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**

Joint Motion to Seal Information in Complaint

Plaintiff Federal Trade Commission ("FTC"); Defendant U.S. Anesthesia Partners, Inc. ("USAP"); and Defendants Welsh, Carson, Anderson & Stowe XI, L.P.; WCAS Associates XI, LLC; Welsh Carson, Anderson & Stowe XII, L.P.; WCAS Associates XII, LLC; WCAS Management Corporation; WCAS Management, L.P.; and WCAS Management, LLC ("Welsh Carson Defendants") respectfully request that the Court maintain certain competitively sensitive information in the Complaint under seal.

On September 21, 2023, the FTC filed this action alleging violations of federal antitrust law. Pursuant to the FTC's statutory obligations, the FTC filed a public version of the Complaint (ECF No. 1) redacting certain information obtained during the FTC's nonpublic investigation into the conduct at issue in this case. *See* 16 C.F.R. § 4.10(g). The FTC also filed an *Ex Parte* Motion for Leave of Court to File Unredacted Complaint Temporarily Under Seal (ECF No. 2), attaching an unredacted Complaint. On October 6, 2023, the Court granted the Motion, ordered the Clerk to file the unredacted Complaint under seal (now at ECF No. 62), and provided parties and nonparties 20 days to move to seal information in the unredacted Complaint. ECF No. 59.

To avoid the burden and expense of motion practice, the parties and nonparties have met and conferred concerning which portions of the Complaint they would move to maintain under seal. Defendants and nonparties Aetna Inc., Cigna Corp., and UnitedHealth Group Inc. (the "Insurer Nonparties") maintain that the Complaint contains certain commercially and competitively sensitive information that, if publicly disclosed, would weaken their competitive standing by giving an unfair advantage to business rivals and contracting partners. *See Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978) (noting that, historically, "courts have refused to permit their files to serve . . . as sources of business information that might harm a litigant's competitive standing"); *Vantage Health Plan, Inc. v. Willis-Knighton Med. Ctr.*, 913 F.3d 443, 450 (5th Cir. 2019). Specifically, Defendants and Insurer Nonparties have proposed redactions to keep under seal information such as confidential pricing information, internal business strategies and plans, contracting terms, and customer information. *See Vantage Health Plan*, 913 F.3d at 451 (affirming district court's exercise of discretion to require redaction of "negotiating strategy, prices, rates, projections, and other financial information . . . [including] reimbursement rates and percentages"); *N. Cypress Med. Ctr. Operating Co., Ltd. v. Cigna Healthcare*, 781 F.3d 182, 204 (5th Cir. 2015) ("[S]ealing may be appropriate where [judicial records] incorporate confidential business information."); *In re Sanchez Energy Corp.*, No. 19-34508 (MI), 2021 WL 3637696, at *1 n.2 (S.D. Tex. July 14, 2021) (Elrod, J., sitting by designation) (ordering for summary judgment papers containing "confidential pricing information" to remain under seal); *DISH Network, LLC v. WLAJ-TV, LLC*, No. CV 16-0869, 2017 WL 1333057, at *2 (W.D. La. Apr. 3, 2017) (sealing a contract containing "extremely sensitive, proprietary provisions" that the parties kept confidential because "the competitive disadvantages that would flow to [the moving parties] . . . outweighs the interest of the public including competitors, of viewing specific provisions in

the Agreement"). Defendants and Insurer Nonparties submit that their interest in keeping targeted allegations confidential, in light of the competitive harms that would flow from their public disclosure, outweighs the public's right of access. *See Jones v. RealPage, Inc.*, No. 3:19-cv-2087-B, 2021 WL 268824, at *1-2 (N.D. Tex. Jan. 27, 2021) (granting the defendant's request for "minimal redactions" of a court order that "implicate[d] [the defendant's] most private and confidential information" because doing so would not "contravene the purpose behind public access to judicial records").

The FTC does not oppose the information that USAP proposes to be redacted. Additionally, the FTC and Defendants do not oppose the information proposed to be redacted by the Insurer Nonparties. Accordingly, the proposed redactions are not in dispute.

The parties have prepared Attachment 1, a redacted version of the Complaint reflecting their agreed upon redactions.[1] The proposed redactions to the Complaint are limited in number and scope and thus narrowly tailored to protect the public's presumptive right of access to judicial records. *See June Med. Servs., L.L.C. v. Phillips*, 22 F.4th 512, 521 (5th Cir. 2022); *Le v. Exeter Fin. Corp.*, 990 F.3d 410, 419 (5th Cir. 2021).

The parties are submitting Attachment 1 under seal at this time because another nonparty intends to file a separate motion to seal additional portions of the Complaint beyond those redacted in Attachment 1. The FTC intends to oppose that motion within 10 days, pursuant to the Court's Order (ECF No. 59).

[1] Should the Court require additional information to support keeping the unopposed information in the Complaint redacted, the Insurer Nonparties are prepared to file declarations in support of this motion. USAP is concurrently filing a sealed declaration in support of its proposed redactions.

Dated: October 26, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this day, I caused the foregoing Joint Motion to Seal Information in Complaint, Attachment 1, and Proposed Order to be served on all counsel of record using the ECF system of the United States District Court for the Southern District of Texas.

Dated: October 26, 2023

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