UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION

ELECTRICAL MEDICAL TRUST, et al., Plaintiffs, v. U.S. ANESTHESIA PARTNERS, INC., et al. Defendants.	Case No. 4:23-cv-04398 **ORAL ARGUMENT REQUESTED**

U.S. ANESTHESIA PARTNERS' CROSS-MOTION TO COMPEL NON-PARTY BROWN & BROWN INSURANCE SERVICES, INC. TO COMPLY WITH SUBPOENA

Pursuant to Federal Rule of Civil Procedure 45(d)(2)(B)(i), Defendants in the above-captioned Action—U.S. Anesthesia Partners, Inc., U.S. Anesthesia Partners Holdings, Inc., and U.S. Anesthesia Partners of Texas, P.A. (together, "USAP")—seek an order compelling non-party Brown & Brown Insurance Services, Inc. ("BBIS") to comply with its September 29 subpoena, as narrowed on November 18 (the "Subpoena"). USAP complied with Local Rule 7.1(D) by conferring with BBIS on November 25, 2025 and December 17, 2025, discussing the Subpoena that is the basis of this Cross-Motion ("Cross-Motion"). In its Opposition memorandum to BBIS's Motion to Quash (ECF No. 190, "Opposition" or "Opp."), USAP noted that BBIS filed its Motion in the wrong court. *See* Opp. at 8. Nonetheless, to preserve its rights to cross-move to compel, and because USAP does not object to this Court resolving BBIS's Motion, USAP hereby files this Cross-Motion before this Court—rather than in the Western District of Texas, where it would be required to be filed under normal circumstances.

INTRODUCTION

Plaintiffs in the above-captioned action—two self-funded benefit plans—brought this class-action under the federal antitrust laws against USAP, alleging that USAP engaged in anticompetitive conduct that caused them and other benefit plans to pay supracompetitive prices for anesthesia services in Texas. USAP contends that Plaintiffs cannot meet their burden to certify a class because each self-funded plan operates through unique, individualized arrangements with insurance brokers like BBIS. These brokers customize the plan's benefits design, network structures, stop-loss coverage, and provider contracting strategies based on each plan sponsor's specific needs, workforce demographics, geographic footprint, and risk tolerance. As a result, determining whether USAP's alleged conduct injured any self-funded plan, and the extent of any damages (if they exist), requires individualized inquiries into each plan's specific broker-negotiated arrangements, not common proof. This defeats the commonality and predominance requirements of Rule 23(b)(3).

To support its class-action defenses, USAP seeks discovery from BBIS, a major insurance broker that serves self-funded plans in Texas. The Subpoena seeks plan-level documents—including broker proposals, renewal presentations, administrative services agreements, stop-loss insurance policies, network adequacy analyses, provider contracting recommendations, and regulatory implementation guidance—that BBIS prepares for and maintains regarding its clients. These documents are highly relevant to proving USAP's class certification defense: they will demonstrate that each plan's unique broker-negotiated arrangements, varying coverage terms, different network structures, individualized stop-loss protection, customized cost-sharing provisions, and plan-specific responses to regulatory changes (including the No Surprises Act and changes to the CMS inpatient-only list) create such significant plan-to-plan differences that

determining injury and damages requires individualized analysis, thus defeating the predominance requirement of Federal Rule of Civil Procedure 23(b)(3).

Substantively, BBIS's burden and overbreadth objections are inaccurate and unavailing. USAP's Subpoena contains express temporal limitations (January 1, 2018 to present), specific subject matter restrictions (documents related to health insurance brokerage services for Texas clients), and a targeted sampling methodology (approximately 35 of BBIS's clients across different size categories). BBIS's confidentiality-based objections fail because the Court's comprehensive Protective Orders adequately safeguard BBIS's information. *See* Dkts. 94, 176.

In response to BBIS's Motion, USAP cross-moves to compel compliance with the Subpoena. As described below and in the Opposition, USAP made repeated good faith efforts to secure compliance, but to no avail. *See* Opp. at 5–7, 9. Accordingly, pursuant to FRCP 45(d)(2)(B)(i), USAP asks the Court to compel BBIS to comply fully with its Subpoena.

BACKGROUND

A. The Parties

USAP is a defendant in the above-captioned putative antitrust class action, *Electrical Medical Trust, et al. v. United States Anesthesia Partners, et al.,* No. 4:23-cv-04398 (S.D. Tex.). Plaintiffs in the same action—Electrical Medical Trust and Plumbers Local Union No. 68 Welfare Fund, both self-funded employee benefit plans ("Plaintiffs")—allege USAP monopolized anesthesia services markets in Houston, Dallas-Fort Worth, and Austin through anticompetitive acquisitions and exclusionary conduct. Plaintiffs seek to certify a class of all entities "who, on or after four years prior to the filing of [the] complaint. . . paid for hospital-only anesthesia services provided in Texas by USAP or its co-conspirators." *See* Dkt. 128, Plaintiffs' Amended Class Action Complaint ("Am. Compl.") ¶ 133.

As a broker, BBIS plays a central role in assembling and negotiating multiple aspects of self-funded plans. Brokers operate as intermediaries that help employers design and implement self-funded plans by providing market expertise, recommending plan structures and connecting – *i.e.*, brokering – connections between employers with third party administrators ("TPAs"), stop loss carriers and other vendors essential to operating a self-funded plan. Brokers also negotiate pricing on behalf of their employer clients and offer ongoing support on plan performance and compliance, including advising clients on the substantial regulatory changes arising from the Texas Surprise Billing Law, Tex. Ins. Code § 1467.001 *et seq*., which went into effect on January 1, 2020 ("SBL"), and the similar federal law called the No Surprises Act, 42 U.S.C. § 300gg-111, which went into effect in January 2022 ("No Surprises Act").

B. USAP's Asserted Defenses in the Above-Captioned Action

USAP's defense strategy will rely, in part, on BBIS (and other brokers') documents to substantiate its claim that class certification should be denied because individualized differences in how self-funded plans structure their relationships with the payors defeat the predominance and superiority requirements of Rule 23(b)(3). The documents USAP seeks from BBIS are directly relevant to USAP's defenses to class certification. Its Subpoena asks for documents showing how BBIS's clients—self-funded plans in Texas—structure and pay for their health coverage. These documents include, *inter alia*, marketing materials, administrative services agreements, reimbursement schedules, and plan descriptions. BBIS's documents will likely demonstrate the unique nature of each plan's structure and arrangements, showing that common questions do not predominate, determination of damages (if any) would be unmanageable, and that class resolution is not superior to individual adjudication.

The documents USAP seeks are also relevant to USAP's defenses to the antitrust claims alleged against it which require USAP to analyze data relevant to market conditions and use that

data to submit expert opinions. *See Viazis v. Am. Ass'n of Orthodontists,* 182 F. Supp. 2d 552, 569 (E.D. Tex. 2001), *aff'd*, 314 F.3d 758 (5th Cir. 2002) ("In order to prove an anticompetitive effect on the relevant market, the plaintiff may either prove that the defendants' behavior had an 'actual detrimental effect' on competition, or . . . define the relevant market and establish that the defendants possessed power in that market." (citation omitted)).

C. USAP's Efforts to Engage with BBIS Regarding the Subpoena

Since USAP sent its narrowing proposal on November 18, 2025, USAP has only been able to speak with BBIS twice. *See* Opp. at 6; *see also infra* at 13. During the first meeting, the parties discussed search parameters. During the second, the parties discussed costs, and counsel for BBIS claimed she did not have the "authority" to make a formal request. *See id.* USAP scheduled a third, but BBIS did not show up and instead filed its Motion. *See id.*

LEGAL STANDARD

"Federal Rule of Civil Procedure 45 explicitly contemplates the use of subpoenas in relation to non-parties and governs subpoenas served on a third party. . . as well as motions to quash or modify or to compel compliance with such a subpoena." *Am. Fed'n of Musicians of the U.S. and Canada v. Skodam Films, LLC*, 313 F.R.D. 39, 42 (N.D. Tex. 2015) (quoting *Isenberg v. Chase Bank USA, N.A.*, 661 F. Supp. 2d 627, 629 (N.D. Tex. 2009)) (cleaned up). Courts routinely compel compliance with valid subpoenas where, as here, a non-party has been properly served but fails to respond, object, or otherwise comply. *See Skodam Films,* 313 F.R.D. at 42.

Rule 26(b)(1) allows parties to "obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case[.]" Fed. R. Civ. P. 26(b)(1). "Relevancy is broadly construed, and a request for discovery should be considered relevant if there is 'any possibility' that the information sought may be relevant to the claim or defense of any party." *Camoco, LLC v. Leyva*, 333 F.R.D. 603, 606 (W.D. Tex. 2019) (citation

omitted). To evaluate the relevancy and proportionality of the requested discovery, the court considers "the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." *Kilmon v. Saulsbury Industries, Inc.*, 2018 WL 5800757, at *1 (WD. Tex. Feb. 28, 2018) (quoting Fed. R. Civ. P. 26(b)(1)).

To succeed on a Rule 45 motion to compel subpoena compliance, a movant "must establish that the issued subpoena was valid, was properly served, and the recipient of the subpoena failed to respond or otherwise comply." *Kyle on Behalf of Estate of Kyle v. Saiz*, 2022 WL 4280905, at *1 (W.D. Tex. Aug. 4, 2022) (citing *Martin v. Trinity Indus., Inc.*, 959 F.2d 45, 47 (5th Cir. 1992)). Once a court is satisfied that the movant "has made a *prima facie* showing that it issued a valid subpoena [it] may then issue an order requiring the nonparty to either comply with the subpoena [or, *inter alia*] seek protection under Rule 45." *EB Holdings II, Inc. v. Ill. Nat'l Ins. Co.*, 2021 WL 6134783, at *1 (S.D. Tex. Dec. 29, 2021).

ARGUMENT

I. THE COURT SHOULD DENY BBIS'S MOTION TO QUASH AND GRANT USAP'S CROSS-MOTION TO COMPEL

BBIS does not deny that it possesses documents relevant to the Subpoena. It does not allege it could not obtain and produce these documents if it tried. It mistakenly asserts that USAP agreed to certify compliance with the Subpoena in exchange for eleven (non-responsive) "proposals" that BBIS sent back in October. Instead of meaningfully engaging with USAP to address those documents and what else was needed, or negotiate the scope of the Subpoena, BBIS moved to quash—and on specious terms.

The Court should grant USAP's Cross-Motion because it is (A) valid and properly served, and (B) seeks relevant and proportional documents to the scope of this case.

A. The Subpoena Was Valid, Properly Served, and BBIS Has Failed to Comply with its Mandate

The requested discovery satisfies Rule 26(b)(1)'s requirements: it is not only relevant to the merits of the case, but also USAP's class certification defense (proving individualized plan variations that defeat predominance), proportional to the needs of this broad antitrust class action, and reasonable in scope (requesting plan-level business documents for a sample of clients, not individual claim files for all clients). *See* Fed. R. Civ. P. 26(b)(1). The Court should compel compliance.

First, under Rule 45, a subpoena is valid if it

> (i) state[s] the court from which it issued; (ii) state[s] the title of the action and its civil-action number; (iii) command[s] each person to whom it is directed to . . . . at a specified time and place . . . produce designated documents, electronically stored information, or tangible things in that person's possession, custody, or control . . . ; and (iv) set[s] out the text of Rule 45(d) and (e).

Fed. R. Civ. P. 45(a)(1)(A). The Subpoena here complied with the rule: it (i) stated that it issued from the United States District Court for the Southern District of Texas, *see* Ex. 2 to Motion to Quash at 3; (ii) stated the underlying title and civil-action number for the above-captioned action, *see id.*; (iii) commanded the production of documents and electronically stored information, *see id.* at 3, 5–16; and (iv) set out the verbatim text of Rule 45(d) and (e), *see id.* at 5. BBIS did not object to the Subpoena's structure.

Second, the Subpoena satisfied the service requirements of Rule 45. BBIS accepted service of the Subpoena via email and does not otherwise dispute that service was proper. *See* Ex. B to Opp. at 16.

Third, to date BBIS has refused to meaningfully engage with USAP regarding the Subpoena; instead of attending the parties' January 22 scheduled meet-and-confer, BBIS elected to file the present Motion. *See generally* Opp. at 6–7. Given that BBIS seeks a "protective order"—in addition to simply seeking to quash the Subpoena—it was required to meet and confer ***in good faith***. *See Rogers*, 2025 WL 2460267, at *7 ("[B]ecause [plaintiff] has filed a motion for protective order in conjunction with her motion to quash, she is required to comply with Rule 26(c)(1)'s meet-and-confer and certification requirements.") (citing cases). BBIS has not done so. *See* Opp. at 4–6; *see also infra* at 13.

B. The Requested Documents are Both Relevant and Proportional to the Scope of this Case

The documents sought by the Subpoena will support USAP's defenses against both class certification and the merits of Plaintiffs' antitrust claims. Courts apply Rule 26(b)(1)'s proportionality analysis by considering "the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." *Kilmon*, 2018 WL 5800757, at *1. Here, all facts weigh in favor of production.

Plaintiffs seek to certify a class of self-funded employee benefit plans that allegedly paid supracompetitive prices for USAP's anesthesia services in Texas. To certify under Rule 23(b)(3), plaintiffs must prove that "questions common to the class members predominate over questions affecting only individual members" and that "class resolution is superior to alternative methods for adjudication of the controversy." *Gambrill v. CS Disco, Inc*., 2025 WL 3771433, at *4 (W.D. Tex. Dec. 16, 2025) (quoting *Elson v. Black*, 56 F.4th 1002, 1006 (5th Cir. 2023)). USAP's defense

in this regard is straightforward: each self-funded plan operates through unique, individualized arrangements with its broker and third-party administrator that make class treatment inappropriate.

USAP also expects BBIS's documents will show the variety of plan design and structures, stop-loss insurance arrangements, administrative services agreements, and other individualized pricing and other features it and TPAs negotiate on behalf of beneficiaries like Plaintiffs. These differences are not cosmetic—they fundamentally affect how each plan experiences (and responds to) alleged overcharges. For USAP to adequately present its defenses to claims of monopolization and market power, it must analyze relevant data concerning, among other things, the pricing and provision of anesthesia services, which BBIS should possess in its capacity as a broker for self-funded plans in Texas.

For example, **Administrative Services Agreements, Claims Processing Agreements, Preferred Provider Agreements,** and **Bundled Payment Agreements** (November 18, 2025 Narrowing Letter Requests: 1,2(i), (iii-v), 3-5) will show the bespoke nature of each Broker-client relationship, including what services BBIS provides, how claims are processed, how brokers arrange a single, pre-negotiated payment for certain procedures, what authority BBIS has to negotiate rates, and how disputes are resolved. **Stop-Loss Insurance Documents** (Requests 1, 2(ix), 3-5) reveal each plan's risk tolerance: plans with low attachment points (where insurance coverage starts at lower amounts) bear less financial exposure to high healthcare costs and have different incentives to challenge rates than plans with high attachment points or aggregate-only coverage. Put simply, plans with more insurance coverage will pay less in damages for any alleged overpriced anesthesia services, further demonstrating individualization in plan negotiation's impact on alleged damages.

Summary Plan Descriptions, Plan Booklets, Cross Plan Offset Information, Reimbursement Arrangements or Schedules, and **Reference-Based Pricing Agreements** (Requests 1, 2(vi-vii), (x), (xiii-xiv), 3-5) show varying coverage terms, exclusions, and cost-sharing arrangements that directly impact what each plan paid for anesthesia services its members utilized and how much it was harmed (if at all). A plan that excludes certain anesthesia services or requires high patient cost-sharing experiences alleged overcharges differently than a plan with comprehensive coverage and low deductibles. This information should also highlight how each plan has responded to the Federal and Texas No Surprises Act, another individualized issue defeating commonality. **New Client or Client Onboarding Questionnaires** ((Requests 1, 2 (xi-xii), 3-5) will show the individualized risk profile and characteristics of different plan members that are used to determine rates, deductibles, etc. The variations arising from this information will demonstrate that alleged harm differs by plan based on how each of their bespoke agreements were shaped by their individualized characteristics and needs.

1. Any Data Privacy Concerns are Addressed by the Protective Orders

BBIS's objection (Mot. to Quash at 7) that the Subpoena would "expose" it to "confidentiality or business risks" is misguided. The Court's protective orders are more than sufficient to safeguard any proprietary or confidential information that BBIS produces in this action.[1] For example, USAP and the FTC have successfully exchanged dozens of terabytes of sensitive data under substantially identical protective orders in the parallel FTC proceeding—*In the Matter of U.S. Anesthesia Partners, Inc., et al.*, FTC Docket No. 9344. That case involves the

[1] To the extent BBIS has concerns about HIPAA, USAP notes that HIPAA explicitly permits disclosure of protected health information in response to lawful subpoenas (45 C.F.R. § 164.512(e)), particularly where protective orders are in place. BBIS can and should redact individual patient names or other direct patient identifiers if present, but plan-level information, aggregate claims data, and administrative documents are not restricted by HIPAA. *See* Opp. at 13.

same alleged conduct, the same markets, and the same competitive concerns, yet the parties (and nonparties pursuant to subpoena power) have produced and reviewed massive volumes of confidential business information, competitively sensitive pricing data, and proprietary strategic documents. USAP provided BBIS with the protective orders in conjunction with the Subpoena. The orders allow BBIS to designate documents as Confidential or Highly Confidential, and thereby limit who can review those documents. Confidentiality is therefore no reason to excuse BBIS's obligation to produce documents responsive to the Subpoena. *See generally* Opp. at 13.

2. The Subpoena Is Proportional Under Rule 26(b)(1)

Finally, the proportionality analysis strongly favors production. This is a complex antitrust class action. The discovery bears on core issues for both class discovery and the merits of Plaintiffs' claims. And notably, "broad" discovery is considered to be proportional in antitrust cases. *See* Opp. at 12.

C. The Court Should Order BBIS to Comply with the Subpoena

Courts routinely compel compliance in such circumstances where, as here, counsel has refused to respond to repeated attempts to engage via email, phone, and letter. *See, e.g., Folkenflik v. Chapwood Cap. Inv. Mgmt., LLC, 2020 WL 9936142, at *7 (E.D. Tex. June 5, 2020)* (ordering compliance with subpoena under similar circumstances); *Field v. Energy First Eng'g & Consulting, LLC*, 2021 WL 11728172, at *2 (W.D. Tex. July 21, 2021) (motion to compel initially filed in this Court). The Court should do the same and order BBIS to comply with USAP's narrowed Subpoena. *Pebblebrook Condo. Ass'n, Inc. v. Canopius US Ins., Inc*., 2025 WL 2928960, at *2 (E.D. La. Oct. 15, 2025).

BBIS has offered no excuse—adequate or otherwise—for its refusal to comply with USAP's Subpoena. It had the opportunity to meet and confer with USAP to narrow or otherwise

negotiate the scope of the Subpoena, and it chose not to. The Court should now mandate compliance.

CONCLUSION

For the foregoing reasons, USAP respectfully requests that this Court issue an order: a) granting USAP's Cross-Motion to Compel; b) granting USAP's reasonable attorneys' fees and costs associated with bringing this Cross-Motion; and c) any such other and further relief as the Court deems appropriate.

DATED: February 12, 2026

Respectfully submitted,

/s/ *Julianne Jaquith*

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RULE 7 CERTIFICATE OF CONFERENCE

I hereby certify that I spoke with counsel for BBIS on December 17, 2025. My colleague Aseem Chipalkatti joined me on the call. During that call, counsel for BBIS indicated that she did not have the "authority" to make a formal request for costs, and she could not commit to any date certain for which USAP could expect a document production. We agreed to speak again but, despite multiple attempts, were unable to do so. In particular, we agreed to meet and confer on

January 22, 2026, but BBIS's counsel asked to re-schedule the following day. Instead of attending that re-scheduled meeting, BBIS filed its Motion.

DATED: February 12, 2026 */s/ Alexander S. Allred*

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of February, 2026, I caused to be filed the foregoing Cross-Motion to Compel with the Court through ECF filing, which caused a copy to be sent to all counsel of record.

/s/ *Alexander Allred*