

FILED

JUN 11 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALMONT AMBULATORY SURGERY CENTER, LLC, a California limited liability company; BAKERFIELD SURGERY INSTITUTE, LLC, a California limited liability company; CIRO SURGERY CENTER, LLC, a California limited liability company; EAST BAY AMBULATORY SURGERY, LLC, a California limited liability company; MODERN INSTITUTE OF PLASTIC SURGERY & ANTIAGING, INC., a California corporation; NEW LIFE SURGERY CENTER, LLC, DBA Beverly Hills Surgery Center, a California limited liability company; ORANGE GROVE SURGERY CENTER, LLC, a California limited liability company; SAN DIEGO AMBULATORY SURGERY CENTER, LLC, a California limited liability company; SAN JOAQUIN VALLEY SURGERY CENTER, LLC, a California limited liability company; SKIN CANCER & RECONSTRUCTIVE SURGERY SPECIALIST OF BEVERLY HILLS, INC., a California corporation; VALENCIA AMBULATORY SURGERY CENTER, LLC, a California limited liability company; WEST HILLS

No. 17-55301

D.C. No.
2:14-cv-02139-MWF-VBK

MEMORANDUM*

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

SURGERY CENTER, LLC, a California limited liability company; PALMDALE SURGERY CENTER, LLC, a California limited liability company; INDEPENDENT MEDICAL SERVICES, INC., a California corporation,

Plaintiffs-Appellants,

v.

UNITEDHEALTH GROUP, INC.; UNITED HEALTHCARE SERVICES, INC.; UNITEDHEALTHCARE INSURANCE COMPANY; OPTUMINSIGHT, INC.; AMERICAN ASSOCIATION OF RETIRED PERSONS (AARP), a District of Columbia corporation; AARP EMPLOYEES WELFARE PLAN; ACCENTURE, LLP, a Delaware limited liability partnership; ACCOR NORTH AMERICA, INC., a Delaware corporation; ACCOR NORTH AMERICA, INC. GROUP INSURANCE PLAN, a Delaware corporation; ACTAVIS, INC., a Delaware corporation; ACTAVIS HEALTH AND WELFARE PLAN; ACUSHNET COMPANY, a Delaware corporation; ACUSHNET COMPANY CONSOLIDATED HEALTH AND WELFARE PLAN; ADP TOTALSOURCE, INC., a Florida corporation; ADP TOTALSOURCE INC. HEALTH AND WELFARE PLAN; AEGIS MEDIA AMERICAS, INC., a Delaware corporation; AEGIS MEDIA NORTH AMERICA WELFARE

BENEFIT PLAN; AEGON USA, LLC, an Iowa limited liability company; AEGON COMPANIES FLEXIBLE BENEFITS PLAN; AERA ENERGY SERVICES COMPANY, a Delaware corporation; AERA ENERGY SERVICES COMPANY MEDICAL BENEFITS PLAN; AIR LIQUIDE USA, LLC, a Delaware liability company; AIR LIQUIDE USA, LLC GROUP BENEFITS PLAN; AKZO NOBEL, INC., a Delaware corporation; AKZO NOBEL, INC. SALARIED EMPLOYEES GROUP BENEFITS PROGRAM; ALCON LABORATORIES, INC., a Delaware corporation; ALCON LABORATORIES, INC. VOLUNTARY EMPLOYEES BENEFICIARY ASSOCIATION TRUST; ALL AMERICAN CONTAINERS, INC.; ALL AMERICAN CONTAINERS INC. WELFARE BENEFIT PLAN; ALLSTATE INSURANCE COMPANY; ALLSTATE CAFETERIA PLAN; ALPHA MECHANICAL, INC.; ALPHA MECHANICAL HEATING & AIR CONDITIONING INC. HEALTH INSURANCE PLAN; ALTEC INDUSTRIES, INC.; AMERICAN AIRLINES, INC.; GROUP LIFE AND HEALTH BENEFITS PLAN; AMERICAN BUILDING SUPPLY, INC.; AMERICAN BUILDING SUPPLY, INC. EMPLOYEES BENEFIT PLAN; AMERICAN FINANCIAL GROUP, INC.; AMERICAN FINANCIAL GROUP, INC. GROUP WELFARE BENEFIT PLAN; AMERICAN INTERNATIONAL

GROUP, INC.; AMERICAN INTERNATIONAL GROUP INC. MEDICAL PLAN; ANHEUSER-BUSCH COMPANIES, INC.; ANHEUSER-BUSCH EMPLOYEES BENEFIT TRUST; ANIXTER, INC.; ANIXTER INC. GROUP INSURANCE; ANN, INC.; ANN, INC. WELFARE BENEFITS PLAN; ANSCHUTZ ENTERTAINMENT GROUP, INC.; AEG EMPLOYEE HEALTH & WELFARE PLAN; APARTMENT MANAGEMENT CONSULTANTS BENEFITS PLAN; APL LIMITED; WELFARE PLAN FOR EMPLOYEES OF APL LIMITED; APPLE, INC. HEALTH AND WELFARE BENEFIT PLAN; APPLE AMERICAN GROUP LLC; APPLE AMERICAN GROUP LLC SECTION 125 PLAN; APTCO, LLC; ARDENT SERVICES, LLC; ARDENT SERVICES, LLC MEDICAL PLAN; AT&T INC.; AT&T UMBRELLA BENEFIT PLAN; AT&T MOBILITY LLC; CINGULAR WIRELESS MEDICAL PLUS PLAN; ATI SYSTEMS INTERNATIONAL, INC.; ATI SYSTEMS; AUCTION.COM, LLC; AUCTION.COM EMPLOYEE BENEFIT PLAN; AUTOMATIC DATA PROCESSING, INC.; AUTOMATIC DATA PROCESSING, INC. FLEX 2000 PLAN; AVON PRODUCTS, INC.; AVON PRODUCTS, INC. MEDICAL PLAN FOR ACTIVE EMPLOYEES; BAKER HUGHES INC.; BAKER HUGHES, INC. WELFARE BENEFITS PLAN; BARNES & NOBLE INC.;

BARNES & NOBLE INC.
COMPREHENSIVE MEDICAL AND
DENTAL PLAN; BAUSCH & LOMB
INCORPORATED; BAUSCH & LOMB
COMPREHENSIVE MEDICAL PLAN;
BAYSIDE MANAGEMENT
COMPANY LLC EMPLOYEE BENEFIT
PLAN; BAYSIDE MANAGEMENT
COMPANY, LLC; BBA AVIATION
USA, INC.; BBA AVIATION, INC.
BENEFIT PLAN; BECTON DICKINSON
AND COMPANY GROUP LIFE AND
HEALTH PLAN; BECTON,
DICKINSON AND COMPANY;
BELMONT VILLAGE, LP; BELMONT
VILLAGE LP HEALTHCARE
BENEFITS PLAN; BEST BUY CO. INC.;
BEST BUY FLEXIBLE BENEFITS
PLAN; BEST MEDICAL
INTERNATIONAL, INC.; BEST
MEDICAL INTERNATIONAL BENEFIT
PLAN; BLACK BOX NETWORK
SERVICES, INC.; BLACK BOX
NETWORK SERVICES GROUP
MEDICAL PLAN; BMW OF NORTH
AMERICA, LLC; BMW OF NORTH
AMERICA LLC HEALTH AND
WELFARE PLANS; BNSF RAILWAY
COMPANY; BNSF RAILWAY
COMPANY FLEXIBLE BENEFIT
PLAN; BOAT AMERICA
CORPORATION; BOAT U.S. HEALTH
PLAN; BOSTON MARKET
CORPORATION; BOSTON MARKET
CORPORATION HEALTH AND
WELFARE PLAN; BRADY
CORPORATION; W.H. BRADY CO.

INSURED BENEFITS PLAN;
ADVANCE/NEWHOUSE
PARTNERSHIP HEALTH BENEFITS
PLAN; BRINKER SERVICES
CORPORATION; BRINKER
INTERNATIONAL, INC. WELFARE
BENEFIT PLAN; BRINK'S
INCORPORATED; THE BRINKS
COMPANY COMPREHENSIVE
HEALTH AND WELFARE PLAN;
BUCA RESTAURANTS 2, INC.; BUCA
INC. HEALTH CARE BENEFIT PLAN;
BUILDING MATERIALS
CORPORATION OF AMERICA; GAF
MATERIALS CORPORATION
WELFARE BENEFIT PLAN; BUPA
WORLDWIDE CORPORATION; BUPA
WORLDWIDE CORPORATION
HEALTH & BENEFITS PLAN; BWAY
CORPORATION; BWAY
CORPORATION COMPREHENSIVE
MEDICAL PLAN; CALIBER HOME
LOANS, INC.; VERICREST
FINANCIAL, INC. WELFARE AND
BENEFITS PLAN; CALIFORNIA
CHARTER SCHOOLS ASSOCIATION;
CCSA EMPLOYEE BENEFIT
WELFARE TRUST C/O BRMS;
CBEYOND COMMUNICATIONS LLC;
CBEYOND COMMUNICATIONS
HEALTH AND WELFARE PLAN; CBIZ
MHM, LLC; CBIZ INC. GROUP
HEALTH AND WELFARE PLAN; CBS
CORPORATION; CBS HEALTH AND
WELFARE BENEFITS PLAN; CEC
ENTERTAINMENT CONCEPTS LP;
CEC ENTERTAINMENT WELFARE

BENEFIT PLAN; CENTRAL PARKING SYSTEM; CENTRAL PARKING SYSTEM HEALTH AND WELFARE PLAN; CENTRIC GROUP LLC; CENTRIX GROUP HOSPITAL PLAN; CGX ENERGY, LLC; COGENTRIX ENERGY, LLC GROUP INSURANCE PLAN; C.H. ROBINSON COMPANY, INC.; C.H. ROBINSON COMPANY GROUP HEALTH MAJOR MEDICAL PLAN; CHARLOTTE RUSSE, INC.; CHARLOTTE RUSSE HOLDING, INC. WELFARE BENEFIT PLAN; CHARMING SHOPPES, INC.; CHARMING SHOPPES, INC. MEDICAL PLAN; CHEVRON CORPORATION; CHEVRON CORPORATION OMNIBUS HEALTH CARE PLAN; CHILD DEVELOPMENT INCORPORATED; CDI GROUP WELFARE PLAN; CITIGROUP MANAGEMENT CORP.; CITIGROUP HEALTH BENEFIT PLAN; CNA FINANCIAL CORPORATION HEALTH AND GROUP BENEFITS PROGRAM; COGNIZANT TECHNOLOGY SOLUTIONS CORP.; COGNIZANT HEALTH & WELFARE BENEFIT PLAN; COMFORT SYSTEMS USA, INC.; COMFORT SYSTEMS USA HEALTH & WELFARE PLAN; COMMSCOPE, INC. OF NORTH CAROLINA; COMMSCOPE WELFARE BENEFIT PLAN; CONESYS EMPLOYEE BENEFIT PLAN; CONMED CORPORATION; CONMED CORPORATION HEALTHCARE PLAN; CONSTRUCTION TEAMSTERS

SECURITY FUND FOR SOUTHERN CALIFORNIA; COURT BUSINESS SERVICES CORPORATION; COURT BUSINESS SERVICES CORPORATION GROUP INSURANCE PLAN; COVIDIEN, LP; COVIDIEN HEALTH & WELFARE BENEFITS PLAN; CREDIT SUISSE SECURITIES (USA), LLC; CREDIT SUISSE SECURITIES (USA) LLC GROUP HEALTH CARE PLAN; CROWLEY MARITIME CORPORATION; CROWLEY MARITIME CORPORATION WELFARE HEALTH LIFE & ACCIDENTAL DEATH & DISMEMBERMENT PLANS; CYTEC INDUSTRIES, INC.; CYTEC INDUSTRIES INC. HEALTH AND WELFARE PLAN; DANAHER CORPORATION; DANAHER CORPORATION & SUBSIDIARIES MEDICAL PLAN; DARDEN GROUP LIFE AND HEALTH BENEFIT PLAN FOR SALARIED EMPLOYEES; DARDEN RESTAURANTS INC.; DEERE & COMPANY; DELOITTE & TOUCHE WELFARE BENEFIT PLAN; DELOITTE, LLP; DELTA AIR LINES, INC.; DELTA FAMILY-CARE MEDICAL PLAN; DENSO SALES CALIFORNIA, INC.; DENSO SALES CALIFORNIA, INC. GROUP INSURANCE PLAN; DIAGEO NORTH AMERICA, INC.; DIAGEO NORTH AMERICA, INC. MEDICAL CARE AND LIFE INSURANCE PLAN FOR SALARIED AND RETIRED

EMMPLOYEES; DISCOVERY COMMUNICATIONS WELFARE BENEFIT PLAN; DISCOVERY COMMUNICATIONS, LLC; DOLLAR THRIFTY AUTOMOTIVE GROUP, INC.; DOLLAR THRIFTY AUTOMOTIVE GROUP, INC. WELFARE BENEFIT PLAN; JOHN DEERE FLEXIBLE BENEFITS PLAN; PRODUCERS' HEALTH BENEFITS PLAN; DS WATERS OF AMERICA, INC.; DS WATERS OF AMERICA, INC. HEALTH AND WELFARE PLAN; DR. PEPPER SNAPPLE GROUP, INC.; DR. PEPPER SNAPPLE GROUP, INC. HEALTH PLAN; DRIVETIME AUTOMOTIVE GROUP, INC.; DRIVETIME WELFARE BENEFIT PLAN; ECOLAB HEALTH AND WELFARE BENEFITS PLAN; ECOLAB, INC.; EDWARD D. JONES & CO. EMPLOYEES HEALTH AND WELFARE PROGRAM; EDWARD D. JONES & CO., L.P.; EMCOR GROUP, INC.; EMCOR GROUP, INC. EMPLOYEE WELFARE PLAN; ENSIGN US DRILLING EMPLOYEE BENEFIT PLAN; ENSIGN UNITED STATES DRILLING, INC.; ENTERPRISE HOLDINGS HOSPITAL INSURANCE PLAN; ENTERPRISE HOLDINGS, INC.; ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC.; ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC. LIFE LTD. TRAVEL ACCIDENT, VISION SERVICE, MEDICAL DENTAL;

EQUITY RESIDENTIAL PROPERTIES TRUST GROUP INSURANCE PLAN; EQUITY RESIDENTIAL SERVICES, LLC; ERNST & YOUNG MEDICAL PLAN; ERNST & YOUNG, LLP; ESSILOR OF AMERICA, INC.; ESSILOR OF AMERICA, INC. EMPLOYER WELFARE BENEFIT PLAN; ESTEE LAUDER, INC.; EXPERIAN INFORMATION SOLUTIONS, INC.; EXPERIAN INFORMATION SOLUTIONS, INC. HEALTH AND WELFARE PLAN; EXPRESS MESSENGER SYSTEMS, INC.; EXPRESSJET AIRLINES, INC.; EXPRESSJET AIRLINES, INC. CONSOLIDATED WELFARE BENEFIT PLAN; FARMERS GROUP, INC.; FARMERS GROUP, INC. EMPLOYEE PREPAID BENEFIT PLAN; ESTEE LAUDER COMPANIES, INC.; FC USA INC. BENEFITS; FC USA, INC.; FNPC HEALTH AND WELFARE PLAN; FIDELITY BROKERAGE SERVICES, LLC; FIDELITY GROUP EMPLOYEES MEDICAL, DENTAL AND CAFETERIA PLAN; FIFTH & PACIFIC COMPANIES, INC.; FINRA DISPUTE RESOLUTION, INC.; FINRA EMPLOYEE GROUP MEDICAL; FISERV, INC.; FISERV, INC. WELFARE BENEFIT PLAN; FIVE STAR QUALITY CARE; FIVE STAR QUALITY CARE-CA, INC.; FLEXTRONICS EMPLOYEE BENEFITS PLAN; FLEXTRONICS INTERNATIONAL USA, INC.; FOOT LOCKER RETAIL, INC.; FOOT

LOCKER WELFARE BENEFIT
PAYMENT PLAN; FOX
ENTERTAINMENT GROUP, INC.; FOX
HEALTH PLAN; FUGATE AVIATION,
INC.; FUGATE ENTERPRISES
EMPLOYEE WELFARE BENEFIT
PLAN; FUTURE ELECTRONICS
CORP.; FUTURE ELECTRONICS
CORP. GROUP INSURANCE PLAN;
G4S SECURE SOLUTIONS, INC.; GAP
INC. HEALTH AND LIFE PLAN; GE
GLOBAL HEALTH PLAN; GF HEALTH
PRODUCTS, INC.; GP STRATEGIES
CORPORATION; GP STRATEGIES
CORPORATION WELFARE BENEFIT
PLAN; GAP, INC.; GENERAL
ELECTRIC COMPANY; GENERAL
PARTS, INC.; GENERAL PARTS, INC.
EMPLOYEE BENEFITS PLAN
MEDICAL INSURANCE; GENON
ENERGY GROUP WELFARE
BENEFITS PLAN; GENON ENERGY
SERVICES, LLC; GENPACT PROCESS
SOLUTIONS, LLC; GENPACT
WELFARE BENEFIT PLAN; GEORG
FISCHER EMPLOYEE BENEFIT PLAN;
GEORG FISCHER SIGNET, LLC;
GEORGIA-PACIFIC LLC;
GLAXOSMITHKLINE HEALTH AND
WELFARE BENEFITS PLAN FOR US
EMPLOYEES; GLAXOSMITHKLINE,
LLC; GREAT-WEST LIFE & ANN INS
FLEXIBLE BENEFIT PLAN; GREAT-
WEST LIFE & ANNUITY INSURANCE
COMPANY; WELFARE TRUST FOR
G4S SECURE SOLUTIONS USA INC.
AND AFFILIATES; GTECH

CORPORATION; GTECH CORPORATION PARTICIPANT BENEFIT PLAN; GREYSTAR MANAGEMENT SERVICES, LP; GREYSTAR MANAGEMENT SERVICES, LLP; HD SUPPLY HEALTH AND WELFARE PROGRAM; HD SUPPLY, INC.; HEALTH INVENTURES HEALTH AND WELLNESS BENEFIT PLAN; HEALTH INVENTURES, LLC; HEARTLAND AUTOMOTIVE SERVICES, INC.; HEARTLAND AUTOMOTIVE SERVICES, INC. GROUP MEDICAL AND LIFE PLAN; HEWLETT-PACKARD COMPANY; HEWLETT-PACKARD COMPANY HEALTH MAINTENANCE ORGANIZATION PROGRAM; HONEYWELL INTERNATIONAL INC. BENEFIT PLAN; HONEYWELL INTERNATIONAL, INC.; HOT TOPIC, INC.; HOT TOPIC, INC. HEALTH AND WELFARE PLAN; HOTELS AB, LLC; THE STANDARD/HOTELS AB WELFARE BENEFIT PLAN; HUHTAMAKI AMERICAS, INC.; HUHTAMAKI AMERICAS, INC. GROUP INSURANCE PLAN; IMORTGAGE.COM, INC. CAFETERIA PLAN; IMORTGAGE.COM. INC.; ING AMERICAS WELFARE BENEFITS PLAN; ING NORTH AMERICA INSURANCE CORPORATION; INFORMA USA, INC.; INFORMA USA, INC. AND SUBSIDIARIES INSURANCE PLAN; INGRAM MICRO, INC.; INSPIRITY GROUP HEALTH

PLAN; INSPERITY HOLDINGS, INC.;
INSTANT WEB, INC.; INTEGRA
LIFESCIENCES CORP.
MEDICAL/PRESCRIPTION, DENTAL
AND STD PLAN; INTEGRA
LIFESCIENCES CORPORATION;
INTELSAT CORPORATION;
INTELSAT GROUP WELFARE
BENEFITS PLAN; INTER-RAIL
TRANSPORT, INC.; INTER-RAIL, INC.
EMPLOYEE HEALTH PLAN;
INTERCARE HOLDINGS, INC.;
INTERCARE HOLDINGS, INC.
HEALTH & WELFARE PLAN; INSTANT
WEB INC. AND SUBSIDIARY
MEDICAL BENEFIT PLAN; IBM
MEDICAL & DENTAL PLAN FOR
REGULAR AND PART-TIME
EMPLOYEES; INX INTERNATIONAL
GROUP MEDICAL/DENTAL PLAN;
INX INTERNATIONAL INK CO.;
INTERNATIONAL ALUMINUM
CORPORATION; INTERNATIONAL
ALUMINUM CORPORATION HEALTH
AND WELFARE PLANS;
INTERNATIONAL BUSINESS
MACHINES CORPORATION;
INTERNATIONAL PAPER COMPANY;
INTERNATIONAL PAPER GROUP
INSURANCE PLAN; INTERNATIONAL
SPEEDWAY CORPORATION;
INTERNATIONAL SPEEDWAY
CORPORATION WELFARE BENEFIT
PLAN; INTERSTATE HOTELS &
RESORTS BENEFITS PROGRAM;
INTERSTATE HOTELS & RESORTS,
INC.; J.C. PENNEY CORPORATION,

INC.; J.C. PENNEY CORPORATION,
INC. HEALTH & WELFARE BENEFITS
PLAN; JPMORGAN CHASE & CO.;
JACK IN THE BOX, INC.; JACK IN THE
BOX, INC. CREW EMPLOYEES
HEALTH & WELFARE PLAN;
JACKSON LEWIS LLP WELFARE
PLAN; JACKSON LEWIS, LLP;
JACOBS ENGINEERING GROUP, INC.;
JACOBS ENGINEERING GROUP, INC.
EMPLOYEE GROUP INSURANCE
PLAN; JETBLUE AIRWAYS
CORPORATION; JETBLUE AIRWAYS
GROUP HEALTH INSURANCE PLAN;
THE JPMORGAN CHASE HEALTH &
PROTECTION PLAN FOR ACTIVE
EMPLOYEES; JONES LANG LASALLE
AMERICAS, INC.; JONES LANG
LASALLE GROUP BENEFITS PLAN;
KELLY MITCHELL GROUP INC.
MEDICAL PLAN; KELLY MITCHELL
GROUP, INC.; EMPLOYEE BENEFIT
PLAN OF THE COMPASS GROUP
USA, INC.; KLA-TENCOR
CORPORATION GROUP INSURANCE
PLAN; KLA-TENCOR CORPORATION;
KMI FLEXIBLE BENEFIT PLAN;
KINDER MORGAN G.P., INC.;
KINETIC CONCEPTS, INC.; KINETICS
CONCEPTS INC. EMPLOYEE
BENEFITS TRUST; KONICA MINOLTA
BUSINESS SOLUTIONS USA, INC; L
BRANDS, INC.; L'OREAL USA S/D,
INC.; L'OREAL USA, INC.
COMPREHENSIVE MEDICAL PLAN;
LA-Z-BOY INCORPORATED; LA-Z-
BOY INCORPORATED MEDICAL

PLAN; LARSON-JUHL US LLC
WELFARE PLAN; LARSON-JUHL US
LLC WELFARE PLAN; LARSON-JUHL
US, LLC; LEAVITT GROUP AGENCY
ASSOCIATION; LEAVITT GROUP
AGENCY ASSOCIATION HEALTH
BENEFIT PLAN; LEVEL 3
COMMUNICATIONS, INC. WELFARE
BENEFIT PLAN; LEVEL 3
COMMUNICATIONS, LLC; LEVY
RESTAURANTS, INC.; LIMITED
BRANDS, INC. HEALTH AND
WELFARE BENEFITS PLAN; LINDE
NORTH AMERICA, INC.; LINDE
NORTH AMERICA, INC. INSURANCE
PLAN; MISA GROUP BENEFIT PLANS;
MAERSK INC. ACTIVE NONUNION
HEALTH AND WELFARE PLAN;
MAERSK, INC.; MAKO SURGICAL
CORP HEALTH AND WELFARE
PLAN; MARUBENI ITOCHU STEEL
AMERICA, INC.; HEALTH CARE PLAN
OF THE EMPLOYEES OF MCM CORP.;
MCM CORPORATION; MARY KAY,
INC.; MAY KAY, INC.
COMPREHENSIVE EMPLOYEE
HEALTH AND WELFARE PLAN;
MCMASTER-CARR SUPPLY
COMPANY; MCMASTER-CARR
SUPPLY COMPANY GROUP
INSURANCE PROGRAM; MEDCO
HEALTH SOLUTIONS, INC.; MEDCO
HEALTH SOLUTIONS, INC. WELFARE
BENEFIT PLAN; MEDEGEN WELFARE
BENEFIT PLAN; MEDEGEN, INC.;
MEDICAL SPECIALTIES
DISTRIBUTORS, LLC; MEDICAL

SPECIALTIES DISTRIBUTORS, LLC
GROUP BENEFIT PLAN;
MIDAMERICAN ENERGY COMPANY;
MIDAMERICAN ENERGY COMPANY
WELFARE BENEFIT PLAN; MILLARD
REFRIGERATED SERVICES, INC.;
MILLARD REFRIGERATED
SERVICES, INC. GROUP MAJOR
MEDICAL; MOBILE MINI, INC.;
MOBILE MINI, INC. BENEFIT PLAN;
MOCEAN HEALTH AND WELFARE
BENEFITS PLAN; MOCEAN, LLC;
MONAVIE, LLC; MONAVIE, LLC
FRINGE BENEFIT PLAN; WELFARE
BENEFIT PLAN FOR EES. OF
METROPOLITAN LIFE; AMPLAN, THE
AMTRAK UNION BENEFITS PLAN;
GROUP INSURANCE PLAN FOR
EMPLOYEES OF NEC AND
AFFILIATES; HEALTH INSURANCE
PLAN OF MULTIPLAN, INC.;
MONROVIA NURSERY COMPANY;
MONROVIA NURSERY COMPANY
EMPLOYEE BENEFIT PLAN;
MOUNTAIN VALLEY EXPRESS CO.
INC. WELFARE BENEFIT PLAN;
MOUNTAIN VALLEY EXPRESS CO.,
INC.; MULTIPLAN, INC.; MYRIAD
GENETICS, INC.; MYRIAD GENETICS,
INC. WELFARE BENEFIT PLAN; NCH
CORPORATION; NCH CORPORATION
EMPLOYEE LIFE AND HEALTH
BENEFIT PLAN; NEC CORPORATION
OF AMERICA; NPL CONSTRUCTION
CO.; NPL CONSTRUCTION CO.
EMPLOYEE HEALTH BENEFIT PLAN;
NRC PAYROLL MANAGEMENT

HEALTH AND WELFARE PLAN; NRC
PAYROLL MANAGEMENT, LLC;
NATIONAL CAPTIONING INSTITUTE,
INC.; NATIONAL CAPTIONING
INSTITUTE, INC. HEALTH &
WELFARE BENEFITS PLAN;
NATIONAL MENTOR HOLDINGS,
LLC; NATIONAL MENTOR
HOLDINGS, LLC FLEXIBLE BENEFIT
PLAN; NATIONAL RAILROAD
PASSENGER CORPORATION;
NATIONAL RAILROAD PASSENGER
CORPORATION CHOICEPLUS
CAFETIRIA PLAN; NATIONSTAR
MORTGAGE GROUP HEALTH AND
WELFARE BENEFIT PLAN;
NATIONSTAR MORTGAGE LLC;
NEFF RENTAL LLC HEALTH &
WELFARE PLAN; NEFF RENTAL,
LLC; NETAPP, INC.; NETAPP, INC.
GROUP HEALTH PLAN; NEW BREED
CORPORATE SERVICES, INC.; NEW
BREED CORPORATE SERVICES INC.
WELFARE BENEFIT PLAN; NIKE,
INC.; NIKE, INC. GROUP INSURANCE
PLAN; NORTHROP GRUMMAN
CORPORATION GROUP BENEFITS
PLAN; NORTHROP GRUMMAN
CORP.; NOVARTIS
PHARMACEUTICALS CORP.
WELFARE BENEFITS PLAN;
NOVARTIS PHARMACEUTICALS
CORPORATION; NURSEFINDERS,
INC.; NURSEFINDERS, LLC; ALCAN
SALARIED WELFARE BENEFITS
PROGRAM; GROUP BENEFITS PLAN
FOR EMPLOYEES OF PARSONS

CORPORATION & DESIGNATED
SUBSIDIARIES; GROUP INSURANCE
PLAN HOURLY AND SALARIED
EMPLOYEES OF PARKER HANNIFIN
CORP.; OCLC EMPLOYEE WELFARE
BENEFIT PLAN; OCLC ONLINE
COMPUTER LIBRARY CENTER, INC.;
OLD DOMINION EMPLOYEE
BENEFIT PLAN; OLD DOMINION
FREIGHT LINE, INC.; OLIN
CORPORATION; OLIN
MEDICAL/DENTAL PLAN; ORIX USA
CORPORATION; ORIX USA
CORPORATION WELFARE PLAN;
OSRAM SYLVANIA, INC.; OSRAM
SYLVANIA, INC. PLAN FOR GROUP
INSURANCE; PANALPINA, INC.;
PANALPINA, INC. WELFARE
BENEFITS PLAN; PARKER-HANNIFIN
CORPORATION; PARSONS
CORPORATION; PAYLESS
SHOESOURCE, INC.; PAYLESS
SHOESOURCE, INC. MEDICAL PLAN;
PECHINEY PLASTIC PACKAGING,
INC.; PENTAIR, INC.; PENTAIR, INC.
ACTIVE EMPLOYEE WELFARE PLAN;
PEFORMANCE FOOD GROUP INC.
EMPLOYEE BENEFITS PLAN;
PERFORMANCE FOOD GROUP, INC.;
PERKINS FLEXIBLE BENEFITS PLAN;
PEROT SYSTEMS CORPORATION;
PEROT SYSTEMS CORPORATION
HEALTH WRAP PLAN; PETCO
ANIMAL SUPPLIES INC. GROUP
BENEFIT PLAN AND TRUST; PETER
KIEWIT SONS', INC.; PETER KIEWIT
SONS', INC. HEALTH AND WELFARE

PLAN; PETSMART SMARTCHOICES
BENEFIT PLAN; PETSMART, INC.;
PFIZER MEDICAL PAN; PFIZER, INC.;
PHARMACEUTICAL PRODUCT
DEVELOPMENT, LLC;
PHARMACEUTICAL PRODUCT
DEVELOPMENT, LLC WELFARE
BENEFIT PLAN; PLAINS ALL
AMERICAN GP LLC EMPLOYEE
BENEFIT PLAN; PLAINS ALL
AMERICAN GP, LLC; PLATINUM
HOME MORTGAGE CORPORATION;
GROUP INSURANCE PLAN FOR
EMPLOYEES OF REXAM, INC.; PPS
HOLDINGS, INC.; PPS HOLDINGS,
INC. EMPLOYEE BENEFIT PLAN; PSC
ENVIRONMENTAL SERVICES, LLC;
PSC, LLC GROUP WELFARE
BENEFITS PLAN; PSN USA
HOLDINGS, INC.; PSN USA
HOLDINGS, INC. WELFARE BENEFIT
PLAN; PLAYBOY ENTERPRISES
INTERNATIONAL, INC.; PLAYBOY
HEALTH BENEFIT PLAN; PRADA
USA CORP.; PRADA USA
CORPORATION WELFARE BENEFIT
PLAN; PRECYSE SOLUTIONS, INC.;
PRIME ADMINISTRATION LLC
CONSOLIDATED HEALTH &
WELFARE PLAN; PRIME
ADMINISTRATION, LLC; PROBUILD
HOLDINGS, INC.; PROBUILD
HOLDINGS, INC. WELFARE BENEFIT
PLAN; PROCTOR & GAMBLE RHD,
INC.; PROGRESSIVE LOGISTICS
SERVICES, LLC; PROGRESSIVE
LOGISTICS SERVICES, LLC MEDICAL

& LIFE INSURANCE BENEFITS PLAN;
QBE FIRST GROUP HEALTH AND
WELFARE PLAN; QBE FIRST
INSURANCE AGENCY, INC.;
QUANTUM CORPORATION;
QUANTUM CORPORATION HEALTH
AND WELFARE PLAN; RAINBOW
USA, INC.; RAINBOW USA, INC.
MEDICAL PLAN; RAYTHEON
COMPANY; RAYTHEON HEALTH
BENEFITS PLAN; RED WING SHOE
COMPANY FLEXIBLE BENEFIT
PLAN; RED WING SHOE COMPANY,
INC.; REXAM, INC.; TIRE CENTERS,
LLC EMPLOYEE BENEFIT PLAN;
TIRE CENTERS, LLC; TOSHIBA
AMERICA INC. GROUP WELFARE
BENEFIT PLAN; TOSHIBA AMERICA,
INC; TOWERS WATSON AMERICA,
LLC; TOWERS WATSON MEDICAL
PLAN; TRIBUNE COMPANY;
TRIBUNE COMPANY BENEFIT
PROGRAM; TRINET HR
CORPORATION; TUCKER ELLIS &
WEST LLP WELFARE BENEFIT PLAN;
TUCKER ELLIS, LLP; U.S. AUTO
PARTS NETWORK, INC.; U.S.
NURSING CORPORATION; UPM
RAFLATAC, INC.; UPM-RAFLATAC,
INC. HEALTH AND WELFARE
BENEFIT PLAN; US AIRWAYS
GROUP, INC.; US AUTO PARTS
NETWORK INC. HEALTH AND
WELFARE BENEFIT PLAN; US
NURSING CORP. EMPLOYEE
BENEFIT PLAN; UNION BANK
HEALTH BENEFIT PLAN; UNION

BANK, N.A.; UNITED AIRLINES
CONSOLIDATED WELFARE BENEFIT
PLAN; UNITED AIRLINES, INC.;
UNIVISION COMMUNICATIONS, INC.;
UNIVISION WELFARE BENEFITS
PLAN; URBAN DECAY COSMETICS
HEALTH AND WELFARE PLAN;
URBAN DECAY COSMETICS, LLC;
USA TRUCK INC. WELFARE BENEFIT
PLAN; USA TRUCK, INC.; UTI
SERVICES, INC.; UTI SERVICES, INC.
WELFARE BENEFITS PLAN;
VALEANT PHARMACEUTICALS
INTERNATIONAL GROUP WELFARE
PLAN; VALEANT
PHARMACEUTICALS
INTERNATIONAL; VELOCITY
EXPRESS LLC FLEXIBLE BENEFITS
PLAN; VELOCITY EXPRESS, LLC;
VEOLIA ENVIRONMENTAL
SERVICES NORTH AMERICA CORP.
EMPLOYEE HEALTH BENEFIT PLAN;
VEOLIA ENVIRONMENTAL
SERVICES NORTH AMERICA, LLC;
VERIZON COMMUNICATIONS, INC.;
VERIZON PLAN 550; VIA
TECHNOLOGIES, INC.; VIA
TECHNOLOGIES, INC. HEALTH AND
WELFARE PLAN; GROUP BENEFITS
PLAN FOR EMPLOYEES OF
WORLEYPARSONS CORPORATION;
HEALTH & WELFARE BENEFIT
PLANS OF VULCAN MATERIALS
COMPANY; VIACOM HEALTH PLAN;
VIACOM, INC.; VOLT INFORMATION
SCIENCES, INC.; VOLT
INFORMATION SCIENCES, INC. AND

AFFILIATE EMPLOYEE WELFARE BENEFITS PLAN; VULCAN MATERIALS COMPANY; W. W. GRAINGER INC. GROUP BENEFIT PLAN I; W. W. GRAINGER, INC.; WACHOVIA CORPORATION HEALTH AND WELFARE PLAN; WACHOVIA FINANCIAL SERVICES, INC.; WALMART INC.; WAL-MART STORES, INC. ASSOCIATES HEALTH AND WELFARE PLAN; WE'RE READY TO ASSEMBLE; WE'RE READY TO ASSEMBLE, INC.; WELLS FARGO & CO. HEALTH PLAN; WELLS FARGO & COMPANY; WESTWAYS STAFFING SERVICES HEALTH PLAN; WESTWAYS STAFFING SERVICES, INC.; WHOLE FOODS MARKET CALIFORNIA, INC.; WHOLE FOODS MARKET, INC. CAFETERIA PLAN; WILLIAMS-SONOMA STORES, INC.; WILLIAMS-SONOMA, INC. HEALTH & WELFARE PLAN; WIPRO HEALTH AND WELFARE PLAN; WIPRO LIMITED; WOLVERINE WORLD WIDE, INC.; WOLVERINE WORLDWIDE FLEXIBLE SPENDING ACCOUNT PLAN; WORLD TRAVEL HOLDINGS, INC.; WORLD TRAVEL HOLDINGS, INC. FLEXIBLE BENEFIT PLAN; WORLEYPARSONS CORPORATION; WSA GROUP; WSA GROUP, INC.; WYNRIGHT CORPORATION; WYNRIGHT WELFARE BENEFIT PLAN; XETA TECHNOLOGIES, INC.; XETA TECHNOLOGIES, INC. WELFARE

BENEFIT PLAN; YUM! BRANDS, INC.;
YUM! BRANDS, INC. RESTAURANT
EMPLOYEES GROUP INSURANCE
PLAN; ZALE CORPORATION; ZALE
CORPORATION BENEFITS PLAN;
TOWERS WATSON AMERICA, LLC;
UNITEDHEALTH GROUP EMPLOYEE
HEALTH BENEFIT PLAN;
ACCENTURE UNITED STATES
GROUP HEALTH PLAN;
ADVANCE/NEWHOUSE
PARTNERSHIP; AEGON
COMPANIES MEDICAL PLAN;
ALCATEL-LUCENT RETIREE
WELFARE BENEFITS PLAN;
ALCATEL-LUCENT USA, INC.;
AMERICAS INC BENEFITPLUS
FLEXIBLE BENEFITS PLAN; BIOMED
REALTY L.P.; BIOMED REALTY L.P.
WELFARE BENEFITS PLAN;
CROWLEY HOLDINGS, INC.;
DARDEN GROUP LIFE AND HEALTH
BENEFIT PLAN FOR HOURLY
EMPLOYEES; DARDEN GROUP LIFE
AND HEALTH BENEFIT PLAN FOR
SALARIED EMPLOYEES; DELOITTE
& TOUCHE GROUP INSURANCE
PLAN; DELTA ACCOUNT-BASED
HEALTHCARE PLAN; DENSO SALES
CALIFORNIA, INC. GROUP LIFE,
ACCIDENT, MEDICAL & DENTAL
INSURANCE; DIAGEO NORTH
AMERICA, INC. MEDICAL CARE AND
LIFE INSURANCE PLAN FOR
HOURLY AND RETIRED
EMPLOYEES; DIAGEO NORTH
AMERICA, INC. MEDICAL CARE AND

LIFE INSURANCE PLAN FOR SALARIED AND RETIRED EMPLOYEES; DIAGEO NORTH AMERICA, INC. MEDICAL CARE AND LIFE INSURANCE PLAN FOR HOURLY AND RETIRED EMPLOYEES; G6 HOSPITALITY GROUP INSURANCE PLAN ACTAVIS, INC.; HOLDINGS INC WELFARE HEALTH LIFE & ACCIDENTAL DEATH & DISMEMBERMENT PLANS; INTERNATIONAL, INC.; JOHN DEERE HEALTH BENEFIT PLAN FOR WAGE EMPLOYEES; KATE SPADE & COMPANY; NATIONAL MEDICAL CARE, INC.; NATIONAL MEDICAL CARE, INC. GROUP MEDICAL, DENTAL, LIFE AND AD&D PLAN; THE BMS ENTERPRISES, INC.; THE BMS ENTERPRISES, INC. PLAN; THE ESTAAE LAUDER COMPANIES, INC.; THE JOHN DEERE HEALTH BENEFIT PLAN FOR SALARIED EMPLOYEES; WELFARE BENEFITS PLAN; CROWLEY HOLDINGS, INC. WELFARE HEALTH LIFE & ACCIDENTAL DEATH & DISMEMBERMENT PLANS; TOWERS WATSON & CO.; BRIGHT HORIZONS CHILDREN'S CENTERS, LLC; BRIGHT HORIZONS FLEXIBLE BENEFIT PLAN; BUCKEYE TECHNOLOGIES COMPREHENSIVE HEALTH CARE PLAN; BUCKEYE TECHNOLOGIES, INC.; BUILD-A-BEAR WORKSHOP, INC.; BUILD-A-BEAR WORKSHOP, INC. WELFARE BENEFIT PLAN;

EDGEWOOD MANAGEMENT CORPORATION; GLOBAL MAIL, INC.; GLOBAL MAIL, INC. WELFARE PLAN; MID-CITY FINANCIAL/EDGEWOOD MANAGEMENT; PSI SERVICES, LLC; PSI SERVICES, LLC HEALTH AND WELFARE BENEFITS PLAN; POLYAIR CORPORATION; POLYAIR CORPORATION FLEXIBLE BENEFITS PLAN; NATIONAL RAILWAY CARRIERS; NESTLE WATERS NORTH AMERICA HOLDINGS GROUP BENEFITS PLAN; NESTLE WATERS NORTH AMERICA, INC.; UNITED TRANSPORTATION UNION HEALTH & WELFARE PLAN; W.W. GRAINGER INC. GROUP BENEFIT PLAN II; WINDSTREAM COMPREHENSIVE PLAN OF GROUP INSURANCE; WINDSTREAM CORPORATION; APL LIMITED MEDICAL WELFARE BENEFIT PLAN; HEWLETT-PACKARD COMPREHENSIVE WELFARE BENEFITS PLAN; THE GAP, INC.; THE GAP, INC. HEALTH AND LIFE PLAN; DOES; CONESYS, INC.,

Defendants-Appellees.

Appeal from the United States District Court
for the Central District of California
Michael W. Fitzgerald, District Judge, Presiding

Submitted May 14, 2019**
Seattle, Washington

Before: O'SCANNLAIN and FRIEDLAND, Circuit Judges, and EZRA,*** District Judge.

Plaintiff Almont Ambulatory Surgery Center, LLC along with twelve other surgical centers and one physicians' medical group (collectively "Almont") appeal four orders by the district court denying (1) Almont's motion for relief from judgment pursuant to Federal Rule of Civil Procedure 60(b), (2) Almont's motion to disqualify district court Judge Michael Fitzgerald, (3) Almont's application to file documents in support of the disqualification motion *in camera*, and (4) Almont's motion for reconsideration of the Rule 60(b) order pursuant to Federal Rule of Civil Procedure 59(e). Because the facts are known to the parties, we repeat them only as necessary to explain our decision.

As an initial matter, the employee welfare plan defendants (collectively "UnitedHealth") argue that we lack jurisdiction to review the district court's denial of Almont's Rule 60(b) motion, because such denial was not included in the notice of appeal for this case. *See Almont Ambulatory Surgery Ctr., LLC v. UnitedHealth Grp.,*

** The panel unanimously concludes this case is suitable for decision without oral argument. *See Fed. R. App. P. 34(a)(2).*

*** The Honorable David A. Ezra, United States District Judge for the District of Hawaii, sitting by designation.

Inc., No. 2:14-cv-02139-MWF-VBK, ECF Nos. 2056, 2058. Indeed, although Almont timely appealed the order, the appeal was separately docketed and later dismissed for failure to prosecute. *See Almont Ambulatory Surgery Ctr., LLC v. UnitedHealth Grp., Inc.*, No. 16-55844, ECF No. 122. Nevertheless, we can fairly infer that Almont intended to appeal the Rule 60(b) order, and thus we can construe the notice of appeal in this case as including it. *See Lolli v. County of Orange*, 351 F.3d 410, 414 (9th Cir. 2003) (citing *Montes v. United States*, 37 F.3d 1347, 1351 (9th Cir. 1994)). Doing so would not prejudice UnitedHealth, who briefed the merits of the issue. Consequently, we may exercise jurisdiction over the appeal of the Rule 60(b) order. *See Lolli*, 351 F.3d at 414.

Almont's challenge to the court's denial of the Rule 60(b) motion fails on the merits. Almont's proffered reasons for failing to retain counsel by the court's deadline are contradicted by the record and do not establish excusable neglect as required by Rule 60(b). *See Bateman v. U.S. Postal Serv.*, 231 F.3d 1220, 1222 (9th Cir. 2000).

Almont next challenges the denial of its motion to disqualify presiding Judge Michael W. Fitzgerald—a decision made by Judge Otis D. Wright II, to whom the motion had been randomly assigned. But Almont's theory—that Judge Fitzgerald had an irreconcilable conflict of interest because (1) his brother, an Assistant United States

Attorney for the Central District of California, allegedly supervised a criminal investigation involving Almont's managers and sabotaged Almont's legal representation, and (2) the government was a party to this case—finds no support in the record. As Judge Wright properly found, the U.S. Attorney's Office engaged in no impropriety with respect to Almont's representation. Furthermore, AUSA Fitzgerald did not enter an appearance in this case, and the government was never a party at any stage of the proceedings. Absent any factual support for its motion, Almont has failed to show that disqualification was required under federal law or applicable codes of judicial conduct. *See, e.g.*, 28 U.S.C. § 455; Judicial Conference of the United States, Committee on Codes of Conduct Advisory Op. No. 38. The district court did not abuse its discretion by denying the motion.

Nor did the court abuse its discretion by denying Almont's application to file certain documents in support of its disqualification motion *in camera*. Although the court summarily denied Almont's application, we may "affirm on any basis supported by the record," even where "the district court did not explain its decision." *Allen v. Bedolla*, 787 F.3d 1218, 1222 (9th Cir. 2015); *see also United States v. Morales*, 720 F.3d 1194, 1201 (9th Cir. 2013). Here, *in camera* review of the documents that formed the basis of the disqualification motion would have prevented the employee plan defendants from mounting an effective defense to the motion in violation of their

due process rights. *See Yamada v. Nobel Biocare Holding AG*, 825 F.3d 536, 544–46 (9th Cir. 2016). Consistent with the district court’s rulings on Almont’s previous requests for *in camera* review, the court properly denied Almont’s application.

Finally, we reject Almont’s challenge to the denial of its Rule 59(e) motion. Almont failed to identify legal error or relevant newly discovered evidence, and its arguments for reconsideration largely repeated the arguments made in support of its unsuccessful Rule 60(b) motion. *See 389 Orange St. Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999). The court did not abuse its discretion by denying the motion.¹

AFFIRMED.

¹ We deny Almont’s motion to file certain excerpts of record *in camera* and under seal, filed with this court on March 26, 2018; its motions to supplement the record on appeal and to file certain exhibits *in camera* and under seal, filed August 6, 2018; and its request for judicial notice, filed May 14, 2019.

FILED

Almont Ambulatory Surgery Center, LLC v. UnitedHealth Group, Inc., No. 17-55301

JUN 11 2019

O'SCANNLAIN, Circuit Judge, specially concurring:

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

I concur in the judgment and in the court's reasoning affirming the denial of Almont's motion for disqualification, application for *in camera* review, and motion for reconsideration.

I respectfully disagree, however, with the conclusion that our court has jurisdiction to review the district court's Rule 60(b) order. In my view, the unique procedural history of this case renders it distinguishable from *Lolli*: Almont's appeal of the Rule 60(b) order was docketed separately from its appeal of the other issues in this case. Because Almont failed to include the Rule 60(b) order in its notices of appeal for *this* case, I would hold that the Rule 60(b) order is not properly before us and decline to review it. *See Valadez-Lopez v. Chertoff*, 656 F.3d 851, 859 n.2 (9th Cir. 2011).