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**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

WAGNER AERONAUTICAL, INC.
et al.,

Plaintiffs,

v.

DAVID DOTZENROTH et al.,

Defendants.

Case No.: 21CV0994 L AGS

**DEFENDANTS' UNOPPOSED *EX PARTE* APPLICATION FOR
ENTRY OF REDACTED ORDER
DENYING PLAINTIFFS' MOTION
FOR PRELIMINARY
INJUNCTION**

Hon. M. James Lorenz
Mag. Judge: Hon. Andrew G. Schopler

Case No.: 21CV0994 L AGS

Ex Parte Application for Entry of Redacted Order Denying Plaintiffs' PI Motion

I. INTRODUCTION

Defendants David Dotzenroth, Sequoia Aircraft Conversions, LLC, CAI Consulting Ltd., and Charles Wiley Dotzenroth (the “Dotzenroth Defendants”) and Defendants John Tomblin, David Jones, Ronald Towry, and Eric Kivett, in their official capacities with NIAR (the “NIAR Defendants”), hereby apply *ex parte* for immediate entry of a redacted Order Denying Plaintiffs’ Motion for Preliminary Injunction. The Order was filed under seal as Document 373, but there is no entry on the public docket indicating that it was entered or that Plaintiffs’ motion was denied. This application requests entry of a redacted order in accordance with the practice this Court has followed with respect to other materials filed under seal. The parties agree on the redactions to be made, and Plaintiffs do not oppose this request.

II. FACTS

On September 28, 2022, the Court issued an Order denying Plaintiffs’ Motion for Preliminary Injunction. Doc. 373. The Order was sealed and there is no record of it on PACER. On October 3, 2022, immediately after receiving a copy of the sealed Order in the mail, the Dotzenroth Defendants’ counsel emailed Plaintiffs’ counsel and the NIAR Defendants requesting their consent to disclose the Order to their clients. Fitzgerald Dec. ¶ 2, Exh. A. On October 4, 2022, Plaintiffs’ counsel responded, stating “We have no objection to you sharing the opinion with your clients (and with in-house counsel at WSU). However, please redact the references to [party name omitted] as we had designated that information counsel only.” *Id.* Plaintiffs did not request any other redactions. *Id.*

Subsequently, the Dotzenroth Defendants’ counsel emailed Plaintiffs’ and NIAR Defendants’ counsel a copy of the Order, Doc. 373, with Plaintiffs’ requested redactions applied (two small redactions on page 9), asking whether they would join a stipulated request for the redacted version to be entered by the Court on the public docket. Fitzgerald Dec. ¶ 3, Exh. B. The NIAR Defendants’

1 counsel joined the request to docket the redacted Order. *Id.* Plaintiffs’ counsel
 2 stated Plaintiffs “take no position to your request and do not intend to file an
 3 opposition” to this *ex parte* application. Fitzgerald Dec. ¶ 4.

4 III. ARGUMENT

5 This application is unopposed, and consistent with this Court’s practice of
 6 having the parties file public, redacted versions of documents that are filed under
 7 seal. The parties have filed redacted versions of all of the briefing relating to the
 8 preliminary injunction motion. *See, e.g.*, Doc. 161-1 (brief in support of
 9 injunction); Doc. 196 (NIAR Defendants’ opposition); Doc. 207 (Dotzenroth
 10 Defendant’s opposition); Doc. 222 (Plaintiffs’ reply). The redacted version of the
 11 Order will complete the record relating to the motion.

12 Entry on the public docket of a redacted version of the Order, redacting
 13 only that information Plaintiffs wish to be kept confidential, also is consistent
 14 with public policy. The Supreme Court made clear that “the courts of this country
 15 recognize a general right to inspect and copy public records and documents,
 16 including judicial records and documents.” *Nixon v. Warner Commc’ns,*
 17 *Inc.*, 435 U.S. 589, 597 (1978). There is a strong presumption of public access to
 18 court records. *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096
 19 (9th Cir. 2016). The presumption of access is “based on the need for federal
 20 courts, although independent—indeed, particularly because they are
 21 independent—to have a measure of accountability and for the public to have
 22 confidence in the administration of justice.” *United States v. Amodeo (Amodeo*
 23 *II)*, 71 F.3d 1044, 1048 (2d Cir.1995); *see also Valley Broad. Co. v. U.S. Dist.*
 24 *Court—D. Nev.*, 798 F.2d 1289, 1294 (9th Cir.1986) (explaining that the
 25 presumption of public access “promot[es] the public’s understanding of the
 26 judicial process and of significant public events”).

27 In the Ninth Circuit, the standard for sealing public records is “stringent.”
 28 *Ctr. for Auto Safety*, 809 F.3d 1092 at 1096 (reversing and remanding, holding

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Dated: October 6, 2022

By: /s/ Kenneth Fitzgerald

Kenneth M. Fitzgerald
Robert G. Knaier
Keith M. Cochran
Amanda T. Muskat
Brittany M. Vojak
FITZGERALD KNAIER LLP
Attorneys for Defendants David
Dotzenroth, Sequoia Aircraft
Conversions, LLC, CAI Consulting
Ltd., and Charles Wiley Dotzenroth

Dated: October 6, 2022

By: /s/ Bryan Wilson

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Attorneys for Defendants David Dotzenroth; Sequoia Aircraft Conversions, LLC;
CAI Consulting Ltd.; and Charles Wiley Dotzenroth

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

WAGNER AERONAUTICAL, INC.;
MAMMOTH FREIGHTERS LLC;
WILLIAM WAGNER; and WILLIAM
TARPLEY,

Plaintiffs,

v.

DAVID DOTZENROTH; SEQUOIA
AIRCRAFT CONVERSIONS, LLC;
CAI CONSULTING LTD.; CHARLES
WILEY DOTZENROTH; JOHN
TOMBLIN, in his official capacity as
Executive Director of NIAR; DAVID
JONES, in his official capacity as

Case No.: 21-CV-0994-L-AGS

**DECLARATION OF KENNETH M.
FITZGERALD IN SUPPORT OF
UNOPPOSED *EX PARTE*
APPLICATION FOR ENTRY OF
REDACTED ORDER DENYING
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

Hon. M. James Lorenz

Mag. Judge: Hon. Andrew G. Schopler

Case No.: 21CV0994 L AGS

Declaration of K. Fitzgerald ISO Defendants' Unopposed *Ex Parte* Application

1 Director of NIAR WERX; RONALD
2 TOWRY, in his official capacity as
3 Chief Engineer of NIAR; ERIC
4 KIVETT, in his official capacity as
Program Manager at NIAR; and JOHN
DOES 1-99, in their official capacities,

5
6 Defendants.

1 I, Kenneth M. Fitzgerald, declare as follows:

2 1. I am a partner at the law firm of Fitzgerald Knaier LLP. I represent
3 Defendants David Dotzenroth, Sequoia Aircraft Conversions, LLC, CAI
4 Consulting Ltd., and Charles Wiley Dotzenroth (“Dotzenroth Defendants”). I am
5 licensed to practice in the State of California and am admitted to this Court, and I
6 have personal knowledge of the facts set forth herein, to which I could and would
7 testify competently if called upon to do so.

8 2. On October 3, 2022, my office a mailed copy of sealed docket entry
9 Doc. 373, the Court’s Order Denying Plaintiffs’ Motion for Preliminary
10 Injunction. Immediately thereafter, I emailed counsel for Plaintiffs and the NIAR
11 Defendants requesting their consent for us to disclose the Order to our clients. On
12 October 4, 2022, Plaintiffs’ counsel responded, stating “We have no objection to
13 you sharing the opinion with your clients (and with in-house counsel at WSU).
14 However, please redact the references to [name omitted] as we had designated
15 that information counsel only.” Plaintiffs did not request any other redactions.
16 Attached hereto as Exhibit A is a true and correct copy of that email exchange.

17 3. On October 5, 2022, I emailed Plaintiffs’ and NIAR Defendants’
18 counsel a copy of the Order with Plaintiffs’ requested redactions (two small
19 redactions on page 9), and asked whether they would join a stipulated request for
20 the redacted version to be filed by the Court on the docket. NIAR Defendants’
21 counsel agreed to join the request. Attached hereto as Exhibit B is a true and
22 correct copy of those emails, but omitting the redacted version of the Order.

23 4. The same day, I informed Plaintiffs’ counsel that we were planning
24 to apply *ex parte* for an order entering the redacted version of the Order that
25 Plaintiffs’ counsel had approve on the public docket. I requested whether
26 Plaintiffs would join a stipulated application for that order and conferred with
27 Plaintiffs’ counsel. Plaintiffs’ counsel Eric Nitz emailed us stating that Plaintiffs
28 “take no position to your request and do not intend to file an opposition” to the *Ex*

1 *Parte* Application I asked them to stipulate to us filing. This application is
2 therefore unopposed.

3 5. Defendants are prepared to publicly file the redacted version of the
4 Court's Order, with the redactions requested by Plaintiffs' counsel, promptly
5 upon the Court's approval of this application and entry of the requested order
6 being submitted to the Court.

7 I declare under penalty of perjury under the laws of the United States that
8 the foregoing is true and correct.

9 Executed on October 6, 2022, in San Diego, California.

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Kenneth M. Fitzgerald

CERTIFICATE OF SERVICE

I certify that today I am causing to be served the foregoing document by CM/ECF notice of electronic filing upon the parties and counsel registered as CM/ECF Users. I further certify that, to the extent they are not registered CM/ECF Users, I am causing the foregoing document to be served by other means.

Dated: October 6, 2022



Kenneth M. Fitzgerald

**INDEX OF EXHIBITS TO DECLARATION OF KENNETH FITZGERALD
IN SUPPORT OF DEFENDANTS' UNOPPOSED *EX PARTE*
APPLICATION FOR ENTRY OF REDACTED ORDER DENYING
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

| Exhibit No. | Description | Page No. |
|------------------------|---|---------------------|
| A | 10/04/2022 – Emails re Order re Motion for Preliminary Injunction | 1-5 |
| B | 10/05/2022 – Emails re Redacted Order Denying PI Motion | 6-8 |

EXHIBIT A

From: Nitz, Eric <enitz@mololamken.com>
Date: Tuesday, October 4, 2022 at 1:51 PM
To: Wilson, Bryan <BWilson@mofo.com>, Molo, Steven <smolo@mololamken.com>, Barbee, Jonathan <JBarbee@mololamken.com>
Cc: Kenneth Fitzgerald <kfitzgerald@fitzgeraldknaier.com>, Alan K. Brubaker <abrubaker@wingertlaw.com>, Ian R. Friedman <IFriedman@wingertlaw.com>, IFriedman@wingertlaw.com <IFriedman@wingertlaw.com>, Keith Cochran <kcochran@fitzgeraldknaier.com>, WSU_Wagner_MoFo <WSU_Wagner_MoFo@mofo.com>
Subject: RE: Order Re Motion for Preliminary Injunction

Bryan and Ken F.,

I was just about to respond. We have no objection to you sharing the opinion with your clients (and with in-house counsel at WSU). However, please redact the references to [REDACTED] as we had designated that information counsel only.

Best regards,
Eric

From: Wilson, Bryan <BWilson@mofo.com>
Sent: Tuesday, October 4, 2022 4:50 PM
To: Molo, Steven <smolo@mololamken.com>; Nitz, Eric <enitz@mololamken.com>; Barbee, Jonathan <JBarbee@mololamken.com>

Cc: Kenneth Fitzgerald <kfitzgerald@fitzgeraldknaier.com>; Alan K. Brubaker <abrubaker@wingertlaw.com>; Nitz, Eric <enitz@mololamken.com>; Ian R. Friedman <IFriedman@wingertlaw.com>; IFriedman@wingertlaw.com; Keith Cochran <kcochran@fitzgeraldknaier.com>; WSU_Wagner_MoFo <WSU_Wagner_MoFo@mofo.com>
Subject: RE: Order Re Motion for Preliminary Injunction

Steve, Eric, and Jonathan,

I am following up on the three email requests below and my further call with Jonathan three hours ago. We know that you are aware of our inquiries. Surely one of you can take five minutes to respond.

Please also state whether you have shown the order to your clients.

There should be no dispute about these questions and your failure to respond is causing our client significant harm. Please respond immediately.

Regards,

Bryan Wilson
BWilson@mofo.com
T +1 (650) 813-5603

**IIORRISON
FOERSTER**

From: Wilson, Bryan
Sent: Tuesday, October 4, 2022 12:03 PM
To: Molo, Steven <smolo@mololamken.com>; Nitz, Eric <enitz@mololamken.com>; Barbee, Jonathan <JBarbee@mololamken.com>
Cc: Kenneth Fitzgerald <kfitzgerald@fitzgeraldknaier.com>; Alan K. Brubaker <abrubaker@wingertlaw.com>; enitz@mololamken.com; Ian R. Friedman <IFriedman@wingertlaw.com>; IFriedman@wingertlaw.com; Keith Cochran <kcochran@fitzgeraldknaier.com>; WSU_Wagner_MoFo <WSU_Wagner_MoFo@mofo.com>
Subject: FW: Order Re Motion for Preliminary Injunction

Steve, Eric, and Jonathan,

Please respond.

Thanks

Bryan Wilson
BWilson@mofo.com
T +1 (650) 813-5603

**IIORRISON
FOERSTER**

From: Wilson, Bryan <BWilson@mofo.com>
Sent: Tuesday, October 4, 2022 7:42 AM
To: Kenneth Fitzgerald <kfitzgerald@fitzgeraldknaier.com>; Alan K. Brubaker <abrubaker@wingertlaw.com>; enitz@mololamken.com; Ian R. Friedman (<IFriedman@wingertlaw.com>) <IFriedman@wingertlaw.com>; jbarbee@mololamken.com; Lanham, John R. <JLanham@mofo.com>; Keith Cochran <kcochran@fitzgeraldknaier.com>; Kuwayti, Kenneth A. <KKuwayti@mofo.com>; Lizette Cervantes <lcervantes@fitzgeraldknaier.com>; Robert Knaier

<rknaier@fitzgeraldknaier.com>; Swoopes, Roman A. <RSwoopes@mofo.com>; smolo@mololamken.com

Cc: WSU_Wagner_MoFo <WSU_Wagner_MoFo@mofo.com>

Subject: RE: Order Re Motion for Preliminary Injunction

Plaintiffs' counsel,

Please confirm you do not contend that the existence of the order and the denial of the motion is confidential. If you disagree, please state the basis.

We confirm that we do not object to the order being disclosed to your clients if the agreement is mutual for all clients.

Regards,

Bryan Wilson
Morrison & Foerster
755 Page Mill Road
Palo Alto, CA 94304
(650) 813-5603

From: Kenneth Fitzgerald <kfitzgerald@fitzgeraldknaier.com>

Date: Monday, Oct 03, 2022, 6:12 PM

To: Alan K. Brubaker <abrubaker@wingertlaw.com>, Wilson, Bryan <BWilson@mofo.com>, enitz@mololamken.com <enitz@mololamken.com>, Ian R. Friedman (IFriedman@wingertlaw.com) <IFriedman@wingertlaw.com>, jbarbee@mololamken.com <jbarbee@mololamken.com>, Lanham, John R. <JLanham@mofo.com>, Keith Cochran <kcochran@fitzgeraldknaier.com>, Kenneth Fitzgerald <kfitzgerald@fitzgeraldknaier.com>, Kuwayti, Kenneth A. <KKuwayti@mofo.com>, Lizette Cervantes <cervantes@fitzgeraldknaier.com>, Robert Knaier <rknaier@fitzgeraldknaier.com>, Swoopes, Roman A. <RSwoopes@mofo.com>, smolo@mololamken.com <smolo@mololamken.com>

Cc: WSU_Wagner_MoFo <WSU_Wagner_MoFo@mofo.com>

Subject: Order Re Motion for Preliminary Injunction

External Email

We just received the attached order denying plaintiffs' PI motion in the mail.

Please let us know if you'll consent to us sharing the order with our clients.

Kenneth Fitzgerald
kfitzgerald@fitzgeraldknaier.com

FITZGERALD KNAIER LLP

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EXHIBIT B

From: Wilson, Bryan <BWilson@mofo.com>
Sent: Wednesday, October 5, 2022 12:33 PM
To: Kenneth Fitzgerald <kfitzgerald@fitzgeraldknaier.com>; Molo, Steven <smolo@mololamken.com>; Nitz, Eric <enitz@mololamken.com>; Barbee, Jonathan <JBarbee@mololamken.com>; Ian R. Friedman <ifriedman@wingertlaw.com>; Alan K. Brubaker <abrubaker@wingertlaw.com>
Cc: Robert Knaier <rknaier@fitzgeraldknaier.com>; Brittany Vojak <bvojak@fitzgeraldknaier.com>; WSU_Wagner_MoFo <WSU_Wagner_MoFo@mofo.com>
Subject: RE: Redacted Order Denying PI Motion

Ken,

We would join the request and agree that it should be done as soon as possible.

Plaintiffs' counsel: Please advise whether in the meantime we can share the redacted order with KMC's counsel. If you do not agree, please advise whether you have shared the order with Fortress or any other third party.

Regards,

Bryan Wilson
BWilson@mofo.com
T +1 (650) 813-5603

**HORRISON
FOERSTER**

From: Kenneth Fitzgerald <kfitzgerald@fitzgeraldknaier.com>
Sent: Wednesday, October 5, 2022 7:40 AM
To: Steven Francis Molo <smolo@mololamken.com>; Eric Richard Nitz <enitz@mololamken.com>; Jonathan E. Barbee <jbarbee@mololamken.com>; WSU_Wagner_MoFo <WSU_Wagner_MoFo@mofo.com>; Ian R. Friedman <ifriedman@wingertlaw.com>; Alan K. Brubaker <abrubaker@wingertlaw.com>
Cc: Robert Knaier <rknaier@fitzgeraldknaier.com>; Brittany Vojak <bvojak@fitzgeraldknaier.com>
Subject: Redacted Order Denying PI Motion

External Email

Counsel,

Attached is the court's order denying plaintiffs' motion for preliminary injunction, redacted as you requested for sharing with our clients.

Please let us know as soon as possible if you will join a stipulated request for this redacted version to be filed by the court on the docket.

Kenneth Fitzgerald
kfitzgerald@fitzgeraldknaier.com

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