

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

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

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

Defendants.

Case No.: 4:23-CV-03560-KH

DEFENDANT U.S. ANESTHESIA PARTNERS, INC.’S NOTICE OF APPEAL

PLEASE TAKE NOTICE that Defendant U.S. Anesthesia Partners, Inc., appeals to the United States Court of Appeals for the Fifth Circuit from the Memorandum Opinion and Order (Dkt. No. 146), entered in this action on May 13, 2024. The Order is an immediately appealable collateral order. *See Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949). It conclusively determined the disputed issues, separate from the merits, of (1) whether the Federal Trade Commission has statutory authority to file this federal court action for permanent injunctive relief without first initiating administrative proceedings, *see* 15 U.S.C. § 53(b); and (2) if so, whether the exercise of that “quintessentially executive power,” *Seila Law LLC v. CFPB*, 591 U.S. 197, 219 (2020), is constitutional given that the FTC is an independent agency whose Commissioners cannot be removed at will by the President, *see* 15 U.S.C. § 41. Those issues are functionally unreviewable on final judgment, as waiting to appeal would require USAP to litigate the whole “illegitimate proceeding, led by an illegitimate decisionmaker.” *Axon Enter., Inc. v. FTC*, 598 U.S. 175, 191 (2023); *see also id.* (“A proceeding that has already happened cannot be undone.”).

Dated: June 12, 2024

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CERTIFICATE OF SERVICE

I hereby certify that on June 12, 2024, I filed the foregoing document with the Court and served it on opposing counsel through the Court's CM/ECF system. All counsel of record are registered ECF users.

Respectfully submitted,

/s/ Mark C. Hansen

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