**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF DELAWARE**

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| Jeff ANDREWS on behalf of himself and all others similarly situated,<br><br>Plaintiff,<br><br>v.<br><br>USPI HOLDING COMPANY, INC.,<br><br>Defendant. | ) | C.A. No.______________<br><br>**DEMAND FOR JURY TRIAL** |

## CLASS ACTION COMPLAINT

### SUMMARY OF CLAIMS

1. Jeff Andrews ("Andrews" or "Plaintiff") on behalf of himself and all others similarly situated employees (the "Key Employees" or the "Plaintiffs") of USPI Holding Company, Inc. ("USPI" or the "Company"), by and through the undersigned counsel, brings this breach of contract class action against USPI. Plaintiffs seek to recover damages resulting from USPI's breach of its 2015 Stock Incentive Plan (the "Plan") by: (i) failing to meet USPI's obligation to set the Company's fair market value and instead deliberately devaluing USPI as ordered by USPI's parent company Tenet Healthcare Corporation ("Tenet") and its Chairman and CEO Ron Rittenmeyer ("Rittenmeyer"); and (ii) failing to determine the Company's fair market value and thus the value of Plaintiffs' stock options in good faith. Plaintiffs seek to recover the damages resulting from USPI's breach of the Plan.

2. USPI is a privately-owned operator of ambulatory surgical centers, *i.e.* health facilities that host surgeries that do not require an overnight hospital stay. USPI has over 17,000

employees, owns and operates over 400 ambulatory facilities nationwide, and serves over 9,000 physicians and over 2.7 million patients each year. As of May 1, 2019, USPI had $2.2 billion in annual revenue. In 2015, Tenet bought a slight majority of USPI and as of 2018 Tenet owned 95% of USPI. Baylor Scott & White Health ("Baylor") owns the remaining 5% of USPI.

3. Baylor is one of the nation's largest not-for-profit healthcare systems and is a critical source of patient referrals for USPI, accounting for 30% of USPI's profits. USPI's Dallas Service Region is particularly dependent on its relationship with Baylor and consists of 10 hospitals and 30 surgical facilities in the DFW area.

4. Tenet is a national hospital management company. Tenet has 115,500 employees and over $18 billion in annual revenue. Though just one of Tenet's several hundred subsidiaries, USPI accounts for a large portion of Tenet's annual revenues and profits.

**USPI Created the Plan to Recruit, Incent, and Retain the Key Employees**

5. On July 27, 2015, USPI persuaded Jeff Andrews and 173 other Key Employees to work for the Company and to contribute to its success and progress with the Plan.

6. The Plan's key features were:

- In return for remaining USPI employees, USPI agreed to issue the Key Employees stock options annually from 2015-2019 with an exercise price set on the date of issuance of the stock options;
- USPI's Board of Directors or USPI's Compensation Committee had to determine the "Fair Market Value" of USPI, and thus the value stock options in good faith;
- The Plan's stock options expired on July 27, 2022; and
- Delaware law governs the Plan.

From 2015 through 2019, USPI granted approximately 9.4 million stock options to the Key Employees under the Plan through Stock Option Agreements between USPI and the Key Employees.

**Tenet hired KPMG to value USPI, USPI's Compensation Committee accepted KPMG's valuations and used KPMG's valuations to set the stock options' exercise prices**

7. In or around 2016, Tenet or USPI retained KPMG to value USPI. From 2016 to 2019 KPMG determined USPI's fair market value using a consistent valuation method (the "KPMG Valuation Method")—twice a year in the normal course of USPI's business. USPI's Compensation Committee ratified KPMG's valuations of USPI and adopted the same price that KPMG assigned to USPI to set the exercise prices of subsequently issued stock options during that time. USPI also publicized the KPMG valuations to the Key Employees to encourage their continued employment. USPI embedded the KPMG valuations into Excel spreadsheets that modeled the value of the stock options (the "Stock Option Models") and sent those spreadsheets to the Key Employees so that everyone could see how valuable their stock options were becoming. The values that the Stock Option Models showed for the Key Employees' stock options were based on the KPMG Valuation Method and over several years the Key Employees used them to calculate the value of their stock options and decide whether to continue working for USPI for wages below market rates.

**The Key Employees Honored Their Bargain and Grew USPI**

8. Since the Plan started in 2015, USPI has flourished under the guidance of the Key Employees. KPMG recorded USPI's meteoric growth using the KPMG Valuation Method. Despite USPI's success, the Key Employees accepted below-market salaries, because of how lucrative USPI represented the stock options were becoming under the Plan

9. KPMG also projected consistent and significant growth in USPI's fair market value through July 27, 2022, when the Plan was to terminate and the Key Employees planned to exercise their stock options.

10. The Key Employees were well aware of USPI's and the stock options' projected growth in value, because USPI repeatedly told them the Plan would compensate them for working for below-market wages by pointing to KPMG's projected value for their stock options, and USPI repeatedly emailed Stock Option Models with which the Key Employees could calculate the future value of their stock options based on the KPMG Valuation Method.

11. USPI knew that it owed the Key Employees a significant amount of money—USPI developed the Plan, had all of the KMPG valuations, and produced the Stock Option Models it sent to employees. USPI also knew that it would have to pay that money when the Key Employees exercised their options.

**Rather than honor their obligations, USPI and Tenet decided to breach the Plan, cheat the Key Employees out of what they had earned, and then conceal their scheme**

12. As the Plan's redemption date approached, USPI and Tenet decided that they preferred not to honor their obligations. Instead, they decided to take the value accumulated in the Key Employee's options and transfer that wealth to Tenet shareholders, including in particular Tenet's top executives. Accordingly, at the direction of Tenet and Tenet's CEO Rittenmeyer—USPI ordered Barclays plc ("Barclays") to value USPI using a revised valuation method (the "Barclays Method"), designed to cut USPI's value. When that was not enough, Tenet and USPI's Compensation Committee (itself made up of senior Tenet executives) further slashed USPI's value to $34.13/share (the "Compensation Committee Valuation").

13. Tenet and USPI's decision to arbitrarily cut the value of the Key Employees' options under the Plan was born of corporate greed and gamesmanship not in response to any objective market condition, change in the profitability or prospects of USPI, or any other legitimate business concern. Tenet and USPI's Compensation Committee slashed the value of USPI in bad faith and in order to take the value previously vested in the Key Employees' options

and give that value to Tenet shareholders. In doing so, USPI breached Plan by implementing its new valuation not through USPI's Compensation Committee, but rather at the direction of Tenet (and Rittenmeyer in particular). Additionally, USPI and Tenet breached the Plan's provision requiring USPI's Compensation Committee to determine the Company's "fair market value" in good faith.

14. As if slashing the value of the options were not enough, USPI's Compensation Committee then refused to adjust the stock options' exercise prices based on whatever new valuation method USPI's Compensation Committee used to revalue USPI. In a typical "cashless" stock-option exercise, an option holder is paid the difference between the exercise price and the share value. If the exercise price is $20, and the share price is $50, the option holder receives $30 per share. The exercise prices for the Plan options track the KPMG Valuation Method, which placed a substantially higher value on USPI than the Barclays or Compensation Committee valuations. USPI's use of the higher KMPG valuation for the exercise price, and the lower Compensation Committee Valuation for the share values, resulted in a grossly imbalanced apples-to-oranges comparison that sunk previously lucrative shares deep underwater. When asked to explain its decision, USPI's Compensation Committee cited "tax reasons" and nothing more.

15. USPI then told the Key Employees that it was not applying the Compensation Committee Valuation to Baylor's 5% equity stake in the Company, claiming that Baylor owned a different class of shares. In truth, USPI and Tenet could not afford to anger such an important referring partner that was responsible for 30% of USPI's profits and may have sued USPI and Tenet for breach of fiduciary duty and shareholder oppression.

16. USPI's and Tenet's actions so discouraged several Key Employees that they lost confidence in USPI and left the Company. Their departure likely damaged USPI's value and the remaining Key Employees' stock options' value.

17. On February 24, 2020, USPI held a meeting to announce the cancellation of the Plan. USPI did not want the Key Employees to take notes in the meeting, but some Key Employees did so. Then USPI announced its decision to cancel the Plan and pay the Key Employees stock option proceeds, *i.e.* USPI's current price per share minus the stock options' exercise price per share, based on the $34.13/share valuation that USPI's Compensation Committee imposed in bad faith.

18. USPI's arbitrary devaluation of USPI's share price for *just* the Key Employees (and not for Baylor) breached the Plan provisions that required the Company to determine its fair market value in good faith, and USPI must make the Key Employees whole. USPI knew that it would have to pay the Key Employees a large sum in July 2022. Rather than pay what they owed, USPI made the decision to breach the Plan and devalue the Key Employees' stock options in bad faith. USPI decided it would be cheaper to get sued than to pay the Key Employees what they were owed. USPI also calculated that even if the Key Employees filed a suit to hold USPI accountable, it could still benefit from its misconduct by attempting to settle with some or even all of the Key Employees for less than the value of the Plan's stock option proceeds under the KPMG Valuation Method.

**JURISDICTION AND VENUE**

19. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332 (d)(2)(A). Several members of the putative class are diverse from USPI. Several members of the putative class are diverse from USPI. These include but are not limited

to James Jackson, who resides in California, Erik Kraemer, who resides in Tennessee, Alex Bateman, who resides in Georgia, and Christopher Hartshorn, who resides in Missouri.

20. Defendant USPI is headquartered in Texas and incorporated in Delaware, these members of the putative class are diverse from it and minimal diversity exists. The amount in controversy also exceeds $5 million. Thus, the Court has subject matter jurisdiction under the Class Action Fairness Act.

21. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b)(1); 1391(c)(2). USPI is incorporated in Delaware and resides here for venue purposes. Thus, venue is proper in Delaware District court.

## PARTIES

22. Lead Plaintiff Jeff Andrews is a former Market Presidents of USPI.

23. Andrews earned 44,116 2015-Issued Stock Options, 28,000 2016-Issued Stock Options, 30,000 2017-Issued Stock Options, 8,000 of part 1 of the 2018-Issued Stock Options, and 42,058 of part 2 of the 2018-Issued Stock Options.

24. USPI is headquartered in Addison, Texas, and incorporated in Delaware. USPI has 17,000 employees, operates in 28 states, and has 400 ambulatory facilities serving over 9,000 physicians and over 2.7 million patients annually. Tenet secured 95% ownership of USPI on April 26, 2018. Baylor owns the remaining 5% of USPI.

## CLASS ACTION ALLEGATIONS

25. Plaintiffs bring this action as a class action, pursuant to Fed. R. Civ. P. 23(a) and (b)(3), on behalf of a class consisting of all USPI employees who participated in the Plan (the "Class") and refused to waive their claims against USPI for breach of the Plan.

26. Excluded from the Class are any current or former director of Defendant who was an administrator under the Plan or otherwise improperly determined the "Fair Market Value" to be paid to the option holders as alleged herein, members of the immediate families of such excluded persons, any firm, trust, partnership, corporation, officer, director or other individual or entity in which any such excluded person has controlling interest or which is related to or affiliated with any such excluded person, and the legal representatives, heirs, successors-in-interest or assigns of any such excluded person.

27. The Class is so numerous that joinder of all members is impracticable. Approximately 9.4 million USPI stock options were issued pursuant to the Plan. USPI issued stock options to 174 Key Employees, rendering joinder of all such employees impracticable.

28. The names and addresses of the record participants in the Plan are available from USPI's corporate records. Notice can be provided to such record participants via first class mail using techniques and a form of notice similar to those customarily used in class actions.

29. Plaintiffs' claims are typical of the claims of the members of the Class. Plaintiffs and all members of the Class sustained damages as a result of the wrongful conduct complained of herein.

30. Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in class and securities litigation. Plaintiffs have no interests that are contrary to or in conflict with those of the members of the Class that Plaintiffs seek to represent.

31. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Because the damages suffered by individual Class members

may be relatively small, the expense and burden of individual litigation make it virtually impossible for Class members individually to seek redress for the wrongful conduct alleged.

32. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class include whether:

(a) Defendant breached the Plan's provision requiring it to determine USPI's fair market value in good faith, as alleged herein.

(b) Defendant breached the Plan's provisions requiring that USPI's fair market value be determined by USPI's Compensation Committee or Board of Directors, not at the unilateral and arbitrary direction of Tenet or Tenet CEO Ron Rittenmeyer.

(c) Defendant's breach of contract artificially devalued USPI's fair market value and the Plaintiffs' stock options by a significant degree.

(d) The members of the Class have sustained damages and, if so, the appropriate measure thereof.

33. Lead Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action.

## FACTUAL BACKGROUND

### I. USPI FOUNDED THE PLAN TO MOTIVATE THE KEY EMPLOYEES TO GROW THE COMPANY

#### A. *USPI is a leader in ambulatory surgical care: a business that depends on personal relationships*

34. Don Steen founded USPI in 1998 with healthcare-focused private equity firm Welsh Carson Anderson & Stowe ("Welsh Carson") as its primary stockholder. USPI owns and operates ambulatory facilities, *i.e*. surgical facilities that do not require the patient to stay

overnight. USPI works with more than 9,000 physicians across America to deliver the best care to over 2.7 million patients each year. A healthcare providers' greatest asset is its people: their skills, their experience, and their personal relationships with patients, doctors, and other market participants. USPI extols the necessity of personal relationships to its success on its website:

- Our partner relationships often expand into new ventures and a broader market presence which enhances our growth prospects and strategic position within a market to better serve patients and our physician partners;

- Health systems partner with us to further execute their ambulatory network strategies and fulfill their missions and ministries. We align with our health system partners both clinically and economically to enhance their facility network, while providing more access, as the importance of moving business to shorter stay settings elevates; and

- Our physicians partner with us to increase their productivity, better control the outcomes of the facilities in which they practice, and to ensure excellence in the experience of their patients and families.

USPI celebrates the fact that "all of this is accomplished through a team of over 17,000 dedicated employees."

### B. *USPI Founded the Plan to Recruit, Retain, and Motivate the Key Employees*

35. On July 27, 2015, USPI founded the Plan to attract, retain, and incent key board members, executives, and employees by giving them a stake in USPI's success. The Plan's terms were as follows:

- In return for remaining a USPI employee, USPI agreed to issue the Key Employees stock options annually from 2015-2019 with an exercise price set on the date of issuance of the stock options;

- The "Fair Market Value" of USPI and thus of the stock options was required to be determined in good faith by USPI's Board of Directors or USPI's Compensation Committee;

- The Plan's stock options expired on July 27, 2022;

- USPI's Compensation Committee was appointed by USPI's Board of Directors and initially consisted of Keith Pitts (Now Former Vice Chair of Tenet) and D. Scott Mackesey (Managing Partner of Welsh Carson);

- Key Employees may exercise the stock options for USPI shares any time after the options vest;

- From July 1 through September 30 each year, Key Employees may cause USPI to redeem any USPI shares they have held for 6 months and 1 day for their Fair Market Value. Redemptions may be paid in cash or in Tenet's shares;

- All options must be exercised before July 27, 2022, and expire under other conditions, such as termination for cause, etc.;

- The Plan can be changed in 3 ways:

  1. USPI's Board of Directors may at any time amend, suspend or terminate the Plan;

  2. USPI's Compensation Committee may amend the Plan or "any agreement issued [under it] to the extent necessary for a [Stock Option] Award granted, sold or issued under [the Plan] to comply with applicable tax or securities laws."; and

  3. The Participant Committee "shall have the authority to approve (without any further consent) any such amendment, suspension or termination so long as such amendment, suspension or termination is uniformly applicable to all Participants and/or such amendment is necessary to avoid any adverse accounting treatment or ensure equity classification of an Award.";

- Under the Plan, the Participant Committee consists of USPI's Chief Executive Officer and "such additional or successor Participants as may be designated from time to time by the Board."; and

- "[N]o amendment, suspension or termination of [the] Plan or of any Agreement issued [under it] shall adversely alter or otherwise impair any rights or obligations in any [Stock Option] Award . . . issued, granted, sold or issued under [the] Plan [before its amendment, suspension, or termination] without the consent of the holder thereof."

36. The Lead Director on Tenet's Board of Directors, Rittenmeyer, reviewed the Plan's terms and approved it. Rittenmeyer is now Tenet's Executive Chairman and CEO.

37. Under the Plan, USPI issued a set of stock options from 2015 to 2017 on an annual basis and on a biannual basis in 2018. The 2015-Issued Stock Options have an exercise price of $24.77/share. The 2016-Issued Stock Options have an exercise price of $28.61/share. The 2017-Issued Stock Options have an exercise price of $31.77/share. Part 1 of the 2018-Issued Stock Options has an exercise price of $39.22/share. Part 2 of the 2018-Issued Stock Options has an exercise price of $41.34/share. The stock options vest according to the following schedule:

| | 7/1/2016: % Vested | 7/1/2017: % Vested | 7/1/2018: % Vested | 7/1/2019: % Vested | 7/1/2020: % Vested | 7/1/2021: % Vested | 7/27/2022: Exercise Deadline |
|---|---|---|---|---|---|---|---|
| 2015-Issued Options | 12.5% | 25% | 37.5% | 100% | | | |
| 2016-Issued Options | | 12.5% | 25% | 37.5% | 100% | | |
| 2017-Issued Options | | | 16.67% | 33.34% | 100% | | |

| | 3/1/2016: % Vested | 3/1/2017: %Vested | 3/1/2018: %Vested | 3/1/2019: % Vested | 3/1/2020: % Vested | 3/1/2021: % Vested | 7/27/2022 |
|---|---|---|---|---|---|---|---|
| Part 1 of the 2018-Issued Options | | | | 16.67% | 33.34% | 100% | |

| | 7/1/2016 | 7/1/2017 | 7/1/2018 | 7/1/2019 | 7/1/2020 | 7/1/2021 | 7/27/2022 |
|---|---|---|---|---|---|---|---|
| Part 2 of the 2018-Issued Options | | | | 16.67% | 33.34% | 100% | |

38. On information and belief, USPI has issued most or all of the 11,111,111 stock options that the Plan permits.

## II. THE KEY EMPLOYEES HONORED THEIR BARGAIN AND GREW USPI

39. Plaintiffs honored their bargain and grew USPI by a steady and substantial degree from 2015 to present while working for wages below the market rate. By the close of 2018, the Key Employees had grown USPI's fair market value by 86% according to the KPMG Valuation Method.

### A. *Tenet Hired KPMG to value USPI and USPI's Compensation Committee copied KPMG's valuations to set the stock options' exercise prices*

40. KPMG valued USPI from 2015 to 2019 with the KPMG Valuation Method twice a year in the normal course of USPI's business. USPI's Compensation Committee ratified KPMG's valuations of USPI and copied them to set the exercise prices for subsequent issuances of stock options under the Plan. This process occurred as follows:

- On July 27, 2015, USPI's Compensation Committee issued the 2015-Issued Stock Options with an exercise price of **$24.77/share**;
- KPMG valued USPI at **$28.61/share**;
- USPI's Compensation Committee ratified KPMG's **$28.61/share** valuation of USPI and set the exercise price of the 2016-Issued Stock Options as **$28.61/share**;
- On November 18, 2016, USPI's Compensation Committee issued the 2016-Issued Stock Options to the Key Employees with an exercise price of **$28.61/share**;
- KPMG valued USPI at **$31.77/share**;
- USPI's Compensation Committee ratified KPMG's **$31.77/share** valuation of USPI and set the exercise price of 2017-Issued Stock Options as **$31.77/share**;

- On July 14, 2017, USPI's Compensation Committee issued the 2017-Issued Stock Options to the Key Employees with an exercise price of **$31.77/share**;

- KPMG valued USPI at **$39.22/share**;

- USPI's Compensation Committee ratified KPMG's **$39.22/share** valuation and set the exercise price of Part 1 of the 2018-Issued stock options at **$39.22/share**;

- On March 1, 2018, USPI's Compensation Committee issued Part 1 of the 2018-Issued Stock Options to the Key Employees with an exercise price of **$39.22/share**;

- KPMG valued USPI at **$41.34/share**;

- USPI's Compensation Committee ratified KPMG's **$41.34/share** valuation of USPI and set the exercise price of subsequent stock options as **$41.34/share**;

- On July 30, 2018, USPI's Compensation Committee issued Part 2 of the 2018-Issued Stock Options to the Key Employees with an exercise price of **$41.34/share**; and

- KPMG valued USPI in mid-2019 at $**48.00/share**.

41. Additionally, KPMG projected USPI's significant and sustained growth through July 2022 when the Plan terminated. During the several years that KPMG valued USPI, USPI emailed a Stock Option Model to the Key Employees with which they could value their stock options. On information and belief, USPI's executives created this Stock Option Model and based it on KPMG's valuations of USPI. Over the years, the Key Employees entered their stock option holdings into the Stock Option Models to forecast how the Plan would make them whole after working for 7 years for below-market wages.

**AS THE KEY EMPLOYEES GREW THE COMPANY, USPI'S LIABILITY TO THEM UNDER THE PLAN ALSO GREW**

42. USPI's total liability to the Key Employees under the Plan grew from 2015 to 2020, and KPMG projected the liability would continue to grow up to the Plan's termination date on July 27, 2022.

## III. USPI AND TENET TOOK THE CALCULATED RISK TO BREACH THE PLAN TO REDUCE THEIR GROWING LIABILITY TO THE KEY EMPLOYEES AND TO ENRICH TENET'S EXECUTIVES

### A. *Tenet Acquired 95% of USPI*

43. On April 26, 2018, Tenet secured 95% ownership of USPI by purchasing Welsh Carson's remaining equity stake under the terms of the put/call agreement. In doing so, Tenet took nearly complete responsibility for USPI's growing liability to the Key Employees under the Plan.

44. Thereafter, USPI continued to grow in value thanks to the Key Employees' skill, dedication, and hard work. On information and belief, Tenet's balance sheet only designated USPI's liability under the Plan to the Key Employees as $300 million as of 2019. But this was only a fraction of what USPI was projected to owe the Key Employees upon the Plan's termination in July 2022.

45. USPI's former Chief Financial Officer Jason Cagle even told Tenet's executives that this accounting treatment did not comply with Sarbanes-Oxley reporting requirements. On information and belief, Tenet's CEO Ron Rittenmeyer replied, "I don't really give a sh[!]t. I'm not paying out the Plan anyway, because we don't have the money." Tenet's executives told Cagle he clearly "wasn't on the team," and fired him one week later. In further evidence of Tenet executive's scheme to devalue the Key Employee's options, Rittenmeyer told USPI's executives "you need to quit sending out those models [based on the KPMG Valuation Method] or you will get sued."

46. By that time, USPI's and Tenet's Executives—CEO and Chairman Ron Rittenmeyer, CFO Dan Cancelmi, and COO Saum Sutaria—had decided to take a calculated risk to deprive the Key Employees' of the stock option proceeds they had earned and to enrich themselves. Here is what they did.

### B. *USPI and Tenet Installed Two of Tenet's Officers as USPI's Compensation Committee*

47. USPI and Tenet changed USPI's Compensation Committee to consist of Tenet's CFO Dan Cancelmi and Tenet's COO Saum Sutaria.

### C. *USPI and Tenet instructed Barclays to use the Barclays Method that cut the value of the Stock Options, and USPI's Compensation Committee slashed the value of the Stock Options even further*

48. Tenet and the USPI Compensation Committee (comprised of Tenet CFO Cancelmi and COO Sutaria) abandoned the KPMG valuations and shopped for another valuation firm that would reduce the value of USPI and thus the Key Employees' options. On information and belief, Tenet and USPI shopped for a new valuation firm because they knew that any changes to the directions given to KPMG would, at minimum, create a paper-trail documenting Tenet and USPI's bad faith, and that KPMG might even refuse to provide the reduced valuation. Tenet and USPI eventually commissioned Barclays to provide a reduced valuation of USPI, based on the "Barclays Method." On information and belief, the Barclays Method burdened USPI with tens of millions of dollars of Tenet's G&A expenses, deprived USPI of tens of millions of dollars of alleged but unexplained "synergies" associated with Tenet's ownership, and removed millions of dollars of guaranteed, annual income from USPI's wholly owned subsidiaries. On information and belief, even after adopting these unprecedented valuation metrics, the Barclays Method only devalued USPI by a few dollars per share.

49. Unsatisfied with the relatively small devaluation of USPI under the Barclays Method, Tenet and USPI's Compensation Committee further slashed USPI, assigning it an arbitrary value of $34.13/share. USPI's Compensation Committee offered no explanation for this further reduction in USPI's valuation.

50. On information and belief, the $34.13/share price was in no way connected to USPI's real value. The $34.13/share price did have a rationale, however. It reduced USPI's liability to the Key Employees under the Plan to exactly $300 million: the precise amount that Tenet had reserved on its budget as USPI's liability for paying out the stock option proceeds to the Key Employees under the Plan.

51. After USPI told the Key Employees about the $34.13/share valuation, and then said it would not change the stock options' exercise prices for "tax reasons." Previously, USPI had accepted KPMG's valuations and used them to set the stock options' exercise prices over several years. The new valuation of $34.13/share was below the exercise prices for Part 1 of the 2018-Issued Stock Options, *i.e.* $39.22/share, and Part 2 of the 2018-Issued Stock Options, *i.e.* $41.34/share. In turn, the new valuation stopped the Key Employees from exercising any of the 2018-Issued Stock Options. The $34.13/share valuation reduced the value of the stock options that the Key Employees could still exercise by a massive degree.

52. Revealing its true motives, USPI did not apply the $34.13/share valuation to Baylor's 5% equity stake in USPI. Baylor is USPI's most important referral partner and is responsible for 30% of USPI's annual profits. Relations between Baylor and Tenet are also strained and altercations have occurred in meetings between them. USPI and Tenet could not risk angering such an important business partner who was also likely to sue it for breach of fiduciary duty and shareholder oppression given its resources, sophistication, and the arbitrariness of the

Compensation Committee Valuation. But USPI and Tenet could risk betraying the Key Employees and did just that.

***Tenet's Executives Praise the Key Employees' Success to Stock Analysts***

53. Before and after they arbitrarily cut USPI's and the stock options' value, Tenet's executives recognized the Key Employees' hard work and USPI's success. On February 26, 2019, Tenet's CFO Dan Cancelmi praised USPI's growth and prospects to Tenet's stock analysts:

> USPI has been performing incredibly well. We are very optimistic that that's going to continue. Organically just to remind you, we look at it as 2% to 3% case growth going forward, as well as 2% to 3% pricing growth and EBITDA growth—EBITDA less NCI growth 8% to 10% on a long-term basis, we're going to do a little bit better than that this year, but—and then when you think about the pipeline, we feel obviously, really good about the business.

54. In June 2019, Tenet's COO Saum Sutaria told Tenet's stock analysts: "USPI is literally the leading platform with not-for-profit health system partners across the country[.]"

55. In October 2019, Tenet's COO Saum Sutaria—one month after he slashed USPI's value without explanation as 1 of 2 members of USPI's Compensation Committee—exclaimed to Tenet's stock analysts, "[t]he ambulatory environment is growing and it's growing rapidly. We are very happy with the fact that both the USPI and hospital assets participate significantly in outpatient [surgery]." For that reason, Tenet's COO Saum Sutaria saw "big opportunity for USPI centers to partner with health systems across the country and drive outpatient growth."

56. In November 2019—2 months after Tenet and USPI's Compensation Committee slashed USPI's value—Tenet's CEO Ron Rittenmeyer told Tenet's stock analysts:

> Within USPI, our ambulatory business volumes in our surgical and nonsurgical facilities were strong resulting in case growth of just over 5%. We also delivered EBITDA less NCI growth of, more than 17%[.] We added five surgical facilities to the ambulatory platform in the third quarter including forming [joint ventures] with three new healthcare partners. Year-to-date we've added a total of five new

> health system partners and we plan to close on more in the fourth quarter with a pipeline that remains very strong and robust.

57. Tenet's CFO Dan Cancelmi—the other member of USPI's Compensation Committee that slashed USPI's value without explanation 2 months earlier—added, "we are pleased with the strong and consistent results USPI has been delivering with EBITDA up almost 14% and EBITDA less facility level NCI up 17.5%." In support of Tenet's positive outlook, Tenet's CFO Dan Cancelmi stated, "USPI continues to perform very well, very consistent[,] driving nice growth as we've moved through the year."

### D. *The Key Employees look for answers*

58. After USPI devalued itself and the Plan's stock options, the Key Employees voiced the following questions and concerns:

- Did Tenet hire outside counsel to determine whether the Plan was enforceable, and figure out how to slash its cost?
- Did anyone represent the Key Employees in the process that led to adoption of the Compensation Committee Valuation?
- How did Tenet's Executives manage Tenet's and their own compelling conflicts of interest when adopting the Compensation Committee Valuation?
- Does the Compensation Committee Valuation have any projections for the Plan's future value so the Key Employees can decide whether to keep working for USPI for below-market wages for the next 34 months until the Plan expires?
- Why did Tenet fire KPMG?
- When did Tenet hire Barclays to perform the new valuation?
- Why now? Why did Tenet saddle USPI with tens of millions of dollars of of Tenet's overhead costs and deprive USPI of tens of millions of dollars of unexplained and unprecedented synergies 4 years after the Plan began and after KPMG had valued the Plan so many times without ever considering such overhead costs and synergies?

- How were the claimed synergies even determined?

- What was USPI's enterprise value under the Compensation Committee Valuation?

- Is USPI going to raise the Key Employees' salaries that have been kept at below-market wages, because the Plan was supposed to make them whole?

- Since Tenet and USPI's Compensation Committee approved each valuation of USPI under the KPMG Valuation Method and copied them to set the stock options' exercise prices, how are they going to rectify their massive and repeated error?

- Are Tenet and USPI's Compensation Committee going to change the stock option's exercise prices?

- How will the drastic reduction in the cost of the Plan, *i.e.* the amount that USPI would have had to pay the Key Employees in stock option proceeds, affect Tenet's stock?

59. Around this time, Andrews warned Tenet's CEO Ron Rittenmeyer that he could get sued for slashing USPI's value with an unexplained valuation method. Rittenmeyer replied "I have been sued before; I have deep pockets."

### E. *USPI's Compensation Committee and Tenet all had compelling motives not to determine USPI's fair market value in good faith*

60. In its 2019 Form 10-K report, Tenet answered the Key Employees' question about how a drastic reduction in the Plan's cost would impact Tenet's stock price:

> The interest expense associated with [Tenet's] indebtedness offsets a substantial portion of [Tenet's] operating income. During 2018, our interest expense was $1.004 billion and represented 61% of our $1.647 billion of operating income. As a result, relatively small percentage changes in [Tenet's] operating income can result in a relatively large percentage change in [Tenet's] net income and earnings per share, both positively and negatively.

61. Operating income consists of a company's profits minus operating expenses such as labor costs. "Earnings per share is generally considered to be the most important factor to

determine share price and firm value." In turn, Tenet's financial structure had a simple but powerful accounting loophole: the company could cut costs and disproportionately increase its earnings per share without creating any real and lasting economic growth. Since earnings per share drive a company's stock price, anyone with Tenet stock, restricted stock, or stock options could make a fortune by indiscriminately cutting Tenet's costs.

62. Tenet's CEO Ron Rittenmeyer, COO Saum Sutaria, and CFO Dan Cancelmi are doing just that by cutting costs to achieve a short-term rise in Tenet's share price due to this accounting loophole. All of these executives have generous holdings of Tenet's stock, restricted stock, and stock options that will vest by January 2022—before the Plan's original termination on July 27, 2022.

63. As of March 2019, Tenet's CEO Ron Rittenmeyer holds 165,857 shares of Tenet stock, 408,526 vested stock options, and 216,948 stock options that will vest by February 2020. As of March 2019, Tenet's CEO Ron Rittenmeyer held restricted stock worth $23 million that will vest by June 30, 2021. If Tenet's stock price rises, Tenet's CEO Ron Rittenmeyer's stock, stock options, and restricted stock will become much more valuable. Tenet's CEO Ron Rittenmeyer is 72 years old and is scheduled to retire as Tenet's CEO in fewer than 2 years.

64. As of March 2019, Tenet's COO Saum Sutaria held restricted stock worth $12 million that will vest by January 2022. If Tenet's share price rises, Tenet's COO Saum Sutaria's restricted stock will become much more valuable.

65. As of March 2019, Tenet's CFO Dan Cancelmi holds 255,089 shares of Tenet stock, 37,500 vested Tenet stock options, and 164,792 stock options that will vest by February 2021. If Tenet's share price rises, Tenet's CFO Dan Cancelmi's stock and stock options will become much more valuable.

66. This massive windfall motivated Tenet's executives to contrive a rise in Tenet's stock price by slashing costs. Thanks to this strategy and the accounting loophole, Tenet's share price has increased by 75% from August 31, 2017 when Tenet's CEO Ron Rittenmeyer became CEO to March 21, 2019.

67. One of Tenet's large upcoming costs was the stock option proceeds that the Key Employees earned under the Plan by making USPI into a success while working for below-market wages. Some of those Key Employees have left USPI and others have voiced that they might do so in the future due to the change in the valuation method. Thus, Tenet's executives—Tenet's CEO Ron Rittenmeyer, Tenet's CFO Dan Cancelmi, and Tenet's COO Saum Sutaria—are wasting USPI's most valuable asset—its people—by placing Tenet's short-term stock price and their personal wealth above USPI's and Tenet's long-term value, viability, and growth.

68. All of these wrongdoers weighed the risks and rewards of breaching the Plan's requirement to determine USPI's fair market value in good faith and decided to breach the Plan to benefit themselves and to harm the Key Employees. USPI must make the Key Employees whole after they grew the Company by a substantial degree while working for below-market wages for nearly half a decade.

## COUNT I

### Against USPI for Breach of the Stock Option Agreements

69. Plaintiffs repeat and re-allege each and every allegation contained above as if fully set forth herein. This Count is asserted against USPI. The Plan and all associated stock option agreements are valid and enforceable contracts. Plaintiff and members of the putative

class have performed their obligations under the Plan and associated stock option agreements and every condition precedent has been met.

70. Pursuant to the Plan, USPI through USPI's Board of Directors or USPI's Compensation Committee had to determine USPI's fair market value in good faith.

71. USPI breached the Plan when USPI's Compensation Committee failed to value USPI, instead delegating that decision to Tenet and Rittenmeyer specifically.

72. USPI further breached the Plan when it failed to determine USPI's fair market value in good faith but instead assigned an arbitrary value to USPI below its fair market value.

73. This determination was not in good faith. Rather USPI's Compensation Committee devalued USPI at the direction of Tenet and Rittenmeyer for the purpose of benefiting USPI and Tenet by slashing USPI's liability to the Plaintiffs. USPI's Compensation Committee failed to determine USPI's fair market value in good faith in connection with exercising its right to value the Company and the Plan's stock options, including by ignoring the KPMG valuation previously relied upon by both USPI's Compensation Committee and Key Employees, intentionally shopping for a reduced valuation from Barclays, then ignoring even the reduced valuation when Barclays did not deliver the dramatic cuts demanded by USPI, Tenet, and Rittenmeyer.

74. USPI is liable, because the Plan required USPI's Board of Directors or USPI's Compensation Committee to determine the fair market value of the Company in good faith.

75. Since the Plan did not define good faith, USPI had to determine USPI's fair market value in subjective good faith given everything that USPI's Compensation Committee, executives, and Board of Directors knew about USPI's value, said concerning USPI's value, and

did concerning USPI's value. On information and belief, this includes but is not limited to KPMG's consistent and repeated valuations of USPI based on the KPMG Valuation Method, USPI's Compensation Committee's ratification of KPMG's consistent and repeated valuations of USPI based on the KPMG Valuation Method, USPI's use of KPMG's valuations of USPI based on the KPMG Valuation Method to set the exercise prices of stock options that it issued under the Plan, USPI's Compensation Committee's reliance on KPMG's valuations of USPI based on the KPMG Valuation Method when issuing stock options to Plaintiffs under the Plan, USPI's repeated issuance of the Stock Option Model based on the KPMG Valuation Method to the Key Employees, USPI's past, present, and projected future performance, USPI's Executives', Board of Directors', and USPI's Compensation Committee members' statements about the Company's past, present, and projected future performance and value, and any other knowledge that USPI's executives, Board of Directors, or USPI's Compensation Committee had about USPI's value.

76. USPI's Compensation Committee relied on the KPMG Valuation Method to determine USPI's fair market value and the value of the Plan's stock options on a biannual basis over several years. On information and belief, USPI's Compensation Committee ratified all of KPMG's valuations of USPI without any modification to the value per share that KPMG assigned to USPI. USPI's Compensation Committee copied USPI's price per share from the KPMG Valuation Method to set the exercise prices of the stock options that it subsequently issued under the Plan.

77. After realizing how much USPI would owe the Plaintiffs under the Plan using KPMG's valuation method, USPI's Compensation Committee—acting according to orders from Tenet and Rittenmeyer—designed the unprecedented Barclays Method to strip USPI of its value.

USPI's Compensation Committee then further slashed USPI's value by a significant degree without any substantive explanation.

78. USPI did not determine the fair market value of USPI in subjective good faith because it ignored KPMG's past, present, and future valuations of USPI that USPI's Compensation Committee had previously ratified, copied to set the stock options' exercise prices, and used to issue stock options under the Plan. Instead, USPI's Compensation Committee designed the Barclays Method, which was contrived to lower USPI's value, and then arbitrarily cut that contrived, lower value by a significant sum without explanation. USPI's Compensation Committee took these steps at the express direction of Tenet and Rittenmeyer, and for the express purpose of devaluing the Key Employees' stock options. All of this and more shows that USPI through USPI's Compensation Committee did not determine the value of USPI in subjective good faith. Rather, USPI's Compensation Committee merely implemented the arbitrary devaluation ordered by Tenet and Rittenmeyer solely to reduce USPI's liability to the Key Employees under the Plan.

79. By reasons of the foregoing, USPI breached the Plan and is liable to Plaintiff and the members of the Class, each of whom has been damaged by reason of USPI's violation. USPI cancelled the Plan on February 24, 2020 and paid the Key Employees the difference between the stock options' exercise prices and the $34.13/share price.

80. The $34.13/share price was much lower than USPI's projected price for February 24, 2020 based on the latest KPMG Valuation Method, so the Key Employees received stock option proceeds that were a fraction of what they had expected based on the KPMG Valuation Method. Since the $34.13/share price was much lower than the projected share price for USPI based on the KPMG Valuation Method, the stock options that the Key Employees could

exercise, *i.e.* the 2015-Issued Options, the 2016-Issued Options, and the 2017-Issued Options, were worth much less than what the Key Employees expected after several years of receiving updates on USPI's and their stock options' present value based on the KPMG Valuation Method and projecting USPI's and their stock options' future value with the Stock Option Model that was based on the KPMG Valuation Method. Additionally, Since the $34.13/share price was lower than the exercise prices for Part 1 of the 2018-Issued Stock Options and Part 2 of the 2018-Issued Stock Options, the Key Employees could not even redeem those stock options when USPI cancelled the Plan on February 24, 2020, depriving them of considerable stock option proceeds that they would have received if USPI had determined its fair market value in good faith based the KPMG Valuation Method. USPI must make the Key Employees whole after they grew the Company while working for below-market wages for nearly half a decade.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff on his own behalf, and on behalf of the other members of the Class, prays for judgment as follows:

A. Declaring this action to be a proper class action, certifying Plaintiff as the Class representative and his counsel as Class counsel;

B. Declaring and determining that the Defendant breached the Plan by reason of its conduct as alleged herein;

C. Awarding money damages against the Defendant in favor of the Plaintiff and the other members of the Class for all losses and injuries suffered as a result of the acts and transactions complained of herein, together with pre-judgement interest on all of the aforesaid damages that the Court shall award from the date of said wrongs to the date of judgment herein at a rate the Court shall fix;

D. Awarding Plaintiff and the Class their costs and expenses incurred in this action, including reasonable attorneys', accountants', and experts' fees; and

E. Awarding such other relief as may be just and proper.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury.

Dated: March 6, 2020

Respectfully submitted,

**MCKOOL SMITH, P.C.**

Robert M. Manley (*pro hac* to be submitted)
Phillip M. Aurentz (*pro hac* to be submitted)
Avery R. Williams (*pro hac* to be submitted)
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***Local Counsel for the Plaintiffs***

# CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

## I. (a) PLAINTIFFS

Jeff Andrews on behalf of himself and all others similarly situated

**(b)** County of Residence of First Listed Plaintiff Tarrant County (Texas)
*(EXCEPT IN U.S. PLAINTIFF CASES)*

**(c)** Attorneys *(Firm Name, Address, and Telephone Number)*
Daniel A. Griffith, Esquire,and Chad Toms, Esquire, Whiteford, Taylor & Preston LLC, 405 N. King Street, Suite 500, Wilmington, DE 19801, (302) 357-3254

## DEFENDANTS

USPI Holding Company, Inc.

County of Residence of First Listed Defendant
*(IN U.S. PLAINTIFF CASES ONLY)*

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

## II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

## III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

*(For Diversity Cases Only)*

| | PTF | DEF | | PTF | DEF |
|---|---|---|---|---|---|
| Citizen of This State | ☐ 1 | ☐ 1 | Incorporated *or* Principal Place of Business In This State | ☐ 4 | ☒ 4 |
| Citizen of Another State | ☒ 2 | ☐ 2 | Incorporated *and* Principal Place of Business In Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

## IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

**CONTRACT**
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☒ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

**REAL PROPERTY**
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

**TORTS**

**PERSONAL INJURY**
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

**PERSONAL INJURY**
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

**PERSONAL PROPERTY**
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

**CIVIL RIGHTS**
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

**PRISONER PETITIONS**

**Habeas Corpus:**
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

**Other:**
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

**FORFEITURE/PENALTY**
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

**LABOR**
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

**IMMIGRATION**
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

**BANKRUPTCY**
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

**PROPERTY RIGHTS**
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark

**SOCIAL SECURITY**
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

**FEDERAL TAX SUITS**
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

**OTHER STATUTES**
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit (15 USC 1681 or 1692)
- ☐ 485 Telephone Consumer Protection Act
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

## V. ORIGIN *(Place an "X" in One Box Only)*

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District *(specify)*
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
28 U.S.C. Section 1332

Brief description of cause:
Breach of Stock Incentive Plan

## VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

**DEMAND $** In Excess of $5 Million

CHECK YES only if demanded in complaint:
**JURY DEMAND:** ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

*(See instructions):*

JUDGE DOCKET NUMBER

DATE
03/09/2020

SIGNATURE OF ATTORNEY OF RECORD
/s/ Daniel A. Griffith

**FOR OFFICE USE ONLY**

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE