IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

Electrical Medical Trust and Plumbers Local Union No. 68 Welfare Fund, *Plaintiff,* v. U.S. Anesthesia Partners, Inc., *et al.*, *Defendants*	CAUSE NO. 4:23-CV-04398

NON-PARTY BROWN & BROWN INSURANCE SERVICES, INC. MOTION TO QUASH SUBPOENA AND MOTION FOR PROTECTIVE ORDER

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Brown & Brown Insurance Services, Inc. ("Movant" or "BBIS") and files this Motion to Quash Subpoena and Motion for Protective Order and would show as follows:

I. SUMMARY OF THE ARGUMENT

Defendant U.S. Anesthesia Partners, Inc. ("Defendant") issued a subpoena duces tecum to Movant, a non-party in this proceeding, seeking broad categories of documents from Movant, including client proposals, renewals, agreements, insurance policies, and related communications, most of which are confidential, proprietary, and unrelated to the issues in the underlying case. *See,* Exhibit 2. In a good faith effort to cooperate, Movant has had numerous verbal and written communications with Defendant to narrow the scope of the requested documents. Exhibits 3. Movant has even produced documents based on its understanding of the agreed on narrowed scope. Exhibit 1. However, Defendants are continuing to seek documents from Movant, requiring Movant to seek relief from this Court. Exhibits 4, 6, and 7.

Movant seeks relief from the Court as the subpoena is facially overbroad, disproportionate, and unduly burdensome under Federal Rules of Civil Procedure 45 and 26. It also threatens disclosure of trade secrets and commercially sensitive information. Movant respectfully requests that the Court quash the subpoena under Rule 45(d)(3)(A)–(B) and a protective order.

II. STANDARD OF REVIEW

When a party serves a subpoena on a non-party, Rule 45 requires the serving party to take reasonable steps to avoid imposing undue burden or expense on a non-party. Fed. R. Civ. P. 45(d)(1). Rule 45 enables the Court to enforce this duty by limiting a subpoena served on a non-party and by imposing appropriate sanctions, which may include lost earnings and reasonable attorney's fees. Fed. R. Civ. P. 45(d)(1). *Andra Grp., LP v. JDA Software Grp., Inc.*, 312 F.R.D. 444, 448 (N.D. Tex. 2015). The Court may quash or modify a subpoena requesting disclosure of trade secrets or confidential commercial information; alternatively, the Court may order production under specified conditions if the serving party shows substantial need, undue hardship absent production, and ensures the non-party is reasonably compensated. Fed. R. Civ. P. 45(d)(3)(A)(iii)-(iv), (B)–(C); *Wiwa v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004).

In assessing whether a subpoena imposes an undue burden, the Court considers the following factors: "(1) relevance of the information requested; (2) the need of the party for the documents; (3) the breadth of the document request; (4) the time period covered by the request; (5) the particularity with which the party describes the requested documents; and (6) the burden imposed." *Wiwa,* 392 F.3d at 817-18, citing, *Williams v. City of Dallas*, 178 F.R.D. 103, 109 (N.D.

Tex. 1998). Subpoenas that "sweepingly pursue material with little apparent or likely relevance" are overbroad. *Concord Boat Corp. v. Brunswick Corp.*, 169 F.R.D. 44 (S.D.N.Y. 1996). Courts find facial overbreadth where requests demand "all documents" concerning broad subjects without particularity or reasonable time limits. See *Am. Fed'n of Musicians of the U.S. & Can. v. Skodam Films, LLC*, 313 F.R.D. 39, 40 (N.D. Tex. 2015) (citing *In re O'Hare Misc. A.*, 2012 WL 1377891, at *2 (S.D. Tex. Apr. 19, 2012)); *Turnbow v. Life Partners, Inc.,* No. 3:11-cv-1030-M, 2013 WL 1632794.

III. EXHIBITS

Movant's Motion to Quash is supported by the following evidence:

A. Exhibit 1- Declaration of Adam Compton;

B. Exhibit 2- Subpoena;

C. Exhibit 3- Emails between Movant and Defendant

D. Exhibit 4- November 18, 2025 correspondence from Defendant;

E. Exhibit 5- December 11, 2025 correspondence from Movant;

F. Exhibit 6- January 13, 2026 correspondence from Defendant.

G. Exhibit 7- January 21, 2026 correspondence from Defendant.

IV. RELEVANT BACKGROUND

Movant is not a party to the underlying case and has no direct involvement in Plaintiffs' claims. In March 2024, Movant and Defendant executed a Non-Disclosure and Confidentiality Agreement in connection with an employee benefits brokerage RFP prepared by Movant. Movant was not awarded the RFP; neither Plaintiffs nor Defendant are Movant's clients. *See,* Exhibit 1, at ¶¶5-7. Subsequently, on or about September 29, 2025, Defendant served Movant through

undersigned counsel with a Subpoena Duces Tecum, commanding compliance in Austin on October 24, 2025. *See,* Exhibit 2. Due to the facially overbroad nature of the subpoena, and in in a good faith effort to cooperate, Movant and Defendant began communicating to schedule a "meet-and-confer" to discuss the scope and substance of the subpoenas. *See,* Exhibit 3.

During the October 17, 2025 "meet-and-confer", Defendant acknowledged overbreadth and stated it sought a sampling of proposals or renewal documents for **s**elf-funded health plans sent to Texas customers from 2018 to present**,** focusing on clients with 1,000+ employees**,** and **e**xcluding emails and internal communications**.** Movant confirmed the narrowed scope via email and received an extension until November 14, 2025 to produce responsive documents. *See,* Exhibit 3, pp. 2-5. In accordance with this agreement, Movant searched for and produced approximately eleven (11) proposals on November 12, 2025, which Movant understood to be complete compliance. *See,* Exhibits 1 and 5. However, in correspondence dated November 18, 2025, Defendant demanded far broader categories of documents, including final and draft marketing/renewal materials, presentations, renewal packages, agreements, schedules, and proposals for at least 35 clients from different categories identified by number of employees or beneficiaries and whether government or non-government entity**,** from 2018 to present, together with numerous subcategories untethered to the underlying case. *See,* Exhibit 4 Movant has continued corresponding and conferring with Defendant to evaluate feasibility of Defendant's request. *See,* Exhibits 5-7. In correspondence dated December 11, 2025, Movant provided responses and objections to Defendant's requests, including privacy and confidentiality issues and the undue burden hardship imposed on Movant. *See*, Exhibit 5. Yet, Defendant has continued pursuing Movant to produce documents and threatening to file a motion to compel. *See,* Exhibits 6-7. As set forth below, searching for and compiling responsive documents would severely disrupt

Movant's operations, causing undue hardship and financial burden, and also potentially expose Movant to potential confidentiality and business risks. *See,* Exhibit 1, ¶¶12-14.

V. MOTION TO QUASH AND FOR PROTECTIVE ORDER

Movant seeks to quash this subpoena and seeks further protection from the subpoena on the basis that the document requests are overly broad, harassing, unduly burdensome, seeks confidential trade secret and business information, and seek documentation that is irrelevant to the issues in the lawsuit. *See*, Exhibits 1, 2, & 6. Rule 45 sets forth several mandatory grounds under which a Court must quash a subpoena served on a non-party. Because the subpoena is facially overbroad, not particularized, requires Movant to disclose confidential and privileged documents, and constitutes an undue burden, Movant requests this Court to quash the subpoena.

A. The Subpoena Is Facially Overbroad and Not Particularized

Defendant's 66-page subpoena and subsequent "narrowing" demand to produce all-encompassing categories of Movant's client-facing and internal business materials, many unrelated to the underlying case and without meaningful limits on subject matter, time period**,** or particularity, are facially over broad**.** *See,* Exhibits 1, 2, and 5. All eleven (11) Requests for Documents include requests to produce "all documents and communications." *See,* Exhibit 2. For example, Request for Production No. 11 requests "all documents and communications related to Cross Plan Offsets Texas." *Id.* Other requests require production of "all documents" regarding analyses/comparisons of Texas health insurance plans and "all documents" identifying every employee welfare plan for which Movant provided brokerage services, with attendant names, members, terms, costs, claims data, and reporting from as early as 2010 to present. *Id.* Such "all documents" demands on a non-party are precisely the kind of facially overbroad and unreasonable

requests courts reject. See *Skodam Films*, 313 F.R.D. at 40; *Wiwa*, 392 F.3d at 818; *Concord Boat*, 169 F.R.D. 44.

Even after the meet-and-confer, Defendant's November 18, 2025 letter expanded scope to include final and draft materials across at least 35 clients, innumerable subcategories, and multi-year time frames untethered to class certification issue, contrary to the parties' earlier agreement to a limited sampling of proposals/renewals for self-funded Texas clients with 1,000+ employees. *See*, Exhibit 4. The subpoena should be quashed on facial over-breadth alone.

B. The Subpoena Imposes a Severe and Disproportionate Burden on a Non-Party

Additionally, the subpoena should be quashed because it subjects the Movant, a non-party to undue burden. A court has broad discretion in determining whether compliance with a subpoena amounts to an undue burden on a non-party. FED. R. CIV. P. 26(c)(1) and 45(d)(1); *Samurai Glb., LLC v. Landmark Am. Ins. Co.*, No. 3:20-cv-3718-D, 2023 WL 8627527, at *1 (N.D. Tex. Dec. 13, 2023). The Rule 26(b)(1) proportionality factors overwhelmingly favor non-party protection. First, Movant is not a party and has no involvement in Plaintiffs' claims. Defendant has litigated for over two years and has direct access to its own plan information and market data, undercutting any claimed "need" for intrusive non-party discovery. Second, none of the requests are particularized, nor are they sufficiently limited in time, and it is unclear how they relate to the subject matter of the lawsuit. Third, even attempting to supplement its production to respond with the subpoena would amount to an undue hardship. A review of the subpoena show, none of the requests specify any specific client. *See*, Ex. 2. As such, Movant would have to manually search through each of its clients' files to determine whether responsive documents exits. Even using the criteria set forth in Defendant's November 18, 2025 letter presents a burden, because Movant's clients documents are not stored by employee or beneficiary list. Further, Movant does not

maintain a client list of clients based on the number of employees or beneficiaries. Instead, Movant's clients' documents are stored in multiple systems and may exist in: Electronic email archives, secure client proposal software, encrypted document management databases, and paper storage facilities. Movant estimates it would take more than 140 hours of personnel time and greater than $8,000 in internal labor merely to identify and review responsive files- excluding attorney review, confidentiality screenings, logging, and any vendor costs—while materially disrupting core operations. *See*, Ex. 1. Courts routinely protect non-parties from such burdens. *See*, *MetroPCS v. Thomas*, 327 F.R.D. 600, 609 (N.D. Tex. 2018). Because the burden and expense outweigh any likely benefit, Rule 26(b)(1) requires limiting or denying the requested discovery.

C. The Requests Threaten Disclosure of Trade Secrets and Confidential Commercial Information

In addition to seeking confidential business information of Movant, Defendant's subpoena requests for Movant to produce confidential business information in its possession from other third-parties, including Movant's clients, potential clients, management companies, and insurance carriers, including proprietary pricing structures, client-specific proposals, marketing systems, private healthcare records protected by HIPAA, agreements, and other confidential business information. *See*, Exhibits 1, 2, 4,5,7. Courts recognize such materials as protected. See *In re Remington Arms Co., Inc.*, 952 F.2d 1029, 1032 (8th Cir. 1991). Rule 45(d)(3)(B) empowers the Court to quash or modify subpoenas requiring disclosure of trade secrets or confidential commercial information. Producing such documents would expose Movant to potential confidentiality and other business risks, like HIPAA violations, violating privacy rights, and breach of contracts. Any production, if ordered, should be limited to non-client-identifying sampling and governed by a strong protective order to prevent competitive harm.

D. Defendant Failed Its Rule 45(d)(1) Duty; Cost-Shifting Is Warranted

To the extent the Court permits any portion of the subpoena, Movant requests to be compensated for the time, business disruption, and legal fees associated with the subpoena. Rule 45(d)(1) requires Defendant to take reasonable steps to avoid undue burden or expense on non-parties. Defendant's shifting and expanding demands, refusal to narrow the scope to the agreed sampling, and insistence on broad categories of documents impose precisely the undue burden the rule prohibits. When production is ordered from a non-party, courts may require the requesting party to bear costs. See, e.g., *Bell Inc. v. GE Lighting, LLC,* 6:14-cv-00012, 2014 WL 1630754 (W.D. Va. April 23, 2014)(discusses use of multi-factor inquiry including the non-party's interest, ability to bear costs, and public importance); *DeGeer v. Gillis*, 755 F. Supp. 2d 909, 928–29 (N.D. Ill. 2010). Movant has no stake in the litigation, cannot efficiently absorb the costs compared to Defendant, and has already incurred substantial attorneys' fees and internal disruption. Cost-shifting (including fees) is appropriate.

VI. CONCLUSION AND PRAYER

For the foregoing reasons, Non-Party Brown & Brown Insurance Services, Inc. respectfully requests that the Court quash Defendant's subpoena in its entirety, together with such other relief the Court deems just and proper.

Respectfully submitted,

HINSHAW & CULBERTSON LLP

By: /s/ *Tessa Vorhaben*
Tessa Vorhaben
Texas State Bar No. 24147772
Southern District No. 1139116
1717 Main Street, Suite 3625
Dallas, Texas 75201
tvorhaben@hinshawlaw.com
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Facsimile: 312-704-3001
ATTORNEY FOR NON-PARTY BROWN & BROWN INSURANCE SERVICES, INC.

AI CERTIFICATE

The undesigned preparer of this filing certifies that no portion of the filing was drafted by Artificial Intelligence ("AI") nor was AI utilized in drafting the foregoing document.

/s/ Tessa Vorhaben
Tessa Vorhaben

CERTIFICATE OF CONFERENCE

I hereby certify that I spoke with counsel for U.S. Anesthesia multiple times regarding the merits of this motion and the scope of the subpoena. U.S. Anesthesia has declined to withdraw the subpoena, therefore, judicial relief is necessary.

/s/ Tessa Vorhaben
Tessa Vorhaben

CERTIFICATE OF SERVICE

I hereby certify a true and correct copy of the foregoing document has been this the 22nd day of January, 2026, served on each party who has appeared herein, by and through its attorney of record, via e-service.

/s/ Tessa Vorhaben
Tessa Vorhaben

Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

Electrical Medical Trust and Plumbers Local Union No. 68 Welfare Fund, *Plaintiff,* v. U.S. Anesthesia Partners, Inc., *et al.*, *Defendants*	Case No. 4:23-cv-04398

DECLARATION OF ADAM COMPTON

Adam Compton, under penalty of perjury, deposes and says:

1. My name is Adam Compton. I am over the age of eighteen (18), am otherwise competent to make this Declaration, and do so based on my personal knowledge of the matters described herein.

2. I am the Vice President and Operations Leader for Brown & Brown Insurance Services, Inc. ("BBIS") and am based at 5850 Granite Parkway, Suite 350, Plano, Texas 75024.

3. BBIS is a wholesale insurance brokerage which provides various services to clients, including employee benefits-related services.

4. With respect to the antitrust class action lawsuit, *Electrical Medical Trust and Plumbers Local Union No. 68 Welfare Fund v. U.S. Anesthesia Partners, Inc., et al,* United States District Court for the Southern District of Texas, Case No. 4:23-cv-04398, filed on November 20, 2023, BBIS is not a party and has no knowledge or involvement with the underlying claims.

5. In early 2024, U.S. Anesthesia Partners included BBIS in an employee benefits brokerage Request for Proposal ("RFP"). As part of this process, BBIS and U.S. Anesthesia Partners signed a Non-Disclosure and Confidentiality Agreement. *See,* Exhibit 1-A.

6. BBIS was not awarded the RFP, and U.S. Anesthesia Partners is not a client of BBIS.

7. Neither Electrical Medical Trust and Plumbers Local Union No. 68 Welfare Fund are clients of BBIS.

8. In connection with responding to U.S. Anesthesia Services' document request, BBIS produced approximately eleven (11) proposals, Bates labeled BB202501528-707-000001-000185. It was BBIS' understanding that this production fully complied with U.S. Anesthesia Partner's request.

9. In connection with categories of documents identified in U.S. Anesthesia Partner's November 18, 2025 correspondence, BBIS responds as follows:

(1) BBIS is not in possession the requested documents with Electrical Medical Trust and Plumbers Local Union No. 68 Welfare Fund;

(2) For the various categories of clients identified in the letter, BBIS does maintain final versions of marketing and/or renewal documents, presentations, and renewal packages from 2022 to present, and these are available for retrieval; however, to do so would require significant effort and resources as set forth below. For documents between 2018 to present, this was prior to Brown & Brown, Inc.'s acquisition of the Hays Companies. These documents may be available for retrieval; however, locating responsive documents would require a manual search, and BBIS' access to these documents may be limited.

(3) For the agreements, arrangements, schedules or terms, made, modified, facilitated or brokered between January 1, 2028 to present sufficient to show the full scope of BBIS' relationship with those clients and all agreements, draft agreements or proposals facilitated or brokered for those clients including those agreements BBIS is not a party to, including but not limited to:

i. Administrative Services Agreements: These documents are held by the insurance carriers; BBIS may have copies if the insurance carrier provided same, but BBIS is not in control of these documents.

ii. Certificate of Coverage Booklet/Evidence of Coverage Booklet: BBIS does hold these for its client which provide plan language and eligibility, but limited claims or financial data.

iii. Claims Processing Agreements: These are held by the insurance carriers; BBIS does not maintain or control these documents.

iv. Preferred Provider Agreements: These are managed by the insurance carriers; BBIS does not maintain, possess, or control these documents.

v. Bundled Payment Arrangements: These are between the insurance carriers and vendors; BBIS does not possess or hold these documents.

vi. Referenced-Based Pricing Agreements: Not applicable to BBIS as it does not engage in these arrangements. Consequently, BBIS does not have responsive documents.

vii. Reimbursement Arrangements or Schedules: These are controlled by the insurance carrier and vendor; BBIS does not retain these documents.

viii. Shared Savings Arrangements: These are proprietary to insurance carriers; these records are not available to BBIS.

ix. Stop-Loss Insurance Contract/Reinsurance Policy Terms and Pricing: BBIS does hold executed stop-loss contracts for self-funded clients, which show fees and contract terms, but limited claims data.

x. Summary Plan Descriptions ("SPDs"): BBIS maintains SPDs for client, which summarize plan terms and eligibility, but do not include detailed financials.

xi. New Client or Client Onboarding Questionnaires: BBIS does have onboarding questionnaires for its own processes.

xii. Existing Client Retainment Policies and Questionnaires: BBIS does not have any such documents.

xiii. Plan Booklet: These are provided by insurance carriers directly to clients; BBIS would only have copies if they were shared. BBIS is not in control of these documents.

xiv. Cross Plan Offset Information: These are proprietary to insurance carriers and not held by BBIS.

xv. Fee schedules for out-of-network provider payment independent dispute resolution process (Federal No Surprises Act/Texas equivalent): These are managed by insurance carriers or payors and not available from BBIS' records.

xvi. Protocols for out-of-network provider payment independent dispute resolution process (Federal No Surprise Act/Texas equivalent): These are controlled by carriers/payors and not maintained by BBIS.

10. For the requested documents that BBIS does maintain, these documents are not stored by employee count or searchable by the criteria stated by U.S. Anesthesia. Instead, they are stored in multiple systems and may exist in: Electronic email archives, secure client proposal software, encrypted document management databases, and paper storage facilities.

11. To identify and collect the requested documents, BBIS' personnel would be required to manually:

a. Identify prospective clients meeting the employee threshold;

b. Review each account file one-by-one for responsive documents;

c. Retrieve archived paper files, scan, and digitize documents;

d. Review documents for confidentiality and privilege.

12. BBIS estimates that compliance would require at least four (4) hours per account file, resulting in a total burden of more than 140 hours of employee labor. The cost to BBIS for internal labor alone would exceed $8,000. This does not include additional costs for legal review, confidentiality protection, potential outside vendor expenses, and loss of revenue due to employee diversion.

13. These records may also contain confidential and proprietary business information and competitively sensitive marketing strategies, and may include confidential and proprietary third-party commercial information involving clients, prospective clients, insurance carriers, management companies, and others who, like BBIS, have no connection to this lawsuit.

14. Compliance would severely disrupt BBIS' operations, require the diversion of multiple full-time personnel from essential duties, and expose BBIS to potential confidentiality and business risks.

I declare under penalty of perjury that the foregoing is true and correct.

This 22nd day of January, 2026

Adam Compton

Adam Compton

Exhibit 2

quinn emanuel trial lawyers | houston
700 Louisiana Street, Suite 3900, Houston, Texas 77002-2841 | TEL (713) 221-7000 FAX (713) 221-7100

WRITER'S DIRECT DIAL NO.
(713) 221-7000

WRITER'S EMAIL ADDRESS
juliannejaquith@quinnemanuel.com

September 29, 2025

VIA ELECTRONIC MAIL

Texas Insurance Services, Inc.
c/o Tessa Vorhaben (tvorhaben@hinshawlaw.com)
Hinshaw & Culbertson LLP
400 Poydras Street, Suite 3150
New Orleans, LA 70130

Re: *Electrical Medical Trust, et al. v. U.S. Anesthesia Partners, Inc.*, No. 4:23-cv-04398 (S.D. Tex.) – Third-Party Subpoena

Dear Ms. Vorhaben:

My firm represents U.S. Anesthesia Partners Inc. in *Electrical Medical Trust, et al. v. U.S. Anesthesia Partners, Inc.*, No. 4:23-cv-04398 (S.D. Tex.). Enclosed please find a third-party subpoena issued to Texas Insurance Services, Inc. Thank you for agreeing to accept electronic service of this subpoena. Exhibit 1 to the subpoena is the governing Protective Order (Dkt. No. 94). All responsive materials produced pursuant to the attached subpoena shall conform with the instructions set forth in Exhibit 2 to the subpoena (Dkt. No. 147).

Best Regards,

/s/ Julianne Jaquith
Julianne Jaquith

Enclosure

cc: Kenneth M. Fetterman, Kellogg, Hansen, Todd, Figel & Fredrick, P.L.L.C.

UNITED STATES DISTRICT COURT
for the

Southern District of Texas

Electrical Medical Trust and Plumbers Local Union No. 68 Welfare Fund, Plaintiff, v. U.S. Anesthesia Partners, Inc., *et al.*, Defendants.	)	Case No. 4:23-cv-04398

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Texas Insurance Services, Inc. c/o Tessa Vorhaben, Hinshaw & Culbertson LLP
400 Poydras Street, Suite 3150, New Orleans, LA 70130
(Name of person to whom this subpoena is directed)

☒ *Production:* **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

Place: 300 West 6th St., Suite 2010, Austin, TX 78701	Date and Time: October 24, 2025 at 11:59 PM CT

☐ *Inspection of Premises:* **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time: _____

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: September 29, 2025

CLERK OF COURT

OR

_____	/s/ Julianne Jaquith
Signature of Clerk or Deputy Clerk	*Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing Plaintiffs and Defendants, who issue or request this subpoena, is: Julianne Jaquith, 700 Louisiana Street, Suite 3900, Houston, TX 77002, juliannejaquith@quinnemanuel.com, (713) 221-7027

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

□ I served the subpoena by delivering a copy to the named person as follows: _____

_____

_____ on *(date)* _____ ; or

□ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ _____ .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) ***For Other Discovery.*** A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013)

DEFINITIONS

1. "Acquired Practice" means and includes each of Greater Houston Anesthesiology P.A.; Lake Travis Anesthesiology; Pinnacle Anesthesia Consultants; North Houston Anesthesiology; Anesthesia Consultants of Dallas; Excel Anesthesia, P.A.; BMW Physicians; Medical City Physicians; East Texas Anesthesiology Associates, P.A.; Sugarland Anesthesia PLLC; Metrowest Anesthesia Care PLLC; Capital Anesthesiology Association; Amarillo Anesthesia Consultants, P.A.; Star Anesthesia P.A.; Guardian Anesthesia Services, Inc.; and Guardian Anesthesia Services, PLLC.

2. "Anesthesia Services" means all services offered by Anesthesiologists, CRNAs, or CAAs to patients undergoing surgical or nonsurgical procedures in an outpatient or inpatient setting requiring the administration of medication, fluids, and/or blood during surgery, monitoring services during surgery, preoperative assessments, and postoperative visits. The type of anesthesia offered during surgery includes general anesthesia, regional anesthesia, and local anesthesia. The term "Anesthesia Services" also includes any pain management services offered to a patient by Anesthesiologists, CRNAs, or CAAs, including postoperative pain management services, or services designed to manage pain resulting from acute or chronic injuries or conditions.

3. "Anesthesiologist" means a physician who (i) holds a valid medical license, (ii) has successfully completed an accredited anesthesiology residency program, (iii) is board-certified or board-eligible in anesthesiology by the American Board of Anesthesiology or American Osteopathic Board of Anesthesiology, (iv) maintains all required continuing medical education, and (v) is legally authorized to independently practice anesthesiology, including the administration of general, regional, and local anesthesia, perioperative patient care, pain management, and

supervision of anesthesia care teams, all in accordance with applicable federal, state, and local laws and regulations.

4. "Certified Anesthesiologist Assistant" or "CAA" means a non-physician anesthesia provider who (i) has completed a master's degree program in anesthesiologist assisting, (ii) has passed the National Commission for Certification of Anesthesiologist Assistants examination, (iii) maintains current certification and continuing education requirements, and (iv) is legally authorized to assist in the delivery of anesthesia care under the direction and supervision of a qualified anesthesiologist, as defined by applicable state laws and regulations. CAAs are only licensed to practice in states that have specifically enacted legislation recognizing the profession.

5. "Certified Registered Nurse Anesthetist" or "CRNA" means a registered nurse who (i) holds a current, unrestricted registered nurse license, (ii) has completed a nurse anesthesia educational program, (iii) has passed the certification exam, (iv) maintains current certification and continuing education requirements, and (v) is legally authorized to administer anesthesia and provide anesthesia-related care within the scope of practice defined by applicable state nursing practice acts and regulations, which may include requirements for physician collaboration, supervision, or direction depending on jurisdiction.

6. "Commercial Healthcare Insurer" means a non-governmental entity that provides Persons with healthcare insurance coverage, such as commercial health insurance plans like preferred provider organizations (PPOs) and health maintenance organizations (HMOs), or provides for the administration of such coverage, by administering benefits enrollment, premiums collection, claims processing and adjudication, healthcare provider network establishment, negotiation of reimbursement rates with healthcare providers, and compliance measures.

7. "Communication" means the transmittal of information or request for information, including, but not limited to, any written contact between two or more people by such means as letters, memoranda, facsimile transmissions, text messages, instant messages, social media messages, and emails, as well as any oral discussion by such means as face-to-face meetings and telephone or video conversations.

8. "Concern" or "Concerning" means relating to, in relation to, comprising, constituting, containing, regarding, referring to, describing, discussing, embodying, evidencing, exhibiting, identifying, memorializing, mentioning, recording, showing, studying, analyzing, reflecting, pertaining to, supporting, refuting, responsive to, or with respect to a given subject matter.

9. "Cross Plan Offsets" means coordination mechanisms where benefits, payments, or coverage responsibilities are adjusted between different Health Insurance Plans when an individual is covered by multiple plans or when there is overlapping coverage.

10. "Date" means the exact day, month, and year if ascertainable; if not, the closest approximation that can be made by means of relationship to other events, locations, or matters.

11. "Direct Employer Contract" means any contract, agreement, or other arrangement in which an employer contracts directly with a healthcare provider or provider network to deliver medical services to their employees.

12. "Document" or "Documents" means all documents or Electronically Stored Information or data as defined in Federal Rule of Civil Procedure 34(a), including all copies where the copy is not identical to the original. For the avoidance of doubt, "Document" or "Documents" shall be construed to include Communications.

13. "Electronically Stored Information" or "ESI" means all Documents or data that are stored in any electronic medium from which information can be obtained.

14. "Employee Welfare Plan" means a plan established or maintained by an employer or by an employee organization (such as a union), or both, that covers medical care for Members or their dependents directly or through insurance, reimbursement, or otherwise, typically pursuant to the provisions of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001 et seq. This includes, but is not limited to, Self-Funded Health Plans.

15. "Fully Insured Health Plan" means any plan where costs of participants' claims are borne by a Commercial Healthcare Insurer that collects premiums and provides a network and coverage for employee healthcare costs.

16. "Health Insurance Plan" means any insurance plan that provides coverage for healthcare expenses, such as commercial health insurance plans like preferred provider organizations (PPOs) and health maintenance organizations (HMOs). "Health Insurance Plans" include both Self-Funded Health Plans and Fully Insured Health Plans.

17. "Include" or "including" shall not be construed as limiting any request, and shall mean the same as "including, but not limited to."

18. "Members" means the individuals to which an Employee Welfare Plan provides a Health Insurance Plan.

19. "Person" means any person and includes natural persons, corporations, firms, partnerships, proprietorships, associations, joint ventures, States, Territories, government agencies or entities, and other enterprises or legal entities.

20. "Plaintiffs" refers, collectively and individually, to Electrical Medical Trust and Plumbers Local Union No. 68 Welfare Fund, including, but not limited to, their wholly or partially

owned subsidiaries, parent companies, unincorporated divisions, joint ventures, partnerships, operations under assumed names, predecessors, affiliates, investment vehicles, and all directors, officers, partners, employees, agents, attorneys, consultants, and any other Person(s) acting or purporting to act with or on its behalf.

21. "Provider" means a person or entity that is licensed, certified, or otherwise authorized by law to provide healthcare services, and has either entered into a contractual relationship with a Health Insurance Plan or may bill patients directly for amounts above insurance payments.

22. "Relating to," "relate to," "related to," or "in relation to" mean concerning, constituting, regarding, referring to, describing, discussing, embodying, evidencing, memorializing, mentioning, recording, studying, analyzing, reflecting, pertaining to, supporting, refuting, responsive to, or with respect to.

23. "Self-Funded Health Plan" means any Health Insurance Plan that is not a Fully Insured Health Plan, including any plan where plan sponsors or organizers (such as employers) use their own money to cover part or all of their Members' healthcare claims.

24. "Third-Party Administrator" refers to any Person that performs the administrative services necessary for or otherwise supports Your Members' utilization of the healthcare benefits You offer, including benefits enrollment, premiums collection, claims processing and adjudication, healthcare provider network establishment, negotiating reimbursement rates with healthcare providers, and compliance measures.

25. "USAP" means U.S. Anesthesia Partners, Inc., and any predecessors thereof, including, but not limited to, the Acquired Practices.

26. The terms "You" and "Your" as used herein shall refer to the party responding to this subpoena and any of its parents, predecessors, other affiliates, successors, or subsidiaries, including officers, directors, employees, partners, agents, consultants, or any other person acting or purporting to act on behalf of such entities.

INSTRUCTIONS

1. You are requested to produce all Documents described below that can be located by a reasonable search of materials within Your possession, custody or control, or in the possession, custody or control of Your officers, directors, agents, employees, representatives, affiliated or associated companies or any other person or entity acting or purporting to act on Your behalf. A Document is deemed to be in Your possession, custody, or control if You have possession of the Document, have the right to secure such Document from another Person having possession thereof, or the Document is readily available to You (including those Documents in the custody or control of Your officers, directors, agents, employees, representatives, affiliated or associated companies, or any other person or entity acting or purporting to act on Your behalf).

2. Unless otherwise stated in a specific request, these requests seek responsive information and documents authored, generated, disseminated, drafted, produced, reproduced, received, obtained, or otherwise created, distributed, or possessed, concerning, or in effect during the period January 1, 2018 to the present.

3. Each request seeks production of all Documents and things described, along with any addenda, attachments, appendices, drafts, and non-identical copies, as found or located in Your files, together with a copy of the descriptive file folder or database category in its entirety.

4. If You object to part of a request, You must state the basis of Your objections in accordance with Rule 45 of the Federal Rules of Civil Procedure, and produce all documents called for by the portion of the request to which You do not object.

5. If there are no documents responsive to a particular request, Your response shall say so in writing.

6. If Documents are withheld under any claim of privilege, including, but not limited to, attorney-client privilege, work product doctrine, deliberative process privilege, investigative

files privilege, and/or law enforcement privilege, provide a privilege log that complies with Federal Rule of Civil Procedure 26(b)(5) and any protocols ordered by the Court. Such log shall, at a minimum, identify each such Document, state the specific basis for the claim of privilege for each Document withheld, and provide the following information: (1) the Date appearing on the Document; (2) a description of the subject matter and general nature of the Document (e.g., whether it is a letter, memorandum, email, etc.); (3) the author of the Document; and (4) the identity of each Person to whom the Document was addressed and the identity of each Person to whom a copy was sent.

7. These requests shall be deemed continuing requests so as to require supplemental responses if You obtain or discover additional documents between the time of initial production and the time of the trial. Such supplemental documents must be produced promptly upon discovery.

8. Documents in electronic form should be produced in a native format, with all metadata, absent a separate agreement among the parties. Documents in hard-copy form should be produced as scanned, color TIFF image files.

9. Please contact USAP outside counsel Julianne Jaquith of Quinn Emanuel Urquhart & Sullivan, LLP at juliannejaquith@quinnemanuel.com or (713) 221-7027 to discuss how You intend to produce the Documents.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

Documents sufficient to show each analysis and/or comparison of the Health Insurance Plans available in Texas that You prepared. This includes, but is not limited to, the terms under which coverage is provided under each plan, the scope of coverage, exclusions, pricing, how coverage is administered, reimbursement rates, how and by whom payments are made to Providers, risk assessment, and who assumes the risk.

REQUEST FOR PRODUCTION NO. 2:

Documents sufficient to show every comparison and/or analysis of the Self-Funded Health Plans available in Texas. This includes, but is not limited to, the terms under which coverage is provided under each plan, the scope of coverage, exclusions, pricing, how coverage is administered, reimbursement rates, how and by whom payments are made to Providers, and risk assessment.

REQUEST FOR PRODUCTION NO. 3:

All Documents and Communications between You and any Health Insurance Plan concerning reimbursement rates for Anesthesia Services and/or costs of Anesthesia Services, including, but not limited to, in the State of Texas.

REQUEST FOR PRODUCTION NO. 4:

All Documents reflecting any analysis, assessment, or other evaluation concerning any impact Anesthesia Services has on the costs of providing any Health Insurance Plan or the terms of such plans, including but not limited to, the shifting of costs to individuals covered by the Health Insurance Plan through levels of deductibles or co-pays.

REQUEST FOR PRODUCTION NO. 5:

All Documents reflecting any analysis, assessment, or other evaluation of the rate of inflation of healthcare service costs, including, but not limited to, Anesthesia Services (whether evaluated on a monthly, annual, geographic, product market, or other basis).

REQUEST FOR PRODUCTION NO. 6:

All Documents reflecting or relating to negotiations with Commercial Health Insurers regarding the cost of Anesthesia Services.

REQUEST FOR PRODUCTION NO. 7:

For the period January 1, 2010, to the present, Documents sufficient to identify every Employee Welfare Plan with Members in Texas for which You have provided brokerage services. For each such Plan, please provide the following:

a. The name of the Employee Welfare Plan;

b. The name of the sponsor or enrollee employer for the Employee Welfare Plan;

c. The number of Members in the Employee Welfare Plan;

d. Whether the Employee Welfare Plan has Members only in Texas, and if so, in what geographic regions in Texas and the number of Members per region;

e. If the Employee Welfare Plan has Members outside Texas, what other geographic regions in which it has Members;

f. The Payor for each Employee Welfare Plan;

g. The name and type of each Health Insurance Plan provided by the Employee Welfare Plan to its employees;

h. The terms, scope, and coverage of each Health Insurance Plan provided by the Employee Welfare Plan;

i. The monthly cost of each Health Insurance Plan to the Employee Welfare Plan;

j. The third party administrator for the Employee Welfare Plan (if any);

k. The stop loss insurance coverage for the Employee Welfare Plan (if any);

l. Any arrangements or provisions relating to the Employee Welfare Plan's obligation to pay for Anesthesia Services (if any);

m. Any reporting and/or analysis of claims data; and

n. Any monthly reports.

REQUEST FOR PRODUCTION NO. 8:

All Documents and Communications between You, on the one hand, and the Plaintiffs, on the other.

REQUEST FOR PRODUCTION NO. 9:

Documents sufficient to show the structure of Your organization as it relates to the administration of claims for healthcare services provided in Texas, including all ownership, corporate affiliates, and all departments and individuals responsible for administration of claims for healthcare services provided in Texas.

REQUEST FOR PRODUCTION NO. 10:

All Documents and Communications related to Direct Employer Contracts between You, on the one hand, and employers in Texas on the other.

REQUEST FOR PRODUCTION NO. 11:

All Documents and Communications related to Cross Plan Offsets in Texas.

EXHIBIT 1

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

ELECTRICAL MEDICAL TRUST, et al.,

Plaintiffs,

v.

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

Defendants.

Case No.: 4:23-CV-04398

PROTECTIVE ORDER

Pursuant to Federal Rule of Civil Procedure 26(c), the parties to the above-captioned case (the "Litigation"), through their respective counsel, agree that the terms and conditions of this Protective Order (the "Order") shall govern the production and handling of all documents, items, or other information exchanged by the parties and/or nonparties in the Litigation including, without limitation, responses to requests for production, interrogatories, requests for admissions, pleadings, exhibits, and deposition or other testimony, regardless of the medium or manner in which any such materials are generated, stored, or maintained. This includes any material produced, filed, or served by any party or nonparty during discovery in this Litigation, or any information included in any such material. The Court finds that good cause exists for entry of a protective order in this Litigation to prevent unauthorized disclosure and use of confidential information during and after the course of the Litigation.

Accordingly, **IT IS HEREBY ORDERED AS FOLLOWS**:

1. **Persons/Entities Covered**. This Order is binding upon all current and future parties to this Litigation, including their respective corporate parents, subsidiaries, affiliates,

successors, or assigns and their respective counsel, agents, representatives, officers, and employees and any others set forth in this Order. This Order shall also apply to any materials produced in discovery in this Litigation by nonparties, and shall apply to parties and nonparties alike, and further provided that this Order does not limit any party or nonparty's rights with respect to its own materials that it produces in discovery in this Litigation. When conducting discovery from nonparties, the parties to this Litigation shall provide notice of the terms of this Order to such nonparties by providing a copy of this Order with the discovery requests.

2. **Definitions**. The following definitions will apply to this Order.

(a) "Document(s)" shall have the meaning contemplated by Federal Rule of Civil Procedure 34(a)(1)(A).

(b) "Producing Party" means any party or nonparty that produces information, documents, or electronically stored information ("ESI") in this Litigation.

(c) "Receiving Party" means any party or nonparty that receives information, documents, or ESI produced in this Litigation.

(d) "Investigation" means the pre-filing investigation conducted by the Federal Trade Commission ("FTC") in connection with *Federal Trade Commission v. U.S. Anesthesia Partners, Inc.*, No. 4:23-cv-03560 (S.D. Tex.) ("*FTC v. USAP*").

3. **Designation of Materials**. Any Producing Party may designate a document, or all or any part of a discovery response, deposition, or other material as Confidential Material or Highly Confidential Material (defined below) based on a good-faith belief that such materials qualify for that designation under the terms of this Order:

(a) "Confidential Material" shall mean (i) any information, testimony, or tangible thing produced during discovery that reveals a trade secret; (ii) confidential research,

analysis, development, or commercial information, which is maintained as confidential and has not been released into the public domain (unless through unauthorized disclosure), in accordance with Federal Rule of Civil Procedure 26(c); (iii) personal information that is protected from disclosure by statute or regulation or is otherwise entitled to protection from public disclosure; and (iv) any other information for which a good faith claim of need of protection can be made under the Federal Rules of Civil Procedure and/or applicable law.

(b) "Highly Confidential Material" shall mean any Confidential Material that, if disclosed, is likely to cause significant competitive or commercial harm. By way of example only, Highly Confidential Material may include: trade secrets; highly sensitive and non-public research or analysis; competitively sensitive customer information; non-public financial, marketing, or strategic business planning information not more than three (3) years old; current or future non-public pricing information; information relating to research, development, testing of, or plans for existing or proposed future products, or services; information relating to the processes, apparatus, or analytical techniques used by a party or nonparty in its present or proposed commercial production of such products or services; confidential contractual terms, proposed contractual terms, or negotiating positions (including internal deliberations about negotiating positions) taken with respect to U.S. Anesthesia Partners, Inc. or competitors to U.S. Anesthesia Partners, Inc.; personnel files; and communications that disclose any Highly Confidential Material. Material that is more than three (3) years old is presumptively not entitled to protection as Highly Confidential Material; provided, that such material may be considered Highly Confidential Material if it discloses current business practices. Nothing in the foregoing description of "Highly Confidential Material" (and, in particular, the fact that financial information less than three (3) years old is generally considered to be "Highly Confidential

Material") is intended to foreclose any party from arguing that specific pricing information that may be less than three (3) years old is neither Confidential Material nor Highly Confidential Material.

(c) The parties to this Litigation and nonparties desire to ensure the privacy of patient records and other information that the parties have determined might contain Confidential Health Information ("CHI") and agree that a Producing Party may designate CHI as Confidential Material at a minimum and, as such, subject to the terms of this Order. The parties to this Litigation and nonparties also seek to ensure that any person who receives and stores CHI in connection with this proceeding will develop, implement, maintain, and use appropriate administrative, technical, and physical safeguards to preserve the privacy, integrity, and confidentiality of any CHI and to prevent unpermitted use or disclosure of any CHI they may receive from any person in connection with this proceeding. CHI will be securely returned or destroyed pursuant to the provisions of this Order. As used in this Order, "Confidential Health Information" or "CHI" shall mean any patient health information protected by any state or federal law, including but not limited to "Protected Health Information" or "PHI" as set forth in 45 C.F.R. § 160.103.

(d) Confidential and Highly Confidential Material, respectively, shall include: (i) all copies, extracts, and complete or partial summaries prepared from such Confidential or Highly Confidential Material; (ii) portions of deposition transcripts and exhibits thereto that contain or summarize the content of any such Confidential or Highly Confidential Material; (iii) portions of briefs, memoranda, or any other writings filed with the Court and exhibits thereto that contain or summarize the content of any such Confidential or Highly Confidential Material; (iv) written discovery responses and answers that contain or summarize the content of any such

Confidential or Highly Confidential Material; and (v) deposition testimony designated in accordance with paragraph 3(g) below.

(e) Information designated as Confidential or Highly Confidential Material shall be considered "trade secrets and commercial or financial information" that is "privileged or confidential" under 5 U.S.C. § 552(b)(4) for the purpose of the Freedom of Information Act.

(f) Any document produced by a Producing Party in this Litigation may be designated as Confidential Material by marking it "CONFIDENTIAL" on the face of the document at the time of production. Any document produced by a Producing Party in this Litigation may be designated as Highly Confidential Material by marking it "HIGHLY CONFIDENTIAL" on the face of the document at the time of production. A Producing Party may also designate electronic documents and other non-paper media as Confidential or Highly Confidential Material, as appropriate, by (i) noting such designation in an accompanying cover letter; (ii) affixing the confidentiality designation to the material or its container, including the appropriate confidentiality designation in the load file provided with the electronic production; (iii) including the appropriate confidentiality designation in the name of the file(s) provided with the electronic production; or (iv) using any other means that reasonably notifies the party in receipt of the material (the "Receiving Party") of the designation.

(g) Testimony provided in this Litigation may be designated as Confidential Material or as Highly Confidential Material if the testimony concerns or relates to the designating party's or nonparty's Confidential or Highly Confidential Material. The party or nonparty desiring to designate any portion of testimony as Confidential or Highly Confidential Material shall do so by so stating orally on the record on the day that the testimony is being given. Following any such oral designation, the confidential portions of the deposition shall be

taken only in the presence of persons entitled to access such information under this Order. A Producing Party may designate any or all portions of the transcript or video of any deposition (or of any other testimony) as containing Confidential or Highly Confidential Material in accordance with this Order by notifying all other parties in writing within thirty (30) calendar days of the Producing Party's receipt of the final transcript that the transcript contains Confidential or Highly Confidential Material and designating the specific pages and/or lines as containing Confidential or Highly Confidential Material. All transcripts and videos of testimony in this Litigation shall be treated as Highly Confidential Material and subject to this Order until thirty (30) calendar days after a final transcript of the deposition (or other testimony) is received by the Producing Party. Any portion of any deposition testimony that is not designated as Confidential or Highly Confidential Material in accordance with this paragraph, within thirty (30) calendar days after a final transcript and/or video of the deposition (or other testimony) is received by the Producing Party shall not be entitled to the protections afforded to Confidential or Highly Confidential Material under this Order.

(h) Any document produced (or material containing or summarizing information from a document produced), as well as all transcripts of any investigational hearings, during the Investigation (the "Investigatory Material") shall be treated as Highly Confidential Material under this Order, notwithstanding any designation or lack thereof on the documents as originally produced, unless either the original source of the document agrees or the Court orders otherwise. The confidentiality of Investigatory Material may be challenged under the provisions of paragraph 8 below.

(i) Notwithstanding any of the foregoing, information shall be deemed non-confidential material under this Order if it is in the public domain, or is already known to a party

through proper means and on a nonconfidential basis or is or becomes available to a party from a source rightfully in possession of such information on a nonconfidential basis.

4. **Individuals to Whom Confidential Material May Be Disclosed**. Unless otherwise ordered by the Court or permitted in writing by a Producing Party, Confidential Material may be used only in connection with this Litigation, and disclosure of Confidential Material may be made only to:

(a) The Court and court personnel, including assistants, clerks, law clerks, and other support staff (this category is referred to as the "Court").

(b) Outside attorneys for a party who are working on this Litigation and their employed or retained secretaries, paralegals, legal assistants, and support services (including, without limitation, copy services, jury consultants, mock jurors/focus group participants, interpreters, translators, document management services, graphics services, and similar professional services) (this category is referred to as "Outside Attorneys").

(c) For U.S. Anesthesia Partners, Inc., one attorney employed in-house (i) who has executed the agreement annexed hereto as Appendix A, and (ii) who, at the time of signing the agreement annexed as Appendix A and for a period of two (2) years after receipt of Confidential Material, does not participate in or advise on Competitive Decision-Making or litigation or other legal actions involving the Producing Party of the Confidential Material (this category is referred to as "U.S. Anesthesia Partners In-House Counsel"). "Competitive Decision-Making" means decision-making relating to a competitor, or potential competitor, of U.S. Anesthesia Partners, Inc., a payor, or a healthcare provider (such as a hospital or ambulatory surgery center), including decisions regarding contracts, marketing, pricing, rates, product or

service development or design, service offerings, research and development, mergers or acquisitions, or licensing, acquisition, or enforcement of intellectual property rights.

(d) For the collective Welsh Carson entities, one in-house attorney who has executed the agreement annexed hereto as Appendix A (this category is referred to as "Welsh Carson In-House Counsel" and, together with U.S. Anesthesia Partners In-House Counsel, collectively "In-House Counsel").

(e) Court reporters, court videographers, and similar transcription services and their support staff providing services in court or at depositions for the purpose of assisting the Court in this Litigation (this category is referred to as "Court Reporters").

(f) Any expert or consultant, including all nonparty personnel and support staff assisting such expert or consultant, but not the entity itself by which such expert or consultant and assisting personnel are employed, who is retained by or for the benefit of any of the parties in this Litigation to assist counsel in this Litigation, and provided that the expert or consultant has executed the agreement annexed hereto as Appendix A (this category is referred to as "Experts").

(g) Any mediators engaged by the parties or appointed by the Court, and their support staff (this category is referred to as "Mediators").

(h) Any person who authored or previously received the material. For e-mails, this provision is limited to individuals in the to, from, cc, or bcc fields, and includes any attachments to an e-mail that the person received.

(i) The Producing Party's current directors, officers, employees, or outside counsel.

(j) The Producing Party's former employees, provided that the party showing the former employee the materials has a good faith reason to believe that the former employee accessed the materials in the ordinary course of business during their employment or worked on issues sufficiently related that such access would have been likely.

(k) To the extent such Confidential Material was produced by a Producing Party, any person who has been designated as a Federal Rule of Civil Procedure 30(b)(6) witness by the Producing Party.

(l) A custodian of records that has or had possession of the material or access in the ordinary course of business to the material.

(m) During the conduct of hearings, witnesses in the Litigation, to whom disclosure is reasonably necessary and who have signed the agreement annexed hereto as Appendix A (this category is referred to as "Witnesses").

(n) Any other person to whom the Producing Party consents in writing or by order of the Court.

5. **Individuals to Whom Highly Confidential Material May Be Disclosed**. Unless otherwise ordered by the Court or permitted in writing by the Producing Party, Highly Confidential Material may be used only in connection with this Litigation, and disclosure of Highly Confidential Material may be made only to the following, as defined in paragraph 4 above:

(a) The Court.

(b) Outside Attorneys.

(c) Court Reporters.

(d) Experts.

(e) Mediators.

(f) Any person who authored or previously received the material. For e-mails, this provision is limited to individuals in the to, from, cc, or bcc fields, and includes any attachments to an e-mail that the person received.

(g) The Producing Party's current directors, officers, employees, or outside counsel.

(h) The Producing Party's former employees, provided that the party showing the former employee the materials has a good faith reason to believe that the former employee accessed the materials in the ordinary course of business during their employment or worked on issues sufficiently related that such access would have been likely.

(i) To the extent such Confidential Material was produced by a Producing Party, any person who has been designated as a Federal Rule of Civil Procedure 30(b)(6) witness by the Producing Party.

(j) A custodian of records that has or had possession of the material or access in the ordinary course of business to the material.

(k) Witnesses.

(l) Any other person to whom the Producing Party consents in writing or by order of the Court.

6. **Handling of Confidential Material and Highly Confidential Material**. All material designated Confidential or Highly Confidential shall remain in the possession of the attorneys who receive such material through discovery in this Litigation, and they shall not release or disclose the nature, substance, or contents thereof, except that copies of such materials may be made for the use of those assisting the attorneys to whom disclosure may be made under

paragraphs 4 and 5 above, including Experts, and copies of such materials may be submitted to the Court under seal as necessary. Persons who have been shown Confidential or Highly Confidential Material pursuant to this Order and have not otherwise obtained or maintained the material in the normal course of business shall not retain copies of that material.

7. **Inadvertent Failure to Designate as to Confidentiality**. Except to the extent provided in paragraph 3(f) above, in the event that a Producing Party fails to designate confidential material as Confidential or Highly Confidential, the Receiving Party shall, upon a written request from the Producing Party, treat and preserve such information, document, paper, or other thing in accordance with the confidentiality designation that the Producing Party states should have been affixed to it. The Producing Party shall re-produce the information, document, paper, or other thing with the appropriate confidentiality designation unless doing so would not be feasible (as, for example, in the case of a final deposition transcript). Each Receiving Party shall replace the incorrectly designated materials with the newly designated materials, destroy the incorrectly designated materials, and treat the materials in accord with their new designation. Except as provided in paragraph 3(f) above, the inadvertent failure of a party or nonparty to designate material as Confidential or Highly Confidential at the time of production shall not be deemed a waiver of the protections afforded by this Order, either as to specific information in the material or as to any other information relating thereto or on the same or related subject matter. No party shall be deemed to have violated this Order if, prior to notification of any later designation, such material has been disclosed or used in a manner inconsistent with the later designation. If material inadvertently not designated as confidential was filed with a court on the public record or otherwise disclosed before the time of the material's later designation, then the

Producing Party shall be responsible for seeking appropriate relief, including return of the material.

8. **Challenging a Confidentiality Designation.**

(a) A Receiving Party shall not be obligated to challenge the propriety of a Confidential or Highly Confidential designation at the time the designation is made. A Receiving Party may challenge a confidentiality designation at any time or at such time defined and identified in any pre-trial Order or process entered by this Court, and a Receiving Party's failure to have made such a challenge at any previous time, including after acceptance or receipt of material with a confidentiality designation, shall not be deemed a waiver of the Receiving Party's right to challenge any confidentiality designation.

(b) A Receiving Party seeking to challenge a Confidential or Highly Confidential designation shall give notice in writing of such challenge to counsel for the Producing Party specifying the document or portion of document or otherwise identifying the materials at issue and setting forth the basis for the Receiving Party's challenge.

(c) Within seven (7) calendar days of receipt of written notice that the Receiving Party objects to the confidentiality designation, counsel for the Producing Party shall meet and confer with counsel for the Receiving Party to attempt to resolve the challenge.

(d) If the Receiving Party and Producing Party are unable to resolve the challenge within fourteen (14) calendar days of the notice provided under paragraph 8(b) above, then the Receiving Party may move the Court for an order removing the challenged material from the restrictions of this Order. Any papers filed in support of or in opposition to this motion shall, to the extent necessary, be filed under seal to preserve the claimed confidentiality of the

material at issue. The Producing Party bears the burden of proof on the issue of the propriety of the challenged confidentiality designation.

(e) Until the parties or the Court resolves a challenge to the designation of Confidential or Highly Confidential Material, the asserted designation shall remain in effect.

9. **Challenging In-House Counsel Access**.

(a) Within seven (7) days after entry of this Order, Defendants must submit to the Plaintiffs a written statement that (i) sets forth the full name of the designated In-House Counsel; (ii) for U.S. Anesthesia Partners, Inc.'s designated In-House Counsel only, describes the In-House Counsel's past, and current, and reasonably foreseeable future primary job duties and responsibilities in sufficient detail to determine if In-House Counsel participates in or advises on, or may participate in or advise on, any competitive decision-making; and (iii) for U.S. Anesthesia Partners, Inc.'s designated In-House Counsel only, lists the current litigations or other legal actions in which the In-House Counsel participates or advises on behalf of U.S. Anesthesia Partners, Inc. The party serving a subpoena on a nonparty shall attach a copy of this Order and the written statement to the request, and shall also attach a copy of the Protective Order in *FTC v. USAP*.

(b) Each Defendant may disclose Confidential Material to its designated In-House Counsel unless the Defendant receives a written objection from another party or the Producing Party within (i) eighteen (18) days of entry of this Order (for nonparties that provided documents or information in response to compulsory process from the Federal Trade Commission during the Investigation) or (ii) fourteen (14) days of receipt of the first request in the form of a subpoena for documents or information. Any such objection must set forth in detail

the grounds on which it is based. For the avoidance of doubt, Defendants may not disclose Confidential Material to its designated In-House Counsel during the objection period.

(c) If a Defendant receives a timely written objection, it must meet and confer with the objecting party or nonparty to try to resolve the matter by agreement within seven (7) calendar days of the written objection. If no agreement is reached, the objecting party or nonparty must file a motion seeking a ruling from the Court on its objections within seven (7) calendar days of the conference or other date agreed-to by the parties to the dispute. The response to any such motion will be due within seven (7) calendar days.

(d) Until the parties to the dispute or the Court resolves a challenge to the sharing of Confidential Material with a Defendant's In-House Counsel, the Defendant shall not share such Confidential Material with its In-House Counsel, nor can the objecting party or nonparty withhold production or provision of documents or information from Defendants' Outside Attorneys or Experts.

(e) Any objection by a Producing Party under paragraph 9 of this Order shall also be deemed an objection under paragraph 8 of the Protective Order in *FTC v. USAP*, and vice versa. The court's resolution of any objection in *FTC v. USAP* shall be deemed to resolve the same objection under this Order.

10. **Filing Confidential Material and Highly Confidential Material**. No Confidential or Highly Confidential Materials, including, but not limited to, any documents, pleadings, motions, transcripts, or other filings that disclose the contents or substance thereof, shall be filed in the public record of the Litigation unless otherwise ordered by the Court. In filing papers with the Court that contain or make reference to material designated as Confidential or Highly Confidential, the filing party or nonparty will seek leave from the Court to file the

Confidential or Highly Confidential Material under temporary seal. Upon or after filing any paper containing Confidential or Highly Confidential Material, the filing party or nonparty shall file on the public record a duplicate copy of the paper that does not reveal the Confidential or Highly Confidential Material. The Producing Party will have fourteen (14) days to provide a basis for maintaining the record under seal consistent with the public's common-law and First Amendment right of access. Any responses in opposition are due fourteen (14) days after the Producing Party files its motion. No replies are permitted without leave of court. Nothing in this Order shall restrict the parties or nonparties from challenging the filing or maintenance of any Confidential or Highly Confidential Material under seal.

11. **Use of Confidential Material and Highly Confidential Material**.

(a) All documents produced in discovery, and all materials designated Confidential and Highly Confidential, shall be used solely in furtherance of the prosecution, defense, or attempted settlement of this Litigation, shall not be used at any time for any other purpose whatsoever, except as provided in paragraph 11(b) below, including, without limitation, any commercial or business purpose, and shall not be disclosed to or made accessible to any person except as specifically permitted by this Order. All materials designated Confidential or Highly Confidential must be stored and maintained by the Receiving Party in a manner no less secure than a Receiving Party would store and maintain its own confidential material or that of its clients.

(b) Nothing in this Order prevents the parties to *FTC v. USAP* from utilizing Confidential or Highly Confidential Material in connection with that action, provided that a protective or confidentiality order in that case provides protections for Confidential and Highly Confidential Material comparable to the protections for such information contained in this Order.

Prior to such use, all nonparty Producing Parties (that provided documents or materials during discovery in this Litigation) must have received proof of the entry of such order.

(c) This Order shall not restrict any attorney who is a qualified recipient under the terms of this Order from rendering advice to his or her client that is a party with respect to these actions, and in the course thereof, from generally relying upon his or her examination of Confidential or Highly Confidential Material. In rendering such advice or in otherwise communicating with the client, the attorney shall not disclose directly or indirectly the specific content of any Confidential or Highly Confidential Material of another party or nonparty where such disclosure would not otherwise be permitted under the terms of this Order.

(d) If any Confidential or Highly Confidential Material is filed in the public record by the Producing Party in either this Litigation or in *FTC v. USAP*, such public filing shall constitute the Producing Party's waiver of the designation of the publicly filed material for its use by any party in this Litigation and in *FTC v. USAP*; provided, however, that inadvertent disclosure of Confidential or Highly Confidential Material through a public filing shall not constitute a waiver if the inadvertent disclosure is corrected within three (3) business days by withdrawing the public filing containing Confidential or Highly Confidential Material, and the filing is replaced with a filing under seal pursuant to paragraphs 7 and 10 above. However, such public filing will not constitute a waiver of any confidentiality designations made with respect to any non-publicly filed portions of the publicly filed document or concerning any other material not actually publicly filed.

(e) Nothing in this Order shall be construed to prejudice any party's right to use Confidential or Highly Confidential Material in any hearing or other pre-trial proceeding before the Court, or any party's right to challenge any such use.

(f) The parties agree to cooperate in good faith to develop a process for disclosure of Confidential or Highly Confidential information at trial.

12. **Other Proceedings**. Any person or party subject to this Order who receives a subpoena or other request for production of information covered by this Order shall promptly notify the Producing Party so that the party or nonparty may have an opportunity to appear and be heard on whether that information should be disclosed. Except with regard to *FTC v. USAP*, Confidential and Highly Confidential Material shall not be produced in any other proceeding, or for any use other than in this Litigation, without an order compelling production from a court of competent jurisdiction or the agreement of the Producing Party.

13. **Unauthorized Disclosure of Confidential or Highly Confidential Material**.

(a) If any person subject to this Order becomes aware that they or any other person has, either intentionally or inadvertently, disclosed Confidential or Highly Confidential Material to someone not authorized to receive such material under this Order, counsel for the party involved shall (i) as soon as is practicable notify in writing the Producing Party of the unauthorized disclosure; (ii) use best efforts to obtain the return or destruction of all copies of the protected materials; and (iii) inform the person or persons to whom unauthorized disclosures were made, to the extent the person or persons are identifiable, of the terms of this Order.

(b) The Court has jurisdiction to enforce this Order and to grant relief, as authorized by law or in equity, for any violations thereof.

14. **Inadvertent Production or Disclosure of Privileged Documents**. If information subject to a claim of attorney-client privilege, work product immunity, or any other applicable privilege or immunity is produced inadvertently, the parties shall comply with Federal Rule of

Evidence 502(d), Federal Rule of Civil Procedure 26(b)(5)(B), and any other relevant order of the Court.

15. **Nonparties**.

(a) If information sought in a discovery request implicates a Producing Party's obligation to a nonparty not to disclose such information, the following procedures shall be followed:

(i) The Producing Party shall timely serve a written objection to the production of such information on the basis of its obligation to a nonparty not to disclose the information.

(ii) The Producing Party shall, no later than the date on which written objections are served under paragraph 15(a)(i) above, provide the nonparty written notice of the pending request and a copy of this Order.

(iii) If the nonparty does not object to the disclosure within fourteen (14) calendar days from which the written notice of the pending request was sent by the party or such additional time as may be required by the Producing Party's obligation to the nonparty, the Producing Party shall produce the materials subject to any appropriate designations under the terms of this Order.

(iv) If the nonparty objects to the disclosure, the nonparty shall timely seek a protective order by filing within fourteen (14) calendar days from the objection a motion for a protective order or other appropriate relief from the Court. Should the nonparty timely seek relief, no disclosure shall be made or required unless disclosure is ordered by the Court.

(v) Nothing in this Order shall be deemed to require any Producing Party to subject itself to any penalties for noncompliance with any legal process or order, or to seek any relief from the Court in connection with obligations imposed by a discovery request.

(b) If any discovery requests are served on a nonparty, the party serving the discovery request shall provide the nonparty with notice of the terms of this Order. Documents produced by nonparties in this Litigation that consist of or contain portions of documents originally created or generated by a party shall be treated as Highly Confidential. If any party believes the designation should be Confidential or no designation, it can notify the party who originally created/generated the document, the parties can confer, and go through the dispute resolution process as necessary.

16. **Further Application**. Nothing in this Order shall preclude any party, or any nonparty from whom discovery has been requested, from applying to the Court for additional or different protections with respect to specific material based on a showing of good cause. The Court shall retain jurisdiction over the parties, nonparty Producing Parties and any person executing an undertaking to be bound by the terms of this Order, during the pendency of the Litigation and for such time thereafter as is needed to enforce the terms of this Order.

17. **Reservation of Rights**.

(a) By designating any material Confidential or Highly Confidential, the parties do not acknowledge that any such material is relevant or admissible in this Litigation. All parties reserve the right to seek discovery of, or alternatively to resist discovery of, such material in this Litigation.

(b) Nothing in this Order shall prohibit a party from using or disclosing publicly available or independently discovered information, unless the party is aware that the information has become public improperly or inadvertently.

(c) Nothing in this Order prevents any party from seeking a further order of this Court pursuant to Federal Rule of Civil Procedure 26(c).

18. **Modification**. The Court retains the right to allow disclosure of any subject covered by this Order or to modify this Order at any time. Furthermore, nothing in this Order shall prejudice the right of the parties to stipulate (subject to Court approval) an amendment, modification, or supplement to this Order. Nothing in this Order shall preclude any party from seeking an order of the Court amending, modifying, or supplementing this Order.

19. **Conclusion of this Litigation**.

(a) The provisions of this Order will not terminate at the conclusion of this Litigation. This Order shall remain in full force and effect unless modified, superseded, or terminated by written agreement of the parties or by an order of this Court.

(b) Absent a written request by a Producing Party to return materials (at its own expense) within sixty (60) calendar days after such time as this Litigation is concluded, whether by final adjudication on the merits from which there remains no right of appeal, or by other means, all persons having received information designated as Confidential or Highly Confidential Material must destroy such materials. Alternatively, the Producing Party may require all counsel to certify in writing to the Producing Party that all such information has been destroyed. As to those materials that contain or reflect attorney work product, counsel of record for the parties shall be entitled to retain such work product in their files, so long as such

materials, in accordance with the provisions of this Order, are clearly marked to reflect that they contain information subject to this Order and are maintained as such.

(c) Notwithstanding any other provision of this Order, attorneys shall be entitled to retain pleadings, affidavits, motions, briefs, expert reports (and exhibits thereto), correspondence (including internal correspondence and e-mail), any other papers filed with the Court (including exhibits), deposition transcripts (including exhibits), and the trial record (including exhibits) even if such materials contain Confidential or Highly Confidential Material, so long as this Order will continue to govern any such retained materials. The Receiving Party's reasonable efforts shall not require the return or destruction of materials that (i) are stored on backup storage media made in accordance with regular data backup procedures for disaster recovery purposes; (ii) are located in the email archive system or archived electronic files of departed employees; (iii) are subject to litigation hold obligations; or (iv) are otherwise required by law to be retained. Backup storage media need not be restored for the purpose of returning or certifying destruction of materials, but any such materials retained in backup storage media shall continue to be treated in accordance with this Order.

20. **Termination of Access**.

(a) In the event any person or party permanently ceases to be engaged in the conduct of these actions, such person's or party's access to Confidential and Highly Confidential Material shall be terminated, and all copies thereof shall be returned or destroyed in accordance with the terms of paragraph 19 above, except that such return or destruction shall take place as soon as practicable after such person or party ceases to be engaged in the conduct of this Litigation.

(b) The provisions of this Order shall remain in full force and effect as to any person or party who previously had access to Confidential and Highly Confidential Material, except as may be specifically ordered by the Court or consented to by the Producing Party.

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It is so ORDERED.

7/19/24
Date

The Honorable Alfred H. Bennett
United States District Judge

APPENDIX A

AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

I, _____, am employed as _____ by _____. I acknowledge and certify as follows:

1. I have read the Protective Order in *Electrical Medical Trust, et al. v. U.S. Anesthesia Partners, Inc., et. al.*, Civil Action No. **4:23-CV-04398** in the United States District Court for the Southern District of Texas and agree to be bound by its terms.

2. I will not make copies or notes of Confidential or Highly Confidential Material that I receive in this litigation except as necessary to enable me to render assistance in connection with this Litigation.

3. I will not disclose Confidential or Highly Confidential Material that I receive in this Litigation to any person not expressly entitled to receive it under the terms of the Protective Order and will retain any such material in a safe place.

4. I will not use Confidential or Highly Confidential Material that I receive in this Litigation for any purpose other than that authorized by the Protective Order.

5. I will retain all Confidential or Highly Confidential Material that I receive in this Litigation in my custody until I have completed my assigned duties, whereupon the materials will be returned to the person that provided them to me or destroyed, as provided by the Protective Order. Such delivery or destruction shall not relieve me from any of the continuing obligations imposed upon me by the Protective Order.

6. I agree to be subject to the continuing jurisdiction of the United States Court for the Southern District of Texas for the sole purpose of having the terms of the Protective Order enforced.

7. I understand that my failure to abide by the terms of the Protective Order will subject me, without limitation, to civil and criminal penalties for contempt of Court.

Date: _____ Signature: _____

Address: _____

_____

EXHIBIT 2

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

ELECTRICAL MEDICAL TRUST, et al., Plaintiffs, v. U.S. ANESTHESIA PARTNERS, INC., et al. Defendants.	Case No.: 4:23-cv-04398

STIPULATION AND ORDER REGARDING ELECTRONIC DISCOVERY PROCEDURE

WHEREAS, Rule 26(f) of the Federal Rules of Civil Procedure states that the parties must confer about a proposed discovery plan that states the parties' views and proposals on, among other things, "any issues about disclosure, discovery, or preservation of electronically stored information, including the form or forms in which it should be produced," Fed. R. Civ. P. 26(f)(3)(C);

WHEREAS, the parties mutually seek to reduce the time, expense, and other burdens of discovery of certain electronically stored information ("ESI") and privileged materials, as described further below, and to better define the scope of their obligations with respect to preserving such information and materials;

WHEREAS, the parties are aware of the importance of cooperation and recognize that cooperation does not require nor does it always result in agreement. Nonetheless, the parties agree to cooperate in good faith throughout the matter as long as that cooperation promotes the "just, speedy, and inexpensive determination" of this action, as required by Fed. R. Civ. P. 1. The parties agree to use reasonable, good faith, and proportional efforts to preserve, identify and produce relevant and discoverable information consistent with Fed. R. Civ. P. 26(b)(1). The parties'

anticipated areas of cooperation include identifying limits on custodians, identifying relevant and discoverable subject matter, establishing time periods for eDiscovery, and other parameters to limit and guide preservation and eDiscovery issues;

WHEREAS, the parties therefore are entering into this Stipulation with the request that the Court enter it as an Order;

NOW THEREFORE, it is hereby STIPULATED and ORDERED:

I. GENERAL PROVISIONS

1. **Applicability**. The procedures and protocols set forth in this Order Regarding Electronic Discovery Procedure (the "Order") shall govern the search for, disclosure of, and format of documents, tangible things, and ESI (collectively "discovery materials") produced for use in the above-captioned case (the "Litigation").
2. **Limitations & Non-Waiver**. This Order does not define the scope of production nor the relevance, discoverability, confidentiality, or admissibility of any particular discovery materials. Nothing in this Order establishes any agreement as to either the temporal or subject-matter scope of discovery in this Litigation. Compliance with this Order does not constitute a waiver of any objection to the production of particular discovery materials, including as irrelevant, undiscoverable, inadmissible, unduly burdensome or not reasonably accessible, or privileged. Nothing in this Order shall be construed to affect the authenticity or admissibility of any discovery materials, and all objections to authenticity or admissibility of any discovery material are preserved. Except as specifically set forth herein, this Order does not alter or affect the applicability of the Federal Rules of Civil Procedure or Local Rules for the United States District Court for the Southern District of Texas. Nothing in this Order is intended to be an exhaustive list of discovery obligations or rights.

3. **Definitions**. The following definitions will apply to this Stipulation and Order.

   a. "Document(s)" shall have the meaning contemplated by Federal Rule of Civil Procedure 34(a)(1)(A).

   b. "Producing Party" means any party or third party that produces information, documents, or ESI in this Litigation.

   c. "Receiving Party" means any party or third party that receives information, documents, or ESI produced in this Litigation.

   d. "Investigation" means the pre-filing investigation conducted by the Federal Trade Commission ("FTC") in connection with *FTC v. U.S. Anesthesia Partners, Inc.*, No. 4:23-cv-03560 (S.D. Tex.).

4. **Prior Productions**. If any Producing Party previously produced discovery materials to the FTC in connection with the Investigation, the Producing Party need not reformat those discovery materials in accordance with the production specifications in this Order.

II. PRESERVATION

1. **Materials To Be Preserved**. Each party will take reasonable and proportionate steps to preserve relevant and discoverable ESI in compliance with duties to preserve material under the Federal Rules of Civil Procedure. To reduce the costs and burdens of preservation and to ensure proper ESI is preserved, the parties agree that:

   a) The parties shall preserve non-duplicative, relevant information currently in their possession, custody, or control; and

   b) Subject to and without waiving any protection described above, the parties agree that the parties will endeavor to agree upon date limitation(s) for the preservation of ESI

and to identify relevant custodians from whom potentially relevant ESI will be preserved.

2. Nothing in this Stipulation and Order prevents any party from asserting, in accordance with the Federal Rules of Civil Procedure, that certain categories of Documents or ESI are not reasonably accessible.

3. **Preservation Does Not Affect Discoverability or Claims of Privilege**. By preserving discovery materials for the purpose of this Litigation, the parties are not conceding that such material is discoverable, nor are they waiving any claim of privilege or other protection.

III. COLLECTION AND REVIEW

1. **Cooperation**. The parties agree that in responding to an initial Federal Rule of Civil Procedure 34 request, they will meet and confer about methods to search discovery materials in order to identify discovery material that is subject to production in discovery and filter out discovery material that is not subject to discovery.

2. **System Files**. Each Producing Party will use its best efforts to filter out common system files and application executable files by using a commercially reasonable hash identification process. Examples of hash values that may be filtered out during this process are located in the National Software Reference Library ("NSRL") NIST hash set list. Each Producing Party will provide a list of additional document types, if any, used as a filter to the Receiving Party as soon as practicable.

3. **Deduplication**. Each Producing Party is required to produce only a single copy of a responsive Document, and each Producing Party may remove exact duplicate Documents (based on MD5 or SHA-1 hash values at the family level) across custodians. For emails with attachments, the hash value is generated based on the parent/child document grouping. Attachments should not

be eliminated as duplicates for purposes of production, unless the parent email and all attachments are also duplicates. An attachment to a parent may not be suppressed on the basis that a duplicate stand-alone version of that attachment exists. Stand-alone versions of Documents may not be suppressed on the basis that a duplicate version is attached to a parent. To the extent that deduplication through MD5 or SHA-1 hash values is not possible, the parties shall meet and confer to discuss any other proposed method of deduplication. A Producing Party must make reasonable efforts to identify all agreed upon custodians who were in possession of any deduplicated Documents in the "Alternative Custodian" field. In the event of rolling productions of discovery materials, the Producing Party will, as needed, supplement the load files with updated Alternative Custodian information. Duplicate custodian information may be provided by a metadata overlay and will be provided by a Producing Party on an ongoing basis.

4. **Email Threading**. Where multiple email messages are part of a single chain or "thread," a Producing Party is only required to produce the most inclusive message (the "Last In Time Email") and need not produce earlier, less-inclusive email messages or "thread members" that are fully contained, including attachments and inline objects (including inline images and hyperlinks) and including identical text, identical subject(s), identical senders, and identical recipients (including in "to," "cc," and "bcc" fields), within the Last In Time Email. Only email messages (including inline objects, text, subject(s), and senders and recipients) and all attachments that are fully contained in and identical to the Last In Time Email will be considered less-inclusive email messages that need not be produced. For the avoidance of doubt, responsive "non-inclusive" emails that will be produced independently of any "threaded" email chain include not only chains with different "endpoints," but also other non-

inclusive content such as, for example, attachments that are not included in later iterations on the chain, unsent drafts with unique content, or emails containing alterations to earlier emails not captured in a later inclusive email of the same thread. The Receiving Party can request in good faith, and for good cause shown, reasonable and specific lesser-included emails in order to exclude impertinent or extraneous materials from the examination of a witness, and the Producing Party shall not refuse a good faith request for such production.

5. **Filtering**. If a Producing Party proposes to apply other filters to limit discovery materials that are collected for processing and review (e.g., filters that identify system files, non-user generated files, or zero-byte files or pictures in signature files or embedded objects), the Producing Party shall advise the Receiving Party, and the parties shall meet and confer regarding such additional proposed filters.

IV. CLAIMS OF PRIVILEGE

1. **Privilege Logs**. For Documents withheld from production on the basis of attorney-client privilege, work product doctrine, and/or any other applicable privilege or protection (collectively "privilege"), the Producing Party shall prepare a summary log containing, for each Document (except as agreed upon by the parties) claimed as privileged, an export of all or a subset of the metadata fields listed below (as agreed upon by the parties) to the extent such information exists and has not been suppressed or redacted for privilege. The export should include, at a minimum, the following information from the top line email and from any attachment, in separate entries:

    - BEGNO (if not produced) or BEGBATES (if produced)
    - ENDNO (if not produced) or ENDBATES (if produced)
    - BEGATTACH (if not produced) or BEGBATESATTACH (if produced)
    - ENDATTACH (if not produced) or ENDBATESATTACH (if produced)
    - NUMBER_OF_ATTACHMENTS
    - CUSTODIAN(S)

- FROM
- TO
- CC
- BCC
- SUBJECT
- SENTDATE
- RECEIVEDDATE
- FILENAME
- FILEXT
- DOCTYPE
- AUTHOR (if available)
- CREATEDDATE
- REDACTED

2. **Document and Claim Descriptions**. In addition to the fields described in paragraph IV.1, the Producing Party's log should include two additional fields for each Document on the summary log: (a) the subject matter of the Document, and (b) the basis of the privilege claim.

3. **List of Counsel**. The Producing Party must also provide a list of all counsel identified in the summary log.

4. **Rolling Privilege Logs**. The parties agree to a rolling privilege log such that privilege logs are due 45 days after production for the set of requests is largely complete or 60 days after the close of fact discovery for requests issued within the last 90 days of the close of fact discovery.

5. **Exceptions to Privilege Log Requirement**. A Producing Party need not log Documents that were created after the date of the filing of the complaint in this Litigation, provided that responsive communications with non-litigation counsel regarding business matters shall be logged. A Producing Party need not log redacted Documents as long as the reason for the redaction is noted on the face of the Document in the redacted area and the redaction is noted in the proper metadata field. For redacted Documents where the subject matter is not decipherable as a result of redactions, the Receiving Party may request additional information to understand the basis of the redaction. The parties shall meet and confer in good faith to

resolve requests for additional information, and any intractable disagreements in this regard shall be raised with the Court.

V. REDACTION

1. **Initial Categories**. Discovery material may be redacted on the following bases: privilege, sensitive personal identifying information ("Sensitive PII"), and Confidential Health Information ("CHI"). Discovery materials redacted for Sensitive PII and CHI need not be logged. All redactions must only encompass the privileged material directly at issue.
2. **Additional Categories**. If, during the course of discovery, a Producing Party identifies other kinds of information that it has a reasonable basis for redacting, the parties will meet and confer before such redactions are made. If the issue cannot be resolved, the parties will seek resolution from the Court.
3. **Sensitive PII or CHI**. A Producing Party shall make reasonable efforts not to produce unredacted Sensitive PII or CHI, as defined in the Protective Order (ECF No. 94). If a Receiving Party determines that a Producing Party has produced unredacted Sensitive PII or CHI, the Receiving Party shall request the Producing Party provide a redacted version, which shall be provided as soon as practicable. The Receiving Party shall further promptly destroy the unredacted Sensitive PII or CHI.

VI. PRODUCTION FORMAT

1. **Format**. The parties agree to produce Documents in the formats described in Appendix 1 to this Order, unless otherwise agreed in writing by a Receiving Party. The parties agree to produce privilege logs in Excel.
2. **Format of Materials Collected During the Investigation**. Notwithstanding the foregoing, materials collected by U.S. Anesthesia Partners, Inc. and the Welsh Carson entities during the

Investigation and materials produced to the FTC by nonparties during the Investigation may be produced in the same format as originally collected or produced, respectively. A Producing Party may exclude the metadata and coding fields set forth in Appendix A when producing data for Documents collected during the Investigation and for which those fields are not available in the form collected.

3. **Cooperation on Format**. If particular Documents warrant a different format, the parties will cooperate to arrange for the mutually acceptable production of such Documents.
4. **Searchability**. The parties agree, to the extent practicable, not to materially degrade the searchability of the Documents as part of the document production process.

VII. MISCELLANEOUS PROVISIONS

1. **Amendment**. Nothing herein shall preclude the parties from seeking to amend this Order, provided that the parties first meet and confer before seeking relief from the Court.
2. **Costs of Document Production**. Unless this Court orders otherwise for good cause shown, each party and nonparty shall bear the costs of collecting, processing, reviewing, and producing its own Documents, provided they are reasonably accessible.
3. **Hard Copy Document Storage**. During the pendency of this Litigation, the parties shall make reasonable efforts to preserve the originals of all hard copy Documents as to which there may be issues of legibility of all or any part of the production copy. Each party reserves the right to request in good faith and upon a showing of good cause to inspect such original Documents of the opposing party or parties, which request shall not be unreasonably denied. If such request to inspect is denied, the party may seek relief from the Court.
4. **Short Message Data**. Electronic messages exchanged between users on communication software such as Microsoft Teams shall be produced in a searchable format that preserves the

conversational relationship and presentational features of the original messages, such as emojis, images, video files, and animations. Electronic messages must not be converted to unitized files that contain less than a 24-hour period of conversation. Redactions may be applied to privileged or non-responsive portions of a conversation. To the extent electronic messages cannot be produced in a reasonably useable format, the parties will meet and confer to address the identification, production, and production format of short message data.

5. **Collaboration Tools**. Collaboration and document management tools are software that allow multiple persons on different devices to edit the same copy of a document. To the extent that documents stored on a collaboration or document management tool are produced, the parties shall meet and confer concerning the format of production. To the extent Defendants have already produced documents that were stored on a collaboration or document management tool, Plaintiffs agree to accept future productions of documents from those same collaboration or document management tools in the same format as previously produced.

6. **Integration/Appendices**. The following documents are incorporated herein by reference:

    a. "Appendix 1" is a document describing the production format and fields to be included in the Documents produced by each party.

DEFENDANTS

By: */s/ Kyle M. Wood*

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PLAINTIFFS

By: */s/ Brendan P. Glackin*
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Counsel for Defendants U.S. Anesthesia Partners, Inc., U.S. Anesthesia Partners Holdings, Inc., and U.S. Anesthesia Partners of Texas, P.A.

SO ORDERED this _____ day of _____, 2025

_____

Alfred H. Bennett
United States District Judge

APPENDIX 1: PRODUCTION FORMAT

A. **Cover Letter**. A cover letter shall be included with each production and shall include (1) the Producing Party's name; (2) the production date; (3) the production volume name or number (e.g., VOL001); (4) information sufficient to identify all accompanying media (hard drive, thumb drive, DVD, CD, Secure FTP); and (5) the Bates number range of the materials contained in the production volume.

B. **Entire Document**. Except for privileged material, the Producing Party will produce each responsive Document in its entirety by including all attachments and all pages, regardless of whether they directly relate to the specified subject matter. Notwithstanding this paragraph, embedded links without attachments or references to linked Documents which are not attached (by way of example only, a website on the public internet) need not be included. Attachments must be produced along with the Document to which they are attached, regardless of whether they have been produced separately. Copies that differ in any respect from an original (because, by way of example only, handwritten or printed notations have been added) should be produced separately.

C. **Production Components**. Except as otherwise provided below, discovery materials shall be produced in accordance with the following specifications:

1. An ASCII delimited data file (.DAT) with ASCII 020 for the comma character and ASCII 254 for the quote character, with all values in a multi-value field separated by a semi-colon ASCII 059 (with the use of commas and quotes as delimiters not acceptable using standard delimiters) and encoded in UTF-8;
2. An image load file (.OPT) that can be loaded into commercially acceptable production software (e.g., Concordance);

3. TIFF images single-page: black and white, Compression Group 4 300dpi, and with 1 bit depth; a party can make a reasonable good faith and limited request for production of a color JPEG file after conferring with opposing counsel;
4. Document level .TXT files for all Documents containing extracted full text or optical character recognition ("OCR") text (where the OCR software shall be set to high quality settings);
5. Parent-child relationships will be maintained in production; and
6. Document families must be produced, even if only the parent email or an attachment to an email is responsive, except (1) junk files and non-user created content routinely excluded during processing (for example, embedded images), and (2) Documents that are withheld on the basis of attorney-client privilege or work product protection. The Receiving Party reserves the right to challenge the withholding and/or redaction of Documents. The parties shall meet and confer in good faith to resolve any disputes regarding the withholding and/or redaction of Documents. Any intractable disagreements in this regard shall be raised with the Court.

If a particular Document or category of Documents warrants a different production format — for example, if it is impractical to produce an entire Document family for particular Documents—the parties will cooperate in good faith to arrange for a mutually acceptable production format.

D. **Production Media and Access Controls**. Documents shall be encrypted and produced through electronic means, such as secure file sharing methods (e.g., FTP), or on CD, DVD, flash drive, or external hard drive ("Production Media"). Each piece of Production Media shall identify a production number corresponding to the production volume (e.g., "VOL001"). Each

piece of Production Media shall also identify: (1) the Producing Party's name; (2) the production date; and (3) the Bates Number range of the materials contained on the Production Media. Nothing in this Order will preclude or impair any and all protections provided to the parties by any Protective Order(s) agreed and entered into by the parties. Any data produced by the Producing Party must be protected in transit, in use, and at rest by all in receipt of such data. The parties will use best efforts to avoid the unnecessary copying or transmittal of produced Documents. Any copies made of produced data must be kept on media or hardware employing whole-disk or folder level encryption or otherwise secured on information systems and networks in a manner consistent with the best practices for data protection. If questions arise, parties will meet and confer to ensure security concerns are addressed prior to the exchange of any Documents.

E. **Data Load Files/Image Load Files**. All production items will be provided with a delimited data file or "load file," which will include both an image cross-reference load file (such as an Opticon file) and a metadata (.dat) file with the metadata fields identified below on the document level to the extent available. Each TIFF in a production must be referenced in the corresponding image load file. The total number of Documents referenced in a production's data load file should match the total number of designated document breaks in the image load file(s) in the production. The total number of pages referenced in a production's image load file should match the total number of TIFF files in the production. All images must be assigned a unique Bates number that is sequential within a given Document and across the production sets. The Bates numbers in the image load file must match the corresponding Documents' beginning Bates numbers in the data load file. An image's Bates number shall be branded in the lower right-hand corner of the TIFF image, using a consistent font type and size. If the

Receiving Party believes that a Bates number obscures the content of a Document, then the Receiving Party may request that the Document be produced with the Bates number in a different position. The total number of Documents in a production should match the total number of records in the data load file. Load files shall not vary in format or structure within a production, or from one production to another.

F. **Metadata Fields**. With the exception of the hard copy paper Documents, which are separately addressed in paragraph N below, each of the metadata and coding fields set forth below that can be extracted shall be produced for each Document to the extent reasonably practicable. The parties are not obligated to populate manually any of the fields below if such fields cannot be extracted from a Document, with the exception of the following: (a) BEGBATES, (b) ENDBATES, (c) BEGATTACH, (d) ENDATTACH, (e) CUSTODIAN, (f) ALT CUSTODIAN(S), (g) CONFIDENTIALITY (except for Documents already produced to the FTC during the Investigation and which by agreement of the parties and the Protective Order in this case are automatically Highly Confidential if previously designated Confidential), (h) REDACTIONS, (i) NATIVEFILEPATH, and (j) TEXTFILEPATH, which should be populated by the Producing Party or the party's vendor. The parties will make reasonable efforts to ensure that metadata fields automatically extracted from the Documents correspond directly to the information that exists in the original Documents.

Field Name[1]	Field Description (when applicable/available)
BEGBATES	Beginning Bates number as stamped on the production image

[1] Field names can vary from system to system and even between different versions of sdystems. Thus, parties are to be guided by these Field Names and Field Descriptions when identifying the metadata fields to be produced for a given Document pursuant to this Order.

ENDBATES	Ending Bates number as stamped on the production image
BEGATTACH	First production Bates number of the first Document in a family
ENDATTACH	Last production Bates number of the last Document in a family
PARENT ID	Document ID or Beginning Bates number of the parent email
CUSTODIAN	Individual identified for collection and from whom the Document originated
ALT CUSTODIAN(S)	Identified Custodian(s) whose Documents de-duplicated out
CONFIDENTIALITY	Confidentiality designation assigned to Document
HASHVALUE	MD5 or SHA1 hash value of Document (only if no deduplication is utilized)
AUTHOR	Any value populated in the Author field of the Document properties (Edoc or attachment only)
DATECREATED	Date the Document was created (format: MM/DD/YYYY) (Edoc or attachment only)
DATEMODIFIED	Date when Document was last modified according to filesystem information (format: MM/DD/YYYY) (Edoc or attachment only)
FROM	The name and email address of the sender of the email
TO	All recipients that were included on the “To” line of the email
CC	All recipients that were included on the “CC” line of the email
BCC	All recipients that were included on the “BCC” line of the email

DATERECEIVED	Date email was received (format: MM/DD/YYYY)
DATESENT	Date email was sent (format: MM/DD/YYYY)
FILESIZE	The original file size of the produced Document
ORIGINATING PATH	File path of the file as it resided in its original environment
REDACTIONS	Indicate "Yes" if a Document is redacted. Otherwise, leave blank.
NATIVEFILEPATH	Native File Link (Native Files only)
EMAIL THREAD ID	Unique identification number that permits threading of email conversations. For instance, MS Outlook identification number ("PR_CONVERSATION_INDEX") is 22 bytes in length, followed by zero or more child blocks each 5 bytes in length, that facilitates use of email threading. (Microsoft application Documents only) (only if no email threading is utilized)
TEXTFILEPATH	Path to extracted text/OCR file for Document
EMAILSUBJECT	Subject line of email
TIMESENT	Time email was sent
TIMEZONEUSED	Time zone used to standardize date/time during document processing
RECEIVETIME	Time email was received
FILENAME	File name of the edoc or email
TITLE	Any value populated in the "Title" field of the Document properties
SUBJECT	Any value populated in the "Subject" field of the Document properties
DOCEXT	File extension of the Document

G. **TIFFs**. Documents that exist only in hard copy format shall be scanned and produced as TIFFs. Documents that exist as ESI shall be converted and produced as TIFFs, except as provided below. The imaged data shall retain all attributes of the native or hard-copy file, such as document breaks, to the extent reasonably practicable. To the extent reasonably practicable, produced TIFF images will show all text and images that are visible in the form in which the electronic Document was last saved, with the exception of redacted portions. Hidden content, tracked changes or edits, comments, notes, and other similar information, shall to the extent reasonably practicable also be imaged so that such content is viewable on the image file. Unless excepted below, single page, black and white, Group IV TIFFs should be provided, at least 300 dots per inch (dpi) with 1 bit depth for all Documents, with corresponding multi-page text and necessary load files. Each TIFF image shall be named according to a unique corresponding Bates number associated with the Document. Each image shall be branded according to the Bates number and the agreed upon confidentiality designation. Original Document orientation should be maintained (i.e., portrait to portrait, and landscape to landscape). Documents that are difficult to render in TIFF because of technical issues, or any other Documents that are impracticable to render in TIFF forma, may be produced in their native format with a placeholder TIFF image stating "Document Produced Natively." A Producing Party retains the option to produce ESI in alternative formats if so agreed by the Receiving Party, which may include native format, or a combination of native and TIFF formats. Where the TIFF image is unreadable or has materially degraded the quality of the original, the Producing Party shall provide a higher quality TIFF image or the native or original file.

H. **Color**. A party that received a production may make reasonable good faith and limited requests that color images be produced where color is helpful to interpret the contents of the relevant

Document. The production of Documents and/or ESI in color shall be made in single-page JPEG format (300 dpi). All requirements for productions stated in this Order regarding productions in TIFF format apply to any productions of Documents and/or ESI in color made in such an alternative format. Reasonable requests that a Document be produced in color for the reasons set forth in this paragraph will not be unreasonably denied by the Producing Party. If a Producing Party wishes to object, it may do so by responding in writing and setting forth its objection(s) to the production of the requested Document in color.

I. **Text Files**. A single multi-page, document-level text file shall be provided for each Document, and the filename should match its respective TIFF filename. When possible, the text of native files should be extracted directly from the native file. Text files will not contain the redacted portions of the Documents. A commercially acceptable technology for OCR shall be used for all scanned, hard copy Documents and for Documents with redactions. To ensure optimal accuracy and quality, OCR software used for extracting text from native files and for processing hard copy scanned Documents shall be set to high quality settings.

J. **Native Files**. Spreadsheets (e.g., MS Excel) and presentations (e.g., MS PowerPoint) will be produced in native format unless redacted, in which instance, spreadsheets shall be produced as native redactions or in TIFF, with OCR text files post redaction. PowerPoint files and other presentation files shall be produced reflecting speaker notes, hidden slides, and any other hidden content, if any. Excel files shall be produced with all hidden rows, columns, and other information visible. To the extent that they are produced in this Litigation, audio, video, and multi-media files will be produced in native format. Native files shall be produced with a link in the NATIVEFILEPATH field, along with extracted text (where extracted text is available) and applicable metadata fields set forth in paragraph F above. A Bates numbered TIFF

placeholder indicating that the Document was provided in native format must accompany every native file.

K. **Request for Other Native Files**. Other than as specifically set forth above, a Producing Party need not produce Documents in native format. If a party would like a particular Document produced in native format and this Order does not require the production of that Document in its native format, the party making such a request shall explain the reason for its request that the Document be produced in its native format. The Receiving Party will provide a specific Bates range for Documents it wishes to be produced in native format. The Producing Party need only produce such a Document in native format if reasonably practicable. Any native files that are produced should be produced with a link in the NATIVEFILEPATH field, along with all extracted text and applicable metadata fields as set forth in paragraph F.

L. **Confidentiality Designation**. Responsive Documents in TIFF format will be stamped with the appropriate confidentiality designations in accordance with any order regarding confidentiality entered in this matter. If the Receiving Party believes that a confidentiality designation obscures the content of a Document, then the Receiving Party may request that the Document be produced with the confidentiality designation in a different position. Each responsive Document produced in native format will have its confidentiality designation identified in the filename of the native file and indicated on its corresponding TIFF placeholder.

M. **Databases and Other Structured Data**. Data compilations should be submitted separately from Document productions. The parties shall meet and confer regarding the production format and scope of data contained in databases in order to ensure that any information produced is reasonably usable by the Receiving Party and that its production does not impose

an undue burden on the Producing Party. With respect to any of Plaintiffs' or third parties' databases that has not yet been the subject of production in this case, the Producing Party shall produce a data sample from the relevant database that includes the fields and sample values to be produced. To avoid doubt, information will be considered reasonably usable when produced in CSV format, tab-delimited text format, Microsoft Excel format, or Microsoft Access format. To the extent a party is constrained from producing responsive ESI because of a third-party license or because software necessary to view the ESI is hardware-dependent, the parties shall meet and confer in an attempt to reach an agreement on whether alternative methods exist to enable the Receiving Party to view the ESI.

N. **Paper Documents**. A Producing Party shall scan paper Documents using OCR technology, and searchable ASCII text files shall be produced, unless otherwise agreed by the parties. The following information shall be produced in the load file accompanying production of paper Documents produced by scan and OCR to the extent reasonably practicable: (a) BEGBATES, (b) ENDBATES, (c) CUSTODIAN, (d) CONFIDENTIALITY, and (e) REDACTIONS. Paper Documents should be logically unitized for production to the extent reasonably practicable. When scanning paper Documents for production, distinct Documents shall not be merged into a single record, and single Documents shall not be split into multiple records. The parties will make reasonable efforts to unitize Documents correctly. Where a Document or a Document group–such as folder, clipped bundle, or binder–has an identification spine or other label, the information on the label shall be scanned and produced as the first page of the Document or grouping to the extent reasonably practicable.

O. **Date and Time**. No party shall modify the date or time as contained in any original ESI. This provision does not prevent parties from deleting inaccurate date or time information that arises as an incident of collection or processing.

P. **Time Zone**. To the extent reasonably practicable, ESI items shall be processed using a consistent time zone (e.g., Central Standard Time) and the time zone shall be disclosed to the Receiving Party.

Q. **Auto Date/Time Stamps**. To the extent reasonably practicable, ESI items shall be processed so as to preserve the data/time shown in the Document as it was last saved, not the date of collection or processing.

R. **Hidden Text**. ESI items shall be processed, to the extent practicable, in a manner that preserves hidden columns or rows, hidden text, worksheets, speaker notes, tracked changes, and comments.

S. **Password-Protected, Encrypted, or Proprietary-Software Files**. With respect to any ESI items that are password-protected or encrypted within the scope of review, the Producing Party will take reasonable steps based on industry standards to break the protection so that the Documents can be reviewed and produced if appropriate. In the event that encrypted or password-protected Documents, which are reasonably likely to be responsive to a document request, remain for a particular custodian after such reasonable efforts have been made, the Producing Party shall advise the Receiving Party by producing a placeholder TIFF image stating "Technical Issue." ESI that cannot be reviewed because proprietary software is necessary to view the ESI will be disclosed to a Receiving Party, and the parties shall meet and confer regarding the next steps, if any, with respect to such ESI.

T. **Submission Guidelines**.

1. Where possible, productions should be submitted via secure File Transfer Protocol, such as Accellion. Where not possible, adhere to the following guidelines:
    a. For productions over 10 gigabytes that cannot be submitted via a secure File Transfer Protocol, use hard disk drives, formatted in Microsoft Windows-compatible, uncompressed data in USB 2.0 or 3.0 external enclosure.
    b. For productions under 10 gigabytes that cannot be submitted via a secure File Transfer Protocol, CD-ROM (CD-R, CD-RW), optical disks and DVD-ROM (DVD+R, DVD+RW), optical disks for Windows-compatible personal computers, and USB 2.0 Flash Drives are acceptable storage formats.
2. Encryption of productions using NIST FIPS-Compliant cryptographic hardware or software modules, with passwords sent under separate cover, is strongly encouraged.

Exhibit 3

From: Aseem Chipalkatti
To: Vorhaben, Tessa
Subject: RE: Electrical Medical Trust vs. U.S. Anesthesia Partners, Inc. re: third-party subpoena to Brown & Brown
Date: Friday, October 24, 2025 2:36:38 PM
Attachments: image005.png
image006.png

Hi Tessa,

We agree to an extension to November 14, given your representation that a production is forthcoming. Have a good weekend!

Aseem

Aseem Chipalkatti (*he/him*)
Associate
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From: Aseem Chipalkatti
Sent: Thursday, October 23, 2025 11:14 AM
To: 'Vorhaben, Tessa' <tvorhaben@hinshawlaw.com>
Subject: RE: Electrical Medical Trust vs. U.S. Anesthesia Partners, Inc. re: third-party subpoena to Brown & Brown

Hi Tessa,

Let me run the November 14 date up the chain and get back to you – I don't think it will be a problem, especially given that it's in furtherance of making a production and the possibility of an earlier production. Appreciate your help here!

Thanks,

Aseem

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From: Vorhaben, Tessa <tvorhaben@hinshawlaw.com>
Sent: Thursday, October 23, 2025 11:08 AM
To: Aseem Chipalkatti <aseemchipalkatti@quinnemanuel.com>
Subject: RE: Electrical Medical Trust vs. U.S. Anesthesia Partners, Inc. re: third-party subpoena to Brown & Brown

[EXTERNAL EMAIL from tvorhaben@hinshawlaw.com]

Hi Aseem-

The offices are still in the process of identifying potentially relevant proposals, so we will need an extension until November 14th with the anticipation of receiving and producing the documents sooner. Also, neither Electrical Medical Trust and Plumbers Local Union No. 68 Welfare Fund are clients of either AGIS or Brown & Brown Insurance Services, Inc.

Tessa Vorhaben
Contract Partner
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From: Aseem Chipalkatti <aseemchipalkatti@quinnemanuel.com>
Sent: Thursday, October 23, 2025 2:10 AM
To: Vorhaben, Tessa <tvorhaben@hinshawlaw.com>
Subject: RE: Electrical Medical Trust vs. U.S. Anesthesia Partners, Inc. re: third-party subpoena to Brown & Brown

Hi Tessa,

Sorry for my delayed response. The information that you mention for Brown & Brown Insurance Services, Inc would be very helpful. 20 proposals total should be fine for us, ideally spread as evenly as possible between 2018 and present. As to AGIS, to clarify, is that Long Term Care policies that are offered directly to consumers? Or are those offered to employees through their employers as supplemental coverage? If the latter, we may be interested, but if the former, I think you will be correct. And just to confirm: are neither Electrical Medical Trust and Plumbers Local Union No. 68 Welfare Fund clients of either AGIS or Brown & Brown Insurance Services, Inc?

As to the deadline, we understand, and appreciate your assistance with these subpoenas. Given the progress that Brown & Brown is making progress towards a production, would another week (October 31) work? Or would your team need more time to pull everything together?

Thanks,

Aseem

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From: Vorhaben, Tessa <tvorhaben@hinshawlaw.com>
Sent: Wednesday, October 22, 2025 8:58 AM
To: Aseem Chipalkatti <aseemchipalkatti@quinnemanuel.com>
Subject: RE: Electrical Medical Trust vs. U.S. Anesthesia Partners, Inc. re: third-party subpoena to Brown & Brown

[EXTERNAL EMAIL from tvorhaben@hinshawlaw.com]

Hi Aseem- I wanted to touch base with you following our call on Friday to give you an update on response efforts. AGIS does not have any responsive documents as they only handle Long Term Care policies. Brown & Brown Insurance Services, Inc. (I incorrectly advised the entity was Texas Insurance Services) has started the process. They 4 regional locations in Texas with multiple offices throughout the state, so they are first working to identify clients in Texas with self-funded health care plans and >1000+ employees. It is my understanding that y'all are really looking for a sampling. How many renewals or proposals are you realistically needing- 5, 10, 30? For example, five representative client renewals or proposals from 2018 -present? I'm trying help them narrow the search parameters a bit because the way their internal document management system work makes it difficult to search and locate only (1) renewals or proposals; (2) Texas clients; (3) employees >1000 employees; (4) self-funded health care; (5) 2018-present. If you have the names of specific companies names, that would be helpful. Also, I know this information is needed for the class certification hearing. When is that? I know the response deadline is tomorrow or Friday; however, at this juncture, this deadline is not doable. Any guidance you can provide in this regard would be appreciated.

Tessa Vorhaben
Partner
Hinshaw & Culbertson LLP

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Proudly
MANSFIELD RULE
CERTIFIED *PLUS*

From: Aseem Chipalkatti <aseemchipalkatti@quinnemanuel.com>
Sent: Thursday, October 16, 2025 9:59 AM
To: Vorhaben, Tessa <tvorhaben@hinshawlaw.com>
Subject: RE: Electrical Medical Trust vs. U.S. Anesthesia Partners, Inc. re: third-party subpoena to Brown & Brown

Hi Tessa,

Thanks for sending your availability - I just set something up for 2:00 PM CT tomorrow, thanks! Please note that we will be joined by Alyssa Picard from our co-counsel at Kellogg Hansen.

Thanks,

Aseem

Aseem Chipalkatti (*he/him*)
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From: Vorhaben, Tessa <tvorhaben@hinshawlaw.com>
Sent: Wednesday, October 15, 2025 6:40 AM
To: Aseem Chipalkatti <aseemchipalkatti@quinnemanuel.com>
Subject: RE: Electrical Medical Trust vs. U.S. Anesthesia Partners, Inc. re: third-party subpoena to Brown & Brown

[EXTERNAL EMAIL from tvorhaben@hinshawlaw.com]

Good morning-

Yes, tomorrow morning between 8:30 am. Central and 11:00 a.m; between 3:00 p.m. and 4:30 p.m. and Friday from 8:30 a.m.-noon and 1:30 – 3:00.

Tessa Vorhaben
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From: Aseem Chipalkatti <aseemchipalkatti@quinnemanuel.com>
Sent: Tuesday, October 14, 2025 10:37 PM
To: Vorhaben, Tessa <tvorhaben@hinshawlaw.com>
Subject: RE: Electrical Medical Trust vs. U.S. Anesthesia Partners, Inc. re: third-party subpoena to Brown & Brown

Hi Tessa,

My apologies – I missed this email come in. Do you have any availability later this week?

Thanks,

Aseem

Aseem Chipalkatti (*he/him*)
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From: Vorhaben, Tessa <tvorhaben@hinshawlaw.com>
Sent: Friday, October 10, 2025 8:37 AM
To: Aseem Chipalkatti <aseemchipalkatti@quinnemanuel.com>
Subject: RE: Electrical Medical Trust vs. U.S. Anesthesia Partners, Inc. re: third-party subpoena to Brown & Brown

[EXTERNAL EMAIL from tvorhaben@hinshawlaw.com]

On Monday, I have a meeting from 1-2 p.m central time, but otherwise open.

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From: Aseem Chipalkatti <aseemchipalkatti@quinnemanuel.com>
Sent: Thursday, October 9, 2025 7:05 PM
To: Vorhaben, Tessa <tvorhaben@hinshawlaw.com>
Subject: RE: Electrical Medical Trust vs. U.S. Anesthesia Partners, Inc. re: third-party subpoena to Brown & Brown

Understood – thanks!

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From: Vorhaben, Tessa <tvorhaben@hinshawlaw.com>
Sent: Thursday, October 9, 2025 4:53 PM
To: Aseem Chipalkatti <aseemchipalkatti@quinnemanuel.com>
Subject: Re: Electrical Medical Trust vs. U.S. Anesthesia Partners, Inc. re: third-party subpoena to Brown & Brown

[EXTERNAL EMAIL from tvorhaben@hinshawlaw.com]

No, I have a meeting from 2- 4 pm and then my oldest plays football so Friday night lights at 5 pm. I'm currently stuck in Dallas airport so will send Monday availability tomorrow.

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From: Aseem Chipalkatti <aseemchipalkatti@quinnemanuel.com>
Sent: Thursday, October 9, 2025 6:49:18 PM
To: Vorhaben, Tessa <tvorhaben@hinshawlaw.com>
Subject: RE: Electrical Medical Trust vs. U.S. Anesthesia Partners, Inc. re: third-party subpoena to Brown & Brown

Hi Tessa,

Is any time between 3 and 5 PM CT tomorrow ok by you? If not, we have more availability on Monday.

Thanks!

Aseem

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From: Aseem Chipalkatti
Sent: Thursday, October 9, 2025 9:09 AM
To: Vorhaben, Tessa <tvorhaben@hinshawlaw.com>
Subject: RE: Electrical Medical Trust vs. U.S. Anesthesia Partners, Inc. re: third-party subpoena to Brown & Brown

Thanks Tessa – I'll circle up with my team and get back to you on timing. Are you free all day?

Thanks,

Aseem

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From: Vorhaben, Tessa <tvorhaben@hinshawlaw.com>
Sent: Thursday, October 9, 2025 8:07 AM
To: Aseem Chipalkatti <aseemchipalkatti@quinnemanuel.com>
Subject: Re: Electrical Medical Trust vs. U.S. Anesthesia Partners, Inc. re: third-party subpoena to Brown & Brown

[EXTERNAL EMAIL from tvorhaben@hinshawlaw.com]

Good morning- I'm in Laredo for hearings this morning and it's taking longer than anticipated. I need to reschedule. I'm available tomorrow.

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From: Aseem Chipalkatti <aseemchipalkatti@quinnemanuel.com>
Sent: Tuesday, October 7, 2025 6:56:56 PM
To: Vorhaben, Tessa <tvorhaben@hinshawlaw.com>
Subject: RE: Electrical Medical Trust vs. U.S. Anesthesia Partners, Inc. re: third-party subpoena to Brown & Brown

Thanks Tessa – just set up a call for then.

Aseem Chipalkatti (*he/him*)

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From: Vorhaben, Tessa <tvorhaben@hinshawlaw.com>
Sent: Tuesday, October 7, 2025 12:50 PM
To: Aseem Chipalkatti <aseemchipalkatti@quinnemanuel.com>
Subject: RE: Electrical Medical Trust vs. U.S. Anesthesia Partners, Inc. re: third-party subpoena to Brown & Brown

[EXTERNAL EMAIL from tvorhaben@hinshawlaw.com]

Yes, that works.

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From: Aseem Chipalkatti <aseemchipalkatti@quinnemanuel.com>
Sent: Tuesday, October 7, 2025 2:44 PM
To: Vorhaben, Tessa <tvorhaben@hinshawlaw.com>
Subject: RE: Electrical Medical Trust vs. U.S. Anesthesia Partners, Inc. re: third-party subpoena to Brown & Brown

Hi Tessa,

Would 1 PM CT Thursday afternoon work? If so, I'll send a calendar invite with a couple of my colleagues CCed.

Thanks,

Aseem

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From: Vorhaben, Tessa <tvorhaben@hinshawlaw.com>
Sent: Tuesday, October 7, 2025 6:35 AM
To: Aseem Chipalkatti <aseemchipalkatti@quinnemanuel.com>
Subject: RE: Electrical Medical Trust vs. U.S. Anesthesia Partners, Inc. re: third-party subpoena to Brown & Brown

---

Tomorrow afternoon or Thursday afternoon work for me.

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From: Aseem Chipalkatti <aseemchipalkatti@quinnemanuel.com>
Sent: Tuesday, October 7, 2025 1:04 AM
To: Vorhaben, Tessa <tvorhaben@hinshawlaw.com>
Subject: RE: Electrical Medical Trust vs. U.S. Anesthesia Partners, Inc. re: third-party subpoena to Brown & Brown

Hi Tessa,

Hope you've been keeping well. I wanted to check in and see if we could get some time on the calendar this week to meet and confer regarding these reissued subpoenas.

Thanks!

Aseem

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From: Aseem Chipalkatti
Sent: Monday, September 29, 2025 12:37 PM
To: Vorhaben, Tessa <tvorhaben@hinshawlaw.com>
Subject: RE: Electrical Medical Trust vs. U.S. Anesthesia Partners, Inc. re: third-party subpoena to Brown & Brown

Hi Tessa,

Hope you had a good weekend! Thank you again for taking the time to speak last week and agreeing to accept electronic service of the two attached subpoenas to AGIS Network and Texas Insurance Services, Inc. For your reference, there are no changes to the substance of the subpoena, just the compliance date and entity names. Once you've had time to digest, we'd like to schedule a time to meet and confer about the scope and substance of the subpoena at your convenience – please let us know some times that work for your this week.

In addition, by this email, we hereby withdraw the subpoena issued on September 3, 2025.

Thank you,

Aseem

Aseem Chipalkatti (*he/him*)

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From: Aseem Chipalkatti
Sent: Friday, September 26, 2025 9:57 AM
To: Vorhaben, Tessa <tvorhaben@hinshawlaw.com>
Subject: RE: Electrical Medical Trust vs. U.S. Anesthesia Partners, Inc. re: third-party subpoena to Brown & Brown

Thanks Tessa! We'll be sending something over on Monday – thanks so much for your help, and have a great weekend as well!

Thanks,

Aseem

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From: Vorhaben, Tessa <tvorhaben@hinshawlaw.com>
Sent: Friday, September 26, 2025 8:10 AM
To: Aseem Chipalkatti <aseemchipalkatti@quinnemanuel.com>
Subject: Re: Electrical Medical Trust vs. U.S. Anesthesia Partners, Inc. re: third-party subpoena to Brown & Brown

[EXTERNAL EMAIL from tvorhaben@hinshawlaw.com]

Hi Aseem- I have authority to accept electronic service on behalf of AGIS Network and Texas Insurance Services.

Have a great weekend!

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From: Aseem Chipalkatti <aseemchipalkatti@quinnemanuel.com>
Sent: Wednesday, September 24, 2025 5:10:48 PM
To: Vorhaben, Tessa <tvorhaben@hinshawlaw.com>
Subject: Re: Electrical Medical Trust vs. U.S. Anesthesia Partners, Inc. re: third-party subpoena to Brown & Brown

9 AM Eastern tomorrow works, in that case. Thanks for your flexibility.

Aseem Chipalkatti (he/him)
Associate
Quinn Emanuel Urquhart & Sullivan, LLP

From: Vorhaben, Tessa <tvorhaben@hinshawlaw.com>
Sent: Wednesday, September 24, 2025 3:07:25 PM
To: Aseem Chipalkatti <aseemchipalkatti@quinnemanuel.com>
Subject: Re: Electrical Medical Trust vs. U.S. Anesthesia Partners, Inc. re: third-party subpoena to Brown & Brown

[EXTERNAL EMAIL from tvorhaben@hinshawlaw.com]

Unfortunately I'm in depositions all day tomorrow. I'm heading to client meetings now. Friday is open for me.

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From: Aseem Chipalkatti <aseemchipalkatti@quinnemanuel.com>
Sent: Wednesday, September 24, 2025 5:05:50 PM
To: Vorhaben, Tessa <tvorhaben@hinshawlaw.com>
Subject: RE: Electrical Medical Trust vs. U.S. Anesthesia Partners, Inc. re: third-party subpoena to Brown & Brown

Hi Tessa,

Would it be possible to do any time after 11 Eastern? I'm on Pacific Time tomorrow.

Thanks!

Aseem

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From: Vorhaben, Tessa <tvorhaben@hinshawlaw.com>
Sent: Wednesday, September 24, 2025 3:04 PM
To: Aseem Chipalkatti <aseemchipalkatti@quinnemanuel.com>
Subject: Re: Electrical Medical Trust vs. U.S. Anesthesia Partners, Inc. re: third-party subpoena to Brown & Brown

hi Aseem- I just landed in Laredo. I can call at 9 am eastern tomorrow if that works.

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From: Aseem Chipalkatti <aseemchipalkatti@quinnemanuel.com>
Sent: Wednesday, September 24, 2025 12:55:25 PM
To: Vorhaben, Tessa <tvorhaben@hinshawlaw.com>
Subject: RE: Electrical Medical Trust vs. U.S. Anesthesia Partners, Inc. re: third-party subpoena to Brown & Brown

Hi Tessa,

Thank you for your call – I just gave you a ring back on your cell but might have missed you. Happy to speak whenever you have a moment at (202) 948-8849.

Thanks,

Aseem

Aseem Chipalkatti (*he/him*)
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From: Vorhaben, Tessa <tvorhaben@hinshawlaw.com>
Sent: Wednesday, September 24, 2025 6:38 AM

To: Aseem Chipalkatti <aseemchipalkatti@quinnemanuel.com>
Subject: Electrical Medical Trust vs. U.S. Anesthesia Partners, Inc. re: third-party subpoena to Brown & Brown

[EXTERNAL EMAIL from tvorhaben@hinshawlaw.com]

Hi Aseem-

I am writing on behalf of Brown & Brown, Inc. regarding the referenced matter. If you could call my cell when you get a chance- (504) 495-8867.

Thanks, Tessa

Tessa Vorhaben
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Exhibit 4

quinn emanuel trial lawyers | houston
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WRITER'S DIRECT DIAL NO.
(713) 221-7027

WRITER'S EMAIL ADDRESS
juliannejaquith@quinnemanuel.com

November 18, 2025

CONFIDENTIAL
VIA E-MAIL

Tessa Vorhaben
Hinshaw & Culbertson LLP
400 Poydras Street, Suite 3150
New Orleans, LA 70130

Re: *Electrical Medical Trust, et al. v. United States Anesthesia Partners, et al.*, No. 4:23-cv-04398 (S.D. Tex.)

Dear Tessa:

I write in regard to the subpoena issued on behalf of United States Anesthesia Partners ("USAP"), Defendant in the above-referenced action. That subpoena was served on Texas Insurance Services, Inc. on September 29, 2025. The deadline for compliance with this subpoena was October 31, 2025. The deadline for any Objections to this subpoena was October 13, 2025, 14 days after it was served. *See* Federal Rule of Civil Procedure 45(d)(2)(B) (an "objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served").

You advised us on October 22, 2025, that the appropriate name for the responding entity was Brown & Brown Insurance Services, Inc. ("Brown & Brown"). Brown & Brown made a production on November 12, 2025. Unfortunately, that production did not encompass the scope of our subpoena. As we discussed, to assist in the process of finding responsive documents, and as we had discussed during earlier meet-and-confers, USAP is amenable, without a waiver of its rights, at this time to narrowing its requests to the following categories of information called for in the subpoena to facilitate your prompt compliance:

(1) All communications and documents made or modified between January 1, 2018 to the present, with Plaintiffs in the above-referenced matter, Electrical Medical Trust and Plumbers Local Union No. 68 Welfare Fund, as those terms are defined in Definition 20 of the subpoena.

(2) For ten of Brown & Brown's clients where the total number of that client's beneficiaries located in the state of Texas is **greater than 5,000** and the client is **not** a federal or state government entity, all documents (whether identified by description or specific name) falling within the following categories, created, prepared for or presented to those clients:[1]

a. Final versions of marketing and/or renewal documents, presentations, and renewal packages made or modified between January 1, 2018 to the present, relating to or otherwise conveying details and information about both partially and fully Self-Funded Health Insurance Plans made available to your clients for their employees.

b. Agreements, Arrangements, Schedules, or Terms, made, modified, facilitated or brokered between January 1, 2018 to the present, sufficient to show the full scope of Brown & Brown's relationship with those clients and all agreements, draft agreements or proposals facilitated or brokered for those clients including those agreements Brown & Brown is not a party to, including but not limited to:

i. Administrative Services Agreements;

ii. Certificate of Coverage Booklet/Evidence of Coverage Booklet;

iii. Claims Processing Agreements;

iv. Preferred Provider Agreements;

v. Bundled Payment Arrangements;

vi. Reference-Based Pricing Agreements;

vii. Reimbursement Arrangements or Schedules;

viii. Shared Savings Arrangements;

ix. Stop-Loss Insurance Contract/Reinsurance Policy terms and pricing;

x. Summary Plan Descriptions;

xi. New Client or Client Onboarding Questionnaires;

xii. Existing Client Retainment Polices and Questionnaires;

xiii. Plan Booklet;

[1] This includes information sent from the broker to the client, as well as the final renewal packages from the plans.

xiv. Cross Plan Offset Information;

xv. Fee schedules (whether charged by an arbitrator, payor, or other third-party managing the arbitration process) associated with any and all stages of the out-of-network provider payment independent dispute resolution process, including the open negotiation period, required by the Federal No Surprises Act and/or the Texas equivalent; and

xvi. Protocols—including those constraining or otherwise governing those described in 2(b)(xv)—addressing or otherwise referring to any and all stages of the out-of-network provider payment independent dispute resolution process, including the open negotiation period, required by the Federal No Surprises Act and/or the Texas equivalent.

(3) For ten of Brown & Brown's clients in the state of Texas where the total number of that client's beneficiaries located in the state of Texas is **less than 5,000 and greater than 500** and the client is **not** a federal or state government entity, all documents (whether identified by description or specific name) falling within the categories listed in 2(a)-(b), *supra*, that were created, prepared for, or presented to those clients.

(4) For ten of Brown & Brown's clients in the state of Texas where the total number of that client's beneficiaries located in the state of Texas is **less than 500** and the client is **not** a federal or state government entity, all documents (whether identified by description or specific name) falling within the categories listed in 2(a)-(b), *supra*, that were created, prepared for, or presented to those clients.

(5) For five of Brown & Brown's clients in the state of Texas that are themselves local government entities (*e.g.*, school districts, city governments, local/city hospitals), all documents (whether identified by description or specific name) falling within the categories listed in 2(a)-(b), *supra*, that were created, prepared for, or presented to those clients.

USAP reserves all rights to seek additional discovery responsive to the subpoena as served, and maintains that it is appropriately tailored and reasonably calculated to lead to the discovery of relevant evidence. These modifications are not concessions as to the relevance of or the burden posed by this subpoena. Instead, USAP offers this proposal to facilitate your prompt response to our requests.

To address any remaining concerns regarding the confidentiality of Brown & Brown's responses, I attach the Protective Order and the Supplemental Protective Order entered into in the above-referenced matter. Both make clear that Brown & Brown, as a producing party, may designate produced materials as Confidential or Highly Confidential, as a production may so merit. We remain available should you have further questions, including the technical manner and means best suited for making Brown & Brown's prompt production.

Very truly yours,

Julianne Jaquith

Encls.: Protective Order, Supplemental Protective Order

Exhibit 5

HINSHAW

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Tessa P. Vorhaben
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December 11, 2025

Via Email

Julianne Jaquith
Quinn Emanuel
700 Louisiana Street, Suite 3900
Houston, Texas 77002
juliannejaquith@quinnemanuel.com

Re: *Electrical Medical Trust, et al. v. United States Anesthesia Partners, et al.,* No. 4:23-cv-04398 (S.D. Tex)

Dear Julianne:

I write on behalf of Brown & Brown Insurance Services, Inc. ("BBIS") in further response to your correspondence dated November 18, 2025. The United States Anesthesia Partners ("USAP") Subpoena was incorrectly issued to Texas Insurance Services, Inc. and served on me via email on September 29, 2025. The Subpoena requested compliance in Austin, Texas and provided a response deadline of October 24, 2025. Texas Insurance Services, Inc. is not affiliated in any way BBIS, and I notified you of this inaccuracy.[1] In an effort to cooperate and avoid court involvement, we agreed to "meet-and-confer" on October 17, 2025. Based on that meeting, it was my understanding that USAP was requesting a "sampling" of proposals or renewals that BBIS sent to their clients located in Texas who are self-funded with >1,000 employees. Following our "meet-and-confer", I confirmed with your co-counsel that BBIS was searching for renewals or proposals for Texas clients with employees >1,000 with self-funded health care from 2018 to present and that 20 proposals would suffice. I also confirmed that BBIS would produce responsive documents by November 14th. Through its search efforts, BBIS located approximately eleven (11) responsive proposals, and these were produced on November 12th.

Then, on November 18, 2025, I received your correspondence advising that BBIS's production did not encompass the scope of USAP's subpoena but that USAP was amenable to narrowing its requests to the categories identified therein. The categories identified enlarged, rather than narrowed, the scope of USAP's requests and were contrary to our prior agreements. Instead of only wanting a sampling of proposals and renewals from a handful of clients with >1,000 employees, USAP is now requesting agreements, arrangements, schedules, and terms with clients, and even those agreements BBIS is not a party to, for roughly 35 clients who are local government

[1] USAP and BBIS entered into a Non-Disclosure and Confidentiality Agreement in early 2024; USAP was aware of the correct entity.

entities, have less than 500 beneficiaries and are not a government entity, have less than 5,000 beneficiaries and are not a government entity, and have greater than 5,000 beneficiaries and are not a government entity.

BBIS has completed its search for the requested documents and provides the following responses to USAP's requests for production contained in both the November 18, 2025 letter and September 29, 2025 subpoena:

(1) All communications and documents made or modified between January 1, 2018 to the present, with Plaintiffs in the above-referenced matter, Electrical Medical Trust and Plumbers Local Union No. 68 Welfare Fund, as those terms are defined in Definition 20 of the subpoena.

BBIS is not in possession of documents responsive to this request.

(2) Final versions of marketing and/or renewal documents, presentations, and renewal packages made or modified between January 1, 2018 to the present, relating to or otherwise conveying details and information about both partially and fully Self-Funded Health Insurance Plans made available to your clients for their employees.

For the various categories of clients identified, BBIS does maintain final versions of marketing and/or renewal documents, presentations, and renewal packages from 2022 to present, and these are available for retrieval; however, to do so would require significant effort and resources as set forth below. For documents between 2018 to 2022, this was prior to Brown & Brown, Inc.'s acquisition of the Hays Companies. These documents may be available for retrieval; however, locating responsive documents would require a manual search, and BBIS' access to these documents may be limited.

(3) For the agreements, arrangements, schedules or terms, made, modified, facilitated or brokered between January 1, 2028 to present sufficient to show the full scope of BBIS' relationship with those clients and all agreements, draft agreements or proposals facilitated or brokered for those clients including those agreements BBIS is not a party to, including but not limited to:

i. Administrative Services Agreements: These documents are held by the insurance carriers; BBIS may have copies if the insurance carrier provided same, but BBIS is not in control of these documents.

ii. Certificate of Coverage Booklet/Evidence of Coverage Booklet: BBIS does hold these for its client which provide plan language and eligibility, but limited claims or financial data.

iii. Claims Processing Agreements: These are held by the insurance carriers; BBIS does not maintain or control these documents.

iv. Preferred Provider Agreements: These are managed by the insurance carriers; BBIS does not maintain, possess, or control these documents.

v. Bundled Payment Arrangements: These are between the insurance carriers and vendors; BBIS does not possess or hold these documents.

vi. Referenced-Based Pricing Agreements: Not applicable to BBIS as it does not engage in these arrangements. Consequently, BBIS does not have responsive documents.

vii. Reimbursement Arrangements or Schedules: These are controlled by the insurance carrier and vendor; BBIS does not retain these documents.

viii. Shared Savings Arrangements: These are proprietary to insurance carriers; these records are not available to BBIS.

ix. Stop-Loss Insurance Contract/Reinsurance Policy Terms and Pricing: BBIS does hold executed stop-loss contracts for self-funded clients, which show fees and contract terms, but limited claims data.

x. Summary Plan Descriptions ("SPDs"): BBIS maintains SPDs for client, which summarize plan terms and eligibility, but do not include detailed financials.

xi. New Client or Client Onboarding Questionnaires: BBIS does have onboarding questionnaires for its own processes.

xii. Existing Client Retainment Policies and Questionnaires: BBIS does not have any such documents.

xiii. Plan Booklet: These are provided by insurance carriers directly to clients; BBIS would only have copies if they were shared. BBIS is not in control of these documents.

xiv. Cross Plan Offset Information: These are proprietary to insurance carriers and not held by BBIS.

xv. Fee schedules for out-of-network provider payment independent dispute resolution process (Federal No Surprises Act/Texas equivalent): These are managed by insurance carriers or payors and not available from BBIS' records.

xvi. Protocols for out-of-network provider payment independent dispute resolution process (Federal No Surprise Act/Texas equivalent): These are controlled by carriers/payors and not maintained by BBIS.

REQUEST FOR PRODUCTION NO. 1: As worded, BBIS does not have documents responsive to this request.

REQUEST FOR PRODUCTION NO. 2: As worded, BBIS does not have documents responsive to this request.

REQUEST FOR PRODUCTION NO 3.: As worded, BBIS does not have documents responsive to this request.

REQUEST FOR PRODUCTION NO. 4: As worded, BBIS does not have documents responsive to this request.

REQUEST FOR PRODUCTION NO. 5: As worded, BBIS does not have documents responsive to this request.

REQUEST FOR PRODUCTION NO. 6: As worded, BBIS does not have documents responsive to this request.

REQUEST FOR PRODUCTION NO. 7: As worded, BBIS is unable to search for or provide responsive documents. Brown & Brown, Inc. did not acquire Hays Companies until 2022. Further, this request is overly broad in time and scope and is unduly burdensome as set forth in further detail below.

REQUEST FOR PRODUCTION NO. 8: BBIS is not in possession of documents or communications responsive to this request.

REQUEST FOR PRODUCTION NO. 9: BBIS' parent company is Brown & Brown, Inc., which is a publicly traded company, and the requested information is publicly available.

REQUEST FOR PRODUCTION NO. 10: As worded, BBIS is unable to respond to this request.

REQUEST FOR PRODUCTION NO. 11: As worded, BBIS is unable to respond to this request. Cross Plan Offsets are proprietary to insurance carriers, and BBIS would not have this information.

For the documents identified above that BBIS does maintain, these documents are not stored by employee or beneficiary count or searchable by the criteria identified by USAP. Instead, the documents are stored in multiple systems and may exist in: Electronic email archives, secure client proposal software, encrypted document management databases, and paper storage facilities. To identify and collect the requested documents is a massive undertaking, as it would require BBIS' personnel to manually: (a) identify prospective clients meeting the employee or beneficiary threshold; (b) review each account file one-by-one; (c) retrieve archived paper files, scan, and digitize documents; and (d) review documents for confidentiality and privilege.

To comply with USAP's request would require at least four (4) hours per account file, resulting in a total burden of more than 140 hours of employee labor. The cost to BBIS for internal labor alone would exceed $8,000. This does not include additional costs for legal review, confidentiality protection, potential outside vendor expenses, and loss of revenue due to employee diversion. These records may also contain confidential and proprietary business information and competitively sensitive marketing strategies, and may include confidential and proprietary third-party commercial information involving clients, prospective clients, insurance carriers, management companies, and others who, like BBIS, have no connection to this lawsuit. While we acknowledge receipt of the Protective Order and Supplemental Protective Order attached with your November 18th correspondence, neither of those documents address BBIS's concerns raised herein.

We remain available should have further questions regarding the above responses or would like to discuss this issue further.

Sincerely,

Tessa P. Vorhaben

Exhibit 6

quinn emanuel trial lawyers | washington, dc
555 13th Street NW, Suite 600, Washington, District of Columbia 20004 | TEL (202) 538-8000 FAX (202) 538-8100

WRITER'S DIRECT DIAL NO.
(202) 538-8000

WRITER'S EMAIL ADDRESS
aseemchipalkatti@quinnemanuel.com

January 13, 2026

CONFIDENTIAL
VIA E-MAIL

Tessa Vorhaben
Hinshaw & Culbertson LLP
400 Poydras Street, Suite 3150
New Orleans, LA 70130

Re: *Electrical Medical Trust, et al. v. United States Anesthesia Partners, et al.,* No. 4:23-cv-04398 (S.D. Tex)

Dear Tessa:

I write regarding the subpoena issued September 29, 2025 on behalf of United States Anesthesia Partners ("USAP") in the above-captioned action. On November 18, USAP narrowed its subpoena and requested a smaller subset of documents than previously outlined. You responded to that narrowing proposal on December 11—identifying documents that your client, Brown & Brown, Inc. ("Brown & Brown") possessed and indicating that "[t]o comply with USAP's request would require . . . more than 140 hours of employee labor . . . . [and] would exceed $8,000."

We met and conferred to discuss this issue on December 17. You stated the need for client approval to make a formal cost request, and we committed to a follow-up meeting. On December 19, you stated that you would provide an update on December 23. On December 23, you stated you would provide a response by January 7. January 7 has now come and gone with no communication. It has been over a month since you represented that Brown & Brown possessed responsive documents. You have yet to produce those documents or make any formal request for costs.

Please convey whether Brown & Brown is (1) requesting reimbursement as a condition to comply with the subpoena, or (2) refusing to comply with it entirely. Assuming the former, please identify in writing the exact cost of production that Brown & Brown is requesting, as well as a detailed, line-item breakdown of the offsetting costs.

We request the courtesy of a response no later than the close of business on **Thursday, January, 15**. If we do not hear from you by then, we are prepared to move to compel the production of the responsive documents in the United States District Court for the Western District of Texas. Should you fail to respond to this correspondence, we will represent in our motion that you did not respond to our good-faith attempt to resolve the matter by agreement, as required by Local Rule CV-7(i).

Best regards,

/s/ Aseem N. Chipalkatti
Aseem N. Chipalkatti

Exhibit 7

quinn emanuel trial lawyers | austin, tx
300 West 6th Street, Suite 2010, Austin, Texas 78701 | TEL (737) 667 6100; FAX (737) 667 6110

WRITER'S DIRECT DIAL NO.
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WRITER'S EMAIL ADDRESS
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January 21, 2026

CONFIDENTIAL
VIA E-MAIL

Tessa P. Vorhaben
Hinshaw & Culbertson LLP
400 Poydras Street, Suite 3150
New Orleans, LA 70130

Re: *Electrical Medical Trust, et al. v. United States Anesthesia Partners, et al.*, No. 4:23-cv-04398; subpoena to Brown & Brown Insurance Services, Inc.

Dear Tessa:

I write in advance of our scheduled call tomorrow regarding Brown & Brown Insurance Services, Inc's ("BBIS") December 11, 2025 Responses & Objections ("R&O's") to USAP's subpoena. To ensure our call is productive and to determine whether we can reach any mutually acceptable agreement, I ask that you come prepared to address the following questions and concerns with regard to your R&O's.

1. **Scope of the Search**. BBIS responds to several document requests by stating that "BBIS is not in possession of documents responsive to this request" or "BBIS does not have documents responsive to this request." For each such response, please address: (a) the specific search methodology and terms used to determine BBIS has no responsive documents; (b) identification of the custodians whose files were searched; (c) identification of the data sources and systems searched (email, document management systems, client files, etc.); and (d) the time period covered by the search. Without this information, we cannot evaluate whether BBIS has conducted a reasonable search or is instead making unsupported assertions of non-responsiveness.

2. **"As Worded" Qualifications**. For Requests 1-4 and 6, BBIS states that, "as worded, [it] does not have documents responsive to this request." I would like to address and discuss what you mean by "as worded." Is there alternative language we could use that would yield

responsive documents? Are you suggesting that BBIS *does* possess relevant documents but believes they do not technically fit within the request as drafted? If so, please identify what documents BBIS possesses and propose specific language modifications that would render those documents responsive. We believe this is what any good-faith negotiations would require, and these qualifications appear to be evasive rather than substantive objections.

3. **"Unable to Respond**." For several requests, BBIS states it is "unable to respond" or "unable to search for or provide responsive documents." This terminology is ambiguous and inadequate. Does "unable to respond" mean: (a) BBIS possesses responsive documents but is withholding them on privilege grounds; (b) BBIS possesses responsive documents but is withholding them on other legal grounds; (c) the burden of searching is too great; or (d) something else entirely? Please elaborate on what specific impediment prevents BBIS from responding to each request where this language appears.

4. **Documents Held by Third Parties**. BBIS frequently responds that documents are "held by insurance carriers" or "controlled by carriers/payors" and therefore not within BBIS's possession, custody, or control. However, you also acknowledge that BBIS "may have copies" of certain documents if carriers provided them. Please clarify: (a) has BBIS actually searched for copies of documents that carriers may have provided; (b) if so, what was the result of that search; and (c) if not, why not? The fact that carriers hold originals does not excuse BBIS from producing copies in its possession. Moreover, Federal Rule of Civil Procedure 45 encompasses documents within BBIS's "control," which may include documents BBIS has the practical ability to obtain from carriers with whom it has ongoing business relationships.

   Relatedly, you respond to Request # 3 by stating that many requested agreements are held by insurance carriers and "BBIS is not a party to" those agreements. However, the request explicitly seeks "agreements, draft agreements or proposals facilitated or brokered for those clients including those agreements BBIS is not a party to." As a broker, BBIS facilitates and brokers agreements between its clients and carriers. Please provide a written response or come prepared to explain: (a) whether BBIS maintains copies of agreements it facilitates or brokers in the ordinary course of business; (b) whether BBIS participated in negotiating or presenting these agreements to clients; and (c) what documents BBIS does maintain reflecting the terms of arrangements it brokers. Please also be prepared to discuss whether BBIS can obtain any of these documents from its carrier partners.

5. **Temporal Scope and Storage Issues**. BBIS objects that documents from 2018-2022 (pre-acquisition) would require manual searching and that access may be limited. Please explain: (a) what efforts BBIS has made to access pre-acquisition Hays Companies documents; (b) what specific obstacles exist to accessing those documents; (c) whether BBIS has communicated with Brown & Brown, Inc. corporate or Hays Companies personnel about retrieving these documents; and (d) whether any sampling approach focused on post-2022 documents would be acceptable. Additionally, you state that

documents are stored in "multiple systems" and "are not stored by employee or beneficiary count." As we have explained to other subpoena recipients, the fact that BBIS does not organize documents by the criteria in our requests is not a valid objection. Please come prepared to discuss whether BBIS has an alternative suggestion, and if not whether BBIS can provide us with a list of Texas-based clients along with beneficiary/employee counts, and USAP can select specific clients from that list to reduce BBIS's search burden—if that is an alleged barrier to production.

6. **Confidentiality Concerns**. You assert that the protective order and supplemental protective order do not adequately "address BBIS's concerns" regarding confidential and proprietary information. Please identify with specificity what provisions you believe are inadequate and what additional protections BBIS requires. The protective orders in this case provide comprehensive safeguards for confidential business information, trade secrets, and third-party data—including restrictions on who may access such information and how it may be used. If BBIS believes additional protections are necessary, please come prepared with specific proposed modifications or redaction protocols.

7. **Sampling and Narrowing Proposals**. Our November 18, 2025 letter proposed a targeted sampling approach to reduce BBIS's burden—specifically requesting documents for approximately 35 clients across different size categories rather than requiring production for BBIS's entire client base. You characterize this as "enlarging" rather than narrowing the scope, but that misses the point. The subpoena's original requests, if read broadly, could encompass all Texas clients. Our sampling approach dramatically limited the universe of clients for which production is required. If BBIS believes our proposed categories remain too burdensome, please come prepared with a counter-proposal that would provide representative documents while further reducing burden.

8. **Burden and Cost Objections.** Lastly, BBIS estimates that compliance would require 140 hours of labor at a cost exceeding $8,000 for internal labor alone. However, you have never requested that USAP offset any of these costs. If cost is truly the barrier to production, please come prepared to provide: (a) a detailed, itemized breakdown of the estimated hours by task; (b) the hourly rates or salary costs underlying your calculations; (c) identification of which specific requests or categories of documents drive the majority of this burden; and (d) any proposals for how the scope of requests could be narrowed to reduce burden while still providing meaningful discovery. Our client is not opposed to paying reasonable costs associated with compliance, but we need concrete information rather than conclusory burden assertions.

We appreciate BBIS's production of the eleven proposals in November, but that limited production does not satisfy the subpoena's scope. We remain willing to work with BBIS to narrow requests, accommodate reasonable confidentiality concerns, and discuss cost-sharing arrangements. However, BBIS's responses contain numerous ambiguities, unsupported assertions,

and inadequately explained objections that make it impossible to evaluate whether BBIS is making good faith efforts to comply.

Please either respond to this letter in writing or come to tomorrow's call prepared to address each of the above points substantively. If we cannot reach agreement, we will need to proceed expeditiously to motion practice. USAP reserves all rights and remedies and waives none.

Best regards,

/s/ *Jack Simms*
Jack A. Simms, Jr.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

Electrical Medical Trust and Plumbers Local Union No. 68 Welfare Fund,
Plaintiff,
v.

U.S. Anesthesia Partners, Inc., *et al.*,
Defendants

CAUSE NO. 4:23-CV-04398

ORDER ON NON-PARTY BROWN & BROWN INSURANCE SERVICES, INC.'S MOTION TO QUASH SUBPOENA AND MOTION FOR PROTECTIVE ORDER

ON THIS DATE, came on for consideration Non-Party, Brown & Brown Insurance Services, Inc.'s Motion to Quash Subpoena and Motion for Protective Order. Having considered the Motion, any response, reply and the pleadings on file, the Court hereby GRANTS Non-Party, Brown & Brown Insurance Services, Inc.'s Motion to Quash Subpoena and Motion for Protective Order:

Dated: _____

_____
UNITED STATES DISTRICT COURT JUDGE