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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

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9 MD Helicopters Incorporated,

10 Plaintiff,

11 v.

12 Boeing Company,

13 Defendant.

No. CV-17-02598-PHX-JAT

ORDER

14
15 At issue is Plaintiff MD Helicopters, Inc. (“MDHI”) and
16 Defendant/Counterclaimant Boeing Corporation’s (“Boeing”) Joint Application for Leave
17 to File Under Seal (Doc. 129) and Boeing’s Motion to Seal Documents (Doc. 139). The
18 Court now rules on these Motions.

19 **I. BACKGROUND**

20 Boeing’s Motion to Seal Documents (Doc. 139) asked the Court to enter an order
21 directing the Clerk to file under seal Exhibits C, T, Y, and Z to Boeing’s Controverting
22 Statement of Facts in Support of Its Response to Plaintiff’s Motion for Summary Judgment.
23 These exhibits are currently lodged under seal at Doc. 140. In its Memorandum in Support
24 of its Motion to Seal Documents (“Memorandum”), Boeing withdrew its Motion to Seal
25 (Doc. 139), and instead requested that portions of exhibits C and T be redacted. (Doc. 144
26 at 1–3). In this Memorandum, Boeing also withdrew its request to file Exhibits Y and Z
27 under seal and did not propose any redactions to these two exhibits. (Doc. 144 at 3).

28 The parties’ Joint Application for Leave to File Under Seal (Doc. 129) asked the

1 Court to enter an order directing the Clerk to file under seal MDHI’s unredacted Motion
2 for Summary Judgment, MDHI’s unredacted supporting Statement of Facts, and Exhibits
3 33, 35, 40, 41, 42, 45, 47, 50, 52, 53, 57, 60, 64, 70, 71, and 74. These documents are
4 currently lodged under seal at Docs. 131 and 132. In their Joint Memorandum in Support
5 of Joint Motion for Leave to File Under Seal, the parties withdrew their Joint Application
6 for Leave to File Under Seal (Doc. 129) and instead requested that portions of Exhibits 33,
7 35, 41, 42, 50, 57, 60, 70 and 71 be redacted. (Doc. 144 at 3–5). In this Joint Memorandum,
8 the parties also withdrew their request to file Exhibits 40, 45, 47, 52, 53, 64, and 74 under
9 seal, and did not propose any redactions to those exhibits. (Doc. 144 at 5).

10 **II. ANALYSIS**

11 As the parties move to redact documents appended to dispositive motions, they bear
12 the burden of meeting the “compelling reasons” standard set forth in *Kamakana v. City &*
13 *Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006). This standard was discussed in
14 detail in the Court’s April 26, 2019 Order (Doc. 143), and, therefore, will not be restated
15 here.

16 **A. Exhibit C**

17 Exhibit C to Boeing’s Controverting Statement of Facts in Support of Its Response
18 to Plaintiff’s Motion for Summary Judgment is entitled “Amendment of
19 Solicitation/Modification of Contract (BOEING0186019).” (Doc. 138-1 at 1). Boeing
20 moves to redact pricing information reflected in this contract, with the exception of the
21 contract’s final overall price figure. (Doc. 144 at 2). Boeing avers that this proprietary
22 pricing information constitutes a trade secret, especially because “the methods for setting
23 such prices are not commonly-used industry formulas.” (*Id.* (citing *Steinberg Moorad &*
24 *Dunn Inc., a California Corp. v. Dunn*, 136 F. App’x 6, 13 (9th Cir. 2005); *TDBBS LLC v.*
25 *Ethical Prod. Inc.*, No. CV-19-01312-PHX-SMB, 2019 WL 1242961, at *4 (D. Ariz. Mar.
26 18, 2019))). After reviewing the unredacted version of Exhibit C filed at Doc. 140-1 and
27 the redacted version filed at Doc. 144-3, the Court finds that Boeing has shown compelling
28 reasons to redact this pricing information. Further, as Boeing points out, the proposed

1 redactions to Exhibit C “would not have any effect on Boeing’s Controverting Statement
2 of Facts because the fact for which this document is cited as support relates to the overall
3 contract price, which remains unredacted.” (Doc. 144 at 2; *see* Doc. 138 ¶ 10).

4 **B. Exhibit T**

5 Exhibit T to Boeing’s Controverting Statement of Facts is entitled “Format 6
6 Schedule Report (BOEING0178633).” (Doc. 138-1 at 1). Boeing moves to redact slides 4
7 and 5 of this document, located at BOEING0178636 through BOEING0178637, because
8 these pages “contain highly sensitive trade secrets related to Boeing’s proprietary
9 production process which, if disclosed, would provide Boeing’s competitors with an
10 economic advantage over Boeing.” (Doc. 144 at 2 (citing *Enter. Leasing Co. of Phx. v.*
11 *Ehmke*, 3 P.3d 1064, 1070 (Ariz. Ct. App. 1999) (holding that documents regarding the
12 plaintiff’s financial information and operations were trade secrets where those documents
13 provided economic value to the plaintiff and “would allow a competitor to gain an
14 advantage if the documents were discovered in the marketplace”))). Boeing also avers that
15 the information on slides 4 and 5 of Exhibit T “relates to the production process for military
16 equipment and weaponry, and thus contains confidential and sensitive information
17 regarding United States military capabilities.” (*Id.* (citing *McQuilliams v. Int’l Auto*
18 *Logistics, LLC*, No. 2:14-CV-124, 2016 WL 4257362, at *1 (S.D. Ga. Aug. 11, 2016)
19 (granting the parties’ joint motions to file under seal where the parties “established that
20 sealing these records is necessary to protect Defendant’s proprietary information and
21 information that implicates national security interests”); *Am. Civil Liberties Union v. Dep’t*
22 *of Def.*, No. 09CIV8071BSJFM, 2012 WL 13075284, at *6 (S.D.N.Y. Mar. 20, 2012)
23 (granting the defendant’s request to seal documents where doing so “is necessary to
24 preserve the national security”); *United States v. Ressam*, 221 F. Supp. 2d 1252, 1263
25 (W.D. Wash. 2002) (sealing documents “required to protect ongoing compelling interests
26 of national security”))).

27 After reviewing the unredacted version of Exhibit T filed at Doc. 140-1 and the
28 redacted version filed at Doc. 144-3, the Court finds that Boeing has shown compelling

1 reasons to redact slides four and five of Exhibit T, as these slides contain trade secrets and
2 sensitive information regarding United States military capabilities. *See Ground Zero Ctr.*
3 *for Non-Violent Action v. United States Dep't of Navy*, 860 F.3d 1244, 1262 (9th Cir. 2017)
4 (“National security concerns can, of course, provide a compelling reason for shrouding in
5 secrecy even documents once in the public domain.”); *GPNE Corp. v. Apple Inc.*, 2015
6 WL 4381244, at *1 (N.D. Cal. July 16, 2015) (“[A] trial court has broad discretion to permit
7 sealing of court documents for, inter alia, the protection of ‘a trade secret or other
8 confidential research, development, or commercial information.’”) (quoting Fed. R. Civ.
9 P. 26(c)(1)(G)).

10 **C. Exhibits 33, 35, and 57**

11 With respect to Exhibits 33, 35, and 57 to MDHI’s Statement of Facts, Boeing
12 moves to redact the portions of these exhibits pertaining to Boeing’s labor rates, and
13 information from which those labor rates could be extrapolated. (Doc. 144 at 3–4). Mark
14 Asplund, Boeing’s Senior Counsel, avers that these exhibits contain proprietary
15 information and trade secrets related to the manufacture of AH-6i and related helicopters.
16 (Doc. 129-1 at 2–3). Boeing claims that the labor rates contained in these exhibits represent
17 confidential information that Boeing’s competitors could use to gain a competitive
18 advantage. (Doc. 144 at 3–4 (citing *Enter. Leasing Co. of Phx.*, 3 P.3d at 1070)). After
19 reviewing the unredacted versions of these exhibits at Docs. 132-1, 132-2 and 132-3, the
20 Court agrees. As Boeing has shown compelling reasons to redact information pertaining to
21 its labor rates, the Court will instead consider the redacted versions of Exhibits 33, 35, and
22 57 at Docs. 127-8, 127-9, 128-2, and 144-1 in the resolution of this case. *See Torres*
23 *Consulting & Law Grp., LLC v. Dep’t of Energy*, No. CV-13-00858-PHX-NVW, 2013 WL
24 6196291, at *4–5 (D. Ariz. Nov. 27, 2013) (finding that the defendant conclusively
25 established that its labor production rates were trade secrets because this information, if
26 disclosed, “would give a competitor conclusive insight into how it could modify its
27 business to undercut another’s”).

1 **D. Exhibits 41, 42, and 50**

2 Next, Boeing moves to redact portions of Exhibits 41, 42, and 50 to MDHI's
3 Statement of Facts pertaining to production of Boeing aircraft other than the AH-6i, the
4 helicopter model at issue in this suit. (Doc. 144 at 4). Boeing asserts that the disclosure of
5 information relating to production timetables could put Boeing at a competitive
6 disadvantage. (Doc. 144 at 4 (citing *Enter. Leasing Co. of Phx.*, 3 P.3d at 1070)). Further,
7 Boeing avers that because some of the information contained in these three exhibits relates
8 to the production process for military equipment and weapons, the exhibits contain
9 confidential and sensitive information regarding United States military capabilities. (*Id.*).
10 Boeing has shown compelling reasons to redact the trade secrets and sensitive information
11 regarding United States military capabilities contained in these exhibits for the same
12 reasons set forth in the discussion of Exhibit T, *supra*. See *Ground Zero Ctr. for Non-*
13 *Violent Action*, 860 F.3d at 1262; *GPNE Corp.*, 2015 WL 4381244, at *1. As to Exhibit
14 41, redacting those portions of slides 1 and 3 (BOEING0170892 and BOEING0170894)
15 relating to programs other than the AH-6i and redacting slide 2 (BOEING010893) in its
16 entirety protects this information. As to Exhibit 42, redacting slides 6 and 7
17 (BOEING0060284 and BOEING0060285) in their entirety protects this information as
18 these slides relate to programs other than the AH-6i. Finally, as to Exhibit 50, redacting the
19 portions of this email exchange pertaining to production of Boeing aircraft other than the
20 AH-6i also protects this information. Accordingly, the Court will consider the redacted
21 versions of Exhibits 41, 42, and 50 set forth at Doc. 144-1 in the resolution of this case.

22 **E. Exhibits 60, 70, and 71**

23 With respect to Exhibits 60, 70, and 71 to MDHI's Statement of Facts, Boeing
24 moves to redact pricing information because this proprietary information is a trade secret.
25 (Doc. 144 at 4–5). Specifically, with respect to Exhibits 60 and 71, Boeing moves to redact
26 any pricing information reflected in these contracts except for the overall price figures.
27 (*Id.*). As to Exhibit 70, Boeing moves to redact information related to negotiations over
28 specific price points and the justification for those price points on the grounds that this

1 information is a protected trade secret which needs to be redacted to protect internal
2 deliberative processes which, if disclosed, would give competitors an advantage over
3 Boeing. (*Id.* at 5). After reviewing the unredacted versions of these three exhibits filed at
4 Docs. 132-12, 132-14, and 132-15 and the redacted versions filed at Doc. 144-2, the Court
5 finds that Boeing has shown compelling reasons to redact the pricing information contained
6 in Exhibits 60, 70, and 71 for the same reasons cited in the discussion of Exhibit C, *supra*.

7 **III. CONCLUSION**

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Accordingly,

IT IS ORDERED that Boeing’s Motion to Seal Documents (Doc. 139) is **DENIED AS MOOT**. The Clerk of the Court is directed to leave the documents at Doc. 140 lodged and under seal. The Court will not consider the documents lodged at Doc. 140 in the resolution of this case, and will instead consider the versions of Exhibits C, T, Y, and Z filed at Doc. 144-3.

IT IS FURTHER ORDERED that MDHI and Boeing’s Joint Application for Leave to File Under Seal (Doc. 129) is **DENIED AS MOOT**. The Clerk of the Court is directed to leave the documents at Docs. 131 and 132 lodged and under seal. The Court will not consider the documents lodged at Doc. 131 and 132 in the resolution of this case. Instead, the Court will consider the versions of Exhibits 35, 40, 41, 42, 45, 47, 50, 52, 53, 60, 64, 70, 71, and 74 filed at Docs. 144-1 and 144-2, and the versions of Exhibits 33 and 57 filed at Docs. 127-8, 127-9, and 128-2.

IT IS FURTHER ORDERED that MDHI shall refile public versions of its Motion for Summary Judgment (Doc. 126) and Statement of Facts (Doc. 127) which only redact information set forth in the redacted portions of Exhibits 33, 35, 41, 42, 50, 57, 60, 70, and 71 by May 29, 2019.

IT IS FINALLY ORDERED striking MDHI’s Motion for Summary Judgment (Doc. 126) and Statement of Facts (Doc. 127). If filed by May 29, 2019, MDHI’s updated versions of its Motion for Summary Judgment and Statement of Facts will be deemed timely.

Dated this 20th day of May, 2019.

