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

In re:

NYGARD HOLDINGS (USA) LIMITED, et al.,¹

Debtors in a Foreign Proceeding.

Chapter 15

Case No. 20-10828 (____)

Joint Administration Requested

**MOTION FOR ENTRY OF AN ORDER SHORTENING
THE NOTICE PERIODS FOR EMERGENCY HEARINGS ON MOTIONS
OF FOREIGN REPRESENTATIVE
FOR (I) ENTRY OF AN ORDER GRANTING PROVISIONAL RELIEF
PURSUANT TO SECTIONS 105(a) AND 1519 OF THE BANKRUPTCY CODE, (II)
JOINT ADMINISTRATION OF CHAPTER 15 CASES AND RELATED RELIEF, AND
(III) ENTRY OF AN ORDER SCHEDULING A HEARING ON CHAPTER 15
PETITION FOR RECOGNITION AND RELATED RELIEF AND SPECIFYING FORM
AND MANNER OF SERVICE**

Richter Advisory Group Inc. (“Richter”) is acting solely in its capacity as court-appointed receiver (and not in its personal or corporate capacity) (the “Receiver”) and authorized foreign representative (the “Foreign Representative”) of:

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 Registration Number (“CRA”), are: Nygard Holdings (USA) Limited (FEIN 3048), Nygard Inc. (FEIN 0509), Nygard NY Retail, LLC (FEIN 1672), Fashion Ventures, Inc. (FEIN 0956), Nygard International Partnership (FEIN 1535), Nygard Properties Ltd. (CRA 0003), Nygard Enterprises Ltd. (FEIN 7127), 4093887 Canada Ltd. (FEIN 1534), 4093879 Canada Ltd. (FEIN 1533).

- (a) Nygard Holdings (USA) Limited (“Holdings”);
Nygard Inc. (“Inc.”);
Nygard NY Retail, LLC (“NY Retail”); and
Fashion Ventures, Inc. (“Fashion”) (collectively, the “U.S. Debtors”); and
- (b) Nygard International Partnership (“International”);
Nygard Properties Ltd. (“Properties”);
Nygard Enterprises Ltd. (“Enterprises”);
4093887 Canada Ltd. (“4093887”); and
4093879 Canada Ltd. (“4093879”) (collectively, the “Canadian Debtors,”
and together with the U.S. Debtors, the “Debtors”).

Each of the Debtors was placed in a receivership on March 18, 2020 by order (the “Receivership Order”) of the Court of Queen’s Bench Manitoba (the “Canadian Court”), Court File No. CI 20-01-26627 (the “Canadian Proceeding”).

The Foreign Representative respectfully submits this motion (the “Motion to Shorten”) seeking entry of an order shortening the notice periods for hearing the Foreign Representatives’ (a) *Motion of the Receiver as Authorized Foreign Representative for Entry of an Order Granting Provisional Relief Pursuant to Sections 105(a) and 1519 of the Bankruptcy Code* (the “Provisional Relief Motion”)², (b) *Motion of the Receiver as Authorized Representative for Joint Administration of Chapter 15 Cases and Related Relief* (the “Joint Administration Motion”), and (c) *Motion for Entry of an Order Scheduling a Hearing on Chapter 15 Petition for Recognition and Related Relief and Specifying Form and Manner of Notice of Service* (the “Scheduling and Notice Motion,” and collectively with the Emergency Motion and Joint Administration Motion, the “Motions”), filed contemporaneously, and setting the hearing on the relief sought by the Motions (the “Emergency

² All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Provisional Relief Motion. References to sections and chapters are references to sections and chapters of the Bankruptcy Code unless otherwise states.

Hearing”) for March 19, 2020 at 10:00 a.m. (ET) or as soon thereafter as the Court may hear the Motions. In support of the relief requested, the Foreign Representative represents as follows:

BACKGROUND

1. This Motion to Shorten concerns the Motions, filed contemporaneously. The Foreign Representative incorporates by reference the Verified Petition and the *Declaration of Gilles Benchaya in Support Of (I) Verified Petition Under Chapter 15 for Recognition of a Foreign Main Proceeding and Related Relief and (II) Motion of the Foreign Representative for Provisional Relief in aid of a Foreign Main Proceeding* (the “Benchaya Declaration”).

2. As set forth more fully in the Motions, the Court’s consideration of the Motions on an expedited basis is imperative because, without the application of the automatic stay and the ability of the Foreign Representative to control the Debtors’ assets located in the United States, there is a material risk that the Debtors’ creditors and litigants may commence enforcement actions against the Debtors and their properties located in the United States during the period between the petition date and the date on which this Court determines whether to recognize the Canadian Proceeding. The relief requested in the Motions also will allow the Foreign Representative to avoid delays in efficiently and orderly liquidating the Debtors’ assets without interference from creditors while the Debtors’ petition is pending determination.

3. In order to swiftly enforce the Receivership Order in the United States and to obtain the benefit of the automatic stay, the Foreign Representative seeks the Court’s consideration of the Motions at the Emergency Hearing.

JURISDICTION AND VENUE

4. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference to Bankruptcy Judges of the District Court for the*

Southern District of New York, dated January 31, 2012 (Preska, C.J.). Recognition of a foreign proceeding and other matters under chapter 15 of the Bankruptcy Code are core proceedings under 28 U.S.C. § 157(b)(2)(P).

5. The Foreign Representative, solely in its capacity as authorized Foreign Representative, and not in its personal or corporate capacity, consents to the entry of final orders or judgments by the Court if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1410(1) and (3).

7. This case has been properly commenced pursuant to sections 1504, 1509, and 1515 by the filing of the Petition seeking recognition of the Canadian Proceeding as a “foreign main proceeding” under section 1515.

8. The statutory predicates for the relief requested herein are sections 105(a) and 1519 and Bankruptcy Rules 2002, 9006, 9007, and 9029(b).

RELIEF REQUESTED

9. The Foreign Representative respectfully requests that the Court enter an order shortening the notice periods for the Emergency Hearing on the Motions.

BASIS FOR RELIEF REQUESTED

10. The Foreign Representative may submit a motion for immediate provisional relief under section 1519, and subsection (e) thereto states that the “standards, procedures, and limitations applicable to an injunction shall apply to relief under this section.” 11 U.S.C. § 1519(e). Under Federal Rule of Civil Procedure 65, a court may issue an *ex parte* temporary restraining order without written or oral notice to the adverse party or its attorney where (a) “specific facts in an affidavit or verified complaint clearly show that immediate and irreparable injury, loss, or

damage will result to the movant before the adverse party can be heard in opposition” and (b) “the movant’s attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.” Fed. R. Civ. Pro. 65(b). A final hearing on the temporary restraining order would then take place within fourteen (14) days after the entry of such temporary restraining order. Notwithstanding the foregoing, but without waiving the benefits, the Foreign Representative has provided notice as expeditiously as possible under the circumstance.

11. The Bankruptcy Rules and Local Rules do not expressly address procedures to obtain emergency provisional relief under section 1519. The Foreign Representative respectfully requests that the Court invoke its power, consistent with its authority under Bankruptcy Rule 9029(b) and section 105(a), approving the procedures requested in this Motion to Shorten, as these procedures are necessary for the relief contemplated by the relevant provisions of chapter 15.

12. In addition, Bankruptcy Rule 9006(c) authorizes the court, with or without motion or notice, to reduce notice periods under the Bankruptcy Rules for cause shown.

13. Considering the Motions at the Emergency Hearing is analogous to the Court hearing “first day motions” in cases brought under chapter 11 of the Bankruptcy Code. The relief sought in the Provisional Relief Motion is interim in nature and can only be made final after adequate notice is provided as contemplated by section 1519(e) and Federal Rule of Civil Procedure 65. The relief sought in the Joint Administration and Scheduling and Notice Motions is procedural in nature and will not prejudice any party. Therefore, in light of the foregoing, cause exists for the Court to hear the Motions on an urgent basis at the Emergency Hearing, as such is necessary to protect the Debtors’ assets within the jurisdiction of the United States and to protect the interests of the Debtors’ creditors by facilitating a centralized liquidation process pending recognition of the Canadian Proceeding as a foreign main proceeding.

NOTICE

14. Notice of this Motion to Shorten has been provided to: (i) the United States Trustee for the Southern District of New York (Attn: Paul K. Schwartzberg, Esq.); (ii) the Debtors; (iii) Peter J. Nygard; (iv) all persons or bodies authorized to administer foreign proceedings of the Debtors, including the Canadian Proceeding; (v) all entities against whom provisional relief is being sought under section 1519 of the Bankruptcy Code; (vi) all parties to litigation pending in the United States to which any of the Debtors is a party at the time of the filing of the Petition; and (vii) all parties that have filed a notice of appearance in these chapter 15 cases. The Foreign Representative submits that such notice is proper and that no other or further notice need be provided.

CONCLUSION

WHEREFORE, the Foreign Representative respectfully requests entry of an order granting the Motion to Shorten and such other and further relief as is just and proper.

Dated: March 18, 2020
New York, New York

Respectfully submitted,

/s/ Steven J. Reisman
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Counsel to the Foreign Representative

Exhibit A

Proposed Order

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

In re:

NYGARD HOLDINGS (USA) LIMITED, et al.,¹

Debtors in a Foreign Proceeding.

Chapter 15

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**ORDER SHORTENING NOTICE PERIOD FOR EMERGENCY
HEARINGS ON MOTIONS OF FOREIGN REPRESENTATIVE
FOR (I) ENTRY OF AN ORDER GRANTING PROVISIONAL RELIEF
PURSUANT TO SECTIONS 105(a) AND 1519 OF THE BANKRUPTCY CODE, (II)
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(III) ENTRY OF AN ORDER SCHEDULING A HEARING ON CHAPTER 15
PETITION FOR RECOGNITION AND RELATED RELIEF AND SPECIFYING FORM
AND MANNER OF SERVICE**

Upon the motion (the “Motion to Shorten”)² of Richter Advisory Group Inc. (“Richter”), solely in its capacity as court-appointed receiver (and not in its personal or corporate capacity) (the “Receiver”) and authorized foreign representative (the “Foreign Representative”) of:

(a) Nygard Holdings (USA) Limited (“Holdings”); Nygard Inc. (“Inc.”); Nygard NY Retail, LLC (“NY Retail”); and Fashion Ventures, Inc. (“Fashion”) (collectively, the “U.S. Debtors”); and

(b) Nygard International Partnership (“International”); Nygard Properties Ltd. (“Properties”); Nygard Enterprises Ltd. (“Enterprises”); 4093887 Canada Ltd. (“4093887”); and 4093879 Canada Ltd. (“4093879”) (collectively, the “Canadian Debtors,” and together with the U.S. Debtors, the “Debtors”), each of which was placed in a receivership on March 18, 2020 by

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 Registration Number (“CRA”), are: Nygard Holdings (USA) Limited (FEIN 3048), Nygard Inc. (FEIN 0509), Nygard NY Retail, LLC (FEIN 1672), Fashion Ventures, Inc. (FEIN 0956), Nygard International Partnership (FEIN 1535), Nygard Properties Ltd. (CRA 0003), Nygard Enterprises Ltd. (FEIN 7127), 4093887 Canada Ltd. (FEIN 1534), 4093879 Canada Ltd. (FEIN 1533).

² Capitalized terms not defined in this Order shall have the meaning ascribed to them in the Motion.

order (the “Receivership Order”) of the Court of Queen’s Bench Manitoba (the “Canadian Court”), Court File No. CI 20-01-26627 (the “Canadian Proceeding”), for entry of an order shortening the notice periods for an emergency hearing (the “Emergency Hearing”) on the (a) *Motion of the Receiver as Authorized Foreign Representative for Entry of an Order Granting Provisional Relief Pursuant to Sections 105(a) and 1519 of the Bankruptcy Code* (the “Provisional Relief Motion”), (b) *Motion of the Receiver as Authorized Representative for Joint Administration of Chapter 15 Cases and Related Relief* (the “Joint Administration Motion”), and (c) *Motion for Entry of an Order Scheduling a Hearing on Chapter 15 Petition for Recognition and Related Relief and Specifying Form and Manner of Notice of Service* (the “Scheduling and Notice Motion,” and collectively with the Emergency Motion and Joint Administration Motion, the “Motions”) and setting the date and time for the Emergency Hearing for March 19, 2020 at 10:00 a.m. (ET) or as soon thereafter as the Court may hear the Motions; and upon this Court’s review and consideration of the Motion to Shorten, the Verified Petition and the Benchaya Declaration; and this Court having jurisdiction to consider the Motion to Shorten and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion to Shorten and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P); and venue being proper before this Court pursuant to 28 U.S.C. § 1410(1) and (3); and appropriate, sufficient, and timely notice of the filing of the Motion to Shorten having been given; and the Court having found and determined that the relief sought in the Motion to Shorten is in the best interest of the Debtors, their creditors, and parties in interest, and is in the interest of international comity and not inconsistent with United States policy, and that the legal and factual basis set forth in the Motion to Shorten establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The relief requested in the Motion to Shorten is GRANTED as set forth in this Order.

2. The Court shall consider the Motions at an Emergency Hearing on March [___], 2020 at [___] [__].m. (ET).

3. All objections or other responses to the Motions may be made orally at the Emergency Hearing.

4. On March 18, 2020, the Foreign Representative shall serve a copy of this Order by email, facsimile transmission, or regular mail to: (i) the United States Trustee for the Southern District of New York (Attn: Paul K. Schwartzberg, Esq.); (ii) the Debtors; (iii) Peter J. Nygard; (iv) all persons or bodies authorized to administer foreign proceedings of the Debtors, including the Canadian Proceeding; (v) all entities against whom provisional relief is being sought under section 1519 of the Bankruptcy Code; (vi) all parties to litigation pending in the United States to which any of the Debtors is a party at the time of the filing of the Petition; and (vii) all parties that have filed a notice of appearance in these chapter 15 cases. Under the circumstances, no other or further notice is necessary.

Dated: March ____, 2020
New York, New York

UNITED STATES BANKRUPTCY JUDGE