



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

In re:

Zetta Jet USA, Inc.

Debtor(s).

CHAPTER 7

Case No.: 2:17-bk-21386-SK
Adv No: 2:19-ap-01147-SK

**COURT’S MEMORANDUM OF DECISION
ON “MOTION FOR LEAVE TO AMEND
ADVERSARY COMPLAINT,” DOCKET #242,
FILED BY CHAPTER 7 TRUSTEE
JONATHAN D. KING**

Jonathan D. King

Plaintiff(s),

v.

Bombardier Aerospace Corporation,
CAVIC Aviation Leasing (Ireland) 22 Co.
Designated Activity Company

Defendant(s).

Date: 6/30/21
Time: 9:00 a.m.
Courtroom: 1575

On 6/30/21 at 9:00 a.m., the Court heard a “Motion for Leave to Amend Adversary
Complaint” (Motion), Docket #242, filed by Jonathan D. King, in his capacity as chapter

1 7 trustee (Trustee) for Zetta Jet USA, Inc. and Zetta Jet PTE, Ltd. Appearances were
2 as noted on the record. All parties were given an opportunity to be heard. At the
3 conclusion of the 6/30/21 hearing, the Court took the Motion under submission. A copy
4 of the Court's Memorandum of Decision regarding the Motion is attached hereto.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

Date: July 13, 2021

25

26

27

28



Sandra R. Klein
United States Bankruptcy Judge

Before the Court is a “Motion for Leave to Amend Adversary Complaint” (Motion) filed by Jonathan D. King (King), in his capacity as chapter 7 trustee for Zetta Jet USA, Inc. (Zetta USA) and Zetta Jet PTE, Ltd. (Zetta Singapore, and together with Zetta USA, Debtors). CAVIC AP Docket #242.¹

On 5/26/21, CAVIC Aviation Leasing (Ireland) 22 Co. Designated Activity Company (CAVIC) filed an “Opposition to Trustee’s Motion for Leave to Amend Adversary Complaint” (CAVIC Opposition) and a “Declaration of Kristina Azlin” (Azlin 5/26/21 Decl.). CAVIC AP Docket #264. That same day, Bombardier Aerospace Corporation (BAC) filed a “Response to Trustee’s Motion to Amend Adversary Complaint” (BAC Response). CAVIC AP Docket #265.

On 6/9/21, the Trustee filed a “Reply in Support of Motion for Leave to Amend Adversary Complaint” (Reply) and a “Request for Judicial Notice” (RJN). CAVIC AP Docket #s 267-68.

On 6/30/21, the Court held a hearing on the Motion during which counsel for the Trustee, CAVIC and BAC appeared and were given an opportunity to be heard. At the conclusion of the hearing, the Court took the Motion under submission. Based on the argument in the pleadings and argument of counsel during the hearing, and for the reasons stated in the analysis below, the Motion is denied in part and granted in part as set forth below. This memorandum constitutes the Court’s findings of facts and conclusions of law regarding the Motion.

I. Facts

a. Bankruptcy Cases

On 9/15/17, Zetta USA and Zetta Singapore filed chapter 11 petitions (collectively, Bankruptcy Cases). Zetta USA Docket #1; Zetta Singapore Docket #1. King was appointed as the chapter 11 trustee, and after the Bankruptcy Cases were converted, he was appointed as the chapter 7 trustee. Zetta USA Docket #s 159, 452, 458.

b. CAVIC AP and Motions to Dismiss

On 5/21/19, the Trustee filed a complaint (Original CAVIC Complaint) in King v. CAVIC Aviation Leasing (Ireland) 22 Co. Designated Activity Co. et al., 2:19-ap-01147-SK (CAVIC AP), which contained seven causes of action against the following parties:

¹ References to the CAVIC AP Docket are to the docket in King v. CAVIC Aviation Leasing (Ireland) 22 Co. Designated Activity Co. et al., 2:19-ap-01147-SK. References to the Jetcraft AP Docket are to the docket in King v. Jetcraft Corp. et al., 2:19-ap-01382-SK. References to the Zetta USA Docket are to the docket in In re Zetta Jet USA, Inc., 2:17-bk-21386-SK. References to the Zetta Singapore Docket are to the docket in In re Zetta Jet PTE, Ltd., 2:17-bk-21387-SK.

Count #	Type of Claim	Statute(s)	Defendant(s)	Page #
1	Declaratory Judgment that the Financed Leases are Financings and Not True Leases	N/A	CAVIC	28
2	Declaratory Judgment that the APA is Terminated	N/A	Bombardier	29
3	Declaratory Judgment that CAVIC's Security Interest in the Refund is Not Perfected	UCC Article 9	CAVIC	29
4	The Unperfected Security Interest in the Refund Must Be Avoided and Preserved for the Benefit of the Debtor's Estate	11 U.S.C. §§ 544(a)(1)	CAVIC	30
5	The Right to the Refund is Recoverable for the Benefit of the Estate	11 U.S.C. §§ 550(a)	CAVIC	31
6	The Refund Is Property of the Estate	11 U.S.C. §§ 542(a)	Bombardier	31
7	Avoidance and Recovery of Preferential Transfers	11 U.S.C. §§ 547, 550	CAVIC	32

CAVIC AP Docket #1.

i. CAVIC Motion to Dismiss

The Court granted a "Motion to Dismiss Counts I, III, IV, V, VI, and VII of the Trustee's Adversary Complaint" filed by CAVIC (CAVIC MTD), dismissing Counts I, III, IV, V, VI and VII with leave to amend those counts. CAVIC AP Docket #s 59, 157, 174.

ii. BAC Motion to Dismiss

The Court granted a "Motion to Dismiss Counts II and VI of Adversary Complaint" filed by BAC (BAC MTD), dismissing Counts II and VI with leave to amend those counts. CAVIC AP Docket #s 70, 156, 175.

c. Jetcraft AP and Motions to Dismiss

On 9/13/19, the Trustee filed a complaint (Original Jetcraft Complaint) in King v. Jetcraft Corp. et al., 2:19-ap-01382-SK (Jetcraft AP), which contained 17 causes against the following parties:

Count #	Type of Claim	Statute(s)	Defendant(s)	Page #
1	Aiding and Abetting Breach of Fiduciary Duty	N/A	FK Defendants; Bombardier	43
2	Civil Conspiracy	N/A	FK Defendants; Bombardier	45
3	Cal. Bus. & Prof. Code § 17200	Cal. Bus. & Prof. Code § 17200	FK Defendants; Bombardier	46
4	Unjust Enrichment	N/A	FK Defendants; Bombardier	47
5	Constructive Trust	Cal. Civ. Code §§ 2223 and 2224	FK Defendants; Bombardier	48
6	Fraud	N/A	FK Defendants; Bombardier	49
7	Avoidance and Recovery of Fraudulent Transfer and Obligations (Plane 1)	11 U.S.C. §§ 548, 550	Jetcraft Corporation; Jetcoast; ECN; Element Aviation	50
8	Avoidance and Recovery of Fraudulent Transfer and Obligations (Plane 10)	1 U.S.C. §§ 548, 550	Jetcraft Global; Orion; ECN; Element Aviation	52
9	Avoidance and Recovery of Fraudulent Transfer and Obligations (Plane 11)	11 U.S.C. §§ 548, 550	Element Aviation; ECN	53
10	Avoidance and Recovery of Fraudulent Transfers and Obligations (CAVIC Payments)	11 U.S.C. §§ 548, 550	Bombardier	55
11	Avoidance and Recovery of Fraudulent Transfer and Obligations (Plane 6)	11 U.S.C. §§ 548, 550	Bombardier	56
12	Avoidance and Recovery of U.S. Preference Transfer	11 U.S.C. §§ 547, 550	ECN; Element Aviation	58
13	Avoidance and Recovery of U.S. Preference Transfer	11 U.S.C. §§ 547, 550	Bombardier	59
14	Avoidance and Recovery of U.S. Preference Transfer	11 U.S.C. §§ 547, 550	Bombardier; Learjet, Inc.	60
15	Willful Violation of Automatic Stay	11 U.S.C. § 362	Bombardier	61
16	Turnover of Property of the Estate	11 U.S.C. § 542	Jetcraft Corporation; Jetcraft Global	62
17	Disallowance of Claims	11 U.S.C. § 502(d)	All Defendants	63

Jetcraft AP Docket #1.

i. FKG/FKP/FK Motion to Dismiss

The Court granted a "Motion to Dismiss Counts I-VI of Adversary Complaint" (FK MTD) filed by FKG/FKP/FK, dismissing Counts I, II, III and VI with leave to amend and

dismissing Counts IV (Unjust Enrichment) and V (Constructive Trust) without leave to amend. Jetcraft AP Docket #s 45, 107, 120.

ii. JC/JG/J/JA Motion to Dismiss

The Court granted in part and denied in part a “Motion to Dismiss Counts VII, VIII, XVI & XVII of Adversary Complaint” filed by Jetcraft Corporation (Jetcraft Corp.), Jetcraft Global, Inc. (Jetcraft Global), Jetcoast 5000-5, LLC (Jetcoast), and Jetcraft Asia Limited (Jetcraft Asia, and together with Jetcraft Corp., Jetcraft Global, and Jetcoast, JC/JG/J/JA), dismissing Counts VII and VIII to the extent they alleged constructive fraudulent transfers with leave to amend those counts regarding constructive fraudulent transfers. Jetcraft AP Docket #s 46, 108, 117.

iii. BAC/BI/LI Motion to Dismiss

The Court granted a “Motion to Dismiss Counts I-VI, X-XI, XIII-XIV, XVII of Adversary Complaint” filed by BAC, Bombardier Inc. (BI, and together with BAC, BAC/BI or Bombardier), and Learjet, Inc. (LI, and together with BAC/BI, BAC/BI/LI), dismissing Counts I-VI, X-XI, XIII-XIV, and XVII, with leave to amend all counts other than Count IV, which was dismissed with prejudice. Jetcraft AP Docket #s 76, 109, 121.

d. Motions to Consolidate

The Trustee moved to consolidate the Jetcraft AP and the CAVIC AP (Consolidation Motion), which the Court denied. CAVIC AP Docket #s 184, 236; Jetcraft AP Docket #s 153, 193.

e. Proposed Amended Complaints

The proposed amended complaint in this adversary proceeding (CAVIC PAC) contains the following causes of action against the following parties:

Count #	Type of Claim	Statute(s)	Defendant(s)	Page #
1	Declaratory Judgment for Recharacterization	N/A	CAVIC; CAVIC	130
2	Declaratory Judgment that the Plane 5 APA Is Terminated	N/A	Statutory Trusts; TVPX	135
3	Declaratory Judgment that CAVIC's Security Interest in the Refund is Not Perfected	UCC Article 9	BAC	136
4	Avoidance of Unperfected Security Interest	11 U.S.C. §§ 544(a)(1)	CAVIC	136
5	Recovery of Refund	11 U.S.C. §§ 550(a)	CAVIC	137
6	Turnover of Refund	11 U.S.C. §§ 542(a)	BAC	137

The proposed amended complaint in the Jetcraft AP (Jetcraft PAC) contains the following causes of action against the following entities:

Count #	Type of Claim	Statute(s)	Defendant(s)	Page #
1	Aiding and Abetting Breach of Fiduciary Duty	N/A	FK Defendants; Bombardier	145
2	Civil Conspiracy	N/A	FK Defendants; Bombardier	149
3	Cal. Bus & Prof Code § 17200; Cal. Penal Code § 641.3	Cal. Bus & Prof Code § 17200; Cal. Penal Code § 641.3	FK Defendants; Bombardier	151
4	Unjust Enrichment	N/A	FK Defendants; Bombardier	154
5	Constructive Trust	Cal. Civ. Code §§ 2223 and 2224	FK Defendants; Bombardier	154
6	Fraudulent Misrepresentation	N/A	FK Defendants; Bombardier	155
7	Fraudulent Concealment / Nondisclosure	N/A	FK Defendants; Bombardier	160
8	Avoidance and Recovery of Actual Intent Fraudulent Transfers (Plane 1)	11 U.S.C. §§ 548, 550	Jetcraft Corp.; Jetcoast	163
9	Avoidance and Recovery of Constructive Fraudulent Transfer (Plane 1)	11 U.S.C. §§ 548, 550	Jetcraft Corp.; Jetcoast	165
10	Avoidance and Recovery of Actual Intent Fraudulent Transfers (Plane 10)	11 U.S.C. §§ 548, 550	Jetcraft Global; Orion	167
11	Avoidance and Recovery of Constructive Fraudulent Transfer (Plane 10)	11 U.S.C. §§ 548, 550	Jetcraft Global; Orion	169
12	Avoidance and Recovery of Actual Intent Fraudulent Transfers (Planes 2-5)	11 U.S.C. §§ 548, 550	Bombardier	170
13	Avoidance and Recovery of Constructive Fraudulent Transfers (Planes 2-5)	11 U.S.C. §§ 548, 550	Bombardier	172
14	Avoidance and Recovery of Actual Intent Fraudulent Transfers (Planes 2-5)	11 U.S.C. §§ 548, 550	Bombardier; CAVIC; CAVIC Statutory Trusts; and nominal party TVPX	174
15	Avoidance and Recovery of Constructive Fraudulent Transfers (Planes 2-5)	11 U.S.C. §§ 548, 550	Bombardier; CAVIC; CAVIC Statutory Trusts; and nominal party TVPX	179
16	Avoidance and Recovery of Actual Intent Fraudulent Transfer (Plane 6)	11 U.S.C. §§ 548, 550	Bombardier	183
17	Avoidance and Recovery of Constructive Fraudulent Transfer (Plane 6)	11 U.S.C. §§ 548, 550	Bombardier	185
18	Avoidance and Recovery of US Preference Transfer	11 U.S.C. §§ 547, 550	BAC	188
19	Avoidance and Recovery of US Preference Transfer	11 U.S.C. §§ 547, 550	Learjet; B; BAC	189
20	Violation of Automatic Stay	11 U.S.C. § 362	BAC	190
21	Avoidance and Recovery of Actual Intent Fraudulent Transfer (Plane 16)	11 U.S.C. §§ 548, 550	Jetcraft Global; Jetcraft Corp.	191
22	Avoidance and Recovery of Constructive Fraudulent Transfer (Plane 16)	11 U.S.C. §§ 548, 550	Jetcraft Global; Jetcraft Corp.	193
23	Avoidance and Recovery of US Preference Transfer	11 U.S.C. §§ 547, 550	Jetcraft Corp.	195
24	Turnover of Property of the Estate	11 U.S.C. § 542	Jetcraft Global; Jetcraft Corp.	197
25	Disallowance of Claims	11 U.S.C. § 502(d)	All Defendants	198
26	Robinson-Patman Act	15 U.S.C. § 13(c)	FK Defendants; Bombardier	198
27	N.Y. Penal Law § 180.03	N.Y. Penal Law § 180.03	FK Defendants; Bombardier	200
28	Civil RICO	18 U.S.C. 1962(c)	FK Defendants; Bombardier	201
29	Civil RICO Conspiracy	18 U.S.C. 1962(d)	FK Defendants; Bombardier	210
30	Recharacterization of 2015 Plane 6 Finance Lease	11 U.S.C. § 105(a), 547, 548, 550	Glove Assets; nominal party Wells Fargo	212
31	Avoidance and Recovery of Actual Intent Fraudulent Transfer (Plane 6)	11 U.S.C. §§ 548, 550	Bombardier; Glove Assets; nominal party Wells Fargo	213
32	Avoidance and Recovery of Constructive Fraudulent Transfer (Plane 6)	11 U.S.C. §§ 548, 550	Bombardier; Glove Assets; nominal party Wells Fargo	216

II. Argument

a. Motion

The Trustee contends that the Court granted him leave to amend all counts in the Original CAVIC Complaint against CAVIC and Counts 2 and 6 against BAC. Motion at 10. Alternatively, he contends that even if the Court had not granted leave to amend, the Court should do so now under the extremely liberal standard of Rule 15 of the Fed. R. Civ. P. (FRCP), because he has a legitimate reason to amend to address the Court’s ruling that: 1) English law applied to the Trustee’s recharacterization claim because the parties selected English law to govern the relevant agreements; 2) the Trustee could not avoid the parties’ choice-of-law clauses because there were no allegations of fraud; and 3) English law did not allow for recharacterization of the relevant documents. *Id.* at 10-11.² He contends that neither CAVIC nor BAC can demonstrate that denial of amendment would be warranted. *Id.* at 13-17. The Trustee also asserts that the ZJ6000-1 Statutory Trust, ZJ6000-2 Statutory Trust, and ZJ6000-3 Statutory Trust (collectively the CAVIC Statutory Trusts) and TVPX ARS Inc. (TVPX, and together with the CAVIC Statutory Trusts, the Added Parties) are not necessary parties because they are not real parties in interest in the relevant transactions. *Id.* at 17. But, he contends that the Added Parties are parties to the leases that the Trustee seeks to recharacterize in Count 1 and if the Court determines that the parties are necessary and joinder is

² The Trustee contends that the Court held that “the forum in the parties’ contractual choice of law need not have any relation to the parties (except for contract formation issues).” Motion at 10. The Trustee misstates the Court’s ruling, which provided that, “[w]here the making of a contract is not in dispute, the law chosen by the parties need not have any reasonable relationship to the creation or performance of the contract.” CAVIC AP Docket # 157-1 at 14 (citing *In re CMR Mortg. Fund, LLC*, 416 B.R. 720, 729 (Bankr. N.D. Cal. 2009)).

feasible, they must be joined under FRCP 19. Id. at 18. Alternatively, the Trustee contends that they may be joined under Rule 20. Id.

b. CAVIC Opposition

CAVIC responds by highlighting that the CAVIC Original Complaint was narrow: it focused on issues of contract interpretation and preferential payments regarding four aircraft that CAVIC bought, financed and leased. CAVIC Opposition at 7. CAVIC claims that it was merely a side note in the Original Jetcraft Complaint, substantively mentioned in only 5 of that complaint's 397 paragraphs, in which the Trustee alleged that the CAVIC aircraft transactions occurred, the leases for those aircraft were disguised financings, and BAC received approximately \$147.4 million from CAVIC in connection with those aircraft. Id. at 13. CAVIC notes that the CAVIC PAC adds 445 paragraphs to the Original CAVIC Complaint and thousands of pages of new exhibits. Id. at 8-9, 18. CAVIC highlights that the Trustee makes no secret that the fraudulent transfer allegations in the CAVIC PAC are meant to duplicate the same allegations asserted in the Jetcraft PAC because he explicitly incorporates by reference the entire Jetcraft PAC into the CAVIC PAC. Id. at 18 (citing CAVIC PAC ¶ 584).

CAVIC argues that the vast majority of the Trustee's new allegations are time-barred by § 546, it is irrelevant that the Trustee does not actually assert a § 548 claim against CAVIC, and the relation-back doctrine does not save the Trustee's § 548 claim. Id. at 20-23. According to CAVIC, the Trustee's relabeling his time-barred claims as factual predicates for other claims against CAVIC fails. Id. at 23. And, it asserts that a declaratory judgment claim is not the appropriate vehicle for the Trustee to pursue the fraudulent transfers alleged in Count 1. Id. at 33-35.

CAVIC also contends that the CAVIC PAC creates an "illogical loop," because Count 1 is and has always been a predicate to the Jetcraft PAC's fraudulent transfer claims, which CAVIC contends is necessary for the Trustee to have standing to assert § 548 claims based on transfers of property that the Debtors never possessed. Id. at 29-30. CAVIC asserts that the CAVIC PAC is a "shotgun pleading," which are futile, disfavored and routinely dismissed. Id. at 26-28. According to CAVIC, it will be prejudiced if the Motion is granted because this case will go from a tightly focused adversary proceeding to a "bloated, confusing, and unmanageable one." Id. at 10, 28-32.

c. BAC Response

BAC highlights that the Original CAVIC Complaint was 34 pages and generally focused on the purchasing, financing, and leasing of Bombardier Global 6000 Aircraft with serial numbers 9716 (Plane 2), 9740 (Plane 3), 9764 (Plane 4), and an aircraft that was to be manufactured (Plane 5). BAC Response at 2. BAC argues that the CAVIC PAC is 113 pages, with 2,436 pages of exhibits into which the Trustee "imported" all of the allegations in the Jetcraft AP. Id. at 3. BAC contends that the amendments against it are derivative and dependent on the amendments against CAVIC, and it incorporates and joins in the arguments contained in the CAVIC Opposition. Id.

d. Reply

The Trustee reiterates that the Court granted leave for all of the amendments that CAVIC challenges. Reply at 6, 10-11. The Trustee claims that he did not “add or change the nature of any claims,” except he removed the preference claim, which will be refiled in Singapore. Id. at 6. According to the Trustee, he is merely seeking to amend Count 1 to bolster his legal theory to recharacterize the transactions for Planes 2 through 4 as finance leases, which he requested in the Original CAVIC Complaint. Id. at 8. The Trustee highlights that in Count 1, he is not seeking any damages against CAVIC, but instead he is seeking to avoid and recover fraudulent transfers from Bombardier. Id. at 8. The Trustee asserts that in the CAVIC PAC, “nothing substantive has changed about the nature of the allegations and claims against CAVIC.” Id. at 8-9.

The Trustee argues that CAVIC cannot meet any of the five factors that courts analyze when considering whether to deny an FRCP 15 motion. Id. at 11-12. He asserts that CAVIC will not be prejudiced by facing a “recharacterization challenge” to the leases for Planes 2 through 4 because it submitted more than \$239 million in unsecured and administrative claims. Id. at 9. He contends that increasing the complexity of the case and delay are not relevant to prejudice. Id. at 12. He argues that CAVIC has not demonstrated legally cognizable prejudice due to additional discovery because no discovery has occurred in this case. Id. at 12-13. According to the Trustee, there is no illogical loop with claims being predicated on each other as CAVIC argues. Id. at 15.

The Trustee asserts that amendment would not be futile because he is not seeking to avoid fraudulent transfers from CAVIC under § 548 or seeking any recovery from CAVIC, so Count 1 is not subject to § 546’s statute of limitations. Id. at 16-18. Instead, he argues that he is “seeking recharacterization of the Plane 2-4 [lease transactions] to invoke the Court’s exclusive jurisdiction to determine whether the Debtors had an interest in funds, as borrowers under disguised financings, that were transferred to Bombardier at closing on the Plane 2-4 [lease transactions] under §§ 541 and 548 which can be done at any time prior to closing of the cases.” Id. at 9. He also asserts that his recharacterization request is part of the claims administration process and is not subject to any statute of limitations. Id. at 18. Finally, the Trustee alleges that the CAVIC PAC is not a “shotgun pleading,” but instead addresses the Court’s ruling on the choice of law issue. Id. at 21. He claims that because of the nature of the “fraudulent kickback, commercial bribery and embezzlement scheme,” all of the allegations in Count 1 relate to Planes 2 through 4. Id.

III. Legal Standard

Federal Rule of Bankruptcy Procedure 7015 provides that Rule 15 of the FRCP applies to supplemental and amended pleadings in bankruptcy cases. Rule 15(a)(2) indicates that “a party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.”

Courts have the discretion to grant or deny leave to amend a complaint. Swanson v. U.S. Forest Serv., 87 F.3d 339, 343 (9th Cir. 1996). “In exercising this discretion, a court must be guided by the underlying purpose of Rule 15 to facilitate decisions on the merits, rather than on the pleadings or technicalities.” United States v. Webb, 655 F.2d 977, 979 (9th Cir. 1981). Consequently, the policy to grant leave to amend is applied with “extreme liberality.” Id.

Parties seeking leave to amend have the initial burden to show a legitimate reason for seeking amendment. See Foman v. Davis, 371 U.S. 178, 182 (1962); Advanced Cardiovascular Sys., Inc. v. Scimed Life Sys., Inc., 989 F. Supp. 1237, 1241 (N.D. Cal. 1997). Assuming the movant meets that burden, the burden then shifts to the party opposing amendment to show that leave to amend is not warranted based on:

- 1) Bad faith;
- 2) Undue delay;
- 3) Prejudice to the opposing party;
- 4) Futility of amendment; or
- 5) Whether the plaintiff has previously amended the complaint.

In re W. States Wholesale Nat. Gas Antitrust Litig., 715 F.3d 716, 738 (9th Cir. 2013); see also Aqua Caliente Band of Cahuilla Indians v. Coachella Valley Water Dist., 2020 WL 5775174, at *2 (C.D. Cal. July 8, 2020) (indicating that the party opposing amendment bears the burden of showing prejudice, unfair delay, bad faith, or futility of amendment). “The court has the discretion to determine whether the presence of any of these elements justifies refusal of a request to amend the pleading.” Advanced Cardiovascular Sys., 989 F. Supp. at 1241.

IV. Analysis

a. RJN

In the RJN, the Trustee requests that the Court take judicial notice of proofs of claims filed by CAVIC and the CAVIC Statutory Trusts in the Zetta USA and Zetta Singapore cases (POCs), as well as certain facts contained in those documents. RJN at 2. No timely response to the RJN was filed.

Under Federal Rule of Evidence (FRE) 201, the Court can take judicial notice of “a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” The burden is on the party requesting judicial notice. In re James, 300 B.R. 890, 894 (Bankr. W.D. Tex. 2003) (ruling that the party requesting judicial notice has the burden of persuading the Court that the fact is “appropriate for judicial notice”).

The Court may take judicial notice of the fact that POCs were filed in the Zetta USA and Zetta Singapore cases. In re Tuma, 916 F.2d 488, 491 (9th Cir. 1990) (“We may take

judicial notice of bankruptcy records in the underlying proceeding.”); see also In re Intelligent Direct Mktg., 2015 WL 925565, at *1 (E.D. Cal. Mar. 3, 2015) (granting a request for judicial notice of proofs of claims in the underlying bankruptcy case because the proofs of claims were public records, and their authenticity was undisputed). The Court, however, cannot take judicial notice of facts contained in those POCs. In re Intelligent Direct Mktg., 2015 WL 925565, at *1 (noting that judicial notice could only be taken of the existence of the proofs of claims, not facts contained in those documents); see also Gross Belsky Alonso LLP v. Edelson, 2009 WL 1505284, at *5 (N.D. Cal. May 27, 2009) (noting that a court may take judicial notice of court records, including that a proof of claim in a bankruptcy proceeding was filed, but a court may not take judicial notice of the truth of contents of documents) (citing M/V Am. Queen v. San Diego Marine Constr. Corp., 708 F.2d 1483, 1491 (9th Cir. 1983)).

b. Legitimate Reason

The Trustee contends that he has a legitimate reason to amend: he was responding directly to the Court’s CAVIC MTD and BAC MTD rulings. Motion at 13. CAVIC responds that the Trustee, recognizing he might not be able to add CAVIC to the Jetcraft AP, has instead pled the entire Jetcraft PAC in this case. CAVIC Opposition at 8. The Trustee replies that he did not add or change the nature of any claims, other than eliminating the preference claim. Reply at 6. He contends that he did not need to seek leave to file the CAVIC PAC because the Court granted him leave to amend Counts 1 through 6. Id.

The Trustee is correct that the Court granted him leave to amend Count 1 of the Original CAVIC Complaint. But, that is not what the Trustee actually did. He attempts to shift the focus away from the massive changes in the CAVIC PAC by arguing that he was merely responding to the Court’s rulings. That argument is not persuasive. Although it is true that in Count 1 the Trustee is still seeking declaratory judgment, that is where the similarities between the Original CAVIC Complaint and the CAVIC PAC end. In the Original CAVIC Complaint, which did not contain any allegations of fraud and did not even mention that term, the Trustee sought findings based on various documents and contracts, that:

- 1) The economic realities of the leases for Planes 2-5 (Leases for Planes 2-5)³ and the documents pertaining to those leases prove that the relationship between

³ The Leases for Planes 2-4 are lease agreements between the Debtors (through TVPX) and CAVIC (through the CAVIC Statutory Trusts). CAVIC PAC ¶¶ 573-75; see also CAVIC PAC Sch. 2: Ex. 2-27 (5/24/16 “Aircraft Lease Agreement” regarding Plane 2 between ZJ6000-1 Statutory Trust as Lessor, and TVPX as Lessee); Ex. 2-35 (9/16/16 “Aircraft Lease Agreement” regarding Plane 3 between ZJ6000-2 Statutory Trust as Lessor, and TVPX as Lessee); Ex. 2-47 (12/23/16 “Aircraft Lease Agreement” regarding Plane 4 between ZJ6000-3 Statutory Trust as Lessor, and TVPX as Lessee). The Lease for Plane 5 was a lease agreement between the Debtors (through TVPX) and CAVIC (through the ZJ6000-4 Statutory Trust). See CAVIC PAC ¶ 47 (indicating that the ZJ6000-4 Statutory Trust was established by CAVIC specifically for a lease for Plane 5); see also CAVIC PAC Sch. 2 Ex. 2-61 (12/23/16 “Aircraft Lease Agreement” regarding Plane 5 between ZJ6000-4 Statutory Trust as Lessor, and TVPX as Lessee).

CAVIC and the Debtors was a borrower/lender relationship and not a true lessee/lessor relationship. Original CAVIC Complaint ¶ 124.

- 2) The parties intended that the Leases for Planes 2-5 would be financings. Id. ¶ 125.
- 3) The parties refer to the Lease for Plane 5 as a “Financing lease.” Id. ¶ 126.
- 4) The parties refer to the amount ultimately to be loaned as the “Financed Amount.” Id. ¶ 127.
- 5) The parties refer to a \$30 million pre-delivery payment to BAC (\$30M PDP) as the “Loan Amount.” Id. ¶ 128.
- 6) The parties refer to the term and interest repayments as the “Loan Term” and the “Loan Interest Repayment.” Id. ¶ 129.
- 7) The terms of the Head Lease and Sub-lease confirm that they are financing arrangements and not leases. Id. ¶ 130. (The “Head Lease” was a 12/23/16 agreement regarding Plane 5, between the ZJ6000-4 Statutory Trust, as lessor, and TVPX, as lessee. Id. ¶ 48(d). The “Sub-Lease” was a 12/23/16 agreement regarding Plane 5 between TVPX, as owner trustee and lessor, and Zetta USA, as lessee. Id. ¶ 48(h).)
- 8) CAVIC never intended to operate or own aircraft. CAVIC is a subsidiary created to provide aviation financing to airlines and other operators. It does not independently operate aircraft or purchase aircraft for re-sale to airlines or operators. Id. ¶ 131.
- 9) Under applicable law, the Lease for Plane 5 would have been characterized as a disguised financing and not a true lease and the Leases for Planes 2-4 should be recharacterized as disguised financings. Id. ¶ 132.
- 10) The Trustee seeks declaratory judgment that the Leases for Planes 2-5 are actually financing agreements and not true leases. Id. ¶ 133.

In contrast, the CAVIC PAC includes allegations that make the declaratory judgment claim asserted in the Original CAVIC Complaint unrecognizable. The CAVIC PAC adds allegations regarding 18 individuals and companies, who are described as “Relevant Non-Parties”: 1) Export Development Canada (EDC); 2) ECN Aviation Inc. f/k/a Element Aviation Inc. (Element); 3) ECN Capital Corporation, as successor to Element Financial Corporation (ECN, and together with Element, Element/ECN); 4) Michael O’Keefe; 5) Frederic Larue; 6) Tony Bergeron; 7) Steve Hudson; 8) Fazal-Karim; 9) Jetcraft Corp.; 10) Jetcraft Global; 11) Jetcraft Asia; 12) Jetcoast; 13) Orion Aircraft Holdings Ltd.

The Court notes that Count 1 of the Original CAVIC Complaint sought recharacterization of the Leases for Planes 2-5. See Original CAVIC Complaint ¶ 133 (requesting a declaratory judgment that the Leases for Planes 2-5 were financing agreements and not true leases). Although the CAVIC PAC alleges that the Lease for Plane 5 would have been characterized as a financing and not an operating or true lease had Plane 5 been delivered to the Debtors and financed through the proposed finance lease structure, CAVIC PAC ¶ 527, in the CAVIC PAC Count 1, the Trustee only seems to seek recharacterization of the Leases for Planes 2-4. See CAVIC PAC ¶ 583 (Count 1, alleging that the Leases for Planes 2-4 should be recharacterized as secured financings); see also Jetcraft PAC ¶ 727 n.33 (alleging that in Count 1 of the CAVIC PAC, the Trustee seeks a declaratory judgment recharacterizing the Leases for Planes 2-4 as finance leases rather than true leases). Based on the Trustee’s description, the Court will treat Count 1 of the CAVIC PAC as seeking recharacterization of the Leases for Planes 2-4.

(Orion); 14) Anne Behrend; 15) Peter Antonenko; 16) Chad Anderson; 17) FKG; and 18) FKP. CAVIC PAC ¶¶ 49-70. Eight of these parties are named as defendants in the Jetcraft PAC. See Jetcraft PAC Preamble (naming Fazal-Karim, Jetcraft Corp., Jetcraft Global, Jetcraft Asia, Jetcoast, Orion, FKG, and FKP as defendants). The CAVIC PAC includes allegations regarding a multi-year fraud scheme, a Ponzi-like scheme, bribes involving Formula 1 tickets (F1 Tickets)⁴, Sea-Doos, and two \$500,000 kickbacks, a multitude of transactions in which CAVIC was not involved, and 12 planes that CAVIC had nothing to do with, all of which are discussed in more detail below. See, e.g., CAVIC PAC ¶¶ 95-103 (outlining the allegations of the commercial bribery and the Ponzi schemes). The CAVIC PAC also discusses Geoff Cassidy’s (Cassidy) evolution as a con artist, and a superyacht “side venture” with Cassidy and Fazal-Karim agreeing to buy a superyacht and operate charters as a new business venture. CAVIC PAC ¶¶ 71-75, 316-30.

Although the Trustee includes these allegations under the heading “ALLEGATIONS RELATING TO COUNT I FOR DECLARATORY JUDGMENT,” CAVIC PAC at 20, the CAVIC PAC does not articulate how such allegations pertain to CAVIC. “Where . . . the complaint, as amended, would radically alter the scope and nature of the case and bears no more than a tangential relationship to the original action, leave to amend should be denied.” DeSousa v. Dep’t of State, 840 F.Supp.2d 92, 113 (D.D.C. 2012) (internal citations omitted); CareToLive v. von Eschenbach, 525 F.Supp.2d 952, 971 (S.D. Ohio 2007) (denying motion to amend because a proposed new claim would “radically shift” the scope and nature of the litigation); McAlpin v. Schweitzer, 2012 WL 5727851, at *4 (D. Mont. Nov. 15, 2012) (denying a motion to amend where new claims would “radically alter the scope and nature” of the case and were only “tangentially related” to the original complaint). Here, leave to amend would do much more than allow the Trustee to fully litigate the legal dimensions of the Original CAVIC Complaint’s recharacterization claim regarding Planes 2 through 5. Miss. Ass’n of Coops. v. Farmers Home Admin, 139 F.R.D. 542, 544 (D.D.C. 1991). Instead, it would allow the Trustee to transform this case into something entirely new: a massive fraud scheme, in which CAVIC had no involvement. Id. at 544. Rule 15(a) provides a party with an opportunity to strengthen or correct an original deficiency but leave to amend is not a “process of metamorphosis.” Id. at 545.⁵

⁴ The F1 Tickets were five tickets to the Singapore Formula 1 event on September 16, 17, and 18, 2016, which Bombardier provided to Geoff Cassidy, Debtors’ Managing Director and a director of Zetta Singapore, at his request. CAVIC PAC ¶¶ 22, 299, 304-08.

⁵ The cases cited in this paragraph did not explicitly mention whether denial of the motions to amend were based on the plaintiff’s failure to establish a legitimate reason for amendment, although from reviewing the cases, the Court believes that this was the reason for the courts’ rulings. Some courts, however, have analyzed this issue in the context of whether amendment would be prejudicial to the defendant or would be futile. See Wright v. Corr. Corp. of Am., 2016 WL 264907, at *5 (D.D.C. Jan. 21, 2016) (analyzing defendant’s argument that the amended complaint would “transform their case into something entirely new” as part of whether the defendant had established prejudice); Valez v. Linder, 2008 WL 5435896, at *6 (D. Mont. Apr. 25, 2008) (quoting Miss. Ass’n of Coops. v. Farmers Home Admin, 139 F.R.D. 542, 544 (D.D.C. 1991)) (noting that, among other reasons, the proposed amendments would be futile because they asserted a wide variety of claims unrelated to the allegations in the original complaint). The Court believes that the analysis of the change in the allegations between the

The Court denied the Consolidation Motion in which the Trustee sought to consolidate the CAVIC AP with the Jetcraft AP. CAVIC AP Docket #236; Jetcraft AP Docket #193. The Trustee, however, is essentially seeking that same relief in the context of this Motion. The Trustee could have sought reconsideration of or appealed the denial of the Consolidation Motion. He did neither. Instead, he essentially copied and pasted much of the proposed consolidated complaint (Consolidated Complaint) into the CAVIC PAC and the Jetcraft PAC. Compare Consolidated Complaint ¶¶ 73-166, 172-321, 362-367, 400-484, with CAVIC PAC ¶¶ 71-442 (setting forth substantially similar allegations), and Jetcraft PAC ¶¶ 72-165, 171-321, 326-67, 400-84 (setting forth substantially similar allegations).

The Trustee chose to name CAVIC and BAC as defendants in the CAVIC AP, which involved four aircraft, the \$30M PDP, and \$4,768,654.10 in preference payments. Original CAVIC Complaint ¶ 1. In contrast, he chose to file a separate adversary proceeding against JC/JG/J/JA, Orion, FKG/FKP/FK, BAC/BI/LI, and Element/ECN, in which he sought: 1) damages for a massive fraud and commercial bribery scheme, which allegedly included a Ponzi-like scheme involving 16 planes; 2) avoidance and recovery of fraudulent and preference transfers; 3) damages for violation of the automatic stay; 4) turnover of profits regarding the sale of an aircraft by Jetcraft Corp. or Jetcraft Global; and 5) disallowance of claims filed by 13 defendants. The Trustee acknowledges that he “moved to consolidate the [CAVIC AP and Jetcraft AP] in significant part to address th[e] issue of the Trustee having a pending declaratory judgment count in one action that was a predicate to fraudulent transfer claims in another.” Jetcraft AP Docket #199 at 32. Unless and until the Court grants a motion to consolidate, the Jetcraft AP and CAVIC AP remain separate lawsuits.

It is true that the Court granted the Trustee leave to amend the Original CAVIC Complaint. But, the Court did not grant the Trustee authorization to add a massive fraud scheme to the CAVIC AP, in which CAVIC had no role. In fact, the CAVIC PAC’s allegations involving the “CAVIC Transactions,” ¶¶ 132-47, do not mention the word fraud or allege that CAVIC engaged in any fraud at all, and during the 6/30/21 hearing on the Motion, the Trustee’s counsel acknowledged that there were no allegations that CAVIC engaged in any fraud. Therefore, the Court finds that the Trustee did not have a legitimate reason for seeking leave to amend to file the CAVIC PAC, which is currently before the Court.

Alternatively, even if that were not true, and if the Trustee had established that he had a legitimate reason for seeking leave to amend to file the CAVIC PAC, it would not make a difference because the Court finds that CAVIC has met its burden of demonstrating that amendment would be futile.

Original CAVIC Complaint and the CAVIC PAC is appropriate regarding whether the Trustee has demonstrated a legitimate reason for amendment. The Court also finds that CAVIC has met its burden of demonstrating both futility and prejudice based on the radical changes from the Original CAVIC Complaint to the CAVIC PAC.

c. Futility

i. Statute of Limitations

The Trustee does not mention any statute of limitations in the Motion. In the CAVIC Opposition, CAVIC argues that: 1) the Trustee was required to bring § 548 claims against it by 9/15/19; 2) the relation-back doctrine does not save the Trustee's amendments; 3) the Trustee cannot bring time-barred § 548 claims under the guise of declaratory relief; and 4) the Trustee cannot circumvent the statute of limitations by framing § 548 claims as factual predicates for other claims. CAVIC Opposition at 19-26. CAVIC also notes that the Trustee now incorporates by reference the entire Jetcraft PAC into the CAVIC PAC. *Id.* at 17-19 (citing CAVIC PAC ¶ 584). In the Reply, the Trustee asserts that he is not seeking affirmative relief against CAVIC. Reply at 17.

Futility alone can justify denial of a motion for leave to amend. Bonin v. Calderon, 59 F.3d 815, 845 (9th Cir. 1995). "For an amendment to be futile, it must appear on its face that it is not actionable." Coble v. Derosia, 2011 WL 444961, at *4 (E.D. Cal. Feb. 8, 2011). An amendment is futile only if no set of facts can be proven under the amendment that would constitute a valid and sufficient claim. Volungis v. Liberty Mut. Fire Ins. Co., 808 Fed.Appx. 414, 417 (9th Cir. 2020). A court may deny leave to amend due to futility or legal insufficiency if the amendment would fail a Rule 12(b)(6) motion to dismiss.⁶ Howard v. Finander, 2017 WL 10543342, at *5 (C.D. Cal. Mar. 27, 2017). Courts can consider futility in the context of a request for leave to amend, including futility based on statutes of limitations. See, e.g., Fowler v. Univ. of Phoenix, Inc., 817 Fed.Appx. 442, 443 (9th Cir. 2020) (affirming dismissal with prejudice of a complaint where the claims were barred by the statute of limitations and amendment would have been futile).

As an initial matter, the Court notes that Count 1 of the CAVIC PAC is multi-layered—it is styled as a declaratory judgment claim, which seeks recharacterization of the Leases for Planes 2-4 as secured financings rather than true leases based on a massive fraud scheme involving 16 planes (only four of which CAVIC had any involvement with) and 18 "Relevant Non-Parties" (eight of whom are named as defendants in the Jetcraft PAC). The Trustee makes no secret of the fact that he is seeking to import all of the allegations contained in the Jetcraft PAC into the declaratory relief claim in the CAVIC PAC so that he can pursue relief under §§ 548 and 550 against BAC/BI in Counts 14

⁶ When ruling on a 12(b)(6) motion to dismiss, courts must construe allegations in the light most favorable to the plaintiff and can only consider the allegations in the complaint as well as matters that are subject to judicial notice and documents that are properly incorporated by reference. Khoja v. Orexigen Therapeutics, Inc., 899 F.3d 988, 998 (9th Cir. 2018); Johnson v. Riverside Healthcare Sys., LP, 534 F.3d 1116, 1121-22 (9th Cir. 2008); Knox v. Davis, 260 F.3d 1009, 1012 (9th Cir. 2001). When determining whether the CAVIC PAC would be futile, the Court only examined the allegations in, and documents attached to, the CAVIC PAC, as well as documents filed in the CAVIC AP, Jetcraft AP, and Zetta USA and Zetta Singapore cases, which are properly the subject of judicial notice.

and 15 of the Jetcraft AP.⁷ In fact, he “fully incorporated by reference . . . all supporting allegations contained in the [Jetcraft PAC].” *Id.* ¶ 584. By including allegations regarding a massive fraud scheme that does not involve CAVIC, the Trustee is attempting to circumvent the Court’s ruling that the English choice-of-law clauses do not allow recharacterization of the Leases for Planes 2-4 as secured transactions. CAVIC AP Docket #157-1 at 20; CAVIC PAC ¶ 444 (indicating that the “Trustee is not bound by the choice-of-law provisions in [the Leases for Planes 2-4, which] were part of actual or constructively fraudulent transfers or obligations”).

The Trustee has not cited any authority or advanced any argument that it would be appropriate for the entire Jetcraft PAC, which was filed in a separate adversary proceeding, to be incorporated into this adversary proceeding and the Court declines to do so. Further, the Court does not find persuasive the Trustee’s assertion that, because he is not seeking affirmative relief against CAVIC, statutes of limitations are inapplicable. Reply at 17. He cites no authority to support his position and the Court was unable to locate any case that so held.

a. Declaratory Relief

In the Motion, the Trustee does not address the timeliness of Count 1 in which he seeks “Declaratory Judgment for Recharacterization” against CAVIC, the CAVIC Statutory Trusts, and TVPX. CAVIC highlights that the Trustee describes his 371 paragraphs of allegations regarding § 548 as “relating to Count I for Declaratory Judgment,” but there is no legal basis for asserting time-barred claims as “factual predicates” for a declaratory judgment action seeking to interpret contracts. CAVIC Opposition at 23. According to CAVIC, causes of action are based on allegations, not labels, and the Trustee cannot recast a time-barred claim as a claim for declaratory judgment. *Id.* at 23-24 (citing Levald, Inc. v. City of Palm Desert, 998 F.2d 680, 688-89 (9th Cir. 1993); Good Morning to You Prods. Corp. v. Warner-Chappell Music, Inc., 2013 WL 12138670, at *2 (C.D. Cal. Oct. 16, 2013)). The Trustee replies that CAVIC’s argument is “entirely irrelevant.” Reply at 17.

To the extent that the Trustee seeks a declaratory judgment in Count 1 that the Leases for Planes 2-4 were part of fraudulent transfers and therefore should be recharacterized as secured financings rather than true leases, his attempt to relabel § 548 claims as a declaratory relief claim is unavailing.

The Ninth Circuit was confronted with an analogous issue in Levald, Inc. v. City of Palm Desert, 998 F.2d 680 (9th Cir. 1993). Levald, Inc. (Levald) owned and leased a mobile home park in Palm Desert, California (Palm Desert). *Id.* at 683. Palm Desert passed an ordinance that prohibited mobile home park owners from increasing rent for a mobile home space (Ordinance), and in 1989, Levald filed a complaint against Palm Desert,

⁷ Counts 14 and 15 of the Jetcraft PAC, in which the Trustee alleges that the Leases for Planes 2-4 were secured financings rather than true leases, are brought under §§ 548 and 550, and seek avoidance and recovery from BAC/BI of \$120,360,000 it received from CAVIC. Jetcraft PAC ¶¶ 727, 743, 751, 764.

alleging that the Ordinance violated the Takings Clause of the U.S. Constitution. Id. at 684. The district court dismissed the complaint, concluding that the claims were barred by the statute of limitations and the Ninth Circuit affirmed. Id. at 684, 688-89. Like the Trustee, Levald argued that the statute of limitations did not apply to its claim for declaratory judgment. Id. at 688. The Ninth Circuit disagreed, noting that the argument was meritless and stating:

To prevent plaintiffs from making a mockery of the statute of limitations by the simple expedient of creative labelling—styling an action as one for declaratory relief rather than for damages—courts must necessarily focus upon the substance of an asserted claim as opposed to its form. It is settled, therefore, that where legal and equitable claims coexist, equitable remedies will be withheld if an applicable statute of limitations bars the concurrent legal remedy.

Id. at 688 (citation omitted). The Ninth Circuit held that if a “claim for declaratory relief could have been resolved through another form of action which has a specific limitations period, the specific period of time will govern.” Id. at 688.

Similarly, in Good Morning to You Productions Corp. v. Warner-Chappell Music, Inc., 2013 WL 12138670 (C.D. Cal. Oct. 16, 2013), the court examined the substance of a declaratory relief claim to determine whether and what statute of limitations applied. Good Morning to You Productions Corp., Robert Siegel, Rupa Marya, and Major Productions, LLC (collectively GM/RS/RM/MP) sued Warner/Chappell Music, Inc. and Summy-Birchard, Inc. (collectively WC/SB), seeking, among other things: 1) declaratory judgment that WC/SB did not own the copyright to, or possess the exclusive right to, demand licensing fees for the use of a song, which was in the public domain; and 2) relief based on entry of declaratory judgment, including an injunction, restitution, and an accounting. Id. at *1. WC/SB moved to dismiss, arguing that the declaratory judgment and relief claims fell outside the Copyright Act’s three-year statute of limitations. Id. GM/RS/RM/MP responded that the Declaratory Judgment Act, 28 U.S.C. § 2201,⁸ does not contain a statute of limitations, and the “most analogous state limitations law” should be used, which was the four-year statute of limitations contained in California’s unfair competition law. Id. at *2. The court dismissed the declaratory judgment and relief claims as time-barred based on the Copyright Act’s statute of limitations. Id. According to the court, the Declaratory Judgment Act is merely a “procedural vehicle” for claims otherwise within federal jurisdiction and because the declaratory judgment claims were “maintained under the provisions” of the Copyright Act, they were subject to the Copyright Act’s three-year statute of limitations and were time-barred. Id.

⁸ Title 28 U.S.C. § 2201(a) provides:

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

Courts in other districts have reached similar conclusions as Levald and Good Morning: the substance, rather than the label, of a claim determines the applicable statute of limitations. See Lehman XS Tr., Series 2006-GP2 by U.S. Bank N.A. v. Greenpoint Mortg. Funding, Inc., 916 F.3d 116, 127 (2d Cir. 2019) (holding that U.S. Bank N.A.'s "indemnification" claim was untimely because it was a repackaged version of its time-barred breach of contract claims, and it could not circumvent the statute of limitations by recasting contract claims as one for indemnification); Bank of N.Y. v. Foothills at Macdonald Ranch Master Assoc., 329 F.Supp.3d 1221, 1127-28 (D. Nev. 2018) (applying a four-year statute of limitations to a declaratory relief claim that a deed of trust encumbered foreclosed property or an HOA sale was void, because the focus of the lawsuit was determining whether a foreclosure extinguished a deed of trust); In re G-I Holdings, Inc., 2016 WL 4991489, at *47 (Bankr. D.N.J. Sept. 9, 2016) (holding that indemnity and restitution claims were recast, time-barred tort claims and were therefore time-barred themselves); Warrick v. Roberts, 34 F.Supp.3d 913, 922-24 (N.D. Ill. 2014) (indicating that what was "truly at issue" was whether the plaintiffs were the sole owners of a copyright, and the Copyright Act's three-year statute of limitations governed the plaintiffs' infringement claim); Lesesne v. Brimecome, 918 F.Supp.2d 221, 224-25 (S.D.N.Y. 2013) (holding that the plaintiffs' tortious interference claims were really "time-barred defamation claims in disguise" and were therefore time-barred); Algrant v. Evergreen Valley Nurseries Ltd. P'ship, 941 F.Supp. 495, 497-99 (E.D. Pa. 1996), (imposing the one-year statute of limitations applicable to § 29(b) of the Securities and Exchange Act of 1934 claims and § 508 of the Pennsylvania Securities Act claims and the two-year statute of limitations applicable to common law fraudulent inducement claims, which were the substance of the plaintiffs' declaratory relief claims), aff'd 126 F.3d 178 (3d Cir. 1997) (holding that if a claim is barred by a statute of limitations "then a court will withhold declaratory judgment . . . essentially predicated upon the same cause of action" because otherwise, statutes of limitations could be circumvented merely by draping claims "in the raiment of the Declaratory Judgment Act"); see also Farmers Ins. Exch. v. First Choice Chiropractic & Rehab., 2016 WL 10827072, at *19, 29-30 (D. Or. Feb. 25, 2016) (holding that a fraud claim was time-barred to the extent it was based on medical treatment provided to an "undercover operative," who posed as a patient and an unjust enrichment claim was time-barred to the extent it was based on the defendants' representations regarding the operative); Birdsong v. Unified Gov't of Wyandotte Cty./Kan. City, Kan., 2014 WL 105509, at *9 (D. Kan. Jan. 10, 2014) (holding that amendment of three claims was futile to the extent they relied on underlying conduct alleged in time-barred counts).

Further, as a court in this district held, plaintiffs cannot evade statutes of limitations by framing time-barred claims as factual predicates for other types of relief. In Garcia v. Wachovia Mortg. Corp., 676 F.Supp.2d 895, 899 (C.D. Cal. 2009), Lillian Garcia (Garcia) filed a complaint against Wachovia Mortgage, FSB (Wachovia), alleging claims for: 1) rescission under the Truth in Lending Act (TILA) and 12 CFR part 226 et seq. (Reg. Z); 2) damages and other forms of relief under TILA and Reg. Z; 3) violations of the Fair Debt Collection Practices Act (FDCPA); 4) violations of the California Unfair Competition Law (UCL), Cal. Bus. & Prof. Code § 17200; 5) quiet title; and 6) violation of the Real Estate Settlement Procedures Act (RESPA). Wachovia moved to dismiss,

arguing that the TILA/Reg. Z claim and part of the RESPA claim were time-barred. Id. at 899, 905, 907-08. The court dismissed those claims as untimely and also held that the UCL claim was dismissed to the extent it was based on time-barred predicate federal statutory claims under TILA or RESPA. Id. at 911. According to the court, it could not allow Garcia to plead around an actual bar to relief simply by recasting a time-barred cause of action as one for unfair competition under the UCL. Id. (citing Chabner v. United of Omaha Life Ins. Co., 225 F.3d 1042, 1048 (9th Cir. 2000)).

b. Recharacterization

As noted above, in the Motion, the Trustee did not address whether Count 1 is subject to any statute of limitations. CAVIC did not address the statute of limitations for recharacterization claims. The Trustee replies that he is seeking to recharacterize the Leases for Planes 2-4 “as part of the Court’s jurisdiction to determine property of the estate under § 541 and whether loan proceeds paid to Bombardier at closing on Planes 2-4 constituted ‘an interest of a debtor’ subject to avoidance under § 548.” Reply at 17. The Trustee contends that recharacterization claims are “essentially part of the claims allowance process and therefore not subject to a statute of limitations.” Id. at 18-19.

The Trustee argues for the first time in the Reply that there is no statute of limitations for a recharacterization claim, and arguments raised for the first time in a reply brief are waived. In re Flashcom, Inc., 503 B.R. 99, 135 n.24 (C.D. Cal. 2013); Loc. Bankr. R. 9013-1(g)(4) (indicating that new arguments or matters raised for the first time in reply documents will not be considered). Even if that were not the case, the Trustee did not bring a recharacterization claim. As noted above, he brought a declaratory relief claim, seeking recharacterization of the Leases for Planes 2-4 as secured financings rather than true leases based on a massive fraud scheme, spanning approximately three years, involving 16 planes (12 of which CAVIC had nothing to do with) and 18 “Relevant Non-Parties.” The crux of the assertions in Count 1 of the CAVIC PAC are the §§ 548 and 550 allegations, because without them, the Trustee would not be able to obtain the relief that he seeks: not to be bound by the English choice-of-law clauses in the Leases for Planes 2-4, so that the leases can be recharacterized as secured financings rather than true leases—a necessary predicate for him to be able to avoid and recover transfers to BAC in Counts 14 and 15 of the Jetcraft PAC. CAVIC PAC ¶¶ 71-442, 572-584.

Although the Trustee cites In re Maxim Truck Co., Inc., 415 B.R. 346, 359 (Bankr. S.D. Ind. 2009), and In re Fitness Holdings Int’l, Inc., 714 F.3d 1141, 1148 (9th Cir. 2013), to support his argument that there is no statute of limitations for recharacterization claims, those cases are inapposite. In Maxim, the trustee brought a claim seeking to recharacterize debt as equity. First Amended Complaint, Pry v. Maxim Global, Inc. (In re Maxim Truck Co., Inc.), No. 01-91878-JKC-71 (Bankr. S.D. Ind. July 11, 2008), ECF No. 157. The Court in Maxim noted that a “claim to recharacterize debt as equity is not statutorily based and there is no explicit statute of limitations.” In re Maxim Truck Co., 415 B.R. at 359. Similarly, in In re Fitness Holdings, 714 F.3d at 1143-44, the issue before the court was whether loans from the debtor’s sole shareholder could be

recharacterized as equity. In contrast, in Count 1 of the CAVIC PAC, the Trustee does not seek to recharacterize debt to equity. Instead, he seeks a declaratory judgment that the Leases for Planes 2-4 should be recharacterized as secured financings rather than true leases, based on a massive fraud scheme. CAVIC PAC ¶¶ 71-442.

The Trustee's general reference to the Court's jurisdiction under § 541 and the cases that he mentions in passing, Langenkamp v. Culp, 498 U.S. 42, 44-45 (1990); Northern Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 54 (1982); Katchen v. Landy, 382 U.S. 323, 329-30 (1966); Pepper v. Litton, 308 U.S. 295, 304 n.11 (1939); and In re Bellingham Ins. Agency, Inc., 702 F.3d 553, 563-64 (9th Cir. 2012) do not advance his position. None of those cases address statutes of limitations. Nor do they stand for what the Trustee appears to be citing them for, which is that filing an untimely § 548 fraudulent transfer claim should be excused because CAVIC and the CAVIC Statutory Trusts filed proofs of claims in the Zetta USA and Zetta Singapore cases. Rather, the cases cited by the Trustee stand for the proposition that this Court has the power to adjudicate claims as part of the claims allowance process or in the context of fraudulent transfer or preference actions.

c. 11 U.S.C. §§ 546 and 548

As analyzed above, the gravamen of Count 1 of the CAVIC PAC is that the Trustee is seeking to avoid and recover actual and constructive fraudulent transfers from Zetta Singapore to BAC and BI under §§ 548 and 550.⁹ The statute of limitations for § 548 is contained in 11 U.S.C. § 546(a)(1), which provides:

An action or proceeding under section . . . 548 . . . may not be commenced after . . .

(1) the later of—

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

(B) 1 year after the appointment or election of the first trustee . . . if such appointment or such election occurs before the expiration of the period specified in subparagraph (A).

Here, the petition was filed on 9/15/17, and King was appointed as the chapter 11 trustee on 10/5/17. Zetta USA Docket #s 1, 159; Zetta Singapore Docket #1. To the extent the CAVIC PAC alleges §§ 548 and 550 claims, the statute of limitations expired on 9/15/19, and unless the §§ 548 and 550 claims contained in Count 1 of the CAVIC PAC relate back to the Original CAVIC Complaint, they are time-barred.

⁹ 11 U.S.C. § 550 is a "secondary cause of action" and is implicated only after a trustee prevails under the avoidance sections of the Bankruptcy Code. In re Patts, 470 B.R. 234, 242 (Bankr. D. Mass. 2012) (internal citations omitted).

2. Relation Back of § 548 Claims

FRCP 15(c)(1)(B) provides:

(c) An amendment to a pleading relates back to the date of the original pleading when:

...

(B) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading

“An otherwise time-barred claim in an amended pleading is deemed timely if it relates back to the date of a timely original pleading.” ASARCO, LLC v. Union Pac. R. Co., 765 F.3d 999, 1004 (9th Cir. 2014). “An amended claim arises out of the same conduct, transaction, or occurrence if it will likely be proved by the ‘same kind of evidence’ offered in support of the original pleading.” Id. (citing Percy v. S.F. Gen. Hosp., 841 F.2d 975, 978 (9th Cir. 1988)). To relate back, the original and amended pleadings must “share a common core of operative facts so that the adverse party has fair notice of the transaction, occurrence, or conduct called into question,” and the plaintiff will rely on “the same evidence to prove each claim.” Echlin v. PeaceHealth, 887 F.3d 967, 978 (9th Cir. 2018); ASARCO, 765 F.3d at 1004 (citing Martell v. Trilogy, Ltd., 872 F.2d 322, 325 (9th Cir. 1989)). The party asserting that relation-back applies bears the burden of proof, and Rule 15(c)’s relation-back doctrine is “liberally applied.” ASARCO, 765 F.3d at 1004 (citing Clipper Exxpress v. Rocky Mountain Motor Tariff Bureau, Inc., 690 F.2d 1240, 1259 n.29 (9th Cir. 1982)); In re Enron Corp., 361 B.R. 36, 41 (Bankr. S.D.N.Y. 2006) (indicating that the party who asserts relation-back bears the burden of proof).

In the Motion, the Trustee does not address relation back of §§ 548 and 550 claims, which are the substance of Count 1’s allegations. CAVIC contends that the Trustee cannot meet the requirements of Rule 15(c)(1)(B) because the Original CAVIC Complaint did not contain a § 548 claim or even mention “fraud.” CAVIC Opposition at 21. Instead, CAVIC asserts that the Original CAVIC Complaint named two defendants, CAVIC and BAC, sought to recharacterize the Leases for Planes 2-5, and sought return of the \$30M PDP and avoidance of \$4,768,654.10 in preference payments. Id. at 12. According to CAVIC, because the Original CAVIC Complaint did not address the Debtors’ fraudulent intent or the facts underlying the § 548 claims at all, the § 548 allegations do not relate back to the Original CAVIC Complaint. Id. at 22. In the Reply, the Trustee summarily argues that the claims against CAVIC would be timely if the Court were to apply California’s four-year statute of limitations on written contracts. Reply at 20. He also briefly mentions that the Court should apply California’s more lenient relation-back doctrine. Id.

As outlined above, Count 1 of the Original CAVIC Complaint, which was brought against CAVIC, sought declaratory judgment that the Leases for Planes 2-5 were secured

financings rather than true leases based on terms in the relevant documents. In contrast, Count 1 of the CAVIC PAC pleads a claim for “Declaratory Judgment for Recharacterization” against CAVIC, the CAVIC Statutory Trusts, and TVPX, so that the Trustee can pursue relief under §§ 548 and 550 against BAC and BI in Counts 14 and 15 of the Jetcraft AP, and alleges as follows:

- 1) Cassidy was a con artist. CAVIC PAC ¶¶ 71-75.
- 2) Cassidy approached James Seagrim (Seagrim) and Matthew Walter (Walter)¹⁰ in 2014 to form Zetta Singapore, and on 7/15/15, they incorporated Zetta Singapore. Id. ¶¶ 76-81.
- 3) Bombardier and the Asian private luxury jet market were in crisis. Id. ¶¶ 82-88.
- 4) Zetta Singapore was formed in a manner that provided Cassidy with actual and effective control of key functions of the company, including its financial operations. Id. ¶ 89.
- 5) Shortly after becoming the Managing Director of Zetta Singapore, Cassidy embarked on a plan to purchase high-priced Bombardier aircraft that saddled the company with almost \$500 million in insurmountable debt in exchange for commercial bribes and kickbacks and to cover up his embezzlement scheme. During the approximately 2 years that Zetta Singapore existed, Cassidy caused the Debtors to buy at least nine Bombardier luxury jets and enter into purchase agreements or options for six more aircraft, even though it was economically impossible for the Debtors to service the debt and the Debtors were regularly failing to pay their other creditors on time. Id. ¶¶ 90-94.
- 6) On 12/5/15, Cassidy on behalf of Zetta Singapore entered into an aircraft purchase agreement with Jetcraft Corp. and Jetcoast for Plane 1. Id. ¶ 119. The transaction closed on 12/30/15. Id. ¶ 120.
- 7) Cassidy, on behalf of Zetta Singapore, executed four aircraft purchase agreements with BAC on 12/10/15 for Planes 2 through 5. Id. ¶ 134.
- 8) To complete the purchase of Planes 2 through 5, the Debtors obtained financing from CAVIC through a finance lease structure. Id. ¶¶ 136-40.
- 9) Also in December 2015, Cassidy worked with Li Qi to acquire Planes 6 and 7. Id. ¶¶ 148-69. The seller of Plane 6 was BAC, and the financier was Glove Assets Investment Limited (Glove). Id. Sch. 1. The seller of Plane 7 was Li Qi’s company, Universal Leader Investment Limited (UL). Id. ¶ 150 & Sch. 1.
- 10) On 2/6/16, Cassidy executed aircraft purchase agreements for Planes 8 and 9 with BAC. Id. ¶¶ 170-71 & Sch. 1.
- 11) In August and September 2016, Cassidy received a \$500,000 kickback as part of the Debtors’ purchase of Plane 10 from Orion. As part of the same deal, the Debtors agreed to lease Plane 11, which was owned by Element/ECN. Id. ¶ 175.

¹⁰ Seagrim was the Debtors’ Director of Operations and a Director of Zetta Singapore and Zetta USA. CAVIC PAC ¶ 24. Walter was the Debtors’ Director of Sales and a Director of Zetta Singapore and Zetta USA. Id. ¶ 25.

- 12) Zetta Singapore was unable to pay the debt service for Planes 6 and 7 and an above market loan to Li Qi for those planes, so in September 2016 Cassidy engineered an insider transaction with Li Qi to refinance the debt owed to UL and Glove regarding Planes 6 and 7 (Minsheng Refinancing). Id. ¶¶ 194-217. This refinancing resulted in a significant, above-market payout to Li Qi and enabled Cassidy to cause the Debtors to buy more aircraft. Id. ¶ 194.
- 13) Of the \$80 million of proceeds from the Minsheng Refinancing, Cassidy stole almost \$5 million, and \$12.4 million was used to make initial payments on Planes 12 through 15 from Bombardier. Id. ¶ 198.
- 14) Cassidy also misappropriated about \$1 million from the Minsheng Refinancing to pay for a Singapore residence and an installment payment on his Dragon Pearl yacht. Id. ¶ 211.
- 15) In August 2017, Cassidy manufactured a deal to buy Plane 16 from Falconwing Limited (Falconwing) for \$11 million worth of block hours¹¹ and then resell it to Jetcraft Global for \$5.5 million, which Cassidy used to pay off a \$5 million debt to Element as part of the transaction for Plane 10. Id. ¶¶ 218-230.
- 16) Fazal-Karim, Jetcraft, and Bombardier each paid or caused commercial bribes to be paid to Cassidy in return for buying planes from Jetcraft and Bombardier. Id. ¶ 231.
- 17) Fazal-Karim directed Jetcraft's CEO to pay Cassidy a \$500,000 kickback (First Kickback) as part of the combined transactions involving Planes 1 through 6 in December 2015 and another \$500,000 kickback (Second Kickback) in August 2016 as part of the acquisition of Planes 10 through 15 and to ensure that Cassidy would not cancel contracts worth hundreds of millions of dollars. Id. ¶ 232.
- 18) By 3/18/15, Fazal-Karim and Khader Mattar (Mattar)¹² entered into a "corrupt relationship" that involved illicit, improper, and undisclosed payments between Fazal-Karim and Mattar relating to "Zetta aircraft transactions" as well as other unrelated transactions involving third parties. Id. ¶¶ 284-98.
- 19) Bombardier paid Cassidy one bribe and agreed to pay another (that was ultimately paid by Fazal-Karim through FKP) as a quid pro quo in direct response to Cassidy's threat to cancel contracts worth more than \$230 million to Bombardier, as well as to ensure that Cassidy would enter into four additional contracts that Bombardier valued at \$129.4 million. These bribes took the form of Sea-Doo jet skis and F1 Tickets and exceeded \$86,300 in aggregate value. Id. ¶¶ 299-315.
- 20) Cassidy and Fazal-Karim had a separate, undisclosed side venture in which Cassidy agreed to buy half of the Nyota superyacht (Nyota) with Fazal-Karim. This side venture created an undisclosed conflict of interest, Fazal-Karim aided and abetted Cassidy's breaches of fiduciary duty because Cassidy was

¹¹ Block hours are prepaid hours for a jet charter at a fixed price. Id. ¶ 100.

¹² Mattar was the Vice President of Sales for the Middle East, Africa, Asia Pacific and China for Bombardier Business Aircraft. Id. ¶ 38.

- misusing “Zetta” resources for the superyacht, and it gave Fazal-Karim a convenient vehicle to pay Cassidy additional bribes. Id. ¶ 316.
- 21) Each of the “Planes” was significantly overpriced. Id. ¶¶ 331-350.
- 22) The “scheme” fell apart in mid-2017, and on 8/22/17, Cassidy was removed from the board and his role at the Debtors. Id. ¶¶ 351-54.
- 23) Cassidy operated the Debtors as a fraudulent scheme, and he caused the Debtors to acquire Planes 1 through 16 and caused the Debtors to make payments and transfers related to Planes 1 through 16 to keep the scheme going. Id. ¶¶ 358-88.
- 24) Because Cassidy “was engaged in a commercial bribery and kickback scheme, fraud, misappropriations, and Ponzi-like schemes, he believed at the time of each aircraft transaction that the consequences of his actions were substantially certain to hinder, delay, or defraud the Debtors’ creditors, and Cassidy should have seen this result as a natural consequence of his actions.” Id. ¶ 389.
- 25) The “Badges of Fraud” are present. Id. ¶ 406-22.
- a. The kickbacks and bribes were not disclosed to the Debtors’ other directors. Id. ¶ 406.
 - b. Plane 1 through 6’s transactions were negotiated simultaneously by Cassidy and Fazal-Karim as part of a single purchase program that involved all of the Debtor’s assets. The transactions involving Planes 10 through 15 involved all or substantially all of the Debtors’ available cash at the time of the transaction. Id. ¶ 407.
 - c. Cassidy removed the Debtors’ assets in the Planes 1 through 6 transactions when he received the First Kickback, in the transactions involving Planes 10 through 11 when he received the Second Kickback, and in the transactions involving Planes 6 through 7 and 12 through 15 as part of the Minsheng Refinancing, which Cassidy engineered in part to steal almost \$5 million from the Debtors to buy the Dragon Pearl and other luxury items. Id. ¶ 408.
 - d. The Debtors did not receive reasonably equivalent value in the transactions. Id. ¶ 409.
 - e. The initial payments on Planes 1 and 6 made the Debtors insolvent. From an income perspective, each Plane was a net loser for the Debtors at the rate the Debtors were able to charge. Id. ¶ 410.
 - f. Each of the transfers to the Defendants described in the CAVIC PAC was made shortly before or after the Debtors incurred substantial debt. Id. ¶ 411.
 - g. Cassidy and Fazal-Karim had a special relationship because they were close associates and friends. Cassidy indicated that Fazal-Karim was involved in many aspects of the Debtors. Fazal-Karim essentially became an insider of the Debtors, negotiating on their behalf and profiting off of the Zetta aircraft transactions. The two also initiated a joint venture to buy and charter a yacht. They traveled and spent time socially together. Id. ¶ 412.

- h. Fazal-Karim indicated that he had “known [] Cassidy for many years when he was operating planes for other clients of mine,” and “[m]aintained my relationship with him through his career and founding of Zetta Jet.” Emails show that Cassidy knew Fazal-Karim for more than 5 years before Zetta Singapore was founded. Id. ¶ 413.
- i. Cassidy and Fazal-Karim were close associates based on Fazal-Karim’s involvement in the Debtors’ business and operations. In a personal statement Cassidy sent defending his actions after the Debtors filed bankruptcy, he credited Fazal-Karim with “Zetta” “reach[ing] the heights it did.” Id. ¶ 414.
- j. Fazal-Karim essentially became an insider of the Debtors. Cassidy agreed to buy the “Planes” exclusively through Fazal-Karim’s company, Jetcraft Corp., and its affiliates or from Bombardier with Fazal-Karim acting as Bombardier’s agent. Fazal-Karim was deeply involved in the majority of the Debtors’ transactions. Id. ¶ 415.
- k. Fazal-Karim and Mattar discussed “coach[ing]” Cassidy on his communications with Bombardier executives and Fazal-Karim ghost wrote (with input from Mattar) draft communications between Cassidy and Bombardier executives including Bombardier Business Aircraft President David Coleal. Id. ¶ 416.
- l. Cassidy and Fazal-Karim’s close association is further demonstrated by their involvement together in various side businesses and agreements, both before and during Cassidy’s time at the Debtors. Id. ¶ 417.
- m. In August 2012, Cassidy and Fazal-Karim discussed an agreement in which AAC¹³ and Jetcraft Corp. would co-market an Embraer Legacy 600 and split the profits. Cassidy repeatedly approached Fazal-Karim with various business opportunities over the years. Id. ¶ 418.
- n. In 2017, Cassidy and Fazal-Karim agreed to buy and charter the Nyota. Cassidy and Fazal-Karim agreed to buy the Nyota in Cassidy’s name, separate from the Debtors’ business (although they agreed to use the Debtors’ contractors and put the yacht on the Debtors’ insurance policy without reimbursing the Debtors). The transaction was not disclosed to or agreed to by the Debtors’ uninterested directors and management. Cassidy ultimately failed to pay his half of the Nyota’s price, but both men were deeply involved in buying and outfitting of the yacht. Id. ¶ 419.
- o. Fazal-Karim and Cassidy were also friends. They planned and went on various trips together with other friends and family members, including to Miami to “party” and to Las Vegas to see a Connor McGregor fight. Id. ¶ 420.

¹³ The CAVIC PAC does not define “AAC.” It does mention “Asia Aviation Company Pte. Ltd.,” which is defined as “Asia Aviation.” Cassidy and his then-wife owned Asia Aviation, which operated a single jet on behalf of the jet’s owner, until Asia Aviation merged with Zetta Singapore. CAVIC PAC ¶¶ 19, 21.

- p. Because Fazal-Karim is the alter ego of Jetcraft Corp. and the other “Fazal-Karim Entities,” his special relationship with Cassidy also applies to them. Id. ¶ 421.
 - q. Because Fazal-Karim was acting as Bombardier’s agent in each of the transactions, his special relationship with Cassidy also applies to Bombardier. Id. ¶ 422.
- 26) The Debtors did not receive reasonably equivalent value for Planes 1 through 16. Id. ¶¶ 423-24.
 - 27) The Debtors were insolvent at the time of or were made insolvent by each transaction. Id. ¶¶ 425-32.
 - 28) The Debtors had unreasonably small capital. Id. ¶¶ 433-34.
 - 29) The Debtors incurred debt on each of the planes that they knew they could not pay as they came due. Id. ¶¶ 435-42.
 - 30) The choice-of-law provisions in the Leases for Planes 2-4 do not affect Count 1 because: i) the Trustee is not bound by the choice-of-law provisions because they were part of actual or constructively or fraudulent transfers or obligations; ii) the choice-of-law provisions are ineffective under the relevant choice-of-law rules; or iii) under English law, the transactions would be characterized as finance leases. Id. ¶¶ 443-85.
 - 31) On 5/24/16, the Debtors, through TVPX as owner trustee, entered into the Lease for Plane 2 with CAVIC, through the ZJ6000-1 Statutory Trust. Id. ¶ 573.
 - 32) On 9/16/16, the Debtors, through TVPX as owner trustee, entered into the Lease for Plane 3 with CAVIC, through the ZJ6000-2 Statutory Trust. Id. ¶ 574.
 - 33) On 12/23/16, the Debtors, through TVPX as owner trustee, entered into the Lease for Plane 4 with CAVIC, through the ZJ6000-3 Statutory Trust. Id. ¶ 575.
 - 34) TVPX, not in its individual capacity but solely as owner trustee, is a party to the Leases for Planes 2-4 as lessee. At all relevant times, the Debtors rather than TVPX were the real parties in interest on the Leases for Planes 2-4. Id. ¶ 576.
 - 35) The CAVIC Statutory Trusts are parties to the Leases for Planes 2-4 as lessors. At all times, CAVIC was the real party in interest on the Leases for Planes 2-4. Id. ¶ 577.
 - 36) The Leases for Planes 2-4 are not true leases or operating leases, but finance leases that create a security interest both per se and under the economic realities test. Id. ¶¶ 578-83.
 - 37) The relief sought in Count 1 is for the purpose of pursuing relief under §§ 548 and 550 of the Bankruptcy Code against BAC and BI in Counts 14 and 15 of the Jetcraft PAC which is fully incorporated by reference including all supporting allegations contained in the Jetcraft PAC. Id. ¶ 584.

Pursuant to 11 U.S.C. § 548(a), the Trustee may avoid any transfer of the Debtors of property that was made or incurred within two years before the petition date if the Debtors voluntarily:

(A) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the Debtors were or became, on or after the date that such transfer was made or such obligation was incurred, indebted; or

(B)(i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and

(ii)(I) were insolvent on the date that such transfer was made or such obligation was incurred, or become insolvent as a result of such transfer or obligation;

(II) were engaged in business or a transaction, or were about to engage in business or a transaction, for which any property remaining with the Debtors was an unreasonably small capital; [or]

(III) intended to incur, or believed that the Debtors would incur, debts that would be beyond the Debtors' ability to pay as such debts matured.

Here, as discussed above, regarding an actual intent fraudulent transfer, Count 1 of the CAVIC PAC includes transfers regarding 16 planes, but it only alleges that CAVIC was involved in transactions for Planes 2 through 5. The CAVIC PAC alleges, among many other things, that:

- 1) Cassidy operated the Debtors as a fraudulent scheme, CAVIC PAC ¶¶ 358-88;
- 2) He believed that the consequences of his actions were substantially certain to hinder, delay, or defraud creditors, id. ¶¶ 389-405; and
- 3) Alternatively, the badges of fraud were present, id. ¶¶ 406-22.

Regarding constructive fraudulent transfers, the CAVIC PAC also alleges that:

- 1) The Debtors did not receive reasonably equivalent value for the "Planes," CAVIC PAC ¶¶ 423-24;
- 2) The Debtors were insolvent at the time of or were made insolvent by each transaction, id. ¶¶ 425-32;
- 3) The Debtors had unreasonably small capital, id. ¶¶ 433-34; and
- 4) The Debtors incurred debts that they knew they could not pay as they came due, id. ¶¶ 435-42.

Count 1 of the Original CAVIC Complaint, which sought declaratory relief, did not contain any allegations of fraudulent transfers or even mention the term fraud at all. Although it did seek recharacterization of the Leases for Planes 2-5, it did so based on provisions in various documents and contracts. Original CAVIC Complaint ¶¶ 123-33. In contrast, Count 1 of the CAVIC PAC seeks declaratory relief to recharacterize the Leases for Planes 2-4 as secured financings based on a massive, multi-year fraud scheme, which will require proof regarding Cassidy's intent, the value of the planes and

whether the Debtors received reasonably equivalent value for them, the Debtors' insolvency and whether they incurred debt that they knew they could not pay. Count 1 of the CAVIC PAC therefore relies on a different type of evidence than Count 1 of the Original CAVIC Complaint, and the Court finds that it does not relate back. See Williams v. Boeing Co., 517 F.3d 1120, 1133 (9th Cir. 2008) (indicating that a claim did not relate back because it was a new legal theory depending on different facts).

Although the Trustee asserts that the claims against CAVIC would be timely if the Court were to apply Cal. Civ. Pro. Code § 337, the Trustee did not include any contract claims in the CAVIC PAC. Reply at 20. Even if he had, that would not alter the analysis because the CAVIC PAC indicates that the Debtors executed the Leases for Planes 2-4 more than four years before the CAVIC PAC was filed. CAVIC PAC ¶¶ 136 (alleging that Zetta Singapore entered into agreements with CAVIC regarding: 1) Plane 2 on 5/24/16; 2) Plane 3 on 9/16/16; and 3) Plane 4 on 12/23/16). And, although Plane 5 was never delivered, the relevant documents were executed on 12/10/15, 12/23/16, and 3/31/17. CAVIC PAC ¶¶ 9, 134, Sch. 2 Ex. 2-61.

Finally, the cases the Trustee cites for the proposition that a state's relation-back doctrine applies, are inapposite because they involved claims brought under 42 U.S.C. § 1983, which lacks a statute of limitations. Butler v. Nat'l Cmty. Renaissance of Cal., 766 F.3d 1191, 1198, 1201 (9th Cir. 2014). In § 1983 cases, federal courts apply the forum state's: 1) statute of limitations for personal injury actions; 2) tolling law; and 3) relation back law if it is more lenient than federal law. Id.; Ross v. Glendale Police Dep't., 2017 WL 4856871, at *4 (D. Ariz. Oct. 27, 2017). Here, it is undisputed that § 546's two-year statute of limitations applies to § 548 claims.

ii. Conclusion – Futility

For the reasons stated above, the Court finds that CAVIC has met its burden of demonstrating that the proposed amendments to Count 1 are futile.

d. Undue Delay, Bad Faith and Prejudice

Because the Court finds that amendments to Count 1 are futile, the Court need not address undue delay, bad faith, or prejudice. See Bonin v. Calderon, 59 F.3d 815, 845 (9th Cir. 1995) (indicating that futility alone can justify denial of a motion for leave to amend).

V. Conclusion

The Motion is denied in part and granted in part. The Motion is denied regarding Count 1, any allegations relating to Count 1 (including those contained in the: 1) Preliminary Statement; 2) Jurisdiction and Venue; 3) Parties and Relevant Non-Parties; 4) Allegations Relating to Count 1 for Declaratory Judgment; 5) Allegations Relating to Actual Intent Fraudulent Transfer and Count 1 for Declaratory Judgment; 6) Allegations Relating to Constructive Fraudulent Transfer and Count 1 for Declaratory Judgment; 7)

Allegations Relating to Choice of Law and Count 1 for Declaratory Judgment; and 8) Allegations Relating to CAVIC PDP and Counts 2 through 6), and any allegations relating to Count 1 that were incorporated into Counts 2 through 6. The Motion is granted regarding all other amendments.¹⁴

¹⁴ Neither CAVIC nor BAC raises issues regarding allegations contained in the CAVIC PAC, which are not included in, or related to, Count 1. Nor do they address whether any additions that were redlined in green text, other than those relating to Count 1, were actually authorized by the Court. For the purposes of ruling on the Motion, the CAVIC Opposition, the BAC Response, and the Reply, it was not necessary for the Court to determine whether the Trustee correctly highlighted in green those additions that were authorized by the Court.