UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ELECTRICAL MEDICAL TRUST, *et al.*,	§	
	§	
Plaintiffs,	§	
	§	
VS.	§	CIVIL ACTION NO. 4:23-CV-04398
	§	
U.S. ANESTHESIA PARTNERS, INC., *et al.*,	§	
	§	
	§	
Defendants.	§	

ORDER

Before the Court are Defendants U.S. Anesthesia Partners Holdings, Inc. ("Holdings") and U.S. Anesthesia Partners of Texas, P.A.'s ("Texas P.A.") Motion to Dismiss the Amended Complaint (the "Motion to Dismiss") (Doc. #146); Plaintiffs Electrical Medical Trust and Plumbers Local Union No. 68 Welfare Fund's (collectively, "Plaintiffs") Response (Doc. #153); and Holdings and Texas P.A.'s Reply (Doc. #155).[1] Having considered the parties' arguments and the applicable legal authority, the Court grants the Motion to Dismiss in part.

[1] Plaintiffs also filed a Motion for Leave to File Temporarily Under Seal (the "Motion for Leave"), seeking leave to file its Response and certain exhibits temporarily under seal. Doc. #152. Holdings and Texas P.A. have not responded to the Motion for Leave, which the Court takes "as a representation of no opposition." S.D. Tex. Local R. 7.4. The Court finds that the Motion for Leave should be granted and deems the sealed Response (Doc. #153) properly filed. In addition, the Court notes that Plaintiffs filed an unsealed, redacted version of their Response. Doc. #154. In this Order, the Court cites to the sealed, unredacted version of the Response at Docket No. 153.

I. Background

a. Factual Background

The Court previously recited the factual background of this case at length in its September 27, 2024 Order. Doc. #104 at 1–6. Accordingly, the Court incorporates that factual background and summarizes below the facts necessary to analyze the Motion to Dismiss.

This lawsuit arises out of an alleged anticompetitive scheme perpetrated by Defendants U.S. Anesthesia Partners, Inc. ("USAP"), Holdings, and Texas P.A. (collectively, "Defendants") to monopolize hospital anesthesia services in Texas. Doc. #127 ¶ 1. USAP is a physician services organization that offers anesthesiology services. *Id.* ¶¶ 1–2. Holdings is the ultimate parent company of USAP, such that both entities "share the same directors, managers, and officers." *Id.* ¶¶ 17–18. Texas P.A. is a professional association. *Id.* ¶¶ 19–20. Plaintiffs are self-funded employee benefit plans that "directly reimburse[] healthcare providers who treat [their] members" and paid Defendants for hospital anesthesia services. *Id.* ¶¶ 14–15.

In 2012, private equity firm Welsh Carson formed USAP with the goal of building a "nationwide presence" by consolidating the hospital anesthesia market in certain key areas, including Texas. *Id.* ¶ 53. Thus, shortly after USAP was formed, it acquired Greater Houston Anesthesiology ("GHA"), an anesthesiology provider group in Houston "20 times the size of the second largest local competitor." *Id.* ¶¶ 57–59. Notably, GHA also had "the highest reimbursement rates in Houston." *Id.* ¶ 4. After its acquisition of GHA, USAP then went on to acquire fifteen other anesthesia practices in Texas. *Id.* ¶¶ 65–87. Some of these acquisitions are particularly relevant for this Order. Specifically, USAP and Holdings jointly negotiated and executed merger agreements with Pinnacle Anesthesia Consultants ("Pinnacle") in January 2014; MetroWest Anesthesia Care, PLLC ("MetroWest") in March 2017; Capital Anesthesiology

Association, PLLC ("Capital") in February 2018; and Star Anesthesia, PLLC ("Star") in September 2019. *Id.* ¶¶ 67–73, 81–84, 86. Texas P.A. is also a party to those mergers. *Id.* ¶ 20.

Each time, USAP increased the providers' reimbursement rates to match GHA's higher rates. *Id.* The acquisitions steadily increased USAP's Texas market share—by 2019, it achieved 50% market share in Texas, which rose to a high of 60% in 2020. *Id.* ¶ 90. According to Plaintiffs, they have been harmed by Defendants' misconduct by paying higher prices for hospital anesthesia services than they otherwise would have. *Id.* ¶ 10.

b. Procedural History

On November 20, 2023, Plaintiffs filed their Original Class Action Complaint (the "Complaint") against USAP and Welsh Carson, alleging claims for (1) monopolization under Section 2 of the Sherman Act ("Section 2"), (2) unlawful acquisition under Section 7 of the Clayton Act ("Section 7"), (3) conspiracy to monopolize under Section 2, (4) attempted monopolization under Section 2, (5) horizontal agreement to fix prices under Section 1 of the Sherman Act ("Section 1"), and (6) horizontal agreement to divide market under Section 1. Doc. #1 ¶¶ 146–93. On February 20, 2024, USAP and Welsh Carson moved to dismiss all claims asserted against them pursuant to Rule 12(b)(6). Doc. #49; Doc. #50. On September 27, 2024, the Court dismissed Plaintiffs' claims against Welsh Carson, as well as the conspiracy claim against USAP. Doc. #104.

On April 3, 2025, Plaintiffs filed their Amended Class Action Complaint (the "Amended Complaint"), bringing claims against USAP, Holdings, and Texas P.A. for (1) monopolization under Section 2; (2) unlawful acquisition under Section 7; (3) attempted monopolization under Section 2; (4) horizontal agreement to fix prices under Section 1; and (5) horizontal agreement to divide market under Section 1. Doc. #127 ¶¶ 151–91. On June 6, 2025, Holdings and Texas P.A. moved to dismiss the claims against them pursuant to Rule 12(b)(6). Doc. #146.

II. Legal Standard

To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), "a complaint need not contain 'detailed factual allegations'; rather, it need only allege facts sufficient to 'state a claim for relief that is plausible on its face.'" *Littell v. Hous. Indep. Sch. Dist.*, 894 F.3d 616, 622 (5th Cir. 2018) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft*, 556 U.S. at 663. "Significantly, a complaint may proceed even if 'recovery is very remote and unlikely,' so long as the alleged facts 'raise a right to relief above the speculative level.'" *Littell*, 864 F.3d at 622 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555–56 (2007)). In evaluating the complaint, courts take "well-pleaded factual allegations . . . as true" but do "not credit conclusory allegations or allegations that merely restate the legal elements of a claim." *Chhim v. Univ. of Tex. at Austin*, 836 F.3d 467, 469 (5th Cir. 2016).

III. Analysis

In their Motion to Dismiss, Holdings and Texas P.A. argue Plaintiffs raise "no substantive allegations against them." Doc. #146 at 1. Plaintiffs respond that the Amended Complaint alleges USAP, Holdings, and Texas P.A. engaged in an anticompetitive scheme as a single enterprise. Doc. #153 at 6–13.

As the Court explained in its September 27, 2024 Order, single enterprise theory implicates *Copperweld Corporation v. Independence Tube Corporation*, in which the Supreme Court held "the coordinated activity of a parent and its wholly owned subsidiary must be viewed as that of a single enterprise." 467 U.S. 752, 771 (1984). In *American Needle, Inc. v. National Football League*, the Supreme Court further elaborated that a parent corporation and its wholly owned

subsidiary "are controlled by a single center of decisionmaking" and "control a single aggregation of economic power." 560 U.S. 183, 194 (2010) (citing *Copperweld*, 467 U.S. at 769). Beyond *Copperweld* and *American Needle*, however, single enterprise theory remains largely uncharted territory. Indeed, the Fifth Circuit has not squarely addressed the issue. As such, other district courts in this Circuit have looked to the Ninth and Tenth Circuits—the two federal circuits which have grappled with single enterprise theory—for guidance. *See Chandler v. Phoenix Servs.*, No. 7:19-cv-14, 2020 WL 1848047, at *12 ("Accordingly, the Court looks to the single-enterprise-liability standard advanced by the Ninth Circuit and the Tenth Circuit—the only two federal circuits to have addressed the issue." (citing *Arandell Corp. v. Centerpoint Energy Servs.*, 900 F.3d 623 (9th Cir. 2018); *Lenox MacLaren Surgical Corp. v. Medtronic, Inc.*, 847 F.3d 1221 (10th Cir. 2017))), *aff'd*, 45 F.4th 807 (5th Cir. 2022).

In *Arandell*, the Ninth Circuit held that a subsidiary may be held liable "when it acts in coordination with [its] parent" but not when the parent company acts independently. *Arandell Corp.*, 900 F.3d at 633. Similarly, in *Lenox*, the Tenth Circuit explained that *Copperweld* denounces the view that an antitrust plaintiff can establish Section 2 claims only by "proving that specific [defendants] independently satisfied each necessary element." *Lenox*, 847 F.3d at 1236. Instead, the "aggregated conduct" of the single enterprise "must be scrutinized." *Id.* To hold otherwise, the Tenth Circuit posited, "would all but eviscerate [antitrust liability] with respect to sophisticated competitors" who spread their "anticompetitive scheme over multiple subsidiaries." *Id.* Both the Ninth and Tenth Circuits recognized, however, that a corporation could not be found liable "merely by virtue of its place in the same corporate family" as an anticompetitive actor. *Id.* at 1237. Instead, a plaintiff is "still required to 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." *Chandler*, 2020 WL 1848047, at *14 (quoting *Lenox*, 847 F.3d at 1237) (emphasis added).

Plaintiffs allege USAP, Holdings, and Texas P.A. "function as a single entity with a shared identity." Doc. #127 ¶ 21. Holdings and Texas P.A. argue this theory fails because the Amended Complaint is devoid of "individualized allegations" against them. Doc. #155 at 2. The question, therefore, is whether Plaintiffs have adequately alleged Holdings and Texas P.A. "independently participated in the enterprise's scheme." *Chandler*, 2020 WL 1848047, at *14.

a. Holdings

The Court begins with Plaintiffs allegations against Holdings. In the Amended Complaint, Holdings is described as the "ultimate parent company" of USAP.[2] Doc. #127 ¶ 17. Moreover, Holdings and USAP "share the same directors, managers, and officers." *Id.* ¶ 18. Plaintiffs further allege that these "common directors, managers, and officers . . . negotiated and implemented" the acquisitions of Pinnacle, MetroWest, Capital, and Star. *Id.* Holdings argues these allegations do not permit the inference that it engaged in either "coordinated or independent anticompetitive conduct." Doc. #146 at 9.

The Court disagrees, finding two district court cases especially salient. In *Jones v. Varsity Brands, LLC*, the Western District of Tennessee addressed whether plaintiffs had sufficiently alleged facts to support a single enterprise theory where a parent corporation provided "the necessary funding for its subsidiary "to enhance, extend, and ensure [the enterprise's] monopoly power." 618 F. Supp. 3d 713, 724. There, the court found allegations "sufficient to establish that the [parent corporation] participated in the exclusionary scheme as part of the enterprise," even if

[2] Specifically, "[t]hirteen wholly-owned" intermediate entities connect Holdings to USAP. Doc. #127 ¶ 17.

it was not alleged to have "participated in each act or transaction." *Id.* Specifically, the court highlighted the allegation that the parent corporation held seats on its subsidiary's board of directors. *Id.* The allegations in the case before this Court are stronger: Holdings and USAP "share the *same* directors, managers, and officers." Doc. #127 ¶ 18 (emphasis added).

The Court likewise finds *FTC v. Syngenta Crop Protection AG* instructive. 711 F. Supp. 3d 545 (M.D.N.C. 2024). There too, the Middle District of North Carolina found antitrust plaintiffs plausibly alleged "coordinated activity" between a parent corporation and its subsidiary, in part because the same individual served as the president of the two corporations. *Id.* at 585–86. Furthermore, executives of the defendant parent corporation were alleged to be "directly involved in the negotiation" of the challenged transaction. *Id.* Again, Plaintiffs' Amended Complaint presents allegations akin to those in *Syngenta*. Importantly, for instance, Plaintiffs allege the "common directors, manager, and officers" of Holdings and USAP "negotiated and implemented" the merger agreements with Pinnacle, MetroWest, Capital, and Star. Doc. #127 ¶ 18.

Holdings believes that "hav[ing] signed a few merger agreements" does not involve it in the "core challenged conduct of 'creating an anesthesia behemoth.'" Doc. #146 at 9 (quoting Doc. #127 ¶ 6.). But this argument fails for two reasons. First, Plaintiffs do not allege Holdings merely "signed a few merger agreements"—they allege Holdings negotiated and implemented acquisitions with USAP. Doc. #127 ¶ 18. Second, the act of acquiring anesthesia practices goes to the very heart of the challenged conduct in this case. As the Amended Complaint explains, Defendants obtained a monopoly *because* of these acquisitions and then used their power to raise prices. *Id.* ¶ 88. Accordingly, Holdings' role in at least four of the acquisitions demonstrates its

independent participation in the anticompetitive scheme.[3]

b. Texas P.A.

But while Plaintiffs successfully allege Holdings and USAP are a single enterprise, they fail to plead Texas P.A.'s independent participation in the same scheme. Instead, as explained, the allegations against Holdings and Texas P.A. differ in critical ways.

First, as an initial matter, the Court is less comfortable applying single enterprise principles to Texas P.A. After all, in *Copperweld*, the Supreme Court held "the coordinated activity of *a parent and its wholly owned subsidiary* must be viewed as that of a single enterprise." *Lenox*, 847 F.3d at 1233 (quoting *Copperweld*, 467 U.S. at 771 (emphasis added)). Here, Holdings is the parent corporation and USAP its wholly owned subsidiary. Doc. #127 ¶ 17. Texas P.A., on the other hand, is neither. Rather, it is a "Texas professional association" and therefore a step removed from *Copperweld* and its progeny. *Id.* ¶ 19.

More importantly, however, the Amended Complaint does not adequately suggest Texas P.A.'s independent participation in the anticompetitive scheme. To be sure, Plaintiffs allege Texas P.A. entered "several merger agreements," including those with Pinnacle, MetroWest, Capital, and

[3] Holdings further argues the Court should dismiss the claims against it because "only one of the alleged transactions—Star—allegedly occurred within the statute of limitations" for this case, "which bars claims based on conduct before September 21, 2019." Doc. #155 at 3. But as the Court explained in its September 27, 2024 Order, the continuing violation exception in federal antitrust cases "permits a cause of action to accrue whenever the defendant . . . commits an act that by its very nature is a continuing antitrust violation." *Kaiser Aluminum & Chem. Sales, Inc. v. Avondale Shipyards, Inc.*, 677 F.2d 1045, 1051 (5th Cir. 1982). Here, Plaintiffs have successfully alleged Holdings' "independent[] participat[ion] in the enterprise's scheme" during the limitations period because it "negotiated and implemented" the Star merger. *Supra* pp. 6–8 (quoting *Chandler*, 2020 WL 1848047, at *14). As such, under the continuing violation exception, Plaintiffs have plead timely claims arising from the anticompetitive scheme, which included the Star acquisition.

Star. Doc. #127 ¶ 20. But unlike Holdings, Texas P.A. is only "a party" to those mergers—Plaintiffs do not allege it negotiated or implemented the agreements. *Id.* In that respect, then, the allegations against Texas P.A. differ from those against Holdings and are likewise distinguishable from those in *Syngenta*, where the defendant was alleged to be "directly involved in the negotiation" of an anticompetitive transaction. *Id.* ¶ 18; *Syngenta*, 711 F. Supp. 3d at 586. That Texas P.A. is a party to merger agreements is not enough—in and of itself—to subject it to potential antitrust liability. *See Syngenta*, 711 F. Supp. 3d at 585 ("Antitrust law doesn't recognize guilt by mere association . . . ." (quoting *SD3, LLC v. Black & Decker (U.S.) Inc.*, 801 F.3d 412, 422 (4th Cir. 2015))).

Finally, the Court is not persuaded by Plaintiffs' allegation that Texas P.A. has "entered at least some contracts with commercial payors regarding terms for reimbursement of hospital-only anesthesia services." *Id.* ¶ 20. Although Plaintiffs need not plead "detailed factual allegations" against Texas P.A., they must provide more than "mere conclusory statements." *Ashcroft*, 556 U.S. at 678. The Amended Complaint does not identify any of the alleged reimbursement contracts. Doc. #127 ¶ 20. More pressing still, Plaintiffs do not clarify whether Texas P.A. used "negotiating leverage" against commercial payors to raise reimbursement prices. *E.g.*, *id.* ¶ 62. Thus, Plaintiffs' allegations against Texas P.A. impermissibly "lump[] [it] together" with Holdings and USAP "without sufficient detail." *Syngenta*, 711 F. Supp. 3d at 585 (quoting *Black & Decker*, 801 F.3d at 423). As such, the claims against Texas P.A. should be dismissed.

c. Leave to Amend

Having concluded that Texas P.A. should be dismissed, the Court considers whether Plaintiffs should be allowed to amend their pleadings. Where, as here, the Court has imposed a scheduling order on the parties, "Federal Rules of Civil Procedure 15 and 16 operate together to

govern the amendment of pleadings." *Tex. Indigenous Council v. Simpkins*, 544 F. App'x 481, 420 (5th Cir. 2013). Plaintiffs must demonstrate "good cause" to justify further amendment. *S&W Enters., L.L.C. v. SouthTrust Bank of Ala., NA*, 315 F.3d 533, 536 (5th Cir. 2003). In determining whether there is good cause to amend, 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.*

Here, there is good cause to allow Plaintiffs to amend. First, the Court puts little weight on the fact that Plaintiffs have not explained their failure to "timely move for leave to amend." *See Vantage Trailers, Inc. v. Beall Corp.*, No. H-06-3008, 2007 WL 9705996, at *1 (S.D. Tex. Oct. 1, 2007) ("A plaintiffs failure to obtain leave to amend is not necessarily dispositive because 'the grant or denial of the opportunity to amend is within the court's discretion.'" (quoting *Hicks v. Resol. Tr. Corp.*, 767 F. Supp. 167, 170 (N.D. Ill. 1991))). The Scheduling Order set an April 3, 2025 deadline for Plaintiffs to amend their pleadings. Doc. #114. Naturally, only *after* Plaintiffs amended their Complaint pursuant to this deadline did Holdings and Texas P.A. move to dismiss the claims asserted against them. It would have made no sense for Plaintiffs to request leave to amend pleadings based on arguments not yet been raised by Defendants nor addressed by the Court.

Next, the Court finds the amendment important because it pertains to single enterprise theory, which Plaintiffs insist is "the most appropriate legal framework" upon which to proceed in this case. *See Bazrowx v. Scott*, 136 F.3d 1053, 1054 (5th Cir. 1998) (holding that a plaintiff should be afforded the opportunity to plead his "best case"). Third, neither Holdings nor Texas P.A. will be prejudiced by allowing Plaintiffs leave to amend because doing so "will not change the nature of [the] claims" against them. *Elepreneurs Holdings, LLC v. Benson*, No. 4:21-cv-26, 2021 WL

5140769, at *10 (E.D. Tex. Nov. 4, 2021). Last, because there is no prejudice to be suffered, the Court need not consider any continuance. Thus, for the foregoing reasons, the Court finds it in the interests of justice to grant Plaintiffs leave to amend.

IV. Conclusion

In conclusion, the Court finds Plaintiffs have alleged USAP and Holdings were a single enterprise engaged in an anticompetitive scheme. Conversely, the Amended Complaint does not sufficiently allege independent participation by Texas P.A. Thus, the Motion to Dismiss is GRANTED IN PART as to Plaintiffs' claims against Texas P.A and DENIED IN PART as to Plaintiffs' claims against Holdings.

Pursuant to Federal Rule of Civil Procedure 15(a) and 16(b), the Court grants Plaintiffs leave to amend their complaint to address the deficiencies outlined in this Order. Plaintiffs must file their amended complaint within twenty-one (21) days of the entry of this Order. Failure to file an Amended Complaint within 21 days will result in the dismissal of Plaintiffs' claims against Texas P.A. with prejudice.

It is so ORDERED.

MAR 26 2026
Date

The Honorable Alfred H. Bennett
United States District Judge