

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

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

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5 PRESENT: BARRINGTON D. PARKER,
6 MICHAEL H. PARK,
7 WILLIAM J. NARDINI,
8 *Circuit Judges.*
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12 *Haynes, et al. v. World Wrestling Entertainment, Inc.*
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15
16 William Albert Haynes, III, Rodney Begnaud, AKA Rodney Mack, Russ
17 McCullough, individually and on behalf of all others similarly situated, AKA
18 Big Russ McCullough, Ryan Sakoda, individually and on behalf of all others
19 similarly situated, Matthew Robert Wiese, individually and on behalf of all
20 others similarly situated, AKA Luther Reigns, Evan Singleton, Vito Lograsso,
21 Cassandra Frazier, Individually and as next of kin to her deceased husband,
22 Nelson Lee Frazier, Jr. a/k/a Mabel a/k/a Viscera a/k/a Big Daddy V a/k/a King
23 Mabel and as personal representative of The Estate of Nelson Lee Frazier, Jr.,
24 Deceased, Shirley Fellows, on behalf of Estate of Timothy Alan Smith a/k/a Rex
25 King, Joseph M. Laurinaitis, AKA Road Warrior Animal, Paul Orndorff, AKA
26 Mr. Wonderful, Anthony Norris, AKA Ahmed Johnson, James Harris, AKA
27 Kamala, Chris Pallies, AKA King Kong Bundy, Ken Patera, Barbara Marie
28 Leydig, Terry Brunk, AKA Sabu, Barry Darsow, AKA Smash, Bill Eadie, AKA
29 Ax, John Nord, Jonathan Hugger, AKA Johnny the Bull, James Brunzell, Susan
30 Green, Angelo Mosca, AKA King Kong Mosca, James Manley, AKA Jim

1 Powers, Michael Enos, AKA Mike, AKA Blake Beverly, Bruce Reed, AKA
2 Butch, Sylain Grenier, Omar Mijares, AKA Omar Atlas, Don Leo Heaton, AKA
3 Don Leo Jonathan, Troy Martin, AKA Shane Douglas, Marc Copani, AKA
4 Muhammad Hassan, Mark Canterbury, AKA Henry Godwin, Victoria Otis,
5 AKA Princess Victoria, Judy Hardee, Judy Martin, Bernard Knighton, as
6 Personal Representative of Estate of Brian Knighton, a.k.a. Axl Rotten, Marty
7 Jannetty, Terry Szopinski, AKA Warlord, Sione Havia Vailahi, AKA Barbarian,
8 Timothy Smith, AKA Rex King, Tracy Smothers, AKA Freddie Joe Floyd,
9 Michael R. Halac, AKA Mantaur, Rick Jones, AKA Black Bart, Ken Johnson,
10 AKA Slick, George Gray, AKA One Man Gang, Ferrin Jesse Barr, AKA J.J.
11 Funk, Rod Price, Donald Driggers, Ronald Scott Heard, on behalf of estate of
12 Ronald Heard also known as Outlaw Ron Bass, Boris Zhukov, David Silva,
13 John Jeter, AKA Johnny Jeter, Gayle Schecter, as Personal Representative of
14 Estate Jon Rechner a.k.a. Balls Mahoney, Ashley Massaro, AKA Ashley,
15 Charles Wicks, AKA Chad Wicks, Perry Satullo, AKA Perry Saturn, Charles
16 Bernard Scaggs, AKA Flash Funk, Carole M. Snuka, on behalf of Estate of
17 James W. Snuka,

18
19 *Consolidated Plaintiffs-Appellants,*

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

22
23 *Appellants,*

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

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34 *Consolidated Plaintiffs,*

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37 v.

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40 World Wrestling Entertainment, Incorporated,

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42 *Consolidated Plaintiff-Defendant-Appellee,*

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44 Vincent K. McMahon, Individually and as the Trustee
45 of the Vincent K. McMahon Irrevocable Trust U/T/A dtd.
46 June 24, 2004, as the Trustee of the Vincent K. McMahon

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

1 2008, and as Special Trustee of the Vincent K. McMahon
2 2013 Irrev. Trust U/A dtd. December 5, 2013 and as Trust,

3
4 *Consolidated Defendant-Appellees,*

5
6 Robert Windham, Thomas Billington, James Ware, Oreal
7 Perras, John Doe's, Various,

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9 *Consolidated-Defendants.*

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11 -----x

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13 FOR PLAINTIFF-APPELLANTS:
14 Kyros Law P.C. and Pro Se
15 Appellant Konstantine W. Kyros

Konstantine W. Kyros
Anthony M. Norris
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19 FOR CONSOLIDATED PLAINTIFFS-
20 APPELLANTS:
21 William Albert Haynes, III, Russ
22 McCullough, Ryan Sakoda, Matthew
23 Robert Weise, Evan Singleton,
24 Cassandra Frazier, Joseph M.
25 Laurinaitis, Paul Orndorff, James
26 Harris, Chris Pallies and Ken Patera, et al.

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29 FOR CONSOLIDATED PLAINTIFFS-
30 APPELLANTS:
31 Cassandra Frazier, Joseph M.
32 Laurinaitis, Anthony Norris, James
33 Harris, Chris Pallies and Ken Patera, et al.

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36 APPELLANTS:
37 Joseph M. Laurinaitis, Paul Orndorff,
38 Anthony Norris, James
39 Harris, Chris Pallies and Ken Patera, et al.

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42 FOR CONSOLIDATED PLAINTIFFS-
43 APPELLANTS:
44 Joseph M. Laurinaitis, Paul Orndorff,
45 Anthony Norris, James
46 Harris, Chris Pallies and Ken Patera, et al.

Brenden P. Leydon
WOCL LEYDON, LLC
Stamford, CT.

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FOR DEFENDANTS-APPELLEES:
World Wrestling Entertainment Inc.
Vincent K. McMahon

Jerry S. McDevitt
Curtis B. Krasik
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Pittsburgh, PA.

Jeffrey P. Mueller
DAY PITNEY LLP
Hartford, CT.

Appeal from the United States District Court for the District of Connecticut

(Bryant, J.).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED,

AND DECREED that the appeals of sanctions orders are **DISMISSED**, the merits

appeals of the dismissal of all claims in *Haynes v. World Wrestling Entertainment, Inc.*,

McCullough v. World Wrestling Entertainment, Inc., *Frazier v. World Wrestling*

Entertainment, Inc., and *Singleton v. World Wrestling Entertainment, Inc.* are

DISMISSED, and the judgment of the district court on all other claims is **AFFIRMED**.¹

This appeal arises from seven cases consolidated in the United States District

Court for the District of Connecticut.² The cases were brought against World Wrestling

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

² Two of the seven consolidated cases have not been appealed. The first was brought by World Wrestling Entertainment, Inc. (“WWE”) in June 2015 in the District of Connecticut. *World Wrestling Entm't, Inc. v. Windham et al.*, No. 3:15-cv-994 (VLB). In *Windham*, WWE sought a declaratory judgment after appellant Konstantine W. Kyros threatened to pursue litigation on behalf of four previously unrepresented wrestlers. In that case, WWE was granted relief in the form of a declaration stating that the claims of those four wrestlers were time-barred. The second

1 Entertainment Inc. by former WWE wrestlers. The plaintiffs-appellants allege that, as a
2 result of physical trauma they experienced while performing, they suffered neurological
3 damage resulting in diseases such as chronic traumatic encephalopathy (“CTE”), in
4 addition to other significant physical and mental health impairments. In each of the cases,
5 the plaintiffs-appellants were represented by the same attorney, Konstantine W. Kyros of
6 Kyros Law P.C. We assume the parties’ familiarity with the underlying pleadings and
7 their factual allegations, the procedural and substantive rulings below, and the issues on
8 appeal.

9 **I.**

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

case that was a part of the consolidation below but is not appealed here was originally filed by Kyros in June 2015 in the Northern District of Texas. *James v. World Wrestling Entm’t, Inc.*, No. 3:15-cv-1229 (VLB). The district court dismissed *James* in November 2016 for Plaintiffs’ lack of standing.

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

1 action to the District of Connecticut. In February 2015, the estate of Nelson Lee Frazier
2 Jr., a deceased wrestler, commenced a wrongful death action in the Western District of
3 Tennessee. *Frazier v. World Wrestling Entm't Inc.*, No. 3:15-cv-1305 (VLB). In April
4 2015, wrestlers Russ McCullough, Ryan Sakoda, and Matthew Wiese commenced
5 another putative class action, this time in the Central District of California. *McCullough*
6 *v. World Wrestling Entm't Inc.*, No. 3:15-cv-1074 (VLB).

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

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

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

1 Frazier’s estate failed to plead any non-conclusory allegations linking Frazier’s death to
2 injuries sustained while wrestling. Frazier had died of a heart attack, and the operative
3 pleading contained no allegations that heart failure could result from CTE.

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

11 II.

12 After the district court dismissed all claims in the *Haynes* and *McCullough* actions
13 and dismissed all but the fraud-by-omission claim for each plaintiff in the *Singleton*
14 action, the *Haynes* and *McCullough* plaintiffs filed notices of appeal in this Court. WWE
15 moved to dismiss those appeals on the grounds that the appeals were not taken from a
16 final judgment that disposed of all the consolidated cases. *See Hageman v. City Investing*
17 *Co.*, 851 F.2d 69 (2d Cir. 1988). A panel of this Court, applying the then-current law of
18 this Circuit, agreed that the final judgments in *Haynes* and *McCullough* could not be
19 appealed until final judgments had been entered in all the consolidated cases.
20 Accordingly, the panel dismissed the *Haynes* and *McCullough* appeals without prejudice.
21 *See McCullough v. World Wrestling Entm’t, Inc.*, 838 F.3d 210, 214 (2d Cir. 2016).

1 More than a year later, on March 27, 2018, the Supreme Court held that in
2 consolidated cases such as these, a final judgment in one of the cases is immediately
3 appealable even where final judgments have not been entered in each of the consolidated
4 cases. *Hall v. Hall*, 138 S. Ct. 1118, 1131 (2018) (“[Federal Rule of Civil Procedure]
5 42(a) did not purport to alter the settled understanding of the consequences of
6 consolidation. That understanding makes clear that when one of several consolidated
7 cases is finally decided, a disappointed litigant is free to seek review of that decision in
8 the court of appeals.”).

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

19 **III.**

20 In July 2016, *Laurinaitis v. World Wrestling Entm’t, Inc.*, No. 3:16-cv-1209
21 (VLB), a suit brought by fifty former WWE wrestlers, was commenced in the District of
22 Connecticut. The complaint included a number of tort claims and, in addition, sought

1 relief under various statutes on the ground that, in its contracts with the wrestlers, WWE
2 had misclassified them as independent contractors. WWE moved to dismiss the action
3 and the district court granted the motion, holding that the claims were either time-barred,
4 barred by prior rulings, or frivolous.

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

17 Under Connecticut law, wrongful death claims must be brought “within two years
18 from the date of death” except that “no such action may be brought more than five years
19 from the date of the act or omission complained of.” Conn. Gen. Stat. § 52-555(a).
20 Section 52-555 may “serve as a bar to a wrongful death claim” even if “an injured victim
21 could not have known that he or she had a claim against the alleged tortfeasor until after
22 the limitation period had expired.” *Greco v. United Techs. Corp.*, 277 Conn. 337, 353

1 (2006). The district court correctly determined that none of the plaintiffs in the
2 *Laurinaitis* action had wrestled for WWE within five years of the filing of that complaint
3 and thus the wrongful death claims were also time-barred. Again, we find no error.

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

14 Connecticut statutes of repose may, under appropriate circumstances, be tolled
15 under what its courts term the 'continuing course of conduct' doctrine. *Watts v.*
16 *Chittenden*, 301 Conn. 575, 583–84 (2011) (recognizing that a period of repose may be
17 tolled in the proper circumstances, reflecting the "policy that, during an ongoing
18 relationship, lawsuits are premature because specific tortious acts or omissions may be
19 difficult to identify and may yet be remedied"). Appellants contend that it applies in this
20 case. Pursuant to that doctrine, a plaintiff must show that a defendant: "(1) committed an
21 initial wrong upon the plaintiff; (2) owed a continuing duty to the plaintiff that was
22 related to the alleged original wrong; and (3) continually breached that duty." *Witt v. St.*

1 *Vincent’s Med. Ctr.*, 252 Conn. 363, 370 (2000). Where Connecticut courts have found a
2 duty “continued to exist after the cessation of the act or omission relied upon, there has
3 been evidence of either a special relationship between the parties giving rise to such a
4 continuing duty or some later wrongful conduct of a defendant related to the prior act.”
5 *Macellaio v. Newington Police Dep’t*, 145 Conn. App. 426, 435 (2013). The existence of
6 a special relationship “will depend on the circumstances that exist between the parties
7 and the nature of the claim at issue.” *Saint Bernard Sch. of Montville, Inc. v. Bank of Am.*,
8 312 Conn. 811, 835 (2014).

9 The district court concluded that the *Laurinaitis* plaintiffs failed plausibly to allege
10 a special or continuing relationship between themselves and WWE, in part because “a
11 mere contractual relationship does not create a fiduciary or confidential relationship,” *Id.*
12 at 836. There were no plausible allegations in the complaint that could lead the court
13 reasonably to conclude that WWE had a continuing duty to provide comprehensive health
14 care to the wrestlers after they stopped performing. Likewise, the district court was
15 unpersuaded by the allegation that continuing royalty payments somehow gave rise to a
16 duty on the part of WWE with respect to the alleged misclassification as independent
17 contractors. We agree with the district court and we similarly conclude that the
18 continuing-course-of-conduct doctrine did not cause the otherwise applicable statutes of
19 limitation or repose to be tolled.

20 The district court was also correct that the statutes of limitation and repose should
21 not be tolled under the fraudulent concealment doctrine. For the doctrine to apply, the
22 wrestlers were required plausibly to allege that WWE “(1) had actual awareness, rather

1 than imputed knowledge, of the facts necessary to establish the plaintiffs’ cause of action;
2 (2) intentionally concealed these facts from the plaintiffs; and (3) concealed the facts for
3 the purpose of obtaining delay on the plaintiffs’ part in filing a complaint on their cause
4 of action.” *Falls Church Grp., Ltd. v. Tyler, Cooper & Alcorn, LLP*, 281 Conn. 84, 105
5 (2007). Proof of fraudulent concealment requires “clear, precise, and unequivocal
6 evidence.” *Id.*

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

11 **IV.**

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

21 While sanctions have been awarded, the amount of sanctions has not been
22 determined; consequently, this Court lacks appellate jurisdiction over the sanctions

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

8 In sum, the appeals in *Haynes v. World Wrestling Entertainment, Inc.*, No. 3:15-
9 cv-1156 (VLB), *Singleton v. World Wrestling Entertainment, Inc.*, No. 3:15-cv-425
10 (VLB), *Frazier v. World Wrestling Entertainment, Inc.*, No. 3:15-cv-1305 (VLB), and
11 *McCullough v. World Wrestling Entertainment, Inc.*, 172 F. Supp. 3d 528 (D. Conn.
12 2016) (VLB), are dismissed because the notices of appeal were untimely and we
13 therefore lack appellate jurisdiction.

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

20 CONCLUSION

21 Accordingly, the appeals of the merits orders in *Haynes*, *McCullough*, *Frazier*,
22 and *Singleton* are **DISMISSED** for lack of appellate jurisdiction. The appeal of sanctions

1 ordered in *Laurinaitis* and *Singleton* is **DISMISSED** for lack of appellate jurisdiction.

2 The judgment of the district court in all other respects is **AFFIRMED**.⁴

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4

FOR THE COURT:

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Catherine O'Hagan Wolfe, Clerk

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