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18 *Limited and Jahid Fazal-Karim*

19 **IN THE UNITED STATES BANKRUPTCY COURT**

20 **CENTRAL DISTRICT OF CALIFORNIA – LOS ANGELES DIVISION**

21 **IN RE:**

22 ZETTA JET USA, INC., a California
23 corporation

24 Debtor.

25 **IN RE:**

26 Lead Case No.: 2:17-bk-21386-SK

27 Jointly administered with:
28 2:17-bk-21387-SK
(Zetta Jet PTE Ltd., a Singaporean
corporation)

CHAPTER 7 CASES

ADV. PRO. NO. 2:19 AP 01147-SK

1 ZETTA JET PTE Ltd., a Singaporean
2 corporation

3 Debtor.

5 JONATHAN D. KING, solely in his
6 capacity as Chapter 7 Trustee of Zetta
7 Jet USA, Inc. and Zetta Jet PTE, Ltd.,

8 Plaintiff,

9 v.

10
11 CAVIC AVIATION LEASING
12 (IRELAND) 22 CO. DESIGNATED
13 ACTIVITY COMPANY; and
14 BOMBARDIER AEROSPACE
CORPORATION,
Defendants.

**JETCRAFT AND FK ENTITIES’
RESPONSE TO TRUSTEE’S
MOTION TO FILE
UNREDACTED AMENDED
COMPLAINT AND REDLINE
UNDER SEAL**

Date: June 30, 2021

Time: 9:00 am PT

Place: All hearings via
Government Zoom

Judge: Hon. Sandra R. Klein

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1 TO THE HONORABLE SANDRA R. KLEIN, UNITED STATES
2 BANKRUPTCY JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE,
3 AND ALL OTHER INTERESTED PARTIES:

4 1. Pursuant to LBR 5003-2(c), section 107(b) of the Bankruptcy Code,
5 and the *Motion to File Unredacted Amended Complaint and Redline Under Seal*,
6 Dkt. No. 243 (the “Motion”), non-parties Jetcraft Corporation, Jetcraft Global, Inc.,
7 Jetcoast 5000-5 LLC, Orion Aircraft Holdings Ltd., Jetcraft Asia Limited
8 (collectively, “Jetcraft”), FK Group Ltd., FK Partners Limited and Jahid Fazal-
9 Karim (collectively, the “FK Entities” and, together with Jetcraft, the “Jetcraft and
10 FK Entities”), as “parties in interest” under section 107(b) of the Bankruptcy Code,
11 hereby file their Response to the Motion.¹ This Response is contemplated both by
12 the Motion itself and Section 16 of the Stipulated Protective Order in place in the
13 *Jetcraft* Action (defined below). See Case No. 01382-SK, Dkt. No. 143 (the “SPO”).

14 **PROCEDURAL BACKGROUND**

15 2. On December 4, 2020, the Trustee filed the *Motion to Consolidate*
16 *Related Adversary Proceedings* (AP Dkt. No. 184) (the “Motion to Consolidate”),
17 which sought to consolidate this proceeding with *King v. Jetcraft Corporation, et*
18 *al.*, C.D. Cal. Bankr. Adv. No. 2:19-ap-01382-SK (the “Jetcraft Action”).² In
19 support of the Motion to Consolidate, on February 18, 2021, the Trustee sought leave

20 _____
21 ¹ The Jetcraft and FK Defendants have also filed a Response to the Trustee’s
22 *Application to File Unredacted Amended Complaint and Redline Under Seal, King*
23 *v. Jetcraft Corporation, et al.*, C.D. Cal. Bankr. Adv. No. 2:19-ap-01147-SK (Bankr.
24 C.D. Cal.), Dkt. No. 200.

25 ² Citations to the docket in this adversary proceeding are cited as “AP Dkt. No.
26 ____.” Citations to the docket in the jointly administered bankruptcy cases captioned
27 *In re Zetta Jet USA, Inc., et al.*, Case No. 17-21386-SK (Bankr. C.D. Cal.) are cited
28 as “BK Dkt. No. ____.” Other than in Exhibits A and B, citations to the proposed
Amended Complaint and the Redline are cited as “AC ¶ ____.” Citations to
Declaration of Peter Antonenko are cited as “Antonenko Decl. ¶ ____.” Citations to
Declaration of Jahid Fazal-Karim are cited as “Fazal-Karim Decl. ¶ ____.”

1 to file an unredacted version of his Proposed Consolidated Amended Complaint
2 (the “PCAC”) under seal as a supplemental exhibit to the Motion to Consolidate. AP
3 Dkt. No. 216. Because the PCAC contained information that had been designated
4 as Confidential (or Trustee and Attorneys’ Eyes Only) by various current and former
5 parties to this action (including the Jetcraft and FK Entities), the Trustee proposed a
6 redacted PCAC to be filed on the public docket.

7 3. On February 5, 2021, the court denied the Motion to Consolidate, AP
8 Dkt. No. 236, and subsequently entered a scheduling order requiring the Trustee to
9 file a motion to amend the original Complaint pursuant to Federal Rule of Civil
10 Procedure 15 (made applicable by Federal Rule of Bankruptcy Procedure 7015),
11 with clean and redlined versions of the Trustee’s proposed amended complaint
12 attached. AP Dkt. No. 239.

13 4. On April 28, 2021, the Trustee filed a *Motion for Leave to Amend*
14 *Adversary Complaint*. AP Dkt. No. 242. In connection with that motion, the Trustee
15 filed an Application to file the proposed Amended Complaint and Redline
16 (collectively, the “Proposed Amended Complaint”)³ under seal. AP Dkt. No. 243.
17 As part of the Proposed Amended Complaint, the Trustee added a number of
18 allegations relating to the Jetcraft and FK Entities, along with one exhibit (Exhibit
19 10) relating to Jahid Fazal-Karim. A number of the allegations in the Proposed
20 Amended Complaint and Exhibit 10 attached thereto contain information that had
21 been designated as Confidential (or Trustee and Attorneys’ Eyes Only) by the
22

23 ³ The Proposed Amended Complaint and Redline contain identical information
24 and paragraph numbers and thus any reference or citation to the “Proposed Amended
25 Complaint” herein, other than in Exhibit A, shall be deemed to also be a reference
26 to the Redline therein. Exhibit A contains separate references to the Proposed
27 Amended Complaint and its Redline because, due to the redlining, the line numbers
28 for the citations to the confidential commercial information at issue differ between
the two documents.

1 Jetcraft and FK Entities under the SPO.

2 5. On May 7, 2021, the Court ordered the Trustee to file redacted versions
3 of the Proposed Amended Complaint and Redline on the public docket and to
4 provide the Court with unredacted versions of those documents. AP Dkt. No. 247.
5 As a result, the parties coordinated with the Trustee's counsel regarding the
6 redactions to the allegations and exhibits to those documents. The Trustee filed the
7 redacted Proposed Amended Complaint and Redline on the public docket on May
8 10, 2021 (the "Redacted Proposed Amended Complaint"). AP Dkt. No. 249.
9 Moreover, the Trustee provided the Court with unredacted versions of those
10 documents on the same day. In the unredacted versions, the Trustee reflected the
11 redactions requested by the Jetcraft and FK Entities in purple. Those proposed
12 redactions are set out in Exhibit A hereto and addressed further below.

13 6. The Jetcraft and FK Entities file this response in order to substantiate
14 their claims of confidentiality over the information contained in the Proposed
15 Amended Complaint and Exhibit 10 that is identified in Exhibit A hereto.

16 **FACTUAL BACKGROUND**

17 7. Jetcraft is in the business of aircraft sales, acquisition, leasing, and
18 related services. Antonenko Decl. ¶ 4. Mr. Fazal-Karim and his entities, FK
19 Partners Ltd. and FK Group Ltd., also participate in the private-aircraft market.
20 Fazal-Karim Decl. ¶ 2. For example, they have provided services to Jetcraft in
21 connection with private aircraft transactions. *Id.* Mr. Fazal-Karim has served as
22 Bombardier's sales representative in Asia. *Id.* ¶ 5.

23 8. The business-aircraft market in which the Jetcraft and FK Entities
24 operate is highly competitive and consists of a limited number of participants
25 competing with each other for sales to a relatively small group of customers.
26 Antonenko Decl. ¶ 5. Potential purchasers are highly sophisticated and often
27 advised by counsel and brokers, who review publicly available documents seeking
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1 information that may afford them an advantage when negotiating the price of an
2 aircraft or other terms of any ultimate purchase, including broker fees or
3 commissions. *Id.*

4 9. Sellers of business aircraft compete not only based on the attributes and
5 performance of the aircraft, but also on negotiated terms of aircraft purchase
6 agreements (“APAs”), along with the pricing and financing of the transaction. *Id.*

7 ¶¶ 5-10. Sellers treat all this information as highly confidential. *Id.*

8 10. Most APA terms are the subjects of negotiation between the parties to
9 the transaction—including (but not limited to) the aircraft price; closing procedures;
10 the down payment amounts, timing and method of payment; escrow requirements;
11 representations and warranties made by the buyer and seller; the payment and
12 delivery schedules; pre-delivery inspection and acceptance rights; registration
13 requirements; remedies for default or late payments; risk allocation devices,
14 including with respect to regulatory changes; termination rights (including what
15 remedies each party may seek in the event of termination); delivery location;
16 governing law; assignability; terms of the warranty and of aftermarket support;
17 training; and completion specifications. *Id.* ¶ 6.

18 11. Disclosure of APA terms would place Jetcraft, in its various roles as
19 either buyer or seller of aircraft, at a competitive disadvantage when negotiating
20 with current and future counterparties or competing with companies offering
21 comparable services, allowing them to assemble more attractive packages for
22 Jetcraft clients. *Id.* ¶¶ 9, 15. Such terms are therefore confidential for important
23 business reasons—maintaining Jetcraft’s competitiveness in the highly competitive
24 private aircraft industry. *Id.* ¶¶ 5–10, 14–15.

25 12. As a result, Jetcraft invariably includes strong confidentiality
26 provisions in its APAs. *Id.* ¶ 10. Jetcraft takes steps to limit access that those within
27 Jetcraft have to its APAs, purchase price information, and
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1 compensation/commission information. *Id.*

2 13. The risk of competitive information leaking to competitors is
3 heightened due to the significant public attention this adversary proceeding has
4 attracted. *Id.* ¶ 8; Fazal-Karim Decl. ¶ 14.

5 **ARGUMENT**

6 14. “On request of a party in interest, the Court *shall* ... protect an entity
7 with respect to a trade secret *or* confidential research, development, or commercial
8 information.” 11 U.S.C. § 107(b) (emphasis added). Protection thus extends not
9 just to trade secrets but to any “confidential ... commercial information.” *See, e.g.,*
10 *Video Software Dealers Assoc. v. Orion Pictures Corp. (In re Orion Pictures Corp.)*,
11 21 F.3d 24, 28 (2d Cir. 1994). Once the Court determines that information falls into
12 any of the categories described in § 107(b), protection is mandatory. *In re Roman*
13 *Catholic Archbishop of Portland in Ore.*, 661 F.3d 417, 430 (9th Cir. 2011).
14 Similarly, Section 107(b)’s mandatory protection extends to the “confidential ...
15 commercial information” not just of the debtors but of any “entity” involved in the
16 proceeding. 11 U.S.C. § 107(b); *see also, e.g., In re Borders Grp., Inc.*, 462 B.R.
17 42, 48 (Bankr. S.D.N.Y. 2011).

18 15. Confidential commercial information protected under § 107 is
19 information that would give “an unfair advantage to competitors.” *In re Itel Corp.*,
20 17 B.R. 942, 944 (9th Cir. B.A.P. 1982); *see also Orion Pictures*, 21 F.3d at 27.

21 16. Section 107 entirely supplants any common-law balancing of public
22 and private interests imposed *outside* the bankruptcy context. *Roman Catholic*
23 *Archbishop*, 661 F.3d at 430–31. Protection *must* follow whenever an entity
24 demonstrates that the information it seeks to protect is confidential commercial
25 information. *Id.*; *see* 11 U.S.C. § 107(b).

26 17. Here, the Jetcraft and FK Entities qualify as “parties in interest” under
27 section 107(b) of the Bankruptcy Code because certain allegations in the Proposed
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1 Amended Complaint (as well as Exhibit 10) contain information that had been
2 designated as Confidential (or Trustee and Attorneys' Eyes Only) by the Jetcraft and
3 FK Entities under the SPO. As set forth below and in the attached Declarations of
4 Peter Antonenko and Jahid Fazal-Karim, the Proposed Amended Complaint should
5 be sealed (and the Redacted Proposed Amended Complaint filed on May 10, 2021
6 should remain on the public record) because a number of its allegations and Exhibit
7 10 attached thereto reveal confidential and propriety commercial information
8 relating to, among other things, the terms of certain APAs, repurchase agreements,
9 and loan agreements, the Side Letter Agreement, sale and purchase prices for various
10 transactions involving Jetcraft, the profits and commissions that Jetcraft earned
11 and/or paid as part of these transactions, the commissions Mr. Fazal-Karim earned
12 (or was due) on various transactions identified in the Proposed Amended Complaint
13 (including commissions in his role as Bombardier's sales representative), and the
14 names of Mr. Fazal-Karim's clients with no relation to this proceeding (as well as
15 information that can be used to identify those clients), along with the estimated net
16 profit margin he made on transactions involving those clients (both in the body of
17 the Proposed Amended Complaint and in Exhibit 10 attached thereto).

18 18. For ease of reference, the Jetcraft and FK Entities have grouped the
19 proposed redactions by type of information and address each group individually
20 below. Moreover, for the convenience of the Court, attached hereto as Exhibit A, is
21 a table listing and explaining the specific redactions to the Proposed Amended
22 Complaint and Exhibit 10 attached thereto (by paragraph, line and/or section
23 numbers). The Jetcraft or FK Entities believe such redactions are warranted under
24 applicable law.

25 19. All told, the redactions requested by the Jetcraft and FK Entities affect
26 only 58 paragraphs out of over 615 paragraphs in the Proposed Amended Complaint
27 and only 1 out of 15 exhibits thereto (which collectively spanned over 300 pages).

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1 And in almost all instances, the redactions affected only a small portion of the
2 paragraph or document at issue.

3 **I. THE PROPOSED AMENDED COMPLAINT CONTAINS**
4 **VARIOUS CATEGORIES OF CONFIDENTIAL**
5 **COMMERCIAL INFORMATION THAT COULD HARM SOME**
6 **OR ALL OF THE JETCRAFT AND FK ENTITIES IF MADE**
7 **PUBLIC**

8 *a. Purchase/Sale Price of Aircraft and Terms of Aircraft Purchase*
9 *Agreements, Guaranty's, Repurchase Agreements, Loan*
10 *Agreement, and Side Letter Agreement*

11 20. A significant number of the redactions in the Proposed Amended
12 Complaint involve the specific purchase/sale price of aircraft that Jetcraft purchased
13 and/or sold. Specifically, the Proposed Amended Complaint reveals the prices at
14 which a Jetcraft entity bought and sold Planes 1, 10, and 16. AC ¶¶ 218, 222, 224,
15 227, 230 (purchase and re-sale price of Plane 16); 246–48, 334, 335, and 340–47
16 (purchase and re-sale price of Plane 1); 185, 334, 335, and 348–50 (purchase and re-
17 sale price of Plane 10). Moreover, the Proposed Amended Complaint reveals the
18 amount of payments Jetcraft required the buyer itself to pay on transactions (*e.g.*,
19 down payments) versus the amount of the purchase price that is financed. AC
20 ¶¶ 106, 122, and 254 (APAs); and ¶ 177 (loan agreement). Given the relatively small
21 market for private aircraft, Jetcraft considers the prices at which it buys and sells
22 aircraft to be confidential commercial information that, if publicly disseminated,
23 could harm it in future aircraft transactions. Antonenko Decl. ¶ 5; *Itel*, 17 B.R. at
24 944 (“[W]ithholding of commercial information is directed toward not affording an
25 unfair advantage to competitors by providing them information as to the commercial
26 operations of the [entity].”); *Formax Inc. v. Alkar-Rapidpak-MP Equip., Inc.*, 2014
27 WL 792086, at *3 (“Documents containing highly sensitive pricing information, ...
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1 sales dollar amounts, profit and loss data, and other financial records not normally
2 made known to the public may be properly filed under seal.”). In a similar vein, the
3 amount of the purchase price that Jetcraft requires a buyer to pay to Jetcraft directly
4 as a down payment (both in absolute dollars and as a percentage of sales price) in
5 contrast to the amount that is financed is also confidential commercial information
6 that future buyers could use against Jetcraft in future negotiations. *see* Antonenko
7 Decl. ¶¶ 6–10, 15; *see Formax*, 2014 WL 792086, at *3;. For these reasons (and
8 others), Jetcraft’s APAs for Planes 1, 10, and 16 each contains a confidentiality
9 provision.

10 21. Relatedly, the Proposed Amended Complaint also describes or quotes
11 terms of the Jetcraft’s APAs. AC ¶¶ 106, 122, and 254. As with the sales prices,
12 Jetcraft considers the specific terms of its APAs to be confidential commercial
13 information, as these are subject to negotiation and can affect the ultimate economics
14 of a transaction. Antonenko Decl. ¶ 6–10, 15. For example, what specific
15 representations Jetcraft demands a counterparty make in an APA or that Jetcraft is
16 willing to make sometimes vary from deal to deal and disclosure of the
17 representations in the APAs disclosed in the AC could harm future negotiations. *Id.*
18 ¶ 6, 15; *see, e.g.*, AC ¶ 254. Similarly, the remedies for breach or default provisions
19 that Jetcraft agrees to (or refuses to agree to) are confidential to Jetcraft. *Id.*; *see* AC
20 ¶ 122; *see also Orion Pictures*, 21 F.3d at 27–28 (“[T]he bankruptcy court properly
21 found ... that disclosing the sealed information, including the overall structure, terms
22 and conditions of the McDonald’s Agreement, renders very likely a direct and
23 adverse impairment to Orion’s ability to negotiate favorable ... agreements, thereby
24 giving Orion’s competitors an unfair advantage.”). Again, as a result, Jetcraft insists
25 that all of its APAs contain confidentiality provisions. Antonenko Decl. ¶ 10.

26 22. The Proposed Amended Complaint also refers to the specific terms of
27 Repurchase Agreements that Jetcraft entered into with the lender on Planes 1 and
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1 10, and terms of a loan agreement related to the initial purchase of Plane 1. AC
2 ¶ 131 and 193. The Repurchase Agreements were entered into in connection with
3 securing financing for Planes 1 and 10. Antonenko Decl. ¶¶ 21, 23–24. Given
4 Jetcraft’s role in working with lenders regarding financing for planes they sell, the
5 specific terms of what Jetcraft is willing to do (or not do) in connection with that
6 financing are commercially sensitive. *Id.*; see also *Orion Pictures Corp.*, 21 F.3d at
7 27–28. If the specific terms are publicly disclosed, it could put Jetcraft at a
8 commercial and competitive disadvantage when negotiating with lenders on future
9 deals. *Id.* The redactions to the Proposed Amended Complaint address the core
10 economic aspects of the Repurchase Agreement that could cause Jetcraft competitive
11 harm in future deals. *Id.* ¶ 24.

12 23. Finally, the Proposed Amended Complaint refers to the specific terms
13 of the Side Letter Agreement regarding Plane 16. AC ¶ 224 (last sentence). While
14 the existence of that agreement is not confidential, the specific terms (especially the
15 financial terms) are confidential because knowledge of these terms by potential
16 counterparties could be used by those counterparties against Jetcraft in future
17 negotiations. Antonenko Decl. ¶¶ 17, 19–20. For this reason, the Side Letter
18 Agreement (like the APAs) contains a confidentiality provision. *Id.* The redactions
19 to the Proposed Amended Complaint are limited to the financial terms of the Side
20 Letter Agreement. *Id.* ¶ 20.

21 *b. Profits on Transactions and Commissions Paid by Jetcraft*

22 24. The Proposed Amended Complaint also discloses the specific amounts
23 of the profits that Jetcraft made on various aircraft transactions together with internal
24 commissions that Jetcraft paid to Jetcraft owners based on those profit amounts. AC
25 ¶¶ 129, 191, 248, 347, and 349. The amount of profit Jetcraft makes on aircraft
26 transactions is confidential commercial information for Jetcraft. Antonenko Decl.
27 ¶¶ 25, 27; see also *Formax*, 2014 WL 792086, at *3. Disclosure of this data would
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1 give future purchasers an advantage when seeking to negotiate down a sale price,
2 and as with other pricing-term information, disclosure would also hand competitors
3 the knowledge necessary to develop offers that could make it difficult for the Jetcraft
4 to compete for sales. *Id.* Moreover, the release of the profit amount, together with
5 the internal commissions will disclose the details of Jetcraft’s confidential
6 compensation structure. *Id.*; *In re Georgetown Steel Co.*, 306 B.R. 542, 546 (D.S.C.
7 2004) (approving sealing of salary information when testimony showed that “the
8 Company has always considered salary and benefit information confidential and
9 proprietary in nature”). Disclosing this compensation-related information (which
10 Jetcraft believes is unique in the industry) could harm Jetcraft’s ability to retain
11 employees. *Id.* ¶ 27.

12 *c. Commissions Earned by Mr. Fazal-Karim*

13 25. The Proposed Amended Complaint contains numerous allegations
14 about the specific amounts that Mr. Fazal-Karim either was paid or was due to be
15 paid as commissions in his role as Bombardier’s Sales Representative. AC ¶¶ 129,
16 147, 153, 173, 191, 217, 248, 287e–g, and 349. Mr. Fazal-Karim considers the
17 commissions he was either paid or due to be paid pursuant to those agreements to be
18 personally and commercially confidential. Fazal-Karim Decl. ¶¶ 6–9; *see also*
19 *Georgetown Steel, LLC*, 306 B.R. at 546. Mr. Fazal-Karim understands that
20 Bombardier considers this information to be commercially sensitive as well and that
21 it is generally considered sensitive information in the private aircraft market. *Id.*
22 ¶¶ 8–9. Customers could use the amount paid in a commission as leverage in seeking
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1 a lower sale price. *Id.* Competitors could similarly offer to charge lower
2 commissions in an attempt to lure customers away. *Id.*

3 *d. Exhibit 10 – Mr. Fazal-Karim’s Clients and Net Profits, and*
4 *Revenue*

5 26. Exhibit 10 to the Proposed Amended Complaint contains a spreadsheet
6 prepared by Mr. Fazal-Karim. That spreadsheet contains the names of Mr. Fazal-
7 Karim’s clients/contacts in the Asian and Middle Eastern aircraft market whose
8 aircraft transactions he was involved in. Fazal-Karim Decl. ¶¶ 10–13. Mr. Fazal-
9 Karim’s client list is undoubtedly confidential commercial information. *Id.* Indeed,
10 courts often conclude that client lists are not just confidential commercial
11 information, but also proprietary trade secret information subject to protection from
12 public disclosure. *E.g., PMMR, Inc. v. Chaloner*, 2015 WL 13283060, at *3 (C.D.
13 Cal. 2015) (noting that a “client list qualifies as a trade secret” if it derives
14 independent economic value from not being generally known and is subjected to
15 reasonable efforts to maintain its secrecy). Additionally, disclosing the tail numbers
16 of aircraft allows competitors to easily identify the customers associated with these
17 transactions. Fazal-Karim Decl. ¶¶ 10–13. In addition to client names, Exhibit 10
18 lists the approximate net profit that Mr. Fazal-Karim estimated he earned on each of
19 the listed transactions. *Id.* Profit information is confidential and disclosing it
20 publicly could cause him harm in future transactions. *Id.*; *see Formax*, 2014 WL
21 792086, at *3.

22 27. Finally, the bottom portion of the spreadsheet reflects amounts that Mr.
23 Fazal-Karim forwarded to one of his personal advisors who was assisting him with
24 his financial affairs. *Id.* As with other dollars-and-cents information, disclosing
25 amounts Mr. Fazal-Karim received in aircraft-sale or -purchase transactions would
26 hand competitors and purchasers information they could try to leverage in future
27 transactions. *Id.*; *see Formax*, 2014 WL 792086, at *3.

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1 WHEREFOR, the Jetcraft and FK Entities respectfully request that the Court
2 grant Trustee’s Motion for Leave to File the Proposed Amended Complaint Under
3 Seal and allow the parties to file the Proposed Amended Complaint under seal and
4 to maintain the Redacted Proposed Amended Complaint filed on May 10, 2021 on
5 the public record.

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Respectfully Submitted,

Dated: May 12, 2021

KING & SPALDING LLP

By:/s/ Aaron S. Craig_____

*Attorneys for Jetcraft Corporation, Jetcraft
Global, Inc.; JetCoast 5000-5, LLC; Orion
Aircraft Holdings Ltd.; Jetcraft Asia Limited,
FK Group Ltd, FK Partners Limited; and
Jahid Fazal-Karim*

EXHIBIT A

JETCRAFT AND FK ENTITIES’ PROPOSED REDACTIONS AND REASONS FOR REDACTIONS TO THE PROPOSED AMENDED COMPLAINT IN THE *CAVIC* ACTION¹

Paragraph	Reasons for Redactions
Proposed Amended Complaint	
AC ¶ 93, line 5 RL ¶ 93, line 21	This contains highly confidential commercial information relating to sensitive terms of the aircraft purchase agreement, specifically the deposit amount. Antonenko Decl. ¶¶ 10–15.
AC ¶ 105, lines 7–12 RL ¶ 105, lines 26-28, 1-3	This contains highly confidential commercial information relating to sensitive terms of the aircraft purchase agreement, specifically (a) the deposit amount and timing, (b) the payment schedule and (c) remedies in the event of a breach. <i>Id.</i>
AC ¶ 122, lines 13–16 RL ¶ 122, lines 7-10	This contains highly confidential commercial information relating to sensitive terms of the aircraft purchase agreement, specifically (a) the price of the aircraft, (b) deposit amount and timing, and (c) remedies in the event of a breach. <i>Id.</i>
AC ¶ 123, line 17 RL ¶ 123, line 11	This contains highly confidential commercial information relating to sensitive terms of the aircraft purchase agreement, specifically the deposit amount. <i>Id.</i>
AC ¶ 126, line 24 RL ¶ 126, line 18	This contains highly confidential commercial information relating to sensitive terms of the aircraft purchase agreement, specifically the deposit amount. <i>Id.</i>
AC ¶ 127, line 2 RL ¶ 127, line 21	This contains highly confidential commercial information relating to sensitive terms of the aircraft purchase agreement, specifically the deposit amount. <i>Id.</i>
AC ¶ 129, lines 6–7 RL ¶ 129, lines 25-26	This contains highly confidential commercial information relating to the transactions, specifically the (a) amount of profits and (b) amount of internal sales commissions. <i>Id.</i> ¶ 25, 27; Fazal–Karim Decl. ¶¶ 5–11.
AC ¶ 131, lines 24–25 RL ¶ 131, lines 16-17	This contains highly confidential commercial information relating to sensitive terms of the repurchase agreement, specifically calculation of the repurchase obligation and triggering event for such obligation. <i>Id.</i> ¶¶ 21, 23–24.
AC ¶ 147, line 4 RL ¶ 147, line 25	This contains highly confidential commercial information relating to the amount of sales commissions. Fazal–Karim Decl. ¶¶ 6–9.
AC ¶ 153, line 1 RL ¶ 153, line 23	This contains highly confidential commercial information relating to the amount of sales commissions. <i>Id.</i>

¹ Citations to the Proposed Amended Complaint are cited as “AC ¶ ____.” Citations to the Redline are cited as “RL ¶ ____.” Citations to Declaration of Peter Antonenko are cited as “Antonenko Decl. ¶ ____.” Citations to Declaration of Jahid Fazal-Karim are cited as “Fazal-Karim Decl. ¶ ____.” Citations to the exhibits to Schedule 2 of the Proposed Amended Complaint are cited as “Exhibit “2–____.”

Paragraph	Reasons for Redactions
AC ¶ 173, lines 12, 15, 18 RL ¶ 173, lines 10, 13, 16	This contains highly confidential commercial information relating to the amount of sales commissions. <i>Id.</i>
AC ¶ 177, lines 5–7 RL ¶ 177, lines 4-6	This contains highly confidential commercial information relating to sensitive terms of the loan agreement, specifically the terms and amount of the interest payment obligations. Antonenko Decl. ¶ 13–16.
AC ¶ 185, line 3 RL ¶ 185, line 3	This contains highly confidential commercial information relating to sensitive terms of the aircraft purchase agreement, specifically the price of the aircraft. <i>Id.</i> ¶¶ 10–15.
AC ¶ 191, lines 23–24 RL ¶ 191, lines 23-24	This contains highly confidential commercial information relating to the (a) amount of profits, (b) amount of internal sales commissions, and (c) amount of broker fees. <i>Id.</i> ¶¶ 25, 27; Fazal–Karim Decl. ¶¶ 6–9.
AC ¶ 193, lines 16–19 RL ¶ 193, lines 16-19	This contains highly confidential commercial information relating to sensitive terms of the repurchase agreement, specifically calculation of the repurchase obligation and triggering event for such obligation. <i>Id.</i> ¶¶ 21, 23–24.
AC ¶ 217, line 17 RL ¶ 217, line 21	This contains highly confidential commercial information relating to the amount sales commissions. Fazal–Karim Decl. ¶¶ 6–9.
AC ¶ 218, line 25 RL ¶ 218, line 2	This contains highly confidential commercial information relating to sensitive terms of the aircraft purchase agreement, specifically the price of the aircraft. Antonenko Decl. ¶¶ 10–15.
AC ¶ 222, line 18 RL ¶ 222, line 23	This contains highly confidential commercial information relating to sensitive terms of the aircraft purchase agreement, specifically the price of the aircraft. <i>Id.</i>
AC ¶ 224, lines 27, 1–3 RL ¶ 224, lines 5, 7-9	This contains highly confidential commercial information relating to sensitive terms of the side letter agreement, specifically core economic terms, and sensitive terms of the aircraft purchase agreement and letter of intent, specifically the price of the aircraft. <i>Id.</i> ¶¶ 10–15, 17, 19–20, 25, 27.
AC ¶ 227, lines 16–17 RL ¶ 227, lines 22-23	This contains highly confidential commercial information relating to sensitive terms of the aircraft purchase agreement, specifically the price of the aircraft. <i>Id.</i> ¶¶ 10–15.
AC ¶ 230, line 2 RL ¶ 230, line 9	This contains highly confidential commercial information relating to sensitive terms of the aircraft purchase agreement, specifically the proposed price of the aircraft. <i>Id.</i>
AC ¶ 246, lines 25–26 RL ¶ 246, lines 7-8	This contains highly confidential commercial information relating to sensitive terms of the aircraft purchase agreement, specifically the price of the aircraft. <i>Id.</i>
AC ¶ 247, lines 3,5 RL ¶ 247, lines 11, 13	This contains highly confidential commercial information relating to sensitive terms of the aircraft purchase agreement, specifically the price of the aircraft. <i>Id.</i>

Paragraph	Reasons for Redactions
AC ¶ 248, lines 9–11 RL ¶ 248, lines 17-19	This contains highly confidential commercial information relating to sensitive terms of the aircraft purchase agreement, specifically the (a) price of the aircraft, (b) amount of profits, and (c) amount of internal sales commissions. <i>Id.</i> ¶¶ 10–15, 25, 27.
AC ¶ 254, lines 4–5 RL ¶ 254, lines 14-15	This contains highly confidential commercial information relating to sensitive terms of the aircraft purchase agreement, specifically the required representation and warranties of buyer. <i>Id.</i> ¶¶ 10–15.
AC ¶ 287a, lines 28, 2 RL ¶ 287a, lines 15, 17	This contains highly confidential commercial information relating to the amount of estimated net profits from sales commissions. Fazal–Karim Decl. ¶¶ 10–13.
AC ¶ 287b, line 4 RL ¶ 287b, line 19	This contains highly confidential commercial information relating to the amount of estimated revenues from sales commissions. <i>Id.</i>
AC ¶ 287d, line 11 RL ¶ 287d, line 26	This contains highly confidential commercial information relating to the amount of estimated net profits from sales commissions. <i>Id.</i>
AC ¶ 287e, line 14 RL ¶ 287e, line 2	This contains highly confidential commercial information relating to the amount of estimated net profits from sales commissions and actual sales commissions due. <i>Id.</i>
AC ¶ 287f, lines 16, 18 RL ¶ 287f, lines 4, 6	This contains highly confidential commercial information relating to the amount of estimated net profits from sales commissions and actual sales commissions due. <i>Id.</i>
AC ¶ 287g, lines 20–21 RL ¶ 287g, lines 8-9	This contains highly confidential commercial information relating to the amount of estimated net profits from sales commissions and actual sales commissions due. <i>Id.</i>
AC ¶ 287i, line 1 RL ¶ 287i, line 17	This contains highly confidential commercial information relating to the amount of estimated revenues from sales commissions. <i>Id.</i>
AC ¶ 334, lines 12, 18 RL ¶ 334, lines 9, 15	This contains highly confidential commercial information relating to sensitive terms of the aircraft purchase agreements, specifically the price of the aircraft. Antonenko Decl. ¶¶ 10–15.
AC ¶ 335, lines 11–12, 23–24 RL ¶ 335, lines 25-26, 10-11	This contains highly confidential commercial information relating to sensitive terms of the aircraft purchase agreements, specifically the price of the aircraft. <i>Id.</i>
AC ¶ 340, line 13 RL ¶ 340, line 9	This contains highly confidential commercial information relating to the terms of the aircraft purchase agreement, specifically the price of the aircraft. <i>Id.</i>
AC ¶ 341, line 16 RL ¶ 341, line 12	This contains highly confidential commercial information relating to sensitive terms of the aircraft purchase agreement, specifically the proposed prices of the aircraft. <i>Id.</i>
AC ¶ 342, lines 18, 19, 21 RL ¶ 342, lines 14-15, 17	This contains highly confidential commercial information relating to sensitive terms of the aircraft purchase agreement, specifically the proposed prices of the aircraft and deposit amount. <i>Id.</i>

Paragraph	Reasons for Redactions
AC ¶ 343, lines 22–23 RL ¶ 343, line 19	This contains highly confidential commercial information relating to sensitive terms of the aircraft purchase agreement, specifically the price of the aircraft. <i>Id.</i>
AC ¶ 344, lines 25–26 RL ¶ 344, lines 21-22	This contains highly confidential commercial information relating to sensitive terms of the aircraft purchase agreement, specifically the price of the aircraft. <i>Id.</i>
AC ¶ 345, lines 3–5 RL ¶ 345, lines 27, 1-2	This contains highly confidential commercial information relating to sensitive terms of the aircraft purchase agreement, specifically the price of the aircraft. <i>Id.</i>
AC ¶ 346, lines 6–7 RL ¶ 346, lines 3-4	This contains highly confidential commercial information relating to sensitive terms of the aircraft purchase agreement, specifically the actual and proposed price of the aircraft. <i>Id.</i>
AC ¶ 347, lines 11, 14–15 RL ¶ 347, lines 8, 11-12	This contains highly confidential commercial information relating to sensitive terms of the aircraft purchase agreement, specifically the (a) price of the aircraft and (b) the amount of profits, and the amount of internal sales commissions. <i>Id.</i> ¶¶ 10–15, 25, 27.
AC ¶ 348, line 20 RL ¶ 348, line 17	This contains highly confidential commercial information relating to sensitive terms of the aircraft purchase agreement, specifically the price of the aircraft. <i>Id.</i> ¶¶ 10–15.
AC ¶ 349, lines 22, 25–26 RL ¶ 349, lines 19, 22-23	This contains highly confidential commercial information relating to sensitive terms of the aircraft purchase agreement, specifically the (a) price of the aircraft and (b) the amount of profits, and the amount of internal sales commissions. <i>Id.</i> ¶¶ 10–15, 25, 27.
AC ¶ 350, line 5 RL ¶ 350, line 3	This contains highly confidential commercial information relating to sensitive terms of the aircraft purchase agreement, specifically the price of the aircraft. <i>Id.</i>
AC ¶ 399, line 28 RL ¶ 399, line 7	This contains highly confidential commercial information relating to the amount of sales commissions. Fazal–Karim Decl. ¶¶ 10–13.
Exhibit 10 to the Proposed Amended Complaint	
	This contains highly confidential commercial information relating to estimated net profits from sales commissions, actual sales commissions due, the identity of clients and contacts in the Asian and Middle East private aircraft market, and data (plane serial numbers) that can be used to identify other clients. Fazal–Karim Decl. ¶ 10–13.

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Fazal-Karim*

**IN THE UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA – LOS ANGELES DIVISION**

IN RE:

ZETTA JET PTE Ltd., a Singaporean
corporation

Debtor.

Lead Case No.: 2:17-bk-21386-SK

Jointly administered with:

2:17-bk-21387-SK

(Zetta Jet PTE Ltd., a Singaporean
corporation)

CHAPTER 7 CASES

ADV. PRO. NOS. 2:19 AP 01382-SK
AND 2:19 AP 01147-SK

**DECLARATION OF PETER
ANTONENKO IN SUPPORT OF
JETCRAFT AND FK PARTNERS'
RESPONSE TO TRUSTEE'S
APPLICATION TO FILE
UNREDACTED AMENDED
COMPLAINT AND REDLINE
UNDER SEAL**

1 JONATHAN D. KING, solely in his
2 capacity as Chapter 7 Trustee of Zetta
3 Jet USA, Inc. and Zetta Jet PTE, Ltd.,

4 Plaintiff,

5 v.

6 JETCRAFT CORPORATION,
7 JETCRAFT GLOBAL, INC.,
8 JETCOAST 5000-5 LLC, ORION
9 AIRCRAFT HOLDINGS LTD., FK
10 GROUP LTD, FK PARTNERS
11 LIMITED JAHID FAZAL-KARIM,
12 BOMBARDIER AEROSPACE
13 CORPORATION, BOMBARDIER,
14 INC., LEARJET, INC., ECN
15 AVIATION INC. F/K/A ELEMENT
16 AVIATION INC., and ECN CAPITAL
17 CORPORATION AS SUCCESSOR
18 TO ELEMENT FINANCIAL
19 CORPORATION,

20 Defendants.

21 JONATHAN D. KING, solely in his
22 capacity as Chapter 7 Trustee of Zetta
23 Jet USA, Inc. and Zetta Jet PTE, Ltd.,
24 Plaintiff,

25 v.

26 CAVIC AVIATION LEASING
27 (IRELAND) 22 CO. DESIGNATED
28 ACTIVITY COMPANY; and
BOMBARDIER AEROSPACE
CORPORATION,
Defendants.

Date: June 30, 2021
Time: 9:00 a.m. (PDT)
Place: All hearings via
Government Zoom

Judge: Hon. Sandra R. Klein

1 I, Peter Antonenko, hereby declare under penalty of perjury as follows:

2 1. I am over 18 years of age. Except as otherwise noted, I have personal
3 knowledge of the matters set forth herein and, if called as a witness, would testify
4 competently thereto. This declaration (the "Declaration") is submitted in support
5 of Jetcraft and FK Entities' Response to Trustee's Application to File Unredacted
6 Amended Complaint and Redline under Seal in case number 2:19 AP 01382-SK (the
7 "Jetcraft Action")¹ and of Non-Party's Jetcraft and FK Entities' Response to
8 Trustee's Application to File Unredacted Amended Complaint and Redline under
9 Seal in case number 2:19 AP 01147-SK (the "CAVIC Action")² (collectively, the
10 "Responses").³ I am an attorney licensed to practice law in Minnesota since 2002.
11 I currently serve as the Chief Operating Officer of Jetcraft Corporation and am a
12 minority shareholder and board member of Jetcraft Global (UK) Limited
13 (collectively, "Jetcraft"). I have served in this role since 2014, and previously served
14 as the Executive Vice President, Senior Vice President and General Counsel, and
15 Vice President of Operations at different times since I joined Jetcraft in 2006.
16 Currently, Jetcraft has approximately 40 employees.

17 2. Jetcraft is in the business of aircraft sales, acquisition, leasing, and
18 related services, and it was in existence for approximately 40 years before I joined
19 Jetcraft in 2006. In the course of my roles, I have been and remain involved in
20 Jetcraft's operations, and I currently oversee Jetcraft's marketing, legal, and
21

22 ¹ I understand that the Proposed Amended Complaint and the Redline in the
23 *Jetcraft Action* contain identical information and paragraph numbers. Therefore,
24 any reference or citation to the Proposed Amended Complaint in the *Jetcraft*
25 *Action* in this Declaration is also a reference to the Redline therein.

26 ² I understand that the Proposed Amended Complaint and the Redline in the
27 *CAVIC Action* contain identical information and paragraph numbers. Therefore,
28 any reference or citation to the Proposed Amended Complaint in *CAVIC Action* in
this Declaration is also a reference to the Redline therein.

³ Capitalized terms not defined herein have the meanings ascribed to them in
the Responses.

1 transactional management groups, including in-house counsel, who have
2 responsibility for day-to-day operations. More specifically, I have been and am
3 involved with negotiating and documenting Jetcraft's aircraft purchase and sale
4 transactions, including financing aspects of those deals, in the private aircraft
5 market. Jetcraft's counterparties on the purchase and sale transactions include
6 original aircraft manufacturers, corporations, sovereigns, and individuals. I have
7 significant experience negotiating with these purchasers and sellers, as well as with
8 maintenance providers, vendors, advisors, consultants, and attorneys for each.

9 3. As explained herein, the material from the Proposed Amended
10 Complaint described below constitutes confidential commercial information. Public
11 disclosure of such information creates a significant risk of harm for Jetcraft's
12 business and should, therefore, be redacted from the publicly-filed Proposed
13 Amended Complaint.

14 4. Jetcraft is a market leader in the business of buying and selling private
15 aircraft. Jetcraft generates a portion of its revenue by acquiring new or pre-owned
16 aircraft and then ultimately reselling or trading those aircraft to third parties. In
17 addition, Jetcraft earns brokerage fees when it matches aircraft buyers and sellers
18 and facilitates their transactions. Jetcraft's profitability is a product of the margins
19 and fees it earns on aircraft transactions and the expenses, financing costs, and
20 commissions it incurs to complete such transactions.

21 5. Given the capital-intensive nature of private aircraft transactions, with
22 prices that can often exceed \$50 million, the market in which Jetcraft operates is
23 highly competitive and consists of a limited number of participants competing with
24 one another for sales to a relatively small group of global clientele. The parties
25 involved in these transactions, and their advisors, are highly sophisticated and seek
26 to utilize their experience and publicly available information to gain advantages in
27 their transactions through negotiating leverage. That leverage is often directly
28 correlated to the purchase and sale prices and the terms of the final transaction

1 agreements, which in turn affect the amount of brokerage fees earned or
2 commissions paid as part of the transactions. Jetcraft's business success depends
3 not only on the transaction economics, but also on the structure of the transactions
4 and agreements, and the contractual terms and conditions negotiated amongst the
5 parties.

6 6. The agreements governing the purchase and sale of the aircraft are
7 commonly known as aircraft purchase agreements ("APA"). During the
8 negotiations of APAs, the parties and their advisors diligently negotiate the terms of
9 the transaction, including the terms of the APA and related financing because those
10 terms affect the ultimate economics of a transaction. APA terms that are commonly
11 negotiated, include, but are not limited to, the aircraft price; closing procedures; the
12 down payment amounts, timing and method of payment; escrow requirements;
13 representations and warranties made by the buyer and seller; the payment and
14 delivery schedules; pre-delivery inspection and acceptance rights; registration
15 requirements; remedies for default or late payments; risk allocation devices,
16 including with respect to regulatory changes; termination rights (including what
17 remedies each party may seek in the event of termination); delivery location;
18 governing law; assignability; terms of the warranty and of aftermarket support;
19 training; and completion specifications.

20 7. Jetcraft's customers also enlist Jetcraft and leverage its expertise to
21 advise on the structure and terms for financing the aircraft acquisition. The terms of
22 financing are heavily negotiated, including but not limited to escrow requirements;
23 security interests and lien releases; principal and interest payment obligations and
24 timing, which are closely correlated to the APA payment schedule; remedies upon
25 default and default interest rates; credit enhancement mechanisms which may be or
26 could be required by lenders, including guaranties, interest rate protection or post-
27 default rights and remedies.

28

1 8. As indicated above, giving Jetcraft’s customers, suppliers, lenders and
2 competitors, among others, public access to details such as sales price and the other
3 contract terms identified above could significantly affect or impair Jetcraft’s ability
4 to fairly engage and protect its interests in future negotiations. Jetcraft’s potential
5 customers (both sellers and purchasers of private aircraft) are likely to discover and
6 leverage such confidential terms (including sales prices) to coerce Jetcraft into either
7 walking away from a deal or accepting terms that it otherwise would not, essentially
8 forcing Jetcraft to negotiate against itself based on prices and terms disclosed from
9 other transactions. The risk that disclosure of such confidential terms will
10 disadvantage Jetcraft in future negotiations is magnified in this case given the
11 highly-publicized nature of this case within the private aircraft industry. In fact,
12 since the filing of the initial Adversary Complaint in September 2019, potential and
13 existing customers have discussed the allegations made against Jetcraft with Jetcraft
14 personnel and competitors have tried to use such allegations to harm Jetcraft in the
15 market.

16 9. It is for these reasons that the structure of these transactions, namely the
17 terms and conditions of each purchase or sale, and the prices at which Jetcraft
18 acquires or sells such aircraft, constitute highly confidential commercial
19 information. The public disclosure of the information described in this Declaration
20 would place Jetcraft at a marked disadvantage in negotiating with prospective
21 suppliers and purchasers, and it could also impair Jetcraft’s ability to effectively
22 serve as a broker in other transactions. Namely, it would put Jetcraft entities at a
23 competitive disadvantage, allowing competing sellers of business aircraft to
24 assemble packages that are more attractive to potential purchasers.

25 10. For the reasons set forth above, Jetcraft requires—as it did with the
26 APAs and related documents referenced in this Declaration—that all letters of intent,
27 APAs, related financing agreements, and ancillary transaction documents related
28 thereto, include strict confidentiality provisions or designations. Jetcraft takes steps

1 to limit access that those within Jetcraft have to its APAs, purchase price
2 information, and compensation/commission information.

3 **A. Prices and Terms of APAs and Loan Agreements**

4 11. The Proposed Amended Complaint in the *Jetcraft* Action identifies the
5 prices at which Jetcraft bought or sold Planes 1, 10 and 16, along with the amount
6 of down payments Jetcraft required buyer pay directly to Jetcraft (as opposed to in
7 escrow). *Jetcraft* AC ¶¶ 224, 228, 230, 233, 236, 816, 821, 828, 831, 840, and 853
8 (purchase and re-sale price of Plane 16); 252–54, 344, 345, and 350–57 (purchase
9 and re-sale price of Plane 1); 191, 344, 345, and 358–60 (purchase and re-sale price
10 of Plane 10); and 94, 123–24, and 127–28 (amount of deposits). Furthermore, the
11 Proposed Amended Complaint identifies various prices for Plane 1 that the parties
12 proposed at different stages of the negotiation process. *Jetcraft* AC ¶¶ 340-46
13 (proposed re-sale prices for Plane 1).

14 12. The Proposed Amended Complaint in the *CAVIC* Action likewise
15 identifies the same information as described in paragraph 11 above. *CAVIC* AC ¶¶
16 218, 222, 224, 227, 230 (purchase and re-sale price of Plane 16); 246–48, 334, 335,
17 and 340–47 (purchase and re-sale price of Plane 1); 185, 334, 335, and 348–50
18 (purchase and re-sale price of Plane 10); and 93, 122–23, and 126–27 (amount of
19 deposits); 340–46 (proposed re-sale prices for Plane 1).

20 13. Similarly, the Proposed Amended Complaint in the *Jetcraft* Action and
21 the Proposed Amended Complaint in the *CAVIC* Action also describe or quote terms
22 of the Jetcraft APAs and a loan agreement of a Jetcraft affiliate. *Jetcraft* AC ¶¶ 106,
23 123, 260, and 621 (APAs); and 183 (loan agreement); and *CAVIC* AC ¶¶ 106, 122,
24 and 254 (APAs); and 177 (loan agreement).

25 14. As indicated above, Jetcraft’s sale/purchase prices and the terms of the
26 APAs constitute confidential commercial information that would put Jetcraft at a
27 competitive disadvantage in competing with other aircraft brokers and in future
28

1 negotiations with aircraft sellers and buyers. Moreover, these prices were included
2 within APAs that each contained strict confidentiality provisions.

3 15. I have reviewed the 5 APAs for Planes 1, 10 and 16, which were
4 attached as exhibits to Schedule 2 of the Proposed Amended Complaint in the
5 *Jetcraft* Action. Exhibits 2-1, 2-2, 2-93, 2-121, and 2-124. I assessed which portions
6 of those agreements would put Jetcraft, in its various roles as either buyer or seller
7 of aircraft, at a competitive disadvantage when negotiating with current and future
8 counterparties or competing with companies offering comparable services. In many
9 instances, disclosure of a specific term could harm Jetcraft. In other instances, the
10 fact that a certain term or representation is not included in a specific section of the
11 agreement could harm Jetcraft because it would show future counterparties that
12 Jetcraft did not require a certain term or representation that Jetcraft is demanding
13 from them. I have reviewed all of the proposed redactions to those 5 APAs and the
14 redactions are limited to provisions relating to the (i) price of the aircraft, (ii)
15 inspection rights, (iii) delivery conditions, (iv) deposit, (v) termination rights, (vi)
16 default rights, (vii) cure rights, (viii) buyer and seller representations and warranties,
17 (ix) transportation expenses, (x) remedies, including liquidated damages or
18 reimbursement rights, and (xi) warranty rights. These provisions can all have
19 economic impact on Jetcraft in its aircraft transactions, such that their disclosure can
20 impact the economics of future deals, and these redactions are necessary to protect
21 Jetcraft's competitive position in the market. These provisions, which are redacted
22 from Exhibits 2-1, 2-2, 2-93, 2-121, and 2-124, are set out in Exhibit B to the
23 Response filed in the *Jetcraft* Action.

24 16. The discharges and releases for Planes 1 and 10, which are attached as
25 exhibits to Schedule 2 of the Proposed Amended Complaint, (Exhibits 2-7 and 2-
26 95), were executed in connection with APAs pursuant to the financing terms for
27 Jetcraft's acquisition of such aircraft. The releases therefore contain commercially
28 sensitive information, specifically relating to the nature and extent of guaranties

1 negotiated with Jetcraft's lenders. Public disclosure of this information would
2 prejudice Jetcraft's negotiation with its lenders. I have likewise reviewed all the
3 proposed redactions to those 2 agreements and redactions are limited to only
4 information relating to the scope of the guaranties. These provisions, which are
5 redacted from Exhibits 2-7 and 2-95, are set out in Exhibit B to the Response filed
6 in the *Jetcraft* Action.

7 **B. Side Letter Agreement and Repurchase Agreements**

8 17. The Proposed Amended Complaint in *Jetcraft* Action also references
9 specific terms of a Side Letter Agreement between Jetcraft and Zetta PTE related to
10 Plane 16. *Jetcraft* AC ¶¶ 230 (last sentence) and 852.

11 18. The Proposed Amended Complaint in *CAVIC* Action similarly
12 references such terms of the Side Letter Agreement. *CAVIC* AC ¶¶ 224 (last
13 sentence).

14 19. The existence of the Side Letter Agreement is not confidential.
15 However, the specific terms constitute confidential commercial information because
16 they relate to the core economic terms of the transaction involving Plane 16.
17 Knowledge of such terms would give future counterparties negotiating leverage
18 against Jetcraft as they could, for example, demand side letters with similar terms.
19 As with the APAs, the Side Letter Agreement is subject to a strict confidentiality
20 provision.

21 20. As with the APAs and documents related thereto, I have also reviewed
22 the Side Letter Agreement attached as an exhibit to Schedule 2 of the Proposed
23 Amended Complaint in the *Jetcraft* Action. Exhibit 2-129. I limited the redaction
24 of that agreement to only the profit-split percentages which, if publicly disclosed,
25 could be used by future counterparties against Jetcraft in future negotiations. The
26 provisions that are redacted from Exhibit 2-129 are set out in Exhibit B to the
27 Response filed in the *Jetcraft* Action.

28

1 21. The Proposed Amended Complaint in the *Jetcraft* Action also includes
2 allegations describing the specific terms of Jetcraft’s purported obligations under
3 certain Repurchase Agreements between ECN and Jetcraft relating to Plane 1 and
4 10, in connection with securing financing for those aircraft, and terms of a loan
5 agreement related to the initial purchase of Plane 1. *Jetcraft* AC ¶¶ 132 and 199.

6 22. The Proposed Amended Complaint in the *CAVIC* Actions contains
7 identical descriptions. *CAVIC* AC ¶¶ 131 and 193.

8 23. As described above, however, the specific terms and conditions, along
9 with the obligations created thereunder, constitute confidential, commercially
10 sensitive information because if the details of the terms were disclosed publicly,
11 Jetcraft would be unfairly disadvantaged in ongoing and future negotiations with
12 lenders. For example, future lenders might demand that Jetcraft agree to similar
13 terms in future transactions before agreeing to finance a deal for a Jetcraft customer.

14 24. I reviewed the Plane 10 Repurchase Agreement attached as an exhibit
15 to Schedule 2 of the proposed Amended Complaint in the *Jetcraft* Action (Exhibit
16 2-22) and the terms that are redacted reflect the core economic substance of the
17 Repurchase Agreement the disclosure of which, as described above, could harm
18 Jetcraft in ongoing or future negotiations with lenders. The provisions that are
19 redacted from Exhibit 2-22 are set out in Exhibit B to the Response filed in the
20 *Jetcraft* Action.

21 **C. Profits and Commissions**

22 25. The Proposed Amended Complaint in the *Jetcraft* Action further
23 discloses the specific amounts of profits Jetcraft made and the internal commissions
24 it paid on Planes 1 and 10, along with the broker fee it earned on Plane 16. *Jetcraft*
25 AC ¶¶ 8, 130, 197, 254, 357, and 359.

26 26. The Proposed Amended Complaint in the *CAVIC* Action identically
27 discloses the amount of Jetcraft’s profits, internal commissions and broker fees.
28 *CAVIC* AC ¶¶ 129, 191, 248, 347, and 349.

1 27. The amount of profits generated, commissions paid, and fees earned
2 constitute confidential and proprietary commercial information. Providing
3 competitors and counterparties access to profits and fees would give them a
4 competitive advantage over Jetcraft, enabling competitors to undercut Jetcraft's
5 prices or terms and providing counterparties leverage to negotiate reduced purchase
6 prices, brokerage fees, or other favorable terms Jetcraft would not otherwise
7 entertain. Moreover, the amounts paid in internal commissions (which Jetcraft
8 believes is unique in the private aircraft market) could be used by competitors to
9 attempt to poach Jetcraft's employees or agents, thus impairing Jetcraft's ability to
10 retain those individuals.

11 28. The risk of public disclosure and the harm described in this Declaration
12 is significant. Therefore, if the items described above are not redacted, they will
13 almost certainly become known to Jetcraft's current and potential customers,
14 lenders, suppliers, and competitors, thus impairing Jetcraft's ability to fairly
15 negotiate or compete with such parties. In contrast, allowing for the information to
16 be redacted will limit the risk of further harm.

17 I declare under penalty of perjury under the laws of the United States of
18 America that the foregoing is true and correct.

19 Executed on May 12, 2021 in Minneapolis, Minnesota.

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21 
22 Peter Antonenko

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16 *Attorneys for Jetcraft Corporation, Jetcraft Global, Inc., Jetcoast 5000-5 LLC,*
17 *Orion Aircraft Holdings Ltd., FK Group Ltd., FK Partners Limited and Jahid*
18 *Fazal-Karim*

19 **IN THE UNITED STATES BANKRUPTCY COURT**
20 **CENTRAL DISTRICT OF CALIFORNIA – LOS ANGELES DIVISION**

21 **IN RE:**

22 ZETTA JET USA, INC., a California
23 corporation

24 Debtor.

Lead Case No.: 2:17-bk-21386-SK

Jointly administered with:

2:17-bk-21387-SK
(Zetta Jet PTE Ltd., a Singaporean
corporation)

25 **IN RE:**

26 ZETTA JET PTE Ltd., a Singaporean
27 corporation

CHAPTER 7 CASES

ADV. PRO. NOS. 2:19 AP 01382-SK
and 2:19 AP 01147-SK

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Debtor.

**DECLARATION OF JAHID
FAZAL-KARIM IN SUPPORT OF
THE JETCRAFT AND FK
ENTITIES' RESPONSE TO
TRUSTEE'S APPLICATION TO
FILE UNREDACTED AMENDED
COMPLAINT AND REDLINE
UNDER SEAL**

JONATHAN D. KING, solely in his
capacity as Chapter 7 Trustee of Zetta
Jet USA, Inc. and Zetta Jet PTE, Ltd.,
Plaintiff,

Date: June 30, 2021
Time: 9:00 a.m. (PDT)
Place: All hearings via
Government Zoom

v.

Judge: Hon. Sandra R. Klein

JETCRAFT CORPORATION,
JETCRAFT GLOBAL, INC.,
JETCOAST 5000-5 LLC, ORION
AIRCRAFT HOLDINGS LTD., FK
GROUP LTD, FK PARTNERS
LIMITED JAHID FAZAL-KARIM,
BOMBARDIER AEROSPACE
CORPORATION, BOMBARDIER,
INC., LEARJET, INC., ECN
AVIATION INC. F/K/A ELEMENT
AVIATION INC., and ECN CAPITAL
CORPORATION AS SUCCESSOR
TO ELEMENT FINANCIAL
CORPORATION,
Defendants.

JONATHAN D. KING, solely in his
capacity as Chapter 7 Trustee of Zetta
Jet USA, Inc. and Zetta Jet PTE, Ltd.,
Plaintiff,

v.

CAVIC AVIATION LEASING
(IRELAND) 22 CO. DESIGNATED
ACTIVITY COMPANY; and

1 BOMBARDIER AEROSPACE
2 CORPORATION,
3 Defendants.

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1 I, Jahid Fazal-Karim, hereby declare under penalty of perjury as follows:

2 1. I am over 18 years of age. Except as otherwise noted, I have personal
3 knowledge of the matters set forth herein and, if called as a witness, would testify
4 competently thereto. This declaration (the "Declaration") is submitted in support of
5 the *Jetcraft and FK Entities' Response to Trustee's Application to File Unredacted*
6 *Amended Complaint and Redline under Seal* in case number 2:19 AP 01382-SK (the
7 "Jetcraft Action")¹ and of *Non-Party Jetcraft and FK Entities' Response to Trustee's*
8 *Application to File Unredacted Amended Complaint and Redline under Seal* in case
9 number 2:19 AP 01147-SK (the "CAVIC Action")² (collectively, the "Responses").

10 At the time of the transactions alleged in each Proposed Amended Complaint in the
11 *Jetcraft Action* and *CAVIC Action*, respectively, I was a shareholder and Board
12 member of Jetcraft Corporation. I am currently the majority owner of Jetcraft UK,
13 which is the sole owner of Jetcraft Corporation. I am also the director and sole
14 beneficial owner of FK Partners Ltd. and FK Group Ltd. The FK entities have
15 interests in a variety of different businesses including businesses that are not
16 involved in the private aircraft sale or lease business. I have worked most of my
17 professional career in the global aircraft business. From 1994 to 2001, I worked at
18 Airbus in various roles including as Vice President of Business Development and
19 Asset Management. From approximately 2001 to 2008 I was employed by
20 Bombardier in various roles including as Senior Vice President of Worldwide Sales.

21 2. Jetcraft is in the business of aircraft sales, leasing, and related trade
22 services. It had been in existence for approximately 42 years before I purchased my
23 _____

24 ¹ I understand that the Proposed Amended Complaint and Redline in the
25 *Jetcraft Action* contain identical information and paragraph numbers. Therefore,
26 any reference or citation to the Proposed Amended Complaint in *Jetcraft Action* in
27 this Declaration is also a reference to the Redline therein.

28 ² I understand that the Proposed Amended Complaint and Redline in the
CAVIC Action contain identical information and paragraph numbers. Therefore,
any reference or citation to the Proposed Amended Complaint in the *CAVIC*
Action is also a reference to the Redline therein.

1 first equity interests in 2008. Jetcraft also provides consulting and management
2 services in the private aircraft industry. I am not an employee of Jetcraft, but I
3 provide services to the company. As part of that work, I help identify potential
4 buyers and sellers of private aircraft. At the time of the transactions alleged in the
5 Proposed Amended Complaints, I had a contractual arrangement through my
6 separate business, FK Partners, to be compensated for my work or role in completed
7 aircraft transactions. That contractual relationship is now with FK Group.

8 3. As explained herein, certain material included in the Proposed
9 Amended Complaints constitutes confidential commercial information that should
10 be redacted from the publicly-filed Amended Complaint in the *Jetcraft* Action and
11 *CAVIC* Action, respectively.

12 **My Commissions From Jetcraft and Bombardier**

13 4. My primary compensation in my role as a broker in the private aircraft
14 market is commissions I earn on aircraft purchase and sale transactions that I am
15 involved in.

16 5. For example, as noted above, Jetcraft compensates me through my
17 separate businesses for the work I do in helping identify potential buyers and sellers
18 of private aircraft. I am also compensated on non-Jetcraft aircraft transactions that
19 I am involved in. In addition, I have acted as Bombardier's authorized representative
20 for aircraft sales in Asia. I received (or was entitled to receive) certain commissions
21 on sales I made on Bombardier's behalf.

22 6. The amounts of my commissions from both Jetcraft and Bombardier
23 (*Jetcraft* AC ¶¶ 8, 130, 148, 154, 179, 197, 223, 254, 293e–g, 357, 359, and 399;
24 *CAVIC* AC ¶¶ 129, 147, 153, 173, 191, 217, 248, 287e–g, and 349) constitutes
25 confidential commercial information for Jetcraft, the FK Entities, and Bombardier,
26 respectively.

27 7. If current or potential customers learn the commission amounts I
28 charged to Jetcraft and Bombardier, they can use that information as potential

1 leverage when negotiating with me for commissions on deals. Moreover, I have
2 competitors who also seek to act as brokers on private aircraft sales and, if they learn
3 the amount of commissions I charged on these transactions, they can use that
4 information to more effectively compete against me by offering to charge a lower
5 commission. This could result in me either losing customers or having to charge
6 lower commissions.

7 8. Moreover, my commissions from Bombardier were paid pursuant to
8 written Sales Representative Agreements and my understanding is that Bombardier
9 considers the amounts I was paid (or due to be paid) pursuant to these agreements to
10 be confidential.

11 9. In my experience, the amount of commission paid in connection with
12 private aircraft sales is sensitive and guarded information in the competitive private
13 aircraft sales market. As such, this type of information is not freely available to all
14 competitors in the marketplace. Accordingly, disclosure of my or my companies'
15 information in this regard creates an unfair advantage for my competitors.

16 **Exhibit 10 to the Proposed Amended Complaints**

17 10. Exhibit 10 to the Proposed Amended Complaint in each of the *Jetcraft*
18 Action and *CAVIC* Action, respectively, is an email that I sent to Khader Mattar that
19 has a spreadsheet attached. I sent the email to Mr. Mattar because he was
20 confidentially thinking about leaving his position at Bombardier. He had confided
21 in me and, as a result, we were, on a confidential basis, considering going into
22 business together in the Asian and Middle East aircraft market after he left
23 Bombardier. The purpose of sending Mr. Mattar the spreadsheet was to provide him
24 with an estimate of the net profits/margins (not total commissions) that I had made
25 on some previous aircraft transactions in the Asian and Middle East market in order
26 for him to assess financial aspects of our potential joint business. I understood that
27 Mr. Mattar would maintain the information contained therein as confidential.

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1 11. The spreadsheet that is attached to the cover email is divided into two
2 sections. The top section contains the names of both my clients and contacts in the
3 Asian and Middle East aircraft market, together with an estimate of the net
4 profit/margins (not total commissions) I made on the transactions involving those
5 clients/contacts. Although a couple of the line items contain only the serial numbers
6 of aircraft (with no associated client name), disclosure of the serial number provides
7 my competitors with a way to identify who my customer was on that transaction.
8 This is because there are publicly-available subscription resources (AMSTAT and
9 JETNET) that provide owner history of aircraft by serial number. Both the names
10 of my clients/contacts and serial numbers of the planes (other than Zetta and the
11 Zetta tail numbers) along with the estimates of net profit/margin for each transaction
12 are commercially sensitive to me and my business; public disclosure of this
13 information could be detrimental to my business. These client names/serial numbers
14 (other than Zetta), my dealings with them, the resulting transactions, and the profit
15 margins generated are also commercially sensitive. Disclosure of my clients' names
16 could allow my competitors to attempt to take the client relationship from me.
17 Moreover, disclosure of my estimate of net profits/margin can be used by current
18 and potential clients to negotiate lower commission rates and can be used by
19 competitors to try to take business from me by offering lower commissions. As
20 noted above, this type of information is not freely available or accessible for market
21 participants and disclosure of my and my companies' information in this regard
22 creates an unfair competitive disadvantage for me and my companies. Thus, public
23 disclosure of this information will negatively affect my ability to keep existing
24 customers, to gain new customers, and to negotiate commissions for aircraft sales
25 with those customers. Although the body of the Proposed Amended Complaints
26 does not disclose the names of any of the non-Zetta clients or contacts from Exhibit
27 10, it does include various financial figures from or based on Exhibit 10 in the
28 following paragraphs: *Jetcraft* AC ¶¶ 293a and 293d (estimated net profits); 293b

1 and 293i (estimated revenues); and 293e–g (estimated net profits and actual sales
2 commissions due); and *CAVIC* AC ¶¶ 287a and 287d (estimated net profits); 287b
3 and 287i (estimated revenues); and 287e–g (estimated net profits and actual sales
4 commissions due). The body of each Proposed Amended Complaint in the *Jetcraft*
5 Action and *CAVIC* Action, respectively, thus discloses confidential commercial
6 information.

7 12. The bottom portion of the attached spreadsheet (entitled “Payments
8 made as of January 30, 2016”) reflects money I transferred from my business
9 accounts at either FK Partners or FK Group to a personal advisor who was assisting
10 me with my financial affairs in Dubai at the time. It also discloses one confidential
11 name and a number of confidential serial numbers of the aircraft that were the subject
12 of transactions I worked on. For the reasons stated above, customers and
13 competitors could use the disclosure of the name and the non-Zetta serial numbers
14 to negotiate and compete against me unfairly and ultimately to cause me financial
15 harm. In addition, customers could use the disclosure of the amounts of money I
16 made in my business to argue for lower fees on future transactions, and competitors
17 could use those amounts to lure clients away from me. For this reason, these
18 amounts of money are not merely personal and confidential financial information;
19 they are confidential commercial information because they would grant both my
20 future customers and my competitors a competitive advantage in their negotiations
21 with me. Paragraph 293i of the Proposed Amended Complaint in the *Jetcraft* Action
22 discloses one of the payment amounts from the bottom portion of the spreadsheet
23 and thus reveals confidential commercial information. Paragraph 287i of the
24 Proposed Amended Complaint in the *CAVIC* Action discloses identical information.

25 13. Contrary to the allegations in the Proposed Amended Complaints, no
26 portion of Exhibit 10 reflects or evidences payments made to either Mr. Mattar or
27 any person employed by Bombardier.

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