IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

LISA TORREY, et al.,

Plaintiffs,

v.

INFECTIOUS DISEASES SOCIETY OF AMERICA, et al.,

Defendants.

Civil Action No. 5:17-cv-00190-RWS

DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT

TABLE OF CONTENTS

Page

STATEMENT OF THE ISSUES 1

INTRODUCTION 2

ARGUMENT 5

I. Plaintiffs' RICO Claims Must Be Dismissed 5

A. The Amended Complaint Omits the Key Factual Allegations that Supported the Court's Ruling that Plaintiffs Properly Alleged a RICO Enterprise Under Rule 8(a) 5

B. Plaintiffs Are Not Entitled to a Relaxed Pleading Standard for Those Allegations Subject to Rule 9(b) 7

C. Even Under a Relaxed Pleading Standard, Plaintiffs' Allegations Fall Short 10

II. The Amended Complaint Omits Key Factual Allegations That Supported the Court's Ruling that Plaintiffs Properly Pled Their Antitrust Claims 12

III. Plaintiffs Fail to Allege Fraudulent Concealment 15

IV. Twenty-One Plaintiffs' Claims Are Barred by the Statute of Limitations 18

V. All Claims Against Dr. Steere Should Be Dismissed 21

CONCLUSION 21

TABLE OF AUTHORITIES

Page(s)

Cases

State of Texas v. Allan Constr. Co., Inc.,
851 F.2d 1526 (5th Cir. 1988) 17

Anderson v. Liberty Lobby, Inc.,
477 U.S. 242 (1986).....16

Astoria Entm't, Inc. v. Edwards,
159 F. Supp. 2d 303 (E.D. La. 2001).....16

Bell Atl. Corp. v. Twombly,
550 U.S. 544 (2007).....15

Carney v. U.S.,
No. 3:99-CV-1989-M, 2003 WL 21653853 (N.D. Tex. Mar. 31, 2003).....17

U.S. v. Chubb Institute,
No. 06-3562, 2010 WL 1076228 (D.N.J. Mar. 22, 2010) 9

Cincinnati Life Ins. Co. v. Grotenhuis,
No. 2:10-cv-00205-LJM-WGH, 2012 WL 13032884 (S.D. Ind. Feb. 16, 2012).....9

Clark v. Centene Co. of Tex., L.P.,
44 F. Supp. 3d 674 (W.D. Tex. 2014).....21

Cole v. Boeing Co.,
75 F. Supp. 3d 70 (D.D.C. 2014), *aff'd*, 621 F. App'x 10 (D.C. Cir. 2015).....16

Electroglas, Inc. v. Dynatex Corp.,
497 F. Supp. 97 (N.D. Cal. 1980) 20

Elliott v. Foufas,
867 F.2d 877 (5th Cir. 1989) 7

In re Enron Corp. Securities,
465 F. Supp. 2d 687 (S.D. Tex. 2006) 22

Gregory v. Houston Independent Sch. Dist.,
No. CV H-14-2768, 2016 WL 5661701 (S.D. Tex. Sept. 30, 2016) 11

Halprin v. Fed. Deposit Ins. Corp.,
No. 5:13-CV-1042-RP, 2016 WL 5718021 (W.D. Tex. Sept. 30, 2016) 9

Kaiser Aluminum & Chem. Sales, Inc. v. Avondale Shipyards, Inc.,
677 F.2d 1045 (5th Cir. 1982) 19, 20

United States ex rel. King v. Alcon Labs., Inc.,
232 F.R.D. 568 (N.D. Tex. 2005) 11, 12

United States ex rel. Lam v. Tenet Healthcare Corp.,
481 F. Supp. 2d 673 (W.D. Tex. 2006).....12

Larry R. George Sales Co. v. Cool Attic Corp.,
587 F.2d 266 (5th Cir. 1979) 16

Marucci Sports, L.L.C. v. Nat'l Collegiate Athletic Ass'n,
751 F.3d 368 (5th Cir. 2014) 15

Nelson Radio & Supply Co. v. Motorola, Inc.,
200 F.2d 911 (5th Cir. 1952) 16

Paup v. Texas,
No. 6:16-CV-417-RWS-KNM, 2017 WL 9289648 (E.D. Tex. Jan. 31, 2017).....12

Poster Exch., Inc. v. Nat'l Screen Serv. Corp.,
517 F.2d 117 (5th Cir. 1975) 19, 20

Rahr v. Grant Thornton LLP,
142 F. Supp. 2d 793 (N.D. Tex. 2000) 22

Rx.com, Inc. v. Medco Health Solutions, Inc.,
No. 5:04-CV-227-DF, 2008 WL 11449354 (E.D. Tex. Mar. 11, 2008), *aff'd*
322 F. App'x. 394 (5th Cir. 2009) 20, 21

Sealed Appellant I v. Sealed Appellee I,
156 F. App'x 630 (5th Cir. 2005) 8

Summer v. Land & Leisure, Inc.,
664 F.2d 965 (5th Cir. 1981) 17

U.S. ex rel. Thompson v. Columbia/HCA Healthcare Corp.,
125 F.3d 899 (5th Cir. 1997) 11

Vendever LLC v. Intermetic Mfg. Ltd.,
No. 3:11-CV-201-B, 2011 WL 4346324 (N.D. Tex. Sept. 16, 2011) 16, 22

Verde v. Stoneridge, Inc.,
No. 6:14-CV-225, 2016 WL 9022449 (E.D. Tex. Nov. 7, 2016).....21

U.S. ex rel. Willard v. Humana Health Plan of Texas Inc.,
336 F.3d 375 (5th Cir. 2003) 8, 11

Statutes and Codes

Racketeer Influenced and Corrupt Organizations Act ("RICO")
18 U.S.C. §§ 1961-1968 ..... *passim*

Sherman Antitrust Act of 1890
15 U.S.C. §§ 1-38 .....2, 3, 6, 19

Rules and Regulations

Federal Rules of Civil Procedure
Rule 8(a).....5, 6
Rule 9(b) ..... *passim*
Rule 12(b)(6).....1, 2, 7

Other Authorities

Areeda, Hovenkamp & Blair, Antitrust Law 320 at 214 (2d ed. 2000).....20

Wormser et al., The Clinical Assessment, Treatment, and Prevention of Lyme Disease, Human Granulocytic Anaplasmosis, and Babesiosis: Clinical Practice Guidelines by the Infectious Diseases Society of America, 43 *Clinical Infectious Diseases* 9, 1089-1134 (Nov. 1, 2006) *available at* https://academic.oup.com/cid/article/43/9/1089/422463 18

Pursuant to Fed. R. Civ. P. 9(b) and 12(b)(6), Defendants Aetna Inc., Blue Cross Blue Shield of Texas, Anthem, Inc., Cigna Health and Life Insurance Company, United Healthcare Services Inc., UnitedHealth Group Incorporated, Blue Cross and Blue Shield Association, Kaiser Foundation Health Plan (collectively, the "Insurance Defendants"); Dr. Gary P. Wormser, Dr. Raymond J. Dattwyler, Dr. Eugene Shapiro, Dr. John J. Halperin, Dr. Leonard Sigal, Dr. Allen Steere (collectively, the "IDSA Panelists"); and Infectious Diseases Society of America ("IDSA") submit this Motion to Dismiss Plaintiffs' First Amended Complaint, Dkt. No. 186 ("Am. Compl.").

Plaintiffs' Amended Complaint fails to cure the pleading deficiencies that led the Court to dismiss Plaintiffs' RICO claims and to conclude that their fraudulent concealment allegations were insufficient. The Amended Complaint also removed key allegations upon which Plaintiffs' RICO and antitrust claims rely, thus subjecting the entire complaint to dismissal.

The claims of twenty-one of the twenty-four Plaintiffs also fail because those Plaintiffs have not alleged an injury within the relevant statute of limitations period. In addition, all claims against Dr. Steere should be dismissed because Plaintiffs no longer allege that Dr. Steere received any payments from any Insurance Defendant. Finally, if Plaintiffs' RICO claims are dismissed but their antitrust claims survive, the Court should grant the IDSA Panelists' pending motion to dismiss for lack of personal jurisdiction, which the Court has held in abeyance.

Defendants request that the Court set a hearing for this motion.

STATEMENT OF THE ISSUES

Whether Plaintiffs' Amended Complaint should be dismissed under Rules 9(b) and 12(b)(6) because

1. Plaintiffs failed to allege facts sufficient to plead a plausible cause of action under the RICO Act;

2. Plaintiffs failed to allege facts sufficient to plead a plausible cause of action against all Defendants under the Sherman Act;
3. Plaintiffs failed to allege facts sufficient to support tolling the statutes of limitations via fraudulent concealment;
4. Plaintiffs failed to allege an injury on behalf of twenty-one Plaintiffs within the relevant statute of limitations window; and
5. Plaintiffs failed to allege facts sufficient to plead any plausible cause of action against Dr. Allen Steere.

INTRODUCTION

Plaintiffs' Original Complaint rested on a conspiracy theory that sought to explain away the mainstream medical and scientific consensus related to Lyme disease treatment. Complaint, Dkt. No. 1 ("Orig. Compl."). In ruling on Defendants' motion to dismiss the Original Complaint, the Court held that Plaintiffs stated claims under the Sherman Act, but not under RICO, and that Plaintiffs had not alleged facts sufficient to establish fraudulent concealment to toll the relevant statutes of limitations. Memorandum Opinion and Order, Dkt. No. 114 ("Mem. Op.") at 12-23, 26-31. The Court gave Plaintiffs thirty days to file an amended complaint, noting that they had been engaging in discovery with Defendants for over four months and might be able to cure the deficiencies in their RICO claims and fraudulent concealment allegations. *Id.*

Instead of filing an amended complaint within thirty days, Plaintiffs first filed a motion for an open-ended extension—arguing that they lacked the facts necessary to plead proper RICO claims and fraudulent concealment allegations. Dkt. No. 123. Plaintiffs then filed a motion to compel that sought unspecified non-email discovery from 2013 to 2017 from the Insurance Defendants—but not from IDSA or the IDSA Panelists—and that asked the Court to order

Defendants to produce documents starting in 1992. Dkt. No. 138. At the hearing on these and other motions on March 11, 2019, the Court ordered Plaintiffs to file their amended complaint within fourteen days. Transcript, Dkt. No. 177 at 100:23-25.

On March 25, 2019, after having the opportunity to seek discovery from Defendants and non-parties for at least eleven months, Plaintiffs filed an amended complaint that not only fails to correct the deficiencies in their RICO claims and fraudulent concealment arguments but also deletes key allegations that undergirded Plaintiffs' RICO and Sherman Act claims.

Alleged Payments to IDSA Panelists. Plaintiffs again allege that the Insurance Defendants paid four of the IDSA Panelists from 1995 to 2017, Am. Compl. ¶ 66, that Defendants' wrongful acts "are related and continuous," Am. Compl. ¶ 99, and that "this is a multi-year conspiracy constituting a continuing tort." Am. Compl. ¶ 106. But these allegations are purely conclusory: Plaintiffs do not identify a single payment from an Insurance Defendant to an IDSA Panelist.

Plaintiffs complain that they do not have the facts they need. But nowhere does the Amended Complaint allege what efforts, if any, Plaintiffs have made to obtain evidence of payments from sources other than the Connecticut Attorney General, whose investigation ceased over a decade ago.[1] Am. Compl. Ex. B. Nor do Plaintiffs explain why they are unable to allege a single specific payment from an Insurance Defendant to an IDSA Panelist between 2013 and 2017, even though Plaintiffs were provided full discovery from Defendants from November 2013 to November 2017. Plaintiffs also allege that the Insurance Defendants paid the IDSA Panelists to serve as expert witnesses, Am. Compl. ¶¶ 59, 100, but Plaintiffs do not allege that they made any

[1] The Connecticut Attorney General had requested evidence of payments only up to July 31, 2007, and concluded his investigation in 2008. Am. Compl. ¶ 83, footnote 58.

effort to identify the proceedings where the IDSA Panelists served as experts or that these proceedings are private or are under seal.

Alleged Reporting of Doctors to Medical Boards. Plaintiffs also assert that the Insurance Defendants have reported doctors to medical boards for treating chronic Lyme disease but do not identify a single Insurance Defendant that reported a single doctor to a medical board. Plaintiffs allege that "a health insurance company" reported Dr. Hope McIntyre to the Maryland State Board of Physicians on March 24, 2014, Am. Compl. ¶ 73, but do not allege that any of the Insurance Defendants made that report. Similarly, Plaintiffs allege that Drs. Joseph G. Jemsek, Kenneth B. Liegner, and Charles Ray Jones were reported to medical boards, Am. Compl. ¶¶ 74-76, but do not allege that any Insurance Defendant made any such report. Plaintiffs allege that their subpoena to the Texas Medical Board was quashed because of a Texas statute protecting investigative information, but they fail to disclose that the Texas Medical Board's motion to quash was granted only after Plaintiffs failed to file a response.[2]

Removal of Conspiracy Allegations. Plaintiffs not only fail to plead facts in support of their dismissed RICO and fraudulent concealment allegations, but they actually have retreated, *removing* from their Amended Complaint key allegations that underpinned the Court's ruling sustaining parts of the Original Complaint under Rule 8(a). The Court's ruling relied upon specific allegations in the Original Complaint that the Insurance Defendants paid the IDSA Panelists "large fees" and "large sums of money" to develop arbitrary guidelines for the Insurance Defendants, to review and deny insurance coverage claims related to Lyme disease for the Insurance Defendants,

[2] *See* Order granting Non-Party Texas Medical Board's Opposed Motion to Quash Subpoena to Produce Documents and Notice of Objections, attached as Exhibit A ("Response to the motion was due by June 29, 2018, but no response has been filed.").

and to testify against Lyme doctors for the Insurance Defendants. Mem. Op. at 14, 18 (quoting Orig. Compl. ¶¶ 55, 79).

Those allegations are now gone. Plaintiffs no longer allege that the Insurance Defendants paid the IDSA Panelists "large fees" in exchange for anything. At most, Plaintiffs allege that the Insurance Defendants paid the IDSA panelists unspecified consulting fees to "influence" the IDSA Lyme disease guidelines. Am. Compl. ¶ 49. And Plaintiffs now do not allege that the Insurance Defendants made any payments at all to Dr. Steere.[3]

Finally, for twenty-one Plaintiffs, the Amended Complaint does not allege any injuries caused by Defendants' alleged conduct within the four-year statute of limitations period.

ARGUMENT

I. Plaintiffs' RICO Claims Must Be Dismissed

A. The Amended Complaint Omits the Key Factual Allegations that Supported the Court's Ruling that Plaintiffs Properly Alleged a RICO Enterprise Under Rule 8(a)

Before dismissing Plaintiffs' RICO claims for failing to allege fraud with sufficient particularity under Rule 9(b), the Court held that Plaintiffs' Original Complaint adequately pled a RICO enterprise under the less stringent requirements of Rule 8(a). Mem. Op. at 14, 18-19. That holding rested upon specific allegations in the Original Complaint that the Insurance Defendants paid the IDSA Panelists "large fees" and "large sums of money" in order (1) to develop "together" restrictive Lyme disease treatment guidelines; (2) to review and deny Lyme disease claims for the

[3] The Original Complaint alleged as follows: "The Insurance Defendants also paid Dr. Allen Steere, a well-respected Lyme researcher, to endorse their new Lyme disease treatment policy of limiting Lyme disease treatment to 28-days." Orig. Compl. ¶ 59. This allegation does not appear in the Amended Complaint, which no longer alleges that any Insurance Defendant paid Dr. Steere.

Insurance Defendants; and (3) to testify against Lyme disease doctors the Insurance Defendants reported to state medical boards. *Id.* (quoting Orig. Compl. ¶¶ 49, 55, 70, 79).

The Court held that the Original Complaint adequately alleged that the IDSA Panelists, in exchange for "large fees" and "large sums of money" from the Insurance Defendants, *agreed* with the Insurance Defendants to restrain trade in the alleged market for Lyme disease treatment and to monopolize that market. Mem. Op. at 19, 21. These same conspiracy allegations supported Plaintiffs' alleged RICO enterprise. *See* Mem. Op. at 26 (citing twice Mem. Op. Section I. C, upholding Plaintiffs' antitrust claims based on specific allegations of an unlawful agreement among Defendants).

Plaintiffs have now removed those allegations. In particular, the Amended Complaint does not allege that the Insurance Defendants paid "large fees" or "large sums of money" to the IDSA Panelists to work "together" on the guidelines, to review and deny Lyme disease claims, or to testify against Lyme disease doctors before medical boards. The Amended Complaint alleges no more than that the Insurance Defendants paid consulting fees to the IDSA panelists "to influence the IDSA guidelines," Am. Compl. ¶ 49, that "consulting fees were paid by the insurance companies to the IDSA Panelists before the IDSA Panelists created the IDSA guidelines," Am. Compl. ¶ 56, and that the Insurance Defendants "work with, and compensate, the IDSA Panelists to keep the 28-day standard in place." Am. Compl. ¶ 88. These conclusory allegations are not sufficient to allege an antitrust conspiracy by Defendants, as discussed below, *see* Section IV, *infra,* and likewise are not sufficient to allege a RICO enterprise. *See Elliott v. Foufas*, 867 F.2d 877 (5th Cir. 1989) (affirming dismissal of RICO claim based on Plaintiff's conclusory allegations).

Because the Amended Complaint does not allege facts sufficient to plead a RICO enterprise, Plaintiffs' RICO claims should be dismissed under Rule 12(b)(6).

B. Plaintiffs Are Not Entitled to a Relaxed Pleading Standard for Those Allegations Subject to Rule 9(b)

Plaintiffs have not demonstrated the diligence required to benefit from a relaxed pleading standard. The Court therefore should continue to hold Plaintiffs' RICO claims to Rule 9(b)'s heightened pleading standard, which Plaintiffs concede in their Amended Complaint they cannot satisfy.

The Court dismissed Plaintiffs' RICO claims in the Original Complaint because Plaintiffs failed to allege acts of fraud with the particularity required by Rule 9(b). Mem. Op. at 28-29. Plaintiffs had previously urged the Court to apply a relaxed pleading standard, but the Court determined that "the most appropriate course of action" would be to permit Plaintiffs to amend their complaint, using the additional facts they had obtained from Defendants after more than four months of discovery. *Id.* at 29-30. The Court recognized that "the pleading requirements of Rule 9(b) may, to some extent, be relaxed when the facts relating to the alleged fraud are peculiarly within the perpetrator's knowledge." *Id.* at 29 (citing *U.S. ex rel. Willard v. Humana Health Plan of Texas Inc.*, 336 F.3d 375, 385 (5th Cir. 2003)). However, a claimant seeking a relaxed pleading standard must demonstrate that it was diligent in seeking the facts necessary to plead his claims with particularity. *Sealed Appellant I v. Sealed Appellee I,* 156 F. App'x 630, 634 (5th Cir. 2005).

In *Sealed Appellant I*, the Fifth Circuit affirmed a dismissal from the Eastern District of Texas for failure to satisfy Rule 9(b)'s pleading requirements in part because the claimant had not demonstrated that he had exercised diligence by attempting to obtain the necessary information from the relevant third parties. *Id.* That required diligence extends to seeking the necessary information from the parties themselves, particularly here, where Plaintiffs had nearly eleven

months to obtain discovery from Defendants before filing their Amended Complaint. *See Halprin v. Fed. Deposit Ins. Corp.*, No. 5:13-CV-1042-RP, 2016 WL 5718021, at *4 (W.D. Tex. Sept. 30, 2016) (rejecting relaxed standard for Rule 9(b) where plaintiffs had access to discovery and failed to allege key facts—*e.g.*, where and when misrepresentations were made and who made them); *cf. Cincinnati Life Ins. Co. v. Grotenhuis*, No. 2:10-cv-00205-LJM-WGH, 2012 WL 13032884, at *4 (S.D. Ind. Feb. 16, 2012) (declining to relax pleading standard where, "nearly a year after litigation began and after extensive motions practice," the plaintiffs "had ample time to obtain discovery sufficient to conform their pleadings to the basic requirements of Rule 9(b)"); *U.S. v. Chubb Institute*, No. 06-3562, 2010 WL 1076228, at *11 (D.N.J. Mar. 22, 2010) (relators' argument for relaxed pleading standard was "undermined by the fact that they have had access for the past two years to voluminous records" produced in discovery).

Plaintiffs have not demonstrated the diligence required to benefit from a relaxed pleading standard. In response to the Court's Order allowing them to file an amended pleading using the additional facts they had obtained from Defendants during four months of discovery, Plaintiffs did not even try. Instead of filing an amended complaint by October 29, 2018, Plaintiffs first filed a motion for an open-ended extension. Plaintiffs then filed a motion to compel that sought unspecified non-email discovery from 2013 to 2017 from the Insurance Defendants—but not from IDSA or the IDSA Panelists—and that asked the Court to order Defendants to produce documents starting in 1992.

While waiting for a hearing on Plaintiffs' motions, with discovery open and ongoing, Plaintiffs again sat on their hands. They did not seek Defendants' depositions. They did not even seek Defendants' emails, as noted by the Court at the March 11 hearing:

> THE COURT: . . . . So here we are 11 months after the scheduling conference, and you haven't submitted an e-discovery request? Is that what you're telling me?

MR. DUTKO: Your Honor, we –
THE COURT: Yes or no?
MR. DUTKO: That is correct.

Transcript, Dkt. 177 at 14:2-8.

Plaintiffs admitted at the March 11 hearing that they did not have the facts they would need to plead their RICO claims with particularity—and argued yet again for a relaxed pleading standard. But the Court refused to reconsider its motion to dismiss ruling:

THE COURT: Are you arguing the motion to dismiss again?
MR. DUTKO: Well, based on your question --
THE COURT: Because I've ruled on the motion to dismiss.

Transcript, Dkt. 177 at 51:1-6. As such, the Court denied Plaintiffs' motion for an open-ended extension and ordered Plaintiffs to file their amended complaint within fourteen days. Transcript, Dkt. 177 at 100:22-25.

Plaintiffs' limited discovery efforts fall short. Plaintiffs allege that they sought information from the Connecticut Attorney General, Am. Compl. ¶ 62, but, when rebuffed, they apparently gave up. Plaintiffs assert that their subpoena to the Texas Medical Board was quashed due to a Texas statute, Am. Compl. ¶ 71, but in fact Plaintiffs' subpoena was quashed only after Plaintiffs failed to file a response to the medical board's motion to quash.[4] Plaintiffs now allege that "a health insurance company" reported Dr. Hope McIntyre to the Maryland State Board of Physicians on March 24, 2014, Am. Compl. ¶ 73, but there is no indication that Plaintiffs sought to discover whether any of the Defendants reported Dr. McIntyre, even though they had eleven months to seek that discovery.

[4] *See* Ex. A, Order granting Non-Party Texas Medical Board's Opposed Motion to Quash Subpoena to Produce Documents and Notice of Objections ("Response to the motion was due by June 29, 2018, but no response has been filed."). Plaintiffs apparently did not do anything to test the statute that they assert blocks their access to the information they claim they need.

The result is a new complaint that again fails to "allege facts specifying each Defendant's contribution to the fraud." Mem. Op. at 28-29. Instead, Plaintiffs blame Defendants for their inability to plead proper fraud claims, even after nearly eleven months of discovery. In their Amended Complaint—after describing the parties and the jurisdictional basis for their claims, but before even alleging a single fact regarding Lyme disease or the supposed conspiracy—Plaintiffs allege that "the facts and allegations are based upon information acquired by Plaintiffs because Defendants have not produced documents that are solely in their control." Am. Compl. ¶ 40.

Defendants deny that the facts exist to support Plaintiffs' allegations. But taking Plaintiffs' allegations as true for purposes of this motion to dismiss, Plaintiffs failed to exercise reasonable diligence to obtain relevant documents and information from Defendants in order to plead Defendants' alleged fraud with particularity. The Court should not reward their indolence with a relaxed pleading standard. *See Gregory v. Houston Independent Sch. Dist.*, No. CV H-14-2768, 2016 WL 5661701, at *7 (S.D. Tex. Sept. 30, 2016) (a court should resist "open[ing] the door to discovery as a tool to remedy the defects in the first amended complaint").

C. Even Under a Relaxed Pleading Standard, Plaintiffs' Allegations Fall Short

The Court should not relax Rule 9(b)'s pleading standard, but even under a relaxed standard, the Amended Complaint fails to plead fraud adequately. As noted above, the Fifth Circuit recognizes certain exceptions to Rule 9(b), *see U.S. ex rel. Willard*, 336 F.3d at 385, but this exception "must not be mistaken for license to base claims of fraud on speculation and conclusory allegations." *U.S. ex rel. Thompson v. Columbia/HCA Healthcare Corp.*, 125 F.3d 899, 903 (5th Cir. 1997). Moreover, "even where allegations are based on information and belief, the complaint must set forth a factual basis for such belief." *Id.*

Courts that have applied a relaxed pleading standard still have dismissed fraud claims that lacked basic details regarding the alleged fraud. *See, e.g., Paup v. Texas*, No. 6:16-CV-417-RWS-

KNM, 2017 WL 9289648, at *13 n.16 (E.D. Tex. Jan. 31, 2017) (dismissing fraud claim where plaintiff provided "the contents of the false representations" but omitted "the time and place of these alleged fraudulent activities") *report and recommendation adopted*, 2017 WL 1129906 (E.D. Tex. Mar. 27, 2017); *United States ex rel. King v. Alcon Labs., Inc.*, 232 F.R.D. 568, 572 (N.D. Tex. 2005) (relators failed to plead fraud under relaxed pleading standard because they did not identify anybody involved in the alleged fraud, did not point to specific fraudulent claims, and did not specify a date on which fraudulent activity occurred); *United States ex rel. Lam v. Tenet Healthcare Corp.*, 481 F. Supp. 2d 673, 688 (W.D. Tex. 2006) (allegations that the fraudulent events took place at some point in the 1980s, between 1995 and 2002, and in 1999 were insufficient to plead fraud under relaxed standard).

Like the dismissed fraud claims in *Paup*, *King,* and *Lam*, the watered-down fraud allegations in the Amended Complaint fall short even under a relaxed pleading standard. The alleged payments from the Insurance Defendants to the IDSA Panelists are no longer "large," and they now were allegedly made only with the hope that they would influence the IDSA Lyme disease guidelines—not as part of a racketeering scheme. There are still no allegations of which Insurance Defendants, if any, paid which IDSA Panelists at what times, even within the November 2013 to November 2017 time period. Likewise, there are still no details regarding which Insurance Defendants, if any, reported which Lyme disease doctors to medical boards or when these reports were made—or which IDSA Panelists testified against which Lyme disease doctors or when.

Plaintiffs' RICO claims should therefore be dismissed with prejudice. *See Paup*, 2017 WL 9289648, at *13; *King,* 232 F.R.D. at 572; *Lam*, 481 F. Supp. 2d at 688.

II. The Amended Complaint Omits Key Factual Allegations That Supported the Court's Ruling that Plaintiffs Properly Pled Their Antitrust Claims

In ruling that Plaintiffs properly pled their antitrust claims, the Court held that the Original Complaint contained sufficient factual matter "to suggest that an agreement was made" and that "the alleged agreement had an anticompetitive effect." Mem. Op. at 13. The Court also held that "Plaintiffs have pleaded a plausible claim of conspiracy and concerted action among the Defendants to restrain trade" and that Plaintiffs alleged conduct that "adequately establishes a concerted action, meeting of the minds and commitment to a common scheme by the Defendants." *Id.* at 18-19.

In so holding, the Court relied upon the following specific allegations in the Original Complaint that the Insurance Defendants paid the IDSA Panelists "large fees" and "large sums of money" as part of an alleged anticompetitive conspiracy:

1) The Insurance Defendants paid the IDSA Panelists "large fees" so that "together" they developed arbitrary guidelines, Mem. Op. at 14 (quoting Orig. Compl. ¶ 55);
2) In 2006 the Insurance Defendants "put the IDSA Panelists back to work" to write even more restrictive guidelines, *id.* at 18 (citing Orig. Compl. ¶ 70);
3) The Insurance Defendants paid the IDSA Panelists "large sums of money . . . to review, and deny, insurance coverage claims related to Lyme disease," *id.* at 14 (quoting Orig. Compl. ¶ 55); and
4) The Insurance Defendants, after reporting Lyme-treating doctors to medical boards, "would pay the IDSA Panelists to testify as experts against these doctors." *Id.* at 18 (quoting Orig. Compl. ¶ 79).

The Court held that these allegations "more than adequately establish[] a concerted action, meeting of the minds and commitment to a common scheme by the Defendants" in order to state

a claim under Section 1. Mem. Op. at 19. The Court also held that the same allegations that support Plaintiffs' Section 1 claim—in particular, allegations that the Insurance Defendants and IDSA Panelists worked together to report physicians who treated chronic Lyme disease and that the Insurance Defendants paid the IDSA Panelists to review and deny claims for long-term antibiotic treatment for chronic Lyme disease—demonstrate that Plaintiffs sufficiently pled their Section 2 claim. Mem. Op. at 21.

Those allegations are now gone. And the watered-down allegations that remain are not enough. Instead of alleging an actual agreement between the Insurance Defendants, the IDSA Panelists, and IDSA, the Amended Complaint now alleges that the Insurance Defendants "paid consulting fees to the IDSA panelists to *influence* the IDSA guidelines," Am. Compl. ¶ 49 (emphasis added), that "consulting fees were paid by the insurance companies to the IDSA Panelists before the IDSA Panelists created the IDSA guidelines," *id.* ¶ 56, and that the Insurance Defendants "work with, and compensate, the IDSA Panelists to keep the 28-day standard in place." *Id.* ¶ 88.

There is no longer any specific allegation that the Insurance Defendants paid "large fees" or "large sums of money" to the IDSA Panelists to work "together" on the guidelines or to review and deny Lyme disease claims. Mem. Op. at 14 (quoting Orig. Compl. ¶ 49). There is also no longer any specific allegation that the Insurance Defendants paid the IDSA Panelists to testify against the Lyme-treating doctors reported to medical boards. With respect to the "large fees" and "large sums of money" that Plaintiffs alleged in their Original Complaint are the foundation of the massive conspiracy that supports their RICO and antitrust claims, the Amended Complaint asserts in a conclusory fashion that "[a]ll of the evidence of payments made from the Insurance

Defendants to the IDSA Panelists are solely in the possession of the Defendants." Am. Comp. ¶ 61.

These weakened allegations can no longer sustain Plaintiffs' antitrust claims. The Court held that Plaintiffs must allege "that the defendants engaged in concerted action, defined as having a conscious commitment to a common scheme designed to achieve an unlawful objective." Mem. Op. at 18 (quoting *Marucci Sports, L.L.C. v. Nat'l Collegiate Athletic Ass'n*, 751 F.3d 368, 372-73 (5th Cir. 2014)); *see Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 545 (2007) ("Stating a § 1 claim requires a complaint with enough factual matter (taken as true) to suggest that an agreement was made.").

Marucci and *Twombly,* relied upon by the Court in upholding Plaintiffs' antitrust claims as pled in the Original Complaint, now support dismissing Plaintiffs' antitrust claims as pled in the Amended Complaint. For example, the plaintiff in *Marucci* alleged "without further detail" that the defendants entered into a conspiracy "which consisted of an understanding and concert of action" to exclude competitors and new entrants in the market by enforcing a standard for baseball bats. *Marucci*, 751 F.3d at 375 (internal quotations omitted). But the Fifth Circuit found that the plaintiff had failed to "allege any specific *facts* demonstrating an intention on the part of the [defendants] or any other party to engage in a conspiracy." *Id.* Because these allegations did not "set forth facts that demonstrate a 'meeting of the minds'" among the alleged conspirators, the court held that the plaintiff had failed to sufficiently allege a Section 1 claim. *Id.* (quoting *Twombly*, 550 U.S. at 557).

Alleging that the Insurance Defendants paid the IDSA Panelists before the guidelines were created with the hope that the payments might "influence" the IDSA Lyme disease guidelines is not sufficient because it does not allege any "intention on the part of" the IDSA panelists "to

engage in a conspiracy." *Id.* In addition, Plaintiffs' conclusory allegations at the end of the Amended Complaint, *see, e.g.,* Am. Compl. ¶¶ 110, 115—unchanged from the Original Complaint—cannot save Plaintiffs' now-deficient antitrust claims. *See Vendever LLC v. Intermetic Mfg. Ltd.*, No. 3:11-CV-201-B, 2011 WL 4346324, at *7-8 (N.D. Tex. Sept. 16, 2011) ("In pleading a § 1 conspiracy, 'a general allegation of conspiracy, without a statement of the facts constituting the conspiracy to restrain trade, its object and accomplishment, is but an allegation of a legal conclusion, which is insufficient to constitute a cause of action.'") (quoting *Nelson Radio & Supply Co. v. Motorola, Inc.*, 200 F.2d 911, 913-14 (5th Cir. 1952)); *Larry R. George Sales Co. v. Cool Attic Corp.*, 587 F.2d 266, 273 (5th Cir. 1979) (same).

It would be particularly inappropriate to credit Plaintiffs' unchanged, wholly conclusory allegations where, as here, Plaintiffs have removed from their Original Complaint specific factual allegations that all Defendants had entered into an unlawful conspiracy. *See, e.g.*, *Cole v. Boeing Co.*, 75 F. Supp. 3d 70, 79 n.8 (D.D.C. 2014) ("Because this phrase was deleted from the Second Amended Complaint and there is no evidence in the record to support it, the Court has no basis to infer that [plaintiff] complained of harassment based on gender when she went to the OIG, and it declines to do so.") *aff'd*, 621 F. App'x 10 (D.C. Cir. 2015).

III. Plaintiffs Fail to Allege Fraudulent Concealment

Plaintiffs are not entitled to a relaxed pleading standard and, even if a relaxed pleading standard were to apply, they still have not properly pled fraudulent concealment by Defendants.

As the Court held, fraudulent concealment may toll the statute of limitations only if Plaintiffs can prove two elements: "first that the defendants concealed the conduct complained of, and second, that the plaintiff failed, despite the exercise of due diligence on his part, to discover the facts that form the basis of his claim." Mem. Op. at 34 (quoting *Astoria Ent., Inc. v. Edwards*, 159 F. Supp. 2d 303, 319 (E.D. La. 2001) (quoting *State of Texas v. Allan Constr. Co., Inc.*, 851

F.2d 1526, 1528 (5th Cir. 1988)). As with other claims involving fraud, fraudulent concealment allegations must meet Rule 9(b)'s heightened standard. *Id.* at 34-35; *see Summer v. Land & Leisure, Inc.*, 664 F.2d 965, 970-71 (5th Cir. 1981).

Plaintiffs' Amended Complaint falters at the first step because it does not allege concealment. *See Carney v. United States*, No. 3:99-CV-1989-M, 2003 WL 21653853, at *3-4 (N.D. Tex. Mar. 31, 2003) (granting motion to dismiss and rejecting plaintiff's fraudulent concealment argument for failure to allege any affirmative acts of concealment). Plaintiffs' Amended Complaint adds a new section titled "Fraudulent Concealment," Am. Compl. ¶¶ 92-98, and Plaintiffs' first new fraudulent concealment allegation is that Dr. Steere "acknowledged in 1994 that chronic Lyme disease existed: 'It has become increasingly apparent that the Lyme disease spirochete, *Borrelia burgorferi*, may persist in some patients for years.'" *Id.* ¶ 93 (quoting letter from A. Steere dated August 11, 1994). Even assuming that Dr. Steere's letter means what Plaintiffs say it means regarding chronic Lyme disease (and Defendants deny this assumption), the letter, on its face, cannot support Plaintiffs' fraudulent concealment allegations for the simple reason that it was never concealed from anyone. To the contrary, it was sent to multiple patients, inviting them to participate in follow-up research led by Dr. Steere. Plaintiffs do not allege that Dr. Steere (or any other Defendant) concealed anything.

Plaintiffs' other new fraudulent concealment allegations likewise do not allege concealment. If, as Plaintiffs allege, Defendants improperly report doctors to medical boards, deny insurance coverage for long-term antibiotics (from which Plaintiffs, themselves, claim that they have suffered), or claim that chronic Lyme disease does not exist, Am. Compl. ¶ 94, they do so openly, and Plaintiffs have been aware of these alleged wrongful acts for decades. They cannot, therefore, be a proper basis to invoke fraudulent concealment.

Plaintiffs' final fraudulent concealment allegation—that the 2006 IDSA Lyme disease guidelines claim that "there is no treatment failure for any Lyme patient who receives short-term antibiotics," Am. Compl. ¶ 95—is squarely contradicted by the 2006 Lyme disease guidelines themselves. *See* Wormser et al., The Clinical Assessment, Treatment, and Prevention of Lyme Disease, Human Granulocytic Anaplasmosis, and Babesiosis: Clinical Practice Guidelines by the Infectious Diseases Society of America, 43 *Clinical Infectious Diseases* 9, 1089-1134 at 1093-94 (Nov. 1, 2006) *available at* https://academic.oup.com/cid/article/43/9/1089/422463 (last visited April 8, 2019) (acknowledging possible treatment failures and discussing follow-up treatments).[5] And, again, even if the IDSA Lyme disease guidelines errantly claimed that there is no treatment failure, the guidelines were not concealed but were notorious and open.

Plaintiffs' new fraudulent concealment allegations also fail because they are not pled with the particularity required by Rule 9(b) and also because Plaintiffs have not included sufficient allegations to suggest that they exercised due diligence in investigating their potential claims. The Court held squarely that "even if Plaintiffs had adequately pleaded that Defendants fraudulently concealed their actions, they do not allege any facts in their Complaint that would support an inference that Plaintiffs exercised due diligence to discover these actions." Mem. Op. at 35. In response, Plaintiffs allege *no new facts* to support an inference that they exercised due diligence to discover their purported claims.

Not only have Plaintiffs failed to answer the Court's call to allege their diligence, the facts alleged, together with Plaintiffs' admissions at the March 11 hearing and the entire record in this

[5] Indeed, Table 3 of the 2006 IDSA Guidelines explicitly states: "Regardless of the clinical manifestation of Lyme disease, complete response to treatment may be delayed beyond the treatment duration. Relapse may occur with any of these regimens; patients with objective signs of relapse may need a second course of treatment." *Id.* at 1106.

case, confirm that Plaintiffs have failed to diligently investigate the existence of any facts to support their allegations. Because Plaintiffs have not alleged facts to show they acted diligently in investigating claims that they now contend are supported by decades-old public statements, fraudulent concealment does not toll the statute of limitations for their RICO or antitrust claims. Plaintiffs' claims, if any have been properly pled, should be limited to the four years prior to the filing of the Original Complaint.

IV. Twenty-One Plaintiffs' Claims Are Barred by the Statute of Limitations

Absent the benefit of tolling due to fraudulent concealment, Plaintiffs must allege "some injurious act actually occurring during the limitations period." *Kaiser Aluminum & Chem. Sales, Inc. v. Avondale Shipyards, Inc.*, 677 F.2d 1045, 1053 (5th Cir. 1982) (quoting *Poster Exch., Inc. v. Nat'l Screen Serv. Corp.*, 517 F.2d 117, 128 (5th Cir. 1975)). "Generally, an antitrust cause of action accrues, and the four-year statute of limitations begins to run, when a defendant commits an act that injures a plaintiff's business." *Kaiser Alum.*, 677 F.2d at 1051.

The Court noted that the Fifth Circuit recognizes the continuing violation exception to the four-year statute of limitations. *See* Mem. Op. at 32 (citing *Poster Exch.*, 517 F.2d at 119). This exception provides that a new cause of action under the Sherman Act accrues "whenever the defendant commits an overt act in furtherance of an antitrust conspiracy." *Kaiser Alum.*, 677 F.2d at 1051. However, damages occurring within the limitations period caused by an act *outside* the limitations period will not create a new cause of action or otherwise toll the limitations period. *Id.* at 1053.

An antitrust plaintiff must demonstrate "a specific act or word of refusal during the limitations period." *Poster Exch.*, 517 F.2d at 129. "[T]he harm that creates the new cause of action must be 'antitrust harm, i.e., a continuing injury to competition, not merely a continuing pecuniary injury to a plaintiff.'" *Kaiser Alum.*, 677 F.2d at 1055 (quoting *Electroglas, Inc. v.*

Dynatex Corp., 497 F. Supp. 97, 105 (N.D. Cal. 1980)). "Plaintiffs are not generally allowed to restart the limitations period perpetually merely by repeated requests that the defendant refuses." *Rx.com, Inc. v. Medco Health Solutions, Inc.*, No. 5:04-CV-227-DF, 2008 WL 11449354, at *8 (E.D. Tex. Mar. 11, 2008) (quoting Areeda, Hovenkamp & Blair, Antitrust Law 320 at 214 (2d ed. 2000)), *aff'd* 322 F. App'x. 394 (5th Cir. 2009).

Here, the Court held that three Plaintiffs alleged "specific instances of overt, anticompetitive action occurring within four years from the time of filing the Complaint" (*i.e.*, occurring on or after November 10, 2013): Plaintiff Amy Hanneken, who allegedly was denied insurance coverage for chronic Lyme treatment in 2014; Plaintiff Rosetta Fuller, who allegedly was diagnosed with Lyme disease in 2016; and Plaintiff Adriana Moreira, who allegedly was diagnosed with Lyme disease in 2016. *See* Mem. Op. at 33. Defendants do not assert here that these three Plaintiffs' claims are time-barred.[6]

The remaining twenty-one Plaintiffs, however, cannot rely on these three acts in furtherance of the alleged conspiracy to toll the statute of limitations applicable to their individual claims. The statute of limitations applies separately to each Plaintiff's case. *See, e.g.*, *Clark v. Centene Co. of Tex., L.P.*, 44 F. Supp. 3d 674, 687 (W.D. Tex. 2014) (granting summary judgment as to individual plaintiff's claims barred by the individualized application of the statute of limitations); *see also Verde v. Stoneridge, Inc.*, No. 6:14-CV-225, 2016 WL 9022449, at *9 (E.D.

[6] While Defendants do not seek reconsideration of the Court's decision on this point, Defendants nonetheless reserve the right to demonstrate that not one of these Plaintiffs has alleged an overt act in furtherance of the alleged conspiracy—and, in particular, that the acts alleged by Plaintiff Rosetta Fuller and Plaintiff Adriana Moreira are not acts *by a Defendant*—and therefore are insufficient to demonstrate that these three Plaintiffs have claims within the statute of limitations period.

Tex. Nov. 7, 2016) (finding that the statute of limitations requires an individualized inquiry for each plaintiff).

Apart from the three Plaintiffs named above, the Amended Complaint contains no allegations of "an act injurious" to each individual on or after November 10, 2013. Furthermore, it is not enough for Plaintiffs to allege generally that the Insurance Defendants continued to deny coverage for chronic Lyme treatment throughout the limitations period; as noted above, Plaintiffs cannot "restart the limitations period" simply by repeatedly asking for coverage that was previously denied. *See Rx.com*, 2008 WL 11449354, at *8. These Plaintiffs fail to connect any act *within the limitations period* to *any* antitrust injury or other alleged harm to them. Without allegations of acts causing antitrust injury within the limitations period, the conduct alleged in the Amended Complaint is time-barred for these individual Plaintiffs.

Perhaps to avoid this individualized inquiry and to toll the statute of limitations for Plaintiffs as a group, the Amended Complaint states for the first time that Plaintiffs bring this action "on behalf of themselves and for all other members of the class herein." Am. Comp. at 1. But the Amended Complaint contains no class allegations, and Plaintiffs have not otherwise asked the Court to certify a class. Individuals who file actions separate from a class action cannot take advantage of class action tolling of claims. *In re Enron Corp. Sec.*, 465 F. Supp. 2d 687, 715-16 (S.D. Tex. 2006). Such tolling "is not intended to be a tool to manipulate limitations periods for parties who, intending all along to pursue individual claims, assert reliance on the proposed class action just long enough to validate their otherwise time barred claims." *Rahr v. Grant Thornton LLP*, 142 F. Supp. 2d 793, 800 (N.D. Tex. 2000).

Because the Amended Complaint fails to allege even a single injurious act on or after November 10, 2013, for twenty-one Plaintiffs, these twenty-one Plaintiffs must be dismissed.

V. All Claims Against Dr. Steere Should Be Dismissed

Even if some or all of Plaintiffs' claims survive, the Court should dismiss Plaintiffs' claims against Dr. Steere because Plaintiffs no longer plausibly allege that Dr. Steere was a member of any conspiracy. In the Original Complaint, Plaintiffs alleged that the "Insurance Defendants also paid Dr. Allen Steere . . . to endorse their new Lyme disease treatment policy of limiting Lyme disease treatment to 28-days." Orig. Compl. ¶ 59. This allegation is absent from the Amended Complaint. Plaintiffs do not allege that Dr. Steere received any payments from any Insurance Defendant. *See* Am. Compl. ¶ 66 (alleging, upon information and belief, payments to the other IDSA Panelists). Without anything to support this alleged conspiracy, Plaintiffs' claims regarding Dr. Steere rest on conclusory allegations and should be dismissed. *See Vendever*, 2011 WL 4346324, at *7-8.

CONCLUSION

For the reasons stated herein, Defendants request that the Court dismiss all counts of Plaintiffs' Amended Complaint with prejudice.

Respectfully submitted,

BAKER BOTTS L.L.P.

By: s/ Earl B. Austin
Earl B. Austin - *Lead Attorney*
Texas Bar No. 01437300

30 Rockefeller Plaza
New York, New York 10112
Phone: (212) 408-2564
Fax: (212) 259-2564
Email: earl.austin@bakerbotts.com

John B. Lawrence
Texas Bar No. 24055825

2001 Ross Avenue, Suite 600
Dallas, Texas 75201
Phone: (214) 953-6873
Fax: (214) 661-6873
Email: john.lawrence@bakerbotts.com

Matthew G. Sheridan
Texas Bar No. 24088404
910 Louisiana Street
Houston, Texas 77002
Phone: (713) 229-1568
Fax: (713) 229-7968
Email: matthew.sheridan@bakerbotts.com

HALTOM & DOAN

Jennifer H. Doan
Texas Bar No. 08809050
J. Randy Roeser
Texas Bar No. 24089377
6500 Summerhill Road, Suite 100
Texarkana, TX 75503
Telephone: 903.255.1000
Facsimile: 903.255.0800
Email: jdoan@haltomdoan.com
Email: rroeser@haltomdoan.com

ATTORNEYS FOR DEFENDANT AETNA INC.

REED SMITH LLP

BY: /s/ Peter J. Chassman
Martin James Bishop
Texas Bar No. 24086915
Peter John Chassman
Texas Bar No. 00787233

811 Main Street, Suite 1700
Houston, TX 77002
Phone: (713) 469-3885
Fax: (713) 469-3899
Email: mbishop@reedsmith.com
Email: pchassman@reedsmith.com

Debra H. Dermody (*pro hac vice*)
William J. Sheridan (*pro hac vice*)
225 Fifth Avenue, Suite 1200
Pittsburgh, PA 15222-2716
Phone: (412) 288-3131
Fax: (412) 288-3063
Email: ddermody@reedsmith.com
Email: wsheridan@reedsmith.com

ATTORNEYS FOR DEFENDANT BLUE CROSS AND BLUE SHIELD OF TEXAS

FOLEY & LARDNER LLP – LOS ANGELES

BY: /s/ Kimberly A. Klinsport
KIMBERLY A. KLINSPORT
Texas Bar No. 24096073
555 South Flower Street, Suite 3500
Los Angeles, CA 90071-2411
Phone: (213) 972-4500
Fax: (213) 486-0065
E-mail: kklinsport@foley.com

FOLEY & LARDNER LLP - BOSTON

Michael J. Tuteur
(Admitted to E.D. Tex.)
111 Huntington Avenue, Suite 2500
Boston, MA 02199-7610
Phone: (617) 342-4000
Fax: (617) 342-4001
Email: mtuteur@foley.com

FOLEY & LARDNER LLP – SAN FRANCISCO

Eileen R. Ridley
(Admitted to E.D. Tex.)
555 California Street, Suite 1700
San Francisco, CA 94104-1520
Phone: (415) 434-4484
Fax: (415) 434-4507
Email: eridley@foley.com

ATTORNEYS FOR DEFENDANT ANTHEM, INC.

MORGAN, LEWIS & BOCKIUS LLP

BY: /s/ R. Brendan Fee
R. Brendan Fee (*pro hac vice*)
brendan.fee@morganlewis.com
Amy M. Dudash (*pro hac vice*)
amy.dudash@morganlewis.com
1701 Market Street
Philadelphia, PA 19103-2921
Phone: (215) 963-5000
Fax: (215) 963-5001

Crystal R. Axelrod
Texas Bar No. 24078170
1000 Louisiana Street, Suite 4000
Houston, TX 77002
Phone: (713) 890-5000
Fax: (713) 890-5001
Email: crystal.axelrod@morganlewis.com

ATTORNEYS FOR DEFENDANT CIGNA HEALTH AND LIFE INSURANCE COMPANY, IMPROPERLY SUED AS CIGNA CORPORATION

HOGAN LOVELLS US LLP

By: /s/ Benjamin F. Holt
BENJAMIN F. HOLT
Admitted pro hac vice
Virginia Bar No. 48388
D.C. Bar No. 483122
Benjamin.Holt@HoganLovells.com
HOGAN LOVELLS US LLP
555 13th Street, NW
Washington, D.C. 20004
Phone: (202) 637-5600
Fax: (202) 637-5910

Matthew J. Piehl
Admitted pro hac vice
Virginia Bar No. 82518
D.C. Bar No. 1008726
Minnesota Bar No. 395942
Matthew.Piehl@HoganLovells.com
HOGAN LOVELLS US LLP
80 South Eighth Street
Suite 1225
Minneapolis, MN 55402
Phone: (612) 402-3000
Fax: (612) 339-5167

Michael E. Jones
Texas SBN 10929400
mikejones@potterminton.com
POTTER MINTON, P.C.
110 North College, Ste. 500
Tyler, Texas 75702
Phone: (903) 597-8311
Fax: (903) 593-0846

ATTORNEYS FOR DEFENDANTS UNITED HEALTHCARE SERVICES INC. AND UNITEDHEALTH GROUP INCORPORATED

KIRKLAND & ELLIS LLP

BY: /s/ Daniel E. Laytin
DANIEL E. LAYTIN
(Admitted pro hac vice)

BY: /s/ Sarah J. Donnell
SARAH J. DONNELL
(Admitted pro hac vice)
300 N. LaSalle
Chicago, IL 6065
Phone: (312) 862-2000
Fax: (312) 862-2200
Email: dlaytin@kirkland.com

ATTORNEYS FOR DEFENDANT BLUE CROSS AND BLUE SHIELD ASSOCIATION

COOPER & SCULLY, P.C.

BY: /s/ Derek S. Davis
DEREK S. DAVIS
State Bar No. 00793591
JOHN SCULLY
State Bar No: 17936500

900 Jackson Street, Suite 100
Dallas, Texas 75202
Phone: (214) 712-9500
Fax: (214) 712-9540
Email: derek.davis@cooperscully.com
Email: john.scully@cooperscully.com

ATTORNEYS FOR DEFENDANT KAISER FOUNDATION HEALTH PLAN, INC. improperly served as KAISER PERMANENTE, INC.

PILLSBURY WINTHROP SHAW PITTMAN LLP

BY: /s/ Ronald Casey Low
RONALD CASEY LOW

Ronald Casey Low
State Bar No. 24041363
401 Congress Avenue, Suite 1700
Austin, TX 78701
Phone: (512) 580-9616
Fax: (512) 580-9601
Email: casey.low@pillsburylaw.com

Alvin Dunn – *Lead Attorney*
(*pro hac vice*)
Robert C. K. Boyd
(*pro hac vice*)
1200 Seventeenth St. NW
Washington, D.C. 20036
Tel: (202) 663-8000
Fax: (202) 663-8007
Email: alvin.dunn@pillsburylaw.com
Email: robert.boyd@pillsburylaw.com

ATTORNEYS FOR DEFENDANTS INFECTIOUS DISEASES SOCIETY OF AMERICA, DR. GARY P. WORMSER, DR. RAYMOND J. DATTWYLER, DR. EUGENE SHAPIRO, DR. JOHN J. HALPERIN, DR. LEONARD SIGAL, AND DR. ALLEN STEERE

Dated: April 9, 2019

CERTIFICATE OF SERVICE

I, Casey Low, hereby certify that on the 9th of April, 2019, the foregoing Defendants' Motion to Dismiss Plaintiffs' Amended Complaint with exhibits and accompanying Proposed Order were filed through the ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and paper copies will be sent to those indicated as non-registered participants.

/s/ *Casey Low*
Casey Low