UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA, *Plaintiff*, v. SURGICAL CARE AFFILIATES LLC, and SCAI HOLDINGS, LLC *Defendants*.	)	No. 3-21-cr-00011-L

UNOPPOSED MOTION FOR LEAVE TO FILE REPLY TO THE UNITED STATES' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

Pursuant to Local Criminal Rule 47.1(f) and this Court's February 8, 2021 Order (Doc. No. 24), Defendants Surgical Care Affiliates LLC and SCAI Holdings, LLC, respectfully request leave to file a Reply to the United States' Opposition to Defendants' Motion to Dismiss (Doc. No. 44), and state in support:

1. Defendants filed a 21-page Memorandum in Support of Defendants' Motion to Dismiss on March 26, 2021. Doc. No. 38-1.

2. The government sought and received a 5-page extension of the briefing limit (Doc. Nos. 42-43) and filed a 30-page Opposition to Defendants' Motion to Dismiss on April 30, 2021 (Doc. No. 44).

3. Defendants respectfully request leave to file a Reply to respond to the government's authorities and issues, to clarify Defendants' arguments in light of the government's characterizations of them, and to assist the Court in deciding these important questions.

4. The proposed Reply, attached hereto as Exhibit A, is 10 pages in length.

5. Counsel for Defendants have conferred in good faith with counsel for the government regarding this Motion, and counsel for the government has advised that the government does not oppose the relief requested herein.

Respectfully submitted,

s/Paul Coggins
PAUL COGGINS
LOCKE LORD LLP
2200 Ross Avenue, Suite 2800
Dallas, TX 75201
214-740-8104
214-756-8104 (facsimile)
Texas Bar No. 04504700
pcoggins@lockelord.com

PAUL D. CLEMENT*
ERIN E. MURPHY*
MATTHEW D. ROWEN*
KIRKLAND & ELLIS LLP
1301 Pennsylvania Ave. NW
Washington, DC 20004
202-389-5000
202-389-5200 (facsimile)

JAMES H. MUTCHNIK*
DANIEL E. LAYTIN*
KIRKLAND & ELLIS LLP
300 N. LaSalle
Chicago, IL 60654

SARA S. TATUM*
KIRKLAND & ELLIS LLP
601 Lexington Ave.
New York, NY 10022

Counsel for Defendant
SCAI Holdings, LLC

s/Robert L. Webster
ROBERT L. WEBSTER
7557 Rambler Road, Suite 525
Dallas, TX 75231
469-758-4150
469-758-4160 (facsimile)
Texas Bar No. 2153375
robert.webster@bobwebsterlaw.com

DAVID B. ANDERS*
SARAH K. EDDY*
KEVIN S. SCHWARTZ*
WACHTELL, LIPTON, ROSEN & KATZ
51 West 52nd St.
New York, NY 10019
212-403-1000
212-403-2000 (facsimile)

Counsel for Defendant
Surgical Care Affiliates LLC

* admitted *pro hac vice*

May 14, 2021

CERTIFICATE OF SERVICE

I hereby certify that on May 14, 2021, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Northern District of Texas by using the CM/ECF system per Local Rule 49.2. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/Paul Coggins
Paul Coggins

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA, *Plaintiff*, v. SURGICAL CARE AFFILIATES LLC, and SCAI HOLDINGS, LLC *Defendants*.	)))))))))))	No. 3-21-cr-00011-L

[PROPOSED] REPLY IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

s/Paul Coggins
PAUL COGGINS
LOCKE LORD LLP
2200 Ross Avenue, Suite 2800
Dallas, TX 75201
214-740-8104
214-756-8104 (facsimile)
Texas Bar No. 04504700

PAUL D. CLEMENT*
ERIN E. MURPHY*
MATTHEW D. ROWEN*
KIRKLAND & ELLIS LLP
1301 Pennsylvania Ave. NW
Washington, DC 20004

JAMES H. MUTCHNIK*
DANIEL E. LAYTIN*
KIRKLAND & ELLIS LLP
300 N. LaSalle
Chicago, IL 60654

SARA S. TATUM*
KIRKLAND & ELLIS LLP
601 Lexington Ave.
New York, NY 10022

Counsel for Defendant SCAI Holdings, LLC

s/Robert L. Webster
ROBERT L. WEBSTER
7557 Rambler Road, Suite 525
Dallas, TX 75231
469-758-4150
469-758-4160 (facsimile)
Texas Bar No. 21053375

DAVID B. ANDERS*
SARAH K. EDDY*
KEVIN S. SCHWARTZ*
WACHTELL, LIPTON, ROSEN & KATZ
51 West 52nd St.
New York, NY 10019

Counsel for Defendant Surgical Care Affiliates LLC

* admitted *pro hac vice*

May 14, 2021

The government seeks to criminally prosecute as a *per se* Sherman Act violation an alleged agreement not to solicit another company's employees, even though no court in history has ever definitively found such an agreement unlawful under *any* mode of analysis. Not only is this kind of agreement not illegal *per se*, but subjecting a practice to *per se* condemnation for the first time in a criminal prosecution would violate bedrock guarantees of due process.

Unable to identify any prior case in which an employee non-solicitation agreement was held to be illegal *per se*, the government rests its entire case on an analogy, claiming that employee non-solicitation agreements are simply a species of market allocation long subject to *per se* treatment. That contention is flawed at every turn. Employee non-solicitation agreements involve limited restrictions on initiating discussions with other companies' employees, not strict divisions of customers, territories, or product markets. It took a full century after the Supreme Court began condemning *customer* market-allocation agreements before anyone suggested that *employee* non-solicitation agreements were analogous, and even then the first court to consider the analogy rejected it as inapt. The government itself did not begin pressing the analogy until just this past decade, and its efforts have yet to produce any decision subjecting an employee non-solicitation agreement to *per se* treatment. Indeed, no court has definitively held such an agreement unlawful even under the rule of reason. That is in part owing to the reality that customer market-allocation and employee non-solicitation agreements pose very different economic questions. Most employers lack the power to impact the market for employees, and employee non-solicitation agreements have pro-competitive benefits, like protecting trade secrets and investments in training, and avoiding litigation over non-compete agreements. But even if a court someday deems such an agreement *per se* illegal, it cannot happen for the first time in a criminal case without violating due process. This novel and misguided indictment should be dismissed.

I. The Indictment Should Be Dismissed Because The *Per Se* Rule Does Not Apply.

The government does not dispute that the validity of its indictment depends on its claim that employee non-solicitation agreements qualify for *per se* treatment. The government thus tacitly admits that the indictment does not contain the necessary prerequisites to plead a rule-of-reason case. Yet the government does not identify a single court that has condemned an employee non-solicitation agreement as a *per se* antitrust violation. In fact, it cannot even identify a single court that has ever condemned an employee non-solicitation agreement under the rule of reason, which makes it impossible to claim that courts have had sufficient "experience" with such agreements to enable them "to predict with confidence that the rule of reason will condemn" virtually all of them. *State Oil Co. v. Khan*, 522 U.S. 3, 10 (1997) (citation omitted).

The government instead rests its entire argument on an analogy, insisting that so-called "no-poach" agreements between or among employers (by which it means both non-solicitation agreements and more restrictive no-hire pacts) are just a species "of per se unlawful market allocation." Opp'n 4. But horizontal market-allocation agreements have been subject to *per se* treatment for over a century, yet court after court has considered non-solicitation and no-hire agreements as distinct practices not subject to *per se* treatment, rather than a species of unlawful market-allocation agreements. For many years, the contested question was whether comparable agreements vis-à-vis employees implicated the Sherman Act *at all*. *See, e.g.*, *Radovich v. Nat'l Football League*, 352 U.S. 445 (1957); *Quinonez v. Nat'l Ass'n of Secs. Dealers*, 540 F.2d 824 (5th Cir. 1976). The notion that courts struggled with that threshold question for years when in reality such agreements were plainly unlawful market-allocation agreements is entirely unpersuasive.

In fact, the analogy to market-allocation agreements did not even occur to the government until relatively recently. Horizontal market-allocation agreements have long been recognized as "[o]ne of the classic examples of a per se violation of § 1." *United States v. Topco Assocs.*, 405

U.S. 596, 608 (1972). In *Topco*, the Supreme Court traced this tradition of *per se* condemnation back to *Addyston Pipe & Steel Co. v. United States*, 175 U.S. 211 (1899). Despite the long history of *per se* condemnation of agreements to allocate customers and territories, and the equally long history of various agreements not to hire or solicit certain employees, the effort to condemn the latter as merely a species of the former is relatively novel. Until very recently, almost all efforts to attack "no-poach" agreements as unlawful (by private litigants and government regulators alike) tried to analogize the agreements to a different practice—namely, boycotts. *See, e.g.*, *Phillips v. Vandygriff*, 711 F.2d 1217, 1227 (5th Cir. 1983) (analyzing blanket no-hire as potential boycott), *modified on reh'g in part*, 724 F.2d 490 (5th Cir. 1984); *Union Circulation Co. v. FTC*, 241 F.2d 652, 657 (2d Cir. 1957) (analyzing "no-switching" agreements as potential boycotts); *Eichorn v. AT&T Corp.*, 248 F.3d 131, 142 (3d Cir. 2001) (similar); *Molinari v. Consol Energy Inc.*, 2012 WL 4928489, at *4 (W.D. Pa. Oct. 16, 2012) (similar); *Cesnik v. Chrysler Corp.*, 490 F.Supp. 859, 866 (M.D. Tenn. 1980) (similar); *cf. Radovich*, 352 U.S. at 449. And the courts that were confronted with the less-strained boycott analogy rejected it as a basis for *per se* treatment even for no-hire agreements. *See, e.g.*, *Union Circulation Co.*, 241 F.2d at 657 ("These agreements are not designed to coerce retailers, or other independent members of an industry, into abandoning competitive practices of which the concerted parties do not approve."); *Eichorn*, 248 F.3d at 143 (finding "no support within the relevant case law for" treating "no-hire agreement []as per se illegal"); *Coleman v. Gen. Elec. Co.*, 643 F.Supp. 1229, 1243 (E.D. Tenn. 1986) (rejecting argument that no-hire agreement was *per se* unlawful boycott), *aff'd*, 822 F.2d 59 (6th Cir. 1987).

It was not until 1999—one hundred years after *Addyston Pipe*—that the first court of appeals even *considered* the theory that a no-hire agreement might be treated as a species of market allocation, and the Second Circuit rejected that theory out of hand. *See Bogan v. Hodgkins*, 166

F.3d 509, 515 (2d Cir. 1999) (finding that no-hire agreements are "clearly not" a form of market allocation because, "while the [agreement] may constrain [employees] to some degree, it does not allocate the market for [employees] to any meaningful extent"). The Second Circuit viewed the group-boycott analogy as plaintiffs' "strongest argument," but still found it unavailing. *Id.*

Similarly, it was not until just this past decade that a handful of district courts (all in civil litigation) began embracing the notion that market allocation might sometimes be a viable analogy. *See In re High-Tech Emp. Antitrust Litig.*, 856 F.Supp.2d 1103, 1122 (N.D. Cal. 2012); *United States v. eBay, Inc.*, 968 F.Supp.2d 1030, 1038-40 (N.D. Cal. 2013); *In re Ry. Indus. Emp. No-Poach Antitrust Litig.*, 395 F.Supp.3d 464, 484-85 (W.D. Pa. 2019); *Fonseca v. Hewlett-Packard Co.*, 2020 WL 6083448, at *10 (S.D. Cal. Feb. 3, 2020). But even those courts did not deem the analogy sufficient to warrant subjecting the agreements before them to *per se* treatment; they instead concluded that they needed more facts to decide whether the no-hire or non-solicitation agreement at issue really *was* so "manifestly anticompetitive" as to "lack … any redeeming virtue," *Leegin Creative Leather Prods., Inc. v. PSKS, Inc.*, 551 U.S. 877, 886 (2007). *See, e.g.*, *In re Ry. Indus.*, 395 F.Supp.3d at 485 (inviting defendants to again "raise th[e] issue" of what standard to apply "in a motion for summary judgment"). And not one of them actually found a standalone employee non-solicitation agreement to be anti-competitive.

This judicial history alone forecloses importing the *per se* rule into this context, as the *per se* rule is reserved for categories of agreements that courts can safely "predict with confidence … would be invalidated in all or almost all instances under the rule of reason." *Leegin*, 551 U.S. at 886-87. If even at this late date courts have not been able to identify a single employee non-solicitation agreement that is *actually* anti-competitive, then the government cannot plausibly ask this Court to take the extraordinary step—in a criminal prosecution, no less—of concluding that

every such agreement presumptively fits that bill. Nor does it matter that some courts have observed that some subset of "no-poach" agreements could, *in theory*, warrant *per se* treatment. *See* Opp'n 12-13. If most no-hire and non-solicitation agreements have not *proven* to be devoid of "any redeeming virtue," *Leegin*, 551 U.S. at 886, then this Court plainly cannot "predict with confidence that the rule of reason will condemn" virtually all of them, *State Oil*, 522 U.S. at 10. And "[w]hen the Courts are uncertain of the competitive significance of a particular type of restraint," their job is to "decline to apply the per se label." *United States v. Realty Multi-List, Inc.*, 629 F.2d 1351, 1365 (5th Cir. 1980). After all, outside of the criminal context—which even the government recognizes is reserved for *per se* violations—the alternative to *per se* condemnation is to consider the actual effect of the agreement on the affected market *under the rule of reason*, which is the default rule in antitrust cases. *Texaco Inc. v. Dagher*, 547 U.S. 1, 5 (2006).

The fact that courts have long resisted equating employee no-poach agreements with agreements to allocate customers is unsurprising given the unique aspects of labor markets. Agreements designed to protect a company's existing workforce are much more likely to have pro-competitive benefits than territorial divisions of customers. For one thing, hiring, training, and promoting employees requires significant investment that, if protected, can make a company a more effective competitor. As the Seventh Circuit explained when rejecting an antitrust challenge to a non-compete agreement, "[k]nowing that he is not cutting his own throat by doing so, the employer will train the employee, giving him skills, knowledge, and trade secrets that make the firm more productive." *Polk Bros., Inc. v. Forest City Enters., Inc.*, 776 F.2d 185, 189 (7th Cir. 1985). Those same pro-competitive benefits can and often do arise from employer agreements that avoid litigation over non-compete agreements while protecting trade secrets and investments in training. *See, e.g.*, *Hangar v. Berkley Grp., Inc.*, 2015 WL 3439255, at *7 (W.D. Va. May 28,

2015) (employee non-solicitation agreement avoids litigation over non-competes); *cf. Aydin Corp. v. Loral Corp.*, 718 F.2d 897, 900 (9th Cir. 1983) (analyzing non-interference agreement and recognizing interest in "preserving trade secrets and protecting investments in personnel").

In addition, the notion that two companies could exercise market power over a non-specialized labor market is highly implausible. While extensive judicial experience with customer-allocation agreements has taught that companies entering into such agreements have the market power necessary to make them profitable, that is far less likely to be true in non-specialized labor markets such as those pleaded here. *See* Indictment ¶¶ 6, 9-12, 16-20 (generically referring only to "senior-level employees"). And even if two employers agree not to solicit or hire each other's employees, that agreement leaves them free to compete for a large universe of potential new hires from innumerable other sources. It is thus no surprise that the government invokes a case like *Anderson v. Shipowners' Association of Pacific Coast*, 272 U.S. 359 (1926), which involved specialized employees and an effort to address all potential hires (and to fix wages)—or that, even in *Anderson*, the Court did not view the agreement as a market-allocation scheme subject to *per se* condemnation as such, *see Union Circulation Co.*, 241 F.2d at 657 n.2 (discussing *Anderson*).

Post-*Anderson* developments, including the non-statutory labor exemption, *see Mine Workers v. Pennington*, 381 U.S. 657 (1965); *Meat Cutters v. Jewel Tea Co.*, 381 U.S. 676 (1965), and the careful analysis of the no-hire agreement in *Radovich*, also underscore that labor markets are different from other markets.[1] Those differences underscore why courts should not import into this context *per se* rules that were developed to police anti-competitive conduct in consumer

[1] The distinct nature of the labor market is also shown by the efforts of some states to regulate no-hire or non-solicitation agreements as distinct phenomena under state employment law. *See, e.g.*, 26 Me. Rev. Stat. § 599-B; Washington State Office of the Attorney General, *AG Ferguson Announces Fast-Food Chains Will End Restrictions on Low-Wage Workers Nationwide* (July 12, 2018), https://bit.ly/2R8Djyi.

markets. Indeed, the whole point of the distinction between *per se* and rule-of-reason treatment is to resist the kind of facile analogies the government presses here. After all, at the broadest level of generality, virtually every anti-competitive agreement could be described as a species of price fixing, bid rigging, boycott, or market allocation, which themselves are just species of unlawful restraints of trade. If that kind of condemnation-by-analogy sufficed, then *per se* treatment would become the rule, not the very narrow exception that the Supreme Court and the Fifth Circuit have cautioned it is. And even if strict no-hire agreements could be analogized to market allocation, the agreements alleged here, which put no employee off-limits and permitted movements initiated by the employees, could not be said to allocate any market. The legality of such agreements must be determined by careful consideration of the relevant market and pro-competitive benefits, not by an inapt analogy to very different practices in very different markets.

II. Applying The *Per Se* Rule To An Employee Non-Solicitation Agreement For The First Time Ever In This Criminal Prosecution Would Violate Due Process.

Even if the government can someday convince a court to subject an employee non-solicitation agreement to *per se* condemnation, the Due Process Clause would prevent it from making the first such case a *criminal* case. Bedrock principles of notice have particular force in the criminal context and do not permit the imposition of criminal liability for violating general prohibitions that have not been reduced to clear guidance that provides "fair warning" of what is prohibited. *United States v. Lanier*, 520 U.S. 259, 266 (1997). Under the Sherman Act, that fair warning must come from prior judicial decisions subjecting a category of restraint to the *per se* rule. The government does not really contest that. Instead, it attacks a strawman, arguing that the Sherman Act is not facially void for vagueness. That, of course, is not SCA's argument. The problem the government faces here is not that the Sherman Act is facially vague. It is that "due process bars courts from applying a novel construction of a criminal statute to conduct that neither

the statute nor any prior judicial decision has fairly disclosed to be within its scope." *Id.* Since the Sherman Act itself "does not, in clear and categorical terms, precisely identify the conduct which it proscribes," *United States v. U.S. Gypsum Co.*, 438 U.S. 422, 438 (1978), that notice must come from the courts. Yet the government cannot identify even a single district court case—let alone any binding authority—that has definitively held that employee non-solicitation agreements are *per se* illegal. Indeed, neither of the cases the government invokes as purportedly putting the world on notice that entering into such agreements was punishable by prison time, *see* Opp'n 25 (citing *eBay* and *High-Tech*), even decided whether the *per se* rule should apply.

The government protests that criminal prosecutions are not unconstitutional just because they "involv[e] untested fact patterns or novel industries." Opp'n 28. But in contrast to the cases the government cites, SCA's argument is not that the outpatient-service industry is such an esoteric context that SCA should be immune from well-established rules like the prohibition against price fixing. SCA's point is instead that even though every firm in every industry participates in a labor market, and various forms of "no-poach" agreements have been in widespread use for decades, there is no case holding those agreements to be subject to the *per se* rule—and when it comes to employee non-solicitation agreements in particular, there does not even appear to be a case squarely condemning such an agreement under the rule of reason. Under those circumstances, it is fanciful to insist that employers have been given fair warning that entering into employee non-solicitation agreements is criminal misconduct. Unsurprising, the indictment here fails to allege that anyone thought they were breaking the law, or tried to hide the existence of these agreements.

The government repeats its insistence that all these no-poach agreements are just a species of market-allocation agreements, which have long been subject to *per se* condemnation. But that argument is even weaker as a due process argument than as an argument for extending the *per se*

rule to employee non-solicitation agreements. That analogy remains just an analogy, and, as demonstrated, no court has squarely embraced it as a basis for *per se* condemnation even in a civil case, even though courts have been analyzing the Sherman Act's applicability to market-allocation agreements for a century. If it really were obvious to all the world that non-solicitation agreements are just a species of *per se* illegal market allocation, then one would have expected the Supreme Court to recognize as much in *Radovich*. Or the Fifth Circuit in *Quinonez*. Or the Second Circuit in *Bogan*. Or the Third Circuit in *Eichorn*. Instead, courts continue to struggle with that question in civil litigation even today. Given the persistence of that muddle even in the civil context, the notion that the *per se* illegality of employee non-solicitation agreements is sufficiently well established to provide "fair warning" to criminal defendants should be a non-starter.

Indeed, the government itself did not begin claiming that "no-poach" agreements are a species of horizontal market allocation in *civil* cases until the past decade. And the government did not announce until late 2016 (long after the Indictment alleges that such agreements were formed here) that it intended to begin *criminally* prosecuting those who enter into such agreements, even though its limited civil enforcement efforts had met with little success. The government tries to dismiss that 2016 Guidance as an effort to make its litigating position "more digestible for the nonlawyer." Opp'n 29. But if "decades of precedent" had already given the public "fair notice that … non-solicitation agreements between competitors are per se unlawful," Opp'n 22, then the government would not have felt compelled to assure even nonlawyers that it would not prosecute agreements that occurred before it issued that guidance. *See* U.S. Dep't of Justice, *Justice News: Deputy Assistant Attorney General Michael Murray Delivers Remarks at the Santa Clara University School of Law* (Mar. 1, 2019), https://bit.ly/2MsVT1G. Nor would it have waited until 2021 to bring the first-ever criminal case for conduct that has been commonplace for decades.

The truth is that the government should have waited even longer to initiate such a prosecution—at least until *per se* treatment could be established in civil cases (if it ever comes to be)—because due process requires nothing less. Given the broad strokes with which Congress prohibited unlawful restraints of trade in the Sherman Act, the requisite "fair warning" must come from "judicial decision" rather than statutory text. *Lanier*, 520 U.S. at 266. And it must come from civil, not criminal cases, as fair notice cannot come after someone has already been accused of a crime. That rule not only stems from bedrock due process principles, but makes practical sense. Civil cases lend themselves to clarifying the proper treatment of practices because the plaintiff can argue for rule-of-reason or *per se* treatment (or something in between, like "quick look" analysis) in the alternative. In the criminal context, by contrast, it is *per se* condemnation or nothing, and adopting the *per se* framework affects virtually every aspect of the case, from discovery obligations to evidentiary rulings to post-trial analysis. Indeed, the government does not deny that, in its view, SCA should not even be able to make many of the arguments that other courts have considered when deciding whether the *per se* rule should govern in civil cases involving no-hire or non-solicitation agreements. Yet the only mechanism to assure early appellate guidance before a possibly unnecessary trial is to dismiss the indictment; a threshold ruling for the government would force the parties to develop the record and proceed to trial under a *per se* shadow that could render consideration of market power and pro-competitive justifications inadmissible. All these points weigh strongly in favor of declining the government's invitation to become the first court ever to hold that entering into an employee non-solicitation agreement with another employer is so obviously anti-competitive as to constitute a federal crime.

CONCLUSION

For the foregoing reasons, the Court should dismiss the indictment.

Respectfully submitted,

s/Paul Coggins
PAUL COGGINS
LOCKE LORD LLP
2200 Ross Avenue, Suite 2800
Dallas, TX 75201
214-740-8104
214-756-8104 (facsimile)
Texas Bar No. 04504700
pcoggins@lockelord.com

PAUL D. CLEMENT*
ERIN E. MURPHY*
MATTHEW D. ROWEN*
KIRKLAND & ELLIS LLP
1301 Pennsylvania Ave. NW
Washington, DC 20004
202-389-5000
202-389-5200 (facsimile)

JAMES H. MUTCHNIK*
DANIEL E. LAYTIN*
KIRKLAND & ELLIS LLP
300 N. LaSalle
Chicago, IL 60654

SARA S. TATUM*
KIRKLAND & ELLIS LLP
601 Lexington Ave.
New York, NY 10022

Counsel for Defendant
SCAI Holdings, LLC

s/Robert L. Webster
ROBERT L. WEBSTER
7557 Rambler Road, Suite 525
Dallas, TX 75231
469-758-4150
469-758-4160 (facsimile)
Texas Bar No. 21053375
robert.webster@bobwebsterlaw.com

DAVID B. ANDERS*
SARAH K. EDDY*
KEVIN S. SCHWARTZ*
WACHTELL, LIPTON, ROSEN & KATZ
51 West 52nd St.
New York, NY 10019
212-403-1000
212-403-2000 (facsimile)

Counsel for Defendant
Surgical Care Affiliates LLC

* admitted *pro hac vice*

May 14, 2021

CERTIFICATE OF SERVICE

I hereby certify that on May 14, 2021, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Northern District of Texas by using the CM/ECF system per Local Rule 49.2. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/Paul Coggins
Paul Coggins

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA, *Plaintiff*, v. SURGICAL CARE AFFILIATES LLC, and SCAI HOLDINGS, LLC *Defendants*.	No. 3-21-cr-00011-L

[PROPOSED] ORDER GRANTING DEFENDANTS' UNOPPOSED MOTION FOR LEAVE TO FILE REPLY TO THE UNITED STATES' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

This matter having come before the Court upon Defendants Surgical Care Affiliates LLC and SCAI Holdings, LLC's unopposed motion for leave to file a Reply to the United States' Opposition to Defendants' Motion to Dismiss (Doc. No. 44), and upon good cause shown, the Court hereby orders that:

Defendants' Motion is GRANTED, and Defendants may file a Reply to the United States' Opposition to Defendants' Motion to Dismiss not to exceed 10 pages.

SO ORDERED on this ___ day of May, 2021.

____

THE HONORABLE SAM A. LINDSAY
UNITED STATES DISTRICT JUDGE