

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NOT FOR PUBLICATION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; 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; WEST HILLS SURGERY CENTER, LLC, a California limited liability company; INDEPENDENT MEDICAL SERVICES, INC., a California corporation; BAKERSFIELD SURGERY INSTITUTE, LLC; VALENCIA AMBULATORY SURGERY CENTER, LLC; PALMDALE AMBULATORY SURGERY CENTER, LLC; PROPERTY CARE INSURANCE, INC.; SAN JOAQUIN VALLEY SURGERY

Nos. 16-56241  
17-55285

D.C. No.  
2:14-cv-02177-MWF-VBK

MEMORANDUM\*

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

CENTER, LLC; SKIN CANCER &  
RECONSTRUCTIVE SURGERY  
SPECIALISTS OF BEVERLY HILLS,  
INC.; SKIN CANCER &  
RECONSTRUCTIVE SURGERY  
SPECIALISTS OF WEST HILLS, INC.;  
SURGERY CENTER MANGEMENT;  
TOP SURGEONS, LLC; WOODLAKE  
AMBULATORY; 1-800-GET-THIN,  
LLC; CINDY OMIDI; JULIAN OMIDI;  
MICHAEL OMIDI; VALLEY  
SURGICAL CENTER, LLC,

Plaintiffs-Appellants,

v.

INTERNATIONAL LONGSHORE AND  
WAREHOUSE UNION; PACIFIC  
MARITIME ASSOCIATION;  
INTERNATIONAL  
LONGSHOREMEN'S AND  
WAREHOUSEMEN'S UNION-PACIFIC  
MARITIME ASSOCIATION WELFARE  
PLAN; ILWU-PMA COASTWISE  
INDEMNITY PLAN,

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 seven other surgical centers and one physicians' medical group (collectively "Almont") appeal five orders by the district court. Because the facts are known to the parties, we do not repeat them here.

We reject Almont's first challenge on appeal—namely, that the district court improperly dismissed the case for lack of prosecution. *See* Fed. R. Civ. P. 41(b). Almont's failure to secure counsel by the court's deadline constituted a lengthy and unreasonable delay in prosecution and prejudiced the employee welfare plan's ability to defend against suit. In light of the factors described in *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986), the court did not abuse its discretion.

Nor did the court abuse its discretion in denying Almont's motion for relief from judgment pursuant to Federal Rule of Civil Procedure 60(b). Almont's proffered reasons for failing to retain counsel by the court's deadline are contradicted by the

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\*\* 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.

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's remaining challenges to the district court's denials of its motion for disqualification, its application for *in camera* review, and its Federal Rule of Civil Procedure 59(e) motion echo those raised in *Almont Ambulatory Surgery Center, LLC v. UnitedHealth Group, Inc.*, No. 17-55301, – F. App'x – (9th Cir. \_\_\_\_, 2019). We reject them for the same reasons. *Id.*<sup>1</sup>

**AFFIRMED.**

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<sup>1</sup> We deny Almont's motion to file certain excerpts of record *in camera* and under seal, filed with this court on April 24, 2018. We also deny Almont's motions to supplement the record on appeal and to file certain exhibits *in camera* and under seal, filed August 30, 2018.