

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

FEDERAL TRADE COMMISSION,
Plaintiff-Appellee,
v.

U.S. ANESTHESIA PARTNERS, INC.,
Defendant-Appellant.

On Appeal from the United States District Court
for the Southern District of Texas
No. 4:23-cv-03560; Hon. Kenneth M. Hoyt

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August 12, 2024

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4.	Certificate of Service	

TAB 1

**U.S. District Court
SOUTHERN DISTRICT OF TEXAS (Houston)
CIVIL DOCKET FOR CASE #: 4:23-cv-03560
Internal Use Only**

Federal Trade Commission v. U.S. Anesthesia Partners, Inc. et al

Assigned to: Judge Kenneth M Hoyt

Related Case: 4:23-cv-04398

Cause: 15:0045 Federal Trade Commission Act

Date Filed: 09/21/2023

Jury Demand: None

Nature of Suit: 410 Anti-Trust

Jurisdiction: U.S. Government Plaintiff

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Date Filed	#	Docket Text
09/21/2023	<u>1 (p.31)</u>	COMPLAINT against All Defendants filed by Federal Trade Commission. (Attachments: # <u>1 (p.31)</u> Civil Cover

		Sheet)(Monahan, Kara) (Entered: 09/21/2023)
09/21/2023	<u>2 (p.3449)</u>	Ex Parte SEALED MOTION <i>for Leave of Court to File Unredacted Complaint Temporarily Under Seal</i> by Federal Trade Commission, filed. (Attachments: # <u>1 (p.31)</u> Exhibit Unredacted Complaint) (Monahan, Kara) (Entered: 09/21/2023)
09/21/2023	<u>3 (p.3560)</u>	SEALED DOCUMENT <i>Proposed Order Granting FTC Ex Parte Motion for Leave of Court to File Unredacted Complaint Temporarily Under Seal</i> by Federal Trade Commission, filed. (Monahan, Kara) (Entered: 09/21/2023)
09/21/2023	<u>4 (p.140)</u>	MOTION to Appear Pro Hac Vice for Kara Monahan (Fee Exempt) by Federal Trade Commission, filed. Motion Docket Date 10/12/2023. (Monahan, Kara) (Entered: 09/21/2023)
09/21/2023	<u>5 (p.141)</u>	MOTION to Appear Pro Hac Vice for Michael J. Arin (Fee Exempt) by Federal Trade Commission, filed. Motion Docket Date 10/12/2023. (Arin, Michael) (Entered: 09/21/2023)
09/21/2023	<u>6 (p.142)</u>	MOTION to Appear Pro Hac Vice for Gary Howard Schorr (Fee Exempt) by Federal Trade Commission, filed. Motion Docket Date 10/12/2023. (Schorr, Gary) (Entered: 09/21/2023)
09/21/2023	<u>7 (p.143)</u>	MOTION to Appear Pro Hac Vice for Dylan Herts (Fee Exempt) by Federal Trade Commission, filed. Motion Docket Date 10/12/2023. (Herts, Dylan) (Entered: 09/21/2023)
09/21/2023	<u>8 (p.144)</u>	MOTION to Appear Pro Hac Vice for Timothy Grayson (Fee Exempt) by Federal Trade Commission, filed. Motion Docket Date 10/12/2023. (Grayson, Timothy) (Entered: 09/21/2023)
09/21/2023	<u>9 (p.145)</u>	MOTION to Appear Pro Hac Vice for Eric M. Sprague (Fee Exempt) by Federal Trade Commission, filed. Motion Docket Date 10/12/2023. (Sprague, Eric) (Entered: 09/21/2023)
09/21/2023	<u>10 (p.146)</u>	MOTION to Appear Pro Hac Vice for Neal J. Perlman (Fee Exempt) by Federal Trade Commission, filed. Motion Docket Date 10/12/2023. (Perlman, Neal) (Entered: 09/21/2023)
09/21/2023	<u>11 (p.147)</u>	MOTION to Appear Pro Hac Vice for Bradley S. Albert (Fee Exempt) by Federal Trade Commission, filed. Motion Docket Date 10/12/2023. (Albert, Bradley) (Entered: 09/21/2023)
09/21/2023	<u>12 (p.148)</u>	MOTION to Appear Pro Hac Vice for Leah Hubinger (Fee Exempt) by Federal Trade Commission, filed. Motion Docket Date 10/12/2023. (Hubinger, Leah) (Entered: 09/21/2023)
09/21/2023	<u>13 (p.149)</u>	NOTICE of Appearance by Garth Huston on behalf of Federal Trade Commission, filed. (Huston, Garth) (Entered: 09/21/2023)
09/21/2023	<u>14 (p.150)</u>	MOTION to Appear Pro Hac Vice for Patrick Kennedy (Fee Exempt) by Federal Trade Commission, filed. Motion Docket Date 10/12/2023. (Kennedy, Patrick) (Entered: 09/21/2023)
09/22/2023	<u>15 (p.151)</u>	

		MOTION to Appear Pro Hac Vice for Charles A. Loughlin (Fee Paid: \$100, receipt number ATXSDC-30552990) by WCAS Associates XI, LLC, WCAS Associates XII, LLC, WCAS Management Corporation, WCAS Management, L.P., WCAS Management, LLC, Welsh, Carson, Anderson & Stowe XI, L.P., Welsh, Carson, Anderson & Stowe XII, L.P., filed. Motion Docket Date 10/13/2023. (Loughlin, Charles) (Entered: 09/22/2023)
09/22/2023	<u>16 (p.152)</u>	MOTION to Appear Pro Hac Vice for Kenneth W. Field (Fee Paid: \$100, receipt number ATXSDC-30553034) by WCAS Associates XI, LLC, WCAS Associates XII, LLC, WCAS Management Corporation, WCAS Management, L.P., WCAS Management, LLC, Welsh, Carson, Anderson & Stowe XI, L.P., Welsh, Carson, Anderson & Stowe XII, L.P., filed. Motion Docket Date 10/13/2023. (Field, Kenneth) (Entered: 09/22/2023)
09/22/2023	<u>17 (p.153)</u>	MOTION to Appear Pro Hac Vice for Jamie Lee (Fee Paid: \$100, receipt number ATXSDC-30553083) by WCAS Associates XI, LLC, WCAS Associates XII, LLC, WCAS Management Corporation, WCAS Management, L.P., WCAS Management, LLC, Welsh, Carson, Anderson & Stowe XI, L.P., Welsh, Carson, Anderson & Stowe XII, L.P., filed. Motion Docket Date 10/13/2023. (Lee, Jamie) (Entered: 09/22/2023)
09/22/2023	<u>18 (p.154)</u>	MOTION to Appear Pro Hac Vice for Ilana Kattan (Fee Paid: \$100, receipt number ATXSDC-30554591) by WCAS Associates XI, LLC, WCAS Associates XII, LLC, WCAS Management Corporation, WCAS Management, L.P., WCAS Management, LLC, Welsh, Carson, Anderson & Stowe XI, L.P., Welsh, Carson, Anderson & Stowe XII, L.P., filed. Motion Docket Date 10/13/2023. (Kattan, Ilana) (Entered: 09/22/2023)
09/22/2023	<u>19 (p.155)</u>	MOTION to Appear Pro Hac Vice for Ashley Ifeadike (Fee Paid: \$100, receipt number ATXSDC-30554632) by WCAS Associates XI, LLC, WCAS Associates XII, LLC, WCAS Management Corporation, WCAS Management, L.P., WCAS Management, LLC, Welsh, Carson, Anderson & Stowe XI, L.P., Welsh, Carson, Anderson & Stowe XII, L.P., filed. Motion Docket Date 10/13/2023. (Ifeadike, Ashley) (Entered: 09/22/2023)
09/22/2023	<u>20 (p.156)</u>	WAIVER OF SERVICE Returned Executed as to U.S. Anesthesia Partners, Inc. served on 9/21/2023, answer due 11/20/2023, filed.(Arin, Michael) (Entered: 09/22/2023)
09/25/2023	<u>21 (p.157)</u>	ORDER for Initial Pretrial and Scheduling Conference by Telephone and Order to Disclose Interested Persons. Counsel who filed or removed the action is responsible for placing the conference call and insuring that all parties are on the line. The call shall be placed to (713)250-5613. Telephone Conference set for 4/15/2024 at 09:30 AM by telephone before Judge

		Kenneth M Hoyt (Signed by Judge Kenneth M Hoyt) Parties notified.(RebeccaBecknal, 4) (Entered: 09/25/2023)
09/26/2023	<u>22 (p.162)</u>	CERTIFICATE OF SERVICE of <u>1 (p.31)</u> Complaint, <u>21 (p.157)</u> Order for Initial Conference - FORM - Hoyt, by Federal Trade Commission, filed.(Arin, Michael) (Entered: 09/26/2023)
09/26/2023	<u>23 (p.164)</u>	WAIVER OF SERVICE Returned Executed as to WCAS Associates XI, LLC served on 9/21/2023, answer due 11/20/2023, filed.(Arin, Michael) (Entered: 09/26/2023)
09/26/2023	<u>24 (p.165)</u>	WAIVER OF SERVICE Returned Executed as to WCAS Associates XII, LLC served on 9/21/2023, answer due 11/20/2023, filed.(Arin, Michael) (Entered: 09/26/2023)
09/26/2023	<u>25 (p.166)</u>	WAIVER OF SERVICE Returned Executed as to WCAS Management Corporation served on 9/21/2023, answer due 11/20/2023, filed.(Arin, Michael) (Entered: 09/26/2023)
09/26/2023	<u>26 (p.167)</u>	WAIVER OF SERVICE Returned Executed as to WCAS Management, L.P. served on 9/21/2023, answer due 11/20/2023, filed.(Arin, Michael) (Entered: 09/26/2023)
09/26/2023	<u>27 (p.168)</u>	WAIVER OF SERVICE Returned Executed as to WCAS Management, LLC served on 9/21/2023, answer due 11/20/2023, filed.(Arin, Michael) (Entered: 09/26/2023)
09/26/2023	<u>28 (p.169)</u>	WAIVER OF SERVICE Returned Executed as to Welsh, Carson, Anderson & Stowe XI, L.P. served on 9/21/2023, answer due 11/20/2023, filed.(Arin, Michael) (Entered: 09/26/2023)
09/26/2023	<u>29 (p.170)</u>	WAIVER OF SERVICE Returned Executed as to Welsh, Carson, Anderson & Stowe XII, L.P. served on 9/21/2023, answer due 11/20/2023, filed.(Arin, Michael) (Entered: 09/26/2023)
09/27/2023	<u>33 (p.174)</u>	ORDER granting <u>4 (p.140)</u> Motion for Kara Monahan to Appear Pro Hac Vice Note: Instructions to request Texas Southern CM/ECF registration through PACER are found <u>here</u> .(Signed by Judge Kenneth M Hoyt) Parties notified.(GabrielleLyons, 4) (Entered: 09/28/2023)
09/28/2023	<u>30 (p.171)</u>	ORDER granting <u>12 (p.148)</u> Motion for Leah Plaugher Hubinger to Appear Pro Hac Vice Note: Instructions to request Texas Southern CM/ECF registration through PACER are found <u>here</u> .(Signed by Judge Kenneth M Hoyt) Parties notified.(JacquelineMata, 4) (Entered: 09/28/2023)
09/28/2023	<u>31 (p.172)</u>	ORDER granting <u>14 (p.150)</u> Motion for Patrick Michael Kennedy to Appear Pro Hac Vice Note: Instructions to request Texas Southern CM/ECF registration through PACER are found <u>here</u> .(Signed by Judge Kenneth M Hoyt) Parties notified.(JacquelineMata, 4) (Entered: 09/28/2023)
09/28/2023	<u>32 (p.173)</u>	ORDER granting <u>15 (p.151)</u> Motion for Charles A. Loughlin to

		Appear Pro Hac Vice Note: Instructions to request Texas Southern CM/ECF registration through PACER are found here. (Signed by Judge Kenneth M Hoyt) Parties notified.(JacquelineMata, 4) (Entered: 09/28/2023)
09/28/2023	<u>34 (p.175)</u>	ORDER granting <u>5 (p.141)</u> Motion for Michael J. Arin to Appear Pro Hac Vice Note: Instructions to request Texas Southern CM/ECF registration through PACER are found here. (Signed by Judge Kenneth M Hoyt) Parties notified.(GabrielleLyons, 4) (Entered: 09/28/2023)
09/28/2023	<u>35 (p.176)</u>	ORDER granting <u>6 (p.142)</u> Motion for Gary Howard Schorr to Appear Pro Hac Vice Note: Instructions to request Texas Southern CM/ECF registration through PACER are found here. (Signed by Judge Kenneth M Hoyt) Parties notified.(GabrielleLyons, 4) (Entered: 09/28/2023)
09/28/2023	<u>36 (p.177)</u>	ORDER granting <u>7 (p.143)</u> Motion for Dylan Herts to Appear Pro Hac Vice Note: Instructions to request Texas Southern CM/ECF registration through PACER are found here. (Signed by Judge Kenneth M Hoyt) Parties notified.(GabrielleLyons, 4) (Entered: 09/28/2023)
09/28/2023	<u>37 (p.178)</u>	ORDER granting <u>8 (p.144)</u> Motion for Timothy Grayson to Appear Pro Hac Vice Note: Instructions to request Texas Southern CM/ECF registration through PACER are found here. (Signed by Judge Kenneth M Hoyt) Parties notified.(GabrielleLyons, 4) (Entered: 09/28/2023)
09/28/2023	<u>38 (p.179)</u>	ORDER granting <u>9 (p.145)</u> Motion for Eric M. Sprague to Appear Pro Hac Vice Note: Instructions to request Texas Southern CM/ECF registration through PACER are found here. (Signed by Judge Kenneth M Hoyt) Parties notified.(GabrielleLyons, 4) (Entered: 09/28/2023)
09/28/2023	<u>39 (p.180)</u>	ORDER granting <u>10 (p.146)</u> Motion for Neal J. Perlman to Appear Pro Hac Vice Note: Instructions to request Texas Southern CM/ECF registration through PACER are found here. (Signed by Judge Kenneth M Hoyt) Parties notified.(GabrielleLyons, 4) (Entered: 09/28/2023)
09/28/2023	<u>40 (p.181)</u>	ORDER granting <u>11 (p.147)</u> Motion for Bradley S. Albert to Appear Pro Hac Vice Note: Instructions to request Texas Southern CM/ECF registration through PACER are found here. (Signed by Judge Kenneth M Hoyt) Parties notified.(GabrielleLyons, 4) (Entered: 09/28/2023)
09/28/2023	<u>41 (p.182)</u>	ORDER granting <u>16 (p.152)</u> Motion for Kenneth W. Field to Appear Pro Hac Vice Note: Instructions to request Texas Southern CM/ECF registration through PACER are found here. (Signed by Judge Kenneth M Hoyt) Parties notified.(JacquelineMata, 4) (Entered: 09/28/2023)
09/28/2023	<u>42 (p.183)</u>	ORDER granting <u>17 (p.153)</u> Motion for Jamie Lee to Appear Pro Hac Vice Note: Instructions to request Texas Southern CM/ECF registration through PACER are found

		<u>here</u> .(Signed by Judge Kenneth M Hoyt) Parties notified.(JacquelineMata, 4) (Entered: 09/28/2023)
09/28/2023	<u>43 (p.184)</u>	ORDER granting <u>18 (p.154)</u> Motion for Ilana Kattan to Appear Pro Hac Vice Note: Instructions to request Texas Southern CM/ECF registration through PACER are found <u>here</u> .(Signed by Judge Kenneth M Hoyt) Parties notified.(JacquelineMata, 4) (Entered: 09/28/2023)
09/28/2023	<u>44 (p.185)</u>	ORDER granting <u>19 (p.155)</u> Motion for Ashley Ifeadike to Appear Pro Hac Vice Note: Instructions to request Texas Southern CM/ECF registration through PACER are found <u>here</u> .(Signed by Judge Kenneth M Hoyt) Parties notified.(JacquelineMata, 4) (Entered: 09/28/2023)
09/29/2023	<u>45 (p.186)</u>	MOTION to Appear Pro Hac Vice for Geoffrey M. Klineberg (Fee Paid: \$100, receipt number ATXSDC-30589991) by U.S. Anesthesia Partners, Inc., filed. Motion Docket Date 10/20/2023. (Klineberg, Geoffrey) (Entered: 09/29/2023)
09/29/2023	<u>46 (p.187)</u>	MOTION to Appear Pro Hac Vice for Kevin J. Miller (Fee Paid: \$100, receipt number ATXSDC-30590205) by U.S. Anesthesia Partners, Inc., filed. Motion Docket Date 10/20/2023. (Miller, Kevin) (Entered: 09/29/2023)
09/29/2023	<u>47 (p.188)</u>	MOTION to Appear Pro Hac Vice for Mark C. Hansen (Fee Paid: \$100, receipt number ATXSDC-30590373) by U.S. Anesthesia Partners, Inc., filed. Motion Docket Date 10/20/2023. (Hansen, Mark) (Entered: 09/29/2023)
09/29/2023	<u>48 (p.189)</u>	MOTION to Appear Pro Hac Vice for Kenneth M. Fetterman (Fee Paid: \$100, receipt number ATXSDC-30590452) by U.S. Anesthesia Partners, Inc., filed. Motion Docket Date 10/20/2023. (Fetterman, Kenneth) (Entered: 09/29/2023)
09/29/2023	<u>49 (p.190)</u>	MOTION to Appear Pro Hac Vice for Kevin B. Huff (Fee Paid: \$100, receipt number ATXSDC-30590512) by U.S. Anesthesia Partners, Inc., filed. Motion Docket Date 10/20/2023. (Huff, Kevin) (Entered: 09/29/2023)
09/29/2023	<u>50 (p.191)</u>	MOTION to Appear Pro Hac Vice for David L. Schwarz (Fee Paid: \$100, receipt number ATXSDC-30590585) by U.S. Anesthesia Partners, Inc., filed. Motion Docket Date 10/20/2023. (Schwarz, David) (Entered: 09/29/2023)
09/29/2023	<u>51 (p.192)</u>	MOTION to Appear Pro Hac Vice for Catherine M. Redlingshafer (Fee Paid: \$100, receipt number ATXSDC-30590636) by U.S. Anesthesia Partners, Inc., filed. Motion Docket Date 10/20/2023. (Redlingshafer, Catherine) (Entered: 09/29/2023)
10/02/2023	<u>52 (p.193)</u>	ORDER granting <u>49 (p.190)</u> Motion for Kevin Huff to Appear Pro Hac Vice Note: Instructions to request Texas Southern CM/ECF registration through PACER are found <u>here</u> .(Signed by Judge Kenneth M Hoyt) Parties notified.(KimberlyPicota, 4) (Entered: 10/02/2023)

10/02/2023	<u>53 (p.194)</u>	ORDER granting <u>47 (p.188)</u> Motion for Mark Hansen to Appear Pro Hac Vice Note: Instructions to request Texas Southern CM/ECF registration through PACER are found here. (Signed by Judge Kenneth M Hoyt) Parties notified.(KimberlyPicota, 4) (Entered: 10/02/2023)
10/02/2023	<u>54 (p.195)</u>	ORDER granting <u>46 (p.187)</u> Motion for Kevin Miller to Appear Pro Hac Vice Note: Instructions to request Texas Southern CM/ECF registration through PACER are found here. (Signed by Judge Kenneth M Hoyt) Parties notified.(KimberlyPicota, 4) (Entered: 10/02/2023)
10/02/2023	<u>55 (p.196)</u>	ORDER granting <u>45 (p.186)</u> Motion for Geoffrey Klineberg to Appear Pro Hac Vice Note: Instructions to request Texas Southern CM/ECF registration through PACER are found here. (Signed by Judge Kenneth M Hoyt) Parties notified.(KimberlyPicota, 4) (Entered: 10/02/2023)
10/02/2023	<u>56 (p.197)</u>	ORDER granting <u>48 (p.189)</u> Motion for Kenneth Fetterman to Appear Pro Hac Vice Note: Instructions to request Texas Southern CM/ECF registration through PACER are found here. (Signed by Judge Kenneth M Hoyt) Parties notified.(KimberlyPicota, 4) (Entered: 10/02/2023)
10/02/2023	<u>57 (p.198)</u>	ORDER granting <u>51 (p.192)</u> Motion for Catherine Redlingshafer to Appear Pro Hac Vice Note: Instructions to request Texas Southern CM/ECF registration through PACER are found here. (Signed by Judge Kenneth M Hoyt) Parties notified.(KimberlyPicota, 4) (Entered: 10/02/2023)
10/02/2023	<u>58 (p.199)</u>	ORDER granting <u>50 (p.191)</u> Motion for David Schwarz to Appear Pro Hac Vice Note: Instructions to request Texas Southern CM/ECF registration through PACER are found here. (Signed by Judge Kenneth M Hoyt) Parties notified.(KimberlyPicota, 4) (Entered: 10/02/2023)
10/06/2023	<u>59 (p.200)</u>	ORDER granting <u>2 (p.3449)</u> Ex Parte Motion for Leave to File Unredacted Complaint Temporarily Under Seal. (Signed by Judge Kenneth M Hoyt) Parties notified.(KimberlyPicota, 4). (Entered: 10/06/2023)
10/06/2023	60	COMPLAINT for Injunctive and Other Equitable Relief against U.S. Anesthesia Partners, Inc., WCAS Associates XI, LLC, WCAS Associates XII, LLC, WCAS Management Corporation, WCAS Management, L.P., WCAS Management, LLC, Welsh, Carson, Anderson & Stowe XI, L.P., Welsh, Carson, Anderson & Stowe XII, L.P. filed by Federal Trade Commission.(KimberlyPicota, 4) (KimberlyPicota, 4). (Entered: 10/06/2023)
10/06/2023	61	***ENTERED IN ERROR***.(KimberlyPicota, 4) Modified on 10/6/2023 (CynthiaHorace). (Entered: 10/06/2023)
10/06/2023	<u>62 (p.3562)</u>	SEALED UNREDACTED COMPLAINT, filed. (KimberlyPicota, 4) (Entered: 10/06/2023)

10/10/2023	<u>63 (p.202)</u>	CERTIFICATE OF INTERESTED PARTIES by U.S. Anesthesia Partners, Inc., filed.(Hansen, Mark) (Entered: 10/10/2023)
10/10/2023	<u>64 (p.206)</u>	NOTICE of Appearance by R. Paul Yetter on behalf of WCAS Associates XI, LLC, WCAS Associates XII, LLC, WCAS Management Corporation, WCAS Management, L.P., WCAS Management, LLC, Welsh, Carson, Anderson & Stowe XI, L.P., Welsh, Carson, Anderson & Stowe XII, L.P., filed. (Yetter, R) (Entered: 10/10/2023)
10/10/2023	<u>65 (p.208)</u>	CERTIFICATE OF INTERESTED PARTIES by WCAS Associates XI, LLC, WCAS Associates XII, LLC, WCAS Management Corporation, WCAS Management, L.P., WCAS Management, LLC, Welsh, Carson, Anderson & Stowe XI, L.P., Welsh, Carson, Anderson & Stowe XII, L.P., filed.(Yetter, R) (Entered: 10/10/2023)
10/11/2023	<u>66 (p.212)</u>	Joint MOTION to Modify Motion to Dismiss Deadlines and Page Limits by Federal Trade Commission, filed. Motion Docket Date 11/1/2023. (Attachments: # <u>1 (p.31)</u> Proposed Order)(Monahan, Kara) (Entered: 10/11/2023)
10/19/2023	<u>67 (p.218)</u>	ORDER granting <u>66 (p.212)</u> Motion to Modify Motion to Dismiss Deadlines and Page Limits. Motions to dismiss due 11/20/23. Opposition due 1/19/24. Replies in support due 2/26/24.(Signed by Judge Kenneth M Hoyt) Parties notified.(GabrielleLyons, 4) (Entered: 10/19/2023)
10/26/2023	<u>68 (p.219)</u>	Joint MOTION to Seal Information in Complaint by Federal Trade Commission, filed. Motion Docket Date 11/16/2023. (Attachments: # <u>1 (p.31)</u> Attachment 1, # <u>2 (p.3449)</u> Proposed Order)(Monahan, Kara) (Entered: 10/26/2023)
10/26/2023	<u>69 (p.3668)</u>	UNSEALED per Dkt. No. 109 (p.1119) . SEALED EXHIBITS <i>Attachment 1</i> re: <u>68 (p.219)</u> Joint MOTION to Seal Information in Complaint by Federal Trade Commission, filed. (Monahan, Kara) Modified on 12/1/2023 (GabrielleLyons, 4). (Entered: 10/26/2023)
10/26/2023	<u>70 (p.227)</u>	NOTICE of Appearance by Gary Y. Gould on behalf of Envision Healthcare Corporation, filed. (Gould, Gary) (Entered: 10/26/2023)
10/26/2023	<u>71 (p.230)</u>	Unopposed MOTION to Seal Declaration of Len Wright in Support of the Parties' Joint Motion to Seal Information in Complaint by U.S. Anesthesia Partners, Inc., filed. Motion Docket Date 11/16/2023. (Attachments: # <u>1 (p.31)</u> Proposed Order)(Hansen, Mark) (Entered: 10/26/2023)
10/26/2023	<u>72 (p.3775)</u>	SEALED DOCUMENT <i>Declaration of Len Wright in Support of the Parties' Joint Motion to Seal Information in Complaint</i> by U.S. Anesthesia Partners, Inc., filed. (Hansen, Mark) (Entered: 10/26/2023)
10/26/2023	<u>73 (p.237)</u>	

		Corrected MOTION to Seal Declaration of Len Wright in Support of the Parties' Joint Motion to Seal Information in Complaint (Unopposed) by U.S. Anesthesia Partners, Inc., filed. Motion Docket Date 11/16/2023. (Attachments: # <u>1 (p.31)</u> Proposed Order)(Hansen, Mark) (Entered: 10/26/2023)
10/26/2023	<u>74 (p.244)</u>	UNSEALED per Dkt. No. 109 (p.1119) . Opposed SEALED MOTION by Envision Healthcare Corporation, filed. (Attachments: # <u>1 (p.31)</u> Exhibit A, # <u>2 (p.3449)</u> Exhibit B, # <u>3 (p.3560)</u> Exhibit C, # <u>4 (p.140)</u> Exhibit D, # <u>5 (p.141)</u> Affidavit, # <u>6 (p.142)</u> Proposed Order) (Gould, Gary) Modified on 12/1/2023 (GabrielleLyons, 4). (Entered: 10/26/2023)
10/26/2023	<u>75 (p.414)</u>	MOTION to Appear Pro Hac Vice for Amanda Wait (Fee Paid: \$100, receipt number ATXSDC-30724632) by Envision Healthcare Corporation, filed. Motion Docket Date 11/16/2023. (Gould, Gary) (Entered: 10/26/2023)
10/30/2023	<u>76 (p.415)</u>	ORDER granting <u>75 (p.414)</u> Motion for Amanda Wait to Appear Pro Hac Vice Note: Instructions to request Texas Southern CM/ECF registration through PACER are found here .(Signed by Judge Kenneth M Hoyt) Parties notified.(GabrielleLyons, 4) (Entered: 10/30/2023)
10/30/2023	<u>77 (p.416)</u>	ORDER for Expedited Response re: <u>74 (p.244)</u> Opposed SEALED MOTION Response to Motion due by 11/9/2023.(Signed by Judge Kenneth M Hoyt) Parties notified.(CynthiaHorace) (Entered: 10/30/2023)
10/30/2023	<u>78 (p.417)</u>	ORDER granting <u>73 (p.237)</u> Motion to Seal.(Signed by Judge Kenneth M Hoyt) Parties notified.(GabrielleLyons, 4) (Entered: 10/30/2023)
11/02/2023	<u>79 (p.418)</u>	ORDER granting <u>68 (p.219)</u> Motion to Seal Information in Complaint.(Signed by Judge Kenneth M Hoyt) Parties notified.(KimberlyPicota, 4) (Entered: 11/02/2023)
11/02/2023	<u>80 (p.419)</u>	CORRECTED ORDER granting <u>68 (p.219)</u> Joint MOTION to Seal Information in Complaint. (Signed by Judge Kenneth M Hoyt) Parties notified.(JacquelineMata, 4) (Entered: 11/03/2023)
11/06/2023	<u>81 (p.421)</u>	UNSEALED per Dkt. No. 109 (p.1119) . SEALED RESPONSE <i>in Opposition</i> re: <u>74 (p.244)</u> Opposed SEALED MOTION by Federal Trade Commission, filed. (Attachments: # <u>1 (p.31)</u> Appendix Appendix of Authorities, # <u>2 (p.3449)</u> Proposed Order) (Monahan, Kara) Modified on 12/1/2023 (GabrielleLyons, 4). (Entered: 11/06/2023)
11/08/2023	<u>82 (p.605)</u>	MOTION to Appear Pro Hac Vice for Douglas Hallward-Driemeier (Fee Paid: \$100, receipt number ATXSDC-30780538) by WCAS Associates XI, LLC, WCAS Associates XII, LLC, WCAS Management Corporation, WCAS Management, L.P., WCAS Management, LLC, Welsh, Carson, Anderson & Stowe XI, L.P., Welsh, Carson, Anderson & Stowe XII, L.P., filed. Motion Docket Date 11/29/2023.

		(Hallward-Driemeier, Douglas) (Entered: 11/08/2023)
11/08/2023	<u>83 (p.606)</u>	MOTION to Appear Pro Hac Vice for David B. Hennes (Fee Paid: \$100, receipt number ATXSDC-30780672) by WCAS Associates XI, LLC, WCAS Associates XII, LLC, WCAS Management Corporation, WCAS Management, L.P., WCAS Management, LLC, Welsh, Carson, Anderson & Stowe XI, L.P., Welsh, Carson, Anderson & Stowe XII, L.P., filed. Motion Docket Date 11/29/2023. (Hennes, David) (Entered: 11/08/2023)
11/08/2023	<u>84 (p.607)</u>	MOTION to Appear Pro Hac Vice for Jane E. Willis (Fee Paid: \$100, receipt number ATXSDC-30780864) by WCAS Associates XI, LLC, WCAS Associates XII, LLC, WCAS Management Corporation, WCAS Management, L.P., WCAS Management, LLC, Welsh, Carson, Anderson & Stowe XI, L.P., Welsh, Carson, Anderson & Stowe XII, L.P., filed. Motion Docket Date 11/29/2023. (Willis, Jane) (Entered: 11/08/2023)
11/08/2023	<u>85 (p.608)</u>	MOTION to Appear Pro Hac Vice for C. Thomas Brown (Fee Paid: \$100, receipt number ATXSDC-30781042) by WCAS Associates XI, LLC, WCAS Associates XII, LLC, WCAS Management Corporation, WCAS Management, L.P., WCAS Management, LLC, Welsh, Carson, Anderson & Stowe XI, L.P., Welsh, Carson, Anderson & Stowe XII, L.P., filed. Motion Docket Date 11/29/2023. (Brown, C.) (Entered: 11/08/2023)
11/08/2023	<u>86 (p.609)</u>	MOTION to Appear Pro Hac Vice for Kathryn Caldwell (Fee Paid: \$100, receipt number ATXSDC-30781116) by WCAS Associates XI, LLC, WCAS Associates XII, LLC, WCAS Management Corporation, WCAS Management, L.P., WCAS Management, LLC, Welsh, Carson, Anderson & Stowe XI, L.P., Welsh, Carson, Anderson & Stowe XII, L.P., filed. Motion Docket Date 11/29/2023. (Caldwell, Kathryn) (Entered: 11/08/2023)
11/08/2023	<u>87 (p.3786)</u>	SEALED RESPONSE re: <u>74 (p.244)</u> Opposed SEALED MOTION by U.S. Anesthesia Partners, Inc., filed. (Hansen, Mark) (Entered: 11/08/2023)
11/09/2023	<u>88 (p.610)</u>	ORDER granting <u>86 (p.609)</u> Motion for Kathryn Caldwell to Appear Pro Hac Vice Note: Instructions to request Texas Southern CM/ECF registration through PACER are found here. (Signed by Judge Kenneth M Hoyt) Parties notified.(GabrielleLyons, 4) (Entered: 11/09/2023)
11/09/2023	<u>89 (p.611)</u>	ORDER granting <u>84 (p.607)</u> Motion for Jane E. Willis to Appear Pro Hac Vice Note: Instructions to request Texas Southern CM/ECF registration through PACER are found here. (Signed by Judge Kenneth M Hoyt) Parties notified.(GabrielleLyons, 4) (Entered: 11/09/2023)
11/09/2023	<u>90 (p.612)</u>	

		ORDER granting 85 (p.608) Motion for C. Thomas Brown to Appear Pro Hac Vice Note: Instructions to request Texas Southern CM/ECF registration through PACER are found here. (Signed by Judge Kenneth M Hoyt) Parties notified.(GabrielleLyons, 4) (Entered: 11/09/2023)
11/09/2023	91 (p.613)	ORDER granting 83 (p.606) Motion for David B. Hennes to Appear Pro Hac Vice Note: Instructions to request Texas Southern CM/ECF registration through PACER are found here. (Signed by Judge Kenneth M Hoyt) Parties notified.(GabrielleLyons, 4) (Entered: 11/09/2023)
11/09/2023	92 (p.614)	ORDER granting 82 (p.605) Motion for Douglas Hallward-Driemeier to Appear Pro Hac Vice Note: Instructions to request Texas Southern CM/ECF registration through PACER are found here. (Signed by Judge Kenneth M Hoyt) Parties notified.(GabrielleLyons, 4) (Entered: 11/09/2023)
11/13/2023	93 (p.615)	MOTION to Appear Pro Hac Vice for Derek C. Reinbold (Fee Paid: \$100, receipt number ATXSDC-30794967) by U.S. Anesthesia Partners, Inc., filed. Motion Docket Date 12/4/2023. (Reinbold, Derek) (Entered: 11/13/2023)
11/13/2023	94 (p.616)	MOTION to Appear Pro Hac Vice for Dennis D. Howe (Fee Paid: \$100, receipt number ATXSDC-30795340) by U.S. Anesthesia Partners, Inc., filed. Motion Docket Date 12/4/2023. (Howe, Dennis) (Entered: 11/13/2023)
11/13/2023	95 (p.3789)	SEALED REPLY re: 74 (p.244) Opposed SEALED MOTION by Envision Healthcare Corporation, filed. (Gould, Gary) (Entered: 11/13/2023)
11/20/2023	96 (p.617)	Unopposed MOTION to Seal Motion to Dismiss by U.S. Anesthesia Partners, Inc., filed. Motion Docket Date 12/11/2023. (Attachments: # 1 (p.31) Proposed Order)(Hansen, Mark) (Entered: 11/20/2023)
11/20/2023	97 (p.3798)	SEALED MOTION <i>to Dismiss</i> by U.S. Anesthesia Partners, Inc., filed. (Attachments: # 1 (p.31) Proposed Order) (Hansen, Mark) (Entered: 11/20/2023)
11/20/2023	98 (p.622)	APPENDIX re: 97 (p.3798) SEALED MOTION <i>to Dismiss</i> by U.S. Anesthesia Partners, Inc., filed.(Hansen, Mark) (Entered: 11/20/2023)
11/20/2023	99 (p.787)	MOTION to Dismiss 1 (p.31) Complaint (<i>Redacted</i>) by U.S. Anesthesia Partners, Inc., filed. Motion Docket Date 12/11/2023. (Attachments: # 1 (p.31) Proposed Order)(Hansen, Mark) (Entered: 11/20/2023)
11/20/2023	100 (p.832)	MOTION to Dismiss 1 (p.31) Complaint <i>Welsh Carson Entities' Motion to Dismiss</i> by WCAS Associates XI, LLC, WCAS Associates XII, LLC, WCAS Management Corporation, WCAS Management, L.P., WCAS Management, LLC, Welsh, Carson, Anderson & Stowe XI, L.P., Welsh, Carson, Anderson

		& Stowe XII, L.P., filed. Motion Docket Date 12/11/2023. (Attachments: # <u>1 (p.31)</u> Proposed Order)(Yetter, R) (Entered: 11/20/2023)
11/20/2023	<u>101 (p.878)</u>	APPENDIX re: <u>100 (p.832)</u> MOTION to Dismiss <u>1 (p.31)</u> Complaint <i>Welsh Carson Entities' Motion to Dismiss</i> by WCAS Associates XI, LLC, WCAS Associates XII, LLC, WCAS Management Corporation, WCAS Management, L.P., WCAS Management, LLC, Welsh, Carson, Anderson & Stowe XI, L.P., Welsh, Carson, Anderson & Stowe XII, L.P., filed.(Yetter, R) (Entered: 11/20/2023)
11/27/2023	<u>102 (p.1080)</u>	ORDER granting <u>94 (p.616)</u> Motion for Dennis D. Howe to Appear Pro Hac Vice Note: Instructions to request Texas Southern CM/ECF registration through PACER are found <u>here</u>. (Signed by Judge Kenneth M Hoyt) Parties notified.(JacquelineMata, 4) (Entered: 11/27/2023)
11/27/2023	<u>103 (p.1081)</u>	ORDER granting <u>93 (p.615)</u> Motion for Derek C. Reinbold to Appear Pro Hac Vice Note: Instructions to request Texas Southern CM/ECF registration through PACER are found <u>here</u>. (Signed by Judge Kenneth M Hoyt) Parties notified.(JacquelineMata, 4) (Entered: 11/27/2023)
11/27/2023	<u>104 (p.1082)</u>	MOTION to Appear Pro Hac Vice for Benjamin Gruenstein (Fee Paid: \$100, receipt number ATXSDC-30854071) by American Investment Council, filed. Motion Docket Date 12/18/2023. (Gruenstein, Benjamin) (Entered: 11/27/2023)
11/27/2023	<u>105 (p.1083)</u>	MOTION to Appear Pro Hac Vice for Noah Joshua Phillips (Fee Paid: \$100, receipt number ATXSDC-30854081) by American Investment Council, filed. Motion Docket Date 12/18/2023. (Phillips, Noah) (Entered: 11/27/2023)
11/27/2023	<u>106 (p.1084)</u>	NOTICE of Appearance by Gregg J. Costa on behalf of American Investment Council, filed. (Costa, Gregg) (Entered: 11/27/2023)
11/27/2023	<u>107 (p.1087)</u>	MOTION for Leave to File Brief as Amicus Curiae by American Investment Council, filed. Motion Docket Date 12/18/2023. (Attachments: # <u>1 (p.31)</u> Proposed Amicus Brief, # <u>2 (p.3449)</u> Proposed Order)(Gruenstein, Benjamin) (Entered: 11/27/2023)
11/29/2023	<u>108 (p.1118)</u>	MOTION to Appear Pro Hac Vice for Perry Lange (Fee Paid: \$100, receipt number ATXSDC-30864321) by U.S. Anesthesia Partners, Inc., WCAS Associates XI, LLC, WCAS Associates XII, LLC, WCAS Management Corporation, WCAS Management, L.P., WCAS Management, LLC, Welsh, Carson, Anderson & Stowe XI, L.P., Welsh, Carson, Anderson & Stowe XII, L.P., filed. Motion Docket Date 12/20/2023. (Lange, Perry) (Entered: 11/29/2023)
11/30/2023	<u>109 (p.1119)</u>	ORDER denying <u>74 (p.244)</u> Motion to Seal.(Signed by Judge Kenneth M Hoyt) Parties notified.(GabrielleLyons, 4) (Entered: 11/30/2023)

12/06/2023	<u>110 (p.1121)</u>	NOTICE of Re-Filing re: <u>99 (p.787)</u> MOTION to Dismiss <u>1 (p.31)</u> Complaint (<i>Redacted</i>) by U.S. Anesthesia Partners, Inc., filed. (Attachments: # <u>1 (p.31)</u> Motion To Dismiss the FTC's Complaint (Modified Redacted Version))(Hansen, Mark) (Entered: 12/06/2023)
12/07/2023	<u>111 (p.1168)</u>	MOTION to Appear Pro Hac Vice for Kyle M. Wood (Fee Paid: \$100, receipt number ATXSDC-30905181) by U.S. Anesthesia Partners, Inc., filed. Motion Docket Date 12/28/2023. (Wood, Kyle) (Entered: 12/07/2023)
12/28/2023	<u>112 (p.1169)</u>	ORDER granting <u>104 (p.1082)</u> Motion for Benjamin Gruenstein to Appear Pro Hac Vice Note: Instructions to request Texas Southern CM/ECF registration through PACER are found <u>here</u>. (Signed by Judge Kenneth M Hoyt) Parties notified.(KimberlyPicota, 4) (Entered: 12/28/2023)
12/28/2023	<u>113 (p.1170)</u>	ORDER granting <u>108 (p.1118)</u> Motion for Perry Lange to Appear Pro Hac Vice Note: Instructions to request Texas Southern CM/ECF registration through PACER are found <u>here</u>. (Signed by Judge Kenneth M Hoyt) Parties notified.(KimberlyPicota, 4) (Entered: 12/28/2023)
12/28/2023	<u>114 (p.1171)</u>	ORDER granting <u>111 (p.1168)</u> Motion for Kyle Wood to Appear Pro Hac Vice Note: Instructions to request Texas Southern CM/ECF registration through PACER are found <u>here</u>. (Signed by Judge Kenneth M Hoyt) Parties notified.(KimberlyPicota, 4) (Entered: 12/28/2023)
12/28/2023	<u>115 (p.1172)</u>	ORDER granting <u>105 (p.1083)</u> Motion for Noah Phillips to Appear Pro Hac Vice Note: Instructions to request Texas Southern CM/ECF registration through PACER are found <u>here</u>. (Signed by Judge Kenneth M Hoyt) Parties notified.(KimberlyPicota, 4) (Entered: 12/28/2023)
01/03/2024	<u>116 (p.1173)</u>	ORDER granting <u>107 (p.1087)</u> Motion for Leave to File Brief as Amicus Curiae.(Signed by Judge Kenneth M Hoyt) Parties notified.(GabrielleLyons, 4) (Entered: 01/04/2024)
01/03/2024	<u>117 (p.1174)</u>	BRIEF as Amicus Curiae in Support re: <u>100 (p.832)</u> MOTION to Dismiss <u>1 (p.31)</u> Complaint <i>Welsh Carson Entities' Motion to Dismiss</i> by American Investment Council, filed.(GabrielleLyons, 4) (Entered: 01/04/2024)
01/19/2024	<u>118 (p.1199)</u>	MOTION to Appear Pro Hac Vice for Daniel Butrymowicz (Fee Exempt) by Federal Trade Commission, filed. Motion Docket Date 2/9/2024. (Butrymowicz, Daniel) (Entered: 01/19/2024)
01/19/2024	<u>119 (p.1200)</u>	RESPONSE in Opposition to <u>97 (p.3798)</u> SEALED MOTION to Dismiss, filed by Federal Trade Commission. (Attachments: # <u>1 (p.31)</u> Proposed Order, # <u>2 (p.3449)</u> First Appendix of Authorities, # <u>3 (p.3560)</u> Second Appendix of Authorities)(Monahan, Kara) (Entered: 01/19/2024)
01/19/2024	<u>120 (p.1599)</u>	

		RESPONSE in Opposition to <u>100 (p.832)</u> MOTION to Dismiss <u>1 (p.31)</u> Complaint <i>Welsh Carson Entities' Motion to Dismiss</i> , filed by Federal Trade Commission. (Attachments: # <u>1 (p.31)</u> Proposed Order, # <u>2 (p.3449)</u> Appendix of Authorities)(Monahan, Kara) (Entered: 01/19/2024)
01/22/2024	<u>121 (p.1889)</u>	ORDER granting <u>118 (p.1199)</u> Motion for Daniel W. Butrymowicz to Appear Pro Hac Vice Note: Instructions to request Texas Southern CM/ECF registration through PACER are found <u>here</u> .(Signed by Judge Kenneth M Hoyt) Parties notified.(KimberlyPicota, 4) (Entered: 01/25/2024)
02/23/2024	<u>122 (p.1890)</u>	NOTICE of Appearance by David Beck on behalf of U.S. Anesthesia Partners, Inc., filed. (Beck, David) (Entered: 02/23/2024)
02/23/2024	<u>123 (p.1892)</u>	NOTICE of Appearance by Garrett Brawley on behalf of U.S. Anesthesia Partners, Inc., filed. (Brawley, Garrett) (Entered: 02/23/2024)
02/26/2024	<u>124 (p.1894)</u>	REPLY in Support of <u>100 (p.832)</u> MOTION to Dismiss <u>1 (p.31)</u> Complaint <i>Welsh Carson Entities' Motion to Dismiss</i> , filed by WCAS Associates XI, LLC, WCAS Associates XII, LLC, WCAS Management Corporation, WCAS Management, L.P., WCAS Management, LLC, Welsh, Carson, Anderson & Stowe XI, L.P., Welsh, Carson, Anderson & Stowe XII, L.P.. (Yetter, R) (Entered: 02/26/2024)
02/26/2024	<u>125 (p.1922)</u>	APPENDIX re: <u>124 (p.1894)</u> Reply in Support of Motion, by WCAS Associates XI, LLC, WCAS Associates XII, LLC, WCAS Management Corporation, WCAS Management, L.P., WCAS Management, LLC, Welsh, Carson, Anderson & Stowe XI, L.P., Welsh, Carson, Anderson & Stowe XII, L.P., filed.(Yetter, R) (Entered: 02/26/2024)
02/26/2024	<u>126 (p.2172)</u>	REPLY in Support of <u>99 (p.787)</u> MOTION to Dismiss <u>1 (p.31)</u> Complaint (<i>Redacted</i>), filed by U.S. Anesthesia Partners, Inc.. (Attachments: # <u>1 (p.31)</u> Appendix)(Hansen, Mark) (Entered: 02/26/2024)
03/08/2024	<u>127 (p.2318)</u>	NOTICE of Setting as to <u>99 (p.787)</u> , <u>100 (p.832)</u> MOTIONS to Dismiss. Parties notified. Motion Hearing set for 3/28/2024 at 01:00 PM in Courtroom 11A before Judge Kenneth M Hoyt, filed. (CynthiaHorace) (Entered: 03/08/2024)
03/08/2024	<u>128 (p.2319)</u>	NOTICE of Resetting as to <u>99 (p.787)</u> , <u>100 (p.832)</u> MOTIONS to Dismiss. Parties notified. Motion Hearing set for 3/28/2024 at 01:00 PM in Courtroom 11A before Judge Kenneth M Hoyt, filed. (TIME CHANGE ONLY) (CynthiaHorace) (Entered: 03/08/2024)
03/25/2024	<u>129 (p.2320)</u>	MOTION to Appear Pro Hac Vice for David B. Schwartz (Fee Exempt) by Federal Trade Commission, filed. Motion Docket Date 4/15/2024. (Schwartz, David) (Entered: 03/25/2024)
03/28/2024	<u>130 (p.2321)</u>	

		ORDER granting <u>129 (p.2320)</u> Motion for David B. Schwartz to Appear Pro Hac Vice Note: Instructions to request Texas Southern CM/ECF registration through PACER are found <u>here</u>. (Signed by Judge Kenneth M Hoyt) Parties notified. (glc4) (Entered: 03/29/2024)
04/02/2024	<u>131 (p.2322)</u>	NOTICE of Resetting as to <u>99 (p.787)</u> , <u>100 (p.832)</u> MOTIONS to Dismiss. Parties notified. Motion Hearing set for 4/8/2024 at 10:00 AM in Courtroom 11A before Judge Kenneth M Hoyt, filed. (cjh4) (Entered: 04/02/2024)
04/05/2024	<u>132 (p.2323)</u>	JOINT DISCOVERY/CASE MANAGEMENT PLAN by Federal Trade Commission, filed. (Attachments: # <u>1 (p.31)</u> FTC Appendix of Authorities, # <u>2 (p.3449)</u> Defendants Appendix of Authorities) (Grayson, Timothy) (Entered: 04/05/2024)
04/08/2024	133	Minute Entry for proceedings held before Judge Kenneth M Hoyt. The Court heard arguments from each side and takes the pending motions under advisement. MOTION HEARING held on 4/8/2024. Appearances: Gregg Jeffrey Costa, Timothy Grayson, David Bernard Schwartz, Geoffrey Morris Klineberg, David J Beck, Garrett Scott Brawley, R Paul Yetter, David B. Hennes, Kathryn E Caldwell. (Court Reporter: M. Malone), filed. (cjh4) (Entered: 04/08/2024)
04/08/2024	<u>134 (p.2579)</u>	AO 435 TRANSCRIPT REQUEST by Steven Vacek for Transcript of Motion Hearing before Judge Hoyt on 4/8/24. Expedited (7 days) turnaround requested. Court Reporter/Transcriber: Mayra Malone, filed. (cmk4) (Entered: 04/08/2024)
04/09/2024	<u>135 (p.2580)</u>	AO 435 TRANSCRIPT REQUEST by Jules Ross for Transcript of Motion Hearing held on 4/8/2024 before Kenneth M Hoyt. Ordinary (30 days) turnaround requested. Court Reporter/Transcriber: Mayra Malone, filed. (mew4) (Entered: 04/09/2024)
04/09/2024	<u>136 (p.2582)</u>	AO 435 TRANSCRIPT REQUEST by Ryan Gibbs for Transcript of Motion Hearing on April 8, 2024. Expedited (7 days) turnaround requested. Court Reporter/Transcriber: Mayra Malone, filed. (cng4) (Entered: 04/10/2024)
04/11/2024	<u>137 (p.2583)</u>	AO 435 TRANSCRIPT REQUEST by Julian Gill for Transcript of Hearing, 04/08/2024, Judge Kenneth M Hoyt. Expedited (7 days) turnaround requested. Court Reporter/Transcriber: Mayra Malone, filed. (bwl4) (Entered: 04/11/2024)
04/11/2024	<u>138 (p.2585)</u>	AO 435 TRANSCRIPT REQUEST by Michael Arin for Transcript of Motion Hearing on 4/8/2024 before Judge Kenneth M. Hoyt. Ordinary (30 days) turnaround requested. Court Reporter/Transcriber: Mayra Malone, filed. (Arin, Michael) (Entered: 04/11/2024)
04/11/2024	<u>139 (p.2587)</u>	Letter to Judge Hoyt re Statement by FTC by Welsh, Carson, Anderson & Stowe XI, L.P., filed. (Yetter, R) (Entered: 04/11/2024)

		04/11/2024)
04/15/2024	<u>140 (p.2588)</u>	AO 435 TRANSCRIPT REQUEST by Morganne Towne for Transcript of Motion Hearing held on 04/08/2024 before Judge Kenneth M Hoyt. Daily (24 hours) turnaround requested. Court Reporter/Transcriber: Mayra Malone, filed. (mew4) (Entered: 04/16/2024)
04/22/2024	<u>141 (p.3377)</u>	TRANSCRIPT re: Motion Hearing held on April 8, 2024 before Judge Kenneth M Hoyt. Court Reporter/Transcriber Mayra Malone. Ordering Party Paul Yetter Release of Transcript Restriction set for 7/22/2024., filed. (Malone, Mayra) (Entered: 04/22/2024)
04/23/2024	<u>142 (p.2590)</u>	Notice of Filing of Official Transcript as to <u>141 (p.3377)</u> Transcript. Party notified, filed. (dah4) (Entered: 04/23/2024)
05/01/2024	<u>143 (p.2591)</u>	ORDER SETTING SCHEDULING a) Initial disclosures are due on or before May 13, 2024; b) Discovery otherwise begins on or after May 13, 2024; c) The parties agree on the handling of electronically stored information, privileged information and a privilege log, if necessary; d) The parties agree to limitations as it relates to interrogatories, admissions, productions; e) The designations of experts rest on the parties who anticipate calling them. Experts must be designated and reports provided on or before January 31, 2025; rebuttal experts are to be designated and reports provided on or before February 28, 2025; no reply expert designations are permitted; f) All discovery, whether expert or fact witnesses closes April 30, 2025; g) Expedited responses are required on all pretrial motions; h) Discovery may be extended by agreement of the parties without Court intervention so long as the dispositive motion deadline and docket call dates are not to changed without leave of Court; i) Dispositive motion must be filed on or before April 30, 2025; responses are due by May 30, replies within ten (10) days of responses. No surreplies are permitted; a Docket Call set for 9/8/2025 at 11:30 AM in Courtroom 11A before Judge Kenneth M Hoyt (Signed by Judge Kenneth M Hoyt) Parties notified. (jm4) (Entered: 05/01/2024)
05/09/2024	<u>144 (p.2593)</u>	Opposed MOTION for Protective Order by Federal Trade Commission, filed. Motion Docket Date 5/30/2024. (Attachments: # <u>1 (p.31)</u> FTC's Proposed Protective Order) (Grayson, Timothy) (Entered: 05/09/2024)
05/09/2024	<u>145 (p.2619)</u>	MEMORANDUM of Law in Support re: <u>144 (p.2593)</u> Opposed MOTION for Protective Order by Federal Trade Commission, filed. (Attachments: # <u>1 (p.31)</u> Appendix of Authorities, # <u>2 (p.3449)</u> Arin Declaration, # <u>3 (p.3560)</u> Exhibit A, # <u>4 (p.140)</u> Exhibit B, # <u>5 (p.141)</u> Exhibit C, # <u>6 (p.142)</u> Exhibit D) (Grayson, Timothy) (Entered: 05/09/2024)
05/13/2024	<u>146 (p.2786)</u>	MEMORANDUM OPINION AND ORDER granting <u>100 (p.832)</u> MOTION to Dismiss <u>1 (p.31)</u> Complaint <i>Welsh Carson Entities' Motion to Dismiss</i> ; denying <u>99 (p.787)</u> MOTION to

		Dismiss <u>1 (p.31)</u> Complaint (<i>Redacted</i>) (Signed by Judge Kenneth M Hoyt) Parties notified. (glc4) (Entered: 05/13/2024)
05/14/2024	<u>147 (p.2809)</u>	RESPONSE in Opposition to <u>144 (p.2593)</u> Opposed MOTION for Protective Order, filed by U.S. Anesthesia Partners, Inc.. (Attachments: # <u>1 (p.31)</u> Exhibit A - Declaration of Ki'Jhana Friday, # <u>2 (p.3449)</u> Exhibit B - Proposed Protective Order Redline Comparison, # <u>3 (p.3560)</u> Appendix of Authorities, # <u>4 (p.140)</u> USAP's Proposed Protective Order) (Hansen, Mark) (Entered: 05/14/2024)
05/15/2024	<u>148 (p.3014)</u>	ORDER for Expedited Response re: <u>144 (p.2593)</u> Opposed MOTION for Protective Order. Response to Motion due by 5/28/2024.(Signed by Judge Kenneth M Hoyt) Parties notified. (cjh4) (Entered: 05/15/2024)
05/17/2024	<u>149 (p.3015)</u>	REPLY in Support of <u>144 (p.2593)</u> Opposed MOTION for Protective Order, filed by Federal Trade Commission. (Attachments: # <u>1 (p.31)</u> Revised Proposed Protective Order, # <u>2 (p.3449)</u> Second Arin Declaration, # <u>3 (p.3560)</u> Exhibit E, # <u>4 (p.140)</u> Exhibit F, # <u>5 (p.141)</u> Exhibit G) (Grayson, Timothy) (Entered: 05/17/2024)
05/23/2024	<u>150 (p.3244)</u>	Unopposed MOTION for Extension of Time To Answer Complaint by U.S. Anesthesia Partners, Inc., filed. Motion Docket Date 6/13/2024. (Attachments: # <u>1 (p.31)</u> Proposed Order) (Hansen, Mark) (Entered: 05/23/2024)
05/28/2024	<u>151 (p.3249)</u>	ORDER granting <u>150 (p.3244)</u> Unopposed Motion for Extension of Time to Answer. Answer due for U.S. Anesthesia Partners, Inc. 6/17/2024.(Signed by Judge Kenneth M Hoyt) Parties notified. (cjh4) (Entered: 05/28/2024)
05/28/2024	<u>152 (p.3250)</u>	ORDER ON MOTION FOR PROTECTIVE ORDER granting <u>144 (p.2593)</u> Opposed MOTION for Protective Order.(Signed by Judge Kenneth M Hoyt) Parties notified. (cjh4) (Entered: 05/28/2024)
06/12/2024	<u>153 (p.3253)</u>	NOTICE OF APPEAL to US Court of Appeals for the Fifth Circuit re: <u>146 (p.2786)</u> Memorandum and Opinion, by U.S. Anesthesia Partners, Inc. (Filing fee \$ 605, receipt number ATXSDC-31756007), filed. (Hansen, Mark) (Entered: 06/12/2024)
06/13/2024	<u>154 (p.3256)</u>	Clerks Notice of Filing of an Appeal. The following Notice of Appeal and related motions are pending in the District Court: <u>153 (p.3253)</u> Notice of Appeal. Fee status: Paid, filed. (dlr1) (Entered: 06/13/2024)
06/13/2024		Appeal Review Notes re: <u>153 (p.3253)</u> Notice of Appeal. Fee status: Paid. The appeal filing fee has been paid or an ifp motion has been granted.Hearings were held in the case - transcripts were produced. Number of DKT-13 Forms expected: 1, filed. (dlr1) (Entered: 06/13/2024)
06/13/2024	<u>155 (p.3257)</u>	

		MOTION to Stay <i>Pending Interlocutory Appeal</i> by U.S. Anesthesia Partners, Inc., filed. Motion Docket Date 7/5/2024. (Attachments: # <u>1 (p.31)</u> Appendix of Authorities, # <u>2 (p.3449)</u> Proposed Order) (Hansen, Mark) (Entered: 06/13/2024)
06/17/2024	<u>156 (p.3288)</u>	NOTICE of <i>Withdrawal of Counsel</i> by Federal Trade Commission, filed. (Schwartz, David) (Entered: 06/17/2024)
06/17/2024	<u>157 (p.3290)</u>	ANSWER to <u>1 (p.31)</u> Complaint by U.S. Anesthesia Partners, Inc., filed. (Hansen, Mark) (Entered: 06/17/2024)
06/21/2024		Notice of Assignment of USCA No. 24-20270 re: <u>153 (p.3253)</u> Notice of Appeal, filed. (dar1) (Entered: 06/21/2024)
06/24/2024		(Court only) ***(PRIVATE ENTRY) ROA requested from USCA, due on 07/08/2024, filed. (dar1) (Entered: 06/24/2024)
06/26/2024	<u>158 (p.3375)</u>	DKT13 TRANSCRIPT ORDER REQUEST by U.S. Anesthesia Partners, Inc.. Transcript is already on file in Clerks office regarding Motion to Dismiss Hearing on 4/8/24 before Judge Hoyt. (No transcript is needed). Court Reporter/Transcriber: Mayra Malone. This order form relates to the following: 133 Motion Hearing, <u>153 (p.3253)</u> Notice of Appeal, <u>141 (p.3377)</u> Transcript, filed. (Klineberg, Geoffrey) (Entered: 06/26/2024)
07/03/2024		Electronic record on appeal certified to the Fifth Circuit Court of Appeals re: <u>153 (p.3253)</u> Notice of Appeal USCA No. 24-20270, filed. (dar1) (Entered: 07/03/2024)
07/03/2024		Electronic Access to Record on Appeal Provided re: <u>153 (p.3253)</u> Notice of Appeal to D. Howe, G. Klineberg, K. Miller, D. Reinbold, D. Schwarz. Attorneys of record at the Circuit may <u>download the record from the Court of Appeals</u> . (USCA No. 24-20270), filed. (dar1) (Entered: 07/03/2024)

TAB 2

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

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

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

Defendants.

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

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

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

Dated: June 12, 2024

Respectfully submitted,

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

CERTIFICATE OF SERVICE

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

Respectfully submitted,

/s/ Mark C. Hansen

Mark C. Hansen

TAB 3

ENTERED

May 13, 2024

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

VS.

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

Defendants.

§
§
§
§
§
§
§
§

CIVIL ACTION NO. 4:23-CV-03560

MEMORANDUM OPINION AND ORDER**I. INTRODUCTION**

Before the Court are the defendants', U.S. Anesthesia Partners, Inc. ("USAP") and Welsh Carson,¹ motions to dismiss (DEs 99 & 100). The plaintiff, the Federal Trade Commission ("FTC"), has responded to the motions (DEs 119 & 120), and the defendants have replied (DEs 124 & 126). After reviewing the filings and the applicable law, the Court determines that Welsh Carson's motion should be **GRANTED**, and USAP's motion should be **DENIED**.

II. FACTUAL BACKGROUND

This antitrust case concerns the monopolization of Texas' hospital anesthesia market. We begin with a brief explanation of the hospital anesthesia market, as provided by the FTC. Hospitals need anesthesiologists on-hand 24/7 for surgical procedures.

¹ Seven defendants are Welsh Carson entities. Because their distinction is not crucial to this analysis, the Court frequently refers to them all as "Welsh Carson" for ease of reference.

Some hospitals directly employ anesthesiologists, but many contract with outside groups to be their exclusive providers. Anesthesiologists are primarily compensated through reimbursement by insurers or insurers' clients (employers). Insurers' main leverage while negotiating reimbursement rates is the threat of network exclusion. Insurers select favored anesthesia groups to join their networks. Anesthesia groups strive to participate in these networks because network exclusion can endanger hospital relationships and make it more difficult to obtain payment. Thus, if groups raise their rates too high, the insurance company will remove them from the network. But this threat is credible only if the insurer has feasible alternatives with which to replace them. If a group grows so large that it becomes indispensable, the threat of network removal loses its bite, leaving patients with the burden of paying higher rates. That is what the FTC alleges has happened regarding USAP.

USAP

In 2012, USAP was created by a private equity firm called Welsh Carson and several physician partners. USAP's goal was to drive profits by consolidating Texas' hospital anesthesia market. Accordingly, USAP quickly began an aggressive acquisition strategy. Its first target, Greater Houston Anesthesiology, was the largest practice in Houston, billing itself as "20 times the size of the second largest local competitor." Welsh Carson put \$100 million toward the purchase, with third-party lenders providing the rest. After this first acquisition, USAP started planning more,

targeting groups that already had exclusive contracts with hospitals. Through “tuck-in clauses,” USAP would apply its higher rates to the same services already offered by its acquisitions.

Thus, USAP soon bought three other practices in Houston. Each had strong relationships with important hospitals, and each had previously competed with USAP. After each acquisition, USAP raised the acquired group’s rates to match its own higher rates. In 2014, USAP took this strategy to Dallas, buying the area’s largest practice, followed by six more. USAP soon expanded to Tyler, Austin, Amarillo, and San Antonio. In each of these markets, the FTC alleges that USAP used its dominance to raise prices at patients’ expense. To date, USAP has acquired at least fifteen anesthesia groups in Texas.

Apart from USAP’s acquisitions and price increases, the FTC also alleges that USAP maintains price-setting agreements with several competitors. Under these agreements, USAP bills for work that its competitors perform, but it bills under USAP’s higher rates, as if the competitors’ anesthesiologists were USAP’s. This practice has the effect of increasing USAP’s bargaining power and eliminating potential savings for patients. USAP inherited two such ongoing agreements and executed a third agreement that has since expired.

Finally, the FTC alleges that USAP paid Envision Healthcare to stay out of the Dallas market. Envision is a national healthcare company that also provides anesthesia

services to hospitals. While USAP initially sought to persuade Envision not to compete anywhere in Texas, Envision limited its agreement to not competing in Dallas for five years in return for \$9 million.

Today, USAP is the largest anesthesia practice in Texas, including in many of its metro areas.² It controls nearly 70% of the commercially insured, hospital-only anesthesia market in Houston, a similar share in Dallas, and over 52% in Austin. USAP handles nearly half of all hospital-only anesthesia cases in Texas, and earns almost 60% of all hospital anesthesia revenue paid by Texas insurers, employers, and patients. USAP's negotiating leverage has grown along with its market share, and USAP has used this leverage to raise prices across Texas. The FTC alleges that this has resulted in patients and their employers paying tens of millions of dollars more each year for anesthesia than they otherwise would pay.

Welsh Carson

The mastermind behind USAP is allegedly Welsh Carson, a private equity firm that invests in healthcare and technology. Welsh Carson operates through various corporate entities that share personnel and resources. Hence, one set of entities houses the firm's employees and manages its investments, while another set, known as "funds," makes and holds Welsh Carson's investments, while a separate set controls these funds.

² USAP currently operates in eight states, with Texas remaining its largest market.

The FTC alleges that all of these corporations operate together, as a single company, to hatch and carry out USAP's monopolization scheme.

In early 2012, Welsh Carson decided to enter Texas' hospital-based anesthesia market. Brian Regan, a partner at Welsh Carson, spearheaded this strategy. He explained that the plan was to "consolidate practices with high market share in a few key markets," which would offer "negotiating leverage with commercial payors." Over the next few months, Welsh Carson employees set up the company that would effect this scheme—USAP. Welsh Carson initially owned 50.2% of USAP, and saw itself as USAP's "control investors." Welsh Carson chose USAP's leadership, including its CEO, CFO, COO, and head of human resources. Each of these officers had previously been employed at other Welsh Carson entities. USAP's CEO, Kristen Bratberg, had led a previous Welsh Carson consolidation strategy in the neonatology sector. Brian Regan, himself, served as a USAP director from its creation until 2022.

After creating USAP, Welsh Carson actively participated in its acquisitions. USAP's internal rules required that proposed acquisitions be approved by Welsh Carson. Welsh Carson employees researched anesthesia practices for USAP to acquire. Welsh Carson also worked with a consultant to develop a modeling tool for identifying promising acquisition targets. Welsh Carson funded USAP's first acquisition. Welsh Carson negotiated USAP's first acquisition in Dallas, and Brian Regan led the negotiations for USAP's agreement with Envision, initially proposing that USAP pay

Envision \$9 million annually to not provide anesthesia services in Texas. This ultimately became the price tag for Envision's exclusion from Dallas.

In 2017, Welsh Carson sold about half its stake in USAP. A Welsh Carson entity This left Fund XII, a Welsh Carson entity with 23% ownership of USAP. Fund XII appoints two of the fourteen board seats in USAP. In 2021, the FTC began a two-year investigation of Welsh Carson and USAP. It brought this suit on September 21, 2023 to permanently enjoin the defendants' anticompetitive conduct under Section 13(b) of the FTC Act. The Court held a hearing on the present motions to dismiss on April 8, 2024.

III. CONTENTIONS OF THE PARTIES

Welsh Carson argues that the FTC cannot bring this suit under Section 13(b) of the FTC Act because Welsh Carson is not violating antitrust laws, nor is it about to. USAP makes the same argument, adding that Section 13(b) requires a concomitant administrative proceeding, which the FTC has not begun. USAP further asserts that the FTC is unconstitutional because its commissioners are not removable at will by the President. Finally, USAP argues that the FTC's claims are based on a myopic market definition, and that USAP has not raised prices above competitive levels.

The FTC responds that both Welsh Carson and USAP are currently violating antitrust laws, and that both are about to violate antitrust laws. The FTC insists that 13(b) does not require an administrative proceeding before a suit can be filed.

Regarding the argument that it is unconstitutional, the FTC points to Fifth Circuit precedent holding otherwise. The FTC defends its market definition of commercially insured hospital-only anesthesia, asserting that non-hospital anesthesia is not an available substitute. Finally, the FTC maintains that it has alleged super-competitive pricing due to the defendants' uncompetitive behavior.

IV. STANDARD OF REVIEW

Federal Rule of Civil Procedure 12(b)(6) authorizes a motion to dismiss for “failure to state a claim upon which relief can be granted.” Under the difficult standard of a Rule 12(b)(6) motion, “[t]he plaintiff’s complaint is to be construed in a light most favorable to the plaintiff, and the allegations contained therein are to be taken as true.” *Oppenheimer v. Prudential Sec., Inc.*, 94 F.3d 189, 194 (5th Cir. 1996). Dismissal is appropriate only if the “[f]actual allegations [are not] enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact).” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A court’s review is limited to the allegations in the complaint and any documents attached to a defendant’s motion to dismiss, if they are both referred to in the complaint and central to the claims. *Causey v. Sewell Cadillac-Chevrolet, Inc.*, 394 F.3d 285, 288 (5th Cir. 2004).

V. ANALYSIS & DISCUSSION

Section 13(b)

The FTC’s statutory authority for seeking this injunction lies in 15 U.S.C. § 53(b) (commonly referred to as “Section 13(b)”). Section 13(b) allows the FTC to “bring suit in a district court of the United States to enjoin” allegedly unlawful conduct only where it has “reason to believe . . . that any person, partnership, or *corporation is violating, or is about to violate*, any provision of law enforced by the [FTC].” (Emphasis added). Section 13(b) is not a catch-all statute. Rather, Section 13(b) “addresses a specific problem, namely, that of stopping seemingly unfair practices from taking place while the [FTC] determines their lawfulness [through its own administrative proceedings].” *AMG Cap. Mgmt.*, 593 U.S. at 76. *See* S. Rep. No. 93-151, at 30 (1973). The FTC is authorized to conduct its agency actions through Section 5(b) of the FTC Act, which is a much broader grant of antitrust authority, and looks backward, while Section 13(b) looks forward. Section 13(b) therefore “does not permit the FTC to bring a claim based on long-past conduct without some evidence that the defendant ‘is’ committing or ‘is about to’ commit another violation.” *Federal Trade Commission v. Shire ViroPharma, Inc.*, 917 F.3d 147, 156 (3d Cir. 2019). If “the FTC wants to recover for a past violation — where an entity ‘has been’ violating the law — it must use Section 5(b).” *Id.* at 159 (quoting 15 U.S.C. § 45(b)).³ What the FTC cannot do is “use the most advantageous

³ Of course, the FTC is not alone in enforcing antitrust law. The Department of Justice has broad authority to enforce antitrust law, including for past acts. *See* 15 U.S.C. §§ 4, 25.

aspects of each statutory provision—to punish [a defendant] for a past violation using the less onerous enforcement mechanism [of Section 13(b)].” *Id.*

A) Welsh Carson

A) 1) The FTC Has Not Adequately Alleged that Welsh Carson “is violating” Antitrust Law

The FTC argues that Welsh Carson is currently violating antitrust laws. The FTC insists that “USAP continues to hold the illegally acquired practices, uses the resulting leverage to raise prices, and shares its profits with Welsh Carson.” But the FTC does not cite any authority for the proposition that receiving profits from an entity that may be violating antitrust laws is itself a violation of antitrust laws. Indeed, “profits, sales, and other benefits accrued as the result of an initial wrongful act are not treated as ‘independent acts.’” *Z Techs. Corp. v. Lubrizol Corp.*, 753 F.3d 594, 600 (6th Cir. 2014). Thus, the act of receiving profits from USAP is not an ongoing antitrust violation.

The FTC also argues that Welsh Carson commits ongoing antitrust violations by continuing to hold stock in USAP. The FTC insists that “an injunction under Section 13(b) is a theoretically available remedy in a Section 2 challenge to long-ago mergers so long as the defendant still holds the purchased assets or stock.” *Fed. Trade Comm’n v. Facebook, Inc.*, 560 F. Supp. 3d 1, 32 (D.D.C. 2021). Thus, the FTC’s argument that

Welsh Carson is committing ongoing antitrust violations boils down to this: 1) Welsh Carson holds stock in USAP; 2) holding assets that result in reduced competition is an ongoing violation of antitrust laws; and 3) Section 13(b) permits the FTC to address ongoing violations.

The first and third steps are not in serious dispute. The substance therefore is in the second step of the argument. The FTC is correct that holding assets can constitute an ongoing violation of antitrust laws: “[A]ny acquisition by one corporation of all or any part of the stock of another corporation, competitor or not, is within the reach of [Section 2] whenever the reasonable likelihood appears that the acquisition will result in a restraint of commerce or in the creation of a monopoly of any line of commerce.” *United States v. E. I. du Pont de Nemours & Co.*, 353 U.S. 586, 592 (1957). Section 7 of the Clayton Act prohibits mergers or acquisitions, “directly or indirectly,” if the effect “may be substantially to lessen competition, or to tend to create a monopoly.” 15 U.S.C. § 18 (2000). In *du Pont*, the Court determined that a supplier to General Motors leveraged stock that it had bought to entrench itself as General Motors’ primary supplier. 353 U.S. at 592. The differences between *du Pont* and the present case, though, are that *du Pont* involved a direct acquisition, Section 13(b) was not in play, and *du Pont* did not involve a defendant with a minority, noncontrolling stake in the purchasing entity.

Since 2017, only one of the Welsh Carson entities—Fund XII—has owned stock in USAP. Fund XII’s 23% ownership entitles it to appoint two of the fourteen directors to the USAP board: one-seventh of the board, disproportionately small compared to its almost one-quarter ownership. The FTC does not explain how Fund XII’s minority stake—as distinct from USAP’s acquisitions of anesthesiology practices—is a violation of Section 2 of the Sherman Act or Section 7 of the Clayton Act. Indeed, at oral argument, the FTC conceded “we still have to prove that Welsh Carson’s conduct substantially lessens competition . . . we are not seeking to hold Welsh Carson liable merely because they have an ownership stake.” But that ownership stake is the FTC’s only hook for an “ongoing violation” under Section 13(b). Section 13(b) requires more than the FTC’s concession; *Welsh Carson’s ongoing* conduct must reduce competition. It is not clear how owning a minority share in a company that reduces competition satisfies the statute.

What *du Pont* and *Facebook* indicate is that if an acquisition was *itself* a violation of antitrust laws, the FTC may use Section 13(b) to address it. Indeed, the “Clayton Act is concerned with whether an acquisition or merger *itself* may cause antitrust injury.” *Geneva Pharms. Tech. Corp. v. Barr Lab’ys Inc.*, 386 F.3d 485, 511 (2d Cir. 2004) (citing *Cargill, Inc. v. Monfort of Colorado, Inc.*, 479 U.S. 104, 115–17 (1986)). The FTC’s authorities discuss only one merger to roll back, where rolling back the merger resolves the ongoing violation. Not so here; The FTC’s theory would require rolling

back Welsh Carson’s acquisition of USAP stock and USAP’s *own* acquisitions. The analogous merger to *du Pont* is not USAP’s acquisitions, but Fund XII’s 2017 purchase of 23% of USAP. And there is no allegation that that acquisition itself violated antitrust laws. Thus, the FTC’s conflation of Fund XII’s stake in USAP with USAP’s acquisitions of anesthesia groups is unavailing.

The closest case to the present one appears to be *Cmtty. Publishers, Inc. v. Donrey Corp.*, 882 F. Supp. 138 (W.D. Ark. 1995). There, the court determined that Section 7 applied to a parent company that acquired stock through its subsidiary. The key difference, though, is that the parent and subsidiary had “substantially overlapping ownership.” *Id.* at 139. Indeed, 99% of the parent stock was owned by an entity called “SGI,” which was owned entirely by a family trust. The subsidiary, meanwhile, was owned 95.5% by the very same family trusts. Furthermore, the parent, the subsidiary, and SGI were all chaired by the same man, who was a member of the family who owned the trusts.

There is a stark contrast between *Donrey* and the present case, in which Fund XII owns 23% of USAP and has only two out of fourteen board seats. The fact that other Welsh Carson entities that do not own stock in USAP helped create both USAP and its acquisition strategy does not change the analysis. The FTC has not cited a case in which a minority, noncontrolling investor—however hands-on—is liable under Section 13(b) because the company it partially owned made anticompetitive acquisitions. Such a

construal of Sections 7 and 13(b) would expand the FTC's reach further than any court has yet seen fit; it would also expand liability to minority investors whose subsidiaries reduce competition. This Court will not adopt this novel interpretation.

A) 2) The FTC Has Not Adequately Alleged that Welsh Carson Is “About To Violate” Antitrust Law

The second stage of the Section 13(b) analysis is whether the FTC has adequately pled that Welsh Carson is “about to” violate antitrust law. The FTC alleges that nothing “prevent[s] Welsh Carson from re-upping its investment in USAP, retaking formal control of the company, and directing yet more anticompetitive positions.” The FTC also points to Welsh Carson’s investments in the emergency medicine and radiology markets as evidence of intent to further consolidate the anesthesia market.

The parties disagree as to the proper interpretation of Section 13(b)’s “about to violate.” The FTC insists that the Fifth Circuit held that Section 13(b)’s “about to violate” requirement can be satisfied by alleging facts that give a “fair inference of a reasonable expectation of continued violations.” *F.T.C. v. Sw. Sunsites, Inc.*, 665 F.2d 711, 723 (5th Cir. 1982) (citing *Securities and Exchange Commission v. Manor Nursing Center, Inc.*, 458 F.2d 1082, 1100-01 (2d Cir. 1972)). It is not clear that this was the holding of *Sunsites*. The court mentioned this standard without analysis, discussion of the statute, or any other support. The entire relevant paragraph reads:

The district court acted well within its discretion in ordering appellees to cease and desist from further violations of the Act. This is particularly true

when the evidence developed to date suggests a large-scale systematic scheme tainted by fraudulent and deceptive practices, giving rise to a “fair inference of a reasonable expectation of continued violations” absent restraint.

Id. Regardless, it is unclear how much light is shined by interpreting “about to violate” as “giving rise to a fair inference of a reasonable expectation of continued violations.” Indeed, the consensus is that “[a]side from analyzing the facts at issue, the *Sunsites* court did not provide extensive guidance to district courts on applying § 13(b)’s threshold requirement.” *Fed. Trade Comm’n v. Educare Ctr. Servs., Inc.*, 433 F. Supp. 3d 1008, 1014 (W.D. Tex. 2020). The facts at issue in *Sunsites* were quite distinct from those before this Court. There, the FTC sought to enjoin a party from *persisting* in a “continuing” fraudulent scheme executed *by that party*. Here, there is no allegation of fraud, and Welsh Carson’s activity is not continuing. Indeed, the FTC does not allege any conduct by Welsh Carson in the past six years that is a plausible antitrust violation.

Instead, the FTC argues that Welsh Carson designed and implemented a large, systematic scheme that still exists. This argument is to mean, if anything, that the violation is ongoing, rather than likely to recur. The only sense in which the scheme still exists is that USAP still exists, and that USAP still consolidates the market and reduces competition. But that goes to USAP’s violations, not Welsh Carson’s; *Sunsites* said nothing about derivate liability for another company’s actions.

Besides, this long-past conduct does not raise a fair inference that Welsh Carson will soon do so again, even if such conduct were an antitrust violation. Indeed, it is

unclear what an act of recurrence would mean: creating another vehicle for anesthesia consolidation to compete with USAP? The FTC insists that Welsh Carson’s having the “blueprints, finances, and personnel to continue this scheme” satisfy Section 13(b)’s “about to violate” standard. But the mere capacity to do something does not meet the requirement that the thing is likely to recur. As in *Facebook*, “[t]here are no facts alleged . . . suggesting that the antitrust ‘scrutiny’ the company is facing is ‘about to’ pass or indeed will pass at any time in the foreseeable future.” *Fed. Trade Comm’n v. Facebook, Inc.*, 560 F. Supp. 3d 1, 26–27 (D.D.C. 2021). See *Shire ViroPharma*, 917 F.3d at 153, 160 (finding allegation that “[a]bsent an injunction, there is a cognizable danger that [defendant] will engage in similar conduct” because it has the “incentive and opportunity” to do so. Such an argument, without evidence, is “woefully inadequate to state a claim under Section 13(b).”).

The Court will quickly address two more arguments from the FTC. First, comments from Welsh Carson executives indicating a desire to consolidate other healthcare markets do not show that Welsh Carson is about to violate antitrust laws. The FTC has not sufficiently pled information about those plans to pursue a Section 13(b) case to enjoin Welsh Carson from activities in those non-anesthesia markets. Second, Welsh Carson’s “lack of contrition” does not indicate an impending violation, either; the law does not require defendants to admit liability and apologize in order to avoid an injunction.

The Court repeats that Congress’ purpose in enacting Section 13(b) was to “address[] a specific problem, namely, that of stopping seemingly unfair practices from taking place while the [FTC] determines their lawfulness.” *AMG Cap. Mgmt.*, 593 U.S. at 76. Again, this Court will not be the first to use this specialized statute to expand antitrust liability to reach active investors in companies that are alleged to violate antitrust law. The FTC does not articulate why it cannot return with a new lawsuit under Section 13(b) if and when Welsh Carlson signals—beyond mere speculation and conjecture—that it is actually about to violate the law. The Court’s analysis should not be construed to offer any opinion on Welsh Carson’s conduct except as Section 13(b) applies to it.

B) USAP

B) 1) The FTC Need Not Bring A Concomitant Administrative Proceeding

USAP’s first argument is that the FTC overreached its authority under Section 13(b) by bringing this suit without initiating a concomitant administrative proceeding. USAP marshals eloquent and thorough arguments of statutory interpretation to this end. But as far as the Court is aware, every court to consider this issue has disagreed that such a proceeding is necessary, including three circuit courts. As the Seventh Circuit explained:

The statutory language of section 13(b) limits the availability of preliminary injunctive relief to situations ‘pending issuance of a complaint by the Commission.’ No similar language is found in the second proviso relating to permanent injunctive relief . . . Had Congress intended the

initiation or not of an administrative cease and desist proceeding to affect the ability of the Commission to seek permanent injunctive relief, it undoubtedly would have included language similar to that found in the provision governing preliminary injunctive relief.

United States v. JS & A Grp., Inc., 716 F.2d 451, 456 (7th Cir. 1983). *See F.T.C. v. H. N. Singer, Inc.*, 668 F.2d 1107 (9th Cir. 1982) & *F.T.C. v. U.S. Oil & Gas Corp.*, 748 F.2d 1431 (11th Cir. 1984).

USAP invokes *AMG* to argue that this Court should resist these authorities. *AMG Cap. Mgmt., LLC v. Fed. Trade Comm’n*, 593 U.S. 67 (2021). The problem is that *AMG* indicates the opposite. There, the Supreme Court held that the FTC may not use Section 13(b) to authorize monetary relief. While the Court thus focused on a different issue than the present one, its analysis included several observations on the FTC’s injunction authority. Interpreting Section 13(b), the Court opined that the words “permanent injunction” “might also be read, for example, as granting authority for the Commission to . . . dispense with administrative proceedings to seek what the words literally say (namely, an *injunction*).” *Id.* at 76. Lest there be any doubt, two pages later, the Court declared: “the Commission may use § 13(b) to obtain injunctive relief while administrative proceedings are foreseen or in progress, *or when it seeks only injunctive relief.*” *Id.* at 78 (emphasis added). The FTC seeks only injunctive relief in this case.

Undaunted, USAP brushes this aside as dicta. Even if it is dicta, dicta acquires a certain luster when it comes from the U.S. Supreme Court. Indeed, “we are generally bound by Supreme Court dicta, especially when it is ‘recent and detailed.’” *Hollis v.*

Lynch, 827 F.3d 436, 448 (5th Cir. 2016) (quoting *Gearlds v. Entergy Servs., Inc.*, 709 F.3d 448, 452 (5th Cir. 2013)). *AMG* is only three years old, and the Court repeated the point twice. This Court will not gainsay it.

B) 2) The FTC Alleges Ongoing Violations Under Section 13(b)

Next, like *Welsh Carson*, USAP argues that the FTC has not alleged that USAP is currently or about to violate antitrust laws. USAP therefore argues that Section 13(b) is not the appropriate vehicle for these claims, and that the FTC has exceeded its statutory authority. The Court has already laid out the framework of this analysis above with regard to *Welsh Carson*. Applying it to USAP, however, yields a different result.

The FTC alleges multiple instances of ongoing conduct: USAP continues to own the anesthesia groups it unlawfully acquired and continues to charge high prices; USAP currently maintains two price-setting arrangements that result in higher prices; and USAP's overall monopolization scheme remains intact.

USAP's acquisitions constitute ongoing conduct. USAP acquired at least 15 anesthesia groups over the last 12 years. USAP continues to hold these companies. Even though the acquisitions themselves have closed, maintaining the assets of these companies could constitute a violation of antitrust law appropriately pursued under Section 13(b). As explained above, "an injunction under Section 13(b) is a theoretically available remedy in a Section 2 challenge to long-ago mergers so long as the defendant still holds the purchased assets or stock." *Fed. Trade Comm'n v. Facebook, Inc.*, 560 F.

Supp. 3d 1, 32 (D.D.C. 2021). This is because, for antitrust purposes, acquisitions do not always end with the close of the deal:

We need not go beyond the Clayton Act itself to conclude that ‘acquisition’ as used in [§] 7 of the Act means holding as well as obtaining assets. The Act provides that the FTC, if it finds a violation of [§] 7, can require a party to ‘divest itself of the stock, or other share capital, or assets, held . . . contrary to the provisions of ([§] 7).’ Thus, the framers of the Act did not regard the terms ‘acquire’ and ‘acquisition’ as unambiguously banning only the initial transaction of acquisition; rather, they read the ban against ‘acquisition’ to include a ban against holding certain assets.

United States v. ITT Cont’l Baking Co., 420 U.S. 223, 240–41 (1975) (cleaned up). USAP seeks to distinguish *ITT* because it concerned “materially different factual circumstances.” USAP highlights that *ITT* upheld a fine for an ongoing violation of a consent decree, rather than an antitrust violation. The consent decree is different, USAP says, because it covered “both the initial transaction and the maintenance of the rights” acquired in the transaction. But this is misleading, and indeed begs the whole question. The consent decree did not say that it covered the maintenance of the rights. Rather, the Supreme Court *decided* that it covered the maintenance of those rights based on its own definition of “acquisition” in *Du Pont*. *United States v. ITT Cont’l Baking Co.*, 420 U.S. 223, 241 (1975) (citing *United States v. E. I. du Pont de Nemours & Co.*, 353 U.S. 586, 592 (1957)). Thus, the distinction USAP points to is not a valid difference.

On the other hand, USAP’s authorities illustrate a distinction with a true difference. USAP points to cases from the 8th and 6th circuits for the proposition that mergers do not constitute continuing violations once they are complete: *Midwestern*

Mach. Co. v. Nw. Airlines, Inc., 392 F.3d 265 (8th Cir. 2004); *Z Techs. Corp. v. Lubrizol Corp.*, 753 F.3d 594 (6th Cir. 2014). How do these cases coexist with *Du Pont* and *ITT*? The titles of these cases provide the answer: they do not involve the FTC. Instead, they feature private plaintiffs, and thus implicate the statute of limitations. The government, however, is not constrained by a statute of limitations. *See Fed. Trade Comm’n v. Credit Bureau Ctr., LLC*, 937 F.3d 764, 783 (7th Cir. 2019) (“[S]ection 13b has no statute of limitations.”). Thus, these cases are neither binding nor superior to the United States Supreme Court’s opinion. Moreover, their reasoning was based on a statutory mechanism not in play here.

Because these acquisitions constitute ongoing activity and plausibly contribute to the monopoly power and unfair competition that the FTC’s complaint alleges, the FTC is within its statutory authority to bring claims I-VIII. The FTC’s ninth claim of price fixing and tenth claim of market allocation are plausibly part of the “large-scale systematic scheme” alleged by the FTC and supported by the alleged acquisitions. *F.T.C. v. Sw. Sunsites, Inc.*, 665 F.2d 711, 723 (5th Cir. 1982). Thus, the FTC is within its statutory authority to bring these claims.⁴

B) 3) The FTC Is Not An Unconstitutionally Constituted Entity

⁴ It is worth distinguishing USAP’s conduct from Welsh Carson’s. Welsh Carson owned a noncontrolling piece of a company that acquired another company; the acquisitions at issue here were thus derivative of a company in which one Welsh Carson entity owned 23% and had disproportionally few board seats. That is very different from the direct, wholesale acquisition of one company by its competitor.

The Court need not spend many words on the constitutional argument.⁵ The defendants ask this Court to declare the FTC is unconstitutionally constituted because its commissioners are not removable at will by the President. Precedent forecloses this argument.

Almost 90 years ago, the Supreme Court held that the President's inability to remove FTC commissioners at will was constitutional. *Humphrey's Ex'r v. United States*, 295 U.S. 602 (1935). The defendants argue that the FTC's authority has grown such that *Humphrey's* no longer makes sense. But just last year, the Fifth Circuit rejected this argument: "[A]lthough the FTC's powers may have changed since *Humphrey's Executor* was decided, the question of whether the FTC's authority has changed so fundamentally as to render *Humphrey's Executor* no longer binding is for the Supreme Court, not us, to answer." *Illumina, Inc. v. Fed. Trade Comm'n*, 88 F.4th 1036, 1047 (5th Cir. 2023). *See also Consumers' Rsch. v. Consumer Prod. Safety Comm'n*, 91 F.4th 342 (5th Cir. 2024). It is not for this Court to answer, either.

C) *The Merits*

On the merits, USAP argues that the FTC's market definition of "hospital-only anesthesia services" is improper and unsupported by the factual allegations. Specifically, USAP argues that the FTC does not address interchangeability or cross-elasticity of demand, and that the market should also include out-of-hospital

⁵ USAP did not spend many words, either. Instead, USAP incorporated Welsh Carson's constitutional argument into its own brief with no elaboration.

anesthesiologists. But the FTC’s complaint does address this by saying that hospital patients get no say in their anesthesiologist; “Patients requiring hospital care cannot switch to outpatient anesthesia regardless of price.” Thus, it does not matter if, theoretically, out-of-patient anesthesiologists could perform the same services within the hospital, because as a practical matter once a patient requires treatment in a hospital, out-of-hospital anesthesiology services are off the table. The complaint alleges that industry participants, including USAP and insurers, recognize the distinctions between in- and out-patient anesthesia care. The complaint also alleges that out-patient anesthesia services do not adequately constrain prices for in-patient care because anesthesiologists face significantly different working conditions in hospitals, and hospitals often have sticky and exclusive anesthesia services contracts. At this stage, the Court cannot say the FTC has failed to allege a plausible market definition.

Next, USAP argues that the FTC has not sufficiently alleged that USAP enjoys monopoly power. The FTC quotes an insurance executive describing USAP’s consolidation strategy as “tak[ing] the highest rate of all . . . and then peanut butter spread that across the entire state of Texas.” The FTC alleges that USAP has raised prices significantly, charging the highest rates in Houston and Dallas, and double the median rate in Texas. No anesthesia group could achieve this before USAP began its consolidation strategy. USAP also alleges that payors tried to constrain USAP’s high rates but failed due to insufficient alternatives. Whether USAP charges above a

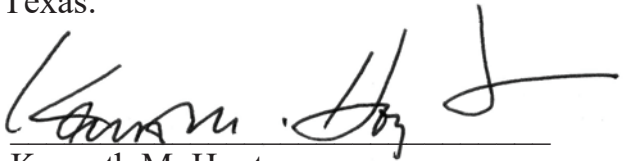
competitive price or enjoys monopoly power are factual disputes. These considerations also apply to USAP's argument that the FTC has failed to allege anticompetitive conduct under the Sherman Act or the Clayton Act. The FTC has plausibly alleged acquisitions resulting in higher prices for consumers, along with a market allocation and price-setting scheme. It would be premature to dismiss these claims at this stage.

VI. CONCLUSION

Based on the foregoing analysis and discussion, the Court **GRANTS** Welsh Carson's motion to dismiss and **DENIES** USAP's motion to dismiss.

It is so **ORDERED**.

SIGNED on May 13, 2024, at Houston, Texas.


Kenneth M. Hoyt
United States District Judge

TAB 4

CERTIFICATE OF SERVICE

I certify that, on August 12, 2024, the foregoing was filed electronically with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit using the appellate CM/ECF system. All counsel of record are registered CM/ECF users, and will be served by the appellate CM/ECF system.

/s/ Geoffrey M. Klineberg
Geoffrey M. Klineberg

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U.S. Anesthesia Partners, Inc.*