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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

LEONARDO, S.P.A., an Italian company,  
  
Plaintiff,  
  
v.  
  
THE BOEING COMPANY, a Delaware  
corporation,  
  
Defendant.

No. 2:19-cv-2082  
  
**COMPLAINT**

**NATURE OF THE CASE**

1) This case arises out of an improper claim asserted by defendant, The Boeing Company (“Boeing”), related to alleged “nonconforming” aircraft parts manufactured and delivered by plaintiff, Leonardo, S.p.A. (“Leonardo”), in accordance with the parties’ contract. Such non-conformances, if they exist, are due, not to any failure by Leonardo, but to Boeing’s outdated and/or defective design drawings and industrialization processes. Based upon this improper and unjustified claim, Boeing, in breach of the parties’ agreement, is refusing to pay millions of dollars it owes to Leonardo for other high-quality manufactured airplane components and has, instead, wrongfully proceeded to “set off” against such amounts due to Leonardo a spurious claim of “damages” resulting from the purported “non-conformances.” Boeing’s

1 wrongful conduct has caused Leonardo to suffer millions of dollars in damages, consisting of, *inter*  
2 *alia*, Leonardo's unpaid invoices, the valuable time and resources that Leonardo has unnecessarily  
3 spent assisting Boeing to repair the purported non-conformances, the costs incurred by Leonardo  
4 as a result of Boeing wrongfully placing it on "probation" due to the purported non-conformances,  
5 and the harm to Leonardo from having to carry on its books a wrongfully-issued negative purchase  
6 order, by which Boeing purports to recover its "damages." Furthermore, Leonardo's damages are  
7 continuing. Leonardo accordingly seeks to recover its damages resulting from Boeing's wrongful  
8 conduct, as well as a declaratory judgment that it bears no responsibility for the purported "non-  
9 conformances" and that Boeing may not continue to "set off" against Leonardo's invoices the  
10 amounts Boeing claims as damages resulting from such purported non-conformances.

11 2) For more than 40 years, Leonardo has manufactured parts for the Boeing 767  
12 aircraft in strict compliance with Boeing's design drawings, machining specifications, procedures,  
13 instructions, processes, industrialization methods and tooling (collectively, "Drawings, Tooling and  
14 Production Methods"). On June 28, 2019, Boeing provided formal notice to Leonardo for the first  
15 time of minor scratches ("Tool Marks") and purported foreign object debris ("FOD")<sup>1</sup> discovered  
16 inside enclosed portions of aircraft parts called "slats" (described below), which Leonardo has  
17 produced for the Boeing 767 aircraft since 1979. At the time Boeing provided such notice to  
18 Leonardo, Boeing apparently had already undertaken to "repair" the purported FOD and Tool  
19 Marks, without providing Leonardo with proper notice of such repairs as required under the  
20 parties' contract. Boeing now claims that the "repairs" of the subject slats have resulted in  
21 damages, the cost of which should be borne by Leonardo.

22 3) Accordingly, on August 27, 2019, Boeing provided its first "slat cost recovery"  
23 invoice to Leonardo in the amount of \$26,181,152, covering the period spanning August 5 through  
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25 <sup>1</sup> "Foreign object debris" is generally understood in the aviation industry to refer to any article or substance, alien to  
26 an aircraft or system, which may potentially cause damage if not removed and controlled. See AS9146, "Foreign  
Object Damage (FOD) Prevention Program – Requirements for Aviation, Space, and Defense Organizations," Art.  
3.5 (Terms and Definitions), SAE International, April 2017 (last accessed November 19, 2019).

1 August 20, 2019. Boeing demanded that Leonardo pay the “slat cost recovery” invoice within 30  
2 days, or else Boeing would apply a set-off against Leonardo’s future unpaid invoices (which  
3 concern other aircraft components) until Boeing’s invoice is paid in full. On September 27, 2019,  
4 Boeing notified Leonardo that it had begun implementing its wrongful set-off remedy and, as  
5 confirmation of the same, sent Leonardo a so-called “purchase order” in the negative amount of  
6 \$26,181,151. Starting on September 27, 2019 and as of December 12, 2019, Boeing has failed to  
7 pay any of Leonardo’s outstanding invoices for parts Leonardo produced for the 767 program,  
8 totaling more than \$25 million.

9 4) For point of reference, Leonardo invoices Boeing approximately \$19–20 million  
10 per year for slats. This means that, under Boeing’s current claim that it has the right to set off \$26  
11 million against Leonardo’s future invoices, Leonardo would be forced to produce slats for Boeing  
12 at no cost for more than one year. Worse, on December 14, 2019, Boeing sent Leonardo  
13 information pertaining to an impending *second* claim for damages in the amount of \$33 million,  
14 representing the cost to “repair” the allegedly “nonconforming” slats as well as the “collateral  
15 impact” of such repairs, indicating its intention to set off against Leonardo’s future invoices  
16 amounts commensurate with such increased damages.

17 5) Notably, Boeing’s purported “damages” are being set off against Leonardo’s  
18 invoices for entire “Shipsets,” which are comprised of *every product* Leonardo manufactures for  
19 the Boeing 767 aircraft, regardless of whether such products are claimed by Boeing to be  
20 nonconforming.

21 6) Leonardo disputes that Boeing has any right or basis to proceed as it is doing with  
22 respect to the slats at issue, and asserts that Boeing, not Leonardo, is responsible for the cost and  
23 impact of Boeing’s purported repairs. Boeing has always been responsible for the design drawings  
24 and specifications which have produced the allegedly “nonconforming” slats at issue, and either  
25 knows, or should have known, that such designs are susceptible to producing what are, at most,  
26 minor scratches and residue inside an enclosed chamber in the slats. Indeed, until 2019, Boeing

1 never complained or voiced any concern about FOD and Tool Marks in the enclosed chamber of  
2 767 slats and, based on this conduct, accepted the possibility of some dust and scratches in an  
3 enclosed space created by its design.

4 7) Moreover, Boeing has not met its obligations under the standards and prevention  
5 program requirements applicable to organizations in the aviation, space and defense industry  
6 respecting FOD (“AS9146”) which, if met, would have avoided or substantially minimized the FOD  
7 of which Boeing now complains.

8 8) Boeing is basing its claims on the use, starting in 2019, of a new form of visual  
9 inspection technology called a video-borescope (“Borescope”). A Borescope is a type of industrial  
10 endoscope primarily used to inspect airplane engines. The use of such technology is neither  
11 contemplated nor required by the parties’ contract or any quality or production standard heretofore  
12 in effect between the parties, and for good reason: there is currently no standardized inspection and  
13 acceptance criteria associated with visual inspections using the Borescope, rendering its use highly  
14 subjective.

15 9) Whereas the metal shavings, metal dust and other *de minimis* debris of which  
16 Boeing now complains is, in most cases, invisible to the naked eye (particularly in light of the  
17 enclosed location of such purported “FOD”), the high-definition Borescope that Boeing has only  
18 lately used to inspect the 767 slats at issue can greatly magnify dust and residue such that it appears  
19 much larger and much more significant. Leonardo submits that the latent FOD and Tool Marks  
20 now being identified by high-definition Borescope have always been a possible byproduct of  
21 Boeing’s Drawings, Tooling and Production Methods, but were not detectable using the previous  
22 visual inspection tools provided by Boeing.

23 10) In addition, Leonardo is not aware of any instance when this long-existing *de*  
24 *minimis* residue or Tool Marks in slats have caused any problem with an aircraft or caused one to  
25 be grounded. Notably, the operational usage of the slat itself on an aircraft subjects it to far greater  
26 exposure to FOD than what is being identified through the Borescope.

1           11)       Apart from its responsibility for the Tool Marks and purported FOD, Boeing also  
2 has breached the parties' contract by failing to meet prescribed notice requirements with respect  
3 to identifying and repairing the allegedly nonconforming slats at issue. The parties' contract  
4 requires Boeing to inspect the slats manufactured by Leonardo within a reasonable time after  
5 delivery, and provide prompt notice of any rejections and the basis therefor. Also, if Boeing intends  
6 to repair a rejected product and estimates that such repair will exceed more than 200 manhours (as  
7 Boeing claims is the case here), Boeing is obligated to advise Leonardo prior to such repair. Here,  
8 some of the slats at issue were delivered to Boeing as early as 2014, well before Boeing provided  
9 Leonardo with notice of rejection in June 2019, and Boeing did not provide notice of the repair  
10 work it claims will exceed 200 hours until *after* it had done purported repair work.

11           12)       In addition, the alleged "damages" Boeing seeks to recover through set-off exceed  
12 the scope of remedies provided for in the parties' contract and, in any event, such damages are, as  
13 a whole, speculative, grossly inflated, and well beyond anything ever contemplated by the parties.  
14 The parties' contract provides that, in the event Boeing rejects and repairs any product  
15 manufactured by Leonardo, Boeing is entitled to recover its reasonably estimated costs for labor  
16 and materials. Here the "damages" sought by Boeing are primarily consequential and indirect, and  
17 include over \$17 million in so-called "disruption" charges related to the repairs, as well as other  
18 purported costs. Such categories of damages go well beyond the contemplation of the parties in  
19 1978 when they executed their contract and were not reasonably foreseeable at the time of  
20 contracting, nor are the amounts sought even remotely reasonable.

21           13)       Leonardo also believes that Boeing has inflated its direct costs associated with the  
22 repairs at issue, by claiming many more hours than it actually spent (and needed to spend) repairing  
23 the FOD and Tool Marks. In July 2019, immediately after Boeing provided belated notice to  
24 Leonardo of its repairs, Leonardo engaged, at Boeing's request, approximately 96 mechanics  
25 ("Contractors") to rework and repair 767 Slats Boeing disingenuously claimed were  
26 nonconforming. Boeing inflated the hours worked by these Contractors when calculating its

1 purported “disruption” costs, factoring a hypothetical twelve-hour work day, even though the  
2 Contractors reported working, on average, only four hours per day or less due to Boeing’s  
3 inefficiencies and unavailability. Upon information and belief, Boeing employed the same pattern  
4 of inexactitude when calculating the direct repair costs incurred by its own personnel. The impact  
5 of Boeing’s improper inflation of these purported direct repair costs is magnified because such  
6 direct repair costs are used as multipliers to compute the various indirect and consequential  
7 damages Boeing seeks.

8 14) Rather than calculating its actual costs in undertaking the repairs at issue, Boeing  
9 uses hypothetical circumstances and abstract formulas to estimate the indirect and consequential  
10 costs of “disruption.” Such costs do not reflect any actual “disruption” that might have occurred  
11 as a result of the purported “repairs,” and merely serve as a penalty. Boeing purports that its  
12 “disruption” damages reflect the displacement of Boeing jobs caused by a supplier, here Leonardo;  
13 yet, despite numerous requests by Leonardo, Boeing has failed to provide evidence of any such  
14 disruption caused by the “repairs” of the slats. Boeing’s use of abstract formulas to compute  
15 alleged “disruption” damages is illogical and irrational, and Boeing has failed to provide any  
16 evidence as to why these formulas are appropriate to use for the alleged “non-conformances.”  
17 Leonardo certainly never agreed or contemplated that Boeing could take a cookie-cutter formula,  
18 which may be applicable to large scale disruptions, and apply that formula in a static way to the  
19 minor, at best, repairs done here.

20 15) As explained below, rather than provide Leonardo with adequate evidence in  
21 support of its claimed damages, Boeing has sought to obfuscate the baseless nature of its claim by  
22 asserting that its calculation of damages is based upon “confidential” and/or “proprietary”  
23 formulas and methodologies.

24 16) In sum, when the parties entered into the 767 Program contract in 1978, Boeing  
25 dictated the Drawings, Tooling and Production Methods for fabricating 767 slats, which Leonardo  
26 has followed faithfully for 40 years. In those 40 years, Boeing never required Leonardo to use

1 enhanced visual technology to inspect slats for FOD and Tool Marks and never raised any concern  
2 about the type of FOD and Tool Marks underlying this dispute until 2019. Despite this, and the fact  
3 that Boeing requires Leonardo to continue to manufacture slats pursuant to the original 1978  
4 Drawings, Tooling and Production Methods, which Boeing knows risk the possibility of minor  
5 Tool Marks and residue, Boeing is rejecting what it previously accepted based on a new form of  
6 technology, which can find microscopic matters not previously detectable with the naked eye.  
7 Boeing cannot have it both ways. Either what are now claimed to be “non-conformances” are  
8 acceptable, as they have been for years, and Boeing cannot claim damages to repair such “non-  
9 conformances”; or, if Boeing does not consider these now “visible for the first time” minor marks  
10 and residue acceptable, Boeing must change its 40-year-old designs so these inevitable minor  
11 issues can be prevented, and it must accept responsibility for any such minor issues to date. Boeing,  
12 however, cannot do what it is now doing, that is, require the use of 40-year-old designs, which  
13 Boeing plainly knows necessarily create the possibility of the minor scratches and residue, and  
14 then, by using a new form of inspection technology, claim that the parts are nonconforming due to  
15 the microscopic scratches and residue and then require Leonardo to pay to repair the minor  
16 scratches and residue.

17 17) For all of the foregoing reasons, Boeing is not entitled to set off the alleged slat  
18 damages against Leonardo’s prospective invoices, as it has done and says it will continue to do.  
19 Boeing’s failure to pay Leonardo’s invoices in full as they become due is a breach of contract by  
20 Boeing, for which Leonardo is entitled to substantial damages. Leonardo is also entitled to  
21 declaratory relief to prevent Boeing from continuing this wrongful course of conduct.

22 18) Boeing must also compensate Leonardo for the substantial costs it has incurred as  
23 a result of Boeing’s faulty Drawings, Tooling and Production Methods. Where, as here, Boeing  
24 has improperly rejected products delivered by Leonardo, Boeing, not Leonardo, is responsible for  
25 all repair costs. Because Boeing has required Leonardo to incur substantial costs to repair products  
26 that Boeing improperly rejected, Leonardo is entitled to recover such costs, estimated to be

1 approximately \$24 million for the same period for which Boeing has issued its slat cost recovery  
2 invoice and “negative purchase order,” subject to increase as Boeing continues its wrongful  
3 conduct. Boeing is also liable to Leonardo for damages caused by wrongfully placing Leonardo  
4 on probation and by the issuance of Boeing’s negative purchase order and the resultant impact on  
5 Leonardo’s finances.

6 **PARTIES**

7 19) Leonardo is a global industrial company specializing in aerospace, defense and  
8 security that is incorporated under the laws of the Republic of Italy and has a principal place of  
9 business located in Rome, Italy.

10 20) Boeing is a global aircraft manufacturer incorporated in the state of Delaware,  
11 which has its headquarters located at 100 North Riverside Plaza, Chicago, Illinois 60606, and  
12 operations and facilities located in the State of Washington.

13 **JURISDICTION AND VENUE**

14 21) The Court has subject matter jurisdiction over Leonardo’s claims pursuant to 28  
15 U.S.C. § 1332, because there is diversity of citizenship between plaintiff and defendant, and the  
16 matter in controversy exceeds \$75,000, exclusive of interest and costs.

17 22) The Court has personal jurisdiction over Boeing by virtue of its continuous and  
18 systematic contacts with Washington state. Boeing is registered to do business in this state and has  
19 a registered agent for service of process in this state. Moreover, Boeing regularly transacts business  
20 in this state and derives substantial revenue therefrom.

21 23) Venue is proper under 28 U.S.C. § 1391(b) and (c) because a substantial part of the  
22 events giving rise to Leonardo’s claims occurred in this district, and Boeing is subject to personal  
23 jurisdiction in this district.

24 **STATEMENT OF FACTS**

25 24) Leonardo, formerly known as Finmeccanica S.p.A. (“Finmeccanica”), is an Italian  
26 industrial group of companies specializing in the aerospace, defense and security industries. It is



1 currently also the ninth largest defense contractor in the world. Leonardo's Aerostructures division  
2 is engaged in the design, development, production, maintenance and upgrade of commercial,  
3 military and military training aircraft, as well as various other aerostructures and components  
4 thereof.

5 25) Upon information and belief, Boeing is an American multinational corporation and  
6 the world's largest aerospace company, whose products and services include commercial and  
7 military aircraft, satellites, weapons, electronic and defense systems, launch systems, advanced  
8 information and communication systems and performance-based logistics and training.

9 **The Parties' Long Relationship and Utilization of Boeing's Designs and**  
10 **Manufacturing Specifications**

11 26) Leonardo and Boeing have had a long-standing industrial relationship based on  
12 their mutual involvement in several major commercial airplane programs. The relationship between  
13 Leonardo and Boeing began in the early 1970s, when Boeing and Leonardo's predecessor-in-  
14 interest in the aeronautics sector, Alenia Aeritalia & Selenia, S.p.A. (together with certain  
15 successors-in-interest, "Alenia"), collaborated on several Boeing commercial airplane programs,  
16 including the Boeing 767 airplane program, which was commenced in 1978. In the 1990s, the  
17 relationship between Boeing and Alenia was extended to a second commercial airplane program  
18 involving the Boeing 777, resulting in Alenia manufacturing the largest flap ever installed on a  
19 commercial airplane. Following the consolidation of Alenia into Leonardo-Finmeccanica (an  
20 interim entity) in 2016, Leonardo took over as Boeing's industrial partner in Italy, serving important  
21 roles in Boeing's 767 and 787 commercial airplane programs, as well as in Boeing's helicopter  
22 division.

23 27) Indeed, since 2003, Leonardo has demonstrated technological expertise in  
24 composite materials at the highest levels as a partner in Boeing's 787 Program. Notably, in August  
25 2019, Boeing recognized Leonardo's excellent performance, quality products and on-time delivery  
26 by awarding Leonardo the distinction of "Champion Performer" in Boeing's 787 Program.

1           28)       This dispute concerns the parties' relationship with respect to the Boeing 767  
2 airplane program. The parties' relationship is governed by the Master Program Contract D-414000-  
3 8923N, executed by and between Boeing and Alenia on August 14, 1978 (the "MPC"). A true and  
4 correct copy of the MPC (together with selected exhibits and amendments thereto) is attached hereto  
5 as Exhibit A. Leonardo assumed Alenia's role under the MPC in 2016.

6           29)       The particular Boeing 767 parts at issue in this case are called "slats" ("767 Slats"),  
7 which Leonardo manufactures for Boeing pursuant to the MPC. Slats are aerodynamic surfaces on  
8 the leading edge of the wings of a fixed-wing aircraft, which, when deployed, allow the aircraft to  
9 fly at lower speeds or take off and land in shorter distances.

10          30)       In accordance with the MPC, Boeing provides Leonardo with the Drawings,  
11 Tooling and Production Methods used to manufacture 767 Slats, or such Drawings, Tooling and  
12 Production Methods are produced by Leonardo subject to Boeing's approval and specifications.  
13 See Ex. A, at Arts. 3.8, 3.9, 3.10.C.3. These Drawings, Tooling and Production Methods have  
14 always created the possibility of the FOD and Tool Marks about which Boeing now complains.

15          31)       Specifically, the geometry and closed configuration of portions of 767 Slats limit  
16 the visibility of certain components, *i.e.*, the slat's cove panel.<sup>2</sup> Leonardo must secure the cove panel  
17 using rivets (permanent mechanical fasteners); however, because of the geometry and low visibility  
18 just described, drills, backing bars, and other riveting tools used in installation may create scratches  
19 inside the closed portion of the 767 Slat (*i.e.*, Tool Marks). During this process as well, minor debris  
20 from the machining and attachment process may become trapped inside the enclosed portions of  
21 the 767 Slat. While Boeing requires Leonardo to clean the parts it manufactures — including the  
22 767 Slats at issue here — at intervals prior to delivery, the tools designated by Boeing for such  
23 processes, *i.e.*, vacuums and aeration tools, are insufficient to remove FOD inside the enclosed  
24 portions of the 767 Slat to the extent it is created during the securing of the cove panel.

25 \_\_\_\_\_  
26 <sup>2</sup> A slat's "cove" refers to the cavity behind a leading edge slat. The cove's cover panel is the final component of the  
767 Slat to be installed, the purpose of which is to reduce noise in the cove area. Here, the slat's cove panel encloses  
the area in which Boeing has identified FOD and Tool Marks.

1           32)       In April 2017, the International Aerospace Quality Group, or IAQG,<sup>3</sup> issued a set  
2 of standards governing the prevention of FOD and foreign object damage (“FOD”) entitled “Foreign  
3 Object Damage (FOD) Prevention Program – Requirements for Aviation, Space and Defense  
4 Organizations.” A true and correct copy is attached hereto as Exhibit B. Known informally as  
5 AS9146, these standards incorporate the IAQG’s industry best practices and guidelines for the  
6 prevention of FOD into a set of Prevention Program requirements for “organizations that design,  
7 develop, and provide aviation, space and defense products and services[,]” as well as “organizations  
8 providing post-delivery support, including the provision of maintenance, spare parts, or materials  
9 for their own products and services.” Ex. B, at 3. AS9146 places the onus on the purchasing  
10 organization — here, Boeing — to provide risk assessment and prevention requirements to its  
11 downstream supplier — here, Leonardo. See Ex. B, at 4; see also Foreign Object Damage (FOD)  
12 Prevention Program Guidance Material 8 (March 2016), a true and correct copy of which is attached  
13 as Exhibit C. Notwithstanding the foregoing, Boeing has failed to provide Leonardo with any  
14 training or technical guidance concerning the prevention of FOD in the enclosed chamber of the 767  
15 Slat, or the inherent risk of FOD caused by Boeing’s Drawings, Tools and Production Methods, in  
16 contravention of AS9146.

17           33)       Leonardo and, for most of the relevant period, members of Boeing’s Supplier  
18 Quality team located in Italy have visually inspected all 767 Slats prior to delivering them to  
19 Boeing’s plant in Everett, Washington (the “Everett, Washington Facility”). However, because the  
20 shape and configuration of a 767 Slat make it difficult — or at least impractical without reopening  
21 the slat — to visually detect Tool Marks and FOD during the final stages of assembly, such visual  
22 inspections, which must necessarily be carried out after the 767 Slats are fully assembled and  
23 permanently closed (as instructed by Boeing), do not detect slight imperfections such as Tool Marks

24 \_\_\_\_\_  
25 <sup>3</sup> The IAQG is a cooperative body responsible for improving quality processes throughout the aerospace supply chain.  
26 Broken into three groups representing Europe, the Americas and Asia Pacific regions, IAQG comprises representatives  
of all major aerospace businesses worldwide. Each of the three sectors of IAQG recognize each other’s standard—  
eliminating the need for a manufacturer to perform quality system audits of suppliers in other countries.

1 and FOD contained in the enclosed portions of the slats. In addition, because the current design of  
2 the 767 Slat uses rivets instead of screws to secure the cove panel, reopening the 767 Slat to remove  
3 FOD substantially *increases* the risk of creating Tool Marks.

4 34) Indeed, the only way to detect Tool Marks and FOD located in these closed areas is  
5 through the use of a Borescope, a newly-employed form of technology which can be inserted into  
6 miniscule openings in the otherwise closed areas of the 767 Slats for purposes of magnified, remote  
7 visual inspection. The Borescope's magnification power is up to 100x what can be viewed with the  
8 naked eye; under it, the slightest dust or residue, which can barely be viewed under a normal lens,  
9 can appear significant. With few exceptions, such is the nature of the purported "non-  
10 conformances" claimed by Boeing to be the basis for its rejections.

11 35) In fact, until 2019, Boeing never raised any concern at all about FOD and Tool  
12 Marks in these enclosed areas of 767 Slats and did not reject 767 Slats produced by Leonardo due  
13 to the type of FOD and Tool Marks of which Boeing now complains until it started using the high-  
14 definition Borescope as part of its inspection process — also in 2019. Notably, although Boeing  
15 made approximately 100 modifications to the design of its 767 Slats over the last 16 years, none of  
16 these modifications addressed the presence of FOD and Tool Marks. By all indications, Boeing was  
17 aware of the risk of certain types of FOD and Tool Marks created by its Drawings, Tooling and  
18 Production Methods, but evidently considered the risk tolerable.

19 **The MPC Provisions Relevant to Boeing's Rejections**

20 36) Article 3.5 of the MPC, entitled "Quality Control; Inspection and Rejection;  
21 Rework and Repair," governs the parties' conduct with respect to nonconforming products and sets  
22 forth the appropriate notice procedures and agreed-upon remedies in the event Boeing rejects a  
23 product because it does not conform to the requirements of the MPC. These provisions contain  
24 specific notice requirements and limit Boeing's damages in the event of a rejection to its costs and  
25 expenses.

26 37) Article 3.5.B.2, in particular, requires Boeing to inspect all products within a

1 reasonable time after receipt, and then to provide prompt notice of rejection and the basis therefor.

2 Article 3.5.B.2 of the MPC states, in relevant part:

3 Final inspection will be made within a reasonable time after the receipt of each  
4 Product. Boeing may reject any Product that does not conform to the requirements  
5 of this Contract, and Boeing shall give Participant *prompt notice* of such rejection  
6 and the basis therefor. In the event any product is rejected pursuant to this clause,  
7 Participant shall promptly return any monies paid by Boeing for such rejected  
8 Product (except when Boeing repairs such Product pursuant to (iii) below) and shall  
9 reimburse Boeing for its costs and expenses associated with such rejection  
10 including but not limited to any costs of transportation, insurance, and handling of  
11 the Product. Rejected Products shall at Boeing's option either be (i) held by Boeing,  
12 subject to disposal instructions from Participant; (ii) returned by Participant, subject  
13 to Participant's right, if Participant so requests and acts promptly, to inspect and  
14 test the rejected Product at Boeing's plant prior to its return; or (iii) repaired by  
15 Boeing in accordance with Clause 3.5.C below. (emphasis added)

11 38) Article 3.5.C.1.c of the MPC further requires Boeing to notify Leonardo prior to  
12 undertaking any repair requiring Leonardo's direct assistance in the furnishing of necessary  
13 information, materials, parts or manpower, or in cases where Boeing estimates that the magnitude  
14 of such repair will require greater than 200 manhours of labor and \$2,000 in materials cumulative  
15 for a Shipset. See Article 3.5.C.1.c. In such cases, Article 3.5.C.1.c of the MPC limits Boeing's  
16 damages to its estimated costs for labor and materials. In any and all cases, Boeing is required to  
17 provide timely notice of its rejection of any product. Article 3.5.C. of the MPC states, in relevant  
18 part:

19 C. Rework and Repair

20 1. In the event that any Product is rejected by Boeing, Boeing shall have the  
21 right to repair or rework (collectively, hereafter "repair") such Product or to  
22 have such Product repaired by a third party subject to the following  
23 conditions:

24 a. for repair of any Production Article where Boeing's labor estimate  
25 does not exceed 20 manhours cumulative for the Shipset of which  
26 such Production Article is a part and Boeing's material estimate  
does not exceed \$500 cumulative for such Shipset, Boeing shall  
perform the work at no charge to Participant, and Participant hereby  
authorizes Boeing to accomplish all such work without further  
notification by Boeing or authorization by Participant.

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- b. for (i) repair of any Production Article where both: (a) Boeing's labor estimate is less than 200 manhours cumulative for such Shipset; and (b) Boeing's material estimate is less than \$2,000 cumulative for such Shipset, except for repair of any Production Article which falls within the limits of Clause 3.5.C.1.a. above or (ii) any repair of any other Product where Boeing's labor estimate is less than 200 manhours, Boeing shall accomplish such work and Participant shall reimburse Boeing for all labor and materials estimated for such repair. The labor rate to be reimbursed by Participant shall be Boeing's then-current labor rate which shall include direct labor, overhead, fringe benefits, and profit of 10%. Participant hereby authorizes Boeing to accomplish such repair without further notification by Boeing or authorization by Participant. (Emphasis added.)
  - c. When the repair required hereunder is of such a serious nature as to require Participant's direct assistance in the furnishing of necessary information, materials, or parts for repair, or manpower, or is of a magnitude beyond the limits of Clause 3.5.C.1.b above, Boeing will notify Participant of such conditions prior to repair. In any event, such notification will not delay Boeing's proceeding with necessary repair, and Participant agrees to provide any required direct assistance in a timely manner in order to support Boeing's in-plant schedules. Reimbursement procedures shall be the same as set forth in Clause 3.5.C.1.b above. (Emphasis added.)

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- 5. Written notification of rejection under this clause 3.5.C, including the reasons therefor, except with respect to rejections for which specific notification requirements exist under clause 3.5.C.1.c, shall be provided to Participant in a timely manner. (Emphasis added.)

39) Article 3.5.C.2 of the MPC additionally provides that Boeing is responsible for all repair costs incurred as a result of the improper rejection of any Product by Boeing. Article 3.5.C.2 states:

In the event it is determined during the repair of any Product hereunder that such Product was improperly rejected, Boeing shall promptly accept such Product and be responsible for all repair costs Boeing has incurred with respect to such Product. (Emphasis added.)

Based upon the language of Article 3.5.C.2, to the extent Boeing's rejection of the 767 Slats at issue here based upon its use of the Borescope is determined to be improper, Boeing is responsible for its

1 own “repair” costs.

2 40) Article 3.6 of the MPC, entitled “Warranty and Service Life Policy,” requires  
3 Boeing to provide Leonardo with prompt notice, within one year, of issues related to Leonardo’s  
4 workmanship or services. See Ex. A, at Art. 3.6.A.1.

5 41) In cases where Boeing has accepted a nonconforming product, Article 3.6 permits  
6 Boeing, at its option, to correct such issues; however, Article 3.6 limits Boeing’s recovery for such  
7 corrections to its reasonable, estimated cost of labor and materials. See Ex. A, at Art. 3.6. Moreover,  
8 in cases where Boeing undertakes to correct a nonconforming product that it previously accepted  
9 and, given the nature of the non-conformance, Boeing requires Leonardo’s direct assistance in the  
10 furnishing of necessary information, materials or manpower, or estimates that its corrections will  
11 require greater than 200 manhours of labor and/or \$2,000 in materials cumulative for a Shipset,  
12 Boeing must provide Leonardo with prior notice of such corrections in accordance with Article  
13 3.6.A.3.b.3.

14 42) Article 3.6 of the MPC states, in relevant part:

15 Warranty and Service Life Policy

16 A. Participant Warranties

17 1. Participant warrants that all Products delivered to Boeing under this  
18 Contract will be free from defects in material and workmanship and will  
19 conform to the requirements of the Contract, including, but not limited  
20 to, the applicable descriptions specifications and drawings, and  
21 additionally that those Products or any portions thereof which may be  
22 manufactured in accordance with designs furnished by Participant will  
23 be free from defects in design and suitable for their intended purposes  
24 as set forth in the descriptions, specifications and drawings related  
25 thereto.

26 Participant further warrants that all services provided under this  
Contract will comply with the statement of work contained herein or in  
any purchase orders, and Participant will bring any non-complying  
service into compliance, upon notification of such noncompliance by  
Boeing, provided that such notification is provided within one (1) year  
after completion of services. (Emphasis added.)



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3. If any Product accepted by Boeing under this Contract fails to comply in any respect with the warranty set forth in Clause 3.6.A.1 above, regardless of whether such failure to comply is detected by Participant, Boeing or Boeing's customer, Participant shall, at Boeing's option and direction, either:
- a. with respect to any Product returned to Participant, make all corrections necessary so that such Product complies in all respects with said warranty, or
  - b. with respect to any Product corrected by Boeing, reimburse Boeing its reasonable costs for performing such corrections as follows:
    1. for the correction of any Production Article before delivery thereof to a Boeing customer where Boeing's labor estimate for the correction of such Production Article does not exceed twenty (20) manhours cumulative for the Shipset of which such Production Article is a part and Boeing's material estimate for the correction of such Production Article does not exceed \$500.00 cumulative for such Shipset, Boeing shall perform the correction at no charge to Participant, and Participant authorizes Boeing to accomplish such corrections without further notification by Boeing or authorization by Participant.
    2. for (i) the correction of any Production Article before delivery thereof to a Boeing customer where both (a) Boeing's labor estimate for the correction of such Production Article is less than two hundred (200) manhours cumulative for such Shipset, and (b) Boeing's material estimate is less than \$2,000.00 cumulative for such Shipset, except for the correction of any Production Article which falls within the limits of Clause 3.6.A.3.b(1) above, or (ii) the correction of any Production Article after delivery thereof to a Boeing customer or (iii) the correction of any other Product where Boeing's labor estimate for the correction thereof is less than two hundred (200) manhours, Boeing shall accomplish such correction and Participant shall reimburse Boeing for all labor and materials estimated for such correction. The labor rate to be reimburse by Participant shall be Boeing's then-current labor rate which shall include direct labor, overhead, and fringe benefits, plus 10% profit. Participant hereby authorizes Boeing to accomplish such corrections without further notification by Boeing or authorization by Participant.
    3. for the correction of any Product before or after delivery to a



1 Boeing customer where Boeing determines that the defect is  
2 of such a nature as to require Participant’s assistance in either  
3 the furnishing of information, materials, or manpower, or is  
4 of a magnitude beyond the limits of Clause 3.6.A.3.b(2)  
5 above, Boeing shall notify Participant of such condition prior  
6 to the accomplishment of such correction. . . . Labor and  
7 material reimbursement procedures shall be the same as that  
8 set forth under (2) above . . . (Emphasis added.)

9 4. In addition to the costs for corrections performed by Boeing . . . as set  
10 forth in Clause 3.6.A.3 herein, Participant shall reimburse Boeing for  
11 the direct labor costs incurred by Boeing . . . in the actual removal and  
12 reinstallation of the Product itself. Removal and reinstallation labor  
13 performed by Boeing . . . shall not exceed Boeing’s reasonable estimate  
14 of the direct manhours required. Necessary transportation and insurance  
15 costs for Product correction shall be borne by Participant. (Emphasis  
16 added.)

17 5. Written notice of a defect pursuant to this warranty, except with respect  
18 to defects corrected by Boeing pursuant to Clause 3.6.A.3.b, shall be  
19 provided by Boeing within three (3) months after Boeing’s receipt of  
20 written notice of the defect from Boeing’s customer, but no later than  
21 three (3) months after expiration of the warranty period set forth in  
22 Clause 3.6.A.2 herein. (Emphasis added.)

23 43) The primacy of Boeing’s designs, instructions and specifications is further  
24 illustrated in Article 3.6.A.6 of the MPC, which limits Leonardo’s warranty of any product accepted  
25 by Boeing to exclude any product “installed, used, serviced, modified or repaired” by Boeing or  
26 Boeing’s customer “other than in conformity with Boeing’s applicable service manuals, bulletins  
or written instructions,” unless Boeing submits “reasonable proof” that such installation, use or  
service is not the cause of any defect claimed under such warranty. Specifically, Article 3.6.A.6  
states:

6. None of the warranties set forth herein shall apply to any Product  
accepted under this Contract which has been installed, used, serviced,  
modified or repaired other than in conformity with Boeing’s applicable  
service manuals, bulletins, or written instruction, unless Boeing submits  
reasonable proof to Participant that any such installation, use or service,  
was not the cause of any defect claimed under the warranty herein.

1                    **Leonardo Suggests Quality Improvements to Boeings' Drawings, Tooling and**  
2                    **Production Methods**

3                    44)        Over the course of Boeing's 767 program, Leonardo and its predecessors-in-  
4 interest have expressed concern over the Drawings, Tooling and Production Methods insisted upon  
5 by Boeing for the 767 Slat, which rely exclusively upon manual processes (including the use of  
6 hand tools) that have not been updated or improved despite the advent of new technologies and the  
7 fact that other Boeing programs utilize automated industrial processes.

8                    45)        As recently as the summer of 2019, Leonardo suggested engineering quality  
9 improvements aimed at eliminating or significantly reducing various issues associated with  
10 Boeing's outdated Drawings, Tooling and Production Methods, including the FOD and Tool Marks  
11 of which Boeing now complains. In particular, Leonardo proposed: (1) changes to the specifications  
12 for installing the 767 Slat's cove panel in order to reduce the occurrence of swarf or metallic dust,  
13 resulting from the drilling process; (2) replacing the rivets used to secure the 767 Slat's cove panel  
14 with nut plates and screws, in order to allow for easier installation and removal of the cove panel  
15 for the purpose of detecting swarf created in the final stages of the 767 Slat's assembly; and (3)  
16 sealing exposed areas of the slats' *honeycomb wedge* to lower the risk of swarf contamination and  
17 other FOD.

18                    46)        Rather than cooperating with Leonardo to address the issues about which Boeing  
19 now professes such great concern, Boeing responded months later on October 1, 2019, contending  
20 that Leonardo's suggested quality improvements (known as "ELRs") were necessary only due to  
21 issues with Leonardo's workmanship and, therefore, Boeing would implement the changes only if  
22 Leonardo financed the related engineering costs. See October 1, 2019 Letter from Boeing  
23 referencing 767 Slat ELR Support ("10-1-19 ELR Support Letter"), a true and correct copy of  
24 which is attached as Exhibit D. In what plainly can be considered posturing, the 10-1-19 ELR  
25 Support Letter baselessly suggested that Leonardo's change requests were made to address issues  
26 with Leonardo's "workmanship" when, in reality, such requests were aimed at addressing the

1 outdated nature of Boeing's Drawings, Tooling and Production Methods. See October 16, 2019  
2 Letter from Leonardo responding to 10-1-19 ELR Support Letter ("10-16-19 ELR Support  
3 Response"), a true and correct copy of which is attached as Exhibit E.

4 47) Regrettably, this scenario is not unique and, on the contrary, Boeing has  
5 demonstrated a tendency towards putting its bottom line ahead of its professed quality, and  
6 presumably safety, concerns. Indeed, despite professing outward concern about the quality of  
7 Leonardo's workmanship, Boeing's insistence that the minor FOD and Tool Marks found inside  
8 the enclosed portions of 767 Slat are issues which require rework and repair is inconsistent with  
9 its past conduct; in particular, its laxity towards updating and improving the tooling and production  
10 methods it requires Leonardo to use in the manufacture of parts for the Boeing 767.

11 48) In an example unrelated to the instant dispute, Leonardo proposed in early 2019  
12 that Boeing update the 40-year-old equipment and tooling it requires Leonardo to use in the  
13 production of all parts for the Boeing 767 aircraft, and sent Boeing a quote for the upgrade and  
14 improvement of approximately 1300 outdated items needing refurbishment. Despite initially  
15 agreeing that upgrades were needed, Boeing did not act on the quote for several months. When  
16 Boeing finally did respond to the quote, it indicated that Leonardo had to make a "business case"  
17 for why each improvement and upgrade should be undertaken. In light of Boeing's pattern of  
18 putting cost savings above quality, Leonardo believes that Boeing has devised the instant dispute  
19 merely as a way to force Leonardo to lower its supplier costs. If it were indeed necessary to repair  
20 the microscopic FOD and Tool Marks of which Boeing complains, it would not have waited months  
21 to act in response to Leonardo's ELRs.

22 **Boeing Sends Leonardo a Notice of Default and Warning Notice and**  
23 **Wrongfully Places Leonardo's Pomigliano Plant on a Costly Probation**

24 49) On June 28, 2019, Boeing issued a formal "767 Notice of Default and Warning  
25 Notice" (the "6-28-19 Notice") to Leonardo, in which Boeing asserted "disruptions" to Boeing's  
26 production system resulting from purported "quality failures" discovered in Leonardo's

1 manufacture of 767 Slats (and other aircraft parts). In particular, Boeing complained of FOD as well  
2 as “gouges and tool marks” discovered during its inspection of 767 Slats previously delivered by  
3 Leonardo, including slats delivered on September 4, 2018, and indicated that it would continue to  
4 conduct inspections. A true and correct copy of the 6-28-19 Notice is attached hereto as Exhibit F.

5 50) Notwithstanding the MPC’s requirement that Boeing provide prompt written notice  
6 of its rejection of any products manufactured thereunder (see Ex. A, at Arts. 3.5.B.2.; 3.5.C.1.),  
7 Boeing’s 6-28-19 Notice rejected slats delivered by Leonardo several months prior. Boeing would  
8 go on to reject slats delivered by Leonardo as far back as 2014. Leonardo also understands that  
9 Boeing had already begun to “repair” the alleged “quality failures” despite the MPC’s requirement  
10 that Boeing provide notice to Leonardo prior to doing such work. See Ex. A, at Art. 3.5.C.1.c.

11 51) The 6-28-19 Notice contends that “Leonardo is liable for any costs Boeing incurs  
12 as a result of the defaults described in this letter, including, without limitation, costs for onsite  
13 support, disruption to the Boeing production system, claims from Boeing’s customers, replacement  
14 parts to support the removal and replacement of non-conforming Products, and expedited  
15 shipment.” Id.

16 52) Several weeks later, on July 22, 2019, Boeing placed Leonardo’s Pomigliano Plant  
17 Quality Management System on a minimum 90-day probation (the “Leonardo System Probation”).

18 53) Among other things, the 7-23-19 Probationary Status Letter required Leonardo to  
19 sustain additional surveillance, *ad hoc* audits and increased inspections, and to provide Boeing  
20 with periodic status reports of actions taken to address the purported FOD and Tool Marks in its  
21 production process, needlessly draining Leonardo’s resources and resulting in burdensome costs.

### 22 **Leonardo Takes Steps to Address Boeing’s Newly-Raised Concerns**

23 54) On July 26, 2019, Leonardo responded to the 6-28-19 Notice, stating that the FOD  
24 and Tool Marks were due to the “aged” and outdated industrialization process Boeing required  
25 Leonardo to follow, as well as the “closed configuration of [the 767] slats” (hereafter, Leonardo’s  
26 “Root Cause Analysis”). Leonardo nonetheless expressed its full commitment to mitigating and

1 minimizing the issues being raised by Boeing for the first time in June 2019. A true and correct  
2 copy of Leonardo's July 26 letter (the "7-26-19 Response") is attached hereto as Exhibit G.

3 55) While not agreeing that it had any responsibility for what Boeing was now claiming  
4 to be "quality failures," Leonardo endeavored to work with Boeing to address this new concern.  
5 During a 13-week period from July 1 to September 30, 2019, Leonardo sent approximately 96  
6 Contractors to Boeing's Everett, Washington Facility to assist Boeing with its purported "repairs"  
7 of the 767 Slats. Although the parties agreed on July 25, 2019 that it was necessary to have a  
8 Leonardo Planner and Manufacturing Engineer representative onsite at the Everett, Washington  
9 Facility to coordinate and organize the rework and repair process and supervise the Contractors,  
10 Boeing later changed its mind, and decided that it was no longer necessary for Leonardo to  
11 supervise the Contractors' repairs and refused to allow Leonardo to do so.

12 56) Boeing's Drawings, Tooling and Production Methods have never required and,  
13 indeed, do not contemplate the use of a Borescope at any stage of production or inspection.  
14 Nevertheless, following Boeing's notice to Leonardo for the first time of alleged "quality issues"  
15 detected using the Borescope in mid-2019, Leonardo developed a quality control plan to  
16 supplement its visual inspection of permanently closed (and thus inaccessible) areas of slats by  
17 incorporating the Borescope into its remote visual inspection process. Leonardo formally  
18 incorporated the Borescope into its visual inspection process at the end of July 2019.

19 **Boeing Sends Leonardo a Notice of Default and Exercises a Set-off**

20 57) On August 27, 2019, Boeing sent Leonardo a "Notice of Event of Default" ("8-27-  
21 19 Notice of Default"), which alleged that Leonardo failed to cure "quality failures across  
22 [Leonardo's] 767 statement of work" within the applicable 30-day cure period following the 6-28-  
23 19 Notice. See 8-27-19 Notice of Default, a true and correct copy of which is attached hereto as  
24 Exhibit H. In the 8-27-19 Notice of Default, Boeing contended, without basis and in conclusory  
25 fashion, that the Tool Marks and FOD identified by Boeing in its 6-28-19 Notice were attributable,  
26 not to a defective design, but to Leonardo's poor workmanship, completely failing to take into

1 account its own defective Drawings, Tooling and Production Methods and that the vast majority of  
 2 767 Slats subject to its claim had been certified and approved by Boeing over the course of several  
 3 source inspections carried out by Boeing personnel in Leonardo's facility in Pomigliano, Italy.  
 4 While not dispositive, such approvals demonstrate Boeing's tolerance for the FOD and Tool Marks  
 5 at issue here.

6 58) On the same date, Boeing sent Leonardo an "invoice" in the amount of \$26,181,152  
 7 for costs related to its "repairs" of previously delivered and paid for 767 Slats (the "8-27-19 767  
 8 Slat Cost Recovery Invoice"). A true and correct copy of the 8-27-19 767 Slat Cost Recovery  
 9 Invoice is attached hereto, without exhibits, as Exhibit I. In the 8-27-19 767 Slat Cost Recovery  
 10 Invoice and supporting documentation thereto, Boeing claims the following costs:

11	Everett Factory	\$7,921,209
12	Contractor Disruption	\$10,426,995
13	Everett Delivery Center (EDC)	\$710,445
14	Successor Installation Plan Disruption	\$2,543,116
14	<u>BDS Impact</u>	<u>\$4,579,387</u>
15	Grand Total	\$26,181,152

16 See Ex. I. Boeing demanded that Leonardo pay the 8-27-19 767 Slat Cost Recovery Invoice within  
 17 30 days, or by September 27, 2019; otherwise, Boeing would "immediately proceed with debiting  
 18 Leonardo's 767 production purchase orders until the invoice was paid in full." Id.

19 59) Promptly thereafter, on September 5, 2019, Leonardo responded to Boeing's 8-27-  
 20 19 Notice of Default, rejecting the assertions made by Boeing respecting the referenced quality  
 21 failures. A true and correct copy of such response (the "LDO 9-5-19 Response") is attached hereto  
 22 as Exhibit J. In the LDO 9-5-19 Response, Leonardo asserted its belief that the FOD and Tool Marks  
 23 were caused by Boeing's defective and outdated Drawings, Tooling and Production Methods,  
 24 noting that the quality issues identified by Boeing, namely, the FOD and Tool Marks, were  
 25 "exclusively limited to a specific closed area of [outboard slats/the 767 Slats]." See Ex. I.  
 26 Notwithstanding Leonardo's belief that the quality issues described in the 6-28-19 Notice are due

1 to Boeing's Drawings, Tooling and Production Methods, Leonardo expressed its continued  
2 commitment to mitigating and minimizing the impact of such purported "non-conformances" on  
3 Boeing's production process. See id.

4 **Boeing Rebuffs Leonardo's Efforts to Engage in Meaningful Discussion and**  
5 **Refuses to Support its Claimed Damages**

6 60) On September 12, 2019, Leonardo again wrote to Boeing disputing the 8-27-19  
7 767 Slat Cost Recovery Invoice (the "LDO 9-12-19 Response"). Specifically, Leonardo rejected  
8 Boeing's claim to recover any purported costs outside the scope of the MPC and, in particular,  
9 Article 3.5.C.1, which limits Boeing's remedies to reimbursement for "all labor and materials  
10 estimated for such repair and rework." A true and correct copy of the LDO 9-12-19 Response is  
11 attached hereto as Exhibit K. Leonardo further contested the number of rework hours for which  
12 Boeing seeks to be paid, which were provided with no explanation or support, and which appeared  
13 inflated compared to the reports from the Contractors it hired to assist with the repairs. Leonardo  
14 sought to discuss these concerns and requested that Boeing provide back-up documentation  
15 supporting the 8-27-19 767 Slat Cost Recovery Invoice. To date, Boeing has, at best, provided  
16 partial responses, failing to fully answer Leonardo's inquiries and refusing to provide the data used  
17 to support Boeing's claim.

18 61) In response, Boeing wrote to Leonardo on September 25, 2019 (the "9-25-19 Set-  
19 Off Letter"), doubling down in its wrongful and heavy-handed approach. Rather than present any  
20 details, let alone the best evidence of its \$26 million damages claim, Boeing purported to provide,  
21 "as a courtesy," a summary explanation of its claimed damages, including various breakdowns and  
22 cost methodologies, sample calculations and other background information, in tabular form. A true  
23 and correct copy of the 9-25-19 Set-Off Letter, with exhibits, is attached hereto as Exhibit L. The  
24 information provided, however, did not address Boeing's claimed actual damages purportedly  
25 arising from the 767 Slats at issue.

26 62) In the 9-25-19 Set-Off Letter, Boeing also stated its intention to set off roughly \$2.5



1 million against Leonardo's unpaid invoices every two weeks until the Boeing 8-27-19 767 Slat Cost  
2 Recovery Invoice is satisfied (the "Unpaid Invoices"), and attached a "767 Set-Off Estimated  
3 Schedule" showing amounts to be set off against Leonardo's invoices and the scheduled date of  
4 each set-off. See Ex. L, at attachment "e."

5 63) On September 26, 2019, external counsel for Leonardo, Alan D'Ambrosio, wrote  
6 to Boeing, once again disputing Boeing's right to the amounts claimed in its 8-27-19 767 Slat Cost  
7 Recovery Invoice, as well as Boeing's right to set off. A true and correct copy of Leonardo's  
8 September 26, 2019 letter (the "9-26-19 D'Ambrosio Letter") is attached hereto as Exhibit M.

9 64) In determining that Boeing is not entitled to set off, the 9-26-19 D'Ambrosio Letter  
10 points out that Boeing's claimed "disruption" costs are not reasonable and were not reasonably  
11 foreseeable at the time the parties' entered into the MPC. See Ex. M, at 2. The 9-26-19 D'Ambrosio  
12 Letter also reiterated Leonardo's concerns with respect to Boeing's method of calculating its  
13 damages, which seeks "to utilize a single model (unrelated to the underlying facts) that Boeing has  
14 developed to estimate damage and apply it to any and all types of disruption, whether major or  
15 minor and without proper evidence of Leonardo's fault." While acknowledging Boeing's provision  
16 of further information "regarding 'the buildup of Boeing's claim,'" the 9-26-19 D'Ambrosio Letter  
17 rejected such information as unclear and incomplete, noting that Boeing had failed to "respond to  
18 numerous issues and questions previously raised by Leonardo to Boeing," and that the information  
19 provided in support of Boeing's claim was insufficient to "satisfy the obligation of Boeing to  
20 provide a clear and precise calculation of its damages." Id. In light of such issues, Mr. D'Ambrosio  
21 requested that Boeing "defer any action with respect to its alleged claim until such time as the  
22 parties have had ample time to discuss the validity of [such claims] . . . and . . . Boeing's [damages]  
23 calculation." Id. Finally, Mr. D'Ambrosio requested that Boeing eliminate the portion of its claim  
24 not related to slat cost recovery. See id.

25 65) On September 27, 2019, Boeing responded to the 9-26-19 D'Ambrosio Letter,  
26 adjusting the amount of the 8-27-19 767 Slat Cost Recovery Invoice (the "9-27-19 Slat Cost



1 Recovery Adjustment”). A true and correct copy of the 9-27-19 Slat Cost Recovery Adjustment is  
2 attached hereto as Exhibit N. In the 9-27-19 Slat Cost Recovery Adjustment, Boeing confirmed  
3 that, as of September 27, 2019, Boeing was processing a set-off in the amount of \$2,514,905 against  
4 the entirety of Leonardo’s invoice LDO/VEL/P/0026994. On the same date, Boeing sent Leonardo  
5 a purchase order in the negative amount of \$26,181,151 (the “Negative Purchase Order”). A true  
6 and correct copy of Boeing’s Negative Purchase Order is attached hereto as Exhibit O.

7 66) On September 30, 2019, Mr. D’Ambrosio responded to Boeing’s September 27,  
8 2019 letter, formally notifying Boeing that, for the reasons stated in the 9-26-19 D’Ambrosio Letter,  
9 its unilateral September 27 set-off was a breach of the MPC and applicable law. See September 30,  
10 2019 letter from A. D’Ambrosio, a true and correct copy of which is attached hereto as Exhibit P.  
11 On behalf of Leonardo, Mr. D’Ambrosio demanded that Boeing not engage in any new set off  
12 against Leonardo’s subsequent invoices or issue new Boeing invoices until a fair and satisfactory  
13 agreement with Leonardo had been reached. Id.

14 67) Notwithstanding Leonardo’s demand, Boeing subsequently processed set-offs  
15 against nine (9) Leonardo invoices in full, namely: LDO/VEL/P/0026994 in the amount of  
16 \$2,514,905 on September 25, 2019; LDO/VEL/P/0028461 in the amount of \$2,558,474 on October  
17 3, 2019; LDO/VEL/P/0029901 in the amount of \$2,558,474 on October 14, 2019;  
18 LDO/VEL/P/0031023 in the amount of \$2,558,474 on October 23, 2019; LDO/VEL/P/0032803 in  
19 the amount of \$2,514,905 on November 3, 2019; LDO/VEL/P/0034434 in the amount of  
20 \$2,558,474 on November 12, 2019; LDO/VEL/P/0034523 in the amount of \$2,514,905 on  
21 November 21, 2019; LDO/VEL/P/0034956 in the amount of \$2,558,474 on December 3, 2019;  
22 LDO/VEL/P/0036322 in the amount of 2,558,474 on December 12, 2019; and  
23 LDO/VEL/P/0038434/19 in the amount of \$2,514,905 on December 23, 2019, for a total amount  
24 owed to Leonardo of \$25,410,464. See 767 Set-Off Estimated Schedule, a true and correct copy of  
25 which is attached hereto as Exhibit Q.

26 68) On October 1, 2019, Leonardo and Boeing continued their discussions regarding

1 the 8-27-19 767 Slat Cost Recovery Invoice. See October 1, 2019 letter from R. Haney (the “10-1-  
2 19 Everett Meeting Letter”), a true and correct copy of which is attached hereto as Exhibit R.  
3 Following that meeting, Boeing representatives suggested that both companies continue their  
4 discussions in an in-person meeting in Boeing’s Everett, Washington Facility. See Ex.R.

5 69) On October 3, 2019, Leonardo responded to the 10-1-19 Everett Meeting Letter,  
6 acknowledging Boeing’s offer of an in-person meeting, but reiterating its position that Boeing has  
7 no legal basis for the amounts claimed in the 8-27-19 767 Slat Cost Recovery Invoice or any right  
8 to set off such amounts against Leonardo’s invoices. A copy of Leonardo’s October 3, 2019 letter  
9 (the “10-3-19 Everett Meeting Response”) is attached hereto as Exhibit S.

10 70) In the 10-3-19 Everett Meeting Response, Leonardo reiterated its position that  
11 Boeing’s September 27, 2019 set-off constituted a breach of the MPC and demanded that Boeing  
12 “not proceed with any new set-offs against Leonardo’s remaining invoices until a fair and  
13 satisfactory agreement with Leonardo has been reached.” See Ex. S.

14 71) On October 8, 2019, counsel for Boeing, Rachel Esguerra, wrote to Mr.  
15 D’Ambrosio disputing Leonardo’s position with respect to Boeing’s claimed right to recover  
16 consequential damages, notwithstanding the provisions of the MPC. A copy of Ms. Esguerra’s letter  
17 (the “10-8-19 Boeing Response”) is attached hereto as Exhibit T.

18 72) On October 10, 2019, Mr. D’Ambrosio responded to Boeing’s 10-8-19 Boeing  
19 Response and, once again, attributed any non-conformances purportedly found in the 767 Slats to  
20 the “antiquated and problematic industrial design of product and jigs that are owned exclusively by  
21 Boeing.” A true and correct copy of Mr. D’Ambrosio’s October 10, 2019 letter (the “10-10-19  
22 Letter”) is attached hereto as Exhibit U.

23 73) Mr. D’Ambrosio’s 10-10-19 Letter also challenged whether “all of the disruptions  
24 and other damages alleged by Boeing are clearly attributable to Leonardo and foreseeable at the  
25 time the [MPC] was signed,” noting, in addition, that Boeing’s documentation in support of its  
26 claimed damages “d[id] not provide anything approaching a clear and equitable calculation of

1 alleged damages, particularly in light of the use by Boeing of a general model that is not tailored to  
2 the specific facts and circumstances of any component and category of damages.” See Ex. U, at 2.  
3 The 10-10-19 Letter also pointed out Boeing’s failure to provide the “best evidence available” in  
4 support of its claimed damages in accordance with Washington state law, and that, to date, Boeing’s  
5 claims were based upon “inaccurate assumptions, speculation and conjecture.” See id. While the  
6 10-10-19 Letter indicated an intent to seek judicial intervention to resolve the parties’ dispute, Mr.  
7 D’Ambrosio confirmed Leonardo’s willingness to discuss the matter further with Boeing during a  
8 meeting scheduled for October 23–24 at Boeing’s Everett, Washington Facility. Id.

9 74) On October 18, 2019, Ms. Esguerra provided a response (the “10-18-19 Letter”) to  
10 Mr. D’Ambrosio’s 10-10-19 Letter, a true and correct copy of which is attached hereto as Exhibit  
11 V. In the 10-18-19 Letter, Ms. Esguerra stated Boeing’s willingness to discuss the 8-27-19 767 Slat  
12 Cost Recovery Invoice before and after the October 23–24 meeting at the Everett, Washington  
13 Facility and “invited” Leonardo to communicate its questions in advance of the meeting so that the  
14 parties could engage in a “productive discussion.” See id.

15 75) On October 21, 2019, Mr. D’Ambrosio responded to Ms. Esguerra’s 10-18-19  
16 Letter, expressing concern that, despite the conciliatory tone of Boeing’s 10-18-19 Letter, Boeing  
17 had provided “very limited, incomplete, and inadequate responses” to Leonardo’s repeated requests  
18 for back up in support of Boeing’s 8-27-19 767 Slat Cost Recovery Invoice which, in Boeing’s own  
19 words, were provided merely “*as a courtesy*” to Leonardo. See October 21, 2019 Letter from Alan  
20 D’Ambrosio (the “10-21-19 Letter”), a true and correct copy of which is attached hereto as Exhibit  
21 W (emphasis added). In addition, Mr. D’Ambrosio denounced Boeing’s attempts to obfuscate the  
22 precise calculation of its claim by asserting the “confidential” nature of the methodologies and  
23 formulae used to calculate its claimed damages, which are general, and do not consider the specifics  
24 of any particular claimed non-conformance. See id. Mr. D’Ambrosio reiterated Leonardo’s position  
25 that Boeing had no unilateral right to set off amounts due and owing to Leonardo against Boeing’s  
26 purported damages and that doing so was a breach of the MPC. See id.

1           76)     On October 23 and 24, 2019, Leonardo attended an Executive Program  
2 Management Review at Boeing’s Everett, Washington Facility, at which Leonardo again stated its  
3 objections to Boeing’s 8-27-19 767 Slat Cost Recovery Invoice and requested additional  
4 information in support of Boeing’s claim.

5           77)     On November 8, 2019, Boeing wrote to Leonardo, purporting to provide additional  
6 documentation in response to Leonardo’s requests. See November 8, 2019 letter from Boeing,  
7 (without enclosure, the “11-8-19 Boeing Letter”), attached hereto as Exhibit X. However, Boeing  
8 remained vague regarding the calculation of its damages, noting in some instances that “the precise  
9 details and breakdowns are sensitive proprietary data and not shared with suppliers,” and conceding  
10 in others, “Boeing does not calculate disruption, liaison engineering, and factory support discretely  
11 in each instance.” See id.

12           78)     On November 13, 2019, Leonardo wrote to Boeing to reiterate its position that  
13 Leonardo is not responsible for any purported non-conformances affecting the 767 Slats and  
14 therefore not in default under the MPC. See November 13, 2019 letter from Leonardo (the “11-13-  
15 19 LDO Letter”) attached hereto as Exhibit Y. The 11-13-19 LDO Letter indicated an intention to  
16 send a separate letter addressing the “767 Slats Recovery Response to Leonardo Data Request,”  
17 attached to the 11-8-19 Boeing Letter. See id.

18           79)     On November 15, 2019, Leonardo sent a letter to Boeing (the “11-15-19 LDO  
19 Rejection”) rejecting the 11-8-19 Boeing Letter on the grounds that Boeing did not provide a  
20 “meaningful response to Leonardo’s request for data or has provided responses that are ambiguous,  
21 incomplete or not calculated to provide Leonardo with the information and data required for  
22 Leonardo to evaluate Boeing’s claims.” Leonardo reiterated Boeing’s obligation to provide the  
23 “best evidence available to support its claims,” noting that “responses such as *‘the precise details  
24 and breakdowns are sensitive proprietary data and not shared with suppliers [and] . . . Boeing does  
25 not calculate disruption, liaison engineering, and factory support discretely in each instance’* not  
26 only do not provide the best evidence available to Boeing, but also prevent Leonardo from making

1 any proper evaluation of Boeing's claims." Notwithstanding these objections, Leonardo addressed  
2 several contentions in the 11-8-19 Boeing Letter, reserving its right to provide subsequent feedback.

3 80) On the same day, Boeing responded to the 11-15-19 LDO Rejection (the "11-15-  
4 19 BDS Response"), attaching a document that Boeing purported constituted "Boeing's response  
5 to Leonardo's request regarding the BDS portion of the claim."

6 81) On November 21, 2019, Leonardo responded by providing a further, detailed  
7 analysis of Boeing's "767 Slats Cost Recovery Response to Leonardo Data Request" (the "11-21-  
8 19 LDO Response"). Specifically, the 11-21-19 LDO Response noted, with respect to the direct  
9 rework hours underlying Boeing's 767 Slats claim, that many of the rework hours claimed  
10 supporting Boeing's claimed "disruption" costs were falsely attributed to Boeing when, in fact,  
11 Leonardo's Contractors performed most of the rework and repair of the 767 Slats at issue. See 11-  
12 21-19 LDO Response attached hereto as Exhibit Z.

13 82) Indeed, despite being contracted for 12-hour shifts, Leonardo's Contractors  
14 reported spending, on average, only four hours per day on the rework and repair of the 767 Slats,  
15 due in large part to inefficiencies at the Everett, Washington Facility and the unavailability of  
16 necessary Boeing personnel. Boeing nonetheless grossly inflated the direct work hours of  
17 Leonardo's Contractors, admittedly relying on the shift schedules for such Contractors as opposed  
18 to the actual hours worked, and then multiplied those inflated work hours by various "disruption  
19 factors," thereby exponentially increasing its claimed "disruption" costs without justification.  
20 Upon information and belief, Boeing employed the same practice across all direct repairs,  
21 contributing to Boeing's overinflated direct labor costs.

22 83) Separately, Leonardo's 11-21-19 LDO Response objected to the number of rework  
23 hours supporting Boeing's claim, which greatly exceed (by a factor of 10) the number of hours  
24 Leonardo believes involved rework and repair and, in some cases, are based upon duplicate records.  
25 See Ex. Z. Leonardo therefore again requested detailed records supporting Boeing's claimed direct  
26 rework hours. Leonardo has been requesting that Boeing provide support for the direct labor hours

1 underlying its claim since September 2019.

2 84) Leonardo also objected to other categories of damages underlying Boeing's 767  
3 Slat claim in the 11-21-19 LDO Response, including Boeing's purported BDS Impact damages,  
4 which Leonardo found to be incomplete and absolutely incomprehensible, despite the fact that  
5 Leonardo had been asking for further information on the BDS Impact portion of Boeing's claim for  
6 four months.

7 85) On November 26, 2019, Leonardo emailed Boeing expressing "key concerns"  
8 about noted inconsistencies in that portion of Boeing's claim related to the rework and repair of the  
9 767 Slats. A copy of Leonardo's November 26, 2019 email (the "11-26-19 LDO Email") is attached  
10 as Exhibit AA.

11 86) Initially, the 11-26-19 LDO Email expressed concern about Boeing's apparent  
12 failure to distinguish between work performed by Leonardo's Contractors and that performed by  
13 Boeing personnel, and requested clarification on how Boeing tracked and distinguished their  
14 respective activities. As explained in the 11-26-19 LDO Email, Leonardo identified inconsistencies  
15 in more than 5,000 out of a total 7,400 rework hours underlying Boeing's 767 Slats claim, which  
16 suggests that Boeing has engaged in a pervasive practice of charging Leonardo for work performed  
17 by Leonardo's own Contractors, even though Leonardo separately paid those Contractors for their  
18 work. See Ex. AA. Although Leonardo has for months requested that Boeing provide clarification  
19 on how it tracks Contractor hours, Boeing has, to date, not provided a response.

20 87) Moreover, notwithstanding Boeing's definition of "disruption" as "the  
21 displacement of *Boeing jobs* caused by a supplier issue," which it calculated by multiplying various  
22 "disruption factors" against time allegedly spent by Boeing to repair the 767 Slats at issue, Boeing  
23 applied the same disruption factors to the work performed by *Leonardo's* Contractors. See id. By  
24 definition, work by Leonardo's contractors cannot cause "disruption" to Boeing personnel. Indeed,  
25 as noted in the 11-26-19 LDO Email, Leonardo hired approximately 96 Contractors to address  
26 alleged non-conformances in the 767 Slats precisely to avoid any disruption to Boeing in

1 performing its repairs. These inconsistencies further lead Leonardo to question the accuracy and  
2 reasonableness of Boeing's 8-27-19 767 Slat Cost Recovery Invoice.

3 88) On December 6, 2019, Boeing responded to the 11-26-19 LDO Email, conceding  
4 errors in the 8-27-19 767 Slat Cost Recovery Invoice and reducing the amount of its 767 Slat claim  
5 by \$41,353. However, Boeing refused to provide any further explanation of the calculations  
6 underlying its 8-27-19 767 Slat Cost Recovery Invoice, stating: "Boeing does not intend to provide  
7 any additional documentation for the initial invoice at this time."

8 89) Moreover, on December 14, 2019, Boeing wrote to Leonardo concerning an  
9 impending second claim for \$33 million in damages pertaining to purported "non-conformances"  
10 in the 767 Slats and their "collateral impact," which covers the period spanning July 1 through  
11 August 4, 2019 and August 21 through September 18, 2019. Of the \$33 million claimed, \$29  
12 million consists of alleged "contractor disruption" damages, which are no doubt overestimated  
13 based on the same hypothetical methodologies employed to compute the Negative Purchase Order.

14 90) Boeing's refusal to substantiate the amounts claimed in its first 8-27-19 767 Slat  
15 Cost Recovery Invoice and continuation of its wrongful attempt to shift the cost of slat repairs to  
16 Leonardo by preparing a second slat cost recovery invoice has resulted in an impasse, leaving  
17 Leonardo with no choice but to file this action.

18 **Boeing's Set-Off is Improper For Multiple Reasons**

19 **A. Boeing is Responsible for the Alleged Non-Conformances**

20 91) For several reasons, Leonardo is not liable for the "non-conformances" at issue.  
21 First, any such non-conformances are the result of Boeing's defective Drawings, Tooling and  
22 Production Methods, which are not robust enough to prevent the minor issues which Boeing now  
23 claims to be "non-conformances."

24 92) Second, the 767 Slats at issue were physically inspected and approved by Boeing's  
25 Supplier Quality ("SQ") and Source Funding Source Inspection ("SFSI") Teams in Italy before  
26 being delivered to Boeing's Everett, Washington Facility. Boeing does have the right under the



1 MPC to inspect the 767 Slats again after delivery to its Everett, Washington Facility. However, as  
2 noted above, the 767 Slats were later determined by inspectors located in Boeing's Everett,  
3 Washington Facility to be non-compliant based upon the magnified results of a Borescope, and the  
4 use of such equipment in the quality inspection process is new and is not mandated by the MPC or  
5 Boeing's quality control process. Id. Furthermore, the inspection and acceptance criteria applicable  
6 to the use of the Borescope technology in question (also known as remote visual inspection, or  
7 "RVI") is highly subjective and easily influenced by factors such as magnification, light intensity  
8 and camera resolution, the parameters of which are not delimited by Boeing, resulting in the  
9 inconsistent application of such Borescope technology to Boeing's quality control process. See id.  
10 Boeing cannot now assert a claim against Leonardo for minor "non-conformances" that arise from  
11 the use of Boeing's 40-year old design drawings, and which are now visible for the first time using  
12 a new form of technology being applied without standards or accepted criteria.

13 93) To put a fine point on it, some of the rejected 767 Slats were jointly inspected in  
14 Leonardo's facility in Pomigliano, Italy by Leonardo and Boeing personnel using a Borescope and  
15 were approved before being rejected by Boeing's inspectors in Everett, Washington. Then, these  
16 same 767 Slats were inspected after shipment to Boeing's Everett, Washington Facility by another  
17 team using a Borescope, and the slats were rejected. This highlights the inconsistencies created by  
18 the lack of standard guidelines applicable to the use of the Borescope.

19 **B. Boeing Failed to Provide Adequate Notice**

20 94) As noted in the LDO 9-5-19 Response, Boeing has failed to provide timely notice  
21 to Leonardo of its rejection of the 767 Slats at issue, in violation of Articles 3.5.B.2 and 3.5.C.5 of  
22 the MPC. The 767 Slats at issue were delivered to Boeing as early as 2014, well before Boeing  
23 provided notice of any issue involving FOD and Tool Marks. Moreover, Boeing began to repair the  
24 purported "non-conformances" prior to notifying Leonardo, in violation of the MPC.



1                   C.     **Boeing’s Claimed Damages Exceed the Parties’ Agreement,**  
2                   **Are Inflated, and Do Not Reflect Actual Costs Incurred by Boeing**

3             95)       In addition, even if Boeing had a basis to assert that such non-conformances are  
4     attributable to Leonardo, the costs noted in Boeing’s 8-27-19 767 Slat Cost Recovery Invoice far  
5     exceed the parties’ agreement, and are grossly inflated and disproportionate to any alleged “harm”  
6     resulting from Boeing’s repairs. The documentation Boeing provided in support for its 8-27-19 767  
7     Slat Cost Recovery Invoice does not explain or justify Boeing’s reasons for including certain  
8     categories of costs, much less demonstrate how such costs were recoverable under the MPC.  
9     Among the costs disputed by Leonardo in the 8-27-19 767 Slat Cost Recovery Invoice are  
10    approximately \$17.4 million in so-called “disruption” costs, \$761,503 in costs associated with  
11    “Liaison Engineering,” \$2.7 million in inflated contractor costs and \$4.6 million in other  
12    unspecified costs. Such costs go far beyond the damages available to Boeing for reworked and  
13    nonconforming products, which, per the MPC, are limited to Boeing’s estimated cost of labor and  
14    materials. See Ex. A, at Art. 3.5.C.1.b. and c.

15            96)       As an initial matter, Boeing’s purported direct costs are inflated. As noted above,  
16    Leonardo supplied Contractors for a 13-week period. Due to Boeing’s inefficiency, the Contractors  
17    employed by Leonardo did not perform the aforementioned rework activities for more than four (4)  
18    labor hours per day, yet Boeing subsequently billed Leonardo for “disruption” based on the  
19    Contractors’ working a twelve hour shift. The damage to Leonardo based upon Boeing’s wrongful  
20    conduct is further exacerbated by the fact that Leonardo paid its Contractors directly based upon a  
21    twelve hour work day, yet such Contractors worked, on average, four (4) hours per day. See Cost  
22    and Hours Report, attached hereto as Exhibit AB; 767 Slat Cost Recovery Response to Leonardo  
23    Data Request, dated November 14, 2019, attached hereto as Exhibit AC. In fact, the time records  
24    and invoices supplied by the Contractors hired by Leonardo to repair the 767 Slats at issue  
25    demonstrate a more than 200% mark up in the number of hours used for the hypothetical disruption  
26    calculation based upon contractor repairs, with Boeing using 14,760 hours of contractor time when,

1 in fact, such Contractors performed just over 5,000 hours of repair work. See Ex. AA.

2 97) With specific reference to Everett Factory rework hours, for which Boeing is billing  
3 the amount of \$7,921,209, Leonardo's analysis of Non Conformance Operations ("NCO")  
4 documents provided by Boeing shows an overestimation of approximately 250% in terms of hours  
5 performed by Boeing personnel.

6 98) The "disruption" alleged by Boeing is also greatly overstated. The FOD and Tool  
7 Marks at issue were limited to a specific, permanently closed area of outboard slats affecting  
8 approximately 53 aircraft. Once notified of the FOD and Tool Marks, Leonardo promptly worked  
9 to address the issues by hiring, at its own expense, approximately 96 Contractors to conduct the  
10 necessary repair work. In the nine days following Boeing's 8-27-19 Notice of Default, Leonardo  
11 and its Contractors reworked and resolved the FOD and Tool Marks reported in 23 out of 53 affected  
12 aircraft, well before Boeing delivered any of the subject aircraft to its customers. See Ex. I. To  
13 further minimize any disruption to Boeing's production process, Leonardo also increased its  
14 deliveries of 767 Slats to Boeing, adding five additional Shipsets to its delivery schedule.

15 99) Indeed, Boeing's estimates of the financial impact of such disruption — *i.e.*, its  
16 "disruption" costs, are grossly inaccurate and appear to be based upon generalized, imprecise and  
17 overbroad calculations of the hypothetical downstream impact of FOD and Tool Marks on its  
18 production schedule. For example, Boeing admittedly uses a fixed value to calculate the disruptive  
19 impact of FOD and Tool Marks on its downstream production schedule and does not adjust such  
20 values depending upon the size/importance of the non-conformance at issue. Boeing's counsel has  
21 confirmed that the disruption costs reflected in Boeing's 8-27-19 767 Slat Cost Recovery Invoice  
22 were merely estimates developed using Boeing's "standard estimating models constructed from  
23 historical data." See Ex. S. Moreover, upon information and belief, Boeing's method of calculating  
24 its disruption has vastly changed over the years and is now based upon different criteria than Boeing  
25 previously used to calculate its disruption costs. The only thing that is clear is that, in addition to  
26 charging \$365 per hour for repairs, Boeing's calculations of its repairs factor in \$597 per hour for

1 disruption and \$102 per hour for liaison engineering, totaling an effective hourly rate of \$1,064.

2 100) Moreover, Boeing's calculations are based upon outdated 2018 factors, as opposed  
3 to 2019 when Boeing purportedly discovered the non-conformances at issue. Finally, Boeing's  
4 damages include time spent on tasks other than repairing FOD and Tool Marks. For example,  
5 Boeing's 7,432 "Everett rework hours" include generic categories such as "support," making it  
6 difficult for Leonardo to verify the accuracy of its calculations.

7 101) Leonardo further disputes the hourly rates applied to Boeing's purported labor,  
8 disruption and liaison engineering costs, which were not agreed upon and are unreasonably  
9 inflated; particularly with respect to the claimed disruption costs, for which Boeing has applied  
10 hourly rates equal to approximately 164% of Boeing's estimated direct labor costs. In determining  
11 the hourly rates associated with the aforementioned costs, Boeing has failed to distinguish between  
12 the various forms of disruption and other charges underlying the 8-27-19 767 Slat Cost Recovery  
13 Invoice, and has failed to differentiate between the manhours needed to address major and minor  
14 non-conformances.

15 **Leonardo Has Been Damaged As a Result of Boeing's Wrongful Conduct**

16 102) For the period spanning August 5 to August 20, 2019 alone, Leonardo has been  
17 damaged in excess of \$24 million due to Boeing's wrongful conduct, which, as detailed below,  
18 includes Leonardo's costs in providing direct assistance to Boeing in the form of Contractors and  
19 additional slat deliveries in order to support Boeing's unnecessary repairs.

20 103) Specifically, Leonardo has sustained damages in the amount of at least  
21 \$10,699,069.00, resulting from its provision of direct assistance to Boeing to address purported  
22 FOD and Tool Marks affecting the 767 Slats. This figure comprises over \$8.8 million spent on  
23 Contractors to assist Boeing in its repairs, and over \$1.8 million spent on extra parts shipped by air  
24 courier from Leonardo's plant in Pomigliano, Italy, to Boeing's Everett, Washington Facility, in  
25 order to avoid any delays in Boeing's production schedule.

26 104) Boeing's wrongful conduct has also caused Leonardo to sustain \$9,899,744.95 in

1 damages and other costs related to disruptions in its plant production schedule. Specifically, as the  
 2 result of Boeing's wrongful claims, Leonardo has been forced to focus time and resources away  
 3 from its standard production activities, and towards the instant dispute, increasing production costs.

4 105) In addition, Leonardo has sustained \$329,875.00 in damages resulting from the  
 5 necessary analysis and management of data related to the alleged non-conformances at issue  
 6 ("MRR"). Leonardo has also sustained over \$100,000 in damages related to "scraps"— or discarded  
 7 product — resulting from unnecessary rework and repair of the 767 Slats at issue.

8 106) Moreover, Leonardo has sustained nearly \$3 million in general and administrative  
 9 costs and other expenses related to this dispute.

10 107) A table summarizing Leonardo's costs follows below.

Extra Flights	\$1,877,906.00
Contractors	\$3,555,800.00
Inefficiency LDO	\$9,899,744.95
MRR	\$329,875.00
Scraps	\$101,276.16
Contractors Italy LDO	\$5,265,363.70
G&A	\$841,198.63
Expenses	\$2,152,477.18
	<b>\$ 24,023,641.62</b>

11  
 12  
 13  
 14  
 15  
 16  
 17  
 18 108) In addition to these damages, Leonardo has sustained damages associated with  
 19 Boeing's imposition of an unjustified probation, which increases Leonardo's costs and damages its  
 20 reputation, as well as harm from the impact of the Negative Purchase Order on its financials.  
 21 Leonardo's damages are continuing and will continue to grow commensurate with Boeing's  
 22 wrongful conduct.

**FIRST CLAIM FOR RELIEF**  
**(BREACH OF CONTRACT)**

23  
 24  
 25 109) Leonardo repeats and realleges the allegations contained in paragraphs 1–108 as if  
 26 fully set forth herein.

1 110) The MPC is a valid and enforceable contract, supported by valid consideration,  
2 formed and at all relevant times existing between Leonardo and Boeing.

3 111) Leonardo fully performed and satisfied its obligations in accordance with the terms  
4 of the MPC and all corresponding and applicable purchase orders.

5 112) Notwithstanding the foregoing, Boeing has materially breached the terms of the  
6 MPC in several ways, as set forth below.

7 **A. Boeing's Failure to pay the Unpaid Invoices when due has caused Leonardo to**  
8 **sustain damages**

9 113) The applicable purchase orders issued by Boeing pursuant to the MPC relating to  
10 the complete Shipsets that are the subject of the Unpaid Invoices obligated Leonardo to deliver such  
11 products to Boeing in accordance therewith.

12 114) Leonardo delivered all the Shipsets that are the subject of the Unpaid Invoices in  
13 full conformity with the requirements of the MPC and the respective purchase orders.

14 115) Boeing has previously accepted all the Shipsets that are the subject of the Unpaid  
15 Invoices.

16 116) Boeing has received and previously accepted all the Unpaid Invoices.

17 117) Notwithstanding the foregoing, Boeing has willfully refused to pay ten of those  
18 Unpaid Invoices that have already become due, in the amount of \$25,410,464, in material breach  
19 of the terms of the MPC.

20 118) Moreover, Boeing has already declared its unwillingness to pay the remaining  
21 Unpaid Invoice, in the amount of \$2,558,474, as it becomes due on January 1, 2020, in anticipatory,  
22 material breach of the terms of the MPC.

23 119) By reason of the foregoing breaches of contract by Boeing, Leonardo has been  
24 caused to suffer damages, namely the sums presently due and owing pursuant to the Unpaid  
25 Invoices, which is presently calculated to be \$25,410,464, together with pre-judgment interest  
26 thereon at the applicable statutory rate.

1           **B. Boeing's rejections of the 767 Slats at issue were improper**

2           120) As set forth above, for decades, Leonardo fully performed and satisfied its  
3 manufacturing and delivery obligations to Boeing in accordance with the terms of the MPC.

4           121) With respect to the 767 Slats at issue, Leonardo fully performed and satisfied its  
5 obligations in accordance with the terms of the MPC and the corresponding and applicable purchase  
6 orders.

7           122) In view of the foregoing, Boeing paid Leonardo for the 767 Slats at issue.

8           123) Boeing's subsequent rejections of the 767 Slats at issue were wrongful, and in  
9 material breach of the MPC, as set forth below.

10                   **1) Any purported non-conformances were the result of Boeing's Drawings,**  
11                   **Tooling and Production Methods and failure to follow AS 9146**

12           124) As set forth above, Boeing requires Leonardo to utilize Boeing's Drawings,  
13 Tooling and Production Methods with respect to the manufacture and production of 767 Slats.  
14 Leonardo has faithfully adhered to the use of Boeing's Drawings, Tooling and Production Methods  
15 since the execution of the MPC in 1978.

16           125) As set forth above, in contravention of AS9146, Boeing has also failed to provide  
17 Leonardo with training or guidance with respect to the prevention of FOD or the inherent risk of  
18 FOD caused by Boeing's Drawings, Tools and Production Methods.

19           126) With respect to the 767 Slats at issue, Boeing's Drawings, Tooling and Production  
20 Methods were the sole or predominant cause of the alleged non-conformances, which were raised  
21 by Boeing for the first time in June 2019, which were exacerbated by Boeing's failure to comply  
22 with the requirements of AS9146.

23                   **2) Boeing's changed inspection methodologies resulted in improper**  
24                   **rejections**

25           127) As set forth above, in the summer of 2019, Boeing began to unilaterally, materially  
26 and impermissibly change the methodology by which it inspected the 767 Slats at issue, *to wit*, from

1 visual inspection to a magnified inspection using a Borescope.

2 128) Such Borescope testing is not mandated by the MPC and other contract documents.

3 129) Based upon the results of Boeing's Borescope inspection, Boeing began improperly  
4 rejecting the 767 Slats at issue on the basis that they are nonconforming, without providing to  
5 Leonardo any objective or rational characterization of the non-conformances at issue or any  
6 objective criteria by which to define a clear threshold beyond which a slat could be considered  
7 unacceptable.

8 130) The conditions detected by the Borescope were acceptable conditions which had  
9 previously existed by reason of Boeing's own Drawings, Tooling and Production Methods.

10 131) In effect, Boeing began making improper rejections of the 767 Slats at issue simply  
11 by reason of employing a new form of inspection technology with respect to conditions which had  
12 never previously been deemed non-conforming.

13 132) Moreover, the Borescope inspections were not objectively or consistently  
14 conducted, which further contributed to Boeing's improper rejections of the 767 Slats (and its  
15 improper demands for the costs of rework/repair and correction work and other purported damages).

16 133) As a result of the foregoing, Boeing wrongfully and improperly rejected the 767  
17 Slats at issue, and wrongfully seeks purported damages, including its purported costs to  
18 rework/repair such slats and/or to correct such slats, in breach of the MPC.

19 134) As a result of Boeing's prior material breaches of the MPC, Boeing is barred from  
20 any monetary recovery concerning the 767 Slats at issue.

21 **C. Boeing breached the notice provisions of the MPC**

22 135) As a general matter, Boeing routinely and systematically failed to comply with its  
23 inspection, rejection, and repair and rework notice obligations under the MPC with respect to the  
24 767 Slats at issue, together with its obligation to give written notice of defect and/or correction  
25 regarding warranty claims.

26 136) With respect to inspections and outright rejections of 767 Slats, pursuant to MPC

1 Article 3.5.B.2, Boeing was obligated to (a) conduct final inspections within a reasonable time after  
2 receipt of each product, and (b) provide Leonardo with “prompt notice of such rejection and the  
3 basis therefor.”

4 137) Boeing failed to satisfy the foregoing inspection and rejection notice obligations  
5 concerning the 767 Slats at issue, in breach of the MPC.

6 138) With respect to rejections of 767 Slats that Boeing nonetheless repaired and  
7 reworked, and for which Boeing might otherwise be entitled to recover such repair costs, pursuant  
8 to MPC Articles 3.5.C.1.c and 3.5.C.5, Boeing was obligated to give written notice of same prior  
9 to doing the work.

10 139) Boeing failed to satisfy the foregoing notice obligations for repair and rework costs  
11 concerning the 767 Slats at issue, in breach of the MPC.

12 140) With respect to the warranty contained in MPC Article 3.6.A for products  
13 previously accepted, and for which Boeing might otherwise be entitled to recover “correction”  
14 costs, Boeing was obligated to provide written notice of defect and/or correction pursuant to MPC  
15 Articles 3.6.A.1, 3.6.A.3.b.3 and 3.6.A.5.

16 141) Boeing failed to satisfy the foregoing notice obligations for warranty claims  
17 concerning the 767 Slats at issue, in breach of the MPC.

18 142) Moreover, to the extent that Boeing seeks to assert rights pursuant to MPC Article  
19 3.6, none of the warranties set forth therein apply to the 767 Slats at issue which were installed,  
20 used, serviced, modified or repaired by Boeing or its customers.

21 143) As a result of Boeing’s prior material breaches of the MPC, Boeing is barred from  
22 any monetary recovery concerning the 767 Slats at issue.

23 **D. Boeing is not entitled to recover the categories of damages it seeks**

24 144) As a general matter, Boeing has wrongfully claimed its entitlement to several  
25 categories of damages with respect to the 767 Slats at issue, which are not recoverable pursuant to  
26 the express terms of the MPC or applicable statutory law.



1 145) As set forth above, (a) in the event of rejection of a Product pursuant to MPC Article  
2 3.5.C, Boeing was entitled to recover only its repair and rework costs for such Product and (b) in  
3 the event of a warranty claim for a previously accepted Product pursuant to MPC Article 3.6.A,  
4 Boeing was entitled to recover only its correction costs for such Product (assuming it satisfied the  
5 other contractual provisions related thereto).

6 146) Despite the aforementioned damages limitation provisions of the MPC, Boeing  
7 wrongfully claims entitlement to “Everett Factory” damages, “Contractor Disruption” damages,  
8 “Everett Delivery Center” damages, “Successor Installation Plan Disruption” damages, and “BDS  
9 Impact” damages, purportedly totaling \$26,181,152.

10 147) The foregoing five categories of purported damages far exceed the limited  
11 categories of costs of repair/rework or correction which might otherwise be recoverable damages  
12 under the MPC (assuming Boeing satisfied the contractual provisions related thereto).

13 148) Boeing does not otherwise have a right to recovery of such purported damages  
14 pursuant to Wash. Rev. Code, Uniform Commercial Code §§ 62A.2-607, 62A.2-714, 62A.2-715 or  
15 other applicable law.

16 **E. Boeing has inflated and grossly exaggerated its purported damages and/or is**  
17 **otherwise unable or unwilling to substantiate such claimed damages**

18 149) Boeing has inflated and grossly exaggerated its purported damages and has refused  
19 to sufficiently substantiate such claimed damages, despite due and repeated demand therefor.

20 150) As more fully set forth above, among the more patently improper issues that are  
21 presented by the limited information Boeing has provided in support of its purported \$26 million  
22 damages claim are the following:

23 A. Inflated direct labor costs: Boeing seeks \$2,712,010 in direct  
24 reworking/repair/correction labor costs, but has grossly inflated that figure  
25 considering that on the basis of Leonardo’s internal reports, many of the rework  
26 hours were performed by Leonardo’s contractors and not by Boeing personnel and

1 should not have been included in Boeing's calculation.

2 B. Furthermore, upon information and belief, Boeing wrongly calculated the number  
3 of hours that its own personnel worked, based upon shift schedules rather than  
4 actual hours worked, and thus grossly inflated those hours.

5 C. Flawed analysis of "Contractor Disruption" charges of \$10,426,995 and Liaison  
6 Engineering charges of \$761,503: Boeing falsely contends that it is entitled to  
7 disruption charges calculated, in part, based on the amount of hours that Leonardo's  
8 96 Contractors worked even though those Contractors helped to avoid or minimize  
9 any purported disruption. The 96 Contractors should not be used in any purported  
10 disruption costs calculation.

11 D. Inflated "Contractor Disruption" charges and Liaison Engineering charges: The  
12 formula Boeing employs to calculate its disruption and liaison engineering charges  
13 is based upon multipliers of the number of its direct rework labor hours. Since those  
14 hours were inflated by reason of Boeing including hours worked by Leonardo's  
15 Contractors and by inflating the number of hours that Boeing personnel worked,  
16 the disruption and liaison engineering charges are inflated, exponentially.

17 E. Unsubstantiated estimates of the financial impact of such disruption: Boeing's  
18 disruption damages figures appear to be based upon outdated, generalized, imprecise  
19 and overbroad calculations, using Boeing's standard estimating models constructed  
20 from historical data, of the hypothetical downstream impact of FOD and Tool Marks  
21 on its production schedule.

22 F. Boeing's disclosures with respect to the BDS Impact damages of \$4,579,387 are  
23 incomplete and incomprehensible.

24 G. Damages not related to non-conformances at issue: Boeing's damages include time  
25 spent on tasks other than repairing FOD and Tool Marks, making it difficult (at best)  
26 for Leonardo to verify the accuracy of its calculations.

1 **F. Boeing has impermissibly employed a set-off**

2 151) Boeing has no basis upon which to set off its purported damages because the MPC  
3 does not permit a right of set-off by Boeing for purported damages resulting from non-  
4 conformances with the 767 Slats at issue against monies owed by Boeing for other products which  
5 were delivered, accepted and invoiced without issue.

6 152) Indeed, MPC Article 2.6.B.2 expressly provides for Boeing to issue a separate  
7 invoice for services rendered in connection with its repair/rework or correction services relating to  
8 rejected or nonconforming products, further bolstering the fact that set-offs are not permitted under  
9 the MPC.

10 153) Moreover, Boeing may not conduct a set off pursuant to the UCC in the absence of  
11 a breach by Leonardo of the MPC entitling it to damages.

12 154) Inasmuch as Boeing, not Leonardo, is the cause of the alleged non-conformances  
13 at issue, Boeing has impermissibly resorted to self-help, and refused and refuses to pay Leonardo  
14 sums presently due and owing as indicated on the Unpaid Invoices.

15 155) By reason of the foregoing breaches of contract by Boeing, Leonardo has been  
16 caused to suffer damages, namely the sums due and owing pursuant to the Unpaid Invoices.

17 156) As a direct and proximate result of Boeing's breaches of contract, Leonardo has  
18 been damaged in an amount to be proven at trial, but which exceeds \$75,000 exclusive of interest  
19 and costs.

20 **SECOND CLAIM FOR RELIEF**  
21 **(DECLARATORY JUDGMENT)**

22 157) Leonardo repeats and realleges the allegations contained in paragraphs 1–108 as if  
23 fully set forth herein.

24 158) In view of the foregoing, there exist present, actual and existing justiciable  
25 controversies with respect to the rights and obligations between Leonardo and Boeing.

26 159) Leonardo accordingly hereby demands and is entitled to a judgment declaring:

- 1 A. The cause of any non-conformance in the 767 Slats at issue is solely or primarily  
2 attributable to Boeing's Drawings, Tooling and Production Methods and,  
3 accordingly, cannot be the basis for rejection or damages claims under the  
4 MPC.
- 5 B. The Borescope inspection results were an improper basis upon which to reject  
6 the 767 Slats, namely pre-existing, previously acceptable conditions caused by  
7 Boeing's Drawings, Tooling and Production Methods.
- 8 C. Boeing has no basis upon which to recover damages because it failed to satisfy  
9 its notice obligations to Leonardo pursuant to the MPC.
- 10 D. Boeing does not have a right to the purported damages it claims because, *inter*  
11 *alia*, it has not satisfied the MPC or Wash. Rev. Code, Uniform Commercial  
12 Code §§ 62A.2-607, 62A.2-714, 62A.2-715 or other applicable law.
- 13 E. Boeing's purported damages calculations are without foundation in fact,  
14 speculative, grossly inflated, wildly disproportionate, and are otherwise not  
15 recoverable.
- 16 F. Boeing does not have a right to set off the purported damages it claims relating  
17 to the 767 Slats at issue against the Unpaid Invoices because, *inter alia*, (i) it  
18 has not satisfied Wash. Rev. Code, Uniform Commercial Code § 62A.2-717,  
19 and (ii) Boeing did not provide the best evidence of its purported damages under  
20 the MPC.

21 **THIRD CLAIM FOR RELIEF**  
22 **(PERMANENT INJUNCTIONS)**

23 160) Leonardo repeats and realleges the allegations contained in paragraphs 1–108 as if  
24 fully set forth herein.

25 161) Leonardo seeks a mandatory permanent injunction and a permanent injunction,  
26 respectively: (a) directing and requiring Boeing to immediately pay Leonardo all sums which are

1 due and owing but which have been withheld on the basis of Boeing’s purported set-off right with  
2 respect to the 767 Slats at issue, which is presently calculated to be \$25,410,464, together with pre-  
3 judgment interest thereon at the applicable statutory rate; and (b) restraining Boeing from  
4 withholding any future sums due and owing to Leonardo on the same basis.

5 **FOURTH CLAIM FOR RELIEF**  
6 **(BREACH OF CONTRACT)**

7 162) Leonardo repeats and realleges the allegations contained in paragraphs 1–108 as if  
8 fully set forth herein.

9 163) The MPC is a valid and enforceable contract, supported by valid consideration,  
10 formed and at all relevant times existing between Leonardo (or its predecessor-in-interest) and  
11 Boeing.

12 164) Leonardo fully performed and satisfied its obligations in accordance with the terms  
13 of the MPC and all corresponding and applicable purchase orders.

14 165) As set forth above, Boeing wrongfully and improperly rejected the 767 Slats at  
15 issue, in material breach of the MPC.

16 166) As set forth above, Boeing wrongfully and improperly placed Leonardo on  
17 probation as a result of the 767 Slats at issue, in material breach of the MPC.

18 167) Leonardo was caused by Boeing to unnecessarily incur significant costs by reason  
19 of Boeing’s wrongful and improper rejections of the 767 Slats at issue and its wrongful placement  
20 of Leonardo on probation.

21 168) Among other things, pursuant to MPC Articles 3.5.C.1.c and 3.6.A.3.b.3,  
22 respectively, upon Boeing’s request, Leonardo was required to provide direct assistance to Boeing  
23 in the form of furnishing information, materials, parts and manpower in connection with necessary  
24 “repair” or “correction,” as applicable, of properly rejected products.

25 169) Significantly, however, MPC Article 3.5.C.2 expressly recognizes that Boeing  
26 might improperly reject products, in which event Boeing shall be responsible for all of the repair

1 costs that it may incur.

2 170) Boeing wrongfully and improperly sought and demanded Leonardo's direct  
3 assistance in Boeing's repair and correction of the 767 Slats at issue, in material breach of MPC  
4 Articles 3.5.C.1.c and 3.6.A.3.b.3.

5 171) Boeing wrongfully and improperly sought and demanded Leonardo's direct  
6 assistance in Boeing's repair and correction of the 767 Slats at issue, in material breach of other  
7 provisions of the MPC.

8 172) Leonardo was caused by Boeing to unnecessarily incur significant out-of-pocket  
9 and internal costs by reason of having to furnish direct assistance to Boeing in the repair and  
10 correction of the 767 Slats, including the costs associated with the deployment of approximately 96  
11 Contractors to Everett, Washington in 2019 alone.

12 173) By reason of Boeing's breaches of contract, Leonardo has also been caused to  
13 suffer other damages, including but not limited to the costs of dedicated internal resources, costs  
14 associated with processing and responding to Boeing's formal rejections, as well as its other  
15 complaints and inquiries, and informal requests for assistance regarding the 767 Slats at issue,  
16 general and administrative costs, financial expenses, the harm to Leonardo from having to carry a  
17 wrongfully-issued Negative Purchase Order on its books, and other foreseeable direct, indirect,  
18 consequential, general, and special damages.

19 174) As a direct and proximate result of Boeing's breaches of contract, Leonardo has  
20 been damaged in an amount to be proven at trial, but which is not less than \$24 million, exclusive  
21 of interest and costs.

22 **FIFTH CLAIM FOR RELIEF**  
23 **(BREACH OF IMPLIED COVENANT**  
24 **OF GOOD FAITH AND FAIR DEALING)**

25 175) Leonardo repeats and realleges the allegations contained in paragraphs 1–108 as if  
26 fully set forth herein.

1           176) The MPC is a valid and enforceable contract, supported by valid consideration,  
2 formed and at all relevant times existing between Leonardo and Boeing.

3           177) The MPC, at Articles 3.5.C.1 and 3.6.A, respectively, (a) permits Boeing to reject  
4 any product that does not conform to the contract requirements, and (b) provides that Leonardo  
5 warranties that products will be free from defects in material and workmanship.

6           178) Pursuant to MPC Article 3.5, Boeing had a right of physical inspection of the  
7 products that Leonardo manufactured and delivered to Boeing pursuant to purchase orders issued  
8 by Boeing, and to reject products on the basis of such physical inspections.

9           179) Pursuant to MPC Article 3.6, Boeing had a right to make a warranty claim with  
10 respect to later-discovered defects, or non-conformances, that were detected after inspection and  
11 acceptance of products by Boeing.

12           180) Boeing could not reject products or assert warranty claims without doing so in good  
13 faith and without fairly dealing with Leonardo with respect to same, as was within the reasonable  
14 expectations of the parties and in accordance with industry norms and standards.

15           181) Pursuant to the parties' decades-long course of dealing and custom and practice,  
16 Boeing inspected and accepted or rejected slats and made warranty claims regarding slats based  
17 upon its (or its customer's) physical inspection of such slats using the naked eye, and without the  
18 use of such technologies as a Borescope.

19           182) Pursuant to the parties' decades-long course of dealing and custom and practice,  
20 Boeing did not previously reject slats or make warranty claims regarding slats based upon  
21 immaterial or *de minimis* non-conformances that did not impact or impair the functionality or safe  
22 operation thereof.

23           183) Pursuant to the parties' decades-long course of dealing and custom and practice,  
24 Boeing did not previously reject slats or make warranty claims regarding slats without doing so in  
25 good faith and without fairly dealing with Leonardo, including by engaging in a substantive degree  
26 of consultation, cooperation and collaboration with Leonardo concerning the source and materiality



1 of alleged non-conformances.

2 184) As set forth above, Leonardo performed all of its obligations pursuant to the MCP  
3 with respect to the 767 Slats at issue.

4 185) Boeing breached its implied obligations to engage in the inspection/approval or  
5 rejection and warranty claim processes with Leonardo in good faith, and to fairly deal with  
6 Leonardo with respect to the 767 Slats at issue by, *inter alia*, (a) unilaterally employing a Borescope  
7 in the inspection/acceptance process and in inspecting previously accepted slats, (b) rejecting (or  
8 purportedly asserting warranty claims with respect to) the 767 Slats based upon immaterial or *de*  
9 *minimis* non-conformances viewable only by the Borescope and without regard for the fact that  
10 such conditions did not impact or impair the slats' functionality or safe operation, and (c) rejecting  
11 the 767 Slats on the basis of conditions, such as FOD and Tool Marks, which had previously existed  
12 and had been deemed acceptable to Boeing and, indeed, were caused by Boeing's own Drawings,  
13 Tooling and Production Methods.

14 186) The aforementioned breaches and wrongful conduct on the part of Boeing were  
15 material.

16 187) By reason of Boeing's breaches of contract, Leonardo has not received the benefit  
17 of its bargain.

18 188) By reason of Boeing's breaches of contract, Boeing is barred from any claim of  
19 monetary damages against Leonardo.

20 189) By reason of Boeing's breaches of contract, Leonardo has been caused to suffer  
21 significant damages, including but not limited to the unnecessary costs associated with having to  
22 furnish direct assistance to Boeing in the repair and correction of the 767 Slats (including the costs  
23 associated with the deployment of approximately 96 Contractors to Everett, Washington in 2019),  
24 the costs of dedicated internal resources, costs associated with processing and responding to  
25 Boeing's formal rejections, as well as its other complaints and inquiries, and informal requests for  
26 assistance regarding the 767 Slats at issue, costs associated with Boeing's wrongful placement of

1 Leonardo on probation, general and administrative costs, financial expenses, the harm to Leonardo  
2 from having to carry a wrongfully-issued Negative Purchase Order on its books, the Unpaid  
3 Invoices, and other foreseeable direct, indirect, consequential, general, and special damages.

4 190) As a direct and proximate result of Boeing's breaches of contract, Leonardo has  
5 been damaged in an amount to be proven at trial, but which exceeds \$75,000 exclusive of interest  
6 and costs.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Leonardo demands judgment for costs and attorneys' fees, together with  
9 the following relief:

- 10 1. Awarding money damages to Leonardo in an amount to be proven at trial;  
11 2. Awarding prejudgment interest;  
12 3. Awarding declaratory judgment relief against Boeing;  
13 4. Awarding injunctive relief against Boeing; and  
14 5. Such other and further relief as the Court deems just and reasonable.

15 DATED: December 23, 2019.

16 /s/Jessica M. Andrade  
17 Jessica M. Andrade, WSBA # 39297

18 POLSINELLI P.C.  
19 1000 Second Ave., Suite 3500  
20 Seattle, Washington 98104  
21 Tel: (206) 393-5400  
[jessica.andrade@polsinelli.com](mailto:jessica.andrade@polsinelli.com)

22 Alan A. D'Ambrosio (*Pro Hac Vice forthcoming*)  
23 William F. Dahill (*Pro Hac Vice forthcoming*)  
24 Joseph Johnson  
Kamanta C. Kettle

25 **DUNNINGTON, BARTHOLOW & MILLER LLP**  
26 230 Park Avenue, 21st Floor  
New York, New York 10169

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Tel: (212) 682-8811  
[adambrosio@dunnington.com](mailto:adambrosio@dunnington.com)  
[wdahill@dunnington.com](mailto:wdahill@dunnington.com)  
[jjohnson@dunnington.com](mailto:jjohnson@dunnington.com)  
[kkettle@dunnington.com](mailto:kkettle@dunnington.com)

*Attorneys for Plaintiff Leonardo S.p.A.*