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8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **LOS ANGELES DIVISION**

11 In re:) Lead Case No.: 2:17-bk-21386-SK
12 ZETTA JET USA, INC., a California) Chapter 7
corporation,) Jointly Administered With:
13 Debtor.) Case No.: 2:17-bk-21387-SK
14) Adv. Proc. No. 2:19-01147-SK

15 In re:) **CAVIC AVIATION LEASING**
16 ZETTA JET PTE, LTD., a Singaporean) **(IRELAND) 22 CO. DESIGNATED**
corporation,) **ACTIVITY COMPANY'S**
17 Debtor.) **MEMORANDUM IN OPPOSITION TO**
18) **TRUSTEE'S MOTION FOR LEAVE TO**
19) **AMEND ADVERSARY COMPLAINT**

20 JONATHAN D. KING, solely in his)
21 capacity as Chapter 7 Trustee of Zetta Jet)
USA, Inc. and Zetta Jet PTE, Ltd.,)
22 Plaintiff,) Hearing Date: June 30, 2021
23) Time: 9:00 am pst
24) Place: Courtroom 1575
25) (All Hearings Conducted Via
26) Telephone or Government
27) Zoom)

28 v.)
29 CAVIC AVIATION LEASING (IRELAND))
30 22 CO. DESIGNATED ACTIVITY)
COMPANY; and BOMBARDIER)
31 AEROSPACE CORPORATION,)
32)
33 Defendants.)
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Cases

Acri v. International Assoc. of Machinists & Aerospace Workers,
 781 F.2d 1393 (9th Cir. 1986) 13

AmerisourceBergen Corp. v. Dialysis West, Inc.,
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Ballard v. Chase Bank USA, NA,
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Bautista v. Los Angeles Cnty.,
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Birdsong v. Unified Gov’t,
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Butler v. National Community Renaissance of Calif.,
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Casavelli v. Johanson,
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Dupree v. Apple, Inc.,
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Edejer v. DHI Mortg. Co.,
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Eminence Capital, LLC v. Aspeon, Inc.,
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Ewert v. eBay, Inc.,
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Farmers Ins. v. First Choice,
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Garcia v. Wachovia,
 676 F. Supp. 2d 895 (C.D. Cal. 2009) 19

Good Morning to You Productions Corp. v. Warner-Chappell Music, Inc.,
 2013 WL 12138670 (C.D. Cal. Oct. 16, 2013)..... 18

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1	<i>Horowitz v. Stewart Title Guar. Co.</i> ,	
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2		
3	<i>In Levald, Inc. v. City of Palm Desert</i> ,	
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4	<i>In re Allied Digital Technologies Corporation</i> ,	
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8	<i>In re Dolfi</i> ,	
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11	<i>In re Hunt</i> ,	
12	2015 WL 5749794 (Bankr. C.D. Cal. Sept. 30, 2015)	15
13	<i>In re ITSV, Inc.</i> ,	
14	2006 WL 6810990 (9th Cir. B.A.P. 2006).....	14
15	<i>In re Magno</i> ,	
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17	<i>In re Valenti</i> ,	
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18	<i>In re Williams</i> ,	
19	2012 WL 2564700 (Bankr. N.D. Cal. July 2, 2012).....	21
20	<i>Jackson v. Bank of Hawaii</i> ,	
21	902 F.2d 1385 (9th Cir. 1990)	13, 22, 26
22	<i>Lehman XS Trust, Series 2006-GP2 v. GreenPoint Mortg. Funding, Inc.</i> ,	
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25	<i>Mangindin v. Wash. Mut. Bank</i> ,	
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9	<i>Platt Elec. Supply, Inc. v. Eoff Elec., Inc.,</i> 522 F.3d 1049 (9th Cir. 2008)	14
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11	<i>Ransby v. Countrywide Home Loans Servicing,</i> 2011 WL 13216947 (N.D. Ga. Jul 13, 2011)	22
12		
13	<i>Rosen v. Chowaiki & Co.,</i> 593 B.R. 699 (Bankr. S.D.N.Y 2018).....	28
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15	<i>Ruiz v. Mortg. Elec. Registration Sys., Inc.,</i> 2009 WL 2390824 (E.D. Cal. Aug. 3, 2009).....	28
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17	<i>Sackett & Kvan, Inc. v. Beaman,</i> 399 F.2d 884 (9th Cir. 1968)	14
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23	<i>Stambanis v. Tbwa Worldwide, Inc.,</i> 2020 WL 4060171 (C.D. Cal. July 20, 2020).....	23
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25	<i>Stenzel v. Equifax Info. Servs. LLC,</i> 2020 WL 60156 (M.D. Fla. Jan 6, 2020).....	20
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	<i>Tahoe-Sierra Pres. Council v. Tahoe Reg'l Planning Agency,</i> 808 F. Supp. 1474 (D. Nev. 1992).....	16
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Statutes

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11 U.S.C. § 548 *passim*

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Other Authorities

Fed. R. Civ. P. 8 4, 5, 21, 22, 25

Fed. R. Civ. P. 9(b)..... 4, 22, 29

Fed. R. Civ. P. 12 1, 3, 29

Fed. R. Civ. P. 15 *passim*

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1 **I. INTRODUCTION**

2 The Trustee’s Motion to Amend is a perplexing work of fiction. In the guise of
3 “amending” his contract-based declaratory relief claims, the Trustee seeks to file *a massive new*
4 *case* asserting far-reaching fraud-based allegations that involve materially different facts and
5 circumstances than those originally at-issue in this case and, as a matter of law, are time-barred
6 as to CALI. This absurd attempt to import and simultaneously litigate the entire Jetcraft Action¹
7 here cannot be allowed.

8 For the past two years, this adversary proceeding was narrowly directed to issues of
9 contract interpretation and preferential payments related to four airplanes that CALI—an arms-
10 length business provider to the Debtors—purchased, financed, and leased. In the separate and
11 far larger Jetcraft Action, the Trustee is attempting to prosecute a sprawling adversary against
12 eleven defendants based on an alleged ponzi-scheme, illegal kickbacks, and conspiracy to
13 commit fraud in connection with the purchase and use of sixteen aircraft. CALI is not a party to
14 the Jetcraft Action.

15 Despite the tremendous costs to the estate of prosecuting these actions, neither case has
16 gone well for the Trustee. The Trustee has suffered a series of losses that have driven, and now
17 frame, his current scatter-shot litigation tactics, including this Motion to Amend.

18 The Trustee’s problems began in March 2020. In an order dismissing substantial portions
19 of the Jetcraft Complaint, this Court ruled that the Trustee does not have standing to assert
20 fraudulent transfer claims as to certain transfers *unless* the Trustee is able to recharacterize *the*
21 *entire lease-transactions* concerning the planes that those transfers relate to as disguised
22 financings. Since some of the underlying leases are contracts with CALI (hereinafter the “**CALI**
23 **Aircraft Leases**”) and CALI has a fundamental right to defend its transactions, the Court
24 recognized that CALI may be an indispensable party to the Jetcraft Action on that issue. At the
25 time the March 2020 order was made, the recharacterization issue was pending before the Court
26 *in this case* and was subject to CALI’s then-pending Rule 12 motion.

27
28 ¹ The “**Jetcraft Action**” refers to case no. 2:19-ap-01382-SK, and the “**Jetcraft Complaint**”
refers to the complaint originally filed in that action at Dkt. No. 1.

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1 In October 2020—almost seven months after the Court’s order dismissing the Trustee’s
2 fraudulent transfer claims in Jetcraft—the Court granted CALI’s motion to dismiss the initial
3 complaint in this case in its entirety. Critically, and as related to the Trustee’s current efforts, the
4 Court held that the Trustee cannot recharacterize the CALI Aircraft Leases as disguised
5 financings as a matter of law: “[T]he transactions are leases under English law and cannot be
6 recharacterized as urged by the Trustee.” (Dkt. No. 157-1 (CAVIC) at 20.)

7 Unhappy with this Court’s orders dismissing his claims in both cases, the Trustee has
8 spent the last six months dragging CALI through a series of unnecessary and improper
9 procedural maneuverings—including a failed effort to consolidate the two actions—that, at best,
10 are a tremendous waste of time and resources. Now, in an egregious go-for-broke maneuver, the
11 Trustee seeks to simultaneously import *all Jetcraft allegations* into this case *and also* bring
12 CALI into the Jetcraft case by adding new Code² § 548 fraudulent transfer claims against CALI
13 (the “**New Claims**”) in that case. As set forth in CALI’s concurrently filed opposition to the
14 Jetcraft Motion, the Trustee’s New Claims against CALI in Jetcraft are time-barred as a matter of
15 law and cannot satisfy the stringent relation-back requirements of Rule 15(c) for bringing in new
16 parties.³ The Trustee’s proposed amendment in that case is therefore both futile and prejudicial.

17 In this case, the Trustee’s Proposed Amended Complaint (“**PAC**”)⁴ is even more
18 perplexing—and improper. Recognizing that he may not be allowed to add CALI to the Jetcraft
19 Action and that he cannot directly add the New Claims to this case, the Trustee has instead
20 pleaded *the entirety* of his newly proposed Jetcraft Complaint in this case⁵—complete with
21

22 _____
23 ² All references to the Code are to the Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*

24 ³ A full analysis of the reasons why the Trustee’s fraudulent transfer claims against CALI are
25 time-barred is set forth in CALI’s concurrently filed opposition to the Trustee’s Motion for
26 Leave to Amend in that action (hereinafter, the “**Jetcraft Motion**”). In order to conserve
27 resources and avoid unnecessary duplication, CALI has endeavored not to wholly restate those
28 arguments here—although some overlap is necessary.

⁴ To avoid confusion CALI refers to the proposed amended complaint filed in connection with
this adversary proceeding as the “**PAC**” or “**CALI PAC**.” Similarly, CALI refers to the
Trustee’s proposed amended complaint in the Jetcraft Action as the “**Jetcraft PAC**.”

⁵ See CALI PAC, ¶ 584 (“The relief sought in this Count is for the purpose of pursuing relief
under Section 548 and 550 of the Bankruptcy Code against BAC and BI in Counts 14 and 15 of

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1 allegations regarding *all* sixteen aircraft, *all* of the Jetcraft defendants, far-reaching claims of
2 kickbacks, an alleged ponzi scheme, and years of fraudulent transfers that do not involve CALI
3 and which only the Jetcraft Defendants can defend. The Trustee does this under the guise of
4 adding additional “facts” in support of his pre-existing contract interpretation claims against
5 CALI and Bombardier. The Court should see this for what it is—a transparent attempt to avoid
6 the applicable statute of limitation and re-litigate this Court’s October Memorandum Opinion.

7 The Trustee’s Motion to Amend the CALI Complaint fails for many reasons.

8 **First**, “shotgun pleadings” like the Trustee’s PAC are futile, disfavored, and routinely
9 dismissed because they fail to provide defendants with adequate notice of the claims against
10 them and the basis of each claim.⁶

11 The Trustee is attempting, in this action, to incorporate all 970 paragraphs in the Jetcraft
12 PAC—together with thousands of pages of exhibits—none of which allege that CALI
13 participated in a kickback or other scheme. And this is in addition to the hundreds of new
14 paragraphs in the CALI PAC itself, none of which allege that CALI participated in any improper
15 conduct. To the contrary, the Jetcraft PAC is clear that CALI is a victim and not a perpetrator of
16 the alleged fraud.⁷ The Trustee’s PAC thus seeks to re-write the entire scope of this action and
17 adjudicate the allegedly fraudulent acts of over a dozen non-parties in the process. Courts reject
18 this type of shotgun amendment where the vast majority of the allegations are directed toward
19 the actions of non-parties.

20 Further, it is not this Court’s duty—and is a tremendous burden on judicial resources—to

21 _____
22 *Jetcraft* which is hereby fully incorporated by reference including all supporting allegations
contained in the *Jetcraft* complaint.”.)

23 ⁶ Amendments are properly denied as futile where, as here, the newly pled claims or allegations
24 cannot withstand a 12(b)(6) motion. *See Ewert v. eBay, Inc.*, 602 F. App’x 357, 359–60 (9th Cir.
25 2015) (amendment is futile “if the amendment would fail a motion to dismiss under Rule
26 12(b)(6).”); *see also In re Barrack*, 217 B.R. 598, 608 (B.A.P. 9th Cir. 1998) (“If an amended
27 complaint could not withstand a motion to dismiss for failure to state a claim, it would
28 be futile for the bankruptcy court to allow amendment.”).

27 ⁷ CALI’s alleged role in the Jetcraft PAC is limited to little more than the assertion that CALI
28 financed the CALI Aircraft transactions followed by the (now Court-rejected) assertion that the
CALI leases were disguised financings and that CALI was a victim of Cassidy’s alleged fraud.
(*Jetcraft PAC*, ¶¶ 408-09 & 435-37 (Cassidy circulated a materially false “First Business Plan”
and a misleading spreadsheet to CALI while negotiating the CALI Aircraft transactions).)

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1 sort through hundreds of paragraphs of irrelevant allegations to determine whether they comport
2 with the Trustee’s pleading obligations under either Rule 8 or Rule 9(b) (which applies to any
3 fraud claim). Indeed, it is well recognized that “[p]rolix, confusing complaints . . . impose unfair
4 burdens on litigants and judges.”⁸ The Trustee’s failure to conform to basic federal pleading
5 standards is inexcusable and should not be condoned.

6 **Second**, allowing the Trustee’s proposed amendment would be highly prejudicial to
7 CALI.⁹ This litigation would go from a tightly focused case to a bloated, confusing, and
8 unmanageable one. From both a legal and an evidentiary basis, there is no way for CALI to
9 meaningfully respond or defend itself against the 970 paragraphs in the Jetcraft PAC *plus* the
10 hundreds of proposed new paragraphs in the CALI PAC which, overwhelmingly, are not directed
11 against CALI. The Trustee fails to delineate which allegations apply to CALI—as required by
12 federal pleading requirements—and, as such, there are no clear parameters of the claims against
13 it. If the Trustee is permitted to both incorporate and import all Jetcraft allegations, CALI would
14 instantly be required to participate in dozens of depositions, extensive discovery, and multiple
15 hearings in which none of CALI’s actions are at issue, on the chance that some statement,
16 document or pleading would affect CALI’s interests. It would be true madness. And the
17 inclusion of CALI in a fraud-based trial, with dozens of witnesses and testimony regarding the
18 alleged scheme of other, unrelated parties, would be highly prejudicial and grossly expensive.

19 **Third**, Code § 546(a) provides a statute of limitations for commencement of fraudulent
20 transfer actions under Code § 548 which bars the vast majority of the Trustee’s new allegations.
21 It is irrelevant that the Trustee fails to assert a claim under Code § 548 when the CALI PAC is
22 replete with—and the Trustee’s claims are now expressly dependent on—allegations of
23 fraudulent conduct.

24 ///

25 _____
26 ⁸ *McHenry v. Renne*, 84 F.3d 1172, 1180 (9th Cir. 1996).

27 ⁹ *N2 Packaging Sys, LLC v. N2 Pack Can. Inc.*, No. CV-19-02351-PHX-NVW, 2020 WL
28 2512786, at *3 (D. Ariz. May 15, 2020) (“Prejudice is the touchstone of the inquiry under Rule
15(a).”).

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1 The Trustee was required to have brought his Code § 548 claims against CALI no later
2 than September 15, 2019, but did not do so. The Trustee cannot circumvent the time-bar now
3 simply by calling them claims for “declaratory judgment.” The Ninth Circuit squarely rejects
4 attempts to avoid statutes of limitations with labeling subterfuge: “[Plaintiff] finally contends
5 that the statute of limitations is inapplicable to its claim for declaratory judgment. This argument
6 is meritless.”¹⁰ Thus, creative labeling of claims cannot save the PAC.

7 Likewise, while the Trustee may assert that his New Claims relate back to his initial
8 complaint, he does not even attempt to meet the requirements of Rule 15(c)(1)(B), nor can he.
9 The Original CALI Complaint did not include a fraudulent transfer claim (the term “fraud” was
10 never used), nor did it put at-issue or attempt to put at-issue “the conduct, transaction[s], or
11 occurrence[s]” that the Trustee now claims gives rise to the alleged fraudulent transfers—*i.e.*, the
12 alleged fraudulent ponzi-scheme, kickbacks, and other alleged bad acts and bad actors that the
13 Trustee now alleges extends across all sixteen plane transactions at issue in the Jetcraft Action.

14 Simply put, based on the Trustee’s original complaint, CALI could not expect that it
15 would ever have to defend itself *in this declaratory relief action* against allegations of a years-
16 long, massive fraudulent scheme, *conducted by others*. Nor should it be forced to. The Trustee’s
17 attempt to state a Code § 548 claim against CALI in this case—whether directly or indirectly—
18 should be rejected as both futile and highly prejudicial.

19 **For these reasons**, as more fully set forth below, CALI respectfully submits that the
20 Trustee’s Motion to Amend should be denied in its entirety. If the Trustee intends to continue
21 with his prosecution of this case, he must do so within the constraints of this Court’s prior orders,
22 applicable law governing permissible amendments, and Rule 8 of the Federal Rules of Civil
23 Procedure. Any such amended complaint must not be based on allegations of fraud that are
24 time-barred as to CALI; nor should the Trustee be allowed to convert his previously direct
25 declaratory relief claims against CALI into constructively derivative claims that are based on the
26 alleged fraudulent actions of others.

27
28 ¹⁰ *In Levald, Inc. v. City of Palm Desert*, 998 F.2d 680, 688-89 (9th Cir. 1993).

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1 **II. PROCEDURAL HISTORY**

2 **A. For Two Years The CALI Action Has Been a Straightforward Preference**
3 **and Declaratory Relief Case Involving Four Aircraft and a Small Set of**
4 **Transactions in 2017.**

5 On May 21, 2019, the Trustee filed his adversary complaint against CALI and
6 Bombardier Aerospace Corporation (“**Bombardier**”) in this case. (Dkt. No. 1 (CAVIC) (the
7 “**CALI Complaint**” or “**CALI Compl.**”) The CALI Complaint was generally directed to the
8 purchase, financing, and leasing of four Bombardier Global 6000 Aircraft, having serial numbers
9 ending in: 9764 (Aircraft 9764); 9740 (Aircraft 9740); 9716 (Aircraft 9716); and 9788 (Aircraft
10 9788) (together, the “**CALI Aircraft**”). (Dkt. No. 157-1 (CAVIC) at 1.)

11 As against CALI, the CAVIC Complaint sought: declaratory judgment that the CALI
12 Aircraft leases were disguised financing agreements and not true leases (Count I); declaratory
13 judgment that CALI’s security interest in a \$30 million “refund” related to Airplane 9788 was
14 unperfected (Count III); a ruling that the \$30 million “refund” related to Airplane 9788 properly
15 belonged to the Debtors based on the declaratory judgement assertions in Counts I and II (Counts
16 IV-V); and reversal of certain payments by Debtors to CALI on a theory of avoidable preference
17 payments (Count VII). (CALI Compl., ¶¶ 123-170.)

18 As against Bombardier, the CALI Complaint sought: declaratory judgment that the
19 purchase agreement related to the Aircraft 9788 had been terminated (Count II); and an order
20 that the \$30 million “refund” currently held by Bombardier in connection with Airplane 9788
21 must be turned over to the Trustee (Count VI). Approximately \$35 million was put in issue in
22 the CALI Complaint. (CALI Compl., Prayer for Relief.)

23 In short, the CALI Complaint was exceedingly straightforward: it named two defendants,
24 sought to recharacterize certain leases related to four airplane transactions, sought the return of a
25 specific \$30 million-dollar sum based on the Trustee’s interpretation of the contracts at issue and
26 secured transactions law, and sought to avoid a limited number of transactions as preference
27 payments.

28

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1 **B. The Jetcraft Action Alleges a Sprawling Ponzi Scheme and Conspiracy to**
2 **Commit Fraud that is Unrelated to CALI and Purportedly Spans the Sale of**
3 **Sixteen Aircraft.**

4 On September 13, 2019—four months *after* filing the CALI Complaint—the Trustee filed
5 his adversary complaint against Jetcraft Corporation, Jetcraft Global, Inc., Jetcoast 5000-5 LLC,
6 Orion Aircraft Holdings Ltd., FK Group Ltd., FK Partners Limited, Jahid Fazal-Karim,
7 Bombardier, Bombardier, Inc., Learjet, Inc., ECN Aviation Inc. F/K/A Element Aviation Inc.,
8 and ECN Capital Corporation as successor to Element Financial Corporation. (Jetcraft Compl.)¹¹
9 CALI was not a defendant in the Jetcraft Complaint.

10 The Jetcraft Complaint focused on an alleged Ponzi scheme operated by the Debtors’
11 creator and owner, Geoff Cassidy (“Cassidy”), and an alleged conspiracy to commit fraud as
12 between Cassidy and certain defendants related to Bombardier and Jahid Fazal-Karim. (*Id.*) The
13 Trustee sought extensive relief from the defendants in the Jetcraft Complaint, putting at issue
14 seventeen causes of action related to breaches of fiduciary duty, civil conspiracy, unfair business
15 practices, unjust enrichment, fraud, and the avoidance and recovery of transactions under the
16 doctrines of fraudulent transfer and preference payments. (*Id.*, ¶¶ 233-397 & Prayer for Relief.)
17 Based on the alleged ponzi scheme and related “fraud”, the Trustee sought to unwind various
18 transactions related to the manufacture, sale, and leasing of fifteen airplanes, “totaling almost
19 half-a-billion dollars.” (Dkt. No. 108 (Jetcraft) at 28.)

20 The CALI Aircraft transactions were presented as a side-note to the main subject matter
21 of the Jetcraft Complaint. Of the 397 paragraphs in the Jetcraft Complaint, CALI was
22 substantively referenced in only five of them. (Jetcraft Compl., ¶¶ 109-114.) In these
23 paragraphs, the Trustee simply alleged that the transactions for the CALI Aircraft occurred, that
24 the leases for these aircraft were disguised financings, and that Bombardier received
25 approximately \$147.4 million in transfers from CALI in connection with the transactions for the
26 CALI Aircraft. (*Id.*) CALI is not alleged to have played any role in the fraud, conspiracy, or
27

28 _____
¹¹ The defendants in the Jetcraft Action are referred to herein as the “**Jetcraft Defendants.**”

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1 Ponzi scheme alleged in the Jetcraft Complaint, nor is it alleged to have had any involvement in
2 the vast majority of the airplane transactions at issue in that case.

3 In Count X of the Jetcraft Complaint, the Trustee sought to classify transfers related to
4 the CALI Aircraft as fraudulent. (*Id.*, ¶¶ 321-331.) In particular, the Trustee alleged that the
5 Debtors made fraudulent payments directly from the Debtor entities to Bombardier in
6 furtherance of the CALI Aircraft, totaling approximately \$26.4 million. (*Id.*) The Trustee
7 further alleged that the Debtors made “payments by way of financing through CAVIC, at the
8 direct of the Debtors” in the amount of approximately \$120 million. (*Id.*)

9 **C. The Trustee Lost a Series of Motions to Dismiss After Filing the CALI and**
10 **Jetcraft Actions.**

11 *1. The Court Dismissed All Counts in the CALI Action.*

12 On January 10, 2020, CALI moved to dismiss the Complaint in the CALI Action, seeking
13 the dismissal of all causes of action directed against it. (Dkt. No. 59 (CAVIC).) On January 30,
14 2020, Bombardier similarly moved to dismiss the Complaint in the CALI Action, seeking the
15 dismissal of all causes of action directed against it. (Dkt. No. 70 (CAVIC).) On October 19,
16 2020, the Court granted both CALI and Bombardier’s motions and dismissed all counts against
17 them. (Dkt. Nos. 157-1 & 174 (CAVIC) (dismissing claims against CALI); Dkt. Nos. 156-1 &
18 175 (CAVIC) (dismissing claims against Bombardier).)

19 Regarding the first count against CALI, the Court held that, as a matter of law, the
20 Trustee could not recharacterize the CALI Aircraft leases as disguised financings. Specifically,
21 the Court held that the leases at issue “require[] the application of English law” according to the
22 federal common law and Restatement principles governing this dispute. (Dkt. No. 157-1
23 (CAVIC) at 14-15.)¹² After making this determination, the Court held that the leases at issue
24 “were hire purchase agreements” under English law and that “[t]herefore, the transactions are
25 leases under English law and cannot be recharacterized as urged by the Trustee.” (*Id.* at 20.)
26
27

28 ¹² The Court also held that the Trustee was bound by the leases’ English choice of law despite
being a third party representative of creditors. (*Id.* at 15-18.)

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1 Regarding Counts II-VI—all dealing with facets of the Trustee’s assertion that it was
2 entitled to the \$30 million “refund” related to Airplane 9788—the Court held that the Counts
3 were “inextricably intertwined” and that the Counts “turn[] on whether the assignment [related to
4 Airplane 9788] was absolute or for security.” (*Id.* at 31.) The Court analyzed the contracts at
5 issue and held that, under controlling New York law, that the assignment “is not avoidable as an
6 unperfected security interest” because the complaint “d[id] not sufficiently plead the APA
7 Assignment was for security rather than an absolute assignment.” (*Id.* at 52.)

8 Regarding Count VII—a straightforward preferential transfers claim—the Court held that
9 the claim was subject to a subsequent new value defense and must be dismissed. (*Id.* at 61.)

10 The Court granted CALI and Bombardier’s motions to dismiss without prejudice, and
11 allowed the Trustee narrow leave to amend the causes of action he had already pleaded in order
12 to attempt to correct the issues noted by the Court. (Dkt. No. 157-1 (CAVIC) at 67 (“the Court
13 finds that it is appropriate to grant the Trustee leave to amend Counts I, III, IV, V, VI, and VII”);
14 Dkt. No. 156-1 at 12 (“the Court finds that it is appropriate to grant the Trustee leave to amend
15 counts II and VI”).)

16 2. *The Court Dismissed Most Counts in the Jetcraft Action.*

17 Between October and December 2019 every major group of defendants in the Jetcraft
18 Action filed a motion to dismiss. (Dkt Nos. 39, 40, 45, 46 & 76 (Jetcraft).) The Court granted in
19 part and denied in part those motions. (Dkt. Nos. 108 & 117, 107 & 120, 109 & 121 (Jetcraft).)
20 The Court’s dismissals allowed the Trustee to narrowly amend certain causes of action he had
21 already pleaded. (Dkt. Nos. 107 (Jetcraft) at 52 (“Counts I-VI are dismissed, and the Court
22 grants the Trustee leave to amend Counts I, II, III, and VI.”); 108 (Jetcraft) at 39 (“The Court
23 grants the Trustee leave to re-plead Counts VII and VIII regarding constructive fraudulent
24 transfers.”); 109 (Jetcraft) at 44 (“the Motion is granted regarding Counts I-VI, X-XI, XIII-XIV,
25 and XVII . . . the Court grants the Trustee leave to amend all counts other than Count IV”).)

26 Most relevant to the instant Motion, the Court dismissed Count X of the Jetcraft
27 Complaint—alleging that Bombardier received fraudulent transfers pursuant to Code § 548 in
28 conjunction with the financing of the CALI Aircraft—because the claim relied on

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1 recharacterizing the leases related to the CALI Aircraft as disguised financings and “the
2 allegations that the CAVIC Transactions were ‘disguised financings’ are conclusory and
3 insufficient to withstand a motion to dismiss,” meaning that the Trustee had not alleged standing
4 to recover payments related to those leases. (Dkt. No. 109 (Jetcraft) at 39.) The Court further
5 held that, even if the Trustee had properly pleaded that the CALI leases were disguised
6 financings, the claim failed because CALI was a necessary party to the complaint given CALI’s
7 interests in its own aircraft leases. (*Id.* at 40.)

8 **D. After Having Both the Jetcraft and CALI Complaints Dismissed, the Trustee**
9 **Moved for Consolidation of the Two Cases, Which the Court Denied.**

10 After the Court dismissed the CAVIC and Jetcraft Complaints, the Court ordered the
11 parties to mediate, expressing a preference for a unified mediation among the parties to both
12 adversary proceedings. (Dkt. No. 180 (CAVIC) at 2-3; Dkt. No. 149 (Jetcraft) at 2-3.) The
13 Court further ordered that, prior to mediation, the Trustee provide an amended complaint for
14 *each adversary proceeding*. (Dkt. No. 180 (CAVIC) (“Trustee shall provide CAVIC and
15 Bombardier with a draft amended complaint . . . that the Trustee intends to assert against the
16 defendant(s) for *this adversary proceeding*”) (emphasis added); Dkt. No. 149 (Jetcraft) (“Trustee
17 shall provide Jetcraft, the FK Defendants, Bombardier, and Learjet with a draft amended
18 complaint . . . that the Trustee intends to assert against the defendant(s) for *this adversary*
19 *proceeding*”) (emphasis added).)

20 Despite the fact that consolidation was not discussed by the parties or the Court, and in
21 lieu of providing an amended complaint for each adversary proceeding as ordered, the Trustee
22 unilaterally drafted and circulated a proposed “Consolidated Complaint” and filed a surprise
23 motion to consolidate the CAVIC and Jetcraft Actions. (Dkt. Nos. 184 & 216 (CAVIC) (Mot.
24 and Consolidated Complaint); Dkt. Nos. 153 & 174 (Jetcraft) (same).) The Trustee has since
25 admitted that a primary motivation for his unilateral attempt at consolidation was “in significant
26 part to address this issue of the Trustee having a pending declaratory judgment count in one
27 action that was a predicate to fraudulent transfer claims in another.” (Mot. at 20.)
28

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1 Both CALI and Bombardier filed oppositions to the Trustee’s attempt to consolidate the
2 actions, and the Court ultimately ruled that neither a consolidated complaint nor consolidation
3 was appropriate. (Dkt. No. 236 (CAVIC) (order denying consolidation for reasons stated on
4 record); Declaration of Kristina Azlin in Support of Opposition to Amendment, Ex. 1 at 33-42
5 (transcript of oral ruling).) In particular, the Court held that the proposed consolidated complaint
6 went beyond the leave to amend granted by the Court’s prior dismissal orders and that
7 consolidation was inappropriate in light of the fact that neither action had an active pleading on
8 file. (*Id.*)

9 As a part of denying the Trustee’s motion to consolidate, the Court explicitly reiterated
10 that CALI’s role as a necessary party to the Bombardier fraudulent transfer claim did **not** mean
11 that the Trustee could add CALI to that claim without establishing the propriety of doing so
12 under Rule 15. (*Id.* at 37:25-38:6 (“Although the trustee maintains that the Court required Covic
13 to be made a party to the Jetcraft adversary, he misconstrues the Court’s ruling. The Court found
14 that Covic was an indispensable party to the Jetcraft adversary, but it did not grant the trustee
15 leave to amend the Jetcraft adversary to add Covic, nor did it make any findings that Covic *could*
16 be added to the Jetcraft adversary proceeding.”) (emphasis added).)

17 After denying the Trustee’s motion to consolidate, the Court ordered the Trustee to file
18 separate complaints in each adversary, and further ordered the Trustee to highlight the amended
19 complaints to distinguish portions of the complaints that were covered by the Court’s prior leave
20 to amend specific claims in the Trustee’s original complaints from the portions of the amended
21 complaints that were directed to new claims or parties beyond the scope of the Court’s prior
22 leave to amend. (*Id.* at 41-42.)

23 **III. DISCUSSION**

24 **A. The Amended Complaint Seeks to Adjudicate the Trustee’s Massive** 25 **Fraudulent Transfer Claims From The Jetcraft Action Under the Guise of a** 26 **“Declaratory Relief” Claim In This Case.**

27 The CALI PAC, submitted in connection with the instant motion to amend (“**Motion**” or
28 “**Mot.**”), adds 445 paragraphs to the Original CALI Complaint and thousands of pages of new

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1 exhibits. It adds *ten* of the Jetcraft Defendants—Jetcraft Corporation, Jetcraft Global, Inc.,
2 Jetcoast 5000-5 LLC, Orion Aircraft Holdings Ltd., FK Group Ltd, FK Partners Limited, Jahid
3 Fazal-Karim, Bombardier, Inc., ECN Aviation Inc., and ECN Capital Corporation—as purported
4 “relevant non-parties.” (CALI PAC, ¶¶ 49-70.) Then, over the course of 371 newly-added
5 paragraphs, the Trustee copies, nearly verbatim, the same fraudulent transfer allegations he
6 makes in his Jetcraft PAC. (*Compare* CALI PAC, ¶¶ 71-442 (starting with “Cassidy’s evolution
7 as a con artist” and ending with a section related to the Debtors knowing they could not pay
8 debts as they came due) *with* Jetcraft PAC, ¶¶ 72-484 (same).) These new allegations result in a
9 PAC that is over three times larger, by page count, than the original 34-page complaint filed in
10 this action.

11 The Trustee does not explicitly allege Code § 548 causes of action in the CALI PAC
12 despite including 371 paragraphs related exclusively to fraudulent transfer.¹³ Instead, the Trustee
13 alleges that the choice of law provisions related to the contracts at issue in the Trustee’s
14 declaratory relief claims can be disregarded “because the Plane 2-4 Finance Leases were part of
15 actual or constructively fraudulent transfers or obligations.” (CALI PAC, ¶ 444.) In other
16 words, the Trustee now purports to allege a ponzi scheme and fraudulent transfers related to
17 sixteen aircraft transactions—twelve of which have nothing to do with CALI—where the actual
18 defendants to these fraudulent transfer claims are non-parties, in order to use *those* alleged
19 fraudulent transfers as a predicate fraud for the Trustee’s declaratory relief based
20 recharacterization arguments against CALI. In fact, the Trustee makes it no secret that the
21 fraudulent transfer allegations in the CALI PAC are actually meant to duplicate the fraudulent
22 transfer claims in the Jetcraft PAC, even going so far as to ***incorporate the entire JETCRAFT***
23 ***PAC by reference.*** (*See* CALI PAC, ¶ 584 (“The relief sought in this Count is for the purpose of
24 pursuing relief under Section 548 and 550 of the Bankruptcy Code against BAC and BI in Counts
25

26 ¹³ As noted above, the Trustee does seek leave to add CALI as a new-defendant to his Code §
27 548 claims against Bombardier in his concurrently-filed motion to amend the Jetcraft Complaint.
28 (Jetcraft Mot. at 17-19.) However, for the reasons set forth in CALI’s opposition to amend the
complaint in Jetcraft, the Trustee’s attempt to add CALI to his fraudulent transfer claims therein
is time-barred.

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1 14 and 15 of *Jetcraft* which is hereby fully incorporated by reference including all supporting
2 allegations contained in the *Jetcraft* complaint.”.)

3 The Trustee’s “amendments” are an improper attempt to import *the entire* *Jetcraft* Action
4 into this case and should be rejected. The fraudulent transfer allegations¹⁴ have nothing to do
5 with CALI or the original contract-based claims alleged in this case—CALI is not alleged to
6 have played any role in the fraud and it had absolutely nothing to do with the transactions related
7 to Planes 1 and 6-16. The Trustee offers no justification or explanation as to how—or why—his
8 allegations of a sprawling ponzi scheme and fraudulent transfers related to all sixteen planes can
9 or should be adjudicated *in this case*, when they are already the subject of the *Jetcraft* Action.¹⁵

10 **B. The PAC’s Code § 548 Allegations are An Impermissible Attempt to Bring a**
11 **Time-Barred Code § 548 Claim Against CALI.**

12 *I. The Trustee Was Required To Bring Any Code § 548 Claims Against CALI*
13 *No Later Than September 15, 2019.*

14 The Trustee cannot bring Code § 548 claims against CALI because they are time-barred.
15 Code § 546 provides a statute of limitations for commencement of actions under Code § 548,
16 which governs actions by a Chapter 7 Trustee for fraudulent conveyance. 11 U.S.C. §§ 546(a),
17 548. Specifically, Section 546(a)(1) provides that an action or proceeding to recover fraudulent
18 transfers may not be commenced after the later of:

19 (A) two (2) years after the entry of the order for relief; or

20 _____
21 ¹⁴ See CALI PAC, ¶¶ 71-442 (including, *inter alia*, kickbacks related to Plane 1 (¶ 235),
22 kickbacks related to Plane 10 (¶ 265), a “corrupt relationship” between non-parties Fazal-Karim
23 and Matter (¶ 284), allegations that Planes 1 and 6-12 were overpriced (¶ 334).) These are all
24 generalized allegations of fraudulent transfer that are not broken up by plane or by defendant.
(*See, e.g., id.*, ¶ 358 (“Cassidy caused the Debtors to acquire each of the 16 Planes and caused
the Debtors to make payments and transfers related to each of the 16 planes to keep the scheme
on-going.”); *see generally id.*, ¶¶ 358-442 (setting forth actual intent and constructive fraudulent
transfer allegations as applying across all 16 plane transactions).)

25 ¹⁵ The Trustee also offers no reason to excuse his delay in alleging these “new” facts and theories
26 in this case, when such facts and theories have been known to the Trustee for years—as
27 evidenced by his assertion of the very same allegations in the *Jetcraft* Action. *See Acri v.*
28 *International Assoc. of Machinists & Aerospace Workers*, 781 F.2d 1393, 1398 (9th Cir. 1986)
 (“[L]ate amendments to assert new theories are not reviewed favorably when the facts and the
theory have been known to the party seeking amendment since the inception of the cause of
action.”); *accord Jackson v. Bank of Hawaii*, 902 F.2d 1385, 1388 (9th Cir. 1990) (holding delay
in filing amended complaint from October 1987 to May 1988 is “inexplicable and unjustified”).

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1 (B) one (1) year after the appointment or election of the first trustee (if such
2 appointment occurs within two (2) years after the order for relief.)

3 Code § 546(a)(1).

4 Here, the two-year period for commencing a Code § 548 action began to run on the
5 Chapter 11 petition date, which was September 15, 2017. (Zetta USA Docket No. 1; Zetta PTE
6 Docket No. 1.) The one-year period began to run on October 5, 2017, when the United States
7 Trustee appointed Jonathan S. King as the Chapter 11 trustee for both the Zetta USA and Zetta
8 PTE proceedings. (Zetta USA Docket Nos. 120, 155, 159, 452, 458); see *In re Allied Digital*
9 *Technologies Corporation*, 300 B.R. 616, 610 (Bankr. D. Del. 2003)).

10 Thus, the Trustee was required to have commenced his Code § 548 claim against
11 CALI—if he had one—no later than September 15, 2019 for the claim to be timely filed. He did
12 not do so.

13 The limitations period for any Code § 548 claims against CALI has therefore run. *See*,
14 *e.g.*, *In re ITSV, Inc.*, No. CC-05-1174-MaPaK, 2006 WL 6810990, at *9 (9th Cir. B.A.P. 2006)
15 (affirming order denying Trustee’s attempt to amend complaint to add Code § 548 claim when
16 “amendment was untimely because the new claims were barred by the applicable statute of
17 limitations, [Bankruptcy Code] § 546(a)(1)(A)”). Accordingly, any attempt to state a Code §
18 548 claim against CALI in this case—or any other—is futile and should not be allowed. *Platt*
19 *Elec. Supply, Inc. v. Eoff Elec., Inc.*, 522 F.3d 1049, 1060 (9th Cir. 2008) (leave to amend denied
20 as futile because claims were barred by the statute of limitations); *Sackett & Kvan, Inc. v.*
21 *Beaman*, 399 F.2d 884, 889-90 (9th Cir. 1968) (affirming denial of motion to amend when claim
22 was barred by applicable statute of limitations).

23 2. *The Relation Back Doctrine Would Not Allow a Code § 548 Claim*
24 *Against CALI In This Case.*

25 FRCP Rule 15(c)(1) governs the circumstances under which a newly-added claim against
26 an existing party may relate back to the date the original complaint was filed. *Butler v. National*
27 *Community Renaissance of Calif.*, 766 F.3d 1191, 1202 (9th Cir. 2014) (citing *Krupski v. Costa*
28 *Crociere S.p.A.*, 560 U.S. 538, 541 (2010)). That Rule provides in relevant part that: “An

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1 amendment to a pleading relates back to the date of the original pleading when: ... (B) the
2 amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set
3 out—or attempted to be set out—in the original pleading.” Fed. R. Civ. P. 15(c)(1)(B). In this
4 way, the “relation back” doctrine is intended to balance the ability of a plaintiff to amend its
5 pleadings with the rights of a defendant to be fairly and timely informed of the claims against it;
6 new claims only relate back when a defendant is “able to anticipate claims that might follow
7 from the facts alleged by the plaintiff.” *In re Hunt*, No. 2:11-BK-58222-ER, 2015 WL 5749794,
8 at *7-8 (Bankr. C.D. Cal. Sept. 30, 2015) (citing *Percy v. San Francisco Gen. Hosp.*, 841 F.2d
9 975, 979 (9th Cir. 1988)) (holding that claims did not relate back where “[t]he Trustee could not
10 have anticipated that she would be required to defend against such allegations based on the
11 original Answer and Counterclaim” and the additional allegations could not “be proven by the
12 same type of evidence”).

13 Here, the Trustee does not even attempt to meet the requirements of Rule 15(c)(1)(B), nor
14 can he. The Original CALI Complaint did not include a Code § 548 claim, nor did it put at-issue
15 or attempt to put at-issue “the conduct, transaction[s], or occurrence[s]” that the Trustee now
16 claims gives rise to the Code § 548 claim—*i.e.*, the alleged fraudulent ponzi-scheme, kickbacks,
17 and other alleged bad acts that the Trustee alleges extends across all sixteen plane transactions at
18 issue in the Jetcraft Action.¹⁶ In fact, the word “fraud” does not appear a single time in the
19 Original CALI Complaint and no fraudulent conduct was alleged in that pleading at all. Simply
20 put, the original complaint filed by the Trustee in this case had nothing to do with the Code § 548
21 scheme that now forms the gravamen of the Trustee’s new PAC or the payments related to those
22 alleged Code § 548 claims. Instead, as discussed above, the original CALI Complaint narrowly
23 focused on contractual issues related to the parties’ respective rights and responsibilities under

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27 ¹⁶ The Original CALI Complaint also did not contain any allegations regarding Planes 1 or 6-16,
28 which the Trustee now seeks to add to this action, despite the fact that CALI had nothing to do
with those Planes.

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1 the CALI Aircraft Leases and determining the proper ownership of a \$30 million pre-delivery
2 payment that was paid by CALI and is currently held by Bombardier.¹⁷

3 Because the CALI Complaint did not address the Debtors' fraudulent intent or the facts
4 underlying the alleged Code § 548 claims at all, the Trustee's Code § 548 allegations do not
5 relate back to the original CALI Complaint pursuant to FRCP 15(a)(1)(B). Litigating these new
6 allegations will require completely different witnesses, documents, and an evaluation of a wholly
7 different scope of evidence, the vast majority of which is in the possession and control of third-
8 parties. CALI certainly could not have expected that it would ever be forced to defend itself *in*
9 *this declaratory relief action* against allegations of a years-long, massive fraudulent scheme,
10 conducted by others. *In re Magno*, 216 B.R. 34, 38-39 (9th Cir. B.A.P. 1997) ("The focus of the
11 inquiry is on *the factual allegations* made in the two complaints so as to give the opposing party
12 fair notice of the claims against him."; a sufficient link between new claims and original claims
13 "will be found when the claim to be added will likely be proved by the same kind of evidence
14 offered in support of the original pleading.") (citations and quotations omitted) (emphasis
15 added).

16 In light of the above, courts routinely reject relation back when a plaintiff attempts to add
17 new claims that require new and different types of evidence than what was required to prove up
18 the claims of the original complaint. *See, e.g., In re Dolfi*, 605 B.R. 385, 388-94 (Bankr. W.D.
19 Pa. 2019) (amended complaint alleging debt was non-dischargeable for fraud did not related
20 back to original complaint that was "devoid of allegations of fraud, deceit, or any actions by
21 [defendant] to wrongfully induce Plaintiffs to act"); *Tahoe-Sierra Pres. Council v. Tahoe Reg'l*
22 *Planning Agency*, 808 F. Supp. 1474, 1482 (D. Nev. 1992) ("Amendments to complaints
23 alleging claims arising from different contracts, different patents and separate violations do not
24 'relate' back to the original complaint."); *Stuart C. Irby Co. v. Brown*, No. 13-CV-0520-CVE-

25 _____
26 ¹⁷ It also narrowly sought the return of approximately \$4.7 million in alleged preference
27 payments that occurred between June 17, 2017 and September 14, 2017 (CALI Compl., ¶¶ 111-
28 122), which the Trustee apparently does not intend to replead in this case. However, again, those
preference claims were not based on any allegations of fraud, kick-backs, an alleged ponzi-
scheme, or any of the other allegations of wrongdoing by the other identified parties that now
populate the Trustee's CALI PAC.

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1 FHM, 2014 WL 585099, at *12-13 (N.D. Okla. Feb. 14, 2014) (new fraud claim based on
2 “almost 50 paragraphs of additional factual allegations” did not relate back to short complaint for
3 breach of fiduciary duty); *In re Valenti*, 310 B.R. 138, 149-50 (9th Cir. B.A.P. 2004) (no relation
4 back when original complaint “alleged . . . Debtor hid assets and income” whereas “the proposed
5 amended complaint [alleged] that Debtor hid debt”).

6 In short, there is no basis in law or fact for the Trustee to argue that his new Code § 548
7 allegations relate back to the original CALI Complaint. Instead, those new facts all go to the
8 Trustee’s Code § 548 allegations *in the Jetcraft Action*—which is where they should stay.
9 Because none of those Code § 548 allegations were put at issue in his original complaint in this
10 case, the Trustee is precluded from alleging any claim against CALI based on them now.

11 3. *The Trustee Cannot Re-Label His Time-Barred Code § 548 Claims As*
12 *“Factual Predicates” For Other Claims Against CALI.*

13 For the reasons discussed above, the Trustee cannot bring Code § 548 claims against
14 CALI because they are time-barred. The Trustee seeks to sidestep the fact that he is barred from
15 directly bringing Code § 548 claims against CALI by omitting an explicit claim for fraudulent
16 transfer from his complaint. Instead, the Trustee characterizes his 371 paragraphs of allegations
17 related to Code § 548 as “relating to Count I for Declaratory Judgment.” (PAC, heading directly
18 above ¶ 71.)

19 In other words, the Trustee now wants the *entire Jetcraft § 548 case*—directed entirely at
20 Bombardier and the non-party Jetcraft Defendants—at the center of his declaratory judgment
21 claim against CALI. There is no legal basis for allowing a plaintiff to add hundreds of
22 paragraphs, entirely against third-parties and asserting time-barred claims, as “factual predicates”
23 for a declaratory judgment action seeking to interpret a contract. Courts in the Ninth Circuit
24 reject attempts to re-label and recast time-barred claims as different causes of action—including
25 as claims for “declaratory judgment.” Causes of action are based on allegations, not labels.

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1 The Ninth Circuit case of *In Levald, Inc.* is instructive. There, the Ninth Circuit squarely
2 rejected a plaintiff’s attempt to recast a time-barred claim as a claim for declaratory judgment:
3 “[Plaintiff] finally contends that the statute of limitations is inapplicable to its claim for
4 declaratory judgment. This argument is meritless.” 998 F.2d at 688-89.

5 To prevent plaintiffs from making a mockery of the statute of
6 limitations by the simple expedient of creative labelling—styling an
7 action as one for declaratory relief rather than for damages—courts
8 must necessarily focus upon the substance of an asserted claim as
9 opposed to its form. It is settled, therefore, that where legal and
10 equitable claims coexist, equitable remedies will be withheld if an
11 applicable statute of limitations bars the concurrent legal remedy. []
12 Therefore, if a claim for declaratory relief could have been resolved
13 through another form of action which has a specific limitations
14 period, the specific period of time will govern.

15 *Id.* at 688¹⁸; *see also Good Morning to You Productions Corp. v. Warner-Chappell*
16 *Music, Inc.*, No. CV134460GHKMRWX, 2013 WL 12138670, at *2 (C.D. Cal. Oct. 16, 2013)
17 (“[A] plaintiff may not circumvent an applicable statute of limitations by characterizing a claim
18 as one for equitable relief.”)¹⁹

19 Courts in other Circuits are in accord. *Lehman XS Trust, Series 2006-GP2 v. GreenPoint*
20 *Mortg. Funding, Inc.*, 916 F.3d 116, 127 (2d Cir. 2019) (“U.S. Bank cannot circumvent the
21 statute of limitations by recasting its contract claim as one for indemnification.”); *In re G-I*
22 *Holdings, Inc.*, Nos. 01-30135 (RG) and 01-38790 (RG), 2016 WL 4991489, at *47 (Bankr.

23
24 ¹⁸ Citing and quoting *Gilbert v. City of Cambridge*, 932 F.2d 51, 57-58 (1st Cir. 1991) (*citing*
25 *Cope v. Anderson*, 331 U.S. 461, 464 (1947), *Russell v. Todd*, 309 U.S. 280, 289 (1940), and
Orangetown v. Gorsuch, 718 F.2d 29, 42 (2d Cir. 1983)), disapproved of on other grounds.

26 ¹⁹ The Trustee’s attempt to label this all as one declaratory relief claim—rather than as a new
27 claim—is also immaterial. At best, the Trustee is trying to assert a brand-new declaratory relief
28 claim based on substantially different facts and legal theories. *See, e.g., Bautista v. Los Angeles*
Cnty., 216 F.3d 837, 840–41 (9th Cir. 2000) (“Courts have required separate counts where
multiple claims are asserted, where they arise out of separate transactions or occurrences, and
where separate statements will facilitate a clear presentation.”) (citations omitted).

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1 D.N.J. Sept. 9, 2016) (“This Court also finds that NYCHA’s indemnity and restitution claims are
2 recast time-barred tort claims and as such must be dismissed. This Court finds that NYCHA is
3 attempting to circumvent the expired statute of limitations on its tort claims by alleging equitable
4 claims of indemnity and restitution.”); *Warrick v. Roberts*, 34 F. Supp. 3d 913, 923-24 (N.D. Ill.
5 2014) (time bar for copyright ownership had passed, and plaintiffs could not avoid that time bar
6 by bringing only an infringement claim because the “case poses the threshold question whether
7 plaintiffs are the sole owners of the copyright—and the answer to that question, rather than . . .
8 infringement, is what is truly at issue”); *Lesesne v. Brimecome*, 918 F. Supp. 2d 221, 225
9 (S.D.N.Y. 2013) (“a plaintiff should not be allowed to circumvent the statute of limitations for
10 defamation by recharacterizing his claims as other torts”).

11 Neither can a plaintiff circumvent statutes of limitation by purporting to frame time-
12 barred claims as mere factual predicates for other types of relief. *See, e.g., Garcia v. Wachovia*,
13 676 F. Supp. 2d 895, 911 (C.D. Cal. 2009) (plaintiff could not bring unfair competition claim
14 based on time-barred predicate actions because “[a] court may not allow plaintiff to plead around
15 an absolute bar to relief simply by recasting the cause of action as one for unfair competition”);
16 *Birdsong v. Unified Gov’t*, No. 13-2090-JAR, 2014 WL 105509, at *9 (D. Kan. Jan. 10, 2014)
17 (amendment futile when proposed claim was based on underlying police misconduct that formed
18 the basis of time-barred causes of action); *Farmers Ins. v. First Choice*, No. 3:13-cv-01883-PK,
19 2016 WL 10827072, at *29-30 (D. Ore. Feb. 25, 2016) (certain fraud claims were time-barred,
20 plaintiff’s unjust enrichment claim dismissed to extent it depending on time-barred fraud).

21 Here, the Trustee does not hide the true goal animating his motion to amend: he wants to
22 adjudicate the entirety of the Jetcraft Action within *this* action in order to get around his failure
23 to timely plead CALI as a defendant to his fraudulent transfer claims *in that case*. The Trustee’s
24 fraudulent transfer claims are, however, equally time-barred in this action, regardless of the
25 Trustee’s artful pleading, and the Trustee should not be permitted to circumvent that time bar by
26 pleading an entire complaint’s worth of fraudulent transfer facts—especially those that have
27 nothing to do with CALI—under the guise of being “factual support” for the narrow contract
28 interpretation issues that the Trustee pleaded in the original CALI Complaint. The Trustee’s

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1 proposed amendments, insofar as they relate to fraudulent transfers, should therefore be denied
2 as futile.

3 **C. The Trustee’s Severely Prejudicial and Futile Shotgun Complaint Must be**
4 **Rejected.**

5 *I. The Trustee’s Shotgun Pleading is Futile.*

6 The CALI PAC should also be rejected as an impermissible shotgun pleading, which is
7 itself another form of futile complaint. “The key characteristic of a shotgun pleading is that it
8 fails to one degree or another, and in one way or another, to give the defendants adequate notice
9 of the claims against them and the grounds upon which each claim rests, which renders them
10 disfavored and usually subject to dismissal.” *Casavelli v. Johanson*, No. CV-20-00497-PHX-
11 JAT, 2020 WL 4732145, at *9 (D. Ariz. Aug. 14, 2020).

12 A complaint is a shotgun pleading where it has at least one of the
13 following characteristics: (1) it contains multiple counts where each
14 count adopts the allegations of all preceding counts, (2) it is replete
15 with conclusory, vague, and immaterial facts not obviously
16 connected to any particular cause of action, (3) it asserts multiple
17 claims against multiple defendants without specifying which of the
18 defendants are responsible for which acts or omissions of which of
19 the defendants the claim is brought against.

20 *Id.*

21 “The Court has recognized that allowing shotgun pleadings would lead to many negative
22 consequences,” including uncontrolled discovery, unmanageable dockets, and even “society
23 los[ing] confidence in the court’s ability to administer justice.” *Sollberger v. Wachovia Sec.,*
24 *LLC*, No. SACV 09-0766 AG (ANx), 2010 WL 2674456, at *4 (C.D. Cal. Jun. 30, 2010)
25 (citations and quotations omitted).

26 Shotgun pleadings are routinely dismissed. *See, e.g., Casavelli*, 2020 WL 4732145 at
27 *10 (dismissing pleading where “it was extremely difficult to identify which of the Defendants
28 did what and how Plaintiffs were injured as a result”); *Sollberger*, 2010 WL 2674456 at *5

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1 (“This shotgun pleading style deprives Defendants of knowing exactly what they are accused of
2 doing wrong . . . this defect alone warrants dismissal.”); *Stenzel v. Equifax Info. Servs. LLC*, No
3 8:19-cv-1247-T-60SPF, 2020 WL 60156, at *2 (M.D. Fla. Jan 6, 2020) (“the proposed second
4 amended complaint, in its current shotgun form, is futile”).

5 Along similar lines, “a court may consider judicial economy and whether amendment
6 would lead to expeditious disposition of litigation on merits.” *Horowitz v. Stewart Title Guar.*
7 *Co.*, No. 16-00666 LEK-KJM, 2018 WL 6588506, at *7 (D. Haw. May 3, 2018) (denying
8 request for leave to amend, quoting *Hearns v. San Bernardino Police Dept.*, 530 F.3d 1124, 1136
9 (9th Cir. 2008) for the proposition that courts have “for decades upheld dismissals with prejudice
10 of needlessly prolix and confusing complaints”). While “there is no magic number of pages
11 which renders a complaint needlessly long,” length is often an indicator of a complaint that is
12 “argumentative, prolix, replete with redundancy, and largely irrelevant,” in violation of Fed. R.
13 Civ. P. 8(a). *In re Williams*, No. 11-57848-ASW, 2012 WL 2564700, at *2 (Bankr. N.D. Cal.
14 July 2, 2012). “Part of the rationale for dismissing a needlessly long and confusing complaint is
15 that courts ‘are busy enough without having to penetrate a tome approaching the magnitude of
16 war and peace to discern a plaintiff’s claims and allegations.’” *Id.* (quoting *Cafasso, U.S. ex rel.*
17 *v. General Dynamics C4 Systems, Inc.*, 637 F.3d 1047, 1058 (9th Cir. 2011)).

18 The CALI PAC is a quintessential prolix shotgun complaint. It lumps CALI into a
19 fraudulent transfer scheme allegedly undertaken by over a dozen non-parties regarding sixteen
20 aircraft transactions, twelve of which CALI indisputably has no relation to. It then makes the
21 Trustee’s declaratory relief claims *against CALI*—and the interpretation of its written
22 agreements *with CALI*—specifically dependent on findings of fraudulent transfer *in those claims*.
23 The CALI PAC does not relate to any actionable act that CALI has done or explain or justify the
24 Trustee’s fraudulent transfer allegations on a plane-by-plane basis, such that CALI can even
25 begin to understand how the fraudulent transfer claims relate to Planes 2-5, which are the only
26 planes CALI was involved with, or why its contracts can, or should, be impacted by the fraud of
27 others—especially when, as the Trustee concedes, if such fraud exists, CALI is a victim of that
28 fraud.

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1 The CALI PAC, in essence, now seeks to force CALI to defend against fraudulent
2 transfer allegations that CALI had no part of based on the Trustee’s amorphous allegations that
3 some fraudulent transfers happened somewhere within the hundreds of paragraphs of allegations
4 related to the sixteen airplane transactions at issue in the Jetcraft Action. This does not comport
5 with the Trustee’s pleading obligations under either Rule 8 or Rule 9(b) (which would apply to
6 any claims that sound in fraud), and the CALI PAC must be rejected as futile. *See, e.g., Ransby*
7 *v. Countrywide Home Loans Servicing*, No. 1:10-CV-2819-CAP-LTW, 2011 WL 13216947, at
8 *7-8 (N.D. Ga. Jul 13, 2011) (“Shotgun pleadings also characteristically fail to specify which
9 defendant is responsible for each act alleged”) (holding that “[b]ecause Plaintiff’s Proposed
10 Second Amended Complaint is a shotgun pleading, it is futile”).

11 2. *CALI Will Be Severely Prejudiced By The Requested “Amendment.”*

12 Of the factors courts analyze when adjudicating motions for leave to amend, the potential
13 for prejudice to the opposing party “carries the greatest weight.” *Eminence Capital, LLC v.*
14 *Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003). Indeed, “[p]rejudice is the touchstone of the
15 inquiry under Rule 15(a).” *N2 Packaging*, 2020 WL 2512786 at *3.

16 Recognizable prejudice in the context of amendment takes many forms. Greatly
17 expanding the scope of discovery in a case and seeking to relitigate issues that have already been
18 decided are recognized types of undue prejudice under Rule 15. *See Jackson*, 902 F.2d at 1387
19 (affirming finding of undue prejudice when amending complaint to add additional claims
20 “advance[d] different legal theories and require[d] proof of different facts” and would “require
21 appellees to relitigate a portion of their [prior action]”). Indeed, “even if a delayed motion for
22 leave is made well before the close of discovery, opposing parties can still be prejudiced by
23 having to scramble to address new theories and allegations and resultingly incur high, additional
24 litigation costs that could have been avoided had the moving party pursued such theories and
25 allegations in its original complaint.” *N2 Packaging*, 2020 WL 2512786 at *3 (untimely and
26 prejudicial to add new legal theories and claims even when discovery had not yet ended); *see*
27 *also AmerisourceBergen Corp. v. Dialysis West, Inc.*, 465 F.3d 946, 953-54 (9th Cir. 2006)
28 (affirming denial of motion to amend “[e]ven though eight months of discovery remained”

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1 because amendment “would have unfairly imposed potentially high, additional litigation costs of
2 [defendant] that could have easily been avoided had [movant] pursued [new] theory in its
3 original complaint”); *Dupree v. Apple, Inc.*, No. 16-CV-00289-LHK, 2017 WL 201705, at *4
4 (N.D. Cal. Jan. 18, 2017) (denying amendment where additional claims “would expand
5 discovery . . . [and] the parties would have to engage in extensive new discovery”);

6 Moreover, “[p]rolix, confusing complaints . . . impose unfair burdens on litigants and
7 judges.” *McHenry*, 84 F.3d at 1180. Long, confusing complaints result in circumstances where
8 “[o]nly by months or years of discovery and motions can each defendant find out what he is
9 being sued for,” which means that “[t]he expense and burden of such litigation promotes
10 settlements based on the anticipated litigation expense rather than protecting immunity from
11 suit.” *Id.* at 1178. Courts have thus recognized that defendants can be “prejudiced by the
12 constantly evolving and changing theory of the case . . . that amount[s] to a moving target,”
13 because “various iterations of Plaintiffs’ complaint” can “[leave] defendants guessing as to
14 which claim was brought against them.” *Moon v. City of Orange*, No. SACV 19-258 JVS
15 (KESx), 2020 WL 6145106, at *6 (C.D. Cal. Sept. 18, 2020).

16 In addition, “[p]rejudice has been found . . . where expense, delay, and wear and tear on
17 individual and companies is shown.” *Dupree*, 2017 WL 201705 at *4 (quoting *Kaplan v. Rose*,
18 49 F.3d 1363, 1370 (9th Cir. 1994)) (prejudice found where defendant “ha[d] invested significant
19 resources in litigating the instant case and narrowing the issues by filing two motions to dismiss”
20 and the proposed amendments “would thus prejudice [defendant] by forcing [it] to engage in
21 further litigation that could have been avoided if Plaintiff had asserted his new causes of action
22 earlier”); *see also Stambanis v. Tbwa Worldwide, Inc.*, No. 219-CV-3962 (ODW) (JEMx), 2020
23 WL 4060171, at *2 (C.D. Cal. July 20, 2020) (denying leave to amend and rejecting plaintiff’s
24 argument that “additional expense of litigating new claims is not prejudicial”).

25 CALI is greatly prejudiced by the Trustee’s proposed amendments.

26 First, the Trustee’s PAC would create an illogical loop—with no way for CALI to
27 meaningfully respond or defend itself, and no clear parameters of the claims against it.
28

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1 Specifically, the Trustee admits that his declaratory relief claim in this case *is* and *has*
2 *always been* “a predicate to [his] fraudulent transfer claims in” the Jetcraft Action. (Mot. at 20
3 (explaining that a primary motivation for his unilateral attempt at consolidation was “in
4 significant part to address this issue of the Trustee having a pending declaratory judgment count
5 in one action that was a predicate to fraudulent transfer claims in another”).) This is because, in
6 order to have standing to assert claims for fraudulent transfer based on transfers of property that
7 the Debtors *never possessed* (such as the airplane purchase payments made by CALI to
8 Bombardier), the Trustee must *first* demonstrate that the leases relating to those transfers were
9 disguised financings. (See Dkt. No. 109 (Jetcraft) at 38-41.)

10 Now, however, the Trustee seeks to amend his declaratory relief claim in a way that will
11 make the fraudulent transfer claims against the Jetcraft Defendants a predicate to his declaratory
12 relief claims in this case against CALI. This is because, at least according to the Trustee’s new
13 arguments (which CALI disputes would be sufficient, regardless), in order to set aside the
14 parties’ choice of law provisions in the CALI Aircraft Leases, the Trustee must *first* prove that
15 those leases were part of a fraudulent transfer.

16 But, logically, the Trustee cannot have it both ways. The Trustee cannot claim that the
17 choice of law provisions in the CALI Leases should be set aside *in order to find* that the
18 transactions are disguised financings *because* they were part of a fraudulent transfer (especially
19 when CALI is alleged to be a victim of the fraud, not a perpetrator); and then, in the same breath,
20 argue that the transfers were fraudulent *because* the leases were disguised financings. In other
21 words, the declaratory relief claim cannot be *both* a predicate for—and predicated on—the
22 Trustee’s fraud claims against others. According to the Trustee’s own allegations, there would
23 be no end to this logic loop.

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1 To illustrate, this is the legal and factual construct that the Trustee’s PAC now purports to
2 impose:



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14 The Trustee simply should not be allowed to amend his pleading in a way that creates a
15 legal absurdity. Rule 15 does not permit him to convert his previously straight-forward contract-
16 based declaratory relief claim against CALI into a derivative claim that is predicated on his Code
17 § 548 claims against others that are, in turn, predicated on his declaratory relief claim against
18 CALI. This makes no sense. Even if the Trustee could identify any legal support for this sort of
19 construct, and CALI knows of none, it is unduly prejudicial to force CALI to litigate such
20 claims. *McHenry*, 84 F.3d at 1179 (“[p]rolix, confusing complaints . . . impose unfair burdens
21 on litigants and judges”); *Moon*, 2020 WL 6145106 at *6 (prejudicial to make defendants guess
22 as to claims against them based on constantly evolving and changing theories).²⁰

23 Second, the Trustee’s amended complaint converts this narrow contract dispute into a
24 carbon copy of the Jetcraft Action, resulting in a massive increase and shift in the scope of
25 discovery, motion practice, and coordination that will be necessary to adjudicate this action—all
26 ///

27
28 ²⁰ The prejudice and inefficiencies identified by courts in connection with dismissing shotgun pleadings under Rule 8 should apply equally here as prejudicial. See Section III.C.1, *supra*.

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1 of which will lead to exponentially higher defense costs. Indeed, what the Trustee is actually
2 attempting to do is to unilaterally consolidate the two actions without leave to do so.

3 Third, the Trustee’s characterization of this dispute as “in its earliest stages” (Mot. at 1)
4 ignores that: this case is almost two years old; CALI participated in two unsuccessful mediations;
5 the Trustee’s motion to compel funds to be placed in a Court Registry was denied; both the
6 Jetcraft and CALI complaints were dismissed after months of extensive legal briefing and
7 argument; and the Trustee’s motion for consolidation was denied. It is more accurate to say that,
8 despite extensive activity, the Trustee has accomplished nothing other than to render the estates
9 even more administratively insolvent. Further, while discovery has not technically commenced
10 in this case, the Trustee’s original pleading did not set forth the type of case that would require
11 extensive discovery. Indeed, as evidenced by the Court’s order granting CALI’s motion to
12 dismiss, it has always been CALI’s position that the recharacterization issue can—and should—
13 be decided as a matter of law based on the parties’ written contracts. In any event, the Trustee
14 has already put CALI through more wear and tear than many cases require through their
15 discovery periods, a burden the Trustee attempts to casually disregard.

16 In short, forcing CALI to endure—and incur—the substantial burden of defending against
17 the claims (and non-claims) set forth in the PAC would be fundamentally unfair, prejudicial, and
18 should be denied. *Jackson*, 902 F.2d at 1387; *N2 Packaging*, 2020 WL 2512786, at *3;
19 *AmerisourceBergen*, 465 F.3d at 953-54; *Moon*, 2020 WL 6145106 at *6; *Dupree*, 2017 WL
20 201705, at *4. Two years after filing and after already forcing CALI to expend considerable
21 resources addressing the contract-based claims in this case, the Trustee should not be allowed to
22 abruptly convert this case from a small contractual interpretation dispute into a massive
23 fraudulent transfer action predicated on the acts of others.

24 ///
25 ///
26 ///
27 ///
28 ///

1 3. *A Declaratory Judgment Claim Is Not The Appropriate Vehicle For the*
2 *Trustee to Seek Redress For the Fraudulent Transfers That He Now*
3 *Complains of.*

4 Count I seeks relief against CALI for declaratory relief, which is governed by the
5 Declaratory Judgment Act, 28 U.S.C. § 2201.²¹ Specifically, the Trustee requests a declaration
6 that “the Plane 2-4 Finance Leases should be recharacterized as secured financings under US or
7 English law, not as true or operating leases, and that the Plane 2-4 Finance Leases vested the
8 Debtors with an economic ownership interest in Planes 2, 3, and 4 for the purposes of the
9 Trustee’s claims under section 105(a), 548, and 550 of the Bankruptcy Code.” (CALI PAC, ¶
10 583.)²² However, while the relief in the Original CALI Complaint was based on issues of
11 contract interpretation (including the alleged expectations of CALI and the Debtors), the
12 Trustee’s PAC is based almost entirely on the fraudulent transfer allegations that the Trustee
13 seeks to import from the Jetcraft Action. (CALI PAC, ¶¶ 444-454 (because “[t]he Trustee
14 alleges in Count I of this Complaint and in Counts 14 and 15 of *Jetcraft* that the estates were
15 actually or constructively defrauded . . . the choice-of-law provisions [related to the Trustee’s
16 recharacterization argument] do not bind the Trustee”).)

17 Given these new allegations, the Trustee’s new declaratory relief claim is not cognizable
18 as an independent cause of action under the Declaratory Relief Act. *See Seattle Audubon Soc. v.*
19 *Moseley*, 80 F.3d 1401, 1405 (9th Cir. 1996) (“A declaratory judgment offers a means by which
20 rights and obligations may be adjudicated in cases brought by any interested party involving an
21 actual controversy *that has not reached a stage at which either party may seek a coercive remedy*

22 _____

23 ²¹ The Declaratory Judgment Act provides in pertinent part:

24 a) In a case of actual controversy within its jurisdiction ... any court of the United States,
25 upon the filing of an appropriate pleading, may declare the rights and other legal relations
26 of any interested party seeking such declaration, whether or not further relief is or could
27 be sought. Any such declaration shall have the force and effect of a final judgment or
28 decree and shall be reviewable as such.

29 28 U.S.C. § 2201(a).

30 ²² This tracks what the Trustee sought in his original complaint under Count I. (*See* Original
31 CALI Compl., ¶ 133 (“the Plaintiff seeks a declaratory judgment that the Financed Leases are
32 actually financing agreements and not true leases”).)

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1 and *in cases where a party who could sue for coercive relief has not yet done so.*”) (citation and
2 quotation signals omitted) (emphasis added).

3 That is, because the Trustee’s declaratory relief claim is now based on allegations
4 regarding *the Jetcraft Defendants’ past wrongs*, a claim under the Declaratory Relief Act is
5 improper and duplicates the Trustee’s causes of action in that case. *See, e.g., McGraw-Edison v.*
6 *Performed Line Prods.*, 362 F.2d 339, 342-43 (9th Cir. 1966) (“It is well settled . . . that a
7 declaratory judgment may be refused where it would serve no useful purpose . . . or would not
8 finally determine the rights of the parties . . . or where it is being sought merely to determine
9 issues which are involved in a case already pending and can be properly disposed therein.”);
10 *Ballard v. Chase Bank USA, NA*, No. 10-cv-790 L(POR), 2010 WL 5114952, at *8 (S.D. Cal.
11 Dec. 9, 2010) (“A claim for declaratory relief ‘rises or falls with [the] other claims.’”) (citation
12 omitted); *Mangindin v. Wash. Mut. Bank*, 637 F. Supp. 2d 700, 707 (N.D. Cal. 2009) (“A claim
13 for declaratory relief is unnecessary where an adequate remedy exists under some other cause of
14 action.”); *Ruiz v. Mortg. Elec. Registration Sys., Inc.*, No. CIV. S-09-0780 FCD DAD, 2009 WL
15 2390824, at *6 (E.D. Cal. Aug. 3, 2009) (dismissing claim for declaratory judgment where
16 foreclosure already occurred such that the plaintiff was seeking “to redress past wrongs”); *Edejer*
17 *v. DHI Mortg. Co.*, No. C 09-1302 PJH, 2009 WL 1684714, at *11 (N.D. Cal. Jun. 12, 2009)
18 (“Plaintiff’s declaratory relief cause of action fails because she seeks to redress past wrongs
19 rather than a declaration as to future rights.”).

20 Now that the Trustee’s declaratory relief claim is primarily a claim premised on the
21 tortious conduct of the non-party Jetcraft Defendants, it is the type of claim that is routinely
22 rejected as inappropriate for disposition via declaratory judgment. *See, e.g., Rosen v. Chowaiki*
23 *& Co.*, 593 B.R. 699, 717 (Bankr. S.D.N.Y 2018) (dismissing declaratory judgment claim when
24 it requested “a declaratory judgment finding the factual elements of fraud, seemingly as a basis
25 for the imposition of a constructive trust”); *Pena v. U.S. Coast Guard*, No. 18-23188-CIV-
26 SCOLA/MCALILEY, 2019 WL 5430709, at *5 (S.D. Fla. Oct. 2, 2019) (“This lawsuit calls
27 upon the Court to make a factual determination regarding past conduct. There is no current legal
28 right or obligation between the parties that is in dispute—which is what a declaratory judgment

1 might address.”) (denying plaintiff’s request to add declaratory judgment claim pronouncing
2 defendants responsible for fraud).

3 The Declaratory Judgment Act is not intended to allow a plaintiff to adjudicate tort
4 claims against non-parties and the Trustee’s amended declaratory judgment claims are futile.

5 **D. CALI Reserves The Right to Address Defects in the Trustee’s Proposed**
6 **Amended Complaint with a Motion to Dismiss, if Required.**

7 There are many reasons to deny the Trustee’s Motion to Amend and the Court should do
8 so now, without forcing CALI to further respond to the Trustee’s lengthy and unintelligible PAC,
9 whether under Rule 12(b), 12(c), or otherwise. If the Court does allow an amended complaint to
10 be filed, CALI reserves all defenses thereto, including those based on the applicable statutes of
11 limitation, as well as the myriad of other defects that permeate the Trustee’s new allegations.

12 For example:

- 13 • Even if alleged only as “predicate” facts upon which the Trustee’s other claims
14 are based on, as the Trustee claims in his motion to amend, the Trustee fails to
15 adequately allege facts to support his fraud theories in accordance with Rule 9(b).
- 16 • The Trustee’s allegations of misappropriation *by Cassidy* or allegations involving
17 alleged kickbacks involving *Mr. Fazal Karim* have no relevant connection to the
18 transactions *with CALI*. The Trustee does not allege any facts suggesting the
19 CALI knew of or abetted Cassidy’s alleged misconduct. Rather, the Trustee
20 admits that CALI was one of the victims of Cassidy’s scheme. In any event,
21 allegations of personal dealing and fraud *by Cassidy* fail to sufficiently
22 demonstrate the requisite badges of fraud, or other facts showing actual intent on
23 the part *of the Debtors*, to hinder, delay, or defraud its creditors in regards to any
24 of the CALI Aircraft transactions.
- 25 • For all of the reasons already addressed by this Court in its prior orders, the
26 alleged “Ponzi-like” scheme is wholly inadequate to circumvent pleading actual
27 fraud, and the Trustee’s claims fail in any event because CALI was one of the
28 admitted victims of the alleged scheme, not a perpetrator.

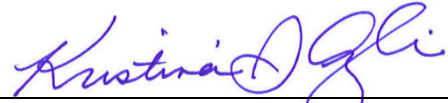
1 All of these issues, and more, will need to be addressed before the Trustee is allowed to
2 proceed with any of his fraud-based claims.

3 **IV. CONCLUSION**

4 For the aforementioned reasons, the Trustee's Motion to Amend should be denied.²³

6 Dated: May 26, 2021

HOLLAND & KNIGHT LLP

8 

9 By: ROBERT J. LABATE (SBN 313847)
10 KRISTINA S. AZLIN (SBN 235238)

11 *Attorneys for CAVIC Aviation Leasing*
12 *(Ireland) 22 Co. Designated Activity*
13 *Company*

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25 ²³ CALI files this Opposition solely on its own behalf. CALI notes, however, that the Trustee
26 seeks to add ZJ6000-1 Statutory Trust, ZJ6000-2 Statutory Trust, and ZJ6000-3 Statutory Trust
27 (collectively, the "Statutory Trusts") to this action as defendants in Count 1. The futility,
28 prejudice, and related arguments made herein would apply equally to the Trustee's attempt to
add the Statutory Trusts to this action. Further, the issues related to the futility and prejudice of
adding new parties to this action given the Trustee's lack of justification under Rule 15 for such
additions, as set forth in CALI's opposition to the Trustee's motion to amend in the Jetcraft
Action, would apply as well.

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7 *Attorneys for CAVIC Aviation Leasing (Ireland) 22 Co. DAC*

8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **LOS ANGELES DIVISION**

11 In re:) Lead Case No.: 2:17-bk-21386-SK
12 ZETTA JET USA, INC., a California) Chapter 7
corporation,) Jointly Administered With:
13 Debtor.) Case No.: 2:17-bk-21387-SK
14) Adv. Proc. No. 2:19-01147-SK

15 In re:) **DECLARATION OF KRISTINA AZLIN**
16 ZETTA JET PTE, LTD., a Singaporean) **IN SUPPORT OF CALI'S OPPOSITION**
corporation,) **TO TRUSTEE'S MOTION FOR LEAVE**
17 Debtor.) **TO AMEND ADVERSARY COMPLAINT**

18 JONATHAN D. KING, solely in his) Hearing Date: June 30, 2021
19 capacity as Chapter 7 Trustee of Zetta Jet) Time: 9:00 am pst
USA, Inc. and Zetta Jet PTE, Ltd.,) Place: Courtroom 1575
20 Plaintiff,) (All Hearings Conducted Via
21) Telephone or Government
22) Zoom)

23 v.)
24 CAVIC AVIATION LEASING (IRELAND))
25 22 CO. DESIGNATED ACTIVITY)
COMPANY; and BOMBARDIER)
26 AEROSPACE CORPORATION,)
27 Defendants.)
28) Judge: Honorable Sandra R. Klein,
United States Bankruptcy Judge

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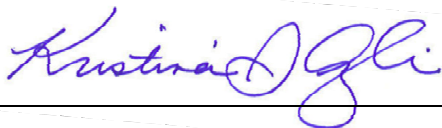
I, Kristina S. Azlin, hereby declare and certify as follows:

1. I am a partner at Holland & Knight LLP, counsel for CAVIC Aviation Leasing (Ireland) 22 Co. Designated Activity Company (“CALI”), in the adversary proceeding styled as King v. CAVIC Aviation Leasing (Ireland) 22 Co. Designated Activity Company, No. 2:19-ap-01147-SK (C.D. Cal. Bankr.) (the “CALI” proceeding). I am over the age of 18 and have personal knowledge of the matters stated herein. I could truthfully testify thereto if called upon as a witness.

2. Attached as Exhibit A is a true and correct copy of excerpts of the transcript from the March 31, 2021, 10:00 a.m. hearing in this action.

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

Executed on May 26, 2021, at Los Angeles, California.



Kristina S. Azlin

EXHIBIT A

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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

-oOo-

In Re:) Case No. 2:17-bk-21386-SK
) Chapter 7
ZETTA JET USA, INC., et al.,)
) Los Angeles, California
Debtors.) Wednesday, March 31, 2021
) 9:00 AM

ADV#: 2:18-ap-01340-SK
JONATHAN D. KING v. NEW
TARGET INVESTMENTS LIMITED,
ET AL.

ADV#: 2:19-ap-01147-SK
JONATHAN D. KING v. CAVIC
AVIATION LEASING (IRELAND)

ADV#: 2:19-ap-01382-SK
JONATHAN D. KING v. JETCRAFT
CORPORATION, ET AL.

#11.00 HRG RE CHAPTER 7
TRUSTEE'S FIFTH MOTION UNDER
LBR 2016-2 AND BK CODE
SECTION 105 FOR APPROVAL OF
CASH DISBURSEMENTS NECESSARY
FOR THE ADMINISTRATION OF THE
DEBTORS' ESTATES

#11.10 HRG RE CHAPTER 7
TRUSTEE'S MOTION FOR
ADJOURNMENT

#12.00 HRG RE TRUSTEE'S
MOTION FOR DEFAULT JUDGMENT
AGAINST NEW TARGET
INVESTMENTS LIMITED, LINKAGE
ACCESS LIMITED, DRAGON PEARL
LIMITED, AND KEBU WU

#13 STATUS CONFERENCE RE
AMENDED COMPLAINT FOR
FRAUDULENT FRAUDULENT
CONVEYANCE UNDER 11 U.S.C.



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548 (A) (1) (A) , 548 (A) (1) (B)
AND 550, DECLARATORY JUDGMENT
UNDER AN ALTER EGO THEORY
UNDER 11 U.S.C. 362,
IMPOSITION OF CONSTRUCTIVE
TRUST UNDER 11 U.S.C. 541 (D) ,
WILLFUL VIOLATION OF THE
AUTOMATIC STAY UNDER 11
U.S.C. 362 and 541 (A) ,
AVOIDANCE OF POSTPETITION
TRANSFERS UNDER 11 U.S.C.
549 (A) , TURNOVER OF ESTATE
PROPERTY UNDER 11 U.S.C.
542 (A) , AND DISALLOWANCE OF
CLAIMS UNDER 11 U.S.C. 502 (D)

#14.00 HRG RE MOTION TO
CONSOLIDATE RELATED ADVERSARY
CASES

#15.00 HRG RE MOTION TO
CONSOLIDATE RELATED ADVERSARY
CASES

#16.00 STATUS CONFERENCE RE
COMPLAINT FOR (I) JUDGEMENTS
DECLARING (A) LEASES AS
DISGUISED FINANCING
ARRANGEMENTS, (B) AN ASSET
PURCHASE AGREEMENT
TERMINATED, AND (C) A
SECURITY INTEREST
UNPERFECTED; (II) AVOIDANCE
OF AN UNPERFECTED SECURITY
INTEREST UNDER 11 U.S.C.
544 (A) ; (III) RECOVERY OF AN
AVOIDED TRANSFER UNDER 11
U.S.C. 550; (IV) TURNOVER OF
ESTATE PROPERTY UNDER 11
U.S.C. 542; (V) AVOIDANCE OF
PREFERENTIAL TRANSFERS UNDER
11 U.S.C. 547; AND (VI)
RECOVERY OF PROPERTY OF THE
ESTATE UNDER 11 U.S.C. 550

#17.00 STATUS CONFERENCE RE
COMPLAINT



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TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE SANDRA KLEIN
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES (All present by video or telephone):

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Defendants:

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Court Recorder: SHEMAINEE CARRANZA
United States Bankruptcy
Court
Edward R. Roybal Federal Building
255 East Temple Street
Room 940
Los Angeles, CA 90012
(855) 460-9641

Transcriber: MELISSA ZIMMERMAN
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Phoenix, AZ 85020
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Proceedings recorded by electronic sound recording;
transcript provided by transcription service.



Zetta Jet USA, Inc.

1 LOS ANGELES, CALIFORNIA, WEDNESDAY, MARCH 31, 2021, 10:00 AM

2 -oOo-

3 (Call to order of the Court.)

4 THE COURT: All right. Turning back to the motions to
5 consolidate. And why don't I just -- I'll take appearances,
6 but I want appearances of the parties who are actually going to
7 be arguing this motion. I know there's a lot of other parties
8 who are listening. I see three, four, five people whose
9 cameras are on, so I'm just going to go from left to right.

10 Mr. Labate?

11 MR. LABATE: Thank you, Your Honor. Robert Labate on
12 behalf of Cavic (Cali) and Holland & Knight. And Ms. Azlin
13 will be arguing for us. Thank you.

14 THE COURT: Okay, great. Good morning, Ms. Azlin.

15 MS. AZLIN: Morning, Your Honor.

16 THE COURT: Okay. I also see Mr. Torosian.

17 MR. TOROSIAN: Morning, again, Your Honor. Jeff
18 Torosian for the trustee and I will be arguing for the trustee
19 on this matter.

20 THE COURT: Great, thank you.

21 I see Mr. Troop.

22 MR. TROOP: Good morning, Your Honor. Andrew Troop
23 from Pillsbury Winthrop Shaw Pittman on behalf of the various
24 (indiscernible) and I'll be arguing this morning.

25 And Ms. Fornos is also on the line.



Zetta Jet USA, Inc.

1 But instead, they're going to try to get out of two
2 complaints with two motions. We think consolidation makes a
3 heck of a lot of sense. We think, frankly, it protects them as
4 much as us. And if not, we will file two separate complaints
5 with a lot of the same allegations and may or may not want to
6 consolidate down the road, depending on the rulings and
7 depending on which one completes first.

8 We think consolidation makes a lot of sense for
9 judicial economy, for Your Honor's sake, for the briefings'
10 sake, and frankly, for all parties' sake. I thank Your Honor.

11 THE COURT: Thank you. All right. I'm ready to rule.
12 I'm not going to go through all of the parties' arguments. Be
13 assured that I've reviewed all of the pleadings, the motion,
14 Bombardier's statement in response, Jetcraft's response in
15 opposition, Cavic's opposition, and the trustee's reply. I --
16 just given the press of other business I have this afternoon,
17 I'm -- what I normally do is lay out all of the arguments. But
18 again, I have considered all of the arguments and I'm very
19 familiar with all of the facts as well as all of the law.

20 In terms of the legal standard, I think it's important
21 to set forth what the actual legal standard is. FRBP 7042
22 provides that FRCP is applicable in adversary proceedings. And
23 FRC 42 indicates that consolidation is appropriate if actions
24 before the Court involve a common question of law or fact, the
25 Court may, one, join for a hearing or trial any and all matters



Zetta Jet USA, Inc.

1 at issue in the actions, two, consolidate the actions, or
2 three, issue any other orders to avoid unnecessary costs or
3 delay.

4 For two adversaries to be consolidated, there must be
5 a common question or law or fact. Consolidation does not
6 completely merge constituent cases into one, nor does it change
7 the rights of the party or make those who are parties in one
8 suit parties in another. Consolidation is merely an
9 administrative device used for convenience to accomplish
10 considerations of judicial economy and fairness. Although
11 courts have broad discretion to consolidate adversary
12 proceedings into one action, the court must make precise
13 findings regarding the common questions of law and fact that
14 justify consolidation. That's In re Adams Apple, 829 F.2d 1484
15 Ninth Circuit (1987).

16 To frame the issue before the Court, it's helpful to
17 summarize the Court's rulings on the motion to dismiss. On
18 3/12 and 3/20 of last year, the Court issued a ruling and
19 entered an order on the Fazeem Karul -- excuse me. Now, I
20 can't say the names, and I had them summarized. The Fazal-
21 Karim and entities motion to dismiss, dismissing Counts I
22 through VI of the Jetcraft adversary and granting the trustee
23 leave to amend specific counts. And that leave to amend was
24 regarding Counts I, II, III, and VI.

25 On 3/12 and 3/28, the Court issued a ruling and



Zetta Jet USA, Inc.

1 entered an order on the Jetcraft motions to dismiss, dismissing
2 Counts VII and VIII to the extent they alleged constructive
3 fraudulent transfers and granting the trustee leave to amend
4 those counts regarding constructive fraudulent transfers.

5 On 3/12 and 3/20, the Court issued a ruling and
6 entered an order on the Bombardier entity's motion to dismiss,
7 dismissing Counts I through VI, X through XVI, XVIII through
8 XIX -- hold on. Excuse me. No, XIII through XIV and XVII of
9 the adversary and granting the trustee leave to amend all
10 counts other than Count IV, which was dismissed with prejudice.

11 On 10/7 and 10/19, the Court issued a ruling and
12 entered an order on the Cavic motion to dismiss, dismissing
13 Counts I, III, IV, V, VI, and VII of the Cavic adversary
14 complaint with leave to amend those counts.

15 And on the same dates, the Court issued a ruling and
16 entered an order on the Bombardier motion to dismiss,
17 dismissing Counts II and IV of the Cavic adversary with leave
18 to amend those counts. Although the trustee claims that the
19 Court granted leave to amend without limitation in both
20 adversary proceedings -- that's the reply at III, he cites
21 nothing in the record to support this assertion.

22 In fact, the Court did not grant unlimited leave to
23 amend. Instead, in its rulings, the Court specified which
24 counts the trustee could amend. The orders issued regarding
25 the Cavic and Bombardier motions to dismiss specifically



Zetta Jet USA, Inc.

1 mentioned which counts the trustee was authorized to amend.
2 That's the Cavic adversary proceeding, docket number 174 to 75.

3 Although the orders entered in the Jetcraft adversary
4 proceeding did not mention the specific counts that the trustee
5 was authorized to amend, the orders explicitly referenced the
6 detailed rulings issued by the Court on each motion to dismiss
7 and the rulings which identified the specific counts that the
8 trustee was authorized to amend, control. That's In re
9 Garland, 295 BR 347 Ninth Circuit (2003).

10 In the Ninth Circuit, courts generally allow
11 plaintiffs to add new claims and/or add new parties to amended
12 complaints where an order of dismissal granted leave to amend
13 without limitation. That's MAO-MSO Recovery II, LLC, a case
14 cited by the trustee from the Central District of California.
15 But where leave to amend is given to cure deficiencies in
16 certain specified claims, new claims alleged for the first time
17 in an amended pleading should be dismissed or stricken. That's
18 Vahora v. Valley Diagnostic Laboratory, 2017, Westlaw 2572440,
19 Eastern District of California (2017).

20 And where a complaint is dismissed with leave to amend
21 that is limited in scope, the plaintiff must seek leave of the
22 court as required by FRCP 15 before adding new claims and/or
23 adding new parties. The trustee argues that the motion can be
24 construed as a motion to amend. That was argued at the reply
25 at 11 to 12. But the Court notes that he raises this argument



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1 for the first time in the reply. And the defendants didn't
2 have an opportunity to respond to that request. And it need
3 not be considered by the Court. And it will not be considered
4 by the Court. That's L.B.R. 9013-1(g) (4).

5 And trustee's cited authority, cause -- a Central
6 District California case from 2010 on top of a Eastern District
7 California case from 2009. Those cases are distinguishable
8 because the defendants in both cases had an opportunity to
9 reply to the requests for leave to amend. And the plaintiffs
10 in both cases sought to delete claims from the complaints.

11 In terms of the indispensable party issue regarding
12 the dismissal of Count X of the Jetcraft adversary in the
13 Court's tentative ruling, which is docket number 76 in the
14 Jetcraft adversary proceeding, the Court indicated as follows,
15 "As an initial matter, the allegations that the Cavic
16 transactions were disguised financings are conclusory and
17 insufficient to withstand a motion to dismiss".

18 Even if that were not the case and even if the
19 complaint contained sufficient allegations that the Cavic
20 transactions were disguised financings, Cavic can -- Count X
21 must be dismissed for failure to join Cavic, an indispensable
22 party. Alternatively, if the Cavic transactions were not
23 disguised financings, then the trustee lacks standing to
24 recover the \$121.7-million Cavic payment to BAC.

25 Although the trustee maintains that the Court required



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1 Cavic to be made a party to the Jetcraft adversary, he
2 misconstrues the Court's ruling. The Court found that Cavic
3 was an indispensable party to the Jetcraft adversary, but it
4 did not grant the trustee leave to amend the Jetcraft adversary
5 to add Cavic, nor did it make any findings that Cavic could be
6 added to the Jetcraft adversary proceeding.

7 Further, the trustee's reliance on MAO-MSO Recovery
8 II, LLC is not persuasive. In that case, the Court held that
9 it had granted leave to amend without limitation after
10 dismissing a complaint and authorizing the plaintiffs to
11 "attempt to cure the deficiencies by filing a second amended
12 complaint". The court in that case, Judge Berard (sic),
13 acknowledged that its language regarding leave to amend was
14 indelibly less than clear than in cases where leave to amend
15 was granted with limitation, where courts had stated that a
16 plaintiff could file an amended complaint addressing the
17 deficiencies identified herein or when courts only granted
18 leave to amend regarding certain claims.

19 Here, the Court granted the trustee leave to amend
20 specific counts in dismissing the complaints in the two
21 adversaries that the trustee seeks to consolidate. And as the
22 court in MAO-MSO recognized, this was limited mean to amend.
23 In terms of whether there are common questions of law and fact
24 and risk of inconsistent results, although the trustee insists
25 that the two adversaries here, common questions of law and



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1 fact, and that, absent consolidations the adversary proceedings
2 are at risk of inconsistent rulings, the cases he cites to
3 support this argument are inapposite because they each involved
4 operative complaints.

5 Those cases are all brought solely as Boston Edison
6 Company, Discount Bank, International Paving System (phonetic),
7 and Bank of Montreal. Here, as everyone recognizes, there are
8 no operative complaints. The Court notes that the trustee
9 cites a case from the Southern District of California, Alegre
10 v. Jewell, to support his argument that he can seek
11 consolidation before filing a new complaint in either the
12 Jetcraft adversary or the Cavic adversary. Alegre, however, is
13 factually and procedurally distinguishable. It involved three
14 cases, Alegre I, Alegre II, and Alvarado, which all included
15 overlapping facts regarding a century-old dispute over tribal
16 identity. The defendants, in fact, acknowledged that the
17 defendants in all three cases were identical and the three
18 cases were based on similar transactions. That's docket number
19 994 in 17-CV-00938.

20 Finally, regarding the trustee's argument that
21 Bombardier reserved its right to seek consolidation of the two
22 adversaries, he quotes from the Bombardier motion to dismiss
23 Counts I and IV of the adversary that were filed in the Cavic
24 adversary in which Bombardier stated, "Assuming that the Court
25 doesn't dismiss this adversary proceeding against Cavic and



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1 Bombardier and the Jetcraft adversary proceeding against the
2 Bombardier entities, Bombardier reserves the right to seek to
3 consolidate the adversary proceeding with the Jetcraft
4 adversary".

5 As all parties know the Cavic adversary complaint was
6 dismissed as set forth previously. And Bombardier's
7 reservation of rights is different from the situation in BAE
8 Systems Mobility & Protection Systems Inc., a district -- out
9 of Arizona -- case from 2009 cited by the trustee where a court
10 ordered a consolidation after a defendant's motion to dismiss
11 was denied and the defendant didn't dispute that it would be
12 appropriate to consolidate the action with another proceeding.

13 In terms of timing on the ruling of the motion to
14 dismiss, here, Cavic and Jetcraft cite authority to suggest
15 where defendants' plan to move for Rule 12(b)(6) dismissal,
16 consolidation is premature. Although the trustee argues that
17 federal California federal courts do not require motions to
18 dismiss rulings before evaluating whether consolidation is
19 appropriate, whether a motion to dismiss or consolidate should
20 be adjudicated first is not relevant at this juncture because
21 the only issue before the Court is whether to consolidate the
22 adversaries.

23 And without operative complaints in each adversary,
24 it's impossible for the Court to make the specific factual
25 findings that must be made for consolidation to occur.



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1 Further, in the cases cited by the trustee, Lowery,
2 Jin, and Oser, the courts considered request to consolidate
3 actions where operative complaints had actually been filed.
4 And the Schad case is distinguishable because the parties
5 requested that the cases be consolidated for pre-trial
6 purposes. So for the reasons stated, the motion to consolidate
7 is denied.

8 So where does that leave us? We don't have operative
9 complaints in either the Jetcraft action or in the Cavic
10 action. And this is how the Court proposes to proceed. The
11 trustee must file a redlined and clean copy of amended
12 complaints in each of the adversary proceedings to address the
13 specific counts that the trustee (sic) authorized the trustee
14 to amend in its rulings and in its orders.

15 It appears that the trustee is also seeking to add
16 counts, add parties, and add other allegations that were not
17 previously included in either the Cavic or Jetcraft adversary
18 proceedings. So to expedite these cases, what the Court
19 proposes is as follows. The trustee files a motion to amend
20 under Rule 15. The motion to amend must attach a proposed
21 redlined and clean copy of amended complaints in both separate
22 adversary proceedings.

23 For amendments that the trustee believes he was
24 authorized to make based upon the Court's previous ruling, any
25 changes must be redlined in green. For any changes that the



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1 Court had not previously authorized in its rulings on the
2 motions to dismiss, the redlining of those changes, which would
3 be adding parties or adding counts or adding other allegations,
4 those changes must be made in a different color -- blue, red --
5 it doesn't matter to the Court.

6 Parties will then have an opportunity, in response to
7 the motion to amend, to set forth their position. And then,
8 the Court will rule on those motions to amend. At that point,
9 the Court and the parties can discuss whether it makes sense to
10 adjudicate a potential motion to consolidate, adjudicate a
11 potential motion to dismiss, or what other possible motions may
12 be filed.

13 So I'm not going to entertain any argument on my
14 ruling. The only argument that I will entertain is on the
15 proposal of the trustee filing a motion to amend under Rule 15
16 and color-coding the amendments, green for amendments that the
17 trustee -- that the Court, excuse me, authorized the trustee to
18 amend certain counts and a different color for any changes that
19 weren't authorized in the Court's prior ruling and changes that
20 the trustee seeks to make, which would be amending counts,
21 adding parties, adding counts, or adding other allegations.

22 So Mr. Torosian?

23 MR. TOROSIAN: Very quick, Your Honor. We can do all
24 that. Obviously, we're going to defer to your ruling. And
25 we'll meet the thirty days. We would have forty days to file



PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

HOLLAND & KNIGHT LLP
400 South Hope Street, 8th Floor
Los Angeles, CA 90071
Telephone: 213.896.2400

A true and correct copy of the foregoing document entitled (*specify*): (1) CAVIC AVIATION LEASING (IRELAND) 22 CO. DESIGNATED ACTIVITY COMPANY'S MEMORANDUM IN OPPOSITION TO TRUSTEE'S MOTION FOR LEAVE TO AMEND ADVERSARY COMPLAINT; and (2) DECLARATION OF KRISTINA AZLIN IN SUPPORT OF CALI'S OPPOSITION TO TRUSTEE'S MOTION FOR LEAVE TO AMEND ADVERSARY COMPLAINT will be served or was served (**a**) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (**b**) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) May 26, 2021, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page 1

2. SERVED BY UNITED STATES MAIL:

On (*date*) _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) March 3, 2021, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

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

May 26, 2021

Kristina S. Azlin

/s/ Kristina S. Azlin

Date

Printed Name

Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

In re: ZETTA JET USA, INC.
Adv. Proc. No. 2:19-ap-01147-SK

(1) TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEE):

<u>SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEE)</u>	
BOMBARDIER AEROSPACE CORPORATION: Matthew S Walker 12255 El Camino Real Ste 300 San Diego, CA 92130-2006 619-234-5000 Fax : 858-509-4010 Email: matthew.walker@pillsburylaw.com , renee.evans@pillsburylaw.com , docket@pillsburylaw.com	PLAINTIFF JONATHAN D. KING, SOLELY IN HIS CAPACITY AS CHAPTER 7 TRUSTEE OF ZETTA JET USA, INC. AND ZETTA JET PTE, LTD.: Robbin L. Itkin Sklar Kirsh 1880 Century Park East Los Angeles, CA 90067 Email: ritkin@sklarkirsh.com , cbullock@sklarkirsh.com John K Lyons DLA PIPER LLP (US) 444 West Lake St, Ste 900 Chicago, IL 60606-0089 Tel: 312-368-4000 Fax: 312-236-7516 LEAD ATTORNEY Email: john-lyons-7790@ecf.pacerpro.com David M Riley Morgan Lewis & Bockius LLP 2049 Century Park East Suite 700 Los Angeles, CA 90067 Tel: 310-595-3000 Fax: 310-595-3300 Email: david.riley@morganlewis.com , davidzriley@gmail.com
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