

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

BASEL MUSHARBASH,

Plaintiff,

v.

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

Defendants.

Case No.: 4:25-cv-00116

**DEFENDANT U.S. ANESTHESIA PARTNERS, INC.'S ANSWER TO  
PLAINTIFF BASEL MUSHARBASH'S CLASS ACTION COMPLAINT**

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Defendant U.S. Anesthesia Partners, Inc. (“USAP”) hereby answers Plaintiff Basel Musharbash’s (“Plaintiff”) Class Action Complaint dated January 9, 2025 (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 Plaintiff 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<sup>1</sup> 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 Plaintiff’s 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.

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<sup>1</sup> For purposes of this Answer, USAP adopts the definition of “Welsh Carson” set forth in footnote 1 of the Complaint. To the extent footnote 1 requires a response, USAP denies that the various entities listed there at all times acted as a single entity.

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. 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 2's allegations regarding Welsh Carson are irrelevant in light of the Court's dismissal of Plaintiff's 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. Additionally, USAP admits that material produced in the Federal Trade Commission's ("FTC") investigation of this matter includes the quoted language from Paragraph 2. USAP respectfully directs the Court to those documents for an accurate and complete statement of their contents 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. 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 Plaintiff's claims against it. To the extent that a further response is required, USAP admits that John Rizzo, Kristen Bratberg, and Welsh Carson had a role in the formation of USAP 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. 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. To the extent that Paragraph 5 presupposes unidentified methodologies for assessing USAP's prices, changes in quality, or other factors, USAP lacks sufficient knowledge to admit or deny allegations based on such unidentified methodologies. To the extent that any further response is required, USAP 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 Plaintiff's claims against it. To the extent Paragraph 6 presupposes unidentified methodologies to assess competition and market share, USAP lacks sufficient information to admit or deny allegations based on such unidentified methodologies. To the extent that a further response is required, USAP otherwise 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. USAP lacks sufficient information to admit or deny Paragraph 8's comparison of USAP's in-network rates to a purported average of an unidentified set of anesthesia providers. 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. To the extent that a further response is required, USAP 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 legal conclusions and characterizations of this action to which no response is required. To the extent that a further response is required, USAP admits that the FTC and certain private plaintiffs have filed complaints against USAP and denies the remaining allegations in 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, USAP denies that this Court has subject matter jurisdiction, including because Plaintiff lacks Article III standing.

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 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**

14. USAP admits that Plaintiff's insurer determined that Plaintiff was responsible for paying \$637.10 for anesthesiology services provided by USAP at Medical City Dallas Hospital. USAP denies that Plaintiff's insurer's payment was limited to \$135.39. USAP lacks sufficient information to admit or deny the remaining allegations in Paragraph 14.

### **B. Defendant USAP**

15. USAP admits the first and second sentences of Paragraph 15. The third 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 third sentence of Paragraph 15. Footnote 2 sets forth a legal conclusion to which no response is required. To the extent a response is required, USAP admits that U.S. Anesthesia Partners of Colorado, Inc. entered into a settlement with the Colorado Department of Law but denies any

allegation that it was engaged in anticompetitive business practices. USAP otherwise denies Paragraph 15.

**C. Defendant Welsh Carson**

16. USAP admits the first sentence of Paragraph 16. The remainder of Paragraph 16's allegations are vague, conclusory, and argumentative, and its allegations regarding Welsh Carson are irrelevant in light of the Court's dismissal of the Plaintiff's claims against it. Further, USAP lacks sufficient information to admit or deny Welsh Carson's internal organizational structure. To the extent that a further response is required, USAP denies all but the first sentence of Paragraph 16 except to the extent that it admits a specific well-pleaded factual allegation elsewhere in this Answer.

17. USAP admits the first sentence of Paragraph 17. Otherwise, Paragraph 17's allegations regarding Welsh Carson are irrelevant in light of the Court's dismissal of the Plaintiff's claims against it. Moreover, USAP lacks sufficient information to admit or deny Paragraph 17's allegations regarding the Welsh Carson entities' corporate commonalities. To the extent a further response is required, USAP denies the remaining allegations in Paragraph 17.

18. USAP admits the first sentence of Paragraph 18. USAP further admits that D. Scott Mackesy was a director on USAP's board from 2012 to 2021. USAP further admits that Welsh Carson has the right to appoint two seats on USAP's board of directors, and that Brian Regan served on USAP's board from 2012 until 2022. Otherwise, Paragraph 18's allegations regarding Welsh Carson are irrelevant in light of the Court's dismissal of the Plaintiff's claims against it. To the extent that a further response is required, USAP denies the remaining allegations in Paragraph 18 except to the extent that it admits a specific well-pleaded factual allegation elsewhere in this Answer.

19. USAP admits the first sentence of Paragraph 19. Otherwise, Paragraph 19's allegations regarding Welsh Carson are irrelevant in light of the Court's dismissal of the Plaintiff's claims against it. USAP admits that evidence produced in the FTC's investigation of this matter includes the quoted language in the last sentence and respectfully directs the Court to that material for an accurate and complete statement of the contents. To the extent that a further response is required, USAP the remaining allegations of Paragraph 19 except to the extent that it admits a specific well-pleaded factual allegation elsewhere in this Answer.

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 Plaintiff's claims against it. To the extent that a further response is required, USAP admits that Robert Coward is currently Vice Chairman for USAP and was previously an operating partner at Welsh Carson and the CEO of USAP. USAP otherwise 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. Further, Paragraph 21's allegations regarding Welsh Carson are irrelevant in light of the Court's dismissal of Plaintiff's 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 called itself USAP's "primary architect." USAP admits that evidence produced in the FTC's investigation of this matter includes the quoted language in the last sentence and respectfully directs the Court to

that material for an accurate and complete statement of the contents. USAP otherwise denies the remaining allegations in Paragraph 21.

22. The allegations in Paragraph 22 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 Brian Regan served on USAP's board from 2012 until 2022. USAP otherwise denies the remaining 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 Plaintiff's claims against it. To the extent that a further response is required, USAP admits that Welsh Carson had a role in the formation of USAP. USAP otherwise denies Paragraph 23.

## FACTUAL ALLEGATIONS

### I. USAP'S ANTICOMPETITIVE SERIAL ACQUISITION SCHEME

#### A. Welsh Carson Conspires with Healthcare Executives to Monopolize Anesthesia Markets

24. To the extent that Paragraph 24's allegations characterize Welsh Carson's state of mind, USAP lacks sufficient information to admit or deny them. Moreover, Paragraph 24's allegations regarding Welsh Carson are irrelevant in light of the Court's dismissal of Plaintiff's 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 24.

25. 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 25.

26. USAP lacks sufficient information to admit or deny the allegations in Paragraph 26 and therefore denies Paragraph 26.

27. The allegations in Paragraph 27 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 lacks sufficient information to admit or deny allegations regarding Welsh Carson's state of mind or internal delegation related to investments. Paragraph 27 also alleges a legal conclusion to which no response is required. Moreover, Paragraph 27's allegations regarding Welsh Carson are irrelevant in light of the Court's dismissal of Plaintiff's claims against it. To the extent that a further response is required, USAP admits that Kristen Bratberg served as the first CEO of USAP. USAP otherwise denies Paragraph 27.

**B. Defendants Begin Rolling up Houston with the Acquisition of Greater Houston Anesthesiology**

28. USAP denies the allegations in the second sentence of Paragraph 28. USAP otherwise lacks sufficient information to admit or deny the allegations in Paragraph 28 and therefore denies Paragraph 28.

29. USAP admits the first sentence of Paragraph 29. 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 denies the remaining allegations in Paragraph 29.

30. USAP lacks sufficient information to admit or deny the allegations of Paragraph 30. 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 denies the remaining allegations in Paragraph 30.

31. USAP admits the first two sentences of Paragraph 31. USAP admits that Greater Houston Anesthesiology chose Welsh Carson and New Day's offer and that the parties agreed to a three-month exclusivity period. USAP otherwise denies Paragraph 31.

32. USAP lacks sufficient information to admit or deny allegations regarding consultants' analyses of the referenced 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 32.

33. 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 33.

34. USAP lacks sufficient information to admit or deny the allegations in Paragraph 34 and therefore denies Paragraph 34.

35. USAP lacks sufficient information to know whether “funding” was “secured” and therefore denies the first sentence of Paragraph 35 to the extent it relies on that clause. USAP admits that USAP’s formation was announced on November 19, 2012, and that USAP and Greater Houston Anesthesiology entered into an acquisition agreement on December 12, 2012.

**C. Defendants Continue their Consolidation Strategy by Acquiring Twelve Additional Anesthesia Practices in Houston, Dallas-Fort Worth and Austin**

36. The allegations in Paragraph 36 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, USAP lacks sufficient information to admit or deny allegations regarding Welsh Carson’s state of mind or Welsh Carson’s use of the term “value maximization plan.” To the extent that a further response is required, USAP admits that evidence produced in the FTC’s investigation of this matter includes the quoted language, respectfully directs the Court to that evidence for an accurate and complete statement of its contents and otherwise denies Paragraph 36.

37. To the extent the allegations in Paragraph 37 purport to characterize USAP’s “Roll Up Houston” presentation, USAP contends this document speaks for itself. USAP respectfully directs the Court to the quoted evidence for an accurate and complete statement of its contents. To the extent they characterize Welsh Carson’s state of mind, USAP lacks sufficient information to admit or deny them. Further, Paragraph 37’s allegations regarding Welsh Carson are irrelevant in light of the Court’s dismissal of Plaintiff’s claims against it. USAP otherwise denies 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. Paragraph 38 alleges a legal conclusion to which no



response is required. Further, Paragraph 38's allegations regarding Welsh Carson are irrelevant in light of the Court's dismissal of Plaintiff's claims against it. To the extent they 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, 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 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. Paragraph 39 alleges a legal conclusion to which no response is required. Further, Paragraph 39's allegations regarding Welsh Carson are irrelevant in light of the Court's dismissal of Plaintiff's claims against it. To the extent they 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, 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. USAP lacks sufficient information to admit or deny the allegations in Paragraph 39 to the extent that they are predicated on an undefined methodology for calculating and comparing reimbursement rates, and otherwise denies Paragraph 39.

40. The allegations in Paragraph 40 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 that a further response is required, USAP lacks sufficient information to admit or deny whether “funding” was “secured” and otherwise 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. To the extent the allegations in Paragraph 41 characterize Welsh Carson’s state of mind, USAP lacks sufficient information to admit or deny them. Further, Paragraph 41’s allegations regarding Welsh Carson are irrelevant in light of the Court’s dismissal of Plaintiff’s 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. Moreover, USAP lacks sufficient knowledge to admit or deny the allegations in Paragraph 41 to the extent that they are predicated on an undefined methodology for calculating and comparing market shares. USAP otherwise denies the allegations in Paragraph 41.

42. The allegations in Paragraph 42 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 42’s allegations regarding Welsh Carson are irrelevant in light of the Court’s dismissal of Plaintiff’s 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 42.

**1. USAP Acquires Lake Travis Anesthesiology**

43. USAP admits that it acquired Lake Travis Anesthesiology in 2013, that Lake Travis Anesthesiology provided coverage for Lakeway Hospital, and that Greater Houston Anesthesiology had a presence in Austin. USAP further admits that material produced in the FTC's investigation of this matter includes the quoted language from Paragraph 43. USAP respectfully directs the Court to that material for an accurate and complete statement of its contents. USAP denies the remaining allegations in Paragraph 43.

**2. USAP Acquires North Houston Anesthesiology-Kingwood Division**

44. USAP admits that it entered into the agreement referenced in Paragraph 44 and that the referenced numbers of physicians and certified registered nurse anesthetists ("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 44, 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.

**3. USAP Acquires Pinnacle Anesthesia Consultants**

45. Paragraph 45 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 45'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 denies Paragraph 45.

46. USAP lacks sufficient information to admit or deny Paragraph 46'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 denies Paragraph 46.

47. The first sentence of Paragraph 47 is vague, conclusory, and argumentative, and thus requires no response. Moreover, USAP lacks sufficient information to admit or deny Paragraph 47's allegations regarding Welsh Carson's state of mind. To the extent 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 47.

48. USAP admits that it hired consulting firms in connection with a potential acquisition of Pinnacle. 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 48.

49. 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 Paragraph 49. USAP 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 actions of Welsh Carson. USAP otherwise denies Paragraph 49.

50. The allegations in Paragraph 50 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 that a further response is required, USAP admits that material produced in the FTC's investigation of this matter includes the term "wish list." USAP respectfully directs the Court to that material for an accurate and complete statement of its contents, and otherwise denies Paragraph 50.

51. USAP admits that the referenced numbers of anesthesiologists and CRNAs accurately characterize the referenced arrangements and that the acquisition of Pinnacle was completed in January 2014. USAP otherwise denies the remaining allegations in Paragraph 51.

52. The allegations in Paragraph 52 are vague, conclusory, and argumentative, and therefore require no response. USAP denies Paragraph 52, 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.

53. The allegations in Paragraph 53 are vague, conclusory, and argumentative, and therefore require no response. To the extent that a further response is required, USAP lacks sufficient information to admit or deny the allegations in Paragraph 53 to the extent that they are predicated on an undefined methodology for calculating reimbursement rates and otherwise denies the remaining allegations in Paragraph 53, except that USAP admits that it engaged in arbitration with an insurer after the acquisition of Pinnacle.

54. Paragraph 54's allegations regarding Welsh Carson are irrelevant in light of the Court's dismissal of Plaintiff's claims against it. USAP respectfully directs the Court to its

contracts for an accurate and complete statement of their contents and denies Paragraph 54 to the extent it mischaracterizes those contracts. To the extent that a further response is required, USAP otherwise denies Paragraph 54.

#### **4. USAP Acquires Anesthesia Consultants of Dallas**

55. 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 fifth sentences of Paragraph 55. 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 55, 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.

#### **5. USAP Acquires Excel Anesthesia Consultants**

56. USAP admits that the allegations in the first sentence of Paragraph 56 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 last two sentences of Paragraph 56, but respectfully directs the Court to that material for an accurate and complete statement of its contents. USAP otherwise denies the allegations in 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. The allegations also set forth a legal conclusion to which no response is required. 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 57, 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.

58. The allegations in Paragraph 58 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 that a further response is required, USAP interprets “BMW Anesthesiology” as referencing “BMW Physicians,” and admits BMW Physicians, Southwest Anesthesia Associates, and Sundance Anesthesia each employed fewer anesthesiologists and CRNAs than USAP did. USAP otherwise denies the allegations in Paragraph 58.

## **6. USAP Acquires Southwest Anesthesia Associates**

59. USAP admits the allegations set forth in the first sentence of Paragraph 59. USAP admits that material produced in the FTC’s investigation of this matter discusses the information alleged in the second sentence of Paragraph 59 and respectfully directs the Court to that material for an accurate and complete statement of its contents. USAP otherwise denies Paragraph 59, 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.

## **7. USAP Acquires BMW Anesthesiology**

60. USAP interprets “BMW Anesthesiology” as referencing “BMW Physicians.” USAP denies that it acquired BMW Physicians or Medical City Physicians but admits that USAP

hired as new employees personnel formerly associated with BMW Physicians and Medical City Physicians. USAP admits that material produced in the FTC's investigation of this matter includes the quoted language in the third sentence of Paragraph 60. USAP respectfully directs the Court to that material for an accurate and complete statement of its contents. USAP otherwise denies Paragraph 60, 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.

#### **8. USAP Acquires Medical City Physicians**

61. USAP denies that it acquired Medical City Physicians but admits that USAP hired as new employees personnel formerly associated with Medical City Physicians. USAP admits that material produced in the FTC's investigation of this matter includes the quoted language in the second sentence of Paragraph 61. 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.

#### **9. USAP Acquires Sundance Anesthesia**

62. USAP admits that it entered into the agreement referenced in the first sentence of Paragraph 62 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 62 and respectfully directs the Court to that material for an accurate and complete statement of its contents. USAP otherwise denies Paragraph 62,



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.

**10. USAP Acquires MetroWest Anesthesia Care**

63. USAP admits the allegations in the first sentence of Paragraph 63. 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 Paragraph 63's allegations regarding Sheridan Healthcare. USAP otherwise denies the allegations in Paragraph 63.

64. 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 the allegations in Paragraph 64.

65. USAP lacks sufficient knowledge to admit or deny Paragraph 65, 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.

**11. USAP Acquires Capitol Anesthesiology Association**

66. 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 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 lacks sufficient information to admit or deny allegations regarding Welsh Carson's state of mind. USAP otherwise denies Paragraph 66.

67. USAP lacks sufficient knowledge to admit or deny Paragraph 67'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 67.

## **12. USAP Acquires Guardian Anesthesia Services**

68. USAP admits that it entered into the agreement referenced in the first sentence of Paragraph 68 and that the referenced numbers of physicians and CRNAs affiliated with its counterparty are accurate. USAP lacks sufficient knowledge to admit or deny the allegations in Paragraph 68 to the extent that they are predicated on an undefined methodology to assess provider reimbursement rates that USAP lacks sufficient knowledge to admit or deny. USAP denies the remaining allegations in Paragraph 68.

## **D. Defendants Acquire Three Practices in Tyler, Amarillo, and San Antonio to Preserve Monopoly and Pricing Power in Houston, Dallas, and Austin**

### **1. USAP Acquires East Texas Anesthesiology Associates**

USAP admits that it entered into the agreement referenced in the first sentence of this unnumbered Paragraph<sup>2</sup> 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 the unnumbered Paragraph, including to

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<sup>2</sup> As stated above, each paragraph in this Answer corresponds to the same-numbered paragraph of the Complaint. For the avoidance of doubt, this Answer responds to the unnumbered Paragraph appearing between Paragraphs 68 and 69 of the Complaint.

the extent that it is predicated on an undefined methodology for calculating reimbursement rates that USAP lacks sufficient information to admit or deny.

## **2. USAP Acquires Amarillo Anesthesia Consultants**

69. USAP admits that it entered into the agreement referenced in the first sentence of Paragraph 69 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. The allegations regarding the "Amarillo market" are vague, conclusory, argumentative, and set forth a legal conclusion to which no response is required. USAP otherwise lacks sufficient knowledge to admit or deny the allegations of Paragraph 69, including to the extent that it is predicated on an undefined methodology for calculating and comparing.

## **3. USAP Acquires Star Anesthesia**

70. Paragraph 70's allegations regarding Welsh Carson are irrelevant in light of the Court's dismissal of Plaintiff's claims against it. USAP admits that USAP entered into the agreement referenced in the first two sentences of Paragraph 70 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 70, 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.

## II. THE RELEVANT MARKETS

### A. Hospital-Only Anesthesia Services Sold to Patients with Commercial Insurance and Uninsured Patients

71. Paragraph 71 states a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 71.

72. USAP admits that pain management is one of many aspects of anesthesia care, but otherwise denies the allegations in Paragraph 72 as an oversimplified and incomplete description of the complex care anesthesiologists, CRNAs, and certified anesthesiologist assistants (“CAAs”) provide to patients before, during, and after surgery and other procedures.

73. Paragraph 73 alleges a legal conclusion to which no response is required. To the extent that a further response is required, USAP contends that Paragraph 73 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 therefore denies Paragraph 73.

74. The allegations in Paragraph 74 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 74 also alleges a legal conclusion to which no response is required. To the extent that a further response is required, USAP contends that Paragraph 74 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 therefore denies the allegations in Paragraph 74.

75. The allegations in Paragraph 75 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 75 also alleges a legal conclusion to which no

response is required. USAP otherwise denies Paragraph 75, including to the extent that it is predicated on an undefined methodology to assess patient demand and price for anesthesia services, which USAP lacks sufficient knowledge to admit or deny.

76. Paragraph 76's generalizations regarding patients' activities are vague, 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 that a further response is required, USAP admits the vague generalizations in Paragraph 76 can be true in some circumstances, but USAP denies that those generalizations apply always and uniformly to each and every marketplace participant. USAP further admits that anesthesia practices compete for hospital contracts within Texas but otherwise denies Paragraph 76.

77. The allegations in Paragraph 77 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 77 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 Paragraph 77 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 77.

78. Paragraph 78's generalizations regarding patients' healthcare decisions are vague, 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 that a further response is required, USAP admits that the vague generalizations in Paragraph 78 can be true in some circumstances but denies that they are always and uniformly true and otherwise denies Paragraph 78.

79. The allegations in Paragraph 79 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 that a further response is required, USAP admits that the vague generalizations in Paragraph 79 can be true in some circumstances but denies that those generalizations apply always and uniformly to each and every marketplace participant and otherwise denies Paragraph 79.

80. The allegations in Paragraph 80 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 admits that the vague generalizations in Paragraph 80 can be true in some circumstances but denies that they are always and uniformly true and otherwise denies Paragraph 80.

81. Paragraph 81's generalizations regarding commercially insured and uninsured patients' choices are vague, 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 that a further response is required, USAP admits that the vague generalizations in Paragraph 81 can be true in some circumstances but denies that they are always and uniformly true and otherwise denies Paragraph 81.

82. Paragraph 82 alleges a legal conclusion to which no response is required. The allegations in Paragraph 82 are vague, conclusory, and argumentative, and USAP therefore denies it except to the extent that it admits a specific well-pleaded factual allegation elsewhere in this Answer.

83. USAP lacks sufficient information to admit or deny the second and third sentences of Paragraph 83. USAP otherwise denies Paragraph 83.

84. Paragraph 84 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 require overnight call and longer shifts that are scheduled in advance. USAP otherwise contends that Paragraph 84 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 therefore denies Paragraph 84.

85. Paragraph 85 alleges a legal conclusion to which no response is required. Further, the allegations in the first sentence of Paragraph 85 are vague and ambiguous. 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 and otherwise denies Paragraph 85.

86. Paragraph 86 alleges a legal conclusion to which no response is required. To the extent that a further response is required, USAP admits that certain government-sponsored insurance plans have eligibility requirements and otherwise denies Paragraph 86.

87. Paragraph 87 alleges a legal conclusion to which no response is required. USAP denies Paragraph 87 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 87.

88. Paragraph 88's generalizations regarding patient pricing are vague, 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 that a further response is required, USAP contends that Paragraph 88 is an oversimplified and inaccurate description of what determines patient pricing and otherwise denies Paragraph 88.

89. Paragraph 89 alleges a legal conclusion to which no response is required. Further, Paragraph 89's generalizations regarding insurers and anesthesiologists are vague, 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 that a further response is required, USAP denies Paragraph 89.

**B. The Geographic Markets: the Houston, Dallas-Fort Worth, and Austin MSAs**

90. The allegations in Paragraph 90 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.

91. Paragraph 91 alleges a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 91.

**1. The Houston MSA**

92. Paragraph 92 alleges a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 92.

93. Subject to the qualifications that the "Houston MSA" is more formally called "Houston-The Woodlands-Sugar Land, TX MSA," USAP admits Paragraph 93.

94. Paragraph 94's generalizations regarding patients' activities are vague, 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 that a further response is required, USAP admits the vague generalizations in Paragraph 94 can be true in some circumstances, but USAP denies that those generalizations apply always and uniformly to each and every marketplace participant.

95. The allegations in Paragraph 95 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 95 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 95.

96. The allegations in Paragraph 96 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 96's allegations regarding Welsh Carson are irrelevant in light of the Court's dismissal of Plaintiff's 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 96.

97. The allegations in Paragraph 97 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 97's allegations regarding Welsh Carson are irrelevant in light of the Court's dismissal of Plaintiff's 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 97.

98. Paragraph 98 is predicated on an undefined methodology to assess provider group size and reimbursement rates that USAP lacks sufficient information to admit or deny. Paragraph 98's allegations also assume a finding that the antitrust product market Plaintiff has

pleaded is well defined – a conclusion that USAP denies. To the extent that any further response is required, USAP denies Paragraph 98.

99. The allegations in Paragraph 99 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 99 sets forth a legal conclusion to which no response is required. To the extent that any further response is required, USAP denies Paragraph 99.

## **2. The Dallas-Fort Worth MSA**

100. Paragraph 100 alleges a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 100.

101. Subject to the qualifications that the “Dallas MSA” is more formally called “Dallas-Fort Worth-Arlington, TX MSA,” USAP admits Paragraph 101.

102. Paragraph 102’s generalizations regarding patients’ activities are vague, 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 that a further response is required, USAP admits the vague generalizations in Paragraph 102 can be true in some circumstances, but USAP denies that those generalizations apply always and uniformly to each and every marketplace participant.

103. The allegations in Paragraph 103 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 103 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 103.

104. Paragraph 104's allegations assume a finding that the antitrust product market Plaintiff has pleaded is well defined – a conclusion that USAP denies. Paragraph 104 is predicated on an undefined methodology to assess practice group and hospital size that USAP lacks sufficient information to admit or deny. The allegations in the first sentence of Paragraph 104 are vague and ambiguous, and USAP therefore denies them except to the extent that it admits a specific well-pleaded factual allegation elsewhere in this Answer. Moreover, USAP lacks sufficient information to admit or deny Paragraph 104's allegations comparing USAP's number of cases to other, unidentified providers of anesthesia services. Paragraph 104's characterization of USAP's conduct is argumentative and thus requires no response. USAP otherwise denies Paragraph 104.

105. Paragraph 105 is predicated on an undefined methodology to assess provider reimbursement rates and revenue that USAP lacks sufficient information to admit or deny. To the extent that any further response is required, USAP denies Paragraph 105.

106. The allegations in Paragraph 106 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 106 sets forth a legal conclusion to which no response is required. To the extent that any further response is required, USAP denies Paragraph 106.

### **3. The Austin MSA**

107. Paragraph 107 alleges a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 107.

108. Subject to the qualifications that the "Austin MSA" is more formally called "Austin-Round Rock, TX MSA," USAP admits Paragraph 108.

109. Paragraph 109's generalizations regarding patients' activities are vague, 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 that a further response is required, USAP admits the vague generalizations in Paragraph 109 can be true in some circumstances, but USAP denies that those generalizations apply always and uniformly to each and every marketplace participant.

110. The allegations in Paragraph 110 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 110 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 110.

111. The allegations in Paragraph 111 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 111 sets forth a legal conclusion to which no response is required. To the extent that any further response is required, USAP denies Paragraph 111.

**4. Additional Evidence Confirming the Houston, Dallas-Fort Worth, and Austin MSAs are Relevant Geographic Markets**

112. The allegations in Paragraph 112 are vague, conclusory, argumentative, and set forth legal conclusions, and thus require no response. To the extent that a further response is required, USAP denies Paragraph 112.

113. The allegations in Paragraph 113 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 113 also sets forth legal conclusions to which no

response is required, and makes allegations regarding insurers', employers', and employees' states of mind that USAP lacks sufficient information to confirm or deny. USAP otherwise denies Paragraph 113.

114. The allegations in Paragraph 114 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 114 also sets forth legal conclusions to which no response is required. USAP otherwise denies Paragraph 114.

115. USAP denies Paragraph 115.

116. Paragraph 116's allegations assume a finding that the antitrust product market the Plaintiff has pleaded is well defined – a conclusion that USAP denies. USAP otherwise lacks sufficient knowledge to admit or deny the allegations of Paragraph 116, 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. To the extent that any further response is required, USAP denies Paragraph 116.

117. USAP admits that 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 117, including to the extent that it is predicated on an undefined methodology for calculating reimbursement rates and case counts that USAP lacks sufficient information to admit or deny.

118. USAP admits that Star Anesthesia had a presence in the Houston MSA prior to being acquired by USAP but otherwise denies Paragraph 118.

119. The allegations in Paragraph 119 are vague, conclusory, argumentative, and set forth legal conclusions, and thus require no response. USAP otherwise denies Paragraph 119,

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.

### **III. STATUTE OF LIMITATIONS**

#### **A. Fraudulent Concealment**

120. Paragraph 120 sets forth legal conclusions and characterizations of the Complaint in 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 the allegations in Paragraph 120 except as specifically admitted elsewhere in this Answer.

121. Paragraph 121 sets forth legal conclusions to which no response is required. To the extent that a further response is required, USAP denies Paragraph 121.

122. Paragraph 122 sets forth legal conclusions to which no response is required. To the extent that a further response is required, USAP denies Paragraph 122.

123. Paragraph 123 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 lacks knowledge sufficient to admit or deny Paragraph 123's allegations regarding Plaintiff's supposed diligence and otherwise denies Paragraph 123.

124. Paragraph 124 sets forth legal conclusions to which no response is required. To the extent that a further response is required, USAP denies Paragraph 124.

125. Paragraph 125 sets forth legal conclusions to which no response is required. To the extent that a further response is required, USAP admits that the documents cited in footnotes 6 and 7 contain the quoted material but contends that those documents speak for themselves and otherwise denies Paragraph 125.

126. Paragraph 126 sets forth legal conclusions to which no response is required. To the extent that a further response is required, USAP denies Paragraph 126.

127. Paragraph 127 sets forth legal conclusions to which no response is required. To the extent that a further response is required, USAP denies Paragraph 127.

**B. Suspension of Limitations**

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 admits that the claims Plaintiff brings on behalf of himself and the proposed Class are based in whole or in part on the allegations in the FTC's pending civil suit. USAP otherwise denies the allegations in Paragraph 128 except as specifically admitted elsewhere in this Answer.

**IV. WELSH CARSON CONSPIRED TO MONOPOLIZE THE HOUSTON, DALLAS-FORT WORTH, AND AUSTIN MSAS**

**A. Phase 1: Welsh Carson and John Rizzo Hatch the Conspiracy to Monopolize the Relevant Markets**

129. The allegations in Paragraph 129 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 129's allegations regarding Welsh Carson are irrelevant in light of the Court's dismissal of Plaintiff's claims against it. To the extent that a further response is required, USAP admits that material produced in the 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 129.

130. The allegations in Paragraph 130 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. USAP lacks sufficient information to admit or deny allegations regarding Welsh Carson's state of mind or internal delegation related to investments. Further, Paragraph 130's allegations regarding Welsh Carson are irrelevant in light of the Court's dismissal of Plaintiff's claims against it. USAP admits that material produced in the 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 130.

131. Paragraph 131's allegations regarding Welsh Carson are irrelevant in light of the Court's dismissal of Plaintiff's claims against it. To the extent a response is required, USAP lacks sufficient information to admit or deny the allegations in Paragraph 131 and therefore denies Paragraph 131.

**B. Phase 2: Welsh Carson Directs and Profits from the Conspiracy to Monopolize the Relevant Markets**

132. The allegations in Paragraph 132 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. The allegations in Paragraph 132 also set forth legal conclusions to which no response is required. Further, Paragraph 132's allegations regarding Welsh Carson are irrelevant in light of the Court's dismissal of Plaintiff's claims against it. To the extent that a further response is required, USAP lacks sufficient knowledge to admit or deny whether and in what context Welsh Carson "dubbed itself USAP's 'primary architect,'" and therefore denies Paragraph 132.

133. Paragraph 133's allegations regarding Welsh Carson are irrelevant in light of the Court's dismissal of Plaintiff's claims against it. To the extent that a further response is



required, USAP lacks sufficient information to admit or deny the allegations in Paragraph 133 and therefore denies Paragraph 133.

134. The allegations in Paragraph 134 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 134's allegations regarding Welsh Carson are irrelevant in light of the Court's dismissal of Plaintiff's claims against it. To the extent that a further response is required, USAP admits that Kristen Bratberg was hired to be the CEO of New Day but otherwise lacks sufficient information to admit or deny the remaining allegations in Paragraph 134.

135. Paragraph 135's allegations regarding Welsh Carson are irrelevant in light of the Court's dismissal of Plaintiff's claims against it. To the extent that a further response is required, USAP lacks sufficient information to admit or deny the accuracy of the quoted language. USAP respectfully directs the Court to whatever written evidence may be available for an accurate and complete statement of its contents. USAP lacks sufficient information to admit or deny the remaining allegations in Paragraph 135 and therefore denies them.

136. Paragraph 136's allegations regarding Welsh Carson are irrelevant in light of the Court's dismissal of Plaintiff's claims against it. To the extent a further response is required, USAP admits Welsh Carson and New Day submitted a Letter of Intent to enter into an agreement with Greater Houston Anesthesiology on August 29, 2012 and respectfully directs the Court to that material for an accurate and complete statement of its contents. USAP otherwise lacks knowledge sufficient to admit or deny the remaining allegations in Paragraph 136.

137. The allegations in Paragraph 137 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 137's allegations regarding Welsh Carson are irrelevant in light of the Court's dismissal of Plaintiff's claims against it. Further, USAP lacks sufficient information to admit or deny allegations regarding Welsh Carson's state of mind. To the extent that a further response is required, USAP admits that evidence produced in the FTC's investigation of this matter includes the quoted language, respectfully directs the Court to that evidence for an accurate and complete statement of its contents and otherwise denies Paragraph 137.

138. USAP interprets the word "and" that appears with a strikethrough in Paragraph 138 to have been deleted from Paragraph 138. The allegations in Paragraph 138 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. The allegations in Paragraph 138 also set forth legal conclusions to which no response is required. Paragraph 138's allegations regarding Welsh Carson are irrelevant in light of the Court's dismissal of Plaintiff's claims against it. To the extent that a further response is required, USAP admits that evidence produced in the FTC's investigation of this matter includes the quoted language, respectfully directs the Court to that evidence for an accurate and complete statement of its contents and otherwise denies Paragraph 138.

139. USAP admits the first sentence of Paragraph 139. The other allegations in Paragraph 139 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. The allegations also set forth legal conclusions to which no response is required. Paragraph 139's allegations regarding Welsh Carson are irrelevant in light of the Court's dismissal of Plaintiff's claims against it. Further, 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 otherwise denies Paragraph 139.

140. The allegations in Paragraph 140 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. The allegations also set forth legal conclusions to which no response is required. Paragraph 140's allegations regarding Welsh Carson are irrelevant in light of the Court's dismissal of Plaintiff's claims against it. Further, to the extent the allegations characterize Welsh Carson's state of mind, USAP lacks sufficient information to confirm or deny them. To the extent that a further response is required, USAP admits that Brian Regan served on USAP's board from 2012 until 2022. USAP otherwise denies the remaining allegations in Paragraph 140.

141. The allegations in Paragraph 141 set forth legal conclusions to which no response is required. To the extent a response is required, USAP denies Paragraph 141.

## **V. MONOPOLY POWER**

### **A. USAP Leverages Its Monopoly Power to Charge Monopoly Prices**

142. Paragraph 142's allegations assume a finding that the antitrust product market the Plaintiff has pleaded is well defined – a conclusion that USAP denies. To the extent that any further response is required, USAP denies Paragraph 142, including to the extent that it presupposes unidentified methodologies for assessing reimbursement rates, changes in quality, market share, or other factors that USAP lacks sufficient knowledge to admit or deny.

143. Paragraph 143's allegations assume a finding that the antitrust product market the Plaintiff has 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 otherwise denies Paragraph 143, 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 Demonstrate USAP's Monopoly Power**

144. Paragraph 144's allegations assume a finding that the antitrust product market the Plaintiff has pleaded is well defined – a conclusion that USAP denies. Paragraph 144 is also vague and ambiguous insofar as it is unclear whether its allegations relate to USAP's alleged conduct across three separate "MSA markets" or whether Plaintiff alleges there is a single market covering three MSAs. Paragraph 144 also sets forth legal conclusions to which no response is required. To the extent that any further response is required, USAP denies Paragraph 144.

145. Paragraph 145's allegations assume a finding that the antitrust product market the Plaintiff has pleaded is well defined – a conclusion that USAP denies. Paragraph 145 also sets forth legal conclusions to which no response is required. To the extent a further response is required, the allegations in the first sentence of Paragraph 145 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. USAP otherwise denies the remaining allegations in Paragraph 145.

**1. Houston MSA**

146. Paragraph 146's allegations assume a finding that the antitrust product market the Plaintiff has pleaded is well defined – a conclusion that USAP denies. Paragraph 146 also sets forth legal conclusions to which no response is required. To the extent that any further response

is required, USAP denies Paragraph 146, including to the extent that it presupposes unidentified methodologies for assessing market share or other factors that USAP lacks sufficient knowledge to admit or deny.

147. Paragraph 147's allegations assume a finding that the antitrust product market the Plaintiff has pleaded is well defined – a conclusion that USAP denies. To the extent that any further response is required, USAP denies Paragraph 147, including to the extent that it presupposes unidentified methodologies for assessing case volume, market share, or other factors that USAP lacks sufficient knowledge to admit or deny.

148. USAP admits that Paragraph 148 generally accurately characterizes the Herfindahl-Hirschman Index, but denies any legal conclusion regarding that index's application in this matter.

149. Paragraph 149's allegations assume a finding that the antitrust product market the Plaintiff has pleaded is well defined – a conclusion that USAP denies. To the extent that any further response is required, USAP denies Paragraph 149.

## **2. Dallas-Fort Worth MSA**

150. Paragraph 150's allegations assume a finding that the antitrust product market the Plaintiff has pleaded is well defined – a conclusion that USAP denies. To the extent that any further response is required, USAP denies Paragraph 150, including to the extent that it presupposes unidentified methodologies for assessing market share or other factors that USAP lacks sufficient knowledge to admit or deny.

151. Paragraph 151's allegations assume a finding that the antitrust product market the Plaintiff has pleaded is well defined – a conclusion that USAP denies. To the extent that any further response is required, USAP denies Paragraph 151, including to the extent that it

presupposes unidentified methodologies for assessing case volume, market share, or other factors that USAP lacks sufficient knowledge to admit or deny.

152. Paragraph 152's allegations assume a finding that the antitrust product market the Plaintiff has pleaded is well defined – a conclusion that USAP denies. To the extent that any further response is required, USAP denies Paragraph 152.

### **3. Austin MSA**

153. Paragraph 153's allegations assume a finding that the antitrust product market the Plaintiff has pleaded is well defined – a conclusion that USAP denies. To the extent that any further response is required, USAP denies Paragraph 153, including to the extent that it presupposes unidentified methodologies for assessing case volume, market share, or other factors that USAP lacks sufficient knowledge to admit or deny.

154. The allegations in Paragraph 154 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.

155. Paragraph 155's allegations assume a finding that the antitrust product market the Plaintiff has pleaded is well defined – a conclusion that USAP denies. To the extent that any further response is required, USAP denies Paragraph 155.

156. Paragraph 156's allegations assume a finding that the antitrust product market the Plaintiff has pleaded is well defined – a conclusion that USAP denies. To the extent that any further response is required, USAP denies Paragraph 156.

157. Paragraph 157's allegations assume a finding that the antitrust product market the Plaintiff has pleaded is well defined – a conclusion that USAP denies. Paragraph 157 also sets forth legal conclusions to which no response is required. To the extent that any further response is required, USAP denies Paragraph 157, including to the extent that it presupposes unidentified

methodologies for assessing case volume, market share, revenue, or other factors that USAP lacks sufficient knowledge to admit or deny.

158. Paragraph 158's allegations assume a finding that the antitrust product market the Plaintiff has pleaded is well defined – a conclusion that USAP denies. Paragraph 158 also sets forth legal conclusions to which no response is required. To the extent that any further response is required, USAP denies Paragraph 158.

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

159. Paragraph 159's allegations assume a finding that the antitrust product market the Plaintiff has 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 159. To the extent that any further response is required, USAP denies the remaining allegations in Paragraph 159, including to the extent that they presuppose unidentified methodologies for assessing market share, reimbursement rates, or other factors that USAP lacks sufficient knowledge to admit or deny.

160. USAP lacks sufficient information to admit or deny the allegations in Paragraph 160 to the extent that they are predicated on an undefined methodology for calculating and comparing reimbursement rates that USAP. USAP admits that providing anesthesia services in any setting requires extensive training and experience and denies Paragraph 160 to the extent that it does not fully capture that training and experience. USAP otherwise denies the remaining allegations Paragraph 160, including to the extent that they are 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 Plaintiff has pleaded is well defined – a conclusion that USAP denies.

161. Many of the allegations in Paragraph 161 are vague, conclusory, and argumentative, and therefore require no response. USAP admits that the vague generalizations in Paragraph 161's third, fourth, and fifth sentences 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 161.

**D. The Monopolization Scheme Lowered the Quality of Anesthesia Services in the Relevant Markets**

162. The allegations in Paragraph 162 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 lacks knowledge sufficient to admit or deny the allegations in Paragraph 162 and therefore denies Paragraph 162.

163. The allegations in Paragraph 163 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 163 and therefore denies Paragraph 163.

164. The allegations in the first two sentences of Paragraph 164 are vague, conclusory, and argumentative, and therefore require no response. USAP admits that the press article cited includes the quoted language, but denies that the beliefs of a single former USAP anesthesiologist in a geography not implicated in this case are relevant to this case. To the extent that a further response is required, USAP denies Paragraph 164.

165. The allegations in Paragraph 165 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 allegedly anticompetitive conduct. 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. USAP further objects to this allegation to the extent it purports to incorporate by reference a complaint in another action. To the extent that any further response is required, USAP denies Paragraph 165.

**E. Defendants' Scheme Did Not Create Efficiencies That Benefited Patients**

166. Many of the allegations in Paragraph 166 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 166'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 166.

167. The allegations in Paragraph 167 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 167.

**F. Defendants' Violation of the Antitrust Laws Has Had a Continuing Impact**

168. The allegations in Paragraph 168 are vague, conclusory, and argumentative, and therefore require no response. Further, its allegations assume a finding that the antitrust product market the Plaintiff has pleaded is well defined – a conclusion that USAP denies. To the extent that any further response is required, USAP denies Paragraph 168.

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

169. The allegations in Paragraph 169 are vague, conclusory, argumentative, and set forth legal conclusions, and thus require no response. To the extent that a further response is required, USAP denies Paragraph 169's allegations except as specifically admitted elsewhere in this Answer.

170. The allegations in Paragraph 170 are vague, conclusory, argumentative, and set forth legal conclusions, and thus require no response. To the extent that a further response is required, USAP denies Paragraph 170.

171. USAP lacks information sufficient to admit or deny whether unnamed executives made the quoted statements and denies Paragraph 171's allegations to that effect. USAP further objects to Paragraph 171 to the extent that it characterizes information protected by the attorney-client privilege. Paragraph 171 otherwise consists of vague and argumentative assertions that do not require a response. To the extent that a further response is required, USAP otherwise denies Paragraph 171.

**A. USAP's Agreement with Methodist Hospital Physician Organization**

172. The first sentence of Paragraph 172 is vague, conclusory, argumentative, and sets forth legal conclusions, and thus requires no response. Paragraph 172 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 further response is required, USAP admits that it inherited GHA's contract with Methodist Hospital Physician Organization when it entered into an agreement with GHA and otherwise denies Paragraph 172.

173. USAP admits that the quoted words appear in GHA's 2005 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 173 to the extent it mischaracterizes that contract. The final sentence of Paragraph 173 is predicated on an undefined methodology to calculate and compare reimbursement rates, and USAP thus lacks information sufficient to admit or deny it.

174. USAP admits that it inherited GHA's contract with Methodist Hospital Physician Organization when it entered into an agreement with GHA. USAP respectfully directs the Court to that contract for an accurate and complete statement of the contract referenced in Paragraph 174 and denies Paragraph 174 to the extent it mischaracterizes that contract.

175. The first sentence of Paragraph 175 is predicated on an undefined methodology to calculate and compare reimbursement rates, and USAP thus lacks information sufficient to admit or deny it. Paragraph 175 otherwise consists of vague and argumentative assertions that do not require a response. To the extent that a response is required, USAP denies Paragraph 175.

176. USAP admits that it had a contractual relationship with Houston Methodist Hospital Physicians Organization as of September 2023.

**B. USAP's Agreement with Dallas Anesthesiology Associates**

177. USAP denies Paragraph 177.

178. 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 178 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 178 otherwise consists of vague and argumentative assertions that do not

require a response. To the extent that a further response is required, USAP denies the remaining allegations in Paragraph 178.

179. The first sentence of Paragraph 179 is predicated on an undefined methodology to calculate and compare reimbursement rates, and USAP thus lacks information sufficient to admit or deny it. Paragraph 179 otherwise consists of vague and argumentative assertions that do not require a response. To the extent that a response is required, USAP denies Paragraph 179.

180. Paragraph 180 sets forth legal conclusions to which no response is required. Most of the allegations in Paragraph 180 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 180.

181. The allegations in Paragraph 181 are vague, conclusory, and argumentative, and thus require no response. To the extent that a further response is required, USAP denies Paragraph 181.

182. USAP admits that it had a contractual relationship with Dallas Anesthesiology Associates as of September 2023.

**C. USAP's Agreement with Baylor College of Medicine**

183. Paragraph 183 sets forth legal conclusions to which no response is required. The first sentence of Paragraph 183 is predicated on an undefined methodology to calculate and compare procedure volumes, and USAP lacks information sufficient to admit or deny that allegation. USAP admits 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. USAP otherwise denies the remaining allegations in Paragraph 183.

184. Paragraph 184 sets forth legal conclusions to which no response is required. 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 184 to the extent it mischaracterizes that agreement. Paragraph 184 otherwise consists of conclusory and argumentative assertions to which no response is required. To the extent that a response is required, USAP denies the remaining allegations in Paragraph 184.

185. The allegations in Paragraph 185 are vague, conclusory, and argumentative, and thus require no response. To the extent that a further response is required, USAP denies Paragraph 185.

186. USAP admits that its contract with Baylor College of Medicine was terminated in 2020.

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

187. The allegations in Paragraph 187 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 the allegations in Paragraph 187.

188. The allegations in Paragraph 188 are vague, conclusory, and argumentative, and thus require no response. To the extent that a response is required, USAP denies Paragraph 188.

### **VII. THE FEDERAL TRADE COMMISSION FILES SUIT**

189. USAP admits that the claims Plaintiff brings on behalf of himself and the proposed Class are based in whole or in part on the allegations in the FTC's pending civil suit.

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. EMPLOYEE BENEFIT PLANS FILE SUIT**

190. USAP admits that the claims Plaintiff brings on behalf of himself and the proposed Class are based in whole or in part on the allegations in the FTC's pending civil suit. USAP admits that a group of alleged employee benefit plans 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 group's allegations.

#### **IX. USAP ALSO AGREED TO ALLOCATE A MARKET**

191. 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 191 is vague, conclusory, and argumentative, and thus requires no response. To the extent that a further response is required, USAP otherwise denies Paragraph 191.

#### **CLASS ACTION ALLEGATIONS**

192. Paragraph 192 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 denies the allegations in Paragraph 192.

193. Paragraph 193 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 denies that the class alleged in Paragraph 193 can be certified or obtain a class-wide judgment.

194. Paragraph 194 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 denies that a class subject to the exclusions in Paragraph 194 can be certified or obtain a class-wide judgment.

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

195. Paragraph 195 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 denies Paragraph 195.

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

196. Paragraph 196 is a sentence fragment that appears to set forth legal conclusions and characterizations of this action to which no response is required. To the extent that a further response is required, USAP denies Paragraph 196.

197. Paragraph 197 is a sentence fragment that appears to set forth legal conclusions and characterizations of this action to which no response is required. To the extent that a further response is required, USAP denies Paragraph 197.

198. Paragraph 198 is a sentence fragment that appears to set forth legal conclusions and characterizations of this action to which no response is required. To the extent that a further response is required, USAP denies Paragraph 198.

199. Paragraph 199 is a sentence fragment that appears to set forth legal conclusions and characterizations of this action to which no response is required. To the extent that a further response is required, USAP denies Paragraph 199.

200. Paragraph 200 is a sentence fragment that appears to set forth legal conclusions and characterizations of this action to which no response is required. To the extent that a further response is required, USAP denies Paragraph 200.

201. Paragraph 201 is a sentence fragment that appears to set forth legal conclusions and characterizations of this action to which no response is required. To the extent that a further response is required, USAP denies Paragraph 201.

202. Paragraph 202 is a sentence fragment that appears to set forth legal conclusions and characterizations of this action to which no response is required. To the extent that a further response is required, USAP denies Paragraph 202.

203. Paragraph 203 is a sentence fragment that appears to set forth legal conclusions and characterizations of this action to which no response is required. To the extent that a further response is required, USAP denies Paragraph 203.

204. Paragraph 204 is a sentence fragment that appears to set forth legal conclusions and characterizations of this action to which no response is required. To the extent that a further response is required, USAP denies Paragraph 204.

205. Paragraph 205 is a sentence fragment that appears to set forth legal conclusions and characterizations of this action to which no response is required. To the extent that a further response is required, USAP denies Paragraph 205.

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

206. Paragraph 206 sets forth legal conclusions and characterizations of this action and of Plaintiff to which no response is required. To the extent that a further response is required, USAP denies Paragraph 206.

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

207. Paragraph 207 sets forth legal conclusions and characterizations of this action and of Plaintiff to which no response is required. To the extent that a further response is required, USAP denies Paragraph 207.



**E. Rule 23(b)(2)**

208. Paragraph 208 sets forth legal conclusions and characterizations of this action and of Plaintiff to which no response is required. To the extent that a further response is required, USAP denies Paragraph 208.

**F. Rule 23(b)(3)**

209. Paragraph 209 sets forth legal conclusions and characterizations of this action and of Plaintiff to which no response is required. To the extent that a further response is required, USAP denies Paragraph 209.

**VIOLATIONS**

**COUNT ONE**

**Monopolization  
Section Two of the Sherman Act**

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

211. Paragraph 211 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 211.

212. Paragraph 212 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 212.

213. Paragraph 213 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 213.

214. Paragraph 214 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 214.

215. Paragraph 215 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 215.

216. Paragraph 216 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 216.

## **COUNT TWO**

### **Unlawful Acquisition Section Seven of the Clayton Act**

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

218. Paragraph 218 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 218.

219. Paragraph 219 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 219.

220. Paragraph 220 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 220.

221. Paragraph 221 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 221.

222. Paragraph 222 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 222.

## **COUNT THREE**

### **Conspiracy to Monopolize Section Two of the Sherman Act**

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

224. Paragraph 224 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 224.

225. Paragraph 225 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 225.

226. Paragraph 226 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 226.

227. Paragraph 227 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 227.

228. Paragraph 228 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 228.

#### **COUNT FOUR**

##### **Attempted Monopolization Section Two of the Sherman Act**

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

230. Paragraph 230 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 230.

231. Paragraph 231 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 231.

232. Paragraph 232 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 232.

233. Paragraph 233 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 233.

234. Paragraph 234 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 234.

235. Paragraph 235 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 235.

236. Paragraph 236 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 236.

237. Paragraph 237 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 237.

## **COUNT FIVE**

### **Horizontal Agreements to Fix Prices Section One of the Sherman Act**

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

239. Paragraph 239 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 239.

240. Paragraph 240 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 240.

241. Paragraph 241 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 241.

242. Paragraph 242 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 242.

243. Paragraph 243 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 243.

244. Paragraph 244 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 244.

245. Paragraph 245 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 245.

246. Paragraph 246 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 246.

**COUNT SIX**

**Horizontal Agreement to Divide Market  
Section One of the Sherman Act**

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

248. Paragraph 248 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 248.

249. Paragraph 249 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 249.

250. Paragraph 250 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 250.

251. Paragraph 251 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 251.

252. Paragraph 252 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 252.

253. Paragraph 253 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 253.

254. Paragraph 254 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 254.

255. Paragraph 255 sets forth a legal conclusion to which no response is required. To the extent that a further response is required, USAP denies Paragraph 255.

**PRAYER FOR RELIEF**

Plaintiff's 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 Plaintiff has stated a claim for relief or are entitled to any relief.

### **DEMAND FOR JURY TRIAL**

Plaintiff's 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 Plaintiff has 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 Plaintiff's 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**

This Court lacks subject matter jurisdiction over this case because Plaintiff lacks Article III standing.

#### **SECOND DEFENSE**

Plaintiff's 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.

### THIRD DEFENSE

Plaintiff's 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 his claims under the Sherman Act. *See* 15 U.S.C. § 15b. Plaintiff alleges anticompetitive conduct by USAP stretching back more than a decade. Thus, Plaintiff's claims for damages and those of the putative class are barred by the statute of limitations, and Plaintiff's claims for injunctive relief and those of the putative class are barred by the doctrine of laches.

### FOURTH DEFENSE

Plaintiff is not entitled to the relief he seeks because USAP has always faced competition in any properly defined market.

### FIFTH DEFENSE

Plaintiff is not entitled to the relief he seeks because any assets that USAP acquired no longer separately exist, and USAP is a unitary company.

Dated: September 15, 2025

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 15, 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.

/s/ Geoffrey M. Klineberg

Geoffrey M. Klineberg