

1 **WO**

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 MD Helicopters Incorporated,

10 Plaintiff,

11 v.

12 Boeing Company,

13 Defendant.
14

No. CV-17-02598-PHX-JAT

ORDER

15 Pending before the Court is Plaintiff/Counterdefendant MD Helicopters, Inc.'s
16 ("MDHI") notice of intent to provide live testimony at the hearing on its motion to
17 dismiss for failure to state a claim. (Doc. 43). Defendant/Counterclaimant The Boeing
18 Company ("Boeing") objects to the presentation of this testimony. (Doc. 44).

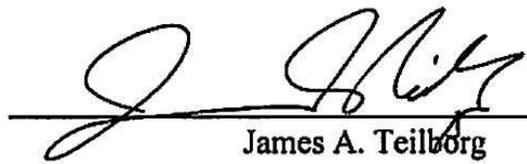
19 Although stylized as a notice, this Court understands MDHI's filing to be a motion
20 to present live testimony. MDHI does not cite, and this Court cannot find, any authority
21 allowing a party to present live testimony at an oral argument on a motion to dismiss for
22 failure to state a claim. In resolving such a motion, a court may only consider the
23 complaint, documents attached to the complaint, documents whose authenticity is not
24 contested and upon which the complaint "necessarily relies," and undisputed matters of
25 public record. *Lee v. City of Los Angeles*, 250 F.3d 668, 688–89 (9th Cir. 2001) (quoting
26 *Parrino v. FHP, Inc.*, 146 F.3d 699, 705–06 (9th Cir. 1998)). If a court considers any
27 other information, the motion to dismiss is converted into a motion for summary
28 judgment. Fed. R. Civ. P. 12(d).

1 MDHI's proposed live testimony is outside of the scope of what this Court may
2 consider on a motion to dismiss for failure to state a claim. Furthermore, the Court
3 declines to convert MDHI's motion to dismiss into a motion for summary judgment.

4 Accordingly,

5 **IT IS ORDERED** that MDHI's notice of intent to provide live testimony at the
6 hearing on its motion to dismiss for failure to state a claim, (Doc. 43), is **DENIED**.

7 Dated this 9th day of April, 2018.

8
9
10
11 
12 _____
13 James A. Teilborg
14 Senior United States District Judge
15
16
17
18
19
20
21
22
23
24
25
26
27
28