full-time contract with the WWE in 2005. [Id. ¶¶ 118, 122-23]. LoGrasso alleges that he "never knew that he could sustain a concussion while remaining awake" and claims he believed that "having his 'bells rung' would not result in a concussion." [Id. ¶ 137]. LoGrasso alleges that during his tenure with the WWE, his trainer Bill Dumott and other unidentified WWE employees encouraged LoGrasso "to fight through serious injury," although such injuries are unspecified. [Id. ¶ 124]. LoGrasso alleges that he was told by unidentified WWE employees that injuries he suffered were part of "paying his dues." [Id. ¶ 125].

LoGrasso alleges that on some date in September of 2006, he was "kicked in the face outside the ring,"

which knocked LoGrasso to the ground "where he struck his head against concrete steps." [Id. ¶ 134]. LoGrasso alleges that he was not examined by WWE medical staff for a possible concussion after the incident. [Id.]. However, LoGrasso does not allege that he ever approached any WWE employee to report concussion-like symptoms or that any specific WWE employee had knowledge of his condition.

LoGrasso retired from wrestling in 2007. [Id. ¶ 136]. In 2008 LoGrasso began experiencing "symptoms of neurological injury in the form of residual, pounding headaches." [Id. ¶ 140]. In either 2009 or 2010, LoGrasso was diagnosed with "TMJ of the jaw" and was diagnosed as "near deaf in one ear and mostly deaf in the other." [Id. at ¶ 141]. In 2014 or 2015 LoGrasso alleges that he was diagnosed as "having numerous neurological injuries," which are not specified. [Id. ¶¶ 142-47].

ii) Plaintiff Evan Singleton

Plaintiff Evan Singleton is a Pennsylvania resident who signed a contract with the WWE in 2012 and wrestled for WWE from 2012 to 2013. [SAC ¶ 93]. Singleton alleges that he "did not have adequate time to rest between matches and was encouraged to wrestle while injured." [Id. ¶ 95]. Singleton also alleges that he sustained "numerous" injuries to the "upper body, neck and head" during his two year wrestling career with WWE, though such injuries are unspecified in the Complaint. [Id.].

Singleton simultaneously alleges that WWE was negligent because, during training, Singleton was

matched "with inexperienced opponents which due to lack of experience resulted in more injuries" and that WWE was negligent because Singleton was scripted to perform a "choke slam" with a "more skilled, more experienced" wrestler despite Singleton's own lack of experience with the maneuver. [Id. ¶¶ 96, 100]. While performing this maneuver on or about September 27, 2012, Singleton alleges that he was "knocked completely unconscious" after being "thrown with extra force" to the wrestling mat. [Id. ¶ 102]. Singleton alleges that he "suffered a blow to the left side of his head and sustained a brain injury as a result." [Id. ¶ 103]. He further alleges that he experienced symptoms immediately after suffering the blow to the head in the choke slam maneuver and that after regaining consciousness he had "balance problems." [Id. ¶ 100, 103].

While Singleton alleges that he was "not treated" after the incident, he admits that he saw a WWE trainer immediately after the incident and was instructed to rest over the following weekend and have his father and roommate monitor his condition. [Id. ¶ 104]. Singleton was later seen by a WWE-affiliated doctor who prescribed additional rest, followed by a WWE-affiliated neurologist who ordered additional testing and a referral to a WWE treating psychiatrist. [Id. ¶¶ 105-106, 115]. Singleton then simultaneously alleges that he was "not medically cleared to wrestle" by WWE but that he was "encouraged" to return and "criticized" and "threaten[ed]" and "harass[ed]" for his inability to return by his trainer, Demott. [Id. ¶ 108].

Singleton does not allege that the WWE ever cleared him to wrestle again, or otherwise failed to prevent additional injury or treatment. Rather, he alleges that as a result of a referral to an inpatient facility by WWE, his primary care physician determined that he suffered from a "possible intracranial hemorrhage." [Id. ¶ 113]. Singleton also alleges that he currently experiences migraines and severe mental health issues as a result of the injury he sustained on September 27, 2015. [Id. ¶¶ 113, 115].

iii) Plaintiff Russ McCullough

Plaintiff Russ McCullough is a California resident who wrestled for the WWE from 1999 to 2001. [MAC ¶ 98]. Several of McCullough's allegations appear to have been copied and pasted from the Singleton Complaint. Like Singleton, McCullough alleges that he "did not have adequate time to rest between matches and was encouraged to wrestle while injured." [Id. ¶ 99]. Also like Singleton, McCullough alleges that he sustained "numerous" injuries to the "upper body, neck and head" during his two year wrestling career with WWE, though such injuries are also unspecified in his Complaint. [Id. ¶ 100].

McCullough alleges alleges that he was "knocked completely unconscious" after being struck to the head with a metal chair during a WWE wrestling match. [Id.] While unconscious, he was struck in the head with the metal chair "more than 15 times." [Id.] McCullough "sought treatment on his own and on an unspecified date not later than 2001 and he was diagnosed with a severe concussion" following the incident. [Id.] McCullough also alleges that while participating in

numerous WWE wrestling matches he suffered "sub-concussive or concussive blows." [Id. ¶ 101]. McCullough currently suffers from "headaches, memory loss and severe mental health issues." [Id. ¶ 103].

iv) Plaintiff Ryan Sakoda

Plaintiff Ryan Sakoda is a California resident who wrestled for the WWE from 2003 to 2004. [Id. ¶ 104]. Sakoda alleges that he knowingly suffered a traumatic brain injury when, on an unspecified date in 2003, he was "knocked unconscious in a match by a Super Kick." [Id. ¶ 106]. Sakoda w alleges that WWE trainers and medical staff told him "not to go to sleep, suggesting that if he did he may bleed to death and die." [Id.]. He alleges that he was "forced to wrestle injured" on the threat of losing his job. [Id. ¶ 105]. Sakoda alleges that he currently suffers from headaches, memory loss and depression. [Id. ¶ 108].

v) Plaintiff Matt Wiese

Plaintiff Matt Wiese is a California resident who wrestled from 2003 to 2005 under the stage name "Luther Reigns." [Id. ¶ 109]. Wiese alleges that he knowingly "sustained numerous untreated head injuries" although such injuries are not specified. [Id. ¶ 110]. Wiese alleges that during a WWE event on an unspecified date he was punched by a wrestler under the stage name "Big Show" and sustained "visible injuries" to his head and vomited afterward. [Id.]. Wiese alleges that "WWE staff took no steps to intervene in the event" or to treat his condition. [Id.]. However, Wiese does not allege that he ever

approached any WWE employee to report concussion-like symptoms or seek treatment or that any specific WWE employee had knowledge of his condition. Wiese alleges that he suffers from headaches and memory loss and has had a stroke. [Id. ¶ 111].

vi) Plaintiff William Albert Haynes III

Plaintiff William Albert Haynes, III ("Haynes") wrestled for WWE from 1986 to 1988. [HAC ¶ 122]. The Complaint alleges that "Haynes is [sic] well known champion wrestler." *Id.* Like the other named plaintiffs, Haynes alleges that at unspecified times he "suffered sub-concussive or concussive blows" and was subjected to "verbal abuse and pressure" from unidentified WWE employees. *Id.* at 123-124. Haynes alleges that on March 29, 1987, he was "hit in the head with a large metal chain" which led to an unspecified "head injury" that was not treated. *Id.* at 126. Haynes does not allege that he ever sought treatment or from the WWE or a physician or trainer employed by WWE or that he ever complained of concussion-like symptoms. Haynes alleges that he was never educated "about the risk of sustaining numerous subconcussive and concussive blows." *Id.* at 125. Haynes "exhibits symptoms of dementia" and depression. *Id.* at 131.

f) Procedural History

Plaintiffs Singleton and LoGrasso originally filed their Complaint in the U.S. District Court for the Eastern District of Pennsylvania on January 16, 2015 as a purported class action. On February 27, 2015, WWE filed a Motion to Transfer Venue pursuant to 28 U.S.C. § 1404(a) due to forum-selection clauses in the

contracts signed by each of the wrestlers. [Dkt. 6]. Those clauses state that: "[t]he parties agree to submit any and all disputes arising out of or relating in any way to this Agreement exclusively to the jurisdiction of the United States District Court of Connecticut." Plaintiffs filed no opposition to the Motion to Transfer. By Order dated March 23, 2015, the Eastern District of Pennsylvania granted WWE's Motion to Transfer, noting that "[t]he plaintiffs do not oppose a transfer of venue and agree that the District of Connecticut is an appropriate forum." [Dkt. 11].

The *McCullough* suit was filed as a purported class action in the Central District of California on April 9, 2015. On May 14, 2015, WWE filed a Motion to Transfer Venue pursuant to 28 U.S.C. § 1404(a) due to forum-selection clauses in the contracts signed by each of the wrestlers. [Dkt. 16]. The *McCullough* plaintiffs opposed the Motion to Transfer, arguing that the forum selection clauses in the contracts are unconscionable under California and Connecticut law. [Dkt. 21]. On July 24, 2015, the McCullough Suit was transferred to this District after a court in the Central District of California found that the forum selection clauses in the Plaintiffs' contracts with the WWE were valid and enforceable. [Dkt. 24].

Haynes filed his own lawsuit in the United States District Court for the District of Oregon, purporting to be a class action. [No. 3:15-cv-0115-VLB, Dkt. 1]. Unlike the named plaintiffs in the *Singleton* and *McCullough* actions, Plaintiff Haynes did not sign a contract with a forum-selection clause limiting jurisdiction to the District of Connecticut. Nonetheless,

on June 25, 2015, the District Court for the District of Oregon granted WWE's Motion to Transfer the *Haynes* action to this District pursuant to 28 U.S.C. § 1404(a), finding that Haynes' choice of forum was entitled to little weight since he had brought a class action on behalf of individuals throughout the United States, because of evidence of forum-shopping on the part of Plaintiff's counsel and because "*forum non conveniens* considerations" weighed in favor of transfer. [Dkt. 59].

In addition, Cassandra Frazier and Michelle James, decedents of former WWE wrestlers have also filed separate wrongful death actions in the Western District of Tennessee and in the Northern District of Texas. [3:15-cv-01305-VLB; 3:15-cv-01229-VLB].[3] Finally, the defendant has counter-sued in a declaratory judgment action styled *World Wrestling Entertainment, Inc v. Windham, et al*, No. 3:15-cv-00994 (VLB), seeking a declaration from this Court that any claims by former wrestlers similar to those of McCullough and LoGrasso are time-barred under the Connecticut statutes of limitations. The outcome of the instant motions to dismiss should therefore be dispositive as to the *Windham* action.

II. Standard of Review

"'To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to

---

[3] The *Frazier* and *James* actions have also been transferred to this district and subsequently consolidated with the *Singleton* and *McCullough* suits. Motions to Dismiss the Amended Complaints in *Frazier* and *James* are now pending before the Court, however they are not examined in this memorandum of opinion.

state a claim to relief that is plausible on its face.'" *Sarmiento v. U.S.*, 678 F.3d 147 (2d Cir. 2012) (*quoting Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). While Rule 8 does not require detailed factual allegations, "[a] pleading that offers 'labels and conclusions' or 'formulaic recitation of the elements of a cause of action will not do.' Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Iqbal*, 556 U.S. at 678 (citations and internal quotations omitted). "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of 'entitlement to relief.'" *Id.* (*quoting Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. (internal citations omitted).

In considering a motion to dismiss for failure to state a claim, the Court should follow a "two-pronged approach" to evaluate the sufficiency of the complaint. *Hayden v. Paterson*, 594 F.3d 150, 161 (2d Cir. 2010). "A court 'can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth.'" *Id.* (*quoting Iqbal*, 556 U.S. at 679). "At the second step, a court should determine whether the 'well-pleaded factual allegations,' assumed to be true, 'plausibly give rise to an entitlement to relief.'" *Id.* (*quoting Iqbal*, 556 U.S. at 679). "The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted

unlawfully." *Iqbal*, 556 U.S. at 678 (internal quotations omitted).

In general, the Court's review on a motion to dismiss pursuant to Rule 12(b)(6) "is limited to the facts as asserted within the four corners of the complaint, the documents attached to the complaint as exhibits, and any documents incorporated in the complaint by reference." *McCarthy v. Dun & Bradstreet Corp.*, 482 F.3d 184, 191 (2d Cir. 2007). The Court may also consider "matters of which judicial notice may be taken" and "documents either in plaintiffs' possession or of which plaintiffs had knowledge and relied on in bringing suit." *Brass v. Am. Film Techs.*, Inc., 987 F.2d 142, 150 (2d Cir.1993); *Patrowicz v. Transamerica HomeFirst, Inc.*, 359 F. Supp. 2d 140, 144 (D. Conn. 2005).

III. Discussion

At the outset, neither the *Singleton* nor the *McCullough* plaintiffs challenge WWE's assertion that Connecticut law applies to their claims by virtue of the forum-selection clause in the contracts between the wrestlers and WWE; and plaintiffs in both cases have submitted opposition briefing relying exclusively on Connecticut law.

Plaintiff Haynes, however, argues that Oregon substantive and procedural law must apply to his claims, noting that he never signed a contract with the WWE which included a forum-selection clause. The Court therefore begins by examining the choice-of-law question with respect to *Haynes*.

1. <u>Connecticut Law Applies to the Claims in the Haynes, Singleton and McCullough Actions</u>

Ordinarily, when a case is transferred pursuant to 28 U.S.C. § 1404(a), "the transferee court generally adheres to the choice of law rules of the transferor court." *Sissel v. Rehwaldt*, 519 Fed. Appx. 13, 17 (2d Cir. 2013) (*citing Van Dusen v. Barrack*, 376 U.S. 612, 639 (1964)). WWE notes that an exception applies when the transferor court lacks personal jurisdiction over the defendant(s), in which case the transferee court's choice-of-law principles govern. *See Garena v. Korb*, 617 F.3d 197, 204 (2d Cir. 2010) ("[W]hen a case is transferred under 28 U.S.C. § 1404(a), the law of the transferor state is to be applied so long as the transferor state could properly have exercised jurisdiction.").[4] However, in this case the determination of which state's choice-of-law rules to apply is made easier by the fact that both Oregon and Connecticut courts consider choice-of-law questions by examining the same factors, which are set forth in the Restatement (Second) of Conflicts § 145. *Jaiguay v. Vasquez*, 287 Conn. 948 A.2d 955 (Conn. 2008) ("we have moved away from the place of the injury rule for tort actions and adopted the most significant

---

[4] [4] WWE notes that its Motion to Dismiss the Haynes action argued that the District Court for the District of Oregon lacked personal jurisdiction over WWE. Thus, WWE argues that if this Court were to determine that WWE was not subject to personal jurisdiction in Oregon, Connecticut choice-of-law rules would apply. The Court need not determine whether WWE was subject to personal jurisdiction in Oregon, as the outcome would be the same under either state's choice-of-law analysis.

relationship test found in §§ 6 and 145 of the Restatement (Second) of Conflict of Laws."); *389 Orange Street Partners v. Arnold*, 179 F.3d 656, 662 (9th Cir. 1999) ("Oregon courts follow the Restatement (Second) of Conflicts of Laws § 145 approach to determining the appropriate substantive law."). Under the factors set forth in the Restatement and the precedent cases in either jurisdiction, Connecticut substantive law must be applied to Haynes' claims.

Section 145 of the Restatement (Second) of Conflicts provides that "[t]he rights and liabilities of the parties with respect to an issue in tort are determined by the local law of the state which, with respect to that issue, has the most significant relationship to the occurrence and the parties." Restatement (Second) Conflict of Laws § 145(2) (1971). The "contacts" that are to be taken into account in determining which state has the most significant relationship include: "(a) the place where the injury occurred, (b) the place where the conduct causing the injury occurred, (c) the domicile, residence, nationality, place of incorporation and place of business of the parties, and (d) the place where the relationship, if any, between the parties is centered." *Id.* These contacts "are to be evaluated according to their relative importance with respect to the particular issue." *Id.*; *see also Jaiguay*, 948 A.2d at 974 (applying same); *389 Orange Street Partners*, 179 F.3d at 661 (applying same).

The first factor, the place where the injury occurred, is essentially neutral in this case. Haynes alleges that he competed in "hundreds" of matches for the WWE, including matches in front of nationally-televised

audiences. [HAC ¶ 122]. Although Plaintiffs argue that "at least four" of those matches occurred in Oregon, [Pl.'s Supp. Mem. at 10], it cannot be said that the "injury" alleged – in the form of increased risk of degenerative neurological conditions – occurred exclusively – or even substantially – within Oregon borders or indeed within any jurisdiction. Haynes has also brought a purported class action on behalf of wrestlers who also presumably were injured in numerous jurisdictions.

The second factor, the place where the conduct giving rise to the injury occurred, weighs heavily in favor of the application of Connecticut law. The documents and witnesses that would be likely to support Haynes' fraud claims are likely to be in or near WWE's corporate headquarters located in Stamford, Connecticut. To the extent Haynes alleges negligence in the form of inadequate training, education, assessment or medical diagnosis, such conduct is likely to have occurred in numerous jurisdictions, but with the direction and coordination of WWE staff located in Connecticut at that time.

The third factor – the domicile of the parties – is neutral. Haynes is an Oregon resident and WWE is incorporated in Connecticut. And the fourth factor, the place where the relationship between the parties is centered, weighs somewhat in favor of Connecticut, as WWE attorneys and staff are likely to have at least contributed to the development and negotiation of Haynes' booking contract and at least contributed to determining the location, dates and times of Haynes' wrestling engagements nationwide.

The four factors enumerated above weigh in favor of the application of Connecticut law. The Court also notes that two important factors in the Oregon court's decision to transfer this action to Connecticut were: (1) evidence of forum-shopping on the part of Plaintiff's counsel, and (2) the fact that the *Haynes* action, along with the *McCullough* action which had already been transferred to this District, was a purported class action on behalf of individuals domiciled throughout the United States. [Dkt. 59]. These factors must also be taken into account here, and lead this Court to assign little value to the fact that Haynes is an Oregon resident, essentially the only fact supporting application of Oregon law. Courts in both the Second and Ninth Circuits have reached the same conclusion in similar circumstances. *See 389 Orange Street Partners*, 179 F.3d at 662 (applying Connecticut law to claims brought by former basketball player Clifford Robinson and noting that "the only factor favoring Oregon substantive law is Robinson's residence in Oregon."). In such circumstances, the Court must apply Connecticut substantive law.

Because the Court applies Connecticut substantive law, the Connecticut statutes of limitations and repose must also apply. "Under Oregon law, the statute of limitation is provided by the state which supplies the substantive law." *389 Orange Street Partners*, 179 F.3d at 661. And under Connecticut law, the statute of limitations is considered procedural and the Connecticut statute of limitations will govern if the underlying claims existed at common law. *Baxter v. Sturm, Ruger & Co. Inc.*, 32 F.3d 48, 49 (2d Cir. 1994) (rejecting application of Oregon statute of limitations

and after the Connecticut Supreme Court found the statute to be procedural and not substantive); *Doe No. 1 v. Knights of Columbus*, 930 F. Supp. 2d 337, 353 (D. Conn. 2013) (Connecticut courts traditionally apply Connecticut's statute of limitations when the plaintiff pursues a common law cause of action").

2. Plaintiffs' Claims Are Not Time-Barred By Connecticut Statutes of Limitations and Repose

The WWE urges dismissal of all of the claims of Plaintiffs LoGrasso, McCullough, Sakoda, and Wiese on the grounds that these plaintiffs' fraud and deceit claims are time-barred pursuant to Conn. Gen. Stat. § 52–577, the Connecticut statute of limitations for tort claims, and that their negligent misrepresentation, negligence, and medical monitoring claims are time-barred pursuant to Conn. Gen. Stat. § 52–584, the Connecticut statute of limitations applicable to negligence claims.

Conn. Gen. Stat. § 52-584 provides in relevant part:

> "No action to recover damages for injury to the person, or to real or personal property, caused by negligence . . . shall be brought but within two years from the date when the injury is first sustained or discovered or in the exercise of reasonable care should have been discovered, and except that no such action may be brought more than three years from the date of the act or omission complained of ...."
> Conn. Gen. Stat. § 52-584 (West).

Section 584, applicable to Plaintiffs negligence claim, is both a statute of limitations and a statute of repose, as it contains both a two-year limitations component running from the date of discovery of the injury as well as a three-year repose component which runs from the date of the act or omission alleged to have caused the injury. *See Neuhaus v. DeCholnoky*, 905 A.2d 1135, 1142 (Conn. 2006). Section 577, applicable to Plaintiffs tort claims for fraud and deceit, is a three-year statute of repose which provides simply that: "[n]o action founded upon a tort shall be brought but within three years from the date of the act or omission complained of." Conn. Gen. Stat. § 52–577 (West).

Because plaintiff Singleton wrestled for WWE as late as 2013, WWE has not argued that his claims are time barred. However, Plaintiffs Haynes, LoGrasso, McCullough, Sakoda and Wiese each ceased wrestling for WWE well before 2012 (together, the "Pre-2012 Plaintiffs"). Whether the Pre-2012 Plaintiffs' claims are time-barred depends on: (1) when each of the plaintiffs first discovered "actionable harm" such that the discovery provision of Conn. Gen. Stat. § 52-584 began to accrue on their negligence claims; (2) whether WWE engaged in a continuing course of conduct that tolled the applicable statutes of repose as to all claims; or (3) whether WWE engaged in fraudulent concealment in violation of Conn. Gen. Stat. § 52-595, such that the applicable statutes of limitations must be tolled as to all claims.

For the reasons stated below, the Court finds that to the extent that the harm alleged is an increased risk

for permanent degenerative neurological conditions, it is not evident from the face of the Complaints that any plaintiff discovered the actionable harm more than two years prior to the filing of the instant suits. The Court also finds the statute of limitations and repose may be tolled only as to the fraudulent omission claim and only to the extent that the Complaint raises questions of fact as to whether WWE owed a continuing duty to disclose, or fraudulently concealed, information pertaining to a link between WWE wrestling activity and permanent degenerative neurological conditions.

a. Date of Discovery of Actionable Harm

WWE first argues that the Pre-2012 Plaintiffs' negligence claims are barred by the discovery portion of the statute of limitations at Sec. 584 because the Plaintiffs discovered the injuries they have complained of well prior to their retirement from wrestling. The Connecticut Supreme Court has defined the term 'injury' in Sec. 52-584 to be an event that occurs when the plaintiff suffers "actionable harm." *Lagassey v. State*, 846 A.2d 831, 845 (Conn. 2004). "Actionable harm," in turn, "occurs when the plaintiff discovers, or in the exercise of reasonable care, should have discovered the essential elements of a cause of action." *Id.* at 846. Thus, "the statute of limitations begins to run when the claimant has knowledge of facts which would put a reasonable person on notice of the nature and extent of an injury and that the injury was caused by the wrongful conduct of another. . . The focus is on the plaintiff's knowledge of facts, rather than on discovery of applicable legal theories." *Id.* The

determination of when a plaintiff in the exercise of reasonable care should have discovered 'actionable harm' is ordinarily a question reserved for the trier of fact." *Id*. at 847.

The WWE notes that under Connecticut law, although an injury occurs "when a party discovers some form" of actionable harm, "the harm complained of need not have reached its fullest manifestation in order for the limitation period to begin to run." *BellSouth Telecomm., Inc. v. W.R. Grace & Co.*, 77 F.3d 603, 614 (2d Cir. 1996), *citing Burns v. Hartford Hosp.*, 472 A.2d 1257, 1261 (1984); *Mollica v. Toohey*, 39 A.3d 1202, 1206 (2012). Thus, with regard to physical injuries, a plaintiff need only discover "some physical injury," not the "full manifestation" of a given injury, for his or her claim to accrue. *See, e.g.*, *Dennis v. ICL*, Inc., 957 F. Supp. 376, 380 (D. Conn. 1997) (claim accrued when plaintiff first learned she had tendinitis and "overuse syndrome" in her wrists due to her work; later diagnosis of Carpal Tunnel Syndrome was merely the full manifestation of the condition "that caused her earlier symptoms.").

The WWE argues, therefore, that the statutes of limitations began to run on the Pre-2012 Plaintiffs' claims at the time that each plaintiff knowingly sustained head injuries while participating in WWE's wrestling matches, because each plaintiff has alleged that he was aware that he had sustained head trauma and/or concussions and was at least somewhat symptomatic of concussive injury at that time that he was wrestling. [Def.'s Mem. at 24]. It is inconsequential, WWE argues, that the Pre-2012

Plaintiffs "did not discover the full manifestation of these alleged head injuries" until a later date. [Def.'s Reply at 7].

The Pre-2012 Plaintiffs have different responses on the issue of the date of discovery of actionable harm. Plaintiff Vito LoGrasso, the only Pre-2012 Plaintiff to have been diagnosed with any permanent condition, argues that he did not discover actionable harm until 2014, when he was diagnosed as "permanently disabled," allegedly due to the head trauma he sustained during his tenure with the WWE. [Pls.' Rep. Mem. at 6-9]. Other Pre-2012 Plaintiffs have alleged that the injuries they sustained are not the discrete head injuries that they suffered while wrestling for WWE, but rather the increased risk of developing permanent neurological conditions, including but not limited to CTE, as a result of their wrestling activity. [Pls.'s Opp. Mem. at 21 ("[j]ust because the Plaintiffs knew they were being hit on the head does not equate to their knowledge that they were receiving severe concussions . . . which . . . will continue to result in long-term neurological injuries")].

On this issue, the Court must concur with the Plaintiffs. The mere fact that the Pre-2012 Plaintiffs allege that they sustained concussions and head trauma during their tenure with the WWE; and that they allege awareness of those concussions and possible concussion-like symptoms at the time, is not necessarily dispositive here at the motion to dismiss stage. A single MTBI such as a concussion, and the symptoms that a discrete MTBI can manifest, are not the same "condition" as a disease such as CTE or

another degenerative neurological disorder that may – or may not – be caused by repeated MTBIs.

The distinction between cause and condition is critical. An individual who smokes cannot be said to be aware of developing lung cancer merely because the individual is aware that he or she smokes. And where, as here, the injury alleged is not an actual condition at all, but rather an *increased risk* of developing a condition, the date of discovery of "some injury" becomes even more difficult to pinpoint. In such cases, it is perhaps possible for a plaintiff to be aware of some form of the risk so as to have discovered the actionable harm. Certainly the widespread publicity of the hazards of smoking in recent decades can be said to have put the American public on notice of an increased risk for lung cancer. On the face of the Complaints, however, the Court cannot determine date(s) of discovery in this case which would bar the instant claims.

Only one court has considered this issue previously, in the context of current and former professional hockey players. *See In re Nat. Hockey League Players' Concussion Injury Litig.*, 2015 WL 1334027, at *5-7 (D. Minn. Mar. 25, 2015) (hereinafter the "NHL case"). In the *NHL* case, Judge Nelson rejected the NHL's substantially similar argument on a Motion to Dismiss under Minnesota law that "the statutes of limitations began to run on Plaintiffs' claims when Plaintiffs sustained head injuries in the NHL because they were aware at that time that they had been injured . . . and the fact that the injuries are now more extensive than they realized at the time they sustained them does not

extend the limitations period." *Id.* at *7. Judge Nelson held that because the NHL plaintiffs "alleged "injury in the form of an increased risk of developing neurodegenerative diseases," it could not be determined from the face of the Complaint that the NHL plaintiffs "were aware that they had suffered an injury—or the possibility of injury—while they were playing in the NHL." *Id.*

The cases cited by WWE in support of an earlier discovery date under Connecticut law are inapposite and do not urge a different outcome here. In *Slekis v. Nat'l R.R. Passenger Corp.*, 56 F. Supp. 2d 202, 206 (D. Conn. 1999), one court held there was an issue of material fact as to whether a paraplegic plaintiff who could not feel a foot injury should have been aware of his cause of action. In that case, the record was "not clear as to what plaintiff saw or experienced at the time of the accident" and whether the experience should have put him on notice of the injury. *Id.* at 206. Similarly, in *Mountaindale Condo. Ass'n, Inc. v. Zappone*, 59 Conn. App. 311 (Conn. App. 2000), the question was whether plaintiff knew of construction defects in an apartment building sufficient to put the plaintiff on notice "that it was likely there were building and fire code violations . . . in the units" prior to the discovery of those specific code violations. *Id.* at 324-325. In both cases the plaintiffs saw or heard some fact or witnessed some incident which could have reasonably put them on notice of their cause of action.

Here, however, it cannot be determined from the face of the Complaints and as a matter of law that the Pre-2012 Plaintiffs were on notice of an increased risk

for a latent, permanent neurological condition merely because they knew they had suffered a concussion and/or sustained other minor brain trauma during the time they wrestled for WWE. The Pre-2012 Plaintiffs' knowledge, or lack thereof, of a connection repeated concussions or sub-concussive blows to the head and latent, permanent neurological conditions presents a material issue of fact that must be decided at a later date.[5] Without knowledge of such a connection,

---

[5] Several facts set forth in LoGrasso's lengthy, 281-paragraph Amended Complaint, do suggest that perhaps, at the very least, LoGrasso should have been aware of some degenerative neurological condition prior to his diagnosis of CTE in 2015, such that his claim may have accrued at an earlier date. Specifically, the Amended Complaint alleges that "by 2008, Mr. LoGrasso was showing symptoms of neurological injury in the form of residual, pounding headaches." [SAC ¶ 140]. Further, LoGrasso alleges that "[i]n 2009 and 2010 [LoGrasso's] headaches continued to worsen and become more frequent." [SAC ¶ 141]. Apparently in either 2009 or 2010, Mr. LoGrasso "was diagnosed with TMJ of the jaw and was disabled near deaf in one ear and mostly deaf in the other." [Id.]. These admissions raise the question whether LoGrasso, by admitting that he began experiencing residual headaches well after he retired in 2008 which worsened in 2009 and 2010, has essentially admitted that he discovered or should have discovered "some injury" that is the basis for his present claim.

LoGrasso, for his part, contends that, although he began experiencing neurological symptoms in 2008, he was unaware that his symptoms were connected to the head trauma he received while wrestling with the WWE until his diagnosis 2014. [Pls.' Rep. Mem. at 8-9]. Yet the allegation that LoGrasso did not know of a connection between his headaches and head trauma sustained during wrestling activity, accepted as true for the purposes of this motion, nonetheless pushes the boundary between possible and plausible. Plaintiffs will carry a heavy burden to convince any reasonable trier of fact that LoGrasso, one year after retiring from

Plaintiffs may have discovered "some injury," but not "actionable harm" because of their inability to tie head trauma that they knew they were sustaining to another party's breach of a duty to disclose increased risks for latent, permanent neurological conditions. *See Lagassey*, 846 A.2d at 846-47; *Slekis*, 56 F. Supp. 2d. at 206.

The Court notes that the WWE has not argued in the instant motions to dismiss that the Pre-2012 Plaintiffs should have reasonably become aware of their causes of action on the basis of widely-publicized studies, lawsuits and settlements linking CTE and other disorders with professional athletes in other sports in recent years. The Court is skeptical, however, of the inherent contradiction which underlies plaintiffs' fraud claims. Plaintiffs simultaneously argue on the one hand that studies and data linking MTBIs with permanent degenerative neurological conditions were both widespread and widely-publicized, and on the other hand that Plaintiffs had no knowledge of any of this widely-publicized information and instead relied, to their detriment, on a television entertainment company to explain to them the dangers of

---

wrestling in 2007, could not pinpoint the source of his headaches, deafness, and TMJ.

WWE did not address this issue in briefing, perhaps because further factual development is necessary to determine whether LoGrasso – or any of the other Pre-2012 Plaintiffs – discovered some form of permanent neurological disorder prior to 2014 or 2015, even if not its "full manifestation." WWE relied upon the sole argument that LoGrasso knew he suffered concussions while wrestling, and therefore discovered "some form" of his latent neurological condition.

volunteering, for compensation, to be hit in the head repeatedly with a metal folding chair.[6]

Nonetheless, because LoGrasso's claim crosses a minimum threshold of plausibility, and because WWE did not argue the point in support of its Motion, further factual development is needed to determine whether any of the Pre-2012 Plaintiffs discovered, or should have discovered actionable harm in the form of an increased risk for latent, permanent degenerative neurological conditions prior to 2013. WWE's Motions are DENIED to the extent they argue that these plaintiffs negligence claims are time-barred by the operation of the statute of limitations in Conn. Gen. Stat. § 52-584.

b. Application of Connecticut's Statute of Repose

Even if plaintiffs did not discover actionable harm at the time they wrestled for WWE, such that their claims are not barred by the statutes of limitations, their claims may still be barred by the Connecticut statutes of repose.

Specifically, Section 52-584 bars a plaintiff from bringing a negligence claim "more than three years from the date of the act or omission complained of." Conn. Gen. Stat. § 52-584 (West). "[T]he relevant date

---

[6] The Court also notes that the term "punch-drunk" has been common parlance for decades and certainly well before Plaintiffs began wrestling for WWE. And in 1984, three years before Plaintiff Haynes began wrestling for WWE, the boxer Muhammad Ali was famously diagnosed with early-onset Parkinson's disease incident to the head trauma he sustained while boxing.

of the act or omission complained of, as that phrase is used in § 52–584, is the date when the negligent conduct of the defendant occurs and ... not the date when the plaintiff first sustains damage . . . ." *Martinelli v. Fusi*, 963 A.2d 640, 644 (Conn. 2009). Therefore, any action commenced more than three years from the date of the negligent act or omission is barred by Sec. 52-584, "regardless of whether the plaintiff could not reasonably have discovered the nature of the injuries within that time period." *Id.* (Internal quotation marks omitted).

Similarly, Sec. 52-577 allows a tort action to be brought within three years "from the date of the act or omission complained of." Conn. Gen. Stat. § 52-577 (West). And, as with Sec. 52-584, operation of Sec. 52-577 cannot be delayed until the cause of action has accrued, "which may on occasion bar an action even before the cause of action accrues." *Prokolkin v. Gen. Motors Corp.*, 365 A.2d 1180, 1184 (Conn. 1976). Thus, even if the Pre-2012 Plaintiffs did not discover the actionable harm alleged until more recently, their claims may still be barred by the operation of the two statutes of repose.

Nonetheless, the Connecticut Supreme Court has recognized that Sec. 52–584 "may be tolled under the continuing course of conduct doctrine." *Neuhaus*, 905 A.2d at 1143. In addition, Conn. Gen. Stat. § 52-595 tolls any statute of limitations or repose, including Sec. 52-584 and Sec. 52-577, if a defendant fraudulently conceals a cause of action from a plaintiff. *See Connell v. Colwell*, 571 A.2d 116, 118 (Conn. 1990) (concluding that "the exception contained in § 52–595 constitutes a

clear and unambiguous general exception to any Connecticut statute of limitations that does not specifically preclude its application.").

WWE argues that "the latest date on which WWE conceivably could have committed any 'act or omission'" with regard to any plaintiff would have been the last day of their employment with WWE. For each the Pre-2012 Plaintiffs, this would have been far more than three years prior to the filing of the instant lawsuits, meaning that each of the claims would be reposed.[7]

The Pre-2012 Plaintiffs appear to concede that the acts or omissions that form the bases of their suits occurred more than three years prior to the filing of their suits, and instead argue solely that their claims are nonetheless timely because the allegations are sufficient to show that WWE fraudulently concealed their cause of action and/or engaged in a continuous course of conduct that justifies tolling the statutes of repose.

c. The Statute of Repose May Be Tolled by the Continuing Course of Conduct Doctrine

Under appropriate circumstances, the Connecticut statutes of repose may be tolled under the continuing course of conduct doctrine. *Blanchette v. Barrett*, 640 A.2d 74, 83 (Conn. 1994). The plaintiff must show the defendant: "(1) committed an initial wrong upon the

[7] Plaintiff LoGrasso, for example, has not contested the WWE's assertion that the date of the wrongful acts or omissions he complains of last occurred on or before December 31, 2007.

plaintiff; (2) owed a continuing duty to the plaintiff that was related to the original wrong; and (3) continually breached that duty." *Witt v. St. Vincent's Medical Center*, 746 A.2d 753, 762 (Conn. 2000).

Where Connecticut courts have found a duty "continued to exist after the act or omission relied upon: there has been evidence of either a special relationship between the parties giving rise to such a continuing duty or some later wrongful conduct of a defendant related to the prior act." *Macellaio v. Newington Police Dep't*, 75 A.3d 78, 85 (Conn. App. 2013). The existence of a special relationship "will depend on the circumstances that exist between the parties and the nature of the claim at issue." *Saint Bernard School of Montville, Inc. v. Bank of America*, 95 A.3d 1063, 1077 (Conn. 2014). Connecticut courts examine each unique situation "in which there is a justifiable trust confided on one side and a resulting superiority and influence on the other." *Alaimo v. Royer*, 448 A.2d 207, 209 (Conn. 1982). Specifically, a "'special relationship' is one that is built upon a fiduciary or otherwise confidential foundation characterized by a unique degree of trust and confidence between the parties, one of whom has superior knowledge, skill or expertise and is under a duty to represent the interests of the other." *Saint Bernard School of Montville*, 95 A.3d at 1077.

However, "a mere contractual relationship does not create a fiduciary or confidential relationship," *id.* at 835-36, and employers do necessarily not owe a fiduciary duty to their employees. *Grappo v. Atitalia Linee Aeree Italiane, S.P.A.*, 56 F.3d 427, 432 (2d Cir.

1995); *Bill v. Emhart Corp.*, No. CV 940538151, 1996 WL 636451, at *3-4 (Conn. Super. Ct. Oct. 24, 1996). The law will imply [fiduciary responsibilities] only where one party to a relationship is unable to fully protect its interests [or where one party has a high degree of control over the property or subject matter of another] and the unprotected party has placed its trust and confidence in the other." *Hi-Ho Tower, Inc. v. Com-Tronics, Inc.*, 761 A.2d 1268, 1279-80 (Conn. 2000).

The Pre-2012 Plaintiffs allege that WWE assumed a continuing duty by virtue of its "ongoing relationships with Plaintiffs through its Wellness Program," and "its public statements . . . which Plaintiffs continued to rely on to their detriment by failing to seek and receive necessary medical treatment." [Pls.' Opp. Mem. at 14].

The WWE strenuously argues that under Connecticut law, a continuing duty owed by a defendant must "rest on the factual bedrock of actual knowledge," *Neuhaus*, 905 A.2d at 1143, and stresses that none of the Pre-2012 Plaintiffs alleges that they ever informed the WWE that they were experiencing concussion-like symptoms. In *Neuhaus*, the defendant hospital failed to warn the plaintiff of the risks – including brain damage – associated with her child's respiratory condition upon the plaintiff's discharge. *Id.* at 196. One of the defendant's doctors had assessed the child's risk factors for complications and determined the child was not at risk of permanent injury. *Id.* The Connecticut Supreme Court held that because there was no evidence that the doctor was ever confronted with actual knowledge that the child's treatment at the hospital "had been mishandled" or became "aware that

his original assessment . . . may have been incorrect," the hospital did not have a continuing duty to warn the plaintiff regarding the risks associated with the underlying condition. *Id.* at 204.

Ignoring the thrust of WWE's argument, Plaintiffs state that "[b]ecause WWE provided [them] with medical care . . . it had a continuing duty to warn them of the risks they faced . . . until disclosure resulting in a complete diagnosis." [Pls.'s Mem. at 17]. In support, Plaintiffs cite to the case of *Witt v. St. Vincent's Med. Ctr.*, 746 A.2d 753 (Conn. 2000), in which the defendant doctor made a diagnosis while expressing concern that his diagnosis may have been incorrect; and later wrote another note expressing concern that the plaintiff could develop cancer. However, the issue in *Witt*, as later clarified by the Connecticut Supreme Court in *Neuhaus*, was the defendant's "initial and continuing concern" that had "never been eliminated" which "triggered his duty to disclose." 905 A.2d at 1144. Thus, *Witt* as clarified by *Neuhaus* stands for the proposition that a continuing duty arises when the medical care provider has reason to suspect that further treatment is needed at the time of treatment; and not for the proposition that once treatment is provided a medical care provider has a duty to advise a patient in perpetuity about medical discoveries, risks and treatment for any possible condition that a patient might reasonably develop.

WWE argues that the court in *Neuhaus* rejected the "expansive type of duty urged here . . . to warn of all potential risks associated with head injuries," and that the court in *Neuhaus* declined to hold that the hospital

had a continuing duty to warn of "the universe of potential risks associated with respiratory distress syndrome." [Dkt. 95-1, Def.'s Mem. at 41]. The WWE further argues that none of the Pre-2012 Plaintiffs have pled any specific wrongful diagnosis or wrongful treatment of any specific injury on the part of a WWE-affiliated medical provider.

However, it is at least plausibly alleged[8] under *Neuhaus* that WWE may have had both the requisite initial and continuing concern about the long-term health of its wrestlers such that it owed a continuing duty to warn those wrestlers about the long-term risks of head trauma sustained in the ring even after they had retired. As to an initial concern, it is at least plausibly alleged that WWE knew as early as 2005 about research linking repeated brain trauma with permanent degenerative disorders and that such brain trauma and such permanent conditions could result from wrestling. For example, the WWE is alleged to have created its Wellness Program in 2006 on the advice of its attorney after the deaths of several former

---

[8] The Court notes that *Neuhaus* and each of the other Connecticut cases rejecting a plaintiff's claim of a continuing duty on the part of a medical provider or practice have occurred at the summary judgment stage, after factual development shed light on whether an initial and continuing concern existed. *See Martinelli*, 290 Conn. at 347-355 (no issue of material fact as to whether the defendant had a subjective concern or awareness that the plaintiff's condition, required further treatment or warning); *Neuhaus*, 280 Conn. at 190 (same); *Witt*, 252 Conn. at 370 (material issue of fact as to whether the defendant physician had an initial and ongoing concern about the plaintiff); *Bednarz v. Eye Physicians of Cent. Connecticut, P.C.*, 287 Conn. 158, 947 A.2d 291 (2008)(same).

wrestlers from drug and alcohol abuse. WWE's attorney is alleged to have recommended to head this Program Doctor Maroon, a noted neurosurgeon and head injury specialist for the NFL, who, together with a colleague, invented the ImPACT concussion test. [SAC ¶ 76, n. 26]. This fact alone, indeed to WWE's credit, plausibly suggests WWE had knowledge causing it to have an early and strong concerns about the health effects of wrestling and the long-term neurological health of WWE wrestlers.

Plaintiffs also plausibly allege that these concerns continued even after plaintiffs retired from wrestling. For example, LoGrasso alleges that he has received, during his retirement, "pamphlets and emails from the Wellness Program regarding the health and safety of retired wrestlers." [Id. ¶ 148]. The Wellness Program is also alleged to have reached out to former wrestlers "to offer support for drug and alcohol abuse." [Id. ¶ 80]. Finally, WWE is alleged to have issued a statement in response to a 2009 ESPN article downplaying the likelihood that a deceased former wrestler suffered from CTE. [Id. ¶ 69]. Such allegations of ongoing contact may be threadbare, but it cannot be determined from the face of the Complaints that WWE did not exhibit an ongoing concern about the health of its former wrestlers.

Furthermore, the key issue here is whether it can be determined from the face of the Complaints that WWE's initial concern about permanent neurological disorders had ever "*been eliminated*." *Witt*, 280 Conn. at 206 (emphasis added). For example, in *Sherwood v. Danbury Hosp.*, 746 A.2d 730, 733 (Conn. 2000)

(*Sherwood I*), a plaintiff in 1985 had received a transfusion of blood that she alleged had been knowingly administered despite having not been tested for the presence of HIV, even though tested blood was available. *Id.* The patient had no further contact or treatment with the hospital where the transfusion was performed whatsoever until her discovery that she had contracted the HIV virus in 1994. *Id.* Noting that the plaintiff's expert had testified that in 1987, "the Center for Disease Control ... issued a recommendation that recipients of multiple transfusions between 1978 and late spring of 1985 be advised that they were at risk for ... HIV ... infection and [be] offered HIV antibody testing," and that another hospital had done so for approximately 17,000 former patients, the court found that there was a material issue of fact as to whether the hospital owed a continuing duty to warn the plaintiff, and remanded the case. *Id.* at 740. Only after factual development revealed that the hospital did not knowingly administer untested blood did the Connecticut Supreme Court later hold that there was no continuing duty to warn the plaintiff of the risks associated with her blood transfusion. *Sherwood v. Danbury Hosp.*, 896 A.2d 777, 797 (Conn. 2006) (*Sherwood II*).[9] At the very least, further factual development is necessary to determine the scope of any

[9] Although the WWE may be an entertainment company and not exclusively a medical provider, the existence of the Wellness Program and its employment of knowledgeable doctors, including experts in head trauma such as Dr. Maroon, suggests that cases such as *Neuhaus* and *Sherwood* are at least somewhat analogous to the case at bar.

initial and ongoing concern by WWE about head injuries in its wrestling programs.

The WWE also argues that an ordinary contractual relationship, such as that between an employer and an employee or independent contractor, does not *ipso facto* create a "special relationship" giving rise to a continuing duty. *See AT Engine Controls, Ltd. v. Goodrich Pump & Engine Control Sys., Inc.*, No. 3:10-cv-01539 (JAM), 2014 WL 7270160 (D. Conn. Dec. 18, 2014). WWE argues that plaintiffs' allegations that WWE possessed specialized knowledge or skill with respect to head trauma are "conclusory" and that it would be improper to impose upon "WWE, an entertainment company, a legal obligation to continually update former performers of developments in medical science regarding potential risks of head trauma." [Def.'s Rep. Mem. at 10].

Plaintiffs note WWE's expansive role in monitoring the safety of wrestling and the welfare of its wrestlers. They allege that "WWE trained its wrestlers, choreographed their performances, and employed medical staff to monitor its wrestlers' health." [Pls.' Opp. Mem. at 29]. Specifically, the WWE is alleged to have designed and scripted the specific stunts performed by the wrestlers, and to have publicly advised that the activities were safe. [SAC ¶¶ 23, 61]. Plaintiffs alleged that WWE regularly collected and continues to collect wrestler injury reports, including during Plaintiffs' careers with WWE. [Id. ¶ 86]. Plaintiffs allege that the WWE took on a greater role as a caretaker for its active wrestlers after its creation of the Wellness Program in 2007. The WWE is alleged to

have publicly stated the intent of the Wellness Program to monitor active wrestlers for concussions, including providing concussion testing, and to have boasted that the program is the "finest monitoring program in American Sports." [Id. ¶ 82]. Although the Wellness Program is not alleged to have taken any active role in monitoring retired wrestlers, the program's doctors are alleged to have been knowledgeable with regard to the latest scientific studies concerning CTE and other permanent degenerative disorders, including the head of the program, Dr. Maroon, who is alleged to have been a critic of certain studies and findings regarding CTE. [Id. ¶ 76]. These allegations, if true, would suggest that a special relationship could have existed between plaintiffs and WWE, one "characterized by a unique degree of trust and confidence between the parties" and by WWE's "superior knowledge, skill or expertise" regarding the prevention and diagnosis of traumatic brain injuries.

Even if WWE did not have a "special relationship" with its wrestlers that continued past their retirement, the plaintiffs here have alleged later wrongful conduct that could relate back to the initial wrong for the purpose of tolling the statutes of repose. For example, the Wellness Program is alleged to have contacted former wrestlers about drug and alcohol abuse, but not about the long-term effects of head trauma sustained while wrestling or the need for testing for neurological disorders. [Id. ¶ 80]. The WWE is alleged to have discredited or disparaged research surrounding CTE or the possibility that former wrestlers could have been diagnosed with CTE. [Id. ¶¶ 68-73]. WWE adamantly

disputes many of these allegations and argues plaintiffs have selectively edited quotes to fabricate such claims. Nonetheless, accepted as true for the purposes of these Motions to Dismiss, such allegations suggest that WWE may have committed later wrongful conduct related to the initial wrongs. Once again, further factual development is necessary to determine whether a special relationship existed by virtue of WWE's superior knowledge, and whether that relationship extended beyond the time period of the wrestlers' employment with WWE.[10]

The Court finds that the complaints plausibly allege the existence of a continuing course of conduct that may toll the statutes of repose on the basis of an initial concern about possible long-term effects of head injuries sustained while wrestling that was ongoing and never eliminated. The Court also finds the possible existence of a special relationship based on the complaints' allegations of WWE's superior knowledge as well as later wrongful conduct related to the initial failure to disclose. Thus, the statutes of repose may tolled by virtue of a continuing duty.

---

[10] The WWE also argues that "LoGrasso's admission that he had discovered some form of harm during his tenure with WWE also precludes him from invoking the continuing course of conduct doctrine." [Def.'s Rep. Mem. at n. 7]; *see Rosato v. Mascardo*, 82 Conn. App. 396, 405 (2004) ("the continuing course of conduct doctrine has no application after the plaintiff has discovered the harm"). However, as the Court earlier held at Part III.a, *supra*, it cannot be determined from the face of the complaint that any plaintiff discovered the harm – in the form of an increased risk of permanent degenerative neurological conditions or actual diagnoses of such conditions prior to 2012.

d. <u>The Statutes of Repose May Be Tolled Because of Fraudulent Concealment</u>

Connecticut has codified the doctrine of fraudulent concealment in Conn. Gen. Stat. § 52–595 ("Section 52-595"), which provides: "[i]f any person, liable to an action by another, fraudulently conceals from him the existence of the cause of such action, such cause of action shall be deemed to accrue against such person so liable therefor at the time when the person entitled to sue thereon first discovers its existence." In order to rely on Section 52-595 to toll the statutes of limitations and repose, a plaintiff must demonstrate that "the defendant: (1) had actual awareness, rather than imputed knowledge, of the facts necessary to establish the cause of action, (2) intentionally concealed those facts from the plaintiff and (3) concealed those facts for the purpose of obtaining delay on the part of the plaintiff in filing a cause of action against the defendant." *Falls Church Grp., Ltd. v. Tyler, Cooper & Alcorn, LLP*, 281 Conn. 84, 105, 912 A.2d 1019, 1033 (2007).

Fraudulent concealment under Section 52-595 must be pled with sufficient particularity to satisfy the requirements Fed. R. Civ. P. 9(b) with regard to fraud claims, because a claim that the statute of limitations should be tolled because of fraud, is "obviously, a claim for fraud." *In re Publ'n Paper Antitrust Litig.*, No. 304MD1631SRU, 2005 WL 2175139, at *5 (D. Conn. Sept. 7, 2005). In addition, a plaintiff must show that due diligence "did not lead, and could not have led, to discovery" of the cause of action. *Martinelli v.*

Bridgeport Roman Catholic Dioceses, 196 F.3d 409, 427 (2nd Cir.1999). "Typically, a plaintiff will prove reasonable diligence either by showing that: (a) the circumstances were such that a reasonable person would not have thought to investigate, or (b) the plaintiff's attempted investigation was thwarted." *OBG Technical Services, Inc. v. Northrop Grumman Space & Mission Systems Corp.*, 503 F.Sup.2d 490 (D. Conn. 2007) (Internal quotation marks omitted).

The WWE argues that "[t]here is no concealment of a cause of action unless the defendant makes an affirmative act or statement concealing the cause of action." [Def.'s Rep. Mem. at 12, *citing Johnson v. Wadia*, No. CV85 0075560 S, 1991 WL 50291 (Conn. Super. Mar. 28, 1991)]. On the contrary, the Connecticut Supreme Court specifically noted in *Falls Church Group* that it had not determined "whether affirmative acts of concealment are always necessary to satisfy the requirements of § 52–595." The court further held that mere nondisclosure may be sufficient "when the defendant has a fiduciary duty to disclose material facts." *Id.* at 107

Plaintiffs' allegations that WWE failed to disclose and concealed information repeated a link between repeated concussive trauma and permanent degenerative neurological conditions may implicate the tolling provision of Sec. 52-595. As the Court noted above, it is at least plausibly alleged that WWE had actual knowledge about research linking repeated brain trauma with permanent degenerative disorders

and that such brain trauma and such permanent conditions could result from wrestling and that the WWE.

The complaints also allege various public comments made by WWE officials and doctors that could form the basis of affirmative acts of concealment, even if no fiduciary relationship existed between the WWE and its wrestlers, as well as an intent to conceal. For example, WWE is alleged to have issued a statement to ESPN questioning the veracity of a report suggesting a former wrestler, Chris Benoit, suffered from CTE. WWE is alleged to have stated that it was "unaware of the veracity of any of these tests . . . Dr. Omalu claims that Mr. Benoit had a brain that resembled an 85year-old with Alzheimer's, which would lead one to ponder how Mr. Benoit would have found his way to an airport, let alone been able to remember all the moves and information that is required to perform in the ring . . . ." [SAC ¶ 70]. The complaints allege that WWE CEO Vincent K. McMahon and former WWE CEO Linda McMahon further attacked those findings in a joint interview on CNN in 2007. [SAC ¶ 74]. Although WWE disputes the truthfulness, meaning and import of such statements and argues that several have been largely taken out of context, at this stage of the litigation plaintiffs' theory that WWE affirmatively concealed its knowledge of CTE-related risks is plausible.

Similarly, in the *NHL* case, Judge Nelson noted the NHL's alleged response to questions surrounding concussions in professional hockey that the league needed "more data, more research, we cannot say

anything conclusive." 2008 WL 4307568 at *13. NHL Commissioner Bettman was alleged to have said of fighting that "[m]aybe it is [dangerous] and maybe it's not." *Id.* at *10. Deputy NHL Commissioner Daly was alleged to have publicly stated that "[The NHL is] completely satisfied with the responsible manner in which the league and the players' association have managed player safety over time, including with respect to head injuries and concussions . . . ." *Id.* at *12. These and other statements were found to have adequately alleged equitable tolling under the doctrine of fraudulent concealment.

It can also be inferred from the facts pled that WWE had knowledge of plaintiffs' cause of action and that any concealment was for the specific purpose of delaying any litigation. Plaintiffs have alleged, for example, that the Wellness Program was created for WWE by an attorney in response to the death of a former wrestler and appears to have immediately embraced a critic of some aspects of recent CTE studies. As noted earlier, the WWE and its executives also made statements questioning one doctor's conclusion that a deceased former wrestler likely suffered from CTE. These facts, assumed to be true for the purposes of this motion, are sufficient to plausibly allege intent on the part of the WWE to conceal a cause of action for the purpose of obtaining delay. *See, e.g.*, *Puro v. Henry,* 449 A.2d 176, 180 (Conn. 1982) (fraudulent concealment may be inferred by a reasonable trier of fact from the balance of the evidence, even if only by circumstantial evidence).

3. Plaintiffs Fail to State A Claim for Negligence Under Connecticut Law

WWE argues that plaintiffs' negligence claims fail to state a claim, as the only duty WWE argues that it owed to plaintiffs under Connecticut law was a duty "to refrain from reckless or intentional misconduct." [Def.'s Mem. at 32].

"The determination of whether a duty exists between individuals is a question of law." *Jaworski v. Kiernan*, 696 A.2d 332, 335 (Conn. 1997). The Court must consider "whether the specific harm alleged by the plaintiff was foreseeable to the defendant." *Id.* at 336. In other words, "whether an ordinary person in the defendant's position, knowing what the defendant knew or should have known, would anticipate that harm of the general nature of that suffered was likely to result." *Id.* The Court must then "determine as a matter of policy the extent of the legal duty to be imposed upon the defendant." *Id.*

Plaintiff in *Jaworski* suffered a knee injured in a co-ed soccer game by incidental contact – a trip from behind by the defendant, who was another soccer player – which was not an essential part of the sport. Although the injury was a foreseeable consequence of the defendant's actions, the Connecticut Supreme Court held that "the normal expectations of participants in contact team sports include the potential for injuries resulting from conduct that violates the rules of the sport." *Id.* at 337. These expectations, in turn, "inform the question of the extent of the duty owed by one participant to another." *Id.* Considering the prospect for a flood of litigation and

the public policy goal of encouraging athletic competition, the court found that "[a] proper balance of the relevant public policy considerations surrounding sports injuries arising from team contact sports also supports limiting the defendant's responsibility for injuries to other participants to injuries resulting from reckless or intentional conduct." *Id.*

Citing *Jaworski*, WWE argues that all of plaintiffs' negligence claims "fail under the contact sports exception" embodied in "the *Jaworski* rule" because "negligence concepts do not apply in sporting-type situations." [Def.'s Mem. at 31]. WWE argues that in *Mercier v. Greenwich Acad.*, No. 3:13-CV-4 (JCH), 2013 WL 3874511 (D. Conn. July 25, 2013), Judge Hall cited *Jaworski* in holding that a school could not be held liable for the actions of its basketball coach in failing to rest and properly asses the plaintiff, who had sustained a concussion from another player during a basketball game. Again noting a concern for a possible flood of litigation, Judge Hall held that "[c]oaches are often required to make split-second decisions during a game . . . holding coaches liable for negligence for such decisions, including player substitution decisions, would dampen their willingness to coach aggressively and would unreasonably threaten to chill competitive play." *Id.* at *4 (internal quotations omitted); *see also Trujillo v. Yeager*, 642 F. Supp. 2d 86 (D. Conn. 2009) (applying *Jaworski* to a co-participant's coach and that coach's employer).

It is clear from these cases that the "Jaworski rule" has established a limited exception to liability for general negligence in the "*contact team sports*" setting

by limiting the extent of the duty owed by a coach in the midst of a game and the duty "*owed by one participant to another.*" *Jaworski*, 696 A.2d 337 (emphasis added). In the instant case, however, the defendant is not a co-participant and the injury alleged did not result from participation in a contact team sport.

WWE nonetheless argues that *Jaworski* should be extended to include the facts and circumstances of the instant case, arguing that "plaintiffs' alleged injuries "arise from risks inherent in their chosen profession which are within the normal expectations of professional wrestlers." [Def.'s Rep. Mem. at 2]. WWE argues that cases in other jurisdictions have further narrowed the scope of liability where "professional athletes take risks for compensation and when contact is a known and purposeful part of the activity." [Def.'s Mem. at 32]. WWE cites to *Turcotte v. Fell*, 502 N.E. 2d 964 (N.Y. 1986), in which the New York Court of Appeals granted summary judgment in favor of a defendant racetrack owner accused of negligently watering a portion of a racetrack, as well as a co-participant jockey accused of "foul riding" leading to the plaintiff jockey's injury. The court held that the plaintiff assumed the risk of falling from his horse, an injury well within the "known, apparent and forseeable dangers of the sport." *Id.* at 970. Similarly, in *Karas v. Strevell*, 884 N.E. 2d 122 (III. 2008), plaintiff sued both co-participant hockey players who had caused his injury by illegally "bodychecking" him from behind as well as the hockey league that organized the match, for failing to appropriately enforce rules against such conduct. The Illinois Supreme Court held that the

league could not be held liable for inadequate rule enforcement, as "rules violations are inevitable in contact sports and are generally considered an inherent risk of playing the game." *Id.* at 137.

Similarly, in the instant case, Plaintiffs broadly allege negligence on the part of the WWE in failing to "exercise reasonable care in training, techniques . . . and diagnosing of injuries such as concussions and sub-concussions." [SAC ¶ 249]. Each of the named plaintiffs allege only one specific incident of negligent conduct in the Complaints, despite the length of all of the Complaints. Each of the wrestlers alleges a similar incident – they sustained head trauma due to a blow from another wrestler or object and WWE failed to either intervene or diagnose them with concussions following the incident.[11] Taking one example, Plaintiff

---

[11] Plaintiff LoGrasso alleges that WWE scripted a program involving LoGrasso and another wrestler named "Regal" and that LoGrasso "was forced to endure and be beaten repeatedly and suffer sustained head trauma" which caused LoGrasso to "have his 'bell rung' every match." [SAC ¶ 133]. On an unspecified date in September of 2006, LoGrasso alleges that Regal kicked him in the face causing him to strike his head against concrete steps, resulting in unspecified head trauma. [SAC ¶ 134]. Plaintiff Matt Weise alleges that he "was punched so hard in the head by Big Show, another WWE wrestler that he had visible injuries to his head and he vomited following the event. WWE staff took no steps to intervene in the event and WWE medical staff did nothing to treat Matt Wiese following the incident." [MAC ¶ 110]. Plaintiff Ryan Sakoda alleges that "[w]hile wrestling for the WWE in 2003, [Sakoda] was knocked unconscious in a match by a Super Kick. The course of treatment recommended to Ryan by the WWE medical staff and trainer was "not to go to sleep," suggesting that if he did, he may bleed to death and die. He stayed awake that night." [MAC ¶ 106]. Plaintiff Russ McCullough alleges that he

Singleton alleges an incident on September 27, 2012 in which he was "choke slammed" by another wrestler named Erick Rowan, whom Singleton described as a "more skilled, more experienced" wrestler. [SAC ¶ 100]. Singleton alleges he had only performed a "choke slam" once before that date even though it is "considered by wrestlers themselves to be one of the more dangerous moves." [SAC ¶ 102]. Singleton alleges that he "sustained a brain injury as a result." [SAC ¶ 103]. Singleton also alleges that WWE failed to treat him for a concussion after the incident. [Id. ¶¶ 104,134-135]. Tellingly, however, none of the six named plaintiffs alleges that they approached any WWE employee after any of the six listed incidents to report head trauma or any symptom of head trauma such as dizziness, and only two of the six plaintiffs specifically allege that they sustained a concussion from the incidents in question.

The Court agrees with WWE that under the contact sports exception they could only be held liable for reckless and intentional conduct, and not ordinary negligence. Plaintiffs were professional wrestlers who were financially compensated to engage in an activity

---

"was knocked completely unconscious after being struck by the back of a metal chair in Cincinnati. After he was knocked unconscious the beating continued and he was struck in the head with a metal chair more than 15 times without intervention by WWE staff. McCullough sought medical treatment on his own and the head injury was diagnosed as a severe concussion." [MAC ¶ 100]. Plaintiff William Albert Haynes III alleges that Haynes alleges that on March 29, 1987, he was "hit in the head with a large metal chain" which led to an unspecified "head injury" that was not treated. [HAC ¶ 126].

in which physical violence was a known and even purposeful part of the activity. They were injured by other participants in what the plaintiffs describe as a "scripted" performance and thus in a manner that the plaintiff knew or should have reasonably anticipated. *See Kent v. Pan Am. Ballroom*, No. F038650, 2002 WL 31776394 (Cal. Ct. App. Dec. 10, 2002) ("[w]restling, and particularly professional wrestling, entails inherent risks of injury. It is a sport where two persons grab, twist, throw or otherwise exert forces and holds upon each other's heads, necks, arms, legs, feet and torsos with the object of forcing the opponent to the mat."); *Walcott v. Lindenhurst Union Free School Dist.*, 243 A.D.2d 558, 662 N.Y.S.2d 931, 121 Ed. Law Rep. 832 (2d Dep't 1997)(high school wrestler assumed the risk of injury resulting from "takedown maneuver" by opponent as such a risk is inherent in wrestling). Or they were injured in a manner that could be reasonably anticipated by an ordinary person who volunteers to "endure" an at least partially-simulated beating before a television audience and hits his head outside the ring. *See, e.g.*, *Foronda ex rel. Estate of Foronda v. Hawaii Intern. Boxing Club*, 96 Haw. 51, 25 P.3d 826 (Ct. App. 2001) (risk of boxer falling through the ropes of a boxing ring is an inherent risk of the sport assumed by any boxer). As such, their claims are well within the type of claims for which *Jaworski* provides an exception to the general duty of care.

Plaintiff LoGrasso also alleges that he "never received any medical information regarding concussions or sub-concussive injuries while employed by the WWE, and that a WWE trainer named "Bill Demott" (SAC ¶ 97), or alternatively, "Bill Dumott"

(SAC ¶ 124), would "continuously permeate (sic) an environment of humiliation and silence," which led WWE wrestlers "to fight through serious injury," which plaintiffs alleged that "upon information and belief has led to Mr. LoGrasso's long-term and latent injuries." [SAC ¶ 124]. Read liberally, plaintiffs allege that WWE was negligent in failing to train and educate its wrestlers about concussions and failed to encourage an environment in which its wrestlers could seek appropriate treatment. These are precisely the same allegations, however, that a court in the Northern District of California recently rejected in a concussion case brought by seven youth soccer players. The soccer players alleged that various soccer leagues, clubs and associations had negligently failed to "to educate players and their parents concerning symptoms that may indicate a concussion has occurred," among other allegations. *Mehr v. Fed'n Int'l de Football Ass'n*, No. 14-cv-3879-PJH, 2015 WL 4366044 (N.D. Cal. July 16, 2015). In dismissing the negligence claim, the court held that, the soccer plaintiffs "alleged no basis for imputing to any defendant a legal duty to reduce the reduce the risks inherent in the sport of soccer, or to implement any of the "Consensus Statement" guidelines or concussion management protocols, and have alleged no facts showing that any defendant took any action that increased the risks beyond those inherent in the sport." *Id.* at *19. The court noted that under California law, "a failure to alleviate a risk cannot be regarded as tantamount to increasing that risk." *Id.*, *citing Paz v. State of California*, 22 Cal.4th 550, 560, 93 Cal.Rptr.2d 703, 994 P.2d 975 (2000).

This Court is similarly convinced that plaintiffs here have failed to allege specific facts – as opposed to vague and conclusory accusations – that WWE acted recklessly or intentionally under *Jaworski* with respect to the risks that are inherent in compensated professional stunt wrestling. As such, plaintiffs' negligence claims fail to state a claim under Connecticut law. Plaintiffs' Negligence claims are DISMISSED.

4. No Separate Cause of Action for Fraudulent Concealment

WWE argues for dismissal of plaintiffs' fraudulent concealment counts on the grounds that fraudulent concealment is not a separate cause of action under Connecticut law. [Def.'s Mem. at 40]. WWE is correct that fraudulent concealment is not a separate cause of action. *See AT Engine Controls Ltd. v. Goodrich Pump & Engine Control Sys., Inc.*, No. 3:10-CV-01539 (JAM), 2014 WL 7270160, at *11, n. 17 (D. Conn. Dec. 18, 2014) ("Connecticut law does not even recognize any affirmative cause of action for fraudulent concealment"); *Liebig v. Farley*, No. CV085005405S, 2009 WL 6499423, at *3 (Conn. Super. Ct. Oct. 27, 2009) ("a claim of fraudulent concealment does not constitute a separate, self-contained cause of action"). Plaintiffs did not directly address this argument in briefing, and so the claim may also be considered

abandoned.[12] Plaintiffs' separately-titled causes of action for fraudulent concealment are DISMISSED.

5. Plaintiffs' Fraudulent Deceit and Negligent Misrepresentation Claims Are Not Pled With Sufficient Particularity

To plead a claim for negligent misrepresentation under Connecticut law, a plaintiff must allege (1) that the defendant made a misrepresentation of fact; (2) that the defendant knew or should have known was false; (3) that the plaintiff reasonably relied upon the misrepresentation; and (4) that the plaintiff suffered pecuniary harm as a result thereof. *Trefoil Park, LLC v. Key Holdings*, LLC, No. 3:14-CV-00364 (VLB), 2015 WL 1138542, at *12 (D. Conn. Mar. 13, 2015), *citing Glazer v. Dress Barn, Inc.*, 274 Conn. 33, 73, 873 A.2d 929, 954 (2005).

For a claim of common law fraud, a plaintiff must allege "(1) that the representation was made as a statement of fact; (2) that it was known to be untrue by the party making it; (3) that it was made for the purpose of inducing the other party to act upon it; and (4) that the party to whom the representation was made was in fact induced thereby to act to his injury." *Leonard v. Comm'r of Revenue Servs.*, 264 Conn. 286, 296, 823 A.2d 1184, 1191 (2003). A key difference between plaintiffs' deceit and negligent

[12] *See, e.g.*, *Paul v. Bank of Am.*, N.A., 3:11–CV–0081 (JCH), 2011 WL 5570789, at *2 (D.Conn. Nov.16, 2011) ("When a party 'offer[s] no response' to its opponent's motion to dismiss a claim, that claim is abandoned")

misrepresentation claims is that whereas a defendant may negligently misrepresent a fact that the defendant *should have known* to be false, a deceitful representation is one that the defendant must "know[] to be untrue." *Id.* at 1191; *see also Sturm v. Harb Dev., LLC*, 298 Conn. 124, 142, 2 A.3d 859, 872 (2010) ("[i]n contrast to a negligent representation, [a] fraudulent representation ... is one that is knowingly untrue, or made without belief in its truth it.").

The WWE argues that plaintiffs failed to plead their fraud by omission, fraudulent deceit and negligent misrepresentation claims with particularity, as is required under Fed. R. Civ. P. 9(b).

In order to satisfy Rule 9(b)'s particularity requirement with regard to fraud claims, the complaint must: "(1) specify the statements that the plaintiff contends were fraudulent, (2) identify the speaker, (3) state where and when the statements were made, and (4) explain why the statements were fraudulent." *Parola v. Citibank (S. Dakota) N.A.*, 894 F. Supp. 2d 188, 200 (D. Conn. 2012) (VLB), *citing Rombach v. Chang*, 355 F.3d 164, 170 (2d Cir. 2004). Put another way, "Rule 9(b) particularity means the who, what, when, where, and how: the first paragraph of any newspaper story." *Walters v. Performant Recovery, Inc.*, No. 3:14-CV-01977 (VLB), 2015 WL 4999796, at *2 (D. Conn. Aug. 21, 2015). The Complaints utterly fail to satisfy this standard.

In addition, a plaintiff must "allege facts that give rise to a strong inference of fraudulent intent." *Parola*, 894 F. Supp. 2d at 200, *citing Shields v. Citytrust Bancorp., Inc.*, 25 F.3d 1124, 1128 (2d Cir.1994). "The

'strong inference of fraud' may be established by either alleging facts to show that a defendant had both motive and opportunity to commit fraud, or facts that constitute strong circumstantial evidence of conscious misbehavior or recklessness." *Id.* The requirements of Rule 9(b) are also applicable to negligent misrepresentation claims. *Yurevich v. Sikorsky Aircraft Div., United Techs. Corp.*, 51 F. Supp. 2d 144, 152 (D. Conn. 1999); *Pearsall Holdings, LP v. Mountain High Funding, LLC*, No. 3:13cv437 (JBA), 2014 WL 7270334, at *3 (D. Conn. Dec. 18, 2014). The Complaint utterly fail to satisfy this standard as well.

Plaintiffs' 281-paragraph complaint is replete with allegations that WWE has "repeatedly" misrepresented material facts to the plaintiffs, often in the form of statements that WWE "misrepresented, omitted, and concealed" various short and long-term risks or possible diagnoses regarding plaintiffs' health, without actually specifying whether such statements were affirmatively misrepresented, or rather affirmatively concealed, or simply omitted. But in regard to the fraud claims the length of plaintiffs' complaints is deceiving, as the length belies an utter lack of substance.

In opposition to WWE's motion to dismiss the Singleton and LoGrasso complaint, plaintiffs could manage to identify[13] only three specific statements that they allege to have been fraudulent:

---

[13] In their opposition to WWE's Motion to Dismiss the *McCullough* complaint, plaintiffs did cite any specific statements and focused almost exclusively on their fraudulent omission claims, essentially conceding the argument.

1. Vince K. McMahon told a congressional committee that the WWE "is always concerned about safety of our talent." SAC ¶ 67.

2. Dr. Joseph Maroon's statement to the NFL Network, Total Access in March, 2015 that "the problem of CTE, although real, is its being over-exaggerated." [SAC ¶ 55].

3. WWE Executive Stephanie McMahon Levesque's testimony in 2007 to the Committee on Oversight and Government Reform of the U.S. House of Representatives that there were "no documented concussions in WWE's history." [SAC ¶ 64].

With regard to Vince K. McMahon's statement that the WWE is "always concerned" about its wrestlers' safety, Plaintiffs did not provide any reason why the statement was fraudulent or why McMahon knew or should have known the statement to be false.

With regard to Dr. Maroon's statement to NFL Network, WWE argues that "expressing critical opinions about scientific matters is simply not a misrepresentation of a past or present material fact." [Def.'s Mem. at 40]; *see, e.g.*, *Trefoil Park*, 2015 WL 1138542, at *8 (noting that Connecticut courts have long excluded statements of opinion as being sufficient to support fraud or negligent misrepresentation claims). Plaintiffs have not addressed this argument and again appear to have abandoned the claim. More importantly, the complaints do not allege facts indicating that at the time the statement was uttered, Dr. Maroon knew or should have known that CTE was

not "over-exaggerated," or facts indicating that any plaintiff relied upon the statement – particularly given that the statement was made after the first complaint in this action had already been filed.[14]

With regard to Stephanie McMahon Levesque's testimony, plaintiffs appear to have repeatedly misrepresented both the substance and meaning of Levesque's testimony. Plaintiffs describe Levesque as having testified that there were no "no documented concussions in WWE's history," and provided a link to the full transcript of the Congressional hearing at which Levesque testified. On a motion to dismiss, the Court may consider any document "attached to the complaint or incorporated in it by reference" as such documents "are deemed part of the pleading and may be considered." *McClain v. Pfizer, Inc.*, No. 3:06-CV-1795 (VLB), 2008 WL 681481, at *2 (D. Conn. Mar. 7, 2008), *citing Roth v. Jennings*, 489 F.3d 499, 509 (2d Cir. 2007).

The full transcript provides:

> (Buffone) Q: So, if I understand you correctly, since the enactment of the wellness policy, WWE has documented no concussions?
>
> (Levesque) A: As far as I know, as far as I was told –

[14] Plaintiffs had presumably been informed about the nature and extent of CTE – at the very least by the attorneys who drafted their complaints – by March of 2015.

(Buffone) Q: Yes.

(Levesque) A: -- no.

[Dkt. 74, Ex. A at 118]. Plaintiffs argue that this statement was false because, at the time of the statement, "WWE wrestlers likely had cumulatively experienced hundreds—if not thousands—of concussions." [SAC ¶ 65]. However, Levesque was asked only about *documented* instances of concussions, and not whether any concussions had in fact occurred – the allegation that concussions *likely* occurred does not establish the statement about a lack of *documented* concussions to be false. Moreover, Levesque was clearly asked about documented instances of concussions "since the enactment of the wellness policy" and not, as the plaintiffs repeatedly and – at the very least, misleadingly – asserted in their complaints, "in WWE's history."

In fact, the one specific statement contained in the complaints that comes closest to providing a basis for a misrepresentation or deceit claim is one never mentioned in plaintiffs' briefing. The Complaints cite a 2009 ESPN article on the deaths of former WWE wrestlers Chris Benoit and Andrew Martin. [SAC ¶ 69]. In the article, Dr. Bennett Omalu – credited with discovery of CTE in NFL players – alleges that he diagnosed Benoit and Martin with CTE after post-mortem autopsies. WWE issued the following statement quoted in the article:

> "[w]hile this is a new emerging science, the WWE is unaware of the veracity of any of these tests, be it for [professional wrestlers] Chris

> Benoit or Andrew Martin. Dr. Omalu claims that Mr. Benoit had a brain that resembled an 85year-old with Alzheimer's, which would lead one to ponder how Mr. Benoit would have found his way to an airport, let alone been able to remember all the moves and information that is required to perform in the ring…WWE has been asking to see the research and tests results in the case of Mr. Benoit for years and has not been supplied with them." [SAC ¶ 69].

WWE's statement mocks Dr. Omalu's claim that Benoit and Martin suffered from CTE by questioning whether his behavior was consistent with CTE, but does not state any material fact which plaintiffs allege to be false. While one could accuse the WWE of having made the statement perhaps with the intent of downplaying a link between wrestling and CTE, plaintiffs have not advanced an argument that any aspect of the statement falsely claimed that Benoit and Martin either did not suffer from CTE or that no link existed between wrestling and CTE. Plaintiffs do claim that "WWE's request to examine the research and tests was feigned," but do not allege the statement to be false or to be a statement upon which plaintiffs have reasonably relied.

Fraudulent statements must be statements of fact and therefore an expression of an opinion or skepticism as to the truth of a matter asserted by another cannot usually support a fraud claim. As the Connecticut Appellate Court has stated: "[t]he essential elements of a cause of action in fraud" include that "a false representation was made as a statement of fact" and

"the absence of any one" element "is fatal to a recovery." *Citino v. Redevelopment Agency,* 721 A.2d 1197 (Conn. App. 1998).

As plaintiffs have failed to plead specific facts indicating that WWE made any specific statement that it knew or should have known to be false at the time, upon which plaintiffs reasonably relied, Plaintiffs' Negligent Misrepresentation and Fraudulent Deceit claims are DISMISSED.

6. Plaintiffs Singleton and LoGrasso Have Alleged A Plausible Claim for Fraud by Omission

In order to adequately plead a fraudulent non-disclosure claim, a party must allege: "the failure to make a full and fair disclosure of known facts connected with a matter about which a party has assumed to speak, under circumstances in which there was a duty to speak." Reville v. Reville, 93 A.3d 1076, 1087 (Conn. 2014). A lack of full and fair disclosure of such facts must be accompanied by an intent or expectation that the other party will make or will continue in a mistake, in order to induce that other party to act to her detriment." *Id.* (Internal quotation marks omitted.) "The key element in a case of fraudulent non-disclosure is that there must be circumstances which impose a duty to speak." *Id.*

In addition, in order to satisfy the requirements of Rule 9(b) a plaintiff must "detail the omissions made, state the person responsible for the failure to speak, provide the context in which the omissions were made, and explain how the omissions deceived the plaintiff."

Frulla v. CRA Holdings, Inc., 596 F. Supp. 2d 275, 288 (D. Conn. 2009) (JCH), *citing Eternity Global Master Fund Ltd. v. Morgan Guar. Trust Co. of N.Y.*, 375 F.3d 168, 187 (2d Cir. 2004).

The WWE argues that plaintiffs have failed to "allege any fact known to WWE that it did not disclose to either Plaintiff under circumstances which called for the disclosure." Rather, the WWE argues that plaintiffs base their fraud charges "on not disclosing medical and scientific opinions not specifically alleged to have even been known by anybody at WWE, and which are not facts in any event." [Def.'s Mem. at 41].

Plaintiffs argue that their allegations are substantially similar to those brought by the hockey plaintiffs in the *NHL* case, where Judge Nelson held that plaintiffs there had plead sufficient facts to for a fraudulent omission claim to proceed against the NHL. In examining whether plaintiffs had detailed the "what" – the specific omissions made, the court noted that plaintiffs had alleged:

> 5. "Although the NHL knew or should have known . . . about this scientific evidence . . . the NHL never told Plaintiffs about the dangers of repeated brain trauma."
>
> 134. "[T]he NHL never told its players that these . . . studies demonstrate an increased risk for NHL players . . . ."
>
> 143. "At no time, including during the seven year Concussion Program and in the following seven year silence before publishing the Program's report, did the NHL warn players that the data suggested at a

> minimum that greater attention to concussions and head injuries was necessary, that it was possible that playing in the same game, or soon after, a head injury was potentially dangerous, or any other such warning."

Id. at *11. The Singleton and McCullough complaints do allege similar allegations against the WWE. Specifically, plaintiffs here allege that:

> 3. "WWE has known or should have known for decades that *repeated concussive and sub-concussive impacts substantially increase the probability that a wrestler will develop a permanent, degenerative brain disease. . . .*"
>
> 56. ". . . WWE was aware in 2005 and beyond *that wrestling for the WWE and suffering head trauma would result in long-term injuries*. And it therefore should have, but never did, warn Plaintiffs of *the risks of concussions and other brain injuries associated with wrestling with WWE.*"
>
> 138. "Mr. LoGrasso was *never educated about the ramifications of head trauma and injury and the likelihood of concussions and sub-concussions and the resulting latent neurological injuries* suffered from sustaining concussions and sub-concussive injuries."

[SAC at ¶¶ 3, 138, 150 (emphasis added].

In the *NHL* case, the court also held that plaintiffs had adequately pled the "who" aspect of their fraud claim – the person(s) responsible for the omissions. Specifically, the court noted plaintiffs' allegations that:

> 16. "Despite the mountain of evidence connecting hockey to brain injuries, NHL Commissioner Gary Bettman subsequently stated that more study on the issue is necessary...";
>
> 84. "At no time during his NHL career did any NHL personnel advise these players, generally or specifically, of the negative long-term effects of sustaining concussions and sub-concussive blows to the head, including the risks of repeat concussions and sub-concussive blows....";
>
> 122. "[Brian] Benson, with Jian Kang, 'contributed to the drafting of the [Concussion Program's report] manuscript.";
>
> 127. "Hockey players, no differently from anyone else, grow up believing that medical personnel, such as League medical directors, supervisors, doctors and trainers, put the patient-players' interests first and foremost. Cleared to play immediately after getting knocked out[,] ... players believed they were, in fact, 'good to go' and not doing any lasting harm to themselves[.]"

2015 WL 1334027 at *12. Similarly, plaintiffs here have alleged facts shedding light on both the "who" – the specific person(s) allegedly responsible for the omissions – and the "when" – the context of the omissions. Specifically, plaintiffs here have alleged that:

> 55. " . . . WWE continues to understate the risks and dangers of CTE, *as evidenced by Dr. Joseph Maroon's statements* to the NFL Network, Total

> Access in March 2015, 'The problem of CTE, although real, is its being over-exaggerated.'
>
> 73. "In a joint interview for the 2007 CNN documentary Death Grip: Inside Pro Wrestling, *WWE CEO Vincent K. McMahon and former WWE CEO Linda McMahon attacked Dr. Omalu and Dr. Bailes's finding that Benoit had suffered from CTE*. This was part of a larger plan to deny that Benoit had suffered from CTE and to discredit the research suggesting he had."
>
> 125. "During his training and wrestling career with WWE, *Mr. LoGrasso was told by WWE employees* and at the time believed that injuries he suffered were part of 'paying his dues', and believed that having 'your bells rung', or receiving 'black and blues' and bloody noses only resulted in the immediate pain and injury with no long-term ramifications or effects."

[SAC at ¶¶ 55, 73, 125, 132 (emphasis added]. The complaints also allege facts indicating the "how" – the ways in which they were allegedly deceived by the omissions.

> 132. "Mr. LoGrasso reasonably relied on the WWE's medical personnel, trainers, agents, and documents when he continued to fight and receive sustained head trauma repeatedly.
>
> 150. Plaintiffs reasonably acted on what WWE omitted – that *concussions and sub-concussive hits are serious and result in permanent disability and brain trauma,* and that returning to wrestling before being properly evaluated, treated and cleared

> to wrestle could result in enormous risks of permanent damage, especially in returning to wrestle immediately after taking brutal hits to the head.
>
> 157. WWE's conduct left [Singlton] without the necessary knowledge to make informed decisions to plan for his own future and his family and to seek appropriate treatment for his latent neurodegenerative condition during his life.

As to the existence of a duty to speak, the Court determined in Part III.C above that it is plausible at this stage of the litigation that defendant owed plaintiffs a duty on the basis of a special relationship that existed by virtue of WWE's superior knowledge and the expertise of its medical staff as well as a general duty that may have arisen as a result of WWE's voluntarily undertaking to create the Wellness Program, to provide concussion testing and to reach out to current and former wrestlers about other hazards linked with WWE participation, including drug and alcohol abuse. Further factual development may shed light on the existence or nonexistence of such a duty.

The WWE argues that under Connecticut law, a fraudulent omission claim cannot proceed with respect "to all facts which are open to discovery upon reasonable inquiry." [Def.'s Mem. at 50, *citing* Saggese v. Beazley Co. Realtors, 109 A.3d 1043, 1056 (Conn. App. 2015)]. The WWE notes that plaintiffs allege in their complaints – in an attempt to bolster their negligence claim – that "[t]he risks associated with sports in which athletes suffer concussive and sub-concussive blows have been known for decades," and go

on to describe "a selection of mounting medical literature concerning head trauma." [SAC ¶ 57].

In *Saggese v. Beazley Co. Realtors*, a Connecticut Appellate Court upheld a trial court's finding after a bench trial that a real estate agent could not be held liable for fraudulent non-disclosure of a letter concerning litigation affecting a parcel of property that had a negative effect on the value of the property in question. 109 A.3d at 1050. In *Saggese*, the plaintiff was made aware of the litigation when she and her attorney were provided the docket numbers of the cases involved. *Id.* at 1056. Finding that there had been no fraudulent non-disclosure, the court held that "[t]he substance of the [related] litigation was open to discovery upon reasonable inquiry" and that "all of the material information was in the plaintiff's possession, but neither she nor her agents made proper use of it." *Id.* The court noted that the real estate agent was not an attorney and was not in a position to analyze or comment on the importance of the related litigation. *Id.*

This Court reads *Saggese* as upholding a finding, upon a full record after a bench trial, that the defendant had not failed to make a "full and fair disclosure of known facts," because the known "facts" that the defendant had a duty to disclose were the docket numbers, and the very existence, of the related litigation. A legal analysis of those facts – which might have led the plaintiff to conclude that the value of the property was at risk in the litigation, was incumbent upon plaintiff's attorney and the defendant was under no further duty to disclose. The Court does not read

Saggese as holding that under Connecticut law a defendant cannot be held liable for non-disclosure of publicly available facts.[15] Indeed, such a holding would seem to conflict with the Restatement (Second) of Torts § 540, which provides that "[t]he recipient of a fraudulent misrepresentation of fact is justified in relying upon its truth, although he might have ascertained the falsity of the representation had he made an investigation." Restatement (Second) of Torts § 540 (1977); *see also Vega v. Jones, Day, Reavis & Pogue*, 17 Cal.Rptr.3d 26, 35 (Cal. App. 2004) ("[T]he contention that publicly available information cannot form the basis for a concealment claim is mistaken. The mere fact that information exists somewhere in the public domain is by no means conclusive."). Rather, *Saggese* appears to concern issues of duty and non-disclosure that may present themselves at a later stage in this case.

The Court notes that Plaintiffs' 281-paragraph "kitchen sink" Complaints certainly seem to present contradictory claims that could make reliance upon non-disclosure of "known facts" difficult to prove. Namely, Plaintiffs allege both that information about concussion risks was both widely known by the public

---

[15] At the very least, Connecticut law is not clear that the public availability of the facts alleged to have been non-disclosed will bar recovery in a fraudulent non-disclosure action. But even if Connecticut law did bar such claims, accepting all of the facts pled in the complaints as true, WWE's superior knowledge regarding such issues may not have been open to discovery by the plaintiffs upon reasonable inquiry. Again, factual development could shed light on whether WWE possessed information outside the public domain that was omitted or concealed.

and at the same time fraudulently concealed from Plaintiffs.

Read liberally, however, the complaints allege that increasing public and scientific awareness of the risks related to head trauma ultimately resulted in recent discoveries regarding a link between repeated head trauma and permanent degenerative neurological conditions. In particular, the WWE is alleged in the various complaints to have had knowledge of such a link as early as 2005.[16] For wrestlers active during and after 2005, information about a link to permanent degenerative conditions could plausibly have informed plaintiffs' own choices about whether and when to re-enter the ring after sustaining a head injury and could plausibly have prevented permanent brain damage. Plaintiffs also allege that by virtue of its Wellness Program, begun in 2007, WWE possessed superior knowledge regarding a link between participation in WWE wrestling events and such permanent conditions. Because Singleton and LoGrasso are alleged to have wrestled on or after 2005, when WWE's knowledge of the non-disclosed facts is alleged to have begun, their claims for fraudulent non-disclosure may proceed.

Whether WWE may be held liable as a matter of law for non-disclosure of known facts about permanent

---

[16] As the Court noted in part I(D), *supra*, it is unclear how the complaints arrive at the year 2005 as the year in which the WWE had knowledge of a link between repeated head trauma from concussive blows with permanent degenerative conditions. Plaintiffs will need to establish a Record upon which a trier of fact could conclude that WWE had knowledge of such a link at that time or at any later time.

degenerative neurological conditions that may result from repeated concussions or sub-concussive impacts is an issue that must be determined at a later stage in this case. The fact that some or all of the material known facts alleged to have been non-disclosed are within the public domain could undermine Plaintiffs' claim to detrimental reliance, at the very least. More importantly, the development of a factual record may reveal that WWE did not possess or fail to disclose "known facts" about CTE or other degenerative conditions and whether such conditions could result from participation in WWE wrestling events.

WWE's Motions to Dismiss is DENIED with respect to the Fraud by Omission claims asserted by Plaintiffs Singleton and LoGrasso. The Fraud by Omission claims brought by Plaintiffs Haynes and McCullough are DISMISSED.

7. No Separate Cause of Action for Medical Monitoring

Lastly, WWE argues that there is "no independent cause of action" under Connecticut law for "medical monitoring." [Def.'s Mem. at 43]. Plaintiffs respond only to the extent that they argue that medical monitoring "expenses are recoverable," citing to cases where such damages have been awarded. [Pl.'s Opp. Mem. at 32]. In other words, plaintiffs failed to address the argument completely, as the availability of damages for medical monitoring costs and the availability of medical monitoring as an independent cause of action are wholly separate issues. A particular type or measure of damages and a cause of action

entitling a person to a particular type or measure of damages are separate and distinct legal principles.

Few Connecticut courts have addressed this question. One Connecticut trial court has held that "[r]ecovery for such expenses would only be allowable if these plaintiffs have sustained actionable injuries." *Bowerman v. United Illuminating*, No. X04CV 940115436S, 1998 WL 910271, at *10 (Conn. Super. Ct. Dec. 15, 1998). One court in this district also noted the availability of medical monitoring damages if the plaintiff proved the existence of an actionable injury. *Martin v. Shell Oil Co.*, 180 F. Supp. 2d 313, 316 (D. Conn. 2002) (JCH). Because plaintiffs have failed to articulate any authority supporting the proposition that plaintiffs can bring a cause of action for "medical monitoring" separate and apart from their cause of action for fraudulent omission under Connecticut law, Plaintiffs' claims for "Medical Monitoring," are DISMISSED. The court expresses no opinion as to whether plaintiffs may recover such damages in the event that they establish liability under a cause of action for fraud by omission.

IV. Conclusion

For the foregoing reasons, Plaintiffs' negligence counts are DISMISSED as those counts fail to state a claim under Connecticut law. Plaintiffs' negligent misrepresentation and fraudulent deceit claims are DISMISSED as plaintiffs have failed to identify with specificity any false representation by WWE upon which they have relied. Plaintiffs' fraudulent concealment and medical monitoring claims are

DISMISSED as those claims do not state separate and independent causes of action under Connecticut law.

However, WWE's motion is DENIED IN PART with respect to the fraudulent omission claim brought by Plaintiffs Evan Singleton and Vito LoGrasso, to the extent that claim asserts that in 2005 or later WWE became aware of and failed to disclose to its wrestlers information concerning a link between repeated head trauma and permanent degenerative neurological conditions as well as specialized knowledge concerning the possibility that its wrestlers could be exposed to a greater risk for such conditions.

WWE's Motion to Dismiss the *Singleton* action [Dkt. 43] is GRANTED IN PART AND DENIED IN PART, and WWE's Motions to Dismiss the *McCullough* and *Haynes* actions [Dkt. 95, Dkt. 64] are GRANTED in FULL.

IT IS SO ORDERED.

/s/
Hon. Vanessa L. Bryant
United States District Judge

Dated at Hartford, Connecticut: March 21, 2016

APPENDIX F

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

Docket Nos:
18-3278, 18-3322, 18-3325, 18-3326, 18-3327, 18-3328, 18-3330

[Filed: October 15, 2020]

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 15th day of October, two thousand twenty.

William Albert Haynes, III, et al.,	)
	)
Consolidated Plaintiffs-Appellants,	)
	)
Kyros Law P.C., Konstantine W. Kyros,	)
	)
Appellants,	)
	)
v.	)
	)
World Wrestling Entertainment, Incorporated,	)
	)
Consolidated Plaintiff-Defendant-Appelle,	)
	)

Vincent K. McMahon, Individually and as The Trustee of the Vincent K. McMahon Irrevocable Trust U/T/A dtd. June 24, 2004, et al.,	)
Consolidated Defendant – Appellee.	)

ORDER

Appellants filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

/s/ Catherine O'Hagan Wolfe
[SEAL]

APPENDIX G

STATUTES AND RULES INVOLVED

1. 28 U.S.C. § 2107 provides, in pertinent part:

(a) Except as otherwise provided in this section, no appeal shall bring any judgment, order or decree in an action, suit or proceeding of a civil nature before a court of appeals for review unless notice of appeal is filed, within thirty days after the entry of such judgment, order or decree.

....

(c) The district court may, upon motion filed not later than 30 days after the expiration of the time otherwise set for bringing appeal, extend the time for appeal upon a showing of excusable neglect or good cause. In addition, if the district court finds–

(1) that a party entitled to notice of the entry of a judgment or order did not receive such notice from the clerk or any party within 21 days of its entry, and

(2) that no party would be prejudiced,

the district court may, upon motion filed within 180 days after entry of the judgment or order or within 14 days after receipt of such notice, whichever is earlier, reopen the time for appeal

> for a period of 14 days from the date of entry of the order reopening the time for appeal.

28 U.S.C. § 2107(a), (c).

2. Federal Rule of Appellate Procedure 4 provides, in pertinent part:

> (a) Appeal in a Civil Case.
>
> (1) Time for Filing a Notice of Appeal.
>
> (A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after entry of the judgment or order appealed from.
>
> ....
>
> (5) Motion for Extension of Time.
>
> (A) The district court may extend the time to file a notice of appeal if:
>
> (i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and
>
> (ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.
>
> ....
>
> (C) No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 14

> days after the date when the order granting the motion is entered, whichever is later.
>
> (6) Reopening the Time to File an Appeal. The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:
>
> (A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry;
>
> (B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77(d) of the entry, whichever is earlier; and
>
> (C) the court finds that no party would be prejudiced.

Fed. R. App. P. 4(a)(1)(A), (5)(A), (C), (6)

3. Federal Rule of Appellate Procedure 26 provides, in pertinent part:

> (b) Extending Time. For good cause, the court may extend the time prescribed by these rules or by its order to perform any act, or may permit an act to be done after that time expires. But the court may not extend the time to file:

> (1) a notice of appeal (except as authorized in Rule 4) or a petition for permission to appeal;

Fed. R. App. P. 26(b)(1)

4. Federal Rule of Civil Procedure 58 provides, m pertinent part:

> (c) Time of Entry. For purposes of these rules, judgment is entered at the following times:
>
> (1) if a separate document is not required, when the judgment is entered in the civil docket under Rule 79(a); or
>
> (2) if a separate document is required, when the judgment is entered in the civil docket under Rule 79(a) and the earlier of these events occurs:
>
> (A) it is set out in a separate document; or
>
> (B) 150 days have run from the entry in the civil docket.

Fed. R. Civ. P. 58(c)

5. Federal Rule of Civil Procedure 60 provides, in pertinent part:

> (b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
>
> ....

> (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
>
> (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b)(5), (6)