

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

OAK AND FORT CORP., *et al.*,<sup>1</sup>

Debtors in a Foreign Proceeding.

Chapter 15

Case No. 25-11282 (MG)

Jointly Administered

**DECLARATION OF KIBBEN M. JACKSON AS CANADIAN COUNSEL IN SUPPORT  
OF VERIFIED PETITION FOR ENTRY OF AN ORDER RECOGNIZING FOREIGN  
MAIN PROCEEDINGS AND GRANTING ADDITIONAL RELIEF**

I, Kibben M. Jackson, to the best of my knowledge, information and belief, state as follows:

1. I am a partner in the insolvency and restructuring practice group in the Vancouver office of the international law firm, Fasken Martineau DuMoulin LLP, located at 550 Burrard Street, Suite 2900, Vancouver, British Columbia, Canada, V6C 0A3 (“Fasken”). Fasken is Canadian counsel to Oak and Fort Corp., 1282339 B.C. Ltd., Oak and Fort US Group, Inc., Oak and Fort Enterprise (U.S.), Inc., NYM Merger Holdings LLC, and Oak and Fort California, LLC (collectively, the “Debtors”) in the proceedings commenced under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the “CCAA”) in Supreme Court of British Columbia (the “Canadian Court”) Action No. S-254287, Vancouver Registry (the “CCAA Proceedings”).

2. I submit this declaration (this “Declaration”) in support of the *Verified Petition for*

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<sup>1</sup> The Debtors in these Chapter 15 cases, along with the last four digits of each Debtor’s U.S. Federal Employer Identification Number (“FEIN”) or Canada Revenue Agency Business Number (“BN”), are: Oak and Fort Corp. (BN 0003); 1282339 B.C. Ltd. (BN 0001); Oak and Fort US Group, Inc. (FEIN 1236); Oak and Fort Enterprise (U.S.), Inc. (FEIN 0468), NYM Merger Holdings LLC (FEIN 6949), and Oak and Fort California, LLC (FEIN 6937). The Debtors’ headquarters are located at 100-7 East 6<sup>th</sup> Ave, Vancouver, British Columbia, Canada.

*Entry of Order Recognizing Foreign Main Proceedings and Granting Related Relief* [Docket No. 6], including any supplements thereto, filed by the Foreign Representative in these cases under Chapter 15 of Title 11 of the United States Bankruptcy Code (the “Bankruptcy Code”).

3. I am over the age of 18 and, if called upon to testify, could and would testify competently to all facts and matters set forth in this Declaration. All facts and matters contained in this Declaration are based upon (i) my knowledge, (ii) my review of the relevant documents, and/or (iii) my opinion based upon my knowledge and experience of the Debtors’ operations.

### **PERSONAL BACKGROUND AND QUALIFICATIONS**

4. I received a Bachelor of Laws from the University of British Columbia Faculty of Law (now Peter A. Allard School of Law) in 1999, and was admitted to the British Columbia bar in 2001.

5. I have extensive experience representing debtors, creditors, and court-appointed monitors and receivers in a broad range of Canadian insolvency matters, including complex proceedings under the CCAA and the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “BIA”), out-of-court workouts, and distressed investments and purchases. I also have significant experience with cross-border and international mandates, most often concerning proceedings in the United States.

6. Although I am not admitted to practice law in the United States. I am generally familiar with recognition proceedings under Chapter 15 of the Bankruptcy Code as a consequence of my involvement with other Canadian proceedings involving debtors with operations in the United States, and which have, accordingly, required recognition under Chapter 15 of the Bankruptcy Code.

**THE DEBTORS' CCAA PROCEEDINGS**

7. On June 2 and June 3, 2025, as applicable, the Debtors filed Notices of Intention to Make a Proposal and commenced proposal proceedings pursuant to Division I of Part III of the BIA (the “Proposal Proceedings”). KSV Restructuring Inc. (“KSV”) was appointed proposal trustee in those proceedings.

8. On June 6, 2025, the Debtors filed an application with the Canadian Court pursuant to the CCAA. On that date, the Canadian Court signed a first-day initial order (the “Initial Order”): (i) directing that the Proposal Proceedings be continued and taken up in the CCAA Proceedings; (ii) appointing KSV as monitor of the Debtors within the CCAA Proceedings (the “Monitor”); (iii) granting a stay of proceedings against the Debtors, the Monitor, and their respective employees, directors, advisors, officers and representatives acting in such capacities for an initial Stay Period (as defined in the Initial Order); (iv) granting an Administration Charge (as defined in the Initial Order) in the maximum amount of CAD \$300,000; (v) declaring the Debtors’ center of main interest to be Vancouver, British Columbia, for purposes of the CCAA Proceedings; and (vi) seeking the aid and recognition of foreign courts in relation to the CCAA Proceedings.

9. The Initial Order further authorized KSV to (a) act as the foreign representative of the Debtors for the purpose of having the CCAA Proceedings recognized in a jurisdiction outside of Canada, and (b) apply for foreign recognition of the CCAA Proceedings and related relief, including provisional relief, as necessary, in the United States Bankruptcy Court pursuant to Chapter 15 of Title 11 of the Bankruptcy Code.

10. On June 16, 2025, the Debtors applied for and were granted an Amended and Restated Initial Order by the Canadian Court, which, among other things:

(a) extended the Stay Period to July 4, 2025;

- (b) increased the amount of the Administration Charge from CAD \$300,000 to CAD \$500,000;
- (c) granted a D&O Charge in the maximum amount of CAD \$3.4 million; and
- (d) granted an Intercompany Charge.

11. On June 27, 2025, the Debtors filed a notice of application for a Second Amended and Restated Initial Order (“SARIO”) to be heard on July 4, 2025 for, among other things:

- (a) an extension of the Stay Period to October 3, 2025;
- (b) approval of an interim financing term sheet (the “Term Sheet”) between the Debtors and certain interim lenders, which would provide an interim financing facility in the maximum principal amount of CAD \$2.5 million; and
- (c) approval of an Interim Lender’s Charge (as defined in the SARIO) to secure the Debtors’ obligations to the interim lenders under the Term Sheet.

12. The Debtors are in the process of preparing to file and serve a notice of application for a Claims Process Order approving a claims process for the assessment of claims which may be asserted against any of the Debtors and their directors and officers, including the claims of those employees whose employment may be terminated during the course of the CCAA Proceedings.

### **STATEMENTS OF CANADIAN LAW AND PRACTICE**

13. The CCAA is Canadian legislation which contemplates a court-supervised restructuring designed to enable financially distressed companies with liabilities in excess of CAD \$5 million to avoid the seizure of their assets or other enforcement proceedings by their creditors while maximizing the company’s value as a going concern for the benefit of creditors and other parties in interest.

14. A CCAA proceeding is, in most cases, a voluntary insolvency proceeding in which a debtor seeks to reorganize or complete a going-concern sale of its assets and business and provide recoveries to creditors, pursuant to a either plan of arrangement or distribution order, and under

court supervision. A debtor's assets and affairs are subject to the supervision of the Canadian court and court-appointed monitor during the pendency of a CCAA proceeding.

15. In a CCAA proceeding, absent exceptional circumstances, a debtor's management and board of directors remain in place, and the board maintains its power under Canadian law to approve any significant actions, including disposing of important assets, borrowing significant amounts, or changing corporate structures, subject to oversight by the court-appointed monitor and approval of the court.

16. Upon the commencement of a CCAA proceeding, the court will appoint a qualified licensed insolvency trustee to act as monitor, an independent court officer and observer of the CCAA proceeding and the debtor's business. The monitor's powers and duties are set out in the CCAA and relevant court orders and include, among other things, the duties to (a) monitor the debtor's ongoing operations, (b) report to the court and stakeholders on any major events affecting the debtor, (c) assist with preparing, filing, and holding meetings for voting on a plan of arrangement, including tabulating votes at any such meeting (d) approve the disclaimer of contracts and leases, and (e) prepare reports in conjunction with any interlocutory motions by the company or other stakeholders. Consent of the monitor is generally not required for the debtor to manage its business in the ordinary course, including the sale of assets in the ordinary course, but the monitor may request that the court enjoin any actions that may prove harmful to the debtor or its creditors. Though the monitor need not formally approve significant transactions such as asset sales outside of the ordinary course, court approval is usually required for such transactions and the court gives weight to the monitor's recommendations concerning such transactions.

17. Following the commencement of a CCAA proceeding, all actions against the debtor and its assets are stayed. The stay presumptively applies to all persons who might bring

proceedings or take either judicial or extra-judicial steps against the debtor or its property, unless there is an express exemption in the CCAA. The stay is first granted for a maximum period of ten (10) days, but is typically extended where the debtor can show it continues to act with good faith and due diligence, and provides a cash flow forecast demonstrating sufficient liquidity to continue the CCAA proceeding during the proposed extension of the stay period. There is no prescribed limit on the number or duration of these extensions of the stay.

18. In a CCAA proceeding, subject to limited exceptions, clauses triggering termination rights upon the debtor's commencement of an insolvency proceeding are not enforceable, so contract counterparties may not terminate contracts solely by virtue of the commencement of the CCAA proceeding or by virtue of the debtor's insolvency.

19. In a CCAA proceeding, a debtor is also able to obtain post-filing financing (*i.e.*, interim financing or DIP financing), subject to a hearing and court approval, after showing that the proposed financing is in the best interests of the stakeholders. Such borrowings would typically be granted priority status in relation to existing secured claims. The Canadian court may approve other priority charges against the company's assets, including administration charges to secure the payment of the fees of the debtor's counsel, the monitor, and its legal counsel, which charges also take priority over existing secured creditors, and where notice of the hearing to approve priority charges is given to potentially affected creditors and the court is of the opinion that such charges are appropriate in the circumstances.

20. Throughout a CCAA proceeding, the court retains broad discretion to make any order that it considers appropriate in the circumstances.

#### **THE CCAA PROCEEDINGS ARE FOREIGN MAIN PROCEEDINGS**

21. To ensure the effective and economic administration of the Debtors' restructuring efforts, I believe that the Debtors require the protection afforded to foreign debtors pursuant to

Chapter 15 of the Bankruptcy Code in order to prevent business disruption and recognize the legal effect of the CCAA Proceedings in the United States.

22. The CCAA Proceedings provide full due process for impacted creditors, including receipt of notice, an opportunity to retain counsel and to appear, to raise objections, and to appeal.

23. To the best of my information and belief, the CCAA Proceedings are judicial proceedings under Canadian law in which the purpose is a corporate restructuring or realization process. In the CCAA Proceedings, the Debtors' assets and affairs are subject to the control or supervision of the Canadian Court and the oversight of the Monitor. Impacted creditors are afforded full due process rights.

24. I believe, to the best of my information and belief, the CCAA Proceedings are the only proceedings related to the insolvency of the Debtors (other than these Chapter 15 proceedings) and therefore, are the only "foreign proceedings" with respect to the Debtors within the meaning of the Bankruptcy Code.

*[signature page to follow]*

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: July 2, 2025

/s/ Kibben M. Jackson

Kibben M. Jackson