

120. By reason of the foregoing, Dr. Ireland has been damaged in the amount of \$3,000,000.

121.

WHEREFORE, Dr. Ireland demands judgment against the defendants, jointly and severally, awarding Dr. Ireland:

- (a) on his First Claim, pursuant to section 4 of the Clayton Act (15 U.S.C. § 15), treble his \$3,000,000 in actual damages to \$9,000,000;
- (b) on his Second Claim, compensatory damages in the amount of \$3,000,000 and punitive damages in an amount to be determined at trial;
- (c) his costs in the prosecution of this action, including reasonable attorneys' fees; and
- (d) such other and further relief as this Court deems just and proper.

TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, plaintiff demands a trial by jury for all issues so triable.

Dated: October 21, 2016



STEPHEN IRELAND M.D.,
Plaintiff Pro Se

APPENDIX GG
Excerpt from the Deposition
of Plaintiff Stephen Ireland, M.D (FER 111-114)

FER-112:15-113:5:

A. This is an e-mail correspondence between Gregory Ferenz, D.O., and myself concerning the possibility of joining Neurology of Bend.

Q. And Gregory Ferenz is another neurologist, correct?

A. Yes, he is.

Q. On Friday, January 11, 2013, you sent an e-mail to Dr. Ferenz, and that's at the bottom part of the first page of this exhibit, Ireland 2007.

Do you see that?

A. Yes, it is.

Q. You made the statement, quote, "Since our practice is very lucrative, we will be able to offer a generous compensation package."

Was that a true statement when you made it?

A. Yes.

APPENDIX HH

*Email from Abendroth asking Ireland to cover her clinic patients just months before the boycott began
(2-ER-17)*

Original Message

From: Dr. Abendroth

To: David Schloesser ; Dr. Abendroth ; Dr. Griffin ; Dr. Koller ; Gary Buchholz ; Laura Schaben ; Mike Bell ; Steve Ireland

Cc: Lesley Camire

Sent: Tuesday, December 18, 2012 1:32 PM

Subject: Call weekend 12/28-12/30 - pls review

To All,

Having had to ask Dick to take over call this past weekend, with at this time unpredictable migraine course, I must arrange coverage for my last call weekend this month. Both of my partners are out of town that weekend so I am having to pursue other options.

We are asking if someone would be willing to cover the call for \$500 per call day to cover 12/28, 12/29 and 12/30. It could certainly be split if needed. This option would be preferred, as it is clear cut.

212a

Another option would be for someone to receive \$200 per day to be the backup person, and additional \$300 if actually called in, with my taking the weekend if doing OK. Difficult to know at this time how likely that would be.

Can't wait until this is resolved. Thanks for any help you can provide.

Cena

Francena Abendroth, M.D.
BMC Neurology
(541) 322-3570

APPENDIX II
*United States Court of
Appeals for the Ninth Circuit,
Memorandum (vacating the District Court's dismissal
of Ireland's claims under
F.R.C.P. 12(b)(6))
Filed Jan. 15, 2019*

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**STEPHEN IRELAND,
Plaintiff-Appellant,**

v.

**BEND NEUROLOGICAL ASSOCIATES, LLC, an
Oregon limited liability company; et al.,
Defendants-Appellees**

**No. 18-35316
D.C. No. 6:16-cv-02054-JR**

MEMORANDUM¹³

**Appeal from the United States District Court
for the District of Oregon
Michael J. McShane, District Judge, Presiding**

¹³ This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Submitted January 15, 2019¹⁴

Before: Trott, Tallman, and Callahan,
Circuit Judges.

Stephen Ireland appeals pro se from the district court's judgment dismissing his action alleging federal and state law claims. We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court's dismissal under Federal Rule of Civil Procedure 12(b)(6). *Hebbe v. Plier*, 627 F.3d 338, 341 (9th Cir. 2010). We affirm in part, vacate in part, and remand.

The district court properly dismissed Ireland's claim of a per se violation of § 1 of the Sherman Act because Ireland failed to allege facts sufficient to state a plausible claim. *See id.* at 341-42 (although pro se pleadings are construed liberally, plaintiff must present factual allegations sufficient to state a plausible claim for relief); *Austin v. McNamara*, 979 F.2d 728, 738 (9th Cir. 1992) (discussing requirements for per se violation under the Sherman Act).

The district court did not abuse its discretion by denying leave to amend the per se Sherman Act claim because amendment would have been futile. *See Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 725-26 (9th Cir. 2000) (explaining that "[a] district court acts within its discretion to deny leave to amend when amendment would be futile").

¹⁴ The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2). Ireland's request for oral argument, set forth in his reply brief, is denied.

However, the district court erred by dismissing Ireland's "rule of reason" Sherman Act claim. Liberally construed, the proposed second amended complaint contains sufficient allegations that defendants' decision to terminate call coverage for Ireland's patients was intended to restrain competition unreasonably and actually caused injury to competition that harmed consumer welfare. Ireland alleged that defendants have refused service to lower-paying patients and procedures, and that he was the only neurologist who saw patients whom defendants refused to see. *See Austin*, 979 F.2d at 739 (requirements for a "rule of reason" violation); *see also Metro Indus., Inc. v. Sammi Corp.*, 82 F.3d 839, 848 (9th Cir. 1996) ("[W]hile conduct that eliminates rivals reduces competition, reduction of competition does not invoke the Sherman Act until it harms consumer welfare." (citation and internal quotation marks omitted)); *Pinhas v. Summit Health, Ltd.*, 894 F.2d 1024, 1032 (9th Cir. 1989) (discussing allegation regarding plaintiff's provision of services at a lower rate than competitors; concluding that plaintiff adequately pleaded injury to competition).

The district court dismissed Ireland's intentional interference with economic relations ("IIER") claim because the allegations regarding the requisite "improper means" or "improper purpose" were directly linked to Ireland's Sherman Act claim. Because we conclude that the district court erred by dismissing the "rule of reason" Sherman Act claim, we conclude that the district court erred by dismissing Ireland's IIER claim. *See Kraemer v. Harding*, 976

P.2d 1160, 1170 (Or. Ct. App. 1999) (elements of an IIER claim).

In sum, we vacate and remand as to Ireland's "rule of reason" Sherman Act claim and IIER claim under Oregon law. We affirm dismissal of Ireland's *per se* Sherman Act claim.

In light of our disposition, we do not consider Ireland's contentions regarding judicial notice or the incorporation by reference doctrine.

The parties shall bear their own costs on appeal. **AFFIRMED in part, VACATED in part, and REMANDED.**

APPENDIX JJ

Excerpt from the Joint Answering Brief of Defendants-Appellees

DktEntry 26:

p. 9:

“...the procompetitive effects of [Defendants’ conduct]—patient safety—far outweighed any possible anticompetitive burdens.”

p. 26:

“... those independent decisions resulted in a mutual agreement to participate in the same call group.”

pp. 38-39:

“...Defendants were entitled to summary judgment because, as the District Court ruled, the pro-competitive justifications for their actions—the need for patient safety—far outweighed any minimal competitive restraint.”

p. 40:

“AMA ethics opinion 9.4.4 recognizes the need for “respect among all health professionals as a means of ensuring good patient care” and includes “conduct that interferes with the individual’s ability to work with other members of the health care team” as an example of disruptive behavior.”

APPENDIX KK
AMA Code of Medical Ethics

9.4.4 Physicians with Disruptive Behavior

The importance of respect among all health professionals as a means of ensuring good patient care is foundational to ethics. Physicians have a responsibility to address situations in which individual physicians behave disruptively, that is, speak or act in ways that may negatively affect patient care, including conduct that interferes with the individual's ability to work with other members of the health care team, or for others to work with the physician.

Disruptive behavior is different from criticism offered in good faith with the aim of improving patient care and from collective action on the part of physicians. Physicians must not submit false or malicious reports of disruptive behavior.

Physicians who have leadership roles in a health care institution must be sensitive to the unintended effects institutional structures, policies, and practices may have on patient care and professional staff.

As members of the medical staff, physicians should develop and adopt policies or bylaw provisions that:

- (a) Establish a body authorized to receive, review, and act on reports of disruptive behavior, such as a medical staff wellness committee. Members must be

required to disclose relevant conflicts of interest and to recuse themselves from a hearing.

(b) Establish procedural safeguards that protect due process.

(c) Clearly state principal objectives in terms that ensure high standards of patient care, and promote a professional practice and work environment.

(d) Clearly describe the behaviors or types of behavior that will prompt intervention.

(e) Provide a channel for reporting and appropriately recording instances of disruptive behavior. A single incident may not warrant action, but individual reports may help identify a pattern that requires intervention.

(f) Establish a process to review or verify reports of disruptive behavior.

(g) Establish a process to notify a physician that his or her behavior has been reported as disruptive, and provide opportunity for the physician to respond to the report.

(h) Provide for monitoring and assessing whether a physician's disruptive conduct improves after intervention.

(i) Provide for evaluative and corrective actions that are commensurate with the behavior, such as self-correction and structured rehabilitation. Suspending

the individual's responsibilities or privileges should be a mechanism of final resort.

(j) Identify who will be involved in the various stages of the process, from reviewing reports to notifying physicians and monitoring conduct after intervention.

(k) Provide clear guidelines for protecting confidentiality.

(l) Ensure that individuals who report instances of disruptive behavior are appropriately protected.

AMA Principles of Medical Ethics: I,II,VIII
