

1 THE HONORABLE RICARDO S. MARTINEZ

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9 UNITED STATES DISTRICT COURT
10 WESTERN DISTRICT OF WASHINGTON
11 AT SEATTLE

12 POLSKIE LINIE LOTNICZE LOT S.A.,

13 Plaintiff,

14 vs.

15 THE BOEING COMPANY,

16 Defendant.

Case No. 2:21-CV-01449-RSM

**STIPULATED MOTION AND
ORDER FOR LEAVE TO
FILE DOCUMENT UNDER SEAL**

**NOTE ON MOTION CALENDAR:
OCTOBER 31, 2022**

17
18 **INTRODUCTION**

19 Pursuant to Local Civil Rule 5(g)(2), Plaintiff POLSKIE LINIE LOTNICZE LOT S.A.
20 (“LOT”) and Defendant THE BOEING COMPANY (“Boeing,” and together with LOT, the
21 “Parties”) respectfully move this Court for leave to file LOT’s First Amended Complaint under
22 seal because it contains excerpts from and summaries of the Parties’ confidential documents
23 containing sensitive contractual terms. After the First Amended Complaint has been filed, the
24 Parties will promptly meet-and-confer to assess which redactions could adequately protect those
25 confidentiality concerns.
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STIPULATED MOTION AND ORDER FOR
LEAVE TO FILE DOCUMENT UNDER SEAL
Case No. 21-cv-1449-RSM

1 **LCR 5(g)(3)(A) CERTIFICATION**

2 The Parties have met and conferred and are in agreement about the need for sealing. In
3 accordance with Local Civil Rule 5(g)(3)(A), the undersigned counsel certify that on October 26,
4 2022, Anthony U. Battista and Mirin Park, on behalf of LOT, and Ulrike B. Connelly, on behalf
5 of Boeing, met and conferred telephonically regarding LOT’s intention to include, in its First
6 Amended Complaint to be filed on October 31, 2022, excerpts to and references from Boeing’s
7 Aircraft General Terms Agreements (“AGTAs”) with airline lessors that leased aircraft to LOT
8 (and assigned some contractual AGTA terms to LOT during the course of those lease
9 agreements). Specifically, during the telephonic meet and confer, counsel for LOT informed
10 counsel for Boeing that LOT’s First Amended Complaint contains excerpts from and summaries
11 of portions of Boeing’s AGTAs. During that call and in follow-up correspondence, Boeing and
12 LOT agreed that any references or excerpts to the AGTAs in LOT’s Amended Complaint should
13 remain under seal because those contracts contain highly sensitive contractual terms relating to
14 the purchase and lease of commercial aircraft, the disclosure of which Boeing asserts will result
15 in commercial harm to Boeing and its airline customers.¹

16 The Parties therefore agree that LOT’s First Amended Complaint would need to be filed
17 under seal in the first instance, subject to this Court’s approval. The Parties further agree that,
18 following LOT’s filing of the First Amended Complaint under seal, as well as this accompanying
19 Stipulation Motion and [Proposed] Order: (1) the Parties would meet and confer to agree on
20 appropriate redactions to LOT’s First Amended Complaint; and, subject to the Court granting
21 this Stipulated Motion, (2) LOT would file a redacted copy of its First Amended Complaint on
22 the public docket within seven (7) days of filing the sealed copy of its First Amended Complaint.

23 The Parties are in further agreement that there is not another means of protecting the
24 commercially sensitive information in the AGTAs.

25 _____
26 ¹ Boeing notes it has not yet seen the proposed contract terms that LOT intends to file with its
First Amended Complaint.

LCR 5(g)(3)(B) LEGAL STANDARD AND BOEING'S ARGUMENT

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2 This Court applies a strong presumption favoring public access to court records that
3 ordinarily requires the moving party to provide compelling reasons to seal a document.
4 *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). But where the
5 underlying motion is non-dispositive, the showing required to rebut the presumption is far lower.
6 *See, e.g., In re Midland Nat'l Life Ins. Co. Annuity Sales Practices Litig.*, 686 F.3d 1115, 1119
7 (9th Cir. 2012) (holding that where the sealed records are “attached to a non-dispositive motion .
8 . . . , the usual presumption of the public’s right of access is rebutted” (internal quotation marks
9 and citation omitted)); *Kamakana*, 447 F.3d at 1179 (“The public policies that support the right
10 of access to dispositive motions, and related materials, do not apply with equal force to non-
11 dispositive materials.”).

12 In the case of a non-dispositive motion, a “good cause” showing will suffice to seal any
13 records attached to the motion. *Kamakana*, 447 F.3d at 1180; *see also Midland*, 686 F.3d at 1119
14 (“[A] particularized showing of ‘good cause’ under Federal Rule of Civil Procedure 26(c) is
15 sufficient to preserve the secrecy of sealed discovery documents attached to non-dispositive
16 motions.” (citation omitted)). Here, LOT is not filing a dispositive motion; it is filing an amended
17 Complaint. Therefore, the Court need only find good cause exists to redact portions of that
18 Complaint that address confidential contractual terms.

19 Boeing and LOT agree that the AGTAs set out the contractual terms on which Boeing
20 sells commercial aircraft to its customers, including the terms of delivery, pricing, rebates, and
21 product warranties. The Parties do not publicly disclose information of this kind. It is particularly
22 sensitive because contracts between Boeing and its customers are heavily negotiated and subject
23 to confidential terms and conditions. Boeing and its customers negotiate those contracts with the
24 understanding that those commercial terms will not be disclosed to the public, thereby resulting
25 in competitive harm both to Boeing and to its customers. For precisely this reason, the AGTAs
26 contain provisions requiring the parties to treat as strictly confidential any information pertaining

1 to the AGTAs, including the documents as well as individual provisions contained therein.
2 Similarly, when airline customers lease Boeing aircraft (versus purchasing them outright), the
3 airline customer, such as LOT here, will execute assignments of certain rights under the lessor's
4 AGTA, and the confidentiality provisions of the AGTAs are one such right assigned.

5 Other courts have consistently permitted parties to redact similar contractual information
6 on the grounds that it is commercially and competitive sensitive. *See, e.g., KM Enters., Inc. v.*
7 *Glob. Traffic Techs., Inc.*, 725 F.3d 718, 734 (7th Cir. 2013) (sealing “customer and pricing
8 data”); *Apple Inc. v. Samsung Elecs. Co.*, 727 F.3d 1214, 1223 (Fed. Cir. 2013) (redacting
9 “product-specific financial information”); *Amgen Inc. v. Amneal Pharms. LLC*, 2021 WL
10 4843959, at *2 (D. Del. Oct. 18, 2021) (sealing “contract price at which [manufacturer] sells the
11 . . . product to each customer” and the “chargebacks, rebates, and discounts provided to each
12 customer”). As Judge Posner reasoned, information of this type gives “unearned competitive
13 advantage” to other firms, and “the American public does not need to know [such information]
14 in order to evaluate the handling of this litigation by the judiciary.” *SmithKline Beecham Corp.*
15 *v. Pentech Pharms., Inc.*, 261 F. Supp. 2d 1002, 1008 (N.D. Ill. 2003).

16 Disclosure of the AGTAs would result in harm to Boeing and its customers (including
17 LOT).² If another aircraft manufacturer learns of these terms, Boeing would be unfairly
18 disadvantaged because the competitor could craft its offers with full knowledge of the package
19 of pricing, services, and other terms that Boeing offers its customers. The result would be that
20 the competitor could craft its own proposals with unilateral insight into Boeing's confidential
21 contracts. That unfair advantage would arise by virtue of the litigation process, not through any
22 earned business advantage. Likewise, such disclosure would also give other airline customers
23 (or aircraft lessees) access to confidential pricing, services, and other contract terms that Boeing
24 offers to the counterparties to the AGTAs at issue in this case, which would create unearned

25 ² LOT does not at this time take a position on whether the specific provisions it excerpts in the
26 First Amended Complaint will cause harm to LOT if disclosed; Boeing reserves its rights on
this issue until it has the opportunity to review the First Amended Complaint.

1 leverage in negotiations with Boeing arising by virtue of a routine filing in a litigation unrelated
2 to those business entities, rather than through any earned competitive advantage.

3 Finally, the Parties do not propose keeping the entirety of the Complaint under seal. *See*
4 LCR 5(g)(3)(B)(iii) (requiring the least restrictive method to ensure protection of material to be
5 sealed). Instead, the Parties anticipate being able to redact only those portions that quote from or
6 specifically detail terms from the AGTAs, and the Parties will submit additional supporting
7 papers to provide a specific basis for sealing the specific provisions at issue. As soon as the First
8 Amended Complaint is filed, and available to Boeing to review, the Parties will work together to
9 prepare such a redacted version for filing in the public record.

10 **CONCLUSION**

11 For the foregoing reasons, the Parties respectfully request that this Court order the
12 following document be filed under seal: an unredacted copy of Plaintiff POLSKIE LINIE
13 LOTNICZE LOT S.A.'s First Amended Complaint. The Parties will submit a redacted copy for
14 filing in the public record within seven (7) days of the Court's order sealing the Complaint.

15 IT IS SO STIPULATED by and between the Parties.
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1 DATED: October 31, 2022

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22 **ORDER**

23 Based upon the foregoing Stipulation, the Court hereby:

24 ORDERS, ADJUDGES AND DECREES that the unredacted copy of Plaintiff
25 POLSKIE LINIE LOTNICZE LOT S.A.'s First Amended Complaint may be filed
26 under seal.

IT IS SO ORDERED.

DATED this 1st day of November, 2022.



RICARDO S. MARTINEZ
UNITED STATES DISTRICT JUDGE