

United States District Court  
District of Massachusetts

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Tracey et al,		)	
		)	
Plaintiffs,		)	
		)	
v.		)	Civil Action No.
		)	16-11620-NMG
Massachusetts Institute of		)	
Technology et al,		)	
		)	
Defendants.		)	
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ORDER

GORTON, J.

Upon careful consideration of the objections of defendants Massachusetts Institute of Technology et al (Docket No. 73) and of plaintiffs David B. Tracey et al (Docket No. 74) to the Report and Recommendation of Magistrate Judge Marianne B. Bowler (Docket No. 70), the Court rejects the recommendations of the Magistrate Judge that:

- 1) plaintiffs have plausibly alleged that defendants possessed a subjective intent to benefit a party in interest;
- 2) plaintiffs' claim in Count III pursuant to § 1106(a)(1)(D) should not be dismissed; and
- 3) any duty to monitor claim in Count IV pursuant to § 1106(a)(1)(D) may proceed

but otherwise accepts and adopts the Report and Recommendation of Magistrate Judge Bowler.

A memorandum and order explaining the Court's reasons for its ruling will follow.

**So ordered.**

  
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Nathaniel M. Gorton  
United States District Judge

Dated September 29, 2017