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

DEFENDANTS U.S. ANESTHESIA PARTNERS HOLDINGS, INC. AND U.S. ANESTHESIA PARTNERS OF TEXAS, P.A.'S REPLY IN SUPPORT OF MOTION TO DISMISS

Plaintiffs' opposition confirms that their amended complaint states no claim. They do not dispute that the amended complaint is a copy of their initial filing—merely substituting a new definition of "USAP" to sweep Holdings and Texas P.A. together with USAP Inc. without adding any substantive allegations. The antitrust laws do not permit liability by copy-paste.

Plaintiffs try to justify their inadequate pleadings by invoking a "single-enterprise theory." But that theory has never been adopted by the Fifth Circuit; where it has, courts require allegations that each affiliate independently participated in wrongdoing. Plaintiffs offer none.

Unable to plead individualized conduct, Plaintiffs fall back on group pleading. But alleging that "USAP" did everything is precisely what Rule 8 forbids. Antitrust complaints, like all others, must give fair notice of what each defendant is alleged to have done.

Plaintiffs' fallback request for leave to amend should also be denied. A scheduling order is already in place, so plaintiffs must show "good cause" for amendment. They cannot.

I. The Amended Complaint States No Claim Against Holdings Or Texas P.A.

A. Plaintiffs' Single-Enterprise Theory Fails

Plaintiffs' claims against Holdings and Texas P.A. rely on a misapplication of the single-enterprise theory. Plaintiffs purport to draw this theory from *Copperweld Corp. v. Independent*

Tube Corp., 467 U.S. 752 (1984), but *Copperweld* held that a parent and its subsidiary cannot conspire under Section 1 of the Sherman Act because they constitute a single enterprise. It did not suggest that affiliates are liable for each other's conduct by virtue of shared ownership.

Plaintiffs attempt to convert *Copperweld* from a shield against conspiracy claims into a sword of enterprise-wide liability. As plaintiffs note (at 7-8), some courts have speculated that collective liability might be appropriate if "a corporation spread its anticompetitive scheme over multiple subsidiaries, such that no one entity met all the requirements for individual antitrust liability." *Lenox MacLaren Surgical Corp. v. Medtronic, Inc.*, 847 F.3d 1221, 1236 (10th Cir. 2017). Plaintiffs nowhere allege such manipulation of corporate formalities. To the contrary, their position has always been that they have a complete claim against USAP Inc.

Plaintiffs' reliance on out-of-circuit cases (at 7-8) underscores the gap in their allegations. In *Arandell Corp. v. CenterPoint Energy Servs., Inc.*, 900 F.3d 623, 628 (9th Cir. 2018), everyone agreed that the affiliate had engaged in conduct that furthered the scheme; the question was whether it did so with the requisite intent. And in *Lenox*, the Tenth Circuit cautioned that its opinion should not "be read to suggest that a corporation can be held liable under § 2 [of the Sherman Act] for the anticompetitive conduct of one or more related entities, merely by virtue of its place in the same corporate family." 847 F.3d at 1237. Plaintiffs offer no such individualized allegations. Instead, they lump all three defendants together as "USAP."

B. Plaintiffs Do Not Allege Independent Participation

1. Starting with specifics (Am. Compl. ¶¶ 17-20), *first*, all plaintiffs do (at 12) is note that they identified four acquisitions—Pinnacle, MetroWest, Capitol, and Star. But as plaintiffs acknowledge (at 11), the Clayton Act requires plausible allegations that the effect of

such conduct may be "substantially to lessen competition." Plaintiffs do not try.[1]

Second, only one of the alleged transactions—Star—allegedly occurred within the statute of limitations, which bars claims based on conduct before September 21, 2019.[2] Antitrust claims by private plaintiffs "must be based on some injurious act *actually occurring during the limitations period*, not merely the abatable but unabated inertial consequences of some pre-limitations action." *Poster Exch., Inc. v. Nat'l Screen Serv. Corp.*, 517 F.2d 117, 128 (5th Cir. 1975). Plaintiffs' own allegations show the other three transactions (Pinnacle, MetroWest, and Capitol) are untimely. Am. Compl. ¶¶ 71, 81, 83. (Their documents show the Star acquisition, effective June 2019, is untimely as well. *See* Glackin Decl. Ex. E at USAP-FTC00003177.)

Third, plaintiffs' passing reference (at 11) to "contracts with commercial payors" states no claim against Texas P.A. The complaint does not identify the payors, the content of the contracts, when they were signed, or whether they had any anticompetitive impact.

2. Plaintiffs fall back (at 10-13) on allegations that refer generically to "USAP." But courts have rejected such group pleading, particularly when a defined term blurs distinctions among defendants. *See*, *e.g.*, *Del Castillo v. PMI Holdings N. Am. Inc.*, 2016 WL 3745953, at *13 (S.D. Tex. July 13, 2016) (dismissing complaint that "collectively refers to the Defendants").

Plaintiffs respond (at 14) that group pleading is acceptable in an antitrust case. But the bar on group pleading flows from Rule 8, which like all the Rules applies across "all civil actions." *See* Fed. R. Civ. P. 1. It also reflects a foundational principle of corporate law: "[A]

[1] For example, plaintiffs say (at 12-13) Star was acquired "the same year" "USAP's share of the all-Texas market crested 50%." They do not allege that Star crossed that threshold, eliminated a rival, or altered competition. Indeed, they allege Star was based in San Antonio, Am. Compl. ¶ 51, not one of the cities where they allege a USAP monopoly, *see id.* ¶ 40.

[2] Plaintiffs admit that they allege "substantially the same misconduct" as the FTC complaint filed on September 21, 2023. Am. Compl. ¶ 130.

parent corporation is not liable for the acts of its subsidiaries." *United States v. Bestfoods*, 524 U.S. 51, 61 (1998). "That principle is not altered in the antitrust context." *In re RealPage, Inc., Rental Software Antitrust Litig. (No. II)*, 709 F. Supp. 3d 552, 558 (M.D. Tenn. 2023).

II. The Court Should Deny Leave To Amend

Because the Court has already entered a scheduling order, plaintiffs must provide "good cause" for an amendment. *See S&W Enters., L.L.C. v. SouthTrust Bank of Ala., NA*, 315 F.3d 533, 536 (5th Cir. 2003). Courts consider "(1) the explanation for the failure to timely move for leave to amend; (2) the importance of the amendment; (3) potential prejudice in allowing the amendment; and (4) the availability of a continuance to cure such prejudice." *Id.* Plaintiffs acknowledge this standard (at 15) but never explain how they meet it.

There can be no good cause here. Most of the additions that plaintiffs preview in their opposition (at 15-16) are time-barred because they occurred before September 21, 2019. *See* Glackin Decl. Ex. A (Pinnacle, Dec. 2013); Ex. B (Excel, Jan. 2015); Ex. C (MetroWest, Jan. 2017); Ex. D (Capitol, Feb. 2018); Ex. E (Star, June 2019); Ex. G (Baylor College of Medicine, Oct. 2014). Plaintiffs suggest (at 15) that they could add allegations regarding Guardian Anesthesia (2020) but never explain how attributing the Guardian acquisition to Holdings and Texas P.A. rather than USAP Inc. would support antitrust liability.

Independently, plaintiffs flunk each of the *S&W* factors. *First*, plaintiffs cannot explain why they failed to add any substantive allegations against Holdings and Texas P.A. Plaintiffs preview (at 15-16) "newly-discovered" information but admit (at 15) that they had, but "did not discover," all the documents they now cite before filing. Lack of diligence is not good cause.

In any event, plaintiffs' "new" evidence is old. They cite (at 16) a 2014 contract between Texas P.A. and Baylor College of Medicine. But Plaintiffs knew about that agreement before, *see* Am. Compl. ¶¶ 125-127, and do not explain how it could support a timely claim.

Second, plaintiffs' proposed amendments are immaterial. The case is proceeding against USAP Inc.; there is no practical reason to expand the case to cover Holdings and Texas P.A. too.

Third, allowing amendment would cause prejudice. Plaintiffs already amended their complaint once. Discovery is now underway and allowing Plaintiffs to inject new theories and allegations risks expanding the scope of discovery and delaying the resolution of the case.

Fourth, even if the Court were to push deadlines, Defendants would still bear the cost of discovery on claims that are time-barred or legally defective. Courts deny leave to amend where, as here, the burden of prolonging litigation outweighs any speculative benefit to the plaintiff. *See*, *e.g.*, *Southwestern Bell Tel. Co. v. City of El Paso*, 346 F.3d 541, 547-48 (5th Cir. 2003).

CONCLUSION

The Court should dismiss the amended complaint and deny leave to amend.

Dated: July 7, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 7, 2025, 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,

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