

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NORTH DAKOTA

In re:	§	
	§	Chapter 15
	§	
BALANCED ENERGY OILFIELD SERVICES INC., <i>et al.</i> <sup>1</sup>	§	Case No. 22-30100
	§	
Debtors in a Foreign Proceeding.	§	(Joint Administration Requested)
	§	

**RECEIVER’S VERIFIED PETITION FOR (I) RECOGNITION OF FOREIGN MAIN PROCEEDING, (II) RECOGNITION OF FOREIGN REPRESENTATIVE, AND (III) RELATED RELIEF UNDER CHAPTER 15 OF THE BANKRUPTCY CODE**

FTI Consulting Canada Inc. (“FTI”), solely in its capacity as court-appointed receiver and manager (“Receiver” or “Foreign Representative”) of Balanced Energy Oilfield Services Inc. (“BCAN”), Balanced Energy Holdings Inc. (“BEH”), and Balanced Energy Oilfield Services (USA) Inc. (“BUSA”) (collectively, the “Balanced Energy” or “Debtors”) pursuant to the *Receivership Order* dated March 7, 2022 (the “Receivership Order”) <sup>2</sup> entered by the Court of Queen’s Bench of Alberta in Judicial Centre of Calgary, Alberta, Canada, Court File No. 2201-02699 (the “Canadian Court” and the “Canadian Proceeding”), pending under Canada’s *Bankruptcy and Insolvency Act* (“BIA”), and as authorized foreign representative of the Debtors, respectfully submits this chapter 15 verified petition (the “Verified Petition”; and together with the official form petition filed concurrently herewith, the “Petition”) for recognition of the Canadian Proceeding pursuant to section 1517 of title 11 of the United States Code (the “Bankruptcy Code”) and respectfully requests (a) recognition of the Canadian Proceeding as a foreign main proceeding,

<sup>1</sup> Simultaneous chapter 15 petitions are filed by the Receiver for affiliated debtors Balanced Energy Oilfield Services Inc., Balanced Energy Holdings Inc., and Balanced Energy Oilfield Services (USA) Inc.; the Receiver seeks joint administration of these proceedings.

<sup>2</sup> A true and correct copy of the Receivership Order is attached as Exhibit A to the Official Form 401 Petition and can also be downloaded free of charge at FTI’s website: <http://cfcanada.fticonsulting.com/balancedenergy> and is incorporated herein for all purposes.

or, in the alternative, as a foreign nonmain proceeding; (b) recognition of the Receiver as the foreign representative of the Debtors; and (c) additional and related relief pursuant to sections 1520 and 1521 of the Bankruptcy Code.

In support of the Petition, the Foreign Representative has filed contemporaneously herewith the (a) *Declaration of Receiver in Support of Receiver's (A) Verified Petition for (I) Recognition of Foreign Main Proceeding, (II) Recognition of Foreign Representative, and (III) Related Relief Under Chapter 15 of the Bankruptcy Code, and (B) Emergency Application for Relief Pursuant to Sections 105(A) and 1519 of the Bankruptcy Code* (the "Receiver Declaration") and (b) *Declaration of Foreign Counsel* (the "Osler Declaration"; and together with the Receiver Declaration, the "Supporting Declarations"), which are incorporated herein by reference.

#### I. PRELIMINARY STATEMENT

1. The Debtors are companies that provide coiled tubing services ("CT Services") to national oil companies, energy companies, and independent exploration and production companies in Canada and the United States. BCAN and BEH are entities organized under the laws of Alberta, Canada. BUSA, a Delaware entity and wholly owned subsidiary of BEH, is a Balanced Energy operating company which, until recently, conducted business in the United States. BCAN and BUSA are borrowers under certain secured credit facilities with a Canada-organized and based lender, National Bank of Canada ("NBC" or "Lender"), and pursuant to loan documents governed by Canadian law. BEH is a guarantor to the credit facilities.

2. On March 1, 2022, as a result of various defaults, NBC brought its *Application (Appointment of Receiver)* in the Canadian Court seeking appointment of the Receiver for the Debtors pursuant to the BIA. On March 7, 2022, the Receiver was appointed pursuant to the Receivership Order entered by the Canadian Court to jointly administer the Debtors' estates. The Receivership Order provides similar rights, powers, and duties to the Receiver as those afforded

to a liquidating trustee under title 11 of the United States Code (the “Bankruptcy Code”), including control over the Debtors’ assets and affairs, a stay of all collection activities and legal actions against the Debtors, and authority to seek recognition and comity with respect to the Receivership Order in foreign jurisdictions, including the United States.

3. Accordingly, the Receiver files the Petition, and the related Debtors’ petitions, and seeks the full extent of protections afforded by chapter 15 of the Bankruptcy Code to facilitate the ongoing administration of the Canadian Proceeding, specifically with respect to the Debtors’ assets located in the United States, and to assist the Receiver in carrying out its duties set forth in the Receivership Order. This chapter 15 case serves an important function in supporting the Receiver’s full and fair administration of the Debtors’ estates for the benefit of all creditors in accordance with the BIA and operative Canadian law, including by recognition of the stay of proceedings set forth in the Receivership Order and as permitted by section 362 of the Bankruptcy Code. As of this filing, the Receiver is aware of three pending actions in the United States filed by creditors of one or more of the Debtors, which seek to impair the Debtors’ assets and/or to liquidate claim amounts through a litigation process, and thus respectfully, should be stayed through recognition of the Canadian Proceeding.

4. For the reasons set forth herein, the Supporting Declarations, and related filings, the Receiver submits that the relief requested in the Petition is necessary and appropriate for the benefit of the Debtors, their creditors, and other parties-in-interest.

## **II. RELIEF REQUESTED**

5. The Foreign Representative requests entry of an order, substantially in the form attached hereto (the “Proposed Order”), (a) granting the Petition and recognizing the Canadian Proceeding as a “foreign main proceeding” (as defined in section 1502(4) of the Bankruptcy Code), or, in the alternative, as a “foreign nonmain proceeding” (as defined in section 1502(5) of the

Bankruptcy Code), and granting all of the relief afforded to such proceedings, pursuant to sections 1517(a) and (b) of the Bankruptcy Code; **(b)** recognizing the Receiver as a “foreign representative” of the Debtors as defined in section 101(24) of the Bankruptcy Code; **(c)** finding that the Petition meets the requirements of section 1515 of the Bankruptcy Code; **(d)** granting all relief afforded to a foreign main proceeding automatically upon recognition pursuant to section 1520 of the Bankruptcy Code, subject to certain modifications described herein; **(e)** granting additional relief pursuant to section 1521 of the Bankruptcy Code; **(f)** providing that no action taken by the Foreign Representative in preparing, disseminating, applying for, implementing, or otherwise acting in furtherance of the Canadian Proceeding, any order entered in respect of the Petition, these chapter 15 cases, any further order for additional relief in the chapter 15 cases, or any adversary proceedings or contested matters in connection therewith, will be deemed to constitute a waiver of any immunity afforded to the Foreign Representative, including, without limitation, pursuant to section 1510 of the Bankruptcy Code; and **(g)** granting such other relief as the Court deems just and proper.

### **III. JURISDICTION AND VENUE**

6. The United States Bankruptcy Court for the District of North Dakota (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(P). The Debtors, by and through the Receiver, confirm their consent, pursuant to Bankruptcy Rule 7008, to the entry of a final order by the Court on this Petition.

7. This chapter 15 case has been properly commenced pursuant to section 1504 of the Bankruptcy Code by filing the Petition pursuant to section 1515 of the Bankruptcy Code.

8. Venue is proper pursuant to 28 U.S.C. § 1410(2).

9. The basis for the relief requested herein is sections 105(a), 362, 363, 1504, 1507, 1510, 1515, 1517, and 1521 of the Bankruptcy Code.

#### **IV. RELEVANT BACKGROUND**

##### **A. The Debtors' Business and Corporate Structure**

10. BCAN and BEH are companies incorporated pursuant to the laws of the Province of Alberta with their registered office in the City of Lethbridge in the Province of Alberta. BUSA is a company incorporated pursuant to the laws of the State of Delaware with its registered agent at The Corporation Trust Company, 1209 Orange Street, Wilmington, DE, 19801 and its principal office address at 2515 31<sup>st</sup> Street SE, Building 3, Minot, North Dakota, 58701. BUSA is a wholly owned subsidiary of BEH. The Debtors maintain a Canadian headquarters at 520 5 Ave SW #1550, Calgary, AB T2P 3R7, Canada. The Debtors' directors and officers reside(ed) in Canada and were/are employed by the Debtors in those respective capacities. Since entry of the Receivership Order, the Receiver has exercised complete control of the Debtors. Operations in the United States have been wound up and all employees laid off, but BUSA continues to own various equipment that is located in the United States. BCAN has ongoing operations and approximately 65 employees in Canada.

11. The Debtors provide CT Services to national oil companies, energy companies, and independent exploration and production companies throughout Canada and (prior the granting of the Receivership Order) the United States. CT Services of the Debtors include, but are not limited to, providing coil tubing and other complimentary services to the oil and gas industry.

12. The business of the Debtors has been negatively impacted since 2021 by the events surrounding the COVID-19 pandemic and the volatility in the oil and gas market. Such impact frustrated the Debtors' finances and ability to pay timely on their Financing Agreement (defined below), and the attempted Investment Solicitation Process (defined below).

13. As of this filing, the Receiver has determined that it is in the best interest of the Canadian estates and all stakeholders to conduct a sales process and continue the Balanced Energy business (in some appropriate form) in order to preserve jobs and realized any enterprise value. The Receiver prepared a sales process motion which was approved by the Canadian Proceeding on March 30, 2022, and which approved a stalking-horse bid and process (described in more detail below).

**B. The Finance Agreement**

14. BCAN and BUSA, as borrowers (the “Borrowers”), and Lender entered into that certain *Offer of Financing* dated June 8, 2020 and accepted by the Borrowers on June 10, 2020 (the “Offer of Financing”), along with that certain *Forbearance Agreement* dated March 2, 2021, the *First Amending Agreement* dated March 31, 2021, the *Second Amending Agreement* dated June 30, 2021, the *Third Amending Agreement* dated August 18, 2021, and the *Fourth Amending Agreement*, dated August 27, 2021.

15. Lender also advanced additional funds to BCAN pursuant to that certain Offer of Financing dated June 25, 2021 respecting a Highly Affected Sectors Availability Program Term Loan (“HASCAP Offer of Financing”; together with the Offer of Financing, the Forbearance Agreement, the First Amending Agreement, the Second Amending Agreement, the Third Amending Agreement and the Fourth Amending Agreement, the “Financing Agreement”). Pursuant to the Financing Agreement, Lender asserts that, as of January 26, 2022, the total indebtedness of the Borrowers to the Lenders, inclusive of interest, was approximately (a) demand revolving operating line of credit in the amount of CAD \$18,853,775.30; (b) BCAP demand loan in the amount of CAD \$4,687,139.14; (c) other outstanding credit card balances in the amount of CAD \$154,802.80; and (d) HASCAP term loan in the amount of CAD \$1,003,397.26 (collectively, the “Indebtedness”).

16. BEH executed a guarantee and a General Security Agreement (“GSA”) in connection with the Financing Agreement, which the Lender asserts obligates BEH—on a secured basis—for the Indebtedness. BUSA and BEH executed a guarantee in connection with the HASCAP Offer of Financing and granted GSA’s in favor of Lender as security for indebtedness under the HASCAP Offer of Financing.

17. Pursuant to the Financing Agreement, a Business Credit Availability Program (BCAP) demand loan (the “BCAP Loan”) was issued to the Borrowers in the amount of CAD \$4,000,000.00, and increased to CAD \$5,175,000.00 pursuant to the terms of the Third Amending Agreement. The BCAP Loan was issued under the Economic Development Corporation (“EDC”) backed demand loan program to provide additional liquidity for the working capital needs of the Debtors during the COVID-19 pandemic. On February 25, 2021, under a BCAP guarantee granted by EDC and the BCAP Loan, EDC guaranteed 80% of the indebtedness owing under the BCAP Loan in favor of NBC.

18. Pursuant to the HASCAP Offer of Financing, the HASCAP Facility was issued to the Debtors in the amount of CAD \$1,000,000.00 pursuant to the Highly Affected Sectors Availability Loan Guarantee Program. On January 19, 2021, pursuant to a HASCAP guarantee agreement granted by Business Development Corporation (“BDC”) and the HASCAP Offer of Financing, BDC guaranteed loans issued under the HASCAP Facility to support BCAN’s business during the pandemic.

**C. The Forbearance Term and Debtors’ Financial Difficulties**

19. Beginning in December 2020, BCAN began experiencing financial difficulty and defaulted under the terms of the Offer of Financing. As a result, on March 2, 2021, Lender entered into that certain Forbearance Agreement with BCAN and the related guarantors to provide the

parties an opportunity to find alternative financing or other sources of equity. The latest extension resulted in forbearance to December 31, 2021.

(1) **Cash Flow Shortfall**

20. On August 18, 2021, in accordance with the Third Amending Agreement, the Debtors provided a budget for the period of July 1, 2021 to December 31, 2021 (the “Revised Budget”).

21. FTI completed a cumulative variance analysis respecting the Revised Budget which illustrated a negative revenue variance, and a cumulative EBITDA lower than projected, resulting in the Debtors failing to meet certain requirements under the Forbearance Agreement (including its EBITDA covenant). This underperformance continued and the Debtors experienced liquidity constraints throughout 2021.

22. On November 16, 2021 and November 26, 2021, respectively, the Debtors provided their 2022 cash flow forecast (the “2022 Forecast”) and their proposed operational and structural changes to improve the Debtors’ profitability. The 2022 Forecast and proposed operational changes included liquidating a portion of the Debtors’ assets and pursuing financing from a third-party source to pay down the Indebtedness and generate additional revenue and cash for the Debtors. However, the 2022 Forecast also demonstrated that there would be a continued negative cash flow and insufficient funds under the Financing Agreement for the Debtors to operate.

23. Due to the financial circumstances and projections of the Debtors under the Revised Budget and the 2022 Forecast, and given the anticipated reduction in revenue and insufficient funds to continue operating as a going concern.

(2) **Investment Solicitation Process**

24. On February 9, 2021, BEH retained BDO Canada LLP (“BDO”) to provide the following services: (i) transactional advisory services to BEH in considering potential financing



options; (ii) assistance and advice to BEH with the evaluation and negotiation of potential transactions and closing of a transaction; and (iii) to manage and assist with any due diligence process as required by a potential investor and assist with communications and presentations with potential purchasers (collectively, the “Investment Solicitation Process”).

25. From February 2021 to July 2021, BDO sought potential investors in accordance with the Investment Solicitation Process. In July 2021, BEH advised Lender that all avenues and options had been exhausted under the Investment Solicitation Process and no investors were identified.

**(3) Lender Demand and Notice of Intention to Enforce Security**

26. On January 26, 2022, Lender issued to the Debtors those certain demand letters and notices of intention to enforce its security pursuant to section 244 of the BIA (the “Demand Letters”), which demanded full payment of the Indebtedness.

27. Following the issuance of the Demand Letters and in accordance with Lender’s obligations under the Financing Agreement, Lender notified the EDC and BDC of alleged defaults of the Debtors under the Financing Agreement and the demand for full payment of the Indebtedness.

28. The Debtors have been and remain unable to pay the entire amount of the Indebtedness that is due and owing to Lender and, therefore, remain in payment Default under the Financing Agreement.

**D. The Canadian Receivership Proceeding**

29. On March 1, 2022, following approximately one year of forbearance by the Lender and an unsuccessful Investment Solicitation Process, Lender filed its *Statement of Claim* against the Debtors in the Canadian Court seeking judgment against the Debtors for the Indebtedness, and

the appointment of the Receiver. In support thereof, Lender caused to be filed the *Affidavit of Dana Ades-Landy*, senior manager, special loans group for NBC (the “NBC Declaration”).

30. On March 7, 2022, the Honorable Justice Grosse for the Canadian Court entered the Receivership Order pursuant to section 243(1) of the BIA.

31. The Receivership Order appointed the Receiver over the estates of the Debtors. The Receivership Order specifically authorizes the Receiver to act “as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.” (Receivership Order ¶ 31). It empowers and authorizes the Receiver to take various steps involving the property of the Debtors subject to the Canadian Proceeding. (Receivership Order ¶ 3). The Receivership Order grants the Receiver access to all of the Debtors’ books, records, contracts, securities, and information. (Receivership Order ¶¶ 4-6). Additionally, the Receivership Order imposes a stay of initiation or continuation of proceedings against the Receiver, and the Debtors and their respective estates. (Receivership Order ¶¶ 7-11).

32. The Receivership Order also grants the Receiver a charge (the “Receiver’s Charge”) on all of the Debtors’ current and future assets, undertakings, and properties of every nature or kind whatsoever, and wherever located, including all proceeds thereof (collectively, the “Property”) to secure payment of the reasonable fees and expenses of the Receiver and its counsel. (Receivership Order ¶ 18). The Receiver’s Charge has the priority set forth in paragraph 18 of the Receivership Order.

33. The Receivership Order further authorizes the Receiver to borrow, by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed CAD \$1,000,000 (or such greater amount as the Canadian Court may by further order authorize) on the terms authorized

therein. (Receivership Order ¶ 21) (the “Receivers Borrowing Charge”). That amount was subsequently increased to CAD \$1,750,000 by Order of the Canadian Court granted on March 30, 2022.

34. The Receivership Order includes a request by the Canadian Court for “aid and recognition of any court . . . having jurisdiction in Canada or in any foreign jurisdiction . . . , to give effect to [the Receivership Order] and to assist the Receiver and its agents in carrying out the terms of [the Receivership Order].” (Receivership Order ¶ 30).

**E. Pending U.S. Civil Actions**

**(1) Rossco/Coach Civil Action**

35. On or about March 10, 2022, Rossco Crane and Rigging, Inc. (“Rossco”) filed in the District Court for the State of North Dakota, County of Ward, its *Motion for Ex Parte Temporary Restraining Order and Preliminary Injunction* (the “TRO Motion,” initiating the “Rossco Crane Action”) against BUSA (the “Defendant”), alleging general unsecured amounts owed by BUSA of approximately \$140,643.27 for oilfield services allegedly provided to BUSA on or about July, 2021 through October, 2021.

36. Subsequently filed in the Rossco Crane Action was the *Affidavit of Kevin Elliot in Support of Motion for Temporary Restraining Order and Temporary Injunction* (the “Affidavit”), whereby Coach, Truck & Tractor, LLC (“CTT”) alleges several repairman liens against BUSA’s property in satisfaction of approximately \$70,000 worth of various oilfield services provided to BUSA. Moreover, CTT states that it has executed on those liens by towing two assets of the Debtors (one crane and one hauling truck) to an impound yard located at 4418 6th Ave. West, Williston, ND 58801 (the “Impounded Assets”).

(2) **Fluid Pro Civil Action**

37. On or about March 8, 2022, Fluid Pro Oilfield Services USA, Inc. (“Fluid Pro”) caused to be served its *Complaint and Jury Demand* in the District Court for the State of North Dakota, County of McKenzie, against BUSA alleging general unsecured amounts owed by BUSA of approximately \$397,460.00 for allegedly providing high pressure fluid pumping services to BUSA on or about October 10, 2021 through December 17, 2021 (the “Fluid Pro Action”).

(3) **Panther Pumping Services Civil Action**

38. On or about March 16, 2022, Panther Pumping Services, LLC (“Panther”) caused to be served its *Complaint* in the District Court for the State of North Dakota, County of McKenzie, against BUSA alleging general unsecured amounts owed by BUSA of approximately \$85,900.00 for allegedly providing pumping and other related oilfield services to BUSA on or about the summer and fall of 2021 (the “Panther Pumping Action”; and collectively with the Rossco Crane Action and the Fluid Pro Action, the “Collection Actions”).

**F. Receivership Status, Sales Process, and Proposed Transaction**

39. Since the Receiver’s appointment (and prior to the appointment in an advisory role), the Receiver has spent significant time analyzing the books and records of the Debtors to assess their assets and liabilities. In connection therewith, the Receiver and Lender, along with the former principals of the Borrowers, have engaged in meaningful and extensive discussions regarding sale or restructure of the Balanced Energy enterprise.<sup>3</sup> The former principals’ new entity, XDI Energy Solutions (“XDI”), has since emerged as a stalking-horse bidder for the Debtors’ assets. The Receiver understands that it is the intention of XDI, should it be the winning bidder under the

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<sup>3</sup> The Receiver has also engaged in a lending, collateral, and perfection/priority review, and the Receiver believes that the Debtors’ assets located in the United States are subject to the Lender’s first priority liens.

slaking horse process, to continue the ongoing business of the Borrowers in Canada and to preserve the ongoing operations (including employee retention) in a new purchasing entity.

40. The Receiver shall continue to operate the Debtors' business, including collection of all outstanding receivables and preservation of estate assets, for the benefit of the creditors pending sale of the assets or some other disposition of the Canadian Proceeding.

## V. **BASIS FOR RELIEF**

41. Chapter 15 of the Bankruptcy Code is designed to promote cooperation and comity between courts in the United States and foreign courts, to protect and maximize the value of a debtor's assets, and to facilitate the rehabilitation and reorganization of businesses. The relief afforded to a foreign debtor under chapter 15 is intended to avoid disruptions that could otherwise derail a debtor's restructuring in its home country.

42. Consistent with these principles, the Receiver, as proposed foreign representative, commenced this ancillary proceeding for the Debtors under chapter 15 of the Bankruptcy Code to obtain recognition of the Canadian Proceeding, specifically including the Receivership Order, and certain relief consistent with Canadian law and protections afforded by the Bankruptcy Code. The Receiver believes that this chapter 15 case will complement the Debtors' primary proceeding in Canada to ensure the effective and economic administration of the Debtors' estates and prevent parties from taking action in the United States that would jeopardize these efforts.

### A. **The Debtors are Eligible for Chapter 15 Relief**

43. The Debtors are eligible to be debtors in a chapter 15 proceeding. For the purposes of chapter 15 of the Bankruptcy Code, a "debtor" means an entity that is the subject of a foreign proceeding. *See* 11 U.S.C. § 1502(1); *see also* 11 U.S.C. § 101(15), (41) (defining "entity" and "person"). Each of the Debtors are unequivocally debtors subject to the Receivership Order under Canadian law.

44. As set forth below, the Canadian Proceeding is a foreign proceeding as that term is defined in the Bankruptcy Code. The Debtors do not fall within any of the categories of entities excluded from chapter 15 eligibility, as set forth in section 1501(c). Accordingly, the Debtors are eligible for relief under chapter 15 of the Bankruptcy Code. *See* 11 U.S.C. § 1501(b), (c).

**B. The Canadian Proceeding Qualifies for Recognition Under Chapter 15**

45. Section 1517(a) of the Bankruptcy Code provides that, after notice and hearing, a court shall enter an order recognizing a foreign proceeding as a foreign main (or nonmain) proceeding if (1) such foreign proceeding is a foreign main (or nonmain) proceeding within the meaning of section 1502 of the Bankruptcy Code, (2) the foreign representative applying for recognition is a person or body, and (3) the petition meets the requirements of section 1515 of the Bankruptcy Code. *See* 11 U.S.C. § 1517(a). As explained in more detail below, the Canadian Proceeding, the Foreign Representative, and the Petition satisfy each of the foregoing requirements.

**(1) The Debtors' General Disclosures**

46. A petition for recognition of a foreign proceeding under chapter 15 of the Bankruptcy Code must (a) state the country where the debtor has its center of main interests, or COMI, and (b) identify each country in which a foreign proceeding by, regarding, or against the debtor is pending. Fed. R. Bankr. P. 1004.2(a) (herein, the "Rule(s)"). As verified in the Debtors' respective Official Form 401 petitions and evidenced in the Receiver Declaration, the Debtors' center of main interests (discussed below) is in Canada, where the Canadian Proceeding is pending.

47. A foreign representative filing a petition for recognition under chapter 15 shall file with the petition a corporate ownership statement containing the information described in Rule 7007.1. Fed. R. Bankr. P. 1007(a)(4). Such a corporate ownership statement has been filed contemporaneously herewith.

48. A foreign representative filing a petition for recognition under chapter 15 shall file with its petition (unless the court orders otherwise), a list containing the names and addresses of all persons or bodies authorized to administer foreign proceedings of the debtor, all parties to litigation pending in the United States in which the debtor is a party at the time of the filing of the petition, and all entities against whom provisional relief is being sought under section 1519 of the Bankruptcy Code. Fed. R. Bankr. P. 1007(a)(4). A Rule 1007(a)(4) list has been filed contemporaneously herewith.

49. Moreover, the Petition is properly filed in this Court pursuant to 28 U.S.C. § 1410(1) and (2). Among other things, BUSA is a defendant in the Collection Actions, pending in North Dakota state court. And the pending actions and all of the Balanced Energy assets located in the United States are subject to Lenders' liens and shall be administered in the Canadian Proceeding. The Debtors are not, as of this filing and to the best of the Receiver's knowledge, a party to any other litigation pending in the United States.

(2) **The Receivership Order Satisfies Section 1515**

50. A petition for recognition shall be accompanied by any of the following:

- (1) A certified copy of the decision commencing such foreign proceeding and appointing the foreign representative;
- (2) A certificate from the foreign court affirming the existence of such foreign proceeding and of the appointment of the foreign representative; or
- (3) In the absence of evidence referred to in paragraphs (1) and (2), any other evidence acceptable to the court of the existence of such foreign proceeding and of the appointment of the foreign representative.

11 U.S.C. § 1515(b).

51. In compliance with 11 U.S.C. § 1515(b), a true and correct copy of the Receivership Order from the Canadian Proceeding, which may be presumed authentic, is appended to and was filed with the Petition. 11 U.S.C. § 1516(b).

(3) **The Canadian Proceeding is a Pending “Foreign Proceeding”**

52. Section 101(23) of the Bankruptcy Code defines “foreign proceeding” as:

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.

53. The Canadian Proceeding satisfies the definition of “foreign proceeding.” Here, the affairs of the Debtors are “under a law relating to insolvency” through the BIA, and “subject to control or supervision by a foreign court for the purpose of reorganization or liquidation” through the appointment of the court-appointed Receiver.

54. The BIA is one of two pieces of federal legislation in Canada applicable to bankruptcies and insolvencies.<sup>4</sup> The BIA governs both voluntary and involuntary bankruptcy liquidations and provides for debtor reorganizations.

55. The BIA also authorizes the appointment of a court-appointed receiver upon a secured creditor’s application. BIA at § 243(1). Such court-appointed receivers are given a mandate and specific powers as set out in the order appointing the receiver. These duties typically include: (a) taking possession and control of the property and assets of the debtor; (b) marketing and selling such property and assets in a commercially reasonable manner (whether as a going concern, en-bloc, or otherwise) and under the supervision and approval of the appointing court; and (c) distributing the proceeds of such sales to the stakeholders in accordance with the legal entitlement. The appointing court has broad discretion to authorize the receiver to “take any other action that the court considers advisable.” *Id.* § 243(1)(c).

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<sup>4</sup> The second federal legislation in Canada concerning insolvencies is the *Companies’ Creditors Arrangement Act* (“CCAA”), which affords financially troubled corporations the opportunity to restructure their financial affairs through a “Plan of Arrangement.” *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (Can.). The CCAA process is akin to chapter 11 of the Bankruptcy Code, affording companies an opportunity to restructure operations rather than liquidate. See *In re Fracmaster, Ltd.*, 237 B.R. 627, 629 n.3 (Bankr. E.D. Tex. 1999).



56. Under the BIA, a court-appointed receiver is a “national” receiver, with the ability to administer assets in each of Canada’s ten (10) provinces and three (3) territories, typically without further order of provincial courts. The BIA and its related legislation the CCAA are federal legislation. Provincial legislative jurisdiction governs property and civil rights, potentially affecting some insolvency-related matters, similar to the interplay between state and federal law in the United States. Nonetheless, the BIA provides a statutory framework for a court-appointed receiver to carry out its mandate on a national basis without reliance on the various provincial statutes or courts for its authority.

57. United States courts have historically recognized cases filed under Canada’s federal bankruptcy and insolvency statutes, the BIA and the CCAA. *See, e.g., Tradewell, Inc. v. American Sensors Elecs., Inc.*, No. 96 CIV. 2474(DAB), 1997 WL 423075, at \*1, n. 1 (S.D.N.Y. July 29, 1997) (noting that the “CCAA is a broad statute, the purpose of which is to provide insolvent debtors with the opportunity to restructure their financial affairs with their creditors.”) (internal quotations omitted). Moreover, since the passage of chapter 15, cases filed under Canada’s insolvency schemes have consistently been recognized as “foreign proceedings.” *See, In re Big Sky Farms, Inc.*, No. 12-01711 (Bankr. N.D. Iowa September 12, 2012); *e.g., In re BOS Solutions LTD.*, No. 20-32465, ECF 41 (Bankr. S.D. Tex. May 19, 2020); *In re Technicolor S.A.*, No. 20-33113, ECF 59 (Bankr. S.D. Tex. July 31, 2020); *In re Entrec Corporation, et al.*, No. 20-32643, ECF 36 (Bankr. S.D. Tex. May 29, 2020); *In re Calmena Energy Servs. Inc.*, No 15-30786, ECF No. 17 (Bankr. S.D. Tex. March 5, 2015) (recognizing Canadian BIA receivership proceeding as foreign proceeding).

58. Accordingly, the Canadian Proceeding is a qualifying “foreign proceeding.” *See also* Osler Declaration.

(4) **The Receiver is a “Foreign Representative”**

59. Section 1517 of the Bankruptcy Code requires that a qualifying “foreign representative” apply for recognition of the foreign proceeding. Section 101(24) of the Bankruptcy Code defines “foreign representative” as follows:

The term “foreign representative” means 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).

60. The Receiver may serve as the “foreign representative” because it constitutes a “person or body.” “Person” is defined under section 101(41) of the Bankruptcy Code to include an individual, partnership or corporation. 11 U.S.C. § 101(41). Because the Receiver is an incorporated entity, it thus qualifies as a “person” and can accordingly serve as a “foreign representative.” The Receiver has been specifically authorized in the Canadian Proceeding to act as the Debtors’ foreign representative. (Receivership Order ¶¶ 30-31). Additionally, the Receivership Order specifically states, “[t]he Receiver shall be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order . . . .” (Receivership Order ¶ 31).

61. Therefore, the Court may presume that the Receiver is a proper “foreign representative.” See 11 U.S.C. § 1516(b). Additionally, courts have previously considered a receiver appointed pursuant to section 243(1) of the BIA to be a duly authorized “foreign representative.” See, e.g., *In re BOS Solutions LTD.*, No. 20-32465, ECF 41 (Bankr. S.D. Tex. May 19, 2020); *In re Baronet U.S.A. Inc.*, No. 07-13821, ECF No. 15 (Bankr. S.D.N.Y. Jan. 1, 2008). See also Osler Declaration.

62. For these reasons, (a) the Canadian Proceeding is a foreign proceeding under the definition of 11 U.S.C. § 101(23); (b) the Receiver is a foreign representative under the definition of 11 U.S.C. § 101(24) and is a person under the definition of 11 U.S.C. § 101(41); and (c) the Petition meets the requirements of section 1515; namely, the evidence of the foreign proceedings and the foreign representative has been provided. Accordingly, the requirements for recognition of the Canadian Proceeding as a foreign proceeding are satisfied.

C. **The Canadian Proceeding Should be Recognized as a Foreign Main Proceeding, or, Alternatively, as a Foreign Nonmain Proceeding**

(1) **The Canadian Proceeding is as a Foreign Main Proceeding because Canada is the Location of the Debtors' Center of Main Interests**

63. A foreign proceeding shall be recognized as a “foreign main proceeding” if it is pending in the country where the COMI exists. 11 U.S.C. § 1517(b). COMI is not a defined term in the Bankruptcy Code; however, it has been equated with a debtor’s principal place of business. *See Bear Stearns*, 374 B.R. 122, 129 (Bankr. S.D.N.Y. 2007) (citing *In re Tri-Continental Exchange Ltd.*, 349 B.R. 627, 633–34 (E.D. Cal. 2006)).

64. Courts have developed five (5) non-exhaustive factors in the determining a debtor’s COMI: (1) the location of those who actually manage the debtor; (2) the location of the debtor’s headquarters; (3) the location of the debtor’s primary assets; (4) the location of the majority of the debtor’s creditors or the majority of creditors affected by the case; and (5) the jurisdiction whose law would apply to most disputes. *See Lavie v. Ran (In re Ran)*, 607 F.3d 1017, 1023 (5th Cir. 2010) (citing *In re SPhinX, Ltd.*, 351 B.R. 103, 117 (Bankr. S.D.N.Y. 2006) *aff’d*, 371 B.R. 10 (S.D.N.Y. 2007)).

65. The first factor is commonly referred to as the “nerve center” or “principal place of business” test. *See Hertz Corp. v. Friend*, 559 U.S. 77 (2010). *See Hertz Corp. v. Friend*, 559

U.S. 77, 80–81, (2010) (nerve center is where the corporation’s high level officers direct, control, and coordinate the corporation’s activities).

66. Canada is the Debtors’ nerve center because the Debtors are either organized under Canadian Law, conduct their business in Canada, or were owned by a Canadian parent company. Moreover, each of the Debtors are controlled by the Receiver (located in Canada). And, as of this filing, none of the Debtors are actively conducting any business in the United States. *See, e.g., In re Gandi*, 2009 WL 2916908, at \*2 (“While the evidence regarding center of main interest is mixed, the court finds that the ‘nerve center’ for the [Debtors] is [in] Canada...the court concludes that, in these circumstances, the court should find that the center of main interests for [a Texas incorporated entity] should be Canada.”) (Unpublished disposition); *In re Suntech Power Holdings Co.*, 520 B.R. 399, 416 (Bankr. S.D.N.Y. 2014) (“[T]he court may consider the location of the debtor’s ‘nerve center,’ including from where the debtor’s activities are directed and controlled, in determining a debtor’s COMI.”); *In re British Am. Isle of Venice, Ltd.*, 441 B.R. 713, 720 (Bankr. S.D. Fla. 2010) (“[I]n analyzing COMI courts have drawn a parallel to the ‘nerve center’ analysis described in [Hertz Corp.]”). The Receiver submits that the first factor establishes Canada as the Debtors’ COMI.

67. The remaining factors also require finding that Canada is the Debtors’ COMI. The Debtors’ headquarters are best described as of this filing as the office of the Receiver in Canada; and, as explained above, the Debtors’ headquarters and address for service of process are located in Alberta. The Debtors’ secured debt obligations—representing the vast majority of the Debtors’ outstanding obligations—are also located in Canada, issued by Canadian lenders, guaranteed by

Canadian guarantors, and are governed by Canadian law.<sup>5</sup> Moreover, the collective principal assets of the Debtors are located in Canada.

68. Accordingly, the Receiver respectfully contends that the facts overwhelmingly support a finding that the Canadian Proceeding is a foreign main proceeding with respect to each of the Debtors. *See In re Ernst & Young, Inc.*, 383 B.R. 773, 781 (Bankr. D. Colo. 2008) (finding COMI in Canada notwithstanding the fact that two standards – the location of the debtors’ creditors and applicable law – yielded inconclusive results); *In re Gandi*, 2009 WL 2916908, at \*2 (finding COMI for Texas incorporated entity was in Canada because “nerve center” for Canadian debtor group was in Canada).

(2) **Alternatively, the Canadian Proceeding is a Foreign Nonmain Proceeding**

69. In the alternative, if this Court concludes that the Canadian Proceeding is not a foreign main proceeding, the Canadian Proceeding should be recognized as a foreign nonmain proceeding pursuant to section 1502(5) of the Bankruptcy Code.

70. 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 nontransitory economic activity.” 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 in order to have an establishment in

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<sup>5</sup> The Financing Agreement is governed by the laws of the Province of Alberta and the federal Laws of Canada; NBC is a Canadian financial institution with offices in Alberta.

a country a debtor must “conduct business in that country.”); *see also Lavie v. 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. 122, 131 (Bankr. S.D.N.Y. 2007) (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.*, 425 B.R. 884, 915 (Bankr. S.D. Fla. 2010) (holding same).

71. When it is apparent that an entity conducts operations in the country where a foreign proceeding is pending, courts will recognize the proceeding as a foreign nonmain proceeding if foreign main proceeding recognition is denied. *See, e.g., SPhinX*, 351 B.R. at 122.

72. Based upon the facts set forth above, each of the Debtors have an undeniable “establishment” in Canada, and, therefore, the Receiver submits that recognition as a foreign nonmain proceeding is, at least, warranted.

## **VI. REQUEST FOR RELIEF RELATED TO RECOGNITION**

### **A. Automatic Relief Afforded in a Foreign Main Proceeding**

73. The Bankruptcy Code provides as a matter of right, upon recognition of a foreign proceeding as a “foreign main proceeding” the following:

- (1) sections 361 and 362 apply with respect to the debtor and the property of the debtor that is within the territorial jurisdiction of the United States;
- (2) sections 363, 549, and 552 apply to a transfer of an interest of the debtor in property that is within the territorial jurisdiction of the United States to the same extent that the sections would apply to property of an estate;
- (3) unless the court orders otherwise, the foreign representative may operate the debtor’s business and may exercise the rights and powers of a trustee under and to the extent provided by sections 363 and 552; and

(4) section 552 applies to property of the debtor that is within the territorial jurisdiction of the United States.

11 U.S.C. § 1520(a).

74. Accordingly, pursuant to 11 U.S.C. § 1520(a), the Receiver seeks entry of an order confirming applications of the delineated provisions of the Bankruptcy Code, including but not limited to the automatic stay provision of section 362.

**B. Automatic Relief is Applicable Whether or Not a Foreign Proceeding is Main**

75. Certain additional relief is automatic upon recognition of a foreign proceeding, whether main or nonmain. Upon recognition of a foreign proceeding, the foreign representative may intervene in any proceedings in a State or Federal court in the United States in which the debtor is a party. 11 U.S.C. § 1524. Upon recognition of a foreign proceeding, the foreign representative has standing in a case concerning the debtor pending under another chapter of this title to initiate actions under sections 522, 544, 545, 547, 548, 550, 553, and 724 (a) of the Bankruptcy Code. 11 U.S.C. § 1523(a). Accordingly, for reasons set forth herein, the Receiver seeks relief to the fullest extent available pursuant to section 1523(a) and 1524.

**C. Discretionary Relief Whether or Not a Foreign Proceeding is Main**

76. Certain discretionary relief is also available upon recognition, in any form, of a foreign proceeding under 11 U.S.C. § 1521. The court may grant relief under section 1521 only if the interests of the creditors and other interested parties, including the debtor, are sufficiently protected. 11 U.S.C. § 1522(a). The Receiver contends that the discretionary relief requested, as described below, is necessary (to the extent not already granted by section 1520(a)) for the benefit and protection of the Debtors, creditors, and parties-in-interest.

77. “Any appropriate” discretionary relief is available upon recognition of a foreign proceeding, whether or not a foreign proceeding is main. 11 U.S.C. § 1521(a) (“Upon recognition

of a foreign proceeding, whether main or nonmain, where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief”). In granting relief under 11 U.S.C. § 1521 to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the law of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding. 11 U.S.C. § 1521(c). That relief includes:

- (1) Staying the commencement or continuation of an individual action or proceeding concerning the debtor’s assets, rights, obligations or liabilities to the extent they have not been stayed under section 1520(a);
- (2) Staying execution against the debtor’s assets to the extent it has not been stayed under section 1520(a);
- (3) Suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under section 1520(a);
- (4) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor’s assets, affairs, rights, obligations or liabilities;
- (5) entrusting the administration or realization of all or part of the debtor’s assets within the territorial jurisdiction of the United States to the foreign representative or another person, including an examiner, authorized by the court;
- (6) extending relief granted under section 1519(a); and
- (7) granting any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a).

11 U.S.C. § 1521(a).

78. In addition, under 11 U.S.C. § 1521(b), upon recognition of a foreign proceeding, whether main or nonmain, the court may entrust the distribution of all or part of the debtor’s assets located in the United States to the Foreign Representative, provided that the court is satisfied that



the interests of creditors in the United States are sufficiently protected. Accordingly, the Receiver seeks all relief available pursuant to section 1521(a) of the Bankruptcy Code in order to carry out its responsibilities described in the Receivership Order.

**D. To the Extent Applicable, the Receiver's Requests Qualify for Injunctive Relief**

79. Pursuant to section 1521(e), relief granted pursuant to section 1521(a)(1) (concerning staying of proceedings); (a)(2) (concerning staying execution against the debtor's assets); (a)(3) (concerning suspending the right to transfer, encumber or otherwise dispose of any assets); and 1521(a)(6) (concerning extending relief granted under section 1519(a)), the "standards, procedures, and limitations applicable to an injunction shall apply."

80. As an initial matter, the Receiver contends that the injunctive standards need not be satisfied because equivalent relief should be granted as a matter of right pursuant to section 1520(a) of the Bankruptcy Code. However, to the extent relevant, the standards are satisfied.

81. The factors for injunctive relief as stated in *Minnesota Bearing Co. v. White Motor Corp.*, 470 F.2d 1323 (8th Cir. 1973),<sup>6</sup> are discussed below.

**(1) A substantial likelihood of success on the merits**

82. In the event the Canadian Proceeding is recognized as a foreign nonmain proceeding, the Receiver also submits that there is a substantial likelihood that the Court will determine that the relief requested in the Proposed Order is necessary to effectuate the purpose of chapter 15 and to protect the assets of the Debtors or the interests of the Debtors' creditors pursuant to section 1521(a) of the Bankruptcy Code.

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<sup>6</sup> This statement of the standard, in particular the requirements of "substantial probability" and "irreparable injury," has become known as the "traditional test." See, e. g., *Young v. Harris*, 599 F.2d 870, 875-76 (8th Cir.), cert. denied sub nom. *Young v. Landrieau*, 444 U.S. 993, 100 S. Ct. 526, 62 L. Ed. 2d 423 (1979); *Fennell v. Butler*, 570 F.2d 263, 264 (8th Cir.), cert. denied, 437 U.S. 906, 98 S. Ct. 3093, 57 L. Ed. 2d 1136 (1978); *Dataphase Sys. v. C L Sys.*, 640 F.2d 109, 112 (8th Cir. 1981).

83. Discretionary relief under 11 U.S.C. § 1521 is routinely granted upon recognition of a foreign proceeding. For instance, courts commonly approve stays,<sup>7</sup> approve debtor-in-possession financing,<sup>8</sup> and apply section 365 of the Bankruptcy Code.<sup>9</sup> Furthermore, a grant of discretionary relief under section 1521 of the Bankruptcy Code would promote uniformity in the administration and disposition of the Debtors' assets and would be consistent with the policies underlying the Bankruptcy Code. *Holland Am. Ins. Co. v. Succession of Roy*, 777 F.2d 992, 999 (5th Cir. 1985) (stating that “promoting uniformity in bankruptcy administration” is a goal of bankruptcy adjudication, in the context of a motion to withdraw the reference); *see also In re Vitro S.A.*, 701 F.3d 1031, 1044 (5th Cir. 2012) (stating that “one of Chapter 15’s goals [is] the furtherance of cooperation between domestic and foreign courts in cross-border insolvency cases.”). Accordingly, the Receiver submits that the requested discretionary relief under 11 U.S.C. § 1521 has a substantial likelihood of being granted. *See, e.g., In re Rede Energia S.A.*, 515 B.R. 69, 91-92 (Bankr. S.D.N.Y. 2014) (“Chapter 15 thus provides courts with broad, flexible rules to fashion relief that is appropriate to effectuate the objectives of the chapter in accordance with comity.”).

**(2) A substantial threat of irreparable injury if protections are not ordered**

84. To the extent necessary to effectuate and complete its duties set forth in the Receivership Order, the Receiver continues to operate the Debtors and/or oversee operations of

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<sup>7</sup> *See, e.g., In re BOS Solutions LTD.*, No. 20-32465, ECF No. 41 (Bankr. S.D. Tex. May 19, 2020); *In re Technicolor S.A.*, No. 20-33113, ECF No. 59 (Bankr. S.D. Tex. July 31, 2020); *In re Entrec Corporation, et al.*, No. 20-32643, ECF No. 36 (Bankr. S.D. Tex. May 29, 2020); *Collins v. Oilsands Quest Inc.*, 484 B.R. 593, 596-97 (S.D.N.Y. 2012). *See also In re Calmena Energy Svcs. Inc.*, No. 15-30786 (Bankr. S.D. Tex. Mar. 5, 2015), ECF No. 17.

<sup>8</sup> *See, e.g., In re Essar Steel Algoma Inc.*, No. 15-12271 (Bankr. D. Del. Dec. 2, 2015), ECF No. 100; *In re Crystallex Int'l Corp.*, No. 11-14074 (Bankr. D. Del. Apr. 26, 2012), ECF No. 111; *In re Biltrite Rubber (1984) Inc.*, No. 09-31423 (Bankr. N.D. Ohio Apr. 2, 2009), ECF No. 58; *In re Rock Well Petroleum Inc.*, No. 08-20802 (Bankr. D. Wy. Feb. 9, 2009), ECF No. 70.

<sup>9</sup> *See, e.g., Essar Steel Algoma*, No. 15-12271 (Bankr. D. Del. Dec. 2, 2015), ECF No. 100; *In re Newsat Ltd.*, No. 15-10810 (Bankr. D. Del. May 29, 2015), ECF No. 113; *In re Qimonda AG*, No. 09-14766 (Bankr. E.D. Va. Nov. 19, 2009), ECF No. 180.

the Debtors. Without injunctive relief recognizing the Receiver's authority in the United States per the Receivership Order, including the staying of the Collection Actions, the Receiver will be frustrated from fully performing its duties, and the value of the Debtors' assets could be jeopardized (i.e., general unsecured creditors may elevate their claims in contravention of applicable Canadian (and corollary U.S.) law). *See, e.g., In re Netia Holdings S.A.*, 278 B.R. 344, 352 (Bankr. S.D.N.Y. 2002) ("It is well established . . . that the dissipation of the finite resources of an insolvent estate constitutes irreparable injury."); *In re MMG, LLC*, 256 B.R. 544, 555 (Bankr. S.D.N.Y. 2000) ("[I]rreparable harm exists whenever local creditors of the foreign debtor seek to collect their claims or obtain preferred positions to the detriment of other creditors.").

85. To permit the Receiver to fulfill its obligations to the Debtors' estates, the Receivership Order provides for substantially similar powers and protections pursuant to Canadian law as those afforded to a chapter 7 trustee under the Bankruptcy Code. Among others, the Receiver's Charge, the Receiver's Borrowing Charge, the Receiver's Protections, the stay of all collection activities akin to 11 U.S.C. § 362, and the grant of specific authority for the Receiver to seek international recognition of the Receivership Order provide the Receiver with vital powers to maximize value for all rightful creditors.

86. Without recognition and enforcement of the Receivership Order to the fullest extent permitted by chapter 15, the Receiver will be unable to fully discharge its duties to all creditors.

(3) ***The threatened injury to the movant outweighs any damage the injunction might cause to the opponent***

87. Any threatened injury to the Debtors outweighs any damage the injunction might cause to opponents, including the Plaintiffs in the Collection Actions. The requested section 1521 relief, if granted, would benefit the Debtors' creditors, as a whole, by ensuring an orderly distribution of assets by and through the Canadian Proceeding, including the contemplated sale(s).

*See, e.g., In re Basis Yield Alpha Fund (Master)*, Case No. 07-12762 (Bankr. S.D.N.Y. 2007), Dkt. No. 5 (stating that failing to issue a restraining order against creditors could, *inter alia*, “undermine the Foreign Representative’s efforts to achieve an equitable result for the benefit of all of the Foreign Debtors’ creditors.”). Moreover, the Debtors’ creditors and interested parties will receive proper notice and have the ability to participate in the Canadian Proceeding—or, as applicable, this proceeding—to protect any rights they may have with respect to the Debtors.

(4) **The injunction will not disserve the public interest**

88. Finally, the requested relief will not disserve the public interest. To the contrary, granting the relief serves the public interest because it sets to facilitate a cross-border process that will provide a benefit to all rightful creditors of the Debtors. *See, e.g., Cunard S.S. Co. Ltd. v. Salen Reefer Svcs. A.B.*, 773 F.2d 452, 458 (2d Cir. 1985) (“The granting of comity to a foreign bankruptcy proceeding enables the assets of a debtor to be dispersed in an equitable, orderly, and systematic manner, rather than in a haphazard, erratic or piecemeal fashion.”).

89. For the above stated reasons, the relief sought is necessary and appropriate, in the interest of the public and international comity, consistent with United States public policy, and will not cause any hardship to any party in interest that is not outweighed by the benefits of granting the requested relief. In the event that the Court finds that the Canadian Proceeding is a foreign nonmain proceedings, the relief requested herein is still appropriate because the relief may be, and should be, granted in the discretion of the Court.<sup>10</sup>

90. Accordingly, to the extent necessary, the Receiver submits that the Court should exercise its discretion in this matter to assure an economical, expeditious, and equitable

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<sup>10</sup> Courts have found that it is not required that an adversary proceeding be filed and served on all parties in interest in order to obtain injunctive relief available under chapter 15. *See, e.g., In re Ho Seok Lee*, 348 B.R. 799, 801 (Bankr. W.D. Wash. 2006) (adversary proceeding not required for Chapter 15 injunctive relief).

administration of the Debtors' estates consistent with the Receivership Order. Without such relief, the Debtors will be exposed to the risk and costs of litigation and other actions against it, which is in violation of the stay provided in the Receivership Order, in contravention of the Receiver fulfilling its duties under applicable Canadian law, and thus threatens the Receiver's efforts to maximize value for the benefit of creditors.

**E. No Bond**

91. The Receiver respectfully suggests that no bond be required under Fed. R. Bankr. P. 7065 and Fed. R. Civ. P. 7065(c). A temporary restraining order or preliminary injunction may be issued on application of a debtor, trustee, or debtor in possession without compliance with Rule 65(c). Fed. R. Bankr. P. 7065. The Receiver, who is carrying out its duties under the BIA, the Judicature Act, and the Receivership Order, is akin to a trustee, and any bond would necessarily come from the Debtors' assets.

**F. Comity**

92. Where a court grants recognition, and subject to any limitations that the court may impose consistent with the policies engrained in chapter 15, a court in the United States shall grant comity or cooperation to the foreign representative. 11 U.S.C. § 1509(b)(3). Consistent with section 1501 of the Bankruptcy Code, the court is required to cooperate to the maximum extent possible with a foreign court or a foreign representative, either directly or through the trustee. 11 U.S.C. § 1525(a). Accordingly, the Receiver seeks comity and cooperation of this Court with respect to the Canadian Proceeding and, specifically, the Receivership Order.

93. Comity is a central tenet of Chapter 15. *See In re Nat'l Warranty Ins. Risk Retention Group*, 300 B.R. 719, 722 (Bankr. Neb. 2003); *Aviva Sports, Inc. v. Fingerhut Direct Mktg.*, 2021 U.S. Dist. LEXIS 219032, \*24 (8th Cir. 2021); *Hoffman v. Bullmore (In re Nat'l Warranty Ins.*

*Risk Retention Group*), 306 B.R. 614, 622 (B.A.P. 8th Cir. 2004). The U.S. Supreme Court defined comity as follows:

“Comity,” in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws.

*Hilton v. Guyot*, 159 U.S. 113, 143 (1895).

94. Exceptions to comity are construed particularly narrowly when the foreign jurisdiction is one such as Canada, a sister common law jurisdiction with procedures akin to those in the United States. See *In re Nat'l Warranty Ins. Risk Retention Group*, 300 B.R. 719, 722 (Bankr. Neb. 2003); *Clarkson Co. v. Shaheen*, 544 F.2d 624, 630 (2d Cir. 1976) (finding that clear and convincing evidence of fraud is required to successfully attack a foreign judgment; the court held that it would contravene the public policy of New York and the doctrine of comity not to recognize the Canadian judgment in these circumstances).

95. The extension of comity to orders issued in Canadian insolvency proceedings is routine. See, e.g., *In re Nortel Networks, Inc.*, 469 B.R. 478, 487 (Bankr. D. Del. 2012); *In re Metcalfe & Mansfield Alternative Invs.*, 421 B.R. at 698-99 (extending comity to Canadian CCAA order providing for a third party release and citing numerous cases where American courts have extended comity to Canadian judgments). Indeed, the BIA is similar to chapter 7 of the Bankruptcy Code, as both are statutory regimes intended to facilitate the liquidation of a debtor, provide a “breathing spell” from creditors’ collection efforts and a centralized process to assert and resolve claims against the debtor’s estate, and provide a fair and equitable process for distribution to creditors in order of priority. *Metcalfe & Mansfield Alternative Investments*, 421 B.R. at 698 (“The U.S. and Canada share the same common law traditions and fundamental principles of law.

Canadian courts afford creditors a full and fair opportunity to be heard in a manner consistent with standards of U.S. due process. U.S. federal courts have repeatedly granted comity to Canadian proceedings.”).

96. For these reasons, the Receiver respectfully requests that the Court grant comity to, and final recognition and enforcement of, the Receivership Order.

## **VII. CONCLUSION**

97. For the reasons stated herein, and as set forth in the Supporting Declarations, the Receiver respectfully requests that this Court recognize the Canadian Proceeding as a foreign main proceeding, and grant the relief requested herein, or, in the alternative, requests recognition as a foreign nonmain proceeding, and that the Court grant the relief requested herein.

*[Remainder of page intentionally left blank]*

Dated: April 14, 2022.

Respectfully submitted,

**OLSON & BURNS, P.C.**

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***Counsel for FTI Consulting Canada Inc., solely in its capacity as court-appointed receiver and manager of the Debtors.***

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was forwarded by electronic transmission to all registered ECF users appearing in the case on April 14, 2022. A separate notice of service will be filed in accordance with applicable Bankruptcy and Local Rules describing specific physical and electronic mailing service.

/s/ Ryan G. Quarne

Ryan G. Quarne



**VERIFICATION OF PETITION**

I, Dustin Olver, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury under the laws of the United States of America as follows:

I am the authorized foreign representative for FTI Consulting Canada Inc., the court-appointed receiver and manager (the “Receiver”) for the Debtors. As such, I have full authority to verify the foregoing Petition on behalf of the Receiver for the Debtors.

I have read the foregoing Petition, and I am informed and believe that the factual allegations contained therein are true and accurate to the best of my knowledge, information, and belief.

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

Dated: April 14, 2022.



\_\_\_\_\_  
Name: Dustin Olver

Title: Authorized Representative for the Receiver

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NORTH DAKOTA

In re:	§	
	§	Chapter 15
	§	
BALANCED ENERGY OILFIELD SERVICES INC., <i>et al.</i> <sup>1</sup>	§	
	§	Case No. 22-30100
	§	
Debtors in a Foreign Proceeding.	§	
	§	

**ORDER GRANTING RECEIVER’S VERIFIED PETITION FOR  
(I) RECOGNITION OF FOREIGN MAIN PROCEEDING, (II) RECOGNITION OF  
FOREIGN REPRESENTATIVE, AND (III) RELATED RELIEF  
UNDER CHAPTER 15 OF THE BANKRUPTCY CODE  
[Relates to Dkt. No. \_\_\_\_]**

FTI Consulting Canada Inc. (“FTI”), solely in its capacity as court-appointed receiver and manager (“Receiver” or “Foreign Representative”) of Balanced Energy Oilfield Services Inc. (“BCAN”), Balanced Energy Holdings Inc. (“BEH”), and Balanced Energy Oilfield Services (USA) Inc. (“BUSA”) (collectively, “Balanced Energy” or the “Debtors”) pursuant to the *Receivership Order* dated March 7, 2022 (the “Receivership Order”), entered by the Court of Queen’s Bench of Alberta in Judicial Centre of Calgary, Alberta, Canada, Court File No. 2201-02699 (the “Canadian Court” and the “Canadian Proceeding”) pending under Canada’s *Bankruptcy and Insolvency Act* (“BIA”), and as authorized foreign representative of the Debtors, filed its *Emergency Verified Petition for (I) Recognition of Foreign Main Proceeding, (II) Recognition of Foreign Representative, and (III) Related Relief Under Chapter 15 of the Bankruptcy Code* (the “Petition”)<sup>2</sup> [Dkt. No. \_\_\_\_], in this chapter 15 proceeding.

<sup>1</sup> Simultaneous chapter 15 petitions are being filed for affiliated debtors Balanced Energy Oilfield Services Inc., Balanced Energy Holdings Inc., and Balanced Energy Oilfield Services (USA) Inc. which are accompanied by identical Verified Petitions (as defined herein); the Receiver will also seek joint administration of these proceedings.  
<sup>2</sup> Capitalized terms not defined herein shall have the meaning ascribed in the Petition.

The Court finds that notice was proper, and that no objections were filed, and that the relief requested in the Petition should be GRANTED.

This Court has considered the evidence admitted on the record, as well as all matters for which judicial notice was taken, and based on this Court’s powers and discretion under sections 105, 1507, 1515, 1517, 1520, 1521, and 1524 of the Bankruptcy Code, and based on the evidence presented and arguments of counsel, and sufficient cause appearing therefor, the Court **FINDS AND CONCLUDES** as follows:

- A. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334.
- B. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b).
- C. Venue is proper pursuant to 28 U.S.C. § 1410. This Court has the authority to enter a final order consistent with Article III of the United States Constitution.
- D. The Debtors are Balanced Energy Oilfield Services Inc., Balanced Energy Oilfield Services (USA) Inc., and Balanced Energy Holdings Inc.
- E. On March 1, 2022, National Bank of Canada, as lender (“NBC” or the “Lender”), filed an *Affidavit (Appointment of Receiver)* seeking the appointment of FTI as receiver under section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (“BIA”).
- F. On March 7, 2022, the Honorable Justice Grosse for the Canadian Court entered the Receivership Order pursuant to section 243(1) of the BIA.
- G. The Receiver is a “person” within the meaning of section 101(41) of the Bankruptcy Code and is the duly appointed foreign representative of the Debtors within the meaning of section 101(24) of the Bankruptcy Code.
- H. This Court has constitutional authority to enter final orders in these cases under *Stern v. Marshall*, 564 U.S. 462 (2011), or, in the alternative, by consent of the parties. See *Executive Benefits Ins. Agency v. Arkinson*, 573 U.S. 25 (2014).
- I. The Canadian Proceeding is a foreign proceeding within the meaning of section 101(23) of the Bankruptcy Code.
- J. As and to the extent set forth in this Order, the Canadian Proceeding is entitled to recognition by this Court pursuant to section 1517 of the Bankruptcy Code.
- K. As and to the extent set forth in this Order, the Canadian Proceeding is entitled to recognition as a foreign main proceeding pursuant to section 1502(4) of the

Bankruptcy Code and section 1517(b)(1) of the Bankruptcy Code with respect to the Debtors. The Debtors' center of main interests is in Canada.

- L. The Receiver is entitled to relief afforded under section 1520 of the Bankruptcy Code.
- M. The Receiver, in its role as foreign representative of the Debtors, and the Debtors, are entitled to the full protections and rights available pursuant to section 1521 of the Bankruptcy Code.
- N. As and to the extent set forth in this Order, the relief granted is necessary and appropriate, in the interest of the public and international comity, consistent with the United States public policy, and will not cause any hardship to any party in interest that is not outweighed by the benefits of granting the requested relief.
- O. Permitting the Debtors' current cash management system to continue pursuant to existing agreements between the Debtors and its existing depository and disbursement banks (collectively, the "Banks") will facilitate the continued operations of the Debtors while the Canadian Proceeding and this proceeding are ongoing.
- P. In the Receivership Order, the Canadian Court granted the Receiver a charge (the "Receiver's Charge") on all of the Debtors' current and future assets, undertakings, and properties of every nature or kind whatsoever, and wherever located, including all proceeds thereof (collectively, the "Property") to secure payment of the reasonable fees and expenses of the Receiver and its counsel. The Receiver's Charge has the priority set forth in paragraph 18 of the Receivership Order.
- Q. In the Receivership Order, the Canadian Court also authorizes the Receiver to borrow, by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed CAD \$1,000,000 (or such greater amount as the Canadian Court may by further order authorize) on the terms set forth in paragraph 21 of the Receivership Order. That amount was subsequently increased to CAD \$1,750,000 by Order of the Canadian Court granted on March 30, 2022. The Canadian Court granted a charge (the "Receiver's Borrowing Charge") on the Property to secure payment of the monies borrowed, together with interest and charges thereon, by the Receiver pursuant to the Receivership Order.
- R. Consistent with section 14.06(1.2) of the BIA, the Receivership Order provides that "[t]he Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities . . . , other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act* . . ." (the "Receiver's Protections").

**NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:**

1. The Canadian Proceeding is hereby recognized as a foreign main proceeding pursuant to section 1517 of the Bankruptcy Code with respect to the Debtors.

2. The Receivership Order is consistent with the public policy of the United States and is, therefore, entitled to and hereby granted comity. The terms of the Receivership Order entered in the Canadian Proceeding under the BIA on March 7, 2022, are given full force and effect in the United States.

3. The Receiver is granted all of the relief afforded under section 1520 of the Bankruptcy Code, including the following:

- A. sections 361 and 362 apply with respect to the Debtors and the property of the Debtors that is within the territorial jurisdiction of the United States;
- B. sections 363, 549, and 552 apply to a transfer of an interest of the Debtors in property that is within the territorial jurisdiction of the United States to the same extent that the sections would apply to property of an estate;
- C. unless the court orders otherwise, the Receiver, as foreign representative, may operate the Debtors' business and may exercise the rights and powers of a trustee under and to the extent provided by sections 363 and 552; and
- D. section 552 applies to property of the Debtors that is within the territorial jurisdiction of the United States.

4. Pursuant to section 1524 of the Bankruptcy Code, the Receiver may intervene in any proceeding in a State or Federal court in the United States in which the Debtors are a party.

5. Pursuant to section 1523(a) of the Bankruptcy Code, the Receiver has standing in a case concerning the Debtors pending under another chapter of this title to initiate actions under sections 522, 544, 545, 547, 548, 550, 553 and 724(a) of the Bankruptcy Code.

6. The following additional relief is granted pursuant to section 1521 of the Bankruptcy Code:

- A. The commencement or continuation of any action or proceeding concerning the assets, rights, obligations or liabilities of the Debtors, including any action or proceeding against FTI in its capacity as Receiver, to the extent not stayed under section 1520(a) of the Bankruptcy Code, is hereby stayed;
  - B. Execution against the assets of the Debtors to the extent not stayed under section 1520(a) of the Bankruptcy Code is hereby stayed;
  - C. The administration or realization of all or part of the assets of the Debtors within the territorial jurisdiction of the United States is hereby entrusted to the Receiver, and the terms of the Receivership Order shall apply to the Debtors, its creditors, the Receiver, and any other parties-in-interest, and the Receiver is authorized to implement the Receivership Order;
  - D. The right of any person or entity, other than the Receiver, to transfer or otherwise dispose of any assets of the Debtors to the extent not suspended under section 1520(a) of the Bankruptcy Code is hereby suspended unless authorized in writing by the Receiver or by Order of this Court;
  - E. The Receiver's Charge, the Receiver's Borrowing Charge, and the Receiver's Protections are granted comity and are given full force and effect in the United States on a final basis;
  - F. The Receiver may undertake the examination of witnesses, the taking of evidence, the production of documents, or the delivery of information concerning the assets, affairs, rights, obligations or liabilities of the Debtors; and
  - G. Notwithstanding Rule 7062 of the Bankruptcy Rules, made applicable to this case by Rule 1018 of the Bankruptcy Rules, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry and, upon its entry, shall become final and appealable.
7. All prior relief granted in the *Order Granting Receiver's Request for Provisional Relief Pursuant to 11 U.S.C. § 1519* [Dkt. No. \_\_\_\_\_] is hereby extended on a final basis, to the extent not inconsistent with the relief granted under this Order
8. This Court shall retain exclusive jurisdiction with respect to the enforcement, amendment or modification of this Order, any request for additional relief or any adversary proceeding brought in and through this chapter 15 proceeding, and any request by an entity for relief from the provisions of this Order, for cause shown, that is properly commenced and within the jurisdiction of this Court.

9. The security provision provided in Rule 65(c) of the Federal Rules of Civil Procedure, made applicable through Rule 7065 of the Bankruptcy Rules, is unnecessary in these cases and is, therefore, waived.

10. This Order applies to all parties in interest in the Debtors' chapter 15 proceedings, as jointly administered, and all of their agents, employees, and representatives, and all those who act in concert with them or who receive notice of this Order.

**SIGNED:** \_\_\_\_\_

\_\_\_\_\_  
THE HONORABLE JUDGE SHON HASTINGS  
CHIEF UNITED STATES BANKRUPTCY JUDGE