

September 3, 2026

By CM/ECF

Mr. Lyle W. Cayce, Clerk of Court
U.S. Court of Appeals for the Fifth Circuit
F. Edward Hebert Building
600 S. Maestri Place
New Orleans, LA 70130-3408

**Re: *Louisiana v. FDA*, No. 26-30203; Response to Plaintiffs' Rule 28(j)
Notice of Supplemental Authority**

Dear Mr. Cayce,

I write in response to the Rule 28(j) letter that Plaintiffs submitted yesterday asserting that the district court's decision in *Florida v. U.S. Food & Drug Administration*, No. 7:25-CV-00126-O (N.D. Tex. August 30, 2026), supports their position in this appeal. That is incorrect.

As Plaintiffs' letter expressly admits, the Texas district court said that it was "bound" by the motion panel's analysis in *Louisiana v. Food & Drug Administration*, 175 F.4th 310 (5th Cir. 2026), but "the merits panel in this case is not similarly bound" by the motion panel's ruling. The Texas district court did no independent or supplemental analysis on any issue before this Court in this appeal; it merely cited the motion-panel ruling that Plaintiffs agree is not binding here.

Moreover, the Supreme Court granted emergency relief staying the motion panel's ruling—a crucial fact that both the Texas district court decision and Plaintiffs' letter ignore. The Supreme Court's grant of emergency relief demonstrates that the Supreme Court disagrees with at least some dispositive aspect of the motion panel's ruling. See Order Granting Stay, *Danco Lab's, LLC v. Louisiana*, No. 25A1207 (May 14, 2026); *Danco Br.* at 4-5, 22-23, 68-77. The Texas district court's decision does not change that.

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Respectfully submitted,

/s/ Jessica L. Ellsworth
Jessica L. Ellsworth

*Counsel of Record for Intervenor-
Defendant Danco Laboratories LLC*

cc: All counsel of record (via CM/ECF)