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

In re:)	Chapter 15
)	
Inscape Corporation, <i>et al.</i> , ¹)	Case No. 23-10074
)	
Debtors in a Foreign Proceeding.)	(Jointly Administered)
)	

**SUPPLEMENT TO VERIFIED PETITION FOR ENTRY OF
ORDER RECOGNIZING FOREIGN MAIN
PROCEEDINGS AND GRANTING ADDITIONAL RELIEF**

Inscape Corporation is the authorized foreign representative (“Foreign Representative”) of the above-captioned debtors (the “Debtors” or the “Company”), which are the subject of jointly-administered proceedings under Canada’s *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (as amended, the “CCAA”) in the Ontario Superior Court of Justice, in Toronto, Ontario, Canada (the “Canadian Proceedings” and such court, the “Canadian Court”). On January 23, 2023 (the “Chapter 15 Commencement Date”), the Foreign Representative filed (i) chapter 15 petitions for each of the Debtors and (ii) a verified petition (the “Verified Petition”)² respectfully seeking entry of an order (the “Order”) pursuant to sections 105(a), 362, 1517, and 1520 of title 11 of the

¹ 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: (i) Inscape Corporation (“Inscape”) (BN 1738), (ii) Inscape Inc., a Delaware Corporation (“Inscape Delaware”) (FEIN 1804), and (iii) Inscape (New York) Inc., a New York Corporation (“Inscape New York”) (FEIN 7231).

² Capitalized terms used but not defined herein have the meanings ascribed to them in the Verified Petition.

United States Code (the “Bankruptcy Code”): (i) recognizing the Canadian Proceedings as “foreign main proceedings” or, in the alternative, as “foreign nonmain proceedings” pursuant to section 1517 of the Bankruptcy Code; (ii) recognizing the Foreign Representative as the “foreign representative,” as defined in section 101(24) of the Bankruptcy Code, in respect of the Canadian Proceedings; (iii) recognizing and enforcing the initial order issued on January 12, 2023 by the Canadian Court (the “CCAA Commencement Date” and together with the Chapter 15 Commencement Date, the “Commencement Dates”) and the amended and restated initial order issued on January 20, 2023 by the Canadian Court; and (iv) granting a stay of execution against the Debtors’ assets and certain other actions against the Debtors or their assets, solely within the territorial jurisdiction of the United States, and applying section 362 of the Bankruptcy Code in these Chapter 15 Cases pursuant to section 1520(a)(1) of the Bankruptcy Code.

On February 21, 2023, the Court held a hearing to consider the relief requested in the Verified Petition (the “Hearing”). At the Hearing, the Court requested additional information from the Foreign Representative and continued the Hearing to March 1, 2023. Accordingly, the Foreign Representative respectfully submits this supplement to the Verified Petition (this “Supplement”) in further support of the relief requested by the Verified Petition. Concurrently herewith, the Foreign Representative has filed the Supplemental Declaration of Eric Ehgoetz in Support of Verified Petition for Entry of an Order Recognizing Foreign Main Proceedings and Granting Additional Relief (the “Supplemental Ehgoetz Declaration”).

BASIS FOR RELIEF

I. Each of the Debtors Meets the Requirements of Section 1517(a) of the Bankruptcy Code.

1. Section 1517(a) of the Bankruptcy Code provides that, after notice and a hearing, an order recognizing a foreign proceeding shall be entered if (i) the foreign representative applying

for recognition is a person or body; (ii) such foreign proceeding for which recognition is sought is a foreign main proceeding or foreign nonmain proceeding within the meaning of section 1502; and (iii) the petition meets the requirements of section 1515. *See* 11 U.S.C. § 1517(a). The Verified Petition, which is incorporated herein by reference, sets forth the bases for satisfaction of such requirements. By this Supplement, the Foreign Representative seeks to supplement the record with additional evidence which demonstrates that the Canadian Proceedings for (i) Inscap New York and (ii) Inscap Delaware for which the Foreign Representative seeks recognition are each foreign main proceedings within the meaning of section 1502(4) of the Bankruptcy Code, or alternatively, that they are each foreign nonmain proceedings within the meaning of section 1502(5) of the Bankruptcy Code.

A. The Canadian Proceedings Are Foreign Main Proceedings Because Each Debtor's Center of Main Interests is Canada.

2. The Bankruptcy Code provides that a foreign proceeding for which Chapter 15 recognition is sought must be recognized as a “foreign main proceeding” if it is pending in the country where the debtor has its center of main interests. 11 U.S.C. §§ 1517(b)(1), 1502(4).

3. Although “center of main interests” (“COMI”) is not defined in the Bankruptcy Code, courts have held the term “COMI” generally equates with the concept of ‘principal place of business’ in the United States.” *In re Millennium Global Emerging Credit Master Fund Ltd.*, 458 B.R. 63, 72 (Bankr. S.D.N.Y. 2011) (quoting *In re Tri-Continental Exchange Ltd.*, 349 B.R. 627, 634 (Bankr. E.D. Cal. 2006)); *see also In re Basis Yield Alpha Fund (Master)*, 381 B.R. 37, 48 (Bankr. S.D.N.Y. 2008) (using COMI and “principal place of business” interchangeably). Stated differently, courts have generally found the COMI to be where the debtor conducts its regular business and, therefore, is a place ascertainable by third parties. *See Morning Mist Holdings Ltd. v. Kryz (In re Fairfield Sentry Ltd.)*, 714 F.3d 127, 130 (2d Cir. 2013) (“*Fairfield Sentry*”) (“The

relevant principle . . . is that COMI lies where the debtor conducts its regular business, so that the place is ascertainable by third parties”); *In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd.*, 374 B.R. 122 (Bankr. S.D.N.Y. 2007), *aff’d*, 389 B.R. 325 (S.D.N.Y. 2008) (“*Bear Sterns II*”). This Court has observed that in *Fairfield Sentry*, the Second Circuit clarified that while “the ‘nerve center’ concept does not control, ‘...to the extent that the concepts are similar, a court may certainly consider a debtor’s ‘nerve center,’ including from where the debtor’s activities are directed and controlled, in determining a debtor’s COMI.” *In re Serviços De Petróleo Constellation S.A.*, 613 B.R. 497, 509 (Bankr. S.D.N.Y. 2020) (citing *Fairfield Sentry*, 714 F.3d at 138 n.10).

4. In the absence of evidence to the contrary, the debtor’s registered office is presumed to be the debtor’s COMI. 11 U.S.C. § 1516(c). However, this presumption is rebuttable where other factors suggest that the true COMI of the debtor lies elsewhere. *See, e.g., Bear Stearns II*, 389 B.R. at 335 (“[S]ection 1516(c) creates no more than a rebuttable evidentiary presumption, which may be rebutted notwithstanding a lack of party opposition”); *see also In re Serviços De Petróleo Constellation S.A.*, 613 B.R. at 507. This Court has stated that the presumption that the location of a debtor’s registered office is the debtor’s COMI “is not a preferred alternative where there is a separation between a corporation’s jurisdiction of incorporation and its real seat.” *In re Ocean Rig UDW Inc.*, 570 B.R. 687, 703 (Bankr. S.D.N.Y. 2017) (citing *In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd.*, 374 B.R. at 128 (emphasis added) (citation omitted)). “[T]he section 1516 presumption exists for the purposes of speed and convenience, and to save stakeholders costs in straightforward cases, but does not tie the hands of a court to examine the facts more closely in any instances where the court regards the issues to be sufficiently material to warrant further inquiry.” *In re Basis Yield Alpha Fund (Master)*, 381 B.R. at 52.

5. In *In re Suntech Power Holdings Co.*, 520 B.R. 399 (Bankr. S.D.N.Y. 2014) (“*Suntech*”), this Court set forth a list of factors that courts consider when determining the location of a debtor’s COMI, stating that:

The following non-exclusive group of factors guides the [COMI] analysis, “but consideration of these specific factors is neither required nor dispositive,” . . . [v]arious factors, singly or combined, could be relevant to such a determination: the location of the debtor’s headquarters; the location of those who actually manage the debtor (which, conceivably could be the headquarters of a holding company); the location of the debtor’s primary assets; the location of the majority of the debtor’s creditors or of a majority of the creditors who would be affected by the case; and/or the jurisdiction whose law would apply to most disputes.

Suntech, 520 B.R. at 416 (quoting *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)).

6. In addition, when determining a debtor’s COMI, courts “may consider the location of the debtor’s ‘nerve center,’ ‘including from where the debtor’s activities are directed and controlled’” *Suntech*, 520 B.R. at 416 (quoting *Fairfield Sentry*, 714 F.3d at 138 n.10). The analysis of a foreign debtor’s COMI is a flexible one, as “courts do not apply any rigid formula or consistently find one factor dispositive.” *In re Betcorp Ltd.*, 400 B.R. 266, 290 (Bankr. D. Nev. 2009).

7. Courts in the Second Circuit, including this Court, have held that a debtor’s COMI should be determined based on its activities at or around the time of the filing of the chapter 15 petition. *In re Mod. Land (China) Co., Ltd.*, 641 B.R. 768, 781 (Bankr. S.D.N.Y. 2022) (“A Chapter 15 debtor’s COMI is determined as of the filing date of the Chapter 15 petition, without regard to the debtor’s historic operational activity.”); *see also In re Olinda Star Ltd.*, 614 B.R. 28, 41 (Bankr. S.D.N.Y. 2020) (“The Second Circuit has made clear that COMI is determined as of the time of the chapter 15 filing, without regard to a debtor’s historical operational activity.”)

(citing *Fairfield Sentry*, 714 F.3d 127, 137 (2d Cir. 2013) (“[A] debtor's COMI should be determined based on its activities at or around the time the Chapter 15 petition is filed.”)).

8. The Foreign Representative submits that consideration of each of the *Suntech* factors supports the conclusion that each Debtor has its COMI in Canada and, thus, the Canadian Proceedings for each Debtor qualify as a “foreign main proceeding” as defined in section 1502(4) of the Bankruptcy Code. In particular, the evidence establishes that, while Inscape New York and Inscape Delaware are incorporated in New York and Delaware, respectively, and have their registered office in Jamestown, New York, the principal place of business, the headquarters, the “nerve center,” and, thus, the center of main interests for each of these debtors is Canada.

9. While each of the *Suntech* factors is presented separately for Inscape New York and Inscape Delaware below, it is important to emphasize that the reality is that the Company, as a whole, was operated and administered as a single, highly integrated enterprise. Thus, while Inscape New York and Inscape Delaware were separately incorporated entities, as a practical matter, they were effectively treated as business divisions within the same enterprise, and their status as separate entities was important principally for intercompany accounting purposes. Thus, the management and the employees of the Company not only viewed it as a single enterprise, but held the Company out to its creditors, vendors and other parties as such. The Foreign Representative respectfully submits that it would have been “ascertainable” to creditors or other third parties that the Company, including Inscape New York and Inscape Delaware, would seek to wind down its affairs in a single, integrated insolvency proceeding in Canada.

Location of the Debtor’s Headquarters

10. The location of the headquarters for Inscape New York and Inscape Delaware (as well as Inscape, the Canadian parent) is the Company’s main headquarters at Holland Landing in

Canada. All business and operations-related functions for all three Debtors occur exclusively at the Holland Landing headquarters, and personnel who perform centralized administrative functions for the three Debtors are located exclusively at the Holland Landing headquarters. The functions performed at the main headquarters for each of these entities include, but are not limited to: customer service, supply chain/procurement, accounting, financing, financial reporting and securities compliance. Importantly, as of the filing of the Canadian Proceedings and these Chapter 15 Cases (as well as the present), all of the key contacts for Inscape New York and Inscape Delaware's customers and vendors have been (or are) located in Canada, and no employees of Inscape New York or Inscape Delaware have performed (or perform) any of the aforementioned operational and administrative functions from the United States. All books and records of Inscape, Inscape New York and Inscape Delaware have been and remain located at the Holland Landing headquarters, and Inscape, Inscape New York and Inscape Delaware have received and continue to receive most of their mail at the Holland Landing headquarters. Further, the Cash Management System, which, among other things, collects funds and pays expenses associated with the operations of all three Debtors, is administered by the finance department located exclusively at the main headquarters at Holland Landing.

The Location of Those Who Actually Manage the Debtor

11. Senior management and other key staff of Inscape New York and Inscape Delaware (as well as Inscape, the Canadian parent) are located in Canada at the Holland Landing headquarters. Eric Ehgoetz is the CEO and Jon Szczur is the CFO of all three Debtors, and there is no additional senior management for Inscape New York or Inscape Delaware. Inscape, the Canadian parent entity, employs the following members of senior management, who perform tasks on behalf of all three Debtors: Dennis Dyke, Vice President of Manufacturing & Supply Chain;

Kacey Neille-Ennis, Director of Human Resources; Kerry Bray, Director of Finance; Vincent Hardy, Assistant Corporate Controller; and Rebecca Montinaro, Director of Customer Service and Logistics. No members of senior management of Inscape New York, Inscape Delaware, or Inscape are located in the United States, and none works from an office in the United States at any time. Both U.S. and Canadian customers and vendors are and have at all relevant times been aware that (i) management of each of the Debtors, including the U.S. entities, and (ii) the key contacts for customers and vendors of each of the Debtors are located in Canada.

12. As of the Chapter 15 Commencement Date, only two U.S.-based salaried employees worked at the Jamestown Facility to assist with wind-down manufacturing processes and finishing up of “punch-items” to fully complete certain existing orders, and neither was an executive: (i) Tom Skinner, Senior Engineering & Specification Manager of the Walls Division and (ii) Jason Youngberg, Plant Manager for the Walls Division. Both Mr. Skinner and Mr. Youngberg were the only full time employees of Inscape New York as of the Chapter 15 Commencement Date. As of such date, Inscape New York also had approximately six hourly employees retained to complete certain wind-down activities. While, prior to the Commencement Dates, the Jamestown Facility served as a U.S. manufacturing facility for the “walls” division of the Company, all decisions relating to operations or business at such facility was directed to the appropriate personnel in Canada and overseen directly by Mr. Ehgoetz, as CEO, and Mr. Szczur, as CFO, in Canada.

13. Similarly, prior to the CCAA Commencement Date, Inscape Delaware employed approximately twelve U.S. sales personnel, and such employees reported directly to management located in Canada (i.e., the CEO); customers and vendors were aware that all key Company

contacts were located in Canada. Inscape Delaware had no employees as of the Chapter 15 Commencement Date.

14. With respect to the boards of directors of the Debtors, at all relevant times, Eric Ehgoetz, CEO, and Jon Szczur, CFO, were and are the sole directors of Inscape New York and Inscape Delaware. Inscape's sole director is Eric Ehgoetz, CEO. Both Mr. Ehgoetz and Mr. Szczur are Canadian citizens, reside in Canada, and work exclusively at the Holland Landing headquarters. All board meetings for each Debtor's board of directors have been held exclusively in Canada.

The Location of the Debtor's Primary Assets

15. Inscape New York consists solely of the "walls" manufacturing facility located in Jamestown, New York, which produced architectural and movable partition walls for office spaces. This facility operated from leased premises (leased by Inscape New York and guaranteed by Inscape, the Canadian parent Debtor) and included machinery and equipment assets valued at approximately \$350,000. The Jamestown Facility is no longer operating. In addition, Inscape New York is owed approximately \$1.1 million in receivables from customers. In order to collect such amounts, all work associated with collection efforts – including, but not limited to, invoicing, accounting, and collection support – is performed at the main headquarters in Canada by employees of Inscape.

16. Inscape Delaware has no material assets.

The Location of the Majority of the Debtor's Creditors or of a Majority of the Creditors Who Would Be Affected by the Case

17. Inscape New York and Inscape Delaware are guarantors under the Hilco Loan Agreement, dated October 28, 2022, by and among HUK 116 Limited, as lender; Inscape, as borrower; and Inscape New York and Inscape Delaware, as guarantors. Pursuant to the Hilco Loan

Agreement, HUK 116 Limited made available the Hilco Loan Facility to be used for, among other purposes, the Company's working capital requirements. As of the Chapter 15 Commencement Date, the total secured indebtedness under the Hilco Loan Facility is C\$2.6 million. As such, HUK 116 Limited, a Canadian company, is the largest creditor of each of the U.S. entities and has a security interest in substantially all of such entities' assets. Accordingly, HUK 116 Limited, a Canadian company, is the creditor who will be most affected by the outcome of the Debtors' cases.

18. The second largest creditor of Inscap New York and Inscap Delaware is Inscap, the parent Debtor, who has its registered office at Holland Landing in Canada. Both Inscap New York and Inscap Delaware have intercompany payables to Inscap in the approximately amounts of \$19 million (for Inscap New York) and \$26.6 million (for Inscap Delaware).

19. Inscap Delaware has no other creditors and is primarily a holding company. Inscap New York has approximately \$1.2 million in trade liabilities, and the majority of its trade creditors are located in the United States. All creditors of each of the Debtors will be given notice of, and a full and fair opportunity to participate in, the claims process in Canada, which process will be administered by the Monitor. All claims allowance and distributions will be maintained by the Court Officer of the Canadian Court.

20. The Pension Benefit Guaranty Corporation (the "PBGC") is a U.S. creditor who will be affected by these Chapter 15 Cases. The Foreign Representative has reached an agreement with the PBGC with respect to the termination liability claims that it seeks to assert against the Debtors. Pursuant to this agreement, which the PBGC has authorized the Foreign Representative to present to the Court, the Foreign Representative and the PBGC have agreed that the PBGC's termination liability claims will be recognized and enforceable in the Canadian Proceedings and that such liability will be joint and several unsecured claims against all three Debtors: Inscap,

Inscape New York, and Inscape Delaware. The quantum of the PBGC's claims will be resolved under U.S. law as part of the claims process in the Canadian Proceedings, and the Foreign Representative has cooperated with, and intends to continue to cooperate with, the PBGC in providing the requisite information necessary to calculate the amount of such termination liability claims.

The Jurisdiction Whose Law Would Apply to Most Disputes

21. The Hilco Loan Agreement, the principal contract to which Inscape New York and Inscape Delaware are parties, is governed by Canadian law.

22. Inscape Delaware serves as a co-tenant for the Chicago Showroom; such lease is governed by Illinois law. Inscape Delaware serves as tenant for the Washington Showroom; such lease is governed by the laws of the District of Columbia. Inscape New York serves as tenant for the Jamestown Facility; such lease is governed by New York law. The Debtors have been working with their landlords in each of these locations in order to address and attempt to resolve lease termination issues and to keep their landlords apprised of the status of these Chapter 15 Cases and of the Canadian Proceedings.

23. The substantial majority of Inscape Delaware and Inscape New York's ordinary trade receivables arose from purchase orders, as opposed to fulsome contracts with their customers. Each invoice provided to a customer stated that "[t]he invoice and the agreement of purchase and sale arising here shall be governed by and constructed in accordance with the laws of Ontario."

24. There are no other material contracts or leases to which Inscape New York or Inscape Delaware is a party.

The Location of the Debtor's "Nerve Center"

25. The "nerve center" of Inscape New York and Inscape Delaware (as well as Inscape, the Canadian parent) is and has always been located in Canada at the main headquarters at Holland Landing. At the main headquarters, management of each Debtor directs and controls its activities and makes all strategic decisions for Inscape New York, Inscape Delaware and Inscape. As of the Commencement Dates, direction and control of all liquidation activities for each of the three Debtors was taking place at Holland Landing in Canada. Since sales in the United States are no longer taking place, Inscape New York and Inscape Delaware are effectively shell companies and have no operations. The U.S. entities have no "nerve center" in the United States, and all activities relating to the liquidation of these entities is taking place in Canada. As such, the "real seat" of each of the Debtors' is Canada, and not the jurisdiction of incorporation or registered office location of Inscape New York or Inscape Delaware.

26. Accordingly, the following facts weigh heavily to support a finding that the COMI for all three Debtors is Canada: (i) the location of the headquarters of all three entities is in Canada, notwithstanding the location of the registered office of Inscape New York and Inscape Delaware; (ii) the location of all members of management and of the boards of directors of all three entities is in Canada, and no strategic decision-making, operational planning, or meetings of the entities' boards of directors take place in the United States; (iii) the largest creditor of all three entities is a Canadian entity and its associated loan agreement, the Hilco Loan Agreement, is governed by Canadian law; (iv) all decision-making for each of the three entities is made by management in Canada, including with respect to U.S. manufacturing and sales (when sales were conducted in the U.S. prior to the Commencement Dates); (v) creditors of each entity are aware that all key customer contacts and customer service for the Company are located in Canada; (vi) all administrative

functions for the three entities are performed in Canada, including customer service, supply chain/procurement, accounting and finance, among other functions; (vii) as of the Commencement Dates, all liquidation activities for the three entities are directed from Canada; and (viii) Inscape New York and Inscape Delaware are primarily shell companies with very few tangible assets in the United States, and their true “nerve center” is in Canada. While the Foreign Representative acknowledges that certain trade creditors of Inscape New York are located in the United States, it submits that no single *Suntech* factor is dispositive in the analysis, and the vast majority of the *Suntech* factors weigh heavily in favor of a finding that the COMI for Inscape New York is Canada. As previously stated, the Foreign Representative will ensure that all U.S. creditors will be given a full and fair opportunity to participate in the claims process in Canada. For all of the foregoing reasons, there is little question that the COMI of Inscape New York, Inscape Delaware, and Inscape is Canada.

II. The Requested Relief Is Consistent with United States Public Policy and the Policy Behind the Bankruptcy Code

27. The purpose of chapter 15 is set forth in section 1501 of the Bankruptcy Code and includes: (i) cooperation between courts of the United States and the courts and other competent authorities of foreign countries involved in cross-border insolvency cases; (ii) the fair and efficient administration of cross-border insolvencies that protect the interests of all creditors, and other interested entities, including the debtor; and (iii) the protection and maximization of the value of the debtor’s assets. *See* 11 U.S.C. § 1501. The Foreign Representative respectfully submits that each of these purposes will be served by recognizing the Canadian Proceedings of each Debtor as a foreign main proceeding, and that the interests of the Debtors’ creditors and other interested entities would not be protected by requiring the U.S. entities to administer their liquidation proceedings separately in the United States.

28. Recognition of the Canadian Proceedings of each of the three Debtors as foreign main proceedings will facilitate the orderly and equitable cross-border wind-down of the Debtors' businesses. The Debtors and their professionals are diligently and conscientiously seeking to maximize the value of their remaining assets, ninety percent of which are located in Canada, in order to distribute such value to their creditors. Practically speaking, because the Debtors operated as a single, integrated enterprise, their ability to maximize the liquidation value of their assets requires them to continue to be administered jointly. For example, the Debtors are seeking to collect on a number of sizable accounts receivable from customers; in order to do so, however, the Debtors have been working to resolve certain remaining concerns by such customers which require providing additional or replacement products manufactured from the Canadian facility, as well as other resources from Canada, regardless of where these receivables were originally "booked".

29. Moreover, in light of the minimal assets of the Debtors remaining to be monetized, the Debtors and their professionals are especially sensitive to the fact that distributions to unsecured creditors – if any – will depend on administering the insolvency proceedings of the Debtors as efficiently as possible. Requiring Inscape New York and Inscape Delaware to be liquidated in plenary proceedings in the United States separate from the main proceeding in Canada for Inscape Corporation would, even in the best case where the U.S. entities' proceedings were administered as efficiently as possible, require the Debtors to hire separate primary restructuring counsel (one firm in Canada to represent Inscape and another in the United States to represent Inscape New York and Inscape Delaware) and to employ the resources of a Canadian monitor (who serves as a "watchdog" over the administration of the Canadian proceeding) with its counsel, the U.S. Trustee, and a U.S. committee of unsecured creditors with its counsel, as well as the concentrated resources of both the Canadian and U.S. courts.

30. Furthermore, instead of a single claims administration and distribution process, if the Debtors were liquidated in separate Canadian and U.S. liquidation proceedings, it would result in separate procedures for the submission and resolution of claims against each of the entities – not only would this create the risk of additional confusion and burden on creditors, many of whom (because of the integrated nature of these businesses) are likely to submit claims against multiple Debtors on both sides of the border, but it would result in inefficiency and delay as two sets of Debtor professionals review overlapping sets of claims and seek to coordinate the resolution of these claims processes on different timelines. The Debtors are genuinely concerned that these additional costs may transform these cases from ones that provide some modest distributions to unsecured creditors to ones where such creditors do not stand to receive any distribution. Additionally, as the claims processes will dictate the timing and nature of distributions in the cases, the separate administration of these proceedings would result in delays. The Foreign Representative respectfully submits that the interests of creditors for the U.S. and Canadian entities will be disserved by the separate administration of these liquidation cases, which will result in greater administrative expenses, less integrated liquidation of the Debtors’ assets, less efficient administration of the claims and distribution process, and greater costs and delays in the overall resolution of the Debtors’ proceedings.

31. Bankruptcy courts in the United States have routinely recognized and granted comity to insolvency proceedings in Canada, recognizing the long history of cooperation between the two jurisdictions and the integrity of, and due process afforded to creditors and other parties in, Canadian insolvency proceedings.³ This Court has observed that “the U.S. and Canada share

³ See, e.g., *In re Nygard Holdings (USA) Ltd.*, No. 20-10828 (DSJ) (Bankr. S.D.N.Y. April 23, 2020) [Docket No. 40]; *In re Imperial Tobacco Canada Ltd.*, No. 19-10771 (JPM) (Bankr. S.D.N.Y. April 17, 2019) [Docket No. 40]; *In re U.S. Steel Canada, Inc.*, No. 17-11519 (MG) (Bankr. S.D.N.Y. July 31, 2017) [Docket No. 16]; *In re Sino-Forest Corp.*, No. 13-10361 (MG) (Bankr. S.D.N.Y. Apr. 15, 2013) [Docket

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.” *In re Metcalfe & Mansfield Alternative Invs.*, 421 B.R. 685, 698 (Bankr. S.D.N.Y. 2010) (citations omitted); *EMA GARP Fund v. Banro Corp.*, 2019 WL 773988, at *6 (S.D.N.Y. 2019) (“Canada is a sister common law jurisdiction with procedures akin to our own, and thus there need be no concern over the adequacy of the procedural safeguards of Canadian proceedings.”); *E&L Consulting, Ltd. v. Doman Industries Ltd.*, 360 F. Supp. 2d 465, 470 (E.D.N.Y. 2005) (“Canada’s bankruptcy procedure under the [CCAA] satisfies the standards of procedural fairness established under the law of this circuit.” (citing *Tradewell, Inc. v. American Sensors Elecs.*, 1997 WL 423075 (S.D.N.Y. July 28, 1997))).

32. Creditors and other parties who are located in the United States will not be prejudiced by the fact that the administration of Inscope New York and Inscope Delaware’s liquidation proceedings is occurring in Canada. Canadian insolvency law does not favor local creditors over foreign creditors, whether located in the United States or elsewhere. Creditors will have the ability to file pleadings and submit claims in the Canadian Proceedings from the United States, and may appear at hearings in the Canadian Proceedings by remote video or telephonic means. As previously noted, as a practical matter, having all three Debtors’ cases administered jointly in Canada will likely result in greater efficiency, less confusion, lower costs, and faster recoveries to creditors than the separate liquidation of the Canadian and U.S. Debtors.

No. 16]; *In re Metcalf & Mansfield Alt. Invs.*, No. 09-16709 (MG) (Bankr. S.D.N.Y. Jan. 5, 2010) [Docket No. 28]; *In re Canwest Global Commc’ns Corp.*, No. 09-15994 (SMB) (Bankr. S.D.N.Y. Nov. 3, 2009) [Docket No. 34]; *In re Baronet U.S.A. Inc.*, No. 07-13821 (JMP) (Bankr. S.D.N.Y. Jan. 10, 2008) [Docket No. 15]; *In re Lone Pine Res. Inc.*, No. 13-12487 (BLS) (Bankr. D. Del. Sept. 26, 2013) [Docket No. 18]; *In re Xentel Inc.*, No. 13-10888 (KG) (Bankr. D. Del. Apr. 12, 2013) [Docket No. 15].

33. For each of the foregoing reasons, the orderly and efficient administration of all three Debtors' cases in jointly administered proceedings in Canada is demonstrably consistent with the public policy of the United States and the Bankruptcy Code.

III. In the Alternative, the Canadian Proceedings Should Be Recognized as Foreign Nonmain Proceedings.

34. In the alternative, were this Court to deny recognition of the Canadian Proceedings of any of the Debtors as foreign main proceedings, it should grant recognition of such proceedings as foreign nonmain proceedings. Pursuant to the Bankruptcy Code, a "foreign nonmain proceeding" is defined as a "foreign proceeding" pending in a country where the debtor has an "establishment" within the meaning of section 1502. 11 U.S.C. § 1517(b)(2). "Establishment" is broadly defined in the Bankruptcy Code as "any place of operations where the debtor carries out a nontransitory economic activity." 11 U.S.C. § 1502(2). To satisfy this definition, a debtor must have "a seat for local business activity in the foreign country" and this activity must have a "local effect on the marketplace." *In re Mood Media Corp.*, 569 B.R. 556, 561-62 (Bankr. S.D.N.Y. 2017); *see also 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 a country a debtor must "conduct business in that country."). Here, the Holland Landing Facility, the Company's largest manufacturing and warehouse facility (i) is located in Canada and (ii) produces all furniture for the furniture segment of the Company's business. The Foreign Representative submits that it cannot be disputed that the Holland Landing Facility is a "seat for local business activity" in Canada that has a local effect on the marketplace.

35. The Holland Landing Facility serves as an "establishment" in Canada for all three Debtors. As noted above, at all relevant times, management for each of the three Debtors were physically located at the Holland Landing Facility and regularly dealt with, and continue to deal with, creditors, vendors and other counterparties for all three Debtors. Moreover, furniture

produced at the Holland Landing Facility was sold (i) to U.S. customers, who were invoiced by Inscape Delaware⁴ and (ii) to Canadian customers, who were invoiced by Inscape. Additionally, prior to the CCAA Commencement Date, Inscape sales employees that were located at the Holland Landing Facility, sold on Inscape New York's behalf the walls products manufactured by Inscape New York to Canadian customers, which were then directly invoiced by Inscape New York.

36. For these reasons, the Foreign Representative submits that the Court should find that each of the Debtors has an "establishment" in Canada within the meaning of Bankruptcy Code section 1502(2) and, if the Canadian Proceedings are not recognized as foreign main proceedings, recognize the Canadian Proceedings as foreign nonmain proceedings.

CONCLUSION

WHEREFORE, the Foreign Representative respectfully requests that this Court enter the Order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and such other and further relief as may be just and proper.

Dated: February 27, 2023
New York, New York

Respectfully submitted,

WILLKIE FARR & GALLAGHER LLP

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⁴ As noted in paragraph 17 of the Verified Petition, generally, the Company's customers are invoiced as follows: (a) Canadian customers of the furniture segment are invoiced by Inscape; (b) U.S. customers of the furniture segment are invoiced by Inscape Delaware; and (c) all customers of the walls segment are invoiced by Inscape New York.

EXHIBIT A

Proposed Order

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

In re:)	Chapter 15
)	
Inscape Corporation, <i>et al.</i> , ¹)	Case No. 23-10074
)	
Debtors in a Foreign Proceeding.)	(Jointly Administered)
)	

**ORDER RECOGNIZING FOREIGN MAIN
PROCEEDINGS AND GRANTING ADDITIONAL RELIEF**

A hearing having been held (the “Hearing”) on February 21, 2023 and March 1, 2023 to consider the chapter 15 petitions for each of the above-captioned debtors (the “Debtors”) and the Verified Petition, filed on January 23, 2023 (the “Verified Petition,” and together with the chapter 15 petitions, the “Petitions”)² of Inscape Corporation, the duly authorized foreign representative (the “Foreign Representative”) of the above-captioned debtors (the “Debtors”) for entry of an order pursuant to sections 105(a), 362, 1517, and 1520 of the Bankruptcy Code: (i) recognizing the Canadian Proceedings as foreign main proceedings pursuant to sections 1517 and 1520 of the Bankruptcy Code, (ii) recognizing the Foreign Representative as the “foreign representative,” as defined in section 101(24) of the Bankruptcy Code, in respect of the Canadian Proceedings, (iii) recognizing and enforcing the Initial CCAA Orders, and (iv) granting a stay of execution against the Debtors’ assets and applying section 362 of the Bankruptcy Code in these Chapter 15 Cases pursuant to section 1520(a)(1) of the Bankruptcy Code; and the Foreign Representative having filed its Supplement to the Verified Petition (the “Supplement”), together

¹ 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: (i) Inscape Corporation (“Inscape”) (BN 1738), (ii) Inscape Inc., a Delaware Corporation (“Inscape Delaware”) (FEIN 1804), and (iii) Inscape (New York) Inc., a New York Corporation (“Inscape New York”) (FEIN 7231).

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Verified Petition or the Initial CCAA Orders (as defined in the Verified Petition), as applicable.

with the Supplement Declaration of Eric Ehgoetz (the “Supplemental Declaration”) on February 27, 2023; and upon this Court’s review and consideration of the Petitions, the Declaration of Eric Ehgoetz, filed contemporaneously therewith, the Supplement, the Supplemental Declaration, and the evidence admitted at the Hearing to consider the Petitions; and due and proper notice of the Petitions having been provided; and no other or further notice being necessary or required; and no objections or other responses having been filed that have not been overruled, withdrawn, or otherwise resolved; and all interested parties having had an opportunity to be heard at the Hearing; and after due deliberation and sufficient cause appearing therefor, the Court makes the following findings of fact and conclusions of law:³

- a. This Court has subject-matter jurisdiction over this matter pursuant to 28 U.S.C. § 1334.
- b. This is a core proceeding under 28 U.S.C. § 157(b)(2)(P).
- c. Venue is proper in this district pursuant to 28 U.S.C. § 1410(1).
- d. The Foreign Representative is the duly appointed “foreign representative” of the Debtors, as such term is defined in 11 U.S.C. § 101(24).
- e. These Chapter 15 Cases were properly commenced pursuant to 11 U.S.C. §§ 1504, 1509 and 1515.
- f. The Foreign Representative has satisfied the requirements of 11 U.S.C. § 1515 and Fed. R. Bankr. P. 1007(a)(4) and 2002(q).
- g. The Debtors have satisfied the eligibility requirements of 11 U.S.C. §§ 109(a) and 1517(a).

³ The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, or any of the following conclusions of law constitute findings of fact, they are adopted as such.

- h. The Canadian Proceedings currently pending before the Canadian Court and provisions made thereunder for the protection, administration and distribution of the Debtors' assets, are "foreign proceedings," as such term is defined in 11 U.S.C. § 101(23).
- i. The Canadian Proceedings are entitled to recognition by this Court pursuant to 11 U.S.C. § 1517.
- j. The Canadian Proceedings are pending in the country where the Debtors' center of main interests is located, are "foreign main proceedings," as such term is defined in 11 U.S.C. § 1502(4), and are entitled to recognition as "foreign main proceedings" pursuant to 11 U.S.C. § 1517(b)(1).
- k. The Foreign Representative is entitled to all the relief provided pursuant to 11 U.S.C. § 1520, without limitation.
- l. The relief granted hereby is necessary and appropriate, in the interests of the public and international comity, consistent with the public policy of the United States, and warranted under 11 U.S.C. §§ 1517 and 1520.

Now therefore, it is hereby ORDERED:

- 1. The Motion is GRANTED in its entirety.
- 2. The Canadian Proceedings are granted recognition as foreign main proceedings pursuant to 11 U.S.C. §§ 1517(a) and 1517(b)(1).
- 3. All relief afforded foreign main proceedings pursuant to 11 U.S.C. § 1520 is hereby granted.
- 4. The Initial CCAA Orders, including any and all existing and future extensions, amendments, restatements, and/or supplements authorized by the Canadian Court, are hereby

given full force and effect, on a final basis, with respect to the Debtors and the Debtors' property that now or in the future is located within the territorial jurisdiction of the United States, including, without limitation, staying the commencement or continuation of any actions against the Debtors or its assets (except as otherwise expressly provided herein or therein).

5. Pursuant to 11 U.S.C. § 1520(a)(1), 11 U.S.C. § 362, including, without limitation, the automatic stay authorized by 11 U.S.C. § 362, shall apply with respect to the Debtors and the Debtors' property that now or in the future is located within the territorial jurisdiction of the United States.

6. The Foreign Representative is authorized to operate the business of the Debtors that is the subject of the Canadian Proceedings and exercise the powers of a trustee to the extent provided by 11 U.S.C. § 1520(a)(3).

7. The Canadian Proceedings and all prior orders of the Canadian Court shall be and hereby are granted comity and given full force and effect in the United States.

8. The Foreign Representative, the Debtors and their respective agents are authorized to serve or provide any notices required under the Bankruptcy Rules or the local rules of this Court.

9. No action taken by the Foreign Representative, the Debtors, or their respective successors, agents, representatives, advisors, or counsel in preparing, disseminating, applying for, implementing, or otherwise acting in furtherance of or in connection with the Canadian Proceedings, this order, these Chapter 15 Cases, or any adversary proceeding herein, or any further proceeding commenced hereunder, shall be deemed to constitute a waiver of the rights or benefits afforded such persons under 11 U.S.C. §§ 306 and 1510.

10. Notwithstanding any provision in the Bankruptcy Rules to the contrary, including, but not limited to, Bankruptcy Rules 7062 and 1018, (i) this Order shall be effective immediately and enforceable upon its entry; (ii) the Foreign Representative is not subject to any stay in the

implementation, enforcement or realization of the relief granted in this Order; and (iii) the Foreign Representative and the Debtors are authorized and empowered, and may in their discretion and without further delay, take any action and perform any act necessary to implement and effectuate the terms of this Order.

11. A copy of this Order shall be served (i) within three business days of entry of this order, by electronic mail to the extent email addresses are available and otherwise by United States mail, overnight or first-class postage prepaid, upon the Notice Parties (as defined in the *Motion for Order Scheduling Recognition Hearing and Specifying Form and Manner of Service of Notice*), the Office of the United States Trustee, and such other entities as the Court may direct and (ii) by posting on the Monitor's website at <https://www.alvarezandmarsal.com/InscapeCorporation>. Such service shall constitute good and sufficient service and adequate notice for all purposes.

12. The Court shall retain jurisdiction with respect to: (i) the enforcement, amendment or modification of this order; (ii) any requests for additional relief or any adversary proceeding brought in or through these Chapter 15 Cases; and (iii) any request by an entity for relief from the provisions of this order, for cause shown, as to any of the foregoing, and provided the same is properly commenced and within the jurisdiction of this Court.

Dated: New York, New York
_____, 2023

UNITED STATES BANKRUPTCY JUDGE