

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ELECTRICAL MEDICAL TRUST, et al.,

Plaintiff,

v.

U.S. ANESTHESIA PARTNERS, INC., et al.

Defendants.

Case No.: 4:23-CV-04398

**DEFENDANT U.S. ANESTHESIA PARTNERS, INC.'S ANSWER TO
PLAINTIFFS ELECTRICAL MEDICAL TRUST AND PLUMBERS
LOCAL UNION NO. 68 WELFARE FUND'S CLASS ACTION COMPLAINT**

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Defendant U.S. Anesthesia Partners, Inc. (“USAP”) hereby answers Plaintiffs Electrical Medical Trust and Plumbers Local Union No. 68 Welfare Fund (“Plaintiffs”) Class Action Complaint dated November 20, 2023 (the “Complaint”) as set forth below and subject to its right to amend pursuant to Federal Rule of Civil Procedure 15(a)(2).

Each paragraph below corresponds to the same-numbered paragraph in the Complaint. All allegations not expressly admitted are denied. USAP does not interpret the headings or preamble in the Complaint as well-pleaded allegations to which any response is required. To the extent a response is required to the headings or preamble, USAP denies all such allegations in the headings and preamble. Unless otherwise defined, capitalized terms refer to the capitalized terms defined in the Complaint, but any such use is not an acknowledgment or admission of any characterization Plaintiffs may ascribe to the terms.

INTRODUCTION

1. The allegations in Paragraph 1 are vague, conclusory, and argumentative, and USAP therefore denies them except to the extent that it admits a specific well-pleaded factual allegation elsewhere in this Answer. Those allegations also set forth legal conclusions to which no response is required. To the extent they characterize Welsh Carson’s state of mind, USAP lacks sufficient information to admit or deny them. Further, Paragraph 1’s allegations regarding Welsh Carson are irrelevant in light of the Court’s dismissal of Plaintiffs’ claims against it. To the extent that a further response is required, USAP contends that the Complaint speaks for itself and otherwise denies Paragraph 1.

2. The allegations in Paragraph 2 are vague, conclusory, and argumentative, and USAP therefore denies them except to the extent that it admits a specific well-pleaded factual allegation elsewhere in this Answer. To the extent they characterize Welsh Carson’s state of mind, USAP lacks sufficient information to admit or deny them. Further, Paragraph 2’s

allegations regarding Welsh Carson are irrelevant in light of the Court's dismissal of Plaintiffs' claims against it. To the extent that a further response is required, USAP admits that Welsh Carson is a private equity firm based in New York and that it had a role in the formation of USAP, and otherwise denies Paragraph 2.

3. The allegations in Paragraph 3 are vague, conclusory, and argumentative, and USAP therefore denies them except to the extent that it admits a specific well-pleaded factual allegation elsewhere in this Answer. Those allegations also set forth a legal conclusion to which no response is required. To the extent they characterize Welsh Carson's state of mind, USAP lacks sufficient information to admit or deny them. Further, Paragraph 3's allegations regarding Welsh Carson are irrelevant in light of the Court's dismissal of Plaintiffs' claims against it. To the extent that a further response is required, USAP admits that material produced in the Federal Trade Commission's ("FTC") investigation of this matter includes the quoted language. USAP respectfully directs the Court to those documents for an accurate and complete statement of their contents and otherwise denies Paragraph 3.

4. The allegations in Paragraph 4 are vague, conclusory, and argumentative, and USAP therefore denies them except to the extent that it admits a specific well-pleaded factual allegation elsewhere in this Answer. Those allegations also set forth a legal conclusion to which no response is required. Further, Paragraph 4's allegations regarding Welsh Carson are irrelevant in light of the Court's dismissal of Plaintiffs' claims against it. To the extent that a further response is required, USAP admits that material produced in the FTC's investigation of this matter includes the quoted language. USAP respectfully directs the Court to that material for an accurate and complete statement of its contents, and otherwise denies Paragraph 4.

5. The allegations in Paragraph 5 are vague, conclusory, and argumentative, and USAP therefore denies them except to the extent that it admits a specific well-pleaded factual allegation elsewhere in this Answer. Those allegations also set forth a legal conclusion to which no response is required. Further, Paragraph 5's allegations regarding Welsh Carson are irrelevant in light of the Court's dismissal of Plaintiffs' claims against it. To the extent that a further response is required, USAP admits that material produced in the FTC's investigation of this matter includes the quoted language. USAP respectfully directs the Court to that material for an accurate and complete statement of its contents, and otherwise denies Paragraph 5.

6. The allegations in Paragraph 6 are vague, conclusory, and argumentative, and USAP therefore denies them except to the extent that it admits a specific well-pleaded factual allegation elsewhere in this Answer. Those allegations also set forth a legal conclusion to which no response is required. Further, Paragraph 6's allegations regarding Welsh Carson are irrelevant in light of the Court's dismissal of Plaintiffs' claims against it. To the extent that a further response is required, USAP denies Paragraph 6.

7. The allegations in Paragraph 7 are vague, conclusory, and argumentative, and USAP therefore denies them except to the extent that it admits a specific well-pleaded factual allegation elsewhere in this Answer. Those allegations also set forth a legal conclusion to which no response is required. Further, Paragraph 7 is predicated on an undefined methodology to assess insurer size that USAP lacks sufficient information to admit or deny. USAP lacks knowledge sufficient to admit or deny whether an unnamed insurance executive made the quoted comment. USAP otherwise denies Paragraph 7.

8. The allegations in Paragraph 8 are vague, conclusory, and argumentative, and USAP therefore denies them except to the extent that it admits a specific well-pleaded factual

allegation elsewhere in this Answer. Those allegations also set forth a legal conclusion to which no response is required. Further, Paragraph 8's allegations regarding Welsh Carson are irrelevant in light of the Court's dismissal of Plaintiffs' claims against it. USAP lacks sufficient information to admit or deny Paragraph 8's comparison of USAP's rates to a purported median of an unidentified set of anesthesia providers, or to admit or deny whether an unnamed United executive made the quoted comment. To the extent that a further response is required, USAP otherwise denies Paragraph 8.

9. The allegations in Paragraph 9 are vague, conclusory, and argumentative, and USAP therefore denies them except to the extent that it admits a specific well-pleaded factual allegation elsewhere in this Answer. Those allegations also set forth a legal conclusion to which no response is required. Further, Paragraph 9's allegations regarding Welsh Carson are irrelevant in light of the Court's dismissal of Plaintiffs' claims against it. To the extent that a further response is required, USAP admits that material produced in the FTC's investigation of this matter includes the quoted language. USAP respectfully directs the Court to those documents for an accurate and complete statement of their contents and otherwise denies Paragraph 9.

10. The allegations in Paragraph 10 are vague, conclusory, and argumentative, and USAP therefore denies them except to the extent that it admits a specific well-pleaded factual allegation elsewhere in this Answer. Those allegations also set forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP contends that the Complaint in this case and the parallel case brought by the FTC speak for themselves, and otherwise denies Paragraph 10.

JURISDICTION AND VENUE

11. Paragraph 11 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, for purposes of the current action, USAP does not contest that the Court has subject matter jurisdiction over this action.

12. Paragraph 12 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP does not contest that it transacts business in this district or that venue in this district is proper.

13. Paragraph 13 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP does not contest that the Court has personal jurisdiction over it in this case.

THE PARTIES

A. Plaintiff Electrical Medical Trust

14. USAP lacks sufficient information to admit or deny Paragraph 14's allegations – including, but not limited to, whether “Electrical Medical Trust directly reimburses healthcare providers who treat its members” – and therefore denies Paragraph 14.

B. Plaintiff Plumbers Local Union No. 68 Welfare Fund

15. USAP lacks sufficient information to admit or deny Paragraph 15's allegations – including, but not limited to, whether “Plumbers Local Union No. 68 Welfare Fund directly reimburses healthcare providers who treat its members” – and therefore denies Paragraph 15.

C. Defendant USAP

16. USAP admits the first sentence of Paragraph 16. The second sentence is vague because there are multiple corporate entities to which “USAP” might refer, and those entities do not all provide the services set forth in that sentence. USAP therefore denies the second sentence of Paragraph 16.

D. Defendant Welsh Carson

17. USAP admits the first sentence of Paragraph 17. Otherwise, many of Paragraph 17's allegations are vague, conclusory, and argumentative, and its allegations regarding Welsh Carson are irrelevant in light of the Court's dismissal of the Plaintiffs' claims against it. Further, USAP lacks sufficient information to admit or deny Welsh Carson's particular organization. To the extent that a further response is required, USAP denies all but the first sentence of Paragraph 17 except to the extent that it admits a specific well-pleaded factual allegation elsewhere in this Answer.

18. USAP admits the first sentence of Paragraph 18. Otherwise, Paragraph 18's allegations regarding Welsh Carson are irrelevant in light of the Court's dismissal of the Plaintiffs' claims against it. Moreover, USAP lacks sufficient information to admit or deny Paragraph 18's allegations regarding the Welsh Carson entities' corporate commonalities, and therefore denies Paragraph 18.

19. Subject to the qualification that Welsh Carson does not acquire physicians, USAP admits Paragraph 19.

20. The allegations in Paragraph 20 are vague, conclusory, and argumentative, and USAP therefore denies them except to the extent that it admits a specific well-pleaded factual allegation elsewhere in this Answer. Further, Paragraph 20's allegations regarding Welsh Carson are irrelevant in light of the Court's dismissal of Plaintiffs' claims against it. To the extent that a further response is required, USAP lacks sufficient knowledge to admit or deny Welsh Carson's control of portfolio companies or whether and in what context it "dubbed itself USAP's 'primary architect,'" and therefore denies Paragraph 20.

21. The allegations in Paragraph 21 are vague, conclusory, and argumentative, and USAP therefore denies them except to the extent that it admits a specific well-pleaded factual

allegation elsewhere in this Answer. To the extent the allegations characterize Welsh Carson's state of mind, USAP lacks sufficient information to confirm or deny them. USAP admits that material produced in the FTC's investigation of this matter includes the quoted language. USAP respectfully directs the Court to that material for an accurate and complete statement of its contents. USAP also admits that Welsh Carson has the right to appoint two seats on USAP's board of directors, that Welsh Carson had the right to appoint the majority of the board from 2012 and 2017, and that Brian Regan served on USAP's board from 2012 until 2022. USAP otherwise denies the remaining allegations in Paragraph 21.

22. Paragraph 22's allegations regarding Welsh Carson are irrelevant in light of the Court's dismissal of Plaintiffs' claims against it. To the extent that a further response is required, USAP lacks sufficient information to admit or deny the allegations to the extent they characterize Welsh Carson's state of mind. USAP admits that its CEO at the time the Complaint was filed was previously affiliated with Welsh Carson but otherwise denies the allegations in Paragraph 22.

23. The allegations in Paragraph 23 are vague, conclusory, and argumentative, and USAP therefore denies them except to the extent that it admits a specific well-pleaded factual allegation elsewhere in this Answer. Further, Paragraph 23's allegations regarding Welsh Carson are irrelevant in light of the Court's dismissal of Plaintiffs' claims against it. To the extent that a further response is required, USAP denies Paragraph 23.

24. Paragraph 24 sets forth legal conclusions to which no response is required. Further, Paragraph 24's allegations regarding Welsh Carson are irrelevant in light of the Court's dismissal of Plaintiffs' claims against it. To the extent that a further response is required, USAP denies Paragraph 24.

FACTUAL ALLEGATIONS

II. THE RELEVANT MARKETS

A. Product Market: Hospital-Only Anesthesia Services Reimbursed by Commercial Payors

25. The first sentence of Paragraph 25 states a legal conclusion to which no response is required. The second sentence is an oversimplified and incomplete description of the complex care anesthesiologists, certified registered nurse anesthetists (“CRNAs”), and certified anesthesiologist assistants (“CAAs”) provide to patients before, during, and after surgery and other procedures. USAP admits that pain management is one of many aspects of anesthesia care and that general and local anesthesia are different methods of managing pain, but otherwise denies the allegations in Paragraph 25’s second sentence as stated. The third and fourth sentences are characterizations of the Complaint to which no response is required. To the extent that a further response is required, USAP denies those sentences of Paragraph 25.

26. USAP lacks sufficient information to admit or deny the final sentence of Paragraph 26. USAP otherwise denies Paragraph 26.

27. Paragraph 27 alleges a legal conclusion to which no response is required. To the extent that a further response is required, USAP contends that Paragraph 27 is an oversimplified and incomplete description of the complex care anesthesiologists, CRNAs, and CAAs provide to patients before, during, and after surgical and other procedures, and USAP therefore denies Paragraph 27.

28. Paragraph 28 alleges a legal conclusion to which no response is required. To the extent that a further response is required, USAP admits that certain hospital services such as trauma and obstetrics that are not provided in outpatient settings require overnight call and longer shifts that are scheduled in advance. USAP otherwise contends that Paragraph 28 is an

oversimplified and incomplete description of the complex care anesthesiologists, CRNAs, and CAAs provide to patients before, during, and after surgical and other procedures, and USAP therefore denies Paragraph 28.

29. Paragraph 29 alleges a legal conclusion to which no response is required. Further, the allegations in the first sentence of Paragraph 29 are vague and ambiguous. To the extent that a further response is required, USAP denies Paragraph 29, except insofar as USAP admits that material produced in the FTC's investigation of this matter includes the quoted language.

30. Paragraph 30 alleges a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 30.

31. Paragraph 31 alleges a legal conclusion to which no response is required. USAP also denies Paragraph 31 to the extent that it is predicated on an undefined methodology for calculating and comparing reimbursement rates that USAP lacks sufficient information to admit or deny. To the extent that a further response is required, USAP denies Paragraph 31.

32. Paragraph 32 alleges a legal conclusion to which no response is required. To the extent that a further response is required, USAP admits the final sentence of Paragraph 32, and otherwise denies Paragraph 32.

B. The Relevant Geographic Markets

33. The allegations in Paragraph 33 are vague, conclusory, and argumentative, and USAP therefore denies them except to the extent that it admits a specific well-pleaded factual allegation elsewhere in this Answer. Moreover, Paragraph 33 alleges a legal conclusion to which no response is required. To the extent that a further response is required, USAP admits that insurers create “provider networks” and that “self-funded insurers sometimes contract with insurers” through contracts that speak for themselves, and that the vague generalizations in all but the first two sentences of Paragraph 33 can be true in some circumstances. But USAP denies

that those generalizations apply always and uniformly to each and every marketplace participant, and otherwise denies Paragraph 33.

34. The allegations in Paragraph 34 are vague, conclusory, and argumentative, and USAP therefore denies them except to the extent that it admits a specific well-pleaded factual allegation elsewhere in this Answer. Moreover, Paragraph 34 alleges a legal conclusion to which no response is required. To the extent that a further response is required, USAP admits the vague generalizations in all but the first two sentences of Paragraph 34 can be true in some circumstances, but USAP denies that those generalizations apply always and uniformly to each and every marketplace participant, and otherwise denies Paragraph 34.

35. USAP denies Paragraph 35.

1. Austin, Dallas, and Houston MSAs

36. Paragraph 36 sets forth legal conclusions to which no response is required. To the extent that a further response is required, USAP denies Paragraph 36.

37. Subject to the qualifications that the “Austin MSA” is more formally called “Austin-Round Rock, TX MSA,” the “Dallas MSA” is more formally called “Dallas-Fort Worth-Arlington, TX MSA,” and the “Houston MSA” is more formally called “Houston-The Woodlands-Sugar Land, TX MSA,” USAP admits Paragraph 37.

38. The allegations in Paragraph 38 are vague, conclusory, and argumentative, and USAP therefore denies them except to the extent that it admits a specific well-pleaded factual allegation elsewhere in this Answer. Moreover, Paragraph 38 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP admits the vague generalizations in all Paragraph 38 can be true in some circumstances, but USAP denies that those generalizations apply always and uniformly to each and every marketplace participant, and otherwise denies Paragraph 38.

39. The allegations in Paragraph 39 are vague, conclusory, and argumentative, and USAP therefore denies them except to the extent that it admits a specific well-pleaded factual allegation elsewhere in this Answer. Moreover, Paragraph 39 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP admits the vague generalizations in all Paragraph 39 can be true in some circumstances, but USAP denies that those generalizations apply always and uniformly to each and every marketplace participant, and otherwise denies Paragraph 39.

2. Combined Texas Major Metropolitan Areas

40. USAP denies Paragraph 40.

41. The allegations in Paragraph 41 are vague, conclusory, and argumentative, and USAP therefore denies them except to the extent that it admits a specific well-pleaded factual allegation elsewhere in this Answer. Moreover, Paragraph 41 sets forth a legal conclusion to which no response is required. USAP also denies Paragraph 41 to the extent that it is predicated on an undefined methodology for calculating and comparing reimbursement rates that USAP lacks sufficient information to admit or deny. Further, USAP lacks knowledge regarding the contents of United's internal strategy discussions. To the extent that a further response is required, USAP admits the vague generalizations in all Paragraph 41 can be true in some circumstances, but USAP denies that those generalizations apply always and uniformly to each and every marketplace participant, and otherwise denies Paragraph 41.

42. USAP denies Paragraph 42.

3. Texas

43. USAP denies Paragraph 43.

44. The allegations in Paragraph 44 are vague, conclusory, and argumentative, and USAP therefore denies them except to the extent that it admits a specific well-pleaded factual

allegation elsewhere in this Answer. USAP also denies Paragraph 44 to the extent that it is predicated on an undefined methodology for identifying “major” employers and the number of employees of the named employers. To the extent that a further response is required, USAP admits the vague generalizations in all Paragraph 44 can be true in some circumstances, and that the listed companies employ individuals in Texas. But USAP denies that Paragraph 44’s generalizations apply always and uniformly to each and every marketplace participant, and otherwise denies Paragraph 44.

45. The allegations in Paragraph 45 are vague, conclusory, and argumentative, and USAP therefore denies them except to the extent that it admits a specific well-pleaded factual allegation elsewhere in this Answer. Paragraph 45 also sets forth legal conclusions to which no response is required, and makes allegations regarding employers’ state of mind that USAP lacks sufficient information to confirm or deny. USAP otherwise denies Paragraph 45.

46. USAP denies Paragraph 46.

47. USAP denies Paragraph 47.

III. USAP AND WELSH CARSON’S ANTICOMPETITIVE SERIAL ACQUISITION SCHEME

A. Welsh Carson Decides to Invest in an “Aggressive ‘Buy and Build’ Consolidation Strategy.”

48. To the extent that Paragraph 48’s allegations characterize Welsh Carson’s state of mind, USAP lacks sufficient information to admit or deny them. Moreover, Paragraph 48’s allegations regarding Welsh Carson are irrelevant in light of the Court’s dismissal of Plaintiffs’ claims against it. To the extent that a further response is required, USAP admits that material produced in the FTC’s investigation of this matter includes the quoted language. USAP respectfully directs the Court to that material for an accurate and complete statement of its contents, and USAP otherwise denies Paragraph 48.

49. USAP lacks sufficient information to admit or deny allegations regarding Welsh Carson's state of mind or internal delegation related to investments. USAP otherwise denies Paragraph 49.

50. USAP lacks sufficient information to admit or deny the allegations in Paragraph 50 and therefore denies Paragraph 50.

B. Welsh Carson and New Day Launch Their Consolidation Strategy by Acquiring Greater Houston Anesthesiology.

51. USAP admits the first sentence of Paragraph 51. USAP lacks sufficient information to admit or deny factual allegations regarding Pediatrix's acquisitions and Kristen Bratberg's role in them, or USAP's state of mind, and therefore otherwise denies Paragraph 51.

52. USAP lacks sufficient information to admit or deny the allegations of Paragraph 52. Further, to the extent the allegations characterize Welsh Carson's state of mind, USAP lacks sufficient information to admit or deny them. To the extent that a further response is required, USAP respectfully directs the Court to whatever written evidence may be available for an accurate and complete statement of its contents, and otherwise denies Paragraph 52.

53. USAP lacks sufficient information to admit or deny allegations regarding consultants' analysis of the transaction. Further, to the extent the allegations characterize Welsh Carson's state of mind, USAP lacks sufficient information to admit or deny them. To the extent that a further response is required, USAP admits that material produced in the FTC's investigation of this matter includes the quoted language. USAP respectfully directs the Court to that material for an accurate and complete statement of its contents, and otherwise denies Paragraph 53.

54. To the extent the allegations characterize Welsh Carson's state of mind, USAP lacks sufficient information to admit or deny them. USAP admits that material produced in the

FTC's investigation of this matter includes the quoted language, respectfully directs the Court to that material for an accurate and complete statement of its contents, and otherwise denies Paragraph 54.

55. Because USAP lacks sufficient information to admit or deny the allegations in Paragraph 55, it denies Paragraph 55.

56. USAP lacks sufficient information to know whether "funding" was "secured" and therefore denies the first sentence of Paragraph 56 to the extent it relies on that clause. USAP otherwise admits Paragraph 56.

57. The allegations in Paragraph 57 are vague, conclusory, and argumentative, and USAP therefore denies them except to the extent that it admits a specific well-pleaded factual allegation elsewhere in this Answer. To the extent they purport to characterize USAP's "Roll Up Houston" presentation, USAP contends this document speaks for itself. To the extent they characterize Welsh Carson's state of mind, USAP lacks sufficient information to admit or deny them. Further, Paragraph 57's allegations regarding Welsh Carson are irrelevant in light of the Court's dismissal of Plaintiffs' claims against it. To the extent that a further response is required, USAP admits that material produced in the FTC's investigation of this matter includes the quoted language, with the exception of the allegations regarding a Welsh Carson analyst's statements, about which USAP lacks sufficient information to admit or deny. USAP respectfully directs the Court to the quoted evidence for an accurate and complete statement of its contents, and otherwise denies Paragraph 57.

58. To the extent the allegations in Paragraph 58 characterize Welsh Carson's state of mind, USAP lacks sufficient information to admit or deny them. Further, Paragraph 58's allegations regarding Welsh Carson are irrelevant in light of the Court's dismissal of Plaintiffs'

claims against it. To the extent that a further response is required, USAP admits that material produced in the FTC's investigation of this matter included language similar to the quoted language. USAP respectfully directs the Court to that material for an accurate and complete statement of its contents, and otherwise denies the allegations in Paragraph 58.

59. The allegations in Paragraph 59 are vague, conclusory, and argumentative, and USAP therefore denies them except to the extent that it admits a specific well-pleaded factual allegation elsewhere in this Answer. To the extent they characterize Welsh Carson's state of mind, USAP lacks sufficient information to admit or deny them. Further, Paragraph 59's allegations regarding Welsh Carson are irrelevant in light of the Court's dismissal of Plaintiffs' claims against it. To the extent that a further response is required, USAP admits that material produced in the FTC's investigation of this matter includes the quoted language, respectfully directs the Court to that material for an accurate and complete statement of its contents, and otherwise denies Paragraph 59.

IV. USAP ACQUIRES ANOTHER FIFTEEN TEXAS ANESTHESIA PRACTICES.

A. Lake Travis Anesthesiology

60. With the exception of any intended characterization of a relevant antitrust market and the undefined basis for characterizing Lake Travis's and GHA's size, USAP admits the first two sentences of Paragraph 60. To the extent that a further response is required, USAP admits that material produced in the FTC's investigation of this matter includes the quoted language. USAP respectfully directs the Court to that material for an accurate and complete statement of its contents. The remaining allegations in Paragraph 60 are vague and conclusory, and USAP therefore denies them except to the extent that it admits a specific well-pleaded factual allegation elsewhere in this Answer

B. North Houston Anesthesiology-Kingwood Division

61. USAP admits that it entered into the referenced agreement and that the referenced numbers of physicians and CRNAs affiliated with its counterparty are accurate. USAP admits that material produced in the FTC's investigation of this matter includes the quoted language. USAP respectfully directs the Court to that material for an accurate and complete statement of its contents. USAP otherwise denies Paragraph 61, including to the extent that it is predicated on an undefined methodology for calculating reimbursement rates that USAP lacks sufficient information to admit or deny.

C. Pinnacle Anesthesia Consultants

62. Paragraph 62 is predicated on an undefined methodology to assess practice group size that USAP lacks sufficient information to admit or deny. Further, USAP lacks sufficient information to admit or deny Paragraph 62's allegations comparing USAP's number of cases and revenues to other, unidentified providers of anesthesia services. To the extent that a further response is required, USAP admits that material produced in the FTC's investigation of this matter includes the quoted language. USAP respectfully directs the Court to that material for an accurate and complete statement of its contents, and otherwise USAP therefore denies Paragraph 62.

63. USAP lacks sufficient information to admit or deny Paragraph 63's allegations regarding conversations among third parties. To the extent that a further response is required, USAP admits that material produced in the FTC's investigation of this matter includes the quoted language. USAP respectfully directs the Court to that material for an accurate and complete statement of its contents, and otherwise USAP therefore denies Paragraph 63.

64. The first sentence of Paragraph 64 is vague, conclusory, and argumentative, and thus requires no response. Moreover, USAP lacks sufficient information to admit or deny

Paragraph 64's allegations regarding Welsh Carson's state of mind. USAP admits that material produced in the FTC's investigation of this matter includes the quoted language, respectfully directs the Court to that material for an accurate and complete statement of its contents, and otherwise USAP therefore denies Paragraph 64.

65. USAP admits that material produced in the FTC's investigation of this matter includes the quoted language in the first sentence and respectfully directs the Court to that material for an accurate and complete statement of its contents. USAP admits the allegations in the first sentence of Paragraph 65 insofar as they concern USAP; USAP lacks sufficient information to admit or deny any allegations concerning Welsh Carson's actions or knowledge. USAP admits that material produced in the FTC's investigation of this matter includes the documents referenced and quoted in the second and third sentences. USAP respectfully directs the Court to that material for an accurate and complete statement of its contents. USAP otherwise denies Paragraph 65.

66. USAP admits that a letter of intent was signed on September 13, 2013, and that material produced in the FTC's investigation of this matter includes the quoted language in the second sentence of Paragraph 66. USAP respectfully directs the Court to that material for an accurate and complete statement of its contents. USAP also admits that the referenced arrangements helped fund USAP's agreement with Welsh Carson. USAP lacks sufficient information to admit or deny the actions of Welsh Carson and Brian Regan. USAP otherwise denies Paragraph 66.

67. The allegations in Paragraph 67 are vague, conclusory, and argumentative, and therefore require no response. To the extent that a further response is required, USAP admits that it settled a dispute with an insurer in 2016 to which Paragraph 67 refers, and respectfully

directs the Court to the terms of that settlement for an accurate and complete statement of its contents. The remaining allegations of Paragraph 67 are vague, and USAP therefore denies them except to the extent that it admits a specific well-pleaded factual allegation elsewhere in this Answer.

68. Paragraph 68's allegations regarding Welsh Carson are irrelevant in light of the Court's dismissal of the FTC's claims against it. USAP respectfully directs the Court to its contracts for an accurate and complete statement of their contents and denies Paragraph 68 to the extent it mischaracterizes those contracts. The remaining allegations in Paragraph 68 are vague and conclusory, and USAP therefore denies them except to the extent that it admits a specific well-pleaded factual allegation elsewhere in this Answer.

D. Anesthesia Consultants of Dallas

69. USAP admits that it entered into the referenced agreement and that the referenced numbers of physicians and CRNAs affiliated with its counterparty are accurate. USAP also admits that material produced in the FTC's investigation of this matter includes the quoted language in the second and third sentences of Paragraph 69. USAP respectfully directs the Court to that material for an accurate and complete statement of its contents. USAP further admits that Anesthesia Consultants of Dallas had exclusive contracts with Methodist Dallas Medical Center and Texas Regional Medical Center before it entered into an agreement with USAP. USAP further admits that Anesthesia Consultants of Dallas served other Methodist Dallas hospitals. USAP otherwise denies the allegations in Paragraph 69.

E. Excel Anesthesia Consultants

70. USAP admits that the allegations in the first sentence of Paragraph 70 accurately characterize the referenced agreement and that the referenced numbers of physicians and CRNAs affiliated with its counterparty are accurate. USAP also admits that material produced in the

FTC's investigation of this matter includes the quoted language in the third and fourth sentences of Paragraph 70, but respectfully directs the Court to that material for an accurate and complete statement of its contents. USAP otherwise denies the allegations in Paragraph 70.

71. USAP admits that material produced in the FTC's investigation of this matter includes the quoted language and respectfully directs the Court to that material for an accurate and complete statement of its contents. USAP lacks sufficient information to admit or deny the allegation regarding Regan's state of mind. USAP otherwise denies Paragraph 71, including to the extent that it is predicated on an undefined methodology for calculating reimbursement rates that USAP lacks sufficient information to admit or deny.

F. Southwest Anesthesia Associates

72. USAP admits the allegations set forth in the first sentence of Paragraph 72. USAP admits that material produced in the FTC's investigation of this matter discusses the information alleged in the second sentence of Paragraph 72 and respectfully directs the Court to that material for an accurate and complete statement of its contents. USAP otherwise denies Paragraph 72, including to the extent that it is predicated on an undefined methodology for calculating reimbursement rates that USAP lacks sufficient information to admit or deny.

G. BMW Anesthesiology and Medical City Physicians

73. USAP admits the first sentence of Paragraph 73. USAP admits that material produced in the FTC's investigation of this matter includes the quoted language in the third and fourth sentences of Paragraph 73. USAP respectfully directs the Court to that material for an accurate and complete statement of its contents. USAP otherwise denies Paragraph 73, including to the extent that it is predicated on an undefined methodology for calculating reimbursement rates that USAP lacks sufficient information to admit or deny.

H. Sundance Anesthesia

74. USAP admits that it entered into the agreement referenced in the first sentence of Paragraph 74 and that the referenced numbers of physicians and CRNAs affiliated with its counterparty are accurate. USAP further admits that Sundance Anesthesia held an exclusive anesthesia services agreement with Texas Health Resources-Southwest Fort Worth. USAP admits that material produced in the FTC's investigation of this matter includes the quoted language in the third sentence of Paragraph 74 and respectfully directs the Court to that material for an accurate and complete statement of its contents. USAP otherwise denies Paragraph 74, including to the extent that it is predicated on an undefined methodology for calculating reimbursement rates that USAP lacks sufficient information to admit or deny.

I. East Texas Anesthesiology Associates

75. USAP admits that it entered into the agreement referenced in the first sentence of Paragraph 75 and that the referenced numbers of physicians and CRNAs affiliated with its counterparty are accurate. USAP also admits that in 2016 East Texas Anesthesiology Associates provided anesthesia services at East Texas Medical Center and University of Texas Health Science Center in Tyler. USAP otherwise denies Paragraph 75, including to the extent that it is predicated on an undefined methodology for calculating reimbursement rates that USAP lacks sufficient information to admit or deny.

J. MetroWest Anesthesia Care

76. USAP admits that material produced in the FTC's investigation of this matter includes the quoted language. USAP respectfully directs the Court to that material for an accurate and complete statement of its contents. USAP lacks sufficient knowledge to admit or deny this Paragraph's allegations regarding Sheridan Healthcare. USAP otherwise denies the allegations in Paragraph 76.

77. USAP lacks sufficient knowledge to admit or deny Paragraph 77, including to the extent that it is predicated on an undefined methodology for calculating and comparing reimbursement rates, case counts, and market shares that USAP lacks sufficient information to admit or deny.

K. Capitol Anesthesiology Association

78. USAP admits that it entered into the referenced agreement and that the referenced numbers of physicians and CRNAs affiliated with its counterparty are accurate. USAP further admits that Capitol Anesthesiology Association had certain exclusive contracts with Austin-area hospitals. USAP further admits that material produced in the FTC's investigation of this matter includes the quoted language. USAP respectfully directs the Court to that material for an accurate and complete statement of its contents. USAP otherwise denies Paragraph 78.

79. USAP lacks sufficient knowledge to admit or deny Paragraph 79's first sentence, including to the extent that it is predicated on an undefined methodology for calculating and comparing reimbursement rates that USAP lacks sufficient information to admit or deny. USAP admits that material produced in the FTC's investigation of this matter includes the quoted language in the second sentence. USAP respectfully directs the Court to that material for an accurate and complete statement of its contents. USAP otherwise denies Paragraph 79.

L. Amarillo Anesthesia Consultants

80. USAP admits that it entered into the agreement referenced in the first sentence of Paragraph 80 and that the referenced numbers of physicians and CRNAs affiliated with its counterparty are accurate. USAP also admits that Baptist St. Anthony's hospital is one of two hospitals in Amarillo, and that it is part of the Ardent Health Services system. USAP otherwise lacks sufficient knowledge to admit or deny the allegations of Paragraph 80, including to the extent that it is predicated on an undefined methodology for calculating and comparing

reimbursement rates, case counts, and market shares that USAP lacks sufficient information to admit or deny.

M. Star Anesthesia

81. USAP admits that it entered into the agreement referenced in the first two sentences of Paragraph 81 and that the referenced numbers of physicians and CRNAs affiliated with its counterparty are accurate. USAP also admits that material produced in the FTC's investigation of this matter includes the quoted language. USAP respectfully directs the Court to that material for an accurate and complete statement of its contents. USAP otherwise denies Paragraph 81, including to the extent that it is predicated on an undefined methodology to assess hospital size, and a different one to calculate and compare reimbursement rates, both of which USAP lacks sufficient knowledge to admit or deny.

N. Guardian Anesthesia Services

82. USAP admits that it entered into the agreement referenced in the first sentence of Paragraph 82 and that the referenced numbers of physicians and CRNAs affiliated with its counterparty are accurate. USAP otherwise lacks sufficient knowledge to admit or deny Paragraph 82, including to the extent that it is predicated on an undefined methodology to assess provider reimbursement rates that USAP lacks sufficient knowledge to admit or deny.

V. MONOPOLY POWER

A. USAP Uses Its Monopoly Power to Charge Monopoly Prices.

83. Paragraph 83's allegations assume a finding that the antitrust product market the Plaintiffs have pleaded is well defined – a conclusion that USAP denies. To the extent that any further response is required, USAP denies Paragraph 83, including to the extent that it presupposes unidentified methodologies for assessing reimbursement rates, changes in quality, or other factors that USAP lacks sufficient knowledge to admit or deny.

84. Paragraph 84's allegations assume a finding that the antitrust product market the Plaintiffs have pleaded is well defined – a conclusion that USAP denies. To the extent that any further response is required, USAP refers the Court to the cited literature for a complete and accurate statement of its contents, and USAP otherwise denies Paragraph 84, including to the extent that it presupposes unidentified methodologies for assessing reimbursement rates, changes in quality, or other factors that USAP lacks sufficient knowledge to admit or deny.

B. Market Share and Concentration Data Also Evince USAP's Monopoly Power.

85. Paragraph 85's allegations assume a finding that the antitrust product market the Plaintiffs have pleaded is well defined – a conclusion that USAP denies. To the extent that any further response is required, USAP denies Paragraph 85.

86. Paragraph 86's allegations assume a finding that the antitrust product market the Plaintiffs have pleaded is well defined – a conclusion that USAP denies. To the extent that any further response is required, USAP denies Paragraph 86.

87. Paragraph 87's allegations assume a finding that the antitrust product market the Plaintiffs have pleaded is well defined – a conclusion that USAP denies. To the extent that any further response is required, USAP denies Paragraph 87.

88. Paragraph 88's allegations assume a finding that the antitrust product market the Plaintiffs have pleaded is well defined – a conclusion that USAP denies. To the extent that any further response is required, USAP denies Paragraph 88.

89. Paragraph 89's allegations assume a finding that the antitrust product market the Plaintiffs have pleaded is well defined – a conclusion that USAP denies. To the extent that any further response is required, USAP denies Paragraph 89.

90. USAP admits that Paragraph 90 generally accurately characterizes the Herfindahl-Hirschman Index, but denies any legal conclusion regarding that index's application in this matter.

91. Paragraph 91's allegations assume a finding that the antitrust product market the Plaintiffs have pleaded is well defined – a conclusion that USAP denies. To the extent that any further response is required, USAP denies Paragraph 91.

92. Paragraph 92's allegations assume a finding that the antitrust product market the Plaintiffs have pleaded is well defined – a conclusion that USAP denies. To the extent that any further response is required, USAP denies Paragraph 92.

93. Paragraph 93's allegations assume a finding that the antitrust product market the Plaintiffs have pleaded is well defined – a conclusion that USAP denies. To the extent that any further response is required, USAP denies Paragraph 93.

94. Paragraph 94's allegations assume a finding that the antitrust product market the Plaintiffs have pleaded is well defined – a conclusion that USAP denies. To the extent that any further response is required, USAP denies Paragraph 94.

95. Paragraph 95's allegations assume a finding that the antitrust product market the Plaintiffs have pleaded is well defined – a conclusion that USAP denies. To the extent that any further response is required, USAP denies Paragraph 95.

C. USAP's Monopoly Power Is Durable and Resistant to Competition.

96. Paragraph 96's allegations assume a finding that the antitrust product market the Plaintiffs have pleaded is well defined – a conclusion that USAP denies. USAP lacks sufficient information to admit or deny the accuracy of the language quoted in the last sentence of Paragraph 96. To the extent that any further response is required, USAP otherwise denies Paragraph 96.

97. USAP denies Paragraph 97 to the extent that it is predicated on an undefined methodology for calculating and comparing reimbursement rates that USAP lacks sufficient information to admit or deny. USAP admits that providing anesthesia services in any setting requires extensive training and experience and denies Paragraph 97 to the extent that it does not fully capture that training and experience. USAP otherwise denies Paragraph 97, including to the extent that it is predicated on an undefined methodology for calculating and comparing reimbursement rates that USAP lacks sufficient information to admit or deny, or on a finding that the antitrust product market the Plaintiffs have pleaded is well defined – a conclusion that USAP denies.

98. Many of the allegations in Paragraph 98 are vague, conclusory, and argumentative, and therefore require no response. USAP admits that the vague generalizations in Paragraph 98's third, fourth, and fifth can be true in some circumstances, but denies that those generalizations apply always and uniformly to each and every marketplace participant. USAP otherwise denies Paragraph 98.

D. USAP's Monopolization Sacrificed Quality.

99. The allegations in Paragraph 99 are vague, conclusory, and argumentative, and thus do not require any response. To the extent that a further response is required, USAP admits that the quoted language appears in the cited document, and otherwise denies Paragraph 99.

100. The allegations in Paragraph 100 are vague and conclusory, and therefore require no response. To the extent that a further response is required, USAP admits that the quoted language appears in the document cited in footnote 14, and respectfully refers the Court to it and the documents cited in footnote 13 for an accurate and complete statement of their contents. USAP otherwise lacks sufficient information to admit or deny the allegations set forth in Paragraph 100, and therefore denies Paragraph 100.

101. The allegations in the first two sentences of Paragraph 101 are vague, conclusory, and argumentative, and therefore require no response. USAP admits that the press article cited includes the quoted language, which reflects that article's characterization of the beliefs of a single former USAP anesthesiologist in a geography not implicated in this case. To the extent that a further response is required, USAP denies Paragraph 101.

102. The allegations in the first sentence of Paragraph 102 are vague, conclusory, and argumentative, and therefore require no response. USAP respectfully refers the Court to the cited documents for an accurate and complete statement of their contents, including without limitation that the physician at issue violated USAP's written policies. USAP denies that the case that is the subject of Paragraph 102 established any breach of any duty on USAP's part, or is in any way a "consequence[]" of any purportedly anticompetitive conduct alleged in Plaintiffs' Complaint, and on that basis otherwise denies Paragraph 102.

103. The allegations in the first sentence of Paragraph 103 are vague, conclusory, and argumentative, and therefore require no response. USAP further denies that the mere filing of a malpractice case establishes that USAP has injured any patient, much less in any way related to any purportedly anticompetitive conduct alleged in Plaintiffs' Complaint. USAP further objects to this allegation to the extent that answering it would require USAP to divulge attorney-client communications or attorney work product, or otherwise admit or deny allegations only properly made in other litigation. To the extent that any further response is required, USAP denies Paragraph 103.

104. The allegations in the first sentence of Paragraph 104 are vague, conclusory, and argumentative, and therefore require no response. USAP further denies that the mere filing of a malpractice case establishes that USAP has injured any patient, much less in any way related to

any purportedly anticompetitive conduct alleged in Plaintiffs' Complaint. USAP further objects to this allegation to the extent that answering it would require USAP to divulge attorney-client communications or attorney work product, or otherwise admit or deny allegations only properly made in other litigation. To the extent that any further response is required, USAP denies Paragraph 104.

105. The allegations in the first sentence of Paragraph 105 are vague, conclusory, and argumentative, and therefore require no response. USAP further denies that the mere filing of a malpractice case establishes that USAP has injured any patient, much less in any way related to any purportedly anticompetitive conduct alleged in Plaintiffs' Complaint. USAP further objects to this allegation to the extent that answering it would require USAP to divulge attorney-client communications or attorney work product, or otherwise admit or deny allegations only properly made in other litigation. To the extent that any further response is required, USAP denies Paragraph 105.

E. Welsh Carson and USAP's Scheme Did Not Create Efficiencies That Benefited Patients or Payors.

106. Many of the allegations in Paragraph 106 are vague, conclusory, and argumentative, and therefore require no response. USAP admits that material produced in the FTC's investigation of this matter includes the quoted language. USAP respectfully directs the Court to those documents for an accurate and complete statement of their contents. USAP also admits that Paragraph 106's vague generalizations can be true in some circumstances, but denies that those generalizations apply always and uniformly to each and every marketplace participant. USAP otherwise denies Paragraph 106.

107. The allegations in Paragraph 107 are vague, conclusory, and argumentative, and therefore require no response. To the extent that a further response is required, USAP admits that the article cited includes the quoted language, and otherwise denies Paragraph 107.

F. Welsh Carson and USAP's Violation of the Antitrust Laws Has Had a Continuing Impact.

108. The allegations in Paragraph 108 are vague, conclusory, and argumentative, and therefore require no response. Further, its allegations assume a finding that the antitrust product market the Plaintiffs have pleaded is well defined – a conclusion that USAP denies. To the extent that any further response is required, USAP denies Paragraph 108.

VI. USAP ALSO AGREED TO FIX PRICES WITH AT LEAST THREE GROUPS.

109. The allegations in Paragraph 109 are vague, argumentative, and conclusory, and thus require no response. To the extent that a further response is required, USAP denies Paragraph 109 allegations except as specifically admitted elsewhere in this Answer.

110. USAP lacks information sufficient to admit or deny whether its executives made the quoted statements and denies Paragraph 110's allegations to that effect. USAP further objects to Paragraph 110 to the extent that it characterizes information protected by the attorney-client privilege. Paragraph 110 otherwise consists of vague and argumentative assertions that do not require a response. To the extent that a response is required, USAP otherwise denies Paragraph 110.

A. USAP's Agreement with Methodist Hospital Physician Organization

111. The first sentence of Paragraph 111 is vague, conclusory, and argumentative, and thus requires no response. Paragraph 111 otherwise consists of vague and argumentative assertions that do not require a response, or allegations regarding a statement purportedly made by an unidentified academic group (about which USAP lacks sufficient information to admit or

deny). To the extent that a response is required, USAP admits that it inherited GHA's contract with TMHPO when it entered into an agreement with GHA, and otherwise denies Paragraph 111.

112. USAP admits that the quoted words appear in GHA's contract with Houston Methodist Hospital. USAP respectfully directs the Court to that contract for an accurate and complete statement of its contents and denies Paragraph 112 to the extent it mischaracterizes that contract. The final sentence of Paragraph 112 is predicated on an undefined methodology to calculate and compare reimbursement rates, and USAP thus lacks information sufficient to admit or deny it.

113. USAP admits that it inherited GHA's contract with TMHPO when it entered into an agreement with GHA. USAP respectfully directs the Court to that contract for an accurate and complete statement of its contents and denies Paragraph 113 to the extent it mischaracterizes that contract.

114. The first sentence of Paragraph 114 is predicated on an undefined methodology to calculate and compare reimbursement rates, and USAP thus lacks information sufficient to admit or deny it. Paragraph 114 otherwise consists of vague and argumentative assertions that do not require a response. To the extent that a response is required, USAP denies Paragraph 114.

B. USAP's Agreement with Dallas Anesthesiology Associates

115. USAP admits that it inherited Pinnacle's contract with Dallas Anesthesiology Associates when it entered into an agreement with Pinnacle. USAP respectfully directs the Court to that contract for an accurate and complete statement of its contents and denies Paragraph 115 to the extent it mischaracterizes that contract.

116. USAP admits that Pinnacle signed the referenced contract in 2008, and that the quoted language appears in that contract. USAP respectfully directs the Court to that contract for an accurate and complete statement of its contents and denies Paragraph 116 to the extent it

mischaracterizes that contract. USAP further admits that Pinnacle provided Dallas Anesthesiology Associates with certain back-office administrative services, such as a customer service telephone number, and that the groups billed patients in the service provider physician's name. Paragraph 116 otherwise consists of vague and argumentative assertions that do not require a response. To the extent that a response is required, USAP denies Paragraph 116.

117. The first sentence of Paragraph 117 is predicated on an undefined methodology to calculate and compare reimbursement rates, and USAP thus lacks information sufficient to admit or deny it. Paragraph 117 otherwise consists of vague and argumentative assertions that do not require a response. To the extent that a response is required, USAP denies Paragraph 117.

118. Most of the allegations in Paragraph 118 are vague, conclusory, and argumentative, and thus require no response. To the extent that a further response is required, USAP admits that Pinnacle provided Dallas Anesthesiology Associates with certain back-office administrative services, such as a customer service telephone number, and that the groups billed patients in the service provider physician's name, but USAP otherwise denies Paragraph 118.

119. The allegations in Paragraph 119 are vague, conclusory, and argumentative, and thus require no response. To the extent that a further response is required, USAP denies Paragraph 119.

C. USAP's Agreement with Baylor College of Medicine

120. USAP admits that it considered a partnership with Baylor College of Medicine, and that it hired the consulting firm Stax, Inc. to evaluate a potential agreement with another practice. USAP lacks information sufficient to admit or deny whether Mr. Regan made the quoted comment, and on that basis denies Paragraph 120's allegation to that effect. USAP otherwise denies Paragraph 120.

121. USAP admits that it entered into an agreement with Baylor College of Medicine in 2014 and that that agreement was terminated in 2020. USAP respectfully directs the Court to that agreement for an accurate and complete statement of its contents and denies Paragraph 121 to the extent it mischaracterizes that agreement. Paragraph 121 otherwise consists of conclusory and argumentative assertions to which no response is required. To the extent that a response is required, USAP denies Paragraph 121.

122. The allegations in Paragraph 122 are vague, conclusory, and argumentative, and thus require no response. To the extent that a further response is required, USAP denies Paragraph 122.

D. USAP's Attempted Agreement with a University of Texas Group

123. The allegations in the first sentence of Paragraph 123 are vague, conclusory, and argumentative, and thus require no response. To the extent that a further response is required, USAP admits that it considered a partnership with the University of Texas anesthesia group, and otherwise denies Paragraph 123.

124. The allegations in Paragraph 124 are vague, conclusory, and argumentative, and thus require no response. To the extent that a response is required, USAP denies Paragraph 124.

VII. THE FEDERAL TRADE COMMISSION FILES SUIT.

125. USAP admits that the FTC filed the referenced Complaint and contends that document speaks for itself. USAP respectfully refers the Court to that Complaint for a complete and accurate statement of its contents, and to USAP's Answer for USAP's denials of the FTC's allegations.

VIII. USAP ALSO AGREED TO ALLOCATE A MARKET.

126. USAP admits that the FTC filed the referenced Complaint, and contends that document speaks for itself. USAP respectfully refers the Court to that Complaint for a complete

and accurate statement of its contents, and to USAP's Answer for USAP's denials of the FTC's allegations. The final sentence of Paragraph 126 is vague, conclusory, and argumentative, and thus requires no response. To the extent that a response is required, USAP otherwise denies Paragraph 126.

CLASS ACTION ALLEGATIONS

127. Paragraph 127 sets forth legal conclusions and characterizations of this action to which no response is required. To the extent that a further response is required, USAP contends that the Complaint in this matter speaks for itself and denies that Complaint's allegations except as specifically admitted elsewhere in this Answer.

128. Paragraph 128 sets forth legal conclusions and characterizations of this action to which no response is required. To the extent that a further response is required, USAP contends that the Complaint in this matter speaks for itself and denies that Complaint's allegations except as specifically admitted elsewhere in this Answer.

129. Paragraph 129 sets forth legal conclusions and characterizations of this action to which no response is required. To the extent that a further response is required, USAP contends that the Complaint in this matter speaks for itself and denies that Complaint's allegations except as specifically admitted elsewhere in this Answer.

A. Numerosity (Rule 23(a)(1))

130. Paragraph 130 sets forth legal conclusions and characterizations of this action to which no response is required. To the extent that a further response is required, USAP contends that the Complaint in this matter speaks for itself and denies that Complaint's allegations except as specifically admitted elsewhere in this Answer.

B. Commonality (Rule 23(a)(2))

131. Paragraph 131 sets forth legal conclusions and characterizations of this action to which no response is required. To the extent that a further response is required, USAP contends that the Complaint in this matter speaks for itself and denies that Complaint's allegations except as specifically admitted elsewhere in this Answer.

132. Paragraph 132 sets forth legal conclusions and characterizations of this action to which no response is required. To the extent that a further response is required, USAP contends that the Complaint in this matter speaks for itself and denies that Complaint's allegations except as specifically admitted elsewhere in this Answer.

133. Paragraph 133 sets forth legal conclusions and characterizations of this action to which no response is required. To the extent that a further response is required, USAP contends that the Complaint in this matter speaks for itself and denies that Complaint's allegations except as specifically admitted elsewhere in this Answer.

134. Paragraph 134 sets forth legal conclusions and characterizations of this action to which no response is required. To the extent that a further response is required, USAP contends that the Complaint in this matter speaks for itself and denies that Complaint's allegations except as specifically admitted elsewhere in this Answer.

135. Paragraph 135 sets forth legal conclusions and characterizations of this action to which no response is required. To the extent that a further response is required, USAP contends that the Complaint in this matter speaks for itself and denies that Complaint's allegations except as specifically admitted elsewhere in this Answer.

136. Paragraph 136 sets forth legal conclusions and characterizations of this action to which no response is required. To the extent that a further response is required, USAP contends

that the Complaint in this matter speaks for itself and denies that Complaint's allegations except as specifically admitted elsewhere in this Answer.

137. Paragraph 137 sets forth legal conclusions and characterizations of this action to which no response is required. To the extent that a further response is required, USAP contends that the Complaint in this matter speaks for itself and denies that Complaint's allegations except as specifically admitted elsewhere in this Answer.

138. Paragraph 138 sets forth legal conclusions and characterizations of this action to which no response is required. To the extent that a further response is required, USAP contends that the Complaint in this matter speaks for itself and denies that Complaint's allegations except as specifically admitted elsewhere in this Answer.

139. Paragraph 139 sets forth legal conclusions and characterizations of this action to which no response is required. To the extent that a further response is required, USAP contends that the Complaint in this matter speaks for itself and denies that Complaint's allegations except as specifically admitted elsewhere in this Answer.

140. Paragraph 140 sets forth legal conclusions and characterizations of this action to which no response is required. To the extent that a further response is required, USAP contends that the Complaint in this matter speaks for itself and denies that Complaint's allegations except as specifically admitted elsewhere in this Answer.

C. Typicality (Rule 23(a)(3))

141. Paragraph 141 sets forth legal conclusions and characterizations of this action and of Plaintiffs to which no response is required. To the extent that a further response is required, USAP contends that the Complaint in this matter speaks for itself and denies that Complaint's allegations except as specifically admitted elsewhere in this Answer.

D. Adequacy (Rule 23(a)(4) and 23(g))

142. Paragraph 142 sets forth legal conclusions and characterizations of this action and of Plaintiffs to which no response is required. To the extent that a further response is required, USAP contends that the Complaint in this matter speaks for itself and denies that Complaint's allegations except as specifically admitted elsewhere in this Answer.

E. Rule 23(b)(2)

143. Paragraph 143 sets forth legal conclusions and characterizations of this action and of Plaintiffs to which no response is required. To the extent that a further response is required, USAP contends that the Complaint in this matter speaks for itself and denies that Complaint's allegations except as specifically admitted elsewhere in this Answer.

F. Rule 23(b)(3)

144. Paragraph 144 sets forth legal conclusions and characterizations of this action and of Plaintiffs to which no response is required. To the extent that a further response is required, USAP contends that the Complaint in this matter speaks for itself and denies that Complaint's allegations except as specifically admitted elsewhere in this Answer.

145. Paragraph 145 sets forth legal conclusions and characterizations of this action and of Plaintiffs to which no response is required. To the extent that a further response is required, USAP contends that the Complaint in this matter speaks for itself and denies that Complaint's allegations except as specifically admitted elsewhere in this Answer.

VIOLATIONS

COUNT ONE

**Monopolization
Section Two of the Sherman Act**

146. USAP incorporates by reference its answers to the allegations in Paragraphs 1-145.

147. Paragraph 147 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 147.

148. Paragraph 148 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 148.

149. Paragraph 149 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 149.

150. Paragraph 150 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 150.

151. Paragraph 151 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 151.

152. Paragraph 152 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 152.

COUNT TWO

Unlawful Acquisition Section Seven of the Clayton Act

153. USAP incorporates by reference its answers to the above paragraphs.

154. Paragraph 154 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 154.

155. Paragraph 155 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 155.

156. Paragraph 156 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 156.

157. Paragraph 157 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 157.

158. Paragraph 158 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 158.

159. Paragraph 159 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 159.

COUNT THREE

Conspiracy to Monopolize Section Two of the Sherman Act

160. USAP incorporates by reference its answers to the above paragraphs.

161. Paragraph 161 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 161.

162. Paragraph 162 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 162.

163. Paragraph 163 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 163.

164. Paragraph 164 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 164.

165. Paragraph 165 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 165.

166. Paragraph 166 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 166.

COUNT FOUR

Attempted Monopolization Section Two of the Sherman Act

167. USAP incorporates by reference its answers to the above paragraphs.

168. Paragraph 168 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 168.

169. Paragraph 169 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 169.

170. Paragraph 170 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 170.

171. Paragraph 171 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 171.

172. Paragraph 172 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 172.

173. Paragraph 173 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 173.

174. Paragraph 174 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 174.

175. Paragraph 175 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 175.

COUNT FIVE

Horizontal Agreements to Fix Prices Section One of the Sherman Act

176. USAP incorporates by reference its answers to the above paragraphs.

177. Paragraph 177 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 177.

178. Paragraph 178 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 178.

179. Paragraph 179 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 179.

180. Paragraph 180 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 180.

181. Paragraph 181 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 181.

182. Paragraph 182 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 182.

183. Paragraph 183 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 183.

184. Paragraph 184 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 184.

COUNT SIX

Horizontal Agreement to Divide Market Section One of the Sherman Act

185. USAP incorporates by reference its answers to the above paragraphs.

186. Paragraph 186 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies 186.

187. Paragraph 187 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 187.

188. Paragraph 188 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 188.

189. Paragraph 189 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 189.

190. Paragraph 190 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 190.

191. Paragraph 191 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 191.

192. Paragraph 192 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 192.

193. Paragraph 193 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 193.

PRAYER FOR RELIEF

Plaintiffs' request for relief, as set forth in Paragraphs A-I, does not contain factual allegations to which any response is required. To the extent that a further response is required, USAP denies the allegations and requests for relief of these Paragraphs and denies that the Plaintiffs have stated a claim for relief or are entitled to any relief.

DEMAND FOR JURY TRIAL

Plaintiffs' demand for jury trial does not contain factual allegations to which any response is required. To the extent that a further response is required, USAP denies the allegations and requests for relief of these Paragraphs and denies that the Plaintiffs have stated a claim for relief or is entitled to any relief.

AFFIRMATIVE AND OTHER DEFENSES

Without assuming any burden of proof that it would not otherwise bear, USAP reasserts, without limitation, all defenses raised in its Motion To Dismiss, Welsh Carson's Motion To Dismiss, and the Defendants' other filings, whether or not separately re-pleaded herein. USAP further asserts the affirmative and other defenses listed below. In listing the defenses below, USAP does not knowingly or intentionally waive any defenses, including arguments about which issues fall within the Plaintiffs' burden of proof. USAP also reserves the right to rely on any affirmative or other defense or claim that may subsequently come to light, and expressly reserves the right to amend its Answer to assert such additional defenses or claims.

FIRST DEFENSE

Plaintiffs' claim that the acquisitions and agreements that are the subject of the Complaint – independently or in the aggregate – violated the antitrust laws Act fails because there were procompetitive justifications for USAP's acquisitions and agreements.

SECOND DEFENSE

Plaintiffs' claims and those of putative class members are barred, in whole or in part, by laches and/or the four-year statute of limitations applicable to their claims under the Sherman Act. *See* 15 U.S.C. § 15b. Plaintiffs allege anticompetitive conduct by USAP stretching back more than a decade. Thus, Plaintiffs' claims for damages are barred by the statute of limitations, and Plaintiffs' claims for injunctive relief are barred by the doctrine of laches.

THIRD DEFENSE

Plaintiffs are not entitled to the relief they seek because USAP has always faced competition in any properly defined market.

FOURTH DEFENSE

Plaintiffs are not entitled to the relief they seek because any assets that USAP acquired no longer separately exist, and USAP is a unitary company.

Dated: October 25, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 25, 2024, I filed the foregoing document with the Court and served it on opposing counsel through the Court's CM/ECF system. All counsel of record are registered ECF users.

Respectfully submitted,

/s/ Mark C. Hansen

Mark C. Hansen