

CLEARY GOTTlieb STEEN & HAMILTON LLP

One Liberty Plaza
New York, NY 10006-1470

T: +1 212 225 2000

F: +1 212 225 3999

clearygottlieb.com

AMERICAS	ASIA	EUROPE & MIDDLE EAST	
NEW YORK	BEIJING	ABU DHABI	LONDON
SAN FRANCISCO	HONG KONG	BRUSSELS	MILAN
SÃO PAULO	SEOUL	COLOGNE	PARIS
SILICON VALLEY		FRANKFURT	ROME
WASHINGTON, D.C.			

D: +1 212 225 2333

memcdonald@cgs.com

CRAIG B. BROD	ROGER A. COOPER	ARON M. ZUCKERMAN
RICHARD J. COOPER	LILLIAN TSU	KENNETH S. BLAZEJEWSKI
JEFFREY S. LEWIS	AMY R. SHAPIRO	MARK E. McDONALD
PAUL J. SHIM	JENNIFER KENNEDY PARK	F. JAMAL FULTON
STEVEN L. WILNER	ELIZABETH LENAS	PAUL V. IMPERATORE
DAVID C. LOPEZ	LUKE A. BAREFOOT	CLAYTON SIMMONS
MICHAEL A. GERSTENZANG	JONATHAN S. KOLODNER	CHARLES W. ALLEN
LEV L. DASSIN	DANIEL ILAN	JULIA L. PETTY
DAVID H. BOTTER	MEYER H. FEDIDA	HELENA K. GRANNIS
JORGE U. JUANTORENA	ADRIAN R. LEIPSIC	SUSANNA E. PARKER
DAVID LEINWAND	ELIZABETH VICENS	THOMAS S. KESSLER
JEFFREY A. ROSENTHAL	ADAM J. BRENNEMAN	JONATHAN MENDES DE OLIVEIRA
MICHAEL D. DAYAN	ARI D. MCKINNON	BRANDON M. HAMMER
CARMINE D. BOCCUZZI, JR.	JAMES E. LANGSTON	KYLIE N. BARZA
JEFFREY D. KARPF	JARED GERBER	NICKOLAS BOGDANOVICH
FRANCISCO L. CESTERO	RISHI ZUTSHI	MATTHEW G. BRIGHAM
FRANCESCA L. ODELL	JANE VANLARE	RESIDENT PARTNERS
WILLIAM L. MCRAE	AUDRY X. CASUGOL	
JASON FACTOR	ELIZABETH DYER	JUDITH KASSEL
JOON H. KIM	DAVID H. HERRINGTON	BOAZ S. MORAG
ALAN M. LEVINE	KIMBERLY R. SPOERRI	HEIDE H. ILGENFRITZ
MARGARET S. PEONIS	AARON J. MEYERS	ANDREW WEAVER
LISA M. SCHWEITZER	DANIEL C. REYNOLDS	CATHERINE S. GRIMM
JUAN G. GIRALDEZ	ABENA A. MAINOO	JOHN V. HARRISON
DUANE MCLAUGHLIN	HUGH C. CONROY, JR.	LAURA BAGARELLA
CHANTAL E. KORDULA	JOHN A. KUPIEC	JONATHAN D.W. GIFFORD
BENET J. O'REILLY	JOSEPH LANZKRON	DAVID W.S. YUDIN
ADAM E. FLEISHER	MAURICE R. GINDI	KARA A. HALEY
SEAN A. O'NEAL	KATHERINE R. REAVES	ANNA KOGAN
GLENN P. MCGRORY	RAHUL MUKHI	BRIAN J. MORRIS
DEBORAH NORTH	ELANA S. BRONSON	CARINA S. WALLANCE
MATTHEW P. SALERNO	KYLE A. HARRIS	ALEXANDER JANGHORBANI
MICHAEL J. ALBANO	LINA BENSHMAN	JOSHUA PANAS
VICTOR L. HOU		CHARITY E. LEE
		RESIDENT COUNSEL

February 2, 2024

Plaintiff's application is GRANTED. The confidential documents (ECF Nos. 48 and 50) shall remain under seal.

The Court of the Clerk is respectfully directed to terminate ECF 47.

Dated: February 5, 2024
New York, NY

SO ORDERED


ROBYN F. TARNOFSKY
UNITED STATES MAGISTRATE JUDGE

Re: Thales Avionics, Inc. v. L3 Technologies, Inc., No. 24-cv-112 (JGK) (RFT)

Dear Magistrate Judge Tarnofsky:

I write on behalf of Plaintiff Thales Avionics, Inc. ("Plaintiff") pursuant to Rule III.E of Your Honor's Individual Practices to respectfully request leave to: (1) file under seal Exhibit 1, Exhibit 2, and Exhibit 3 attached to the Declaration of Mark E. McDonald, dated February 2, 2024; and (2) file in redacted form Plaintiff's reply in support of its motion for preliminary injunction in aid of arbitration ("Reply") (collectively, "Confidential Documents").

Exhibit 1 and Exhibit 2 are documents that Your Honor ordered to be "treated as highly confidential with disclosure limited to outside counsel's eyes only" once produced by Defendant. ECF No. 41 at 1. Moreover, Defendant has previously moved for its letter referring to and describing some of the contents of Exhibit 1 and Exhibit 2 (ECF No. 38) to be filed under seal because it "contains confidential and competitively sensitive information" and because the communications described therein, including Exhibit 1 and Exhibit 2, were "made in connection with a competitive bidding process that has not yet resulted in a final sale." ECF No. 37.

Exhibit 3 is also a non-public document that relates to Defendant's efforts to sell its entire avionics business and contains financial information about Defendant's avionics business. Furthermore, in its communications with Plaintiff before this action was filed, Defendant maintained that that all such documents are covered by a Confidential Agreement as

Hon. Robyn F. Tarnofsky, p. 2

of May 24, 2023 between Plaintiff's and Defendant's parent companies, which in turn provides that all documents subject to it should be kept "strictly confidential." ECF No. 12-1 at 1-2.

Finally, the portions of its Reply that Plaintiff moves to redact either describe the content of Exhibits 1-3, or contain information that Defendant considers confidential and commercially sensitive (ECF No. 32). Your Honor previously granted Defendant's application to redact portions of Defendant's Opposition that contained similar types of information. ECF No. 36.

"Established factors and values that can outweigh the presumption of public access include . . . business secrecy . . . and privacy interests." *Valassis Commc'ns, Inc. v. News Corp.*, No. 17-CV-7378 (PKC), 2020 WL 2190708, at *1 (S.D.N.Y. May 5, 2020). Courts have granted motions to seal commercially sensitive information, which, if disclosed, could cause competitive harm. *See, e.g., Rubik's Brand Ltd. v. Flambeau, Inc.*, No. 17-CV-6559 (PGG) (KHP), 2021 WL 1085338, at *1 (S.D.N.Y. Mar. 22, 2021) (granting motion to seal license agreements, invoices, and documents relating to marketing strategy); *Tropical Sails Corp. v. Yext, Inc.*, No. 14 CIV. 7582, 2016 WL 1451548, at *4 (S.D.N.Y. Apr. 12, 2016) (sealing exhibits that would cause defendant "competitive injury" if disclosed). *Cf. United States v. Amodeo*, 71 F.3d 1044, 1051 (2d Cir. 1995) ("Commercial competitors seeking an advantage over rivals need not be indulged in the name of monitoring the courts.").

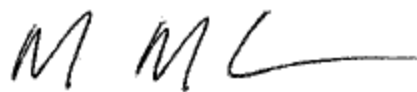
Plaintiff has no objection to filing any of these documents publicly. However, given that Exhibit 1 and Exhibit 2 were produced as highly confidential, Exhibit 3 contains non-public financial information about Defendant's business and is of a type that Defendant previously maintained to be confidential, and portions of Plaintiff's Reply refer to those or other documents that have been filed under seal and information that has been redacted in previous filings in this action, Plaintiff respectfully asks that Your Honor provisionally grant this Motion until Defendant has an opportunity to be heard on whether any or all of the Confidential Documents should be kept under seal.

CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that Your Honor enter an Order allowing Plaintiff to file the Confidential Documents under seal.

Dated: New York, New York
February 2, 2024

Respectfully submitted,



Mark E. McDonald

cc: All Counsel of Record (via ECF)