

THE QUEEN'S BENCH
WINNIPEG CENTRE

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER PURSUANT TO
SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY*
ACT, R.S.C. 1985 c. B-3, AS AMENDED, AND SECTION 55 OF
THE COURT OF QUEEN'S BENCH ACT, C.C.S.M., c. C280

BETWEEN:

WHITE OAK COMMERCIAL FINANCE, LLC,

Applicant,

- and -

NYGÅRD HOLDINGS (USA) LIMITED, NYGARD INC., FASHION
VENTURES, INC., NYGARD NY RETAIL, LLC, NYGARD ENTERPRISES
LTD., NYGARD PROPERTIES LTD., 4093879 CANADA LTD., 4093887
CANADA LTD., and NYGARD INTERNATIONAL PARTNERSHIP,

Respondents.

NOTICE OF MOTION OF THE RECEIVER
(DOCUMENT TRANSFER/ABANDONMENT/DESTRUCTION AUTHORIZATION
ORDER)
HEARING DATE: WEDNESDAY, SEPTEMBER 30, 2020 at 10:00 a.m.
BEFORE THE HONOURABLE MR. JUSTICE EDMOND

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THE QUEEN'S BENCH
WINNIPEG CENTRE

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER PURSUANT TO SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985 c. B-3, AS AMENDED, AND SECTION 55 OF *THE COURT OF QUEEN'S BENCH ACT*, C.C.S.M., c. C280

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Respondents.

NOTICE OF MOTION OF THE RECEIVER –
DOCUMENT
TRANSFER/ABANDONMENT/DESTRUCTION
AUTHORIZATION ORDER

Richter Advisory Group Inc. in its capacity as court-appointed receiver (in such capacity, the “**Receiver**”) of Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC, Nygard Enterprises Ltd., Nygard Properties Ltd., 4093879 Canada Ltd., 4093887 Canada Ltd., and Nygard International Partnership (collectively the “**Debtors**”, and any one of them, a “**Debtor**”), will make a motion before The Honourable Mr. Justice Edmond on Wednesday, the 30th day of September, 2020 at 10:00 a.m., or as soon after that time as the motion can be heard, at the Winnipeg Law

Courts Building, 408 York Avenue, Winnipeg, Manitoba.

THE MOTION IS FOR:

1. An Order under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and pursuant to the inherent jurisdiction of this Honourable Court, substantially in the form attached hereto as Schedule "A" (the “**Document Transfer/Abandonment/Destruction Authorization Order**”), *inter alia*:
 - (a) Abridging the time for service of this Notice of Motion and the materials filed in support of this motion, such that this motion is properly returnable on the stated hearing date, and dispensing with further service thereof;
 - (b) Confirming that, in accordance with paragraph 2(e) of that certain Settlement Agreement (the “**E/B Settlement Agreement**”) made as of September 4, 2020 among the Receiver (on behalf of the Debtors other than as to certain actions of NEL and NPL in relation to providing certain real property mortgages as described in the E/B Settlement Agreement), Edson’s Investments Inc. (“**Edson’s**”), Brause Investments Inc. (“**Brause**”), NPL and Peter J. Nygard, as approved pursuant to the E/B Settlement Approval Order made by this Honourable Court on September 15, 2020, the Receiver is authorized to abandon and leave in the California Properties (as defined in the E/B Settlement Approval Order) all documents, other physical records, and other property (including, without limitation, obsolete / damaged inventory, furnishing, fixtures and equipment) located in each of the California Properties at the time of the surrender of possession each of the respective California

Properties;

- (c) directing and authorizing the transfer of the Records and Data Storage Equipment (as hereinafter defined) located at certain real property owned by the Debtors at 1771 Inkster Boulevard in Winnipeg, Manitoba (“**Inkster**”) and 701 Broadway in Winnipeg, Manitoba (“**Broadway**”) which the Receiver no longer requires for the purposes of the Receivership to the party or parties (the “**Transferee**”) to be identified by counsel for the Debtors;
 - (d) Authorizing and empowering the Receiver to abandon, destroy or otherwise dispose of the Transferred Records and Data Storage Equipment (as hereinafter defined) in the event that the Transferee does not remove the Transferred Records and Data Storage Equipment from Inkster and Broadway within a prescribed time period;
 - (e) Approving the Eighth Report of the Receiver and the conduct and activities of the Receiver and its counsel described therein.
2. In the alternative, the advice and direction of this Honourable Court concerning the transfer and/or abandonment and/or destruction of the Transferred Records and Data Storage Equipment;
 3. Such further and other relief as the circumstances of this case may require, and as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

1. On March 18, 2020, this Honourable Court made the an Order (the “**Receivership Order**”) appointing the Receiver over all the assets, undertakings and properties of the Debtors (including the assets dealt with the Settlement Agreement), which Receivership Order was subsequently amended (by that certain General Order made April 29, 2020 in these proceedings) in relation to assets, undertakings and properties of the Debtors Nygard Enterprises Ltd. and Nygard Properties Ltd. (“**NPL**”). The assets, undertakings and properties of the Debtors subject to the Receivership Order, as amended, are hereinafter referred to as the “**Property**”.
2. The Debtors carried on business and stored Property (and documents and records in or subject to the possession and control of the Receiver pursuant to the Receivership Order) at certain real property located at 312 & 332 East Rosecrans Avenue, Gardena, California (“**East Rosecrans**”), 14401 South San Pedro Street, Gardena, California (“**14401 South San Pedro**”) and 14421 South San Pedro Street, Gardena, California (“**14421 South San Pedro**” and together with East Rosecrans and 14401 South San Pedro, the “**California Properties**”).
3. On September 15, 2020 this Honourable Court made the E/B Settlement Approval Order approving the E/B Settlement Agreement and the transactions contemplated therein including, *inter alia*, the surrender of possession of the California Properties and the sale of certain inventory stored at the California Properties.
4. Paragraph 2(e) of the E/B Settlement Agreement provides that the Receiver is entitled, without cost, to abandon and leave in the California Properties all documents,

other physical records and other property (including, without limitation, obsolete / damaged inventory, furnishing, fixtures and equipment) located therein at the time of the respective surrender of possession of the California Properties.

5. The Debtor NPL owns, and the Debtors have carried on business at, Inkster and Broadway.
6. The Debtors currently store Property and other documents, records and items in or subject to the possession and control of the Receiver pursuant to the Receivership Order, at Inkster and Broadway including, *inter alia*, documents and other physical records (including, without limitation, books, documents, securities, contracts, orders, corporate and accounting records, and other papers, records and hardcopy information of any kind) (collectively, “**Physical Records**”), computer hard drives, servers and associated server equipment (including, without limitation, email messages, letters and other communications and other documents and files stored or filed digitally or electronically thereon or accessible thereby (collectively, “**Electronic Records**” and together with Physical Records “**Records and Data Storage Equipment**”).
7. As reflected in the Reports of the Receiver filed to date with this Honourable Court, the Receiver has, since being appointed as Receiver, engaged in efforts to sell the Property, including Inkster and Broadway.
8. Although Inkster and Broadway have not yet been sold, in anticipation of the sale of Inkster and Broadway, the Receiver requires that the Records and Data Storage Equipment that are no longer required by the Receiver for the purposes of these

receivership proceedings (the “**Transferred Records and Data Storage Equipment**”) be removed.

9. The Debtors have indicated that they may be interested in regaining possession and control of the Transferred Records and Data Storage Equipment.
10. If the Receiver were required to retain the Transferred Records and Data Storage Equipment, then the Transferred Records and Data Storage Equipment would need to either be stored at locations other than Inkster and/or Broadway for some indeterminate period of time, or destroyed. Given the volume of the Transferred Records and Data Storage Equipment, storage would be very costly.
11. The Receiver has determined that it is not in the interests of stakeholders in this proceeding to incur large storage costs in order to retain Transferred Records and Data Storage Equipment, which the Receiver has determined are no longer required for the purposes of these receivership proceedings.
12. In the event that the Transferee does not remove the Transferred Records and Data Storage Equipment from Inkster and Broadway, the Receiver intends to abandon, destroy or otherwise dispose of the Transferred Records and Data Storage Equipment in order to avoid unnecessary storage costs.
13. The Receivership Order and paragraph 2(e) of the E/B Settlement Approval Order.
14. Section 95 of *The Corporations Act*, C.C.S.M. c. C225.
15. The BIA, including sections 243 and 249.

16. Rules 3, 4, 6, 11 and 13 of the *Bankruptcy and Insolvency General Rules*, C.R.C. c. 368.
17. Rules 2.03, 3.02, 16.04, 37 and 41.05 of the *Queen's Bench Rules*, M.R. 553/88, as amended.
18. Such further and other grounds as counsel for the Receiver may advise and as this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The First Report of the Receiver, dated April 20, 2020
2. The Second Report of the Receiver dated May 27, 2020;
3. The Third Report of the Receiver dated June 22, 2020;
4. The Fourth Report of the Receiver, dated June 17, 2020;
5. The Fifth Report of the Receiver dated July 6, 2020;
6. The Sixth Report of the Receiver dated August 3, 2020;
7. The Seventh Report of the Receiver dated September 10, 2020;
8. The Eighth Report of the Receiver to be filed; and

9. Such further and other evidence as counsel for the Receiver may advise and this Honourable Court may permit.

September 25, 2020

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TO: THE ATTACHED SERVICE LIST

**THE QUEEN'S BENCH
Winnipeg Centre**

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER PURSUANT TO SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C., C. B-3, AS AMENDED, AND SECTION 55 OF *THE COURT OF QUEEN'S BENCH ACT*, C.C.S.M., C. C280, AS AMENDED

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Respondents

SERVICE LIST

(as at September 25, 2020)

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SCHEDULE "A"

File No. CI 20-01-26627

**THE QUEEN'S BENCH
WINNIPEG CENTRE**

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER PURSUANT TO SECTION 243 OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985 c. B-3, AS AMENDED, AND SECTION 55 OF THE COURT OF QUEEN'S BENCH ACT, C.C.S.M., c. C280

BETWEEN:

WHITE OAK COMMERCIAL FINANCE, LLC,

Applicant,

- and -

NYGÅRD HOLDINGS (USA) LIMITED, NYGARD INC., FASHION VENTURES, INC., NYGARD NY RETAIL, LLC, NYGARD ENTERPRISES LTD., NYGARD PROPERTIES LTD., 4093879 CANADA LTD., 4093887 CANADA LTD., and NYGARD INTERNATIONAL PARTNERSHIP,

Respondents.

**DOCUMENT TRANSFER / ABANDONMENT / DESTRUCTION
AUTHORIZATION ORDER**

Thompson Dorfman Sweatman LLP
Barristers and Solicitors
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(Matter No. 0173004 GBT)
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THE QUEEN'S BENCH

WINNIPEG CENTRE

THE HONOURABLE)
MR. JUSTICE EDMOND) Wednesday, the 30th day of September, 2020
)

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER PURSUANT TO SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985 c. B-3, AS AMENDED, AND SECTION 55 OF *THE COURT OF QUEEN'S BENCH ACT*, C.C.S.M., c. C280

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Respondents.

DOCUMENT TRANSFER / ABANDONMENT / DESTRUCTION
AUTHORIZATION ORDER

THIS MOTION, made by Richter Advisory Group Inc. in its capacity as court-appointed Receiver (in such capacity, the “**Receiver**”) without security, of the assets, undertakings and properties of Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC, Nygard Enterprises Ltd. (“**NEL**”), Nygard

Properties Ltd. (“**NPL**”), 4093879 Canada Ltd., 4093887 Canada Ltd., and Nygard International Partnership (collectively, the “**Debtors**”) as provided for in the Order of this Court pronounced on March 18, 2020 (as amended by the General Order of this Court pronounced April 29, 2020) (together, the “**Receivership Order**”), for, *inter alia*, an Order directing and authorizing the transfer to the Debtors, or abandonment or destruction (as the case may be), of physical documents / records and electronic records in or subject to the possession of the Receiver pursuant to the Receivership Order and approving and authorizing Eighth Report of the Receiver dated September •, 2020 (the “**Eighth Report**”) was heard this day at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

ON READING the Notice of Motion of the Receiver, the First Report of the Receiver dated April 20, 2020, the Second Report of the Receiver dated May 27, 2020, the Third Report of the Receiver dated June 22, 2020, the Fourth Report of the Receiver dated June 17, 2020, the Fifth Report of the Receiver dated July 6, 2020, the Sixth Report of the Receiver dated August 3, 2020, the Seventh Report of the Receiver dated September •, 2020 and the Eighth Report, and on hearing the submissions of counsel for the Receiver, counsel for the Applicant, counsel for Edson’s Investments Inc. (“**Edson’s**”) and Brause Investments Inc. (“**Brause**”), counsel for Peter J. Nygard and the Debtors, and counsel for •, no one appearing for any other person, although properly served as appears from the Affidavit of Service of • affirmed September •, 2020 filed herein:

1. THIS COURT ORDERS that the time for service of the Notice of Motion of the Receiver and the Eighth Report is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

DOCUMENT TRANSFER / ABANDONMENT / DESTRUCTION

2. THIS COURT ORDERS that, in accordance with paragraph 2(d) of that certain Settlement Agreement (the “**E/B Settlement Agreement**”) made as of September 4, 2020 among the Receiver (on behalf of the Debtors other than as to certain actions of NEL and NPL in relation to providing certain real property mortgages as described in the E/B Settlement Agreement), Edson’s, Brause, NPL and Peter J. Nygard, as approved pursuant to the E/B Settlement Approval Order made on September 15, 2020, the Receiver is hereby authorized, without cost, to abandon and leave in the California Properties (as defined in the E/B Settlement Agreement), all documents, other physical records and other property (including, without limitation, obsolete / damaged inventory, furnishing, fixtures and equipment) located in each of the California Properties at the time of the surrender of possession each of the respective California Properties in accordance with the provisions of the E/B Settlement Agreement.

3. THIS COURT ORDERS that, for the purposes of this Order, “**Records and Data Storage Equipment**” shall mean documents and other physical records (including, without limitation, any and all books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and hardcopy information of any kind) (collectively, “**Physical Records**”), computer hard drives, servers and associated server equipment (including, without limitation, email messages, letters and other communications and other documents and files stored or filed digitally or electronically thereon or accessible thereby (collectively, “**Electronic Records**”), in or subject to the possession and control of the Receiver pursuant to the Receivership Order, whether or not same are Property as defined in the Receivership Order.

4. THIS COURT ORDERS that, subject to the terms of this Order and to:

(a) the retention by the Receiver of possession and control (or the right to possession and control) of such Records and Data Storage Equipment, and

(b) the right of the Receiver to make and, notwithstanding any transfer contemplated by this Order, use copies of such of the Electronic Records (**"Copied Electronic Records"**) and Physical Records,

as the Receiver may, in its sole discretion, determine are required for the continuing purposes of these receivership proceedings, the Receiver be and is hereby authorized and empowered, but not obligated, to, at the request (**"Request"**) of counsel for the Debtors, transfer possession and control of Records and Data Storage Equipment currently located at the properties having the civic addresses of 1771 Inkster Boulevard in Winnipeg, Manitoba (**"Inkster"**), and 701 Broadway in Winnipeg, Manitoba (**"Broadway"**), to the party or parties (the **"Transferee"**) to be identified by counsel for the Debtors in accordance with paragraph 5 below.

5. THIS COURT ORDERS that such Request and the name of the Transferee shall be communicated by counsel for the Debtors to counsel for the Receiver, in writing, on or before October 10, 2020, which Transferee shall proceed promptly thereafter to make reasonable arrangements with the Receiver to pick up, at the sole cost of the Transferee, the Records and Data Storage Equipment which the Receiver no longer requires for the purposes of these receivership proceedings (the **"Transferred Records and Data Storage Equipment"**), and to remove the Transferred Records and Data Storage Equipment from Inkster and Broadway within 15 days from delivery of written notice by

the Receiver to counsel for the Debtors.

6. THIS COURT ORDERS that the Receiver shall provide reasonable cooperation and access to Inkster and Broadway so as to facilitate the removal of the Transferred Records and Data Storage Equipment but the Receiver shall not be responsible for any of the costs associated with the removal of same from Inkster and Broadway. For greater clarity, the Receiver shall not be responsible for any of the costs or work that may be required to disassemble and remove the servers (and associated server equipment) located at Inkster, and the Receiver makes no representations and/or warranties as to the functionality of the servers (and all associated server equipment) following their disassembly and removal from Inkster.

7. THIS COURT ORDERS that, in the event that such Request is not made within the time period described at paragraph 5 herein or, having received such Request, the Transferred Records and Data Storage Equipment are not removed from Inkster and Broadway within 15 days from delivery of written notice by the Receiver to counsel for the Debtors, as required by paragraph 5 herein, the Receiver is hereby authorized and empowered, but not obligated, to proceed thereafter to either abandon, destroy or otherwise dispose of the Transferred Records and Data Storage Equipment as it deems fit, in its sole discretion.

8. THIS COURT ORDERS that the power and authority of the Receiver to abandon, destroy or otherwise dispose of Physical Records, Electronic Records and any other property in or subject to the possession and control of the Receiver pursuant to the Receivership Order, located at the Stores (as defined in the Sale Approval Order of this

Court pronounced April 29, 2020 and the Landlord Terms Order of this Court pronounced June 2, 2020), is hereby confirmed.

9. THIS COURT ORDERS that the Receiver be and is hereby empowered and authorized, but not obligated, to provide to or assist in arranging for the Transferee, at the sole cost and expense of the Transferee, copies of Copied Electronic Records.

10. THIS COURT ORDERS that upon the transfer of the Transferred Records and Data Storage Equipment in accordance with this Order or, failing such transfer, upon the Receiver's abandonment, destruction or disposal of the Transferred Records and Data Storage Equipment in accordance with this Order, the Receiver shall be discharged as the Receiver of the Transferred Records and Data Storage Equipment, provided however that notwithstanding its limited discharge herein, the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of the Receiver.

11. THIS COURT ORDERS AND DECLARES that upon the discharge of the Receiver with respect to the Transferred Records and Data Storage Equipment in accordance with paragraph 11, the Receiver is hereby released and discharged from any and all liability and obligations that the Receiver now has or may hereafter by reason of, or in any way arising out of, the acts or omissions of the Receiver relating specifically to the Transferred Records and Data Storage Equipment, save and except for any gross negligence or willful misconduct on the Receiver's part. For greater clarity, the release and discharge provided for herein also extends to any obligations of the Receiver under the Documents and Electronic Files Access Order pronounced on April 29, 2020 in

relation to the Transferred Records and Data Storage Equipment.

EIGHTH REPORT AND ACTIVITIES OF RECEIVER

12. THIS COURT APPROVES the Eighth Report and the activities of the Receiver and its counsel as described therein, including the Receiver's Interim Statement of Receipts and Disbursements and the interim accounts of the Receiver and its counsel as reflected in the Eighth Report.

GENERAL

13. THIS COURT HEREBY REQUESTS the aid and recognition of any Court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Consultant, the Receiver and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Consultant and the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Consultant and the Receiver and their respective agents in carrying out the terms of this Order.

September 30, 2020

I, • OF THE FIRM OF THOMPSON DORFMAN SWEATMAN LLP HEREBY CERTIFY THAT I HAVE RECEIVED THE CONSENTS AS TO FORM OF THE FOLLOWING PARTIES: THE APPLICANT, THE RESPONDENTS, •, AS DIRECTED BY THE HONOURABLE MR. JUSTICE EDMOND.