

# 18-3278-cv(L),

18-3322-cv(CON), 18-3325-cv(CON), 18-3326-cv(CON),  
18-3327-cv(CON), 18-3328-cv(CON), 18-3330-cv(CON)

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**United States Court of Appeals**  
*for the*  
**Second Circuit**

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WILLIAM ALBERT HAYNES, III, JOSEPH M. LAURINAITIS, AKA Road Warrior Animal, RUSS MCCULLOUGH, individually and on behalf of all others similarly situated, AKA Big Russ McCullough, RYAN SAKODA, individually and on behalf of all others similarly situated, MATTHEW ROBERT WIESE, individually and on behalf of all others similarly situated, AKA Luther Reigns, EVAN SINGLETON, VITO LOGRASSO, CASSANDRA FRAZIER, Individually and as next of kin to her deceased husband, NELSON LEE FRAZIER, JR. a/k/a Mabel a/k/a Viscera a/k/a Big Daddy V a/k/a King Mabel

*(For Continuation of Caption See Inside Cover)*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT (NEW HAVEN)

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**JOINT BRIEF AND SPECIAL APPENDIX FOR APPELLANTS**

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and as personal representative of The Estate of NELSON LEE FRAZIER, JR., Deceased, SHIRLEY FELLOWS, on behalf of Estate of TIMOTHY ALAN SMITH a/k/a Rex King, PAUL ORNDORFF, AKA Mr. Wonderful, CHRIS PALLIES, AKA King Kong Bundy, ANTHONY NORRIS, AKA Ahmed Johnson, JAMES HARRIS, AKA 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, AKA Warlord, SIONE HAVIA VAILAHI, AKA Barbarian, TERRY BRUNK, AKA Sabu, BARRY DARSOW, AKA Smash, BILL EADIE, AKA Ax, JOHN NORD, JONATHAN HUGGER, AKA Johnny the Bull, JAMES BRUNZELL, SUSAN GREEN, ANGELO MOSCA, AKA King Kong Mosca, JAMES MANLEY, AKA Jim Powers, MICHAEL ENOS, AKA Mike, AKA Blake Beverly, BRUCE REED, AKA Butch, SYLAIN GRENIER, OMAR MIJARES, AKA Omar Atlas, DON LEO HEATON, AKA Don Leo Jonathan, TROY MARTIN, AKA Shane Douglas, MARC COPANI, AKA Muhammad Hassan, MARK CANTERBURY, AKA Henry Godwin, VICTORIA OTIS, AKA Princess Victoria, JUDY HARDEE, JUDY MARTIN, TIMOTHY SMITH, AKA Rex King, TRACY SMOTHERS, AKA Freddie Joe Floyd, MICHAEL R. HALAC, AKA Mantaur, RICK JONES, AKA Black Bart, KEN JOHNSON, AKA Slick, GEORGE GRAY, AKA One Man Gang, FERRIN JESSE BARR, AKA J.J. Funk, ROD PRICE, DONALD DRIGGERS, RODNEY BEGNAUD AKA Rodney Mack, RONALD SCOTT HEARD, on behalf of Estate of RONALD HEARD also known as Outlaw Ron Bass, BORIS ZHUKOV, DAVID SILVA, JOHN JETER, AKA Johnny Jeter, GAYLE SCHECTER, as Personal Representative of Estate JON RECHNER a.k.a. Balls Mahoney, ASHLEY MASSARO, AKA Ashley, CHARLES WICKS, AKA Chad Wicks, PERRY SATULLO, AKA Perry Saturn, CHARLES BERNARD SCAGGS, AKA Flash Funk, CAROLE M. SNUKA, on behalf of Estate of JAMES W. SNUKA,

*Consolidated Plaintiffs-Appellants,*

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*Appellants,*

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*Consolidated-Plaintiffs,*

– v. –

WORLD WRESTLING ENTERTAINMENT, INCORPORATED,

*Consolidated Plaintiff-Defendant-Appellee,*

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

*Consolidated Defendant-Appellee,*

ROBERT WINDHAM, THOMAS BILLINGTON, JAMES WARE, OREAL PERRAS, JOHN DOE'S, VARIOUS,

*Consolidated-Defendants.*

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## I. INTRODUCTION

This Appeal involves claims by former wrestlers against World Wrestling Entertainment, Inc. and its Chairman, Vincent K. McMahon's (together, "WWE") related to latent occupational diseases from injuries they sustained as professional wrestlers working for WWE including Chronic Traumatic Encephalopathy, "CTE."

Six deceased wrestlers in the case have been diagnosed with CTE during the pendency of this litigation.

A central issue is whether the wrestlers can avail themselves of tolling for these conditions under Connecticut law, get adequate discovery to show WWE's ongoing concealment and bring their cases to a Jury.

Although WWE has repeatedly sought to escape on its continuing duty to its wrestlers, they argue the company does owe a duty to them to inform them of the specific dangers and risks of these long-term neurological injuries.

The WWE is alleged to have misclassified and used unconscionable contracts to maintain exploitative business practices over these wrestlers. WWE's special relationship with these wrestlers allowed the WWE to operate an unregulated workplace without health insurance, workers' compensation, and workplace protections. The wrestlers seek compensation and remedies for these injustices.

## II. JURISDICTIONAL STATEMENT

Plaintiffs-Appellants William Albert Haynes, III (18-3278) (lead appellate case) (“*Haynes*”), Russ McCullough, Ryan Sakoda, and Matthew Robert Weise, Individually and on behalf of all Others similarly situated (18-3322) (“*McCullough*”), Casandra Frazier (18-3325) (“*Frazier*”), and Joseph M. Laurinaitis et al. (18-3330) (“*Laurinaitis*”) appeal from the judgments dismissing their claims (18-3327) and granting sanctions (18-3330). Evan Singleton and Vito Lograsso (“*Singleton Lograsso*”) appeal from the granting of summary judgment (18-3328) and discovery sanctions (18-3326). Konstantine and Kyros Law appeal from the granting of Rule 11 and Rule 37 Sanctions (18-3330, 19-3326). (Timely Notices of Appeal were filed on October 26, 2018. The District Court had jurisdiction pursuant to 28 U.S.C. § 1332. This Court has jurisdiction under 28 U.S.C. § 1291.

### III. STATEMENT OF ISSUES PRESENTED FOR REVIEW

#### *LAURINAITIS*

1. Whether the District Court improperly disregarded the Wrestlers' allegations of the Continuing Course of Conduct Doctrine when denying its applicability to the Wrestlers' tolling allegations.
2. Whether WWE Committed An Initial Wrong Upon The Wrestlers By Failing to Notify Them Of The Risks Associated With WWE Performances While Under The Duty To Do So.
3. Whether the District Court improperly interpreted WWE's Continuing Duty to the Wrestlers.
4. Whether the District Court improperly disregarded the Wrestlers' allegations of fraudulent concealment when denying the Wrestlers' tolling allegations.
5. Whether the District Court improperly used limited discovery in the *Singleton Lograsso* case which had different facts, different parties, and different allegations, to deny the Wrestlers' tolling allegations.
6. Whether the District Court improperly weighed material factual allegations in the Wrestlers' Second Amended Complaint when deciding WWE's 12(b)(1) Motion to Dismiss.
7. Whether the District Court's reliance on the unpublished decision in *Levy v. World Wrestling Entertainment, Inc.* Civil Action No. 3:08-01289 (PCD) 2009 when deciding to hold the Wrestlers' Misclassification claims arose "at the inception" of the booking contracts and are therefore time-barred was unfounded.
8. Whether the District Court's dismissal of RICO claims was proper by relying on its predication to the Misclassification claims.
9. Whether the District Court improperly held *Laurinaitis'* Unconscionable Contracts Count as frivolous.
10. Whether the District Court's improperly dismissed the Wrestlers' FMLA claims by ignoring equitable estoppel and its own Statute of Limitations.

11. Whether the District Court abused its discretion by granting Rule 11 Sanctions against Attorney Kyros, personally, and his Law Offices, where the District Court made improper findings of fact, weighed evidence, and assessed credibility prior to discovery and under a Motion to Dismiss standard.
12. Whether Attorney Kyros was denied due process and whether the District Court's repeated and routine disparaging remarks and reprimands of Attorney Kyros is "inordinately injurious to [his] reputation" and warrant striking and/or overturning given its use in sanctioning Attorney Kyros, an appealable issue.
13. Whether the District Court erred by applying Section 52-555's Statutes of Limitations to the *Laurinaitis* Wrongful Death and Survival Claims.

*FRAZIER*

14. Whether the District Court improperly dismissed *Frazier* for failing to establish causal relationship between WWE's failure to treat and inform Frazier and Frazier's death.

*SINGLETON LOGRASSO*

15. Whether *Singleton Lograsso's* Claims Evidence Sufficient Disputed Facts Warranting A Jury Trial Considering The Specific Procedural History In This Case and the Consolidated Action.
16. Whether the District Court abused its discretion adopting the Recommended Ruling granting discovery sanctions pursuant to Rule 37 where the sanctions had been explicitly intended to "dissuade further" discovery conduct and the *Singleton Lograsso* case (the only case with discovery) had been dismissed three months prior.

*HAYNES and MCCULLOUGH*

17. Whether the *Haynes* and *McCullough* Allegations Pled Fraud With Sufficient Particularity Under Rule 9(b) and 12(b)(6).
18. Whether the *McCullough* and *Haynes* Rule 23 Classes Were Improperly Dismissed Without Sufficient Findings.

#### IV. STATEMENT OF THE CASE

This appeal is the result of five cases brought by former WWE wrestlers against WWE and, in *Laurinaitis*, its Chairman Vincent K. McMahon. The wrestlers allege unlawful dangerous working conditions resulting in latent neurological injuries and death. Two sanctions Orders against the wrestlers' Counsel, a Rule 11 and a Rule 37, are also appealed.

On October 23, 2014, William Haynes brought the first case seeking Rule 23 class relief. On January 16, 2015, a second class action was filed for two wrestlers, Evan Singleton and Vito Lograsso. A wrongful death case for Nelson Frazier was filed February 18, 2015. A third class action with Russ McCullough, Ryan Sakoda, and Matthew Weise was filed in California on April 9, 2015. The four cases appealed were consolidated under the *McCullough* caption, 3:15-cv-01074-VLB in the District of Connecticut under the Honorable Judge Vanessa L. Bryant after a series of procedural transfers.

On March 21, 2016, Judge Bryant dismissed the *Haynes* and *McCullough* class cases. In the same Order, *Singleton Lograsso* proceeded as individual cases and only as to the Fraudulent Omission claims pertaining to the long-term risks of neurological injuries from 2005 and beyond. The *Haynes* and *McCullough* cases were timely appealed on April 20, 2016 to this Court, the appeals were stayed on

October 20, 2016 pending the outcome of the remaining consolidated cases below. A-59, entry 238.

The *Singleton Lograsso* case was dismissed upon Summary Judgment on March 28, 2018. A-70, entry 374. On July 22, 2018, SPA-181, Judge Bryant adopted part of the recommended ruling on Rule 37 sanctions, singling out only Attorney Kyros to pay WWE's legal fees (WWE has asked for \$175,486.74. A-72, entry 378.

The fifth case, *Laurinaitis*, was filed with 53 wrestlers on July 19, 2016 and consolidated on October 3, 2016. It added Vincent K. McMahon as a Defendant and made allegations in sixteen Counts which, in addition to the risks of head injuries, added workplace violations, unconscionable contract claims, and employment misclassification. The First Amended Complaint filed November 9, 2016 (A-60, entry 252), brought the total to 60 wrestlers. On November 10, 2016, the District Court dismissed the *Frazier* and *James* wrongful death cases. A-60, entry 253.

The *Laurinaitis* case triggered the filing of two Motions for Sanctions by WWE, one on October 17, 2016 (A-58, entry 228), and one on December 23, 2016 against the FAC (A-60, entry 262). The Motions were not served on Counsel prior to filing. See the Opposition A-60, entry 261 and A-64, entry 306. A hearing was held on WWE's first Motion for Sanction on March 2, 2018 (A-64, entry 295)

before Magistrate Judge Richardson. No ruling or findings were made as a result of the hearing.

A status conference was held on January 24, 2017 and the District Court ruled, “that the Stay of Discovery in the consolidated cases is not applicable to the *Laurinaitis* action. A-63, entry 283. On February 1, 2017, WWE again moved to stay discovery. A-63, entry 291, which the Wrestlers opposed. A-63, entry 292. The District Court did not act on the Motion until September 29, 2017. SPA-120, p. 16, stating “discovery would be wasteful and unnecessary”.

On May 9, 2018 (A-68, entry 348), the District Court ordered settlement talks, which took place on August 28, 2018. Surprisingly, the case did not settle.

On September 29, 2017 (SPA-120, pp. 20-22), the District Court set forth a series of instructions to Counsel after holding sanctions and WWE’s Motion to Dismiss the FAC in abeyance. The District Court, *inter alia*, ordered the Wrestlers’ Counsel to file a Second Amended Complaint (“SAC”) and obtain 64 Affidavits from the Wrestlers within 35-days. Counsel complied with the Order and filed the required Affidavits *in camera* and filed the SAC (A-1410) on November 3, 2017, which is the operative document for the *Laurinaitis* appeal.

On September 17, 2018 (SPA-191), the District Court dismissed the 60 Wrestlers’ claims in the *Laurinaitis* case and sanctioned Attorney Kyros, ordering him to pay some of WWE’s legal fees (WWE seeks \$357,439.70 (A-72, entry

386)) and to mail SPA-191, p. 38 to any future Wrestler-clients in order to “protect the public”.

On October 26, 2018, the *Haynes, McCullough, Singleton Lograsso, Frazier, and Laurinaitis* Wrestlers, and Attorney Konstantine Kyros and his Law Offices filed timely Notices of Appeal (A-1686, A-1684, A-1689, A-1694, A-1701).

## V. STATEMENT OF FACTS

### *LAURINAITIS*

The 60 *Laurinaitis* Plaintiffs allege WWE misclassified their employment status using unconscionable booking contracts. They allege WWE owed a special duty to them because of its unique position in the wrestling industry which fostered reliance on WWE's expertise for information and medical care including that of latent diseases related to occupational head trauma. WWE's ongoing failure to address the health issues in the wrestlers is evidenced in six of the Named Plaintiffs' diagnoses of CTE.

### *FRAZIER*

Plaintiff-Appellant Cassandra Frazier is the widow of deceased former WWE Wrestler Nelson Lee Frazier, ("*Frazier*"). Nelson Frazier weighed nearly 400 pounds and died on February 18, 2014 at the age of 43 from a heart attack from severe complications from his years performing for WWE. She alleges WWE promoted an unsafe workplace by scripting dangerous moves Frazier performed repeatedly despite WWE knowing the dangers. As a result of years of WWE wrestling, Frazier suffered long-term injuries that resulted in health complications which led to his death.

*SINGLETON LOGRASSO*

Evan Singleton (“Singleton”) started wrestling for WWE in his early 20s in 2012 to 2013 in WWE Developmental. After insufficient training, he was injured in a match, sustaining a brain injury. He now suffers life-long injuries from his WWE tenure.

Vito Lograsso wrestled for WWE in the 1990s, 2005-2007. During his WWE activities he suffered routine symptoms attributable to head trauma. He was treated by WWE staff such as Dr. Rios. He never knew his injuries suffered in-ring could lead to long-term neurological damage until he was diagnosed shortly before he brought his claims.

*MCCULLOUGH AND HAYNES*

William Albert Haynes III (“Billy Jack Haynes”) wrestled for WWE hundreds of times 1986 to 1988, alleges untreated head injuries, coercive unregulated workplace and detailed injuries in Wrestlemania III, and alleges symptoms of dementia A-103-104 ¶ 122-131, Haynes sought to represent a class of former wrestlers who were at risk for long term diseases from their wrestling careers. A-105 ¶ 132-138.

Russ McCullough (“McCullough”), Ryan Sakoda (“Sakoda”) and Matthew Wiese (“Wiese”) sought to represent a class of wrestlers in California. A-221 ¶ 113-119 McCullough wrestled 1999-2001, Sakoda 2003-2004 and Wiese 2004-2005.

A-194 ¶ 13-15. McCullough alleges being knocked unconscious in WWE and numerous matches with head injuries, has symptoms and treatments related to his WWE career. A-218 ¶ 99-103 Sakoda alleges being knocked unconscious in a WWE event and provided with medically unsound advice by WWE staff. He alleges ongoing symptoms. A-219 ¶106, 108 Wiese states he was punched and vomited in a WWE event, WWE medical staff did not treat him and he has symptoms and long term issues. A-220 ¶ 110-112.

## VI. SUMMARY OF ARGUMENT

WWE has concealed the risks of repetitive head trauma in its performances for decades despite its increasing knowledge of these latent injuries. The Wrestlers allege they have been harmed. Many have diagnosed diseases or are at risk for neurological harm as a result of WWE's actions and inactions.

The WWE engaged in unlawful and exploitative conduct by misclassifying its Wrestlers as independent contractors depriving them of regulatory oversight that could have put them on notice of their injuries and protected them from compounding damage but for WWE's unconscionable booking contracts. The Wrestlers had no workers' compensation, no OSHA, FMLA, or ERISA protections, received no health insurance, and no retirement income. As a result, this is the Wrestlers' only opportunity for justice.

## VII. ARGUMENT

A. *Laurinaitis* Stated Valid Claims for Fraudulent Concealment and the Continuing Course of Conduct Doctrine Sufficient to Toll the Statutes of Limitations and Repose for Their Causes of Action

1. *Laurinaitis*' Continuing Course of Conduct and Fraudulent Concealment Allegations Sufficiently Toll Connecticut Statutes of Limitations and Repose Such That Each of the Causes of Action Should Be Remanded For Further Proceedings.

This Court reviews *de novo* the District Court's determinations on the Continuing Course of Conduct doctrine. *See Kidder v. Read*, 93 A.3d 599, 602-03 (Conn. App. Ct. 2014), *quoting Community Action for Greater Middlesex County, Inc. v. American Alliance Ins. Co.*, 254 Conn. 387, 396, 757 A.2d 1074 (2000) (reviewing the record before the trial court *de novo*).

Although normally this Court would review the District Court's findings regarding equitable tolling for abuse of discretion, it is alleged the District Court did not base its decision on findings of fact that were supported by the evidence and did not apply the correct legal standards, and so this also must be reviewed *de novo*. *Cf. Thomas v. New York City Dep't of Educ.*, 698 Fed. Appx. 38 (2d Cir. 2017). "Generally, the applicability of equitable tolling depends on matters outside the pleadings, so it is rarely appropriate to grant a Rule 12-b-6 motion to dismiss...if equitable tolling is at issue" *Reiser v. Residential Funding Corp.* 380

F.3d 1027, 1030 (7<sup>th</sup> Cir. 2004). See e.g., Darowski v. Wojewoda, #3:15-cv-00803 (MPS), 2016 WL 4179840 at 12.

- a. Whether the District Court improperly disregarded the Wrestlers' allegations of the Continuing Course of Conduct Doctrine when denying its applicability to the Wrestlers' tolling allegations

The Connecticut Supreme Court recently clarified the role of the continuing course of conduct doctrine. See *Angersola v. Radiologic Assocs. of Middletown, P.C.*, 193 A.3d 520 (Conn. 2018). “The continuing course of conduct doctrine delays the accrual of an action by “aggregate[ing] a series of actions by a tortfeasor for purposes of the limitations period, viewing the series of acts as an indivisible whole for that limited purpose.” *Id.*, at 532. The Wrestlers alleged WWE was aware of the Wrestlers' neurological injuries and as a result had a duty to warn the Wrestlers of these injuries. *Id.*, at 536 (noting the continuing course of conduct doctrine “focuses on the defendant's duty to the plaintiff arising from his knowledge of the plaintiff's condition”). Simply put, had WWE “reason to know that the [Wrestlers] require[ed] ongoing treatment or monitoring for a particular condition, then [WWE] may have had a continuing duty to warn the [Wrestlers] or to monitor the condition, and the continuing breach of that duty tolls the statutes of limitations, regardless of whether the [Wrestlers] had knowledge of any reason to seek further treatment”. *Id.*

The Wrestlers' case is of the type described in *Conboy v. State*, 974 A.2d 669 (Conn. 2009), as well as *Angersola* because “the question of jurisdiction [is] so intertwined with the merits of the case ... [that] a court cannot resolve the jurisdictional question without a hearing to evaluate those merits”. *Angersola*, at 536, quoting *Conboy v. State*, at 653.

Whether the continuing course of conduct doctrine applies to the Wrestlers turns on the disputed factual contention that WWE owed a continuing duty to the Wrestlers. When a “jurisdictional determination is dependent on the resolution of a critical factual dispute, it cannot be decided on a motion to dismiss in the absence of an evidentiary hearing to establish jurisdictional facts”. *Angersola v. Radiologic Assocs. of Middletown, P.C.*, 193 A.3d 520, 535 (Conn. 2018), quoting *Schaghticoke Tribal Nation v. Harrison*, 264 Conn. 829, 833, 826 A.2d 1102 (2003) (quoting *Gordon v. H.N.S. Management Co.*, 272 Conn. 81, 92, 861 A.2d 1160 (2004) ([w]hen issues of fact are necessary to the determination of a court's jurisdiction ... due process requires that trial-like hearing be held, in which an opportunity is provided to present evidence and to cross-examine adverse witnesses ...).

Against established Connecticut precedent in *Conboy*, the District Court stayed discovery against the Wrestlers' Opposition, thereby preventing them from producing evidence in support of the continuing course of conduct doctrine and

fraudulent concealment claims. *See Angersola*, at 534 (noting that evidentiary discovery was preserved where discovery prior to a ruling on the defendant's motion to dismiss was refused).

Since discovery was stayed and no discovery transpired, the Wrestlers were unable to properly evidence their allegations. "An evidentiary hearing is necessary because a court cannot make a critical factual [jurisdictional] finding [on the basis of] memoranda and documents submitted by the parties." *Angersola*, at 535. The District Court should have postponed resolution of the jurisdictional question until after discovery or held discovery on these limited issues. *Id.* Instead, the District Court improperly dismissed the Wrestlers' claims for failure to properly allege the continuing course of conduct doctrine. Therefore, the Wrestlers' claims must be remanded for further proceedings.

Nevertheless, the Wrestlers did properly allege sufficient facts establishing the continuing course of conduct doctrine in their SAC. *See Angersola*, at 533 (applying affirmatively the continuing course of conduct doctrine and specifically holding that a claim does not arise until the tortious conduct ceases, to statutorily created causes of action, including wrongful death).

Although the District outlined the three part test to determine whether the Connecticut statutes of repose may be tolled under the continuing course of conduct doctrine, the District Court only analyzed test two, or whether WWE

“owed a continuity to the [Wrestlers] that was related to the original wrong”. SPA-219, *quoting Witt v. St. Vincent’s Med. Ctr.*, 252 Conn. 363, 370 (2000) (noting the three part test, including (1) an initial wrong; (2) a continuing duty relating to that initial wrong; and, (3) a continuing breach of that duty). Additionally, it is unclear which facts were considered since only four specifics were provided. SPA-220-221 (considering certain facts cited as insufficient grounds to establish a continuing duty); *c.f.* SAC (providing 225 pages worth of allegations).

Since this Court reviews the Wrestlers’ tolling allegations *de novo*, “the precise legal analysis undertaken by the trial court is not essential to the reviewing court’s consideration of the issue on appeal”. *See Kidder v. Read*, 93 A.3d 599, 602-03 (Conn. App. Ct. 2014), *quoting Community Action for Greater Middlesex County, Inc. v. American Alliance Ins. Co.*, 254 Conn. 387, 396, 757 A.2d 1074 (2000) (reviewing the record before the trial court *de novo*).

b. Whether WWE Committed An Initial Wrong Upon The Wrestlers By Failing to Notify Them Of The Risks Associated With WWE Performances While Under The Duty To Do So.

The Wrestlers demonstrated “justifiable trust confided on one side and a resulting superiority and influence on the other” such that a special relationship existed and through it a “unique degree of trust and confidence between the parties, superior knowledge, skill or expertise, and ... a duty to represent the interests of the other”. *See Witt v. St. Vincent’s Med. Ctr.*, 252 Conn. 363, 370 (2000). There

are two parts to this relationship, one existing during the Wrestlers employment with WWE and one existing after the Wrestlers retired. *See Witt*, at (discussing relationship at time of injury compared to after).

During the Wrestlers' careers, WWE owed a duty to the Wrestlers to inform the risks of head trauma sustained in matches. This duty arises from WWE's superior knowledge; WWE's power over the Wrestlers throughout employment; and WWE's self-assumed role to represent the interests of the Wrestlers.

WWE "knew that the risks of brain injury could be reduced by implementing specific changes to its performances." A-1512, ¶ 235 (articulating WWE's responsibility to test monitor, consult neurologists, and implement effect policies to prevent concussive injuries). The pointed historiographical list of publications and general acceptance among professional and contact sports of the connection between head trauma and the symptoms alleged in the SAC demonstrate unique knowledge among select groups of which WWE was one. *See* SAC A-1497-1501, ¶¶ 164-181. When WWE was founded in 1963, the known science on head trauma in contact sports had already "discovered the link between head trauma, concussions, and long-term injuries ...in professional contact sports athletes". SAC A-1501, ¶ 182. WWE promoted boxing (1970s-2000s) and football (2001) with literature documenting risks of neurological injuries. SAC A-1502-1504, ¶¶ 191-202.

WWE cannot claim it had no knowledge of the association between head trauma and long-term injuries because of facts stated in the SAC. In 1981 a WWE interviewer discusses “punch drunk.” SAC A-1505, ¶ 203.i. Detailed several examples of WWE’s use of head trauma to produce programs from head injuries. SAC A-1505, ¶¶ 203 (including fetishizing wrestlers with unconsciousness, amnesia, and concussions).

By 1995, WWE conclusively admits knowledge of the relationship between head trauma and long-term neurological injuries during another televised event where WWE’s physician describes the dangers of post-concussion syndrome. *See* SAC A-1507-1508, ¶¶ 205-215. Dr. Jeffery Unger specifically explains to WWE’s viewers:

As a result of the head trauma, about half of these patients develop a syndrome which includes problems such as... nausea, vomiting, headache, blurred vision... and this becomes a problem ... they get depressed as well... And all this persists for between two weeks to several months. However, there’s a group of patients .... have very poor prognosis, and they don’t seem to get better at all.

SAC A-1507, ¶ 210.

This WWE drafted script specifically links the injuries between those suffered in boxing and football to those same injuries suffered in professional wrestling. SAC A-1508, ¶ 211

The importance of the expressed link in 1995 cannot be overstated because the Court improperly found WWE lacked any actual knowledge until 2007 by

ignoring the Wrestlers' pled facts and taking WWE's allegations as true. The SAC detailed numerous concussions during WWE performances. *See, e.g.*, SAC 1508-1510 ¶¶ 216-221 (examplifying only a few of the countless instances described throughout the SAC); SAC A-1510-1511, ¶¶ 222-232 (displayed symptoms); SAC A-1514-1515, ¶¶ 242-243 (recorded injuries because injured wrestlers could not perform and storylines had to be altered) (*but note* no discovery was permitted so the Wrestlers cannot verify the continued existence of any Injury Report) (*see* SPA-138 "discovery would be wasteful and unnecessary").

WWE saw every hit the Wrestlers sustained: "The result was WWE directly witnessed every single time the Plaintiffs suffered blows, displayed direct evidence of head trauma, suffered concussions, and lost consciousness." SAC A-1515, ¶ 246. Since the "Plaintiffs typically sustained hundreds of sub-concussive blows to their heads...", SAC A-1513, ¶¶ 237 and 239 (detailing cracked vertebrae from a chair shot to the head) The Wrestlers allege each performance resulted in risks of long-term neurological injuries, while they remained unaware of any risks, WWE was aware of these risks and reported their symptoms. SAC A-1514, ¶¶ 240-241. SAC A-1426-1486 ¶¶ 38-108.vi. Provides painstaking detail for each Named Wrestler. These sections describe the relationship that each of the Wrestlers maintained with WWE and complete reliance on WWE— whether for a safe work environment, medical treatment, or just a guaranteed paycheck. *Id.*

Although the District Court skipped the Initial Wrong test, the Wrestlers sufficiently pled WWE's superior knowledge and control over them such that when they suffered injuries during performances, WWE owed a duty to inform them of the risks of injuries and to treat them appropriately. *See* SAC A-1610, ¶¶ 609 (diminished intellectual capacity); ¶ 640 (repetitive head injuries ... increased the Wrestlers' risks of developing ...diseases including CTE); ¶ 642 (WWE knew... dangers exposing all WWE wrestlers to repetitive head impacts); ¶ 643 (require specialized testing); ¶ 644 (available monitoring .. for individuals exposed to repetitive head trauma).

WWE committed numerous "initial wrongs" against the Wrestlers when it failed in its duty by not informing the Wrestlers of the risks of their matches and by not treating the Wrestlers' injuries according to accepted medical practice. SAC A-1526, ¶¶ 307.

- c. Whether the District Court improperly interpreted WWE's Continuing Duty to the Wrestlers.

The Wrestlers allege both a continuing special relationship and subsequent wrongful acts related to WWE's failure to inform the Wrestlers' of the risks attributable to WWE performances. *See Witt v. St. Vincent's Medical Center*, 252 Conn. 363, 371 (Conn. 2000) (identifying either a continuing special relationship or a subsequent wrongful act necessary to whether the defendant owed the plaintiff

“a duty that remained in existence after commission of the original wrong related thereto”) (*quoting Blanchette v. Barrett*, 229 Conn. 275 (1994)).

i. WWE’s Special Relationship With The Wrestlers.

WWE was in a unique position of authority and knowledge that requires it inform its Wrestlers of the latent injuries they sustained future risks of diseases resulting from those injuries. *See Handler v. Remington Arms Co.*, 144 Conn. 316 (Conn. 1957) (holding the defendant owed a continuing duty because, despite knowing an ammunition cartridge, if defective, would be an inherently dangerous article and a source of unreasonable risk of injury, permitted it to be available for future use without indicating the danger to which the user would expose himself). WWE’s knowledge and interactions with its Wrestlers rose to the level of a “special relationship” that was affirmatively alleged in the SAC through demonstrations of the overwhelming reliance on WWE’s treatment of injuries suffered during WWE performances see SAC A-1597-98, ¶ 560.

The Wrestlers were not in a position to know or understand their injuries during or after WWE. SAC A-1525-26, ¶ 302-304. The Wrestlers left WWE with no understanding of the latent, degenerative diseases they suffered and were at risk of. The Wrestlers’ lack of insurance and unawareness of their injuries prevented

them from discovering their causes of action within the limitations period, directly attributable to WWE's fraudulent nondisclosure and concealment.

After retirement, "WWE maintained a close relationship with the majority of the Plaintiffs. The Plaintiffs relied on WWE and often called their Talent helpline if they were in need of assistance.... Many overcome by depression, resorted to substance abuse." SAC A-1520-21, ¶ 270. The community events that the District Court improperly downplays were repeated, specific interactions with WWE that put WWE on routine notice of the worsening conditions of its former performers. *See* SAC A-1521, ¶ 272 (describing interactive WWE events).

The Court improperly weighed the pled facts in the SAC against the Wrestlers in order to find no continuing duty. The Wrestlers properly alleged a continuing duty and the Wrestlers' claims should be remanded for further proceedings accordingly.

ii. WWE's Subsequent Wrongful Acts.

Additionally, WWE's continuing failure to inform the Wrestlers of the risks associated with WWE performances so that the Wrestlers could receive necessary medical monitoring and treatment is a subsequent wrongful act sufficient to toll the statutes of repose and limitations as well. *See Witt v. St. Vincent's Medical Center*, 252 Conn. 363, 370 (Conn. 2000) (holding "[i]n determining whether the continuing course of conduct doctrine applies to toll the repose section of the

statute of limitations... that continuing wrongful conduct may include acts of omission as well as affirmative acts of misconduct”). WWE omitted all necessary warnings and information that could have prevented or reduced the risks of long-term neurological injuries.

WWE has not informed them of the risks attributable to their performances and still denies those risks in these lawsuits, A-67 Entry 332 at 27 “The State of CTE Science is Not A Known Fact,” that any injuries the Wrestlers suffer from are related to their employment with WWE. *See Handler v. Remington Arms Co.*, 144 Conn. 316 (Conn. 1957), *citing Vilcinskis v. Sears, Roebuck Co.*, 144 Conn. 170 (Conn. 1956) (noting when the wrong sued upon consists of a continuing course of conduct, the statute does not begin to run until that course of conduct is completed); *see also Cook v. Frankel*, 2001 Ct. Sup. 13468 (Conn. Super. Ct. 2001) (holding the continuing failure to monitor can toll the statute of repose where either a special relationship exists or some later wrongful conduct occurs).

The Wrestlers’ injuries manifest as degenerative conditions SAC A-1516, ¶ 250; *see also Id.*, at ¶ 36-37 (describing specific ongoing injuries attributable to repetitive head trauma). Wrestlers are donating their brains through counsel to further demonstrate the prevalence of neurological injuries in professional wrestlers. SAC A-1424, ¶ 35 (listing five deceased Named Plaintiffs diagnosed with CTE); a sixth Named Wrestler, Ronald Heard, has since died and been

diagnosed with CTE, and another Named Wrestler, Ashley Massaro, age 39, committed suicide during the pendency of her appeal while suffering from depression.

iii. WWE's Continuing Breach Of Their Duty To The Wrestlers.

WWE does not dispute it has taken no action to warn or inform the Wrestlers of any risks attributable to its performances and is vehemently fighting any responsibility to them. Therefore, test three has been met because WWE has and does continue to breach its duty, should one exist, to its Wrestlers. *See Witt v. St. Vincent's Medical Center*, 252 Conn. 363, 374 (Conn. 2000) (determining that allegations of the defendant's continuous failure to report concern over an unknown potential illness (cancer) along with evidence of the defendant's knowledge for the possibility of the illness "were sufficient to create a genuine issue of material fact with regard to whether the defendant was in continual breach of his ongoing duty to the plaintiff). Since the District Court did not rule on this test, and WWE does not dispute it has taken no effort to inform or treat its former Wrestlers, then it can be accepted the Wrestlers have met the third and final test for applying the continuous course of conduct doctrine should sufficient allegations exist to establish the continuing duty in test two.

- iv. The District's Court Contradictory and Improper Findings On the Continuous Course of Conduct Doctrine Warrant Remand For Further Proceedings.

The District Court contradicts its own previous ruling Singleton pertaining to WWE's fraudulent concealment and continuing duty:

The Court reaffirms its holding that plaintiffs have plausibly alleged that WWE: (i) committed an initial wrong by omitting information in public statements and communications with its wrestlers that it was under a duty to disclose, (ii) that this duty continued with respect to current and former wrestlers at risk of CTE and other degenerative brain conditions and (iii) that the breach of this duty has been ongoing.

Order Denying WWE's Motion for Reconsideration, SPA-88,

The Wrestlers have notably provided a significant number of examples demonstrating WWE's continuing duty to the Wrestlers, and the District Court's decision is not only contrary to its own previous ruling, but also to that of *Falls Church Group*, 912 A.2d at 1033, which the District Court cited to in its above Order: "*Falls Church Group*, sets forth a test which *expressly requires* a defendant only to have actual knowledge "of the facts necessary to establish" a cause of action, as opposed to the 'facts necessary to prove by clear and convincing evidence a cause of action at the pleading stage of a case before the commencement of discovery.'" *Id.*

Regardless, "[w]hat level of certainty is required to trigger these duties is necessarily a matter of expert testimony" which the Wrestlers should have the

opportunity to present at trial. *Witt v. St. Vincent's Medical Center*, 252 Conn. 363, 374 (Conn. 2000). There exists issues of material fact as to whether the relationship between the Wrestlers and WWE rose to a “special relationship,” whether WWE committed subsequent wrongful acts pertaining to their actual knowledge of the risks the Wrestlers endured while performing for WWE, and whether their special relationship was ongoing. *Starkweather v. Patel*, 641 A.2d 809 (Conn. App. Ct. 1994). Therefore, the District Court’s ruling on whether the continuing course of conduct applies to the Wrestlers’ causes of action should be overturned, and the Wrestlers’ claims reinstated for further proceedings.

- d. Whether the District Court improperly disregarded the Wrestlers’ allegations of fraudulent concealment when denying the Wrestlers’ tolling allegations.

The District Court held the Wrestlers could not “uncover any evidence showing that WWE has or had actual knowledge that concussions or subconcussive blows incurred during professional wrestlers matches cause CTE”. SPA-222. It continued, “[t]he 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.” SPA-223. The District Court added that “counsel lacks a good faith basis” for the claims. SPA-223. In support of its conclusion, the Court postulated using its own logic unsupported by the record that “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.”

Instead of taking the Wrestlers’ pled allegations in the light most favorable to them, the Court ignored the pled facts altogether and instead made up its own for purposes of deciding whether tolling should apply. The court also concluded counsel lacked good faith without anything to support that conclusion. Nowhere in the pleadings does it state wrestlers had the knowledge to make these decisions. Instead Plaintiff’s state “no familiarity with or any reason to access any medical literature...” SAC A-1525 ¶ 302. Plaintiff’s state they “did not know they were injured” when they sustained head trauma while performing. SAC A-1526 ¶ 315.

It was pled that WWE “never accepted the findings that Benoit had CTE and continues to publicly dispute them”. A-1523, ¶ 287; (alleging “[t]he public statements by WWE executives [about the] existence of CTE in professional wrestling further decreased the Plaintiffs’ ability to understand their latent injuries”); A-1529 ¶ 287 and see A-1601 ¶ 570. A trier of fact could reasonably conclude WWE’s statement would be viewed by the Wrestlers as specifically concealing any connection between WWE performances, head trauma, and the Chris Benoit events.

Finally and crucially, the SAC is unambiguous that the plaintiff's are not reducing their theory or analysis to expert driven terminology of head trauma science or only relying on CTE to prove their allegations A-1416 ¶ 2. Indeed the Plaintiff's explain this in detail throughout the SAC as part of the substantive debate they anticipate in expert testimony A-1495-97 ¶ 155-163 under heading "Chronic Traumatic Encephalopathy is a New Name for an Old Disease."

Instead, the District Court determined 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". SPA-223. The allegations in the SAC directly contradict the Court's statement *See, e.g.,* SAC A-1529 ¶ 287 The only way the District Court could make this determination is by specifically weighing the Wrestlers' allegations against them and finding the Wrestlers not credible witnesses prior to any fact discovery and when ruling on a 12(b)(6) Motion to Dismiss.

The District Court found the Wrestlers' claims time-barred on the face of the complaint, and determined the Wrestlers have the burden of pleadings facts sufficient to establish the tolling of the statutes of limitations. *See OBG Technical Services, Inc. v. Northrop Grumman Space & Mission Systems Corp. ex rel. TRW, Inc.*, 503 F. Supp. 2d 490, 504 (D. Conn. 2007); *but see, infra*, appealing improper 12(b)(1) determinations. The Wrestlers pled fraudulent concealment by showing

that WWE “(1) had actual awareness, rather than imputed knowledge, of the facts necessary to establish the [Wrestlers’] cause of action; (2) intentionally concealed these facts from the [Wrestlers]; and (3) concealed the facts for the purpose of obtaining delay on the [Wrestlers’] part in filing a complaint on their cause of action”. *Falls Church Group, Ltd. V. Tyler, Cooper Alcorn, LLP*, 281 Conn. 84, 105 (2007).

The District Court perplexingly only focused on the 2007 Benoit events to deny the Wrestlers’ fraudulent concealment allegations. “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.” SPA-223. The Wrestlers pled WWE’s actual knowledge in specific detail. *See, supra*, citing SAC A-1505 ¶ 203.i (punch drunk); *Id.* ¶ 203 (symptoms of head trauma highlighted in WWE performances); *Id.* ¶¶ 205-215 (WWE Doctor linking the connection between the long-term neurological injuries to injuries suffered in WWE performances); *Id.* ¶¶ 191-202 (specifying WWE’s promotions of boxing events and football games); *Id.* ¶¶ 164-181 (providing list of published studies of head trauma and its long-term effects); *Id.* ¶¶ 222-232 (detailing the symptoms WWE Wrestlers presented: headaches, dizziness, vomiting, ‘seeing stars’, and unconsciousness).

None of these facts were assessed when determining whether to toll the statute of limitations for fraudulent concealment. As a result, the District Court did not base its decision on findings of fact that were supported by the evidence, and therefore, this Court must review the decision to grant the motion to dismiss *de novo*. *C.f. Thomas v. New York City Dep't of Educ.*, 698 Fed. Appx. 38, 39, 2017 U.S. App. LEXIS 19817, \*2 (holding where “the district court has applied the correct legal standards and based its decision on findings of fact that were supported by the evidence, we review the denial of equitable tolling for abuse of discretion).

As discussed, *supra*, WWE had actual awareness of the risks its matches posed. Wrestlers alleged that WWE took specific actions to conceal these facts. *See, e.g.*, A-1518, ¶ 261 (misclassification barring regulatory protections); *Id.*, A-1519 ¶ 264 (silencing Wrestlers to prevent treatment but from WWE-employed agents); A-1519 ¶ 265 (cultivating complete reliance on WWE’s own medical care offering 100% coverage of all in-ring injuries”); A-1520 ¶ 268 (having no concussion policies during the Wrestlers’ careers thereby fostering a false sense of security); A-1494 ¶ 153 (failing to provide adequate notice under the FMLA, NLRA, and OSHA, forcing use of unconscionable contracts, and violating ERISA guidelines); A-1521-25 ¶ 276-301 (WWE’s insertion into CTE research funding, sitting on the board of the leading CTE foundation, giving millions to a former

wrestler critic, and stating WWE “was helping anyone at risk for CTE” while denying the science of CTE and doing nothing to assist Named Wrestlers).

Finally, the Wrestlers described how and why WWE concealed the facts from its Wrestlers. SAC A-1486-90, ¶¶ 111-128 (describing how WWE’s profits stem from violent performances; A-1493 ¶¶ 145-148 (utilizing the code of silence); A-1494-95 at ¶ 154.

Although not analyzed by the District Court, the Wrestlers note that the type of risk and injury alleged in this case is “self-concealing”, or “inherently unknowable”. *See OBG Technical Services, Inc. v. Northrop Grumman Space & Mission Systems Corp. ex rel. TRW, Inc.*, 503 F. Supp. 2d 490, 507 (D. Conn. 2007). These are latent degenerative diseases that progress over time. The Wrestlers alleged that they could not have known of their injuries. Regardless, WWE’s ongoing concealment prevented any due diligence on their part. As a result, the Wrestlers pled reasonable diligence such that 9(b) particularity was met by showing that: “(a) the circumstances were such that a reasonable person would not have thought to investigate, [and] (b) the [Wrestlers’] attempted investigation was thwarted”. *OBG Technical Services, Inc. v. Northrop Grumman Space & Mission Systems Corp. ex rel. TRW, Inc.*, 503 F. Supp. 2d 490, 507 (D. Conn. 2007) (internal citations omitted).

Therefore, the District Court's denial of fraudulent concealment sufficient to toll the statutes of limitations for the Wrestlers' causes of action should be overturned and the claims remanded for further proceedings.

- e. Whether the District Court improperly used limited discovery in the *Singleton Lograsso* case which had different facts, different parties, and different allegations, to deny the Wrestlers' tolling allegations.

Although it appears the District Court sought to use the complaint supplemented by its resolution of disputed facts in the *Singleton Lograsso* case, this use was misguided. First, its description of the limited discovery in that case was exaggerated. SPA-223 (claiming "the opportunity to conduct extensive discovery on this issue in prior consolidated cases").

The limited discovery order expressly prevented the *Singleton Lograsso* Wrestlers from discovering any evidence of WWE's knowledge prior to 2005,. *See* A-45 Entry 107; Such limited discovery prevented *Singleton Lograsso* from effectively trying their case and its inclusion in the *Laurinaitis* decision is baseless given *Laurinaitis*' specific allegations demonstrating fraudulent concealment.

Regardless, the District Court's statement "He [Kyros] was unable to uncover any evidence showing that WWE has or had actual knowledge that concussions ... incurred during professional wrestling matches cause CTE" ignores the disputed facts in *Singleton Lograsso*'s Statement of Material Facts and ignores the allegations in that case warranting a jury trial.

- f. Whether the District Court improperly weighed material factual allegations in the Wrestlers' Second Amended Complaint when deciding WWE's 12(b)(1) Motion to Dismiss.

“In deciding a motion to dismiss pursuant to Rule 12(b)(1), ... the Court must accept as true all material factual allegations in the complaint but should refrain from drawing any inferences in favor of the party asserting jurisdiction.” *Harriot v. JP Morgan Chase Bank NA*, 2016 U.S. Dist. LEXIS 150696, 8-9 (SDNY, 2016). The Wrestlers pled jurisdiction affirmatively by alleging the continuing course of conduct doctrine and fraudulent concealment to toll the statutes of limitation and repose. These allegations were neither conclusory nor general, as detailed *supra*. These tolling allegations involve disputed facts requiring discovery and trial and determination on a Motion to Dismiss is inappropriate. *See Angersola v. Radiologic Assocs. of Middletown, P.C.*, 193 A.3d 520, 535 (Conn. 2018). The District Court was required to draw any inferences in favor of the Wrestlers because tolling was specifically pled with material factual allegations that must be accepted as true. *Harriott v. JP Morgan Chase Bank NA*, 2016 U.S. Dist. LEXIS 150696, 8-9 (SDNY, 2016).

Although the Wrestlers were not required to plead in their Complaint facts sufficient to overcome WWE's affirmative defense of the statute of limitations, the Wrestlers did so affirmatively demonstrating sufficient factual allegations. *See BPP III., LLC v. Royal Bank of Scot. Group PLC*, 603 Fed. Appx. 57, 59 (2d. Cir.

2015) (stating that although the “plaintiff is not required to plead, in a complaint, facts sufficient to overcome an affirmative defense”). Requiring the Wrestlers to make a showing of reasonable diligence was premature at this stage of litigation and the dismissal should be vacated. *Id.* As such, the District Court improperly weighed the Wrestlers’ factual allegations when it dismissed the Wrestlers’ claims for lack of subject matter jurisdiction under 12(b)(1). Therefore, the District Court’s dismissal of the Wrestlers’ causes of action should be overturned and the claims remanded for further proceedings.

- g. Whether the District Court’s reliance on the unpublished decision in *Levy v. World Wrestling Entertainment, Inc.* Civil Action No. 3:08-01289 (PCD) 2009 when deciding to hold the Wrestlers’ Misclassification claims arose “at the inception” of the booking contracts and are therefore time-barred was unfounded.

Unpublished opinions are not precedents of this Court. *See* Rule 32.1 of the Rules of Appellate Procedure (allowing citation to unpublished opinions but noting: “The rule is limited in scope however, it does not in any way alter the rules as to whether such authority constitutes binding precedent”); *see also* “Unpublished Opinions: A Convent Mean to an Unconstitutional End”, *Georgetown Law Journal*, Vol. 97:621, Weisgerber, Erica S. (“They are written resolutions to specific cases, prepared exclusively for the involved parties, and they are intended to have no binding precedential effect – or even persuasive effect.”

Here, the District Court's sole reliance on the unpublished decision in *Levy* was clear error and her decision must be overturned. The District Court made no analysis explaining why the Wrestlers' Misclassification claims must arise at the inception other than her wholesale adoption of the *Levy* decision. Regardless, *Levy* should not apply to the Wrestlers' claims because of the narrowly tailored decision not applicable to the allegations here. No Booking Contracts were attached to the *Levy* Complaint and therefore gave the court nothing to analyze. *Levy*, No. 36, p. 2. In contrast, the Wrestlers have attached multiple Contracts, made substantial arguments these Contracts were procured through fraud, violate public policy, and are therefore void. The Booking Contracts controlled every aspect of the Wrestlers' work for WWE, and thus, under Nationwide Mutual Insurance Company v. Darden, 503 U.S. 318,323 (1992)., the Wrestlers were employees regardless of what the Contract called them.

The *Levy* Court granted no blanket amnesty for misclassification. The plaintiffs in *Levy* asserted a specific and limited claim under the Booking Contracts and that is all the court ruled upon, in both *Levy I* and *Levy II*. There was no claim the Booking Contracts were invalid. Unlike the claims here, the plaintiffs in *Levy* failed to plead damages: "No particular benefits are claimed to have been lost" and "No specification of any particular deprivation is articulated". *Levy*, No. 38, p. 6.

Here, 26 USC 7434 is applicable and allows the Wrestlers to “bring a civil action for damages” against any party that “willfully files a fraudulent information return” on the plaintiff’s behalf. 26 USC § 7434(a). A defendant found liable in any such action will owe the plaintiff damages “in an equal to the greater of \$5,000 or the sum of—(1) any actual damages sustained by the plaintiff ... (2) the costs of the action, and (3) in the court's discretion, reasonable attorneys' fees.” Id. at § 7434(b). Cuellar-Aguilar v. Deggeller Attractions, Inc., 812 F.3d 614, 2016 USTC P 50, 40 IER Cases 1601 (8th Cir., 2015).

Since the District Court failed to even provide a modicum of analysis to the actual claims in the SAC, its findings must be overturned and remanded for further proceedings. The District Court also tied the Wrestlers’ OSHA and ERISA claims to her dismissal of the Misclassification claims. As a result, these dismissals must be overturned and the claims remanded.

- h. Whether the District Court’s dismissal of RICO claims was proper by relying on its predication to the Misclassification claims.

Application of the affirmative defense of the statute of limitations in RICO claims is subject to the same considerations of estoppel/tolling as are argued with respect to other Counts of the SAC, and all such arguments are incorporated herein. Where tolling/estoppel has been alleged as here a RICO complaint should not be dismissed where it cannot be conclusively established from the Complaint that the Plaintiffs “knew or should have known” of the alleged illegal activities.

Sidney Hillman Realty Ctr. Of Rochester v. Abbott Labs, Inc., 782 F.3d 922,929 (7<sup>th</sup> Cir. 2015). Additionally, in assessing whether a plaintiff “knew or should have known” any disparity in sophistication between the parties may be considered by the Court. Sidney Hillman at 929. “[E]very case must be judged on its own facts from the standpoint of a reasonable person” KDC Foods, Inc. v. Gray, Plant, Mooty, Mooty & Bennett, P.A., 763 F.3d 743,751 (7th Cir., 2014), taking into account the circumstances of the parties such as whether they are sophisticated corporations or as here, wrestlers intentionally coerced with unequal resources and faced with an highly sophisticated attorneys. “[E]quitable tolling is an appropriate remedy when principles of equity would make a rigid application of the statute of limitations unfair.” In re Cmty. Bank of N. Va. Mortg. Lending Practices Litig. PNC Bank Na, 795 F.3d 380, 400 (3rd Cir., 2015).

Further, a RICO statute does not run if there is an “ongoing enterprise” such as here, where the Defendants continue their fraudulent acts to this day by utilizing the unconscionable and illegal Booking and Nostalgia contracts to pay the Plaintiffs a pittance of royalties against what is legitimately due:

a RICO conspiracy offense is complete, thus commencing the running of the five-year statute of limitations, only when the purposes of the conspiracy have either been accomplished or abandoned. United States v. Salerno, 868 F.2d 524, 534 (2d Cir. 1989) (citing United States v. Persico, 832 F.2d 705, 713 (2d Cir. 1987)).

United States v. Rogers, 118 F.3d 466 (6th Cir. 1997). U.S. v. Tocco, 200 F.3d 401 (6th Cir., 1999). (emphasis supplied).

The Booking Contracts and Nostalgia Contracts by abrogating the common law rights of the Plaintiffs (which would be not less than 50% of revenue earned) to their intellectual property, and assigning these rights (excepting unconscionable compensation) to the Defendants, continue to this day to damage the Plaintiffs and further the Racketeering enterprise of the Defendants by diverting money belonging to the Plaintiffs to the Defendants.

- i. Whether the District Court improperly held *Laurinaitis'* Unconscionable Contracts Count as frivolous.

*Laurinaitis* alleged the WWE-required Booking Contracts were unconscionable because they are void or voidable as a matter of public policy because they seek to impose the waiver of fundamental rights, some of which by express legislative fiat are not waivable. *E.g.* Conn. Gen. Stat. Ann. Sec. 31-290 ("No contract, expressed or implied, no rule, regulation, or other device shall in any manner relieve any employer, in whole or in part, of any obligation created by this chapter, except as herein set forth").

*Laurinaitis* alleged the "conduct...with respect to the procurement, execution, and maintenance of the unconscionable "Booking Contracts" ... was and continues to be so egregious that to allow the Defendants to claim the benefits of or to enforce any part of these "contracts"...including the forum selection clause and

choice of law clause would create an unconscionable injustice and consequently reward" WWE for its fraudulent conduct. A-1540, ¶ 361.

The purpose was to misclassify the Wrestlers as independent contractors preventing statutory and regulatory protections guaranteed by public policy and law to ensure profits. A-1540-41 ¶ 363. OSHA (¶¶ 365-380), NLRA (¶¶ 381-384), and the descriptive examples preventing unions (¶¶ 389-390) evidence the consequential damages, lost wages, loss of tax payments, and overall substantial economic harm caused by these contracts. *Id.*, ¶ 392. Prevented from receiving Social Security and Medicare despite meeting the IRS Test for employee status is unconscionable and the claim is far from frivolous since it has caused substantial personal property damage, including the loss of rights to the Wrestlers' own likeness. A-1549 ¶ 395.

These claims are not frivolous and when the allegations are taken in the light most favorable to the Wrestlers, pass Rule 12(b)(6) muster. "It is well established that contracts that violate public policy are unenforceable' Solomon v. Gilmore, 248 Conn. 769, 774 (1999)." The District Court improperly weighed the allegations against the Wrestlers in contravention to Rule 12 standards, and therefore the dismissal must be reversed and *Laurinaitis'* Unconscionable Contract Count remanded for further proceedings.

- j. Whether the District Court's improperly dismissed the Wrestlers' FMLA claims by ignoring equitable estoppel and its own Statute of Limitations.

The Trial Court dismisses the Plaintiffs Family Medical and Leave Act (29 U.S.C. 2601 et seq) claims by referring to 29 U.S.C. 2617, which is the usual statute of limitations if other considerations need not be weighed. However, the Plaintiffs claim that any statute of limitations affirmative defense is tolled by two principles: (a) equitable estoppel and (b) that FMLA requires that prominent notice of FMLA rights be posted, failing which the statute of limitations does not run. Both defenses were ignored by the Court.

Numerous Courts have determined that the “elements of traditional equitable estoppel apply in the FMLA context” Leese v Adelphoi Village, Inc. et al 516 Fed. Appx 192 (2013). “Equitable estoppel is available to prevent a company from contesting an employee's right to assert a claim under the FMLA. Duty v. Norton-Alcoa Proppants, 293 F.3d 481, 494 (8th Cir.2002).” Reed v. Lear Corp., 556 F.3d 674, 678 (8th Cir., 2009). See also Heckler v. Cmty. Health Servs. of Crawford County, Inc., 467 U.S. 51, 59, 104 S.Ct. 2218, 81 L.Ed.2d 42 (1984) (referring to the Restatement (Second) of Torts § 894(1) to define equitable estoppel as warranted in situations where one person has misrepresented facts and another person reasonably relies on the misrepresentation to his or her detriment). Reed v. Lear Corp., 556 F.3d 674 (8th Cir., 2009). Furthermore, equitable estoppel can

serve either as a claim or a defense. Vangas v. Montefiore 925 F. Supp 2d 574, 579 (2013). Failure to post the required FMLA notice results in an estoppel defense Kosakow v New Rochelle Radiology Associates, PC. 274 F. 3d 706,722-27 (2<sup>nd</sup> Cir. 2000), and numerous cases cited therein. Whether equitable estoppel applies in a given case is ultimately a question of fact. Bennett v. United States Lines, Inc., 64 F.3d 62, 65 (2d Cir. 1995). It is therefore not an appropriate consideration for a motion to dismiss when properly alleged as here.

There is an affirmative legal duty to inform an employee of his rights under FMLA: “the FMLA imposes a legal duty upon the employer to inform its employees of the conditions that they must meet in order to be covered by the FMLA”, Kosakow v. New Rochelle Radiology Assoc., 274 F.3d 706, 725 (2<sup>nd</sup> Cir., 2000). The notice requirement is set forth in Section 109 of the Act, 29 U.S.C. § 2619 further mandated through 29 C.F.R. § 825.300 et seq. the Labor Department explicitly indicated that compliance with the posting rule would not suffice to meet all of the employer's notice requirements. See 60 Fed. Reg. at 2219 (“The posting of the notice [required by §§ 825.300] is but one of the notice requirements applicable to employers.”). Bachelor v. AM. W. Airlines, 259 F.3d 1112 (9<sup>th</sup> Cir., 2001) , FN 15. See also 29 F.R.R. §§ 825.301.

In this matter the WWE deliberately chose to not only not make the required postings to inform the Plaintiffs of FMLA rights [SAC- 404, 410], but also to make

affirmative misrepresentations that they were not entitled to such rights [SAC A-1550-51 ¶ 398-99, 400]. Kosakow held that the law in the Second Circuit concerning estoppel in a federal FMLA case are set forth in the Restatement (Second) of Torts 894(1), since that section had been likewise adopted by the United State Supreme Court in Heckler v Community Health Services of Crawford County 467 U.S. 51, 59 (1984). See Kosakow at 726. Therefore, the District Court's reliance on the two year limitations period to dismiss the Wrestlers' FMLA claims by ignoring the tolling arguments of fraudulent concealment and the continuing course of conduct doctrine, as well as FMLA's independent analyses warrants reversal and remand.

B. *Laurinaitis'* Claims Were Not Rule 11 Sanctionable And The Determination Improperly Turned On Substantive Allegations And Disputed Facts

1. Whether the District Court abused its discretion by granting Rule 11 Sanctions against Attorney Kyros, personally, and his Law Offices, where the District Court made improper findings of fact, weighed evidence, and assessed credibility prior to discovery and under a Motion to Dismiss standard.

The Honorable Judge Bryant's decision to sanction Attorney Kyros for Rule 11 violations for asserting frivolous and irrelevant claims is based not in reason, but in confusion and ignorance of the Wrestlers' actual pleadings.

The award of Rule 11 sanctions is reviewed for abuse of discretion. See *Star Mark Mgmt., Inc. v. Koon Chun Hing Kee Soy & Sauce Factory, Ltd.*, 682 F.3d

170, 175 (2d Cir. 2012). “An ‘abuse of discretion’ occurs when a district court ‘base[s] its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence, or render[s] a decision that cannot be located within the range of permissible decisions.’ *Kiobel v. Millson*, 592 F.3d 78, 81 (2d Cir. 2010) (quoting *Sims v. Blot*, 534 F.3d 117, 132 (2d Cir. 2008))”. *Id.* Here, as in *Kiobel*, “the District Court’s decision to impose sanctions ... has no support in law or logic – and therefore constitutes an “abuse of discretion””. *Id.*

In support of its Rule 11 sanctions, the District Court on SPA 203 fn 1, SPA-225-226 provides a series of examples of what is terms “inaccurate, irrelevant, or frivolous” allegations. None of the examples rises to the level of a Rule 11 violation, most are facts that support the wrestlers claims.

- SPA-225, the Court references an “irrelevant” 2015 CTE study and Boston Globe Story about WWE’s influence over a CTE researcher.
  - Reply: Plaintiff’s allege ongoing failure and concealment. Therefore, whether WWE *currently* is or could be in possession of evidence of CTE is directly relevant to WWE’s fraudulent nondisclosure, concealment, and continuing duty to its former Wrestlers.
- SPA-225 Court deems WWE’s position as a billion-dollar company and monopoly in the industry is irrelevant.
  - Reply: This was a required element to proving RICO and demonstrates the power disparity between the billion-dollar company wrestlers.

- SPA-225, Court misunderstands the relevance of a 1995 Monday Night Raw show where WWE’s physician links post-concussion syndrome to WWE performances and relates it to the same types of injuries suffered in boxing and football.
  - Reply: WWE Doctor Dr. Unger explained accepted medical science on post-concussion syndrome, its risks, its causes, and necessary treatments. A reasonable jury could conclude WWE had actual knowledge in 1995 of the link between repetitive head trauma and long-term neurological damage in its performances.
- SPA-225 The Court adds a rebuke of the allegations of two injured wrestlers, claiming that a list of 15 performers in the SAC introduction A-1425, ¶37 who sustained mostly broken necks, herniated discs and so forth “have nothing to do with concussions or head trauma.”
  - Reply: Forces sufficiently strong to break bones, necks, or shoulders likely cause rapid deceleration of the head that results in internal trauma, including sub-concussive and concussive injuries. Refer to the list of injuries for the referenced Wrestlers. A-1465 ¶ 87, 1468 ¶ 89.
- SPA-203 Court decided a wrestler’s sexual assault allegations while on WWE tour irrelevant.
  - Reply: Claim related to her misclassification, and failure to protect Ashley Massaro. WWE does not deem itself responsible to collect data about incidents like this or report them. WWE remains silent and strictly requires its wrestlers do the same. Ms. Massaro also made claims for her risk of CTE, depression and drug addiction, and will not see her Appeal. Ashley committed suicide on May 16, 2019 at the age of 39. Her claims were not frivolous.

The District Court’s misguided findings indicate it either ignored or misunderstood specific elements of the Wrestlers’ claims and misapplied the facts to those claims, particularly where it related to the Wrestlers’ tolling arguments. *See, e.g.*, SPA-226, (claiming studies after Wrestler retirement irrelevant despite

arguments of continuing duty to warn of latent neurological diseases due to WWE's duty to "notice all its former performers of the latent injuries suffered in its workplace..." [SAC A-1527, ¶ 310]; SPA-222-223 (noting limited discovery post-2005 in *Singleton Lograsso* as unable to uncover causes of CTE in WWE. This is clear error as the claims are not reduced to CTE, but to latent neurological injuries including CTE and which is detailed explicitly throughout the SAC); SPA-222-223 (holding "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". This is false on the SAC's face and evidences the District Court's failure to read the Wrestlers' Complaint, let alone apply the allegations to the causes of action).

Fact-specific equitable tolling issues should not be resolved on motions to dismiss and sanctions for frivolousness should not be awarded based on these same issues. *See Darowski v. Wojewoda*, No. 3:15-cv-00803 (MPS), 2016 WL 4179849, at \*12 (D. Conn., 2016), *quoting Mandarino v. Mandarino*, 180 Fed. Appx. 258, 261 (2d Cir. 2006) ("[T]he District Court should not have resolved the fact-specific equitable tolling issues on defendants' motion to dismiss"); Notes of Advisory Committee on the 1983 amendments to Rule 11 (The Rule is "not intended to chill an attorney's enthusiasm or creativity in pursuing factual or legal theories"); *Simpson v. City of New York*, 793 F.3d 259, 265 (2d Cir. 2015) ("Assessments of

credibility and choices between conflicting versions of the events are matters for the jury, not for the court on summary judgment”).

The repeated emphasis on typos as sanctionable conduct must be disavowed. *Kiobel v. Millson*, 592 F.3d 78, 83 (2d Cir. 2010) (“Rule 11 neither penalizes overstatement nor authorizes an overly literal reading of each factual statement”). Where typos were pointed out, they were removed in the Amended Complaint. The use of Mike Webster as a substantive allegation warranting sanctions defies reason SPA-202 as nowhere do the Wrestlers claim Mike Webster, an NFL player, ever performed for WWE.

Attorneys’ fees should only be imposed in egregious circumstances and only with great caution and restraint. *See Kiobel v. Millson*, 592 F.3d 78, 83 (2d Cir. 2010); *Storey v. Cello Holdings, LLC*, 347 F.3d 370, 387 (2d Cir. 2003) (stating the District Court must “ensure that any sanctions decision is made with restraint”). “A distinction must be drawn between a position which is merely losing, and one which is both losing and sanctionable”. *Salovaara v. Eckert*, 222 F.3d 19, 34 (2d Cir. 2000). Here, the Wrestlers’ SAC is “not so untenable as a matter of law as to necessitate sanction”. *Id.* Particularly, where, as noted above, each of the District Court’s examples of frivolousness or irrelevancy was directly controverted by the Wrestlers’ causes of action and substantive claims against WWE. Compare this with the standard that the Wrestlers’ allegations have to be “utterly lacking in

support” and a “substantial” failure to award sanctions, and the District Court’s position becomes untenable. *See Kiobel v. Millson*, 592 F.3d 78, 81 (2d Cir. 2010).

2. Whether Attorney Kyros was denied due process and whether the District Court’s repeated and routine disparaging remarks and reprimands of Attorney Kyros is “inordinately injurious to [his] reputation” and warrant striking and/or overturning given its use in sanctioning Attorney Kyros, an appealable issue.

Attorney Kyros was denied due process by the District Court’s failure to provide adequate notice of the specific grounds for sanctions. Broad assertions are not sufficient where the standard for Rule 11 sanctions is so high. The District Court’s only factual findings are inaccurate and the claims of irrelevant and frivolous allegations are not supported by any legal analysis. The District Court’s Order, rife with dicta, imposes sanctions for a litany of disputed improper conduct, but fails to identify specific frivolous pleadings which findings are based. See SPA-228 The statements do not reveal how these determinations were made, what notice was given or fulfill any of the high requirements for imposition of sanctions. *See Associated Indem. Corp. v. Fairchild Industries, Inc.*, 138 FRD 384 (SDNY 1991), rev’d 961 F2d. 32 (2d Cir. NY 1992) (Rule 11 sanctions only imposed as a “necessary response to frivolous pleading or paper, and [the] Rule was not intended to provide mechanism for imposing sanctions for any and all improper conduct of party or counsel during litigation”).

Absent explicit notice of specific conduct, sanctions are not warranted, particularly where the alleged accusations are unsubstantiated by fact or law. *Novak v. Yale Univ.*, No. 14-cv-00153, 2015 WL 7313855, at \*4 (D. Conn. Nov. 20, 2015 (refusing to dismiss case as sanction when plaintiff was not warned of possibility).

WWE's initial Motion for Sanctions, A-58 Entry 228, was referred to Magistrate Judge Richardson who held a hearing on March 2, 2017 A-64 Entry 295. No Recommended ruling, or credibility determinations were made regard to the hearing. Yet, eighteen months later on 9/17/18, the District Court awarded WWE costs related to these Motions and hearing in SPA-191 with no analysis pertaining to the findings, the hearing, or lack of decision. WWE then sought costs of \$357,439.70, including \$47,433.00 for a PowerPoint used during the hearing. Plaintiffs' Response in Opposition to Defendants' Application for Attorneys' Fees, A-71 Entry 386.

Additionally, SPA-201-202: The Court's procedural history of the WWE sanctions motions is inaccurate and ignored safe harbor provisions of Rule 11. The WWE served two letters advising they would seek sanctions on Plaintiff's counsel dated 8/5/16 and 8/19/16. The WWE filed its first motion 10/17/16 A-58 Entry 228, which at 46 pages bears no resemblance to the served WWE motions and raised new allegations (mostly about typos alleged to be falsehoods) See A-60

Entry 261 for plaintiff's rebuttal. The WWE would repeat this process with its Second motion for sanctions serving an 18 page letter on 11/30/2016 and filing a 55 page motion against the FAC on 12/23/16 A-61 Entry 262, See Opposition A-64 Entry 306.

Wrestlers' Counsel request this Court review the District Court's comments against Attorney Kyros given the Honorable Judge Bryant's dicta disparaging him. *See Keach v. County of Schenectady*, 593 F.3d 218, 223-226 (2d Cir. 2010). Although the Second Circuit does not normally review these comments, in light of numerous other districts' willingness to review routine judicial commentary or criticism of an attorneys' conduct, the Wrestlers' Counsel requests this Court consider the harm being inflicted upon Attorney Kyros and his clients for his bringing legally and factually supported claims.

Where, as here, the allegations are supported by at least disputed facts, no Rule 11 sanctions are appropriate and the disparaging comments should be stricken to prevent any further injury and unfair prejudice to the parties and Counsel. *See Galloway v. United States*, 319 US 372, 406-07, 63 S. Ct. 1077, 87 L. Ed. 1458 (1945) (Blake, J., dissenting) (internal quotation marks omitted) (reasoning minds might reach different conclusions from the testimony of a single witness, the Seventh Amendment guarantees a jury trial.). The District Court should not "search the evidence with meticulous care to deprive litigants of jury trials". *Id.*

Attorney Kyros maintains that he acted in good faith at all times. Therefore, he requests this Court overturn the imposition of Rule 11 sanctions against him and his firm and strike the unfairly prejudicial dicta from the District Court's Orders. *Keach v. County of Schenectady*, 593 F.3d 218, 223-226 (2d Cir. 2010).

Finally SPA-228 the Court issued a nonmonetary sanction "in order to protect the public," from Attorney Kyros he must mail a copy of SPA-191 Order to "future, current or former" wrestlers who retain him. The record does not demonstrate the public needs protection from Mr. Kyros. The injured wrestler's claims demonstrate they need help, advocacy and protection. This sanction should be overturned and stricken.

C. *Laurinaitis* Wrongful Death and Survival Actions

1. Whether the District Court erred by applying Section 52-555's Statutes of Limitations to the *Laurinaitis* Wrongful Death and Survival Claims.

The District Court and appeals relied on *Greco v. United Techs. Corp.*, 277 Conn. 337 (Conn. 2006) when dismissing Estates of James Snuka, Jon Rechner, Brian Knighton, Timothy Smith, Ronald Heard, and Harry Masayoshi Fujiwara's Wrongful Death and Survival Actions ("Wrongful Death claims"). SPA-213 ("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") (*quoting Greco*, at 353).

The Court then proceeds to list when each Decedent last performed. SPA-214. Since each Decedent, with the exception of Snuka, “retired more than five years before [*Laurinaitis*] was filed, and “Snuka has not alleged that any of his alleged injuries were incurred during WWE appearances post-dating 1996”, the District Court held the Wrongful Death claims barred by Section 52-555 and Survival Actions “barred by the statutes of limitations or repose for each of the deceased Plaintiffs’ other claims have elapsed”. *Id.* at 24.

This decision should be reversed because pled tolling allegations were not considered in the analysis. *See Angersola v. Radiologic Assocs. of Middletown, P.C.*, 193 A.3d 520, 524, n.3 (Conn. 2018) (explaining a statute of limitations may be tolled under the continuous course of conduct doctrine, thereby extending the time within which the plaintiff must file). The Wrongful Death Plaintiffs-Appellants each alleged Continuing Course of Conduct and Fraudulent Concealment, of which the District Court did not consider when dismissing the claims. SAC A-1410 ¶¶ 552, 276-301.

The Connecticut Supreme Court in *Angersola* explicitly rejected the analysis used by the District Court and held the continuing course of conduct doctrine applies to wrongful death causes of action. *Angersola*, at 533. The court also noted that the “continuing course of conduct doctrine delays the accrual of an action by “aggregate[ing] a series of actions by a tortfeasor for purposes of the limitations

period, viewing the series of acts as an indivisible whole for that limited purpose”.

*Id.*, at 532.

The District Court’s failure to address the continuing course of conduct doctrine requires reversal and remand for further proceedings.

D. *Frazier* Wrongful Death Case

1. Whether *Frazier* was improperly dismissed for failing to establish causal relationship between WWE’s failure to treat and inform *Frazier* and *Frazier*’s death.

*Frazier* had to prove “not only a violation of a standard of care as a wrongful act, but also a causal relationship between the injury and the resulting death”.

*Roque v. U.S.*, 676 F. Supp. 2d 36 (D. Conn. 2009). The District Court dismissed *Frazier* for failing to establish a causal relationship between WWE’s failure to treat *Frazier*’s in-ring injuries and failure to warn him of the risks associated with WWE performances. *Id.* (noting “such fault [must be] the proximate cause of the injury”). The District Court failed to apply the allegations in *Frazier*’s Amended Complaint, 3:15-cv-01074, No. 98 (“*Frazier* Complaint”) to the Wrongful Death cause of action and failed to view the allegations in the light most favorable to *Frazier* and draw all inferences in her favor. (*Ruiz v. Colvin*, No. 3:15-cv001490 (VAB), at \*3 (D. Conn., 2018) (when reviewing a complaint under 12(b)(6) the court must take all factual allegations in the complaint as true, view the allegations

in the light most favorable to the plaintiff, and draw all inferences in the plaintiff's favor).

*Frazier* brought a Wrongful Death Count (Count VII) alleging WWE scripted dangerous performances (A-286, 288) that he was required to perform (A-298) despite WWE knowing the risks associated with these performances (A-321) and failed to treat (A-196) injuries suffered or inform Frazier of the risks attributed to wrestling while injured (A-249, 315). Frazier never learned the cause of his injuries (A-196, 321).

*Frazier* alleges his size was “glorified and utilized...against sound medical advice” and “instead of providing appropriate medical care” WWE upheld “corporate agendas”. A-345. Frazier “was put in a worse-off state of well-being” that contributed to his heart attack and “inability to survive the heart attack”. *Id.*

The reliance on *Rose v. City of Waterbury*, 3:12cv291(VLB) (D. Conn. Mar. 21, 2013) was unfounded because unlike in *Rose*, *Frazier* pled causal relationship between his death and WWE's conduct. *See Frazier* Complaint (A-239) (scripting moves (A-199); relied on WWE-employed medical professionals for all treatments (A-207); never informed about the risks of long-term neurological injuries (A-196) WWE failed to assess, diagnose, or treat Frazier's injuries (*Id.*) WWE's awareness of the link between repetitive head trauma and long-term neurological injuries (A-196) (WWE proximately caused Frazier's death (§ 302)), *c.f. Rose*, 676 F. Supp. 2d

at 28 (failing to show how the defendant's phone call to the police caused the police to taser the deceased).

Between WWE's unsafe workplace and Frazier's WWE-promoted size, the allegations taken in the light most favorable to *Frazier* details unsafe working condition and failure to properly inform or treat worsening health proximately caused by WWE. *C.f.* A-262-289 (tragic list of WWE performers' untimely deaths, many related to heart failure). WWE's failure to uphold its duty to *Frazier* despite its awareness of the health crisis in its community dictates *Frazier* be given opportunity to prove her claims.

E. *Singleton Lograsso's* Claims Provide Disputed Material Facts Despite Unfairly Prejudicial Discovery Order.

1. Whether *Singleton Lograsso's* Claims Warrant Jury Trial On Disputed Facts.

When seeking reversal of summary judgment *Singleton Lograsso* seeks reversal of summary judgment and limiting discovery. This Court reviews *de novo* a District Court's denial of summary judgment. *Mullins v. City of New York*, 653 F.3d 104, 113 (2d Cir. 2011) (*quoting In re Novartis Wage and Hour Litig.*, 611 F.3d 141, 150 (2d Cir. 2010) (*de novo* review viewing the record in the light most favorable to" plaintiffs)). Summary Judgment appropriate where "there is no genuine issue as to any material fact and ... the moving party is entitled to a

judgment as a matter of law”. *Guilbert v. Gardner*, 480 F.3d 140, 145 (2d Cir. 2007 (citations omitted).

The District Court granted summary judgment finding “undisputed evidence ... demonstrates that WWE did not know of a potential link between concussions and permanent degenerative neurological disorders until after LoGrasso stopped wrestling”. SPA-177.

The District Court erred holding “undisputed evidence” WWE had no knowledge of the link between concussions and permanent neurological injuries until after Lograsso retired because disputed evidence existed demonstrating WWE’s actual knowledge (SPA-177; *c.f.* CA-102-104), including Drs. Lovell and Maroon’s imputed knowledge, WWE’s football franchise and boxing endeavors demonstrate actual knowledge. WWE’s awareness is a jury matter. C-102.

WWE’s disputed understanding is an expert matter and specific dates are not necessary. WWE’s alleged unawareness goes to its reasonableness given its witnessing performers repeatedly beaten, suffering head trauma, wrestling injured, and deteriorating over decades. *E.g.* CA-104, 157 (Ann McKee and CLF). Nowinski’s participation and knowledge can be imputed on WWE. Whether WWE knew in 1995 based on the Dr. Unger script is a jury matter and credibility determination.

Genuine issues of fact exist, particularly surrounding Nowinski's research and conclusions. Encouraged to retire from WWE in 2003 by Vincent McMahon (CA-159-160) due to post-concussion syndrome, injuries suffered in 2005 would be relevant to WWE's actions. Lograsso continued wrestling despite symptoms of head injuries. CA-20.

Singleton relies on WWE's failure to inform him of the long-term risks of neurological diseases and illnesses from repetitive trauma:

The information WWE failed to disclose is not the general possibility of serious injury. It is the long-term risks of repeated head injuries. These are the injuries from which Singleton now suffers and which he was unaware of prior to being injured in September 2012. SODF ¶¶ 236-38. WWE's claim that there is no evidence of these injuries belies the record. CA-35.

The unfairly prejudicial Order Partially Lifting Stay of Discovery, A-45-46 Entry 107, prevented *Singleton Lograsso* from acquiring any meaningful discovery, even after indicating knowledge in the 1990s. *See* 30(b)(6) Deposition of Paul Levesque, CA-864-867 (Wrestlers' Counsel seeking answers to WWE's knowledge of post-concussion syndrome and its existence in WWE in 1995 but was repeatedly prevented by Objection due to discovery order). Preempted from producing information pre-2005, *Singleton Lograsso* could not prove their best claims and include direct evidence in their Opposition due to inability to authenticate on the record.

The Discovery Order's limitations were without merit and its inclusion was clear error warranting reversal and remand to reopen discovery for actual knowledge.

The weighing of fact, credibility assessments, and state of mind determinations were not left to the jury. The holding "WWE took affirmative steps to inform wrestlers of the risks of a brain injury and to assess the risks occasioned by wrestling" is not true for former performers and mischaracterizes the record on an important element to the Wrestlers' claims.

Denying fraudulent concealment tolling is clear error because it relies on the skewed conclusion that "WWE [did not] conceal[] the fact of Benoit's diagnosis from LoGrasso". WWE concealed the cause of the diagnosis, lulling Lograsso into false complacency. CA-41, 48.

A jury could conclude WWE immediately sought to conceal the first diagnosis through omissions and misrepresentations. The facts taken together implicate an ongoing scheme. A jury should determine culpability. *Hunt v. Cromartie*, 526 U.S. 541-42, 551-52 (1999) (finding "it was error to resolve the disputed fact of intent at the summary judgment stage" when circumstantial evidence was susceptible to different interpretations or inferences); *Patrick v. LeFevre*, 745 F.2d 153, 159 (2d Cir. 1984) (clear error by substituting itself for trial where state of mind, motive, sincerity, or conscience are implicated.... The

need for a full exposition of facts ...capable of resolution only by reference to a panoply of subjective factors).

This inequitable holding should not stand as Counsel's own extensive research demonstrates the validity of these claims. *E.g.*, *Laurinaitis* case. WWE had actual knowledge prior to Lograsso's employment and WWE's failure to protect its Wrestlers and continued refusal to inform them necessitates the remand of these actions.

F. *Singleton Lograsso's* Improper Rule 37 Discovery Sanctions.

1. Whether the District Court abused its discretion adopting the Recommended Ruling granting of R.37 discovery sanctions where sanctions had been intended to "dissuade further" discovery conduct and the *Singleton Lograsso* case (only case with discovery) was dismissed three months prior.

Rule 37 discovery sanctions are reviewed for abuse of discretion, but factual findings made in support of the decision are reviewed for clear error. *See Southern New England Telephone v. Global Naps*, 624 F.3d 123, 143 (2d Cir. 2010); (district court's orders be "just").

On February 22, 2018, Magistrate Judge Richardson issued a Recommended Ruling granting Rule 37 sanctions stating *Singleton Lograsso's* Supplemental Interrogatory Responses "continue to be evasive and incomplete". SPA-145. Judge Richardson's rationale, disputedly incorrect, was to "dissuade further abuse

of the discovery process and promote thorough compliance with court orders moving forward”; SPA-158 (continuing case with supplementation). The Summary Judgment Motions had already been fully briefed as of September 10, 2016 (almost a year and a half before the hearing) and discovery had long concluded. There simply could not be any “further abuse of the discovery process” given the procedural history. Any intent to dissuade non-discovery actions cannot be sustained and must be reversed.

Summary Judgment was granted on March 28, 2018. The Recommended Ruling was not adopted until July 22, 2017, almost four months after the case had been extinguished. Only monetary sanctions against Attorney Kyros was adopted improperly relying on non-discovery alleged abused. SPA-189-90, SPA-184.

Any “failure” to comply was substantially justified since affirmative answers were improperly required for omission claims and the reliance on these answers is unjustified since summary judgment had been fully briefed prior to the hearing and the case dismissed before adoption.

Substantively, the adoption was based on incorrect findings of fact. Singling out Attorney Kyros was unjustified by the record. To sanction Attorney Kyros and his law firm, these entities would have to be at fault for the specific sanctionable conduct under Rule 37. It was not indicated that Attorney Kyros was in charge of discovery responses, or even participated in their completion. Attorney Kyros did

not argue the motion at the hearing and Kyros Law was not the law firm in charge of discovery. The decision to only sanction Attorney Kyros was entirely fabricated, is unjust, and was made in clear error. As a result, the decision to adopt the Recommended Ruling based on fabricated facts not on the record was an abuse of the District Court's discretion, provides an unreasonable windfall to the victorious party, and therefore the sanctions should be reversed.

G. *Haynes and McCullough's Class Cases Met Rule 9(b) Requirements.*

1. Whether the *Haynes* and *McCullough* Allegations Pled Fraud With Sufficient Particularity Under Rule 9(b) and 12(b)(6).

Class Wrestlers alleged specific injuries indicative of repetitive head trauma (SPA-14-16), the District Court dismissed *McCullough* and *Haynes* "for failing to allege specific facts" per Rule 9(b). Rule 9(b) was given more weight than it dictates. Specifically, Wrestlers averred omissions pertaining to the risks associated with WWE performances. The Counts for Negligent Misrepresentation, Fraudulent Deceit, and Fraud by Omission were dismissed for failing to *affirmatively* allege specific fraudulent statements. SPA-61. This was clear error, contradicted the pleadings, and instead should have included "(1) what the omissions were; (2) the person [or entity] responsible for the failure to disclose; (3)

the context of the omissions and the manner in which they misled the plaintiff; and (4) what defendant obtained through the fraud”. See *Estate of Axelrod v. Flannery*, 476 F. Supp. 2d 188, 191 (D. Conn. 2007).

Such allegations were specifically pled. *E.g.*, A-193 (“negligently omitting material information”); A-226 (“WWE breached [its] duty by fraudulently failing to disclose material information”); A-227 (“As a direct and proximate result of WWE’s fraud by omission and failure to warn...”); *Id.* (“WWE negligently and/or recklessly misrepresented, omitted, and concealed from Plaintiffs and the putative class material facts concerning repetitive head impacts and related injuries”); A-239 (“WWE had and continues to have a duty...”); A-191 (“WWE chose to hide this necessary information” for profit).

The claims were dismissed for failure to show actual knowledge prior to 2005. The District Court improperly latched onto 2005 despite the Wrestlers’ allegations. A-205 (alleging “WWE was aware in 2005 and beyond” does not mean WWE was not aware prior to 2005, evidencing specific information WWE had at its disposal in 2005, a Mayo Clinic article, CTE findings, and the death of WWE Star Eddie Guerrero (A-211)). The Wrestlers did not assert WWE had no knowledge prior to 2005, and instead reference literature extending back to the 1920s “WWE has known or should have known for decades”. A-191.

A Rule 12(b)(6) motion is not the forum for fact-finding or fact disputes and the Court must accept all allegations in the Complaint as true as well as all inferences taken in the light most favorable to the plaintiffs. *See Falk v. Gen. Motors Corp.*, 496 F. Supp. 2d 1088, 198-99 (N.D. Cal. 2007) (*In re Nat. Hockey League Players' Concussion Injury Litig.*, 2015 WL 1334027, at \*6 (D. Minn., March 25, 2015 (accepting as true NHL hockey player allegations that they suffered “an increased risk of developing serious latent neurodegenerative disorders and diseases including but not limited to CTE, dementia, Alzheimer’s disease or similar cognitive-impairing conditions” and that “CTE is caused by repeated sublethal brain trauma of the sort Plaintiffs repeatedly suffered” and denying motion to dismiss fraud claims based on the NHL’s alleged knowledge and concealment of the same).

Rule 9(b) does not require proof, just general averments of “malice, intent, knowledge, and other condition[s] of mind of a person”. *Estate of Axelrod v. Flannery*, 476 F. Supp. 2d 188, 191 (D. Conn. 2007) (“while the ‘actual... fraud alleged must be stated with particularity ... the requisite intent of the alleged [perpetrator of the fraud] need not be alleged with great specificity.”). “Courts apply this “more general standard to scienter for the simple reason that ‘a plaintiff realistically cannot be expected to plead a defendant’s actual state of mind.’” *Id.*, quoting *Wight v. BankAmerica Corp.*, 219 F.3d 79, 91 (2d Cir. 2000). The District

Court's unreasonable emphasis on evidencing the specific date WWE first had actual knowledge of the risks inherent in its performances is therefore misplaced.

Discovery was not permitted. The Wrestlers alleged WWE's knowledge during their careers sufficiently detailing specific timeframes under Rule 9(b). Information pertaining to the risks of long-term neurological injuries from wrestling in WWE performances was omitted during their careers and WWE failed in its continuing duty to inform its Wrestlers after retirement to this present day. Therefore, the claims should be tolled.

## VIII. CONCLUSION

### WHEREFORE:

- Plaintiffs-Appellants *Laurinaitis*, et al. humbly request this Court reverse the District Court's dismissal of their claims;
- Plaintiffs-Appellants *Laurinaitis*, et al. and Konstantine W. Kyros and his Law Offices humbly request this Court reverse the District Court's granting of Rule 11 sanctions;
- Plaintiff-Appellant *Frazier* humbly requests this Court reverse the District Court's dismissal of her claims;
- Plaintiffs-Appellants *Singleton Lograsso* humbly request this Court reverse the District Court's granting of Summary Judgment;
- Plaintiff-Appellants *Singleton Lograsso* and Konstantine W. Kyros and his Law Offices humbly request this Court reverse the District Court's granting of Rule 37 sanctions;
- Plaintiff-Appellants *Haynes* and *McCullough*, et al. humbly request this Court reverse the District Court's dismissal of its claims; and,
- Remand these actions for further proceedings in accordance with this Court's Order.

Dated: July 8, 2019.

Respectfully Submitted,

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## **CERTIFICATE OF COMPLIANCE**

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**SPA-1**

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

<b>RUSS McCULLOUGH, a/k/a "Big Russ McCullough", RYAN SAKODA, and MATTHEW R. WEISE, a/k/a "Luther Reigns," individually and on behalf of all Others similarly situated, Plaintiffs,</b>	:	<b>CIVIL ACTION NO. 3:15-cv-001074 (VLB) Lead Case</b>
<b>v.</b>	:	
<b>WORLD WRESTLING ENTERTAINMENT, INC.,  Defendant.</b>	:	

<b>EVAN SINGLETON and VITO LOGRASSO Plaintiffs,</b>	:	<b>CIVIL ACTION NO. 3:15-cv-00425 (VLB) Consolidated Case</b>
<b>v.</b>	:	
<b>WORLD WRESTLING ENTERTAINMENT, INC.,  Defendant.</b>	:	

<b>WILLIAM ALBERT HAYNES III, Individually and on behalf of all Others similarly situated, Plaintiffs,</b>	:	<b>CIVIL ACTION NO.  3:15-cv-01156 (VLB) Consolidated Case</b>
<b>v.</b>	:	
<b>WORLD WRESTLING ENTERTAINMENT, INC.,  Defendant.</b>	:	

**March 21, 2015**

**MEMORANDUM OF DECISION GRANTING IN PART AND DENYING IN PART**

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

Plaintiffs in this consolidated action are former wrestlers for World Wrestling Entertainment Inc. ("WWE"), a Connecticut entertainment company which produces televised wrestling programming. Plaintiffs allege that they are either suffering from symptoms of permanent degenerative neurological conditions resulting from traumatic brain injuries sustained during their employment as wrestlers for WWE or are at increased risk of developing such conditions. Plaintiffs claim that they were injured as a result of WWE's negligence in scripting violent conduct and failing to properly educate, prevent, diagnose and treat them for concussions. Plaintiffs also claim that WWE had knowledge of evidence suggesting a link between repeated head trauma that could be sustained during WWE events and permanent degenerative neurological conditions such as CTE and either concealed such evidence, fraudulent or negligently denied that it existed, or failed to disclose it in the face of a duty to disclose. Plaintiffs allege that they relied on such fraudulent statements or omissions to their detriment in making decisions regarding their health. In total, plaintiffs have asserted six claims against WWE in their Complaints, including: "Fraudulent Concealment"; (Count II) "Fraud by Omission"; (Count III) Negligent Misrepresentation; (Count IV) Fraudulent Deceit; (Count V) Negligence; and (Count VI) Medical Monitoring.

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

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

Plaintiffs respond by arguing that the statutes of limitation and repose are subject to tolling based on the continuous course of conduct doctrine and because of fraudulent concealment pursuant to Conn. Gen. Stat. § 52-595. Plaintiffs argue that they have stated claims for negligence because WWE owed a duty of care to protect the Plaintiffs from the long term neurological effects that

may result from sustaining multiple concussions and have stated claims for fraud because WWE failed to disclose that Plaintiffs were at risk for such neurological conditions.

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

I. Factual Background

The following facts and allegations are taken from the Second Amended Complaint in the action brought by Evan Singleton and Vito LoGrasso [3:15-cv-00425-VLB, Dkt. #73] (hereinafter "SAC")) as well as the Amended Complaint in the purported class action brought by Russ McCullough [Dkt. 73] (hereinafter "MAC")) and the Amended Complaint in the purported class action brought by William Albert Haynes [3:15-cv-01156-VLB, Dkt. #43] (hereinafter "HAC")). All three Complaints contain nearly identical factual allegations with the exception of certain paragraphs alleging facts particular to each named plaintiff. The Complaints are also excessively lengthy, including large numbers of paragraphs that offer content unrelated to the Plaintiffs' causes of action and appear aimed at an audience other than this Court.

a) World Wrestling Entertainment, Inc.

The WWE is an "organizer and purveyor of professional wrestling events, programs, and matches." [SAC ¶ 19]. WWE events are alleged to be an "action

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

The WWE employs trainers and doctors to oversee its wrestling events and to treat and monitor its wrestlers for injuries they sustain from participation in the events or practices. [Id. ¶¶ 86, 129, 131]. Specifically, the WWE created a “Wellness Program,” launched on February 27, 2006, which provides “[c]omprehensive medical and wellness staffing, cardiovascular testing and monitoring, ImPACT concussion testing, substance abuse and drug testing, annual physicals, [and] health care referrals” to current and former WWE wrestlers. [Id. ¶ 78]. The WWE also is alleged to collect injury reports concerning injuries sustained by WWE talent in the ring. [Id. ¶ 89].

**b) Concussions and CTE**

Plaintiffs define a “concussion” as a type of mild traumatic brain injury

(“MTBI”) caused by a ‘bump, blow, or jolt to the head or body.’ A blow to the head that does not cause a concussion, or that has not been diagnosed to cause a concussion, is commonly referred to as a sub-concussive blow.” [Id. ¶ 26].

Concussions cause numerous symptoms including: “headaches and problems with concentration, memory, balance coordination, loss of consciousness, confusion, disorientation, nausea, vomiting, fatigue or drowsiness, difficulty sleeping, sleeping more than usual, and seizures.” [Id. ¶ 28].

Chronic traumatic encephalopathy (“CTE”) is defined in the Complaints as a permanent change to brain structure caused by repeated blows to the head. [SAC ¶¶ 32-33]. CTE is usually caused by repeated minor traumatic brain injuries that “often occur[] well before the development of clinical manifestations,” rather than from a single injury. [Id. ¶ 34]. Concussions can cause CTE, but are not the only cause: repeated sub-concussive head trauma can also cause CTE.” [Id. ¶ 25]. Furthermore, sustaining repeated mild traumatic brain injuries without taking sufficient time to recover may significantly increase the risk of developing CTE. [Id. ¶ 30]. Symptoms of CTE include “depression, dementia, cognitive impairment, Parkinsonism, personality change, speech and gait abnormalities.” [SAC ¶ 33]. Whereas a concussion’s symptoms “are often sensory and manifest immediately,” CTE can manifest much later, and “can be caused by blows which have no accompanying symptoms.” [Id. ¶¶ 35-36]. Unlike concussions, CTE can only be diagnosed *post mortem* with a “direct tissue examination, which can detect an elevated level of Tau protein in brain tissue.” *Id.*

**c) Concussion Training, Education and Prevention at WWE**

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

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

For example, the Complaints allege that the WWE did not adequately train “its wrestlers” to execute “their moves,” [SAC ¶88], and that WWE created “complicated and dangerous stunts” which it directed “its wrestlers” to perform. [SAC ¶ 91]. Some allegations single out a former WWE trainer, Bill Demott, who is alleged to have ordered “wrestlers who complained of injuries” to “sit in time out,” and to have assaulted or verbally humiliated those wrestlers. [Id. ¶ 98].

Nowhere do the Complaints allege that any of the named Plaintiffs were subjected to such conduct. Other allegations are patently vague. As an example, WWE is accused of having “continuously permeate[d] (sic) an environment of humiliation and silence.” [Id. ¶ 124]. Demott is accused of having “fostered a brutal culture” and of having forced unnamed wrestlers into “dangerous drills that led to many injuries.” [Id. ¶ 98].

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

Other allegations are patently false.<sup>1</sup> They are simply copied and pasted in whole cloth from one Complaint to another. For example, the McCullough Complaint parrots *verbatim* the allegation that “LoGrasso, wrestling on average five times a week, sustained repeated concussions day after day over many years,” without bothering to change the name of the plaintiff. [MAC ¶ 43]. Even LoGrasso’s allegation that he suffered concussions “day after day” is contradicted by the fact that LoGrasso never alleges that he was diagnosed with a concussion during his entire tenure with WWE. Rather, his Complaint speculatively alleges only that “upon information and belief” a WWE doctor

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

“would on numerous occasions” witness LoGrasso suffer head trauma *extremely likely* to cause concussions.” [SAC ¶ 135 (emphasis added)]. Further, it is unclear what LoGrasso’s basis is for alleging *daily* concussions would be, given that he also alleges that while he was wrestling for WWE he was never educated “regarding concussion or sub-concussive injuries” and “never knew that he could sustain a concussion while remaining awake.” [SAC ¶ 137].

d) WWE’s Alleged Knowledge and Concealment of Risks

Plaintiffs allege that WWE “concealed important medical information, including the effects of multiple head traumas” from the plaintiffs, in a campaign of misinformation and deception to prevent Plaintiffs from understanding the true nature and consequences of the injuries they have sustained.” [Id. ¶ 60-61]. Specifically, the *Singleton* and *McCullough* Complaints allege that WWE was aware “in 2005 and beyond” that wrestling for the WWE and suffering head trauma “would result in long-term injuries.” [SAC ¶ 57, MAC ¶ 57]. It is unclear how plaintiffs arrive precisely at the year 2005 – the paragraph containing this allegation cites a link to an internet article on the website of the Mayo Clinic regarding the causes of concussions that is no longer available. Elsewhere, the Complaints cite to studies conducted in 2009 and 2010 and findings in 2007 that former wrestlers may have suffered from CTE. [SAC ¶ 34, 35, 58]. The Complaints also contain allegations undermining the claim that WWE “was aware” of the medical information allegedly concealed, as they later allege only that “WWE knew, *or should have known*, of developments in medical science

during the last decade,” citing to a “large body of medical and scientific studies that date as far back to the 1920’s that link head trauma to long term neurological problems.” [Id. ¶ 3 (emphasis added)].

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

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

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

The Complaints allege that WWE CEO Vincent K. McMahon and former WWE CEO Linda McMahon further attacked those findings in a joint interview on CNN in 2007. [Id. ¶ 74]. Plaintiffs cite Dr. Joseph Maroon’s statements to the NFL Network, Total Access in March of 2015 that “[t]he problem of CTE, although real, is its being overexaggerated.” [Id. ¶ 56]. Plaintiffs also allege that WWE

Executive Stephanie McMahon Levesque’s testified in 2007 to the Committee on Oversight and Government Reform of the U.S. House of Representatives that there were “no documented concussions in WWE’s history.”<sup>2</sup> [Id. ¶ 64]. Plaintiff LoGrasso further alleges that he has received pamphlets and e-mails from the WWE Wellness Program offering support to former wrestlers struggling with drug and alcohol abuse, but that he has not received any communication from the WWE Wellness Program regarding long-term neurological disorders resulting from wrestling activities. [Id. ¶76].

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

**e) The Named Plaintiffs**

**i) Plaintiff Vito LoGrasso**

Plaintiff Vito LoGrasso began to wrestle for the WWE in 1990 as an extra, eventually signing a full-time contract with the WWE in 2005. [Id. ¶¶ 118, 122-23]. LoGrasso alleges that he “never knew that he could sustain a concussion while remaining awake” and claims he believed that “having his ‘bells rung’ would not result in a concussion.” [Id. ¶ 137]. LoGrasso alleges that during his tenure with

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

the WWE, his trainer Bill Dumott and other unidentified WWE employees encouraged LoGrasso “to fight through serious injury,” although such injuries are unspecified. [Id. ¶ 124]. LoGrasso alleges that he was told by unidentified WWE employees that injuries he suffered were part of “paying his dues.” [Id. ¶ 125].

LoGrasso alleges that on some date in September of 2006, he was “kicked in the face outside the ring,” which knocked LoGrasso to the ground “where he struck his head against concrete steps.” [Id. ¶ 134]. LoGrasso alleges that he was not examined by WWE medical staff for a possible concussion after the incident. [Id.]. However, LoGrasso does not allege that he ever approached any WWE employee to report concussion-like symptoms or that any specific WWE employee had knowledge of his condition.

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

*ii) Plaintiff Evan Singleton*

Plaintiff Evan Singleton is a Pennsylvania resident who signed a contract with the WWE in 2012 and wrestled for WWE from 2012 to 2013. [SAC ¶ 93].

Singleton alleges that he “did not have adequate time to rest between matches and was encouraged to wrestle while injured.” [Id. ¶ 95]. Singleton also alleges that he sustained “numerous” injuries to the “upper body, neck and head” during his two year wrestling career with WWE, though such injuries are unspecified in the Complaint. [Id.].

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

While Singleton alleges that he was “not treated” after the incident, he admits that he saw a WWE trainer immediately after the incident and was instructed to rest over the following weekend and have his father and roommate monitor his condition. [Id. ¶ 104]. Singleton was later seen by a WWE-affiliated doctor who prescribed additional rest, followed by a WWE-affiliated neurologist

who ordered additional testing and a referral to a WWE treating psychiatrist. [Id. ¶¶ 105-106, 115]. Singleton then simultaneously alleges that he was “not medically cleared to wrestle” by WWE but that he was “encouraged” to return and “criticized” and “threaten[ed]” and “harass[ed]” for his inability to return by his trainer, Demott. [Id. ¶ 108].

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

*iii) Plaintiff Russ McCullough*

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

McCullough alleges that he was “knocked completely

unconscious” after being struck to the head with a metal chair during a WWE wrestling match. [Id.] While unconscious, he was struck in the head with the metal chair “more than 15 times.” [Id.] McCullough “sought treatment on his own and on an unspecified date not later than 2001 and he was diagnosed with a severe concussion” following the incident. [Id.] McCullough also alleges that while participating in numerous WWE wrestling matches he suffered “sub-concussive or concussive blows.” [Id. ¶ 101]. McCullough currently suffers from “headaches, memory loss and severe mental health issues.” [Id. ¶ 103].

*iv) Plaintiff Ryan Sakoda*

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

*v) Plaintiff Matt Wiese*

Plaintiff Matt Wiese is a California resident who wrestled from 2003 to 2005 under the stage name “Luther Reigns.” [Id. ¶ 109]. Wiese alleges that he knowingly “sustained numerous untreated head injuries” although such injuries

are not specified. [Id. ¶ 110]. Wiese alleges that during a WWE event on an unspecified date he was punched by a wrestler under the stage name “Big Show” and sustained “visible injuries” to his head and vomited afterward. [Id.]. Wiese alleges that “WWE staff took no steps to intervene in the event” or to treat his condition. [Id.]. However, Wiese does not allege that he ever approached any WWE employee to report concussion-like symptoms or seek treatment or that any specific WWE employee had knowledge of his condition. Wiese alleges that he suffers from headaches and memory loss and has had a stroke. [Id. ¶ 111].

*vi) Plaintiff William Albert Haynes III*

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

f) Procedural History

Plaintiffs Singleton and LoGrasso originally filed their Complaint in the U.S. District Court for the Eastern District of Pennsylvania on January 16, 2015 as a purported class action. On February 27, 2015, WWE filed a Motion to Transfer Venue pursuant to 28 U.S.C. § 1404(a) due to forum-selection clauses in the contracts signed by each of the wrestlers. [Dkt. 6]. Those clauses state that: “[t]he parties agree to submit any and all disputes arising out of or relating in any way to this Agreement exclusively to the jurisdiction of the United States District Court of Connecticut.” Plaintiffs filed no opposition to the Motion to Transfer. By Order dated March 23, 2015, the Eastern District of Pennsylvania granted WWE’s Motion to Transfer, noting that “[t]he plaintiffs do not oppose a transfer of venue and agree that the District of Connecticut is an appropriate forum.” [Dkt. 11].

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

Haynes filed his own lawsuit in the United States District Court for the District of Oregon, purporting to be a class action. [No. 3:15-cv-01115-VLB, Dkt. 1].

Unlike the named plaintiffs in the *Singleton* and *McCullough* actions, Plaintiff Haynes did not sign a contract with a forum-selection clause limiting jurisdiction to the District of Connecticut. Nonetheless, on June 25, 2015, the District Court for the District of Oregon granted WWE's Motion to Transfer the *Haynes* action to this District pursuant to 28 U.S.C. § 1404(a), finding that Haynes' choice of forum was entitled to little weight since he had brought a class action on behalf of individuals throughout the United States, because of evidence of forum-shopping on the part of Plaintiff's counsel and because "*forum non conveniens* considerations" weighed in favor of transfer. [Dkt. 59].

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

## II. Standard of Review

“To survive a motion to dismiss, a complaint must contain sufficient

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

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

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

quotations omitted).

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

### III. Discussion

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

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

#### 1. Connecticut Law Applies to the Claims in the Haynes, Singleton and McCullough Actions

Ordinarily, when a case is transferred pursuant to 28 U.S.C. § 1404(a), “the transferee court generally adheres to the choice of law rules of the transferor court.” *Sissel v. Rehwaldt*, 519 Fed. Appx. 13, 17 (2d Cir. 2013) (citing *Van Dusen v. Barrack*, 376 U.S. 612, 639 (1964)). WWE notes that an exception applies when the transferor court lacks personal jurisdiction over the defendant(s), in which case the transferee court’s choice-of-law principles govern. See *Garena v. Korb*, 617 F.3d 197, 204 (2d Cir. 2010) (“[W]hen a case is transferred under 28 U.S.C. § 1404(a), the law of the transferor state is to be applied so long as the transferor state could properly have exercised jurisdiction.”).<sup>4</sup> However, in this case the determination of which state’s choice-of-law rules to apply is made easier by the fact that both Oregon and Connecticut courts consider choice-of-law questions by examining the same factors, which are set forth in the Restatement (Second) of Conflicts § 145. *Jaiguay v. Vasquez*, 287 Conn. 948 A.2d 955 (Conn. 2008) (“we have moved away from the place of the injury rule for tort actions and adopted the most significant relationship test found in §§ 6 and 145 of the Restatement (Second) of Conflict of Laws.”); *389 Orange Street Partners v. Arnold*, 179 F.3d 656, 662 (9th Cir. 1999) (“Oregon courts follow the Restatement (Second) of Conflicts of Laws § 145 approach to determining the appropriate substantive law.”). Under the factors set forth in the Restatement and the precedent cases in

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

either jurisdiction, Connecticut substantive law must be applied to Haynes' claims.

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

The first factor, the place where the injury occurred, is essentially neutral in this case. Haynes alleges that he competed in “hundreds” of matches for the WWE, including matches in front of nationally-televised audiences. [HAC ¶ 122]. Although Plaintiffs argue that “at least four” of those matches occurred in Oregon, [Pl.’s Supp. Mem. at 10], it cannot be said that the “injury” alleged – in the form of increased risk of degenerative neurological conditions – occurred exclusively – or even substantially – within Oregon borders or indeed within any jurisdiction. Haynes has also brought a purported class action on behalf of

wrestlers who also presumably were injured in numerous jurisdictions.

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

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

The four factors enumerated above weigh in favor of the application of Connecticut law. The Court also notes that two important factors in the Oregon court's decision to transfer this action to Connecticut were: (1) evidence of forum-shopping on the part of Plaintiff's counsel, and (2) the fact that the *Haynes* action, along with the *McCullough* action which had already been transferred to this District, was a purported class action on behalf of individuals domiciled throughout the United States. [Dkt. 59]. These factors must also be taken into

account here, and lead this Court to assign little value to the fact that Haynes is an Oregon resident, essentially the only fact supporting application of Oregon law. Courts in both the Second and Ninth Circuits have reached the same conclusion in similar circumstances. See *389 Orange Street Partners*, 179 F.3d at 662 (applying Connecticut law to claims brought by former basketball player Clifford Robinson and noting that “the only factor favoring Oregon substantive law is Robinson’s residence in Oregon.”). In such circumstances, the Court must apply Connecticut substantive law.

Because the Court applies Connecticut substantive law, the Connecticut statutes of limitations and repose must also apply. “Under Oregon law, the statute of limitation is provided by the state which supplies the substantive law.” *389 Orange Street Partners*, 179 F.3d at 661. And under Connecticut law, the statute of limitations is considered procedural and the Connecticut statute of limitations will govern if the underlying claims existed at common law. *Baxter v. Sturm, Ruger & Co. Inc.*, 32 F.3d 48, 49 (2d Cir. 1994) (rejecting application of Oregon statute of limitations and after the Connecticut Supreme Court found the statute to be procedural and not substantive); *Doe No. 1 v. Knights of Columbus*, 930 F. Supp. 2d 337, 353 (D. Conn. 2013) (Connecticut courts traditionally apply Connecticut's statute of limitations when the plaintiff pursues a common law cause of action”).

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

The WWE urges dismissal of all of the claims of Plaintiffs LoGrasso,

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

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

“No action to recover damages for injury to the person, or to real or personal property, caused by negligence . . . shall be brought but within two years from the date when the injury is first sustained or discovered or in the exercise of reasonable care should have been discovered, and except that no such action may be brought more than three years from the date of the act or omission complained of . . . .”

Conn. Gen. Stat. § 52-584 (West).

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

Because plaintiff Singleton wrestled for WWE as late as 2013, WWE has not argued that his claims are time barred. However, Plaintiffs Haynes, LoGrasso, McCullough, Sakoda and Wiese each ceased wrestling for WWE well before 2012

(together, the “Pre-2012 Plaintiffs”). Whether the Pre-2012 Plaintiffs’ claims are time-barred depends on: (1) when each of the plaintiffs first discovered “actionable harm” such that the discovery provision of Conn. Gen. Stat. § 52-584 began to accrue on their negligence claims; (2) whether WWE engaged in a continuing course of conduct that tolled the applicable statutes of repose as to all claims; or (3) whether WWE engaged in fraudulent concealment in violation of Conn. Gen. Stat. § 52-595, such that the applicable statutes of limitations must be tolled as to all claims.

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

a. Date of Discovery of Actionable Harm

WWE first argues that the Pre-2012 Plaintiffs’ negligence claims are barred by the discovery portion of the statute of limitations at Sec. 584 because the Plaintiffs discovered the injuries they have complained of well prior to their retirement from wrestling. The Connecticut Supreme Court has defined the term

‘injury’ in Sec. 52-584 to be an event that occurs when the plaintiff suffers “actionable harm.” *Lagassey v. State*, 846 A.2d 831, 845 (Conn. 2004). “Actionable harm,” in turn, “occurs when the plaintiff discovers, or in the exercise of reasonable care, should have discovered the essential elements of a cause of action.” *Id.* at 846. Thus, “the statute of limitations begins to run when the claimant has knowledge of facts which would put a reasonable person on notice of the nature and extent of an injury and that the injury was caused by the wrongful conduct of another. . . The focus is on the plaintiff’s knowledge of facts, rather than on discovery of applicable legal theories.” *Id.* The determination of when a plaintiff in the exercise of reasonable care should have discovered ‘actionable harm’ is ordinarily a question reserved for the trier of fact.” *Id.* at 847.

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

The WWE argues, therefore, that the statutes of limitations began to run on the Pre-2012 Plaintiffs' claims at the time that each plaintiff knowingly sustained head injuries while participating in WWE's wrestling matches, because each plaintiff has alleged that he was aware that he had sustained head trauma and/or concussions and was at least somewhat symptomatic of concussive injury at that time that he was wrestling. [Def.'s Mem. at 24]. It is inconsequential, WWE argues, that the Pre-2012 Plaintiffs "did not discover the full manifestation of these alleged head injuries" until a later date. [Def.'s Reply at 7].

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

On this issue, the Court must concur with the Plaintiffs. The mere fact that the Pre-2012 Plaintiffs allege that they sustained concussions and head trauma

during their tenure with the WWE; and that they allege awareness of those concussions and possible concussion-like symptoms at the time, is not necessarily dispositive here at the motion to dismiss stage. A single MTBI such as a concussion, and the symptoms that a discrete MTBI can manifest, are not the same “condition” as a disease such as CTE or another degenerative neurological disorder that may – or may not – be caused by repeated MTBIs.

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

Only one court has considered this issue previously, in the context of current and former professional hockey players. See *In re Nat. Hockey League Players' Concussion Injury Litig.*, 2015 WL 1334027, at \*5-7 (D. Minn. Mar. 25, 2015) (hereinafter the “NHL case”). In the *NHL* case, Judge Nelson rejected the NHL’s substantially similar argument on a Motion to Dismiss under Minnesota law that “the statutes of limitations began to run on Plaintiffs’ claims when

Plaintiffs sustained head injuries in the NHL because they were aware at that time that they had been injured . . . and the fact that the injuries are now more extensive than they realized at the time they sustained them does not extend the limitations period.” *Id.* at \*7. Judge Nelson held that because the NHL plaintiffs “alleged “injury in the form of an increased risk of developing neurodegenerative diseases,” it could not be determined from the face of the Complaint that the NHL plaintiffs “were aware that they had suffered an injury—or the possibility of injury—while they were playing in the NHL.” *Id.*

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

Here, however, it cannot be determined from the face of the Complaints and as a matter of law that the Pre-2012 Plaintiffs were on notice of an increased risk for a latent, permanent neurological condition merely because they knew they had suffered a concussion and/or sustained other minor brain trauma during the time they wrestled for WWE. The Pre-2012 Plaintiffs' knowledge, or lack thereof, of a connection repeated concussions or sub-concussive blows to the head and latent, permanent neurological conditions presents a material issue of fact that must be decided at a later date.<sup>5</sup> Without knowledge of such a

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

LoGrasso, for his part, contends that, although he began experiencing neurological symptoms in 2008, he was unaware that his symptoms were connected to the head trauma he received while wrestling with the WWE until his diagnosis 2014. [Pls.' Rep. Mem. at 8-9]. Yet the allegation that LoGrasso did not know of a connection between his headaches and head trauma sustained during wrestling activity, accepted as true for the purposes of this motion, nonetheless pushes the boundary between possible and plausible. Plaintiffs will carry a heavy burden to convince any reasonable trier of fact that LoGrasso, one year after retiring from wrestling in 2007, could not pinpoint the source of his headaches, deafness, and TMJ.

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

The Court notes that the WWE has not argued in the instant motions to dismiss that the Pre-2012 Plaintiffs should have reasonably become aware of their causes of action on the basis of widely-publicized studies, lawsuits and settlements linking CTE and other disorders with professional athletes in other sports in recent years. The Court is skeptical, however, of the inherent contradiction which underlies plaintiffs' fraud claims. Plaintiffs simultaneously argue on the one hand that studies and data linking MTBIs with permanent degenerative neurological conditions were both widespread and widely-publicized, and on the other hand that Plaintiffs had no knowledge of any of this widely-publicized information and instead relied, to their detriment, on a television entertainment company to explain to them the dangers of volunteering, for compensation, to be hit in the head repeatedly with a metal folding chair.<sup>6</sup>

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

<sup>6</sup> The Court also notes that the term “punch-drunk” has been common parlance for decades and certainly well before Plaintiffs began wrestling for WWE. And in 1984, three years before Plaintiff Haynes began wrestling for WWE, the boxer

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

b. Application of Connecticut's Statute of Repose

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

Specifically, Section 52-584 bars a plaintiff from bringing a negligence claim "more than three years from the date of the act or omission complained of." Conn. Gen. Stat. § 52-584 (West). "[T]he relevant date of the act or omission complained of, as that phrase is used in § 52-584, is the date when the negligent conduct of the defendant occurs and ... not the date when the plaintiff first sustains damage . . . ." *Martinelli v. Fusi*, 963 A.2d 640, 644 (Conn. 2009). Therefore, any action commenced more than three years from the date of the negligent act or omission is barred by Sec. 52-584, "regardless of whether the plaintiff could not reasonably have discovered the nature of the injuries within

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Muhammad Ali was famously diagnosed with early-onset Parkinson's disease incident to the head trauma he sustained while boxing.

that time period.” *Id.* (Internal quotation marks omitted).

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

Nonetheless, the Connecticut Supreme Court has recognized that Sec. 52-584 “may be tolled under the continuing course of conduct doctrine.” *Neuhaus*, 905 A.2d at 1143. In addition, Conn. Gen. Stat. § 52-595 tolls any statute of limitations or repose, including Sec. 52-584 and Sec. 52-577, if a defendant fraudulently conceals a cause of action from a plaintiff. See *Connell v. Colwell*, 571 A.2d 116, 118 (Conn. 1990) (concluding that “the exception contained in § 52-595 constitutes a clear and unambiguous general exception to any Connecticut statute of limitations that does not specifically preclude its application.”).

WWE argues that “the latest date on which WWE conceivably could have committed any ‘act or omission’” with regard to any plaintiff would have been the last day of their employment with WWE. For each the Pre-2012 Plaintiffs, this would have been far more than three years prior to the filing of the instant

lawsuits, meaning that each of the claims would be reposed.<sup>7</sup>

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

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

Under appropriate circumstances, the Connecticut statutes of repose may be tolled under the continuing course of conduct doctrine. *Blanchette v. Barrett*, 640 A.2d 74, 83 (Conn. 1994). The plaintiff must show the defendant: “(1) committed an initial wrong upon the plaintiff; (2) owed a continuing duty to the plaintiff that was related to the original wrong; and (3) continually breached that duty.” *Witt v. St. Vincent's Medical Center*, 746 A.2d 753, 762 (Conn. 2000).

Where Connecticut courts have found a duty “continued to exist after the act or omission relied upon: there has been evidence of either a special relationship between the parties giving rise to such a continuing duty or some later wrongful conduct of a defendant related to the prior act.” *Macellaio v. Newington Police Dep't*, 75 A.3d 78, 85 (Conn. App. 2013). The existence of a special relationship “will depend on the circumstances that exist between the

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<sup>7</sup> Plaintiff LoGrasso, for example, has not contested the WWE’s assertion that the date of the wrongful acts or omissions he complains of last occurred on or before December 31, 2007.

parties and the nature of the claim at issue.” *Saint Bernard School of Montville, Inc. v. Bank of America*, 95 A.3d 1063, 1077 (Conn. 2014). Connecticut courts examine each unique situation “in which there is a justifiable trust confided on one side and a resulting superiority and influence on the other.” *Alaimo v. Royer*, 448 A.2d 207, 209 (Conn. 1982). Specifically, a “‘special relationship’ is one that is built upon a fiduciary or otherwise confidential foundation characterized by a unique degree of trust and confidence between the parties, one of whom has superior knowledge, skill or expertise and is under a duty to represent the interests of the other.” *Saint Bernard School of Montville*, 95 A.3d at 1077.

However, “a mere contractual relationship does not create a fiduciary or confidential relationship,” *id.* at 835-36, and employers do not necessarily owe a fiduciary duty to their employees. *Grappo v. Atitalia Linee Aeree Italiane, S.P.A.*, 56 F.3d 427, 432 (2d Cir. 1995); *Bill v. Emhart Corp.*, No. CV 940538151, 1996 WL 636451, at \*3-4 (Conn. Super. Ct. Oct. 24, 1996). The law will imply [fiduciary responsibilities] only where one party to a relationship is unable to fully protect its interests [or where one party has a high degree of control over the property or subject matter of another] and the unprotected party has placed its trust and confidence in the other.” *Hi-Ho Tower, Inc. v. Com-Tronics, Inc.*, 761 A.2d 1268, 1279-80 (Conn. 2000).

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

Opp. Mem. at 14].

The WWE strenuously argues that under Connecticut law, a continuing duty owed by a defendant must “rest on the factual bedrock of actual knowledge,” *Neuhaus*, 905 A.2d at 1143, and stresses that none of the Pre-2012 Plaintiffs alleges that they ever informed the WWE that they were experiencing concussion-like symptoms. In *Neuhaus*, the defendant hospital failed to warn the plaintiff of the risks – including brain damage – associated with her child’s respiratory condition upon the plaintiff’s discharge. *Id.* at 196. One of the defendant’s doctors had assessed the child’s risk factors for complications and determined the child was not at risk of permanent injury. *Id.* The Connecticut Supreme Court held that because there was no evidence that the doctor was ever confronted with actual knowledge that the child’s treatment at the hospital “had been mishandled” or became “aware that his original assessment . . . may have been incorrect,” the hospital did not have a continuing duty to warn the plaintiff regarding the risks associated with the underlying condition. *Id.* at 204.

Ignoring the thrust of WWE’s argument, Plaintiffs state that “[b]ecause WWE provided [them] with medical care . . . it had a continuing duty to warn them of the risks they faced . . . until disclosure resulting in a complete diagnosis.” [Pls.’s Mem. at 17]. In support, Plaintiffs cite to the case of *Witt v. St. Vincent’s Med. Ctr.*, 746 A.2d 753 (Conn. 2000), in which the defendant doctor made a diagnosis while expressing concern that his diagnosis may have been incorrect; and later wrote another note expressing concern that the plaintiff could develop cancer. However, the issue in *Witt*, as later clarified by the Connecticut Supreme

Court in *Neuhaus*, was the defendant's "initial and continuing concern" that had "never been eliminated" which "triggered his duty to disclose." 905 A.2d at 1144. Thus, *Witt* as clarified by *Neuhaus* stands for the proposition that a continuing duty arises when the medical care provider has reason to suspect that further treatment is needed at the time of treatment; and not for the proposition that once treatment is provided a medical care provider has a duty to advise a patient in perpetuity about medical discoveries, risks and treatment for any possible condition that a patient might reasonably develop.

WWE argues that the court in *Neuhaus* rejected the "expansive type of duty urged here . . . to warn of all potential risks associated with head injuries," and that the court in *Neuhaus* declined to hold that the hospital had a continuing duty to warn of "the universe of potential risks associated with respiratory distress syndrome." [Dkt. 95-1, Def.'s Mem. at 41]. The WWE further argues that none of the Pre-2012 Plaintiffs have pled any specific wrongful diagnosis or wrongful treatment of any specific injury on the part of a WWE-affiliated medical provider.

However, it is at least plausibly alleged<sup>8</sup> under *Neuhaus* that WWE may have had both the requisite initial and continuing concern about the long-term health of its wrestlers such that it owed a continuing duty to warn those wrestlers

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

about the long-term risks of head trauma sustained in the ring even after they had retired. As to an initial concern, it is at least plausibly alleged that WWE knew as early as 2005 about research linking repeated brain trauma with permanent degenerative disorders and that such brain trauma and such permanent conditions could result from wrestling. For example, the WWE is alleged to have created its Wellness Program in 2006 on the advice of its attorney after the deaths of several former wrestlers from drug and alcohol abuse. WWE's attorney is alleged to have recommended to head this Program Doctor Maroon, a noted neurosurgeon and head injury specialist for the NFL, who, together with a colleague, invented the ImpACT concussion test. [SAC ¶ 76, n. 26]. This fact alone, indeed to WWE's credit, plausibly suggests WWE had knowledge causing it to have an early and strong concerns about the health effects of wrestling and the long-term neurological health of WWE wrestlers.

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

about the health of its former wrestlers.

Furthermore, the key issue here is whether it can be determined from the face of the Complaints that WWE's initial concern about permanent neurological disorders had ever "*been eliminated.*" *Witt*, 280 Conn. at 206 (emphasis added). For example, in *Sherwood v. Danbury Hosp.*, 746 A.2d 730, 733 (Conn. 2000) (*Sherwood I*), a plaintiff in 1985 had received a transfusion of blood that she alleged had been knowingly administered despite having not been tested for the presence of HIV, even though tested blood was available. *Id.* The patient had no further contact or treatment with the hospital where the transfusion was performed whatsoever until her discovery that she had contracted the HIV virus in 1994. *Id.* Noting that the plaintiff's expert had testified that in 1987, "the Center for Disease Control ... issued a recommendation that recipients of multiple transfusions between 1978 and late spring of 1985 be advised that they were at risk for ... HIV ... infection and [be] offered HIV antibody testing," and that another hospital had done so for approximately 17,000 former patients, the court found that there was a material issue of fact as to whether the hospital owed a continuing duty to warn the plaintiff, and remanded the case. *Id.* at 740. Only after factual development revealed that the hospital did not knowingly administer untested blood did the Connecticut Supreme Court later hold that there was no continuing duty to warn the plaintiff of the risks associated with her blood transfusion. *Sherwood v. Danbury Hosp.*, 896 A.2d 777, 797 (Conn. 2006)

(*Sherwood II*).<sup>9</sup> At the very least, further factual development is necessary to determine the scope of any initial and ongoing concern by WWE about head injuries in its wrestling programs.

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

Plaintiffs note WWE’s expansive role in monitoring the safety of wrestling and the welfare of its wrestlers. They allege that “WWE trained its wrestlers, choreographed their performances, and employed medical staff to monitor its wrestlers’ health.” [Pls.’ Opp. Mem. at 29]. Specifically, the WWE is alleged to have designed and scripted the specific stunts performed by the wrestlers, and to have publicly advised that the activities were safe. [SAC ¶¶ 23, 61]. Plaintiffs alleged that WWE regularly collected and continues to collect wrestler injury

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

reports, including during Plaintiffs' careers with WWE. [Id. ¶ 86]. Plaintiffs allege that the WWE took on a greater role as a caretaker for its active wrestlers after its creation of the Wellness Program in 2007. The WWE is alleged to have publicly stated the intent of the Wellness Program to monitor active wrestlers for concussions, including providing concussion testing, and to have boasted that the program is the "finest monitoring program in American Sports." [Id. ¶ 82]. Although the Wellness Program is not alleged to have taken any active role in monitoring retired wrestlers, the program's doctors are alleged to have been knowledgeable with regard to the latest scientific studies concerning CTE and other permanent degenerative disorders, including the head of the program, Dr. Maroon, who is alleged to have been a critic of certain studies and findings regarding CTE. [Id. ¶ 76]. These allegations, if true, would suggest that a special relationship could have existed between plaintiffs and WWE, one "characterized by a unique degree of trust and confidence between the parties" and by WWE's "superior knowledge, skill or expertise" regarding the prevention and diagnosis of traumatic brain injuries.

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

disparaged research surrounding CTE or the possibility that former wrestlers could have been diagnosed with CTE. [Id. ¶¶ 68-73]. WWE adamantly disputes many of these allegations and argues plaintiffs have selectively edited quotes to fabricate such claims. Nonetheless, accepted as true for the purposes of these Motions to Dismiss, such allegations suggest that WWE may have committed later wrongful conduct related to the initial wrongs. Once again, further factual development is necessary to determine whether a special relationship existed by virtue of WWE's superior knowledge, and whether that relationship extended beyond the time period of the wrestlers' employment with WWE.<sup>10</sup>

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

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

**d. The Statutes of Repose May Be Tolloed Because of Fraudulent Concealment**

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

Fraudulent concealment under Section 52-595 must be pled with sufficient particularity to satisfy the requirements Fed. R. Civ. P. 9(b) with regard to fraud claims, because a claim that the statute of limitations should be tolled because of fraud, is “obviously, a claim for fraud.” *In re Publ’n Paper Antitrust Litig.*, No. 304MD1631SRU, 2005 WL 2175139, at \*5 (D. Conn. Sept. 7, 2005). In addition, a plaintiff must show that due diligence “did not lead, and could not have led, to discovery” of the cause of action. *Martinelli v. Bridgeport Roman Catholic Dioceses*, 196 F.3d 409, 427 (2nd Cir.1999). “Typically, a plaintiff will prove

reasonable diligence either by showing that: (a) the circumstances were such that a reasonable person would not have thought to investigate, or (b) the plaintiff's attempted investigation was thwarted.” *OBG Technical Services, Inc. v. Northrop Grumman Space & Mission Systems Corp.*, 503 F.Sup.2d 490 (D. Conn. 2007) (Internal quotation marks omitted).

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

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

The complaints also allege various public comments made by WWE officials and doctors that could form the basis of affirmative acts of concealment,

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

Similarly, in the *NHL* case, Judge Nelson noted the NHL’s alleged response to questions surrounding concussions in professional hockey that the league needed “more data, more research, we cannot say anything conclusive.” 2008 WL 4307568 at \*13. NHL Commissioner Bettman was alleged to have said of fighting that “[m]aybe it is [dangerous] and maybe it's not.” *Id.* at \*10. Deputy NHL Commissioner Daly was alleged to have publicly stated that “[The NHL is] completely satisfied with the responsible manner in which the league and the players' association have managed player safety over time, including with respect

to head injuries and concussions . . . .” *Id.* at \*12. These and other statements were found to have adequately alleged equitable tolling under the doctrine of fraudulent concealment.

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

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

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

“The determination of whether a duty exists between individuals is a question of law.” *Jaworski v. Kiernan*, 696 A.2d 332, 335 (Conn. 1997). The Court

must consider “whether the specific harm alleged by the plaintiff was foreseeable to the defendant.” *Id.* at 336. In other words, “whether an ordinary person in the defendant's position, knowing what the defendant knew or should have known, would anticipate that harm of the general nature of that suffered was likely to result.” *Id.* The Court must then “determine as a matter of policy the extent of the legal duty to be imposed upon the defendant.” *Id.*

Plaintiff in *Jaworski* suffered a knee injured in a co-ed soccer game by incidental contact – a trip from behind by the defendant, who was another soccer player – which was not an essential part of the sport. Although the injury was a foreseeable consequence of the defendant’s actions, the Connecticut Supreme Court held that “the normal expectations of participants in contact team sports include the potential for injuries resulting from conduct that violates the rules of the sport.” *Id.* at 337. These expectations, in turn, “inform the question of the extent of the duty owed by one participant to another.” *Id.* Considering the prospect for a flood of litigation and the public policy goal of encouraging athletic competition, the court found that “[a] proper balance of the relevant public policy considerations surrounding sports injuries arising from team contact sports also supports limiting the defendant's responsibility for injuries to other participants to injuries resulting from reckless or intentional conduct.” *Id.*

Citing *Jaworski*, WWE argues that all of plaintiffs’ negligence claims “fail under the contact sports exception” embodied in “the *Jaworski* rule” because “negligence concepts do not apply in sporting-type situations.” [Def.’s Mem. at 31]. WWE argues that in *Mercier v. Greenwich Acad.*, No. 3:13-CV-4 (JCH), 2013

WL 3874511 (D. Conn. July 25, 2013), Judge Hall cited *Jaworski* in holding that a school could not be held liable for the actions of its basketball coach in failing to rest and properly assess the plaintiff, who had sustained a concussion from another player during a basketball game. Again noting a concern for a possible flood of litigation, Judge Hall held that “[c]oaches are often required to make split-second decisions during a game . . . holding coaches liable for negligence for such decisions, including player substitution decisions, would dampen their willingness to coach aggressively and would unreasonably threaten to chill competitive play.” *Id.* at \*4 (internal quotations omitted); see also *Trujillo v. Yeager*, 642 F. Supp. 2d 86 (D. Conn. 2009) (applying *Jaworski* to a co-participant's coach and that coach's employer).

It is clear from these cases that the “*Jaworski* rule” has established a limited exception to liability for general negligence in the “*contact team sports*” setting by limiting the extent of the duty owed by a coach in the midst of a game and the duty “*owed by one participant to another.*” *Jaworski*, 696 A.2d 337 (emphasis added). In the instant case, however, the defendant is not a co-participant and the injury alleged did not result from participation in a contact team sport.

WWE nonetheless argues that *Jaworski* should be extended to include the facts and circumstances of the instant case, arguing that “plaintiffs’ alleged injuries “arise from risks inherent in their chosen profession which are within the normal expectations of professional wrestlers.” [Def.’s Rep. Mem. at 2]. WWE argues that cases in other jurisdictions have further narrowed the scope of

liability where “professional athletes take risks for compensation and when contact is a known and purposeful part of the activity.” [Def.’s Mem. at 32]. WWE cites to *Turcotte v. Fell*, 502 N.E. 2d 964 (N.Y. 1986), in which the New York Court of Appeals granted summary judgment in favor of a defendant racetrack owner accused of negligently watering a portion of a racetrack, as well as a co-participant jockey accused of “foul riding” leading to the plaintiff jockey’s injury. The court held that the plaintiff assumed the risk of falling from his horse, an injury well within the “known, apparent and foreseeable dangers of the sport.” *Id.* at 970. Similarly, in *Karas v. Strevell*, 884 N.E. 2d 122 (Ill. 2008), plaintiff sued both co-participant hockey players who had caused his injury by illegally “bodychecking” him from behind as well as the hockey league that organized the match, for failing to appropriately enforce rules against such conduct. The Illinois Supreme Court held that the league could not be held liable for inadequate rule enforcement, as “rules violations are inevitable in contact sports and are generally considered an inherent risk of playing the game.” *Id.* at 137.

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

diagnose them with concussions following the incident.<sup>11</sup> Taking one example, Plaintiff Singleton alleges an incident on September 27, 2012 in which he was “choke slammed” by another wrestler named Erick Rowan, whom Singleton described as a “more skilled, more experienced” wrestler. [SAC ¶ 100]. Singleton alleges he had only performed a “choke slam” once before that date even though it is “considered by wrestlers themselves to be one of the more dangerous moves.” [SAC ¶ 102]. Singleton alleges that he “sustained a brain injury as a result.” [SAC ¶ 103]. Singleton also alleges that WWE failed to treat him for a concussion after the incident. [Id. ¶¶ 104,134-135]. Tellingly, however, none of the six named plaintiffs alleges that they approached any WWE employee after any of the six listed incidents to report head trauma or any symptom of head

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<sup>11</sup> Plaintiff LoGrasso alleges that WWE scripted a program involving LoGrasso and another wrestler named “Regal” and that LoGrasso “was forced to endure and be beaten repeatedly and suffer sustained head trauma” which caused LoGrasso to “have his ‘bell rung’ every match.” [SAC ¶ 133]. On an unspecified date in September of 2006, LoGrasso alleges that Regal kicked him in the face causing him to strike his head against concrete steps, resulting in unspecified head trauma. [SAC ¶ 134]. Plaintiff Matt Weise alleges that he “was punched so hard in the head by Big Show, another WWE wrestler that he had visible injuries to his head and he vomited following the event. WWE staff took no steps to intervene in the event and WWE medical staff did nothing to treat Matt Wiese following the incident.” [MAC ¶ 110]. Plaintiff Ryan Sakoda alleges that “[w]hile wrestling for the WWE in 2003, [Sakoda] was knocked unconscious in a match by a Super Kick. The course of treatment recommended to Ryan by the WWE medical staff and trainer was “not to go to sleep,” suggesting that if he did, he may bleed to death and die. He stayed awake that night.” [MAC ¶ 106]. Plaintiff Russ McCullough alleges that he “was knocked completely unconscious after being struck by the back of a metal chair in Cincinnati. After he was knocked unconscious the beating continued and he was struck in the head with a metal chair more than 15 times without intervention by WWE staff. McCullough sought medical treatment on his own and the head injury was diagnosed as a severe concussion.” [MAC ¶ 100]. Plaintiff William Albert Haynes III alleges that Haynes alleges that on March 29, 1987, he was “hit in the head with a large metal chain” which led to an unspecified “head injury” that was not treated. [HAC ¶ 126].

trauma such as dizziness, and only two of the six plaintiffs specifically allege that they sustained a concussion from the incidents in question.

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

of claims for which *Jaworski* provides an exception to the general duty of care.

Plaintiff LoGrasso also alleges that he “never received any medical information regarding concussions or sub-concussive injuries while employed by the WWE, and that a WWE trainer named “Bill Demott” (SAC ¶ 97), or alternatively, “Bill Dumott” (SAC ¶ 124), would “continuously permeate (sic) an environment of humiliation and silence,” which led WWE wrestlers “to fight through serious injury,” which plaintiffs alleged that “upon information and belief has led to Mr. LoGrasso’s long-term and latent injuries.” [SAC ¶ 124]. Read liberally, plaintiffs allege that WWE was negligent in failing to train and educate its wrestlers about concussions and failed to encourage an environment in which its wrestlers could seek appropriate treatment. These are precisely the same allegations, however, that a court in the Northern District of California recently rejected in a concussion case brought by seven youth soccer players. The soccer players alleged that various soccer leagues, clubs and associations had negligently failed to “to educate players and their parents concerning symptoms that may indicate a concussion has occurred,” among other allegations. *Mehr v. Fed’n Int’l de Football Ass’n*, No. 14-cv-3879-PJH, 2015 WL 4366044 (N.D. Cal. July 16, 2015). In dismissing the negligence claim, the court held that, the soccer plaintiffs “alleged no basis for imputing to any defendant a legal duty to reduce the reduce the risks inherent in the sport of soccer, or to implement any of the “Consensus Statement” guidelines or concussion management protocols, and have alleged no facts showing that any defendant took any action that increased the risks beyond those inherent in the sport.” *Id.* at \*19. The court noted that

under California law, “a failure to alleviate a risk cannot be regarded as tantamount to increasing that risk.” *Id.*, citing *Paz v. State of California*, 22 Cal.4th 550, 560, 93 Cal.Rptr.2d 703, 994 P.2d 975 (2000).

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

#### 4. No Separate Cause of Action for Fraudulent Concealment

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

briefing, and so the claim may also be considered abandoned.<sup>12</sup> Plaintiffs' separately-titled causes of action for fraudulent concealment are DISMISSED.

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

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

For a claim of common law fraud, a plaintiff must allege "(1) that the representation was made as a statement of fact; (2) that it was known to be untrue by the party making it; (3) that it was made for the purpose of inducing the other party to act upon it; and (4) that the party to whom the representation was made was in fact induced thereby to act to his injury." *Leonard v. Comm'r of Revenue Servs.*, 264 Conn. 286, 296, 823 A.2d 1184, 1191 (2003). A key difference between plaintiffs' deceit and negligent misrepresentation claims is that whereas a defendant may negligently misrepresent a fact that the defendant *should have known* to be false, a deceitful representation is one that the defendant must "know[] to be untrue." *Id.* at 1191; *see also Sturm v. Harb Dev., LLC*, 298 Conn.

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

124, 142, 2 A.3d 859, 872 (2010) (“[i]n contrast to a negligent representation, [a] fraudulent representation ... is one that is knowingly untrue, or made without belief in its truth it.”).

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

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

In addition, a plaintiff must “allege facts that give rise to a strong inference of fraudulent intent.” *Parola*, 894 F. Supp. 2d at 200, *citing Shields v. Citytrust Bancorp., Inc.*, 25 F.3d 1124, 1128 (2d Cir.1994). “The ‘strong inference of fraud’ may be established by either alleging facts to show that a defendant had both motive and opportunity to commit fraud, or facts that constitute strong circumstantial evidence of conscious misbehavior or recklessness.” *Id.* The

requirements of Rule 9(b) are also applicable to negligent misrepresentation claims. *Yurevich v. Sikorsky Aircraft Div., United Techs. Corp.*, 51 F. Supp. 2d 144, 152 (D. Conn. 1999); *Pearsall Holdings, LP v. Mountain High Funding, LLC*, No. 3:13cv437 (JBA), 2014 WL 7270334, at \*3 (D. Conn. Dec. 18, 2014). The Complaint utterly fail to satisfy this standard as well.

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

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

1. Vince K. McMahon told a congressional committee that the WWE "is always concerned about safety of our talent." SAC ¶ 67.
2. Dr. Joseph Maroon's statement to the NFL Network, Total Access in March, 2015 that "the problem of CTE, although real, is its being over-exaggerated." [SAC ¶ 55].
3. WWE Executive Stephanie McMahon Levesque's testimony in 2007 to

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

the Committee on Oversight and Government Reform of the U.S. House of Representatives that there were “no documented concussions in WWE’s history.” [SAC ¶ 64].

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

With regard to Dr. Maroon’s statement to NFL Network, WWE argues that “expressing critical opinions about scientific matters is simply not a misrepresentation of a past or present material fact.” [Def.’s Mem. at 40]; see, e.g., *Trefoil Park*, 2015 WL 1138542, at \*8 (noting that Connecticut courts have long excluded statements of opinion as being sufficient to support fraud or negligent misrepresentation claims). Plaintiffs have not addressed this argument and again appear to have abandoned the claim. More importantly, the complaints do not allege facts indicating that at the time the statement was uttered, Dr. Maroon knew or should have known that CTE was not “over-exaggerated,” or facts indicating that any plaintiff relied upon the statement – particularly given that the statement was made after the first complaint in this action had already been filed.<sup>14</sup>

With regard to Stephanie McMahon Levesque’s testimony, plaintiffs appear to have repeatedly misrepresented both the substance and meaning of Levesque’s testimony. Plaintiffs describe Levesque as having testified that there

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

were no “no documented concussions in WWE’s history,” and provided a link to the full transcript of the Congressional hearing at which Levesque testified. On a motion to dismiss, the Court may consider any document “attached to the complaint or incorporated in it by reference” as such documents “are deemed part of the pleading and may be considered.” *McClain v. Pfizer, Inc.*, No. 3:06-CV-1795 (VLB), 2008 WL 681481, at \*2 (D. Conn. Mar. 7, 2008), *citing Roth v. Jennings*, 489 F.3d 499, 509 (2d Cir. 2007).

The full transcript provides:

(Buffone) Q: So, if I understand you correctly, since the enactment of the wellness policy, WWE has documented no concussions?

(Levesque) A: As far as I know, as far as I was told –

(Buffone) Q: Yes.

(Levesque) A: -- no.

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

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

“[w]hile this is a new emerging science, the WWE is unaware of the veracity of any of these tests, be it for [professional wrestlers] Chris Benoit or Andrew Martin. Dr. Omalu claims that Mr. Benoit had a brain that resembled an 85year-old with Alzheimer's, which would lead one to ponder how Mr. Benoit would have found his way to an airport, let alone been able to remember all the moves and information that is required to perform in the ring...WWE has been asking to see the research and tests results in the case of Mr. Benoit for years and has not been supplied with them.” [SAC ¶ 69].

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

Fraudulent statements must be statements of fact and therefore an

expression of an opinion or skepticism as to the truth of a matter asserted by another cannot usually support a fraud claim. As the Connecticut Appellate Court has stated: “[t]he essential elements of a cause of action in fraud” include that “a false representation was made as a statement of fact” and “the absence of any one” element “is fatal to a recovery.” *Citino v. Redevelopment Agency*, 721 A.2d 1197 (Conn. App. 1998).

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

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

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

In addition, in order to satisfy the requirements of Rule 9(b) a plaintiff must “detail the omissions made, state the person responsible for the failure to speak, provide the context in which the omissions were made, and explain how the omissions deceived the plaintiff.” *Frulla v. CRA Holdings, Inc.*, 596 F. Supp. 2d 275, 288 (D. Conn. 2009) (JCH), citing *Eternity Global Master Fund Ltd. v. Morgan Guar. Trust Co. of N.Y.*, 375 F.3d 168, 187 (2d Cir. 2004).

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

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

5. “Although the NHL knew or should have known . . . about this scientific evidence . . . the NHL never told Plaintiffs about the dangers of repeated brain trauma.”

134. “[T]he NHL never told its players that these . . . studies demonstrate an increased risk for NHL players . . . .”

143. “At no time, including during the seven year Concussion Program and in the following seven year silence before publishing the Program’s report, did the NHL warn players that the data suggested at a minimum that greater attention to concussions and head injuries was necessary, that it was possible that playing in the same game, or soon after, a head injury

was potentially dangerous, or any other such warning.”

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

3. “WWE has known or should have known for decades that *repeated concussive and sub-concussive impacts substantially increase the probability that a wrestler will develop a permanent, degenerative brain disease. . . .*”

56. “. . . WWE was aware in 2005 and beyond *that wrestling for the WWE and suffering head trauma would result in long-term injuries. And it therefore should have, but never did, warn Plaintiffs of the risks of concussions and other brain injuries associated with wrestling with WWE.*”

138. “Mr. LoGrasso was *never educated about the ramifications of head trauma and injury and the likelihood of concussions and sub-concussions and the resulting latent neurological injuries* suffered from sustaining concussions and sub-concussive injuries.”

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

In the *NHL* case, the court also held that plaintiffs had adequately pled the “who” aspect of their fraud claim – the person(s) responsible for the omissions.

Specifically, the court noted plaintiffs’ allegations that:

16. “Despite the mountain of evidence connecting hockey to brain injuries, NHL Commissioner Gary Bettman subsequently stated that more study on the issue is necessary...”;

84. “At no time during his NHL career did any NHL personnel advise these players, generally or specifically, of the negative long-term effects of sustaining concussions and sub-concussive blows to the head, including the risks of repeat concussions and sub-concussive blows....”;

122. “[Brian] Benson, with Jian Kang, ‘contributed to the drafting of the [Concussion Program’s report] manuscript.’”;

127. “Hockey players, no differently from anyone else, grow up believing that medical personnel, such as League medical directors, supervisors, doctors and trainers, put the patient-players’ interests first and foremost. Cleared to play immediately after getting knocked out[,] ... players believed they were, in fact, ‘good to go’ and not doing any lasting harm to

themselves[.]”

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

55. “. . . WWE continues to understate the risks and dangers of CTE, as evidenced by *Dr. Joseph Maroon’s statements* to the NFL Network, Total Access in March 2015, ‘The problem of CTE, although real, is its being over-exaggerated.’

73. “In a joint interview for the 2007 CNN documentary *Death Grip: Inside Pro Wrestling*, *WWE CEO Vincent K. McMahon and former WWE CEO Linda McMahon attacked Dr. Omalu and Dr. Bailes’s finding that Benoit had suffered from CTE*. This was part of a larger plan to deny that Benoit had suffered from CTE and to discredit the research suggesting he had.”

125. “During his training and wrestling career with WWE, *Mr. LoGrasso was told by WWE employees* and at the time believed that injuries he suffered were part of ‘paying his dues’, and believed that having ‘your bells rung’, or receiving ‘black and blues’ and bloody noses only resulted in the immediate pain and injury with no long-term ramifications or effects.”

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

132. “Mr. LoGrasso reasonably relied on the WWE’s medical personnel, trainers, agents, and documents when he continued to fight and receive sustained head trauma repeatedly.

150. Plaintiffs reasonably acted on what WWE omitted – that *concussions and sub-concussive hits are serious and result in permanent disability and brain trauma*, and that returning to wrestling before being properly evaluated, treated and cleared to wrestle could result in enormous risks of permanent damage, especially in returning to wrestle immediately after taking brutal hits to the head.

157. WWE’s conduct left [Singleton] without the necessary knowledge to

make informed decisions to plan for his own future and his family and to seek appropriate treatment for his latent neurodegenerative condition during his life.

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

The WWE argues that under Connecticut law, a fraudulent omission claim cannot proceed with respect "to all facts which are open to discovery upon reasonable inquiry." [Def.'s Mem. at 50, *citing* Saggese v. Beazley Co. Realtors, 109 A.3d 1043, 1056 (Conn. App. 2015)]. The WWE notes that plaintiffs allege in their complaints – in an attempt to bolster their negligence claim – that "[t]he risks associated with sports in which athletes suffer concussive and sub-concussive blows have been known for decades," and go on to describe "a selection of mounting medical literature concerning head trauma." [SAC ¶ 57].

In *Saggese v. Beazley Co. Realtors*, a Connecticut Appellate Court upheld a trial court's finding after a bench trial that a real estate agent could not be held liable for fraudulent non-disclosure of a letter concerning litigation affecting a parcel of property that had a negative effect on the value of the property in

question. 109 A.3d at 1050. In *Saggese*, the plaintiff was made aware of the litigation when she and her attorney were provided the docket numbers of the cases involved. *Id.* at 1056. Finding that there had been no fraudulent non-disclosure, the court held that “[t]he substance of the [related] litigation was open to discovery upon reasonable inquiry” and that “all of the material information was in the plaintiff’s possession, but neither she nor her agents made proper use of it.” *Id.* The court noted that the real estate agent was not an attorney and was not in a position to analyze or comment on the importance of the related litigation. *Id.*

This Court reads *Saggese* as upholding a finding, upon a full record after a bench trial, that the defendant had not failed to make a “full and fair disclosure of known facts,” because the known “facts” that the defendant had a duty to disclose were the docket numbers, and the very existence, of the related litigation. A legal analysis of those facts – which might have led the plaintiff to conclude that the value of the property was at risk in the litigation, was incumbent upon plaintiff’s attorney and the defendant was under no further duty to disclose. The Court does not read *Saggese* as holding that under Connecticut law a defendant cannot be held liable for non-disclosure of publicly available facts.<sup>15</sup> Indeed, such a holding would seem to conflict with the Restatement

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

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

The Court notes that Plaintiffs’ 281-paragraph “kitchen sink” Complaints certainly seem to present contradictory claims that could make reliance upon non-disclosure of “known facts” difficult to prove. Namely, Plaintiffs allege both that information about concussion risks was both widely known by the public and at the same time fraudulently concealed from Plaintiffs.

Read liberally, however, the complaints allege that increasing public and scientific awareness of the risks related to head trauma ultimately resulted in recent discoveries regarding a link between repeated head trauma and permanent degenerative neurological conditions. In particular, the WWE is alleged in the various complaints to have had knowledge of such a link as early as 2005.<sup>16</sup> For

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WWE possessed information outside the public domain that was omitted or concealed.

<sup>16</sup> As the Court noted in part I(D), *supra*, it is unclear how the complaints arrive at the year 2005 as the year in which the WWE had knowledge of a link between repeated head trauma from concussive blows with permanent degenerative conditions. Plaintiffs will need to establish a Record upon which a trier of fact

wrestlers active during and after 2005, information about a link to permanent degenerative conditions could plausibly have informed plaintiffs' own choices about whether and when to re-enter the ring after sustaining a head injury and could plausibly have prevented permanent brain damage. Plaintiffs also allege that by virtue of its Wellness Program, begun in 2007, WWE possessed superior knowledge regarding a link between participation in WWE wrestling events and such permanent conditions. Because Singleton and LoGrasso are alleged to have wrestled on or after 2005, when WWE's knowledge of the non-disclosed facts is alleged to have begun, their claims for fraudulent non-disclosure may proceed.

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

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

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could conclude that WWE had knowledge of such a link at that time or at any later time.

Omission claims brought by Plaintiffs Haynes and McCullough are DISMISSED.

**7. No Separate Cause of Action for Medical Monitoring**

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

Few Connecticut courts have addressed this question. One Connecticut trial court has held that “[r]ecovery for such expenses would only be allowable if these plaintiffs have sustained actionable injuries.” *Bowerman v. United Illuminating*, No. X04CV 940115436S, 1998 WL 910271, at \*10 (Conn. Super. Ct. Dec. 15, 1998). One court in this district also noted the availability of medical monitoring damages if the plaintiff proved the existence of an actionable injury. *Martin v. Shell Oil Co.*, 180 F. Supp. 2d 313, 316 (D. Conn. 2002) (JCH). Because plaintiffs have failed to articulate any authority supporting the proposition that plaintiffs can bring a cause of action for “medical monitoring” separate and apart

from their cause of action for fraudulent omission under Connecticut law, Plaintiffs' claims for "Medical Monitoring," are DISMISSED. The court expresses no opinion as to whether plaintiffs may recover such damages in the event that they establish liability under a cause of action for fraud by omission.

#### IV. Conclusion

For the foregoing reasons, Plaintiffs' negligence counts are DISMISSED as those counts fail to state a claim under Connecticut law. Plaintiffs' negligent misrepresentation and fraudulent deceit claims are DISMISSED as plaintiffs have failed to identify with specificity any false representation by WWE upon which they have relied. Plaintiffs' fraudulent concealment and medical monitoring claims are DISMISSED as those claims do not state separate and independent causes of action under Connecticut law.

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

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

**SPA-71**

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**IT IS SO ORDERED.**

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

**Dated at Hartford, Connecticut: March 21, 2016**

**SPA-72**

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

<b>RUSS McCULLOUGH, a/k/a "Big Russ McCullough", RYAN SAKODA, and MATTHEW R. WEISE, a/k/a "Luther Reigns," individually and on behalf of all Others similarly situated, Plaintiffs,</b>	:	
	:	<b>CIVIL ACTION NO.</b>
	:	<b>3:15-cv-001074 (VLB)</b>
	:	<b>Lead Case</b>
<b>v.</b>	:	
	:	
<b>WORLD WRESTLING ENTERTAINMENT, INC.,</b>	:	
	:	
<b>Defendant.</b>	:	

<b>EVAN SINGLETON and VITO LOGRASSO Plaintiffs,</b>	:	
	:	<b>CIVIL ACTION NO.</b>
	:	<b>3:15-cv-00425 (VLB)</b>
	:	<b>Consolidated Case</b>
<b>v.</b>	:	
	:	
<b>WORLD WRESTLING ENTERTAINMENT, INC.,</b>	:	
	:	
<b>Defendant.</b>	:	

<b>WILLIAM ALBERT HAYNES III, Individually and on behalf of all Others similarly situated, Plaintiffs,</b>	:	
	:	<b>CIVIL ACTION NO.</b>
	:	<b>3:15-cv-01156 (VLB)</b>
	:	<b>Consolidated Case</b>
<b>v.</b>	:	
	:	
<b>WORLD WRESTLING ENTERTAINMENT, INC.,</b>	:	
	:	
<b>Defendant.</b>	:	

<b>WORLD WRESTLING ENTERTAINMENT, INC., Plaintiff,</b>	:	
	:	<b>CIVIL ACTION NO.</b>
	:	<b>3:15-cv-0994 (VLB)</b>

SPA-73

	:	Consolidated Case
v.	:	
	:	
ROBERT WINDHAM, THOMAS	:	
BILLINGTON, JAMES WARE, OREAL	:	
PERRAS, and VARIOUS JOHN DOE'S,	:	
Defendants.	:	

July 21, 2016

**MEMORANDUM OF DECISION DENYING DEFENDANT'S MOTION FOR RECONSIDERATION [Dkt. 118] OF THE COURT'S ORDER [Dkt. 116] GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTIONS TO DISMISS THE SINGLETON AND MCCULLOUGH ACTIONS**

**MEMORANDUM OF DECISION GRANTING DEFENDANT'S MOTION FOR RECONSIDERATION [Dkt. 119] OF THE COURT'S ORDER DISMISSING THE WINDHAM ACTION AND DENYING AS MOOT WWE'S MOTION TO EXPEDITE DISCOVERY AS TO THE IDENTITIES OF THE JOHN DOE DEFENDANTS [Dkt. 117].**

**MEMORANDUM OF DECISION DENYING DEFENDANTS' MOTION TO DISMISS THE WINDHAM ACTION [Dkt. 72] AND DENYING WWE'S MOTION FOR EXPEDITED DISCOVERY OF THE JOHN DOE DEFENDANTS IN THE WINDHAM ACTION [Dkt. 82].**

Plaintiffs in this consolidated action are former wrestlers for World Wrestling Entertainment Inc. ("WWE"), a Connecticut entertainment company which produces televised wrestling programming. Plaintiffs allege that they are either suffering from symptoms of permanent degenerative neurological conditions resulting from traumatic brain injuries sustained during their employment as wrestlers for WWE or are at increased risk of developing such conditions.

In its March 21, 2016, memorandum of opinion and accompanying Order (the "Opinion"), the Court dismissed plaintiffs' claims that they were injured as a

result of WWE's negligence in scripting violent conduct and failing to properly educate, prevent, diagnose and treat them for concussions.

However, plaintiffs also claimed that WWE had knowledge of evidence suggesting a link between head trauma that could be sustained during WWE events and permanent degenerative neurological conditions such as CTE and either concealed such evidence or failed to disclose it in the face of a duty to disclose. Although the Court dismissed plaintiffs' claim that WWE fraudulently misrepresented the risks of wrestling in its performances in a series of public statements, the Court held that plaintiffs LoGrasso and Singleton plausibly stated a claim that WWE fraudulently omitted known facts regarding a link between wrestling activity and permanent brain damage resulting from traumatic brain injuries. The Court further found that this fraud claim may not be tolled by the operation of Connecticut's statutes of limitations and repose.

The Court thereafter entered an Order dismissing WWE's countersuit against Robert Windham, *et al* on the basis that the complaint failed to state a claim upon which relief could be granted as the Court could not, for the reasons stated in its Opinion, issue a declaration that WWE was not liable on the basis of Connecticut's statute of limitations. The Court denied as moot WWE's motion to discover the identities of the unknown John Doe defendants in *Windham*.

Currently before the Court are WWE's Motions to Reconsider [Dkt. 118, Dkt. 119] its March 22, 2016 Opinion and the subsequent dismissal of the *Windham* action. WWE argues that the Court misapplied the applicable law and alleged facts in determining that LoGrasso's claims were not time-barred and in finding

that Singleton and LoGrasso plausibly stated a claim for fraud by omission. WWE also argues that dismissal of the Windham action was premature and that the stated basis – failure to state a claim for relief – was not the basis of the *Windham* defendants’ Motion to Dismiss [Dkt. 72] which argued for dismissal on the sole grounds of lack of subject matter jurisdiction.

For the reasons stated below, WWE’s Motion for Reconsideration of the Court’s Order [Dkt. 116] Granting In Part and Denying In Part Defendant’s Motions to Dismiss the Singleton and McCullough Actions [Dkt. 118] is DENIED.

WWE’s Motion for Reconsideration of the Court’s Order [Dkt. 117] Dismissing the Windham Action [Dkt. 119] is GRANTED and, upon reconsideration, the Court’s Order at Docket Number 117 dismissing the *Windham* action for failure to state a claim is hereby VACATED for the reasons articulated below. Having vacated its dismissal of the Windham action, the Court considers the substantive arguments raised in the Windham defendants’ Motion to Dismiss [Dkt. 72] for lack of subject matter jurisdiction and that motion is GRANTED IN PART AND DENIED IN PART. WWE’s Motion for Expedited Discovery of the John Doe Defendants [Dkt. 82] is DENIED AS MOOT.

I. Standard of Review

The standard for granting a motion for reconsideration “is strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked — matters, in other words, that might reasonably be expected to alter the conclusion reached by the court.” *Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995). “A motion for

reconsideration is justified only where the defendant identifies an intervening change in controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice.” *Ayazi v. United Fedn. of Teachers Local 2*, 487 F. App'x 680, 681 (2d Cir. 2012) (internal citation and quotation marks omitted); *Ensign Yachts, Inc. v. Arrigoni*, 3:09–CV–209 (VLB), 2010 WL 2976927 (D. Conn. July 23, 2010) (same). A “motion to reconsider should not be granted where the moving party seeks solely to relitigate an issue already decided.” *Shrader*, 70 F.3d at 257. Further, Local Rule of Civil Procedure 7(c) requires parties seeking reconsideration to “set[] forth concisely the matters or controlling decisions which counsel believes the court overlooked in the initial decision or order.” D. Conn. Loc. Civ. R. 7(c).

II. Reconsideration of the Court’s Ruling With Respect to the Claims of Singleton and LoGrasso

1. Singleton Plausibly Alleges Harm from WWE’s Conduct

WWE first argues that the Court erred in holding that Plaintiff Evan Singleton could plausibly have been harmed by WWE’s alleged fraudulent omission. In its Opinion, the Court found that, with regard to possible harm to the named plaintiffs, “information about a link to permanent degenerative conditions could plausibly have informed plaintiffs’ own choices about whether and when to re-enter the ring after sustaining a head injury and could plausibly have prevented permanent brain damage.” [Dkt. 116 at 67-68].

WWE argues that “[u]nder the Court’s reasoning . . . if a plaintiff never ‘re-

enter[ed] the ring after sustaining a head injury' he could not have been harmed by WWE's alleged fraud by omission." [Def.'s Mem. at 6]. WWE notes that Plaintiff Singleton alleged that he never wrestled again for WWE after sustaining a single serious head injury on September 27, 2012. Therefore, WWE argues, Singleton could not have plausibly been harmed by the omission of facts which would have affected any decision to re-enter the wrestling ring.

The Court's Opinion should not be read to identify every basis for liability which the complaint could be construed to assert. The Court held that this allegation of harm was sufficiently plausible that both plaintiffs' claims for fraudulent omission stated a claim for relief under Rule 12(b) of the Federal Rules of Civil Procedure. The plaintiff's decision to *re-enter* the ring after sustaining an injury was not the sole basis for liability asserted by the complaint. Rather, Singleton also alleged that WWE was aware of the risks of wrestling in 2005, failed to disclose the risks to its wrestlers, and that he was injured wrestling for WWE in 2012. Thus the complaint also alleges that WWE failed to disclose to Singleton information which could have prevented him from *entering* WWE's simulated wrestling ring and wrestling for WWE in the first instance. The complaint further alleges that WWE's failure to disclose the risks of wrestling could have impacted Singleton's medical decisions. To be clear, Singleton has plausibly alleged that WWE failed to disclose information which could conceivably have prevented him from wrestling, could have enabled him to mitigate the risks of wrestling and could have prompted him to obtain medical treatment promptly after wrestling.

WWE's Motion for Reconsideration on this basis is DENIED.

**2. Allegations Satisfying the Particularity Requirements of Rule 9(b)**

WWE next argues that “none of the three alleged facts relied on by the Court” in determining that plaintiffs had adequately plead the “who” and “when” – the specific speaker(s) and the context of the alleged omissions – required by Rule 9(b) are sufficient to satisfy the requirements of Rule 9 “based on the very legal principles on which the Court relied in dismissing plaintiffs’ affirmative misrepresentation claims.” [Def.’s Mem. at 9]. In its Opinion, the Court had identified three paragraphs in the Second Amended Complaint of plaintiffs Singleton and LoGrasso (the “SAC”) that shed sufficient light on both the speakers and the context of the alleged omissions:

55. “. . . WWE continues to understate the risks and dangers of CTE, as evidenced by Dr. Joseph Maroon’s statements to the NFL Network, Total Access in March 2015, ‘The problem of CTE, although real, is its being over-exaggerated.’

73. “In a joint interview for the 2007 CNN documentary Death Grip: Inside Pro Wrestling, WWE CEO Vincent K. McMahon and former WWE CEO Linda McMahon attacked Dr. Omalu and Dr. Bailes’s finding that Benoit had suffered from CTE. This was part of a larger plan to deny that Benoit had suffered from CTE and to discredit the research suggesting he had.”

125. “During his training and wrestling career with WWE, Mr. LoGrasso was told by WWE employees and at the time believed that injuries he suffered were part of ‘paying his dues’, and believed that having ‘your bells rung’, or receiving ‘black and blues’ and bloody noses only resulted in the immediate pain and injury with no long-term ramifications or effects.”

[SAC ¶¶ 55, 73, 125]. WWE argues that Dr. Maroon’s statements to NFL Network in March of 2015 cannot form the basis of a fraudulent omission claim because plaintiffs could not reasonably have relied upon a statement made after

plaintiffs “commenced this lawsuit, and years after they last performed for WWE.” While this may be true, the March 2015 comments were not the only statements cited by the plaintiffs. Further, they were cited by plaintiffs as *illustrative* of a continuing effort by WWE to downplay the risks of permanent brain damage to WWE wrestlers.

The Opinion referenced other statements as well. For example, the Court noted WWE’s statements to ESPN in 2009 in regards to allegations that former wrestlers Chris Benoit and Andrew Martin could have sustained permanent brain damage from wrestling. In 2009, WWE stated that it was “unaware of the veracity” of tests conducted by Dr. Omalu which purported to diagnose Benoit with CTE, that WWE had “been asking to see the research and tests results in the case of Mr. Benoit for years and has not been supplied with them” and mocked Benoit’s ability, prior to his death, to find “his way to an airport, let alone . . . remember all the moves and information that is required to perform in the ring.” [SAC ¶ 69]. The Court held that the 2009 statement could not form the basis of an affirmative misrepresentation claim, but noted that “one could accuse the WWE of having made the statement perhaps with the intent of downplaying a link between wrestling and CTE.” [Opinion at 60].

The Court cited Dr. Maroon’s 2015 statement as illustrative of the “what” – the context of the alleged omissions – because the 2015 statement, along with the 2009 statement to ESPN and other statements discussed in the Opinion, provide adequate notice to WWE under Rule 9(b) of the instances in which it allegedly failed to disclose a known link between wrestling and CTW: specifically, its public

statements to the media downplaying and discrediting such risks. The 2007 interview by Vincent and Linda McMahon is cited by the Court as yet another example of such public statements.

Similarly, in the *NHL* concussion litigation cited in the Court's Opinion, Judge Nelson noted the NHL's alleged response to questions surrounding concussions in professional hockey that the league needed "more data, more research, we cannot say anything conclusive." 2008 WL 4307568 at \*13. NHL Commissioner Bettman was alleged to have said of fighting that "[m]aybe it is [dangerous] and maybe it's not." *Id.* at \*10. The statements identified by plaintiffs here are in sum and substance similar to those that Judge Nelson found to have supported a fraud claim in the *NHL* litigation.

WWE argues, however, that "because Mr. McMahon merely expressed his 'opinion or skepticism as to the truth' of a specific aspect of Dr. Omalu's and Dr. Bailes' findings," and that the Court's Opinion earlier held such opinions could not form the basis of an affirmative misrepresentation claim, that it is therefore "implausible that omitting that same matter could somehow become a fraud by omission." [Def.'s Mem. at 10]. In other words, WWE argues:

. . . . under the Court's reasoning, had WWE actually stated to LoGrasso that it did not believe Dr. Omalu's and Dr. Bailes' findings established a link between head trauma and long-term neurodegenerative disease, which it never said, it could not be fraud. But if WWE said nothing to LoGrasso because WWE did not believe that a link had been established between head trauma and long-term neurodegenerative disease based on Dr. Omalu's and Dr. Bailes' findings or because it did not know if such findings were correct, it then would become fraud.

[*Id.* at 11]. While the Court is sensitive to the need to prevent a legal

quandary as troubling as that which WWE proposes, no such quandary has been created here. Rather, WWE has mistakenly conflated the nuanced analysis of the claims of fraudulent omission and fraudulent misrepresentation.

The Court's held that plaintiffs had plausibly alleged that WWE may have had an *independent duty* to disclose information linking its simulated wrestling performances with CTE and other neurological conditions and may have breached that duty by failing to disclose such information in public statements. Such a breach may have occurred if WWE had publicly stated that it did not believe Dr. Omalu's findings. Or it may have occurred if WWE had privately stated to Plaintiff LoGrasso, personally, that it needed more time to study Dr. Omalu's findings. Or it may have occurred if WWE had remained entirely silent on the issue. If WWE knew and failed to disclose information which credibly refuted or seriously undermined the opinions and other statements of fact it expressed, it may have failed to disclose information in breach of its duty to its former wrestlers.

Wholly separate and apart from the allegation that WWE had a duty to disclose, and failed to disclose, known information linking WWE wrestling with CTE, are the plaintiffs' now-dismissed allegations that WWE executives, in several specific public statements, fraudulently misrepresented the risk of CTE to current and former wrestlers. The Court's Opinion rejected these fraudulent misrepresentation claims on the basis *that the specific statements cited* were either expressions of opinion or statements that were not alleged to be false. While WWE could not be held liable for fraudulent misrepresentation if it had

stated to LoGrasso, personally, that it did not believe Dr. Omalu's findings, it could plausibly be held liable on that same theory if it had stated to LoGrasso that it did not believe those findings because the findings were published in the National Enquirer and only peer reviewed by a panel of podiatry students.

The Court reaffirms its holding that the 2007, 2009 and 2015 statements both provide adequate context and adequately identify the specific WWE executives who are alleged to have breached their duty to disclose. WWE's Motion for Reconsideration on this basis is DENIED.

### **3. Plausible Inference of Fraudulent Intent**

WWE next urges that the Court "overlooked the complete absence of any allegation giving rise to strong [sic] inference of fraudulent intent." [Def.'s Mem. at 13]. In its Opinion, the Court noted that "[p]laintiffs simultaneously argue on the one hand that studies and data linking [head injuries] with permanent degenerative neurological conditions were both widespread and widely-publicized, and on the other hand that plaintiffs had no knowledge of any of this widely-publicized information." WWE argues that "[i]n light of the Court's astute observation regarding this "inherent contradiction" underlying plaintiffs' fraud claims, it is respectfully submitted that . . . [t]he admitted widespread publicity about the very information supposedly omitted renders any suggestion of fraudulent intent highly implausible." [Def.'s Mem. at 14].

The Court has already considered and rejected this argument, in an earlier portion of the Court's Opinion finding that plaintiffs had pled an adequate basis

for tolling the statutes of repose due to fraudulent concealment of their underlying cause of action. The Court noted, in particular, that “the Wellness Program was created for WWE by an attorney in response to the death of a former wrestler and appears to have immediately embraced a critic of some aspects of recent CTE studies.” [Opinion at 47]. The Court also noted that WWE’s 2009 statement to ESPN was in response to allegations concerning the deaths of two specific former wrestlers who may have had claims similar to those raised by the named plaintiffs. The Court held that these facts allow for the plausible inference that “any concealment was for the specific purpose of delaying” possible litigation. [Id.]

Inherent in the Court’s finding that the facts alleged raise a plausible inference of fraudulent concealment of plaintiffs’ cause of action *to delay litigation* is a finding that WWE could have plausibly intended to conceal information from the plaintiffs *at all*. The Court reaffirms its holding that WWE could plausibly have intended to conceal known facts from the plaintiffs for the purpose of delaying or avoiding litigation, for the purpose of delaying or avoiding the expense of greater concussion prevention effort, or perhaps for the purpose of delaying or avoiding safety measures which might negatively impact the ratings of its television programming.

The Court also discussed the reasons for its holding that plaintiffs claim for fraudulent omission could proceed despite the allegation that much of the information allegedly concealed was in the public domain. The Court held that WWE may have had a duty to disclose publicly available information. [Id. at 67].

But the Court also noted that WWE was also alleged to have “superior knowledge” by virtue of its Wellness Program, trained medical staff and wrestler injury reports and that “factual development could shed light on whether WWE possessed information outside the public domain that was omitted or concealed.” [Id.] WWE has now had the opportunity to build a factual record demonstrating whether information it is alleged to have failed to disclose was reasonably discoverable by Singleton and LoGrasso. The Court will consider this factual record at the appropriate time. WWE’s Motion for Reconsideration on this basis is DENIED.

**4. A Continuing Course of Conduct May Toll the Statute of Repose**

WWE next argues that the Court misapplied Connecticut law in determining that Connecticut’s statute of repose, Conn. Gen. Stat. Sec. 52-577, could be tolled with respect to LoGrasso’s fraudulent omission claim by virtue of the continuing course of conduct doctrine. For the continuing course of conduct exception to apply, 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 Medical Center*, 746 A.2d 753, 762 (Conn. 2000). Any continuing duty owed by a defendant must “rest on the factual bedrock of actual knowledge.” *Neuhaus v. DeCholnoky*, 905 A.2d 1135, 1142 (Conn. 2006)

In its Opinion, the Court examined the Connecticut cases cited by the parties – all of which concerned failure-to-warn cases brought against medical

care providers – and found that under Connecticut law a “continuing duty arises when the medical care provider has reason to suspect that further treatment is needed at the time of treatment.” [Opinion at 38]. However, “once treatment is provided a medical care provider” there is no duty “to advise a patient in perpetuity about medical discoveries, risks and treatment for any possible condition that a patient might reasonably develop.” [Id.]. The Court held that it was “at least plausibly alleged under *Neuhaus* that WWE may have had both the requisite initial and continuing concern about the long-term health of its wrestlers such that it owed a continuing duty to warn those wrestlers about the long-term risks of head trauma sustained in the ring even after they had retired.” [Id. at 38-39]. Noting that the WWE was alleged to have created its Wellness program in 2006 on the advice of its attorney after the deaths of several former wrestlers and to have hired a noted neurosurgeon and head injury specialist for the NFL, the Court held that “this fact alone, indeed to WWE’s credit, plausibly suggests WWE had knowledge causing it to have an early and strong concern[] about the health effects of wrestling.” [Id.]

WWE argues that the continuing course of conduct exception cannot apply here, because “there is no allegation that WWE ever rendered treatment to LoGrasso for any alleged head injury.” [Def.’s Mem. at 17]. And, WWE argues, “[s]ince there was no treatment, there could not have been an initial suspicion ‘at the time of treatment.’” [Id. at 18]. WWE argues that the Court “substituted an alleged initial concern about wrestlers generally for actual knowledge about, and treatment of, LoGrasso specifically,” contrary to the requirement under

Connecticut law that a provider's concern is "based on actual knowledge specific to the plaintiff." [Def.'s Mem. at 19, *citing Hernandez v. Cirimo*, 787 A.2d 657, 662-63 (Conn. App. 2002)].

WWE's arguments parse language in a manner which imposes a legal requirement which does not exist. In particular, WWE misplaces the word "specific" in arguing that Connecticut law requires a medical provider to have had knowledge "of a risk specific to the plaintiff" in order for the continuing course of conduct exception to apply with respect to a medical provider in a failure-to-warn case. What Connecticut law actually requires is that the provider have had knowledge "of a *specific risk* to the plaintiff." See *Hernandez*, 787 A.2d at 662 (emphasis added). That *specific risk* may be a specific risk to a particular known individual, or it may be a *specific risk* to a group of individuals who are identifiable by the defendant. In fact, in its Opinion, the Court examined the Connecticut Supreme Court's opinions in *Sherwood I* and *Sherwood II*, which held that a hospital may have had a continuing duty to warn thousands of former patients who received transfusions of untested blood after the Center for Disease Control advised the hospital of a risk of HIV transfer, but only if the hospital had knowingly administered untested blood and thus had knowledge of a specific risk. *Sherwood v. Danbury Hosp.*, 896 A.2d 777, 797 (Conn. 2006) (*Sherwood II*).<sup>1</sup>

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<sup>1</sup> Consistent with this holding in *Sherwood*, other Connecticut cases, including *Hernandez*, *Witt* and *Neuhaus* make clear that a medical provider cannot be held liable for failing to warn a plaintiff of a risk that a defendant "should have known" about. Rather, in requiring a "factual bedrock of actual knowledge," Connecticut law provides that the statute of repose may be tolled in a failure-to-warn case against a medical provider based upon either: (i) an "initial concern" about a specific risk that had "never been eliminated" or (ii) evidence that the defendant

The “actual knowledge” requirement does not, as WWE suggests, require knowledge of a risk “specific to the plaintiff.” In *Sherwood*, as alleged here, the duty arose based on a known risk to an identifiable group of individuals. In *Sherwood*, the court held that the defendants had a duty to disclose a known risk of HIV exposure to patients who defendants infused with untested blood. Here, plaintiffs allege the defendant had a duty to disclose a known risk of CTE to former wrestlers which it knew to be uniquely susceptible to CTE because of the trauma inherent in performing wrestling stunts under the guidance and direction of WWE and on whose behalf it undertook to implement a Wellness Program.

The Court further notes, as it already noted in its Opinion, that while these cases concerning medical providers are helpful to the analysis of this issue, and “somewhat analogous” to the case at bar, the facts here vary to some degree in that WWE can both be characterized as a medical provider and as an entertainment company and employer. Further, the omissions here are alleged to have been made by both WWE doctors and by non-medical-providers, including television executives. In its capacity as a production company and employer, WWE does not “treat” anyone. WWE’s argument would mean that, in the absence of a Wellness Program, doctors and trainers, the statute of repose could never be tolled on the basis of a continuing course of conduct in a fraud claim against WWE because no litigant would ever have received medical care from the company. This is not the outcome compelled by Connecticut law.

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“subsequently learned that his diagnosis was incorrect.” *Neuhaus*, 905 A.2d at 1144-45.

The Court reaffirms its holding that plaintiffs have plausibly alleged that WWE: (i) committed an initial wrong by omitting information in public statements and communications with its wrestlers that it was under a duty to disclose, (ii) that this duty continued with respect to current and former wrestlers at risk of CTE and other degenerative brain conditions and (iii) that the breach of this duty has been ongoing. WWE's Motion for Reconsideration on this basis is DENIED.

**5. Fraudulent Concealment May Toll the State of Repose**

In its Opinion, the Court held that LoGrasso's allegations that WWE concealed information suggesting a link between repeated concussive trauma and permanent degenerative neurological conditions may implicate the tolling provision for fraudulent concealment codified by statute in Conn. Gen. Stat. § 52-595 ("Section 52-595"). In order to rely on Section 52-595 to toll the statutes of limitations and repose, a plaintiff must demonstrate that "the defendant: (1) had actual awareness, rather than imputed knowledge, of the facts necessary to establish the cause of action, (2) intentionally concealed those facts from the plaintiff and (3) concealed those facts for the purpose of obtaining delay on the part of the plaintiff in filing a cause of action against the defendant." *Falls Church Grp., Ltd. v. Tyler, Cooper & Alcorn, LLP*, 281 Conn. 84, 105, 912 A.2d 1019, 1033 (2007).

WWE urges the Court to reverse its holding by arguing that the "allegation that WWE generally knew about research into brain trauma and a potential link to wrestling falls far short of clear and convincing evidence that WWE knew that

LoGrasso, specifically, had a cause of action related to brain trauma and intentionally concealed those facts from him.” [Def.’s Mem. at 21]. First, the clear and convincing evidence standard is not the standard applicable on a motion to dismiss. Moreover, the Court noted in its Opinion that plaintiffs “also allege that by virtue of its Wellness Program, begun in 2007, WWE possessed superior knowledge regarding a link between participation in WWE wrestling events and such permanent conditions.” [Opinion at 68]. Thus, LoGrasso’s claim cannot be reduced merely to the allegation that WWE ‘generally knew about research into brain trauma.’

WWE argues that fraudulent concealment “expressly requires that the defendant know that the plaintiff has a cause of action, and the knowledge must be actual rather than imputed” and that plaintiffs failed to set forth “clear and convincing evidence that WWE knew that LoGrasso, specifically, had a cause of action.” [Id. *citing Falls Church Grp.*, 912 A.2d at 1032-33]. Connecticut law imposes no such requirement. The Court is mystified as to how WWE can argue that the doctrine *expressly requires* the defendant to have “knowledge of the plaintiff’s cause of action” when the very case cited by WWE, *Falls Church Group*, sets forth a test which *expressly requires* a defendant only to have actual knowledge “of the facts necessary to establish” a cause of action, as opposed to the ‘facts necessary to prove by clear and convincing evidence a cause of action at the pleading stage of a case before the commencement of discovery.’ 912 A.2d at 1033. Furthermore, WWE cites no authority for the proposition that *the facts necessary* to a cause of action refer only to facts which are specific to a single

plaintiff and not an affected group of individuals. While factual development may ultimately reveal that WWE had no actual knowledge *of the facts necessary* to LoGrasso's cause of action, and the possible causes of action of other similarly-situated wrestlers, the allegation is nonetheless plausible.

WWE also argues that LoGrasso did not exercise due diligence to discover the cause of action WWE allegedly concealed from him. [Id.] The extent to which due diligence on the part of LoGrasso to discover could reasonably have led to discovery of his cause of action depends, in part, on whether WWE possessed superior knowledge outside the public domain regarding a link between wrestling and CTE. The reasonableness of any efforts on LoGrasso's part may also depend on the extent to which a lay person could have appreciated the information that was in the public domain prior to 2012. Both issues are fact specific and may be ripe for examination at a later stage in this case, but the Court cannot determine from the face of the SAC that LoGrasso failed to exercise reasonable diligence.

The Court reaffirms its holding that LoGrasso has plausibly alleged that WWE fraudulently concealed his cause of action pursuant to Section 52-595. WWE's Motion for Reconsideration on this basis is DENIED.

## 6. Conclusion

WWE's linguistic feats with respect to the 'express' requirements of Connecticut law as to actual knowledge and specific risks do not suffice for the kinds of "controlling decisions or data that the court overlooked" which WWE is required to set forth in order to obtain relief from the Court's prior Order. See

***Shrader*, 70 F.3d at 257. WWE’s arguments with respect to intent and particularity seek only to re-litigate issues that the Court has already painstakingly decided. WWE’s Motion for Reconsideration of the Court’s Order granting in part and denying in part the defendant’s Motion to Dismiss the Complaint of Evan Singleton and Vito LoGrasso is DENIED.**

**III. Reconsideration of the Court’s Order Dismissing WWE’s Counter-Suit Against *Windham, et al***

After entry of the Court’s Opinion and Order [Dkt. 116] granting in part and denying in part WWE’s Motions to Dismiss in this consolidated action, the Court entered a subsequent Order [Dkt. 117] dismissing WWE’s declaratory judgment countersuit against Robert Windham, Thomas Billington, James Ware, Oreal Perras and “Various John Does” (the “*Windham*” action). [Dkt. No. 3:15-cv-0994 (VLB)]. The Court’s Order noted that, having found that a continuing course of conduct or fraudulent concealment on the part of WWE may have tolled the Connecticut statute of repose with respect to the claims brought by Vito LoGrasso, the Court could not afford WWE the relief it sought in the form of a judgment declaring that all of the named and “Various John Doe” defendants’ claims against WWE were time-barred by the Connecticut statutes of limitations and repose. The Court thereafter denied as moot WWE’s Motion to Expedite Discovery as to the identities of the “John Doe” defendants. [Dkt. 82].

WWE separately urges reconsideration of the Order dismissing the *Windham* action on the grounds that the Order denied WWE its right to notice and an opportunity to be heard. [Dkt. 119-1, Pl.’s Mem. at 9, *citing Thomas v. Scully*,

943 F.2d 259, 260 (2d Cir. 1991)]. WWE argues that the Court's Order entered dismissal for a stated reason – that the Court could not grant WWE the relief it sought – that was never raised by the *Windham* defendants' in their Motion to Dismiss [Dkt. 72]. Indeed, the *Windham* defendants' sole argument raised in favor of dismissal was that the Court lacked subject matter jurisdiction over the *Windham* action because no actual case or controversy existed between the parties. [Dkt. 72-1].<sup>2</sup>

The Plaintiff is correct that a district court cannot dismiss a complaint *sua sponte* for failure to state a claim on which relief can be granted without giving the plaintiff an opportunity to be heard. *Thomas*, 943 F.2d at 260; see also *Perez v. Ortiz*, 849 F.2d 793, 797 (2d Cir. 1988) (“[T]he general rule is that a district court has no authority to dismiss a complaint for failure to state claim upon which relief can be granted without giving the plaintiff an opportunity to be heard.”). *Thomas* concerned a district court's *sua sponte* dismissal of a *pro se* complaint without having provided the *pro se* litigant an opportunity to be heard. 943 F.2d at 259. And in *Perez*, none of the consolidated defendants – police officials and municipalities in the State of Connecticut – had yet moved to dismiss on any basis prior to the district court's dismissal of the state law claims brought against

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<sup>2</sup> The header of Section B of the *Windham* defendants' memorandum in support of dismissal is “Because The Complaint Does Not Present a Case or Controversy, and Because The Complaint Seeks Relief in Violation of the U. S. Constitution, it Fails to State a Claim Upon Which Relief Can be Granted.” That section does argue that because “there is no record providing evidence that the named wrestlers are time-barred by Connecticut law . . . any declaratory judgment would not resolve the purported controversy.” However, this argument is presented as part of an argument that the Court lacks subject matter jurisdiction over the case.

the police defendants in their official capacities. 849 F.2d at 794.

The Court is not entirely convinced that WWE has indeed been deprived of an opportunity to be heard with respect to dismissal of the *Windham* counter-suit for failure to state a claim. On the issue of the applicability of the Connecticut statutes of limitations and repose to the concussion-related negligence and fraud claims of former WWE wrestlers, the Court has now examined hundreds of pages of combined briefing submitted by WWE and the affected wrestlers in three different consolidated actions brought by Vito LoGrasso, William Haynes and Russ McCullough and has now devoted dozens of pages of its own memoranda of opinions setting forth, and then setting forth a second time, the Court's determinations of applicable law. In such circumstances, it is perhaps more appropriate to question whether WWE's arguments concerning Connecticut's statutes of limitations have been heard too much, rather than too little.

However, WWE also argues that “[t]he Court’s conclusion that Plaintiff LoGrasso plausibly alleged a basis for tolling the statute of repose in the Singleton Action cannot justify dismissal [of the *Windham* action],” and on this basis the Court agrees that reconsideration is necessary. WWE notes that the *Windham* defendants “have not yet asserted any basis for tolling the statute of repose” in the *Windham* action as they have yet to answer WWE’s complaint. [Pl.’s Mem. at 12]. Moreover, the Court notes that the four named defendants in the *Windham* action are residents of Florida, Tennessee, North Carolina and the United Kingdom. In addition, the named defendants dispute whether they have signed booking contracts with WWE that contained forum-selection clauses

mandating application of Connecticut law to any claims arising from their wrestling careers. As to each named defendant against WWE, the Court would first need to undertake a factual review and to determine whether Connecticut law applies by virtue of a forum-selection clause in a contract, or whether another state's statute of limitations should be applied by virtue of a choice-of-law analysis. Only then would the Court be in a position in which it could determine whether the declaratory judgment sought by WWE – that the claims of the named defendants are time-barred – should issue.

As WWE correctly points out, the Court would then need to determine whether each defendant has asserted facts sufficient to toll the applicable statute of limitations and/or repose. Although the Court has concluded that LoGrasso plausibly alleged a basis for tolling under Connecticut law by virtue of fraudulent concealment and a continuing course of conduct alleged to have begun in 2005, that same basis for tolling the statute of limitations may not similarly apply to the named plaintiffs, who retired from WWE wrestling in 1999 or earlier. Finally, even if the defendants to the *Windham* action have a plausible basis for tolling the applicable statutes of limitations and repose, WWE is correct that discovery would be then necessary to determine whether evidence existed to support the defendants' allegations that a tolling doctrine or provision was applicable.

For the reasons stated above, WWE's Motion for Reconsideration of the Court's Order dismissing the *Windham* action [Dkt. 119] is GRANTED. The Court's Order entered at docket number 119 is hereby VACATED.

**IV. Opinion Denying Defendants' Motion to Dismiss the Windham Action**

Having vacated the Court's Order dismissing the *Windham* action on the basis of a failure to state a claim upon which relief may be granted, the Court now considers the *Windham* defendants' arguments, raised in their Motion to Dismiss [Dkt. 72], that the Court lacks subject matter jurisdiction over the action. For the following reasons, defendants' Motion is GRANTED IN PART AND DENIED IN PART.

**1. Factual Background**

From October, 2014 to June, 2015, five separate lawsuits against WWE were filed in different jurisdictions 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 lengthy and inflammatory complaints in each case are virtually identical. All five of these lawsuits were subsequently transferred to the District of Connecticut and consolidated before this Court.

On June 2, 2015, Attorney Konstantine Kyros sent letters to WWE threatening similar claims on behalf of four additional professional wrestlers who performed for WWE. On June 29, 2015, WWE commenced the *Windham* declaratory judgment counter-suit against these former wrestlers seeking a declaration that the claims of Kyros' wrestling clients relating to traumatic brain injuries are time-barred by the applicable statutes of limitations and repose under Connecticut law. WWE also sought a declaration that the claims of wholly

unidentified former wrestlers, described only as “Various John Does,” are also barred for the same reasons. These “Various John Does” are not reputed to have threatened to sue WWE.

**2. The *Windham* Action Presents an Actual Case or Controversy Only as to the Named Defendants**

The Declaratory Judgment Act permits a district court to exercise jurisdiction over a proposed declaratory judgment action when an actual controversy exists. See 28 U.S.C. § 2201(a). A district court has broad discretion when considering whether to exercise its jurisdiction under the Declaratory Judgment Act (“DJA”). *Dow Jones & Co. v. Harrods Ltd.*, 346 F.3d 357, 359 (2d Cir. 2003). Thus, under the Declaratory Judgment Act, a district court must first determine whether an actual controversy exists and then decide whether it will exercise jurisdiction over that controversy. *Id.*

An actual controversy is one where “the facts alleged, under all circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.” *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127, 127 S.Ct. 764, 166 L.Ed.2d 604 (2007) (quoting *Md. Cas. Co. v. Pac. Coal & Oil Co.*, 312 U.S. 270, 273, 61 S.Ct. 510, 85 L.Ed. 826 (1941)). Any analysis of the immediacy and reality of a legal dispute is guided by “whether the declaratory relief sought relates to a dispute where the alleged liability has already accrued or the threatened risk occurred, or rather whether the feared legal consequence remains a mere possibility, or even probability of some

contingency that may or may not come to pass.” *Dow Jones & Co., Inc. v. Harrods, Ltd.*, 237 F.Supp.2d 394, 406–07 (S.D.N.Y.2002) (citing *Thomas v. Union Carbide Agric. Prod. Co.*, 473 U.S. 568, 580–81, 105 S.Ct. 3325, 87 L.Ed.2d 409 (1985)), *aff’d*, 346 F.3d 357 (2d Cir. 2003).

The *Windham* defendants argue, without citation to authority in this jurisdiction, that the “letters of representation and preservation” sent to WWE on behalf of the four named defendants “did not institute litigation, nor . . . provide sufficient immediacy and reality to warrant the issuance of a declaratory judgment” because the letters provided “for the possibility [that] litigation would never be initiated” and did not state “what claims might be brought against WWE.” [Def.’s Mem. at 11]. According to the *Windham* defendants, such letters must state with particularity the legal claims at issue in order to present an actual case or controversy. Defendants cite *Kegler v. United States DOJ*, 436 F. Supp. 1204 (D. Wyo. 2006), in which an individual was found to lack standing in a suit brought against the Department of Justice seeking a declaratory judgment that a Wyoming expungement statute restored his right to own and transport a firearm across state lines notwithstanding the prohibition outlined in 18 U.S.C. Sec. 922(g) rescinding such rights for individuals serving sentences of probation. The Wyoming court found that an opinion letter authored by the United States Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) which informed the Wyoming Attorney General that, in the view of ATF, the Wyoming statute would have “[no] effect whatsoever on Federal law” did not by itself present any “genuine threat of imminent prosecution against the plaintiff.” *Id.* at 1206, 1216.

Plaintiff's purported injury resulting from this letter was found to be "wholly conjectural and hypothetical." *Id.* at 1218.

WWE notes that the Second Circuit has found an actual case or controversy exists where one party notifies the other of its intent to file a lawsuit. *Kidder, Peabody & Co. v. Maxus Energy Corp.*, 925 F.2d 556, 559 (2d Cir. 1991) (defendant notified declaratory judgment plaintiff that it intended to file a lawsuit after a ten day "standstill agreement" had passed). WWE also argues that a "history of fierce litigation between parties strongly evidences a justiciable controversy." [Pl.'s Mem. at 29, *citing Broadview Chem. Corp. v. Loctite Corp.*, 417 F.2d 998, 1000 (2d Cir. 1969)]. Finally, WWE argues that because the duty to preserve documents only attaches at the time that litigation is reasonably anticipated, Kyros' preservation letters must therefore present WWE with the reasonable anticipation of litigation. *See Zubulake v. UBS Warburg LLC*, 230 F.R.D. 212, 217 (S.D.N.Y. 2003) ("The duty to preserve attached at the time that litigation was reasonably anticipated.").

A "representation and preservation" letter" need not necessarily state the specific legal claims that a Plaintiff intends to pursue in order to present a party in receipt of such a letter with a sufficiently-accrued liability and a sufficiently-immediate risk as to present an actual case or controversy. In circumstances where, as here, the declaratory judgment plaintiff has been informed by a particular individual or by an identified class or group of individuals of an intent to file suit identifying the subject matter of the dispute and the time period and alleged injury involved, there is an actual case or controversy presented and a

declaratory judgment action may be appropriate under the DJA, particularly where the plaintiff *has already been sued* on identical claims by other plaintiffs represented by the same counsel that authored the representation letter. See *PharmaNet, Inc. v. DataSci Liab. Co.*, No. CIV. 08-2965 (GEB), 2009 WL 396180, at \*10 (D.N.J. Feb. 17, 2009) (actual case or controversy presented where letter sent from defendant's attorney "explicitly raised" an offer for plaintiff to license a specific patent, "mention[ed] by name four of the companies against whom Defendant had filed infringement suits," and "requested an answer by a date certain," as it was "objectively reasonable for a reader to perceive that failure to respond by that date would result in the filing of an infringement suit")

This finding only resolves the case or controversy requirement as to the named defendants on whose behalf Kyros has sent "representation and preservation" letters to WWE. Separately, however, the Court finds that WWE's suit against unnamed "John Does" on whose behalf Kyros has not threatened suit is impermissibly preemptive. WWE's request for a declaratory judgment against wholly unidentified persons WWE describes as "Various John Does" who are presumed to be clients of Attorney Kyros, but for whom no specific threat of imminent litigation has been established, has little support under the cases interpreting the requirements of the DJA. WWE argues that "Kyros' public statements that he represented dozens of former wrestlers" and his statement that "if every wrestler who believes that they'd been harmed by the WWE right now decided to file a lawsuit against the WWE, this would surely decide I think an outcome" suggest that it is "reasonable to assume that such other wrestlers who

have retained Kyros — i.e., the John Doe Defendants — intend to sue WWE.” [Pl.’s Mem. at 30]. In fact, WWE argues that “there would be no other reason for them to have retained Kyros except to sue WWE.” [Id.]

WWE cites to three opinions finding an actual case or controversy at least in part on the basis of threatening public statements made by counsel for a declaratory judgment defendant. None of the three cases were brought against unnamed and unidentified “John Doe” defendants. See *Micron Tech., Inc. v. Mosaid Techs., Inc.*, 518 F.3d 897, 901 (Fed. Cir. 2008) (finding an actual case or controversy based, in part, on named defendant’s “recent public statements . . . [that] confirm its intent to continue an aggressive litigation strategy”); *PharmaNet, Inc. v. DataSci Ltd. Liab. Co.*, Civ. No. 08-2965 (GEB), 2009 WL 396180, at \*8 (D. N.J. Feb. 17, 2009) (actual case or controversy based in part on a named defendant’s public statements announcing a “strategy to sue”); *Shell Oil Co. v. Hickman*, 716 F. Supp. 931, 934 (W.D. Va. 1989) (“based on the . . . actions and representations of the defendants’ counsel, the plaintiffs’ fears of an impending suit filed on behalf of named decedent were real and immediate.”).

The Court does not dispute WWE’s argument that public statements may contribute to a court’s finding of an actual case or controversy between two parties. The Court notes, however, that the cited Kyros statements are too vague to threaten any immediate or specific future suit. Kyros hints at the mere possibility of future claims from his unidentified clients, and not real and immediate controversies. Kyros does not purport to represent all former WWE wrestlers, yet WWE seeks a declaration of the rights of all former wrestlers.

Moreover, the Kyros statements do not constitute a threat of suit. Instead he states what might occur "if every wrestler who believes that they'd been harmed by the WWE" filed suit. By its express terms, the Kyros statement does not state that every former wrestler would bring suit, nor does he state that every former wrestler believes he or she suffered harm. Such statements are too equivocal to create a case or controversy.

If there are circumstances in which a court could find that a DJA action against unidentified persons, not constituting members of a class action, presents a dispute of "sufficient immediacy and reality" as to present an actual case or controversy, even though the declaratory plaintiff *does not even know the identity of the class members*,<sup>3</sup> it is the view of this Court that such a class would likely be defined by *a common injury alleged*, specific and narrow in scope, *that has already accrued* and not merely a common attorney or common legal representation. WWE urges the Court to take on faith and logic that a former

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<sup>3</sup> In *In re Joint E. & S. Dist. Asbestos Litig.*, 14 F.3d 726 (2d Cir. 1993), the Second Circuit vacated a district court's finding that an actual case or controversy was presented where a declaratory judgment plaintiff, Keene, sought to file a mandatory class action against all present or future asbestos claimants against it. Keene argued that a global settlement with such a mandatory class would be "most efficient" and that after reaching such a settlement, it could obtain a declaratory judgment of non-liability against future claimants seeking compensation outside the confines of the global settlement. *Id.* at 731. The Second Circuit did not explicitly examine the issue of whether a declaratory judgment countersuit against an unnamed class of defendants can ever be an appropriate use of the DJA, and instead found that an actual controversy was not presented as "the existence of the settlement is an essential element entitling Keene to a declaratory judgment of non-liability." *Id.* The court further noted that the suit was essentially an attempt to avoid application of the Bankruptcy Code and reminiscent of a "reorganization plan and 'cram down' . . . followed by a discharge." *Id.*

WWE wrestler would not retain the Kyros law firm unless they intended a real and immediate suit against WWE for the same concussion-related causes of action as that claimed by Singleton, LoGrasso and others. In the court's view, even assuming one or more of the "Various John Does" had retained Kyros to advise them whether to bring suit against WWE, any assumption that they actually intended to file suit, however logical, would be a presumptuous invasion of the sanctity and privacy of the attorney-client relationship as well as an infringement of a Plaintiff's sole right to determine *whether* to litigate a claim at all and the full extent of his or her damages giving rise to such a claim. See *Cunningham Bros. v. Bail*, 407 F.2d 1165, 1169 (7th Cir. 1969) (declaratory judgment action improper where plaintiff sought to "force an injured party to litigate a claim which he may not have wanted to litigate at a time which might be inconvenient to him or which might precede his determination of the full extent of his damages").

The Court lacks subject matter jurisdiction over WWE's claim for declaratory relief as against the "Various John Doe" defendants. All claims against the John Doe defendants are DISMISSED. The Court now considers whether, in the exercise of its broad discretion, the Court should exercise jurisdiction as to WWE's claims against the named defendants.

**3. The Court Will Exercise Jurisdiction Over the Named Defendants Despite WWE's Procedural Fencings**

Even where an actual controversy exists, the Court nonetheless retains broad discretion to exercise jurisdiction over a declaratory judgment action. In 1969, the Second Circuit articulated a two-pronged test to guide district courts in

the exercise of this discretion, asking: (1) whether the judgment will serve a useful purpose in clarifying or settling the legal issues involved, and (2) whether a judgment would finalize the controversy and offer relief from uncertainty” and further stating that “if either of these objectives can be achieved the action should be entertained.” *Broadview Chem. Corp.*, 417 F.2d 1000. In recent years, however, the Second Circuit has noted that “[o]ther circuits have built upon this test, to ask also: (3) whether the proposed remedy is being used merely for “procedural fencing” or a “race to res judicata;” (4) whether the use of declaratory judgment would increase friction between sovereign legal systems or improperly encroach on the domain of a state or foreign court; and (5) whether there is a better or more effective remedy. *Dow Jones & Co. v. Harrods Ltd.*, 346 F.3d 357, 359-60 (2d Cir. 2003).

WWE essentially argues that the Second Circuit has never explicitly abrogated its language in *Broadview Chem. Corp.* that if either of the first two factors are met a district court must not decline to exercise jurisdiction, and therefore it is only the first two factors which “control[] this Court’s discretion.” [Pl.’s Mem. at 39]. The reason for WWE’s argument is clear, as the Court later explains – WWE does not wish this Court to consider “procedural fencing” as a factor in examining whether the exercise of jurisdiction over this matter is appropriate.

The Court disagrees with WWE’s statement of the controlling Second Circuit test. WWE overstates *Broadview*. There, the Second Circuit stated that the district court should entertain the matter, not that it must. It stands to reason

that there are circumstances in which the *Broadview* test is met and yet providence dictates that the district court not entertain a case. In noting the factors it did in *Dow Jones*, the Second Circuit signaled its expectation that district courts would exercise their discretion prudently and in the spirit of the Declaratory Judgment Act. Clearly a declaratory judgment may serve a useful purpose or finalize a controversy but yet counterbalancing negative consequences outweigh these benefits. The factors identified in *Dow Jones* are among those which may suggest such improvidence.

WWE also understates *Dow Jones*. There, the Second Circuit affirmed a district court's decision to decline jurisdiction over a declaratory judgment action after examining *all five* of the combined factors described above, and rejected the declaratory plaintiff's argument on appeal that "the district court should have balanced the various factors differently" and further stated that the district court's decision was not "premised on an erroneous view of the law." *Dow Jones & Co.*, 346 F.3d at 360. When the Second Circuit next examined a district court's decision to decline jurisdiction over a declaratory judgment action in *New York v. Solvent Chem. Co.*, 664 F.3d 22, 26 (2d Cir. 2011), the court did not cite the two-pronged test from *Broadview Chem. Corp.* and simply stated that "[w]hen faced with a request for a declaratory judgment pursuant to . . . 28 U.S.C. § 2201(a), a district court *must inquire*" into all five of the above listed factors. See *Solvent Chem. Co.*, 664 F.3d at 26 (emphasis added) (*citing Dow Jones & Co.*, 346 F.3d at 359–60). Thus, the law is clear that not only should the Court consider all five factors from *Dow Jones*, the Court is indeed *required* to do so.

The *Windham* defendants raise no argument that the instant matter would increase friction between sovereigns or encroach on the domain of a state court and raise no argument that there is a more effective remedy available to WWE. Defendants also raise no specific arguments that the *Windham* action would not serve a useful purpose in settling the issues involved, finalizing the controversy, and offering all parties relief from uncertainty.<sup>4</sup> Therefore, the sole question presented is whether WWE engaged in procedural fencing and if so whether its procedural fencing is so foul and improper as to alone warrant dismissal in the exercise of the Court's broad discretion. As the Court explains below, although WWE did engage in procedural fencing, its conduct is outweighed by the ability of the *Windham* action to fully and finally settle the issues between the named plaintiffs and the defendant, relieve the parties of uncertainty and preserve limited judicial resources.

The *Windham* defendants argue in support of dismissal that declaratory judgments should not be used to "anticipate [an] affirmative defense." [Pl.'s Mem. at 27]. Plaintiffs cite to *BASF Corp. v. Symington*, 50 F.3d 555 (8th Cir. 1995), in which the Eighth Circuit held after surveying numerous cases that "where a declaratory plaintiff raises chiefly an affirmative defense, and it appears that granting relief could effectively deny an allegedly injured party its otherwise

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<sup>4</sup> The *Windham* defendants raise a series of arguments that do not directly address any of the five listed factors. The defendants argue that it is improper to "preemptively litigate state-law tort claims," that it is improper to deprive an injured party of his or her right to determine the forum and timing of a suit, that it is improper to use the DJA to litigate statute of limitations defenses and that WWE seeks to "improperly leverage" a ruling against one wrestler as to all others. [Def.'s Mem. at 23-29].

legitimate choice of the forum and time for suit, no declaratory judgment should issue.” *Id.* at 558-559. However, WWE notes that the Eighth Circuit’s survey found that courts, including the Second Circuit itself, have “regularly consider[ed] the merits of affirmative defenses raised by declaratory plaintiffs.” *Id.* at 558, citing, e.g., *Hoelzer v. City of Stamford*, 933 F.2d 1131, 1135–37 (2d Cir. 1991) (examining declaratory plaintiff’s affirmative defense based upon New York’s statute of limitations).

The *Windham* defendants also argue, almost in passing, that WWE’s action has engaged in procedural fencing by denying “the wrestlers the right to determine the place and timing of suit.” [Def.’s Mem. at 27]. Indeed, courts are reluctant to entertain efforts by an alleged tortfeasor to use the DJA in a race-to-the-courthouse effort to shop for a forum with the most favorable statute of limitations. See *Dow Jones & Co.*, 237 F. Supp. 2d at 440 (rejecting Dow Jones’ “rush to file first” in anticipation of litigation in the United Kingdom and in order to apply United States law to the declaratory defendant’s potential defamation claim). And the Eighth Circuit in *BASF Corp.* declined to exercise jurisdiction where the declaratory action by BASF in North Dakota, filed one day after the declaratory defendant had already filed in New Jersey, was “chiefly calculated to take advantage of favorable statute of limitations” in North Dakota and was “a misuse of the declaratory judgment act.” 50 F.3d at 559. The Eighth Circuit surveyed a number of cases and found that in the instances in which courts have permitted a declaratory judgment action on the basis of an affirmative defense, including the cases cited by WWE, the declaratory action did not “involve[] a

threat to an injured party's right to choose its forum.” *Id.* Other circuits are in agreement with this holding in *BASF*. See *AmSouth Bank v. Dale*, 386 F.3d 763, 790 (6th Cir. 2004) (finding abuse of discretion where declaratory action was “an effort to engage in procedural fencing to secure the Banks’ choice of forum”); *Allendale Mut. Ins. Co. v. Bull Data Sys., Inc.*, 10 F.3d 425, 431 (7th Cir. 1993) (“a suit for declaratory judgment aimed solely at wresting the choice of forum from the “natural” plaintiff will normally be dismissed and the case allowed to proceed in the usual way”); *Pac. Employers Ins. Co. v. M/V Capt. W.D. Cargill*, 751 F.2d 801, 804 (5th Cir. 1985) (no abuse of discretion in declining jurisdiction where district court found that declaratory plaintiff sought merely to control the forum of the natural plaintiff’s cause of action).

WWE does not squarely address the procedural fencing factor in briefing, stating only the mere truism that the “proposed remedy is not procedural fencing, but rather goes to the important policy of repose and involves a pure legal issue that is involved in every other case filed by Kyros.” [Pl.’s Mem. at 39]. However, an examination of the very cases cited by WWE in favor of finding an actual case or controversy reveals the extent to which the procedural fencing in the instant matter must be distinguished as procedurally improper.

In *Shell Oil*, the declaratory plaintiff had been sued by counsel for the declaratory defendants on behalf of another Mississippi resident in the District of Mississippi in an obvious attempt to take advantage of Mississippi’s six-year statute of limitations for wrongful death actions despite that individual’s claims having accrued in Virginia, where they were time barred. 716 F. Supp. at 932-333.

The first Mississippi action was transferred to Virginia, but counsel then threatened to file another action in Mississippi on behalf of the declaratory defendants. *Id.* Plaintiff filed a DJA action in Virginia seeking a determination that the Virginia statute of limitations applied to the declaratory defendants' claims and that such claims were time-barred. *Id.* at 933. The Virginia district court held that "declaratory relief is an appropriate remedy" in part because "entry of declaratory judgment for the plaintiffs would promote judicial economy." *Id.* at 934. However, key to the Virginia district court's finding that declaratory relief would be appropriate was its holding that the two-year Virginia statute of limitations would apply and bar defendants' claims *regardless of whether the action was filed in Mississippi or Virginia* under Mississippi's choice-of-law rules. *Id.* The Court further noted that counsel for defendants admitted at oral argument that counsel would not have opposed transfer to Virginia had defendants filed first in Mississippi. *Id.*

Similarly, the Second Circuit in *Hoelzer v. City of Stamford*, also cited by WWE, examined an appeal brought by a New York resident and art restorer who had filed a declaratory judgment action to quiet title to a series of murals in his possession based upon the statute of limitations having run on the City of Stamford's delayed demand for the return of those murals. 933 F.2d at 1131-1135. Applicability of New York's statute of limitations was not disputed on appeal given that demand for the return of the artwork was made in New York, the artwork resided in New York and therefore the claim accrued in New York. *Id.* at 1136. Furthermore, the Second Circuit affirmed the district court's holding that

the New York statute of limitations did not bar defendant's claim, and therefore the declaratory plaintiff's choice of forum did not appear to affect the outcome of the matter. *Id.* at 1137-1138.

These cases illustrate that where a declaratory judgment plaintiff seeks a declaration of non-liability on the basis of an affirmative defense and the use of the DJA *does not impact the application of the law to the parties claims*, notwithstanding the deprivation of the declaratory plaintiff's traditional right to determine the time and place of the suit, exercising jurisdiction over the action may be appropriate. See, e.g., *Hoelzer*, 933 F.2d at 1136. However, where exercising jurisdiction over a declaratory judgment action would *affect the application of one or more state's laws to the claims of the parties* through, for example, the enforcement of a stricter statute of limitations in a forum where the natural plaintiff's claim may not have actually accrued, obvious procedural fencing may outweigh the benefits of exercising jurisdiction over the suit. See *BASF Corp.*, 50 F.3d at 559; *Dow Jones & Co.*, 237 F. Supp. 2d at 440

It cannot be disputed here that via the *Windham* action WWE seeks to preemptively apply Connecticut's statutes of limitations and repose to bar the claims of four named defendants, who reside in four different domestic and foreign jurisdictions other than the State of Connecticut, who likely wrestled in a number of jurisdictions other than Connecticut, without presenting evidence that *any* of the four wrestlers signed contracts with WWE selecting Connecticut as the

exclusive forum for claims arising out of their performances for WWE.<sup>5</sup> In effect, WWE seeks to hale Messrs. Windham, Billington, Ware and Perras into a ring they have built here in the District of Connecticut in order to use the Connecticut statutes of limitations to potentially constrain claims that these wrestlers have yet to even state with specificity.<sup>6</sup> Use of the DJA for such a pre-emptive strike is suspect on its face.

However, in its March 21, 2016 Opinion, this Court already undertook a choice-of-law analysis to determine whether to apply Connecticut or Oregon law to the claims in the *Haynes* action, as there was no evidence that plaintiff Haynes had signed a booking contract with WWE. [Opinion at 20-24]. First, the Court noted Attorney Kyros' own pattern of obvious forum-shopping in prior suits against WWE. [Id. at 18, 23-24]. The Court determined that under Connecticut law, the applicable statutes of limitations are considered procedural where the underlying cause of action existed at common law, and therefore Connecticut's statute of limitations applied to Haynes' common law fraud and negligence claims notwithstanding his Oregon residency and the filing of his action in Oregon. [Id.

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<sup>5</sup> WWE argues that the counsel for the Windham defendants, in several of the previously-filed suits against WWE, agreed to transfer those cases to Connecticut and that one such case was a purported class action that would have encompassed the Windham defendants as class members. However, prior suits were transferred to Connecticut in part on the basis of evidence that the named plaintiffs had signed contracts with WWE containing forum-selection clauses limiting such claims to this jurisdiction. [Opinion at 17].

<sup>6</sup> The Court notes that while, up to this point, all of the complaints filed by Kyros' wrestling clients have been virtual carbon copies and have raised identical claims, the Windham action would restrict the claims of the named plaintiffs based solely on the litigation choices of the wrestlers who have already filed. This point might have more significance had the prior plaintiffs not filed ten-count complaints raising virtually every plausible cause of action.

at 24]. The Court also found that because plaintiff LoGrasso's claim for fraud by omission also plausibly implicated the tolling doctrine of fraudulent concealment and continuing course of conduct, LoGrasso's claims were not necessarily time-barred. [Id. at 35-47]. It is these three determinations that militate against dismissal of the *Windham* action, notwithstanding WWE's procedural fencing.

*First*, in cases such as the instant matter, where the subject matter of the litigation is nationwide in scope, where the declaratory judgment defendants have their own history of abusive forum shopping and procedural fencing and where *similar actions were already pending in the same forum chosen by the declaratory judgment plaintiff*, the Court's nominal concern for the declaratory defendant's own choice of forum and its effect on the application of the law to the claims presented is more circumscribed. Unlike the declaratory plaintiffs in *BASF Corp.* and *Dow Jones*, the declaratory plaintiff here is not attempting to use the DJA to introduce a new and rival forum into the equation, but rather is seeking merely to prevent the inefficient and time-consuming forum-shopping in which Kyros has engaged at the expense of the judicial resources of a number of district courts.

*Second*, even if Messrs. Windham, Billington, Ware and Perras had elected to file suit in the *loci* of their choice, it is likely, based upon the same factors which led three different courts to transfer the *Haynes*, *Frazier* and *Osborne* actions to the District of Connecticut from three different judicial districts, that their suits would similarly be transferred here and face application of Connecticut procedural law, including the Connecticut statutes of limitations.

*Third*, and perhaps most importantly, the Court suspects that application of the Connecticut statutes of limitations in particular – as opposed to the statutes of limitations of another jurisdiction – is unlikely to have an impact on the eventual determination of whether WWE is liable to any of the *Windham* defendants. Specifically, *if* there is sufficient evidence for a trier of fact to conclude that WWE fraudulently omitted material information from LoGrasso concerning permanent head injuries, it is likely that WWE has also fraudulently concealed LoGrasso's cause of action, as LoGrasso's discovery of his cause of action would have been thwarted by the fraudulent omissions.<sup>7</sup> The same logic applies to the *Windham* defendants. By contrast, if no such evidence exists with respect to LoGrasso, it is unlikely that the *Windham* defendants can state any claim for relief for fraud, regardless of whether such claims are time-barred under the laws of different jurisdictions.

Because WWE's procedural fencing is not likely to impact the ultimate disposition of the claims of the *Windham* defendants, the Court finds that this factor is outweighed by the other factors articulated in *Dow Jones* and *Broadview Chem. Corp.*<sup>8</sup> Specifically, the Court finds that the *Windham* action will assist in

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<sup>7</sup> WWE will soon be filing a dispositive motion as to its liability with respect to Singleton and LoGrasso. After months of extensive discover and depositions of witnesses by Singleton and LoGrasso, the evidence will either show that a reasonable trier of fact could find that WWE was under a duty to disclose knowledge in its possession or readily obtainable and failed to do so in a continuing course of fraudulent conduct, or that WWE had no such duty or knowledge or that the conduct was not continuous after the initial wrong.

<sup>8</sup> The Court emphasizes, however, the limited and fact-specific nature of its finding that exercising jurisdiction is appropriate here despite WWE's obvious procedural fencing and the precedent set by numerous prior courts in refusing to

clarifying and settling the legal issues involved by helping to identify whether WWE is liable to any active or former wrestlers and, if so, continuing to refine the possible group of persons to whom WWE could be liable. In addition, a judgment in favor of WWE would provide finality with respect to the named defendants' claims and would relieve WWE of the uncertainty it has faced since it received the "representation and preservation" letters from the four defendants. WWE may also elect to amend its *Windham* complaint and seek a declaration of non-liability on grounds other than the statutes of limitations should the progression of the Singleton and LoGrasso matter indicate that WWE's non-liability is ultimately premised on a different legal or factual theory.

Finally, the exercise of jurisdiction over the *Windham* action would preserve limited judicial resources by avoiding, with respect to the named defendants, the tortuous path to the District of Connecticut that Attorney Kyros' other clients have been forced to walk. In continuing to file carbon-copy concussion suits on behalf of former wrestlers in other jurisdictions, only to have those suits eventually transferred to this District upon WWE's motion, Kyros is only delaying his own clients' potential recovery and wasting limited judicial resources. Against a defendant as well-represented as WWE, such tactics are

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entertain such actions where a declaratory plaintiff seeks to pre-emptively apply a stricter state law than that which would be applicable in the declaratory defendant's natural choice of forum. Because it is likely that the declaratory defendants' claims in this action would have been transferred to this district, where other similar claims were already pending, that Connecticut law would likely have been applied, and that application of Connecticut law instead of the law of another state will not determine the outcome of this matter, WWE's procedural fencing is not likely to bear a significant role in this case.

unlikely to increase, and certain to delay, his clients' own chances of a recovery. Although, in dismissing the John Doe defendants, the Court declines to hale all of Kyros' wrestling clients to Connecticut as a *class*, it is possible – even probable – that the Court will hear the claims of these clients in this District at some point in the future.

Once all of the lawyers, entertainers, and lawyer-entertainers involved in this case have entered the proper ring, perhaps then the parties will stop dancing around the ropes with one another and begin to wrestle these cases toward a fair and just resolution.

For the foregoing reasons, Defendants' Motion to Dismiss the *Windham* action for lack of subject matter jurisdiction is GRANTED with respect to the claims against the unknown "John Does" and DENIED with respect to the claims against the four named defendants. The John Does are DISMISSED. Messrs. Windham, Billington, Ware and Perras are to be REINSTATED as defendants in this consolidated action.

V. WWE's Motion to Expedite Discovery in the *Windham* Action

As the John Doe defendants have been dismissed, WWE's Motion for Expedited Discovery of the John Doe Defendants is DENIED AS MOOT.

VI. Conclusion

In conclusion, WWE's Motion for Reconsideration of the Court's Order [Dkt. 116] Granting In Part and Denying In Part Defendant's Motions to Dismiss the

SPA-115

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**Singleton and McCullough Actions [Dkt. 118] is DENIED. WWE's Motion for Reconsideration of the Court's Order [Dkt. 117] Dismissing the Windham Action [Dkt. 119] is GRANTED. The Court's Order at Docket Number 117 is hereby VACATED.**

**Defendants' Motion to Dismiss the Windham Action [Dkt. 72] is GRANTED IN PART AND DENIED IN PART. The John Doe defendants are DISMISSED. Messrs. Windham, Billington, Ware and Perras are to be REINSTATED as defendants in this consolidated action.**

**WWE's Motion for Expedited Discovery of the John Doe Defendants [Dkt. 82] is DENIED AS MOOT.**

**IT IS SO ORDERED.**

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

**Dated at Hartford, Connecticut: July 21, 2016**

SPA-116

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT**

<b>RUSS MCCULLOUGH, et al., Plaintiffs,</b>	:	
	:	
<b>v.</b>	:	<b>No. 3:15-cv-01074 (VLB) Lead Case</b>
	:	
<b>WORLD WRESTLING ENTERTAINMENT, INC., Defendant.</b>	:	<b>March 24, 2017</b>
	:	

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<b>EVAN SINGLETON and VITO LOGRASSO, Plaintiffs,</b>	:	
	:	
<b>v.</b>	:	<b>No. 3:15-cv-00425 (VLB) Consolidated Case</b>
	:	
<b>WORLD WRESTLING ENTERTAINMENT, INC., Defendant.</b>	:	<b>March 24, 2017</b>
	:	

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**ORDER DENYING DEFENDANT’S  
MOTION FOR SUMMARY JUDGMENT [DKT. NO. 188]**

Defendant World Wrestling Entertainment (“WWE”) has moved for summary judgment on Plaintiffs Evan Singleton’s and Vito LoGrasso’s claims for fraud by omission—the only claims that survived the Defendant’s Motion to Dismiss [Dkt. No. 43]. Along with its summary judgment motion, Defendant submitted a 60-page Local Rule 56(a)1 statement. [Dkt. No. 191<sup>1</sup>] Plaintiffs submitted a 125-page Local Rule 56(a)1 statement in response. [Dkt. No. 210].

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<sup>1</sup> Defendant does not appear to have filed an un-redacted version of their statement of facts under seal, but provided the Court with a courtesy copy of this statement. Defendant is directed to either file on the docket an unredacted version of their original Rule 56(a) statement, or provide the Clerk with a copy for filing under seal.

For the reasons that follow, Defendant's Motion for Summary Judgment is DENIED without prejudice.

"The purpose of [a Rule 56(a) statement] is to aid the court, by directing it to the material facts that the movant claims are undisputed and that the party opposing the motion claims are disputed. Without such statement, the court is left to dig through a voluminous record, searching for material issues of fact without the aid of the parties." *Coger v. Connecticut*, 309 F. Supp. 2d 274, 277 (D. Conn. 2004), *aff'd sub nom., Coger v. Connecticut Dep't of Pub. Safety*, 143 F. App'x 372 (2d Cir. 2005) (quotations omitted); *see also In re Espanol*, 509 B.R. 422, 426 (Bankr. D. Conn. 2014) ("The purpose of Local Rule 56(a) is to assist the Court in the efficient determination of motions for summary judgment and thereby conserve limited and valuable judicial resources."). The parties frustrate this purpose by submitting unnecessarily voluminous Rule 56(a) statements.

This case revolves around a single question: "Did the WWE become aware of and fail to disclose to Singleton and LoGrasso information concerning a link between repeated head trauma and permanent neurological conditions or specialized knowledge concerning the possibility that its wrestlers could be exposed to a greater risk for such conditions," [Dkt. No. 116]. Instead of submitting "*concise statements of each material fact*," L. R. Civ. P. 56(a) (emphasis added), the parties have buried the Court in extraneous information, a substantial portion of which is argument and not fact.

Moreover, the length of each party's Rule 56(a) statement evidences a transparent attempt to sidestep Chambers page limits, which bar submissions

longer than 46 pages. The entirety of the Defendant's factual background section, for example, reads:

The undisputed facts supporting WWE's motion for summary judgment are set forth in WWE's Local Rule 56(a)(1) Statement that is being filed concurrently herewith and is incorporated by reference herein. Due to length restrictions, only some facts can be discussed herein.

[Dkt. No. 188-1 at 6]. As a result, the Defendant's brief effectively balloons from 46 to 106 pages, violating both Rule 56(a) and Chambers Practices.

Because the parties' Rule 56(a) statements are unnecessarily long and argumentative, and reviewing them in full would be wasteful of the Court's scarce resources:

1. Within 21 days of the date of this Order, Defendant is required to submit revised briefing, including a Rule 56(a)1 statement of no more than 30 pages.
2. Within 14 days after Defendants file their revised briefing, Plaintiffs are required to file a response, including a Rule 56(a)2 statement that (1) responds to each of the separately numbered paragraphs in Defendant's Rule 56(a)1 statement with a simple admission or denial, and a citation to the record; and (2) includes a separate section of no more than 30 pages listing all disputed issues of material fact.

Given the parties' familiarity with the record in this case, these deadlines provide the parties' adequate time to complete their revised briefing.

**SPA-119**

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**IT IS SO ORDERED.**

*/s/* \_\_\_\_\_

**Hon. Vanessa L. Bryant**

**United States District Judge**

**Dated at Hartford, Connecticut: March 24, 2017**

SPA-120

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

<b>RUSS MCCULLOUGH, et al.</b> Plaintiffs,	:	
	:	<b>CIVIL ACTION NO.</b>
	:	<b>3:15-CV-1074 (VLB)</b>
<b>v.</b>	:	
	:	<b>LEAD CASE</b>
<b>WORLD WRESTLING ENTERTAINMENT, INC.,</b>	:	
Defendant.	:	

<b>WORLD WRESTLING ENTERTAINMENT, INC.,</b>	:	
Plaintiff,	:	<b>CIVIL ACTION NO.</b>
	:	<b>3:15-CV-994 (VLB)</b>
<b>v.</b>	:	
	:	<b>CONSOLIDATED CASE</b>
<b>ROBERT WINDHAM, THOMAS BILLINGTON, JAMES WARE, and OREAL PERRAS,</b>	:	
Defendants.	:	

<b>JOSEPH M. LAURINAITIS, et al.,</b>	:	
Plaintiffs,	:	<b>CIVIL ACTION NO.</b>
	:	<b>3:16-CV-1209 (VLB)</b>
<b>v.</b>	:	
	:	<b>CONSOLIDATED CASE</b>
<b>WORLD WRESTLING ENTERTAINMENT, INC. and VINCENT K. MCMAHON</b>	:	<b>September 29, 2017</b>
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 *Laurinitis* Procedural History**

The *Laurinitis* 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 neuropathologist 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 be 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.<sup>1</sup> 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.

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

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<sup>1</sup> 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.

*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:

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1. the date or dates on which they wrestled for WWE or any of 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 of its agents or affiliates knew or should have known that wrestling caused any traumatic brain injuries, including CTE.



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UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

RUSS McCULLOUGH, et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	CASE NO. 3:15cv1074 (VLB)
	:	LEAD CASE
WORLD WRESTLING ENTERTAINMENT, INC.,	:	
Defendant.	:	

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EVAN SINGLETON and VITO LOGRASSO,	:	
Plaintiffs,	:	
	:	
v.	:	CASE NO. 3:15cv425 (VLB)
	:	CONSOLIDATED CASE
WORLD WRESTLING ENTERTAINMENT, INC.,	:	
Defendant.	:	

**RECOMMENDED RULING ON DEFENDANT'S MOTIONS FOR SANCTIONS**

Currently pending before this court is Defendant, World Wrestling Entertainment Inc. ("WWE") Motion for Sanctions. (Dkt. #198.) Defendant's motion seeks the imposition of sanctions under Rule 37 of the Federal Rules of Civil Procedure for failure to comply with a discovery order. Oral argument regarding the motion was held on March 2, 2017. For the foregoing reasons, the undersigned recommends that the Defendant's Motion for Sanctions (Dkt. 198) be GRANTED, in part, as outlined herein.

**Procedural History**

The procedural history of the consolidated cases spans a number of years and involves a variety of district courts across the United States. A full recitation of the entire case is not necessary here. Rather, the Court need only outline the background of the current dispute regarding the alleged failure of plaintiff to comply with Judge Bryant's discovery order dated May 19, 2016.

**I. WWE's Motion to Compel**

As was outlined in the briefs and during oral argument, the origin of the pending motion dates back to January 27, 2016, when WWE served the plaintiffs with interrogatories. The plaintiffs responded on March 7, 2016, the parties met and conferred and then WWE filed a motion to compel. (Dkt. #122.) In WWE's motion WWE argued that the plaintiffs' responses were deficient in that they were incomplete or evasive. (See Dkt. #122-1, at 10.) For purposes of the current dispute, only the interrogatories are at issue and the Court need not address any claims relating to the document requests or privilege logs also mentioned in WWE's motion.

Judge Bryant granted in part WWE's motion to compel and ordered plaintiffs to submit supplemental responses to six

different interrogatories.<sup>1</sup> (Dkt. #144.) In so ruling, Judge Bryant implicitly deemed the previous responses to be inadequate. Further, she specifically instructed that where the "Plaintiff is unable to identify a statement or speaker in response to an interrogatory, Plaintiff must state that fact." (Id.) (emphasis added).

Thereafter, on June 15, 2016, plaintiffs served supplemental responses in an attempt to comply with Judge Bryant's ruling.<sup>2</sup> However, as argued by WWE, the responses

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<sup>1</sup> The Court notes that all but one of the interrogatories in question were submitted in identical form to both Mr. LoGrasso and Mr. Singleton. Thus, there are actually 11 interrogatories to which plaintiff was ordered to reply. The Court will differentiate between the interrogatories when necessary.

<sup>2</sup> The Court is aware that there was an issue related to the lack of verification signatures on the plaintiffs' supplemental responses served on June 15, 2016. Counsel for WWE informed plaintiffs' counsel of the issue and signed verifications were provided to WWE on June 17, 2016. WWE has argued that the circumstances surrounding the signing of the verifications shows that plaintiffs were unaware of what their answers said and did not read them before signing under the penalties of perjury. The timing surrounding the answers and the provision of the verifications raises questions regarding what Messrs. Singleton and LoGrasso knew about their sworn interrogatory responses. However, the Court is unwilling to go so far as to recommend the application of the crime fraud exception to Rule 501 of the Federal Rules of Evidence, as suggested by WWE. Rather, as recommended and outlined herein, the plaintiff will be subject to significant sanctions in the hope of deterring further abuses of the discovery process. However, the Court would be remiss not to warn plaintiffs and their counsel that any further suggestion of dishonesty throughout this litigation could, and likely should, result in much more dramatic sanctions up to and including the dismissal.

continued to be either incomplete, unchanged in any material way, or evasive. Given the responses that plaintiffs provided after Judge Bryant's order on the motion to compel, WWE filed the current motion for sanctions under Rule 37. WWE argues that plaintiffs' only remaining claim should be dismissed as a sanction. WWE argues that dismissal is appropriate because, according to WWE, plaintiffs have clearly engaged in perjury by signing the verification pages to their interrogatories and plaintiffs' counsel have suborned perjury, by allowing the plaintiffs to sign and verify knowingly false interrogatory responses. Additionally, and central to this recommended ruling, WWE also argues that plaintiffs' supplemental interrogatory responses continue to be evasive and incomplete.

#### LEGAL STANDARD

Under Rule 37 of the Federal Rules of Civil Procedure a district court is endowed with the authority to sanction a party who fails to comply with a discovery order. Fed. R. Civ. P. 37(b)(2)(A). Sanctions, up to and including dismissal of the action, under Rule 37 "are intended to 'ensure that a party will not benefit from its own failure to comply,' to obtain specific compliance and 'to serve a general deterrent effect on the case at hand and on other litigation.'" Kellogg v. J.C. Penney Corp., Inc., No. 3:11CV733 RNC, 2013 WL 308985, at \*1 (D. Conn. Jan.

25, 2013) (quoting Southern New England Telephone Co. v. Global NAPs Inc., 624 F.3d 123, 149 (2d Cir.2010)). When determining if sanctions are appropriate the court is guided by a variety of factors: "(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." Southern New England Tel. Co. v. Glob. NAPs Inc., 624 F.3d 123, 144 (2d Cir. 2010) (quoting Agiwal v. Mid Island Mortg. Corp., 555 F.3d 298, 302 (2d Cir. 2009)). "The mildest sanction [available under Rule 37] is the reimbursement of expenses to the opposing party caused by the offending party's failure to cooperate, while the harshest sanction is the order of dismissal and default judgment." Friedman v. SThree PLC., No. 3:14CV00378(AWT), 2017 WL 4082678, at \*2 (D. Conn. Sept. 15, 2017) (quoting Martinelli v. Bridgeport Roman Catholic Diocesan Corp., 179 F.R.D. 77, 80 (D. Conn. 1998)).

As mentioned, Rule 37 provides a court with the ability to impose the severe sanction of dismissal if a party does not comply with a discovery order. See Fed. R. Civ. P. 37(b)(2)(A)(v). While given broad discretion in these matters, dismissal is an extreme sanction and "is appropriate 'only where the noncompliance is due to willfulness, bad faith, fault or gross negligence rather than inability to comply or mere

oversight.'" Nieves v. City of New York, 208 F.R.D. 531, 535 (S.D.N.Y. 2002) (quoting Hochberg v. Howlett, No. 92 Civ. 1822, 1994 WL 174337, \*3 (S.D.N.Y. May 3, 1994)).

#### **DISCUSSION**

The focus of defendant's motion is the interrogatory responses that plaintiffs' provided after Judge Bryant granted, in part, WWE's motion to compel. After reviewing the supplemental interrogatory responses and hearing the explanations from plaintiff's counsel for the insufficiencies, the Court is unimpressed. However, in light of the very high bar required for the sanction of dismissal the Court does not recommend that Judge Bryant exercise her discretion to dismiss this case. Likewise, the Court rejects WWE's argument that the crime/fraud exception should permit WWE to obtain attorney client privileged information concerning the verifications that were signed by Plaintiffs. However, the Court does agree that plaintiffs' conduct warrants the imposition of sanctions. In this respect, "[w]hile a showing of willful disobedience or gross negligence is required to impose a harsher sanction, a finding of willfulness or contumacious conduct is not necessary to support sanctions which are less severe than dismissal or entry of a default judgment." Martinelli v. Bridgeport Roman Catholic Diocesan Corp., 179 F.R.D. 77, 80 (D. Conn. 1998).

After considering the interrogatory responses, and the oral arguments in this matter, the Court recommends that plaintiffs' counsel be sanctioned for their failure to comply in any meaningful way with Judge Bryant's ruling regarding interrogatory responses.

I. Interrogatory responses

The Court has reviewed the supplemental interrogatory responses provided by plaintiffs following Judge Bryant's order. Interrogatory number 6 is an outlier, in that it is the only one of the interrogatories that was only served on Mr. LoGrasso. Interrogatory number 6 asked Mr. LoGrasso to:

Identify all symptoms You have experienced since Your relationship with WWE ended which You contend are associated with TBI sustained while performing for WWE, including the date of onset of the symptoms, the length of the symptoms, and the identity of all health care providers who examined or treated You for such symptoms.

(Dkt. #198-4 at 7.) During oral argument WWE's counsel stated that this interrogatory was served on Mr. LoGrasso to have him elaborate on the onset of his symptoms which was uniquely relevant to his case because of statute of limitations issues. (Tr. 86:13-17, Mar. 2, 2017).

It appears to be undisputed that the answer to interrogatory number 6, in essence, did not change following Judge Bryant's ruling on the motion to compel.

Rather, the only difference between plaintiffs' initial response and his supplemental response is the language plaintiff used to express his objection to the interrogatory. During oral argument plaintiffs' counsel indicated it was difficult to respond to interrogatory number 6 given the nature of Mr. LoGrasso's medical records. (TR. 128:16-24, Mar. 2, 2017.) Counsel stated that Mr. LoGrasso was never technically diagnosed with a concussion so it was difficult to identify the onset dates. However, counsel later indicated that the requested information on symptoms was indeed located somewhere within the medical documents produced in this case. (Tr. 128:25-129:11, Mar. 2, 2017.) Counsel finally conceded that perhaps Mr. LoGrasso's response could be amended again to direct WWE to the information WWE originally requested, stating only that "perhaps we could have been more precise." (Tr. 130:5-6, Mar. 2, 2017.)

Providing WWE with an identical response to the answer that Judge Bryant previously deemed insufficient, without even attempting to direct WWE to the information Mr. LoGrasso claims to be responsive to the interrogatory is at best careless. In light of Judge Bryant's order, LoGrasso had an affirmative obligation to make a good faith effort to supplement his response by providing sufficient and

specific information or the specific location of the responsive information. He failed to do so.

In a similar vein, interrogatory number 11 which was served on LoGrasso and interrogatory number 12 which was served on Singleton sought information regarding specific allegations made by them in their second amended complaint. The two interrogatories, which were identical, asked the 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. #198-4 at 9.) The debate regarding the sufficiency of the response to these interrogatories centers on how each side read "to Plaintiff[s]." Based on representations made during oral argument, WWE intended to obtain information regarding public statements and articles that downplayed the risks of concussions and that were provided to or seen by the plaintiffs. WWE further clarified that it was seeking details regarding a specific allegation made by plaintiffs in their complaint. In contrast, plaintiffs' counsel stated that their reading of the interrogatories was that WWE was inquiring about statements that downplayed the risks of concussions that the plaintiffs could face. In other words, counsel understood "to plaintiffs" to refer to the potential risks "to plaintiffs" as opposed to

deceptive statements made "to plaintiffs." Admittedly, the plaintiffs could reasonably interpret the interrogatories in such a manner.

Regardless of which interpretation the Court adopts, the plaintiffs failed to sufficiently respond to these interrogatories.<sup>3</sup> Rather, plaintiffs simply referred WWE to previously provided documents.

In addition to generally referring to documents it had already produced, 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.<sup>4</sup> The

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<sup>3</sup> Interrogatory 12 (LoGrasso) and interrogatory 13 (Singleton), deal with alleged attempts by the WWE to discredit scientific studies related to head injuries. The plaintiffs responded by directing the WWE to the answers previously provided by LoGrasso in response to interrogatory 11 and by Singleton in response to interrogatory 12, which, as discussed were insufficient for their lack of specificity. Plaintiffs' responses also referred to the lack of information shared by WWE regarding the studies, however, that portion of plaintiffs' response was unresponsive to the actual question because it did not attempt to address actual attempts by WWE to discredit those studies.

<sup>4</sup> In Judge Bryant's March 21, 2016 ruling on the Defendant's Motion to Dismiss, the Court attempted to resolve any continued confusion over Stephanie McMahon Levesque's testimony before the United States Congress. In previous filings and arguments, Plaintiffs had argued that Ms. Levesque told Congress that "there were no documented concussions in WWE's history." (Ruling

Court concedes that there was one specific article identified in Mr. LoGrasso's interrogatory response, but no attempt was made to identify any comments within that article that plaintiffs attribute to WWE that supposedly downplay the risks of concussions.

An apparent pattern has emerged in most of plaintiffs' interrogatory responses. When confronted with their own allegations taken from their own complaint, plaintiffs simply direct the 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.

During oral argument the Court directly discussed this issue with plaintiffs' counsel, who conceded in relation to LoGrasso's interrogatory 15 and Singleton's interrogatory 16<sup>5</sup>

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on Def. Mot. to Dismiss, Dkt. 116 at 58-59.) As Judge Bryant stated, plaintiffs' argument, made repeatedly, is "at the very least, misleading[]" noting that Ms. Levesque was only asked about documented instances of concussions after the enactment of the WWE's wellness policy. (Id. at 59.) Thereafter Judge Bryant cautioned plaintiffs' counsel that the continued misuse of "deliberately misleading language . . . undermines his and Plaintiffs' credibility[.]" (Ruling on Defendant's Motion to Dismiss, Dkt. 253 at 24, Nov. 10, 2016.)

<sup>5</sup>Interrogatory 15 (to LoGrasso) and interrogatory 16 (to Singleton) asked the plaintiffs to:

Identify in detail who at WWE criticized "the legitimate scientific studies," as alleged in ¶¶ 193 & 208 of the

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that some of the answers were "perhaps inartfully worded." (Tr. 132:6-7, Mar. 2, 2017.) Additionally, the Court stressed that the plaintiffs had an obligation, especially in light of Judge Bryant's ruling on the motion to compel, to tell WWE where in the supplied documents or identified books and articles the information requested by the interrogatories is located. (Tr. 132:24-133:11, Mar. 2, 2017.)

In their opposition plaintiffs argue that in directing WWE to previously supplied documents or to records in WWE's possession they have complied with Rule 33(d). (Plaintiffs' Opposition, Dkt. 216 at 19.) The Court disagrees. "Rule 33 does not permit a party to avoid specific responses to interrogatories by reference to undifferentiated masses of documents." This, LLC v. Jaccard Corp., No. 3:15-CV-1606(JBA), 2017 WL 547902, at \*3 (D. Conn. Feb. 9, 2017). Instead, as suggested by the undersigned's comments during oral argument, the rule "requires that a party seeking to use alternative means of responding to an interrogatory specify the records from which

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Second Amended Complaint, including in Your answer the date, place, and person(s) rendering the criticism, and how and when the criticism first came to Your attention.

(Dkt. #198-4 at 10.) The Court notes that beyond the internal references to other insufficient responses, the plaintiffs appear to comply with Judge Bryant's ruling by indicating that there are no such statements.

a response can be ascertained." New Colt Holding Corp. v. RJG Holdings of Florida, Inc., No. CIV.3:02-cv-173(PCD), 2003 WL 22327167, at \*2 (D. Conn. June 17, 2003). The plaintiffs should point to specific statements in the supplied documents that are responsive to the specific inquiry

In interrogatory 14 to LoGrasso and interrogatory 15 to Singleton, WWE sought information addressing a very specific allegation in the second amended complaint. More specifically, plaintiffs had alleged that WWE, in communications with wrestlers, not only omitted information but had in some way affirmatively stated that "WWE wrestlers with diagnosed brain trauma did not receive these injuries as a result of wrestling for WWE." (Pls.' Second Am. Comp., ¶¶ 178 and 185.) Plaintiffs once again steered the WWE to random publications and documents with little specificity or guidance and referred to conversations with a trainer and a physician, which were not responsive to the interrogatories. Furthermore, Judge Bryant's order was clear that in the event that the plaintiffs were unable to identify a statement or speaker in response to an interrogatory the plaintiffs were required to state that fact. In this instance, the plaintiffs appear unable to find documentation to back up their assertion. Therefore, the proper response should have been that the plaintiffs are unable to identify any such statements. If, in fact, the plaintiffs are

able to identify such statements, the Court is unable to determine what those statements are, despite having read the interrogatory responses multiple times and having had the benefit of oral argument.

The remaining interrogatories, number 16 to LoGrasso and number 17 to Singleton, highlight a separate issue. These interrogatories go to the heart of the remaining claim of fraud by omission. Plaintiffs' counsel appears to be sincerely unsure of the proper manner in which to respond to these interrogatories, given the nature of the fraud by omission claim. The Court notes that it appears that plaintiffs have attempted to respond to these interrogatories more fully, however, the Court does not believe that the supplemental answers are any more responsive than the original answers. While, clearly the references to other interrogatory responses provided by plaintiffs will be cleaned up in any supplemental responses, the Court stresses that this interrogatory appears to go to the very heart of plaintiff's claim. Plaintiffs should at a minimum be able to specify what information they allege was known to WWE, and how plaintiffs relied upon in some manner.

The Court finds that the plaintiffs' responses were insufficient for the reasons outlined in this recommended ruling. While the Court does not find the required level of

willfulness or culpability to recommend that this case be dismissed, many of the responses provided by the plaintiffs rise to a level where the Court deems it appropriate to impose sanctions on plaintiffs' counsel to dissuade further abuse of the discovery process and promote thorough compliance with court orders moving forward. Given the evasiveness of plaintiffs' responses, the fact that this conduct continued through the meet and confer discussion and after Judge Bryant's ruling on the motion to compel, the Court is of the opinion that sanctions are appropriate. Since this is a recommended ruling and the undersigned believes that the Court is fully aware of the lengthy history in this matter, the Undersigned will not recount it. The Court has admonished plaintiffs' counsel on several occasions but declined to impose sanctions after threatening to impose them.

The Court would be remiss not to mention that Plaintiffs' counsel, specifically Attorney Kyros, has been on notice that plaintiffs need to comply with Court orders and the Federal Rules of Civil Procedure throughout this litigation.<sup>6</sup> The Court

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<sup>6</sup> During a June 8, 2015 status conference Judge Bryant expressed concerns over the quality and content of plaintiffs' filings. Judge Bryant spoke in clear terms regarding the federal rules, pleading standards, and her own expectations for this litigation going forward. Counsel was reminded that "you've got to have a good faith belief in the claim that you file at the time you file[] it." (Transcript of Status Conference, 3:15-cv-425-VLB, Dkt.73 at 47.) Counsel was

hopes that this, a lesser sanction than dismissal, will be sufficient to get this litigation moving in a reasonable manner.

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instructed to file an amended complaint which did not have "any scrivener errors, hyperbolic, inflammatory opinions and references to things that don't have any relevance" to the claims being made. (Id.) Judge Bryant pointed out that "[a] complaint should be a clear and concise statement of the facts that form the basis of [the] claims." (Id. at 61.) Counsel was warned that anything beyond the facts necessary to establish a claim "is just window dressing." (Id.)

In a subsequent ruling Judge Bryant noted that plaintiffs excessively long complaint contains "precious few allegations which detail specific instances of conduct that have wronged" the named plaintiffs. (Ruling on Def. Mot. to Dismiss, Dkt. 116 at 7.) Adding that some allegations are "patently false" and "copied and pasted in whole cloth from one Complaint to another."

Lastly, Judge Bryant has noted that Attorney Kyros and co-counsel have "declined to heed the Court's admonition to edit the unnecessary verbiage, irrelevant allegations, conclusory statements and inflammatory language in the original complaints." (Ruling on Def. Mot. to Dismiss and for Sanctions, Dkt. #253 at 9.) Further the Court stated that Attorney "Kyros' false and misleading statements, identified by WWE above, together with other statements the Court has examined - including [Attorney] Kyros' unprovable claim that deceased and, in at least one case, cremated former wrestlers had CTE 'upon information and belief' - are highly unprofessional." (Id. at 27.) Specifically Judge Bryant admonished "[Attorney] Kyros and his co-counsel to adhere to the standards of professional conduct and to applicable rules and court orders lest they risk future sanction or referral to the Disciplinary Committee of this Court. " (Id. at 27-28.)

**CONCLUSION**

Based on the foregoing, the undersigned recommends that defendant's motion for Sanctions (Dkt. # 198) be GRANTED, in part.

The undersigned recommends that the plaintiffs' second supplemental responses be stricken and the plaintiffs provide yet another round of supplemental responses to WWE's interrogatories by March 15, 2018.<sup>7</sup> The responses are to be in compliance with Judge Bryant's previous ruling, provided in good faith, be specific, and must address the issues raised in the specific interrogatories. It is recommended that if Plaintiff, once again, fails to answer the interrogatories fully and specifically that plaintiffs be precluded from introducing evidence relating to the allegations addressed by the interrogatories.

In addition, the undersigned recommends 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. All fees paid pursuant to this order are to be paid

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<sup>7</sup> In the event that either party objects to this recommended ruling the March 15, 2018 deadline will become moot. In that instance, if the recommendation is affirmed, the Court should set whatever deadline for supplemental responses it deems reasonable and appropriate.

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by the law firm and not by the client, nor are the fees to be recovered through any judgment rendered in this or future related litigation. Lastly, it is recommended that plaintiffs' counsel be required to provide this and any subsequent ruling related to this motion for sanctions to their clients.

Furthermore, 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.

Any party may seek the district court's review of this recommendation. See 28 U.S.C. § 636(b) (written objections to proposed findings and recommendations must be filed within fourteen days after service of same); Fed. R. Civ. P. 6(a), 6(d) & 72; Rule 72.2 of the Local Rules for United States Magistrate Judges, United States District Court for the District of Connecticut; Thomas v. Arn, 474 U.S. 140, 155 (1985); Frank v. Johnson, 968 F.2d 298, 300 (2d Cir. 1992). Failure to timely object to a magistrate judge's report will preclude appellate review. Small v. Sec'y of Health and Human Serv., 892 F.2d 15, 16 (2d Cir. 1989).

SO ORDERED this 22nd day of February 2018, at Hartford, Connecticut.

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/s/  
Robert A. Richardson  
United States Magistrate Judge



**II. Background**

**A. Defendants' Knowledge of a Link Between Head Trauma and Permanent Degenerative Neurological Conditions**

A key issue in this case is when WWE first learned of a potential link between concussive and subconcussive blows suffered by professional wrestlers and permanent degenerative neurological disorders such as chronic traumatic encephalopathy (“CTE”). Plaintiffs’ Rule 56(a)(2) statement is rife with mischaracterizations of the evidence as it pertains to this issue. After careful consideration of the evidence in the light most favorable to the Plaintiffs, the Court has determined that the evidence does not support a finding that WWE knew of a risk that repeated head injuries incurred while performing as a professional wrestler could cause permanent degenerative neurological conditions prior to September 5, 2007. The reasons for this finding are discussed in the paragraphs that follow.

Plaintiffs argue that WWE knew of the risks of repeated head injuries as early as the 1980s. In support, Plaintiffs cite to the deposition of Dr. Joseph Maroon, a neurosurgeon who developed a concussion assessment for athletes, in which he testified that doctors developed a concussion management protocol as early as the 1980s, and that they were aware of the risks of post-concussion syndrome “long before 2008.” [Maroon Dep. at 21-22]. Plaintiffs also cite the testimony of Mark Lovell, a neuropsychologist who worked with Dr. Maroon on concussion testing amateur and professional football players beginning in the 1980s, professional hockey players beginning in 1997, professional soccer players beginning in 2005, and professional race car drivers in the early 2000s.

[Lovell Dep. at 24-35]. Dr. Lovell testified that putting an athlete who suffered a concussion back into a game too soon could cause “long-term issues” like memory loss, headaches, dizziness, balance issues, changes in mood and affect, and potentially suicidal ideation. [Lovell Dep. at 39-51]. Neither Dr. Maroon nor Dr. Lovell were retained by WWE prior to 2008. Therefore, even if Dr. Maroon’s and Dr. Lovell’s statements about concussion science in the 1980s and 1990s could be understood to imply that the risk of permanent degenerative neurological conditions was known to them or to other members of the medical community at that time, that knowledge cannot be imputed to WWE until 2008 at the earliest

In addition to the testimony of the doctors WWE retained to conduct concussion testing in 2008, Plaintiffs cite to two pre-2007 articles relating to concussions. The first is a 2005 Mayo Clinic article which describes “second impact syndrome,” which “occurs when a person has a recurrent head trauma while still recovering from a concussion . . . [and] can lead to devastating swelling of the brain, which could [be ]fatal.” [Pl. Exh. 23 at 2]. The article also states that “[s]ome people experience postconcussion syndrome, a condition in which the symptoms of concussion”—such as “memory and concentration problems, headaches, dizziness, confusion or irritability”—persist for weeks or months after the initial head trauma.” [Pl. Exh. 23 at 3]. According to the Mayo Clinic article, neither second impact syndrome nor postconcussion syndrome are permanent neurogenerative diseases. Rather, the article describes acute

swelling of the brain, and postconcussion symptoms that last months rather than permanently.

The second article was written by Dr. Bennett Omalu in 2005, and detailed the first known case of CTE in a professional football player. In his conclusions, Dr. Omalu stated,

“This case highlights *potential* long-term neurodegenerative outcomes in retired professional National Football League players subjected to repeated mild traumatic brain injury. The prevalence and pathoetiological mechanisms of these *possible* adverse long-term outcomes and their relation to duration of years of playing football *have not been sufficiently studied*. We recommend comprehensive clinical and forensic approaches to understand and further elucidate this emergent professional sport hazard.”

[PI. Exh. 21 at SINGLETON\_0000086] (emphasis added). The article also stated, “This case study by itself cannot confirm a causal link between professional football and CTE. However, it indicates the need for comprehensive cognitive and autopsy-based research on long-term postneurotraumatic sequelae of professional American football.” *Id.* at SINGLETON\_0000090. Plaintiff offers as evidence that WWE knew about this article news coverage relating to its equivocal and inconclusive article. [See PI. Exh. 22, 48]. However, Plaintiff has offered no evidence that WWE was aware of any of this news coverage or of Dr. Omalu’s 2005 article. Plaintiff further offers no evidence to suggest that at the time Dr. Omalu’s article was published, any research existed that would suggest that Dr. Omalu’s findings regarding one football player might apply to professional wrestlers, or that the frequency and severity of head trauma suffered by football players is similar to that suffered by professional wrestlers.

Plaintiffs also argue that WWE learned of a link between concussions and permanent neurodegenerative disease from Chris Nowinski, a former wrestler who retired from wrestling in 2003 following a diagnosis of post-concussion syndrome. Plaintiffs claim that Nowinski remained employed by WWE following his retirement from wrestling, and that during that time, he began researching the connection between repeated concussions and permanent degenerative neurological conditions. [Dkt. 346 ¶ 163]. Based on this research, Nowinski published a book in September 2006, titled “Head Games: Football’s Concussion Crisis.” [Pl. Exh. 24].

Plaintiff’s exhibits regarding Nowinski’s work with WWE between 2003 and 2006 are consistent with the affidavit that Nowinski filed with the Court in connection with a discovery dispute in this case. He stated, “After I retired from wrestling in 2003, I occasionally participated in WWE programs as an independent contractor through independent contractor agreements. As my LinkedIn profile indicates, I primarily participated in programs designed to increase youth voter turnout in political elections.” [Dkt. No. 182-2 ¶ 2]. He further stated, “I did not work at WWE corporate headquarters as part of my participation in these programs. I did not have ‘regular interactions with WWE executives,’ as Plaintiffs assert, as part of my participation in these programs.” *Id.* ¶ 3. Nowinski further described his research as “independent” and stated that he lived in Boston, MA while he was researching his book. *Id.* ¶ 4.

This Court has previously addressed Nowinski’s involvement with WWE between 2003 and 2006, holding that “Plaintiff . . . has offered no facts to suggest

that Nowinski's work with 'Smackdown Your Vote' during the time period in which he researched and authored the book provides him with any knowledge relevant to" WWE's specific knowledge of or an appreciable risk of a link between wrestling activity and permanent degenerative neurological conditions. [Dkt. Nos. 160, 183]. Since the Court issued that ruling, Plaintiffs have not offered any new evidence showing that WWE was aware of Nowinski's research, that anyone at WWE read Nowinski's book, or that anything in Nowinski's book would suggest a link between professional wrestling and permanent degenerative neurological conditions. Indeed, while Nowinski did wrestle professionally, he also played football for many years, and if the title of the book provides an accurate assessment of its content, the book focuses on a "concussion crisis" in football, not wrestling.<sup>1</sup>

In June 2007, the professional wrestler Chris Benoit killed his wife and child before committing suicide, prompting Nowinski to publicly speculate that "untreated concussions might have caused [Benoit] to snap." [PI. Exh. 36]. During a September 5, 2007 press conference, it was revealed that the wrestler

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<sup>1</sup> Plaintiffs' Rule 56(a)(2) statement states, "WWE knew prior to September 2006 that its employee Chris Nowinski was researching the risks of long-term neurological issues and CTE with repeated concussions in the years leading up to the publishing of his book. Mr. McMahon even confronted Nowinski about the accusations. Moreover Linda McMahon, CEO of WWE at the time, and Nowinski had a conversation about Nowinski's research. At the very latest, WWE knew about Nowinski's research and findings when his book was published in September 2006 and began a media tour discussing concussions he suffered in the WWE." [Dkt. No. 346 ¶ 170 (citations omitted)]. Upon review of the cited deposition testimony, the Court finds that the deposition testimony Plaintiffs cite in support of this statement does not, when fairly considered in context, suggest that WWE was aware of Nowinski's work on concussion research until September 2010. [V. McMahon Dep. at 189-90, 202-03, 212].

Benoit had been diagnosed with CTE. [V. McMahon Dep. at 22; S. McMahon Dep. at 51; Pl. Exh. 20]. In the immediate aftermath of this revelation, Vince and Stephanie McMahon made several statements to the media in which they questioned the credibility of the study. In particular, Vince McMahon stated that “I would, as a layman certainly wonder whether or not that report has any credibility” and Stephanie McMahon stated that “these studies have not been proven.” [Pl. Exh. 31]. Vince McMahon mentioned his skepticism that Benoit could truly have had the brain of an 85-year old with dementia to news outlets, and in a letter to Benoit’s estate’s attorney as late as December 2009. [Pl. Exhs. 16, 31, 33]. While Benoit’s diagnosis was revealed in September 2007, a peer review article regarding Benoit’s condition was not published until September 2010. [Def. Exh. 31].

#### **B. Concussion Mitigation Efforts**

Despite making public statements calling into question the validity of the Benoit diagnosis, WWE took affirmative steps to inform wrestlers of the risks of a brain injury and to assess the risks occasioned by wrestling. In March 2008, WWE retained Dr. Maroon as its medical director, and licensed the Immediate Post-Concussion Assessment and Cognitive Testing software (“ImPACT”). [Def. Exh. 36 at WWE\_SING00000277-97; S. McMahon Dep. at 62-63, 91; V. McMahon Dep. at 105-06; Levesque Dep. at 129; Maroon Dep. at 8]. The contract that secured the services of Dr. Maroon and the license for ImPACT also secured the services of Dr. Lovell. [Lovell Dep at 11]. After retaining Dr. Maroon and licensing ImPACT, WWE added neurological testing to its Wellness Program for

current WWE talent for the first time. [V. McMahon Dep. at 36-37; Levesque Dep. at 130-31]. In the Spring of 2008, ImpACT administered baseline tests to current WWE talent. [Lovell Dep. at 57-59]. During baseline testing, the wrestlers are educated about the signs and symptoms of concussions, including a list of 22 symptoms of a concussion. [Lovell Dep. at 58-59]. Since 2008, WWE talent have been given baseline tests once per year. [Lovell Dep. at 63].

The extent to which WWE talent was educated about the risks of permanent degenerative neurological conditions resulting from concussions between 2008 and 2010 is in dispute. However, Dr. Maroon and Chris Nowinski gave several presentations to talent regarding traumatic brain injuries between 2010 and 2015. [V. McMahon Dep. at 42-43; Levesque Dep. at 137; Def. Exhs. 40-59].

### C. LoGrasso

LoGrasso entered into a written booking contract with WWE regarding LoGrasso's wrestling services effective June 25, 2005. [LoGrasso Dep. Exh. 19]. WWE released LoGrasso from his contract with WWE on May 16, 2007. [LoGrasso Dep. at 339; WWE-SING00000305-06]. During the time that LoGrasso performed for WWE between 2005 and 2007, WWE had a doctor named Dr. Rios who attended WWE events and treated WWE talent for in-ring injuries. [Levesque Dep. at 104; McMahon Dep. at 16, 96-97]. Dr. Rios treated LoGrasso in this capacity, but Dr. Rios was not LoGrasso's personal physician. [LoGrasso Dep. at 194-95]. In June 2006, Defendant distributed a memorandum stating that "Dr. Rios [was] not the personal physician for any WWE . . . Talent," and that "Dr. Rios' main responsibility [was] to treat Talent at [WWE events] for injuries

suffered as a result of a performance” and “[a]ny medical follow-ups for injuries” was to be done by the talent’s personal physician.” [J. Laurinaitis Decl.]. The parties dispute whether LoGrasso actually received a copy of this memorandum. In February 2006, WWE instituted a Talent Wellness Program, which initially only involved drug testing and cardiovascular testing. [S. McMahon Dep. at 14-15].

LoGrasso claims that he suffered head trauma during five specific matches, the latest of which took place on January 30, 2007. LoGrasso alleges that he told WWE’s ringside physician, Dr. Rios, that he was experiencing concussion-like symptoms, such as “headaches,” “feeling woozy,” and fatigue, feeling lethargic, tired, etc.” [LoGrasso Dep. at 56, 58-59, 318-21]. Plaintiff alleges that Dr. Rios did not provide appropriate care for a concussion, but rather administered vitamin B-12 shots. [LoGrasso Dep. at 58, 321-22, Pl. Exh. 38].

LoGrasso never received medical treatment from WWE or WWE’s Talent Wellness Program for head injuries. [LoGrasso Supp. Response to WWE Rog. 5]. He did not receive treatment from or as a result of WWE’s Talent Wellness Program for any injuries or illnesses. [LoGrasso Supp. Response to WWE Rog. 5]. LoGrasso also admitted that he had no communications with WWE about symptoms of traumatic brain injury after he last performed for WWE in 2007, and that WWE has provided no medical care to him since he left WWE. [LoGrasso Response to WWE RFA 7, 8]. LoGrasso has, however, received annual letters from WWE in which WWE offers to pay for drug or alcohol rehabilitation if needed by a former performer. [LoGrasso Dep. at 277-79; WWE\_SING00000507-511].

LoGrasso was terminated by WWE in May 2007. [LoGrasso Dep. at 252-53]. In May 2009, LoGrasso sent an email to WWE seeking employment as a trainer, but he did not state in that communication that he was suffering from symptoms of traumatic brain injury. [LoGrasso Dep. Exh. 3; LoGrasso Dep. at 92-93]. LoGrasso was friends with Benoit and his wife, and he stated that he knew that the murder-suicide was a huge story in the media and was well-known in the wrestling business. [LoGrasso Dep. at 236, 239]. LoGrasso also knew that Benoit's CTE diagnosis was publicly reported around the time of the crime. [LoGrasso Dep. at 239]. LoGrasso testified that he remembered WWE denying Benoit's actions had anything to do with wrestling, stating "[w]hen you make a statement like that, you say, okay it had nothing to do with wrestling. You know, and I trusted in the WWE and what they were saying at the time." [LoGrasso Dep. at 237, 326].

**D. Singleton**

Singleton received his baseline IMPACT test on December 1, 2011 and was educated about the signs and symptoms of concussions at that time. [Lovell Dep. at 58-59; Def. Exh. 37]. While Singleton denies attending any of WWE's informational sessions regarding concussion risks, he was required to attend a presentation on August 9, 2012, AND on August 9, 2012, Singleton's professional Twitter account stated "Thank You @WWE for giving me the background." [Def. Exhs. 60, 62].

On September 27, 2012, Singleton sustained a concussion while performing a "choke slam" maneuver during a match. He denies sustaining a

concussion at any time other than during the September 27, 2012 match. [Singleton Dep. at 142-43]. The “choke slam” maneuver is a common move performed in professional wrestling and one that Singleton had seen performed countless times and one he fully expected that he would before when he became a professional wrestler. [Singleton Dep. at 244]. Singleton was told before receiving a choke slam that he would get hurt if he did not tuck his chin during the move. [Singleton Dep. at 28]. However, during the September 27, 2012 match, he did not perform the maneuver correctly and was injured as a result. [Singleton Dep. at 244]. After September 27, 2012, Singleton was never medically cleared by WWE to wrestle, and he never wrestled again. [Singleton Dep. at 64-65, 81].

### III. Legal Standard

Summary judgment should be granted “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The moving party bears the burden of proving that no factual issues exist. *Vivenzio v. City of Syracuse*, 611 F.3d 98, 106 (2d Cir. 2010). “In determining whether that burden has been met, the court is required to resolve all ambiguities and credit all factual inferences that could be drawn in favor of the party against whom summary judgment is sought. *Id.* (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986); *Matsushita Electric Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)). “If there is any evidence in the record that could reasonably support a jury’s verdict for the nonmoving party, summary judgment must be denied.” *Am. Home Assurance*

*Co. v. Hapag Lloyd Container Linie, GmbH*, 446 F.3d 313, 315-16 (2d Cir. 2006) (quotation omitted). In addition, “the court should not weigh evidence or assess the credibility of witnesses” on a motion for summary judgment, as “these determinations are within the sole province of the jury.” *Hayes v. New York City Dep’t of Corr.*, 84 F.3d 614, 619 (2d Cir. 1996).

“A party opposing summary judgment ‘cannot defeat the motion by relying on the allegations in his pleading, or on conclusory statements, or on mere assertions that affidavits supporting the motion are not credible.’ At the summary judgment stage of the proceeding, [p]laintiffs are required to present admissible evidence in support of their allegations; allegations alone, without evidence to back them up, are not sufficient.” *Welch-Rubin v. Sandals Corp.*, No. 3:03-cv-481, 2004 WL 2472280, at \*1 (D. Conn. Oct. 20, 2004) (quoting *Gottlieb v. County of Orange*, 84 F.3d 511, 518 (2d Cir. 1996)). “Summary judgment cannot be defeated by the presentation . . . of but a ‘scintilla of evidence’ supporting [a] claim.” *Fincher v. Depository Trust & Clearing Corp.*, 604 F.3d 712, 726 (2d Cir. 2010) (quoting *Anderson*, 477 U.S. at 251).

#### IV. Discussion

While the parties have submitted a veritable avalanche of paper along with their summary judgment briefing, the Court has limited the issues that it will consider on summary judgment to (1) whether the statutes of repose may be tolled as to LoGrasso due to fraudulent concealment of facts giving rise to a cause of action; and (2) whether Defendants committed fraud by omission by failing to warn Plaintiffs of the risk of long-term degenerative neurological

disorders resulting from head trauma. Although the legal standards for fraud by omission and fraudulent concealment are not identical, both require that the party committing the fraudulent omission or concealment actually knew of the concealed or omitted fact.

1. LoGrasso's Claim is Barred by Connecticut's Statutes of Limitation and Repose

Connecticut General Statutes § 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. 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, 365 A.2d 1180, 1184 (1976). Because LoGrasso stopped wrestling in May 2007—and he was therefore last exposed to the risks of neurological damage via repeated head injuries years prior to the expiration of the statute of repose for tort claims—his claim cannot survive unless the statute of repose is tolled.

Section 52-595 tolls any statute of limitations or repose, including Section 52-577, if a defendant fraudulently conceals a cause of action from a plaintiff. See *Connell v. Colwell*, 214 Conn. 242, 571 A.2d 116, 118 (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.”). Section 52-595 provides, “If 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.”

To demonstrate fraudulent concealment of a cause of action, Lograsso must offer evidence that the Defendant “(1) had actual awareness, rather than imputed knowledge, of the facts necessary to establish the plaintiffs’ cause of action; (2) intentionally concealed these facts from the plaintiffs; and (3) concealed the facts for the purpose of obtaining delay on the plaintiffs’ part in filing a complaint on their cause of action.” *Falls Church Grp., Ltd. v. Tyler, Cooper & Alcorn, LLP*, 281 Conn. 84, 105 (2007). The standard of proof for fraudulent concealment requires “clear, precise, and unequivocal evidence.” *Id.* Additionally, LoGrasso’s claims cannot survive under the doctrine of fraudulent concealment if undisputed evidence shows that LoGrasso “discovered or should have discovered actionable harm in the form of an increased risk for latent, permanent degenerative neurological conditions prior to 2013,” *McCullough v. World Wrestling Entm’t, Inc.*, 172 F. Supp. 3d 528, 549 (D. Conn. 2016).

Plaintiff has offered no evidence to suggest that Defendant was aware of the risk that repeated head injuries of the type commonly suffered by professional wrestlers could cause permanent degenerative neurological conditions prior to September 5, 2007, when Benoit’s CTE diagnosis was publicly revealed. Plaintiff admits that he was aware of the Benoit murder suicide, that the incident was a common topic of conversation among professional wrestlers, and that he considered Benoit a friend prior to Benoit’s death. LoGrasso also knew that Benoit’s CTE diagnosis was publicly reported around the time of the crime.

Although WWE attempted to discredit the finding that Benoit had CTE, and tried to distance WWE from Benoit's behavior, no reasonable jury could find that WWE concealed the fact of Benoit's diagnosis from LoGrasso. Because Plaintiff has offered no evidence from which a reasonable jury could conclude that Defendant fraudulently concealed the cause of action in this case from LoGrasso, the Court finds that LoGrasso's claim is time-barred. Moreover, for the reasons discussed below, even if no statute of repose applied to LoGrasso's claim, it would not survive summary judgment.

**2. Plaintiff has Failed to Raise a Genuine Issue of Fact that would Preclude Summary Judgment on the Fraudulent Omission Claim**

"The essential elements of an action in common law fraud . . . are that: (1) a false representation was made as a statement of fact; (2) it was untrue and known to be untrue by the party making it; (3) it was made to induce the other party to act upon it; and (4) the other party did so act upon that false representation to his injury." *Censor v. ASC Techs. of Connecticut, LLC*, 900 F. Supp. 2d 181, 222-23 (D. Conn. 2012) (quoting *Sturm v. Harb Dev. LLC*, 298 Conn. 124, 142, 2 A.3d 859 (Conn. 2010)). "Fraud by nondisclosure, which expands on the first three of [the] four elements [of fraud], involves the failure to make a full and fair disclosure of known facts connected with a matter about which a party has assumed to speak, under circumstances in which there was a duty to speak . . . . A lack of full and fair disclosure of such facts must be accompanied by an intent or expectation that the other party will make or will continue in a mistake, in order to induce that other party to act to her detriment." *Saggese v. Beazley*

*Co. Realtors*, 155 Conn. App. 734, 752-53 (2015) (quoting *Reville v. Reville*, 312 Conn. 428, 441, 93 A.3d 1076 (2014)).

“[T]he party asserting [a fraud] cause of action must prove the existence of the first three of [the] elements by a standard higher than the usual fair preponderance of the evidence, which higher standard we have described as clear and satisfactory or clear, precise and unequivocal.” *Saggese* 155 Conn. App. at 753 (quoting *Harold Cohn & Co. v. Harco Int’l, LLC*, 72 Conn. App. 43, 51 (2002)). This “clear and convincing standard . . . forbids relief whenever the evidence is loose, equivocal or contradictory.” *Saggese*, 155 Conn. App. at 754 (quoting *Shelton v. Statewide Grievance Committee*, 85 Conn. App. 440, 443-44 (2004)).

While Connecticut law does not foreclose recovery for fraud by omission where the omitted facts were publicly available, a plaintiff’s claim may not survive summary judgment unless he or she offers evidence that this publicly available information was known to the defendant. See *McCullough v. World Wrestling Entm’t, Inc.*, 172 F. Supp. 3d 528, 566 (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) (stating (1) “The Court does not read *Saggese* as holding that under Connecticut law a defendant cannot be held liable for non-disclosure of publicly available facts”; and (2) “the development of a factual record may reveal that WWE did not possess or fail to disclose “known facts” about CTE or other degenerative conditions and whether such conditions could result from participation in WWE wrestling events.”).

To survive summary judgment, Plaintiffs must raise material issues of fact that would allow a reasonable jury to find by clear and convincing evidence that Defendants knowingly and intentionally failed to fully and fairly disclose the risk that concussions could cause permanent degenerative neurological disorders for the purpose of inducing Plaintiffs to continue wrestling, and that Defendants had a duty to disclose such information. Plaintiffs must also raise material issues of fact that would allow a reasonable jury to find by a preponderance of the evidence that Plaintiffs relied on Defendants' fraudulent omissions to their detriment.

“In ruling on a motion for summary judgment, the judge must view the evidence presented through the prism of the substantive evidentiary burden.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 254 (1986). This is because “[i]t makes no sense to say that a jury could reasonably find for either party without some benchmark as to what standards govern its deliberations and within what boundaries its ultimate decision must fall, and these standards and boundaries are in fact provided by the applicable evidentiary standards.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 254–55 (1986). Therefore, where the law requires that an element of a cause of action be satisfied by “clear and convincing” evidence at trial, the Court must grant summary judgment where evidence presented is of “insufficient caliber or quantity to allow a rational finder of fact to find [that element] by clear and convincing evidence.” *Id.*

Defendants argue that Plaintiffs' fraudulent omission claims cannot survive summary judgment because (1) Plaintiffs admitted in their depositions that they

did not know they were asserting fraud claims and could not identify anyone who had defrauded them; (2) Plaintiffs have offered no evidence that Defendants allegedly failed to disclose information about the risk of permanent degenerative neurological disorders with the specific intent to defraud the Plaintiffs; (3) Plaintiffs have offered no evidence that Defendants knew of a link between professional wrestling and permanent degenerative neurological conditions prior to a 2007 press release which revealed that the wrestler Stephen Benoit was posthumously diagnosed with chronic traumatic encephalopathy (“CTE”); (4) Plaintiffs have offered no evidence to support their claim that they detrimentally relied on Defendants’ alleged omission; and (5) Defendants had no duty to disclose information about the risks of permanent degenerative neurological conditions to the Plaintiffs.

LoGrasso’s claim cannot survive summary judgment because undisputed evidence in the record demonstrates that WWE did not know of a potential link between concussions and permanent degenerative neurological disorders until after LoGrasso stopped wrestling. LoGrasso therefore could not have relied upon any omission to choose to continue wrestling, and any injury he suffered while wrestling could not have resulted from WWE’s failure to state what it did not know.

With respect to Singleton, the parties agree that WWE was aware of the risk that concussions or subconcussive blows could cause permanent degenerative neurological conditions before Singleton sustained his career-ending head injury in September 2012. Defendant argues that WWE cannot be held liable for fraud

by omission, because it had developed a concussion testing and education program in which Singleton participated or should have participated prior to his injury during which WWE disclosed to Singleton the risk of sustaining a brain injury while wrestling.

In particular, Singleton was instructed to attend a presentation on August 9, 2012 relating to drug abuse and concussion risks. The presentation was approximately 45 minutes long, and included a description of the WWE's concussion management policy. While the portion of the presentation discussing concussions is relatively brief, Dr. Maroon stated during the presentation, "What happens if you take too many headshots and you go back into the ring before any symptoms have been cleared? . . . If your brain doesn't completely respond and heal and you get hit again, there is a potential danger of having more damage to your brain." [Def. Exh. 48]. Dr. Maroon then displayed a slide showing the brain of an NFL player who he said died from CTE, and stated that while he did not think it was possible to eliminate concussions among WWE performers, that WWE had implemented a testing program that was the same as the one now used by the NFL to prevent any performers from returning to the ring before they are completely asymptomatic. *Id.*

Singleton denies attending this program, and points out that while Defendants have claimed the presentation was mandatory, no efforts to track attendance were undertaken. However, Defendants have offered undisputed evidence that the presentation took place, and that Singleton's supervisor was instructed to "[p]lease have all Talent present for the meeting." [Def. Exh. 60].

Holding a training session in which it is explained that repeated concussions can cause CTE and that CTE can be fatal, is not consistent with a deliberate effort to withhold information for the purpose of inducing Singleton to continue wrestling. Plaintiffs have offered no evidence that Singleton's alleged failure to attend this session was the result of a deliberate effort on WWE's part to prevent him from learning about concussions or CTE. Consequently, no reasonable jury could find anything other than that WWE attempted to inform Singleton about the risks of concussions. His failure to cooperate with that attempt—or WWE's allegedly negligent failure to ensure that all talent in fact attended the presentation—do not transmute WWE's effort to educate performers about concussion risks into fraudulent omission.

WWE attempted to disclose to Singleton the risk that repeated concussions or subconcussive blows could cause the permanent degenerative neurological disorder CTE, and Singleton was injured after WWE made this attempt. Accordingly, Plaintiff has not offered any evidence suggesting that WWE intentionally omitted any information in order to induce Singleton to continue wrestling. Plaintiff has therefore failed to raise a genuine issue of fact that would preclude summary judgment as to Singleton's fraud by omission claim.

V. Conclusion

For the foregoing reasons, Defendant's motion for summary judgement is GRANTED. The Clerk is directed to enter judgment for the Defendant as to Plaintiffs Singleton and LoGrasso.

**SPA-180**

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Once again, the Court notes Plaintiffs' counsels have asserted facts and advanced legal theories for which there is no reasonable evidentiary and legal basis; and once again cautions that such conduct subjects counsel to Rule 11 sanctions. Counsel are advised to read 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.

**IT IS SO ORDERED.**

**VANESSA  
BRYANT**

Digitally signed by VANESSA BRYANT  
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email=VANESSA\_BRYANT@CTD.USCO  
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**Hon. Vanessa L. Bryant  
United States District Judge**

**Dated at Hartford, Connecticut: March 27, 2018**



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 AI 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.

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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.

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*/s*

Hon. Vanessa L. Bryant

United States District Judge

Dated at Hartford, Connecticut: July 22, 2018



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 of 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 then 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 denying 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,<sup>1</sup> and noted:

“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

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<sup>1</sup> 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 traumatic encephalopathy (“CTE”) when a publicly available study published by Bennet Omalu, a neuropathologist 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).

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 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.<sup>2</sup> The DJ Defendants’ Second Affirmative Defense addresses WWE’s claim that the statutes of limitation and repose bar the DJ Defendants’ claims. Specifically, it asserts that WWE fraudulently concealed the cause of action from the DJ Defendants until 2015. However, the Second Affirmative Defense does *not* allege that WWE knew of a link between concussive or subconcussive blows and

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<sup>2</sup> 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.

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 Perras 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 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. Plaintiffs Have Asserted Numerous Patently Time-Barred Claims**

The first complaint in this action was filed on July 18, 2016. The SAC does not allege that any Plaintiff wrestled for WWE and suffered a head injury while wrestling later than 2011. Similarly, with limited exceptions, the Complaint does not state when each Plaintiff first entered into a contract classifying him or her as an independent contractor. However, the wrestler who retired most recently, Salvador Guerrero, signed a booking contract in which he was classified as an independent contractor in 2001, when he first started wrestling for WWE. [SAC, Exh. A.]. It is therefore reasonable to assume that booking contracts were signed when each wrestler began wrestling for WWE. Terry Brunk began wrestling for WWE most recently—in 2006. [SAC ¶ 63].

**1. Tort Claims**

It is not subject to challenge that the statute of limitations for tort claims set forth in Conn. Gen. Stat. 52-577 applies to Plaintiff’s claims for fraud, fraudulent nondisclosure, and civil conspiracy to commit fraudulent concealment. Section 52-577 provides that “[n]o action founded upon a tort shall be brought but within three years from the date of the act or omission complained of.” “The three year limitation period of § 52-577 begins with the date of the act or omission complained of, not the date when the plaintiff first discovers an injury.” *Collum v. Chapin*, 40 Conn. App. 449, 451-52 (1996) (citing *Fichera v. Mine Hill Corp.*, 207 Conn. 204, 212-13 (1988)). “The relevant date of the act or

omission complained of, as that phrase is used in § 52-577, is the date when the negligent conduct of the defendant occurs and not the date when the plaintiffs first sustain damage . . . . Ignorance of his rights on the part of the person against whom the statute has begun to run, will not suspend its operation.”

*Kidder v. Read*, 150 Conn. App. 720, 726-27 (2014).

Plaintiffs’ tort claims arise out of their allegation that WWE concealed the risk that concussions or subconcussive blows could cause permanent degenerative neurological conditions in order to induce Plaintiffs to continue to continue wrestling. This omission must have occurred at a time when the Plaintiffs were still wrestling and could still suffer head injuries while wrestling. With the possible exception of Plaintiff James Snuka, discussed in the next section, no Plaintiff has alleged that he or she wrestled for WWE later than 2011.

## 2. Wrongful Death and Survival Actions

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

elapsed at the time of a person's death, the executor of that person's estate may bring an action within a year of the death.

Fujiwara last wrestled in 1996, [SAC ¶ 55], Rechner last wrestled in 2008, [SAC ¶ 85], Knighton last wrestled in 2005 [SAC ¶ 86], and Heard last wrestled in 1989 [SAC ¶ 109]. The Complaint alleges that Snuka appeared in WWE performances between 2005 and 2015. [SAC ¶ 52]. However, the affidavit of the executor of Mr. Snuka's estate, submitted for in camera review, stated that 1996 was "[t]oward the end of his career," that "most of Jimmy's full-time wrestling was at the height of the 1980s," and that he was "inactive" or "largely semi-retired" between 1996 and 2015. The complaint does not allege, and the affidavit does not support any allegations, that Mr. Snuka suffered any head injuries or risked incurring such injuries later than 1996. All these wrestlers, with the possible exception of Mr. Snuka, retired more than five years before this lawsuit was filed. And Mr. Snuka has not alleged that any of his alleged injuries were incurred during WWE appearances post-dating 1996. Wrongful death actions are therefore barred by Section 52-555. Survival actions are barred because the statutes of limitation or repose for each of the deceased Plaintiffs' other claims have elapsed.

### **3. Misclassification Claims**

Plaintiffs assert misjoined claims that they were misclassified as independent contractors and thereby denied the benefits and protections of the Occupational Safety and Health Act, the National Labor Relations Act, the Employee Retirement Income Security Act, and the Family and Medical Leave Act.

Because Plaintiffs assert that the misclassification was part of a “scheme to defraud the Plaintiffs” and “achieved by the presentation to the Plaintiffs of boilerplate Booking Contracts,” the misclassification claims are governed either by the three-year statute of repose for tort actions, Conn. Gen. Stat. § 52-577, or the six-year statute of limitations for contract actions, Conn. Gen. Stat. § 52-576.

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

The Plaintiff who most recently joined WWE did so in 2006—approximately ten years before this case was filed. Therefore, none of the Plaintiffs can

establish that they were first misclassified as independent contractors within six years of the date they filed the complaint in this action. Plaintiffs' ERISA and OSHA reporting claims are predicated on this misclassification claim, and Plaintiff has not offered the Court any authority to suggest that these claims may survive after the misclassification claim is dismissed.

#### 4. RICO Claims

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

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

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

#### 5. FMLA Claims

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

#### 6. Successor Liability

Because all of the substantive claims against WWE are time-barred, and all the claims that arise out of Plaintiffs' work for ECW or WCW predate their WWE claims, these ECW and WCW claims are also time-barred. The Court therefore need not specifically address whether WWE should be liable for claims arising out of its relationship with ECW or WCW.

**C. Plaintiffs' "Unconscionable 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 Tolloed 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-counsel’s 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.

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**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/**

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**Hon. Vanessa L. Bryant  
United States District Judge**

**Dated at Hartford, Connecticut: September 17, 2018**