**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF DELAWARE**

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| SPRINT COMMUNICATIONS COMPANY L.P., | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | Civil Action No. 18-536-RGA |
| | ) | |
| FRONTIER COMMUNICATIONS CORPORATION, | ) | |
| | ) | |
| | ) | |
| Defendant. | ) | |

**MEMORANDUM OPINION**

## I. INTRODUCTION

Presently before the court in this patent infringement action is the Motion For Leave To Add Frontier Subsidiaries As Defendants And File First Amended Complaint ("FAC"), filed by plaintiff Sprint Communications Company L.P. ("Sprint").[1] (D.I. 117) For the following reasons, Sprint's motion to amend is GRANTED.[2]

## II. BACKGROUND

On April 10, 2018, Sprint filed its original complaint, alleging that defendant Frontier Communications Corporation ("FCC") infringed fifteen patents.[3] (D.I. 1) The patents-in-suit

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[1] Sprint's proposed FAC seeks to add six Frontier subsidiaries as defendants: Frontier Communications of America, Inc., Frontier Communications Online and Long Distance, Inc., Frontier Southwest Inc., Frontier Communications of the Carolinas LLC, Newco West Holdings LLC, and Citizens Telecom Services Co. LLC. (D.I. 117, Ex. A at 1)

[2] The briefing and other filings associated with the instant motion are found at D.I. 118, D.I. 119, D.I. 124, D.I. 125, D.I. 129, D.I. 130, D.I. 152, and D.I. 153.

[3] Specifically, Sprint alleges that FCC infringes U.S. Patent Nos. 6,633,561 ("the '3,561 patent"), 6,463,052 ("the '052 patent"), 6,452,932 ("the '932 patent"), 6,473,429 ("the '429 patent"), 6,298,064 ("the '064 patent"), 6,330,224 ("the '224 patent"), 6,697,340 ("the '340 patent"), 7,286,561 ("the '6,561 patent"), 7,505,454 ("the '454 patent"), 7,327,728 ("the '728 patent"), 7,324,534 ("the '534 patent"), 7,693,131 ("the '131 patent"), 6,563,918 ("the '918 patent"), and 6,999,463 ("the '463 patent") (collectively, the "patents-in-suit"). The patents-in-suit have since expired, with the last one expiring in 2018. (D.I. 119, Ex. F at 1)

are directed to Voice-over-Packet ("VoP") technology, which enables the interfacing of a circuit-switched telecommunications system with a packet-based system in a geographically expansive telecommunications environment. (*Id.* at ¶¶ 8-10) Sprint's VoP technology results in greater efficiencies over prior art systems by reducing wasted bandwidth and obviating the need for expensive switches used in Public Switched Telephone Network ("PSTN") systems.[4] (*Id.* at ¶ 8)

The complaint alleges that FCC "has made, used, offered to sell, and/or sold" certain "broadband and/or packet-based telephony products or services," including Frontier Digital Voice, Vantage Voice, Frontier AnyWare, Frontier Home Phone, and Frontier Business Phone (the "Accused Products and Services"). (*Id.* at ¶ 34) FCC filed an amended answer to the complaint on July 6, 2018, asserting patent infringement and antitrust counterclaims as well as various affirmative defenses. (D.I. 17) On July 27, 2018, Sprint moved to dismiss FCC's antitrust counterclaims and moved to strike the inequitable conduct defenses for nine of the asserted patents. (D.I. 21) On August 10, 2018, FCC informed Sprint that FCC is a holding company that does not make, use, offer to sell, or sell the Accused Products or Services. (D.I. 125, Ex. A at 1)

During the Rule 16(b) scheduling conference held on August 17, 2018, the court asked FCC to identify the correct entities to be sued. (*Id.*, Ex. B at 22:15-23:8) Following the scheduling conference, Sprint sought discovery from FCC regarding the identity of unnamed FCC subsidiaries to be added as parties to the case. (D.I. 119, Ex. A) On September 11, 2018, FCC sent a letter to Sprint identifying the four entities responsible for providing virtually all VoP telephony services. (D.I. 125, Ex. C at 1) On October 10, 2018, FCC proposed a stipulation to substitute certain FCC subsidiaries for FCC. (D.I. 119, Ex. C at 1-2)

[4] The patents-in-suit generally concern the transmission medium for telephone calls by sending voice data in packets rather than by traditional circuit transmissions of the PSTN.

On October 18, 2018, FCC withdrew the proposed stipulation and served supplemental interrogatory responses identifying sixty FCC subsidiaries. (D.I. 119, Exs. D & E) On March 1, 2019, FCC served its first supplemental response to Sprint's Interrogatory 1, which sought a description of "each Relevant Frontier Entity's involvement with the Accused Services including . . . a description of the Frontier Entity's Relevant Operations." (D.I. 130, Ex. H at 4) On March 5, 2019, FCC's counsel sent a letter identifying the specific FCC operating entities associated with the Accused Products and Services. (D.I. 119, Ex. F)

The scheduling order set forth a deadline of April 16, 2019 for motions to join other parties and to amend or supplement the pleadings. (D.I. 31 at ¶ 2) On April 16, 2019, Sprint filed the instant motion to amend the complaint, seeking to add six FCC subsidiaries as defendants (the "Frontier Subsidiary Defendants"), five of which were identified in the March 5, 2019 letter.[5] (D.I. 117, Ex. 1 at ¶¶ 3-8, 58-59) The proposed FAC also adds vicarious liability and joint infringement theories against FCC. (*Id.* at ¶¶ 63-66)

The court granted Sprint's motion to dismiss the antitrust counterclaims and denied-in-part the motion to strike the inequitable conduct defenses in a Memorandum Opinion and Order issued on May 7, 2019. (D.I. 107; D.I. 108) Fact discovery closes on December 20, 2019, and trial is scheduled to commence on November 30, 2020. (*Id.* at ¶¶ 3(a), 19)

## III. LEGAL STANDARD

Rule 15(a)(2) of the Federal Rules of Civil Procedure provides that a party may amend its pleading after a responsive pleading has been filed "only with the opposing party's written consent or the court's leave," and "[t]he court should freely give leave when justice so requires."

[5] The proposed additional Frontier Subsidiary Defendant not included in the March 5, 2019 letter is Newco West Holdings LLC, which was identified in FCC's October 18, 2018 supplemental response to common interrogatory number 3. (D.I. 119, Ex. E at 19)

Fed. R. Civ. P. 15(a)(2). The decision to grant or deny leave to amend lies within the court's discretion. *See Foman v. Davis*, 371 U.S. 178, 182 (1962); *In re Burlington Coat Factory Secs. Litig.*, 114 F.3d 1410, 1434 (3d Cir. 1997). The Third Circuit has adopted a liberal approach to the amendment of pleadings. *See Dole v. Arco*, 921 F.2d 484, 486-87 (3d Cir. 1990). In the absence of undue delay, bad faith, or dilatory motives on the part of the moving party, the amendment should be freely granted, unless it is futile or unfairly prejudicial to the non-moving party. *See Foman*, 371 U.S. at 182; *In re Burlington*, 114 F.3d at 1434.

"An amendment is futile if it is frivolous, fails to state a claim upon which relief can be granted, or 'advances a claim or defense that is legally insufficient on its face.'" *Intellectual Ventures I LLC v. Toshiba Corp.*, C.A. No. 13-453-SLR-SRF, 2015 WL 4916789, at *2 (D. Del. Aug. 17, 2015) (quoting *Koken v. GPC Int'l, Inc.*, 443 F. Supp. 2d 631, 634 (D. Del. 2006)). The standard for analyzing futility of an amendment under Rule 15(a) is the same standard of legal sufficiency applicable under Rule 12(b)(6). *Shane v. Fauver*, 213 F.3d 113, 115 (3d Cir. 2000). Specifically, the amended pleading must fail to state a claim upon which relief could be granted even after the district court "take[s] all pleaded allegations as true and view[s] them in a light most favorable to the plaintiff." *Winer Family Trust v. Queen*, 503 F.3d 319, 331 (3d Cir. 2007); *see also Great W. Mining & Mineral Co. v. Fox Rothschild LLP*, 615 F.3d 159, 175 (3d Cir. 2010).

## IV. ANALYSIS

### A. Undue Delay, Bad Faith, and Prejudice

Applying the legal framework of Rule 15(a) to the present case, the court finds that there is no undue delay, bad faith, or dilatory motive by Sprint.[6] Sprint timely sought leave to amend on April 16, 2019 in accordance with the deadline for amended pleadings set forth in the scheduling order. (D.I. 117; D.I. 31 at ¶ 2) A motion for leave to amend filed on the deadline for amended pleadings generally precludes a finding of undue delay. *See Invensas Corp. v. Renesas Elecs. Corp.*, C.A. No. 11-448-GMS-CJB, 2013 WL 1776112, at *3 (D. Del. Apr. 24, 2013) (finding no undue delay where plaintiff filed motion for leave to amend on deadline for amended pleadings); *Butamax Advanced Biofuels LLC v. Gevo, Inc.*, C.A. No. 11-54-SLR, 2012 WL 2365905, at *2 (D. Del. June 21, 2012) (same). The record reflects that Sprint promptly sought discovery to identify the FCC entities responsible for the alleged infringement after FCC raised the issue in August 2018. (D.I. 119, Ex. A) The record further reflects that Sprint filed the instant motion soon after FCC's March 5, 2019 letter identifying specific FCC subsidiaries with operations related to the Accused Products and Services. (*Id.*, Ex. F) FCC does not argue that the proposed FAC would cause undue hardship or prejudice, and instead bases its opposition to the proposed FAC on its position that such amendment would be futile under Rule 12(b)(6).

### B. Futility

#### 1. Agency

"A parent company is not liable for the actions of its subsidiary solely because of the parent-subsidiary relationship." *StrikeForce Techs., Inc. v. PhoneFactor, Inc.*, C.A. No. 13-490-

[6] In its answering brief, FCC's only objection to Sprint's proposed FAC is that the proposed amendment would be futile. (D.I. 124) FCC raises no arguments with respect to undue delay, bad faith, or prejudice.

RGA-MPT, 2013 WL 6002850, at *3 (D. Del. Nov. 13, 2013). However, a parent corporation may be held liable for the actions of its subsidiary under an agency theory "if the parent directed or authorized those actions." *British Telecommc'ns PLC v. IAC/InteractiveCorp*, 356 F. Supp. 3d 405, 409 (D. Del. 2019) (quoting *T-Jat Sys. 2006 Ltd. v. Expedia, Inc. (DE)*, C.A. No. 16-581-RGA-MPT, 2017 WL 896988, at *6 (D. Del. Mar. 7, 2017)); *see also Phoenix Canada Oil Co. Ltd. v. Texaco, Inc.*, 842 F.2d 1466, 1477 (3d Cir. 1988) ("When one corporation acts as the agent of a disclosed principal corporation, the latter corporation may be liable on contracts made by the agent."). To establish liability pursuant to an agency relationship, the parent-subsidiary relationship must be directly related to the cause of action. *See id.* "Agency theory treats the parent and its subsidiary as two separate corporate entities, holding the parent liable for the specific actions it directed or authorized the subsidiary to perform." *StrikeForce Techs.*, 2013 WL 6002850, at *5.

In support of its argument that Sprint's proposed amendments are futile, FCC alleges that the proposed FAC fails to establish the requisite direction or authorization of FCC subsidiaries by FCC during the relevant time period. (D.I. 124 at 10) In reply, Sprint cites a number of allegations in the proposed amended pleading which support its position that FCC is vicariously liable for the acts of its subsidiaries under an agency theory of liability. (D.I. 129 at 5)

Sprint's proposed FAC plausibly alleges that FCC directed or authorized the allegedly infringing actions of its subsidiaries pursuant to the factors set forth in *British Telecommunications PLC v. IAC/InteractiveCorp*, 356 F. Supp. 3d 405, 409-10 (D. Del. 2019) and *Pacific Biosciences of California, Inc. v. Oxford Nanopore Technologies, Inc.*, C.A. No. 17-1353-LPS, 2019 WL 1789781, at *2 (D. Del. Apr. 24, 2019). (D.I. 117, Ex. 1 at ¶¶ 40-63) "[E]vidence of agency required at the pleading stage is minimal" because discovery is needed to

reveal "the details of corporate internal affairs." *T-Jat*, 2017 WL 896988, at *6; *Jurimex Kommerz Transit G.M.B.H. v. Case Corp.*, 65 F. App'x 803, 808 (3d Cir. 2003) (quoting *In re Craftmatic Sec. Litig. v. Kraftsow*, 890 F.2d 628, 645 (3d Cir. 1989)). Nonetheless, the complaint must "provide sufficient facts connecting the parent and subsidiary companies, and the control of the parent over the acts of the subsidiary, which results in the ultimate cause of action." *T-Jat*, 2017 WL 896988, at *6.

The proposed FAC in the present case recites a series of allegations outlining representations made by FCC to the public that demonstrate "close coordination and a joint strategy for the use and deployment of [the accused] technology." (D.I. 117, Ex. 1 at ¶¶ 44-49); *British Telecommc'ns*, 356 F. Supp. 3d at 410. The proposed FAC pleads that FCC provides the technology and systems for the Accused Products and Services, alleging that FCC "owns, either directly or through a wholly-owned subsidiary, the physical assets used to provide the Accused Products and Services throughout the country," and the "regional exchange carriers operate over equipment owned by FCC." (D.I. 117, Ex. 1 at ¶¶ 46-47; *see also* ¶¶ 42-43). In addition, the proposed amended pleading alleges that FCC hosts the website marketing the Accused Products and Services "even though such services may be provided by one or more FCC subsidiaries." (D.I. 117, Ex. 1 at ¶ 42); *see also Pacific Biosciences*, 2019 WL 1789781, at *2 (considering a shared website between parent and subsidiary as evidence of an agency relationship). Other factors supporting Sprint's asserted agency theory include FCC's employment of the engineers responsible for operating the network components used to provide the Accused Products and Services (D.I. 117, Ex. 1 at ¶ 50), FCC sharing the same executives and board of directors with its subsidiaries (*id.* at ¶ 59), the requirement that FCC's subsidiaries report directly to FCC's CEO (*id.*), and the consolidated financial statements filed by FCC and its subsidiaries (*id.* at ¶

62). These factual allegations support the proposed amended pleading's assertion that "FCC controls, directs, and operates all of the Accused Products and Services as its own properties, such that the subsidiaries providing the Accused Products and Services are in a controlled principal/agency relationship with FCC," and they are sufficient to satisfy the pleading standard at this stage of the proceedings in accordance with the analyses set forth in *British Telecommunications* and *Pacific Biosciences*. (*Id.* at ¶ 63)

Nonetheless, FCC contends that the FAC fails to correlate the asserted agency relationships to the purported acts of past infringement. (D.I. 124 at 8) According to FCC, all fifteen patents-in-suit were expired by the time this suit was brought, but six of the seven allegations in Sprint's proposed FAC are in the present tense and refer to the current relationship between FCC and its subsidiaries. (*Id.*) FCC contends that the one allegation in the past tense refers to a filing in July 2018, after all of the patents had expired. (*Id.*) FCC alleges that this deficiency is not curable because four of FCC's subsidiaries were acquired after the pendency of eleven of the patents-in-suit. (*Id.* at 9-10)

Sprint replies that the proposed FAC expressly defines the Accused Products and Services in the past tense and directly links FCC's direction and control to the Accused Products and Services offered by the operating entities prior to the expiration of the asserted patents. (D.I. 129 at 6) Sprint acknowledges that some, but not all, of the patents-in-suit expired before FCC acquired four of its subsidiaries from Verizon and AT&T, and Sprint's agency allegations extend to the acquired subsidiaries at least as to the unexpired patents-in-suit. (*Id.* at 6-7) Moreover, Sprint contends that FCC cannot escape responsibility for patent infringement committed by the

Acquired Subsidiaries prior to FCC's acquisition because FCC contractually assumed the liabilities of the Acquired Subsidiaries.[7] (*Id.* at 7)

The agency allegations in the proposed FAC sufficiently set forth acts of infringement occurring in the past. Specifically, the proposed FAC alleges that "[t]he Frontier Defendants have made, used, offered to sell, and/or sold—and/or directed or controlled others to make, use, offer to sell, and/or sell—broadband and/or packet-based telephony products or services, including [the Accused Products and Services], without Sprint's permission." (D.I. 117, Ex. 1 at ¶ 41) Each count of the proposed FAC incorporates by reference the past-tense allegations of paragraph 41. (*Id.* at ¶¶ 93-153)

Moreover, the acquisition dates of FCC's subsidiaries do not render the allegations of the proposed FAC futile. Although four of FCC's subsidiaries[8] were acquired after the expiration of eleven of the patents-in-suit, the acquisitions occurred during the terms of the remaining four patents-in-suit. In addition, the proposed FAC alleges that the Acquired Subsidiaries "provided voice services at the direction and control of FCC and for the financial benefit of FCC such that the activities of these subsidiaries with respect to the Accused Products and Services is attributable to FCC." (*Id.* at ¶ 48) Accepting Sprint's allegation as true at this stage of the

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[7] FCC asks the court to disregard Sprint's argument that FCC assumed the liabilities of the subsidiaries acquired from Verizon and AT&T because it is a new theory raised for the first time in Sprint's reply brief. (D.I. 152) FCC argues that any purported liability for infringing activities of its acquired subsidiaries with respect to patents now expired must be confined to its current relationships because the averments in the FAC are phrased in the present tense. However, Sprint directs the court to paragraph 48 of the FAC. (D.I. 153) Paragraph 48 sufficiently alleges facts in support of Sprint's alternate theories of liability attributable to FCC. Whether Sprint will ultimately succeed on the merits based on contractual language in FCC's subsidiary acquisition agreements or other evidence that comes about in discovery is a fact intensive inquiry that the court need not reach on consideration of a motion to amend.

[8] FCC acquired the following four subsidiaries from Verizon and AT&T: Frontier California Inc., Frontier Florida LLC, Frontier Southwest Incorporated, and Southern New England Telephone Company (the "Acquired Subsidiaries").

proceedings, it is plausible to conclude that FCC assumed the liabilities of the Acquired Subsidiaries for damages accruing prior to the acquisition. Whether the allegations are supported presents a question of fact to be resolved after fulsome discovery. Accordingly, the proposed amended pleading adequately alleges that FCC is liable for the infringing actions of its subsidiaries under an agency theory.

**2. Joint infringement**

FCC contends that the FAC fails to plead a joint infringement theory because it does not show that FCC directs or controls all of its subsidiaries, nor does it show direction or control in the relevant timeframe. (D.I. 124 at 12) FCC further contends that the FAC does not adequately allege a joint enterprise because there is no contention that FCC and its subsidiaries have an equal right of control. (*Id.*) According to FCC, such an allegation would contradict Sprint's contentions that FCC directed or controlled its subsidiaries. (*Id.*)

In reply, Sprint alleges that the proposed FAC adequately pleads joint infringement under both the "direction and control" and "joint enterprise" theories. (D.I. 129 at 8) Sprint does not directly address FCC's contention that the proposed amended pleading does not allege that FCC and its subsidiaries have an equal right of control. (*Id.*; D.I. 118 at 15-16)

To plead joint infringement, the complaint must show that one entity "directs or controls" the performance of others, or that the actors "form a joint enterprise." *Eli Lilly & Co. v. Teva Parenteral Medicines, Inc.*, 845 F.3d 1357, 1364 (Fed. Cir. 2017) (quoting *Akamai Techs., Inc. v. Limelight Networks, Inc.*, 797 F.3d 1020, 1022 (Fed. Cir. 2015)). "Proof that a defendant engaged in joint infringement by directing and controlling another party's infringing conduct can be shown where the defendant (1) conditions participation in an activity or receipt of a benefit upon others' performance of one or more steps of a patented method, and (2) establishes the

manner or timing of that performance." *IOENGINE, LLC v. PayPal Holdings, Inc.*, C.A. No. 18-452-WCB, 2019 WL 330515, at *1-3 (D. Del. Jan. 25, 2019) (internal quotation marks and citations omitted). "Proof that a defendant was part of a joint enterprise with another party or group of parties requires a showing of (1) an agreement, express or implied, among the members of the group; (2) a common purpose to be carried out by the group; (3) a community of pecuniary interest in that purpose, among the members; and (4) an equal right to a voice in the direction of the enterprise, which gives an equal right of control." *Id.* (internal quotation marks and citations omitted).

For the reasons previously stated at § IV.B.1, *supra*, Sprint's proposed FAC adequately pleads that FCC directs and controls the actions of its subsidiaries. Moreover, the proposed FAC adequately alleges that FCC and its subsidiaries had an equal right to a voice in the direction of the enterprise: "[B]y agreement among its subsidiaries, either express or implied, Frontier has a common purpose to provide, among other things, the Accused Products and Services to residential and business customers throughout the country." (D.I. 117, Ex. 1 at ¶ 65) Consequently, Sprint's allegations of joint infringement survive under both the "direction and control" and "joint enterprise" theories of liability. *See Mankes v. Vivid Seats Ltd.*, 822 F.3d 1302, 1311 (Fed. Cir. 2016) ("We do not think it appropriate to rule out at this stage any particular theory of direct infringement, including the joint-enterprise theory and the possibility of other bases of attribution recognized in *Akamai IV*.").

**3. Sufficiency of claims against FCC's subsidiaries**

According to FCC, the claims in the FAC against FCC's subsidiaries are futile because there is no specific breakdown of how each entity allegedly infringes each of the fifteen expired patents, or when they performed the allegedly infringing acts. (D.I. 124 at 6) In support of its

position, FCC cites a line of cases holding that "plaintiffs cannot combine allegations against multiple defendants." (D.I. 124 at 13) (citing *T-Jat*, 2017 WL 896988, at *7). FCC contends that Sprint's use of the umbrella term "Frontier" makes it unclear whether Sprint continues to allege that FCC is liable apart from its agency and joint infringement theories.[9] (*Id.* at 14)

In reply, Sprint contends that the proposed amended pleading contains specific allegations for each of the six subsidiaries named as defendants containing details as to how each subsidiary's services infringe each of the asserted patents. (D.I. 129 at 8) Sprint argues that FCC fails to cite any authority in support of its proposition that Sprint was required to allege a cross-agency relationship between the subsidiaries themselves. (*Id.* at 9-10) Sprint also clarifies that the complaint alleges that FCC and its subsidiaries directly infringed the Accused Products and Services, either individually or jointly. (*Id.* at 10)

The proposed FAC plausibly pleads allegations of infringement against the six named FCC subsidiary defendants by identifying the roles of each subsidiary (D.I. 117, Ex. 1 at ¶¶ 52-57), and the relationship of those subsidiaries to FCC, (*id.* at ¶¶ 58-65). To the extent that the proposed FAC groups the named subsidiary defendants together by referring to the "Frontier Subsidiary Defendants," courts in this district have recognized that "there is no *per se* rule that group pleading cannot satisfy" the pleading standard. *Pac. Biosciences*, 2019 WL 1789781, at *2 (quoting *MBIA Ins. Corp. v. Royal Indem. Co.*, 221 F.R.D. 419, 421 (D. Del. 2004) (concluding that it would be unfair to require the identification of which group entities the principal was acting through when the principal controlled each of the group entities)). The proposed FAC provides adequate notice to the named subsidiary defendants of the allegations

[9] Sprint's original complaint did not allege an agency or joint infringement theory against FCC, which was the only named defendant in the original complaint. (D.I. 1) Instead of filing a motion to dismiss the original complaint, FCC filed its answer and counterclaims on June 15, 2018. (D.I. 11)

against them, and FCC fails to allege otherwise. Moreover, for the reasons previously stated at § IV.B.1, *supra*, the proposed amended pleading plausibly alleges that the named subsidiaries are agents of FCC. *See Pac. Biosciences*, 2019 WL 1789781, at *2. Consequently, the proposed FAC's allegations against the named subsidiary defendants pass muster under Rule 12(b)(6) at this stage of the proceedings.[10]

## V. CONCLUSION

For the foregoing reasons, Sprint's motion for leave to amend is granted. (D.I. 117) An Order consistent with this Memorandum Opinion shall issue.

Given that the court has relied upon material that technically remains under seal, the court is releasing this Memorandum Opinion under seal, pending review by the parties. In the unlikely event that the parties believe that certain material in this Memorandum Opinion should be redacted, the parties shall jointly submit a proposed redacted version by no later than **December 17, 2019**, for review by the court, along with a motion supported by a declaration that includes a clear, factually detailed explanation as to why disclosure of any proposed redacted material would "work a clearly defined and serious injury to the party seeking closure." *See In re Avandia Mktg., Sales Practices & Prods. Liab. Litig.*, 924 F.3d 662, 672 (3d Cir. 2019) (quoting *Miller v. Ind. Hosp.*, 16 F.3d 549, 551 (3d Cir. 1994) (internal quotation marks omitted)). If the parties do not file a proposed redacted version and corresponding motion, or if the court determines the motion lacks a meritorious basis, the documents will be unsealed within thirty (30) days of the date the Memorandum Opinion issued.

[10] The court looks to the reasonable facial plausibility of the allegations, not whether they are factually supported at this stage. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) ("A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.").

This Memorandum Opinion is filed pursuant to 28 U.S.C. § 636(b)(1)(A), Fed. R. Civ. P. 72(a), and D. Del. LR 72.1(a)(2). The parties may serve and file specific written objections within fourteen (14) days after being served with a copy of this Memorandum Opinion. Fed. R. Civ. P. 72(a). The objections and responses to the objections are limited to ten (10) pages each.

The parties are directed to the court's Standing Order For Objections Filed Under Fed. R. Civ. P. 72, dated October 9, 2013, a copy of which is available on the court's website, www.ded.uscourts.gov.

Dated: December 10, 2019

Sherry R. Fallon
UNITED STATES MAGISTRATE JUDGE