UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA, Plaintiff, vs. BOOZ ALLEN HAMILTON, INC., et al., Defendants.	Case No.: 1:22-cv-01603-CCB

DEFENDANTS' EMERGENCY MOTION FOR PROTECTIVE ORDER AND SANCTIONS

Pursuant to Federal Rule of Civil Procedure 26(c)(1), Defendants EverWatch Corp. ("EverWatch"), EC Defense Holdings, LLC, and Analysis, Computing & Engineering Solutions, Inc. (collectively the "EW Defendants"), by and through counsel, hereby move this Court for a Protective Order to prevent the United States Department of Justice ("DOJ") from publicly filing, or otherwise publically disclosing, the EW Defendants' confidential materials. EW Defendants also respectfully requests that this Court sanction DOJ, and issue an order (1) requiring DOJ counsel to immediately contact the clerk of court to remove the filing from public access, (2) admonishing DOJ regarding its conduct, and (3) directing DOJ not to publicly disclose EverWatch's confidential materials without following the proper procedures in the Antitrust Civil Process Act and any protective order entered in this case.

In support thereof, EW Defendants state the following:

1. DOJ may not publicly disclose documents produced pursuant to a civil investigative demand ("CID") without the producing party's consent. 15 U.S.C. § 1313(c)(3); *see also GAF Corp. v. Eastman Kodak Co*., 85 F.R.D. 46, 52 (S.D.N.Y. 1979) ("The Antitrust

Civil Process Act specifically bars the government from revealing the contents of [the materials] to Kodak without GAF's consent."); *U.S. v. Alex. Brown & Sons, Inc.*, 169 F.R.D. 532, 543 n.5 (S.D.N.Y. 1996) *aff'd sub nom. United States v. Bleznak*, 153 F.3d 16 (2d Cir. 1998) ("15 U.S.C. § 1313(c) expressly prohibits the Government from disclosing [CID materials] without permission from the targets.").

2. The DOJ has made clear that the Antitrust Civil Process Act prevents it from publicly disclosing documents produced pursuant to a CID, even when the DOJ is engaged in litigation. *See, e.g., U.S. v. AT&T, Inc.*, 310 F. Supp. 3d 161, 185 (D.D.C. 2018) (noting DOJ's argument that it could not produce CID materials in litigation because it was "required [under the Antitrust Civil Process Act] to obtain consent from each of the third parties that originally had produced the information in question.").

3. Rule 26(c)(1) provides that, upon a showing of good cause, the Court may enter a protective order to "protect a person from annoyance, embarrassment, oppression or undue burden or expense." Fed. R. Civ. P. 26 (c)(1). EverWatch's proposed Protective Order easily meets that standard. DOJ's disregard for the Antitrust Civil Process Act, and its apparent inability to correct a filing issue in a timely manner, demonstrate that barring DOJ from further publicly disclosing documents EverWatch produced in response to the CID is appropriate and necessary.

4. This Court has the inherent power to order sanctions "to impose order, respect, decorum, silence, and compliance with lawful mandates." *United States v. Shaffer Equip. Co.*, 11 F.3d 450, 461 (4th Cir. 1993). This Court has considerable discretion to fashion a sanction to remedy this issue and to impose order on this litigation. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 44-45 (1991).

5. Courts treat the improper disclosure of confidential materials extremely seriously, and such conduct is routinely sanctioned. *See, e.g. SAS Inst. Inc. v. World Programming Ltd*., No. 10-25, 2014 WL 1760960 at *4 (E.D.N.C. May 1, 2014) (imposing sanctions for violation of protective order). In the Fourth Circuit, even an unintentional violation of a protective order is an appropriate ground for sanctions. *Forrest Creek Assocs., Ltd. v. McLean Sav. & Loan Ass'n*, 831 F.2d 1238, 1245 (4th Cir. 1987).

6. Courts impose sanctions where parties act irresponsibly with respect to the public dissemination of information, even apart from any protective order. *See, e.g.*, *Am. Sci. & Eng'g, Inc. v. Autoclear, LLC*, 606 F. Supp. 2d 617, 625 (E.D. Va. 2008) (sanctioning the defendant even if the misstatements were unintentional . . . the issuance of a patently misleading press release on a nationally available, widely-read internet set is completely irresponsible.").

7. As further laid out in the Memorandum filed in connection with this Motion, the DOJ has disregarded the Antitrust Civil Process Act in the present action and has filed documents produced by the EW Defendant's in response to a CID on this Court's public docket. DOJ has not corrected this filing issue and claims no correction is necessary. A protective order and sanctions barring DOJ from further publicly disclosing the EW Defendants' confidential materials, requiring DOJ counsel to immediately contact the clerk of court to remove the filing from public access, admonishing DOJ regarding its conduct, and directing DOJ not to publicly disclose EverWatch's confidential materials without following the proper procedures in the Antitrust Civil Process Act is appropriate and necessary to protect the EW Defendants from annoyance, embarrassment, oppression and undue burden or expense and impose order on this litigation.

8. EverWatch met and conferred with DOJ in good faith on July 8, 2022, but the

parties were unable to resolve their dispute.

WHEREFORE, Defendants EverWatch Corp., EC Defense Holdings, LLC, and Analysis, Computing & Engineering Solutions, Inc. respectfully request that this Court grant this Motion for a Protective Order and Sanctions, and to grant such further relief as this Court deems proper.

Respectfully submitted,

Dated: July 11, 2022

/s/ Molly M. Barron

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Attorneys for Defendants EverWatch Corp., EC Defense Holdings, LLC, and Analysis, Computing & Engineering Solutions, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2022, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

/s/ Molly M. Barron
Molly M. Barron (Bar No. 19151)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA, Plaintiff, vs. BOOZ ALLEN HAMILTON, INC., et al., Defendants.	Case No.: 1:22-cv-01603-CCB

DEFENDANTS EVERWATCH CORP., EC DEFENSE HOLDINGS, LLC, AND ANALYSIS, COMPUTING & ENGINEERING SOLUTIONS, INC.'S MEMORANDUM IN SUPPORT OF EMERGENCY MOTION FOR PROTECTIVE ORDER AND SANCTIONS

This litigation is an unprecedented overreach by the Department of Justice Antitrust Division ("DOJ" or "Division") based on a theory that has no basis in law or economics and is belied by common sense. DOJ has admitted that it has no concerns with the proposed merger of Defendant Booz Allen Hamilton, Inc. ("BAH") with Defendant EverWatch Corp., ("EverWatch") apart from one single issue—a single upcoming bid for the National Security Agency's ("NSA") OPTIMAL DECISION ("OD") program. DOJ contends that the mere existence of a facially conditional Merger Agreement—an over 140 page document with largely uncontroversial provisions, like requiring EverWatch to timely pay its taxes between sign and close, and to operate its business in the ordinary course—has somehow instantaneously changed EverWatch's incentives to bid on OD *even pre-closing while it remains a separate company*, such that the entire Merger Agreement should be abrogated. DOJ Mot. for Prelim. Inj. at 2, ECF No. 29 ("PI Motion"). EverWatch expected the NSA to open the OD bid process months ago, and remains ready to compete vigorously—at arms-length against BAH—for that bid, just as it has competed vigorously for at least one other bid issued by the NSA since the Merger Agreement was signed. Given that

EverWatch cannot know whether the proposed merger will actually close, it has no incentive to do otherwise.

In DOJ's zeal to rush to court and paint the parties in a false and misleading anticompetitive light, it has mischaracterized the facts and ignored EW Defendants'[1] basic procedural rights. The latest in a string of examples of DOJ's overzealous behavior is DOJ's improper public disclosure of EverWatch's documents as part of its July 8, 2022 PI Motion, despite the fact that those documents were produced pursuant to a Civil Investigative Demand ("CID") under the confidentiality protections of the Antitrust Civil Process Act, 15 U.S.C. § 1313(c)(3), and were clearly marked "Highly Confidential." In doing so, DOJ has made a series of errors, which supply the basis for this motion: first, DOJ filed EverWatch's documents publicly without obtaining EverWatch's consent, as the statute requires; second, after being informed of this error, DOJ failed to timely contact the Court to remove the materials from public access after EverWatch raised this issue; and third, DOJ told EverWatch it will not do so during the pendency of this dispute, meaning the the documents remain on the public docket. EverWatch respectfully requests that the Court enter a Protective Order to prevent DOJ from publicly filing (or otherwise publicly disclosing) EverWatch's confidential documents in violation of the Antitrust Civil Process Act in the future. EverWatch also respectfully requests that the Court sanction DOJ, and issue an order (1) requiring DOJ counsel to immediately contact the clerk of court to remove the filing from public access, (2) admonishing DOJ regarding its conduct, and (3) directing DOJ not to publicly disclose EverWatch's confidential materials without following the proper procedures in the Antitrust Civil Process Act and any protective order entered in this case.

[1] EverWatch Corp., EC Defense Holdings, LLC, and Analysis, Computing & Engineering Solutions, Inc. (collectively, "EW Defendants").

I. BACKGROUND

EverWatch provides signals intelligence and other cyber security solutions to the U.S. defense and intelligence communities. On March 15, 2022, EverWatch and Defendant EC Defense Holdings, LLC entered into a Stock Purchase Agreement with BAH, pursuant to which BAH would acquire EverWatch for $440 million (the "Transaction"). The Transaction is highly complementary, combining EverWatch's mission-critical classified expertise with BAH's deep artificial intelligence ("AI") and cyber portfolio. BAH anticipates that EverWatch will help expand BAH's capabilities in both intelligence and defense projects. For BAH's National Cyber Platform, EverWatch brings foundational capabilities for intellectual property and intellectual capital and fills platform gaps with respect to cloud & analytics capabilities, Signals Intelligence ("SIGINT") development and deployment as well as institutional familiarity with various SIGINT/Cyber missions. For BAH's National Security Business, EverWatch enhances BAH's existing AI and machine learning capabilities as well as brings on new business models to enable BAH to pursue business opportunities at cost advantages to these end clients. As a result, the parties anticipate that the Transaction will expand services, improve quality, and create more aggressive competition to win more contracts and provide better service.

DOJ has not questioned the Transaction's procompetitive aspects, nor has DOJ questioned the parties' contention that there are at least eight other meaningful competitors that offer interchangeable services. Indeed, a declaration that DOJ itself submitted from Diane Dunshee, Director of Business Management & Acquisition and the Senior Acquisition Executive of the NSA states that there are at least *178 companies* that NSA believed could support the OD procurement and *14 companies* who expressed an interest in being selected as the prime contractor on the procurement. PI Mot. Ex. A ¶ 6, ECF No. 35-1. Nor does DOJ deny that the combined

BAH/EverWatch would create a critical fifth competitor to the incumbent set of Large System Integrators ("LSIs") who have dominated the NSA's Capabilities Directorate[2] for decades.

Instead, DOJ has put forth the novel theory that (1) only competition for the yet-to-be released OD bid matters in assessing the Transaction's overall legality; (2) only EverWatch and BAH are relevant to assessing that single bid (independent of the competitive constraint provided by the possibility of other bidders the NSA has itself identified); and, (3) most bizarrely, that once the parties signed the Merger Agreement, it became impossible for BAH and EverWatch to participate in a competitive bid process on the upcoming OD bid, even while they remain separate companies, who are highly incentivized to compete for and win the bid. Indeed, DOJ has confirmed that it "has no issue with the merger other than the Optimal Decision procurement." Ex. 1 at 1, Email from R. Shores to K. Quin (July 6, 2022, 6:55 AM EST). In short, the parties are ready, willing, and able to continue to do exactly what DOJ has said in every case before this one: compete on the merits in the period between signing a merger agreement and closing their transaction. DOJ Compl.¶ 1, *United States v. Duke Energy Corp.*, 2017 WL 242830, (No. 17-cv-00116) (D.D.C. Jan. 18, 2017), ECF No. 1 ("The HSR Act's notice and waiting period requirements ensure that the parties to a proposed transaction continue to operate independently during review, preventing anticompetitive acquisitions from harming consumers before the government has had the opportunity to review them[.]"). Rather than allow the parties to compete on the OD bid in the ordinary course, the Division has opted to engineer artificial urgency by instituting this litigation and filing a PI Motion based on the mere fact the parties signed a merger

[2] The Directorate of Capabilities is a division of the NSA that handles strategy and integration of advanced technology.

agreement. As detailed below, in its haste to gin up this baseless antitrust case, it has failed to observe the protections that the Antitrust Civil Process Act affords to EverWatch's documents.

A. DOJ's Misrepresentation Of EverWatch's Efforts To Settle With the Government

Under the Hart-Scott-Rodino ("HSR") Act, DOJ has 30 days to review a proposed transaction to determine if it may substantially lessen competition in a relevant antitrust market. 15 U.S.C. § 18a(b)(1)(B). Following this period, DOJ can either (1) do nothing, allowing the transaction to close; (2) sue to block the transaction; or (3) issue a request for an extensive investigation (known as a "Second Request"). As has become an increasingly common practice to avoid protracted and burdensome Second Request investigations that may be unnecessary, parties may also "pull and refile" their HSR filing to start a new 30-day review period.

During the initial review period (which was extended by multiple pull and refiles), Defendants repeatedly attempted to understand DOJ's theory that "the act of signing the merger agreement changed the parties incentives to compete" on a single bid and to explain that this theory was not supported by the facts and did not provide a basis to block the entire deal. Instead, DOJ informed Defendants they must address the issue to obtain DOJ approval for the deal. As a result, Defendants sought to constructively engage with DOJ to propose remedies to allay DOJ's concerns with respect to the parties' incentives to compete for the OD bid. The parties did this in good faith because they are eager to close a transaction that is good for the government across multiple potential procurements, and wanted to promptly isolate and address the narrow issue of the OD bid.[3] These proposals—typical in similar cases—included establishing firewalls (which DOJ

[3] It is customary for parties seeking clearance of a transaction to propose "remedies" to the DOJ that will ameliorate potential lessening of competition as a result of the proposed merger. Typically

rejected), offering to increase bonuses for employees working on a successful bid to further confirm their incentives were not altered in the pre-closing period (which DOJ rejected), and offering to move EverWatch out of the prime role for the OD bid to allow a third party that was already a member of the bid team, but was not a party to the transaction with BAH, to make all key competitive decisions about the bid. When EverWatch proposed this last solution, with the final days of the waiting period dwindling and with no sign that a Second Request was imminent, DOJ appeared interested in learning more about the proposal.

Given DOJ's initial response, on June 3, 2022, EverWatch presented the proposal for a new OD bid lead to DOJ in writing. Ex. 2, Email from A. Reeves to K. Quin (June 3, 2022). DOJ thanked EverWatch for the proposal and asked specifically for a status report: "[Have] EverWatch and [proposed bid lead] agreed that [proposed bid lead] will take over the prime role, and if so, is there documentation of that agreement? Second has [proposed bid lead] already assumed that role?" DOJ expressed no concerns with the proposed arrangement in its response. Ex. 3 at 1, Email from K. Quin to A. Reeves (June 3, 2022, 6:34 PM EST). EverWatch subsequently provided DOJ with written confirmation of the proposed replacement of EverWatch as the prime, if the bid issued. DOJ again thanked EverWatch and again expressed no concerns with EverWatch's proposed remedy. *Id*.

DOJ engages with proposed remedies, advises the parties on adjustments that would make remedies acceptable to DOJ, and memorializes agreed-upon remedies in the form of enforceable consent decrees. *See e.g.*, Final J., *United States v. United Techs. Corp.*, 2020 WL 4810850 (No.20-824) (D.D.C. July 22, 2020), ECF No. 28 (consent decree where DOJ required defendants in military technology sector to divestiture assets to approve merger); *see also* Final J. at 5, *United States v. Gen. Elec. Co*, 2017 WL 6760799, at *3 (No. 17-1146) (D.D.C. Oct. 16, 2017), ECF No. 13 (DOJ requiring General Electric to divest its worldwide water and technologies business in approving its acquisition of Baker Hughes Inc.).

On June 7th, one day before the DOJ's third waiting period was set to expire, DOJ expressed concerns with the proposed remedy, and informed EverWatch that it would be issuing a Second Request and initiating a further investigation of the Transaction. Five days later, in communications on June 12th and June 13th, DOJ further explained that it believed the proposed remedy would worsen competition and asked for immediate assurances that the proposed remedy had not been implemented. EverWatch expressed confusion over whether DOJ was trying to stop a workable remedy that would address DOJ's only professed concern with the transaction. Nevertheless, on June 13th, EverWatch provided confirmation to DOJ in writing that EverWatch had not implemented its proposed remedy. Ex. 4 at 1, Email from A. Reeves to K. Quinn (June 13, 2022, 2:18 PM EST).

On June 15th, DOJ informed the parties that it believed the parties had engaged in improper collusion by proposing the remedy and that the proposed remedy itself violated Section 1 of the Sherman Act. This was surprising in light of EverWatch's June 13th assurances that the remedy had not been implemented and DOJ's failure on multiple occasions to express this concern *before* encouraging EverWatch to proceed with the proposed remedy. That same day, DOJ issued a Second Request to the parties, only one week into the fourth pull-and-refile period. Ex. 5, Letter from R. Danks to A. Reeves (June 15, 2022). On June 17th, DOJ issued EverWatch a CID for documents based on a purported Section 1 investigation (independent of the merger investigation under Section 7 of the Clayton Act and the HSR Act) into an alleged improper agreement with BAH and the proposed replacement bid lead. The CID had a return date of June 23. Ex. 6, CID No. 31063 (June 17, 2022). The DOJ also issued a deposition notice in connection with its Section 1 investigation into the proposed remedy, scheduled for June 30. *Id.*

On June 27th, in an effort to put this issue to rest and given there was nothing to hide, EverWatch produced documents responsive to the CID. Ex. 7 at 7, Email from C. Beller to A. Andresian (June 27, 2022). EverWatch designated its documents "Highly Confidential" and requested confidential treatment of its documents in the cover letter accompanying its production. *Id.* at 1 (noting "[t]he contents of this email are confidential. Please *accord all available protections against disclosure*" (emphasis in original)). Two days later, on June 29th, with its Second Request still pending and no risk of the parties imminently closing their transaction, DOJ filed the instant litigation. Despite being well aware that EverWatch only proposed the arrangement with the potential new bid lead in an effort to resolve DOJ's concerns with the Transaction,[4] and despite encouraging EverWatch to take steps toward implementing the proposal three weeks earlier, DOJ mischaracterized the intent and motives of the parties by publicly alleging that the proposal was "a transparent attempt to evade antitrust scrutiny" and accused EverWatch of engaging in a "shell game." Compl. ¶¶ 56, 58, ECF No. 1.

B. DOJ's Proposed Protective Order Acknowledges That EverWatch's CID Materials Should Be Protected

On June 29th, DOJ sent Defendants a proposed Protective Order. Ex. 8, Email from C. Montezuma to A. Reeves (June 29, 2022). Among other provisions, DOJ's draft Protective Order specifically provided that:

> Any Investigation Materials that a Defendant previously provided to any Plaintiff during the Investigation that the Defendant designated as Confidential or for which

[4] EverWatch's attempts to settle its disputes with the government are exempt from antitrust liability under the *Noerr-Pennington* doctrine, which protects EverWatch's First Amendment right to petition the government. *A.D. Bedell Wholesale Co. v. Philip Morris, Inc.*, 104 F. Supp. 2d 501, 506 (W.D. Pa. 2000), *aff'd*, 263 F.3d 239 (3d Cir. 2001) ("The defendants' activities 'in negotiating the M.S.A with the settling states and achieving a settlement agreement with those states are protected under the *Noerr–Pennington* doctrine as conduct incidental to litigation.'" (quoting *Hise v. Philip Morris Inc.*, 46 F. Supp. 2d 1201, 1260 (N.D. Okla. 1999), *aff'd*, No. 99-5113, 2000 WL 192892 (10th Cir. Feb. 17, 2000)).

> the Defendant requested confidential treatment, including but not limited to testimony, documents, electronic documents and data, and materials produced pursuant to the Antitrust Civil Process Act, 15 U.S.C. § 1311-14, or the Hart-Scott-Rodino Antitrust Improvements Act, 15 U.S.C. § 18a, will be treated as containing Confidential Information.

Id. ¶ 16. Defendants proposed edits to DOJ's draft on July 6th, but did not propose any changes to the provision maintaining confidential treatment of CID documents. Ex. 12 at 1, Email from T. Stenerson to K. Quin (July 6, 2022, 5:42 PM EST). The parties met and conferred on July 7th regarding the Protective Order, and DOJ indicated that it would send a revised draft to Defendants shortly after that call. As of this filing, DOJ has not done so.[5]

C. DOJ's Improper Filing Of EverWatch's Materials On The Public Docket And Unwillingness And Purported Inability To Remove Those Materials

Contrary to DOJ's representations in its proposed draft Protective Order that it would treat investigation materials as confidential, DOJ's Motion for Preliminary Injunction attaches two documents marked "Highly Confidential" that EverWatch produced in response to the CID, and quotes directly from the unredacted portions of those materials six separate times. Mem. in Supp. of PI Mot. ("PI Mem.") at 3 n.3, 18 at n. 38 (quoting Ex. B, ECF No. 35-2); *id.* at 3 n.4, 14 n.35, 15 n.36, 25 n.44 (quoting Ex. C, ECF No. 35-3). Upon discovering that DOJ had filed EverWatch's designated materials on the public docket, counsel for EverWatch immediately alerted DOJ and asked DOJ to remove the materials from the docket and file them under seal. Ex. 9, Email chain between A. Rathbun and K. Quin (July 8, 2022).

[5] On July 8th, DOJ filed a redacted version of its Motion for a Preliminary Injunction, along with numerous sealed exhibits. In that filing, DOJ falsely represented to the Court in its certificates of service and sealed exhibits on June 29 and July 8 that it had served unsealed copies on Defendants via email. Notice of Filing Under Seal, Certificate of Service, ECF No. 2-2; Notices of Filing Under Seal PI Exs. D – I, K – N, ECF Nos. 29-6 – 11, 13 – 16.

Rather than immediately taking action to remove the materials from public view (at least until the parties could resolve any dispute about the issue), DOJ first claimed it did not understand the basis for EverWatch's concern, then claimed that it had no authority to address EverWatch's concern, and finally pointed to the late hour as an excuse to do nothing. *Id.* at 1-3. The next day, DOJ informed EverWatch that it would not remove the materials from public view. Ex. 10 at 1, Email from K. Quin to A. Rathbun (July 9, 2022).

DOJ's refusal to remove the materials – even temporarily – is based on its contention that the Antitrust Civil Process Act allows DOJ to "use" materials obtained pursuant to a CID in litigation. In emails and during a meet and confer on the night of July 8th, counsel for EverWatch repeatedly explained that EverWatch does not dispute that DOJ can *use* EverWatch's CID documents in the litigation, but that the statute requires the DOJ to *file those documents under seal* if it has not first obtained EverWatch's consent to disclose them publicly. 15 USC §1313(c)(3) ("[N]o documentary material . . . so produced shall be available for examination, without the consent of the person who produced such material[.]"). DOJ views this as a distinction without a difference and believes it has the unilateral ability to decide what may be filed publicly.

II. ARGUMENT

A. The Antitrust Civil Process Act Protects Documents Produced Pursuant To A Civil Investigative Demand From Public Disclosure

It is well settled, both as a matter of case law and decades of real-world practice, that the DOJ may not publicly disclose documents produced pursuant to a CID without the producing party's consent. 15 U.S.C. §1313(c)(3); *see also GAF Corp. v. Eastman Kodak Co*., 85 F.R.D. 46, 52 (S.D.N.Y. 1979) ("The Antitrust Civil Process Act specifically bars the government from revealing the contents of [the materials] to Kodak without GAF's consent."); *United States v. Alex. Brown & Sons, Inc.*, 169 F.R.D. 532, 543 n.5 (S.D.N.Y. 1996), *aff'd sub nom. United States v.*

Bleznak, 153 F.3d 16 (2d Cir. 1998) ("15 U.S.C. §1313(c) expressly prohibits the Government from disclosing [CID materials] without permission from the targets."). This is not a controversial or debatable point—it is apparent on the face of the Antitrust Civil Process Act itself.

The DOJ itself has repeatedly made clear (as it must in light of the plain language of the statute) that the Antitrust Civil Process Act prevents it from publicly disclosing documents produced pursuant to a CID, even when the DOJ is engaged in litigation. *See, e.g.*, *United States v. AT&T, Inc*., 310 F. Supp. 3d 161, 185 (D.D.C. 2018) (noting DOJ's argument that it could not produce CID materials in litigation because it was "required [under the Antitrust Civil Process Act] to obtain consent from each of the third parties that originally had produced the information in question."); *see also* Christine Varney, Assistant Att'y Gen., Antitrust Div., U.S. Dep't of Just., Addres on Procedural Fairness 2009 WL 2984202, at *4 (Sept. 12, 2009) ("In view of the potential for information leaks to damage legitimate business interests, the Antitrust Division takes very seriously its obligation not to disclose confidential information."); *United States v. Am. Bar Ass'n*, No. 95-1211), Resp. of the United States to Public Comments, 60 Fed Regi. 63,766, 63,777 ("The [Antitrust Civil Process] Act imposes strict disclosure limits on the Government . . . and the Government must comply with them."). While not binding on the Court, the DOJ Antitrust Division Manual also highlights the impropriety of the DOJ's failure to comply with the Antitrust Civil Process Act. The Manual expressly provides:

> If competitively sensitive information is to be used in a pleading, the Division's general policy is to make reasonable efforts to allow the party that produced the material the opportunity to seek a protective order. Alternatively, the Division may voluntarily file the document or portion of the pleading under seal.

Ex. 11, DOJ, Antitrust Division Manual III-66 (5th ed. Jan. 2022). Indeed, the DOJ's decision to redact portions of its brief and Exhibits A-C and J, and file Exhibits D-I, and K-N completely under seal, demonstrates that DOJ was fully aware that its obligations to maintain confidentiality

extend to litigation.[6] Yet DOJ unilaterally decided that EverWatch was not entitled to those protections, and without any advance notice or discussion with EverWatch, DOJ publicly disclosed EverWatch's CID materials.[7]

DOJ compounded its error when it refused to immediately remove the documents from the public docket while the parties discussed their dispute over the applicability of the Antitrust Civil Process Act. Moreover, it appears that Antitrust Division management did not make themselves available to the attorneys conducting the filing, even though those attorneys purported not to have the authority to correct the filing themselves. Ex. 9 at 1, Email from A. Rathbun to K. Quin (July 8, 2022, 10:40 PM EST). Instead, EverWatch's documents remain on the public docket, with increasing potential to cause unwarranted and unjustified reputational harm to the company and its employees.

B. A Protective Order Is Necessary To Prevent DOJ From Further Public Disclosure Of EverWatch's Documents

Federal Rule of Civil Procedure 26(c)(1) provides that the Court may enter a protective order to "protect a party or person from annoyance, embarrassment, oppression or undue burden or expense." Fed. R. Civ. P. 26 (c)(1). EverWatch's proposed Protective Order easily meets that standard. DOJ's disregard for the Antitrust Civil Process Act, and its apparent inability to correct a filing issue in a timely manner, demonstrate that barring DOJ from further publicly disclosing

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[6] DOJ did not file a motion to seal the PI Motion or its exhibits, as it was required to do under Local Rule 105.11.

[7] This district recognizes that even if a party disagrees that information has not been properly designated as confidential, that party must still file those materials under seal in the first instance, pending resolution of the dispute by the Court. *See* Stip. Order Regarding Confidentiality of Disc'y Material (L.R. 104.13), App. D, U.S. Dist. Ct. for the Dist. of Md. Local Rules (noting that "even if the filing party believes that the materials subject to the Confidentiality Order are not properly classified as confidential, the filing party shall file the Interim Sealing Motion").

documents EverWatch produced in response to the CID is appropriate and necessary. Nor can DOJ credibly argue otherwise—the text of EverWatch's proposed Order is nearly the same text DOJ proposed on June 29th. Ex. 8, Email from C. Montezuma to A. Reeves (June 29, 2022).

C. Sanctions Are Appropriate To Maintain The Integrity Of The Judicial Process

This Court has the inherent power to order sanctions "to impose order, respect, decorum, silence, and compliance with lawful mandates." *United States v. Shaffer Equip. Co*., 11 F.3d 450, 461 (4th Cir. 1993). DOJ's repeated missteps, even before this litigation has truly begun in earnest, regrettably necessitate immediate intervention from this Court to protect the integrity of these proceedings. This Court has considerable discretion to fashion a sanction to remedy this issue and to impose order on this litigation. *Chambers v. NASCO, Inc*., 501 U.S. 32, 44-45 (1991). Accordingly, EverWatch respectfully submits that this Court should sanction DOJ and issue an order (1) requiring DOJ counsel to immediately contact the clerk of court to remove the filing from public access, (2) admonishing DOJ regarding its conduct, and (3) directing DOJ not to publicly disclose EverWatch's CID materials, or any other materials that EverWatch designates as confidential, without following the proper procedures in the Antitrust Civil Process Act and any protective order entered in this case.

Courts treat the improper disclosure of confidential materials extremely seriously, and such conduct is routinely sanctioned. *See, e.g. SAS Inst. Inc. v. World Programming Ltd*., No. 10-25, 2014 WL 1760960, at *4 (E.D.N.C. May 1, 2014) (imposing sanctions for violation of protective order). In the Fourth Circuit, even an unintentional violation of a protective order is an appropriate ground for sanctions. *Forrest Creek Assocs., Ltd. v. McLean Sav. & Loan Ass'n*, 831 F.2d 1238, 1245 (4th Cir. 1987). Moreover, DOJ cannot evade sanctions by pointing to the current lack of a protective order in this case. Courts routinely impose sanctions where parties act irresponsibly with

respect to the public dissemination of information, even apart from any protective order. In *American Science and Engineering, Inc. v. Autoclear, LLC*, the court sanctioned a defendant for publicly issuing a press release containing misleading information regarding the litigation. 606 F.Supp. 2d 617, 625 (E.D. Va. 2008). When the plaintiff sent a retraction to defendant for dissemination, defendant refused to issue it, and the release continued to be available to the public. *Id*. The court sanctioned the defendant, notwithstanding the defendant's contention that the misleading statements were an oversight, because "even if the misstatements were unintentional . . . the issuance of a patently misleading press release on a nationally available, widely-read internet site is completely irresponsible." *Id*.

Here, DOJ has acted completely irresponsibly. It ignored the plain terms of 15 U.S.C. § 1313(c), even after EverWatch's counsel specifically raised that provision. It refused to take immediate steps to remove the filing from the public docket while the parties tried to resolve their dispute. The next day, DOJ doubled down on its obvious misreading of the statute and continued to refuse to correct the issue. Ex. 10 at 1, Email from K. Quin to A. Rathbun (July 9, 2022). Such actions are indifferent to the law and demonstrate a reckless disregard for EverWatch's rights under the CID and as a litigant in this Court.

III. CONCLUSION

EverWatch respectfully requests that the Court grant EverWatch's motion.

Dated: July 11, 2022

/s/ Molly M. Barron

Molly M. Barron (Bar No. 19151)
Amanda P. Reeves (*pro hac vice* pending)
Marguerite M. Sullivan (admitted *pro hac vice*)
Anna M. Rathbun (admitted *pro hac vice*)
G. Charles Beller (admitted *pro hac vice*)
LATHAM & WATKINS LLP
555 Eleventh Street, NW, Suite 1000
Washington, DC 20004
Telephone: (202) 637-2200
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Alfred C. Pfeiffer Jr. (*pro hac vice* pending)
Kelly S. Fayne (admitted *pro hac vice*)
LATHAM & WATKINS LLP
505 Montgomery Street, Suite 2000
San Francisco, CA 94111
Telephone: (415) 391-0600
Facsimile: (415) 395-8095
al.pfeiffer@lw.com
kelly.fayne@lw.com

Attorneys for Defendants EverWatch Corporation, EC Defense Holdings, LLC, and Analysis, Computing & Engineering Solutions, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2022, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

I further certify that I caused copies of Sealed Exhibits 2, 3, 4, 6 and 7 to the foregoing document to be served on July 11, 2022, upon the following in the manner indicated:

Ariana Wright Arnold (Bar No. 23000) — *VIA ELECTRONIC MAIL*
UNITED STATES ATTORNEY'S OFFICE
DISTRICT OF MARYLAND
36 S. Charles Street, Fourth Floor
Baltimore, MD 21201
ariana.arnold@usdoj.gov
Attorneys for Plaintiff

Kevin Quin — *VIA ELECTRONIC MAIL*
Jay Owen
U.S. DEPARTMENT OF JUSTICE
ANTITRUST DIVISION
450 Fifth Street, NW, Suite 8700
Washington, DC 20530
kevin.quin@usdoj.gov
jay.owen@usdoj.gov
Attorneys for Plaintiff

Todd M. Stenerson (Bar No. 14194) — *VIA ELECTRONIC MAIL*
Ryan Shores (*pro hac vice* pending)
Matthew Modell (*pro hac vice* pending)
SHEARMAN & STERLING LLP
401 9th Street, NW, Suite 800
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Susan Loeb (*pro hac vice* pending)
SHEARMAN & STERLING LLP
599 Lexington Avenue
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Telephone: (212) 848-4000

Facsimile: (212) 848-7179
Attorneys for Defendants Booz Allen Hamilton Inc. and Booz Allen Hamilton Holding Corporation

/s/ Molly M. Barron
Molly M. Barron (Bar No. 19151)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA, Plaintiff, vs. BOOZ ALLEN HAMILTON, INC., et al., Defendants.	Case No.: 1:22-cv-01603-CCB

[PROPOSED] ORDER

Defendants EverWatch Corp. ("EverWatch"), EC Defense Holdings, LLC, and Analysis, Computing & Engineering Solutions, Inc. (collectively, "EW Defendants") have moved for this Court to grant EW Defendant's Motion for Protective Order and Sanctions ("Motion"). Having considered the pleadings, memoranda, exhibits, and any response thereto, the Court concludes as follows:

EW Defendants have demonstrated a protective order is necessary protect the EW Defendants from annoyance, embarrassment, oppression or undue burden or expense. Without such protective order, EW Defendants' confidential information may become available to the public in violation of the Antitrust Civil Process Act.

It is within this Court's inherent power to order sanctions to impose order, respect, decorum, silence, and compliance with lawful mandates, and to fashion a sanction to remedy to bring order to the treatment of confidential information in this litigation. Despite the Antitrust Civil Process Act protecting documents produced pursuant to a Civil Investigative Demand from public disclosure, Plaintiff has inappropriately filed EW Defendants' documents publicly and

refused to remove the documents from the docket while the parties worked through their dispute. Sanctions are appropriate here to maintain the integrity of the judicial process.

For these reasons, and for good cause shown, the EW Defendants' Motion for Protective Order and Sanctions is GRANTED.

It is ORDERED, DOJ shall immediately contact the Clerk of Court and request that the Clerk immediately remove Plaintiffs' Motion for a Preliminary Injunction and Exhibit B and Exhibit C to Plaintiff's Motion for a Preliminary Injunction from public access;

It is further ORDERED that DOJ will treat as containing Confidential Information, and will not disclose publicly, any Investigation Materials that a Defendant previously provided to any Plaintiff during the Investigation that the Defendant designated as Confidential or for which the Defendant requested confidential treatment, including but not limited to testimony, documents, electronic documents and data, and materials produced pursuant to the Antitrust Civil Process Act, 15 U.S.C. § 1311-14, or the Hart-Scott-Rodino Antitrust Improvements Act, 15 U.S.C. § 18a.

It is further ORDERED**,** DOJ shall not publicly file any testimony, documents, electronic documents and data, and materials produced by Defendants to DOJ pursuant to the Antitrust Civil Process Act, 15 U.S.C. § 1311-14, or the Hart-Scott-Rodino Antitrust Improvements Act, 15 U.S.C. § 18a without following the proper procedures outlined in the Antitrust Civil Process Act and/or any protective order which may be entered in this case.

This Court hereby admonishes the DOJ for its irresponsible public filing of the EW Defendants' CID materials.

SO ORDERED, this _____ day of July, 2022.

Judge Catherine C. Blake
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA, Plaintiff, vs. BOOZ ALLEN HAMILTON, INC., et al., Defendants.	Case No.: 1:22-cv-01603-CCB

INDEX OF EXHIBITS IN SUPPORT OF DEFENDANTS EVERWATCH CORP., EC DEFENSE HOLDINGS, LLC, AND ANALYSIS, COMPUTING & ENGINEERING SOLUTIONS, INC.'S EMERGENCY MOTION FOR PROTECTIVE ORDER AND SANCTIONS

Exhibit No.	Description	Filing Status
1	Email from R. Shores to K. Quin (July 6, 2022)	Public
2	Email from A. Reeves to K. Quin (June 3, 2022)	Filed Under Seal
3	Email from K. Quin to A. Reeves (June 3, 2022)	Filed Under Seal
4	Email from A. Reeves to K. Quin (June 13, 2022)	Filed Under Seal
5	Letter from R. Danks to A. Reeves (June 15, 2022)	Public
6	CID No. 31063 (June 17, 2022)	Filed Under Seal
7	Email from C. Beller to A. Andresian (June 27, 2022)	Filed Under Seal
8	Email from C. Montezuma to A. Reeves (June 29, 2022)	Public
9	Email between A. Rathbun and K. Quin (July 8, 2022)	Public
10	Email from K. Quin to A. Rathbun (July 9, 2022)	Public
11	DOJ, Antitrust Division Manual III-66 (5th ed. Jan. 2022) (excerpted)	Public
12	Email from T. Stenerson to K. Quin (July 6, 2022)	Public

EXHIBIT 1

From: Ryan Shores <Ryan.Shores@Shearman.com>
Sent: Wednesday, July 6, 2022 6:55 AM
To: Quin, Kevin (ATR); Norm Armstrong; Reeves, Mandy (DC); David Higbee
Cc: ATR-DIA-BAH-EverWatch-Staff
Subject: RE: Schedule for Booz Allen/EverWatch

Kevin:

Thanks for your email and the conversation yesterday. I am writing to confirm our conversation and next steps.

1. When we spoke last Thursday, you committed to send us DOJ's proposed PI order. As we discussed, receiving the draft promptly would allow us to discuss your requested relief with our respective clients. It would also have provided us a meaningful opportunity to confer with you about whether any form of agreed-upon relief could obviate your motion (or at least limit the issues to be litigated). Five days later, and forty-five minutes before our call, you sent us the proposed PI order and announced DOJ's intent to file the PI motion on Wednesday (i.e., at most 24 hours later). On our call yesterday, we asked for at least 48 hours to confer with our respective clients and engage in good-faith discussions with the Division regarding the relief and potential ways the parties could obviate the motion. On our call and in your follow up email below, you refused. We reiterate our request for 48 hours and suggest the parties meet again on Thursday afternoon. As your own delay in providing us with the proposed PI order shows, there is no urgency that would justify filing today. Moreover, DOJ's demand that, in than 24 hours, we both confer with our respective clients regarding an extensive and unprecedented PI request (seeking, among other things, "abrogation" of the merger agreement) and then confer with you is unreasonable. Finally, there are mischaracterizations and faulty assumptions in the proposed order that warrant a discussion by the parties before DOJ rushes in an unnecessary PI filing.
2. During the course of our conversation, you made clear that DOJ's PI request is focused on what you called the anticompetitive "incentives" created by the merger agreement and not on communications between the parties. You explained that DOJ has no issue with the merger other than the Optimal Decision procurement. Apart from this OD bid, DOJ has no concern that the merger would violate the antitrust laws.
3. As to scheduling and the proposed scheduling orders you sent toward the end of last week, you asked us on Friday to "hold off" on reviewing them because "we will be making some significant changes to the proposed schedule. We will send you a new proposal as soon as possible." Today, however, DOJ reversed course. Specifically, you said that we should review the proposed schedules you sent last week and DOJ will be making no material changes to those schedules. We will get back to you as soon as practicable. However, because we had set aside those proposals at your suggestion, it will take us some time to review them, discuss them with our respective clients, and then get back to you with our proposals. We look forward to meeting-and-conferring in good faith on those proposals.
4. We will send you proposed edits to the protective order today.
5. You asked whether we would agree to not consummate the merger until the conclusion of litigation. We said that we would discuss this issue with our respective clients and get back to you.

Best,
Ryan

From: Quin, Kevin (ATR) <Kevin.Quin@usdoj.gov>
Sent: Tuesday, July 5, 2022 11:32 PM
To: Norm Armstrong <NArmstrong@KSLAW.com>; Ryan Shores <Ryan.Shores@Shearman.com>; Amanda.Reeves@lw.com; David Higbee <David.Higbee@Shearman.com>

Cc: ATR-DIA-BAH-EverWatch-Staff <DIA-BAH-EverWatch-Staff@ATR.USDOJ.GOV>
Subject: Schedule for Booz Allen/EverWatch

Norm, Ryan and Mandy,

On our call this afternoon we proposed that the parties discuss the draft preliminary injunction order tomorrow. If I understood correctly, you were planning to send us a proposal tonight with dates for a meet and confer on that and the proposed CMO. We haven't heard from you, but on our call this afternoon you proposed holding off on that discussion until Friday, when you expect to offer some alternatives.

As we stated, we are concerned that the window to restore competition for the OPTIMAL DECISION project is closing rapidly, so it is urgent that this matter move forward as quickly as is reasonably possible. Moreover, the proposed order is quite simple. Given this, we do not believe that a three day review period is warranted.

We will hold off until close of business tomorrow to hear your proposed alternatives for the order, but we cannot delay longer than that.

Kevin

Kevin Quin | Defense, Industrials and Aerospace Section
Antitrust Division | United States Department of Justice
Tel: 202-307-0922 | Mobile: 202-476-0251

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

United States of America,
Plaintiff,

v.

Booz Allen Hamilton, Inc. et al.,
Defendant.

Case No. 1:22-cv-01603-CCB

NOTICE OF FILING OF DOCUMENT UNDER SEAL

Check one.

☒ Exhibit 2 which is an attachment to Defendants EverWatch Corp., EC Defense Holdings, LLC and Analysis, Computing & Engineering Solutions, Inc.'s Emergency Memorandum in Support of Motion for Protective Order and Sanctions

will be electronically filed under seal within 24 hours of the filing of this Notice.

☐ _____
(title of document)

will be electronically filed under seal within 24 hours of the filing of this Notice.

I certify that at the same time I am filing this Notice, I will serve copies of the document identified above by electronic mail.

July 11, 2022
Date

/s/ Molly M. Barron
Signature

Molly M. Barron (Bar No. 19151)
Printed Name and Bar Number
Latham & Waktins LLP
555 11th St., NW, Suite 1000, Washington, DC 20004
Address
molly.barron@lw.com
Email Address
(202) 637-2200
Telephone Number
(202) 637-2201
Fax Number

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

United States of America,
Plaintiff,

v.

Booz Allen Hamilton, Inc. et al.,
Defendant.

Case No. 1:22-cv-01603-CCB

NOTICE OF FILING OF DOCUMENT UNDER SEAL

Check one.

☒ Exhibit 3 which is an attachment to Defendants EverWatch Corp., EC Defense Holdings, LLC and Analysis, Computing & Engineering Solutions, Inc.'s Emergency Memorandum in Support of Motion for Protective Order and Sanctions

will be electronically filed under seal within 24 hours of the filing of this Notice.

☐ _____
(title of document)

will be electronically filed under seal within 24 hours of the filing of this Notice.

I certify that at the same time I am filing this Notice, I will serve copies of the document identified above by electronic mail.

July 11, 2022
Date

/s/ Molly M. Barron
Signature

Molly M. Barron (Bar No. 19151)
Printed Name and Bar Number
Latham & Waktins LLP
555 11th St., NW, Suite 1000, Washington, DC 20004
Address
molly.barron@lw.com
Email Address
(202) 637-2200
Telephone Number
(202) 637-2201
Fax Number

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

United States of America, *
Plaintiff, *
v. * **Case No.** 1:22-cv-01603-CCB
Booz Allen Hamilton, Inc. et al., *
Defendant. *

NOTICE OF FILING OF DOCUMENT UNDER SEAL

Check one.

☒ Exhibit 4 which is an attachment to Defendants EverWatch Corp., EC Defense Holdings, LLC and Analysis, Computing & Engineering Solutions, Inc.'s Emergency Memorandum in Support of Motion for Protective Order and Sanctions

will be electronically filed under seal within 24 hours of the filing of this Notice.

☐ _____
(title of document)

will be electronically filed under seal within 24 hours of the filing of this Notice.

I certify that at the same time I am filing this Notice, I will serve copies of the document identified above by electronic mail.

July 11, 2022
Date

/s/ Molly M. Barron
Signature

Molly M. Barron (Bar No. 19151)
Printed Name and Bar Number
Latham & Waktins LLP
555 11th St., NW, Suite 1000, Washington, DC 20004
Address
molly.barron@lw.com
Email Address
(202) 637-2200
Telephone Number
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Fax Number

EXHIBIT 5

U.S. Department of Justice

Antitrust Division

RFK Main Justice Building
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

June 15, 2022

Amanda P. Reeves
Latham & Watkins LLP
555 Eleventh Street NW, Suite 1000
Washington, DC 20004

Re: Acquisition of EC Defense Holdings, LLC by Booz Allen Hamilton Holding Corporation
HSR-2022-2219

Dear Ms. Reeves:

Pursuant to Section 7A(e)(1) of the Clayton Act, 15 U.S.C. § 18a, and Section 803.20 of the Premerger Notification Rules and Regulations, 16 C.F.R. § 803.20, the Antitrust Division requests additional information and documents relevant to the proposed acquisition of EC Defense Holdings, LLC by Booz Allen Hamilton Holding Corporation. As provided by 15 U.S.C. § 18a(e)(2) and 16 C.F.R. § 803.20, this second request for information extends the waiting period during which this proposed transaction may not be consummated for 30 days from the date of the receipt by the Antitrust Division of all materials requested herein. The requests for additional information and documents are contained in the enclosed schedule.

To comply with this request, deliver the materials by hand or by registered or certified mail to Kevin Quin, Defense Industrials and Aerospace Section, 450 5th Street, NW, Suite 8700, Washington, DC 20530. You are also required to submit a certification attesting to the completeness of your response in accordance with Section 803.6 of the Premerger Notification Rules. Deliver the certificate to the above address and a copy to the Premerger and Division Statistics Unit, 450 5th Street, NW, Suite 1100, Washington, DC 20530.

Please note that the Division will not return any documents to you at the conclusion of the investigation unless they are original documents and marked as “Original” in your production.

If you have any questions regarding this request for additional information, please contact Kevin Quin, the attorney assigned to this matter, at 202-307-0922.

Sincerely,

/s/
Ryan J. Danks
Acting Director of Civil Enforcement

Enclosure

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

United States of America,
Plaintiff,

v.

Booz Allen Hamilton, Inc. et al.,
Defendant.

Case No. 1:22-cv-01603-CCB

NOTICE OF FILING OF DOCUMENT UNDER SEAL

Check one.

☒ Exhibit 6 which is an attachment to Defendants EverWatch Corp., EC Defense Holdings, LLC and Analysis, Computing & Engineering Solutions, Inc.'s Emergency Memorandum in Support of Motion for Protective Order and Sanctions

will be electronically filed under seal within 24 hours of the filing of this Notice.

☐ _____
(title of document)

will be electronically filed under seal within 24 hours of the filing of this Notice.

I certify that at the same time I am filing this Notice, I will serve copies of the document identified above by electronic mail.

July 11, 2022
Date

/s/ Molly M. Barron
Signature

Molly M. Barron (Bar No. 19151)
Printed Name and Bar Number
Latham & Waktins LLP
555 11th St., NW, Suite 1000, Washington, DC 20004
Address
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Email Address
(202) 637-2200
Telephone Number
(202) 637-2201
Fax Number

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

United States of America,
Plaintiff,

v.

Booz Allen Hamilton, Inc. et al.,
Defendant.

Case No. 1:22-cv-01603-CCB

NOTICE OF FILING OF DOCUMENT UNDER SEAL

Check one.

☒ Exhibit 7 which is an attachment to Defendants EverWatch Corp., EC Defense Holdings, LLC and Analysis, Computing & Engineering Solutions, Inc.'s Emergency Memorandum in Support of Motion for Protective Order and Sanctions

will be electronically filed under seal within 24 hours of the filing of this Notice.

☐ _____
(title of document)

will be electronically filed under seal within 24 hours of the filing of this Notice.

I certify that at the same time I am filing this Notice, I will serve copies of the document identified above by electronic mail.

July 11, 2022
Date

/s/ Molly M. Barron
Signature

Molly M. Barron (Bar No. 19151)
Printed Name and Bar Number
Latham & Waktins LLP
555 11th St., NW, Suite 1000, Washington, DC 20004
Address
molly.barron@lw.com
Email Address
(202) 637-2200
Telephone Number
(202) 637-2201
Fax Number

EXHIBIT 8

From: Montezuma, Catherine (ATR) <Catherine.Montezuma@usdoj.gov>
Sent: Wednesday, June 29, 2022 8:51 PM
To: NArmstrong@KSLAW.com; Reeves, Mandy (DC)
Cc: ATR-DIA-BAH-EverWatch-Staff
Subject: Protective Order
Attachments: 2022.06.29 DRAFT Protective Order BAH-EW.docx

Hi Norm and Mandy,

Please find attached a Proposed Stipulated Protective Order and Order Governing Production of Investigation Materials. Let us know if you have any questions or would like to discuss.

Thanks,
Catherine

Catherine S. Montezuma
Attorney | Defense, Industrials, and Aerospace
U.S. Department of Justice, Antitrust Division
450 Fifth Street NW
Washington, DC 20530
(202) 377-9624

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA, *Plaintiff*, v. BOOZ ALLEN HAMILTON HOLDING CORP., *et al.*, *Defendants*.	Civil Action No. 1:22-cv-01603-CCB

[PROPOSED] STIPULATED PROTECTIVE ORDER AND ORDER GOVERNING PRODUCTION OF INVESTIGATION MATERIALS

In the interests of (1) ensuring efficient and prompt resolution of this Action; (2) facilitating discovery by the Parties litigating this Action; and (3) protecting Confidential Information from improper disclosure or use, the Parties stipulate to the provisions set forth below. Unless otherwise specified, days will be computed according to Federal Rule of Civil Procedure 6(a). The Court, upon good cause shown and pursuant to Fed. R. Civ. P. 26(c)(1) and all applicable Local Rules, ORDERS as follows:

A. Definitions

1. "Proposed Transaction" means Booz Allen Hamilton Holding Corp.'s proposed acquisition of EC Defense Holdings, LLC.

2. "Action" means the above-captioned action pending in this Court, including any related discovery, pretrial, trial, post-trial, or appellate proceedings.

3. "Confidential Information" means the portions of any Investigation Materials or Litigation Materials that contain trade secret or other confidential research, development, or

commercial information, as such terms are used in Fed. R. Civ. P. 26(c)(1)(G), or the portions of any document, transcript, or other materials containing such information that have not been published or otherwise made publicly available.

4. "Disclosed" means shown, divulged, revealed, produced, described, transmitted or otherwise communicated, in whole or in part.

5. "Document" means any document or electronically stored information, as the term is used in Fed. R. Civ. P. 34(a).

6. "Investigation" means any pre-complaint review, assessment, or investigation of the Proposed Transaction, including any defense to any claim that the Proposed Transaction would violate Section 7 of the Clayton Act and Section 1 of the Sherman Act.

7. "Investigation Materials" means non-privileged documents, testimony, or other materials that, prior to the filing of this Action, (a) any non-Party provided to any Party, either voluntarily or under compulsory process, in connection with the Investigation; (b) any Party provided to any non-Party relating to the Investigation; or (c) any Defendant, or affiliated person or entity, provided to the Plaintiff relating to the Investigation.

8. "Litigation Materials" means non-privileged documents, testimony, or other materials that, after the filing of this Action, (a) any non-Party provides to any Party, either voluntarily or under compulsory process, in connection with and during the pendency of this Action; (b) any Party provides to any non-Party in connection with and during the pendency of this Action; (c) any Defendant provides to any Plaintiff in connection with and during the pendency of this Action; or (d) any Plaintiff provides to any Defendant in connection with and during the pendency of this Action.

9. "Outside Counsel of Record" means the law firm(s) of attorneys representing a Defendant in this proceeding.

10. "Party" means the Plaintiff or any Defendant in this Action. "Parties" means collectively Plaintiff and Defendants in this Action.

11. "Plaintiff" means the United States of America, and its employees, agents, and representatives.

12. "Person" means any natural person, corporate entity, partnership, association, joint venture, governmental entity, or trust.

13. "Protected Person" means any Person, including a Party, that has provided Investigation Materials to a Party or that provides Litigation Materials to a Party.

B. Notice to Non-Party Protected Persons of the Terms of This Order

14. Within 1 business day of the Court's entry of this Order, each Party must send by email, facsimile, or overnight delivery a copy of this Order to each non-Party Protected Person (or, if represented by counsel, the non-Party Protected Person's counsel) that provided Investigation Materials to that Party.

15. If a non-Party Protected Person determines that this Order does not adequately protect its Confidential Information, it may, within 3 days after receipt of a copy of this Order, seek additional protection from the Court for its Confidential Information. If a non-Party Protected Person timely seeks additional protection from the Court, the Party's obligation to produce that non-Party Protected Person's documents containing Confidential Information, that is the subject of the motion, is suspended until a decision is rendered by the Court. If the Court orders the production of the non-Party's documents, the Party will have 5 business days to make the production unless a longer period is ordered by the Court.

C. Designation of Confidential Information in Investigation Materials

16. Any Investigation Materials that a Defendant previously provided to any Plaintiff during the Investigation that the Defendant designated as Confidential or for which the Defendant requested confidential treatment, including but not limited to testimony, documents, electronic documents and data, and materials produced pursuant to the Antitrust Civil Process Act, 15 U.S.C. § 1311-14, or the Hart-Scott-Rodino Antitrust Improvements Act, 15 U.S.C. § 18a, will be treated as containing Confidential Information.

17. All Investigation Materials previously provided by a non-Party Protected Person during the Investigation, including but not limited to testimony, documents, electronic documents and data, and materials produced pursuant to the Antitrust Civil Process Act, 15 U.S.C. § 1311-14, will be treated as containing Confidential Information regardless of whether or not the non-party Protected Person requested confidential treatment at the time of production.

D. Designation of Confidential Information in Litigation Materials

18. The following procedures govern the process for all Protected Persons to designate as Confidential Information any Litigation Materials, including but not limited to information provided in response to requests under Fed. R. Civ. P. 30, 31, 33, 36 or 45, and documents disclosed in response to Fed. R. Civ. P. 33(d), 34(b)(2) and (c), or 45. Any designation of Confidential Information in Litigation Materials constitutes a representation to the Court that the Protected Person (and counsel, if any) believes in good faith that the Litigation Materials so designated constitute Confidential Information.

19. Whenever discovery is sought from a non-Party in this Action, a copy of this Order must accompany the discovery request or subpoena. To the extent a Party sent a discovery

request to a non-Party prior to the entry of this Order by the Court, that Party must send a copy of this Order to the non-Party within 1 business day of entry of this Order.

20. Counsel for Plaintiffs and Defendants to be notified of confidentiality designations are as follows:

For Plaintiff United States:

XXX
XXX
U.S. Department of Justice
450 Fifth Street NW
Washington, DC 20530

For Defendant Booz Allen Hamilton Holding Corp. and Booz Allen Hamilton Inc.:

XXX

For Defendants EverWatch Corp., EC Defense Holdings, LLC, and Analysis, Computing & Engineering Solutions, Inc.:

XXX

21. Testimony. When a Party questions a deponent about a document or information that has been designated by a non-Party Protected Person as containing Confidential Information, the Party asking the questions must designate as Confidential Information the portion(s) of the transcript relating to that designated document or information. All transcripts of depositions taken in this Action will be treated as Confidential Information in their entirety for 7 days after the date when a complete and final copy of the transcript has been made available to the deponent (or the deponent's counsel, if applicable). Within 1 business day of receipt of the final transcript, the Party who noticed the deposition must provide the final transcript to the deponent (or the deponent's counsel, if applicable). Within 7 days following receipt of the final transcript, the deponent (or the deponent's counsel, if applicable) may designate as Confidential

Information any portion(s) of the deposition transcript, by page(s) and line(s), and any deposition exhibits, or portion(s) of any exhibit(s), that were produced by the deponent or the deponent's employer. To be effective, designations must be provided in writing to Plaintiff's and Defendants' counsel listed in Paragraph 20 of this Order. Any portion(s) of the transcript or deposition exhibit(s) not designated in the manner required by this Paragraph 21 will not be treated as Confidential Information, even if the document(s) that become the deposition exhibit(s) or information that is the subject of the deposition testimony was subject to a prior designation of confidentiality

22. Hard-Copy Documents and Information. A Protected Person who designates any document that it produces in this Action as containing Confidential Information must stamp or otherwise mark each page containing Confidential Information with the designation "CONFIDENTIAL" in a manner that will not interfere with legibility. If the entire document is not Confidential Information, the Protected Person must stamp or label only the pages that contain Confidential Information.

23. Electronic Documents and Information. Where a Protected Person produces in this Action documents or information in electronic format, Confidential Information contained in those electronic documents or information must be designated by the Protected Person for protection under this Order by (a) appending to the file names or designators associated with the electronic document or information an indication of whether the electronic document or information contains Confidential Information, or (b) any other reasonable method for appropriately designating Confidential Information produced in electronic format, including by making designations in reasonably accessible metadata associated with the electronic documents or information. If Confidential Information is produced in electronic format on a disk or other

medium that contains only Confidential Information, the "CONFIDENTIAL" designation may be placed on the disk or other medium. When electronic documents or information are printed for use during a deposition, in a court proceeding, or for provision in printed form to any Person described in Paragraph 28, the Party printing the electronic document or information must affix a "CONFIDENTIAL" label to the printed version and include with the printed version the production number and designation associated with the electronic document or information.

24. Production of documents or information not designated as Confidential Information will not be deemed a waiver of a future claim of confidentiality concerning such documents or information if they are later designated as Confidential Information. If at any time prior to the trial of this Action, a Protected Person realizes that it should have designated as Confidential Information any Investigation Materials or Litigation Materials previously produced in this Action, it may designate such documents or information by notifying the Parties in writing. The Parties must thereafter treat the Investigation Materials or Litigation Materials as designated Confidential Information under the terms of this Order. However, no prior disclosure of documents or information subsequently designated as Confidential Information will violate this Order.

E. Challenges to Designations of Confidential Information

25. Any Party who objects to any designation of Confidential Information may at any time before the trial of this Action provide a written notice to the Protected Person who made the designation and to all Parties stating with particularity the grounds for the objection. All materials objected to must continue to be treated as Confidential Information pending resolution of the dispute either by agreement between the Protected Person and the objecting Party or by the Court.

26. If the objecting Party and the Protected Person cannot reach agreement on an objection to a designation of Confidential Information within 7 days of the Party's written notice, the Protected Person may address the dispute to this Court by filing a motion in accordance with District of Maryland Local Rule 104.13 within 14 days of the Party's written notice. The Protected Person bears the burden of persuading the Court that the material is Confidential Information. If the Protected Person fails to move the Court within the time provided by this Paragraph 26, or if the Court finds the designation of Confidential Information to have been inappropriate, the challenged designation is rescinded. The Parties thereafter will not be required to treat the information as Confidential Information under this Order.

27. This Order does not preclude or prejudice a Protected Person or an objecting Party from arguing for or against any confidentiality designation, establish any presumption that a particular confidentiality designation is valid, or alter the burden of proof that would otherwise apply in a dispute over discovery or disclosure of information.

F. Disclosure of Confidential Information

28. Confidential Information may be disclosed only to the following persons:

(a) the Court and all persons assisting the Court in this Action, including law clerks, court reporters, and stenographic or clerical personnel;

(b) counsel for Plaintiff, including any attorneys, paralegals, other professional personnel (including support and IT staff), and agents or independent contractors retained by Plaintiff to assist in this Action whose functions require access to the information;

(c) Outside Counsel of Record, including any attorneys, paralegals, and other professional personnel (including support and IT staff) assigned to this Action whose functions require access to the information;

(d) outside vendors or service providers (such as copy-service providers and document-management consultants) retained by a Party to assist that Party in this Action, provided that they first execute an Agreement Concerning Confidentiality in the form attached in Appendix A;

(e) any mediator or arbitrator that the Parties engage in this Action or that this Court appoints;

(f) any author, addressee, or recipient of any document or information containing Confidential Information if they previously had lawful access to the document or information;

(g) any Person whom counsel for any Party believes in good faith previously received or had access to the document or information, unless the person indicates that he or she did not receive or have previous access to the document or information;

(h) any Person retained by a Party to serve as a testifying or consulting expert in this Action, including employees of the firm with which the expert or consultant is associated or independent contractors who assist the expert's work in this Action, provided that they first execute an Agreement Concerning Confidentiality in the form attached in Appendix A; and

(i) outside trial consultants (including, but not limited to, graphics consultants) retained by a Party to assist that Party in this Action, provided that they first execute an Agreement Concerning Confidentiality in the form attached in Appendix A.

29. Counsel for the Party making a disclosure to a Person identified in Paragraph 28, subparagraphs (d), (h), or (i), of this Order must obtain and retain the signed version of the Agreement Concerning Confidentiality in the form attached in Appendix A for a period of at least one year following the final resolution of this Action.

30. Each Person identified in Paragraph 28 of this Order to whom information designated as Confidential Information is disclosed must not disclose that Confidential Information to any other Person, except as otherwise provided by this Order.

31. Nothing in this Order:

(a) limits a Protected Person's use or disclosure of its own information designated as Confidential Information;

(b) prevents disclosure of Confidential Information with the consent of the Protected Person that designated the material as confidential;

(c) prevents disclosure by a Party of Confidential Information (i) that is or has become publicly known through no fault of that Party; (ii) lawfully acquired by or known to that Party independent of receipt during the Investigation or in post-complaint discovery in this Action; (iii) previously produced, disclosed, or provided to that Party without an obligation of confidentiality and not by inadvertence or mistake; or (iv) pursuant to a court order; or

(d) prevents the United States' retention, use, or disclosure of Confidential Information outside the context of this Action (i) to the extent permitted or required by law, court order, or regulation; (ii) for law enforcement purposes; (iii) in the course of any other legal proceeding in which the United States is a party; or (iv) for the purpose of securing compliance with a Final Judgment in this Action.

32. In the event of a disclosure of any Confidential Information to any Person not authorized to receive disclosure under this Order, the Party responsible for having made the disclosure must promptly notify the Protected Person whose material has been disclosed and provide to that Protected Person all known relevant information concerning the nature and circumstances of the disclosure. The disclosing Party must also promptly take all reasonable

measures to retrieve the improperly disclosed material and ensure that no further or greater unauthorized disclosure or use of the material is made. Unauthorized disclosure of Confidential Information will not change the confidential status of the disclosed material or waive the right to maintain the disclosed material as containing Confidential Information.

G. **Use of Information Designated Confidential in This Action**

33. Except as provided in Paragraph 31 of this Order, all Confidential Information produced by a Party or a non-Party Protected Person as part of this proceeding may be used solely for the conduct of this Action and must not be used for any business, commercial, competitive, personal, or other purpose.

34. Court Filings. If any documents, testimony, or other materials designated under this Order as Confidential Information are included in or attached to any pleading, motion, exhibit, or other paper to be filed with the Court, the Party seeking to file must seek a court order to file such Confidential Information under seal, in accordance with Local Rule 105.11. A request for the Court to allow filing under seal must include the proposed redactions. If this Court grants leave to file a document under seal, the filing Party must file with the Clerk of this Court a redacted version of the filing. Nothing in this Order will restrict the Parties or any interested member of the public from challenging the filing of any Confidential Information under seal.

35. Exhibits. If a Party includes exhibits on its exhibit list that contain or discuss information that has been designated as Confidential Information, at the time exhibit lists are exchanged, the Party must also provide redacted versions of those exhibits. At the time that the Parties exchange objections to exhibits, each Party must also (a) provide redacted versions of any exhibits on the opposing Party's exhibit list that contain information that the Party previously

designated as Confidential Information and (b) exchange objections to the redacted trial exhibits that were provided with the exhibit lists. The Parties must exchange objections to those redactions on a schedule to be set in the Case Management Order. If a Party fails to provide redacted versions of an exhibit by the conclusion of this process, the exhibit may be entered on the public record in its entirety.

36. Trial. Disclosure at trial of documents and information designated as Confidential Information will be governed pursuant to a separate court order. The Parties will meet and confer as set forth in the Case Management Order and submit a recommended order outlining those procedures. Absent a ruling by the Court to the contrary, documents, deposition testimony, or other materials or information that have been designated as containing Confidential Information by a Protected Person that appear on a Party's exhibit list or in deposition designations, and that are admitted into evidence at trial, will be disclosed on the public record, and any examination relating to such information likewise will be disclosed on the public record, after compliance with procedures that will be established by the Court.

H. Procedures Upon Termination of This Action

37. The obligations imposed by this Order will survive the termination of this Action unless the Court, which will retain jurisdiction to resolve any disputes arising out of this Order, orders otherwise.

38. Except as otherwise provided in this Paragraph 38 and in Paragraph 31 of this Order, within 90 days after the expiration of the time for appeal of an order, judgment, or decree terminating this Action, all Persons having received information designated as Confidential Information must make a good faith effort to (a) return that material and all copies to the

Protected Person (or the Protected Person's counsel, if represented by counsel) that produced it or (b) destroy or delete all such Confidential Information.

39. The Clerk of the Court or Judge may return to counsel for the parties, or destroy, any sealed material at the end of the litigation, including any appeals. All Confidential Information returned to the Parties or their counsel by the Clerk of the Court also must be disposed of in accordance with this Paragraph 39. Counsel for the Parties will be entitled to retain court papers, deposition, hearing, and trial transcripts, trial exhibits, and work product, as may be required by the Rules of Professional Conduct provided that the Parties and their counsel do not disclose the portions of those materials containing information designated as Confidential Information except pursuant to Court order or an agreement with the Protected Person that produced the Confidential Information or as otherwise permitted by this Order.

40. Within 90 days after the expiration of the time for appeal of an order, judgment, or decree terminating this Action, all Persons having received information designated as Confidential Information must certify compliance with Paragraph 39 of this Order in writing to the Party or Protected Person that produced the Confidential Information.

I. Right to Seek Modification

41. Nothing in this Order limits any Person, including members of the public, a Party, or a Protected Person, from seeking further or additional protections for any of its materials or modification of this Order upon motion duly made pursuant to the Rules of this Court, including, without limitation, an order that certain materials not be produced at all or are not admissible evidence in this Action or in any other proceeding.

J. The Privacy Act

42. Any order of this Court requiring the production of any document, information, or transcript of testimony constitutes a court order within the meaning of the Privacy Act, 5 U.S.C. § 552a (b) (11).

K. Persons Bound by The Order

43. This Order is binding on the Parties to this Action, and their attorneys, successors, personal representatives, administrators, assigns, parents, subsidiaries, divisions, affiliates, employees, agents, retained consultants and experts, and any persons or organizations over which the Parties have control.

L. Production of Investigation Materials

44. The Parties agree to waive the exchange of disclosures under Federal Rule of Civil Procedure 26(a)(1) and instead will produce the Investigation Materials pursuant to the terms of this Order.

45. Consistent with the terms of this Order, including the limitations set forth in Paragraph 15, the Parties will produce all Investigation Materials within 4 days of the Court's entry of this Order, except that (a) Plaintiff need not produce to Defendants the Investigation Materials that Plaintiff received from any Defendant; and (b) Defendants need not produce to Plaintiff the Investigation Materials that any Defendant previously produced to Plaintiff.

M. Privilege

46. Pursuant to Federal Rule of Evidence 502(d), the production of Investigation Materials or Litigation Materials does not constitute a waiver of any protection that would otherwise apply to attorney work product, confidential attorney-client communications, or materials subject to the deliberative-process or any other governmental privilege.

AGREED TO:

_____
KEVIN QUIN
United States Department of Justice
Antitrust Division
Defense, Industrials, and Aerospace Section
450 Fifth Street N.W., Suite 8700
Washington, DC 20530
Telephone: (202) 476-0251
Facsimile: (202) 514-9033
Email: Kevin.Quin@usdoj.gov

Counsel for Plaintiff United States of America

[signature block]

Counsel for Booz Allen Hamilton Holding Corp. and Booz Allen Hamilton Inc.

[signature block]

Counsel for EverWatch Corp., EC Defense Holdings, LLC, and Analysis, Computing & Engineering Solutions, Inc.

SO ORDERED.

Date: _____, 2022

_____
XXX
United States District Judge

APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA, *Plaintiff*, v. BOOZ ALLEN HAMILTON HOLDING CORP., *et al.*, *Defendants*.	Case No. 1:22-cv-XXXXX (XXX)

AGREEMENT CONCERNING CONFIDENTIALITY

I, _____, am employed by _____as _____.

I hereby certify that:

1. I have read the Protective Order entered in the above-captioned action and understand its terms.

2. I agree to be bound by the terms of the Protective Order entered in the above-captioned action. I agree to use the information provided to me only as explicitly provided in this Protective Order.

3. I understand that my failure to abide by the terms of the Protective Order entered in the above-captioned action will subject me, without limitation, to civil and criminal penalties for contempt of Court.

4. I submit to the jurisdiction of the United States District Court for the District of Columbia solely for the purpose of enforcing the terms of the Protective Order entered in the above-captioned action and freely and knowingly waive any right I may otherwise have to object to the jurisdiction of said Court.

_____ _____
SIGNATURE DATE

EXHIBIT 9

From: Quin, Kevin (ATR) <Kevin.Quin@usdoj.gov>
Sent: Friday, July 8, 2022 11:16 PM
To: Rathbun, Anna (DC); Reeves, Mandy (DC); Hayes, Natalie (ATR); Owen, Jay (ATR)
Cc: #C-M PROJECT EVERWATCH US ANTITRUST LITIGATION - LW TEAM; Andresian, Alexander (ATR); Armington, Elizabeth (ATR); ATR-DIA-BAH-EverWatch (ATR); Cohen, Alex (ATR); Fairman, Elizabeth (ATR); Greene, Thomas (ATR); Hayes, Natalie (ATR); Holdheim, Sachin (ATR); Isaacs, Miranda (ATR); Markel, Arianna (ATR); Montezuma, Catherine (ATR); Owen, Jay (ATR); Quin, Kevin (ATR); Rouse, Katrina (ATR); Williams, Bryn (ATR)
Subject: RE: U.S. v. Booz Allen Hamilton - Confidential Materials Filed on Public Docket

Anna,

We're working to get input from our management, but we don't have any official position to report yet. We'll let you know as soon as we have one. In the meantime, we've discussed this with our contact in the office of the US Attorney in Baltimore. They've told us that in practice there's no way to reach the clerk tonight, and no other way to get the materials removed. We'll continue working on this, and let you know our progress.

Kevin

From: Anna.Rathbun@lw.com <Anna.Rathbun@lw.com>
Sent: Friday, July 8, 2022 10:40 PM
To: Quin, Kevin (ATR) <Kevin.Quin@usdoj.gov>; Amanda.Reeves@lw.com; Hayes, Natalie (ATR) <Natalie.Hayes@usdoj.gov>; Owen, Jay (ATR) <Jay.Owen@usdoj.gov>
Cc: PROJECTEVERWATCHUSANTITRUSTLITIGATION.LWTEAM@lw.com; ATR-DIA-BAH-EverWatch-Staff <DIA-BAH-EverWatch-Staff@ATR.USDOJ.GOV>
Subject: [EXTERNAL] RE: U.S. v. Booz Allen Hamilton - Confidential Materials Filed on Public Docket

Kevin, Jay, and Natalie:

Thank you for the call. As we explained, we do not seek to limit DOJ's *use* of any materials, but we object to the improper *disclosure* to the public of confidential EverWatch materials. Under 15 USC 1313 (C)(3), the DOJ must seek a producing person's consent before making documents produced pursuant to a CID public. Despite EverWatch's designation of its documents as Highly Confidential, DOJ filed multiple documents publicly instead of filing them under seal. This has not been a controversial point, in our experience—we are not aware of a single instance in which the DOJ has ever filed on the public docket documents designated Highly Confidential by a party publicly, instead of under seal, without the party's prior consent. You indicated that you were not familiar with DOJ's position and would confer with more senior attorneys at the Division tonight. As we explained, the potential harm to EverWatch from having its confidential materials made public increases the longer the materials remain accessible to the public. We request again that DOJ immediately work with the Court to remove the documents—including the brief and exhibits-- from public access, while we continue to discuss which portions of the DOJ's filing should be filed under seal. Please let us know the Division's position by 11 ET tonight so that we may take appropriate action if necessary. We reserve all rights.

Thanks,
Anna

From: Quin, Kevin (ATR) <Kevin.Quin@usdoj.gov>
Sent: Friday, July 08, 2022 9:29 PM

To: Reeves, Mandy (DC) <Amanda.Reeves@lw.com>; Rathbun, Anna (DC) <Anna.Rathbun@lw.com>; Hayes, Natalie (ATR) <Natalie.Hayes@usdoj.gov>; Owen, Jay (ATR) <Jay.Owen@usdoj.gov>
Cc: #C-M PROJECT EVERWATCH US ANTITRUST LITIGATION - LW TEAM <PROJECTEVERWATCHUSANTITRUSTLITIGATION.LWTEAM@lw.com>; ATR-DIA-BAH-EverWatch-Staff <DIA-BAH-EverWatch-Staff@ATR.USDOJ.GOV>
Subject: RE: U.S. v. Booz Allen Hamilton - Confidential Materials Filed on Public Docket

Rather than threatening sanctions, why don't we get on the phone and talk? We can use this dial-in:

Microsoft Teams meeting

Join on your computer or mobile app
Click here to join the meeting
Or call in (audio only)
+1 202-235-7900,,978237868# United States,
Phone Conference ID: 978 237 868#
Find a local number | Reset PIN
Learn More | Meeting options

From: Amanda.Reeves@lw.com <Amanda.Reeves@lw.com>
Sent: Friday, July 8, 2022 9:14 PM
To: Anna.Rathbun@lw.com; Quin, Kevin (ATR) <Kevin.Quin@usdoj.gov>; Hayes, Natalie (ATR) <Natalie.Hayes@usdoj.gov>; Owen, Jay (ATR) <Jay.Owen@usdoj.gov>
Cc: PROJECTEVERWATCHUSANTITRUSTLITIGATION.LWTEAM@lw.com
Subject: [EXTERNAL] RE: U.S. v. Booz Allen Hamilton - Confidential Materials Filed on Public Docket

Please respond to our email now and confirm you are removing the pleading asap. We reserve all of our rights. If you do not remove the pleading asap we will be filing for sanctions.

From: Rathbun, Anna (DC) <Anna.Rathbun@lw.com>
Date: Friday, Jul 08, 2022, 9:03 PM
To: Quin, Kevin (ATR) <Kevin.Quin@usdoj.gov>, Hayes, Natalie (ATR) <Natalie.Hayes@usdoj.gov>, Owen, Jay (ATR) <Jay.Owen@usdoj.gov>
Cc: #C-M PROJECT EVERWATCH US ANTITRUST LITIGATION - LW TEAM <PROJECTEVERWATCHUSANTITRUSTLITIGATION.LWTEAM@lw.com>
Subject: RE: U.S. v. Booz Allen Hamilton - Confidential Materials Filed on Public Docket

Kevin,

It is one thing to use CID materials with the Court by filing them under seal. It is another to unilaterally file them on the public docket without providing any notice to us. The documents plainly bore a Highly Confidential notation. Despite that, DOJ made no attempt to obtain consent to disclose any of this material (and we do not consent). The DOJ cannot unilaterally decide what it believes should be redacted from a public filing. Take down the materials from the public docket immediately.

Thanks,
Anna

From: Quin, Kevin (ATR) <Kevin.Quin@usdoj.gov>
Sent: Friday, July 08, 2022 8:46 PM
To: Hayes, Natalie (ATR) <Natalie.Hayes@usdoj.gov>; Owen, Jay (ATR) <Jay.Owen@usdoj.gov>
Cc: #C-M PROJECT EVERWATCH US ANTITRUST LITIGATION - LW TEAM <PROJECTEVERWATCHUSANTITRUSTLITIGATION.LWTEAM@lw.com>
Subject: RE: U.S. v. Booz Allen Hamilton - Confidential Materials Filed on Public Docket

This is all I propose to send. It seems pretty inarguable. It's actually the quote from the Division manual that I just sent you.

Anna,

The Division is authorized, pursuant to 15 U.S.C. § 1313(d)(1), to use CID material in connection with any court case or grand jury, Federal administrative proceeding, or regulatory proceeding in which the Division is involved. Can you clarify why EverWatch believes CID material must be removed from the docket?

Kevin

Kevin Quin | Defense, Industrials and Aerospace Section
Antitrust Division | United States Department of Justice
Tel: 202-307-0922 | Mobile: 202-476-0251

From: Anna.Rathbun@lw.com <Anna.Rathbun@lw.com>
Sent: Friday, July 8, 2022 7:50 PM
To: Quin, Kevin (ATR) <Kevin.Quin@usdoj.gov>; Andresian, Alexander (ATR) <Alexander.Andresian@usdoj.gov>; Armington, Elizabeth (ATR) <Elizabeth.Armington@usdoj.gov>; Cohen, Alex (ATR) <Alex.Cohen@usdoj.gov>; Fairman, Elizabeth (ATR) <Elizabeth.Fairman@usdoj.gov>; Greene, Thomas (ATR) <Thomas.Greene@usdoj.gov>; Hayes, Natalie (ATR) <Natalie.Hayes@usdoj.gov>; Holdheim, Sachin (ATR) <Sachin.Holdheim@usdoj.gov>; Isaacs, Miranda (ATR) <Miranda.Isaacs@usdoj.gov>; Markel, Arianna (ATR) <Arianna.Markel@usdoj.gov>; Montezuma, Catherine (ATR) <Catherine.Montezuma@usdoj.gov>; Owen, Jay (ATR) <Jay.Owen@usdoj.gov>; Rouse, Katrina (ATR) <Katrina.Rouse@usdoj.gov>; Williams, Bryn (ATR) <Bryn.Williams@usdoj.gov>
Cc: PROJECTEVERWATCHUSANTITRUSTLITIGATION.LWTEAM@lw.com
Subject: [EXTERNAL] U.S. v. Booz Allen Hamilton - Confidential Materials Filed on Public Docket
Importance: High

Kevin,

It has come to our attention that DOJ has quoted in its public filing, and included as public exhibits, internal EverWatch Defendant documents that EverWatch designated Highly Confidential and produced pursuant to CID 31063, in violation of 15. U.S.C. 1313(c)(3) ,28 C.F.R. §16.7 and EverWatch's notification to DOJ on June 27, 2022 that it was producing documents "under an assurance that the Division [would] afford this information confidential treatment and productions against disclosure under all applicable statutes, practices, and regulations." Please ensure that all information EverWatch produced to DOJ pursuant to the CID is removed from the public docket immediately.

Regards,
Anna

Anna M. Rathbun

Pronouns: she/her/hers

LATHAM & WATKINS LLP
555 Eleventh Street, NW
Suite 1000
Washington, D.C. 20004-1304
Direct Dial: +1.202.637.3381
Email: anna.rathbun@lw.com
https://www.lw.com

EXHIBIT 10

From: Quin, Kevin (ATR) <Kevin.Quin@usdoj.gov>
Sent: Saturday, July 9, 2022 12:36 PM
To: Rathbun, Anna (DC); Reeves, Mandy (DC)
Cc: #C-M PROJECT EVERWATCH US ANTITRUST LITIGATION - LW TEAM; Andresian, Alexander (ATR); Armington, Elizabeth (ATR); ATR-DIA-BAH-EverWatch (ATR); Cohen, Alex (ATR); Fairman, Elizabeth (ATR); Greene, Thomas (ATR); Hayes, Natalie (ATR); Holdheim, Sachin (ATR); Isaacs, Miranda (ATR); Markel, Arianna (ATR); Montezuma, Catherine (ATR); Owen, Jay (ATR); Quin, Kevin (ATR); Rouse, Katrina (ATR); Williams, Bryn (ATR)
Subject: RE: U.S. v. Booz Allen Hamilton - Confidential Materials Filed on Public Docket

Anna,

We filed our materials yesterday in good faith, based on the relevant law and following DOJ policy. After we received your emails yesterday evening, we met and conferred with you at 9:45 on a Friday night. Our understanding of that conversation is that EverWatch agrees that Section 1313(d)(1) permits the United States to file CID materials with the court. However, EverWatch interprets Section 1313(c)(3) to require that such materials be filed under seal. We noted that the case team did not share that interpretation, but that we would confer internally. We worked diligently to do that throughout Friday night and into the early hours of Saturday morning.

Having done that, our position is unchanged. 15 USC 1313(c)(3) provides confidentiality protections for CID materials, but it begins with the phrase "[e]xcept as otherwise provided in this section." 15 USC 1313 (d)(1) then provides that, when appearing before any court, a DOJ attorney may use these materials "as such attorney determines to be required." Our view remains that DOJ is therefore well within the bounds of the statute in using these materials.

Based on your emails last night and this morning, it appears that you may be considering calling the Court's emergency number. While DOJ does not think this is necessary in this situation, we request that you involve us in any outreach to the Court.

Finally, the threat of sanctions was unnecessary, and, frankly, made it more difficult for us to engage with your concerns, as it immediately amped the volume up to eleven. I find that it's always easiest for everyone to hear each other when the volume is lower, and I'll work to keep it that way on our side of the table. Thanks.

Kevin

From: Anna.Rathbun@lw.com <Anna.Rathbun@lw.com>
Sent: Friday, July 8, 2022 10:40 PM
To: Quin, Kevin (ATR) <Kevin.Quin@usdoj.gov>; Amanda.Reeves@lw.com; Hayes, Natalie (ATR) <Natalie.Hayes@usdoj.gov>; Owen, Jay (ATR) <Jay.Owen@usdoj.gov>
Cc: PROJECTEVERWATCHUSANTITRUSTLITIGATION.LWTEAM@lw.com; ATR-DIA-BAH-EverWatch-Staff <DIA-BAH-EverWatch-Staff@ATR.USDOJ.GOV>
Subject: [EXTERNAL] RE: U.S. v. Booz Allen Hamilton - Confidential Materials Filed on Public Docket

Kevin, Jay, and Natalie:

Thank you for the call. As we explained, we do not seek to limit DOJ's *use* of any materials, but we object to the improper *disclosure* to the public of confidential EverWatch materials. Under 15 USC 1313 (C)(3), the DOJ must seek a

producing person's consent before making documents produced pursuant to a CID public. Despite EverWatch's designation of its documents as Highly Confidential, DOJ filed multiple documents publicly instead of filing them under seal. This has not been a controversial point, in our experience—we are not aware of a single instance in which the DOJ has ever filed on the public docket documents designated Highly Confidential by a party publicly, instead of under seal, without the party's prior consent. You indicated that you were not familiar with DOJ's position and would confer with more senior attorneys at the Division tonight. As we explained, the potential harm to EverWatch from having its confidential materials made public increases the longer the materials remain accessible to the public. We request again that DOJ immediately work with the Court to remove the documents—including the brief and exhibits-- from public access, while we continue to discuss which portions of the DOJ's filing should be filed under seal. Please let us know the Division's position by 11 ET tonight so that we may take appropriate action if necessary. We reserve all rights.

Thanks,
Anna

From: Quin, Kevin (ATR) <Kevin.Quin@usdoj.gov>
Sent: Friday, July 08, 2022 9:29 PM
To: Reeves, Mandy (DC) <Amanda.Reeves@lw.com>; Rathbun, Anna (DC) <Anna.Rathbun@lw.com>; Hayes, Natalie (ATR) <Natalie.Hayes@usdoj.gov>; Owen, Jay (ATR) <Jay.Owen@usdoj.gov>
Cc: #C-M PROJECT EVERWATCH US ANTITRUST LITIGATION - LW TEAM <PROJECTEVERWATCHUSANTITRUSTLITIGATION.LWTEAM@lw.com>; ATR-DIA-BAH-EverWatch-Staff <DIA-BAH-EverWatch-Staff@ATR.USDOJ.GOV>
Subject: RE: U.S. v. Booz Allen Hamilton - Confidential Materials Filed on Public Docket

Rather than threatening sanctions, why don't we get on the phone and talk? We can use this dial-in:

Microsoft Teams meeting

Join on your computer or mobile app
Click here to join the meeting
Or call in (audio only)
+1 202-235-7900,,978237868# United States,
Phone Conference ID: 978 237 868#
Find a local number | Reset PIN
Learn More | Meeting options

From: Amanda.Reeves@lw.com <Amanda.Reeves@lw.com>
Sent: Friday, July 8, 2022 9:14 PM
To: Anna.Rathbun@lw.com; Quin, Kevin (ATR) <Kevin.Quin@usdoj.gov>; Hayes, Natalie (ATR) <Natalie.Hayes@usdoj.gov>; Owen, Jay (ATR) <Jay.Owen@usdoj.gov>
Cc: PROJECTEVERWATCHUSANTITRUSTLITIGATION.LWTEAM@lw.com
Subject: [EXTERNAL] RE: U.S. v. Booz Allen Hamilton - Confidential Materials Filed on Public Docket

Please respond to our email now and confirm you are removing the pleading asap. We reserve all of our rights. If you do not remove the pleading asap we will be filing for sanctions.

From: Rathbun, Anna (DC) <Anna.Rathbun@lw.com>
Date: Friday, Jul 08, 2022, 9:03 PM
To: Quin, Kevin (ATR) <Kevin.Quin@usdoj.gov>, Hayes, Natalie (ATR) <Natalie.Hayes@usdoj.gov>, Owen, Jay (ATR) <Jay.Owen@usdoj.gov>

Cc: #C-M PROJECT EVERWATCH US ANTITRUST LITIGATION - LW TEAM <PROJECTEVERWATCHUSANTITRUSTLITIGATION.LWTEAM@lw.com>
Subject: RE: U.S. v. Booz Allen Hamilton - Confidential Materials Filed on Public Docket

Kevin,

It is one thing to use CID materials with the Court by filing them under seal. It is another to unilaterally file them on the public docket without providing any notice to us. The documents plainly bore a Highly Confidential notation. Despite that, DOJ made no attempt to obtain consent to disclose any of this material (and we do not consent). The DOJ cannot unilaterally decide what it believes should be redacted from a public filing. Take down the materials from the public docket immediately.

Thanks,
Anna

From: Quin, Kevin (ATR) <Kevin.Quin@usdoj.gov>
Sent: Friday, July 08, 2022 8:46 PM
To: Hayes, Natalie (ATR) <Natalie.Hayes@usdoj.gov>; Owen, Jay (ATR) <Jay.Owen@usdoj.gov>
Cc: #C-M PROJECT EVERWATCH US ANTITRUST LITIGATION - LW TEAM <PROJECTEVERWATCHUSANTITRUSTLITIGATION.LWTEAM@lw.com>
Subject: RE: U.S. v. Booz Allen Hamilton - Confidential Materials Filed on Public Docket

This is all I propose to send. It seems pretty inarguable. It's actually the quote from the Division manual that I just sent you.

Anna,

The Division is authorized, pursuant to 15 U.S.C. § 1313(d)(1), to use CID material in connection with any court case or grand jury, Federal administrative proceeding, or regulatory proceeding in which the Division is involved. Can you clarify why EverWatch believes CID material must be removed from the docket?

Kevin

Kevin Quin | Defense, Industrials and Aerospace Section
Antitrust Division | United States Department of Justice
Tel: 202-307-0922 | Mobile: 202-476-0251

From: Anna.Rathbun@lw.com <Anna.Rathbun@lw.com>
Sent: Friday, July 8, 2022 7:50 PM
To: Quin, Kevin (ATR) <Kevin.Quin@usdoj.gov>; Andresian, Alexander (ATR) <Alexander.Andresian@usdoj.gov>; Armington, Elizabeth (ATR) <Elizabeth.Armington@usdoj.gov>; Cohen, Alex (ATR) <Alex.Cohen@usdoj.gov>; Fairman, Elizabeth (ATR) <Elizabeth.Fairman@usdoj.gov>; Greene, Thomas (ATR) <Thomas.Greene@usdoj.gov>; Hayes, Natalie (ATR) <Natalie.Hayes@usdoj.gov>; Holdheim, Sachin (ATR) <Sachin.Holdheim@usdoj.gov>; Isaacs, Miranda (ATR) <Miranda.Isaacs@usdoj.gov>; Markel, Arianna (ATR) <Arianna.Markel@usdoj.gov>; Montezuma, Catherine (ATR) <Catherine.Montezuma@usdoj.gov>; Owen, Jay (ATR) <Jay.Owen@usdoj.gov>; Rouse, Katrina (ATR) <Katrina.Rouse@usdoj.gov>; Williams, Bryn (ATR) <Bryn.Williams@usdoj.gov>
Cc: PROJECTEVERWATCHUSANTITRUSTLITIGATION.LWTEAM@lw.com

Subject: [EXTERNAL] U.S. v. Booz Allen Hamilton - Confidential Materials Filed on Public Docket
Importance: High

Kevin,

It has come to our attention that DOJ has quoted in its public filing, and included as public exhibits, internal EverWatch Defendant documents that EverWatch designated Highly Confidential and produced pursuant to CID 31063, in violation of 15. U.S.C. 1313(c)(3) ,28 C.F.R. §16.7 and EverWatch's notification to DOJ on June 27, 2022 that it was producing documents "under an assurance that the Division [would] afford this information confidential treatment and productions against disclosure under all applicable statutes, practices, and regulations." Please ensure that all information EverWatch produced to DOJ pursuant to the CID is removed from the public docket immediately.

Regards,
Anna

Anna M. Rathbun
Pronouns: she/her/hers

LATHAM & WATKINS LLP
555 Eleventh Street, NW
Suite 1000
Washington, D.C. 20004-1304
Direct Dial: +1.202.637.3381
Email: anna.rathbun@lw.com
https://www.lw.com

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EXHIBIT 11

U.S. Department of Justice
Antitrust Division

Antitrust Division Manual

Fifth Edition

observations, reflections, or commentary, or a document that staff initially believes the deponent authored or read but that the deponent denies having seen.

In such a case the preferred practice is either to (a) allow the deponent to receive a copy of the document as an exhibit while reviewing the transcript, but require the exhibit to be returned with a signed affirmation (or letter from counsel) stating that no copies have been made, or (b) allow the deponent to receive a copy of the transcript without the exhibit attached, but permitting review of the document at Division (or other Department of Justice) offices if such a review of the document is necessary to the review of the transcript. Cf. Chapter III, Part E.3.c.vi. (discussing when the Division may withhold the transcript from the deponent). On the other hand, if the deponent is already aware of the substance of the document in question, it is permissible to allow the deponent to receive and retain a copy of the transcript with the third party document attached as an exhibit; providing the third-party document as an exhibit is an appropriate courtesy and may make it more convenient for the deponent to review, correct, and inspect the transcript. Examples falling into this category include depositions where a document authored or received by the deponent was produced by his or her former employer; an agreement signed by the deponent where the copy of the agreement was produced by the other party to the agreement; correspondence involving the deponent or his or her firm; or widely circulated newsletters that the deponent likely read.

v. Disclosure in Judicial or Administrative Proceedings

(a) Agreements Concerning Notice

The Division is authorized, pursuant to 15 U.S.C. § 1313(d)(1), to use CID material in connection with any court case or grand jury, Federal administrative proceeding, or regulatory proceeding in which the Division is involved. The Division's policy is to try to avoid using competitively sensitive information in complaints or openly discussing competitively sensitive information, but the Division will not agree to refrain from disclosing CID material in a judicial or administrative proceeding. If competitively sensitive information is to be used in a pleading, the Division's general policy is to make reasonable efforts to allow the party that produced the material the opportunity to seek a protective order. Alternatively, the Division may voluntarily file the document or portion of the pleading under seal.

Notifying parties in writing of the Division's general practice is preferable to making a specific commitment to provide notice. This is because promises regarding how and when the Division may use CID material in judicial and administrative proceedings may impose unnecessary procedural burdens on staff and limit the use of material under circumstances that could not be foreseen at the time the promise was made.

On limited occasions, the Division has agreed to certain limitations on its use of CID material in judicial or administrative proceedings. These agreements have been in the form of promises:

- To notify the producing party in advance, "to the extent that it is reasonably practicable" that the Division plans to use CID information produced by the party in a proceeding or has filed a complaint.
- To make "reasonable efforts" to notify the producing party before turning over material pursuant to a discovery request in litigation in order to provide the party with a reasonable opportunity to see a protective order
- To file under seal any information from a very limited number of documents containing CID information the producing party has reasonably designated "highly confidential" or "restricted confidential."
- Not to impose the party's appearance to seek a protective order or to use the Division's best efforts to secure a reasonable protective order.

Any agreement restricting the use of CID information should be approved by the Chief Legal Advisor and Director of Civil Enforcement. If an agreement regarding notice is made, it should be as limited as possible and apply only to information or documentary material that the party, for legitimate reasons, designates as "highly confidential" or "restricted confidential." Giving such notice should be agreed to only with parties that promise not to seek declaratory relief.

[updated April 2018]

(b) Protective Orders During the Investigatory Stage

Producing parties that are not satisfied with the protection offered under the statute or by consent of the Division may seek a protective order issued by a court. Courts usually will issue such protective orders once a case is filed and, on occasion, even during the investigative stage. In *Aluminum Co. of America v. United States Dep't of Justice*, 444 F. Supp. 1342 (D.D.C. 1978), the court held that it was within its power to issue a protective order to limit disclosure to third parties of confidential information obtained by the Division through the production of documents in response to a CID. The *Aluminum* opinion was followed by the Second Circuit in United States v. GAF Corp., 596 F.2d 10 (2d Cir. 1979); accord *Finnell v. U.S. Dep't of Justice*, 535 F. Supp. 410, 413 (D. Kan. 1982).

(c) Discovery/Protective Orders During Proceedings

Once a case is filed, the use of CID material in that case will typically be governed by a protective order issued by the court in which the suit is pending. All protective orders must be approved by the Director of

Litigation. Whenever a civil action is commenced based on information obtained by CID, the defendants in that action may invoke their full discovery rights under the Federal Rules of Civil Procedure and obtain CID information gathered in the investigation that is relevant to their defense. The House Report on the 1976 amendments to the ACPA noted that the defendants will thus be able fully to protect their rights at trial by interrogating, cross-examining, and impeaching CID witnesses. The House Report also noted that the scope of civil discovery is not unlimited and that the court has broad discretion under the Federal Rules to set limits and conditions on discovery, typically by issuing a protective order. *See* H.R. Rep. No. 94-1343, at 2610 (1976).

During pretrial discovery, parties will typically request that some, or all, CID materials be provided either voluntary or by compulsory process. In the past, when some producers of CID materials have sought to prevent disclosure of their material in litigation, the Division has taken the position that they are discoverable. Although defendants have the right to discover any CID materials obtained by the Division during the investigation that resulted in the civil litigation to which they are a party (subject to any limitations on discovery provided by the Federal Rules of Civil Procedure and any court-imposed protective order) defendants may also attempt to discover CID materials obtained by the Division during the course of other investigations.

The Division's position with respect to a discovery request for CID materials from another investigation is that CID confidentiality continues to apply to such materials, and they are not subject to discovery, unless (1) the materials being sought have been made public during the course of prior litigation before a court or Federal administrative or regulatory agency; (2) the litigant seeking discovery has the consent of the person who produced the CID materials to the disclosure; or (3) the Division has used such materials during the course of the instant pretrial investigation or intends to make use of them at trial. Use during the investigation means more than simply perusing the materials to determine whether they are relevant; they must be put to some more direct use during the pretrial stage. The Division essentially adheres to the position adopted by Judge Greene in *United States v. Am. Tel. & Tel. Co*., 86 F.R.D. 603, 647-48 (D.D.C. 1979) (concerning the discoverability of CID materials produced in other investigations).

The Division's position on the reasonableness of protective orders is guided by balancing the public interest in conducting litigation in the open to the greatest extent possible, *see* 28 C.F.R. § 50.9, against the harm to competition from having competitively sensitive information disclosed to competitors. Staffs should also keep in mind that the disclosure of third-party confidential business information obtained through CIDs may cause third-party CID recipients to be less cooperative with the Division in the future.

Typical protective order provisions include:

- Providing both litigating and third parties with the opportunity to designate material as confidential if they have not already done so.
- Requiring parties to restrict their use of any confidential information they have obtained to the preparation and trial of the pending action.
- Restricting access to confidential material and information to the Division, the parties' outside counsel, and certain consultants, denying access by the defendants' business personnel to competitively sensitive documents from competitors.
- Requiring any court submission that contains confidential information or material to be placed under seal, with properly redacted copies available to the public.
- Requiring that the producing party be given an opportunity to request in camera treatment before disclosure of any confidential material or information at trial.

Regardless of whether the Division has filed a case, CID deposition transcripts may be discoverable from the deponent by a third party, and staff should so inform a deponent who is concerned about confidentiality. *See In re NASDAQ Market-Makers Antitrust Litig.*, 929 F. Supp. 723, 727 (S.D.N.Y. 1996); *In re Air Passenger Computer Reservation Sys. Antitrust Litig.*, 116 F.R.D. 390, 393 (C.D. Cal. 1986). Although the issue is not settled, the Government may be able to assert a qualified privilege over such materials. *See McCray v. Illinois*, 386 U.S. 300, 309-11 (1967) (citing *Vogel v. Gruaz*, 110 U.S. 311 (1884)) and *Three Crown Ltd. P'ship v. Salomon Bros., Inc.*, 1993-2 Trade Cas. (CCH) ¶ 70,320, at 70,665 (S.D.N.Y. 1993). A Division attorney who has sufficient concern about keeping the information in a deposition from the subject of the investigation may want to consider withholding the copy of the transcript from the witness. *See* Chapter III, Part E.3.c.vi.

7. CID Custodians and Deputy Custodians

The Act requires that the Assistant Attorney General designate an antitrust investigator to serve as custodian, and such additional antitrust investigators as the Assistant Attorney General may from time to time determine to be necessary to act as deputy custodians, of documentary material, answers to interrogatories, and transcripts or oral testimony received under the Act. *See* 15 U.S.C. § 1313(a). When a CID is issued, the general Division practice is to appoint the chief of the requesting section or field office as the custodian and the lead attorney on the matter as the deputy custodian. (Staff may also designate additional attorneys as deputy custodians.) Staff should complete the section of the CID specifying the custodian and deputy custodian by first writing the title then the name of the custodian (typically the relevant

EXHIBIT 12

From: Todd Stenerson <Todd.Stenerson@Shearman.com>
Sent: Wednesday, July 6, 2022 5:42 PM
To: Ryan Shores; Kevin.Quin@usdoj.gov
Cc: Reeves, Mandy (DC); David Higbee; NArmstrong@KSLAW.com
Subject: RE: Schedule for Booz Allen/EverWatch
Attachments: 2022.07.06 DRAFT Protective Order DOJ-BAH-EW.docx; 2022.07.06 Change-Pro Redline.pdf

Kevin,

Attached please find proposed edits to the Protective Order. After you've had the opportunity to review them, let us know if you have any questions or additional comments.

Thanks,
Todd

From: Ryan Shores <Ryan.Shores@Shearman.com>
Sent: Wednesday, July 6, 2022 3:19 PM
To: Kevin.Quin@usdoj.gov
Cc: Amanda.Reeves@lw.com; David Higbee <David.Higbee@Shearman.com>; NArmstrong@KSLAW.com; Todd Stenerson <Todd.Stenerson@Shearman.com>
Subject: FW: Schedule for Booz Allen/EverWatch

Kevin: I am confirming you received the below email. Please let us know if we can expect to receive a response. Best, Ryan

---

From: Ryan Shores
Sent: Wednesday, July 6, 2022 6:55 AM
To: 'Quin, Kevin (ATR)' <Kevin.Quin@usdoj.gov>; Norm Armstrong <NArmstrong@KSLAW.com>; Amanda.Reeves@lw.com; David Higbee <David.Higbee@shearman.com>
Cc: ATR-DIA-BAH-EverWatch-Staff <DIA-BAH-EverWatch-Staff@ATR.USDOJ.GOV>
Subject: RE: Schedule for Booz Allen/EverWatch

Kevin:

Thanks for your email and the conversation yesterday. I am writing to confirm our conversation and next steps.

1. When we spoke last Thursday, you committed to send us DOJ's proposed PI order. As we discussed, receiving the draft promptly would allow us to discuss your requested relief with our respective clients. It would also have provided us a meaningful opportunity to confer with you about whether any form of agreed-upon relief could obviate your motion (or at least limit the issues to be litigated). Five days later, and forty-five minutes before our call, you sent us the proposed PI order and announced DOJ's intent to file the PI motion on Wednesday (i.e., at most 24 hours later). On our call yesterday, we asked for at least 48 hours to confer with our respective clients and engage in good-faith discussions with the Division regarding the relief and potential ways the parties could obviate the motion. On our call and in your follow up email below, you refused. We reiterate our request for 48 hours and suggest the parties meet again on Thursday afternoon. As your own delay in providing us with the proposed PI order shows, there is no urgency that would justify filing today. Moreover, DOJ's demand that,

in than 24 hours, we both confer with our respective clients regarding an extensive and unprecedented PI request (seeking, among other things, "abrogation" of the merger agreement) and then confer with you is unreasonable. Finally, there are mischaracterizations and faulty assumptions in the proposed order that warrant a discussion by the parties before DOJ rushes in an unnecessary PI filing.

2. During the course of our conversation, you made clear that DOJ's PI request is focused on what you called the anticompetitive "incentives" created by the merger agreement and not on communications between the parties. You explained that DOJ has no issue with the merger other than the Optimal Decision procurement. Apart from this OD bid, DOJ has no concern that the merger would violate the antitrust laws.
3. As to scheduling and the proposed scheduling orders you sent toward the end of last week, you asked us on Friday to "hold off" on reviewing them because "we will be making some significant changes to the proposed schedule. We will send you a new proposal as soon as possible." Today, however, DOJ reversed course. Specifically, you said that we should review the proposed schedules you sent last week and DOJ will be making no material changes to those schedules. We will get back to you as soon as practicable. However, because we had set aside those proposals at your suggestion, it will take us some time to review them, discuss them with our respective clients, and then get back to you with our proposals. We look forward to meeting-and-conferring in good faith on those proposals.
4. We will send you proposed edits to the protective order today.
5. You asked whether we would agree to not consummate the merger until the conclusion of litigation. We said that we would discuss this issue with our respective clients and get back to you.

Best,
Ryan

From: Quin, Kevin (ATR) <Kevin.Quin@usdoj.gov>
Sent: Tuesday, July 5, 2022 11:32 PM
To: Norm Armstrong <NArmstrong@KSLAW.com>; Ryan Shores <Ryan.Shores@Shearman.com>; Amanda.Reeves@lw.com; David Higbee <David.Higbee@Shearman.com>
Cc: ATR-DIA-BAH-EverWatch-Staff <DIA-BAH-EverWatch-Staff@ATR.USDOJ.GOV>
Subject: Schedule for Booz Allen/EverWatch

Norm, Ryan and Mandy,

On our call this afternoon we proposed that the parties discuss the draft preliminary injunction order tomorrow. If I understood correctly, you were planning to send us a proposal tonight with dates for a meet and confer on that and the proposed CMO. We haven't heard from you, but on our call this afternoon you proposed holding off on that discussion until Friday, when you expect to offer some alternatives.

As we stated, we are concerned that the window to restore competition for the OPTIMAL DECISION project is closing rapidly, so it is urgent that this matter move forward as quickly as is reasonably possible. Moreover, the proposed order is quite simple. Given this, we do not believe that a three day review period is warranted.

We will hold off until close of business tomorrow to hear your proposed alternatives for the order, but we cannot delay longer than that.

Kevin

Kevin Quin | Defense, Industrials and Aerospace Section
Antitrust Division | United States Department of Justice
Tel: 202-307-0922 | Mobile: 202-476-0251

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA, *Plaintiff*, v. BOOZ ALLEN HAMILTON HOLDING CORP., *et al.*, *Defendants*.	Civil Action No. 1:22-cv-01603-CCB

[PROPOSED] STIPULATED PROTECTIVE ORDER

In the interests of (1) ensuring efficient and prompt resolution of this Action; (2) facilitating discovery by the Parties litigating this Action; and (3) protecting Confidential Information from improper disclosure or use, the Parties stipulate to the provisions set forth below. Unless otherwise specified, days will be computed according to Federal Rule of Civil Procedure 6(a). The Court, upon good cause shown and pursuant to Fed. R. Civ. P. 26(c)(1) and all applicable Local Rules, ORDERS as follows:

A. Definitions

1. "Proposed Transaction" means Booz Allen Hamilton Holding Corp.'s proposed acquisition of EC Defense Holdings, LLC.

2. "Action" means the above-captioned action pending in this Court, including any related discovery, pretrial, trial, post-trial, or appellate proceedings.

3. "Confidential Information" means any Investigation Materials or Litigation Materials that contain trade secret or other confidential research, development, or commercial information, as such terms are used in Fed. R. Civ. P. 26(c)(1)(G), or any document, transcript,

or other materials containing such information that have not been published or otherwise made publicly available.

4. "Disclosed" means shown, divulged, revealed, produced, described, transmitted or otherwise communicated, in whole or in part.

5. "Document" means any document or electronically stored information, as the term is used in Fed. R. Civ. P. 34(a).

6. "Investigation" means the pre-Complaint inquiry into the matters at issue in this Action by the United States.

7. "Investigation Materials" means documents, testimony, or other materials that, prior to the filing of this Action, (a) any non-Party provided to any Party, either voluntarily or under compulsory process, in connection with the Investigation; (b) any Party provided to any non-Party relating to the Investigation; (c) the Department of Justice provided to any federal or state governmental agency; (d) any federal or state governmental agency provided to the Department of Justice; or (e) any Defendant, or affiliated person or entity, provided to the Plaintiff relating to the Investigation.

8. "Litigation Materials" means documents, testimony, or other materials that, after the filing of this Action, (a) any non-Party provides to any Party, either voluntarily or under compulsory process, in connection with and during the pendency of this Action; (b) any Party provides to any non-Party in connection with and during the pendency of this Action; (c) the Department of Justice provides to any federal or state governmental agency in connection with and during the pendency of this Action; (d) any federal or state governmental agency provides to the Department of Justice in connection with and during the pendency of this Action; (e) any Defendant provides to any Plaintiff in connection with and during the pendency of this Action;

or (f) any Plaintiff provides to any Defendant in connection with and during the pendency of this Action.

9. "Outside Counsel of Record" means the law firm(s) of attorneys representing a Defendant in this proceeding, and the professional vendors of such firm(s) that provide litigation support services and to whom disclosure is reasonably necessary for this action, consistent with Paragraph 28(d).

10. "Party" means the Plaintiff or any Defendant in this Action. "Parties" means collectively Plaintiff and Defendants in this Action.

11. "Plaintiff" means the United States of America, and its employees, agents, and representatives.

12. "Person" means any natural person, corporate entity, partnership, association, joint venture, governmental entity, or trust.

13. "Protected Person" means any Person, including a Party, that has provided Investigation Materials to a Party or that provides Litigation Materials to a Party.

B. Notice to Non-Party Protected Persons of the Terms of This Order

14. Within 1 day of the Court's entry of this Order, each Party must send by email, facsimile, or overnight delivery a copy of this Order to each non-Party Protected Person (or, if represented by counsel, the non-Party Protected Person's counsel) that provided Investigation Materials to that Party.

15. If a non-Party Protected Person determines that this Order does not adequately protect its Confidential Information, it may, within 3 days after receipt of a copy of this Order, seek additional protection from the Court for its Confidential Information. If a non-Party Protected Person timely seeks additional protection from the Court, the Confidential Information

for which additional protection has been sought will not be provided to other Persons, aside from outside counsel, until a decision is rendered by the Court. If the Court orders the production of the non-Party's documents, the Party will have 5 business days to make the production unless a longer period is ordered by the Court.

C. Designation of Confidential Information in Investigation Materials

16. Any Investigation Materials that a Defendant previously provided to any Plaintiff during the Investigation that the Defendant designated as Confidential or for which the Defendant requested confidential treatment, including but not limited to testimony, documents, electronic documents and data, and materials produced pursuant to the Antitrust Civil Process Act, 15 U.S.C. § 1311-14, or the Hart-Scott-Rodino Antitrust Improvements Act, 15 U.S.C. § 18a, will be treated as containing Confidential Information.

17. All Investigation Materials previously provided by a non-Party Protected Person during the Investigation, including but not limited to testimony, documents, electronic documents and data, and materials produced pursuant to the Antitrust Civil Process Act, 15 U.S.C. § 1311-14, will be treated as containing Confidential Information regardless of whether or not the non-party Protected Person requested confidential treatment at the time of production.

D. Designation of Confidential Information in Litigation Materials

18. The following procedures govern the process for all Protected Persons to designate as Confidential Information any Litigation Materials, including but not limited to information provided in response to requests under Fed. R. Civ. P. 30, 31, 33, 36 or 45, and documents disclosed in response to Fed. R. Civ. P. 33(d), 34(b)(2) and (c), or 45. Any designation of Confidential Information in Litigation Materials constitutes a representation to the

Court that the Protected Person (and counsel, if any) believes in good faith that the Litigation Materials so designated constitute Confidential Information.

19. Whenever discovery is sought from a non-Party in this Action, a copy of this Order must accompany the discovery request or subpoena. To the extent a Party sent a discovery request to a non-Party prior to the entry of this Order by the Court, that Party must send a copy of this Order to the non-Party within 1 business day of entry of this Order.

20. Counsel for Plaintiffs and Defendants to be notified of confidentiality designations are as follows:

For Plaintiff United States:

XXX
XXX
U.S. Department of Justice
450 Fifth Street NW
Washington, DC 20530

For Defendant Booz Allen Hamilton Holding Corp. and Booz Allen Hamilton Inc.:

Todd M. Stenerson
Ryan Shores
Matthew Modell
SHEARMAN & STERLING LLP
401 9th Street, NW, Suite 800
Washington, DC 20004-2128
Email: todd.stenerson@shearman.com
ryan.shores@shearman.com
matt.modell@shearman.com

Susan Loeb
SHEARMAN & STERLING LLP
599 Lexington Avenue
New York, New York 10022-6069
Email: susan.loeb@shearman.com

For Defendants EverWatch Corp., EC Defense Holdings, LLC, and Analysis, Computing & Engineering Solutions, Inc.:

Amanda P. Reeves
Marguerite M. Sullivan
Anna M. Rathbun
G. Charles Beller
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Facsimile: (415) 395-8095
al.pfeiffer@lw.com
kelly.fayne@lw.com

21. Testimony. All transcripts of depositions taken in this Action will be treated as Confidential Information in their entirety for 21 calendar days after the date when a complete and final copy of the transcript has been made available to the deponent (or the deponent's counsel, if applicable). Within 3 business day of receipt of the final transcript, the Party who noticed the deposition must provide the final transcript to the deponent (or the deponent's counsel, if applicable). Within 14 calendar days following receipt of the final transcript, the deponent (or the deponent's counsel, if applicable) may designate as Confidential Information any portion(s) of the deposition transcript, by page(s) and line(s), and any deposition exhibits, or any exhibit(s), that were produced by the deponent or the deponent's employer. To be effective, designations must be provided in writing to Plaintiff's and Defendants' counsel listed in

Paragraph 20 of this Order. Any portion(s) of the transcript or deposition exhibit(s) not designated in the manner required by this Paragraph 21 will not be treated as Confidential Information, even if the document(s) that become the deposition exhibit(s) or information that is the subject of the deposition testimony was subject to a prior designation of confidentiality

22. Hard-Copy Documents and Information. A Protected Person who designates as Confidential Information any document that it produces in this Action must stamp or otherwise mark each page containing Confidential Information with the designation "CONFIDENTIAL" in a manner that will not interfere with legibility.

23. Electronic Documents and Information. Where a Protected Person produces in this Action documents or information in electronic format, those electronic documents or information must be designated by the Protected Person as Confidential Information for protection under this Order by (a) appending to the file names or designators associated with the electronic document or information an indication of whether the electronic document or information contains Confidential Information, or (b) any other reasonable method for appropriately designating Confidential Information produced in electronic format, including by making designations in reasonably accessible metadata associated with the electronic documents or information. If Confidential Information is produced in electronic format on a disk or other medium that contains only Confidential Information, the "CONFIDENTIAL" designation may be placed on the disk or other medium. When electronic documents or information are printed for use during a deposition, in a court proceeding, or for provision in printed form to any Person described in Paragraph 28, the Party printing the electronic document or information must affix a "CONFIDENTIAL" label to the printed version and include with the printed version the production number and designation associated with the electronic document or information.

24. Production of documents or information not designated as Confidential Information will not be deemed a waiver of a future claim of confidentiality concerning such documents or information if they are later designated as Confidential Information. If at any time prior to the trial of this Action, a Protected Person realizes that it should have designated as Confidential Information any Investigation Materials or Litigation Materials previously produced in this Action, it may designate such documents or information by notifying the Parties in writing. The Parties must thereafter treat the Investigation Materials or Litigation Materials as designated Confidential Information under the terms of this Order. However, no prior disclosure of documents or information subsequently designated as Confidential Information will violate this Order.

E. Challenges to Designations of Confidential Information

25. Any Party who objects to any designation of Confidential Information may at any time before the trial of this Action provide a written notice to the Protected Person who made the designation and to all Parties stating with particularity the grounds for the objection. All materials objected to must continue to be treated as Confidential Information pending resolution of the dispute either by agreement between the Protected Person and the objecting Party or by the Court.

26. If the objecting Party and the Protected Person cannot reach agreement on an objection to a designation of Confidential Information within 7 days of the Party's written notice, the objecting Party may address the dispute to this Court by filing a motion in accordance with District of Maryland Local Rule 104.13 within 14 days of the objecting Party's written notice. If the Court finds the designation of Confidential Information to have been inappropriate, the challenged designation is rescinded. The Parties thereafter will not be required to treat the

information as Confidential Information under this Order. If the objecting Party fails to move the Court within the time provided by this Paragraph 26, the objection is withdrawn.

27. This Order does not preclude or prejudice a Protected Person or an objecting Party from arguing for or against any confidentiality designation, establish any presumption that a particular confidentiality designation is valid, or alter the burden of proof that would otherwise apply in a dispute over discovery or disclosure of information.

F. Disclosure of Confidential Information

28. Confidential Information may be disclosed only to the following persons:

(a) the Court and all persons assisting the Court in this Action, including law clerks, court reporters, and stenographic or clerical personnel;

(b) counsel for Plaintiff, including any attorneys, paralegals, other professional personnel (including support and IT staff), and agents or independent contractors retained by Plaintiff to assist in this Action whose functions require access to the information;

(c) Outside Counsel of Record, including any attorneys, paralegals, other professional personnel (including support and IT staff), and agents or independent contractors retained by Defendants to assist in this Action, whose functions require access to the information;

(d) outside vendors or service providers (such as copy-service providers and document-management consultants) retained by a Party to assist that Party in this Action, provided that they first execute an Agreement Concerning Confidentiality in the form attached in Appendix A;

(e) any mediator or arbitrator that the Parties engage in this Action or that this Court appoints;

(f) any author, addressee, or recipient of any document or information containing Confidential Information if they previously had lawful access to the document or information;

(g) any Person whom counsel for any Party believes in good faith previously received or had access to the document or information, unless the person indicates that he or she did not receive or have previous access to the document or information;

(h) any Person retained by a Party to serve as a testifying or consulting expert in this Action, including employees of the firm with which the expert or consultant is associated or independent contractors who assist the expert's work in this Action, provided that they first execute an Agreement Concerning Confidentiality in the form attached in Appendix A;

(i) outside trial consultants (including, but not limited to, graphics consultants) retained by a Party to assist that Party in this Action, provided that they first execute an Agreement Concerning Confidentiality in the form attached in Appendix A; and

(j) one in-house attorney for each Defendant, not involved in business decisions, whose name shall be disclosed to Plaintiff at least 5 business days prior to the effective date of such designation and who shall be agreed upon by the parties or (in the absence of agreement) ordered by the Court, provided that the in-house attorney shall first execute an Agreement Concerning Confidentiality in the form of Appendix A attached hereto. To the extent a Defendant seeks to change the in-house attorney that may receive access to Confidential Information, the Defendant must provide notice to Plaintiff at least 10 business days prior to the effective date of such change.

29. Counsel for the Party making a disclosure to a Person identified in Paragraph 28, subparagraphs (d), (h), (i), or (j), of this Order must obtain and retain the signed version of the

Agreement Concerning Confidentiality in the form attached in Appendix A for a period of at least one year following the final resolution of this Action.

30. Each Person identified in Paragraph 28 of this Order to whom information designated as Confidential Information is disclosed must not disclose that Confidential Information to any other Person, except as otherwise provided by this Order.

31. Nothing in this Order:

(a) will bar or otherwise restrict counsel from rendering legal advice to his or her client with respect to this matter or generally referring to or relying upon Confidential Information in rendering such advice so long as counsel does not specifically disclose the substance of the Confidential information;

(b) limits a Protected Person's use or disclosure of its own information designated as Confidential Information;

(c) prevents disclosure of Confidential Information with the consent of the Protected Person that designated the material as confidential;

(d) prevents disclosure by a Party of Confidential Information (i) that is or has become publicly known through no fault of that Party; (ii) lawfully acquired by or known to that Party independent of receipt during the Investigation or in post-complaint discovery in this Action; (iii) previously produced, disclosed, or provided to that Party without an obligation of confidentiality and not by inadvertence or mistake; or (iv) pursuant to a court order; or

(e) prevents the United States' retention, use, or disclosure of Confidential Information outside the context of this Action (i) to the extent permitted or required by law, court order, or regulation; (ii) for law enforcement purposes; or (iii) for the purpose of securing compliance with a Final Judgment in this Action.

32. In the event of a disclosure of any Confidential Information to any Person not authorized to receive disclosure under this Order, the Party responsible for having made the disclosure must promptly notify the Protected Person whose material has been disclosed and provide to that Protected Person all known relevant information concerning the nature and circumstances of the disclosure. The disclosing Party must also promptly take all reasonable measures to retrieve the improperly disclosed material and ensure that no further or greater unauthorized disclosure or use of the material is made. Unauthorized disclosure of Confidential Information will not change the confidential status of the disclosed material or waive the right to maintain the disclosed material as containing Confidential Information.

G. **Use of Information Designated Confidential in This Action**

33. Except as provided in Paragraph 31 of this Order, all Confidential Information produced by a Party or a non-Party Protected Person as part of this proceeding may be used solely for the conduct of this Action and must not be used for any business, commercial, competitive, personal, or other purpose.

34. Court Filings. If any documents, testimony, or other materials designated under this Order as Confidential Information are included in or attached to any pleading, motion, exhibit, or other paper to be filed with the Court, the Party seeking to file must seek a court order to file such Confidential Information under seal, in accordance with Local Rule 105.11. Nothing in this Order will restrict the Parties or any interested member of the public from challenging the filing of any Confidential Information under seal.

35. Trial. Disclosure at trial of documents and information designated as Confidential Information will be governed pursuant to a separate court order. The Parties will

meet and confer as set forth in the Case Management Order and submit a recommended order outlining those procedures.

H. Procedures Upon Termination of This Action

36. The obligations imposed by this Order will survive the termination of this Action unless the Court, which will retain jurisdiction to resolve any disputes arising out of this Order, orders otherwise.

37. Except as otherwise provided in this Paragraph 37 and in Paragraph 31 of this Order, within 90 days after the expiration of the time for appeal of an order, judgment, or decree terminating this Action, all Persons having received information designated as Confidential Information must make a good faith effort to (a) return that material and all copies to the Protected Person (or the Protected Person's counsel, if represented by counsel) that produced it or (b) destroy or delete all such Confidential Information.

38. The Clerk of the Court or Judge may return to counsel for the parties, or destroy, any sealed material at the end of the litigation, including any appeals. All Confidential Information returned to the Parties or their counsel by the Clerk of the Court also must be disposed of in accordance with this Paragraph 38. Counsel for the Parties will be entitled to retain court papers, deposition, hearing, and trial transcripts, trial exhibits, and work product, as may be required by the Rules of Professional Conduct provided that the Parties and their counsel do not disclose the portions of those materials containing information designated as Confidential Information except pursuant to Court order or an agreement with the Protected Person that produced the Confidential Information or as otherwise permitted by this Order.

I. Right to Seek Modification

39. Nothing in this Order limits any Person, including members of the public, a Party, or a Protected Person, from seeking further or additional protections for any of its materials or modification of this Order upon motion duly made pursuant to the Rules of this Court, including, without limitation, an order that certain materials not be produced at all or are not admissible evidence in this Action or in any other proceeding.

J. The Privacy Act

40. Any order of this Court requiring the production of any document, information, or transcript of testimony constitutes a court order within the meaning of the Privacy Act, 5 U.S.C. § 552a (b) (11).

K. Persons Bound by The Order

41. This Order is binding on the Parties to this Action, and their attorneys, successors, personal representatives, administrators, assigns, parents, subsidiaries, divisions, affiliates, employees, agents, retained consultants and experts, and any persons or organizations over which the Parties have control.

L. Production of Investigation Materials

42. Consistent with the terms of this Order, the Parties will produce all Investigation Materials within 1 day of the Court's entry of this Order, except that (a) Plaintiff need not produce to Defendants the Investigation Materials that Plaintiff received from any Defendant; and (b) Defendants need not produce to Plaintiff the Investigation Materials that any Defendant previously produced to Plaintiff. These Investigative Materials shall be produced on an outside counsel only basis until the time has lapsed for a non-Party Protected Person to seek additional

protections from the Court as described in Paragraph 15 or until the Court has ruled on any such motion seeking additional protection, whichever is later.

M. Privilege

43. Pursuant to Federal Rule of Evidence 502(d), the production of Investigation Materials or Litigation Materials does not constitute a waiver of any protection that would otherwise apply to attorney work product, confidential attorney-client communications, or materials subject to the deliberative-process or any other governmental or non-governmental privilege.

AGREED TO:

_____

KEVIN QUIN
United States Department of Justice
Antitrust Division
Defense, Industrials, and Aerospace Section
450 Fifth Street N.W., Suite 8700
Washington, DC 20530
Telephone: (202) 476-0251
Facsimile: (202) 514-9033
Email: Kevin.Quin@usdoj.gov

Counsel for Plaintiff United States of America

_____

Todd M. Stenerson
David A. Higbee *(admission application pending)*
Ryan Shores *(admission application pending)*
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401 9th Street, NW, Suite 800
Washington, DC 20004-2128
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Counsel for Booz Allen Hamilton Holding Corp. and Booz Allen Hamilton Inc.

Molly M. Barron
Amanda P. Reeves (*pro hac vice* pending)
Marguerite M. Sullivan (*pro hac vice* pending)
Anna M. Rathbun (*pro hac vice* pending)
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Facsimile: (415) 395-8095
al.pfeiffer@lw.com
kelly.fayne@lw.com

Counsel for EverWatch Corp., EC Defense Holdings, LLC, and Analysis, Computing & Engineering Solutions, Inc.

SO ORDERED.

Date: _____, 2022

XXX
United States District Judge

APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA, *Plaintiff*, v. BOOZ ALLEN HAMILTON HOLDING CORP., *et al.*, *Defendants*.	Case No. 1:22-cv-XXXXX (XXX)

AGREEMENT CONCERNING CONFIDENTIALITY

I, _____, am employed by _____as _____.

I hereby certify that:

1. I have read the Protective Order entered in the above-captioned action and understand its terms.

2. I agree to be bound by the terms of the Protective Order entered in the above-captioned action. I agree to use the information provided to me only as explicitly provided in this Protective Order.

3. I understand that my failure to abide by the terms of the Protective Order entered in the above-captioned action will subject me, without limitation, to civil and criminal penalties for contempt of Court.

4. I submit to the jurisdiction of the United States District Court for the District of Maryland solely for the purpose of enforcing the terms of the Protective Order entered in the above-captioned action and freely and knowingly waive any right I may otherwise have to object to the jurisdiction of said Court.

_____ _____
SIGNATURE DATE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA, *Plaintiff*, v. BOOZ ALLEN HAMILTON HOLDING CORP., *et al.*, *Defendants*.	Civil Action No. 1:22-cv-01603-CCB

[PROPOSED] STIPULATED PROTECTIVE ORDER ~~AND ORDER GOVERNING PRODUCTION OF INVESTIGATION MATERIALS~~

In the interests of (1) ensuring efficient and prompt resolution of this Action; (2) facilitating discovery by the Parties litigating this Action; and (3) protecting Confidential Information from improper disclosure or use, the Parties stipulate to the provisions set forth below. Unless otherwise specified, days will be computed according to Federal Rule of Civil Procedure 6(a). The Court, upon good cause shown and pursuant to Fed. R. Civ. P. 26(c)(1) and all applicable Local Rules, ORDERS as follows:

A. Definitions

1. "Proposed Transaction" means Booz Allen Hamilton Holding Corp.'s proposed acquisition of EC Defense Holdings, LLC.

2. "Action" means the above-captioned action pending in this Court, including any related discovery, pretrial, trial, post-trial, or appellate proceedings.

3. "Confidential Information" means ~~the portions of~~ any Investigation Materials or Litigation Materials that contain trade secret or other confidential research, development, or

commercial information, as such terms are used in Fed. R. Civ. P. 26(c)(1)(G), or ~~the portions of~~ any document, transcript, or other materials containing such information that have not been published or otherwise made publicly available.

4. "Disclosed" means shown, divulged, revealed, produced, described, transmitted or otherwise communicated, in whole or in part.

5. "Document" means any document or electronically stored information, as the term is used in Fed. R. Civ. P. 34(a).

6. "Investigation" means ~~any pre-complaint review, assessment, or investigation of the Proposed Transaction, including any defense to any claim that the Proposed Transaction would violate Section 7 of the Clayton Act and Section 1 of the Sherman Act.~~the pre-Complaint inquiry into the matters at issue in this Action by the United States.

7. "Investigation Materials" means ~~non-privileged~~ documents, testimony, or other materials that, prior to the filing of this Action, (a) any non-Party provided to any Party, either voluntarily or under compulsory process, in connection with the Investigation; (b) any Party provided to any non-Party relating to the Investigation; ~~or~~ (c) the Department of Justice provided to any federal or state governmental agency; (d) any federal or state governmental agency provided to the Department of Justice; or (e) any Defendant, or affiliated person or entity, provided to the Plaintiff relating to the Investigation.

8. "Litigation Materials" means ~~non-privileged~~ documents, testimony, or other materials that, after the filing of this Action, (a) any non-Party provides to any Party, either voluntarily or under compulsory process, in connection with and during the pendency of this Action; (b) any Party provides to any non-Party in connection with and during the pendency of this Action; (c) the Department of Justice provides to any federal or state governmental agency in

connection with and during the pendency of this Action; (d) any federal or state governmental agency provides to the Department of Justice in connection with and during the pendency of this Action; (e) any Defendant provides to any Plaintiff in connection with and during the pendency of this Action; or (~~d~~f) any Plaintiff provides to any Defendant in connection with and during the pendency of this Action.

9. "Outside Counsel of Record" means the law firm(s) of attorneys representing a Defendant in this proceeding, and the professional vendors of such firm(s) that provide litigation support services and to whom disclosure is reasonably necessary for this action, consistent with Paragraph 28(d).

10. "Party" means the Plaintiff or any Defendant in this Action. "Parties" means collectively Plaintiff and Defendants in this Action.

11. "Plaintiff" means the United States of America, and its employees, agents, and representatives.

12. "Person" means any natural person, corporate entity, partnership, association, joint venture, governmental entity, or trust.

13. "Protected Person" means any Person, including a Party, that has provided Investigation Materials to a Party or that provides Litigation Materials to a Party.

B. Notice to Non-Party Protected Persons of the Terms of This Order

14. Within 1 ~~business~~ day of the Court's entry of this Order, each Party must send by email, facsimile, or overnight delivery a copy of this Order to each non-Party Protected Person (or, if represented by counsel, the non-Party Protected Person's counsel) that provided Investigation Materials to that Party.

15. If a non-Party Protected Person determines that this Order does not adequately protect its Confidential Information, it may, within 3 days after receipt of a copy of this Order, seek additional protection from the Court for its Confidential Information. If a non-Party Protected Person timely seeks additional protection from the Court, the ~~Party's obligation to produce that non-Party Protected Person's documents containing~~ Confidential Information~~, that is the subject of the motion, is suspended~~ for which additional protection has been sought will not be provided to other Persons, aside from outside counsel, until a decision is rendered by the Court. If the Court orders the production of the non-Party's documents, the Party will have 5 business days to make the production unless a longer period is ordered by the Court.

C. Designation of Confidential Information in Investigation Materials

16. Any Investigation Materials that a Defendant previously provided to any Plaintiff during the Investigation that the Defendant designated as Confidential or for which the Defendant requested confidential treatment, including but not limited to testimony, documents, electronic documents and data, and materials produced pursuant to the Antitrust Civil Process Act, 15 U.S.C. § 1311-14, or the Hart-Scott-Rodino Antitrust Improvements Act, 15 U.S.C. § 18a, will be treated as containing Confidential Information.

17. All Investigation Materials previously provided by a non-Party Protected Person during the Investigation, including but not limited to testimony, documents, electronic documents and data, and materials produced pursuant to the Antitrust Civil Process Act, 15 U.S.C. § 1311-14, will be treated as containing Confidential Information regardless of whether or not the non-party Protected Person requested confidential treatment at the time of production.

D. Designation of Confidential Information in Litigation Materials

18. The following procedures govern the process for all Protected Persons to designate as Confidential Information any Litigation Materials, including but not limited to information provided in response to requests under Fed. R. Civ. P. 30, 31, 33, 36 or 45, and documents disclosed in response to Fed. R. Civ. P. 33(d), 34(b)(2) and (c), or 45. Any designation of Confidential Information in Litigation Materials constitutes a representation to the Court that the Protected Person (and counsel, if any) believes in good faith that the Litigation Materials so designated constitute Confidential Information.

19. Whenever discovery is sought from a non-Party in this Action, a copy of this Order must accompany the discovery request or subpoena. To the extent a Party sent a discovery request to a non-Party prior to the entry of this Order by the Court, that Party must send a copy of this Order to the non-Party within 1 business day of entry of this Order.

20. Counsel for Plaintiffs and Defendants to be notified of confidentiality designations are as follows:

For Plaintiff United States:

XXX
XXX
U.S. Department of Justice
450 Fifth Street NW
Washington, DC 20530

For Defendant Booz Allen Hamilton Holding Corp. and Booz Allen Hamilton Inc.:

Todd M. Stenerson
Ryan Shores
Matthew Modell
SHEARMAN & STERLING LLP
401 9th Street, NW, Suite 800
Washington, DC 20004-2128
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~~XXX~~Susan Loeb
SHEARMAN & STERLING LLP
599 Lexington Avenue
New York, New York 10022-6069
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For Defendants EverWatch Corp., EC Defense Holdings, LLC, and Analysis, Computing & Engineering Solutions, Inc.:

~~XXX~~
Amanda P. Reeves
Marguerite M. Sullivan
Anna M. Rathbun
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21. Testimony. ~~When a Party questions a deponent about a document or information that has been designated by a non-Party Protected Person as containing Confidential Information, the Party asking the questions must designate as Confidential Information the portion(s) of the~~

~~transcript relating to that designated document or information.~~ All transcripts of depositions taken in this Action will be treated as Confidential Information in their entirety for ~~7~~21 calendar days after the date when a complete and final copy of the transcript has been made available to the deponent (or the deponent's counsel, if applicable). Within ~~1~~3 business day of receipt of the final transcript, the Party who noticed the deposition must provide the final transcript to the deponent (or the deponent's counsel, if applicable). Within ~~7~~14 calendar days following receipt of the final transcript, the deponent (or the deponent's counsel, if applicable) may designate as Confidential Information any portion(s) of the deposition transcript, by page(s) and line(s), and any deposition exhibits, or ~~portion(s) of~~ any exhibit(s), that were produced by the deponent or the deponent's employer. To be effective, designations must be provided in writing to Plaintiff's and Defendants' counsel listed in Paragraph 20 of this Order. Any portion(s) of the transcript or deposition exhibit(s) not designated in the manner required by this Paragraph 21 will not be treated as Confidential Information, even if the document(s) that become the deposition exhibit(s) or information that is the subject of the deposition testimony was subject to a prior designation of confidentiality

22. Hard-Copy Documents and Information. A Protected Person who designates as Confidential Information any document that it produces in this Action ~~as containing Confidential Information~~ must stamp or otherwise mark each page containing Confidential Information with the designation "CONFIDENTIAL" in a manner that will not interfere with legibility. ~~If the entire document is not Confidential Information, the Protected Person must stamp or label only the pages that contain Confidential Information.~~

23. Electronic Documents and Information. Where a Protected Person produces in this Action documents or information in electronic format, ~~Confidential Information contained in~~

those electronic documents or information must be designated by the Protected Person as Confidential Information for protection under this Order by (a) appending to the file names or designators associated with the electronic document or information an indication of whether the electronic document or information contains Confidential Information, or (b) any other reasonable method for appropriately designating Confidential Information produced in electronic format, including by making designations in reasonably accessible metadata associated with the electronic documents or information. If Confidential Information is produced in electronic format on a disk or other medium that contains only Confidential Information, the "CONFIDENTIAL" designation may be placed on the disk or other medium. When electronic documents or information are printed for use during a deposition, in a court proceeding, or for provision in printed form to any Person described in Paragraph 28, the Party printing the electronic document or information must affix a "CONFIDENTIAL" label to the printed version and include with the printed version the production number and designation associated with the electronic document or information.

24. Production of documents or information not designated as Confidential Information will not be deemed a waiver of a future claim of confidentiality concerning such documents or information if they are later designated as Confidential Information. If at any time prior to the trial of this Action, a Protected Person realizes that it should have designated as Confidential Information any Investigation Materials or Litigation Materials previously produced in this Action, it may designate such documents or information by notifying the Parties in writing. The Parties must thereafter treat the Investigation Materials or Litigation Materials as designated Confidential Information under the terms of this Order. However, no prior disclosure

of documents or information subsequently designated as Confidential Information will violate this Order.

E. Challenges to Designations of Confidential Information

25. Any Party who objects to any designation of Confidential Information may at any time before the trial of this Action provide a written notice to the Protected Person who made the designation and to all Parties stating with particularity the grounds for the objection. All materials objected to must continue to be treated as Confidential Information pending resolution of the dispute either by agreement between the Protected Person and the objecting Party or by the Court.

26. If the objecting Party and the Protected Person cannot reach agreement on an objection to a designation of Confidential Information within 7 days of the Party's written notice, the Protected Personobjecting Party may address the dispute to this Court by filing a motion in accordance with District of Maryland Local Rule 104.13 within 14 days of the objecting Party's written notice. The Protected Person bears the burden of persuading the Court that the material is Confidential Information. If the Protected Person fails to move the Court within the time provided by this Paragraph 26, or ifIf the Court finds the designation of Confidential Information to have been inappropriate, the challenged designation is rescinded. The Parties thereafter will not be required to treat the information as Confidential Information under this Order. If the objecting Party fails to move the Court within the time provided by this Paragraph 26, the objection is withdrawn.

27. This Order does not preclude or prejudice a Protected Person or an objecting Party from arguing for or against any confidentiality designation, establish any presumption that

a particular confidentiality designation is valid, or alter the burden of proof that would otherwise apply in a dispute over discovery or disclosure of information.

F. Disclosure of Confidential Information

28. Confidential Information may be disclosed only to the following persons:

(a) the Court and all persons assisting the Court in this Action, including law clerks, court reporters, and stenographic or clerical personnel;

(b) counsel for Plaintiff, including any attorneys, paralegals, other professional personnel (including support and IT staff), and agents or independent contractors retained by Plaintiff to assist in this Action whose functions require access to the information;

(c) Outside Counsel of Record, including any attorneys, paralegals, ~~and~~ other professional personnel (including support and IT staff) ~~assigned to~~, and agents or independent contractors retained by Defendants to assist in this Action, whose functions require access to the information;

(d) outside vendors or service providers (such as copy-service providers and document-management consultants) retained by a Party to assist that Party in this Action, provided that they first execute an Agreement Concerning Confidentiality in the form attached in Appendix A;

(e) any mediator or arbitrator that the Parties engage in this Action or that this Court appoints;

(f) any author, addressee, or recipient of any document or information containing Confidential Information if they previously had lawful access to the document or information;

(g) any Person whom counsel for any Party believes in good faith previously received or had access to the document or information, unless the person indicates that he or she did not receive or have previous access to the document or information;

(h) any Person retained by a Party to serve as a testifying or consulting expert in this Action, including employees of the firm with which the expert or consultant is associated or independent contractors who assist the expert's work in this Action, provided that they first execute an Agreement Concerning Confidentiality in the form attached in Appendix A; ~~and~~

(i) outside trial consultants (including, but not limited to, graphics consultants) retained by a Party to assist that Party in this Action, provided that they first execute an Agreement Concerning Confidentiality in the form attached in Appendix A~~.~~; and

(j) one in-house attorney for each Defendant, not involved in business decisions, whose name shall be disclosed to Plaintiff at least 5 business days prior to the effective date of such designation and who shall be agreed upon by the parties or (in the absence of agreement) ordered by the Court, provided that the in-house attorney shall first execute an Agreement Concerning Confidentiality in the form of Appendix A attached hereto. To the extent a Defendant seeks to change the in-house attorney that may receive access to Confidential Information, the Defendant must provide notice to Plaintiff at least 10 business days prior to the effective date of such change.

29. Counsel for the Party making a disclosure to a Person identified in Paragraph 28, subparagraphs (d), (h), ~~or~~ (i), or (j), of this Order must obtain and retain the signed version of the Agreement Concerning Confidentiality in the form attached in Appendix A for a period of at least one year following the final resolution of this Action.

30. Each Person identified in Paragraph 28 of this Order to whom information designated as Confidential Information is disclosed must not disclose that Confidential Information to any other Person, except as otherwise provided by this Order.

31. Nothing in this Order:

(a) will bar or otherwise restrict counsel from rendering legal advice to his or her client with respect to this matter or generally referring to or relying upon Confidential Information in rendering such advice so long as counsel does not specifically disclose the substance of the Confidential information;

(~~a~~b) limits a Protected Person's use or disclosure of its own information designated as Confidential Information;

(~~b~~c) prevents disclosure of Confidential Information with the consent of the Protected Person that designated the material as confidential;

(~~c~~d) prevents disclosure by a Party of Confidential Information (i) that is or has become publicly known through no fault of that Party; (ii) lawfully acquired by or known to that Party independent of receipt during the Investigation or in post-complaint discovery in this Action; (iii) previously produced, disclosed, or provided to that Party without an obligation of confidentiality and not by inadvertence or mistake; or (iv) pursuant to a court order; or

(~~d~~e) prevents the United States' retention, use, or disclosure of Confidential Information outside the context of this Action (i) to the extent permitted or required by law, court order, or regulation; (ii) for law enforcement purposes; or (iii) ~~in the course of any other legal proceeding in which the United States is a party; or (iv)~~ for the purpose of securing compliance with a Final Judgment in this Action.

32. In the event of a disclosure of any Confidential Information to any Person not authorized to receive disclosure under this Order, the Party responsible for having made the disclosure must promptly notify the Protected Person whose material has been disclosed and provide to that Protected Person all known relevant information concerning the nature and circumstances of the disclosure. The disclosing Party must also promptly take all reasonable measures to retrieve the improperly disclosed material and ensure that no further or greater unauthorized disclosure or use of the material is made. Unauthorized disclosure of Confidential Information will not change the confidential status of the disclosed material or waive the right to maintain the disclosed material as containing Confidential Information.

G. **Use of Information Designated Confidential in This Action**

33. Except as provided in Paragraph 31 of this Order, all Confidential Information produced by a Party or a non-Party Protected Person as part of this proceeding may be used solely for the conduct of this Action and must not be used for any business, commercial, competitive, personal, or other purpose.

34. Court Filings. If any documents, testimony, or other materials designated under this Order as Confidential Information are included in or attached to any pleading, motion, exhibit, or other paper to be filed with the Court, the Party seeking to file must seek a court order to file such Confidential Information under seal, in accordance with Local Rule 105.11. ~~A request for the Court to allow filing under seal must include the proposed redactions. If this Court grants leave to file a document under seal, the filing Party must file with the Clerk of this Court a redacted version of the filing.~~ Nothing in this Order will restrict the Parties or any interested member of the public from challenging the filing of any Confidential Information under seal.

35. Exhibits. If a Party includes exhibits on its exhibit list that contain or discuss information that has been designated as Confidential Information, at the time exhibit lists are exchanged, the Party must also provide redacted versions of those exhibits. At the time that the Parties exchange objections to exhibits, each Party must also (a) provide redacted versions of any exhibits on the opposing Party's exhibit list that contain information that the Party previously designated as Confidential Information and (b) exchange objections to the redacted trial exhibits that were provided with the exhibit lists. The Parties must exchange objections to those redactions on a schedule to be set in the Case Management Order. If a Party fails to provide redacted versions of an exhibit by the conclusion of this process, the exhibit may be entered on the public record in its entirety.

35. 36. Trial. Disclosure at trial of documents and information designated as Confidential Information will be governed pursuant to a separate court order. The Parties will meet and confer as set forth in the Case Management Order and submit a recommended order outlining those procedures. Absent a ruling by the Court to the contrary, documents, deposition testimony, or other materials or information that have been designated as containing Confidential Information by a Protected Person that appear on a Party's exhibit list or in deposition designations, and that are admitted into evidence at trial, will be disclosed on the public record, and any examination relating to such information likewise will be disclosed on the public record, after compliance with procedures that will be established by the Court.

H. Procedures Upon Termination of This Action

36. 37. The obligations imposed by this Order will survive the termination of this Action unless the Court, which will retain jurisdiction to resolve any disputes arising out of this Order, orders otherwise.

37. ~~38.~~ Except as otherwise provided in this Paragraph ~~38~~37 and in Paragraph 31 of this Order, within 90 days after the expiration of the time for appeal of an order, judgment, or decree terminating this Action, all Persons having received information designated as Confidential Information must make a good faith effort to (a) return that material and all copies to the Protected Person (or the Protected Person's counsel, if represented by counsel) that produced it or (b) destroy or delete all such Confidential Information.

38. ~~39.~~ The Clerk of the Court or Judge may return to counsel for the parties, or destroy, any sealed material at the end of the litigation, including any appeals. All Confidential Information returned to the Parties or their counsel by the Clerk of the Court also must be disposed of in accordance with this Paragraph ~~39~~38. Counsel for the Parties will be entitled to retain court papers, deposition, hearing, and trial transcripts, trial exhibits, and work product, as may be required by the Rules of Professional Conduct provided that the Parties and their counsel do not disclose the portions of those materials containing information designated as Confidential Information except pursuant to Court order or an agreement with the Protected Person that produced the Confidential Information or as otherwise permitted by this Order.

~~40. Within 90 days after the expiration of the time for appeal of an order, judgment, or decree terminating this Action, all Persons having received information designated as Confidential Information must certify compliance with Paragraph 39 of this Order in writing to the Party or Protected Person that produced the Confidential Information.~~

I. Right to Seek Modification

39. ~~41.~~ Nothing in this Order limits any Person, including members of the public, a Party, or a Protected Person, from seeking further or additional protections for any of its materials or modification of this Order upon motion duly made pursuant to the Rules of this

Court, including, without limitation, an order that certain materials not be produced at all or are not admissible evidence in this Action or in any other proceeding.

J. The Privacy Act

40. ~~42.~~ Any order of this Court requiring the production of any document, information, or transcript of testimony constitutes a court order within the meaning of the Privacy Act, 5 U.S.C. § 552a (b) (11).

K. Persons Bound by The Order

41. ~~43.~~ This Order is binding on the Parties to this Action, and their attorneys, successors, personal representatives, administrators, assigns, parents, subsidiaries, divisions, affiliates, employees, agents, retained consultants and experts, and any persons or organizations over which the Parties have control.

L. Production of Investigation Materials

~~44. The Parties agree to waive the exchange of disclosures under Federal Rule of Civil Procedure 26(a)(1) and instead will produce the Investigation Materials pursuant to the terms of this Order.~~

42. ~~45.~~ Consistent with the terms of this Order~~, including the limitations set forth in Paragraph 15~~, the Parties will produce all Investigation Materials within ~~4 days~~1 day of the Court's entry of this Order, except that (a) Plaintiff need not produce to Defendants the Investigation Materials that Plaintiff received from any Defendant; and (b) Defendants need not produce to Plaintiff the Investigation Materials that any Defendant previously produced to Plaintiff. These Investigative Materials shall be produced on an outside counsel only basis until the time has lapsed for a non-Party Protected Person to seek additional protections from the

Court as described in Paragraph 15 or until the Court has ruled on any such motion seeking additional protection, whichever is later.

M. Privilege

43. ~~46.~~ Pursuant to Federal Rule of Evidence 502(d), the production of Investigation Materials or Litigation Materials does not constitute a waiver of any protection that would otherwise apply to attorney work product, confidential attorney-client communications, or materials subject to the deliberative-process or any other governmental or non-governmental privilege.

AGREED TO:

_____
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United States Department of Justice
Antitrust Division
Defense, Industrials, and Aerospace Section
450 Fifth Street N.W., Suite 8700
Washington, DC 20530
Telephone: (202) 476-0251
Facsimile: (202) 514-9033
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Counsel for Plaintiff United States of America

~~[signature block]~~

_____
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David A. Higbee *(admission application pending)*
Ryan Shores *(admission application pending)*
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Counsel for Booz Allen Hamilton Holding Corp. and Booz Allen Hamilton Inc.

~~[signature block]~~

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Counsel for EverWatch Corp., EC Defense Holdings, LLC, and Analysis, Computing & Engineering Solutions, Inc.

SO ORDERED.

Date: _____, 2022

_____
XXX
United States District Judge

APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA, *Plaintiff*, v. BOOZ ALLEN HAMILTON HOLDING CORP., *et al.*, *Defendants*.	Case No. 1:22-cv-XXXXX (XXX)

AGREEMENT CONCERNING CONFIDENTIALITY

I, _____, am employed by _____as _____.

I hereby certify that:

1. I have read the Protective Order entered in the above-captioned action and understand its terms.

2. I agree to be bound by the terms of the Protective Order entered in the above-captioned action. I agree to use the information provided to me only as explicitly provided in this Protective Order.

3. I understand that my failure to abide by the terms of the Protective Order entered in the above-captioned action will subject me, without limitation, to civil and criminal penalties for contempt of Court.

4. I submit to the jurisdiction of the United States District Court for the District of ~~Columbia~~Maryland solely for the purpose of enforcing the terms of the Protective Order entered in the above-captioned action and freely and knowingly waive any right I may otherwise have to object to the jurisdiction of said Court.

_____ _____
SIGNATURE DATE

Summary report: **Litera® Change-Pro for Word 10.14.0.46 Document comparison done on 7/6/2022 5:26:00 PM**	
Style name: Shearman & Sterling	
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Original filename: Original - 2022.06.29 DRAFT Protective Order BAH-EW (KS 6-30-2022) (003).docx	
Modified filename: 2022.07.06 DRAFT Protective Order DOJ-BAH-EW.docx	
Changes:	
Add	116
~~Delete~~	63
~~Move From~~	1
Move To	1
Table Insert	0
~~Table Delete~~	0
Table moves to	0
~~Table moves from~~	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	181