



**FORCE FILED**

No. S-245481  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED

AND

IN THE MATTER OF THE *COOPERATIVE ASSOCIATION ACT*, S.B.C. 1999, c. 28

AND

IN THE MATTER OF OKANAGAN GROWERS DISTRIBUTION COOPERATIVE, BC  
TREE FRUITS INDUSTRIES LIMITED and 0015755 B.C. LTD.

PETITIONERS

**NOTICE OF APPLICATION**

**Name of applicant:** Alvarez & Marsal Canada Inc. ("A&M"), in its capacity as court-appointed receiver of all of the assets, undertakings and property of the Petitioners (in such capacity, the "Receiver").

To: The Service List, a copy of which is attached hereto as Schedule "A"

TAKE NOTICE that an application will be made by the applicant to the Honourable Madam Justice Gropper at the courthouse at 800 Smithe Street, Vancouver, British Columbia on May 7, 2026 at 9:00 a.m. for the orders set out in Part 1 below.

The applicant estimates that the application will take 10 minutes.

This matter is not within the jurisdiction of an associate judge. Madam Justice Gropper is seized of these proceedings. The date and time of this application has been set by Scheduling.

**Part 1 ORDER SOUGHT**

1. The Receiver seeks an order (the "Slip Order") in substantially the form attached hereto as Schedule "B", amending the order made herein on April 9, 2026 (the "Third Claims Payment Order") to correct inadvertent errors in the calculation of the accepted claim of United Food and Commercial Workers Union, Local No. 247 (the "Union").

2. Such further and other relief as counsel may request and this Honourable Court may deem just.

## **Part 2 FACTUAL BASIS**

3. Capitalized terms used and not otherwise defined in this Notice of Application shall have the meanings ascribed thereto in the Second Report of the Receiver dated April 1, 2026 (the “**Second Report**”) and the Third Report of the Receiver dated May 4, 2026 (the “**Third Report**”).

4. On April 9, 2026, this Court granted the Third Claims Payment Order, among other things, accepting the claims enumerated at paragraph 5.2 of the Second Report as valid (the “**Accepted Claims**”), and directing the Receiver to pay such claimants the full amount of their Accepted Claims. The Accepted Claims included the Union’s claim in the amount of \$463,039.81.

5. The Union’s claim was thought to represent amounts owing to the Union for a number of claims, including a claim for damages for the failure of Okanagan Growers Distribution Cooperative, formerly BC Tree Fruits Cooperative (the “**Co-op**”) to provide adjustment plan notice required under section 54 of the BC *Labour Relations Code* to those Union employees terminated on or after July 25, 2024, being the date that the Co-op formally ceased operations.

6. Due to an oversight, following the granting of the Third Claims Payment Order, the Receiver subsequently became aware that the figure reflected in the Second Report for the Accepted Claims is not accurate. The Accepted Claims as set out in the Third Claims Payment Order inadvertently includes amounts for former Union employees who are not eligible for adjustment plan notice because they were terminated *before* July 25, 2024. The Receiver has determined, and the Union agrees, that the Union’s claim was overstated by \$45,342.05.

7. The Receiver’s Third Report includes the accurate details of the amount of Union’s claim intended to form part of the Accepted Claims.

8. The Receiver seeks to amend the Third Claims Payment Order to reflect correct payment required to be made to the Union. The Slip Order has the effect of revising the Union’s claim down from \$463,039.81 to \$417,697.76, being the Accepted Claims amount less the overstated amount.

9. This portion of the Union's claim has not yet been paid to the Union. It remains subject to review by Service Canada prior to payment by the Receiver. The Receiver provided the accepted amount of the Union's claim (excluding the overstated claims) to Service Canada for their review on April 14, 2026.

### Part 3 LEGAL BASIS

1. The Receiver relies on the following:

- (a) Rules 13-1(17) and 21-7 of the *Supreme Court Civil Rules* of British Columbia;
- (b) the inherent jurisdiction of this Honourable Court; and
- (c) such further and other legal basis as counsel may advise and this Honourable Court may allow.

2. Rule 13-1(17) provides:

The court may at any time correct a clerical mistake in an order or an error arising in an order from an accidental slip or omission, or may amend an order to provide for any matter that should have been but was not adjudicated on.

3. As held by this Honourable Court in *AKA Investments Ltd. v Sathasivam*, 2023 BCSC 1464 ("*AKA SC*"), an order under Rule 13-1(17) is discretionary.

4. Judges of the Supreme Court also have inherent jurisdiction to vary an order, including an entered order, to implement the manifest intention of the court as "it is not in the interests of justice for an order to stand that does not reflect the parties' true entitlements".

*Chand v. Insurance Corporation of British Columbia*, 2009 BCCA 559 ("*Chand*").

5. This results in three situations in which this court can vary a final order (as exceptions to the general principle of *functus officio*): (1) when there is a "slip"-type error in the order; (2) when there is a matter which should have been but was not adjudicated upon; and (3) when the order contains an error in expressing the manifest intention of the court.

*SIVS Marketing Inc. v Xavier*, 2024 BCSC 2178 at para. 22.

6. In *AKA SC* the petitioner sought to amend an *order nisi* due to an error in the calculation of the interest owing under a mortgage of the subject lands which greatly reduced the

redemption amount provided for in the order. Wing Wah, the respondent, opposed the relief sought in that proceeding on the basis that, among other things, there would be material or “profound” prejudice as, if they had been aware of a different interest rate, they would have taken earlier steps to protect the equity of redemption available to preserve, as much as possible, the ability to recover under that mortgage. The Honourable Justice Fitzpatrick found that the amendment was possible, “either under the ‘slip rule’ or by the exercise of the Court’s inherent jurisdiction”.

*AKA SC* at paras. 56, 74 and 85.

7. Wing Wah appealed Fitzpatrick J.’s decision. On appeal, Justice Fenlon, writing for a unanimous court, upheld Justice Fitzpatrick’s decision. With respect to the use of the slip rule, Justice Fenlon stressed that the amendments sought by AKA “did not alter the substantive finding that the mortgage was in default” and that the corrections applied to “precisely the kind of error the slip rule is intended to address”.

*Wing Wah Investment Inc. v. AKA Investments Ltd.*, 2024 BCCA 218 (“*AKA CA*”), at para. 30.

8. In *Buschau v. Rogers Communications Inc.*, 2004 BCCA 142 (“*Buschau*”), the Court of Appeal held that even if the error in the order was not a “clerical” one or an error arising from an “accidental slip or omission” within the meaning of then Rule 41(24), the court below had the inherent jurisdiction to correct the order insofar as it did not reflect its manifest intention. In the absence of any evidence that the respondents had taken any irrevocable step in reliance on the order, or would suffer undue prejudice were it corrected, the Court of Appeal held that this Court is able to exercise this jurisdiction and correct its order.

*Buschau* at para. 27.

9. Here, the Receiver applies to amend the Third Claims Payment Order to rectify an error to ensure the order properly reflects the correct amount of the Union’s claim. Similar to the facts in each of *AKA SC* and *Buschau*, where amending orders were held to be appropriate, the errors leading to the incorrect payment amount being reflected in the Third Claims Payment Order were entirely due to inadvertence, and resulted in the order not properly reflecting the parties’ or the court’s intentions, i.e. to ensure the correct payments are made by the Third Claims Payment Order

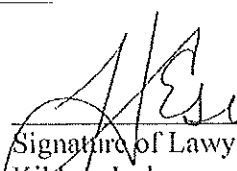
**Part 4 MATERIAL TO BE RELIED ON**

10. the Third Claims Payment Order;
11. the Second Report;
12. the Third Report; and
13. such further and other material as counsel may advise and this Honourable Court deems admissible.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 8 business days after service of this Notice of Application,

- (a) file an Application Response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of the filed Application Response;
  - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
  - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated: 04-May-2026

  
\_\_\_\_\_  
Signature of Lawyer for Applicant,  
Kibbon Jackson

*To be completed by the court only:*

Order made

in the terms requested in paragraphs ..... of Part 1 of this Notice of Application

with the following variations and additional terms:  
.....  
.....  
.....

Date: .....

.....  
Signature of  Judge  Master

The Solicitors for the Petitioner are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 550 Burrard Street, Suite 2900, Vancouver, BC V6C 0A3 Telephone: +1 604 631 3131 Facsimile: +1 604 631 3232. [kjackson@fasken.com](mailto:kjackson@fasken.com) (Reference: Kibben Jackson /285937.00020)

## APPENDIX

### THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- none of the above

SCHEDULE "A"

SERVICE LIST

*(See attached.)*

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TREE FRUITS INDUSTRIES LIMITED and 0015755 B.C. LTD.

PETITIONERS

**CCAA SERVICE LIST**

As at April 10, 2026

<p>Fasken Martineau DuMoulin LLP</p> <p>Attention: <b>Kibben Jackson</b> <b>Mishaal Gill</b> <b>Heidi Esslinger</b> <b>Suzanne Volkow</b></p> <p>Email: <a href="mailto:kjackson@fasken.com">kjackson@fasken.com</a> <a href="mailto:mgill@fasken.com">mgill@fasken.com</a> <a href="mailto:hesslinger@fasken.com">hesslinger@fasken.com</a> <a href="mailto:svolkow@fasken.com">svolkow@fasken.com</a> <a href="mailto:jbeaulieu@fasken.com">jbeaulieu@fasken.com</a></p> <p><i>Counsel for the Monitor, Alvarez &amp; Marsal Canada Inc.</i></p>	<p>Norton Rose Fulbright Canada LLP</p> <p>Attention: <b>Scott Silver</b> <b>Katie Mak</b></p> <p>Email: <a href="mailto:Scott.Silver@nortonrosefulbright.com">Scott.Silver@nortonrosefulbright.com</a> <a href="mailto:katie.mak@nortonrosefulbright.com">katie.mak@nortonrosefulbright.com</a></p> <p><i>Counsel for the Petitioners</i></p>
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<p>Mission Bottle Washing Co. Ltd.</p> <p>Attention: <b>Maged Said</b></p> <p>Email: <a href="mailto:msaid@mbwco.ca">msaid@mbwco.ca</a></p>	<p>Vernon Law</p> <p>Attention: <b>Steven Dvorak</b></p> <p>Email: <a href="mailto:sdd@vernonlaw.ca">sdd@vernonlaw.ca</a></p> <p><i>Counsel for N.M. Bartlett Inc.</i></p>

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<p>Steve Brown</p> <p>Attention: <b>Steve Brown</b></p> <p>Email: <a href="mailto:stevethefarmer@gmail.com">stevethefarmer@gmail.com</a></p>	<p>Nathanson, Schachter &amp; Thompson LLP</p> <p>Attention: <b>Peter Reardon</b>  <b>Kayla Strong</b>  <b>Rick Pearson</b></p> <p>Email: <a href="mailto:preardon@nst.ca">preardon@nst.ca</a>  <a href="mailto:kstrong@nst.ca">kstrong@nst.ca</a>  <a href="mailto:rpearson@nst.ca">rpearson@nst.ca</a>  <a href="mailto:NWalnicki@nst.ca">NWalnicki@nst.ca</a></p> <p><i>Counsel for BC Tree Fruits former members</i></p>
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## E-Service List

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**SCHEDULE "B"**

**DRAFT ORDER**

*(See attached.)*

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
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TREE FRUITS INDUSTRIES LIMITED and 0015755 B.C. LTD.

PETITIONERS

**ORDER MADE AFTER APPLICATION**  
**(SLIP RULE)**

BEFORE THE HONOURABLE  
JUSTICE GROPPER

)  
) May 7, 2026  
)

ON THE APPLICATION OF Alvarez & Marsal Canada Inc. in its capacity as the court-appointed receiver of all the assets, undertakings and property of the Petitioners (in such capacity, the "Receiver") coming on for hearing at Vancouver, British Columbia on this day; AND ON HEARING Kibben Jackson and Tiffany Bennett, counsel for the Receiver, and those counsel listed in Schedule "A" attached hereto; AND UPON READING the materials filed, including the Third Report of the Receiver dated May [●], 2026; AND PURSUANT TO the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended; *Law and Equity Act*, R.S.B.C. 1996, c. 253, as amended, the *Supreme Court Civil Rules*, and the inherent jurisdiction of this Honourable Court,

THIS COURT ORDERS AND DECLARES THAT:

1. The time for service of the Notice of Application for this order and the materials filed in support is hereby abridged such that this Application is properly returnable today, and further service upon any interested party other than those parties on the service list maintained in these proceedings is hereby dispensed with.

2. The order of this Court made herein on April 19, 2029 (Third Claims Payment Order and Claims Adjudication) is hereby varied by deleting paragraph 3 and replacing it with the following paragraph:

The Claims against the Petitioners, including Pre-Filing Claims and Restructuring Period Claims, which have been allowed by the Monitor or Receiver, as applicable, or deemed to have been accepted in accordance with the Claims Process Order or in accordance with the Claims Assignment Order pronounced in these proceedings on October 24, 2024, which Claims are enumerated below, are hereby accepted as valid Claims (collectively, the “Accepted Claims”) for the purposes of payments to be made by the Receiver in accordance with and pursuant to the provisions of this Order:

Claimant	Accepted Claim (CAD)
Tyerman, Boyd	\$181,283.28
United Food and Commercial Workers Union, Local 247	\$417,697.76

3. Endorsement of this order by counsel appearing on this application, other than counsel for the Receiver, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

\_\_\_\_\_  
Signature of Kibben Jackson  
Lawyer for the Receiver, Alvarez & Marsal Canada Inc.

BY THE COURT

\_\_\_\_\_  
REGISTRAR

**SCHEDULE "A"**

**COUNSEL APPEARING**

<b>Name of Party</b>	<b>Counsel Name</b>
BC Tree Fruits Members	Christian Garton
BC Tree Fruits Former Members	Peter J. Reardon
UFCW Local 247	Raashi Ahluwalia

No. S-245481  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c C-36, AS AMENDED

AND

IN THE MATTER OF THE CORPORATE ASSOCIATION ACT, S.B.C. 1999, c. 28

AND

IN THE MATTER OF OKANAGAN GROWERS DISTRIBUTION COOPERATIVE,  
BC TREE FRUITS INDUSTRIES LIMITED and 0015755 B.C. LTD.

PETITIONERS

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ORDER MADE AFTER APPLICATION

(SLIP RULE)

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