

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

ONE AVIATION CORPORATION, *et al.*,¹

Debtors.

Chapter 11

Case No. 18-12309 (CSS)

(Jointly Administered)

NOTICE OF INTENT TO SERVE A SUBPOENA ON DWC PINE INVESTMENT I, LTD

PLEASE TAKE NOTICE THAT pursuant to Federal Rule of Civil Procedure 45(a)(4), made applicable to this matter by Rule 9016 of the Federal Rules of Bankruptcy Procedure, Citiking International US, LLC (“Citiking”), by and through its undersigned counsel, hereby gives notice that Citiking intends to serve a Subpoena, attached hereto as **Exhibit A**, demanding DWC Pine Investment I, Ltd produce documents on October 5, 2020 at 9:00 am EST via electronic mail to Rebekah Soule at rebekah.soule@lw.com.

Date: September 30, 2020
Wilmington, Delaware

THE ROSNER LAW GROUP LLC

/s/ Frederick B. Rosner

Frederick B. Rosner (DE Bar No. 3995)

Zhao (Ruby) Liu (DE #6436)

824 Market Street, Suite 810

Wilmington, DE 19801

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¹ The Debtors in these chapter 11 cases, along with the last four digits of each debtor’s tax identification number, as applicable, are: ONE Aviation Corporation (9649); ACC Manufacturing, Inc. (1364); Aircraft Design Company (1364); Brigadoon Aircraft Maintenance, LLC (9000); DR Management, LLC (8703); Eclipse Aerospace, Inc. (9000); Innovatus Holding Company (9129); Kestrel Aircraft Company, Inc. (2053); Kestrel Brunswick Corporation (6741); Kestrel Manufacturing, LLC (1810); Kestrel Tooling Company (9439); and OAC Management, Inc. (9986). The Debtors’ corporate headquarters is located at 3250 Spirit Drive SE, Albuquerque, NM 87106 (collectively, the “Debtors”).

- and -

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Counsel to Citiking International US, LLC

Exhibit A

UNITED STATES BANKRUPTCY COURT

District of Delaware

In re ONE AVIATION CORPORATION, et al.,
Debtor

Case No. 18-12309 (CSS)

(Complete if issued in an adversary proceeding)

Chapter 11

Plaintiff

v.

Defendant

Adv. Proc. No. _____

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)

To: DWC Pine Investment I, Ltd

(Name of person to whom the subpoena is directed)

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Appendix A.

PLACE	DATE AND TIME
Transmit Electronic Copies to Rebekah Soule (rebekah.soule@lw.com)	October 5, 2020 at 9 am EST

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

PLACE	DATE AND TIME

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: _____

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Frederick B. Rosner
Attorney's signature

The name, address, email address, and telephone number of the attorney representing Citiking International US, LLC who issues or requests this subpoena, are:
Frederick B. Rosner 824 Market Street, Suite 810, Wilmington, DE 19801, Telephone: (302) 777-1111, rosner@teamrosner.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for (*name of individual and title, if any*): _____
on (*date*) _____ .

☐ I served the subpoena by delivering a copy to the named person as follows: _____
_____ on (*date*) _____ ; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true and correct.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information concerning attempted service, etc.:

Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)
(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

(A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises, at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

...
(g) **Contempt.** The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

Appendix A to Subpoena

DEFINITIONS

For purposes of this Subpoena for Documents and their instructions, unless the context clearly indicates otherwise, the following definitions apply to the terms and phrases specified and such terms and phrases shall apply regardless of the font used:

1. “**Accounts**” has the meaning set forth in the Guarantee and Collateral Agreement.
2. “**All**” and “**each**” means “all and each.”
3. “**And**” and “**or**” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Document request all responses that might otherwise be construed to be outside of its scope.
4. “**Any**” means “any and all” where the effect of such construction is to broaden the scope of the topic in question.
5. “**APA**” shall mean the Asset Purchase Agreement by and among SEF OA LLC, as Purchaser, One Aviation Corporation and Certain Subsidiaries of One Aviation Corporation Named herein as the Sellers, dated August 28, 2020.
6. “**Buyer**” shall mean SEF OA LLC, SE Falcon and/or their affiliates.
7. “**Cash**” means assets that are in currency or coin form, including any funds that are credited to any deposit account.
8. “**Company**” means One Aviation Corporation. and its Subsidiaries.
9. “**Confirmation Order**” means the September 18, 2019 Order (A) Approving The Adequacy Of The Debtors Disclosure Statement And (B) Confirming The Second Amended

Joint Prepackaged Chapter 11 Plan Of Reorganization (As Modified) Of One Aviation Corporation And Its Debtor Affiliate, filed as Docket Entry No. 707 in the above captioned case.

10. **“Debtor(s)”** means the Debtor entities identified on the website of the Debtors’ proposed claims and noticing agent at <https://dm.epiq11.com/case/oneaviation/info>.

11. **“Debtors’ Accounts”** means any checking accounts, deposit accounts, brokerage accounts, investment accounts, securities accounts, money market accounts, and savings accounts, maintained or held by or for the benefit of the Debtors.

12. **“DIP Agreement”** means the October 9, 2018 Senior Secured Superpriority Debtor in Possession Credit and Security Agreement by and among Eclipse Aerospace, Inc., Brigadoon Aircraft Maintenance, LLC, as Borrowers and Citiking International US, LLC as Lender, filed as Docket Entry No. 208-1 in the above captioned case.

13. **“DIP Order”** means the Court’s November 27, 2018 Order (I) Authorizing Debtor Borrowers to (A) Obtain Post-Petition Financing (B) Grant Senior Liens and Superpriority Administrative Expense Status, and (C) Utilize Cash Collateral; (II) Granting Adequate Protection to Prepetition Secured Parties; and (III) Granting Related Relief, filed as Docket Entry No. 208 in the above captioned case.

14. **“Document(s)”** means every original (any copy of any original and any copy which differs in any way from any original, e.g., because handwritten or “blind” notes appear thereon or are attached thereto) of every writing and recording, computerized records, digital or electronically stored data, emails, photographs, or other memorialization, of every kind or description, whether handwritten, typed, drawn, sketched, printed or recorded by any physical, mechanical, magnetic, optical, electronic, or electrical means whatsoever, and shall include, by way of illustration only and not by way of limitation, notes, correspondence, e-mails, communications of any nature,

telegrams, memoranda, advertisements, books, records, analyses, notebooks, blueprints, maps, surveys, graphs, charts, plans, summaries or records or transcriptions of personal conversations or statements however made, business forms, labels, appointment books, diaries, routing slips, reports, publications, photographs, films, minutes and other formal or informal memoranda of meetings, transcripts or oral testimony or statements, reports and/or summaries of interviews, negotiations or investigations, agreements and contracts, including all modifications and/or revisions thereof, papers and forms filed with courts or other governmental bodies, notices, messages, calendar entries, brochures, pamphlets, press releases, drafts, revisions of drafts and translations of any documents, tape recordings, audio recordings, video recordings, records and dictation belts to which you or your company now has or has had access to in the past. Any document with any marks on any sheet or side thereof, including by way of illustration only and not by way of limitation, initials, stamped indicia, any comment or any notation of any character and not part of the original text, or any reproduction thereof, is to be considered a separate document for purposes of this Definition.

15. “**DW**” means DWC Pine Investment I, Ltd.

16. “**Including**” shall not be construed to limit the scope of any document request.

17. “**Insolvent**” shall mean the Debtors’ financial condition such that the sum of its debts is greater than all of its property, at a fair valuation, exclusive of (i) property transferred, concealed, or removed with intent to hinder, delay, or defraud its creditors; and (ii) property that may be exempted from property of the bankruptcy estate under section 522 of the Bankruptcy Code.

18. **“Plan”** shall mean the Second Amended Joint Prepackaged Chapter 11 Plan of Reorganization (As Modified) For One Aviation Corporation and Its Debtor Affiliates, dated September 17, 2019, filed as Docket Entry No. 707-1 in the above captioned case.

19. **“Proceedings”** shall mean these Chapter 11 cases initiated by the Debtors on the Petition Date.

20. As used herein, **“relate”** or **“relating to”** when used with respect to a document, agreement, subject or fact, means anything that reflects on, embodies, responds to, is connected with, commenting on, about, discussing, contains, evidences, identifies, states, pertains to, regarding, discussing, summarizing, showing, describing, analyzing, constituting, reciting, recording, supporting, or refers to, details or comments upon such matter.

21. **“Senior DIP Agreement”** shall mean the Senior DIP Loan Term Sheet dated August 28, 2020, filed as Docket Entry No. 911-1 in the above captioned case.

22. **“September 4, 2020 Interim DIP Order”** means the Court’s September 4, 2020 Interim Order Amending And Restating Final Order (I) Authorizing Debtor Borrowers To (A) Obtain Post-Petition Financing Pursuant To 11 U.S.C. §§ 105, 361, 362, 364(C)(1), 364(C)(2), 364(C)(3), 364(D)(1) And 364(E), (B) Grant Senior Liens And Superpriority Administrative Expense Status, And (C) Utilize Cash Collateral Pursuant To 11 U.S.C. § 363; (II) Granting Adequate Protection To Prepetition Secured Parties Pursuant To 11 U.S.C. §§ 361, 362, 363 And 364; (III) Scheduling A Final Hearing; And (IV) Granting Related Relief, filed as Docket Entry No. 911 in the above captioned case.

INSTRUCTIONS

1. These requests shall be deemed to include any Document now or at any time in the Debtors’ possession, custody, or control, including but not limited to any of its respective

employees, agents, attorneys, advisors or other person(s) acting or purporting to act on its behalf.

2. Each request for the production of Documents shall be deemed to be continuing in nature. If at any time additional, responsive Documents come into the Debtors' possession, custody or control, then the responses to these requests shall be promptly supplemented.

3. Documents shall be produced in the manner in which they are maintained in the ordinary course of business or shall be organized and labeled to correspond with the categories in this request.

4. Any Document or portion of any Document withheld from production based on a claim of privilege shall be identified by a list detailing (1) the type(s) of Documents withheld, (2) the general subject matter of such Document(s), (3) the basis of withholding the Document(s), and (4) the number of Documents withheld under each basis. Notwithstanding the assertion of any objection, any requested Document that contains non-objectionable information responsive to this request should be produced, but that portion of the Document for which the objection is asserted may be redacted, provided that the redacted portion is identified and described consistently according to the requirements listed herein.

5. Objections to any part of these requests shall be stated in full.

6. Each request for Documents seeks production of the Document in its entirety, without abbreviation, modification, or redaction, including but not limited to, all attachments, actual, proposed or contemplated envelopes, transmittal sheets, cover letters, exhibits, enclosures, or other matters affixed hereto.

7. A request for Documents shall be deemed to include a request for all actual, proposed, or contemplated drafts or mark-ups thereof, revisions, modifications, or amendments thereto, and non-identical copies thereof, in addition to the Document itself.

8. Any Document that cannot be produced in full shall be produced to the fullest extent possible.

9. Whenever necessary to bring within the scope of a request Documents that might otherwise be construed to be outside its scope:

(a) the use of a verb in any tense shall be construed as the use of that verb in all other tenses; and

(b) the use of a word in its singular form shall be deemed to include within its use the plural form, and vice versa.

10. Each paragraph, subparagraph, clause and word herein should be construed independently and not by reference to any other paragraph, subparagraph, clause or word herein for purposes of limitation.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

All Communications between the DW and Debtor between July 1, 2020 and the present.

REQUEST FOR PRODUCTION NO. 2:

All Communications between DW and the Buyer between July 1, 2020 and the present.

REQUEST FOR PRODUCTION NO. 3:

Any Agreements or Contracts between DW and the Buyer.

REQUEST FOR PRODUCTION NO. 4:

Any Documents discussing Buyer's compliance and/or default under any Agreements or Contracts between the Buyer and DW.

REQUEST FOR PRODUCTION NO. 5:

Any Documents discussing Buyer's compliance and/or default under any Agreements or Contracts between the Buyer and DW.

REQUEST FOR PRODUCTION NO. 6:

All Communications with and/or discussing other potential buyers, aside from the Buyer, from July 1, 2020 to the present.

REQUEST FOR PRODUCTION NO. 7:

All Documents regarding or relating to the Buyer's ability to close under the APA.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 30 day of September, 2020, the foregoing Notice of Intent to Serve a Subpoena on DWC Pine Investment I, Ltd was served via the Court's CM/ECF system upon all CM/ECF system registered users in this case.

Date: September 30, 2020

/s/ Zhao Liu