APPENDIX

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APPENDIX A

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term, 2022
Nos. 21-3127-cv (L), 21-3136-cv (XAP)

[Filed August 28, 2023]

KYROS LAW P.C., KONSTANTINE W. KYROS,
Appellants-Cross-Appellees,

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, a/k/a CHAVO GUERRERO, JR., CHAVO GUERRERO, SR., a/k/a CHAVO CLASSIC, BRYAN EMMETT CLARK, JR., a/k/a ADAM BOMB, DAVE HEBNER, EARL HEBNER, CARLENE B. MOORE-BEGNAUD, a/k/a JAZZ, MARK JINDRAK, JON HEIDENREICH, LARRY OLIVER, a/k/a CRIPPLER, BOBBI BILLARD, LOU MARCONI, BERNARD KNIGHTON, KELLI FUJIWARA SLOAN, on behalf of Estate of HARRY MASAYOSHI FUJIWARA, WILLIAM ALBERT HAYNES, III, RODNEY BEGNAUD, a/k/a RODNEY MACK, RUSS MCCULLOUGH, individually and on behalf of all others similarly situated, a/k/a 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, a/k/a 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 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, a/k/a ROAD WARRIOR ANIMAL, PAUL ORNDORFF, a/k/a MR. WONDERFUL, CHRIS PALLIES, a/k/a KING KONG BUNDY, ANTHONY NORRIS, a/k/a AHMED JOHNSON, JAMES HARRIS, a/k/a KAMALA, KEN PATERA, BARBARA MARIE LEYDIG, BERNARD KNIGHTON, as personal representative of Estate of BRIAN KNIGHTON, a/k/a AXL ROTTEN, MARTY JANNETTY, TERRY SZOPINSKI, a/k/a WARLORD, SIONE HAVIA VAILAHI, a/k/a BARBARIAN, TERRY BRUNK, a/k/a SABU, BARRY DARSOW, a/k/a SMASH, BILL EADIE, a/k/a AX, JOHN NORD, JONATHAN HUGGER, a/k/a JOHNNY THE BULL, JAMES BRUNZELL, SUSAN GREEN, ANGELO MOSCA, a/k/a KING KONG MOSCA, JAMES MANLEY, a/k/a JIM POWERS, MICHAEL ENOS, a/k/a MIKE, a/k/a BLAKE BEVERLY, BRUCE REED, a/k/a BUTCH, SYLAIN GRENIER, OMAR MIJARES, a/k/a OMAR ATLAS, DON LEO HEATON, a/k/a DON LEO JONATHAN, TROY MARTIN, a/k/a SHANE DOUGLAS, MARC COPANI, a/k/a MUHAMMAD HASSAN, MARK CANTERBURY, a/k/a HENRY GODWIN, VICTORIA OTIS, a/k/a PRINCESS VICTORIA, JUDY HARDEE, JUDY MARTIN, TIMOTHY SMITH, a/k/a REX KING, TRACY SMOTHERS, a/k/a FREDDIE JOE FLOYD, MICHAEL R. HALAC, a/k/a MANTAUR, RICK JONES, a/k/a BLACK)

BART, KEN JOHNSON, a/k/a SLICK, GEORGE GRAY, a/k/a ONE MAN GANG, FERRIN JESSE BARR, a/k/a J.J. FUNK, ROD PRICE, DONALD DRIGGERS, RONALD SCOTT HEARD, on behalf of Estate of RONALD HEARD a/k/a OUTLAW RON BASS, BORIS ZHUKOV, DAVID SILVA, JOHN JETER, a/k/a JOHNNY JETER, GAYLE SCHECTER, as personal representative of Estate of JON RECHNER a/k/a BALLS MAHONEY, ASHLEY MASSARO, a/k/a ASHLEY, CHARLES WICKS, a/k/a CHAD WICKS, PERRY SATULLO, a/k/a PERRY SATURN, CHARLES BERNARD SCAGGS, a/k/a FLASH FUNK, CAROLE M. SNUKA, on behalf of Estate of JAMES W. SNUKA,
Consolidated-Plaintiffs,

v.

WORLD WRESTLING ENTERTAINMENT, INC.,
Consolidated Plaintiff-Defendant-Appellee-Cross-Appellant,

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/t/a dtd. December 5, 2013 and as Trust,
Consolidated Defendant-Appellee-Cross-Appellant,

ROBERT WINDHAM, THOMAS BILLINGTON, JAMES

WARE, OREAL PERRAS, JOHN DOES, various,)
Consolidated-Defendants.[*])
_____)

On Appeal from a Judgment of the United States District Court
for the District of Connecticut.

ARGUED: MARCH 30, 2023
DECIDED: AUGUST 28, 2023

Before: LIVINGSTON, *Chief Judge*, and
NARDINI, *Circuit Judge*.[†]

Appellants-Cross-Appellees Konstantine W. Kyros and his law firm, Kyros Law P.C. (together, "Kyros"), appeal from a judgment of the United States District Court for the District of Connecticut imposing sanctions for litigation misconduct under Rules 11 and 37 of the Federal Rules of Civil Procedure. In 2014 and 2015, Kyros brought several lawsuits against Appellees-Cross-Appellants World Wrestling Entertainment, Inc. and Vincent K. McMahon (together, "WWE"). These cases were initially filed in various jurisdictions across the country but were eventually consolidated in the District of Connecticut. This Court previously affirmed the district court's

[*] The Clerk of Court is respectfully directed to amend the caption as set forth above.

[†] Judge Rosemary S. Pooler, originally a member of the panel, died on August 10, 2023. The two remaining members of the panel, who are in agreement, have determined the matter. *See* 28 U.S.C. § 46(d); 2d Cir. IOP E(b)*; United States v. Desimone*, 140 F.3d 457, 458-59 (2d Cir. 1998).

dismissal of one of Kyros's cases against WWE and dismissed the rest for lack of appellate jurisdiction. Kyros also previously challenged orders entered by the district court (Vanessa L. Bryant, *Judge*) determining that he should be sanctioned under Rules 11 and 37, but we also dismissed that appeal for lack of jurisdiction because the amount of sanctions had not yet been determined. Subsequently, the district court (Jeffrey A. Meyer, *Judge*) imposed sanctions against Kyros in the amount of $312,143.55—less than the full amount requested by WWE. Kyros now appeals these final sanctions determinations. On cross-appeal, WWE challenges the district court's reduction of the requested fee award by application of the "forum rule," under which a court calculates attorney's fees with reference to the prevailing hourly rates in the forum in which the court sits. Finding no abuse of discretion, we AFFIRM the judgment.

KONSTANTINE W. KYROS, Kyros Law Offices, Hingham, MA, *for Appellants-Cross-Appellees*.

CURTIS B. KRASIK, K&L Gates LLP, Pittsburgh, PA (Jerry S. McDevitt, K&L Gates LLP, Pittsburgh, PA, Jeffrey P. Mueller, Day Pitney LLP, Hartford CT, *on the brief*), *for Appellees-Cross-Appellants*.

WILLIAM J. NARDINI, *Circuit Judge*:

Over the course of several months in 2014 and 2015, Appellants-Cross-Appellees Konstantine W. Kyros and his law firm, Kyros Law P.C. (together, "Kyros") filed, in jurisdictions across the country, class action lawsuits

and wrongful death lawsuits against Appellees-Cross-Appellants World Wrestling Entertainment, Inc. and Vincent K. McMahon (together, "WWE"), asserting various tort claims that related to chronic traumatic encephalopathy ("CTE") in former wrestlers. In 2016, Kyros filed an additional mass action lawsuit on behalf of fifty-three former wrestlers, asserting a wide range of tort claims. *See Laurinaitis v. World Wrestling Entm't, Inc.*, No. 3:16-cv-1209-VLB (D. Conn.) ("*Laurinaitis*"). These lawsuits were all eventually transferred to the United States District Court for the District of Connecticut. We previously affirmed the district court's dismissal of the *Laurinaitis* complaint and dismissed Kyros's appeals of the other consolidated cases against WWE for lack of jurisdiction. *See Haynes v. World Wrestling Entm't, Inc.*, 827 F. App'x 3 (2d Cir. 2020).

The present appeal concerns only the district court's awards of sanctions in *Laurinaitis* and *Singleton v. World Wrestling Entertainment, Inc.*, No. 3:15-cv-425-VLB (D. Conn.) ("*Singleton*"), one of the class action lawsuits. At an earlier stage of the case, the district court (Vanessa L. Bryant, *Judge*) ruled that Kyros had repeatedly engaged in pleading and discovery misconduct and decided to impose sanctions in *Laurinaitis* under Rule 11 of the Federal Rules of Civil Procedure, and in *Singleton* under Rule 37. Although Kyros challenged these orders in the previous appeal, we dismissed that portion of his appeal because the district court had not yet entered a final order that fixed the amount of sanctions. *See Haynes*, 827 F. App'x at 11. Following our decision, the district court (Jeffrey A. Meyer, *Judge*) adopted a recommended ruling of a

magistrate judge (Robert A. Richardson, *Magistrate Judge*) and awarded sanctions to WWE in the amount of $312,143.55—less than WWE's requested amount of $533,926.44. *McCullough v. World Wrestling Ent., Inc.*, 2021 WL 4472719, at *1, *4–5 (D. Conn. Sept. 30, 2021).[2] With the amount of sanctions calculated, we now consider Kyros's appeal of the Rule 11 and Rule 37 sanctions and WWE's cross-appeal, which challenges the district court's application of the forum rule to award less than the requested amount of sanctions.

I. Background

Two former wrestlers filed the *Singleton* complaint in January 2015 as a putative class action in the Eastern District of Pennsylvania, alleging that they suffered from, or were at increased risk of developing, degenerative neurological conditions as a result of traumatic brain injuries sustained while wrestling for WWE. The Pennsylvania district court transferred the action to the District of Connecticut in March 2015. The *Laurinaitis* complaint, which was filed in the District of Connecticut in July 2016, included a wide range of tort claims and sought relief under various statutes on the ground that WWE had misclassified the plaintiffs as independent contractors. We discuss below the facts and procedural history of *Singleton* and *Laurinaitis* to the extent they are relevant to the challenged sanctions orders.

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[2] The consolidated cases were transferred to Judge Meyer's docket on September 5, 2019.

A. Rule 37 Sanctions in *Singleton*

At a *Singleton* status conference in June 2015, WWE provided the district court with updates on Kyros's various class actions and raised concerns about apparent defects in the complaint, including untimeliness and glaringly false allegations. As an example, WWE pointed to the allegation that CTE had caused the plaintiffs' "untimely death" when, in fact, the plaintiffs were still very much alive. Supp. App'x at 73–74. The district court admonished Kyros for filing a complaint that failed to satisfy fundamental pleading standards and instructed him to re-file "without a lot of superfluous, hyperbolic, inflammatory opinions and references to things that don't have any relevance." Supp. App'x at 127–28. A week later, Kyros filed a second amended complaint.

In March 2016, the district court dismissed all claims but one in the second amended complaint. Specifically, the district court allowed the plaintiffs' fraudulent omission claim to proceed because the complaint, as amended, alleged that WWE was aware of the link between repeated head trauma and degenerative neurological conditions at a time when the plaintiffs were still active as wrestlers for WWE.[3]

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[3] WWE later moved for summary judgment as to the fraudulent omission claim, and the district court granted the motion in March 2018, concluding that Kyros failed to establish that WWE was aware of a link between wrestling and CTE during the relevant time period. The district court noted, "[o]nce again," that Kyros had "asserted facts and advanced legal theories for which there is no reasonable evidentiary and legal basis," and "caution[ed] that such conduct subjects counsel to Rule 11 sanctions." Supp. App'x at 990.

In dismissing the rest of the claims, the district court again admonished Kyros for, among other things, making "patently false," "copied and pasted" allegations in the complaint; "repeatedly misrepresent[ing] both the substance and the meaning" of certain testimony; and failing to include specific and substantive allegations. Special App'x at 7–9, 58.

During discovery on the fraudulent omission claim, WWE served the plaintiffs with interrogatories. The plaintiffs responded, and, after the parties met and conferred, WWE filed a motion to compel, claiming that the plaintiffs' responses were incomplete or evasive. In May 2016, the district court granted in part the motion to compel and ordered the plaintiffs to submit supplemental responses to certain of the interrogatories. The district court instructed that, where the plaintiffs were "unable to identify a statement or speaker in response to an interrogatory," they "must state that fact." Supp. App'x at 248.

On August 8, 2016, WWE moved for Rule 37 sanctions, arguing that the plaintiffs failed to comply with the district court's May 2016 order. The district court referred the Rule 37 motion to a magistrate judge. In February 2018, the magistrate judge issued a recommended ruling on the motion. He concluded that the plaintiffs' interrogatory responses were insufficient. For example, he noted that, rather than identifying specific "deceptive public statement[s]" WWE had made, the plaintiffs' responses directed WWE to an "entire book" along with "random publications and documents with little specificity or guidance." Special App'x at 175, 178. Accordingly, the

magistrate judge recommended sanctioning Kyros "to dissuade further abuse of the discovery process and promote thorough compliance with court orders moving forward." Special App'x at 179–80.

Additionally, the magistrate judge observed that Kyros "ha[d] been on notice that plaintiffs need to comply with Court orders and the Federal Rules of Civil Procedure throughout this litigation," *id.* at 180, and clarified that "plaintiffs and their counsel are now on notice that any further noncompliance during the remainder of this litigation may result in the dismissal of the case," *id.* at 183. The magistrate judge also recommended that Kyros pay WWE's legal fees in connection with the sanctions motion. In July 2018, the district court adopted the magistrate judge's recommended ruling.

B. Rule 11 Sanctions in *Laurinaitis*

Kyros filed the *Laurinaitis* complaint in July 2016 on behalf of fifty-three former WWE wrestlers. The complaint was 214 pages long and contained 667 paragraphs, including seventeen causes of action that were each asserted on behalf of all plaintiffs. Shortly thereafter, WWE notified Kyros of its intention to move for Rule 11 sanctions. Specifically, on two occasions in August 2016, WWE served Kyros with draft Rule 11 motions setting forth as grounds for sanctions, among other things, the issues of time-barred claims in the complaint and the lack of a good-faith basis for allegations regarding WWE's knowledge.

The draft Rule 11 motions asserted that many of the allegations in the complaint appeared to have been

indiscriminately cut and pasted from a complaint filed in the National Football League ("NFL") concussion litigation. For example, the complaint alleged that one purported wrestler (who was, instead, an NFL football player) "sustained repeated and disabling head impacts while a wrestler for the Steelers"—Pittsburgh's NFL team. Special App'x at 205 (internal quotation marks omitted). Similarly, the complaint alleged that various studies had warned of the danger that a concussion would pose to a "football wrestler." Supp. App'x at 346.

On October 17, 2016, after Kyros failed to withdraw or correct the complaint, WWE filed in the district court its first motion for Rule 11 sanctions against Kyros and his co-counsel, premised on the two draft motions it had served on Kyros in August 2016. WWE pointed to purported "false allegations," "frivolous legal claims," and "bad faith," and sought dismissal of the complaint. Supp. App'x at 466. The district court referred this first Rule 11 motion to the magistrate judge.

Kyros responded in two ways. On November 9, 2016, he filed a first amended complaint, which added numerous plaintiffs, pages, and paragraphs. Then, in December 2016, Kyros filed an opposition to WWE's October sanctions motion, arguing that certain "improper" allegations in the complaint were attributable to editing mistakes and that the rest of the complaint contained plausible allegations made in good faith.

Later in December 2016 WWE filed a second motion for Rule 11 sanctions, arguing that the first amended complaint was just as deficient as the original one.

Kyros opposed WWE's December sanctions motion, arguing that there was a good faith basis for the plaintiffs' allegations, that any plagiarism from the NFL litigation was not sanctionable, and that the allegations were sufficient with respect to tolling and knowledge.

In September 2017, the district court issued an interim order on WWE's pending motions to dismiss and for Rule 11 sanctions. Admonishing Kyros for failing to comply with the Federal Rules of Civil Procedure and its own prior instructions, the district court listed several of the "numerous allegations" in the "335 page complaint with 805 paragraphs . . . that a reasonable attorney would know are inaccurate, irrelevant, or frivolous." Special App'x at 150. The district court concluded that the first amended complaint "remain[ed] unnecessarily and extremely long, with an overwhelming number of irrelevant allegations," such that parsing the claims as they stood "would be both a waste of judicial resources [and] unduly prejudicial to the WWE." *Id.* at 162–63. Ultimately, the district court reserved judgment on the pending motions for Rule 11 sanctions and to dismiss, pending the filing of a second amended complaint and the *in camera* submission of sworn affidavits by each *Laurinaitis* plaintiff that would "set[] forth facts within each plaintiff's . . . personal knowledge that form[ed] the factual basis of their claim." *Id.* at 163. The district court also warned Kyros that it would grant the motion to dismiss and "pursuant to Rule 11(c)(3) . . . *sua sponte* revisit whether to award attorney's fees as a sanction," if Kyros failed to comply with the order. *Id.* at 165.

Kyros subsequently filed a second amended complaint and submitted affidavits on behalf of the plaintiffs.

In September 2018, the district court issued its final order in the consolidated cases. The order first concluded that dismissal was warranted because the second amended complaint and the affidavits that Kyros had filed did not comply with its September 2017 order. The district court reviewed Kyros's "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." *Id.* at 196–97. It commented that "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." *Id.* at 230–31. And it added that Kyros "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." *Id.* at 231.

The district court further concluded that an award of attorney's fees and costs was necessary to deter Kyros from violating Rule 11 and ordered Kyros to pay all legal fees that WWE reasonably incurred in connection with the sanctions motions. "[I]n order to protect the public," the district court also ordered Kyros to send a copy of its ruling to each of the *Laurinaitis* plaintiffs and any other future, current, or former

WWE wrestler who retained Kyros to sue WWE. *Id.* Kyros appealed from that judgment.

On October 22, 2020, we affirmed the district court's dismissal of the *Laurinaitis* complaint. *See Haynes*, 827 F. App'x at 10. But we dismissed as premature the appeal as to the Rule 11 sanctions—and the Rule 37 sanctions in *Singleton*—because the amount of sanctions had not yet been determined. *Id.* at 11.

C. Determination of the Amount of the Sanctions

The amount of sanctions was calculated in subsequent proceedings. WWE asked for $533,926.44, which were the attorney's fees and costs it had incurred in connection with its three sanctions motions. The district court referred WWE's application to a magistrate judge for a recommended ruling. On September 2, 2021, the magistrate judge recommended an award of $312,143.55, which included the Rule 37 sanctions in *Singleton* and the Rule 11 sanctions in *Laurinaitis*. In reaching that number, the magistrate judge reduced the amount of attorneys' fees sought, based in part on a fifteen-percent, "across-the-board" reduction, *id.* at 272, and in part on the "forum rule," under which a court calculates attorney's fees with reference to the prevailing hourly rates in the forum in which the court sits, *id.* at 258.

WWE objected to the magistrate judge's recommended ruling on the ground that he erroneously applied the forum rule. Kyros did not object to the recommended ruling. On September 30, 2021, the district court overruled WWE's objections and adopted

the magistrate judge's recommendation, awarding WWE $312,143.55. In particular, the district court rejected WWE's argument that the forum rule should not apply where certain of the consolidated cases had originated in jurisdictions outside the forum, reasoning that local counsel in Connecticut was at least as well positioned to defend the litigation as the out-of-district counsel WWE retained. The district court also noted that it was foreseeable that the cases would be consolidated in Connecticut, in light of mandatory forum-selection clauses in WWE's contracts with the plaintiffs and the Connecticut location of WWE's corporate headquarters.

The district court also rejected WWE's broader arguments that the forum rule does not apply in the sanctions context and that the fees WWE paid should be deemed presumptively reasonable. It concluded that WWE failed to show that experienced civil litigators in Connecticut could not have obtained the same result as out-of-district counsel. And it endorsed the fifteen-percent, across-the-board recommended reduction, reasoning that the magistrate judge's approach to trimming excess fees was a practical one.

Kyros appealed from the judgment imposing sanctions, and WWE cross-appealed as to the application of the forum rule.

II. Discussion

On appeal, Kyros argues that the district court should not have imposed any Rule 11 and Rule 37 sanctions at all. On cross-appeal, by contrast, WWE argues that the award should have been higher;

specifically, it challenges the application of the forum rule to award a lower amount of attorney's fees than it actually paid. We address each argument in turn and, as set forth below, find no abuse of discretion in the district court's imposition of sanctions or its application of the forum rule.

A. Rule 11 Sanctions

This Court "review[s] the imposition of sanctions for abuse of discretion." *Liebowitz v. Bandshell Artist Mgmt.*, 6 F.4th 267, 280 (2d Cir. 2021) (internal quotation marks omitted). "An abuse of discretion occurs when a district court bases its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence, or renders a decision that cannot be located within the range of permissible decisions." *Huebner v. Midland Credit Mgmt., Inc.*, 897 F.3d 42, 53 (2d Cir. 2018) (internal quotation marks omitted). "This deferential standard is applicable to the review of Rule 11 sanctions because . . . the district court is familiar with the issues and litigants and is thus better situated than the court of appeals to marshal the pertinent facts and apply the fact-dependent legal standard mandated by Rule 11." *Universitas Educ., LLC v. Nova Grp., Inc.*, 784 F.3d 99, 103 (2d Cir. 2015) (alteration and internal quotation marks omitted). Still, our review of sanctions "is more exacting than under the ordinary abuse-of-discretion standard" because "sanctions proceedings are unique, placing the district judge in the role of accuser, fact finder and sentencing judge all in one." *Liebowitz*, 6 F.4th at 280 (internal quotation marks omitted).

Federal Rule of Civil Procedure 11 provides that, "[b]y presenting to the court a pleading, written motion, or other paper," an attorney "certifies that to the best of [her] knowledge, information, and belief," formed after a reasonable inquiry, the filing is: (1) "not being 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 by available evidence, or evidence likely to be discovered on further investigation. Fed. R. Civ. P. 11(b). A court may sanction an attorney who violates Rule 11(b) if the court first provides notice and a reasonable opportunity to respond. *See* Fed. R. Civ. P. 11(c)(1).

A party must move for sanctions in a filing that is "separate[] from any other motion" and that "describe[s] the specific conduct that allegedly violates Rule 11(b)." Fed. R. Civ. P. 11(c)(2). Such a motion may not be presented to the court until the expiration of a twenty-one-day "safe harbor" period, during which the alleged violator has the chance to withdraw or correct the challenged filing. *See id.* The court may also initiate sanctions *sua sponte* by issuing an order "to show cause why conduct specifically described in the order has not violated Rule 11(b)." Fed. R. Civ. P. 11(c)(3). When a court initiates Rule 11 sanctions *sua sponte* and the opportunity to correct or withdraw the challenged submission is unavailable, the court must make a finding of bad faith on the part of the attorney before imposing the sanctions. *See In re*

Pennie & Edmonds LLP, 323 F.3d 86, 91–92 (2d Cir. 2003).

Kyros argues that the district court abused its discretion by failing to follow the procedures set out in Rule 11 and by failing to satisfy the requirements of due process. Characterizing the district court's Rule 11 sanctions order as having been imposed *sua sponte*, Kyros contends that the district failed to issue the show-cause order required by Rule 11(c)(3) and to provide him with notice and an opportunity to be heard. By the same token, Kyros claims that the district court failed to make the requisite finding of bad faith before imposing *sua sponte* sanctions.

WWE asserts that Kyros's characterization of the sanctions order ignores the district court's repeated admonitions and interim order putting him on notice that his conduct risked punishment. Noting the oppositions and sur-reply Kyros filed in response to its Rule 11 motions as to the original and first amended *Laurinaitis* complaints, WWE argues that Kyros cannot now claim that he lacked notice of the grounds for sanctions. In particular, WWE suggests that the district court gave Kyros "a last chance to avoid sanctions . . . by complying with the Court's detailed order regarding the information to include in each plaintiff's affidavit and filing amended pleadings in accordance with the Federal Rules and the Court's prior instructions," but Kyros did not comply. Appellees' Br. at 47.

On the record before us, we find no abuse of discretion because the district court ordered sanctions based on pleading defects that WWE had identified in

their motions seeking Rule 11 sanctions. As detailed above, WWE first notified Kyros of its intention to seek Rule 11 sanctions in August 2016, raising the issues of time-barred claims and the lack of a good-faith basis for allegations in the original complaint regarding WWE's knowledge. In October 2016, WWE filed a motion for Rule 11 sanctions in the district court that incorporated precisely those claims it had flagged in August. Days after the Rule 11(c)(2) safe harbor period passed, Kyros filed a first amended complaint, adding plaintiffs and new allegations without addressing the issues of which WWE had complained in its sanctions motion. As WWE notes, Kyros then opposed the October 2016 sanctions motion as well as WWE's December 2016 motion for sanctions as to the first amended complaint—even filing a sur-reply in connection with the latter. These filings were all responsive to the issues raised in WWE's sanctions motions. As Kyros acknowledged in a filing below, the district court's September 2017 order reserved judgment on these two sanctions motions, providing Kyros with an opportunity to file yet another amended pleading in order to comply with the Federal Rules. And, once Kyros filed yet another deficient complaint (the second amended version), the district court sanctioned Kyros under Rule 11 on the same timeliness and lack-of-good-faith grounds that WWE had asserted in its earlier sanctions motions.

It is therefore clear from the record that the district court's sanctions order was based on WWE's two motions for Rule 11 sanctions, not on some new and spontaneous initiative of the district court. Kyros argues that the district court's order was issued "*sua*

sponte," but this misreads the record. The district court did state in its September 2017 order that it would "*sua sponte* revisit" the sanctions issue "pursuant to Rule 11(c)(3)," Special App'x at 165, but that language appears in a ruling that merely reserved decision on WWE's already-filed sanctions motions. And the district court did not ultimately follow the path of imposing *sua sponte* sanctions based on the independent content of the second amended complaint. In its September 2018 order granting sanctions, the court based its findings on precisely the same conduct about which WWE had complained in its two Rule 11 motions, including "factually unsupportable allegations," "frivolous claims," and lack of a good-faith basis. Special App'x 228–31. The decretal language of the September 2018 order likewise confirmed that the court was granting in part WWE's December 2016 sanctions motion—which was based entirely on the original and first amended complaints—"to the extent it sought the award of attorney's fees and costs," Special App'x at 232. And the amount later awarded was premised entirely on attorney's fees and costs that WWE had expended on those two motions—that is, before Kyros filed the second amended complaint. In other words, it makes no difference that the district court had earlier suggested that it might follow the route of considering sanctions *sua sponte*; its actual decision was explicitly framed as a decision on WWE's earlier-filed motions. Accordingly, we reject Kyros's argument that the sanctions order was imposed *sua*

sponte such that the district court was bound by the procedural requirements of Rule 11(c)(3).[4]

For much the same reasons, we reject Kyros's argument that the district court violated his due process rights by depriving him of notice and an opportunity to be heard before imposing sanctions. Here, Kyros had abundant notice of the risk of, and the potential grounds for, sanctions based on WWE's Rule 11 motions and the district court's interim order reserving judgment. Indeed, Kyros took advantage of multiple opportunities to be heard in his responses to those sanctions motions and within the window the district court gave him to amend his complaint. *See, e.g.*, *Margo v. Weiss*, 213 F.3d 55, 63–64 (2d Cir. 2000) (concluding that "the district court was not required to give appellants notice of grounds for sanctions that were clearly expressed in defendants' Rule 11 motion

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[4] Kyros also argues that the district court erred in granting a sanctions motion addressed to the original and first amended complaints, well after Kyros had later filed a second amended complaint. Given the purpose of the safe harbor provision under Rule 11, we agree that district courts should ordinarily not reach back in time to sanction filings that were later superseded, because doing so risks the same lack of notice associated with truly "*sua sponte*" sanctions. We read *In re Pennie & Edmonds*, however, to impose a check on such a possibility by requiring a finding of subjective bad faith in the absence of "an explicit 'safe harbor' protection or an equivalent opportunity" to correct a deficient filing. 323 F.3d at 93. Here, because the WWE's earlier motions gave Kyros the explicit benefit of the Rule's safe harbor provision, no such finding was necessary. And even had WWE's motions *not* provided this benefit, the district court's repeated warnings to Kyros in this case would have likewise provided an "equivalent opportunity" to correct his filings—an opportunity he did not take.

papers" and noting that the appellants "took advantage of the notice they received from the defendants' Rule 11 papers" by submitting a declaration in opposition to the motion). Under such circumstances, even our "more exacting . . . abuse-of-discretion standard," *Liebowitz*, 6 F.4th at 280, does not require us to craft new procedural hurdles for district courts to clear before sanctioning attorneys who violate Rule 11(b).

We have considered the remainder of Kyros's Rule 11 arguments and find them unpersuasive. *See Int'l Ore & Fertilizer Corp. v. SGS Control Services, Inc.*, 38 F.3d 1279, 1286–87 (2d Cir. 1994) ("Appellants raise numerous objections on the merits to the imposition of sanctions, but, even viewing the record in the light most favorable to them, we cannot say that the district court abused its discretion."). Accordingly, we hold that the district court did not abuse its discretion by imposing Rule 11 sanctions on Kyros.

B. Rule 37 Sanctions

As with Rule 11 sanctions, we review the imposition of Rule 37 sanctions for abuse of discretion. *Yukos Capital S.A.R.L. v. Feldman*, 977 F.3d 216, 234 (2d Cir. 2020). Just as a district court has broad discretion to manage discovery, it likewise has wide discretion to impose sanctions for abusing that process. *See, e.g.*, *S.E.C. v. Razmilovic*, 738 F.3d 14, 25 (2d Cir. 2013); *Daval Steel Prods. v. M/V Fakredine*, 951 F.2d 1357, 1365 (2d Cir. 1991).

Rule 37 gives a district court the authority to impose "just" sanctions on a party who fails to comply with a discovery order. Fed. R. Civ. P. 37(b)(2)(A). In

evaluating a district court's exercise of its discretion to impose such sanctions, we weigh factors like: "(1) the willfulness of the non-compliant party or the reason for noncompliance; (2) the efficacy of lesser sanctions; (3) the duration of the period of noncompliance, and (4) whether the non-compliant party had been warned of the consequences of noncompliance," *S. New Eng. Tel. Co. v. Glob. NAPs Inc.*, 624 F.3d 123, 144 (2d Cir. 2010) (internal quotation marks omitted). But "these factors are not exclusive, and they need not each be resolved against the party challenging the district court's sanctions for us to conclude that those sanctions were within the court's discretion." *Id.*

The district court properly imposed Rule 37 sanctions on Kyros based on its finding that he failed to make a good-faith effort to comply with its order to supplement his responses to certain of WWE's interrogatories. For example, rather than identifying specific "deceptive public statement[s]" in response to one of the interrogatories, Kyros's supplemental responses directed WWE to an "entire book" and, in general terms, various previously provided documents and records. Special App'x at 186 (internal quotation marks omitted). Like the district court, we find no error in the magistrate judge's thorough analysis. We agree that Kyros's discovery responses were insufficient and that Rule 37 sanctions were warranted.

Kyros argues that the district court abused its discretion by imposing Rule 37 sanctions on only him and his law firm because WWE's Rule 37 motion was directed to both "Plaintiffs and their counsel." Kyros Br. at 56 (quoting App'x at 67). He claims that an order

imposed under Rule 37(b) must be "directed at the party against whom the sanctions are sought to be imposed." *Id.* (internal quotation marks omitted) (citing *Daval Steel Prods.*, 951 F.2d at 1364). Kyros made a similar argument below, and the district court rejected it, relying in part on Rule 37(b)(2)(C), which requires the court to order "the disobedient party, *the attorney advising that party, or both* to pay the reasonable expenses, including attorney's fees, caused by the failure [to comply with the district court's discovery order]." Special App'x at 189 (emphasis added) (quoting Fed. R. Civ. P. 37(b)(2)(C)). We agree with the district court. Both logic and the text of Rule 37(b)(2)(C) dictate that a court may impose sanctions in a targeted way against the actors whom it identifies as responsible for misconduct, whether those be parties, their attorneys, or both. On appeal, Kyros points to no authority that supports his argument that sanctions had to be imposed jointly on his clients as well as himself (and his firm). *Daval*, the lone case Kyros cites, stands merely for the proposition that one party's violation of a discovery order directed only to that party is not a sufficient basis for a court to impose sanctions on *another party* to which no such discovery order had been directed. *See* 951 F.2d at 1364. It does not suggest that a disobedient party's *counsel* is not covered by an order directed at that same party.

Kyros also argues that the district court abused its discretion by imposing Rule 37 sanctions because WWE was not prejudiced by the plaintiffs' failure to provide sufficient responses to WWE's interrogatories. Specifically, Kyros makes the bare assertion that the interrogatories were irrelevant and assigns particular

significance to the order of operations as it played out below—namely, that the case was dismissed under Rule 56 before the plaintiffs provided their responses to the interrogatories and that the district court issued the sanctions order one year after the magistrate judge held a hearing on the sanctions motion.

Once again, Kyros points to no authority that supports his arguments. The Fifth Circuit case Kyros cites, *FDIC v. Conner*, 20 F.3d 1376, 1381–82 (5th Cir. 1994), suggests only that *dismissal* for failure to comply with a discovery order is not justified where discovery violations do not substantially prejudice defendants. But here, the sanction imposed by the district court for the *Singleton* discovery was an order to pay attorney's fees and costs, not dismissal of the complaint. (Dismissal did occur, to be sure; but that was on the merits, not as a result of sanctions.) And the district court acted well within its discretion when it ordered Kyros to supplement discovery responses that, for example, directed WWE to "random publications and documents with little specificity or guidance." Special App'x at 178. In the magistrate judge's words, the sanctions were imposed "to dissuade further abuse of the discovery process and promote thorough compliance with court orders moving forward"—not as a means of disposing of the case. *Id.* at 179–80.

We decline to consider Kyros's conclusory argument, already considered and rejected below, that WWE's interrogatories were irrelevant. *See Zhang v. Gonzales*, 426 F.3d 540, 545 n.7 (2d Cir. 2005) (deeming argument waived where "only a single conclusory sentence" was devoted to it).

Accordingly, we find no abuse of discretion in the district court's imposition of Rule 37 sanctions on Kyros for his failure to make a good-faith effort to comply with the court's order compelling responses to WWE's interrogatories.

C. The Forum Rule

Finally, we turn to WWE's cross-appeal, which challenges the district court's decision to award sanctions in an amount less than requested by WWE, based on application of the forum rule. We review for abuse of discretion a district court's calculation of the amount of attorney's fees to be awarded. *Holick v. Cellular Sales of New York, LLC*, 48 F.4th 101, 109 (2d Cir. 2022). "Our review is highly deferential in this area because of the district court's inherent institutional advantages in determining attorneys' fees." *H.C. v. New York City Dep't of Ed.*, 71 F.4th 120, 125 (2d Cir. 2023) (internal quotation marks omitted). In conducting our review, we also bear in mind that "[t]he essential goal in shifting fees . . . is to do rough justice, not to achieve auditing perfection." *Fox v. Vice*, 563 U.S. 826, 838 (2011).

One methodology district courts employ to determine the amount of attorney's fees to award involves the "forum rule," under which courts are directed to calculate fees based on the prevailing rates in the forum in which the litigation was brought. *Simmons v. New York City Transit Auth.*, 575 F.3d 170, 172 (2d Cir. 2009). In *Simmons*, we clarified that, "when faced with a request for an award of higher out-of-district rates, a district court must first apply a presumption in favor of application of the forum rule."

Id. at 175. "[T]o overcome that presumption, a litigant must persuasively establish that a reasonable client would have selected out-of-district counsel because doing so would likely (not just possibly) produce a substantially better net result." *Id.* Among the "experience-based, objective factors" district courts should consider in making that determination is "counsel's special expertise in litigating the particular type of case, if the case is of such nature as to benefit from special expertise." *Id.* at 175–76. Litigants must also "make a particularized showing . . . of the likelihood that use of in-district counsel would produce a substantially inferior result." *Id.* at 176.

WWE argues that the district court abused its discretion by applying the forum rule for four main reasons. We consider each in turn. First, WWE notes that the underlying consolidated cases began in jurisdictions outside Connecticut, and asserts that the forum rule "does not apply to a case that was initially brought in another district but subsequently transferred to the forum." WWE Br. at 49. For support, WWE relies on our decision in *Polk v. New York State Department of Correctional Services*, 722 F.2d 23 (2d Cir. 1983). But *Polk* is inapposite. *Polk* concerned the fees awarded to an attorney who initially filed a suit in his home district, after which the case was transferred to the forum district—"not the typical situation in which a lawyer from one district files suit in another district." 722 F.2d at 25. In that case, where a class action relating to the plaintiff was pending in the attorney's home district, the *Polk* Court concluded the district court had discretion to award fees based on the prevailing rate in *either* an attorney's home district *or*

the forum district. *Id.* It also reaffirmed a district court's "broad discretion" to determine reasonable fees, "[s]o long as unwarranted windfalls are not awarded." *Id.* Here, of course, the underlying cases were filed in jurisdictions across the country—none of which was the home district of out-of-district counsel—and were eventually consolidated in the District of Connecticut, where the district court sits. Accordingly, *Polk* does not control the outcome here. *Polk*, in any event, did not purport to create an inflexible rule as to fees in transferred cases. On its own terms, *Polk* described only what a district "normally" "will consider," as well as "special circumstance[s]." *Id.* Here, the district court properly considered a number of such circumstances: that the defendants themselves sought consolidation and had crafted forum-selection clauses accordingly, and that out-of-district counsel was never solely responsible for the Connecticut litigation such that it could not have been handed over to local counsel. Special App'x at 277–78. The district court neither strayed outside its broad discretion nor afforded an unwarranted windfall in its application of the forum rule to reduce WWE's award.

Second, WWE argues that district courts are "not constrained to apply the forum rule where the attorney's fees are awarded as sanctions." WWE Br. at 52. WWE cites *On Time Aviation, Inc. v. Bombardier Capital, Inc.*, 354 F. App'x 448 (2d Cir. 2009), a non-precedential summary order that included the observation that "[t]he reasoning behind the calculation of awards under fee-shifting statutes . . . is not . . . precisely analogous to that applicable to Rule 11 awards." 354 F. App'x at 452. We do not read *On Time*,

however, to suggest that any difference between statutory fee-shifting and Rule 11 awards would preclude application of the forum rule in the sanctions context. Indeed, we see no reason why the rule should not presumptively apply in each context. *On Time* suggests only that, even after applying the forum rule, a district court may still act within its discretion in ordering a larger award to serve the purpose of deterrence under Rule 11. In this case, in any event, WWE points to no evidence in the record indicating that the district court found itself "constrained" to apply the forum rule. And the fact that fee-shifting statutes and Rule 11 sanctions serve different purposes does not mean that a district court abuses its discretion by applying the forum rule to reduce a Rule 11 award. We will not disturb the district court's discretionary determination that the principal objectives of the imposition of Rule 11 sanctions—"the deterrence of baseless filings and the curbing of abuses," *Caisse Nationale de Credit Agricole-CNCA v. Valcorp, Inc.*, 28 F.3d 259, 266 (2d Cir. 1994)—were furthered even after it applied the forum rule to reduce the award.

Third, WWE argues that the forum rule does not apply because WWE is a sophisticated paying client. In WWE's view, "[b]ecause there was an actual paying client" to serve as a touchstone, there was "no need to perform a lodestar calculation to arrive at a presumptively reasonable fee award." WWE Br. at 55 (citing *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 551 (2010)). As we have previously noted, an "actual billing arrangement" is a significant factor in determining what fee is reasonable, but it is "not necessarily controlling." *Crescent Publ'g Grp., Inc. v.*

Playboy Enterprises, Inc., 246 F.3d 142, 151 (2d Cir. 2001). It does not, therefore, create a presumption of reasonableness, nor displace the initial application of the forum rule. Here, the district court gave significant weight to WWE's decision to retain more expensive out-of-district counsel, but concluded that WWE failed to overcome *Simmons*'s presumption in favor of the application of the forum rule. Specifically, the district court noted that the case was dismissed pre-trial based on deficiencies in Kyros's pleadings and discovery requests, and reasoned that such matters are "within the general expertise of civil litigators." Special App'x at 281 (citing *Simmons*, 575 F.3d at 177 (reasoning that the party bearing the cost of attorney's fees "should not be required to pay for a limousine when a sedan could have done the job")). We find no abuse of discretion in that determination.

Fourth, WWE argues that, even if the forum rule applies, WWE is subject to an exception under *Simmons* because out-of-district counsel "likely (not just possibly) produce[d] a substantially better net result" than local counsel would have. 575 F.3d at 172. Citing out-of-district counsel's extensive experience representing WWE and litigating CTE matters, WWE asserts that no local counsel had comparable specific knowledge, nor could local counsel have improved upon the results achieved below. The district court acknowledged out-of-district counsel's "longstanding involvement in defending claims brought by former wrestlers," Special App'x at 281, but, as discussed above, concluded that WWE failed to show that out-of-district counsel likely produced a substantially better net result, especially where the case was dismissed

based on deficient pleadings and conduct during discovery—that is, egregious litigation misconduct that in-district counsel would have been equally well placed to identify and oppose. Once again, we see no reason to fault that determination, made within the district court's broad discretion.

Having carried out our "highly deferential," *H.C.*, 71 F.4th at 125, review of the district court's efforts to achieve "rough justice," *Fox*, 563 U.S. at 838, in keeping with the goals of fee-shifting, we affirm the district court's application of the forum rule under the circumstances of this case.

III. Conclusion

In sum, we hold as follows:

1. The district court did not abuse its discretion by imposing Rule 11 sanctions on Kyros. WWE's sanctions motions and the district court's order that reserved ruling on those motions gave abundant notice to Kyros of the repeated pleading deficiencies that risked imposition of sanctions, and he was afforded sufficient opportunity to be heard.

2. The district court did not abuse its discretion by imposing Rule 37 sanctions on Kyros because Kyros failed to make a good-faith effort to comply with the district court's order compelling responses to WWE's interrogatories.

3. The district court did not abuse its discretion by applying the forum rule to award WWE less than the requested amount of sanctions.

We therefore **AFFIRM** the judgment of the district court.

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.)
_____)

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 that 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 a 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 limitation 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 complaint 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:

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[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 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

> "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 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*

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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).

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

[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.

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 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 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" 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. <u>Plaintiffs Have Asserted Numerous Patently Time-Barred Claims</u>

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 now 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 September 29, 2017]

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.)
_____)

ORDER REGARDING WWE'S MOTION FOR JUDGMENT ON THE PLEADINGS [DKT. NO. 205] AND WWE AND VINCENT K. MCMAHON'S MOTIONS TO DISMISS AND FOR SANCTIONS [DKT. NOS. 262, 266, 269]

I. Introduction

Declaratory Judgment Plaintiff World Wrestling Entertainment, Inc., ("WWE"), brings an action for declaratory judgment ("DJ") against DJ Defendants Robert Windham, Thomas Billington, James Ware, and Oreal Perras (the "*Windham* Defendants"). WWE has moved for judgment on the pleadings on the grounds that the *Windham* Defendants' tort claims are time-

barred under applicable statutes of limitation and repose.

Additionally, Defendants in the *Laurinaitis* action, WWE and Vincent McMahon, have moved to dismiss the claims of the numerous wrestlers in a sixth consolidated case before the Court. Plaintiffs in this action (the "*Laurinaitis* Plaintiffs") have filed a nineteen count complaint that spans 335 pages and includes 805 paragraphs. WWE and McMahon have moved to dismiss this complaint arguing, *inter alia*, that the complaint is rife with inaccurate allegations and frivolous claims, and should be dismissed both on its merits and as a sanction for failing to comply with Federal Rule of Civil Procedure 11.

For the reasons set forth below, the Court reserves judgment on these motions pending the filing of amended pleadings consistent with this Order.

II. Background

A. *Windham* Action Facts

WWE brought a DJ action against Robert Windham and three other wrestlers in this Court on June 29, 2015, after having first been sued over a period of months in five separate actions, three of which were class actions, in five different venues (the "Prior Actions"). On June 2, 2015, the *Windham* Defendants' counsel sent WWE "Notice of Representation" letters on behalf of each wrestler to WWE's corporate headquarters in Stamford, Connecticut. [Compl. ¶ 72]. The letters stated that "the undersigned have been retained by [DJ Defendants Windham, Billington, Ware, or Perras], a former WWE wrestler . . . who was

allegedly injured as a result of WWE's negligent and fraudulent conduct." *Id.* ¶ 73. The letters went on to state that "in light of the possible litigation involving this matter," WWE should refrain from communicating directly with the *Windham* Defendants and should preserve relevant data. *Id.* ¶ 73. The *Windham* Defendants do not deny these allegations. [Answer ¶¶ 72-73].

Three of the *Windham* Defendants are former-professional wrestlers who previously performed for WWE. [Compl. ¶ 5]. Specifically, DJ Defendant Windham last performed for WWE in or around 1986; DJ Defendant Billington last performed for WWE in or around 1988; and DJ Defendant Ware last performed for WWE in or around 1999. *Id.* ¶ 5. The *Windham* Defendants do not deny WWE's allegations setting the timeframes in which each DJ Wrestler performed. [*See* Answer ¶¶ 5, 16-19]. DJ Defendant Perras last performed for an entity known as Capitol Wrestling Corporation. [Compl. ¶ 5]. While the *Windham* Defendants deny that Perras "last performed for an entity other than WWE and its predecessors, they offer no factual basis for this denial. [Answer ¶ 5]. The specifically named *Windham* Defendants had not complained to WWE regarding any alleged injuries in the decades since they last performed until the June 2, 2015 letters. [Compl. ¶ 74].

The *Windham* Defendants do not allege that the WWE knew of the possibility that repeated head trauma could cause permanent neurological injury while the wrestlers were performing, but fraudulently failed to inform them of this danger. Moreover, even

though the *Windham* Defendants are represented by the same attorneys who represent the plaintiff wrestlers six other actions, and even though all six actions (seven including the *Windham* action) have been consolidated, the *Windham* Defendants repeatedly deny that they have sufficient information regarding the other wrestlers' claims to respond to WWE's allegations.

WWE moves for judgment on the pleadings arguing that the *Windham* Defendants' claims are barred by Connecticut's statutes of limitation and repose. The *Windham* Defendants counter that additional discovery is necessary before the Court can choose to apply Connecticut law, and before the Court can determine whether the statutes of limitation and repose have been tolled.

B. ***Windham*** **and** ***Laurinaitis*** **Procedural History**

The *Laurinaitis* action is one of six separate lawsuits against WWE filed on behalf of former professional wrestlers asserting claims that they have sustained traumatic brain injuries. The parties dispute the extent to which each of the lawsuits was "filed or caused to be filed" by Attorney Konstantine Kyros, though the verbose and inflammatory complaints in each of the first five cases are virtually identical. Five of these lawsuits were filed in different districts in an effort to avoid adjudication before this Court. The *Laurinitis* action was filed in this district but upon assignment to Judge Eginton, the *Laurinitis* Plaintiffs attempted to prevent the case from being transferred to this Court. All six cases were transferred to this

Court and consolidated to prevent courts in different districts, and judges within this district, from coming to disparate conclusions regarding common questions of law and fact, particularly in light of the fact that the lead case in this matter, which has now been dismissed, purported to be a class action. Common facts and issues include (1) the extent of WWE's knowledge about the consequences of repeated head injuries; and (2) the extent to which this knowledge was concealed from wrestlers.

The Court considered these questions in its March 21, 2016 decision on WWE's motions to dismiss the complaints of plaintiffs Russ McCullough, Ryan Sakoda, Matthew Robert Wiese, William Albert Haynes, III, Vito LoGrasso, and Evan Singleton. It held that the statutes 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 regarding 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. [Dkt. No. 116 at 25]. The Court further held that the plaintiffs had "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." [Dkt. No. 116 at 39]. The Court then dismissed the claims of McCullough, Sakoda, Wiese, and Haynes on the grounds that they did not allege that they wrestled for WWE on or after 2005. [Dkt. No. 116 at 68].

Concurrently, the *Windham* Defendants filed a motion to dismiss the instant 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.

The Court's March 21, 2016 decision also criticized the wrestlers' counsel Konstantine Kyros for filing "excessively lengthy" complaints that included "large numbers of paragraphs that offer content unrelated to the Plaintiffs' causes of action" and which "appear aimed at an audience other than this Court." [Dkt. No. 116 at 13]. This was not the first time that the Court admonished Kyros for his failure to comply with the pleading standard set forth in the Federal Rules of Civil Procedure, which requires "a short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 8(a)(2). For example, at a June 8, 2015 scheduling conference in the *Singleton* action, the Court told Kyros that the complaint was neither concise nor accurate, as it contained language copied from other lawsuits filed by other attorneys on behalf of athletes who played other sports, and that it included "superfluous, hyperbolic, inflammatory opinions and references to things that don't have any relevance," [Dkt. No. 263-2 at 60]. The Court further instructed Kyros to "read the federal rule, give it some close consideration, perhaps read some cases on the pleading standards" before filing an amended complaint. *Id.*

In spite of these instructions, Kyros has now filed a 335 page complaint with 805 paragraphs that includes numerous allegations that a reasonable attorney would know are inaccurate, irrelevant, or frivolous. *See, e.g.*, Dkt. No. 252 ¶¶ 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 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"), 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). Additionally, while the Complaint devotes one long paragraph to each plaintiff,

it does not specify which claims apply to which plaintiffs or how or why they do.

III. 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). Due to the related claims in the consolidated cases, and the fact that the same counsel was involved in the filing of each consolidated case, the allegations put forward in the consolidated cases, as well as information uncovered during discovery in those cases, is relevant to the Court's decision in the DJ action and on WWE's and McMahon's motions to dismiss.

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)).

IV. Discussion

A. DJ Choice of Law

The Court applies Connecticut procedural law for the reasons set forth in its decision on WWE's motion for reconsideration of the Court's order dismissing the *Windham* action. [*See* Dkt. No. 185 at 38-40].

In addition to the arguments addressed in that decision, the *Windham* Defendants maintain that "[i]t is impossible for the Court to make a substantive determination as a matter of law without knowing whether booking contracts exist for these named wrestlers, whether the purported contracts contain forum selection clauses or choice of law provisions, and whether WWE has engaged in any conduct that would toll the Connecticut statutes of limitation and repose were Connecticut law to apply." [Dkt. No. 217 at 8].

While WWE argues that any booking contracts that exist have Connecticut choice of law clauses, the choice of Connecticut procedural law does not depend on the existence of such clauses. "Connecticut courts consider

a statute of limitation to be procedural, and therefore, Connecticut federal courts apply Connecticut's statute of limitation to common law diversity actions commenced in Connecticut district court." *State Farm Fire & Cas. Co. v. Omega Flex, Inc.*, No. 14CV1456 (WWE), 2015 WL 6453084, at *2 (D. Conn. Oct. 21, 2015) (citing *Doe No. 1 v. Knights of Columbus*, 930 F. Supp. 2d 337, 353 (D. Conn. 2013)). The *Windham* Defendants cannot in good faith assert that any booking contracts relevant to this case would require that the procedural law of any state other than Connecticut should apply. They similarly offer no legal authority stating that the Court may not decide which state's procedural law should apply before contracts mentioned in a pleading are produced. Because in the absence of any contract, Connecticut procedural law applies, and because the *Windham* Defendants cannot deny that any contracts which do exist choose Connecticut law, the Connecticut statutes of limitation and repose must apply.

B. Applicability of Connecticut's Statutes of Limitation and Repose

Section 52-584 of the Connecticut General Statutes 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. "[T]he relevant date 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*, 290 Conn. 347, 354 (2009). Therefore, any action commenced more than three

years from the date of the negligent act or omission is barred by Section 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, Section 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. And, as with Section 52-584, operation of Section 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.*, 170 Conn. 289, 297 (1976). Thus, even if the *Windham* Defendants did not discover the actionable harm alleged until recently, their claims may still be barred by the operation of the statutes of repose.

Nonetheless, the Connecticut Supreme Court has recognized that Section 52-584 "may be tolled under the continuing course of conduct doctrine." *Neuhaus v. DeCholnoky*, 280 Conn. 190, 201 (2006). In addition, Conn. Gen. Stat. § 52-595 tolls any statute of limitations or repose, including Section 52-584 and Section 52-577, if a defendant fraudulently conceals a cause of action from a plaintiff. *See Connell v. Colwell*, 214 Conn. 242, 245 n.4 (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.").

The Connecticut statutes of repose may be tolled under the continuing course of conduct doctrine if 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 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).

This Court considered the applicability of Sections 584 and 577 as they applied to consolidated case plaintiffs Singleton, LoGrasso, McCullough, Haynes, Sakoda, and Wiese. The Court held:

> [T]he 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.

[Dkt. No. 116 at 42].

The Court also held that the statutes of repose could be tolled because of alleged fraudulent concealment

pursuant to Section 52-595, which provides that "[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). The Court held that the complaint alleged 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.

The Court ultimately dismissed all negligence claims to which either exception to the statutes of limitation or repose would apply, on the grounds that the WWE could only be held liable for reckless and intentional conduct, and not ordinary negligence. [Dkt. No. 116 at 53-54]. The Court also dismissed the negligent misrepresentation and fraudulent deceit claims on the grounds that the plaintiffs 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. [Dkt. No. 116 at 61]. As the *Windham* Defendants have not alleged facts to support a claim of reckless and intentional conduct or constituting false representations on which the *Windham* Defendants may have relied, the Court considers only whether the *Windham* Defendants' claims for fraudulent omission are time barred.

In the instant case, the *Windham* Defendants argue that they are not required to put forward facts sufficient to show that the statutes of repose should be tolled in their responsive pleading. Specifically, they argue that discovery is required before they can identify any of the WWE's fraudulent omissions and whether they occurred while the *Windham* Defendants were still performing for WWE. The *Windham* Defendants are incorrect. Pursuant to Rule 11, by filing the DJ answer, Attorney Kyros certified that to the best of his knowledge, information, and belief formed after a reasonable inquiry, the pleading was supported in facts known or facts *likely* to be discovered on further investigation.

A pleading cannot be filed without any factual support on vague hopes that discovery will possibly unearth helpful facts, and the 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.

By order entered nearly two years ago dated January 15, 2016, the Court lifted the discovery stay and directed the parties to conduct discovery on the questions of (1) whether WWE had or should have had knowledge of, and owed a duty to disclose the risks of, long-term degenerative neurological conditions resulting from concussions or mild traumatic brain injuries to wrestlers who performed for WWE in the year 2005 or later, (2) whether and when WWE may have breached that duty, and (3) whether such a breach, if any, continued after Singleton, who wrestled for WWE from 2012 to 2013, and LoGrasso, who retired in 2006, ceased performing for WWE. [Dkt. No. 107]. The Court also ordered the parties to file dispositive motions on the issue of liability by August 1, 2016. [Dkt. No. 107]. Thereafter, on March 21, 2016, the Court granted in part WWE's motion to dismiss explaining the legal standard for a continuing duty to warn, fraudulent concealment, fraud by omission, contact sports exception, negligent misrepresentation, and tolling the statutes of limitations and repose.

Notwithstanding having had the opportunity to conduct discovery on the issue of liability, and in particular if and when WWE became aware of a wrestler's risk of contracting CTE, having filed lengthy complaints asserting innumerable facts in the consolidate cases, and having the benefit of the court's explication on the applicable legal standards, the *Windham* Defendants have not moved to amend their DJ answer to assert facts sufficient to support a defense that the statutes of limitation and repose should be tolled. Nor have they stated with any specificity what additional discovery they need to do so. While discovery was limited to the period which post-dated the time the *Windham* Defendants ceased to wrestle for WWE, it is reasonable to conclude that if WWE did not know after 2005 that concussions or mild traumatic brain injuries sustained by wrestlers caused long-term degenerative neurological conditions, they would not have known it before 2005.[1] Indeed in a separate lawsuit asserting the same claims, summary judgment is fully briefed following completion of discovery, and the 56(a)(2) statement filed by plaintiffs' counsel is devoid of any admissible evidence that a particular agent of WWE knew before 2005 that wrestling could cause a long-term degenerative neurological condition.

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[1] While the *Laurinaitis* complaint appears to assert that WWE knew before 2005 of the risks of repeated head trauma, for the reasons discussed in Section V., *infra*, the Court defers judgment on whether such allegations are legally sufficient to permit the cases of wrestlers who retired before 2005 to proceed.

With respect to jurisdiction and venue, the Wrestlers are in possession of all of the information they would need to deny that they have not performed with WWE since 1999. They presumably have their contracts, tax statements and tax returns, and other records and documentation of their own activity. A party is not entitled to information from an opposing party if he already has it. *See* Fed. R. Civ. P. 26(b)(1) (limiting discovery to non-privileged, relevant, information that is "proportional to the needs of the case, considering . . . the parties' relative access to relevant information."); *Ramos v. Town of E. Hartford*, No. 3:16-CV-166 (VLB), 2016 WL 7340282, at *5 (D. Conn. Dec. 19, 2016) (denying a motion to compel where the discovery sought was "equally available to both parties."). The *Windham* Defendants have asserted no facts establishing that they are entitled to discovery from WWE on this issue.

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. However, in an abundance of deference to the *Windham* Defendants, the Court reserves judgment on the motion pending

submission of an amended answer consistent with this order.

C. *Laurinaitis* Complaint

Despite repeatedly requesting that plaintiffs' counsel exclude irrelevant allegations and ensure that each claim in each consolidated case had 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. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007) ("A document filed *pro se* is to be liberally construed," and "a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers."). While the *Laurinaitis* complaint is, mercifully, not a carbon copy of the complaint filed in the first five consolidated cases, it remains unnecessarily and extremely long, with an overwhelming number of irrelevant allegations. Parsing each of the *Laurinaitis* Plaintiffs' asserted claims to figure out exactly which claims might be legally and factually supportable would be both a waste of judicial resources. It would also be unduly prejudicial to the WWE and McMahon, because the precise contours of the *Laurinaitis* Plaintiffs' claims are so amorphous that the WWE and McMahon would be at a loss to determine how to defend against them.

V. Conclusion

In the interests of justice, fairness to WWE and McMahon, the efficient and effective management of

the Court's docket, in an abundance of deference to the *Windham* Defendants and *Laurinaitis* Plaintiffs in their heretofore unsuccessful efforts to file pleadings in conformity with the Federal Rules of Civil Procedure, and finally, to assure disposition of this case on the merits, it is hereby ordered that within 35 days of the date of this Order, the *Windham* Defendants and *Laurinaitis* Plaintiffs shall 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. Also within 35 days of the date of this Order, each of the *Windham* Defendants and *Laurinaitis* Plaintiffs shall submit for *in camera* review affidavits signed and sworn under penalty of perjury, setting forth facts within each plaintiff's or DJ defendant's personal knowledge that form the factual basis of their claim or 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.

The Court assumes that Attorney Kyros had a good faith belief that the allegations in the *Laurinaitis* complaint and *Windham* answer were true based on interviews with his clients, in which each revealed information about his or her relationship with WWE. Counsel should therefore have no difficulty producing these affidavits within 35 days.

If the *Windham* Defendants or *Laurinaitis* Plaintiffs fail to comply with the Court's order, as set

forth in the preceding paragraphs, and for the foregoing reasons: (1) WWE's Motion for Judgment on the Pleadings will be GRANTED, and declaratory judgment as to the fraudulent omission claim will be entered in favor of WWE; (2) the *Laurinaitis* complaint will be DISMISSED with prejudice pursuant to Federal Rule of Civil Procedure 41(b); and (3) pursuant to Rule 11(c)(3), the Court will *sua sponte* revisit whether to award attorney's fees as a sanction on the *Laurinaitis* Plaintiffs' counsel.

IT IS SO ORDERED.

_____/s/_____

Hon. Vanessa L. Bryant
United States District Judge

Dated at Hartford, Connecticut: September 29, 2017

APPENDIX D

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

[Filed September 27, 2018]

CIVIL NO. 3:15-cv-01074-VLB
LEAD CASE

RUSS MCCULLOUGH, RYAN SAKODA, and MATTHEW ROBERT WIESE, Individually and on behalf of all others similarly situated

v.

WORLD WRESTLING ENTERTAINMENT, INC.

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

WORLD WRESTLING ENTERTAINMENT, INC.

v.

ROBERT WINDHAM, THOMAS

BILLINGTON, JAMES WARE, OREAL PERRAS, and VARIOUS JOHN DOE'S

CIVIL NO. 3:15-cv-00425-VLB
CONSOLIDATED CASE

EVAN SINGLETON and VITO LOGRASSO,

v.

WORLD WRESTLING ENTERTAINMENT, INC.

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

JOSEPH M. LAURINAITIS, a/k/a Road Warrior Animal, CAROLE M. SNUKA on behalf of Estate of JAMES W. SNUKA, PAUL ORNDORFF, a/k/a Mr. Wonderful, SALAVADOR GUERRERO IV, a/k/a Chavo Guerrero, Jr., KELLI FUJIWARA SLOAN on behalf of estate of HARRY MASAYOSHI FUJIWARA, BRYAN EMMETT CLARK, JR., a/k/a Adam Bomb, ANTHONY NORRIS, a/k/a Ahmed Johnson, JAMES HARRIS, a/k/a Kamala, DAVE HEBNER, EARL HEBNER, CHRIS PALLIES, a/k/a King Kong Bundy, KEN PATERA, TERRY MICHAEL BRUNK, a/k/a Sabu, BARRY DARSOW, a/k/a Smash, BILL EADIE a/k/a Ax, JOHN

NORD, a/k/a The Bezerker, JONATHAN)
HUGGER a/k/a Johnny The Bull, JAMES)
BRUNZELL, a/k/a Jumpin' Jim, SUSAN)
GREEN, a/k/a Sue Green, ANGELO)
MOSCA, a/k/a King Kong Mosca, JAMES)
MANLEY, a/k/a Jim Powers, MICHAEL)
"MIKE" ENOS, a/k/a Blake Beverly,)
BRUCE "BUTCH" REED, a/k/a The)
Natural, CARLENE B. MOORE-)
BEGNAUD, a/k/a Jazz, SYLVAIN)
GRENIER, OMAR MIJARES a/k/a Omar)
Atlas, DON LEO HEATON, a/k/a Don Leo)
Jonathan, TROY MARTIN, a/k/a Shane)
Douglas, MARC COPANI, a/k/a)
Muhammad Hassan, MARK)
CANTERBURY, a/k/a Henry Godwin,)
VICTORIA OTIS, a/k/a Princess Victoria,)
JUDY HARDEE a/k/a Judy Martin, MARK)
JINDRAK, GAYLE SCHECTER on Behalf)
of Estate of JON RECHNER a.k.a Balls)
Mahoney, BARBARA MARIE LEYDIG &)
BERNARD KNIGHTON as)
co-representatives of Estate of Brian)
Knighton, a/k/a Axl Rotten, MARTY)
JANNETTY, JON HEIDENREICH, TERRY)
SZOPINSKI, a/k/a The Warlord, SIONE)
HAVEA VAILAHI, a/k/a The Barbarian,)
LARRY OLIVER, a/k/a The Crippler,)
BOBBI BILLARD, ASHLEY MASSARO,)
a/k/a Ashley, PERRY SATULLO a/k/a)
Perry Saturn, DAVID SILVA a/k/a)
Sylvano Sousa, JOHN JETER a/k/a)
Johnny Jeter, CHARLES BERNARD)
SCAGGS a.k.a Flash Funk, CHARLES)

WICKS a.k.a Chad Wicks, SHIRLEY FELLOWS on Behalf of Estate of TIMOTHY ALAN SMITH, a/k/a Rex King, TRACY SMOTHERS, a/k/a Freddie Joe Floyd, MICHAEL R HALAC, a/k/a Mantaur, RICK JONES, a/k/a Black Bart, KEN JOHNSON, a/k/a Slick, GEORGE GRAY, a/k/a One Man Gang, FERRIN JESSE BARR, a/k/a JJ Funk, LOU MARCONI, ROD PRICE, DONALD DRIGGERS, RODNEY BEGNAUD, a/k/a Rodney Mack, RONALD SCOTT HEARD on Behalf of Estate of RONALD HEARD, a/k/a Outlaw Ron Bass, and BORIS ZHUKOV	)
v.	)
WORLD WRESTLING ENTERTAINMENT, INC., and VINCENT K. MCMAHON, Individually and as Trustee of the Vincent K. McMahon Irrevocable Trust U/T/A dtd. June 24, 2004, as Trustee of the Vincent K. McMahon 2008 Irrevocable Trust U/T/A dtd. December 23, 2008, and as Special Trustee of the Vincent K. McMahon 2013 Irrev. Trust U/A dtd. December 5, 2013, and as Trustee of Certain Other Unnamed McMahon Family Trusts, and as Controlling Shareholder of WWE	)

JUDGMENT

This action having come before the Court on World Wrestling Entertainment, Inc.'s (WWE) motion for judgment on the pleadings (Dkt. #205), motion to dismiss the first amended complaint (Dkt. #266), defendant Vincent K. McMahon's motion to dismiss Counts II, XVIII, and XIX of plaintiffs' first amended complaint (Dkt. #269), and defendants' motion for sanctions (Dkt. #262) regarding the first amended complaint before the Honorable Vanessa L. Bryant, United States District Judge; and

The Court having previously dismissed plaintiffs Russ McCullough, Ryan Sakoda and Matthew Robert Wiese on March 21, 2016, and defendant Various John Doe's on March 22, 2016; and having granted defendant's motion for summary judgment on the pleadings as to Evan Singleton and Vito LoGrasso on March 28, 2018; and

The Court having considered the full record of the case including applicable principles of law and having issued a memorandum of decision on September 17, 2018, granting WWE's motion for judgment on the pleadings for declaratory judgment to enter as to James Ware and Thomas Billington; dismissing the action against Robert Windham and Oreal Perras without prejudice to reopening; granting defendants' motions to dismiss; and granting in part defendants' motion for sanctions to the extent it sought attorney's fees and costs; it is therefore

ORDERED, ADJUDGED and DECREED that declaratory judgment is entered in favor of World

Wrestling Entertainment, Inc. as to Ware and Billington; that judgment is entered for World Wrestling Entertainment, Inc. as to Evan Singleton and Vito LoGrasso; and judgment is entered for World Wrestling Entertainment, Inc. and Vincent K. McMahon as to Joseph M. Laurinaitis, Carole M. Snuka on behalf of Estate of James W. Snuka, Paul Orndorff, Salavador Guerrero IV, Kelli Fujiwara Sloan on behalf of Estate of Harry Masayoshi Fujiwara, Bryan Emmett Clark, Jr., Anthony Norris, James Harris, Dave Hebner, Earl Hebner, Chris Pallies, Ken Patera, Terry Michael Brunk, Barry Darsow, Bill Eadie, John Nord, Jonathan Hugger, James Brunzell, Susan Green, Angelo Mosca, James Manley, Michael "Mike" Enos, Bruce "Butch" Reed, Carlene B. Moore-Begnaud, Sylvain Grenier, Omar Mijares, Don Leo Heaton, Troy Martin, Marc Copani, Mark Canterbury, Victoria Otis, Judy Hardee, Mark Jindrak, Gayle Schecter on behalf of Estate of Jon Rechner, Barbara Marie Leydig & Bernard Knighton as co-representatives of Estate of Brian Knighton, Marty Jannetty, Jon Heidenreich, Terry Szopinski, Sione Havea Vailahi, Larry Oliver, Bobbi Billard, Ashley Massaro, Perry Satullo, David Silva, John Jeter, Charles Bernard Scaggs, Charles Wicks, Shirley Fellows on behalf of Estate of Timothy Alan Smith, Tracy Smothers, Michael R Halac, Rick Jones, Ken Johnson, George Gray, Ferrin Jesse Barr, Lou Marconi, Rod Price, Donald Driggers, Rodney Begnaud, Ronald Scott Heard on behalf of Estate of Ronald Heard, and Boris Zhukov.

Dated at Hartford, Connecticut, this 27th day of September, 2018.

ROBIN D. TABORA, Clerk

By /S/ Jeremy J. Shafer
Jeremy Shafer
Deputy Clerk

EOD: 09/27/2018

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

Docket Nos: 21-3127 (Lead)
21-3136 (XAP)

[Filed October 4, 2023]

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 4th day of October, two thousand twenty-three.

Kyros Law P.C., Konstantine W. Kyros, Appellants-Cross-Appellees,	)
Michelle James, as mother and next friend of M.O., a minor child, and T.O, a minor child, et al. Consolidated-Plaintiffs,	)
v.	)
World Wrestling Entertainment, Inc., Consolidated Plaintiff-Defendant-Appellee-Cross-Appellant,	)
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-Cross-Appellant,	)
Robert Windham, Thomas Billington, James Ware, Oreal Perras, John Does, various, Consolidated-Defendants.	)

ORDER

Appellants-Cross-Appellees, Kyros Law P.C. and Konstantine W. Kyros, 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
[SEAL]

APPENDIX F

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

[Filed July 22, 2018]

No. 3:15-cv-01074 (VLB)
Lead Case

RUSS MCCULLOUGH, et al.,
Plaintiffs,

v.

WORLD WRESTLING ENTERTAINMENT, INC.,
Defendant.

No. 3:15-cv-00425 (VLB)
Consolidated Case

EVAN SINGLETON and VITO LOGRASSO,
Plaintiffs,

v.

WORLD WRESTLING ENTERTAINMENT, INC.
Defendant.

MEMORANDUM OF DECISION ADOPTING RECOMMENDED RULING ON DEFENDANT'S MOTION FOR SANCTIONS [DKT. NO. 371]

I. Introduction

Now before the Court is the Objection of Plaintiffs Evan Singleton and Vito LoGrasso to the Recommended Ruling [Dkt. No. 371] on Defendant World Wrestling Entertainment's ("WWE's") Motion for Sanctions [Dkt. No. 198]. Magistrate Judge Robert A. Richardson heard oral argument on the sanctions motion on March 2, 2017, and on February 22, 2018 issued a recommendation that this motion be granted in part. [Dkt. No. 371 at 1, 17]. Shortly after Judge Richardson issued his recommendation, the Court granted WWE's Motion for Summary Judgment [Dkt. No. 330] and instructed the Clerk to terminate Singleton and LoGrasso as parties to this action. [*See* Dkt. No. 374 at 20]. Thus, Judge Richardson's recommendation that certain of Plaintiffs' interrogatory responses be stricken and that Plaintiffs provide an additional round of supplemental discovery responses is MOOT. However, Judge Richardson also recommended that Attorney Konstantine Kyros and his Law Offices pay all of the legal fees that WWE reasonably incurred in connection with its motion for sanctions. This issue remains in dispute.

II. Background

On January 27, 2016, WWE served Plaintiffs with interrogatories, to which Plaintiffs responded on March 7, 2016. [Dkt. No. 122-1 at 11]. The parties met and conferred regarding these interrogatories and

other discovery issues throughout March 2016. *Id.* at 11-14. The Court held a discovery conference with the parties on April 6, 2016, and authorized WWE to file a motion to compel. *Id.* at 14. WWE filed its motion to compel on April 20, 2016. [Dkt. No. 122]. The Court granted in part and denied in part WWE's motion, and ordered Plaintiffs to supplement several interrogatories. [Dkt. No. 144]. The Court specifically noted that "[w]here Plaintiff is unable to identify a statement or speaker in response to an interrogatory, Plaintiff must state that fact." *Id.* On August 8, 2016, WWE filed a motion for sanctions pursuant to Rule 37 of the Federal Rules of Civil Procedure, arguing that Plaintiffs failed to comply with the Court's order in its supplemental responses to six interrogatories. [Dkt. No. 198]. WWE sought dismissal with prejudice and the award of attorney's fees.

The Court referred the sanctions motion to Judge Richardson, who issued his recommendation on February 22, 2018. In his recommended ruling, Judge Richardson noted that Plaintiffs' responses to one interrogatory that the Court ordered Plaintiffs to supplement was essentially unchanged. [Dkt. No. 371 at 7]. Judge Richardson also stated that "[w]hen confronted with their own allegations taken from their own complaint, plaintiffs simply direct WWE to multiple documents and assert that the answer to the interrogatory is located somewhere within these documents, or the plaintiffs refer vaguely to a public statement without providing any specifics to WWE." *Id.* at 11. For example, in response to an interrogatory asking Plaintiffs to:

> Identify each and every 'deceptive public statement [ ] and published article [ ]' of or by WWE which You contend 'downplayed known long-term health risks of concussions to Plaintiff[s]', as alleged in ¶¶ 222 & 230 of the Second Amended Complaint,

[Dkt. No. 198-4 at 9], Plaintiffs referred WWE to

> 'Dr. Maroon's public statements regarding risks of concussions,' the entire book *Head Games* written by Chris Nowinski, and congressional testimony of Stephanie McMahon Levesque, which Judge Bryant had already admonished the Plaintiffs for mischaracterizing.

[Dkt. No. 371 at 10-11].

Judge Richardson rejected Plaintiffs' argument that directing WWE to previously supplied documents or to records in WWE's possession complied with Rule 33(d). He noted instead that "Rule 33 does not permit a party to avoid specific responses to interrogatories by reference to undifferentiated masses of documents," and that the Plaintiffs had an obligation to "point to specific statements in the supplied documents that are responsive to the specific inquiry." *Id.* at 13.

Judge Richardson was also troubled by Plaintiffs' decision to "steer WWE to random publications and documents with little specificity or guidance" when WWE sought information regarding Plaintiffs' specific allegation that WWE affirmatively stated that "WWE wrestlers with diagnosed brain trauma did not receive these injuries as a result of wrestling for WWE." *Id.* at 13 (citing Pl. Second Am. Compl. ¶¶ 178, 185). He

noted that after reviewing the briefing and hearing oral argument, Plaintiffs appeared "unable to find documentation to back up their assertion." [Dkt. No. 371 at 13]. They therefore should have stated that they were unable to identify a statement or speaker, as required by the Court's Order on WWE's Motion to Compel. *Id.* (referring to Dkt. No. 144).

In addition to recommending that Plaintiffs supplement these deficient interrogatory responses, Judge Richardson reminded the parties that "[t]he Court has admonished plaintiffs' counsel on several occasions but declined to impose sanctions after threatening to impose them" and stated that Plaintiffs' attorney Konstantine Kyros "has been on notice that plaintiffs need to comply with Court orders and the Federal Rules of Civil Procedure." [Dkt. No. 371 at 15]. Accordingly, while Judge Richardson held that the sanction of dismissal was unwarranted, monetary sanctions were required to "dissuade further abuse of the discovery process and promote thorough compliance with court orders moving forward." *Id.* at 15, 17.

Judge Richardson recommended that "Attorney Kyros and his Law Offices pay all of the legal fees that the defendant reasonably incurred in connection with this motion for sanctions." *Id.* at 17. Judge Richardson then instructed Attorney Kyros that the fees were to be paid by his firm and not by his client or subtracted from "any judgment rendered in this or future related litigation" and that plaintiffs' counsel must provide this recommended ruling and any subsequent ruling related to the motion for sanctions to their clients. *Id.* at 17-18. Finally, Judge Richardson stated 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.

Plaintiffs timely filed an objection to Judge Richardson's recommended ruling [Dkt. No. 372], to which WWE responded [Dkt. No. 373].

III. Legal Standard

A. Standard of Review

"When a pretrial matter not dispositive of a party's claim or defense is referred to a magistrate judge to hear and decide" the Court must review timely objections to the magistrate judge's recommendation on that nondispositive issue, and "modify or set aside any part of the order that is clearly erroneous or contrary to law." Fed. R. Civ. P. 72(a); *see also* 28 U.S.C. § 636(b)(1)(A); Local R. Civ. P. 72.2. "Monetary sanctions pursuant to Rule 37 for noncompliance with discovery orders usually are committed to the discretion of the magistrate, reviewable by the district court under the 'clearly erroneous or contrary to law' standard." *Thomas E. Hoar, Inc. v. Sara Lee Corp.*, 900 F.2d 522, 525 (2d Cir. 1990). The heightened "de novo" standard of review for dispositive claims is only applied to sanctions motions if the "sanction itself can be considered dispositive of a claim." *Weeks Stevedoring Co. v. Raymond Int'l Builders, Inc.*, 174 F.R.D. 301, 303-04 (S.D.N.Y. 1997). The parties agree that because Judge Richardson did not recommend dismissal of the case, and instead recommended imposing monetary sanctions, the Court must evaluate his findings and

recommendations using the standard set forth in Rule 72(a).

B. Rule 37 Sanctions

"[T]he text of the [Rule 37(b)(2)(A)] requires only that the district court's orders be 'just,' . . . and . . . the district court has 'wide discretion in imposing sanctions under Rule 37.'" *S. New England Tel. Co. v. Glob. NAPs Inc.*, 624 F.3d 123, 144 (2d Cir. 2010) (quoting Rule 37(b)(2)(A) and *Shcherbakovskiy v. Da Capo Al Fine, Ltd.*, 490 F.3d 130, 135 (2d Cir. 2007)). Additionally, Rule 37(b)(2)(C) requires the Court to order "the disobedient party, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure [to comply with the Court's discovery order], unless the failure was substantially justified or other circumstances make an award of expenses unjust." Fed. R. Civ. P. 37(b)(2)(C). The disobedient party bears the burden of proving that his failure was substantially justified or that it would be unjust for some other reason to impose compensatory monetary sanctions. Fed. R. Civ. P. 37(b)(2) advisory committee's note (1970).

IV. Discussion

Plaintiffs ask the Court to reject Judge Richardson's Recommended Ruling because: (1) the Court's discovery order improperly required Plaintiffs to specifically identify statements or speakers in their interrogatory responses; (2) Plaintiffs intend to further supplement their responses so no monetary sanction is required; and (3) Judge Richardson unfairly singled out Attorney

Kyros and his Law Offices for monetary sanctions. None of these arguments succeed in showing that Judge Richardson's ruling was clearly erroneous or contrary to law, or that Plaintiffs' failure to comply with the Court's discovery order was substantially justified or that the imposition of sanctions would be unjust.

Plaintiffs argue first that the Court's ruling on WWE's motion to compel and Judge Richardson's recommended ruling were "inherently prejudicial" and represented an "abuse of discretion" because they restricted permissible interrogatory responses to "specific people" or "specific statements," and a fraud by omission claim does not require such specificity. [Dkt. No. 372 at 4-5]. This argument is wholly without merit, because the interrogatories at issue called for specificity. When an interrogatory requests that the Plaintiffs identify "each and every 'deceptive public statement'" or that the Plaintiffs "identify in detail who at WWE specifically stated 'that WWE wrestlers with diagnosed brain trauma did not receive these injuries as a result of wrestling for WWE,'" the interrogatory requires the Plaintiffs to identify statements or speakers or to state that such information is unknown. Responding vaguely that an individual made public statements, without providing these statements, is both non-responsive, contrary to the essential purposes of discovery, and a violation of the Court's ruling on Defendants' motion to compel.

To the extent Plaintiffs take issue with the Court's instruction to state when a specific statement or speaker was unknown in its responses, the Court notes

that Judge Richardson was tasked with deciding whether Plaintiffs' supplemented interrogatory responses complied with the Court's order on WWE's motion to compel. It was not determining whether the initial discovery order was correct. If Plaintiffs believed that the Court erred when it instructed Plaintiffs to indicate when a specific speaker or statement was unknown, Plaintiffs' only recourse was to move for reconsideration pursuant to Federal Rule of Civil Procedure 60(b) within a reasonable time. *See* Fed. R. Civ. P. 60(b)-(c). Plaintiffs did not avail themselves of this option, and the Court cannot imagine circumstances under which a motion for reconsideration of the discovery order would have succeeded.

Plaintiffs argue second that they should not be sanctioned because they intend to supplement their interrogatory responses, and they suggest that this intention is a natural consequence of their "affirmative duty" to supplement. [Dkt. No. 372 at 6]. A party is required to supplement his discovery responses "(A) in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or (B) as ordered by the court." Fed. R. Civ. P. 26(e). Plaintiffs do not present a situation in which they uncovered new information and are voluntarily supplementing responses to apprise WWE of this information. Rather, the Court ordered Plaintiffs to supplement their patently deficient discovery responses, the resulting supplemental

responses were then judged deficient, and Judge Richardson recommended that the Court order further supplementation as a sanction for failure to comply with the original discovery order. Plaintiffs' intent to supplement is therefore irrelevant to the issue now before the Court: whether Judge Richardson clearly erred when he found that Plaintiffs violated the discovery order.

Attorney Kyros next takes issue with the sanction of attorney's fees. He argues that Judge Richardson's ruling "fails to explain the basis for the fine specifically imposed against Attorney Kyros and his Law Offices in this particular matter." [Dkt. No. 372 at 11]. To the contrary, Judge Richardson cited several examples in which the Court had previously chastised Attorney Kyros for failing to comply with the Court's orders and the Federal Rules of Civil Procedure. [*See* Dkt. No. 371 at 15-16 n.6]. Judge Richardson's determination that an additional warning would not be sufficient to deter future abuses was therefore not clearly erroneous.

Finally, Attorney Kyros suggests that a monetary sanction is inappropriate because Defendants failed to meet and confer before filing the motion for sanctions. While Rule 37(a) requires that the parties confer in good faith in attempt to resolve their discovery dispute prior to filing a motion to compel, Rule 37(b) contains no such requirement. This is undoubtedly because such negotiations will already have taken place prior to the filing of a motion to compel, and because a failure to comply with an order compelling discovery is not only a serious breach of an obligation to the opposing party; it is a serious breach of an obligation to the Court and

to the judicial process. The imposition of Rule 37(b) sanctions, despite the movant's failure to meet and confer before seeking sanctions, is therefore not contrary to law.

V. Conclusion

For the foregoing reasons, the Court ADOPTS the Recommended Ruling on Defendant's Motion for Sanctions [Dkt. No. 371], as Judge Richardson's conclusions are neither clearly erroneous nor contrary to law. This Order does not preclude Attorney Kyros and his Law Offices from seeking contribution from other appearing co-counsel.

IT IS SO ORDERED.

_____/s/_____

Hon. Vanessa L. Bryant
United States District Judge

Dated at Hartford, Connecticut: July 22, 2018

APPENDIX G

Statutory Provision Involved

28 U.S.C. § 2072 (b)

Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.