UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

RUSS McCULLOUGH, *et al.*,	:	**NO. 3:15-cv-01074-VLB**
	:	**LEAD CASE**
Plaintiffs,	:	
	:	
VS.	:	
	:	
WORLD WRESTLING ENTERTAINMENT, INC.,	:	
	:	
	:	
Defendant.	:	

JOSEPH M. LAURINAITIS, *et al.*,	:	**NO. 3:16-CV-01209-VLB**
	:	**CONSOLIDATED CASE**
Plaintiffs,	:	
	:	
VS.	:	
	:	
WORLD WRESTLING ENTERTAINMENT, INC., *et al.*,	:	
	:	
	:	
Defendants.	:	**DECEMBER 23, 2016**

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION FOR SANCTIONS REGARDING THE FIRST AMENDED COMPLAINT

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Defendants World Wrestling Entertainment, Inc. ("WWE") and Vincent K. McMahon ("McMahon") (collectively, "Defendants") submit this memorandum of law in support of their motion for sanctions against Plaintiffs and their counsel, Konstantine Kyros, Brenden Leydon, S. James Boumil, Anthony Norris, Erica C. Mirabella, and R. Christopher Gilreath (collectively, "Plaintiffs' Counsel").

I. INTRODUCTION

In its most recent opinion in these Consolidated Cases, this Court repeatedly admonished Attorney Kyros and his co-counsel for their pattern of litigation misconduct and concluded with this warning:

> **These misleading, deceptive, and baseless allegations [by Attorney Kyros] are precisely the types of statements that many state bar associations have targeted in promulgating rules of professional conduct which demand that admitted attorneys speak with candor to the trier of fact. The Court admonishes Kyros and his co-counsel to adhere to the standards of professional conduct and to applicable rules and court orders lest they risk future sanction or referral to the Disciplinary Committee of this Court.**

***McCullough v. World Wrestling, Entm't, Inc.*, No. 3:15-cv-01074, 2016 U.S. Dist. LEXIS 156459, at *39 (D. Conn. Nov. 10, 2016) ("*McCullough II*"). Following the Court's admonitions, Defendants' counsel offered Plaintiffs' Counsel multiple opportunities to further amend their Amended Complaint in the *Laurinaitis* case in order to cure its many problems, but Plaintiffs' Counsel declined to do so and have continued to maintain that defective pleading despite having been served by Defendants with another Rule 11 motion. The time for this Court to impose sanctions on Attorney Kyros and his co-counsel has therefore arrived.**

The Amended Complaint filed in the *Laurinaitis* case is the thirteenth complaint filed in six cases brought by Attorney Kyros and his co-counsel

against WWE in the past two years. This Court has already dismissed the two putative class actions and the two wrongful death actions in their entirety, and dispositive motions and motions for sanctions are pending in both the *Singleton* case and this case. *See* Doc. Nos. 188, 198, 228, 266. The pending motions for sanctions document an alarming and escalating pattern of misconduct by Attorney Kyros and his co-counsel including:

- **The massive plagiarism of allegations from the NFL concussion lawsuit and the assertion of such allegations against WWE without any factual basis in the original Complaint filed in this case. *See* Doc. No. 229.**

- **The assertion of numerous other knowingly false allegations and patently time-barred and frivolous legal claims in the original Complaint filed in this case, including claims on behalf of numerous plaintiffs who have released such claims. *Id.***

- **The knowing procurement of perjurious interrogatory responses from the plaintiffs in the *Singleton* case after their own deposition testimony confirmed that there was no evidence to support their fraud claims against WWE. *See* Doc. No. 198-1.**

Nevertheless, the pendency of these sanctions motions and this Court's repeated admonitions have failed to deter further misconduct by Kyros or his co-counsel.

The Amended Complaint filed in this case continues to be plagued by the same false allegations and defective legal claims that permeated the original Complaint. It brazenly defies this Court's admonitions by repeating allegations that the Court has already found to be false and misleading in prior rulings. It also makes additional false and inflammatory allegations for plainly improper purposes and introduces new claims that are patently time-barred and defective. It now asserts claims on behalf of at least 20 Plaintiffs who have signed releases and 18 Plaintiffs who continue to wrestle even after filing this lawsuit claiming to

suffer from traumatic brain injuries as a result of WWE's failure to warn them about the long-term risks of wrestling. In sum, the Amended Complaint continues to seek to perpetrate a fraud on this Court.

II. BACKGROUND

WWE has documented the extensive history of misconduct by Attorney Kyros and his co-counsel and the Court's repeated admonitions concerning such misconduct in its pending motions for sanctions in both the *Singleton* case and this case and therefore only briefly recounts and updates that history here.

A. The First Warning

On June 8, 2015, this Court held an initial status conference in the *Singleton* case at which it admonished Attorney Kyros and his local counsel for filing a complaint that violated the Federal Rules in multiple respects. *See* Ex. 1 at 49, 54-55, 60-65. The Court instructed Attorney Kyros "to read the Federal Rule, give it some close consideration, perhaps read some cases on the pleading standard, and then file this complaint again in a week without any scrivener errors, without a lot of superfluous, hyperbolic, inflammatory opinions and references to things that don't have any relevance." *Id.* at 60-61.

B. The Second Warning

On March 21, 2016, this Court dismissed the *McCullough* and *Haynes* class actions and dismissed all of the claims in the *Singleton* action except for a fraud by omission claim for plaintiffs who performed after 2005. The Court admonished Attorney Kyros and his co-counsel for filing complaints that 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." *McCullough v. World Wrestling Entm't, Inc.*, 172 F. Supp. 3d 528, 536 (D. Conn. 2016) ("*McCullough I*").[1] The Court further admonished Attorney Kyros for making "patently false allegations" that were "copied and pasted in whole cloth from one complaint to another" and for "repeatedly misrepresenting both the substance and meaning" of congressional testimony given by WWE executive Stephanie McMahon. *Id.* at 538, 562. The Court also noted that WWE had filed a pending motion for sanctions in the *James* case. *Id.* at 538 n.1.

C. The Third Warning

On November 10, 2016, the Court dismissed the *James* and *Frazier* wrongful death actions and also addressed WWE's motion for sanctions in the *James* case. See *McCullough II*, 2016 U.S. Dist. LEXIS 156459, at *20-40.

First, the Court noted that Attorney Kyros and his co-counsel had made numerous false and misleading allegations unsupported by facts.

- **Plaintiffs' Counsel made "bald assertions unsupported by specific facts" that Frazier and Osborne were injured many times and those undetermined injuries led to their deaths. *Id.* at *25.**
- **Plaintiffs' Counsel made "facially specious assertions" that Frazier and Osborne had CTE. *Id.* at *25-26.**
- **Plaintiffs' Counsel's assertions that Frazier and Osborne had CTE were "knowingly false." *Id.* at *26-27.**
- **Plaintiffs' Counsel's allegation that Frazier's death could be attributed to CTE was, "another bald and baseless allegation,**

[1] **The Court subsequently chastised Attorney Kyros and his co-counsel in the *Singleton* action for seeking discovery of matters that were not relevant and "appear aimed at an audience other than this Court." Doc. No. 171.**

unprovable and unsupportable, which the Court deems unworthy of the barest measure of credibility." *Id.* at *28.

- **"The Court examined this allegation and found it to be without merit, rebuking Kyros for repeatedly misrepresenting the substance and meaning of McMahon's testimony." *Id.* at *34 (internal quotation marks and brackets omitted).**

- **"Kyros' half-truths undermine his credibility and the credibility of the filings submitted by Plaintiffs' counsel." *Id.* at *34.**

- **"Kyros' deliberately misleading language suggesting that WWE directly contested a specific CTE study in 2005 further undermines his and Plaintiffs' credibility." *Id.* at *35.**

Second, the Court noted that Attorney Kyros and his co-counsel continued their practice of making irrelevant and inflammatory allegations.

- **"Kyros and the numerous other counsel co-signing the *James* complaint on behalf of the Plaintiffs declined to heed the Court's admonition to edit the unnecessary verbiage, irrelevant allegations, conclusory statements, and inflammatory language in the original complaints." *Id.* at *16.**

- **Attorney Kyros has a "habit of deceptive and inflammatory rhetoric in Plaintiffs' filings throughout these consolidated wrestling cases." *Id.* at *33.**

- **"To the extent such pictures and specific prior injuries sustained by other wrestlers are included to offer visual evidence that wrestling involves violent contact and risk of injury, they are unnecessary and unduly inflammatory." *Id.* at *37.**

- **"The Court would be well within its broad discretion to sanction counsel for their failure to adhere to the Court's instructions and trim the inflammatory content and unnecessary length of the carbon-copy complaints in these consolidated cases. Their failure to do so forced the Court to needlessly expend resources combing through hundreds of paragraphs of allegations, to find a single shred of relevant factual content indicating whether Plaintiffs asserted a plausible claim." *Id.* at *38-39.**

Third, the Court noted that Attorney Kyros and his co-counsel had repeatedly engaged in other vexatious and unprofessional conduct.

- **The Court has made repeated "admonitions of counsel for inflammatory and unprofessional conduct." *Id.* at *15.**

- **"Kyros filed the *James* action in Texas as part of a vexatious and transparent attempt to circumvent two prior decisions by district courts in Oregon and California." *Id.* at *35-36.**

- **"Kyros' false and misleading statements, identified by WWE above, together with other statements the Court has examined—including Kyros' unprovable claim that deceased, and, in at least one case, cremated former wrestlers had CTE upon information and belief—are highly unprofessional." *Id.* at *39 (internal quotation marks omitted).**

The Court closed by explicitly admonishing Attorney Kyros and his co-counsel to adhere to the Rules of Professional Conduct or risk future sanctions and referral to disciplinary authorities. *Id.* at *36.

D. The Pending Sanctions Motions

There are also two pending sanctions motions that have provided Plaintiffs' Counsel with further warnings regarding their improper conduct.[2]

First, on August 8, 2016, WWE filed a motion for sanctions in the *Singleton* case because Attorney Kyros procured knowingly false interrogatory responses from the plaintiffs that contradicted their prior deposition testimony in material respects. These perjurious interrogatory responses were served in violation of a compulsion order entered by this Court that required the plaintiffs to provide complete and accurate responses to those interrogatories. *See* Doc. No. 198.

Second, on October 17, 2016, WWE filed a motion for sanctions after Plaintiffs' Counsel refused to withdraw or correct any of the numerous Rule 11

[2] The pending motions for sanctions have been referred to Magistrate Judge Robert Richardson for decision. *See* Doc. No. 249.

violations in the original Complaint in this case, which spanned 214 pages and 667 paragraphs and asserted claims on behalf of 53 former WWE performers.[3] *See* Doc. No. 228. These violations included Plaintiffs' Counsel's assertion of knowingly false allegations plagiarized from the NFL Complaint, legal claims foreclosed by controlling precedent and this Court's prior decisions, and patently time-barred and released claims.

E. The Amended Complaint Necessitates the Present Sanctions Motion

On November 9, 2016, Plaintiffs' Counsel continued their misconduct by filing an Amended Complaint which spans 335 pages and 805 paragraphs and now asserts claims on behalf of 60 Plaintiffs. *See* Doc. No. 252. The Amended Complaint was filed after Plaintiffs' Counsel forced Defendants to incur the time and expense of briefing a motion to dismiss and a motion for sanctions with respect to the original Complaint. The Amended Complaint perpetuates and exacerbates the violations in the original Complaint, including the repetition of allegations that this Court found to be false and misleading in its ruling the day after the Amended Complaint was filed. Defendants' Counsel repeatedly asked Plaintiffs' Counsel if they intended to seek leave to further amend their complaint in view of the Court's ruling. *See* Exs. 2-3. Plaintiffs' Counsel nevertheless refused to make any changes to the Amended Complaint. Defendants therefore were forced to served another Rule 11 motion on Plaintiffs' Counsel on November 30, 2016. Because the safe harbor period has expired without Plaintiffs' Counsel taking any corrective action, Defendants now bring that motion before the Court.

[3] **Significantly, four of the law firms that had acted as co-counsel in the prior lawsuits orchestrated by Attorney Kyros did not join in this lawsuit.**

III. LEGAL STANDARD

"Rule 11 seeks to discourage dilatory and abusive litigation tactics and eliminate frivolous claims and defenses." *Paganucci v. City of New York*, 993 F.2d 310, 312 (2d Cir. 1993). Rule 11 provides in relevant part:

> **By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law; [and] (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.**

Fed. R. Civ. P. 11(b). The Court may impose sanctions under 28 U.S.C. § 1927 on any attorney "who so multiples the proceedings in any case unreasonably and vexatiously." 28 U.S.C. § 1927. The Court also has the inherent authority to impose sanctions when a party "has acted in bad faith, vexatiously, wantonly, or for oppressive reasons." *Chambers v. NASCO, Inc.*, 501 U.S. 32, 45-46 (1991).

IV. ARGUMENT

A. Plaintiffs' Counsel Violated Rule 11(b)(3)

Plaintiffs' Counsel have violated Rule 11(b)(3) by continuing to plead numerous patently false allegations throughout the Amended Complaint.

1. Allegations Found to Be False By This Court's Prior Orders

Plaintiffs' Counsel have completely defied this Court's prior rulings by repeating allegations that the Court has already found to be false and misleading.

First, Plaintiffs' Counsel again falsely allege that Stephanie McMahon denied the presence of concussions in WWE wrestling in her testimony before a congressional committee in December 2007. *See* FAC ¶¶ 151, 366, 640. As the transcript of the testimony that Plaintiffs' Counsel have and quote from makes clear, Ms. McMahon never denied that concussions occur in WWE wrestling. To the contrary, she testified that wrestlers are at risk of concussions because of the nature of their work and recalled an example of a former wrestler who had in fact suffered multiple concussions. Ms. McMahon only testified that she was not aware of an instance where a wrestler actually reported a concussion to her rather than to a doctor. *See* Ex. 4 at 114-115. Plaintiffs' Counsel's continued mischaracterization of Ms. McMahon's testimony is inexcusable given that this Court has already "examined this allegation and found it to be without merit, rebuking Kyros for repeatedly misrepresent[ing] the substance and meaning of [McMahon's] testimony." *McCullough II*, 2016 U.S. Dist. LEXIS 156459, at *34.[4]

Second, Plaintiffs' Counsel again falsely allege that WWE has attempted to discredit CTE studies of former football player Terry Long by reference to statements made by Dr. Maroon in 2005. *See* FAC ¶¶ 310-311. As Plaintiffs' Counsel know, WWE did not retain Dr. Maroon as an independent contractor until March 2008 and therefore the attribution to WWE of his statement in 2005 is

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[4] Plaintiffs' Counsel also continue to falsely allege that WWE executive Paul Levesque and Dr. Joseph Maroon have denied the presence of concussions in WWE wrestling and the validity of studies to the contrary. *See* FAC ¶ 640. Plaintiffs cannot cite a single statement made by Dr. Maroon or Mr. Levesque denying concussions in WWE wrestling or the validity of studies to the contrary, and the quoted statements from Mr. Levesque elsewhere in the complaint show that their allegation is false. *Id.* ¶¶ 347, 351.

knowingly false. *Id.* ¶ 333; Ex. 5. In any event, Dr. Maroon never discredited the pathological findings that Terry Long had CTE and only questioned Dr. Omalu's conclusion that his death was caused by the long-term effects of head injuries from playing football rather than suicide from drinking antifreeze, as the medical examiner had found. *See* Ex. 6. Plaintiffs' Counsel's repetition of these false allegations completely disregards this Court's prior finding that "[o]nce again, Kyros' deliberately misleading language suggesting that WWE directly contested a specific CTE study in 2005 further undermines his and Plaintiffs' credibility." *McCullough II*, 2016 U.S. Dist. LEXIS 156459, at *35.

Plaintiffs' Counsel continue their baseless attack on Dr. Maroon by falsely alleging that he denied Dr. Omalu's CTE studies of former football players based on his portrayal in a Hollywood movie. *See* FAC ¶ 700. In reality, Dr. Omalu thanked Dr. Maroon for his support after the publication of these studies. *See* Ex. 7. In addition, Dr. Omalu's colleague (Dr. Julian Bailes) and his attorney (Robert Fitzsimmons) have both stated that the portrayal of Dr. Maroon in the movie was unfair and inaccurate and have praised Dr. Maroon's efforts in making positive changes that have increased player safety in the NFL. *See* Exs. 8-10.

2. <u>False Allegations Plagiarized From the NFL Complaint</u>

Plaintiffs' Counsel continue to falsely attribute statements and actions by the NFL to WWE based on allegations plagiarized from the NFL Complaint. *Compare* Ex. 11 ¶¶ 72, 74, 89-90, 97-103, 106-108, 146-147, 256-257, 269, 274-278, 281-318, 373, 376-381, 376, 423-425 *with* Ex. 12 ¶¶ 210, 212, 223-224, 236-241, 250-252, 304-305, 604-606, 618, 630-634, 640-676, 698, 711-716, 718-721.

In its pending motion for sanctions in this case, WWE established that Plaintiffs' Counsel made numerous false allegations against WWE that were blatantly and shamelessly plagiarized from the NFL concussion lawsuit. For example, Plaintiffs' Counsel had falsely alleged that statements made by NFL Commissioner Roger Goodell were made by WWE, that published scientific studies concerning football players were about wrestlers, and that actions taken by the NFL's Mild Traumatic Brain Injury Committee were taken by WWE. *See* Doc. No. 229 at 24-26. Despite the filing of that motion, Plaintiffs' Counsel have continued their practice of copying allegations from the NFL Complaint without any factual basis to assert them against WWE.[5]

In the Amended Complaint, Plaintiffs' Counsel continue to plagiarize scores of allegations from the NFL Complaint concerning the NFL's knowledge of the long-term effects of repeated head injuries and its attempts to conceal those risks from football players but changed the references to the "NFL" to "WWE" and changed the references to "football players" to "wrestlers." The resulting allegations form the basis for Plaintiffs' fabricated claim in this case that WWE "knew for decades" or "has known or should have known for many years" about the reported long-term risks of neurological injuries in wrestling and fraudulently

[5] In their opposition to the motion for sanctions addressed to the original Complaint in this case, Plaintiffs' Counsel acknowledged their plagiarism of the NFL Complaint but argued that it was not inherently sanctionable. Plaintiffs' Counsel fail to recognize that their conduct is sanctionable because they not only copied the allegations from the NFL Complaint but did so without regard to the falsity of the allegations as applied to WWE. Plaintiffs' Counsel showed their conscious disregard by deliberately changing certain words in the allegations.

concealed such information from its performers. *Compare* Ex. 11 ¶¶ 68-76, 97, 102-104, 108 *with* Ex. 12 ¶¶ 205-214, 236, 240-241, 252.

Plaintiffs' Counsel knew that they did not have any factual basis to assert such allegations against WWE. Discovery in the *Singleton* action indisputably established that WWE did not have knowledge of the alleged long-term risks of neurodegenerative conditions from head injuries in wrestling until September 2007 when the findings that a former wrestler recently had been diagnosed with CTE were first publicly announced. *See* Ex. 13 at 173-174; Ex. 14 at 51; Ex. 15 at 22-23, 117-118; Ex. 16. As the summary judgment filings in the *Singleton* action demonstrated, far from fraudulently concealing these reported risks, WWE promptly instituted a concussion management program in March 2008, and its medical staff began providing regular presentations advising all talent of such risks shortly thereafter. *See* Ex. 5; Ex. 13 at 129-131, 136-139; Ex. 14 at 49-50, 53, 62-63, 91; Ex. 15 at 35-37, 42-43, 105-106. Despite their knowledge of these facts, Plaintiffs' Counsel continue to base their claims on plagiarized allegations from a completely different case concerning the actions of a different organization in a different industry that had no resemblance or relationship to those of WWE.

Plaintiffs' Counsel also continue to copy many of the causes of action and the allegations supporting them directly from the NFL Complaint without regard to whether they have a legal or factual basis in the context of their action against WWE. Plaintiffs' Counsel lifted the claims for medical monitoring, wrongful death, fraudulent concealment, fraud, negligent misrepresentation, negligent hiring, negligent retention, and civil conspiracy directly from the NFL Complaint.

Compare **Ex. 11 ¶¶ 246-248, 249-319, 370-382, 422-425** ***with*** **Ex. 12 ¶¶ 597-614, 615-621, 630-635, 640-644, 645-659, 660-665, 667-678, 697-698, 711-716, 718-721. Plaintiffs' Counsel's plagiarism of these claims from the NFL Complaint flatly ignores this Court's prior rulings dismissing their similar claims against WWE and the facts known to them from discovery in the *Singleton* action. *See McCullough I*, 172 F. Supp. 3d at 567-68.**

Plaintiffs' Counsel's continued plagiarism of allegations from a different case without any factual basis warrants severe sanctions, including dismissal of the Amended Complaint with prejudice. *See Brown v. Ameriprise Financial Services, Inc.,* 276 F.R.D. 599, 605 (D. Minn. 2011) (dismissing complaint with prejudice because "[b]y near-wholesale copying of the allegations from a complaint against a different defendant, in a different court, in a different industry, for conduct occurring in a different decade, and adopting those assertions as her own, Plaintiff has essentially undermined the integrity of the judicial process by lying to the Court."); *Ruby Sands LLC v. Am. Nat'l Bank of Tex.*, No. 2:15-cv-1955-JRG, 2016 U.S. Dist. LEXIS 83897 (E.D. Tex. June 28, 2016) (dismissing complaint with prejudice where plaintiff copied pleading in a different case); *Del Giudice v. S.A.C. Capital Management, LLC*, No. 06-1413, 2009 U.S. Dist. LEXIS 12664 (D.N.J. Feb. 19, 2009) (awarding attorneys' fees and dismissing action where counsel filed a complaint that copied allegations from another lawsuit); *Greenfield v. United States Healthcare,* No. 92-6345, 92-6412, 1993 U.S. Dist. LEXIS 8982 (E.D. Pa. July 1, 1993) (awarding attorneys' fees and dismissing action where counsel filed a verbatim copy of complaint in another action).

3. Allegations Known to Be False From Prior Discovery

Plaintiffs' Counsel continue to assert numerous allegations that they know are false based on the discovery they have already taken in the *Singleton* action.[6]

First, Plaintiffs' Counsel again falsely allege that WWE knew for decades about the reported long-term risks of developing neurodegenerative conditions such as CTE from repetitive head trauma in professional wrestling. *See* FAC ¶¶ 12, 29, 252, 288, 304, 682. As discussed above, discovery in the *Singleton* action indisputably established that WWE did not become aware of these alleged risks until September 2007 when it was first publicly reported that former wrestler Chris Benoit had recently been diagnosed with CTE. *See* Ex. 13 at 173-174; Ex. 14 at 51; Ex. 15 at 22-23, 117-118; Ex. 16. Plaintiffs' Counsel have not done any further independent investigation since discovery closed in the *Singleton* case. Their allegations are based solely on rank plagiarism from the NFL Complaint.

Second, Plaintiffs' Counsel again falsely allege that WWE has failed to warn or disclose any information to current talent regarding the reported long-term effects of traumatic brain injuries through the present day and that WWE's actions have not changed entering 2016. *See* FAC ¶¶ 305, 325, 330, 357, 633, 648, 653, 667, 692. As discussed above, discovery in the *Singleton* action established that WWE promptly instituted a concussion management program in March 2008,

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[6] Attorneys Kyros, Norris, and Mirabella are counsel for the plaintiffs in the *Singleton* action and therefore directly know that the discovery taken in that case established that these allegations were false. Attorneys Leydon and Boumil were on notice of the falsity of these allegations from the pending motion for sanctions in this case and the Court's admonitions to Attorney Kyros and his co-counsel. They also had an independent obligation to confirm that the allegations were supported by evidence and the product of a reasonable investigation.

and its medical staff began providing regular presentations advising all talent of concussion risks shortly thereafter. *See* Ex. 5; Ex. 13 at 129-131, 136-139; Ex. 14 at 49-50, 53, 62-63, 91; Ex. 15 at 35-37, 42-43, 105-106. Plaintiffs' Counsel also knew from the videotape evidence produced in the *Singleton* action that Dr. Maroon specifically warned all talent of the risks of returning to action before they are fully healed in his presentations, demonstrating the complete falsity of the plagiarized allegations to the contrary. *See* FAC ¶ 671. Plaintiffs' Counsel's other allegations further demonstrate their awareness of the fact that WWE instituted a concussion management program in 2008, has organized yearly educational seminars providing all talent with the latest medical information concerning concussions for many years since then, and has made significant donations to sponsor concussion research since 2013. *Id.* ¶¶ 346, 335-337.

Third, Plaintiffs' Counsel falsely allege that WWE's request to examine the research and tests performed on deceased wrestler Chris Benoit was feigned and falsely alleges that Dr. Julian Bailes from the Brain Injury Research Institute never received a request from WWE for records relating to such research and tests. *See* FAC ¶¶ 318, 323. Plaintiffs' Counsel knew that such allegations were patently false because the summary judgment filings in the *Singleton* action included numerous correspondence between WWE's counsel and Dr. Bailes in which WWE specifically requested chain of custody evidence relating to the research and tests performed on Chris Benoit's brain. *See* Exs. 17-22.

Fourth, Plaintiffs' Counsel again falsely allege that the Wellness Program provided medical care to former wrestlers and monitored the health of former

wrestlers. *See* FAC ¶¶ 43, 339, 342, 635. Plaintiffs' Counsel knew from the discovery taken in the *Singleton* action that the Wellness Program has never provided any medical care or treatment to former talent. *See* Ex. 13 at 141-142, Ex. 14 at 132-133. Plaintiffs' Counsel's allegations elsewhere in the Amended Complaint demonstrate that they are fully aware of this fact. *See* FAC ¶ 340.

Fifth, Plaintiffs' Counsel falsely allege that WWE received advice from medical consultants such as Dr. Joseph Maroon and Dr. Mark Lovell from its inception. *See* FAC ¶ 223. Plaintiffs' Counsel knew from discovery taken in the *Singleton* action that Dr. Maroon and Dr. Lovell were not hired by WWE until March 2008 when the Wellness Program was expanded to include a concussion management program. *See* Ex. 5; Ex. 13 at 129-130, 157, 172-173; Ex. 14 at 53, 62-63, 91; Ex. 15 at 105-106. Plaintiff's Counsel's other allegations in the Amended Complaint confirm that they were also aware of this fact. *See* FAC ¶ 333. In any event, the allegations concerning Dr. Maroon and Dr. Lovell are gratuitous since none of the Plaintiffs allege that they received care or treatment from them.

Sixth, Plaintiffs' Counsel falsely allege that WWE wrestling matches involve specific moves that are scripted, controlled, directed, and choreographed by WWE. *See* FAC ¶ 7. Plaintiffs' Counsel knew from the deposition testimony of their own clients in the *Singleton* action that the wrestlers themselves call their matches and determine the particular moves that they will perform in those matches. *See* Ex. 23 at 211; Ex. 24 at 72-73.

Seventh, Plaintiffs' Counsel again falsely allege that no one in wrestling utilized the technique of smashing chairs over an opponent's head "except at the

urging of the WWE." FAC ¶ 411. Plaintiffs' Counsel knew from discovery in the *Singleton* action that Plaintiff Vito LoGrasso repeatedly received chair shots to the head when he performed for other wrestling promotions but never received chair shots to the head while he performed for WWE. *See* Ex. 24 at 163-169, 265-266. Therefore, Plaintiffs' Counsel's suggestion that chair shots were not used in other wrestling organizations and instead were only used at the insistence of WWE is knowingly false and misleading.

4. <u>False Allegations Regarding Alleged Misrepresentations</u>

Plaintiffs' Counsel have continued their pattern reflected in each of the thirteen complaints filed to date of falsely alleging that WWE made fraudulent misrepresentations concerning the potential risks of CTE, without identifying <u>any</u> specific statements made by WWE to <u>any</u> particular Plaintiff. *See, e.g.,* FAC ¶¶ 16, 50, 245, 317, 324-325, 348, 623, 633, 640, 651, 665-669, 671, 692, 720. In particular, Plaintiffs' Counsel repeatedly allege without any factual basis that WWE has denied the existence of any link between repeated head injuries in wrestling and long-term neurodegenerative conditions such as CTE and even accuse WWE of misrepresenting such a link to the United States Congress. *Id.* ¶ 633. Nevertheless, in their over 300-page Amended Complaint, Plaintiffs' Counsel do not and cannot identify any such statement that was made by WWE.[7] Even

[7] Plaintiffs' Counsel's allegations that WWE publicly attacked Dr. Omalu's pathological findings of CTE are false. *See* FAC ¶ 20. WWE simply requested chain of custody evidence that would confirm whether the brain examined by Dr. Omalu was in fact the brain of Chris Benoit. No such evidence has been provided to date despite the fact that such records were also subpoenaed from Dr. Omalu in connection with the *Singleton* case. The only other statement made by WWE that is quoted in the Amended Complaint was merely an expression of opinion

after discovery and the Court's entry of a compulsion order in the *Singleton* case requiring the plaintiffs to specifically identify any such statements, Plaintiffs' Counsel have identified none in the Amended Complaint. In fact, WWE has never made any representations denying the reported risks of CTE. To the contrary, Plaintiff's Counsel quote the following statement from WWE executive Paul Levesque in 2013 in connection with WWE's $1.2 million donation to advance CTE research: "Obviously, I think it's such a huge concern for everybody right now in sports and in the military. As we learn more and more about concussions and what can become of it, I think it's a problem for everybody." *Id.* ¶ 636.

5. False Allegations Regarding Deceased Wrestlers

Plaintiffs' Counsel falsely allege that all of the deceased wrestlers whose brains have been studied to date had CTE. *See* FAC ¶¶ 19, 302. A published study by Dr. Omalu reported that the brains of two out of four deceased wrestlers that were studied were found not to have CTE. *See* Ex. 25.

Plaintiffs' Counsel also allege they were told that several hundred wrestlers have died from Alzheimer's or dementia related injuries according to the website of the CAC (an organization run by former wrestlers) and that WWE knew that wrestlers received repetitive head trauma that dramatically increased their risks of developing neurological disorders because of its relationship to the CAC. *See*

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that Chris Benoit could not have done what he did in his profession if he had the brain of an 85-year-old person with dementia. Plaintiff Vito LoGrasso even agreed with this opinion based on his own experience working with Benoit. *See* Ex. 20 at 254-255. Moreover, this Court has already rejected the claim that this opinion could provide the basis for a fraud claim and observed that no aspect of WWE's statement claimed that Chris Benoit "did not suffer from CTE or that no link existed between wrestling and CTE." *McCullough I*, 172 F. Supp. 3d at 563.

FAC ¶¶ 248-249. Plaintiffs' Counsel knew or should have known from simply visiting the CAC website that it does not provide information concerning the cause of death of former wrestlers—much less any information regarding its relationship to repetitive head trauma from wrestling.[8]

6. <u>False Allegations Regarding WCW and ECW</u>

<u>First</u>, Plaintiffs' Counsel falsely allege that WWE acquired, purchased, and merged with WCW and ECW and assumed their liabilities. *See* FAC ¶¶ 83, 94, 100, 101, 130, 577-579, 583-584, 593. It is a matter of public record that WWE only purchased certain assets of ECW and that the sale was made "free and clear" of any liabilities pursuant to an order of a United States Bankruptcy Court. *See* Ex. 26. It also is a matter of public record that a subsidiary of WWE purchased only certain assets of WCW and that WCW changed its name to Universal Wrestling Corporation. *See Marvel Enters., Inc. v. World Wrestling Federation Entm't, Inc.*, 610 S.E.2d 583, 586 (Ga. App. 2005). Moreover, as Plaintiffs readily acknowledge, Universal Wrestling Corporation continues to exist to oversee "contractual obligations and legal disputes." FAC ¶ 583, n.82; Ex. 27.

<u>Second</u>, Plaintiffs' Counsel falsely allege that WWE had a continuity of ownership with WCW and ECW. *See* FAC ¶¶ 585-586. As Plaintiffs elsewhere admit, WWE is a public company, WCW was owned by AOL Time Warner, and ECW was owned by HHG Corporation. *Id.* ¶¶ 129, 578; Ex. 26. The sole basis for the farcical allegation that there was a continuity of ownership between the companies appears to be an announcement that Shane McMahon would own

[8] The CAC website is available at http://www.caulifloweralleyclub.org.

WCW and that Stephanie McMahon would own ECW that Plaintiffs admit was made as part of a fictional storyline. *Id.* ¶¶ 584-586.

Third, Plaintiffs' Counsel falsely allege that WWE had a continuity of management and employees with WCW and ECW. *See* FAC ¶¶ 585-586. These claims are based on false allegations that former WCW employees Diana Myers, Aaron Blitzstein, Rob Garner, and Steve Barrett were subsequently employed by WWE. *See* Ex. 28. They are also based on false allegations that former WCW employees and ECW employees became part of WWE management. *Id.*

Fourth, Plaintiffs' Counsel falsely allege that WCW and ECW had a continuity of physical location. *See* FAC ¶ 594. As Plaintiffs' Counsel know, WWE's principal place of business is in Connecticut, WCW's principal place of business was in Georgia, and ECW's principal place of business was in New York. *Id.* ¶¶ 128, 132; Exs. 27. For all these reasons, Plaintiffs' successor liability claim against WWE rests on knowingly false allegations.

7. False Allegations Regarding Dates of Events

First, Plaintiffs' Counsel falsely allege that WWE assumed certain legal duties to its wrestlers *as early as 1963* based on allegations of actions that do not date back to 1963. *See* FAC ¶ 225. For example, Plaintiffs' Counsel allege that the WWE banned chair shots to the head in 2010, banned intentional bleeding or blading of wrestlers in 2015, and banned certain other moves on unspecified dates. *Id.* ¶¶ 225-227. None of the alleged actions taken by WWE date back to 1963. Indeed, WWE did not even exist as an organization in 1963. Plaintiffs'

Counsel have attempted to manufacture a duty to Plaintiffs who have not performed in decades based on false and misleading allegations.

Second, Plaintiffs' Counsel falsely allege that WWE undertook a duty to train wrestlers *from the outset of Plaintiffs' careers* based on allegations that wrestlers are trained in facilities where WWE employees and trainers work and advise wrestlers on how to conduct maneuvers. *See* FAC ¶ 165. However, none of the named Plaintiffs allege or could allege that *they* were trained in such facilities by WWE employees and trainers. Indeed, WWE's training facility known as the Performance Center did not even exist at the time Plaintiffs performed. Plaintiffs' Counsel again attempt to create a duty to Plaintiffs who have not performed for WWE for many years based on false and misleading allegations.

Third, Plaintiffs' Counsel falsely allege that Plaintiff Dave Hebner was a referee for WWE from 1986 to *2015*. *See* FAC ¶ 76. Plaintiffs' Counsel represent both Dave Hebner and his brother Earl Hebner and therefore knew or should have known that Dave Hebner last worked for WWE in *2005*. *See* Ex. 30. If Plaintiffs' Counsel's allegation is not a typographical error that they failed to correct when provided with the opportunity, then it could only have been the result of a lack of factual investigation. As explained below, the claims of all of the remaining Plaintiffs are time-barred based on the face of the Amended Complaint alone.

8. Superfluous and Inflammatory Allegations

The Amended Complaint filed by Plaintiffs' Counsel sets a new record for prolixity in these Consolidated Cases and continues to be replete with numerous superfluous and inflammatory allegations that have no relevance to the claims asserted in this case in plain violation of this Court's admonitions. *See* Ex. 1 at

60-61, 65; *McCullough I*, 172 F. Supp. 3d at 536-537; *McCullough II*, 2016 U.S. Dist. LEXIS 156459, at *11, 29, 33-36.

First, Plaintiffs' Counsel make irrelevant allegations concerning wrestlers who are not parties to this case. *See* FAC ¶¶ 34 n.9, 140, 147, 181, 483.

Second, Plaintiffs' Counsel make allegations concerning events that have no relationship to the time period in which Plaintiffs performed for WWE. For example, they make irrelevant allegations about statements or actions taken by WWE after Plaintiffs ceased performing despite the absence of a single allegation as to how any particular Plaintiff relied on any such statements or actions. Most notably, there are countless allegations concerning the Wellness Program and Dr. Maroon but not a single allegation by any Plaintiff that they ever sought treatment from the Wellness Program or Dr. Maroon. *See, e.g.,* FAC ¶¶ 655-717.

Third, Plaintiffs' Counsel falsely allege that WWE attempted to persuade Plaintiff Ashley Massaro not to report an allegation of sexual assault on a military base in Kuwait to the appropriate authorities.[9] *See* FAC ¶ 108. This inflammatory allegation is wholly unrelated to the claims in this case and was presented for the improper purpose of generating negative publicity against WWE in violation of this Court's repeated admonitions against making allegations that are directed at an audience other than the Court and are intended to generate negative media attention for the defendants. *See* Doc. No. 171; *McCullough I*, 172 F. Supp. 3d at

[9] This allegation must involve Massaro being on a WWE visit to a military base in the Middle East in 2006. As best WWE can determine, Massaro became ill while there, was treated by a military doctor, and was later heard telling others that she believed that the doctor had done an inappropriate pelvic exam. At no time did Massaro ever report being sexually assaulted by anyone affiliated with WWE.

536; *McCullough II*, 2016 U.S. Dist. LEXIS 156459, at *34. The false allegations concerning Ashley Massaro succeeded in achieving their improper purpose as evidenced by the widespread media attention they received following the filing of the Amended Complaint in this case. *See, e.g.,* Exs. 31-33.

B. Plaintiffs' Counsel Violated Rule 11(b)(2)

Plaintiffs' Counsel violated Rule 11(b)(2) by continuing to assert numerous claims that are legally frivolous and patently time-barred.

1. Non-Existent Causes of Action

First, Plaintiffs' Counsel continue to assert claims that are not recognized causes of action under applicable law, including a claim seeking a declaratory judgment of misclassification (Count I), unconscionable contracts (Count III), medical monitoring (Count VI), fraudulent concealment (Count VIII), civil conspiracy and fraudulent concealment (Count XIV), intentional deprivation of statutory rights (Count XV), mandatory reporting (Count XVI), and accounting and disgorgement (Count XVII). *See In re Joint E. & S. Dist. Asbestos Litig.*, 14 F.3d 726, 731 (2d Cir. 1993) (declaratory judgment is not an independent cause of action); *McCullough I*, 172 F. Supp. 3d at 560, 562 (no cause of action for medical monitoring or fraudulent concealment); *Macomber v. Travelers Prop. & Cas. Corp.*, 277 Conn. 617, 636 (2006) (no independent cause of action for civil conspiracy in the absence of allegations of a substantive tort); *Macomber v. Travelers Prop. & Cas. Corp.*, 261 Conn. 620, 623 n.3 (2002) (accounting is a remedy and not a cause of action); *Kosiorek v. Smigelski*, No. CV074014607S, 2008 Conn. Super. LEXIS 2615, at *4 (Conn. Super. Ct. Oct. 9, 2008) (disgorgement is a remedy and not a cause of action); *Okafor v. Yale Univ.*, No. CV980410320,

2004 Conn. Super. LEXIS 1657, at *31 (Conn. Super. Ct. June 25, 2004) (unconscionability is a defense and not a cause of action).

Second, Plaintiffs' Counsel continue to assert violations of statutes for which there is no private right of action under controlling law, including alleged violations of federal tax law, the Federal Insurance Contributions Act (FICA), the Occupational Safety and Health Act (OSHA), the National Labor Relations Act (NLRA), and the notice requirement of the Family and Medical Leave Act (FMLA) (Counts III, XVI, and XVII). *See Donovan v. OSHRC*, 713 F.2d 918, 926 (2d Cir. 1983) (no private right of action under OSHA); *Containair Sys. Corp. v. NLRB*, 521 F.2d 1166, 1170 (2d Cir. 1975) (no private right of action under the NLRA); *Palma v. Pharmedica Commc'ns, Inc.*, No. 3:00CV1128, 2001 U.S. Dist. LEXIS 5436, at *4-7 n.1 (D. Conn. Apr. 11, 2001) (no private right of action for violation of FMLA notice requirement); *Le Bouteiller v. Bank of New York Mellon*, No. 14 Civ. 6013, 2015 U.S. Dist. LEXIS 122076, at *23-24 (S.D.N.Y. Sept. 11, 2015) (no private right of action to enforce the tax code). Plaintiffs' Counsel ignored controlling law and this Court's decisions holding that such claims are not viable causes of action.

2. Claims Previously Dismissed By This Court

First, Plaintiffs' Counsel continue to assert traumatic brain injury claims that are legally frivolous in view of this Court's ruling dismissing nearly identical claims asserted by them in these Consolidated Cases, including medical monitoring (Count IV), fraudulent concealment (Count VIII), fraud (Count IV), fraudulent nondisclosure (Count XI), and negligent misrepresentation (Count X). This Court previously dismissed both the medical monitoring and fraudulent concealment claims because they were not viable causes of action. *McCullough*

***I*, 172 F. Supp. 3d at 560, 562. It dismissed the negligence-based claims based on the contacts sports exception recognized by the Connecticut Supreme Court in *Jaworski* and its progeny. *Id.* at 556-570. The Court also dismissed the fraud and negligent misrepresentation claims because "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." *Id.* at 563. Despite adding hundreds of new allegations, the Amended Complaint does not cure this defect. The Court further dismissed the fraud by omission claims of any plaintiffs who were "alleged to have wrestled on or after 2005, when WWE's knowledge of the non-disclosed facts is alleged to have begun." *Id.* at 567.[10] Although Plaintiffs' Counsel falsely allege in the Amended Complaint that WWE had knowledge of the purportedly non-disclosed facts years and decades earlier than previously alleged, these allegations lack any good-faith basis, as discussed above. *See* Section IV.A.2-3.**

Second, Plaintiffs' Counsel continue to assert wrongful death and survival claims (Count VII) that are legally frivolous in view of this Court's ruling dismissing similar claims asserted in these Consolidated Cases. This Court already has concluded that there was no plausible causal connection between the alleged conduct of WWE and the deaths of other decedents from a heart attack and an accidental drug overdose many years after they last performed for WWE.

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[10] As WWE demonstrated in its motion for summary judgment in the *Singleton* action, these allegations were false. They were based on a 2005 Mayo Clinic article that did not provide any information about a link between head injuries and long-term neurodegenerative conditions in wrestling. Moreover, discovery showed that WWE had no knowledge of that article and did not become aware of any such reported link until September 2007. *See* Doc. No. 196 ¶¶ 89-99.

In the *Frazier* and *James* actions, this Court held that "neither Plaintiff has alleged facts linking their decedent's death with CTE." *McCullough II*, 2016 U.S. Dist. LEXIS 156459, at *27. The Court stated that Plaintiffs' Counsel's allegation that Frazier's death from a heart attack was due to CTE that he contracted as a result of WWE's fraudulent conduct was "yet another bald and baseless allegation, unprovable and unsupportable, which the Court deems unworthy of the barest measure of credibility." *Id.* at *28. Nevertheless, in the Amended Complaint, Plaintiffs' Counsel again implausibly assert a causal relationship between WWE's conduct and the sudden death of Jonathan Rechner from cardiovascular disease and Brian Knighton from an accidental drug overdose, both many years after they last performed for WWE. FAC ¶¶ 100-101. Their allegations are again based on "rank speculation" in violation of the Court's prior admonitions. *Id.* at *27.

The wrongful death claim that Plaintiffs' Counsel assert on behalf of Jonathan Rechner is legally frivolous for the additional reason that Plaintiff Gayle Schecter is not the executor or administrator of his estate and therefore lacks standing to assert such a claim. *See* Ex. 34. Plaintiffs' Counsel's assertion of this claim disregards this Court's prior ruling dismissing the wrongful death claim in the *James* case with prejudice because the "plaintiff is neither the executor nor administrator of the decedent's estate" and "[a]t no time did counsel for Plaintiffs invest the minimal effort and expense necessary to establish an estate and appoint an administrator in order to confer standing to bring the instant suit." *McCullough II*, 2016 U.S. Dist. LEXIS 156459, at *22-24.

Third, Plaintiffs' Counsel continue to assert misclassification claims (Counts I-IV and XV-XIX) that are legally frivolous and time-barred in view of this Court's prior rulings dismissing nearly identical claims by other former WWE performers. *See Levy v. World Wrestling Entertainment, Inc.*, No. 3:08-cv-01289, 2009 U.S. Dist. LEXIS 13538 (D. Conn. Feb. 20, 2009) ("*Levy I*"); *Levy v. World Wrestling Entertainment, Inc.*, No. 3:08-cv-1289, 2009 U.S. Dist. LEXIS 66200 (D. Conn. July 31, 2009) ("*Levy II*"). Like the Plaintiffs here, the plaintiffs in *Levy* alleged that they were misclassified as independent contractors and deprived of their rights as employees notwithstanding the fact that all of their contracts had been fully performed and none of them had worked for WWE in many years. This Court held that the plaintiffs failed to state a claim and that their action was time-barred because it was not commenced within six years of the date of execution of their Booking Contracts in which their status as independent contractors was set forth. *Levy I*, 2009 U.S. Dist. LEXIS 13538, at *8-16. This Court then denied the plaintiffs' subsequent motion to reopen the judgment and held that "Plaintiffs' claim that they have an employer-employee relationship" with WWE "has been explicitly rejected by this Court in its ruling granting Defendant's motion to dismiss." *Levy II*, 2009 U.S. Dist. LEXIS 66200, at *9.[11]

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[11] Plaintiffs' Counsel allege that "[t]his is not a case on par with *Levy*" (FAC ¶ 750) even though they copied some of the allegations from *Levy* verbatim. Indeed, after Defendants filed a motion for sanctions concerning Plaintiff's Counsel's plagiarism of the NFL Complaint, Plaintiffs' Counsel introduced an ERISA claim in their Amended Complaint that blatantly plagiarized allegations from the proposed amended complaint filed in the *Levy* case, which this Court already has rejected. *Compare* FAC ¶¶ 563-564 with *Levy v. World Wrestling Entertainment, Inc.*, Case No. 3:08-cv-01289 (Doc. No. 39-3) ¶¶ 9, 15.

Plaintiffs' Counsel's disregard of this Court's rulings in these cases and their pursuit of the same legal theories that were rejected by this Court warrants sanctions. *See Gollomp v. Spitzer*, 568 F.3d 355, 369 (2d Cir. 2009) (upholding sanctions where "several courts had already instructed plaintiff's counsel that similar claims" were barred); *Fitzgerald v. Regions Bank*, No. 5:13-CV-36-OC-10PRL, 2014 U.S. Dist. LEXIS 4547, at *13-14 (M.D. Fla. Jan. 14, 2014) (imposing sanctions where "Plaintiffs filed an Amended Complaint that was based on the same legal theory that the Court had repeatedly rejected in this case and other similar actions"); *Med. Supply Chain, Inc. v. Neoforma, Inc.*, 419 F. Supp. 2d 1316, 1333 (D. Kan. 2006) (imposing sanctions where "Plaintiff's previous two claims in this court were dismissed for failure to state a claim pursuant to Rule 12(b)(6)"); *Balcar v. Bell & Associates, LLC*, 295 F. Supp. 2d 635, 641 (N.D. W. Va. 2003) (imposing sanctions for filing another action where "Plaintiff was advised by this Court in clear and convincing terms that his claims against the defendants in the third action were without merit and were barred.").

3. Claims For Which There Is No Subject Matter Jurisdiction

First, Plaintiffs' Counsel continue to assert misclassification claims (Counts I-IV and XV-XIX) over which the Court lacks subject matter jurisdiction because federal administrative procedures provide the exclusive remedy for challenging Plaintiffs' classification as independent contractors. *See Gifford v. Meda,* No. 09-cv-13486, 2010 U.S. Dist. LEXIS 45322, at *32-34 (E.D. Mich. May 10, 2010) (holding that "the resolution of such employee misclassification claims has been firmly vested in the comprehensive administrative enforcement scheme" under the Internal Revenue Code, Federal Insurance Contributions Act, and

Social Security Act that "forecloses Plaintiffs' attempt to create a RICO claim notwithstanding the presence of this well-established administrative network of resolution and relief.") (collecting cases); *see also* Doc. No. 267 at 31-40.

Second, Plaintiffs' Counsel continue to assert declaratory judgment claims (Counts I, III, and XVI) over which the Court lacks subject matter jurisdiction under well-established law because the declarations that Plaintiffs seek can have no effect on existing rights given that all Plaintiffs ceased performing for WWE many years ago. *See Glanville v. Dupar, Inc.*, 727 F. Supp. 2d 596, 602 (S.D. Tex. 2010) (plaintiffs lacked standing to assert misclassification claims because they "no longer have any employment relationship" with the defendant and "cannot allege future harm from the alleged misclassification").

Plaintiffs' Counsel's continued pursuit of claims over which the Court lacks jurisdiction is sanctionable. *See Brignoli v. Balch, Hardy & Scheinman, Inc.*, 126 F.R.D. 462, 465 (S.D.N.Y. 1989) ("Improperly invoking the subject matter jurisdiction of a federal district court is sanctionable under Rule 11.").

4. Additional Frivolous Claims

First, Plaintiffs' Counsel continue to assert a legally frivolous RICO claim against Defendant McMahon in his individual capacity and as the Trustee of various Trusts (Count II). The RICO claim is predicated on baseless claims of mail and wire fraud in the presentation of Booking Contracts to Plaintiffs that openly and expressly set forth their *agreement* to be classified and treated as independent contractors (FAC ¶ 770.A) and fails to allege that McMahon made any false statements of fact to Plaintiffs in any capacity—much less with the contemporaneous intent to defraud them. Plaintiffs' Counsel also baselessly

assert the RICO claim against McMahon in his capacity as trustee of various estate planning trusts even though they fail to allege that these trusts had any interaction with Plaintiffs or any involvement in the management or operations of WWE or the decision to classify Plaintiffs as independent contractors.

Second, Plaintiffs' Counsel assert an ERISA claim (Count IV) that is legally frivolous because Plaintiffs were not participants under any ERISA plan maintained by WWE. *See* FAC ¶ 570, Prayer for Relief C.1. Since Plaintiffs allege that they were not participants in any ERISA plan, they concede lack of standing to assert an ERISA claim. *See Puga v. Williamson-Dickie Mfg. Co.*, No. 4:09-CV-335, 2009 U.S. Dist. LEXIS 96694, *12 (N.D. Tex. Oct. 16, 2009) (holding that plaintiffs who alleged that they were misclassified as independent contractors lacked standing to assert an ERISA claim because they were admittedly not plan participants); *Curran v. FedEx Ground Package Sys*., 593 F. Supp. 2d 341, 344 (D. Mass. 2009) (same). Plaintiffs' Counsel also fail to plead any ERISA violation. They base their ERISA claim on the false proposition that WWE was required to make plan benefits available to all employees. The Supreme Court plainly and unequivocally adopted the opposite rule more than thirty years ago in a decision that has been followed countless times in the intervening years. *See Shaw v. Delta Air Lines*, 463 U.S. 85, 91 (1983) ("ERISA does not mandate that employers provide any particular benefits, and does not itself proscribe discrimination in the provision of employee benefits."). Therefore, even if Plaintiffs should have been classified as employees and not independent contractors, there is no legal requirement that WWE include all employees in its plans. Moreover, this Court

has already held that it was futile for former WWE performers to assert ERISA claims based on the same allegations that were copied and repeated by Plaintiffs' Counsel in this case. *See Levy II,* 2009 U.S. Dist. LEXIS 66200, at *7-10.

Third, Plaintiff's Counsel assert a successor liability claim against WWE (Count V) that is legally frivolous because WWE did not assume any liability of ECW or WCW to Plaintiffs. WWE acquired certain assets of ECW "free and clear" of all claims pursuant to an order of a federal Bankruptcy Court and is therefore immunized from any successor liability claim arising out of that sale. *See* Ex. 26; *Doktor v. Werner Co.*, 762 F. Supp. 2d 494, 498 (E.D.N.Y. 2011) (holding that "proceeds from such free and clear sales are 'immune from subsequent suits' against the asset purchasing company"). In addition, as Plaintiffs admit, after the sale of certain assets of WCW to a WWE subsidiary, WCW continues to exists under the changed name Universal Wrestling Corporation to "oversee contractual obligations and legal disputes." FAC ¶ 583 n.82; *Marvel Enters.*, 271 Ga. App. at 608. Accordingly, there is no basis for the claim that WWE is responsible for either the liabilities of ECW or WCW.

Fourth, Plaintiffs' Counsel continue to assert claims of fraudulent concealment (Count VIII), fraud (Count IX), negligent misrepresentation (Count X), and fraudulent nondisclosure (Count XI) that are legally frivolous because they fail to identify any omission or misrepresentation of fact made by WWE with the requisite particularity under Federal Rule of Civil Procedure 9(b). Indeed, none of the thirteen complaints filed by Plaintiffs' Counsel in these Consolidated Cases over the course of two years has specifically identified any false statement of fact

made by anyone at WWE to any Plaintiff. *See Gold v. Fields*, No. 92 Civ. 6680, 1993 U.S. Dist. LEXIS 8094, at *21 n.7 (S.D.N.Y. June 11, 1993) (finding "claims sanctionable for failure to plead fraud with particularity").

Fifth, Plaintiffs' Counsel assert claims of negligent hiring and negligent retention (Counts XII-XIII) that are legally frivolous because they are nothing more than baseless attacks on Dr. Joseph Maroon and Dr. Mark Lovell without any allegations that any specific Plaintiff sought or received treatment from either of them. Plaintiffs therefore cannot plausibly allege that they were harmed by any decision by WWE to hire and retain Dr. Maroon and Dr. Lovell. *See Fletcher v. City of New Haven Dep't of Police Serv.*, No. 3:10-CV-558, 2011 U.S. Dist. LEXIS 34711, at *7-8 (D. Conn. Mar. 31, 2011) (dismissing claim for negligent hiring because "no facts are alleged to show a causal link between the harm suffered by the plaintiff and a hiring decision by any defendant").

Sixth, Plaintiffs' Counsel assert a civil conspiracy claim (Count XIV) that is legally frivolous. As noted above, civil conspiracy is not an independent cause of action without allegations of a substantive tort, and fraudulent concealment is not a substantive tort under Connecticut law. In addition, the civil conspiracy claim fails to state a claim because it only alleges actions taken by WWE and "others employed by WWE" (FAC ¶ 719) in violation of the intracorporate conspiracy doctrine. *See Harp v. King*, 266 Conn. 747, 751, n.5 (2003) (holding that "under the intracorporate conspiracy doctrine, employees of the same corporate entity cannot conspire with one another or with the corporate entity").

Seventh, Plaintiffs' Counsel assert accounting and unjust enrichment claims (Counts XVIII and XIX) that are legally frivolous. Plaintiffs have no contractual or other basis to claim any copyright interest in WWE's copyrighted works. *See* FAC Exs. A-D § 2.5 (providing that WWE is the exclusive owner of the copyrights in such works). Moreover, their state law claims related to WWE's exploitation of its copyrighted works are clearly preempted by federal copyright law. *See Ray v. ESPN, Inc.*, 783 F.3d 1140, 1142-44 (8th Cir. 2015) (holding that plaintiff's state law claims related to defendant's reproduction, distribution, or display of plaintiff's wrestling performances was preempted by the Copyright Act); *Somerson v. World Wrestling Entm't, Inc.*, 956 F. Supp. 2d 1345, 1355-56 (N.D. Ga. 2012) (same); *Blood v. Titan Sports, Inc.*, No. 3:94CV307-P, 1997 U.S. Dist. LEXIS 24485, at *33-34 (W.D.N.C. May 13, 1997) (same).

Eighth, Plaintiffs' Counsel assert a legally frivolous claim alleging that Plaintiffs were subject to discipline or discharge for the exercise of their rights of free speech under the First Amendment of the United States Constitution and the Connecticut Constitution. *See* FAC ¶ 767(c). These claims are meritless because neither WWE nor any of its employees are state actors or acting under the color of state law. *See Phillips v. Sage Colleges*, 83 Fed. Appx. 340, 341 (2d Cir. 2003) ("[T]he United States Constitution regulates only government action, not that of private parties."); *Traylor v. Hammond*, 94 F. Supp. 3d 203, 221 (D. Conn. 2015) ("To state a claim under the Connecticut Constitution, a plaintiff must allege that he was injured by either a state actor or a private party acting under color of state law.") (internal quotation marks and ellipses omitted).

5. Patently Time-Barred Claims

Plaintiffs' Counsel violated Rule 11 by asserting claims that are facially and indisputably time-barred. All Plaintiffs failed to bring their claims within the applicable limitations and repose periods, and the vast majority of claims were time-barred for years or even decades before this case was filed. *See* Ex. 35.

First, Plaintiffs' traumatic brain injury claims are patently time-barred. These claims all allege that WWE's acts or omissions caused Plaintiffs to suffer long-term neurological injuries from head trauma sustained during their tenure with WWE. *See* FAC ¶¶ 1-7, 67-126. The tort and negligence-based claims are subject to a three-year statute of repose running from the date that the alleged act or omission occurred. *See* Conn. Gen. Stat. §§ 52-577, 52-584. Because no Plaintiff performed for WWE within three years of the filing of the action, the tort and negligence-based claims are time-barred.[12] The wrongful death claims are also time-barred because they were brought more than five years after Knighton last performed for WWE in 2005 and Rechner last performed for WWE in 2008. *See* Conn. Gen. Stat. § 52-555. Because the time limits of the wrongful death statute are jurisdictional, the Court lacks subject matter jurisdiction over those claims. *See Greco v. United Techs. Corp.*, 277 Conn. 337, 350 (2006); *Ecker v. West Hartford*, 205 Conn. 219, 233 (1987).[13]

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[12] The last Plaintiff (Salvador Guerrero IV) ceased performing for WWE in 2011—five years before this action was filed. FAC ¶ 70. As discussed above, the only Plaintiff who alleges to have performed for WWE after 2011 (Dave Hebner) does so falsely in violation of Rule 11. *See* Section IV.A.7.

[13] The successor liability claim is also patently time-barred since the latest date on which ECW or WCW could have committed any act or omission with respect to Plaintiffs who performed for them was in 2001. *See City of Syracuse v. Loomis*

Second, Plaintiffs' misclassification claims are also patently time-barred. These claims all allege that WWE committed fraud when it presented Plaintiffs with unconscionable Booking Contracts that misclassified them as independent contractors and therefore deprived them of the rights of employees. *See* FAC ¶¶ 376-377, 453. Because such claims sound in fraud, they are barred by the three-year statute of repose for tort claims, running from the respective dates Plaintiffs were presented with their Booking Contracts. *See* Conn. Gen. Stat. § 52-577. Even if these claims were viewed as contract-based claims, they would all still be barred by the six-year statute of limitations for contract actions running from the respective dates the Booking Contracts were executed or the dates Plaintiffs started providing services to WWE.[14] *See* Conn. Gen. Stat. § 52-576; *Levy I*, 2009 U.S. Dist. LEXIS 13538, at *13-15. Because all Plaintiffs executed their Booking Contracts or started providing services for WWE at least six years before the filing of this action, any contract-based claims are time-barred.[15] Plaintiffs' civil RICO claim against Defendant McMahon is time-barred by a four-year statute of limitations running from the date when Plaintiffs executed their Booking Contracts in which their classification as independent contractors was set forth. *See Agency Holding Corp. v. Malley-Duff & Associates, Inc.*, 483 U.S. 143, 156-57

***Armored US, LLC*, 900 F. Supp. 2d 274, 290-295 (N.D.N.Y. 2012).**

[14] Plaintiffs' ERISA claims also accrued when they executed their Booking Contracts that made clear that they were independent contractors and were responsible for their own benefits and therefore are time-barred for the same reasons. *See Levy I*, 2009 U.S. Dist. LEXIS 13538, at *14 (collecting cases).

[15] The most recent relationship alleged to have been commenced by contract began in 2006—at least nine years before this action was filed. *See* FAC ¶ 79.

(1987). In addition, any purported FMLA claim would be time-barred because it was not brought within two years of the date that any Plaintiff last performed for WWE. *See* 29 U.S.C. § 2617(c)(1).

Plaintiffs implicitly acknowledge that all of their claims are time-barred because they seek a declaratory judgment in Count XVII that the otherwise applicable statutes of limitation and repose should be tolled based on the doctrine of equitable estoppel. Plaintiffs do not even allege any other basis for tolling, and there is no basis for their claim of equitable estoppel.[16]

"Equitable estoppel is invoked in cases where the plaintiff knew of the existence of his cause of action but the defendant's conduct caused him to delay in bringing suit." *Cerbone v. Int'l Ladies' Garment Workers' Union*, 768 F.2d 45, 49-50 (2d Cir. 1985). It applies "where the defendant misrepresented the length of the limitations period or in some way lulled the plaintiff into believing that it was not necessary for him to commence litigation." *Id.* at 50. A plaintiff must "plead

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[16] Although Plaintiffs invoked equitable tolling in their opposition to the motion for sanctions with respect to the original Complaint, Plaintiffs have not pled equitable tolling. *See Davis v. Jacobson*, No. 3:12-cv-1102, 2014 U.S. Dist. LEXIS 157693, at *22 (D. Conn. Nov. 7, 2014). In any event, equitable tolling cannot extend the statutes of limitations and repose applicable to Plaintiffs' claims under Connecticut law. *See Lopez v. Travelers Cos.*, No. AANCV15601947S, 2016 Conn. Super. LEXIS 893, at *18 (Conn. Super. Ct. Apr. 26, 2016); *Saperstein v. Danbury Hosp.*, No. X06CV075007185S, 2010 Conn. Super. LEXIS 197, at *41-44 (Conn. Super. Ct. Jan. 27, 2010). As to Plaintiffs' federal claims, Plaintiffs do not and cannot allege (1) that they have been pursuing their rights diligently, and (2) that some extraordinary circumstance stood in their way. *See A.Q.C. ex. rel. Castillo v. United States*, 656 F.3d 135, 144 (2d Cir. 2011); *Reches v. Morgan Stanley & Co.*, No. 16 Civ. 1663, 2016 U.S. Dist. LEXIS 115533, at *8-11 (E.D.N.Y. Aug. 26, 2016) (equitable tolling did not apply where the plaintiff was aware of his classification as an independent contractor and did not allege that he had pursued his rights diligently after his classification or that any extraordinary circumstances that prevented him from filing a claim within the limitations period).

each element of equitable estoppel with particularity." *Twersky v. Yeshiva Univ.*, 993 F. Supp. 2d 429, 443 n.5 (S.D.N.Y. 2014).

Plaintiffs' Counsel's attempt to plead equitable estoppel completely ignores these principles. First, not a single Plaintiff alleges that he or she *knew* of a cause of action. To the contrary, Plaintiffs collectively claim that they did not know of their causes of action. *See* FAC ¶¶ 747-748, 782; *Conklin v. Maidenbaum,* No. 12-CV-3606, 2013 U.S. Dist. LEXIS 113975, at *27-28 (S.D.N.Y. Aug. 13, 2013). Second, no Plaintiff alleges that Defendants made any misrepresentations regarding the length of the limitations period, that Defendants lulled any Plaintiff into believing that it was not necessary to commence litigation after Plaintiffs became aware of their cause of action, or that any Plaintiff reasonably relied on any such misrepresentations. *See Ellul v. Congregation of Christian Bros.*, 774 F.3d 791, 802 (2d Cir. 2014). Third, Plaintiffs do not even generally allege that they exercised any due diligence in pursuing their claims—much less allege due diligence with the required particularity on behalf of each Plaintiff. *See Int'l Strategies Group, Ltd. v. Ness*, 645 F.3d 178, 185 (2d Cir. 2011).

Because Plaintiffs' Counsel knowingly filed suit on undisputedly time-barred claims, Rule 11 sanctions are warranted. *See De La Fuente v. DCI Telecomms., Inc.*, 82 F. App'x 723, 724-25 (2d Cir. 2003) (affirming district court's finding that filing repose-barred claims was sanctionable under Rule 11); *Norris v. Grosvenor Mktg. Ltd.*, 803 F.2d 1281, 1288 (2d Cir. 1986) (finding Rule 11 violation where claims were time-barred); *Chemiakin v. Yefimov*, 932 F.2d 124, 126, 129-30 (2d Cir. 1991) (affirming imposition of sanctions under Rule 11 for filing frivolous

claim in part because the claim was time-barred); *Burns Int'l Security Servs. v. United Plant Guard Workers of Am., Local 538*, 989 F. Supp. 102, 107-08 (D. Conn. 1996) (granting sanctions under Rule 11 for filing a complaint that was untimely and making a tolling argument that was "sanctionably weak").

5. Released Claims

Plaintiffs' Counsel have improperly continued to assert claims on behalf of at least 20 Plaintiffs who signed binding releases that clearly and unambiguously bar the claims alleged in this action.[17] *See* Exs. 36-55. In their opposition to the pending motion for sanctions, Plaintiffs' Counsel conceded that the releases covered the claims alleged in the complaint but claimed that they were *all* invalid because they were procured by fraud. However, Plaintiffs have not pled and cannot plead with the requisite particularity that each or any of these Plaintiffs was fraudulently induced into entering into a release. *See East Point Sys. v. Maxim*, No. 3:13-cv-00215, 2014 U.S. Dist. LEXIS 15280, at *17-19 (D. Conn. Feb. 7, 2014) (fraud in the inducement of a contract must be pled with particularity). Further, demonstrating that even their opposition violated Rule 11, Plaintiffs' Counsel falsely claimed that they had not received copies of the releases. Moreover, their unsupported claim that *all* of the releases were induced by fraud is belied by the release signed by Plaintiff Eadie, who executed a detailed settlement agreement and release of his claims for substantial consideration

[17] Releases were signed by Plaintiffs Carlene Moore-Begnaud, Rodney Begnaud, Mark Canterbury, Bryan Emmett Clark Jr., Marc Copani, Michael Enos, Bill Eadie, Michael Halac, James Harrell, James Harris, Marty Jannetty, Mark Jindrak, Rick Jones, Joseph Laurinaitis, Troy Martin, Anthony Norris, Perry Satullo, James Snuka-Reiher, Terry Szopinski, and John Nord. *See* Exs. 36-55.

under the supervision of the Court and with advice and consent of counsel after protracted litigation with WWE. *See* Ex. 42. While that release perhaps best demonstrates the absolute falsity of the position advocated by Plaintiffs' Counsel, there is no basis for any Plaintiff to allege fraudulent inducement.

It is well-established that the filing and continued pursuit of released claims violates Rule 11 and warrants sanctions. *See White v. Gen. Motors Corp.*, 908 F.2d 675, 682 (10th Cir. 1990) (affirming decision to award sanctions for filing claims covered by a release signed by plaintiffs); *Tilmon-Jones v. Boldian*, 581 F. App'x 493, 498-500 (6th Cir. 2014) (upholding Rule 11 violation where filing of suit "was particularly egregious in light of the clarity of the release contained in the prior settlement agreement between the parties"); *Fuerst v. Fuerst*, 832 F. Supp. 2d 210, 219-20 (E.D.N.Y. 2011) (violation of Rule 11 for failure to withdraw complaint after signing release of claims); *Ashley v. Corona*, No. C-92-4011, 1993 U.S. Dist. LEXIS 7279 at *10-11 (N.D. Cal. May 25, 1993) ("This court finds that in light of that unambiguous release, the filing of this suit constitutes a patently and offensively frivolous, legally unreasonable act in violation of Rule 11.").

6. <u>Claims on Behalf of Plaintiffs Who Continue to Wrestle</u>

Plaintiffs' Counsel also have asserted claims by at least 18 Plaintiffs that are legally frivolous and a fraud on the Court because such Plaintiffs continue to wrestle and perform for wrestling organizations despite their allegations of traumatic brain injuries caused by WWE's failure to warn them of the alleged long-term neurological risks associated with wrestling.[18] *See* Exs. 56-73.[19]

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[18] These include Plaintiffs Carlene Moore-Begnaud, Rodney Begnaud, Terry Brunk, Barry Darsow, Bill Eadie, Sylvain Grenier, Chavo Guerrero Sr., Salvador

Plaintiffs universally allege that they justifiably and reasonably relied on unspecified misrepresentations and omissions by WWE to their detriment both "during their wrestling careers and after their retirement from the WWE." FAC ¶ 656. All Plaintiffs allege that they would have taken "protective measures" or actions to mitigate their injuries both during and after their wrestling careers "had they been told the truth" by WWE about the risks of long-term neurological conditions. *Id.* ¶¶ 355, 710, 717. All Plaintiffs further allege that they now suffer from "severe physical injury" and "diminished cognitive function" as a result of WWE's conduct. *Id.* ¶ 643. The fact that nearly one-third of the Plaintiffs continue to actively wrestle despite filing this lawsuit demonstrates that their claims of traumatic brain injuries and reliance on WWE's alleged failure to warn them about the risks of long-term neurological conditions from wrestling are fraudulent. *See Haesche v. Kissner*, 229 Conn. 213, 218-222 (1993) ("A plaintiff cannot establish that a failure to warn proximately caused their alleged injury when the warning would not have altered their behavior."); *Danise v. Safety-Kleen Corp.*, 17 F. Supp. 2d 87, 97 (D. Conn. 1998) ("The absence of reliance on any misrepresentations precludes a finding that the defendant is liable to the plaintiff for his injuries.").

Guerrero IV, Michael Halac, Earl Hebner, Jon Heidenreich, Marty Jannetty, Mark Jindrak, Troy Martin, Charles Bernard Scaggs, Tracy Smothers, Terry Szopinksi, and Sione Havea Vailahi. *See* Exs. 56-73.

[19] In particular, Defendants invite the Court to review the video that shows Plaintiff Chavo Guerrero Sr. striking Plaintiff Chavo Guerrero Jr. over the head with a chair in a match that aired on or about November 2, 2016. *See* Ex. 62.

7. Failure to Make Individualized Allegations

Plaintiffs' Counsel again fail to make individualized allegations to support each of the claims in the Amended Complaint and fail to identify the specific Plaintiffs who are asserting the claims in each count. Plaintiffs' Counsel lack any factual or legal basis to assert undifferentiated claims on behalf of all Plaintiffs.

- **There is no factual or legal basis to assert FMLA claims on behalf of all Plaintiffs when at least 16 Plaintiffs ceased performing for WWE before the FMLA even became effective.**

- **There is no factual or legal basis to assert claims alleging that all Plaintiffs were misclassified as independent contractors in their Booking Contracts and that the contracts of all Plaintiffs were unconscionable when many Plaintiffs did not enter into any written contracts with WWE. *See, e.g.,* FAC ¶ 778.**

- **There is no factual or legal basis to assert unconscionability claims on behalf of all Plaintiffs when many Plaintiffs were represented by legal counsel in connection with their contracts, entered into their contracts through corporate entities, or were paid hundreds of thousands of dollars to perform for WWE. *See, e.g.,* FAC Ex. B, D ¶¶ 7.1, 13.6; Exs. 74-76 ¶ 13.6.**

- **There is no factual or legal basis to assert RICO claims on behalf of all Plaintiffs against Defendant McMahon in his capacity as Trustee of various family trusts when at least 38 Plaintiffs ceased performing before the first trust was created in 2004.**

- **There is no factual or legal basis to assert RICO claims against various Trusts because these Trusts have nothing to do with the management of WWE or the classification of Plaintiffs as independent contractors.**

- **There is no factual or legal basis to assert negligent hiring and negligent retention claims on behalf of all Plaintiffs when all but three Plaintiffs ceased performing before Dr. Maroon and Dr. Lovell were hired by WWE and none alleges that they sought or received treatment from them.**

- **There is no factual or legal basis to assert successor liability claims on behalf of Plaintiffs who did not perform for WCW and**

ECW, and the successor liability count fails to identify the specific Plaintiffs who are asserting that claim.

- **There is no factual or legal basis to assert traumatic brain injury claims on behalf of all Plaintiffs, and particularly not claims of injuries arising from fraud or omission, when at least 18 Plaintiffs continue to wrestle for other organizations.**

- **There is no factual or legal basis to assert claims on behalf of all Plaintiffs when at least 20 Plaintiffs released their claims.**

Plaintiffs' Counsel violated Rule 11 by continuing to assert such undifferentiated claims. *See Gurman v. Metro Hous. & Redevelopment Auth.*, 884 F. Supp. 2d 895, 901 (D. Minn. 2012) (imposing sanctions where counsel failed to "make clear which specific plaintiffs and which specific defendants are the subject of which specific allegations"); *Gurman v. Metro Hous. & Redevelopment Auth.*, 842 F. Supp. 2d 1151, 1154 (D. Minn. 2011) (stating that "kitchen-sink" violated Rule 11 and that "[b]lanket references to 'plaintiffs' or 'defendants' are unacceptable unless the references genuinely apply to every plaintiff and every defendant").

C. Plaintiffs' Counsel Violated Rule 11(b)(1) and 28 U.S.C. § 1927

Plaintiffs' Counsel violated Rule 11(b)(1) and 28 U.S.C. § 1927 by pursuing this action in bad faith and for plainly improper purposes.

First, Plaintiffs' Counsel have continued to pursue allegations and claims that are so lacking in merit as to mandate the conclusion that this action was filed in bad faith and for an improper purpose. *See Johnson ex rel. United States v. Univ. of Rochester Med. Ctr.*, 642 F.3d 121, 124-126 (2d Cir. 2011) (affirming sanctions where counsel "relentlessly pursued claims without basis in law or fact"); *Gollomp*, 568 F.3d at 368 (section 1927 "authorizes sanctions when the

attorney's actions are so completely without merit as to require the conclusion that they must have been undertaken for some improper purpose").

Second, Plaintiffs' Counsel have continued to file excessively lengthy complaints filled with false and inflammatory allegations to exert pressure on WWE through negative media attention and publicity in violation of the Court's prior admonitions. *See McCullough II*, 2016 U.S. Dist. LEXIS 156459, at *38 (stating that "[b]aseless claims that are included in a complaint as part of a media campaign to pressure the defendant with negative public relations have been found to evidence bad faith and improper purpose on the part of filing counsel" and courts have sanctioned counsel "for the deliberate inclusion of inflammatory content in a pleading after receiving a prior warning against doing so").

Third, Plaintiffs' Counsel's own statements to the media and in internet solicitations reflect that the underlying purpose behind these lawsuits is to solicit enough Plaintiffs to sue WWE in order to increase its litigation costs and extort a settlement based on meritless claims. *See* Ex. 77 at 8; Ex. 78. Plaintiffs' Counsel have solicited former performers to join the lawsuit without even asking whether they sustained any concussions while performing for WWE and have named former performers as Plaintiffs who have publicly stated that they did not want to sue WWE. *See* Exs. 79-81, 82 at 8. Plaintiffs' Counsel also have solicited former WWE performers to join this lawsuit even though they still continue to wrestle for other promotions. *See* Exs. 56-73. Such conduct plainly evidences the improper purpose and bad faith of Plaintiffs' Counsel in pursuing this action. *See Keister v. PPL Corp.*, No. 4:13-cv-00118, 2015 U.S. Dist. LEXIS 172382, at *50-51 (M.D. Pa.

Dec. 29, 2015) (imposing sanctions under Rule 11(b)(1) because "the purpose of this litigation was to extort a settlement from Defendants on meritless facts and to otherwise run up the cost of litigation for opposing counsel").

D. The Court Should Dismiss This Case and Award Full Attorney's Fees

If Rule 11 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). Courts consider the following factors:

> **Whether the improper conduct was willful, or negligent; whether it was part of a pattern of activity, or an isolated event; whether it infected the entire pleading, or only one particular count or defense; whether the person has engaged in similar conduct in other litigation; whether it was intended to injure; what effect it had on the litigation process in time or expense; whether the responsible person is trained in the law; what amount, given the financial resources of the responsible person is needed to deter that person from repetition in the same case; [and] what amount is needed to deter similar activity by other litigants.**

Fed. R. Civ. P. 11, Advisory Committee Note (1993). "Dismissal of a complaint is among the permissible sanctions allowed under Rule 11." *Miller v. Bridgeport Bd. of Educ.*, No. 3:12-cv-01287, 2014 U.S. Dist. LEXIS 103732, at *26-27 (D. Conn. July 30, 2014). The Court may enter "an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation." Fed. R. Civ. P. 11(c)(4). Under section 1927, the Court also may award "the excess costs, expenses, and attorneys' fees reasonably incurred because of" the attorney's misconduct. 28 U.S.C. § 1927.

Plaintiffs' Counsel's continuing pattern of misconduct warrants the most severe sanctions. The Amended Complaint is the thirteenth complaint filed against WWE by Attorney Kyros in six lawsuits over the past two years. This

Court has already dismissed four of the prior lawsuits brought by Attorney Kyros, including the two putative class actions and two wrongful death actions. This Court also has repeatedly admonished Attorney Kyros and his co-counsel for filing excessively lengthy complaints, making knowingly false and deliberately misleading statements, asserting completely irrelevant and inflammatory allegations, repeatedly misrepresenting evidence, pursuing baseless claims as part of a media campaign to pressure the Defendants with negative public relations, and engaging in highly unprofessional and vexatious conduct. This Court also has admonished Attorney Kyros and his co-counsel to adhere to the standards of professional conduct and applicable rules and court orders or risk future sanctions or referral to the Disciplinary Committee of this Court.

The extremely prolix Amended Complaint filed by Plaintiffs' Counsel willfully defies all of the Court's prior admonitions by continuing to pursue at great length patently false allegations and legally frivolous claims against Defendants for plainly improper purposes. Plaintiffs' Counsel's egregious misconduct in multiple cases in the face of the admonitions from this Court shows that only the harshest of sanctions will serve as a deterrent to such misconduct in the future. *See Star Mark Mgmt. v. Koon Chun Hing Kee Soy & Sauce Factory, Ltd.,* 682 F.3d 170, 177-78 (2d Cir. 2012) (imposing sanctions for filing a frivolous complaint where the Court directed counsel to "look at the law" and reminded him "that he had an independent obligation to determine if the proposed claim had merit"); *Chien v. Skystar Bio Pharm. Co.*, 256 F.R.D. 67, 70 (D. Conn. 2009) (imposing sanctions where "the Court gave [the attorney] a chance

to fix the defects in his original complaint and he failed to do so, even though Defendants had already raised the possibility of sanctions.");.

Under these circumstances, dismissal of the Amended Complaint with prejudice is necessary to deter such misconduct by Plaintiffs' Counsel in the future. *See Miller*, 2014 U.S. Dist. LEXIS 103732, at *28-30 (dismissal with prejudice was an appropriate sanction for counsel's fabrication of allegations in an attempt to avoid motion to dismiss). In addition, an award of Defendants' attorney's fees and costs incurred in defending this action and filing this motion for sanctions is also warranted under Rule 11 and under section 1927 and the Court's inherent authority. *See Neroni v. Becker*, 609 F. App'x 690, 693 (2d Cir. 2015) (affirming sanction of attorneys' fees incurred in defending the action where the plaintiffs pursued the action in bad faith and without regard to legal principles); *Keister*, 2015 U.S. Dist. LEXIS 172382, at *62-68 (awarding the defendant the full amount of its attorney's fees and costs because of vexatious and bad faith conduct by plaintiff's counsel). Such sanctions are necessary to finally bring an end once and for all to this protracted and abusive litigation campaign waged by Attorney Kyros and his co-counsel against WWE.

V. CONCLUSION

For these reasons set forth above, the Court should grant Defendants' motion for sanctions, dismiss the Amended Complaint with prejudice, and order Plaintiffs and their counsel to pay Defendants' attorneys' fees and costs incurred in connection with this action.

DEFENDANTS WORLD WRESTLING ENTERTAINMENT, INC. and VINCENT K. McMAHON,

By: ***/s/ Jerry S. McDevitt***

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CERTIFICATION OF SERVICE

I hereby certify that on December 23, 2016 a copy of foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/ Jeffrey P. Mueller
Jeffrey P. Mueller (ct27870)