UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN

In re: Mara Technologies USA Inc., [1] Debtor in a Foreign Proceeding.	Chapter 15 Case No.: 26-45562 (MLO) (Joint Administration Requested)

MEMORANDUM OF LAW IN SUPPORT OF VERIFIED PETITION OF THE FOREIGN REPRESENTATIVE FOR CHAPTER 15 RECOGNITION AND FINAL RELIEF

[1] An order has been requested directing the joint administration of these chapter 15 cases. The chapter 15 debtors incorporated in Canada (the "Canadian Debtors") are: Invotek Group Inc. (Canadian Corp. No. 1215931-7), Case No. 26-45536 and Mara Technologies Inc. (Ontario Corp. No. 1954003), Case No. 26-45545. The chapter 15 debtors incorporated in the United States (the "U.S. Debtors"), with the last four digits of each U.S. Debtor's federal tax identification number, are: Invotek Group USA Inc. (4011), Case No. 26-45556 and Mara Technologies USA Inc. (1919), Case No. 26-45562. The Debtors' executive headquarters are at 5680 14th Avenue, Markham, Ontario L3S 3K8, Canada.

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KSV Restructuring Inc. ("KSV"), the court-appointed receiver and manager (the "Receiver") and authorized foreign representative (the "Foreign Representative") of the above-captioned debtor, together with Mara Technologies Inc., Invotek Group USA Inc., and Invotek Group Inc. (collectively, the "Debtors"), which are the subjects of a receivership proceeding (the "Canadian Proceeding") under section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") pending before the Ontario Superior Court of Justice (Commercial List) (the "Canadian Court"), submits this memorandum of law (this "Memorandum of Law") in support of the *Verified Petition of Foreign Representative for (I) Recognition of Canadian Proceeding as Foreign Main Proceeding, (II) Recognition of Foreign Representative, and (III) Related Relief Under Chapter 15 of the Bankruptcy Code* (the "Verified Petition," and together with the Official Form 401 Petition (the "Petition"), the "Chapter 15 Petition").[2] The Foreign Representative incorporates by reference (a) the Verified Petition; (b) the *Declaration of the Foreign Representative in Support of the Debtors' Verified Petition for (I) Recognition of Foreign Main Proceeding, or, in the Alternative, Foreign Nonmain Proceeding, and (II) Recognition of Foreign Representative* (the

[2] Capitalized terms used but not defined in this Memorandum of Law have the meaning ascribed to them in the Verified Petition.

"Foreign Representative Declaration"); and (c) the *Declaration of Edmond Lamek in Support of Verified Petition of Foreign Representative for (I) Recognition of Canadian Proceeding as Foreign Main Proceeding, (II) Recognition of Foreign Representative, and (III) Related Relief Under Chapter 15 of the Bankruptcy Code* (the "Foreign Law Declaration"), as if fully set forth in this Memorandum of Law and respectfully states as follows:

I.
PRELIMINARY STATEMENT

The Debtors are an integrated group of companies that design and produce build-to-print electronics for customers in the automotive, communications, energy, and life-sciences industries. The operating businesses—Mara Canada and Mara US—are headquartered in Markham, Ontario, with a production facility in Holly, Michigan. The Debtors employ approximately 227 people, 134 in Canada and 93 in Michigan.

The Debtors' Canadian and U.S. operations function as a single production system, with many of their products using processes on both sides of the border to manufacture finished products. Substantially all components and sub-assemblies in Mara US are initially produced at Mara Canada's facilities in Ontario, and final assembly, tuning, and testing of finished products is performed at the Mara US Facility in Michigan. Given the cross-border nature of the Debtors' business, chapter 15 relief is essential to the success of the Canadian Proceeding.

On May 5, 2026, on the application of Frontwell Capital Partners Inc., the Debtors' senior secured lender, the Canadian Court entered an order commencing the Canadian Proceeding and appointing KSV as Receiver authorized to act as Foreign Representative for the purpose of commencing these chapter 15 cases. These cases follow shortly after commencement of the Canadian Proceeding because the Debtors urgently require this Court's assistance to give effect in the United States to the Canadian Court's order and preserve the Debtors' business pending an orderly going-concern sale or reorganization process.

The Debtors' business is entirely dependent on a network of suppliers and service providers, many of them single-source vendors of specialized components and raw materials that are necessary for the Debtors' manufacturing process and cannot be replaced on short notice. Even a brief disruption would cascade through the Debtors' production system. The Canadian Court restrained all suppliers and service providers from discontinuing, altering, interfering with, or terminating the supply of goods or services. Unless those provisions of the Canadian Court's order are enforced in the United States, a single critical supplier, service provider, or other counterparty could halt the Debtors' production, cause missed customer commitments, destroy going-concern value, and trigger a value-destructive liquidation. Accordingly, the Foreign Representative has requested provisional relief from this Court.

Through the Canadian Proceeding, the Receiver intends to conduct and complete a court-supervised going-concern sale or reorganization of substantially all of the Debtors' business and assets, an outcome that would protect jobs in Michigan and Canada, preserve supplier relationships, ensure customer continuity, and maximize recoveries for creditors. Recognition of the Canadian Proceeding will give the Receiver the opportunity to stabilize the Debtors' operations on both sides of the border and permit the Receiver to seek enforcement of further relief obtained from the Canadian Court that may address the Debtors' assets, creditors or other stakeholders in the U.S.

Recognition will also protect the Debtors and their assets within the territorial jurisdiction of the U.S. from creditor and counterparty actions once they learn of the Canadian Proceeding. The proposed recognition would halt piecemeal litigation and prevent any "race to the courthouse" by creditors seeking to take enforcement actions with respect to the Debtors' assets within the United States.

Recognition serves the very purpose for which chapter 15 of the Bankruptcy Code was enacted—to allow for centralized administration of the Debtors' assets by establishing a means of coordination between the Canadian Court and this Court, ensuring fair treatment for the Debtors' creditors and other interested parties in both countries. Absent this Court's recognition of the Canadian Proceeding, actions or

inactions by creditors and counterparts could jeopardize the Debtors' assets and undermine the Foreign Representative's efforts.

As set forth in this Memorandum of Law and in the declarations in support of the requested relief, recognition of the Canadian Proceeding as a foreign main proceeding or, in the alternative, a foreign nonmain proceeding, and the related relief requested in the Verified Petition are warranted under the Bankruptcy Code. The Foreign Representative therefore respectfully requests that this Court recognize the Canadian Proceeding as a foreign main proceeding or in the alternative, a foreign nonmain proceeding, as set forth below.

II.
FACTUAL BACKGROUND

Detailed factual background regarding the Debtors, their business operations, capital and debt structure and the events leading to the commencement of the Canadian Proceeding and the filing of these chapter 15 cases is set forth in the Verified Petition and Foreign Representative Declaration.

III.
ARGUMENT AND AUTHORITY

The Foreign Representative satisfies the Bankruptcy Code's definition of a "foreign representative," the Canadian Proceeding satisfies the Bankruptcy Code's definition of a "foreign proceeding," and, because the Debtors' center of main interest is in Canada, the Canadian Proceeding is entitled to recognition as a "foreign

main proceeding." The Chapter 15 Petition also comply with the requirements of section 1515 of the Bankruptcy Code. Finally, recognition of the Canadian Proceeding will not violate the public policy of the United States. Accordingly, the Foreign Representative respectfully submits that this Court should recognize the Canadian Proceeding under section 1517 of the Bankruptcy Code.

First, the Foreign Representative is a "person," as contemplated in subsections 101(24) and 101(41) of the Bankruptcy Code. The Canadian Court duly appointed the Foreign Representative with respect to the Debtors for the purpose of, among other things, representing the Debtors in these chapter 15 cases.

Second, the Canadian Proceeding is a "foreign proceeding" within the meaning of section 101(23) of the Bankruptcy Code because the Canadian Proceeding is a collective judicial proceeding conducted in Canada under a law related to insolvency or debt adjustment, and the assets and affairs of the Debtors are subject to supervision by the Canadian Court for the purpose of reorganization or liquidation. Additionally, with respect to the Canadian Debtors, the Canadian Proceeding is a "main" proceeding because section 1516(c) of the Bankruptcy Code presumes that certain of the Debtors' center of main interests are in Canada because those Debtors are Canadian companies with their registered offices in Canada, where the Canadian Court has taken jurisdiction over the Canadian Proceeding. The U.S. Debtors, while formed under the laws of the State of Michigan, have their corporate

headquarters in Canada and are subject to Canadian centralized management and financial controls, and thus also have their center of main interest in Canada. If, however, the Court determines the U.S. Debtors' receivership proceedings in Canada do not qualify as a foreign main proceeding, the Foreign Representative seeks this Court's recognition of those proceedings as a foreign nonmain proceeding.

Lastly, the Chapter 15 Petition meets the requirements of section 1515 of the Bankruptcy Code. In accordance with sections 1515(b) and (d) of the Bankruptcy Code, the Petition is accompanied by a certified copy, in English, of the Appointment Order commencing the Canadian Proceeding and appointing the Foreign Representative. (*See* Petition, Ex. A.) In accordance with section 1515(c) of the Bankruptcy Code, the Foreign Representative filed a statement with the Petition, identifying the Canadian Proceeding as the only proceeding with respect to the Debtors and stating that there is no other pending foreign proceeding known to the Foreign Representative with respect to the Debtors. (*See* Petition, Ex. C.) Finally, as required by Rule 1007(a)(4) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the Foreign Representative has also filed the Debtors' corporate ownership statement and a list of persons authorized to administer the foreign proceeding of the Debtors.

Thus, as set forth in detail below, all the conditions to the entry of an order recognizing the Canadian Proceeding as a foreign main proceeding under the

Bankruptcy Code have been satisfied, and the Debtors are entitled to have the Canadian Proceeding recognized as a foreign main proceeding.

A. The background and purpose of chapter 15 of the Bankruptcy Code support recognition.

Congress added chapter 15 to the Bankruptcy Code when it enacted title VIII of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. *See* Pub. L. No. 109-8, § 801 (2005); *see also* 8 Collier on Bankr. ¶ 1501.01 (16th ed.). Chapter 15 encourages cooperation between the United States and courts and other competent authorities of foreign countries involved in cross-border insolvency cases. 11 U.S.C. § 1501(a). Chapter 15 incorporates into United States bankruptcy law the Model Law on Cross-Border Insolvency (the "Model Law") promulgated in 1997 by the United Nations Commission on International Trade Law ("UNCITRAL"), following years of international consultation on how best to coordinate and assist cross-border insolvency cases.

As a result, in interpreting chapter 15 of the Bankruptcy Code, the Court is required to "consider its international origin, and the need to promote an application of this chapter [15] that is consistent with the application of similar statutes adopted by foreign jurisdictions." *See* 11 U.S.C. § 1508. The Guide to Enactment of UNCITRAL's Model Law provides historical and interpretive guidance to the meaning and purpose of the provisions in chapter 15. *See generally* 8 Collier on Bankr. ¶1501.01. Indeed, Congress has instructed that if the Court finds a provision

of chapter 15 to be unclear or ambiguous, the Court may view the UNCITRAL Model Law and the Guide to Enactment with respect to the Model Law as legislative history. *See* H.R. Rep. No. 109-31, at 105 (2005). Courts have further suggested that it is also acceptable to consider interpretations of the Model Law rendered by foreign courts. *See, e.g.*, *In re Condor Ins. Ltd.*, 601 F.3d 319, 321-22 (5th Cir. 2012); *In re Loy*, 432 B.R. 551, 560 (E.D. Va. 2010).

Chapter 15 of the Bankruptcy Code requires a bankruptcy court to recognize a foreign proceeding if the elements in section 1517 of the Bankruptcy Code are satisfied. Section 1517 of the Bankruptcy Code requires that (i) the chapter 15 petition satisfy section 1515 of the Bankruptcy Code, generally by including copies of the relevant filings made with the foreign court or that foreign court orders be attached to the petition and translated into English, (ii) the foreign representative is a person or body, and (iii) the foreign proceeding is either a main proceeding or a foreign nonmain proceeding. Beyond recognition, a chapter 15 case provides the duly authorized foreign representative of such proceeding with various forms of relief to preserve the debtors' assets and value in multinational and cross-border corporate insolvency proceedings, to coordinate the asset administration, and to prevent disruption that otherwise could derail a foreign proceeding from achieving its purposes under the applicable local foreign law.

Consistent with these principles, the Foreign Representative requests that this Court recognize the Canadian Proceeding and grant all relief that it deems just and proper to aid the Debtors in pursuing their goals in the Canadian Proceeding. Recognition is critical to preserving and maximizing the value of the Debtors' assets for the benefit of the Debtors, their creditors, and other stakeholders because it will (i) stay all creditor actions in the United States, (ii) provide a stable platform for the Debtors to conduct and complete their cross-border reorganization, and (iii) provide the Foreign Representative with access to a U.S. court to be heard on issues that may impact the Canadian Proceeding or the Debtors' obligations under Canadian law.

B. The Debtors are eligible to be "debtors" under the Bankruptcy Code.

Section 1502 defines a "debtor" as "an entity that is the subject of a foreign proceeding." 11 U.S.C. § 1502. Because the Debtors are the subjects of the Canadian Proceeding, they qualify as "debtors" under section 1502 of the Bankruptcy Code.

Some courts hold that debtors must also meet the general eligibility requirements under section 109(a) of the Bankruptcy Code as well as the more specific eligibility requirements under section 1517(a) of the Bankruptcy Code. Section 109(a) states, in relevant part, that "only a person that resides or has a domicile, a place of business, or property in the United States . . . may be a debtor under this title." 11 U.S.C. § 109(a). Some courts do not require a debtor to have

assets in the United States to qualify as a debtor under chapter 15 of the Bankruptcy Code, but not all courts have agreed. *Compare In re Bemarmara Consulting A.S.*, No. 13-13037 (KG) [D.I. 38] (Bankr. D. Del. Dec. 17, 2013) (noting section 1502 does not require that a debtor have assets in the United States and that "the requirements of section 109(a) do not control" with respect to recognition), *In re Al Zawawi*, 637 B.R. 663, 667–69 (Bankr. M.D. Fla. 2022), *aff'd*, 97 F.4th 1244 (11th Cir. 2024) (holding that debtor eligibility under chapter 15 is not a prerequisite for recognition) and *In re Venus Capital Mgmt. Co.*, 2026 Bankr. LEXIS 528, at *11–*15 (Bankr. D.R.I. Mar. 2, 2026) (same) *with Drawbridge Special Opp. Fund LP v. Barnet (In re Barnet)*, 737 F.3d 238, 247 (2d Cir. 2013) (holding that eligibility requirements under section 109 of the Bankruptcy Code apply to chapter 15 debtors).

Decisions interpreting section 109(a) of the Bankruptcy Code, as applied to debtors, unanimously hold that a debtor satisfies the section 109 requirements even when it only has a nominal amount of property in the United States, including if that property is a retainer with counsel or other intangible property like a contract in the jurisdiction or claims or causes of action. *See, e.g., In re B.C.I. Fins. Pty Ltd.,* 583 B.R. 288, 294 (Bankr. S.D.N.Y. 2018) (holding that courts that have construed the "property" requirement in section 109 with respect to foreign corporations and have "found the eligibility requirement satisfied by even a minimal amount of property located in the United States"); *In re Berau Capital Res. PTE Ltd*, 540 B.R. 80, 83-

84 (Bankr. S.D.N.Y. 2015) (discussing the legal *situs* of contracts and holding a New York law governed indenture was property in the U.S. sufficient to satisfy section 109 of the Bankruptcy Code); *GMAM Inv. Funds Trust I v. Globo Comunicacoes e Participacoes S.A. (In re Globo Comunicacoes e Participacoes S.A.)*, 317 B.R. 235, 249 (S.D.N.Y. 2004) (stating that courts have repeatedly found that there is "'virtually no formal barrier' to having federal courts adjudicate foreign debtors' bankruptcy proceedings") (citing *In re Aerovias Nacionales de Colombia S.A. (In re Avianca)*, 303 B.R. 1, 9 (Bankr. S.D.N.Y. 2003)); *Maxwell Commc'n Corp. plc v. Societe Generale plc (In re Maxwell Commc'n Corp.)*, 186 B.R. 807, 818-19 (S.D.N.Y. 1995); *see also In re Yukos Oil Co.*, 321 B.R. 396, 407 (Bankr. S.D. Tex. 2005) (holding that funds deposited in a Southwest Bank of Texas account was sufficient to make the company eligible to be a debtor); *In re Global Ocean Carriers Ltd.*, 251 B.R. 31 (Bankr. D. Del. 2000) (holding that approximately $10,000 dollars in a bank account and the unearned portions of retainers provided to local counsel constituted property sufficient to form a predicate for a filing in the United States); *In re Iglesias*, 226 B.R. 721, 722-23 (Bankr. S.D. Fla. 1998) (holding that $500 in a bank account was sufficient property to permit a foreign debtor to seek bankruptcy protection).

As one court colorfully explained, section 109(a) of the Bankruptcy Code "leave[s] the Court no discretion to consider whether it was the intent of Congress

to permit someone to obtain a bankruptcy discharge solely on the basis of having a dollar, a dime or a peppercorn located in the United States." *In re McTague*, 198 B.R. 428, 432 (Bankr. W.D.N.Y. 1996). In short, if the debtor has *any* property in the United States, section 109(a) of the Bankruptcy Code is satisfied.

Here, the Debtors are eligible to be debtors under section 109(a) of the Bankruptcy Code because they have a domicile and/or property in the United States. Debtor Mara Technologies USA Inc. ("Mara US") and Invotek Group USA Inc. ("Invotek US") are both incorporated or formed under the laws of the State of Michigan and thus have domicile in the U.S. (*See* Foreign Representative Decl. ¶¶ 13, 14.) Debtor Invotek Group Inc. ("Invotek Canada"), incorporated under the laws of Canada, has property in the U.S. in the form of a direct or indirect ownership interest in each of U.S. Debtors, and an economic interest in those entities. (*See* Foreign Representative Decl. ¶¶ 10, 11.) Mara Technologies Inc. ("Mara Canada") has property in the U.S. in the form of (i) accounts receivable owed by U.S.-based customers; (ii) intercompany receivables owed by Mara US; and (iii) a U.S. Dollar denominated deposit account maintained at JPMorgan Chase Bank, N.A. in New York, NY with a balance of approximately $1,000 as of the date of commencement of the Canadian Proceeding. (*See* Foreign Representative Decl. ¶ 12.) As a result, to the extent that section 109(a) of the Bankruptcy Code applies, the Debtors satisfy it.

C. The Foreign Representative qualifies as a "foreign representative" under the Bankruptcy Code.

A "foreign representative" that has been duly appointed and authorized in a foreign proceeding to administer the reorganization is a proper applicant for recognition of a foreign proceeding and may commence a chapter 15 case by filing a petition for recognition of a foreign proceeding. *See* 11 U.S.C. §§ 1504 and 1515. Section 101(24) of the Bankruptcy Code defines a "foreign representative" as "a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of such foreign proceeding." 11 U.S.C. § 101(24).

Under section 101(41) of the Bankruptcy Code, a "person" includes an individual, partnership, and corporation. 11 U.S.C. § 101(41). As discussed above, the Foreign Representative is a "person" within the meaning of section 101(41) of the Bankruptcy Code, appointed by the Canadian Court on May 5, 2026. (*See* Petition, Ex. A.). The Canadian Court authorized and empowered KSV to act as Foreign Representative in respect of the Canadian Proceeding and authorized the Foreign Representative to file these chapter 15 cases in the United States for the purpose of recognizing the Canadian Proceeding. (*See* Appointment Order, ¶ 31; Foreign Law Decl. ¶ 36.) Thus, the Foreign Representative falls squarely within

the definition of "foreign representative" under section 101(24) of the Bankruptcy Code.

Since the Canadian Court authorized KSV to act as proposed foreign representative, KSV is a proper foreign representative for each of the Debtors.

D. The Canadian Proceeding is a "foreign proceeding" under the Bankruptcy Code.

Chapter 15 of the Bankruptcy Code permits recognition of a "foreign proceeding." As defined in section 101(23) of the Bankruptcy Code, a "foreign proceeding" is:

> a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.

11 U.S.C. § 101(23). Bankruptcy courts have held that in determining whether a specific proceeding is a "foreign proceeding," the court should examine whether the foreign proceeding meets the following factors: (1) it is a proceeding either judicial or administrative in character, (2) collective in nature, (3) in a foreign country, (4) authorized or conducted under a law related to insolvency or the adjustment of debts, (5) in which the debtor's assets and affairs are subject to the control or supervision of a foreign court, and (6) which is for the purpose of reorganization or liquidation. *See In re ABC Learning Ctrs. Ltd.*, 445 B.R. 318, 327 (Bankr. D. Del. 2010), *aff'd,*

728 F.3d 301 (3d Cir. 2013) (citing *In re Betcorp Ltd.*, 400 B.R. 266, 277 (Bankr. D. Nev. 2009)).

The Canadian Proceeding is a "foreign proceeding" within the meaning of the Bankruptcy Code. As set forth in the Foreign Law Declaration, the Canadian Proceeding is a proceeding in a foreign country—Canada—that is a collective judicial proceeding under the BIA, which is the law relating to bankruptcy and insolvency under the supervision of the Canadian Court. (*See* Foreign Law Decl. ¶¶ 41–43.)

First, the Canadian Proceeding is a proceeding commenced under the BIA, a Canadian law that governs bankruptcy, insolvency, and provides for an arrangement of a company's financial obligations. *See* Foreign Law Decl. ¶¶ 11–12. For purposes of chapter 15 recognition, "the hallmark of a 'proceeding' is a statutory framework that constrains a company's actions and that regulates the final distribution of a company's assets." *Betcorp*, 400 B.R. at 278. Because the Canadian Proceeding operates under this statutory framework, it satisfies the first factor of section 101(23) of the Bankruptcy Code.

Second, the Canadian Proceeding is judicial in character. A reorganization proceeding is judicial in character whenever a "court exercises its supervisory powers." *In re ABC Learning Ctrs. Ltd.*, 445 B.R. at 328.

Third, the Canadian Proceeding is collective in nature. A proceeding is "collective" within the meaning of section 101(23) when it considers the rights and obligations of all creditors and operates for their collective benefit, rather than at the behest of any single creditor, and subjects the debtor's assets and affairs to court supervision for the purpose of an orderly reorganization or liquidation. *See In re Betcorp Ltd.*, 400 B.R. 266, 281 (Bankr. D. Nev. 2009) (a proceeding is "collective" when it "considers the rights and obligations of all creditors"); *In re ENNIA Caribe Holding N.V.*, 594 B.R. 631, 638 (Bankr. S.D.N.Y. 2018) (same); *In re Agro Santino, OOD*, 653 B.R. 79 (Bankr. S.D.N.Y. 2023) (same).

The Canadian Proceeding here has all of the hallmarks those courts identified as dispositive. The Appointment Order vests the Receiver with all of the Debtors' present and future property, assets, and undertakings, and grants the Receiver broad authority to manage, operate, and dispose of the Debtors' business under the Canadian Court's continuing supervision. The Appointment Order also imposes a sweeping stay barring any creditor from commencing or continuing proceedings, enforcing remedies, or exercising rights against the Debtors or the Property without leave of the Canadian Court. That stay protects the Debtors' assets for the benefit of all creditors and forecloses the kind of unilateral, race-to-the-courthouse collection that would defeat collective treatment. Courts have held that a Canadian receivership commenced under section 243(1) of the BIA and section 101 of the CJA satisfies the

"collective" element. *See In re Iovate Health Scis. Int'l Inc.*, 673 B.R. 516, 532–33 (Bankr. S.D.N.Y. 2025) (Canadian proceeding under the BIA is "collective in nature" and "subjects the Debtors' assets and affairs to the supervision of the foreign court"); *In re Giftcraft Ltd.*, 2025 WL 1583480, at *9 (Bankr. S.D.N.Y. June 4, 2025) (Canadian receivership under BIA section 243(1) and CJA section 101 "almost certainly constitutes a 'foreign proceeding'").

Fourth, the Canadian Proceeding is pending before the court of a foreign country, Canada.

Fifth, as described above, the BIA, which governs the Canadian Proceeding, relates to the adjustment of debt. Here, the Receiver intends to utilize the Canadian Proceeding to preserve, protect, and realize on the Property for the benefit of creditors.

Sixth, the Canadian Proceeding subjects the Debtors' assets and affairs to the possession and control of the Receiver during the pendency of the proceedings.

Because the Canadian Proceeding satisfies all of the criteria required by section 101(23) of the Bankruptcy Code, it is a foreign proceeding entitled to recognition under chapter 15 of the Bankruptcy Code. Courts have routinely recognized Canadian receiverships as foreign proceedings on materially identical facts. *See Giftcraft*, 2025 WL 1583480, at *9 (collecting recognition orders in *In re Antamex Industries ULC*, No. 24-10934 (Bankr. D. Del. June 4, 2024); *In re G.I.*

Sportz Inc., et al, No. 20-12610 (Bankr. D. Del. Nov. 17, 2020); *In re Nygard*, No. 20-10828 (Bankr. S.D.N.Y. Nov. 5, 2020); and *In re Thane Int'l, Inc.*, No. 15-12186 (KG) (Bankr. D. Del. Dec. 1, 2015), among others). Accordingly, the Canadian Proceeding is a "foreign proceeding" under section 101(23) of the Bankruptcy Code.

E. The Canadian Proceeding is a "foreign main proceeding" under the Bankruptcy Code.

A bankruptcy court is obligated to enter an order recognizing a foreign proceeding after notice and a hearing if, among other conditions,[3] the foreign proceeding for which recognition is sought is either a "foreign main proceeding" or a "foreign nonmain proceeding." *See* 11 U.S.C. § 1517(a)(1). Section 1502(4) of the Bankruptcy Code provides that a "foreign main proceeding" means "a foreign proceeding pending in the country where the debtor has the center of its main interests." *Id.* § 1502(4). Section 1502(1) of the Bankruptcy Code provides that for purposes of chapter 15, the term "debtor" means "an entity that is the subject of a foreign proceeding." *Id.* § 1502(1). The term "center of main interests" or "COMI" is not defined in chapter 15 of the Bankruptcy Code. However, chapter 15 includes a presumption that, in the absence of evidence to the contrary, the foreign debtor's COMI is the place where the debtor's registered office is located. *Id.* § 1516(c).

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[3] The other conditions are that the foreign representative applying for recognition is a person or body and the petition meets the requirements of section 1515 of the Bankruptcy Code. *See generally* 11 U.S.C. § 1517(a). These conditions are satisfied here as explained above.

The COMI concept in chapter 15 derives from the Model Law and is also used in the European Council (EC) Regulation No. 1346/2000 of May 29, 2000, on European Cross-Border Insolvency Proceedings (the "EC Regulation"). The Legislative Guide provides that the EC Regulation "indicates that the term should correspond to 'the place where the debtor conducts the administration of his interest on a regular basis and is therefore ascertainable by third parties.'" *See* U.N. Comm'n on Int'l Trade Law, UNCITRAL Legislative Guide on Insolvency Law (2004) ¶ 13. The 1997 Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency (the "Guide to Enactment") indicated that it is "not advisable to include more than one criterion for qualifying a foreign proceeding as a main proceeding and provide that on the basis of any of these criteria a proceeding could be deemed a main proceeding" because such an approach "involving 'multiple criteria' would raise the risk of competing claims from foreign proceedings for recognition as a main proceeding." *See* U.N. Comm'n on Int'l Trade Law, UNCITRAL Model Law on Cross-Border Insolvency, with Guide to Enactment (1997) ¶ 127.

In other words, a debtor in a chapter 15 case should only have one COMI, and chapter 15 provides a rebuttable presumption that a debtor's COMI is the place where it is registered. *See*, *e.g., In re Betcorp*, 400 B.R. at 291 (suggesting that competing COMIs undermine the purpose of chapter 15 and lead to sub-optimal distribution of assets). Additionally, as best demonstrated by Judge Lifland's

discussion in the *Fairfield Sentry* case, what has come to be termed the "nerve center test" is the preferred test for determining COMI. The nerve center test looks at the ascertainable location of a chapter 15 debtor even if that means COMI shifted because of the liquidation and appointment of a foreign representative in the foreign proceeding (as long as such shift does not reflect some type of mischief). *See In re Fairfield Sentry Ltd.*, 440 B.R. 60, 65-66 (Bankr. S.D.N.Y. 2010), *aff'd,* 2011 WL 4357421 (S.D.N.Y. Sept. 16, 2011).

In considering facts which might rebut the registered office COMI presumption, U.S. bankruptcy courts have created a number of non-exclusive, non-mandatory factors regarding the location of the debtor's COMI, including: (1) the location of the debtor's headquarters; (2) the location of those who actually manage the debtor; (3) the location of the debtors' primary assets; (4) the location of the majority of the debtors' creditors or a majority of the creditors who would be affected by the case; and (5) the jurisdiction whose law would apply to most disputes. *See, e.g., In re Irish Bank Resolution Corp.*, No. 13-12159 (CSS), 2014 WL 9953792, at *16 (Bankr. D. Del. Apr. 30, 2014), *aff'd,* 538 B.R. 692 (D. Del. 2015); *In re British Am. Ins. Co.*, 425 B.R. 884, 909 (Bankr. S.D. Fla. 2010); *In re SPhinX, Ltd.*, 351 B.R. 103, 117 (Bankr. S.D.N.Y. 2006); *In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd. (In Provisional Liquidation)*, 374 B.R. 122, 128 (Bankr. S.D.N.Y. 2007).

As the registered office for two of the Debtors is in Canada, the center of main interests for the Canadian Debtors is presumed to be Canada, where the Canadian Proceeding is pending. Further, (i) Invotek Canada is the ultimate parent of all the Debtors, (ii) the Canadian Debtors are each incorporated under the laws of Canada, and (iii) the Canadian Debtors each have their registered offices in Canada. (*See* Foreign Representative Decl. ¶¶ 10-12 & n.1.) For all these reasons, the Canadian Debtors' COMI is in Canada, and the Court should recognize the Canadian Proceeding as a foreign main proceeding with respect to those Debtors.

The Foreign Representative also submits that each of the U.S. Debtors have their center of main interests in Canada, and thus, the Canadian Proceeding qualifies as a "foreign main proceeding" under section 1502(4) of the Bankruptcy Code for the U.S. Debtors as well. The non-Canadian status of the U.S. Debtors does not preclude a finding of COMI in Canada. The presumption that a debtor's center of main interests is located at its registered office is rebuttable, and the weight of the evidence here clearly overcomes that presumption, demonstrating that each Debtor's nerve center is in Canada. Courts have previously recognized Canadian proceedings, including receiverships, for non-Canadian subsidiaries as "foreign main proceedings," that were part of a jointly administered proceeding with their Canadian parent. *See, e.g., In re Giftcraft Ltd*., Case No.: 25-11030 [D.I. 37] (Bankr. S.D.N.Y. June 16, 2025) (recognizing a Canadian receivership as foreign main

proceeding, including debtors organized in the United States); *In re BOS Solutions LTD.*, Case No. 20-32465 (Bankr. S.D. Tex. May 19, 2020) [D.I. 41] (same); *In re G.I. Sportz Inc., et al,* Case No. 20-12610 (Bankr. D. Del. Nov. 17, 2020) [D.I. 36] (same); *In re Ted Baker Canada Inc.*, Case No. 24-10699 [D.I. 44] (Bankr. S.D.N.Y. May 9, 2024) (recognizing Canadian CCAA proceeding as a foreign main proceeding for all debtors, including debtor incorporated in New York); *Nygard Holdings (USA) Limited*, Case No. 20-10828 (SMB) [D.I. 40] (Bankr. S.D.N.Y. April 23, 2020) (recognizing Canadian receivership proceeding as foreign main proceeding as to debtors, including two debtors organized in the U.S. and with headquarters in the U.S.); *In re Bench Accounting, Inc*., Case No. 25-10463 (LSS) (Bankr. D. Del. April 9, 2025) (recognizing Canadian proceeding as foreign main proceeding as to debtors, including one debtor organized under the laws of the state of Delaware); *In re SimEx Inc*., Case No. 24-10083 (TMH) [D.I. 39] (Bankr. D. Del. Feb. 20, 2024) (granting foreign main recognition of Canadian proceeding, including as to two debtors organized in the U.S.); *In re Legacy Lifestyles Destin LP*, Case No. 22-01246 (LVV) [D.I. 28] (Bankr. M.D. Fla. May 9, 2022) (granting foreign main recognition of Canadian receivership, including as to debtors organized in the U.S.); *In re Strata Energy Services Inc*., *et al.*, Case Nos. 15-20821 and 15-20822 [D.I. 36 and 24, respectively] (Bankr. D. Wyo. Jan. 26, 2016) (granting foreign main proceeding recognition of Canadian proceeding as to debtors, including one

organized in U.S.); *In re Thane Int'l, Inc.*, Case No. 15-12186 (KG) [D.I. 41] (Bankr. D. Del. Dec. 1, 2015) (granting foreign main recognition of Canadian receivership as to debtors organized in the U.S.); *In re Talon Systems Inc.*, Case No. 13-11811 (KJC) [D.I. 49] (Bankr. D. Del. Aug. 30, 2013) (granting foreign main recognition of Canadian proceeding, including as to debtors organized in the U.S.).

Under all the relevant criteria, Ontario, Canada is the COMI for each of the Debtors in this case. Most important, however, is the location of the receivership in Canada, which is the center of these cases and is where the rights of the Debtors' creditors can be asserted and will be subject to compromise. In many cases where there is a dispute over whether a case should be a main or nonmain proceeding, the location of the administration of the foreign proceeding at the time of the filing of the petition is material. *See, e.g., In re Fairfield Sentry Ltd.*, 714 F.3d 127, 134 (2d Cir. 2013) (indicating that an examination of a company's full operational history could make it more difficult to pinpoint a single COMI); *In re Giftcraft Ltd*., 2025 Bankr. LEXIS 1350, *28-30 (Bankr. S.D.N.Y. June 4, 2025) (finding that although the U.S.-registered debtors were subject to a rebuttable presumption of COMI in the U.S., the presumption was overcome because as of the petition date, all of the debtors' property and assets vested in the Canadian receiver who was granted broad authority to operate the debtors' businesses).

The Debtors operate as a combined enterprise with its center of operations in Ontario, Canada. The COMI of each of the Debtors is located in Canada for the following reasons:

a. the Debtors' head office is located in Markham, Ontario;

b. the Debtors' largest creditors, Frontwell and EDC, are Canadian lenders with their head offices in Toronto, Ontario;

c. the Debtors' credit documents with Frontwell and BMO are governed by Ontario law;

d. the U.S. Debtors are each a party to the Frontwell Credit Agreement and Mara US is a party to the EDC Credit Agreement;

e. the Debtors' executive management team, including its Chairman, Chief Executive Officer, Chief Operating Officer, and Chief Financial Officer, are all based in Markham and employed by Mara Canada;

f. all daily administrative and operational management decisions are directed by senior management of Mara Canada, including accounting, financial reporting, budgeting, treasury and operational oversight. Mara US employees report to Mara Canada with respect to certain administrative functions in Mara US;

g. substantially all strategic decision-making for the Debtors, including the U.S. Debtors, is made by executives of Mara Canada;

h. the Board of Directors of each of the Debtors is composed entirely of Canadian individuals based in Canada, except for Stephen Toy, a U.S. citizen based in the U.S. who is one of five directors of Invotek Canada;

i. the Debtors' cash management system relies on Mara Canada's bank accounts. Mara Canada and Frontwell make advances to Mara US to fund business operations;

j. the Debtors' vendor relationships, including the sourcing of, and payment for, goods and services are paid directly by Mara Canada, and Mara Canada or Frontwell (on behalf of Mara Canada) make advances to Mara US to pay vendors;

k. customer parts are manufactured, in whole or in part, in Canada, with final production of devices manufactured for ATX performed in the U.S.;

l. the Debtors' external auditors are BDO Canada LLP in Canada;

m. the audited financial statements of the Debtors are prepared in accordance with Canadian accounting standards for private enterprises; and

n. the Receiver is currently managing the Debtors' affairs and assets from Canada.

See Foreign Representative Decl. ¶¶ 9–40.

Based on these facts, the Debtors' nerve-center is in Canada, and even though the U.S. Debtors operate in the United States, those Debtors are funded by and under the common strategic control of management in Canada. Therefore, each Debtor's COMI is Canada and, as such, the Canadian Proceeding should be recognized as a foreign main proceeding for each Debtor.

F. In the alternative, the Canadian Proceeding for the U.S. Debtors is a "foreign nonmain proceeding" under the Bankruptcy Code.

In the alternative, if this Court concludes that the Canadian Proceeding for any of the U.S. Debtors is not a "foreign main proceeding," the Court should grant recognition as a "foreign nonmain proceeding" if determined to be applicable under section 1502(5) of the Bankruptcy Code.

The Guide to Enactment explains that in a foreign nonmain proceeding, "the court must be satisfied that the relief relates to assets that, under the law of this State, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding." *See* Guide to Enactment ¶ 153, 158-60. A "foreign nonmain proceeding" is defined as "a foreign proceeding, other than a foreign main proceeding, pending in a country where the debtor has an establishment." *See* 11 U.S.C. § 1502(5); *see also* 11 U.S.C. § 1517(b)(2) (providing that an order of recognition as a "foreign nonmain proceeding" shall be entered "if the debtor has an establishment within the meaning of section 1502 in the foreign country where the proceeding is pending"). An establishment is "any place of operations where the debtor carries out a non-transitory economic activity." *See* 11 U.S.C. § 1502(2).

"Nontransitory economic activity" is not defined in the Bankruptcy Code but has been referred to as "a local place of business." *See In re Creative Fin. Ltd.*, 543 B.R. 498, 520 (Bankr. S.D.N.Y. 2016) (holding that to have an establishment in a country a debtor must "conduct business in that country."); *In re Millennium Glob. Emerging Credit Master Fund Ltd*., 458 B.R. 63, 85 (Bankr. S.D.N.Y. 2011) (holding that several factors contribute to identifying an establishment, including the economic impact of the debtor's operations on the market, the maintenance of a "minimum level of organization" for a period of time, and the objective appearance to creditors whether the debtor has a local presence); *see also In re Ran*, 607 F.3d

1017, 1027 (5th Cir. 2010) (holding that the definition of establishment requires "a place from which economic activities are exercised on the market (i.e. externally), whether the said activities are commercial, industrial or professional."); *In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd.*, 374 B.R. at 131 (holding that the requirements of a "place of operations" from which "economic activity" is conducted require a seat for local business activity that has a local effect on the markets); *In re British Am. Ins. Co., Ltd.*, 425 B.R. at 915 (holding same). As with determining a debtor's COMI, courts determine whether a debtor has an establishment in a country at the time of filing the chapter 15 petition. *See Lavie v. Ran*, 406 B.R. 277, 284–85 (S.D. Tex. 2009).

Given the material and substantive activities conducted by the Debtors in Canada, and the fact that the Debtors' corporate office is in Canada, the U.S. Debtors demonstrably have a local and non-transitory place of business and, hence, an establishment, in Canada. For example, as reflected in the Foreign Representative Declaration, substantially all parts are initially manufactured in whole or in part in Canada, with final assembly of certain production performed in Michigan. Likewise, the Debtors' cash management system uses Mara Canada's bank accounts and Mara Canada makes advances to Mara US so that it can fund its daily business operations. This activity is "non-transitory economic activity" as it is long standing and ongoing not temporary or transitory in nature.

The question of whether entities formed under U.S. law can be part of a Canadian filing was addressed in *In re Mega Brands*, Case No. 10-10485 (CSS) (Bankr. D. Del. Feb. 18, 2010). In that case, the debtors were comprised of Canadian debtors that were in a proceeding under the Canada Business Corporations Act (the "CBCA"), and interpleaded certain U.S. debtors into their Canadian proceeding. The Office of the United States Trustee (the "U.S. Trustee") objected to recognition of the U.S.-based debtors being recognized as debtors in a foreign nonmain proceeding, because:

> [T]he U.S. Debtors with U.S. domiciles, business addresses in the U.S., and with their principal assets in the U.S. are not foreign debtors whose financial affairs are subject to the direct jurisdiction of foreign courts. Under the circumstances, it would appear that these cases would have been more appropriately filed as pre-packaged Chapter 11 proceedings in the United States for the Chapter 15 U.S. Debtors.

See In re Mega Brands, No. 10-10485 (CSS), *United States Tr.'s Limited Obj. to Debtors' Pet. for Recognition and Chapter 15 Relief* (Bankr. D. Del. Mar. 16, 2010) [D.I. 30].

At the hearing on recognition, the U.S. Trustee cross-examined a witness about the nature of the U.S. Debtors and their role in the Canadian case. Tr. of Proceedings (Bankr. D. Del. Mar. 29, 2010) [D.I. 41] at 8:16-10:22. The cross-examination focused on whether the U.S. debtors were formed under Canadian law and whether they were a "body corporate" as defined under the CBCA; they were neither. *Id*. at 10:13-20. The U.S. Trustee conceded that the U.S. debtors had an

establishment in Canada. *Id.* at 16:22-17:5 ("[I]t is true here, as the petitioners contend, that the Chapter 15 U.S. Debtors would have an establishment under the meaning of this statute, because 1502(2) provides that establishment means any place of operations where the Debtor carries out a non-transitory economic activity. And that would seem to be just about anything. And certainly, the allegations in the petition would suggest that the Chapter 15 U.S. Debtors do have establishments in Canada."). The U.S. Trustee's main argument against entry of a recognition order was that the same court in Canada could not be both a court where a foreign main proceeding was pending and the court where a foreign nonmain proceeding was pending. *Id*.

In rejecting this notion, Judge Sontchi held that a debtor that is (i) formed under U.S. law with U.S. assets and (ii) part of the Canadian proceeding could obtain recognition of the Canadian proceeding. Specifically, in overruling the U.S. Trustee's objection, Judge Sontchi held that U.S. debtors in a Canadian proceeding qualified to be debtors in a chapter 15 case and that such debtors' cases were entitled to recognition as either foreign main proceedings or a foreign nonmain proceedings. *Id*. at 22:3-24:25.

Other courts have come to the same conclusion and have found that a U.S. entity in a foreign proceeding can be a foreign debtor in a foreign main proceeding. *In re Giftcraft Ltd*., 2025 Bankr. LEXIS 1350, at *29 (holding foreign main

proceeding recognition was likely because the receiver, based in Canada, was vested with all property, assets, and undertakings of the U.S. registered debtor in a foreign proceeding, with broad power and authority over such assets and the management and operation of the business).

While the COMI factors serve as a useful guide to determine whether a specific foreign debtor is in a foreign main proceeding or a foreign nonmain proceeding, an overly formalistic approach to application of those definitions could potentially jeopardize a cross-border restructuring. As such, and importantly, based on the evidence put before this Court in the Foreign Representative Declaration, the Foreign Representative respectfully submits that the Canadian Proceeding is a foreign main proceeding. But, in the alternative, at a minimum, those Debtors that have been formed under state law in the United States should be determined to be debtors in foreign nonmain proceedings because they have an establishment in Canada via their financial and operating entanglement with the Canadian Debtors, where all of them are properly participating in a restructuring as Debtors in proceedings under the BIA.

G. The Foreign Representative properly commenced these chapter 15 cases.

These cases were duly and properly commenced in accordance with sections 1504 and 1509(a) of the Bankruptcy Code by the filing of the Petition, accompanied by all documents and information required by subsections 1515(b) and (c), in

compliance with section 1515(a) of the Bankruptcy Code. *See In re Irish Bank Resolution Corp.*, 2014 WL 9953792, at *17 ("The final requirement for recognition under § 1517 is that the petition for recognition meets the procedural requirements of [section] 1515"), *aff'd*, 538 B.R. 692 (D. Del. 2015). Section 1504 of the Bankruptcy Code provides that "a case under this chapter is commenced by the filing of a petition for recognition of a foreign proceeding under section 1515." 11 U.S.C. § 1504.

The Foreign Representative satisfied the requirements of section 1515(a) of the Bankruptcy Code by filing the Petition, and section 1515(b) by submitting with the Petition a certified copy, in English, of the Appointment Order commencing the Canadian Proceeding. Further, in satisfaction of section 1515(c), the Foreign Representative has filed with the Petition a statement identifying the Canadian Proceeding as the only foreign proceeding with respect to the Debtors that is known to the Foreign Representative. In addition, in accordance with Bankruptcy Rule 1007(a)(4), the Foreign Representative has filed a corporate ownership statement and a list of persons or bodies authorized to administer the foreign proceeding of the Debtors. The Foreign Representative also disclosed the list of litigation in the U.S. and the list of parties against which provisional relief is sought. Because the Foreign Representative has satisfied the requirements set forth in section 1515 of the

Bankruptcy Code and Bankruptcy Rule 1007(a)(4), these chapter 15 cases have been properly commenced.

H. Recognition would not be manifestly contrary to the public policy of the United States.

The Canadian Proceeding should be recognized as a foreign main proceeding because doing so would not be "manifestly contrary to the public policy of the United States." 11 U.S.C. § 1506.

Recognition will further the purposes of chapter 15 by providing for cooperation between this Court and the Canadian Court in order to ensure that the Debtors' receivership is handled in a fair, efficient, and centralized manner, to protect and maximize the value of the Debtors' assets, and to protect the interests of the Debtors' creditors in the Canadian Proceeding. *See generally* 11 U.S.C. § 1501 (discussing the purpose and scope of chapter 15). Further, the narrow public policy exception in section 1506 of the Bankruptcy Code should only be invoked under exceptional circumstances not present here. *See In re Tri-Cont'l Exch., Ltd.*, 349 B.R. 627, 638 (Bankr. E.D. Cal. 2006) (noting that "Congress has indicated, with its use of the phrase 'manifestly contrary,' that this exception is to be narrowly construed," and, in accordance with the Guide to Enactment, the public policy exception is "only intended to be invoked under exceptional circumstances concerning matters of fundamental importance").

I. The Verified Petition should be granted.

The relief requested by the Foreign Representative in the proposed form of order attached as Exhibit A to the Verified Petition is either required to be entered or may be entered in the Court's discretion. Specifically, because the Foreign Representative has satisfied all the provisions of sections 1515 and 1517 of the Bankruptcy Code, recognition is mandatory. *See* 11 U.S.C. § 1517(a) (stating that "an order recognizing a foreign proceeding shall" be entered if the requisite conditions are satisfied). As set forth in this Memorandum of Law, the Foreign Representative and the Canadian Proceeding satisfy the applicable definitional and documentary provisions of the Bankruptcy Code. Similarly, where a foreign proceeding is pending in a country where the debtor has the center of its main interests, the court must recognize it as a foreign main proceeding. *See* 11 U.S.C. § 1517(b) (also using the "shall" construct for such recognition).

The proposed form of order contains the relief that essentially is self-executing upon recognition. *See* 11 U.S.C. § 1520. The remaining provisions of the form of order rely on the discretionary relief available, such as entrusting the Debtors' assets to the Foreign Representative and granting the Foreign Representative powers and relief available to a trustee. *See* 11 U.S.C. §§ 1520 & 1521. For the reasons set forth in the Verified Petition, this Memorandum of Law, the Chapter 15 Petition, the Foreign Representative Declaration, the Foreign Law

Declaration, and other papers filed with this Court, the Foreign Representative submits that such relief is necessary and proper, and it would be just for the Court to use its discretion to grant this relief.

IV.
CONCLUSION

For the reasons stated in the Verified Petition and this Memorandum of Law, the Foreign Representative respectfully requests that the Court enter an order, substantially in the form attached as Exhibit A to the Verified Petition, recognizing the Canadian Proceeding as a foreign main proceeding, or, in the alternative and if determined to be applicable, recognizing the Canadian Proceeding as a foreign nonmain proceeding, granting the relief in aid of the Canadian Proceeding as requested in the Verified Petition, and granting such other and further relief as this Court deems just and proper.

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Respectfully submitted,

By: */s/ Danielle Rushing Behrends*

Oksana Koltko Rosaluk, Esq.
DLA PIPER LLP (US)
444 West Lake Street, Suite 900
Chicago, Illinois 60606
Telephone: (312) 368-3974
Fax: (312) 251-5874
Email:
oksana.koltkorosaluk@us.dlapiper.com

-and-

R. Craig Martin, Esq.
DLA PIPER LLP (US)
1201 N. Market Street, Suite 2100
Wilmington, DE 19801
Telephone: (302) 468-5700
Fax: (302) 394-2462
Email: craig.martin@us.dlapiper.com

-and-

Sheryl L. Toby (P39114)
Danielle R. Behrends (Texas No. 24086961)
DYKEMA GOSSETT PLLC
39577 Woodward Avenue, Suite 300
Bloomfield Hills, MI 48304
Telephone: (248) 203-0522
Email: stoby@dykema.com
dbehrends@dykema.com

Counsel to Foreign Representative for the Debtors