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

ELECTRICAL MEDICAL TRUST, et al., Plaintiffs, U.S. ANESTHESIA PARTNERS, INC., U.S. ANESTHESIA PARTNERS HOLDINGS, INC., and U.S. ANESTHESIA PARTNERS OF TEXAS, P.A., Defendants.	§ § § § § § § § § §	CIVIL ACTION NO.: 4:23-cv-04398 **ORAL ARGUMENT REQUESTED**

DEFENDANTS U.S. ANESTHESIA PARTNERS HOLDINGS, INC. AND U.S. ANESTHESIA PARTNERS OF TEXAS, P.A.'S
MOTION TO DISMISS THE AMENDED COMPLAINT

It takes more than copy-pasted, everyone-did-everything allegations to state a claim under the antitrust laws. But that is all plaintiffs offer in their amended complaint, which adds two new defendants, U.S. Anesthesia Partners Holdings, Inc. ("Holdings"), and U.S. Anesthesia Partners of Texas, P.A. ("Texas P.A."), but no substantive allegations against them. Rather than allege what either Holdings or Texas P.A. did, when they did it, or how it injured competition, plaintiffs take the allegations they previously made against just U.S. Anesthesia Partners, Inc. ("USAP") and now assert that every such action was actually taken by all three defendants "function[ing] as a single entity with a shared identity." Am. Compl. ¶ 21, Dkt. 127.

Plaintiffs' pleading shortcuts collide head-on with this Court's prior order. There, the Court dismissed claims against investor Welsh Carson because plaintiffs failed to allege "independent participation" in anticompetitive conduct. *Electrical Med. Tr. v. U.S. Anesthesia Partners, Inc.*, 2024 WL 5274650, at *5 (S.D. Tex. Sept. 27, 2024); *see id.* ("*Copperweld* does not support holding a subsidiary liable for the parent's independent conduct."). The claims against Holdings and Texas P.A. should be dismissed for the same reason.

Plaintiffs' Group-Pleaded Allegations Must Be Disregarded. Federal pleading rules require that a complaint give each defendant fair notice of the specific acts for which they are allegedly responsible. Plaintiffs instead rely extensively on the collective label "USAP," making it impossible to determine which defendant allegedly performed which anticompetitive acts or how any defendant's actions allegedly harmed competition in Texas P.A.. *See infra* Part I.A.

Plaintiffs Satisfy No Exception To The Rule Against Group Pleading. Courts permit group pleading against multiple corporate defendants only in rare circumstances, such as when a subsidiary is the parent's alter ego. Plaintiffs do not even try to show that Holdings and Texas P.A. were USAP alter egos: they never allege that Holdings or Texas P.A. were inadequately capitalized, failed to respect corporate formalities, or comingled assets. *See infra* Part I.B.

The Few Allegations Against Holdings And Texas P.A. State No Claim. To state an antitrust claim under the Sherman or Clayton Acts, plaintiffs must allege specific facts demonstrating each defendant's anticompetitive conduct, market power, or agreements harming competition. Plaintiffs' allegations about Holdings and Texas P.A. instead mostly explain where those two entities sit in the corporate structure. And though plaintiffs say Holdings and Texas P.A. were parties to certain merger agreements, the complaint never explains how those defendants independently participated in any unlawful conduct. *See infra* Part II.

This is not a case in which plaintiffs filed their pleading before discovery—where some initial confusion about distinct corporate entities might be understandable, if still inconsistent with Rule 8. Plaintiffs here had the benefit of more than 350,000 documents produced in the FTC litigation, and they have had them for months. If there were substantive allegations to be raised against Holdings and Texas P.A., plaintiffs possessed ample evidence to assert them. Their decision not to do so—or their inability to do so—confirms that dismissal is required.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs' original complaint alleged that USAP worked "to monopolize hospital anesthesia services in Texas," principally by "acquir[ing] . . . other anesthesiology practices in Texas." *Electrical Med. Tr.*, 2024 WL 5274650, at *1, 2. The complaint also alleged that a private equity firm, Welsh Carson, conspired with USAP. The Court granted Welsh Carson's motion to dismiss, concluding that the complaint alleged no independent participation by Welsh Carson during the applicable limitations period. *Id.* at *6. It denied USAP's motion. *Id.* at *9.

Several months later, plaintiffs filed an amended complaint. The new complaint is overwhelmingly identical to the old one, except that it adds two new defendants: Holdings and Texas P.A.. The only unique allegations about Holdings and Texas P.A. are in four paragraphs that focus on those entities' places in USAP's corporate family structure. *See* Am. Compl. ¶¶ 17-20. Holdings is alleged to be a remote (13-times removed) corporate parent of USAP. *Id.* ¶¶ 17-18. Texas P.A. is alleged to be under a different ownership structure in which USAP holds only a 50% interest, *id.* ¶ 19, and to have been a party to "some contracts with commercial payors," *id.* ¶ 20. The complaint does not allege what those contracts are, what they provide for, when they were executed, or how (if at all) they are anticompetitive.

Plaintiffs changed nothing but the definition of "USAP." The original complaint had used "USAP" as a shorthand for U.S. Anesthesia Partners, Inc., *see* Compl. ¶ 1, Dkt. 1, but the amended complaint defines "USAP" as "U.S. Anesthesia Partners, Inc., U.S. Anesthesia Partners Holdings, Inc., and U.S. Anesthesia Partners of Texas, P.A." collectively, *see* Am. Compl. ¶ 1. So every action that the original complaint said was taken by USAP now allegedly was taken by three defendants acting in concert. Those repurposed allegations range from "secur[ing] debt financing," *id.* ¶ 59, to "acquir[ing]" an anesthesia practice, *id.* ¶ 65, to "charg[ing] payors" for clinical services, *id.* ¶ 114, to defending against malpractice claims, *id.* ¶ 108.

LEGAL STANDARD

"Federal Rule of Civil Procedure 12(b)(6) requires that a plaintiff plead facts sufficient to state a plausible cause of action." *Collins v. Midland Mortg.*, 2022 WL 16556810, at *1 (S.D. Tex. Oct. 31, 2022) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "In deciding a Rule 12(b)(6) motion to dismiss for failure to state a claim, the court 'accepts all well-pleaded facts as true, viewing them in the light most favorable to the [nonmovant].'" *Id.* (alteration in original) (quoting *In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205 (5th Cir. 2007)). "Even so, 'a plaintiff's obligation to provide the "grounds" of his "entitle[ment] to relief" requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.'" *Id.* (alteration in original) (quoting *Twombly*, 550 U.S. at 555).

ARGUMENT

I. Plaintiffs' Group-Pleaded Allegations Must Be Disregarded

Plaintiffs' blanket use of the group label "USAP" obscures which defendant allegedly monopolized, conspired, or fixed prices—indeed, it obscures which defendant allegedly did *anything*. Rule 8 forbids such everyone-did-everything pleading, as a "complaint must give 'fair notice of what the claim is and the grounds upon which it rests.'" *Sims v. City of Madisonville*, 894 F.3d 632, 643 (5th Cir. 2018) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 698-99 (2009)). and this Court's prior order confirms that antitrust liability must be evaluated defendant-by-defendant. *See Electrical Med. Tr.*, 2024 WL 5274650, at *5. Indeed, when the plaintiff in parallel litigation lumped seven Welsh Carson entities together, the Court asked, "would not your allegations have to be against each of the seven with some specifics, as opposed to this overarching belief that the board of directors did something that guided all seven?" Tr. of Mot. Hrg. Proceedings at 20:1-5, *Musharbash v. U.S. Anesthesia Partners, Inc.*, No. 4:25-cv-116 (S.D. Tex. May 28, 2025) (attached as Ex. 1 to Declaration of Derek C. Reinbold). The answer

was yes there and it is yes here: Plaintiffs' improperly group-pleaded "USAP" allegations should thus be ignored because they cannot support any claim against Holdings or Texas P.A..

A. The "USAP" Allegations State No Claim Against Holdings Or Texas P.A.

Plaintiffs cannot state a claim against Holdings or Texas P.A. by "lumping together multiple defendants without identifying who is responsible for which acts." *Del Castillo v. PMI Holdings N. Am. Inc.*, 2016 WL 3745953, at *13 (S.D. Tex. July 13, 2016). Even under a pre-*Twombly* understanding of Rule 8, courts rejected such group pleading. *See*, *e.g.*, *Taylor v. IBM*, 54 F. App'x 794 (5th Cir. 2002) (faulting copyright plaintiff for failing "to allege specific acts of infringement by each defendant"); *Robbins v. Oklahoma ex rel. Dep't of Human Servs.*, 519 F.3d 1242, 1250 (10th Cir. 2008) (using the "collective term 'Defendants' . . . with no distinction as to what acts are attributable to whom" flunks Rule 8's fair-notice standard); *Atuahene v. City of Hartford*, 10 F. App'x 33, 34 (2d Cir. 2001) (holding that "[b]y lumping all the defendants together in each claim and providing no factual basis to distinguish their conduct, [the] complaint failed to satisfy [Rule 8's] minimum standard"). Plaintiffs' attempt to group Holdings and Texas P.A. with USAP regardless violates not just Rule 8 but also the "basic tenet of American corporate law" that "the corporation and its shareholders are distinct entities." *Dole Food Co. v. Patrickson*, 538 U.S. 468, 474 (2003).

A plaintiff "must allege factual information of some specificity as to each Defendant." *Dell, Inc. v. This Old Store, Inc.*, 2007 WL 1958609, at *2-3 (S.D. Tex. July 2, 2007). So to state their claims under the Sherman and Clayton Acts, plaintiffs must plausibly allege, for example, that each defendant engaged in exclusionary or predatory conduct to monopolize a well-pleaded market (Section 2), that each defendant's transactions significantly increased market concentration (Section 7), or that each defendant engaged in a horizontal price-fixing agreement

(Section 1). *See Electrical Med. Tr.*, 2024 WL 5274650, at *8-9 (detailing the elements of plaintiffs' causes of action).

Plaintiffs do not even try to meet these requirements. Instead, the amended complaint simply lumps Holdings, Texas P.A., and USAP together as "USAP," a joint label used nearly 300 times. In 127 of the 131 substantive paragraphs in the amended complaint, plaintiffs make no effort to distinguish between the roles or involvement of any of the three entities tagged with the "USAP" label. Such undifferentiated allegations of group liability must be disregarded on a motion to dismiss because they provide no notice of what *each* entity did that gives rise to *each* entity's claimed liability.

B. No Exception To The Rule Against Group Pleading Applies

There is no basis to excuse plaintiffs' impermissible group pleading. At the pleadings stage, courts permit group pleading despite corporate formalities only in limited circumstances that do not apply here—such as where a subsidiary is the alter ego of the parent. *See United States v. Bestfoods*, 524 U.S. 51, 62 (1998); *Gundle Lining Constr. Corp. v. Adams Cnty. Asphalt, Inc.*, 85 F.3d 201, 208-09 (5th Cir. 1996). But plaintiffs come nowhere near alleging facts that would justify applying this equitable doctrine.

The alter ego doctrine does not apply here. That doctrine provides "an equitable remedy which prevents a company from avoiding liability by abusing the corporate form." *Gardemal v. Westin Hotel Co.*, 186 F.3d 588, 594 (5th Cir. 1999). The Fifth Circuit consults a "laundry list of factors . . . when determining whether a subsidiary is the alter ego of the parent":

(1) the parent and the subsidiary have common stock ownership;

(2) the parent and the subsidiary have common directors or officers;

(3) the parent and the subsidiary have common business departments;

(4) the parent and the subsidiary file consolidated financial statements and tax returns;

(5) the parent finances the subsidiary;

(6) the parent caused the incorporation of the subsidiary;

(7) the subsidiary operates with grossly inadequate capital;

(8) the parent pays the salaries and other expenses of the subsidiary;

(9) the subsidiary receives no business except that given to it by the parent;

(10) the parent uses the subsidiaries property as its own;

(11) the daily operations of the two corporations are not kept separate; and

(12) the subsidiary does not observe the basic corporate formalities, such as keeping separate books and records and holding shareholder and board meetings.

Gundle, 85 F.3d at 208-09. Of the twelve, "undercapitalization is a critical factor." *Gardemal*, 186 F.3d at 594.

Here, Plaintiffs allege no facts regarding capitalization, let alone that Holdings or Texas P.A. are "grossly undercapitalized." Indeed, Plaintiffs allege no facts at all regarding 10 of the 12 factors; they do not plead, for instance, that the entities failed to observe corporate formalities, commingled assets, or siphoned funds. At most, plaintiffs allege that Holdings and USAP share common officers and are at the top and bottom, respectively, of a vertical ownership chain. *See* Am. Compl. ¶¶ 17-18. But common ownership and shared officers are insufficient, standing alone, to plead that a subsidiary is the alter ego of its parent. *See Gundle*, 85 F.3d at 208-09. And Plaintiffs' allegations affirmatively show that even that deficient allegation does not apply to Texas P.A., which they allege has a different ownership structure and different directors and officers. *See* Am. Compl. ¶ 19.

In sum, "Plaintiffs' pleadings are not sufficient to establish alter ego . . . because Plaintiffs provide nothing more than bald assertions and conclusory allegations of an alter ego

relationship." *Del Castillo*, 2016 WL 3745953, at *12. Respecting basic pleading rules and corporate formalities here means disregarding plaintiffs' hundreds of group-pleaded allegations.

II. The Few Allegations Specific To Holdings And Texas P.A. State No Claim

The four complaint paragraphs that offer any allegations specific to Holdings and Texas P.A. do not allege a prima facie case of antitrust liability, whether individually or as part of a single enterprise.

First, plaintiffs' few allegations about Holdings and Texas P.A. state no Sherman- or Clayton-Act claim. As to Holdings: Paragraph 17 merely lists Holdings at the top of a corporate family tree, 13 degrees removed from USAP. Paragraph 18 says Holdings "entered several merger agreements," yet spells out no transaction details, date, resulting market share, or anticompetitive effect.

The allegations about Texas P.A. are no better. Paragraph 19 alleges only that Texas P.A. owns five physician PLLCs. And paragraph 20 asserts that Texas P.A. "entered at least some contracts with commercial payors" and "several merger agreements," without providing specifics as to any of those alleged contracts (which payor or acquired entity, when, in what market, and the like). None of these paragraphs pleads (i) a relevant market in which Holdings or Texas P.A. possesses power; (ii) exclusionary or predatory conduct by either entity; or (iii) a transaction likely "to lessen competition" within the meaning of Section 7.

Second, those four Holdings- or Texas P.A.–specific paragraphs fail to plead that Holdings and Texas P.A. should be liable as part of a single enterprise with USAP. As this Court has recognized, the antitrust laws do not permit "a theory of unbounded vicarious liability for the acts of legally distinct entities." *Electrical Med. Tr.*, 2024 WL 5274650, at *5 (quoting *Arandell Corp. v. Centerpoint Energy Servs.*, 900 F.3d 623, 632 (9th Cir. 2018)). Instead, a so-called single-enterprise theory applies only where affiliates engage in "coordinated activity" and

each has "independently participated in the enterprise's scheme." *Id.* "As with any antitrust defendant, Plaintiffs must put forth evidence that [each defendant] engaged in anticompetitive conduct." *Arandell*, 900 F.3d at 633; *see Lenox MacLaren Surgical Corp. v. Medtronic, Inc.*, 847 F.3d 1221, 1237 (10th Cir. 2017) (an antitrust plaintiff must "come forward with evidence that each defendant independently participated in the enterprise's scheme, to justify holding that defendant liable as part of the enterprise"). The amended complaint—whether in Paragraphs 17-20 or elsewhere—alleges no facts suggesting either coordinated or independent anticompetitive conduct by Holdings or Texas P.A.: As detailed above, Holdings and Texas P.A. are alleged only to have signed a few merger agreements, not to have engaged in the core challenged conduct of "creating an anesthesia behemoth," "raising prices," "fixing prices," and "injuring health plans." Am. Compl. ¶¶ 6-10 (cleaned up). Unlike the subsidiary in *Arandell*, which provided "critical contributions to the conspiracy," 900 F.3d at 635, Holdings and Texas P.A. were so irrelevant that the substance of the amended complaint is totally unchanged from that of the original, which did not mention them.

CONCLUSION

For all these reasons, the Court should dismiss the amended complaint for failure to state a claim against Defendants U.S. Anesthesia Partners Holdings, Inc. and U.S. Anesthesia Partners of Texas, P.A.

Dated: June 6, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 6, 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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