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**VIA ECF**

Hon. Alfred H. Bennett  
United States District Judge  
Bob Casey United States Courthouse  
515 Rusk Avenue, 11th Floor, Room 8624  
Houston, Texas 77202

RE: *Electrical Medical Trust, et al. v. U.S. Anesthesia Partners, Inc., et al.*,  
No. 23-cv-04398 (S.D. Tex.)

Your Honor:

I write in response to Mr. Yetter's letter of yesterday attaching the order recently entered in the Federal Trade Commission ("FTC") case pending before Judge Hoyt.<sup>1</sup> Because the letter's argument omits certain key aspects of the order, I write to provide clarification.

First, the letter does not mention the fact that Judge Hoyt resolved the principal arguments advanced by both defendants here: that plaintiffs failed to allege a properly defined relevant market in which the subject transactions reduced competition. Judge Hoyt found that the FTC's allegations—that patients cannot substitute anesthesia outside a hospital for hospital-based services—sufficiently describe a product market at the pleading stage.<sup>2</sup> Additionally, Judge Hoyt found that by alleging increased prices following the acquisitions, the FTC complaint alleged monopoly power directly.<sup>3</sup> These conclusions, if Your Honor were to agree with them, would resolve the bulk of defendants' common arguments.<sup>4</sup>

Second, the letter claims that, as to Welsh Carson, Judge Hoyt's order "confirms that the claims asserted by the Plaintiffs in [this] litigation are barred by the applicable four-year statute of limitations." It does not. Judge Hoyt's observations about Welsh Carson's conduct occurred in his analysis of Section 13(b) of the FTC Act, which affords a narrow right of injunctive relief against entities violating or about to violate the law. Judge Hoyt had no occasion to consider a statute of limitations defense, because "[t]he government . . . is not

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<sup>1</sup> ECF No. 83.

<sup>2</sup> Order at 21-22 (ECF No. 83-1).

<sup>3</sup> Order at 22-23.

<sup>4</sup> USAP Mot. at 12-18 (Feb. 20, 2024), ECF No. 50; WCAS Mot. at 3 n.2 (Feb. 20, 2024), ECF No. 49 (joining USAP motion).

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constrained by a statute of limitations.”<sup>5</sup> He therefore never considered, for example, whether Welsh Carson can be held liable under the Sherman Act and Clayton Act because it formed (it claims) a single enterprise with USAP “at all times,”<sup>6</sup> including in the last four years. He also never considered whether Welsh Carson conspired with others, or with USAP itself, such that USAP’s own continuing violations can be attributed to Welsh Carson for limitations purposes.<sup>7</sup>

These issues have been addressed in the briefs before Your Honor, but the letter filed yesterday made arguments that compelled a response. And as the reply papers of defendants contain several new authorities and arguments to which plaintiffs have never responded, we join their request for oral argument on the motions.

Very truly yours,



Brendan P. Glackin

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<sup>5</sup> Order at 20.

<sup>6</sup> WCAS Mot. at 15 (Feb. 20, 2024), ECF No. 49.

<sup>7</sup> See *Powers v. Nassau Dev. Corp.*, 753 F.2d 457, 461 (5th Cir. 1985).