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Counsel to the Foreign Representative

**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 OF THE FOREIGN REPRESENTATIVE
FOR ENTRY OF AN ORDER GRANTING PROVISIONAL RELIEF
PURSUANT TO SECTIONS 105(a) AND 1519 OF THE BANKRUPTCY CODE²**

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:

- (a) Nygard Holdings (USA) Limited ("Holdings");
Nygard Inc. ("Inc.");
Nygard NY Retail, LLC ("NY Retail"); and

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 References to sections and chapters are references to sections and chapters of the Bankruptcy Code unless otherwise stated.

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
4093889 Canada Ltd. (“4093889”) (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”), pursuant to sections 105(a) and 1519(a) of title 11 of the United States Code (as amended, the “Bankruptcy Code”), for entry of an order substantially in the form attached as **Exhibit A** (the “Provisional Relief Order”), enforcing the Receivership Order in the United States and provisionally applying sections 362 and 365(e) in these chapter 15 cases with respect to the Debtors and their property located in the United States, pending recognition of the Canadian Proceeding.

In support of the Motion, the Foreign Representative respectfully incorporates the following herein by reference: (a) the *Verified Petition Under Chapter 15 for Recognition of a Foreign Main Proceeding and Related Relief* (the “Verified Petition”)³ and (b) 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* (the “Benchaya Declaration”). In further support of the relief requested herein, the Foreign Representative represents as follows:

³ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Verified Petition.

BACKGROUND⁴

1. The Debtors, with various non-debtor entities respectively organized under the laws of the United States of America, Canada, and other jurisdictions (collectively, the “Nygaard Group”), comprise a clothing designer, manufacturer, supplier, and retailer with a head office located in Winnipeg, Manitoba, Canada, which acts as the “nerve center” of the Debtors’ businesses. Substantially all accounting functions, strategic decision making, communications functions, marketing and pricing decisions, new business development initiatives, negotiation of material contracts and leases, IT services, retail, services, design, merchandising, production, and distribution functions are managed centrally from the head office in Winnipeg. The Nygaard Group also has offices in New York City, Shanghai (where its research and design teams are based), Los Angeles, California (where its U.S. logistics operations are based), and Toronto (where its international sales and marketing team is based). It has three distribution centers located in Los Angeles (leased), and Toronto and Winnipeg (both owned by Properties). The Nygaard Group sources inventory from third-party garment manufacturers in Jordan, Bangladesh, Indonesia, Vietnam, and China. The Nygaard Group has multiple product lines and fashion brands, including Peter Nygaard Collections, Bianca Nygaard, Nygaard SLIMS, ALIA, ADX, and TanJay. The Nygaard Group employs approximately 1,450 people worldwide, of whom approximately 100 are located in the United States. The Nygaard Group operates 167 retail stores in Canada and two retail stores in the United States, and upon information and belief, supplied other retailers such as Dillard’s Inc. (“Dillard’s”) and Costco Wholesale Canada Ltd. (“Costco”) until recently.

⁴ To the extent the Foreign Representative has not had complete access to the books and records of the Nygaard Group, the Debtors provide the information contained in this Motion upon information and belief, and based upon information provided by the Lenders.

2. The Debtors and the other entities comprising the Nygard Group, are 100% privately owned and controlled by Peter J. Nygard, either directly or through a series of holding companies.

3. The Debtors are parties to that certain credit agreement dated as of December 30, 2019 (the “Credit Agreement”) with (i) Second Avenue Capital Partners, LLC (“Second Avenue”), as documentation agent and a lender, and (i) White Oak Commercial Finance, LLC (“White Oak,” and together with Second Avenue, the “Lenders”) as administrative agent and collateral agent and a lender. Pursuant to the Credit Agreement, among other things, the Lenders agreed to make formula-based revolving loans to the U.S. Debtors not to exceed \$40,000,000, secured by liens or security interests in substantially all personal property of the U.S. Debtors, and guaranteed by the Canadian Debtors and secured by substantially all of their personal property and certain real property located in Canada (the “Credit Facility”). The Credit Agreement is governed by the laws of the State of New York, and contains a forum selection clause in which the Debtors submitted to the jurisdiction of federal and state courts located in New York County, New York, with respect to any proceedings arising out of or related to the Credit Agreement, and waived objections to the venue of such courts with respect to such proceedings.

4. Almost immediately after closing the Credit Facility, on or about January 3, 2020, the Debtors committed various events of default under the Credit Agreement, and among other things, provided the Lenders with cash-flow forecasts and funding requests that contemplated a cash need that was several millions of dollars in excess of the amount available pursuant to the Credit Agreement’s borrowing base calculation.

5. The Lenders, with the assistance of Richter and despite limited cooperation from the Debtors and their principal Peter Nygard, made significant efforts to understand the Debtors' increased funding needs and potential solutions for the Nygard Group's liquidity crisis.

6. In the midst of the foregoing, the Lenders learned that Peter Nygard and several of the U.S. Debtors had been sued in a class action lawsuit in the United States District Court for the Southern District of New York captioned *Jane Does Nos. 1-10, individually and on behalf of all others similarly situated v.. Peter J. Nygard, Nygard Inc., Nygard International Partnership, and Nygard Holdings Limited*, case no. 1:20-cv-01288 (the "Class Action Lawsuit"). The Class Action Lawsuit alleges, among other things, that Mr. Nygard raped and sexually assaulted multiple children and women and that the defendant U.S. Debtors knowingly aided and abetted him in a decades-long sex-trafficking scheme. The Debtors advised White Oak of the Class Action Lawsuit nearly one week after its issuance, in breach of the Credit Agreement's requirement that the Nygard Group promptly notify White Oak of any litigation that could reasonably be expected to result in a material adverse effect on the business.

7. One week later, on February 25, 2020, a Federal Bureau of Investigation and New York Police Department task force raided the Nygard Group's New York City offices in connection with an investigation into sex trafficking. Later that day, Mr. Nygard publicly announced that he would resign from the Nygard Group and divest his interest therein. The same day, the Nygard Group's largest customer, Dillard's, released a public statement that it had refused current deliveries, canceled all existing orders, and suspended all future purchases from the Nygard Group. Dillard's termination of its relationship with the Nygard Group constituted yet another event of default under the Credit Agreement.

8. On February 26, 2020, White Oak delivered to the Debtors a demand for repayment and notice of intention to enforce its rights against its security pursuant to section 244 of the *Bankruptcy and Insolvency Act of Canada* (the “BIA”) (the “Demand and Section 244 Notice”). The Demand and Section 244 Notice specified the existing and continuing events of default known to White Oak and demanded the full payment of the outstanding indebtedness in the amount of \$25,870,783.37. Pursuant to certain security agreements entered into by White Oak and certain of the Canadian Debtors, White Oak has the right to appoint a receiver upon the occurrence of an event of default under the Credit Agreement.⁵

9. On March 18, 2020, the Canadian Court entered the Receivership Order. The Foreign Representative was appointed as receiver of all assets, undertakings, and properties of the Debtors pursuant to section 101 of the *Courts of Queen’s Bench Act* of the Province of Manitoba and section 243(1) of the BIA. The Receivership Order vests the Foreign Representative with broad power and control over the Debtors’ assets and businesses, including by granting the Foreign Representative express and sole authority to control the Debtors’ businesses and administer the Debtors’ assets. The Receivership Order also provides that the Debtors’ creditors are enjoined from taking action against the Debtors and their assets, wherever located. Receiver Order at ¶ 12-14.

10. Notwithstanding the worldwide application of the stay imposed by the Receivership Order, the Debtors’ creditors may attempt to take enforcement actions against the Debtors’ assets located within the territorial jurisdiction of the United States or refuse to recognize (or interfere with) the Foreign Representative’s authority to control, as receiver, the Debtors’ businesses and administer their assets.

⁵ Credit Agreement, at § 5.1(a)(i).

11. In order to enforce the Receivership Order in the United States and to obtain the benefit of the automatic stay, the Foreign Representative seeks provisional relief between the date hereof and the date on which this Court considers the Verified Petition.

JURISDICTION AND VENUE

12. 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.). This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P).

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

14. The statutory bases for relief are sections 105(a) and 1519.

RELIEF REQUESTED

15. Pursuant to sections 105(a) and 1519, the Foreign Representative respectfully requests that the Court enter the Provisional Relief Order, substantially in the form attached as **Exhibit A**, granting the following provisional relief pending recognition of the Canadian Proceeding as a foreign main proceeding:

- (a) The Foreign Representative shall be the representative of the Debtors with full and sole authority to administer the Debtors' assets and affairs in the United States on a provisional basis.
- (b) Sections 362 and 365 shall apply with respect to each of the Debtors and the property of each of the Debtors that is located within the territorial jurisdiction of the United States. Without limiting the generality of the foregoing, the Provisional Relief Order shall impose a stay within the territorial jurisdiction of the United States of:
 - i. the commencement or continuation, including the issuance or employment of process of, any judicial, administrative or any other action or proceeding involving or against the Debtors or their assets or proceeds thereof, or to recover a claim or enforce any judicial, quasi-judicial, regulatory, administrative or other judgment, assessment, order, lien or arbitration award against the Debtors or

their assets or proceeds thereof, or to exercise any control over the Debtors' assets located in the United States, except as provided in paragraph 13 of the Receivership Order (relating to the Class Action Lawsuit);

- ii. the commencement or continuation of any legal proceeding or action regarding the creation, perfection, seizure, attachment, enforcement, or execution of liens or judgments against the Debtors' property in the United States or of transferring, encumbering or otherwise disposing of or interfering with the Debtors' assets or agreements in the United States;
 - iii. the act to collect, assess, or recover a claim against any of the Debtors that arose before the commencement of the Debtors' chapter 15 cases;
 - iv. the setoff of any debt owing to any of the Debtors that arose before the commencement of the Debtors' chapter 15 cases against any claim against any of the Debtors;
 - v. the transfer, relinquishment, or disposal of any property of the Debtors to any entity (as that term is defined in section 101(15)) other than the Foreign Representative and its expressly authorized representatives and agents; and
 - vi. the termination, modification, refusal to perform, or otherwise acceleration of obligations or exercise of remedies under any contract with any of the Debtors on the basis of (i) the insolvency or financial condition of the Debtors at any time before the closing of these cases; (ii) the commencement of the Canadian Proceeding, the entry of the Receivership Order, or the commencement of these chapter 15 cases under this title; or (iii) the appointment of and taking possession by the Receiver of the Debtors' assets and contracts.
- (c) For counterparties to the Debtors' executory contracts and unexpired leases, section 365(e) shall apply with respect to each of the Debtors and the property of each of the Debtors that is located within the territorial jurisdiction of the United States.
- (d) The Foreign Representative shall have the rights and protections to which the Foreign Representative is entitled under chapter 15, including, but not limited to, the protections limiting the jurisdiction of United States courts over the Foreign Representative in accordance with section 1510 and the granting of additional relief in accordance with section 1519(a)(3).

- (e) Notwithstanding any provision in the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) to the contrary, (i) the Provisional Relief Order shall be effective immediately and enforceable upon entry, (ii) the Foreign Representative is not subject to any stay in the implementation, enforcement, or realization of the relief granted in the Provisional Relief Order, and (iii) the Foreign Representative is authorized and empowered, and may, in its discretion and without further delay, take any action and perform any act necessary to implement and effectuate the terms of the Provisional Relief Order. and
- (f) Such other relief as may be just and proper.

16. Section 1519(a) provides that “from the time of filing of a petition for recognition until the court rules on the petition, the court may at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor ... grant relief of a provisional nature, including – (1) staying execution against the debtor’s assets; (2) entrusting the administration or realization of all or part of the debtor’s assets located in the United States to the foreign representative or another person authorized by the court, including an examiner, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and (3) any relief referred to in paragraph (3), (4), or (7) of section 1521(a).”

BASIS FOR RELIEF

17. The Foreign Representative seeks the benefits of sections 362 and 365(e) to maintain the status quo until the Court holds a hearing to consider the Verified Petition. The Receiver also seeks provisional relief under sections 105(a) and 1519 and intends to seek the continuation of the automatic stay through the application of section 1521(a) at the hearing to recognize the Canadian Proceeding as a foreign main proceeding.

I. Provisional Relief is Urgently Needed, is Necessary and is Appropriate Under the Circumstances

18. Provisional relief should be granted “where relief is urgently needed to protect the assets of the debtor or the interest of creditors . . .” 11 U.S.C. § 1519(a).

19. Although a “petition for recognition of a foreign proceeding shall be decided upon at the earliest possible time,” there is necessarily a gap between the time the petition is filed and the time the court makes a decision on whether the foreign proceeding should be recognized. 11 U.S.C. § 1517(c). Prior to recognition, a chapter 15 debtor does not enjoy the benefit of the automatic stay, which, in this case, necessitates an order granting provisional relief to protect the Debtors’ assets located in the territorial jurisdiction of the United States. Without the application of the automatic stay and the ability of the Receiver to control the Debtors’ assets located in the United States, there is a material risk that the Debtors’ creditors may commence enforcement actions against the Debtors and their properties located in the United States during the gap period between the Petition Date and the date on which this Court determines whether to recognize the Canadian Proceeding. The Foreign Representative also needs provisional relief to assist it in obtaining and maintaining control over the Debtors’ assets located within the territorial jurisdiction of the United States.

20. As a result, there is an urgent need for provisional relief to (i) stay the commencement or continuation of actions against the Debtors and their assets in the United States, (ii) ensure that the counterparties to the Debtors’ contracts continue to perform, and (iii) authorize the Receiver to operate, manage and administer the Debtors’ assets in the United States.

21. Courts in this District and other districts routinely grant the type of provisional relief sought herein. *See, e.g., In re Imperial Tobacco Canada Ltd.*, Case No. 19-10771 (SCC) [Dkts 14 and 22] (Bankr. S.D.N.Y. Mar. 14, 2019 & Mar. 25, 2019) (applying section 1519 and granting the

protection of section 362); *In re Mood Media Corp.*, Case No. 17-11413 (MEW) [Dkt 21] (Bankr. S.D.N.Y. May 24, 2017) (same); *In re Tervita Corp.*, Case No. 16-12920 (MEW) [Dkt 18] (Bankr. S.D.N.Y. Oct. 26, 2016) (same); *In re Grupo Isolux Corsan, S.A.*, Case No. 16-12202 (SHL) [Dkts 20, 21 and 22] (Bankr. S.D.N.Y. Aug. 3, 2016) (same); *In re Oi S.A.*, Case No. 16-11791 (SHL) [Dkt 22] (Bankr. S.D.N.Y. June 22, 2016) (same); *In re Daiichi Chuo Kisen Kaisha*, Case No. 1512650 (MEW) [Dkts 11 and 16] (Bankr. S.D.N.Y. Sept. 29, 2015 & Oct. 7, 2015) (same); *In re Caledonian Bank Limited*, Case No. 15-10324 (MG) [Dkts 8 and 20] (Bankr. S.D.N.Y. Feb. 16, 2015 & Feb. 25, 2015) (same); *In re SIFCO S.A.*, Case No. 14-11179 (MKV) [Dkt 21] (Bankr. S.D.N.Y. May 7, 2014) (same); *see also In re Unique Broadband Sys. Ltd.*, Case No. 19-11321 (KG) [Dkt 12] (Bankr. D. Del. June 13, 2019) (granting the protection of sections 362 and 365(e) of the Bankruptcy Code on a provisional basis); *In re Innova Global Ltd.*, Case No. 19-10653-R [Dkt 13] (Bank. N.D. Okla. Apr. 5, 2019) (authorizing a receiver acting as a foreign representative to operate the debtor's business and administer its assets in the United States on provisional basis); *In re Kraus Carpet Inc.*, Case No. 18-12057 (KG) [Dkt 17] (Bankr. D. Del. Sept. 12, 2018) (order granting provisional relief to apply sections 362 and 365(e)); and *In re RCR Int'l Inc.*, Case No. 18-10112 (LSS) [Dkt 18] (Bankr. D. Del. Feb. 14, 2018) (same).

22. Moreover, under section 1522, a court may grant relief under section 1519, if the "interests of the creditors and other interested entities, including the debtor, are sufficiently protected." 11 U.S.C. § 1522(a). The relief sought herein is provisional pending recognition of the Canadian Proceeding as a foreign main proceeding and supplements the stay in place in Canada under the Receivership Order. In the Verified Petition, the Debtors have requested that the Court exercise its discretion to grant relief similar to the provisional relief requested herein on a final basis after notice and a hearing. In each case, the relief requested will enable the Receiver to

liquidate the Debtors' assets in an orderly fashion through a centralized process for the benefit of the Debtors' creditors. Accordingly, all creditors are sufficiently protected.

II. The Provisional Relief Satisfies the Preliminary Injunction Standard

23. Under section 1519, provisional relief is conditional upon a foreign representative satisfying the applicable standard for injunctive relief. 11 U.S.C. § 1519(e). In the Second Circuit, a party is entitled to injunctive relief if it can show (i) irreparable harm and (ii) either (a) probability of success on the merits or (b) if there is doubt as to the merits, the balance of hardships weighing in favor of the party seeking injunctive relief. *See, e.g., Tinnerello & Sons, Inc.*, 141 F.3d 46, 51-52 (2d Cir. 1998). In evaluating these factors, courts take a "flexible approach and no one factor is determinative." *In re Calpine Corp.*, 365 B.R. 401, 409 (S.D.N.Y. 2007) (internal citations omitted). The Foreign Representative satisfies this standard.

A. The Debtors will Suffer Irreparable Harm if Provisional Relief is not Granted

24. The Foreign Representative's request to apply sections 362 and 365(e) on a provisional basis is necessary to prevent irreparable harm to the Debtors and their assets located in the United States. Absent such relief, the Debtors' assets located in the United States may become subject to enforcement actions from various creditors and litigants that may not believe that they are bound by the Canadian Court's Receivership Order.

25. Courts have held that the disorderly dissolution of a debtor's estate rises to the level of irreparable harm that justifies a court's intervention on behalf of the debtor. *See, e.g., In re Netia Holdings, S.A.*, 278 B.R. 344, 353 (Bankr. S.D.N.Y. 2002) ("[i]t is well established, at least in this district, 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) ("[a]s a rule, therefore, irreparable harm exists whenever local creditors of the foreign debtor seek to collect

their claims or obtain preferred positions to the detriment of the other creditors.”); *In re Lines*, 81 B.R. 267, 270 (Bankr. S.D.N.Y. 1988) (“[w]ith respect to irreparable injury, we note that there appears to be little dispute regarding the notion that the premature piecing out of property involved in a foreign liquidation proceeding constitutes irreparable injury.”).

26. Absent the requested relief, the Debtors are at risk of facing individual enforcement actions by creditors, which would destroy the value of the Debtors’ estates. Allowing creditors to attack the Debtors in a piecemeal fashion would undermine the comprehensiveness of the Canadian Proceeding, which is a collective judicial proceeding that has a priority scheme and characteristics similar to a chapter 7 liquidation. The relief requested would allow the Receiver to liquidate the Debtors’ assets in an orderly fashion through a centralized process and without interference while the Debtors’ Petition for recognition of the Canadian Proceeding is pending.

B. There is a Substantial Likelihood That the Canadian Proceeding will be Recognized as a Foreign Main Proceeding

27. The Foreign Representative is likely to succeed on the merits because the Canadian Proceeding satisfies the requirements of a foreign main proceeding. As set forth in detail in the Verified Petition and the Benchaya Declaration, the Canadian Proceeding is (i) a “foreign proceeding” as defined under section 101(23) and (ii) a “foreign main proceeding” as defined in section 1502(4). Moreover, the Foreign Representative has demonstrated that it is a proper “foreign representative” as defined under Section 101(24). Additionally, the Verified Petition was filed in accordance with, and satisfies the applicable requirements of, chapter 15.

28. Courts in this District and other districts have granted recognition to foreign proceedings similar to the Canadian Proceeding. *See, e.g., In re Cash Store Finance Servs. Inc.*, Case No. 15-12813 (MEW) [Dkt 20] (Bankr. S.D.N.Y. Nov. 25, 2015) (granting recognition of a Canadian proceeding in which a monitor was appointed by a Canadian court); *In re Sherson Group*

Inc., Case No. 1511765 (SHL) [Dkt 25] (Bankr. S.D.N.Y. July 27, 2015) (granting recognition of a Canadian proceeding under the BIA); *see also In re Mundo Media Ltd.*, Case No. 19-11365 (KBO) [Dkt 14] (Bankr. D. Del. July 11, 2019) (recognizing a Canadian receivership proceeding as a foreign main proceeding); *In re Unique Broadband Sys. Ltd.*, Case No. 19-11321 (KG) [Dkt 18] (Bankr. D. Del. July 8, 2019) (recognizing a Canadian receivership proceeding as a foreign main proceeding and enforcing a receivership order on a provisional basis under section 1519(a)). Thus, the likelihood of success on the underlying merits is substantial.

C. The Balance of Harm Weighs in Favor of the Debtors

29. The balance of harm also weighs in favor of granting the provisional relief. Maintaining the *status quo* will preserve the value of the Debtors' assets located in the United States and empower the Receiver to liquidate the Debtors' assets in an orderly fashion. *See In re Innua Canada Ltd.*, Case No. 09-16362, 2009 WL 1025088, at *4 (Bankr. D.N.J. Mar. 25, 2009) (temporarily maintaining the *status quo* pending recognition of the foreign proceedings served to benefit creditors "by allowing for an orderly administration of the Foreign Debtors' financial affairs under the Canadian Proceeding," tipping the balance of harm in favor of the foreign representative); *see also In re Atlas Shipping A/S*, 404 B.R. 726, 742 (Bankr. S.D.N.Y. 2009) (denying certain creditors an advantage over the debtor's other creditors is not a valid reason to deny relief to the foreign representative).

30. The Canadian Proceeding is a collective and centralized process and parties in interest will have an opportunity to participate in that proceeding. Granting this Motion will preserve the Debtors' assets and permit the distribution of the proceeds thereof in accordance with Canadian law.

LOCAL RULE 9013-1(a)

31. This Motion cites the applicable rules and statutory provisions upon which the relief requested is predicated, and discusses their application to this Motion. Accordingly, this Motion satisfies Local Rule 9013-1(a).

NOTICE

32. Notice of this Motion 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.

NO PRIOR REQUEST

33. No prior request for the relief sought in this Motion has been made to this or any other court.

WAIVER OF FRCP RULE 65(C)

34. Bankruptcy Rule 7065 expressly provides that “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).” To the extent Rule 65 of the Federal Rules of Civil Procedure (“FRCP”) applies, the security requirements imposed by FRCP Rule 65(c) are unwarranted under the circumstances and, accordingly, the Foreign Representative respectfully requests a waiver of such requirements.

CONCLUSION

WHEREFORE, the Foreign Representative respectfully requests entry of an order, substantially in the form attached as **Exhibit A**, granting the relief requested herein 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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Cindi M. Giglio, Esq.

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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

Case No. 20-10828 (____)

Joint Administration Requested

**ORDER GRANTING PROVISIONAL RELIEF PURSUANT
TO SECTIONS 105(a) AND 1519 OF THE BANKRUPTCY CODE**²

Upon the motion (the “Motion”)³ 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 4093889 Canada Ltd. (“4093889”) (collectively, the “Canadian Debtors,” and together with the U.S. Debtors, the “Debtors”), each of which 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”), for entry of a provisional order under

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 References to sections and chapters are references to sections and chapters of the Bankruptcy Code unless otherwise stated.

³ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

sections 105(a) and 1519(a) of title 11 of the United States Code (the “Bankruptcy Code”); and upon this Court’s review and consideration of the Motion, the Verified Petition and the Benchaya Declaration; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and 11 U.S.C. §§ 105(a) and 1519; and consideration of the Motion 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 and the hearing thereon having been given pursuant to Rule 2002(q) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”); and upon the record established at such hearing; and the Court having found and determined that the provisional relief sought in the Motion 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 establish just cause for the relief granted herein; and no objections or other responses having been filed that have not been overruled, withdrawn or otherwise resolved; and after due deliberation and sufficient cause appearing therefor, the Court finds and concludes as follows:⁴

a. There is a substantial likelihood that the Foreign Representative will successfully demonstrate that the Canadian Proceeding constitutes a “foreign main proceeding” as defined in section 1502(4).

b. The commencement or continuation of any action or proceeding in the United States against the Debtors should be enjoined pursuant to sections 105(a) and 1519 to permit the

⁴ The findings and conclusions set forth herein and on the record of the Hearing constitute this Court’s findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, as made applicable herein by Bankruptcy Rules 7052 and 9014. To the extent any of the findings of fact herein constitute conclusions of law, they are adopted as such. To the extent any of the conclusions of law herein constitute findings of fact, they are adopted as such.

expeditious and efficient administration of the Canadian Proceeding, and such relief will either (a) not cause an undue hardship to other parties in interest or (b) any hardship to parties is outweighed by the benefits of the relief requested.

c. Unless a preliminary injunction is issued, there is a material risk that the Debtors' creditors or other parties-in-interest in the United States could use the Canadian Proceeding and these chapter 15 cases as a pretext to exercise certain remedies or to terminate executory contracts or unexpired leases against the Debtors and their assets located within the territorial jurisdiction of the United States.

d. Such acts could (a) interfere with the jurisdictional mandate of this Court under chapter 15, (b) interfere with and cause harm to the Receiver's efforts to administer the Canadian Proceeding, (c) interfere with the Receiver's management of and control over the Debtors' assets, and (d) undermine the Receiver's efforts to achieve an equitable result for the benefit of all of the Debtors' creditors. Accordingly, there is a material risk that the Debtors may suffer immediate and irreparable harm, and it is therefore necessary that the Court enter this Order.

e. The Foreign Representative and the Debtors are entitled to the full protections and rights available pursuant to section 1519(a)(1)-(3).

f. All creditors and other parties in interest, including the Debtors, are and will be sufficiently protected following granting of the Motion.

Based on the foregoing findings of fact, after due deliberation, and sufficient cause appearing therefor,

IT IS HEREBY ORDERED:

1. The relief requested in the Motion is GRANTED effective immediately on an interim basis and continuing until the entry of an order of this Court recognizing the Canadian

Proceeding as “foreign main proceeding” as defined in section 1502(4) and the Foreign Representative as a “foreign representative” as defined in section 101(24) (unless otherwise extended pursuant to section 1519(b)):

- a. The Foreign Representative shall be the representative of the Debtors with full and sole authority to administer the Debtors’ assets and affairs in the United States on a provisional basis.
- b. Sections 362 and 365 shall apply with respect to each of the Debtors and the property of each of the Debtors that is located within the territorial jurisdiction of the United States. Without limiting the generality of the foregoing, the Provisional Relief Order shall impose a stay within the territorial jurisdiction of the United States of:
 - (i) the commencement or continuation, including the issuance or employment of process of, any judicial, administrative or any other action or proceeding involving or against the Debtors or their assets or proceeds thereof, or to recover a claim or enforce any judicial, quasi-judicial, regulatory, administrative or other judgment, assessment, order, lien or arbitration award against the Debtors or their assets or proceeds thereof, or to exercise any control over the Debtors’ assets located in the United States;
 - (ii) the creation, perfection, seizure, attachment, enforcement, or execution of liens or judgments against the Debtors’ property in the United States or from transferring, encumbering or otherwise disposing of or interfering with the Debtors’ assets or agreements in the United States;
 - (iii) the act to collect, assess, or recover a claim against any of the Debtors that arose before the commencement of the Debtors’ chapter 15 cases;
 - (iv) the setoff of any debt owing to any of the Debtors that arose before the commencement of the Debtors’ chapter 15 cases against any claim against any of the Debtors;
 - (v) the transfer, relinquishment or disposal of any property of the Debtors to any entity (as the term “entity” is defined in section 101(15)) other than the Foreign Representative and its expressly authorized representatives and agents; and
 - (vi) the termination, modification, refusal to perform, or otherwise acceleration of obligations or exercise of remedies under any contract with any of the Debtors on the basis of (i) the insolvency or financial condition of the Debtors at any time before the closing of these cases; (ii) the commencement of the Canadian Proceeding, the entry of the Receivership Order, or the commencement of these chapter 15 cases; or (iii) the appointment of and taking possession by the Receiver of the Debtors’ assets and contracts.

- c. For counterparties to the Debtors' executory contracts and unexpired leases, section 365(e) shall apply with respect to each of the Debtors and the property of each of the Debtors that is located within the territorial jurisdiction of the United States.
- d. The Foreign Representative shall have the rights and protections to which the Foreign Representative is entitled under chapter 15, including, but not limited to, the protections limiting the jurisdiction of United States courts over the Foreign Representative in accordance with section 1510 and the granting of additional relief in accordance with section 1519(a)(3).
- e. Notwithstanding any provision in the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") to the contrary, (i) the Provisional Relief Order shall be effective immediately and enforceable upon entry, (ii) the Foreign Representative is not subject to any stay in the implementation, enforcement, or realization of the relief granted in the Provisional Relief Order, and (iii) the Foreign Representative is authorized and empowered, and may, in its discretion and without further delay, take any action and perform any act necessary to implement and effectuate the terms of the Provisional Relief Order.

2. The Foreign Representative, in connection with his appointment as the Debtors' Receiver in the Canadian Proceeding or as the "foreign representative" in these chapter 15 cases, and the Debtors are hereby granted the full protections and rights available pursuant to section 1519(a)(1)-(3).

3. Notwithstanding anything to the contrary contained herein, this Order shall not, and shall not be construed as: (i) enjoining the police or regulatory act of a governmental unit, including a criminal action or proceeding, to the extent not stayed under section 362; (ii) staying the exercise of any rights that section 362(o) does not allow to be stayed; and (iii) staying the Class Action Lawsuit until a judgment is achieved, after which the Class Action Lawsuit plaintiffs, acting in any capacity including as judgment creditors, shall be stayed, including from, any efforts to record, collect, or otherwise enforce any judgment they may obtain. In furtherance of subparagraph (iii) above, paragraph 13 of the Receivership Order is incorporated by reference.

4. The Foreign Representative, the Debtors and each of their successors, representatives, advisors, or counsel shall be entitled to the limits on jurisdiction contained in sections 306 and 1510.

5. Pursuant to Bankruptcy Rule 7065, the security provisions of Rule 65(c) of the Federal Rules of Civil Procedure are waived.

6. This Order, the proposed order recognizing the Canadian Proceeding as a “foreign main proceeding” as defined in section 1502(4) and the Foreign Representative as a “foreign representative” as defined in section 101(24), and notice of the hearing on the Petition shall be served on: (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.

7. The banks and financial institutions with which the Debtors maintain bank accounts or on which checks are drawn or electronic payment requests made in payment of prepetition or postpetition obligations are authorized and directed to continue to service and administer the Debtors’ bank accounts without interruption and in the ordinary course and to receive, process, honor and pay any and all such checks, drafts, wires and automatic clearing house transfers issued, whether before or after the petition date and drawn on the Debtors’ bank accounts by respective holders and makers thereof at the direction of the Foreign Representative.

8. Service in accordance with this Order shall be deemed good and sufficient service and adequate notice for all purposes. The Foreign Representative, the Debtors, and their respective agents are authorized to serve or provide any notices required under the Bankruptcy Rules or Local Rules.

9. The Foreign Representative and its agents are authorized and empowered to take all actions necessary to effectuate the relief granted under this Order.

10. This Order shall be effective and enforceable immediately upon its entry.

11. This Court shall retain jurisdiction regarding the enforcement, amendment, or modification of this Order, any requests for additional relief or any adversary proceeding related to these chapter 15 cases.

Dated: March __, 2020
New York, New York

UNITED STATES BANKRUPTCY JUDGE