

**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 UNOPPOSED MOTION TO PERMANENTLY SEAL MATERIAL CONTAINED IN AND EXHIBITS ATTACHED TO THE FEDERAL TRADE COMMISSION’S OPPOSITION TO U.S. ANESTHESIA PARTNERS, INC.’S MOTION FOR LEAVE TO AMEND THE ANSWER

Pursuant to Federal Rules of Civil Procedure 5.2(d) and (e) and the governing protective order, Defendant U.S. Anesthesia Partners, Inc. (“USAP”) respectfully moves the Court to maintain the redactions to the Federal Trade Commission’s (“FTC”) Opposition to USAP’s Motion for Leave to Amend the Answer permanently under seal, and to maintain Exhibits 2, 3, 4, and 10 to the same opposition permanently under seal. Dkt. No. 275. USAP has conferred with counsel for the FTC and counsel indicated that the FTC does not oppose this motion.

BACKGROUND

This motion concerns the sealing of a handful of redactions in the FTC’s Opposition to the Motion for Leave to Amend the Answer (the “FTC’s Opposition”), as well as Exhibits 2-4 and 10 attached to the FTC’s Opposition. The exhibits USAP seeks to maintain under seal include agreements and letters of intent relating to transactions between USAP and other entities, as well as a response to a Civil Investigative Demand discussing the same. Specifically, these exhibits—all of which USAP designated Highly Confidential or Confidential under the

Protective Order—discuss details of USAP’s proposed and consummated transactions, including purchase prices and specifics of the consideration offered and provided. The few redactions USAP is seeking to maintain under seal in the FTC’s Opposition quote or reference this confidential material. For these reasons, USAP respectfully requests that the Court maintain this sensitive material under seal.

PROCEDURAL HISTORY

On May 28, 2024, the Court entered a protective order to prevent the unauthorized disclosure and use of confidential information during and after the litigation. *See* Order on Motion For Protective Order (May 28, 2024), Dkt. No. 152; FTC Revised Proposed Protective Order (May 17, 2024), Dkt. No. 149-1 (“Protective Order”). The Protective Order prohibits the filing of “Confidential or Highly Confidential Materials . . . in the public record.” Protective Order ¶ 9. If a filing contains such materials, “the filing party or nonparty will seek leave from the Court to file the Confidential or Highly Confidential Material under temporary seal.” *Id.* The filing party must also “file on the public record a duplicate copy of the paper that does not reveal the Confidential or Highly Confidential Material.” *Id.* Any producing party who wishes to maintain Confidential or Highly Confidential material under seal has “fourteen (14) days to provide a basis for maintaining the record under seal.” *Id.*

On March 5, 2025, the Court entered a Supplemental Protective Order. *See* Supplemental Protective Order (March 5, 2025), Dkt. No. 244 (“Supp. Protective Order”). In that Order, the Court reaffirmed that “[f]or any pretrial motions, the parties will follow paragraph 9 of the May 2024 Protective Order for filing Confidential and Highly Confidential Materials under seal.” *Id.* ¶ 4.

On June 20, 2025, USAP filed a Motion for Leave to Amend its Answer and supporting exhibits under seal. Dkt. No. 271. On July 11, 2025 the FTC filed an Opposition to USAP’s

Motion for Leave to Amend its Answer. Dkt. No. 275. Before filing, the FTC requested to temporarily seal its Opposition. Dkt. No. 274. On July 18, 2025, USAP filed its Reply In Support of USAP's Motion to Amend its Answer. Dkt. No. 278. On the same day, USAP also filed a Motion to Seal Exhibit J to its Reply In Support of USAP's Motion to Amend its Answer. Dkt. No. 277.

On July 28, 2025, the Court granted USAP's Motion to Seal Exhibit J to its Reply In Support of USAP's Motion to Amend its Answer. Dkt. No. 281. That same day, in a separate order, the Court granted the FTC's Unopposed Motion to Seal its Opposition to USAP's Motion for Leave to Amend its Answer, and further ordered that USAP had until August 11, 2025 "to file a motion to seal any portion of those documents." Dkt. No. 280. Due to an oversight, USAP did not file a motion to seal the Opposition or its exhibits by August 11.

On August 6, 2025, the Court denied USAP's Motion for Leave to Amend its Answer, reasoning that, "[i]n light of the Court's recent Orders concerning discovery, the Court is of the opinion that an amended pleading, if any, must be deferred." Dkt. No. 286.

LEGAL STANDARD

While the public has a common-law right to inspect and copy judicial records, that right is not absolute, and not all materials used in litigation are subject to the First Amendment presumption to the right of access. *See Bradley ex. Rel. AJW v. Ackal*, 954 F.3d 216, 225 (5th Cir. 2020). For example, "material filed with discovery motions is not subject to the common-law right of access, whereas discovery material filed in connection with pretrial motions that require judicial resolution of the merits is subject to the common-law right." *Binh Hoa Le v. Exeter Fin. Corp.*, 990 F.3d 410, 419 (5th Cir. 2021) (quoting *Chicago Tribune Co. v. Bridgestone/Firestone, Inc.*, 263 F.3d 1304, 1312 (11th Cir. 2001)). In addition, "the presumption of public access turns on what the judge did, not on what the parties filed." *Moller*

v. Martian Sales, INC., et al., 2026 WL 852203, at *1 (E.D. La. Mar. 18, 2026) (quoting *City of Greenville v. Syngenta Crop Prot., LLC*, 764 F.3d 695, 697 (7th Cir. 2014)). Thus, “[t]he public has no right to access” materials that were not relevant to the court’s decision, as such materials “cannot conceivably aid the understanding of judicial decisionmaking.” *Id.*

Where the First Amendment’s presumption to the right of public access does not apply, the party seeking to seal information must satisfy the less stringent “good cause” standard, which requires a “particularized factual showing of the harm” to be avoided by sealing. *Binh Hoa Le*, 990 F.3d at 419 (citations omitted).

ARGUMENT

The redacted material in the FTC’s opposition, as well as Exhibits 2-4 and 10 attached thereto, contain confidential information regarding USAP’s potential and actual transactions with business partners. Public disclosure of this information could harm USAP’s competitive positioning and future business plans. Therefore, USAP respectfully requests that the Court maintain these materials under seal.

Timeliness. USAP regretfully did not move to permanently seal the redacted portions of the FTC’s Opposition or the attached exhibits by August 11, 2025. USAP conflated the two sealing-related orders the Court issued on July 28, 2025, and therefore inadvertently overlooked the order requiring that USAP move to seal materials relating to the FTC’s Opposition by August 11. USAP was not aware of the oversight until the FTC raised the issue on March 20, 2026. USAP immediately began assessing the material to determine whether permanent sealing was warranted. When USAP determined that sealing was appropriate, and within 11 business days of the FTC alerting USAP to this issue, USAP filed the instant motion. USAP respectfully requests the Court consider the merits of its request given that USAP acted expeditiously once it was alerted to the prior oversight.

The First Amendment Right of Access Does Not Apply to the At Issue Material. The presumption of the right of access does not apply to the material USAP seeks to maintain under seal for two reasons. *First*, the FTC’s Opposition containing the confidential material was not a dispositive motion. Instead, the Opposition concerned a procedural matter regarding whether USAP could amend its Answer, which is more akin to a discovery dispute. As such, the material within the FTC’s Opposition “is not subject to the common-law right of access.” *Binh Hoa Le.*, 990 F.3d at 419; *see also Moller*, 2026 WL 852203, at *1 (granting motion to seal where the at-issue exhibit was “attached to discovery-related motions, not a substantive motion”). *Cf. Dewolff, Boberg & Assocs., Inc. v. Pethick*, 2023 WL 9892401, at *2 (N.D. Tex. Aug. 18, 2023) (denying motion to file exhibits under seal where “Plaintiff is relying on these exhibits in relation to a merits-based summary judgment motion that the court will be required to resolve.”).

Second, the Court’s ruling on the Motion for Leave to Amend the Answer briefing did not rely on or cite the materials at issue here. Dkt. No. 286. Instead, the Court’s decision was based on “recent Orders concerning discovery.” *Id.* Because the Court’s decision on USAP’s motion was not based on the confidential materials, public disclosure of those materials cannot be said to “aid the understanding of judicial decisionmaking.” *Moller*, 2026 WL 852203, at *1. Thus, “[t]he public has no right to access these documents.” *Id.* Under such circumstances, the less stringent good cause standard applies. *See Binh Hoa Le.*, 990 F.3d at 419

USAP Has Good Cause to Seal the Material At Issue. USAP has good cause to maintain under seal the limited redactions in the FTC’s Opposition, as well as Exhibits 2-4 and 10 attached thereto.

The Fifth Circuit has held that there are “well-recognized situations in which the seal may and should be used.” *Federal Sav. & Loan Ins. Corp. v. Blain*, 808 F.2d 395, 399 (5th Cir. 1987)

(citing *Nixon v. Warner Commc 'ns, Inc.*, 435 U.S. 589, 599 (1978)). This includes preventing documents from being used “as sources of business information that might harm a litigant’s competitive standing.” *Nixon*, 435 U.S. at 598; *see also Oldendorff Carriers GmbH & Co., KG v. Grand China Shipping (Hong Kong) Co.*, 2013 WL 1867604, at *4 (S.D. Tex. Apr. 22, 2013) (finding good cause to maintain seal over confidential corporate information based on defendant’s “reliance on the confidential nature of these agreements, as well as the possibility that disclosure would potentially harm its competitive standing in the shipping industry”).

The redacted material in the FTC’s Opposition, as well as Exhibits 2-4 and 10 contain information that is commercially and/or financially sensitive, reflecting operational business decisions, pricing decisions, contractual terms and negotiations, and other confidential business information. For example, Exhibit 10 contains the “purchase price or bonus amount” for 23 transactions in which USAP was involved—not all of which are even relevant to this litigation. Ex. 10, Table 12. Similarly, Exhibit 2 is a Purchase Agreement that contains a purchase price and detailed terms and conditions relating to one of USAP’s transactions. *See* Exhibit 2. Exhibits 3 and 4 “summarize[] the key elements of USAP’s proposal” to certain parties, including details regarding monetary consideration and the potential future compensation structures. *See generally* Exs. 3-4. Courts routinely hold that this type of information is sufficiently sensitive to warrant sealing. *See, e.g., 340B Holdings, LLC v. Bobo*, 2020 WL 9720461, at *2 (W.D. Tex. Apr. 15, 2020) (holding that “competitive sensitive business information,” such as pricing, financial information, and customer information, warrants filing under seal); *Boudreaux v. Axiall Corp.*, 2024 WL 3858808, at *3 (W.D. La. July 15, 2024), *report and recommendation adopted*, 2024 WL 3831142 (W.D. La. Aug. 14, 2024), *order modified, appeal dismissed in part*, 2025 WL 1693075 (5th Cir. June 17, 2025) (describing a

sealed document as an “Agreement and Plan of Merger” and noting it “appear[s] to be [a] confidential business document[.]”); *N. Cypress Med. Ctr. Operating Co. v. Cigna Healthcare*, 781 F.3d 182, 204 (5th Cir. 2015) (confidential business information can be sealed); *Cellular Commc’ns Equip., LLC v. Apple Inc.*, 2017 WL 10311215, at *3 (E.D. Tex. Jan. 5, 2017) (granting motion to seal information related to payment terms in licensing agreements because disclosure would put the party at a competitive disadvantage in negotiations for future licensing deals); *Apple Inc. v. Samsung Elecs. Co.*, 727 F.3d 1214, 1225-26 (Fed. Cir. 2013) (recognizing “parties’ strong interest in keeping their detailed financial information sealed and the public’s relatively minimal interest in this particular information”); *In re Violation of Rule 28(D)*, 635 F.3d 1352, 1359 (Fed. Cir. 2011) (noting district court granted motion to seal a license agreement because “the parties have legitimate, competitive and business interests in preventing public disclosure”) (cleaned up); *Binh v. King & Spalding LLP*, 2022 WL 130879, at *3 (S.D. Tex. Jan. 10, 2022) (granting motion to seal parties’ litigation funding agreement); *Charles v. Portfolio Recovery Assocs., LLC*, 654 F. Supp. 3d 1153, 1157 (D. Or. 2023) (“[c]ompelling reasons exist to maintain the Asset Sale Agreement under seal” because “public disclosure of this information would competitively harm” defendant's business where “Asset Sales Agreement contains specific proprietary information about the purchase price and financial value of the accounts . . . as well as how defendant arrived at the bid it offered to . . . to purchase the accounts”).

In light of the sensitive information contained in these exhibits, USAP requests that the Court maintain those exhibits under permanent seal, and that it maintain the redactions to the FTC’s Opposition under seal.

CONCLUSION

For the foregoing reasons, USAP respectfully requests that the Court permanently maintain the redactions in FTC’s Opposition and Exhibits 2-4 and 10 to the same permanently under seal.

Dated: April 6, 2026

Respectfully submitted,

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Counsel for Defendant U.S. Anesthesia Partners, Inc.

CERTIFICATE OF CONFERENCE

I hereby certify that on April 3 and 6, 2026, counsel for USAP conferred via telephone and email with counsel for the FTC concerning the relief requested in this motion to seal. I am authorized to state that the FTC does not oppose this motion.

Respectfully submitted,

/s/ Kyle M. Wood

Kyle M. Wood

CERTIFICATE OF SERVICE

I hereby certify that on April 6, 2026, 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/ Geoffrey M. Klineberg

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