

**RICHTER**

File No. CI 20-01-26627

**THE QUEEN'S BENCH  
WINNIPEG CENTRE**

**IN THE MATTER OF THE RECEIVERSHIP 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**

**RICHTER ADVISORY GROUP INC.  
SECOND SUPPLEMENTARY NINTH REPORT OF THE RECEIVER**

**DECEMBER 30, 2020**

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## I. INTRODUCTION

1. On March 18, 2020 (the “**Appointment Date**”), pursuant to an order (the “**Receivership Order**”) of the Court of Queen’s Bench (Winnipeg Centre) (the “**Manitoba Court**”) made in Court File No. CI 20-01-26627 (the “**Canadian Proceedings**”), Richter Advisory Group Inc. (“**Richter**”) was appointed as receiver (in such capacity, the “**Receiver**”) of the assets, undertakings and properties (the “**Property**”) of Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC (collectively, the “**US Debtors**”), Nygard Enterprises Ltd. (“**NEL**”), Nygard International Partnership (“**NIP**”), Nygard Properties Ltd. (“**NPL**”), 4093879 Canada Ltd. (“**879**”), and 4093887 Canada Ltd. (“**887**”, and together with NEL, NIP, NPL and 879, the “**Canadian Debtors**”) (the US Debtors and the Canadian Debtors together, the “**Nygaard Group**” or the “**Debtors**”) to exercise the powers and duties set out in the Receivership Order, pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, (the “**BIA**”) and section 55 of *The Court of Queen’s Bench Act*, C.C.S.M. c.C280.
2. The Receivership Order was granted pursuant to an application made by White Oak Commercial Finance, LLC, (the “**Agent**”) as administrative agent and collateral agent for and on behalf of White Oak and Second Avenue Capital Partners, LLC (collectively, the “**Lenders**”) pursuant to security held by the Lenders in the Property of the Debtors provided in connection with a certain loan transaction and a revolving credit facility (the “**Credit Facility**”) provided thereunder.
3. The Credit Facility was provided to the Debtors pursuant to a Credit Agreement dated December 30, 2019 (the “**Credit Agreement**”) and together with other associated documents, the “**Lenders’ Security**”) as defined in, and attached as Exhibit “D” to, the Affidavit of Robert Dean affirmed March 9, 2020 (the “**March 9 Dean Affidavit**”) and filed in these proceedings.
4. Also on March 18, 2020, the Receiver, as the duly appointed foreign representative (the “**Foreign Representative**”) of the Debtors, commenced proceedings in the United States Bankruptcy Court for the Southern District of New York (the “**US Court**”) by filing, among other things, petitions on behalf of the Receiver in relation to the Debtors pursuant to sections 1504 and 1515 of the US Bankruptcy Code seeking recognition by the US Court of the Canadian proceedings as a foreign main proceeding (the “**Chapter 15 Proceedings**”). On March 26, 2020, the US Court entered, among other things, a provisional recognition order and, on April 23, 2020, the US Court granted a final order recognizing, among other things, the Canadian Proceedings as the foreign main proceeding. The Canadian Proceedings and the Chapter 15 Proceedings are together hereinafter referred to as the “**Receivership Proceedings**”.

5. On April 29, 2020, the Manitoba Court made various Orders, including an Order (the “**Sale Approval Order**”) which, among other things, approved an agreement (the “**Consulting and Marketing Services Agreement**”) between the Receiver and a contractual joint venture comprised of Merchant Retail Solutions, ULC, Hilco Merchant Resources, LLC, Hilco IP Services, LLP dba Hilco Streambank, and Hilco Receivables, LLC (collectively, “**Hilco**” or the “**Consultant**”), and White Oak Commercial Finance, LLC, pursuant to which the Consultant will provide certain consulting, marketing and related asset disposition services. In addition, as it appeared that a going concern or “en-bloc” sale of the Nygard Group’s assets was not likely, the Sale Approval Order authorized the Receiver to liquidate the Nygard Group’s retail inventory and owned furniture, fixtures and equipment through temporarily re-opened stores (the “**Liquidation Sale**”), as soon as circumstances permit. As certain details regarding the Liquidation Sale of particular importance to landlords of the Nygard Group’s retail stores (the “**Landlords**”) were not capable of being known with any precision or certainty at that time (given COVID-19 restrictions on non-essential business activities), the Sale Approval Order set out a process that required the Receiver to obtain a further order of the Manitoba Court addressing certain specified matters prior to commencement of the Liquidation Sale.
6. On April 29, 2020, the Manitoba Court made two (2) further Orders: (i) an Order (the “**General Order**”) addressing, among other things, various general matters, including certain amendments to the Receivership Order (limiting the scope of the Receivership Order in relation to the property, assets and undertakings of NEL and NPL) and the procedure for landlord access to properties leased to Nygard Inc. by certain non-Debtor members of the Nygard Organization (as defined in the First Report of the Receiver dated April 20, 2020), and (ii) an Order (the “**DEFA Order**”) establishing the protocol for requesting access to and / or production of documents and electronic files purported to be in the possession or control (or subject to the possession or control) of the Receiver by certain non-Debtor members of the Nygard Organization (as defined in the First Report (as hereinafter defined)) or directors, officers and employees of the Nygard Group.
7. On May 15, 2020, Edson’s Investments Inc. (“**Edson’s**”) and Brause Investments Inc. (“**Brause**” and collectively, the “**Gardena Landlords**”) filed a notice of motion (the “**Gardena Motion**”) with the Manitoba Court for an order requiring the Receiver to, among other things, lift the stay of proceedings granted by the Manitoba Court in these proceedings so that the Gardena Landlords may terminate leases for properties located in Gardena, California at 312 and 332 East Rosecrans Avenue (“**East Rosecrans**”), 14401 South San Pedro Street (“**14401**”), and 14421 South San Pedro Street (“**14421**” and together with East Rosecrans and 14401, the “**California Properties**”) for failure of the Receiver to pay occupancy rent and retake possession of the California Properties. The Gardena Motion did not proceed as a result of the E/B Settlement Agreement (as hereinafter defined), which was dealt with in the Receiver’s seventh report dated September 10, 2020.

8. On June 2, 2020, as required by the Sale Approval Order and in anticipation of commencing the Liquidation Sale where permitted to do so (taking into consideration local public health orders and related COVID-19 restrictions), the Manitoba Court made an Order (the “**Landlord Terms Order**”) addressing certain Landlord matters in relation to the conduct of the Liquidation Sale.
9. On June 30, 2020, the Manitoba Court made an Order (the “**Notre Dame Approval and Vesting Order**”) approving, among other things, the sale of certain NPL real property located at 1300, 1302 and 1340 Notre Dame Avenue and 1440 Clifton Street (the “**Notre Dame Property**”) in Winnipeg, Manitoba.
10. On June 30, 2020, the Manitoba Court also made an Order (the “**Dillard’s Settlement Approval Order**”) approving, among other things, the terms of an agreed Settlement Agreement and Release of Claims between the Receiver and Dillard’s Inc.
11. On August 10, 2020, the Manitoba Court made an Order (the “**Niagara Approval and Vesting Order**”) approving, among other things, the sale of certain NPL real property located at 1 Niagara Street in Toronto, Ontario (the “**Toronto Property**”).
12. On September 15, 2020, the Manitoba Court made an Order (the “**E/B Settlement Approval Order**”) approving, among other things, the terms of a settlement agreement (the “**E/B Settlement Agreement**”) between the Receiver, the Gardena Landlords, the Lenders, NPL, and Peter Nygard and other members of the Nygard Organization.
13. On October 21, 2020, the Manitoba Court made an Order (the “**Document Abandonment Order**”) approving, among other things, the abandonment of certain documents and property located in the California Properties and the Nygard Group retail stores.
14. On November 19, 2020, the Manitoba Court pronounced an Order (the “**Inkster Approval and Vesting Order**”) approving, among other things, the sale of certain NPL real property located at 1771 Inkster Blvd, Winnipeg Manitoba (the “**Inkster Property**”) and authorizing the Receiver to make such arrangements as it considered reasonable and appropriate for the preservation of the data (the “**Electronic Records**”) and programs (the “**Programs**”) stored or accessible on the Nygard Group’s central information technology system (the “**IT System**”).

15. As the date of this Second Supplementary Ninth Report (as hereinafter defined), the form of the Inkster Approval and Vesting Order has not been settled despite numerous discussions and correspondences among counsel. The Receiver will be scheduling a case conference with the Manitoba Court to resolve the form of Inkster Approval and Vesting Order. Attached hereto as **Appendix "A"** is a copy of the current proposed form of the Inkster Approval and Vesting Order.
16. On November 27, 2020, the Nygard Group appealed certain of the relief granted pursuant to the Inkster Approval and Vesting Order including the sale of the Inkster Property (the "**Inkster Appeal**").
17. On December 8, 2020, the Manitoba Court provided additional direction (the "**December 8 Manitoba Court Direction**") and clarification of the Order pronounced on November 19, 2020 in respect to the preservation of Electronic Records and Programs as well as the provision of certain Electronic Records to the Debtors and/or Mr. Nygard. The Receiver considers that the direction of the Manitoba Court as to those matters is properly described in paragraphs 10 and 11 of the form of Inkster Approval and Vesting Order attached as Appendix "A" hereto, which is the "current form" of the Inkster Approval and Vesting Order proposed by the Receiver, following input from certain counsel. Attached hereto as **Appendix "A1"** is a compare version of the Inkster Approval and Vesting Order, comparing the "current version" with the version attached as Schedule "A" to the Notice of Motion filed in these proceedings requesting the Inkster Approval and Vesting Order (the "**Inkster Approval Motion**").
18. On December 11, 2020, the Receiver filed materials in support of a motion (the "**December 17 Motion**") returnable December 17, 2020 for an Order of a Judge of the Manitoba Court of Appeal in Chambers:
  - (a) cancelling any stay imposed as a result of section 195 of the BIA with respect to Inkster Approval and Vesting Order;
  - (b) declaring that, pursuant to section 193 of the BIA, the Nygard Group requires leave of a Judge of the Manitoba Court of Appeal to proceed with the proposed appeal as set out in the Notice of Appeal by the Debtors filed on November 27, 2020, and that the stay imposed pursuant to section 195 of the BIA is inapplicable in respect of the Inkster Approval and Vesting Order until such time as leave may be granted to the Debtors; and
  - (c) in the alternative, and if necessary, an order providing for the hearing of the Inkster Appeal on an expedited basis, and the abridgement of applicable time periods and filing deadlines.

19. In an effort to make an efficient use of the time available, the Receiver deferred the hearing of the relief described in subparagraphs 18(b) and (c) above, and proceeded on December 17, 2020 with the hearing of its motion for an Order cancelling any stay imposed by the BIA.
20. The December 17 Motion has been heard by a Judge of the Manitoba Court of Appeal but, as at the date of this Second Supplementary Ninth Report, the Judge has not released her decision.
21. In accordance with the Receivership Order, the Receiver has established a website (the “**Receiver’s Website**”) for the purposes of these proceedings at <https://www.richter.ca/insolvencycase/nygard-group>.
22. Copies of the pleadings and other materials filed in the Receivership Proceedings, other than affidavits and appendices sealed by Order of the Manitoba Court, and the various Orders issued by the Manitoba Court are posted to and available for review at the Receiver’s Website.
23. Copies of the pleadings and other materials filed in the Chapter 15 Proceedings, and the various Orders issued by the US Court are also posted to and available for review at the Receiver’s Website.
24. The Receiver has engaged Thompson Dorfman Sweatman LLP (Winnipeg) (“**TDS**”) as its Canadian counsel, and Katten Muchin Rosenman LLP (New York) (“**Katten**”) as its U.S. counsel.

## II. PURPOSE OF REPORT

25. On November 2, 2020, the Receiver filed its ninth report (the “**Ninth Report**”) and on November 10, 2020, the Receiver filed its supplementary ninth report in support of the Inkster Approval Motion returnable November 9, 2020 and later November 13, 2020 for, among other things, an Order from the Manitoba Court (i) approving the terms of an accepted Offer to Purchase dated May 21, 2020 (amended by separate amending agreements dated July 6, July 20, August 14, August 24, August 28, September 17, September 25 and September 30, 2020) between the Receiver and Eighth Avenue Acquisitions Ltd. (or its nominee) for the sale (the “**Inkster Transaction**”) of the Inkster Property, (ii) vesting, upon the closing of the Inkster Transaction, all of NPL’s right, title and interest in and to the Purchased Assets (as defined in the Ninth Report) to the purchaser free and clear of all liens, charges, security interests and other encumbrances; and iii) authorizing the Receiver to, among other things, enter into such arrangements as the Receiver considers reasonable and appropriate for the preservation of the Electronic Records and Programs stored or accessible on the Debtors’ IT System.
26. This report (the “**Second Supplementary Ninth Report**”) is filed by the Receiver to update the Manitoba Court on certain matters in relation to the Receiver’s efforts to preserve the Electronic Records and Programs, and the IT System.



### III. TERMS OF REFERENCE

27. In preparing this Second Supplementary Ninth Report, the Receiver has relied upon information and documents prepared by the Debtors and their advisors, including unaudited, draft and / or internal financial information, the Debtors' books and records, discussions with representatives of the Debtors, including current and former employees, legal counsel to Mr. Peter Nygard, the Debtors and certain related non-Debtor entities, the Lenders and their legal counsel, and information from third-party sources (collectively, the "**Information**"). In accordance with industry practice, except as otherwise described in the Second Supplementary Ninth Report, Richter has reviewed the Information for reasonableness, internal consistency, and use in the context in which it was provided. However, Richter has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Auditing Standards ("**GAAS**") pursuant to the *Chartered Professional Accountant of Canada Handbook* and, as such, Richter expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.
28. The Receiver has prepared this Second Supplementary Ninth Report in its capacity as a Court-appointed officer to update the Manitoba Court in relation to the Receiver's efforts to preserve the Electronic Records and Programs, and the IT System. Parties using this Second Supplementary Ninth Report, other than for the purposes outlined herein, are cautioned that it may not be appropriate for their purposes, and consequently should not be used for any other purpose.
29. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Ninth Report.
30. Unless otherwise noted, all monetary amounts contained in this Second Supplementary Ninth Report are expressed in Canadian dollars.

### IV. RECORD PRESERVATION UPDATE

#### Overview of the Debtors' Records

31. As noted in the Eighth Report of the Receiver dated September 28, 2020 (the "**Eighth Report**"), the business of the Nygard Organization, including the Debtors, appears to have been centrally administered in terms of common physical and electronic file storage, servers, systems and networks. The Receiver understands that while certain of the Debtors' offices and facilities contained local servers and equipment, the IT System is located at the Inkster Property. The IT System comprises 245 servers and is housed in an approximately 140 sqft room at the Inkster Property, which contains four 7 ft server racks, multiple air conditioning units and hundreds of cables connecting the various components. In contemplation of the sale of the Inkster Property, the Receiver has investigated

solutions for the preservation of the functionality of the IT System, including the Electronic Records and the Programs.

32. Given the size and scale of the Nygard Organization, the IT System is a relatively complex network that was developed over a number of years and cannot be easily duplicated or replaced. Further, the Receiver understands the IT System is relatively antiquated with many of the servers at or near end of life in terms of operability and/or storage space. As such, the Receiver understands that simply dismantling and moving the IT System in contemplation of the sale of the Inkster Property carries a high degree of risk of impairment to the functionality of the IT System.
33. As at the Appointment Date, the IT System was operating at or near its capacity with very limited storage space as well as outdated systems, processes and hardware. In addition, based on feedback from various IT consultants, it appears that the Nygard Group's IT infrastructure and security had been poorly maintained by the Debtors prior to the Appointment Date. Given the state of the Nygard Group's operations at that time, and the Receiver's understanding that the Nygard Group would not likely be continuing operations as a going concern (the liquidation of the Nygard Group's wholesale/retail inventories and other assets was approved by the Manitoba Court on April 29, 2020), significant capital investment expenditures and efforts in respect of the IT System were not warranted.
34. The Nygard Organization, including but not limited to the Debtors, also maintained physical documents (the "**Physical Documents**") and together with the Electronic Records, the "**Records**"), such as books, documents, securities, contracts, orders, bills of lading, corporate and accounting records, correspondence, marketing and promotional materials, personnel files, tax papers, time sheets, and other papers, records and hardcopy information, which are currently consolidated in over 5,000 boxes located at either the Inkster Property or the Debtors' owned real property located at 702 / 708 Broadway Avenue in Winnipeg, Manitoba (the "**Broadway Property**"), which are the Debtors' only remaining occupied facilities.

#### **Activities of the Receiver since the Appointment Date**

35. Since the Appointment Date, the Receiver has engaged with several IT consultants and experts in order to assess and maintain the functionality of the IT System and preserve certain Electronic Records, as summarized below:

##### *Informanix Technology Group Inc.*

36. Shortly following its appointment, the Receiver engaged a third-party IT consultancy firm based in Winnipeg, Informanix Technology Group Inc. ("**Informanix**"), which delivers an array of services, including security and

network assessments, infrastructure and datacenter architecture, project management, and related information systems initiatives.

37. Informanix was originally engaged by the Receiver in March 2020 to lockdown, stabilize and backup certain key servers given the aging infrastructure of the IT System. Informanix's initial mandate included the following services:
  - (a) Lockdown: restricting IT System access to active employees and identifying security weaknesses in relation to same. Informanix focussed primarily on securing users' access to the IT System to only approved users, rather than on a comprehensive update/review of the IT System's security infrastructure;
  - (b) Stabilize: addressing disk space issues on servers that were generating errors; and
  - (c) Backup: creating a cloud-based back-up of certain key servers, such as accounting and payroll in the event of a server failure that could impact on the Receiver's realization efforts. Informanix backed up approximately 47 key servers (primarily related to accounting and payroll) (the "**Informanix Backup**"), which were required for day-to-day activities of the Nygard Group as well as the administration of the Receivership Proceedings.
38. The Receiver notes that the initial scope of the Informanix engagement was not to back up the entire IT System or to perform a complete overhaul/upgrade of the security infrastructure of the IT System, as such an undertaking would have required significant capital investment, taken months to implement and was not warranted for the reasons noted in paragraph 33 above.
39. Informanix was subsequently engaged by the Receiver to assist the Nygard IT staff with restoring 22 servers following a two-hour power outage on November 20, 2020, which impacted approximately 570 Manitoba Hydro customers throughout northwestern Winnipeg. The backup power generator for the Inkster Property, which had been serviced the prior week, did not turn on as expected. As a result, the IT System lost power during the outage which impacted the functionality of certain servers/other equipment that were shut down unexpectedly.
40. Informanix and the Nygard IT staff were in the process of recovering/restoring the servers impacted by the power outage. These restoration efforts were, however, redirected following a ransomware attack against the IT System (discussed further below) on December 12, 2020.

KLDiscovery Inc.

41. Subsequent to its appointment, the Receiver retained KLDiscovery Inc. (“**KLD**”), a recognized expert in the areas of eDiscovery and data management, to assist with, among other things, creating a forensic copy (i.e. compressed data as it exists at the time of collection, requiring subsequent extraction) (the “**Forensic Copy**”) of primarily user-generated data saved to the IT System, as well as email data saved to the Nygard Organization’s email servers and the Office365 environment, such that the copied information could be accessed in the future, if required, for a variety purposes, including litigation disclosure. The Receiver understands that the Forensic Copy is estimated to contain approximately 344 terabytes (once extracted) of information and in excess of 60 million records. The Receiver notes the Forensic Copy does not contain information from the Nygard database servers (which store datatables used to run the Programs), e-commerce servers or system, IT administration or disaster recovery servers, which were generally accessed only by Nygard IT staff; rather, the Forensic Copy includes the files and email correspondence saved to those servers that could be accessed by general (i.e. non-IT) users and contain “user-generated” data.
42. The Forensic Copy is a valuable preservation measure, however, the challenge with the Forensic Copy is “searchability”. This is as a result of the volume of data preserved and the nature of the IT System. The Forensic Copy “mirrors” the (copied) data on the IT System and is, therefore, only as “searchable” as it was on the IT System. While the Forensic Copy preserves the electronic data described above, the files contained on the Forensic Copy would need to be extracted, processed and indexed in order to allow parties to query and search those records for keywords and/or other parameters. This is not different than what would have been required, for example, in the case of conducting a proper and thorough electronic records review in the normal course for litigation disclosure purposes in respect of a very large volume of data. There will be additional costs associated with such searches, as there would be in respect of any such exercise undertaken by a formal e-discovery service provider.
43. As noted in the Supplementary Eighth Report of the Receiver dated October 12, 2020 (the “**Supplementary Eighth Report**”), the Receiver engaged in discussions with KLD to investigate search options of data saved on the Forensic Copy in the event that the Electronic Records and Programs, and the IT System could not generally be preserved or resurrected following dismantling of the servers and related equipment to accommodate the sale of the Inkster Property.
44. To enhance and simplify “searchability”, KLD, in consultation with the Receiver, prepared an Assessment of Data Access Options (the “**Access Options**”) outlining the various options to access some or all of the data contained on the Forensic Copy, a copy of which assessment was attached to the Supplementary Eighth Report and shared

with counsel for the Debtors and Mr. Nygard, the Gardena Landlords, Louis Bacon, the “Jane Doe” action plaintiffs, as well as to the US Attorney for the Southern District of New York (the “SDNY”) in relation to the Grand Jury Proceedings (collectively, including the Receiver, the “**Document Stakeholders**”) and served upon the Service List. One of the Access Options included extracting, processing and hosting the data contained on the Forensic Copy into an online platform, Nebula Big Data Store (“**NBDS**”), which information could then be searched by parties in a useable format.

45. The Receiver notes that the cost to process and host the Forensic Copy in NBDS varies widely based on the scope of the data to be processed. For example, instead of hosting all 344 terabytes of data in NBDS, the servers described by the Debtors as likely to contain records relevant to litigation involving the Debtors (or any of them) and Mr. Nygard, including the main file server (i.e. the Nygard Organization’s primary shared server that includes folders and documents generally accessible to and used by corporate employees) and the email data (collectively, the “**Relevant Servers**”), are estimated to total approximately 23 terabytes of data, once extracted, which could be hosted at a significantly lower cost.
46. As a result of the recent focus on the Cloud-Based Solution (as hereinafter defined), no decision has been made by the Receiver with respect to the Access Options.

#### Cloud-Based Solution

47. As noted in the Ninth Report, the Receiver has investigated options to migrate some or all of the IT System to a cloud-based infrastructure (the “**Cloud-Based Solution**”). The primary difference between the Forensic Copy described above and the Cloud-Based Solution is the ability to materially preserve the *functionality* of the IT System, including the Programs contained thereon. To illustrate the difference, the Forensic Copy has preserved user-generated documents, such as payroll registers which were saved on the Nygard Group’s main file server. The Cloud-Based-Solution would preserve the ability to use the information contained on those payroll registers to generate new and unique payroll reports from the Nygard Group’s payroll system/server.
48. Certain of the Programs to be preserved as part of the Cloud-Based Solution could be useful to the Receiver for the purposes of continuing and completing the administration of the Receivership Proceedings, such as certain accounting and payroll programs, and in relation to other matters that may arise in the course of the Receivership Proceedings. Otherwise, the principal purpose of the Cloud-Based Solution was to identify a reasonable option to maintain the Electronic Records and Programs, and the IT System, as “intact” as possible for future purposes of litigation disclosure, and to, as best as possible, maintain the ability to respond fully to Grand Jury subpoenas issued by the SDNY and like processes, if any.

49. Counsel for the “Jane Doe” plaintiffs, in particular, has expressed to the Manitoba Court and the Receiver that the defendants in the “Jane Doe” action, including Mr. Nygard and those Debtors who are parties to the Jane Doe action, have a general duty to preserve potentially relevant evidence, and further expressed the expectation that the Receiver will accordingly take reasonable steps to preserve potentially relevant evidence contained within the Electronic Records and the IT System. While in the normal course, it would be up to Mr. Nygard and the applicable Debtors to identify and preserve such evidence, counsel for the Jane Doe plaintiffs has expressed the concern that potentially relevant evidence may be contained throughout the various Nygard Group databases. If so, that circumstance favours the preservation of all Records, to the extent possible.
50. In general terms, the duty on Mr. Nygard and the applicable Debtors to preserve potentially relevant evidence applies also in respect of other litigation in which they are parties, including, for example, actions involving Louis Bacon.
51. The Debtors and Mr. Nygard have repeatedly taken the position that only the Relevant Servers (as perhaps further limited by the results of the Fawcett Review) contain records that would be potentially relevant for any and all litigation disclosure obligations, and that significant cost could be saved by deleting, and not migrating and storing, data contained on other servers.
52. Following the making of the Inkster Approval and Vesting Order on November 19, 2020, at the direction of the Manitoba Court, TDS engaged in various discussions and email exchanges with Levene Tadman Golub Law Corporation (counsel for Mr. Nygard and the Debtors) (“**LTGLC**”) in an effort by “both sides” to cooperate with respect to potential opportunities to minimize the costs associated with the Cloud-Based Solution, or an alternative solution put forth by the Debtors. TDS, on behalf of the Receiver, has consistently taken the position that the Receiver, as the Court’s officer, will not be the “arbiter” of, and will not decide or purport to decide, what Records are relevant, or what servers may contain potentially relevant evidence, and will not incur the considerable cost of doing so.
53. After several weeks of such discussions and email exchanges, this matter was again heard by the Manitoba Court on December 8, 2020 (the “**December 8 Hearing**”) at which time, the Receiver received additional clarity from the Manitoba Court, authorizing the Receiver to enter into such arrangements as the Receiver considers reasonable and appropriate for the preservation of Electronic Records and Programs, and the IT System, by means of a third-party IT service provider. A provision to this effect is contained in the proposed form of Inkster Approval and Vesting Order attached as Appendix “A” hereto.

54. The Receiver commenced efforts to migrate the Electronic Records and Programs during the week of December 7, 2020, with a view to migrating and preserving substantially all Electronic Records and Programs (with the exception of the AS400 system as discussed in the Ninth Report), and the functionality of the IT System (to the extent possible, and on the basis of varying levels of “priority” and related cost as described in the Supplementary Ninth Report). This approach was intended to attempt to ensure the preservation of Electronic Records and Programs considered helpful to the ongoing administration of the Receivership Proceedings, and maintain Electronic Records generally such that the Receiver was not making determinations as to which Electronic Records are, or which servers contain Electronic Records that are, potentially relevant to litigation.

#### **Further Dialogue with Debtor Counsel**

55. At the December 8 Hearing, counsel for the Debtors and Mr. Nygard expressed that the Debtors and Mr. Nygard agreed that there would be no deletion of Electronic Records. Later on December 8, LTGLC wrote to TDS to provide a list of servers the Debtors suggested should be deleted and not included as part of the Cloud-Based Solution in order to “save time and costs”, and that the Receiver should agree to this deletion given that these servers were alleged to contain only “testing” data. TDS responded that the Receiver understood that the Debtors and Mr. Nygard had agreed that no Electronic Records would be deleted, however, LTGLC thereafter repeated that it needed to discuss the deletion of 10 servers to “save costs” despite the storage cost of these servers totalling only approximately \$5 per month as part of the Cloud-Based Solution.
56. Email correspondence sent to TDS on behalf of the Debtors on December 10, 2020, raised the matter of the treatment of “corrupt” files, suggesting that “... *there is an agreement that a high percentage will be corrupt*”, and then suggesting that the Receiver could obtain “Court approval” for the deletion of corrupted files “determined to be “not relevant””. In email correspondence on December 11, 2020, from LTGLC to TDS, the matter the treatment of “corrupt” files was again raised, suggesting that there was agreement that there were going to be corrupt documents found and “likely have already been found”, raising concerns over the expense of trying to “uncorrupt” such files and again raising the prospect of “having deletions approved by the court.”
57. TDS, on behalf of the Receiver, responded that it had reached no such “agreement” as was suggested by the said messages, and that that the Receiver is not prepared to be (or incur the very considerable expense necessary to become) the arbiter of what documents are or are not relevant to litigation and could not know in advance what might be the appropriate course of action in relation to the circumstances described.
58. Attached hereto as **Appendix “B”** are copies of email correspondences regarding these matters for the period from December 8, 2020, to December 14, 2020.

## The Fawcett Review and “Relevant Records”

59. As noted in the Ninth Report, on October 16, 2020, Greg Fenske and Sandra Fawcett (Sandra L Fawcett Chartered Professional Accountant) were provided with supervised view-only access (the “**Fawcett Review**”) to the IT System (through use of Microsoft Teams software) and had the ability to direct a representative of the Receiver to conduct searches to view files, access specific folders, access Programs, assess the state of the IT System, etc. Subsequent to the Fawcett Review, Mr. Fenske sent multiple emails to the Receiver and TDS to request (the “**Fenske Request**”) copies of (i) all of the files stored within certain specified folders, which Mr. Fenske estimated contained 20 terabytes of data, or approximately 4 million files, and (ii) the email accounts of 37 current or former employees of the Debtors, which Mr. Fenske estimated contained approximately 1 million emails.
60. Following the Fawcett Review, LTGLC, on behalf of Mr. Nygard and the Debtors, has asserted that only 5% of the Electronic Records contain documents that are relevant for litigation purposes, that such Electronic Records are all contained within the servers/data/email data described in the Fenske Request, and that the remaining Electronic Records do not contain potentially relevant evidence. LTGLC has also asserted *that “pictures of product, invoices, payment of invoices, and other like documents of this nature would not be relevant to either the class action or Bacon litigation”* and noted that it wished to identify which servers containing that data, and others, which presumably could be deleted.
61. As noted above, in the course of this dialogue, LTGLC proposed that the Receiver agree to a process whereby the Receiver, the Debtors and Mr. Nygard would reach agreement on the deletion of certain servers and Electronic Records (as proposed by the Debtors) and thereafter the Receiver would seek a Court order authorizing such deletion, on notice to the Service List, including the Document Stakeholders. The Receiver responded to this request by repeating that the Receiver is not prepared to be (or incur the considerable expense necessary to become) the arbiter of what Electronic Records are or are not relevant to litigation, and which servers contain such Electronic Records, and that the Debtors could bring their own motion for whatever relief they consider appropriate or necessary.
62. The Receiver has copied (the “**Fawcett Copy**”) and preserved the files described in the Fenske Request. The requested email accounts can be extracted using KLD, and the Receiver is currently working with KLD to determine the costs associated with extracting the email accounts identified in the Fenske Request.



## Ransomware Attack on the Nygard Group IT System

63. As evidenced by the recent high-profile security breaches of several sensitive US government agencies, ransomware attacks and/or other forms of “hacking” computer systems or private networks are on the rise. According to a Mid-Year Threat Landscape Report for 2020 issued by Bitdefender, a global leader in cybersecurity software, in the first half of 2020, the total number of global ransomware reports increased by 715% year-over-year.
64. On or about December 12, 2020, the IT System was the subject of a ransomware attack (the “**Ransomware Attack**”) which the Receiver understands has compromised certain Electronic Records, Programs and IT infrastructure of the Nygard Organization, including the Debtors.
65. In general terms, the effect of a ransomware attack is to “encrypt” affected files, such that they are not accessible by the “file owner” without the application of a “decrypter program” to be provided by the “attacker” upon payment of a ransom. Affected programs cannot be used until decrypted. The ransomware also enables the attacker to “exfiltrate” data from the target IT system and use the threat of making public such data as part of its ransom demand. Ransomware typically continues to encrypt files as it works its way through an IT system, until such time as the presence of the ransomware is detected and steps are taken to halt its progress.
66. By way of this Second Supplementary Ninth Report, the Receiver is updating the Manitoba Court and other interested stakeholders as to the occurrence and currently known impact of the Ransomware Attack. However, as at the date of this Second Supplementary Ninth Report, by reason of the size and complexity of the IT System, and the caution needed in taking steps to assess the Ransomware Attack, the full scope and impact of the Ransomware Attack is not yet certain. The Receiver, the limited remaining Nygard IT staff and certain IT consultants described below, have been working diligently since the date of the Ransomware Attack to understand its impact and its implications for the IT needs of the Receiver, the preservation of Electronic Records, and Programs, and the viability of the IT System. At this point, the Receiver considers that there is a sufficient preliminary understanding of the circumstances to (i) responsibly report to the Manitoba Court and other stakeholders, (ii) consider what Records preservation steps might be reasonable and appropriate in the “post-attack” environment, and (iii) to the extent possible given the Receiver’s limited access to information, commence a process of issuing certain notices to potentially affected individuals and entities. To be clear, the Receiver is not yet in a position to fully assess the extent to which the Electronic Records have been effectively backed up, and to make a full determination of the extent to which encrypted servers and data should be attempted to be restored. The Receiver is also not presently in a position to fully assess the extent to which a Cloud-Based Solution for the migration and preservation of *all* Electronic Records and Programs remains viable (in particular,

given that the Forensic Copy, the Fawcett Copy and the Informanix Backup are unaffected by the Ransomware Attack and contain key Electronic Records). The Receiver will report further to the Manitoba Court, as additional information becomes available to the Receiver.

67. At present, the Receiver understands the following in connection with the Ransomware Attack:

- (a) at approximately 7:00PM CT on Saturday, December 12, 2020, the Receiver became aware of the Ransomware Attack, which infected the IT System. A message from the attackers (the “**Hacker Message**”), which was inserted as a text “readme” file within the IT System advised, among other things that the IT System had been hacked and system files encrypted. The Hacker Message noted that the only method of recovering the encrypted files was to cooperate with the attackers to obtain the decrypter program. The Hacker Message also provided information on how to access the attackers’ website to verify their claims and presumably make a “ransom payment” to recover the encrypted files. A copy of the Hacker Message is attached hereto as **Appendix “C”**;
- (b) a message posted to a website set up by the attackers in connection with the Ransomware Attack initially demanded payment (the “**Initial Hacker Demand**”) of approximately 99 Bitcoin (in excess of \$ 3.6 million as at the date of this Second Supplementary Ninth Report) – for the decrypter program known only to the attackers to decrypt the now inaccessible files. Failure to meet the attackers demands would result in the files/data stolen from the IT System by the attackers being made public. Unfortunately, the Receiver was not able secure a copy of the Initial Hacker Demand;
- (c) with the assistance of Richter’s IT Risk Advisory Group, the Receiver was able to identify the strain of ransomware responsible for the attack to be ‘Netwalker’. The Receiver has subsequently been informed that the Netwalker ransomware was created by the highly sophisticated cybercrime group known as ‘Circus Spider’, which recently (March 2020) began offering its tools/malware for sale over the dark web. This malicious business model involves Circus Spider recruiting affiliates to help cybercriminal groups execute nefarious activities and spread the Netwalker malware in return for affiliate payments;
- (d) since the beginning of 2020, the Netwalker ransomware has been implicated in many attacks on prominent businesses and organizations across the globe, including healthcare providers, educational facilities, governments and private companies;
- (e) the Receiver did not respond to the Initial Hacker Demand and was recently informed that the cybercriminals responsible for the Ransomware Attack (who remain unknown and who are unlikely to be identified) have increased the “ransom payment” for the decrypter program to approximately 198 Bitcoin (in

excess of \$7.2 million as at the date of this Second Supplementary Ninth Report) (the “**Updated Hacker Demand**”). A screenshot of the Updated Hacker Demand is attached hereto as **Appendix “D”**;

- (f) On December 23, 2020, the Receiver was also informed that failure to pay the “ransom payment” will result in the files/data stolen from the IT System being made public on or about January 2, 2021. A message posted on the attackers’ website threatening to publish the files/data stolen from the IT System on a public messaging blog and including a screenshot of certain internal file folders included as part of the IT System (as evidence of the attackers’ infiltration of the IT System) is attached hereto as **Appendix “E”**. A listing of the internal file folders threatened to be released by the attackers, which was also included on the attackers’ website, is attached hereto as **Appendix “F”**; and
  - (g) as support for the attackers’ threats to release the data/files stolen from the IT System, also included in the attackers’ website is a listing of other entities apparently victimized by the attackers (the “**Hacked Entity Listing**”) whose stolen files/data has either already has been released to the public or will be released upon expiration of the stated deadlines to meet the attackers’ demands. A screenshot of the Hacked Entity Listing including the Nygard Group and several other apparent victims of the attackers is attached hereto as **Appendix “G”**.
68. Payment of the “ransom payment” will not be considered by the Receiver.
69. Upon becoming aware of the Ransomware Attack, the Receiver’s responses have included the following actions/activities:
- (a) within 45 minutes of being notified of the Ransomware Attack, the Receiver engaged professionals from Richter’s IT Risk Advisory Group and Informanix to address the attack. In an effort to contain the breach and the spread of the malware via network connections, the Receiver and the Nygard IT staff were instructed that all servers should be immediately powered down and physically unplugged. All servers were powered down by approximately 8:30PM CT and were physically unplugged by approximately 10:00PM CT on Saturday, December 12, 2020. These immediate actions appear to have stopped the further spread of the malware and preserved certain portions of the IT System, as further described below;
  - (b) on December 13, 2020, the Receiver engaged a leading IT consultancy firm, Sophos Ltd. (“**Sophos**”), which specializes in managed threat response services, such as ransomware attacks. Since that time, the Receiver, Nygard IT Staff, Informanix and Sophos have been working to understand the scope of the Ransomware Attack and to restore, from backups or otherwise, where possible, the Electronic Records and Programs relevant for the purposes of the Receivership Proceedings;

- (c) communicating extensively with TDS to understand both the Nygard Group's and Receiver's obligations to notify parties potentially impacted by the Ransomware Attack, including current/former employees, ecommerce customers, wholesale/retail customers, suppliers and other potentially interested parties. Providing notice of the Ransomware Attack to certain of these parties will, however, be difficult as the IT System remains compromised, and certain parties potentially impacted by the Ransomware Attack may not be known, or their contact details accessible, unless/until the IT System (or certain specific servers) are restored;
- (d) although, as at the date of this Second Supplementary Ninth Report, the full scope and impact of the Ransomware Attack is not yet certain, and the Receiver cannot yet identify specific individuals or entities whose information may be compromised, the Receiver is in the process of drafting a notice to be sent to both current/former Nygard Group employees who were employed on or about the Appointment Date (whose contact details are known to the Receiver) to advise of the Ransomware Attack and that certain of their personal information may have been compromised. The Receiver will also be preparing and filing a report with the Office of the Privacy Commissioner in respect of the Ransomware Attack, and considering the following steps:
  - (i) in the absence of the present ability to specifically identify affected individuals or entities, or access their contact information, the issuance of a press release, on behalf of the Nygard Group, to attempt to provide broad notice of the Ransomware Attack;
  - (ii) the sending of a notice of the Ransomware Attack to creditors and suppliers of the Nygard Group whose names and contact information are known to the Receiver;
  - (iii) endeavouring to obtain contact information for, and give notice to, former employees of the Nygard Group for which the Receiver does not presently have access to contact information; and
  - (iv) endeavouring to provide additional notices to impacted stakeholders as they become known to the Receiver.

70. Below is a summary of the Receiver's current understanding of the impact of the Ransomware Attack:

Department <sup>(2)</sup>	Server Overview <sup>(1)</sup>			Status of Encrypted Servers		
	Unimpacted Servers <sup>(3)</sup>	Encrypted Servers <sup>(4)</sup>	Total Servers	Backup Available <sup>(5)</sup>	Backup Unavailable	Total Encrypted Servers
HR	2	5	7	5	0	5
Sales	44	5	49	5	0	5
Finance	24	8	32	8	0	8
Systems	11	2	13	2	0	2
File Servers	7	1	8	1	0	1
IT	99	37	136	33	4	37
<b>Total</b>	<b>187</b>	<b>58</b>	<b>245</b>	<b>54</b>	<b>4</b>	<b>58</b>

Note 1: The Nygard IT staff, Sophos and Informanix continue to assess and monitor the impact of the Ransomware Attack. The above chart represents the Receiver's understanding of the Ransomware Attack as at the date of this Second Supplementary Ninth Report and is subject to change.

Note 2: Each department includes several servers which have been broadly grouped into separate "departments" for presentational purposes.

Note 3: The IT consultants have assumed that certain servers which were not powered-on at the time of the attack have not been encrypted and continue to review / monitor all server for malware.

Note 4: As noted above, the unplugging of the servers on December 12, 2020 appears to have stopped the spread of the ransomware throughout the IT System; however, included within the "Encrypted Servers" are seven servers which do not appear to be operational.

Note 5: The date of the potential backups available vary depending on the source of the backup (i.e. KLD / Informanix / on-site backups / Cloud-Based Solution). Backup dates range between April and December 2020. The Receiver can not provide any assurances as to the functionality of the backups.

71. Despite the numerous sources of backup data which may be available to restore the encrypted servers, there are 4 servers which have been encrypted, in whole or in part, and which do not appear to have a corresponding backup to restore the affected server. Without the proactive efforts of the Receiver to have certain Electronic Data and Programs copied subsequent to the Appointment Date by Informanix, KLD or the Cloud-Based Solution, approximately 46 servers would have been permanently lost as a result of the Ransomware Attack.
72. The Receiver understands that, even in the event that a backup server exists for certain encrypted servers, the IT System has been severely impaired and the difficult task of restoring the servers using backups is challenging for the following reasons:
- (a) the backup dates are not all uniform (or current) and the data stored on the backup servers may not be complete (i.e. a backup from April 2020 does not include data subsequent to that date);

- (b) the servers will not necessarily be properly integrated (i.e. they will not “speak” to each other). When using partial backups from different points in time, it is extremely difficult to restore servers to their previous state as the servers are no longer properly integrated. A substantial amount of time, costs and effort will be required to “restore” the servers to their previous state, if at all possible;
  - (c) there are limited Nygard IT staff members remaining at the Nygard Group who are familiar with the IT System and employee retention has been, and will continue to be, increasingly difficult; and
  - (d) certain of the backup servers are also encrypted.
73. As at the date of this Second Supplementary Ninth Report, the cause or source of the attack is not known to the Receiver. The Receiver notes the Ransomware Attack did not impact the Forensic Copy, the Fawcett Copy or the Informanix Backup, each of which had been preserved offsite by the Receiver prior to December 12, 2020.
74. The Receiver’s continued actions to restore, to the extent feasible, the IT System have included:
- (a) continuing to identify which Electronic Records and Programs have been encrypted (the “**Encrypted Servers**”) and assess the extent of the encryption (i.e. full vs partial encryption);
  - (b) continuing to identify whether there is a backup of the Encrypted Servers and the date of the backup;
  - (c) attempting to restore servers which are required for the administration of the Receivership Proceedings, or (as asserted by the Debtors) contain Records potentially relevant for litigation purposes, such as the payroll, accounting and the main file servers (the “**High Priority Servers**”) by using the latest backup, if available;
  - (d) consideration of copying all of the Electronic Records and Programs, including Encrypted Servers, which are *not* High Priority Servers, to the Cloud-Based Solution to be stored at an extremely low-cost environment (approximately \$1 per terabyte per month); and
  - (e) once (or if) the High Priority Servers have been restored, copying the High-Priority Servers to the Cloud-Based Solution to maintain the functionality of the Programs.

75. The Receiver notes that several of the Nygard IT backup servers have also been encrypted as a result of the Ransomware Attack. The Receiver is therefore relying on several sources of data to restore, where possible, the High Priority Servers. The backup data to restore the High Priority Servers is being copied from various sources, including:
- (a) the Nygard Group on-site backup data, if such data was not been encrypted by the Ransomware Attack;
  - (b) Informanix data which was copied in the Informanix Backup;
  - (c) the Forensic Copy which was copied between June and November 2020; and
  - (d) data which had completed copying to the Cloud-Based Solution prior to the Ransomware Attack.
76. The Receiver, along with the various IT consultants and the Nygard IT staff, are currently working to assess the damage from the Ransomware Attack and endeavoring to recover as much data and as many key Programs as possible; however, the functionality of the IT System has been permanently compromised and will not operate in the same fashion it operated prior to the Ransomware Attack. As at the date of the Second Supplementary Ninth Report, no software currently exists to decrypt/restore the encrypted data. The Receiver notes that the decryption and restoration of the entire IT System, if it such a decryption program becomes available, would be costly and may not be reasonable or appropriate given the status of these non-operating companies or the relevance to litigation matters as asserted by LTGLC on behalf of Mr. Nygard and the Debtors. Given the option of relying on the Forensic Copy, the Fawcett Copy, the Informanix Backup, whatever data is not encrypted and key data that can be restored from working backups, it may not be reasonable or appropriate to endeavour to migrate and preserve encrypted files and servers to the Cloud-Based Solution, despite the low cost of storing same.

#### **Impact of the Ransomware Attack on the Nygard Group Migration to the Cloud-Based Solution**

77. In light of the Ransomware Attack and the impact on the Nygard IT System, the Receiver intends to continue to carry out its duties in accordance with its understanding of the Inkster Approval and Vesting Order and take such steps and enter into such arrangements as the Receiver considers reasonable and appropriate, for the preservation of Electronic Records and Programs, to the extent feasible.
78. Given the limitations that have been imposed upon the Receiver as a result of the Ransomware Attack, the Receiver will endeavor to preserve, to the extent feasible, the IT System within the Cloud-Based Solution, and make further arrangements that it considers reasonable and appropriate, given the ongoing needs of the Receivership Proceedings and the significant challenges faced by the Receiver. The Receiver will also endeavor

to preserve the Encrypted Servers in an extremely low-cost environment on the Cloud-Based Solution in the event that a decryption program becomes available in the future.

79. The full scope of the Ransomware Attack, and the degree to which the affected Electronic Records and Programs can be restored is not yet known at this time. As noted above, there has been permanent and irreparable harm to the IT System. The Receiver intends on continuing to work with the IT consultants to preserve, to the extent feasible, the IT System and will report further to the Manitoba Court on these matters as necessary.
80. The Ransomware Attack is likely to impact the Receiver's ability to implement the Cloud-Based Solution (to the extent now feasible) prior to the closing of the Inkster Transaction, which is currently scheduled to occur on January 18, 2021, subject to any applicable stay of the Inkster Approval and Vesting Order and such other arrangements as may be made with the purchaser of the Inkster Property. The Receiver is currently making arrangements to move certain IT servers to a third-party hosting facility in the event the migration cannot be completed prior to closing. As noted above, moving the physical servers does carry certain risks; however, given the Ransomware Attack, the Receiver may not be left with any other reasonable alternatives.
81. As to the matter of the preservation of Electronic Records for litigation purposes, the Forensic Copy should contain a copy of all user-generated Electronic Records (including email files) and the Fawcett Copy includes all Electronic Records on the IT System asserted by Mr. Nygard and the Debtors to be potentially relevant to litigation to which Mr. Nygard and/or any of the Debtors are parties.

## **V. STATUS OF DEFA REQUESTS**

### Fenske Request

82. On December 8, 2020, the Manitoba Court ordered that the email accounts and other electronic records copies of which were included in the Fenske Request were to be treated by the Receiver as a Records Access Request of Peter J. Nygard to be dealt with in accordance with the DEFA Order.
83. Based on the Receiver's preliminary review of documents included in the Fenske Request, it appears that a portion of the documents requested may be personal data of certain former Nygard employees. On December 10, 2020 TDS sent an email to LTGLC which included certain clarifying questions to better understand the relevance of certain of the Fenske Request documents for litigation purposes as well as additional clarifying questions in relation to the DEFA request. Paragraph 9(a) of the DEFA Order requires details of the relevant litigation proceedings and evidence satisfactory to the Receiver as to the need for litigation records. A reply to the TDS December 10, 2020 message was received on December 24, 2020. Attached as **Appendix "H"** is a



copy of the December 10, 2020 DEFA request email together with the said December 24, 2020 responding message.

Edson's / Brause DEFA Request

84. As at the date of this Second Supplementary Ninth Report, KLD is conducting a preliminary search to estimate the cost of providing certain documents containing certain search parameters for Edson's, Brause, and their parent company, Nygard Properties (USA) Limited provided by counsel to Edson's and Brause. The Receiver intends on continuing to work cooperatively with the above-noted entities to documents in accordance with their DEFA Requests.

All of which is respectfully submitted on this 30<sup>th</sup> day of December, 2020.

**Richter Advisory Group Inc.**  
**in its capacity as Receiver of**  
**Nygard Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc.,**  
**Nygard NY Retail, LLC, Nygard Enterprises Ltd., Nygard Properties Ltd.,**  
**4093879 Canada Ltd., 4093887 Canada Ltd., any Nygard International Partnership**  
**and not in its personal capacity**



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Adam Sherman, MBA, CIRP, LIT

# **APPENDIX A**

**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.

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**INKSTER APPROVAL AND VESTING ORDER**

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Thompson Dorfman Sweatman LLP  
Barristers and Solicitors  
1700 – 242 Hargrave Street  
Winnipeg, MB R3C 0V1  
(Matter No. 0173004 GBT)  
(G. Bruce Taylor: 204-934-2566)  
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THE QUEEN'S BENCH

WINNIPEG CENTRE

THE HONOURABLE )  
MR. JUSTICE EDMOND ) Thursday, the 19th day of November, 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

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.

INKSTER APPROVAL AND VESTING 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., Nygard

Properties Ltd., 4093879 Canada Ltd., 4093887 Canada Ltd., and Nygard International Partnership (collectively, the “**Debtors**”, or any one of them, a “**Debtor**”) as provided for in the Order of this Court pronounced on March 18, 2020 (the “**Receivership Order**”) (and as further amended by the General Order of this Court pronounced April 29, 2020), for, *inter alia*, an Order approving the sale transaction (the “**Transaction**”) contemplated by the accepted Offer to Purchase as amended (the “**Sale Agreement**”) between the Receiver, as vendor, and Eighth Avenue Acquisitions Ltd. (or such nominee as designated by Eighth Avenue Acquisitions Ltd.), as purchaser (the “**Purchaser**”), as referenced in the Ninth Report of the Receiver dated November 2, 2020 (the “**Ninth Report**”), and vesting in the Purchaser all of the right, title and interest of the Debtor Nygard Properties Ltd. (“**NPL**”) in and to the assets described in the Sale Agreement, namely the land and premises (including, without limitation, buildings and fixtures) located at 1771 Inkster Boulevard, Winnipeg, and certain chattels used in connection with the operation of that property as described in the Sale Agreement (collectively, the “**Inkster Property**”), was heard this day at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

ON READING the Notice of Motion of the Receiver, the Motion Brief of the Receiver dated November 2, 2020 (the “**Motion Brief**”), the Supplementary Motion Brief of the Receiver dated November 10, 2020 (the “**Supplementary Motion Brief**”), the First Report of the Receiver dated April 20, 2020, the Supplementary First Report of the Receiver dated April 27, 2020, the Second Report of the Receiver dated May 27, 2020, the Supplementary Second Report of the Receiver dated May 31, 2020, the Third Report of the Receiver dated June 22, 2020, the Fourth Report of the Receiver dated June 27,

2020, the Supplementary Third Report of the Receiver dated June 29, 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 10, 2020, the Supplementary Seventh Report of the Receiver dated September 14, 2020, the Eighth Report of the Receiver dated September 28, 2020 (the “**Eighth Report**”), the Supplementary Eighth Report of the Receiver dated October 12, 2020 (the “**Supplementary Eighth Report**”), the Ninth Report, including the Confidential Appendices thereto, the Supplementary Ninth Report of the Receiver dated November 10, 2020 (the “**Supplementary Ninth Report**”), the Notice of Motion of the Respondents dated September 29, 2020, the Notice of Motion of the Respondents dated November 5, 2020, the Motion Brief of the Respondents dated November 5, 2020, the Affidavit of Greg Fenske dated November 5, 2020, the Affidavit of Joe Albert dated November 5, 2020, the Supplementary Motion Brief of the Respondents dated November 12, 2020, the Affidavit of Peter Nygard affirmed November 12, 2020, the Affidavit of Joe Albert dated November 12, 2020 and on hearing the submissions of counsel for the Receiver, counsel for the Applicant, and counsel for the Respondents and Peter Nygard, counsel for various landlords, and counsel for various unsecured creditors, no one appearing for any other person, although properly served as appears from the Affidavit of Service of Robert Christian Pierce affirmed November 6, 2020, and the Affidavit of Service of Trista Feniuk affirmed November 12, 2020, filed herein:

1. THIS COURT ORDERS that the time for service of the Notice of Motion of the Receiver, the Ninth Report, the Motion Brief, the Supplementary Motion Brief and the Supplementary Ninth Report is hereby abridged and validated so that this motion is

properly returnable today and hereby dispenses with further service thereof.

### **APPROVAL AND VESTING**

2. THIS COURT ORDERS that the Transaction is hereby approved, and the completion of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Inkster Property to the Purchaser.

3. THIS COURT ORDERS AND DECLARES that, upon the delivery of a Receiver's Certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "**Receiver's Certificate**"), all of NPL's right, title and interest in and to the Inkster Property described in the Sale Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecations, mortgages, assignments, deposit arrangements, leases, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, rights of others, including, without limitation, rights of first refusal or purchase options, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**"), including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Receivership Order, as amended, and the Landlord Terms Order made in this proceeding on June 2, 2020; and (ii) all charges, security interests or claims evidenced by registrations pursuant to *The Personal Property Security Act* (Manitoba) or any other personal property registry system; and (iii) those

Claims listed on Schedule "B" hereto (all of which Claims and the charges and encumbrances referenced in subparagraphs (i), (ii) and (iii), are collectively referred to herein as the "**Encumbrances**", which term shall not include the permitted encumbrances and easements listed on Schedule "C" hereto (the "**Permitted Encumbrances**")) and, for greater certainty, this Court orders that, upon the delivery of the said Receiver's Certificate, all of the Claims and Encumbrances affecting or relating to the Inkster Property are hereby expunged and discharged as against the Inkster Property.

4. THIS COURT ORDERS that upon delivery of the Receiver's Certificate to the Purchaser, the District Registrar of the Winnipeg Land Titles Office in the Province of Manitoba shall immediately cancel Certificate of Title No. 2286531/1 now standing in the name of NPL and shall immediately thereafter issue a new Certificate of Title in respect of the same land in the name of the Purchaser, free and clear from any and all Claims and Encumbrances except those Permitted Encumbrances identified in Schedule "C" hereto, notwithstanding that the time for appeal of this Inkster Approval and Vesting Order has not expired and notwithstanding that all interested parties may not have consented to this Inkster Approval and Vesting Order

5. THIS COURT ORDERS that, for the purposes of determining the nature and priority of Claims and Encumbrances, the net proceeds from the sale of the Inkster Property shall stand in the place and stead of the Inkster Property, and that from and after the delivery of the Receiver's Certificate, all Claims and Encumbrances shall attach to the net proceeds from the sale of the Inkster Property with the same priority as they had with respect to the Inkster Property immediately prior to the sale, as if the Inkster Property had not been sold and remained in the possession or control of the person having that



possession or control immediately prior to the sale.

6. THIS COURT ORDER AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof to the Purchaser.

7. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the BIA in respect of any of the Debtors, including, without limitation, NPL, and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtors, including, without limitation, NPL

the vesting of the Inkster Property in the Purchaser pursuant to this Order shall be binding on any licensed insolvency trustee of the bankruptcy estate that may be appointed in respect of any of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act (Canada)*, or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

#### **SEALING**

8. THIS COURT ORDERS that the Confidential Appendices to the Ninth Report

shall be sealed, kept confidential and not form part of the public record and shall remain stored electronically with this Court on an encrypted basis limiting access to only the Registrar of this Court and the presiding Judge and shall only be made accessible or form part of the public record upon further Order of this Court.

### **REPORTS AND ACTIVITIES OF RECEIVER**

9. THIS COURT APPROVES the Eighth Report, the Supplementary Eighth Report, the Ninth Report and the Supplementary Ninth Report and the activities of the Receiver and its counsel as described therein, including the Receiver's Interim Statements of Receipts and Disbursements as reflected in the Eighth Report and the Ninth Report.

### **PRESERVATION OF ELECTRONIC RECORDS AND PHYSICAL RECORDS**

10. THIS COURT ORDERS that the Receiver be and is hereby authorized and empowered to, prior to the closing of the Transaction, enter into such arrangements as the Receiver considers reasonable and appropriate for:

- (a) the preservation of Electronic Records and Programs (both as defined as the Ninth Report) by means of a third-party IT service provider, with a view to preserving, to the extent feasible, the functionality of the IT System (as defined in the Ninth Report) and Electronic Records stored therein, including, without limitation, the implementation of a "Cloud-Based Solution" as described and defined in the Ninth Report, subject to the direction of this Honourable Court that the Receiver and the Respondents shall endeavor to cooperate in the identification and implementation of a preservation solution to manage the costs associated with the preservation

of data comprising, without limiting the generality of the foregoing, marketing and promotional materials, past shipping and logistics-related documents, high resolution pictures, patterns of clothing and other data reasonably considered to be “low priority” data for the purposes of preservation; and

- (b) the storage of the Physical Records (as defined in the Ninth Report) and dismantled physical servers and equipment (including, without limitation, hard drives from local computers and servers) at a third-party storage location, to be identified by the Receiver.

11. THIS COURT ORDERS that the Respondents’ request that they be provided with electronic files, email accounts and other electronic records from the Nygard IT Systems/Electronic Records, including, without limitation, those electronic files, email accounts and other electronic records copies of which were requested by the Respondents following the review of the Nygard IT Systems/Electronic Records conducted on behalf of the Respondents on or about October 9, 2020 commonly referred to in these proceedings as the “Fawcett Review”, is to proceed as a Records Access Request of Peter J. Nygard and will be dealt with in accordance with the Documents and Electronic Files Access Order made by this Honourable Court on April 29, 2020.

#### **LIFTING OF THE STAY**

12. THIS COURT ORDERS that the Respondents’ request to lift the stay of proceedings under paragraph 12 of the Receivership Order to permit the Respondents, or any one of them, to file a Notice of Intention to make a Proposal pursuant to section

50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended, be and is hereby dismissed.

### **DISCHARGE OF THE RECEIVER**

13. THIS COURT ORDERS that the Respondents' motion to discharge the Receiver as Receiver of the assets, undertakings, and properties of the Respondents be and is hereby dismissed.

### **GENERAL**

14. 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.

DECEMBER       , 2020

\_\_\_\_\_

I, MELANIE M. LABOSSIERE 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, EDSON'S INVESTMENTS INC. and BRAUSE INVESTMENTS INC., LOUIS BACON, ALBERT GELMAN INC.,

ORIENTWORKS INC., THE JANE AND JOHN DOE PLAINTIFFS, OXFORD PROPERTIES GROUP and CROMBIE REIT, and VARIOUS LANDLORDS AS DIRECTED BY THE HONOURABLE MR. JUSTICE EDMOND.

SCHEDULE A  
FORM OF RECEIVER'S CERTIFICATE

**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.

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to the Order of the Honourable Mr. Justice Edmond of the Manitoba Court of Queen's Bench (the "**Court**") dated March 18, 2020 (and as further amended by the General Order of this Court pronounced April 29, 2020), Richter Advisory Group Inc. was appointed as the receiver (the "**Receiver**") of the undertaking, property and assets 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**", or any one of them, a "**Debtor**").

B. Pursuant to an Order of the Court dated November •, 2020, the Court approved the transaction (the “**Transaction**”) contemplated by the accepted Offer to Purchase, as amended (the “**Sale Agreement**”) between the Receiver, as vendor, and Eighth Avenue Acquisitions Ltd. (or such nominee as designated by Eighth Avenue Acquisitions Ltd.), as purchaser (the “**Purchaser**”), as referenced in the Ninth Report of the Receiver dated October •, 2020, and vesting in the Purchaser all of the right, title and interest of the Debtors Nygard Properties Ltd. in and to the assets described in the Sale Agreement, namely the land and premises (including, without limitation, buildings and fixtures) located at 1771 Inkster Boulevard, Winnipeg, and certain chattels used in connection with the operation of that property as described in the Sale Agreement (collectively, the “**Inkster Property**”), which vesting is to be effective with respect to the Inkster Property upon the delivery by the Receiver to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the purchase price for the Inkster Property; (ii) that the conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Inkster Property payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to closing as set in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at the City of Winnipeg, in Manitoba on the                      day of                      , 2020.

Richter Advisor Group Inc., in its capacity as Receiver of the undertaking, property and assets of the Debtors, and not in its personal capacity

per: \_\_\_\_\_  
Name:  
Title:



**SCHEDULE "B"**

**REAL PROPERTY TO BE VESTED – ENCUMBRANCES TO BE EXPUNGED**

Title No. 2286531/1

FIRSTLY: SP LOT 6 PLAN 26533 WLTO IN OTM LOTS 2 AND 3 PARISH OF KILDONAN

SECONDLY: PARCEL 3 PLAN 11773 WLTO EXC OUT OF SAID PARCEL ALL MINES AND MINERALS WHETHER SOLID LIQUID OR GASEOUS AND THE RIGHT TO WORK THE SAME IN SAID PARISH

Encumbrances to be Expunged

Mortgage No. 5140960/1 from Nygard Properties Ltd. to White Oak Commercial Finance, LLC

Notice of Appointment of a Receiver/Mgr No. 5166008/1

**SCHEDULE "C"**

**PERMITTED ENCUMBRANCES**

Caveat No. 228203/1 in favour of The City of Winnipeg

Caveat No. 228344/1 in favour of The City of Winnipeg

## **APPENDIX A1**

**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.

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**INKSTER APPROVAL AND VESTING ORDER**

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Thompson Dorfman Sweatman LLP  
Barristers and Solicitors  
1700 – 242 Hargrave Street  
Winnipeg, MB R3C 0V1  
(Matter No. 0173004 GBT)  
(G. Bruce Taylor: 204-934-2566)  
(Ross A. McFadyen: 204-934-2378)  
(Email: [gbt@tdslaw.com](mailto:gbt@tdslaw.com) / [ram@tdslaw.com](mailto:ram@tdslaw.com))

THE QUEEN'S BENCH

WINNIPEG CENTRE

THE HONOURABLE )  
MR. JUSTICE EDMOND ) [MondayThursday](#), the [9th-19th](#) day of November,  
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

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.

**INKSTER APPROVAL AND VESTING 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., Nygard Properties Ltd., 4093879 Canada Ltd., 4093887 Canada Ltd., and Nygard International Partnership (collectively, the “**Debtors**”, or any one of them, a “**Debtor**”) as provided for in the Order of this Court pronounced on March 18, 2020 (the “**Receivership Order**”) (and as further amended by the General Order of this Court pronounced April 29, 2020), for, *inter alia*, an Order approving the sale transaction (the “**Transaction**”) contemplated by the accepted Offer to Purchase as amended (the “**Sale Agreement**”) between the Receiver, as vendor, and Eighth Avenue Acquisitions Ltd. (or such nominee as designated by Eighth Avenue Acquisitions Ltd.), as purchaser (the “**Purchaser**”), as referenced in the Ninth Report of the Receiver dated ~~October~~ November 2, 2020 (the “**Ninth Report**”), ~~Report~~, and vesting in the Purchaser all of the right, title and interest of the Debtor Nygard Properties Ltd. (“**NPL**”) in and to the assets described in the Sale Agreement, namely the land and premises (including, without limitation, buildings and fixtures) located at 1771 Inkster Boulevard, Winnipeg, and certain chattels used in connection with the operation of that property as described in the Sale Agreement (collectively, the “**Inkster Property**”), was heard this day at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

ON READING the Notice of Motion of the Receiver, the Motion Brief of the Receiver dated ~~October~~ November 2, 2020 (the “**Motion Brief**”), the Supplementary Motion Brief of the Receiver dated November 10, 2020 (the “Supplementary Motion Brief”), the First Report of the Receiver dated April 20, 2020, the Supplementary First Report of the Receiver dated April 27, 2020, the Second Report of the Receiver dated May 27, 2020, the Supplementary Second Report of the Receiver

dated May 31, 2020, the Third Report of the Receiver dated June 22, 2020, the Fourth Report of the Receiver dated June 27, 2020, the Supplementary Third Report of the Receiver dated June 29, 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 10, 2020, the Supplementary Seventh Report of the Receiver dated September 14, 2020, the Eighth Report of the Receiver dated September 28, 2020 ([the "Eighth Report"](#)), the Supplementary Eighth Report of the Receiver dated October 12, 2020, ~~and~~ ([the "Supplementary Eighth Report"](#)), the Ninth Report ~~of the Receiver dated October 12, 2020~~, including the Confidential Appendices thereto, [the Supplementary Ninth Report of the Receiver dated November 10, 2020 \(the "Supplementary Ninth Report"\)](#), [the Notice of Motion of the Respondents dated September 29, 2020](#), [the Notice of Motion of the Respondents dated November 5, 2020](#), [the Motion Brief of the Respondents dated November 5, 2020](#), [the Affidavit of Greg Fenske dated November 5, 2020](#), [the Affidavit of Joe Albert dated November 5, 2020](#), [the Supplementary Motion Brief of the Respondents dated November 12, 2020](#), [the Affidavit of Peter Nygard affirmed November 12, 2020](#), [the Affidavit of Joe Albert dated November 12, 2020](#) and on hearing the submissions of counsel for the Receiver, counsel for the Applicant, and counsel for the Respondents and Peter Nygard, [counsel for various landlords, and counsel for various unsecured creditors](#), no one appearing for any other person, although properly served as appears from the Affidavit of Service of ~~sworn October~~ [Robert Christian Pierce affirmed November 6, 2020](#), [and the Affidavit of Service of Trista Feniuk affirmed November 12, 2020](#), filed herein:

1. THIS COURT ORDERS that the time for service of the Notice of Motion of the

Receiver, the Ninth Report ~~and~~, the Motion Brief ~~of the Receiver~~, the Supplementary Motion Brief and the Supplementary Ninth Report is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

### **APPROVAL AND VESTING**

2. THIS COURT ORDERS that the Transaction is hereby approved, and the completion of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Inkster Property to the Purchaser.

3. THIS COURT ORDERS AND DECLARES that, upon the delivery of a Receiver's Certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "**Receiver's Certificate**"), all of NPL's right, title and interest in and to the Inkster Property described in the Sale Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecations, mortgages, assignments, deposit arrangements, leases, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, rights of others, including, without limitation, rights of first refusal or purchase options, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**"), including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Receivership Order, as amended, and the



Landlord Terms Order made in this proceeding on June 2, 2020; and (ii) all charges, security interests or claims evidenced by registrations pursuant to *The Personal Property Security Act* (Manitoba) or any other personal property registry system; and (iii) those Claims listed on Schedule "B" hereto (all of which Claims and the charges and encumbrances referenced in subparagraphs (i), (ii) and (iii), are collectively referred to herein as the "**Encumbrances**", which term shall not include the permitted encumbrances and easements listed on Schedule "C" hereto (the "**Permitted Encumbrances**")) and, for greater certainty, this Court orders that, upon the delivery of the said Receiver's Certificate, all of the Claims and Encumbrances affecting or relating to the Inkster Property are hereby expunged and discharged as against the Inkster Property.

4. THIS COURT ORDERS that upon delivery of the Receiver's Certificate to the Purchaser, the District Registrar of the Winnipeg Land Titles Office in the Province of Manitoba shall immediately cancel Certificate of Title No. 2286531/1 now standing in the name of NPL and shall immediately thereafter issue a new Certificate of Title in respect of the same land in the name of the Purchaser, free and clear from any and all Claims and Encumbrances except those Permitted Encumbrances identified in Schedule "C" hereto, notwithstanding that the time for appeal of this Inkster Approval and Vesting Order has not expired and notwithstanding that all interested parties may not have consented to this Inkster Approval and Vesting Order

5. THIS COURT ORDERS that, for the purposes of determining the nature and priority of Claims and Encumbrances, the net proceeds from the sale of the Inkster Property shall stand in the place and stead of the Inkster Property, and that from and after the delivery of the Receiver's Certificate, all Claims and Encumbrances shall attach to the

net proceeds from the sale of the Inkster Property with the same priority as they had with respect to the Inkster Property immediately prior to the sale, as if the Inkster Property had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. THIS COURT ORDER AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof to the Purchaser.

7. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the BIA in respect of any of the Debtors, including, without limitation, NPL, and any bankruptcy order issued pursuant to any such applications;  
and
- (c) any assignment in bankruptcy made in respect of the Debtors, including, without limitation, NPL

the vesting of the Inkster Property in the Purchaser pursuant to this Order shall be binding on any licensed insolvency trustee of the bankruptcy estate that may be appointed in respect of any of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act (Canada)*, or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any

applicable federal or provincial legislation.

## **SEALING**

8. THIS COURT ORDERS that the Confidential Appendices to the Ninth Report shall be sealed, kept confidential and not form part of the public record and shall remain stored electronically with this Court on an encrypted basis limiting access to only the Registrar of this Court and the presiding Judge and shall only be made accessible or form part of the public record upon further Order of this Court.

## **NINTH REPORT REPORTS AND ACTIVITIES OF RECEIVER**

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

## **PRESERVATION OF ELECTRONIC RECORDS AND PHYSICAL RECORDS**

10. THIS COURT ORDERS that the Receiver be and is hereby authorized and empowered to, prior to the closing of the Transaction, enter into such arrangements as the Receiver considers reasonable and appropriate for:

- (a) the preservation of Electronic Records and Programs (both as defined as the Ninth Report) by means of a third-party IT service provider, with a view to preserving, to the extent feasible, the functionality of the IT System (as defined in the Ninth Report) and Electronic Records stored therein,

including, without limitation, the implementation of a “Cloud-Based Solution” as described and defined in the Ninth Report, subject to the direction of this Honourable Court that the Receiver and the Respondents shall endeavor to cooperate in the identification and implementation of a preservation solution to manage the costs associated with the preservation of data comprising, without limiting the generality of the foregoing, marketing and promotional materials, past shipping and logistics-related documents, high resolution pictures, patterns of clothing and other data reasonably considered to be “low priority” data for the purposes of preservation; and

(b) the storage of the Physical Records (as defined in the Ninth Report) and dismantled physical servers and equipment (including, without limitation, hard drives from local computers and servers) at a third-party storage location, to be identified by the Receiver.

11. THIS COURT ORDERS that the Respondents’ request that they be provided with electronic files, email accounts and other electronic records from the Nygard IT Systems/Electronic Records, including, without limitation, those electronic files, email accounts and other electronic records copies of which were requested by the Respondents following the review of the Nygard IT Systems/Electronic Records conducted on behalf of the Respondents on or about October 9, 2020 commonly referred to in these proceedings as the “Fawcett Review”, is to proceed as a Records Access Request of Peter J. Nygard and will be dealt with in accordance with the Documents and Electronic Files Access Order made by this Honourable Court on April 29, 2020.

### **LIFTING OF THE STAY**

12. THIS COURT ORDERS that the Respondents' request to lift the stay of proceedings under paragraph 12 of the Receivership Order to permit the Respondents, or any one of them, to file a Notice of Intention to make a Proposal pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended, be and is hereby dismissed.

### **DISCHARGE OF THE RECEIVER**

13. THIS COURT ORDERS that the Respondents' motion to discharge the Receiver as Receiver of the assets, undertakings, and properties of the Respondents be and is hereby dismissed.

### **GENERAL**

~~10.14.~~ 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.

• DECEMBER, 2020 \_\_\_\_\_

I, MELANIE M. LABOSSIERE 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, EDSON'S INVESTMENTS  
INC. and BRAUSE INVESTMENTS INC., LOUIS BACON, ALBERT GELMAN INC.,  
ORIENTWORKS INC., THE JANE AND JOHN DOE PLAINTIFFS, OXFORD PROPERTIES  
GROUP and CROMBIE REIT, and VARIOUS LANDLORDS AS DIRECTED BY THE  
HONOURABLE MR. JUSTICE EDMOND.

SCHEDULE A  
FORM OF RECEIVER'S CERTIFICATE

**THE QUEEN'S BENCH  
WINNIPEG CENTRE**

~~1.~~ 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

~~2.~~  
~~3.~~ **B**  
ETWEEN:

~~4.~~  
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.

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to the Order of the Honourable Mr. Justice Edmond of the Manitoba Court of Queen's Bench (the "**Court**") dated March 18, 2020 (and as further amended by the General Order of this Court pronounced April 29, 2020), Richter Advisory Group Inc. was appointed as the receiver (the "**Receiver**") of the undertaking, property and assets 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**", or any one of them, a "**Debtor**").

B. Pursuant to an Order of the Court dated November •, 2020, the Court approved the transaction (the “**Transaction**”) contemplated by the accepted Offer to Purchase, as amended (the “**Sale Agreement**”) between the Receiver, as vendor, and Eighth Avenue Acquisitions Ltd. (or such nominee as designated by Eighth Avenue Acquisitions Ltd.), as purchaser (the “**Purchaser**”), as referenced in the Ninth Report of the Receiver dated October •, 2020, and vesting in the Purchaser all of the right, title and interest of the Debtors Nygard Properties Ltd. in and to the assets described in the Sale Agreement, namely the land and premises (including, without limitation, buildings and fixtures) located at 1771 Inkster Boulevard, Winnipeg, and certain chattels used in connection with the operation of that property as described in the Sale Agreement (collectively, the “**Inkster Property**”), which vesting is to be effective with respect to the Inkster Property upon the delivery by the Receiver to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the purchase price for the Inkster Property; (ii) that the conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Inkster Property payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to closing as set in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at the City of Winnipeg, in Manitoba on the                      day of                      , 2020.

Richter Advisor Group Inc., in its capacity as Receiver of the undertaking, property and assets of the Debtors, and not in its personal capacity



per: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE "B"**

**REAL PROPERTY TO BE VESTED – ENCUMBRANCES TO BE EXPUNGED**

Title No. 2286531/1

FIRSTLY: SP LOT 6 PLAN 26533 WLTO IN OTM LOTS 2 AND 3 PARISH OF KILDONAN

SECONDLY: PARCEL 3 PLAN 11773 WLTO EXC OUT OF SAID PARCEL ALL MINES AND MINERALS WHETHER SOLID LIQUID OR GASEOUS AND THE RIGHT TO WORK THE SAME IN SAID PARISH

Encumbrances to be Expunged

Mortgage No. 5140960/1 from Nygard Properties Ltd. to White Oak Commercial Finance, LLC

Notice of Appointment of a Receiver/Mgr No. 5166008/1

## SCHEDULE "C"

### PERMITTED ENCUMBRANCES

Caveat No. 228203/1 in favour of The City of Winnipeg

Caveat No. 228344/1 in favour of The City of Winnipeg

Summary Report	
Title	<del>compareDocs-Comparison Results</del>
Date & Time	12/7/2020 3:29:20 PM
Comparison Time	7.34 seconds
compareDocs version	v5.0.0.64

Sources	
Original Document	<del>AVO Inkster - Final(5956696.1).docx</del>
Modified Document	<del>Inkster AVO - Revised - Dec 7 - 2020(6073100.3).docx</del>

Comparison Statistics	
Insertions	15
Deletions	3
Changes	12
Moves	0
Font Changes	0
Paragraph Style Changes	0
Character Style Changes	0
TOTAL CHANGES	30

Word Rendering Set Markup Options	
Name	
<u>Insertions</u>	
Deletions	
<u>Moves / Moves</u>	
Font Changes	
Paragraph Style Changes	
Character Style Changes	
Inserted cells	
Deleted cells	
Merged cells	
Changed lines	Mark left border.
Comments color	By Author.
Balloons	False

- 2

compareDoes-Settings-Used	Category	Option-Selected
Open Comparison Report after saving	General	Always
Report Type	Word	TrackChanges
Character Level	Word	False
Include Headers / Footers	Word	True
Include Footnotes / Endnotes	Word	True
Include List Numbers	Word	True
Include Tables	Word	True
Include Field Codes	Word	True
Include Moves	Word	True
Flatten Field Codes	Word	False
Show Track Changes Toolbar	Word	True
Show Reviewing Pane	Word	True
Update Automatic Links at Open	Word	{Yes / No}
Summary Report	Word	End
Detail Report	Word	Separate (View Only)
Document View	Word	Print
Remove Personal Information	Word	False

Summary Report	
Title	<b>compareDocs Comparison Results</b>
Date & Time	12/29/2020 12:49:33 PM
Comparison Time	2.65 seconds
compareDocs version	v5.0.0.64

Sources	
Original Document	AVO Inkster Schedule A.docx
Modified Document	Inkster AVO - Revised - Dec 24_ 2020(6073100.5).docx

Comparison Statistics	
Insertions	15
Deletions	4
Changes	12
Moves	0
Font Changes	0
Paragraph Style Changes	0
Character Style Changes	0
TOTAL CHANGES	31

Word Rendering Set Markup Options	
Name	
<a href="#">Insertions</a>	
<del>Deletions</del>	
<a href="#">Moves / <del>Moves</del></a>	
Font Changes	
Paragraph Style Changes	
Character Style Changes	
Inserted cells	
Deleted cells	
Merged cells	
Changed lines	Mark left border.
Comments color	By Author.
Balloons	False

compareDocs Settings Used	Category	Option Selected
Open Comparison Report after saving	General	Always
Report Type	Word	TrackChanges
Character Level	Word	False
Include Headers / Footers	Word	True
Include Footnotes / Endnotes	Word	True
Include List Numbers	Word	True
Include Tables	Word	True
Include Field Codes	Word	True
Include Moves	Word	True
Flatten Field Codes	Word	False
Show Track Changes Toolbar	Word	True
Show Reviewing Pane	Word	True
Update Automatic Links at Open	Word	[Yes / No]
Summary Report	Word	End
Detail Report	Word	Separate (View Only)
Document View	Word	Print
Remove Personal Information	Word	False

## **APPENDIX B**

**From:** Bruce Taylor  
**Sent:** Monday, December 14, 2020 1:56 PM  
**To:** Wayne M. Onchulenko <[WOnchulenko@ltglc.ca](mailto:WOnchulenko@ltglc.ca)>  
**Cc:** Ross McFadyen <[RAM@tdslaw.com](mailto:RAM@tdslaw.com)>; Melanie LaBossiere <[MML@tdslaw.com](mailto:MML@tdslaw.com)>  
**Subject:** RE: Nygard [LAW-TDS.FID1853952]

Wayne, there was no express direction from Justice Edmond as you describe, and, respectfully, your approach can hardly be said to take into consideration "... the interests of all parties." As we have said to you many times, there are a variety of reasons to preserve records, not just for litigation purposes.

We have said to you, several times now, that the Receiver is not prepared to be (or incur the very considerable expense necessary to become) the arbiter of what documents are or are not relevant to litigation. The Receiver cannot know in advance what might be the appropriate course of action in relation to the circumstances you describe, and, as we have advised you, is not prepared to commit to the course of action you describe. If you feel this is a matter that requires consideration by the Court, you are at liberty to bring a motion accordingly.

Regards,

G. Bruce Taylor  
P 204-934-2566  
C 204-295-5241  
"he/him"

**From:** Wayne M. Onchulenko <[WOnchulenko@ltglc.ca](mailto:WOnchulenko@ltglc.ca)>  
**Sent:** Monday, December 14, 2020 12:13 PM  
**To:** Bruce Taylor <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>  
**Subject:** FW: Nygard [LAW-TDS.FID1853952]

Hi Bruce

Here is my response in Black

**From:** Bruce Taylor <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>  
**Sent:** December 13, 2020 3:46 PM  
**To:** Wayne M. Onchulenko <[WOnchulenko@ltglc.ca](mailto:WOnchulenko@ltglc.ca)>  
**Cc:** Ross McFadyen <[RAM@tdslaw.com](mailto:RAM@tdslaw.com)>; Melanie LaBossiere <[MML@tdslaw.com](mailto:MML@tdslaw.com)>  
**Subject:** RE: Nygard [LAW-TDS.FID1853952]

Wayne, as to your message below, you advised in your message from December 11/20 at 5:59 pm that:

"we agree there are going to be corrupt documents found and likely have already been found. A large expensive amount of work will have to be done to uncorrupt the documents and in some cases they will not be able to be saved. Our experts estimate this cost could double the cost of the migration from an estimated 50K to an estimated 100K. This would not be following the judges direction to attempt to reduce the costs. Confirm you agree that all corrupt documents should be analyzed to determine if they are relevant and if not they should be deleted."

1. the Receiver has not (and had not at the time of your message) agreed there are going to be corrupt documents found. It may be that corrupt documents will be found. The Receiver can't presently comment on what, if any, additional costs might arise as a result.

In the Receiver's 8th report it set out, its concerns when it stated "insert quote" .

42. Given the size and scale of the Nygard Organization, the IT System is a relatively complex network that was developed over a number of years and cannot be easily duplicated or replaced, at least not in the near term. Further, the Receiver understands the IT System is relatively antiquated with many of the servers at or near end of life in terms of operability and/or storage space, therefore "unplugging", dismantling and moving the IT System carries a high degree of risk of impairment to the functionality of the IT System.

58 (d) the Receiver shall provide reasonable cooperation, and access to the Inkster Property and the Broadway Property, to facilitate the removal of the Redundant Records but the Receiver shall not be responsible for any of the costs associated with the removal of same, and the Receiver makes no representations and/or warranties as to the functionality of the Electronic Records and Storage Equipment included within the Redundant Records;

Assuming the Receiver has not changed it's mind it is a matter of when it comes across corrupted documents not if.

2. we have your point that consideration needs to be given to what is to be done in the event that "corrupt documents" are found in the course of the migration process. The Receiver cannot presently know what documents might be affected and the Receiver is not prepared at present to commit to any generalized course of action in respect of such documents. In a responsible manner, considerations of cost will be balanced against other interests in determining a course of action.

Further to our telephone conversation today am (Mon14 1015am) it is imperative the Receiver not spend extra monies saving non-essential and not relevant records/files.

Our request was the Receiver would agree not to attempt to repair corrupted documents that were not essential or relevant to the litigation. This would be us complying with the Judge's direction to continue to take immediate steps to reduce costs by limiting the amount of documents that are required to be stored.

This is not a generalized course of action but rather a specific course of action which is responsible taking into consideration costs and the interests of all the parties.

The protocol should be that once the Receiver identifies a "corrupted file" it should then make a determination as to the relevance of the records/files and if they are not relevant they should not be saved.

If the Receiver has any concerns about relevance they can notify counsel for Bacon and the Class Action litigants to obtain their approval as well.

Please confirm how you deal with the first set of "corrupted documents", and is this is the protocol you will use. If you do not use this protocol it is our intention to appear before the Judge to have him order this protocol be used.

So, as with the matter of deleting servers, the Receiver has your clients' input regarding the treatment of "corrupt documents", should the issue arise, and will take your clients' input into consideration.

If you remain of the view that a call between you and I would be helpful, I can be available tomorrow morning, if that works for you.

Are you available to speak at 4pm today (Mon14) to discuss the issue of how to deal with the first set of corrupted documents which undoubtedly has already occurred?



Regards,

G. Bruce Taylor  
P 204-934-2566  
C 204-295-5241  
"he/him"

**From:** Wayne M. Onchulenko <[WOnchulenko@lglc.ca](mailto:WOnchulenko@lglc.ca)>  
**Sent:** Friday, December 11, 2020 9:43 PM  
**To:** Bruce Taylor <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>  
**Subject:** FW: Nygard [LAW-TDS.FID1853952]

**Hi Bruce,**

Perhaps you don't agree with the importance of my last paragraph:  
**the cost of dealing with corrupted record/files; and**  
**the need to migrate the records/file in an efficient fashion;**  
but we have obtained expert opinion which we would like to share with you  
to save both time and money.

Justice Edmond directed us to work together to save time and cost. In that regard a phone meeting is important.

**What time can you be available?**

**Wayne**

**From:** Bruce Taylor <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>  
**Sent:** December 11, 2020 4:46 PM  
**To:** Wayne M. Onchulenko <[WOnchulenko@lglc.ca](mailto:WOnchulenko@lglc.ca)>  
**Cc:** Ross McFadyen <[RAM@tdslaw.com](mailto:RAM@tdslaw.com)>; Melanie LaBossiere <[MML@tdslaw.com](mailto:MML@tdslaw.com)>  
**Subject:** RE: Nygard [LAW-TDS.FID1853952]

Wayne, I have your message below and the positions you are now expressing. I am seeking instructions on a response. At the moment, there appears to me to be no more reason to spend the time and cost of more discussion of this, than there was yesterday or the day before.

Regards,

G. Bruce Taylor  
P 204-934-2566  
C 204-295-5241  
"he/him"

**From:** Wayne M. Onchulenko <[WOnchulenko@lglc.ca](mailto:WOnchulenko@lglc.ca)>  
**Sent:** Friday, December 11, 2020 2:33 PM  
**To:** Bruce Taylor <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>  
**Subject:** FW: Nygard [LAW-TDS.FID1853952]

**See below in black for my response. Thank you.**

**From:** Bruce Taylor <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>

**Sent:** December 10, 2020 3:59 PM

**To:** Wayne M. Onchulenko <[WOnchulenko@lglc.ca](mailto:WOnchulenko@lglc.ca)>

**Cc:** Ross McFadyen <[RAM@tdslaw.com](mailto:RAM@tdslaw.com)>; Melanie LaBossiere <[MML@tdslaw.com](mailto:MML@tdslaw.com)>

**Subject:** RE: Nygard [LAW-TDS.FID1853952]

Hi Bruce

Further to our telephone conversation of earlier today, we respond in black below.

Wayne, thank you for your message below. The position of the Receiver is set out in my message to you sent December 8, 2020 at 11:53 pm, and has not changed. The position you and your clients are now expressing is contrary to what you specifically advised the Court, on behalf of your clients, at the December 8 hearing. It is disingenuous for your clients to suggest that they are "following the directions of the court", when those directions were given in the context of your expressed agreement that no records would be deleted. Our position is not contrary to the position taken in court. It is the next step in following the Judges directions to continue to cooperate to save time and costs.

We have now consulted with our New York counsel and they agree the 10 folders of records/files we have forwarded to you to review and confirm are not relevant, would not be relevant to counsel for Bacon and the class action litigation. We further confirm we related to you our discussion with our New York counsel wherein they advised pictures of product, invoices, payment of invoices, and other like documents of this nature would not be relevant to either the class action or Bacon litigation. New York Counsel also advised all privileged documents should be saved/organized so they are easily identified and easily accessible because we will need access to these documents. In order to accomplish this we should not have to use the difficult DEFA process to obtain these documents but rather they should be produced in an easy efficient manner which would be your client producing all documents between counsel and Nygard employees outside of the DEFA process. We can and should do this during the migration process to comply with the judges directions to complete these tasks in the most cost efficient manner.

We can further advise we would be agreeable to put counsel for Bacon and the class action on notice we all agree these documents are not relevant so there will be no issue with the affected parties not having an opportunity to disagree. Finally we are agreeable to having the deletions approved by the court. As I indicated in my previous email this is an urgent topic for my client and we would like to discuss it further this afternoon at 4pm.

You are, of course, at any time at liberty to bring a motion to the Court on behalf of the Respondents seeking an order that records be deleted, on notice to all interested parties. We need your position on the relevance of these records /files, and then the position of counsel for Bacon and the class action before we would consider a motion. Please provide your position. Please respond by Friday Dec 11/20 at 4pm. ( During our conversation). We expect you will agree these documents are not relevant.

Further to our discussion about corrupt documents, we agree there are going to be corrupt documents found and likely have already been found. A large expensive amount of work will have to be done to uncorrupt the documents and in some cases they will not be able to be saved. Our experts estimate this cost could double the cost of the migration from an estimated 50K to an estimated 100K. This would not be following the judges direction to attempt to reduce the costs. Confirm you agree that all corrupt documents should be analyzed to determine if they are relevant and if not they should be deleted.

As was the case on Tuesday, we do not see any purpose in spending time and cost on a call to further discuss these matters. Accordingly, I am not available for a call today at 5pm. Given we have spoken this point seems moot.

Regards,

G. Bruce Taylor  
P 204-934-2566  
C 204-295-5241  
"he/him"

**From:** Wayne M. Onchulenko <[WOnchulenko@ltglc.ca](mailto:WOnchulenko@ltglc.ca)>  
**Sent:** Thursday, December 10, 2020 2:21 PM  
**To:** Bruce Taylor <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>  
**Subject:** FW: Nygard [LAW-TDS.FID1853952]

Hi Bruce

For obvious reasons only messages from me are mine. I have asked my client to not send emails on my behalf.

That being said this is my clients position. If you are available for a call at 5 we can discuss the important content of the email to which you refer. You can respond to the email to me.

**Wayne M Onchulenko\***



700- 330 St. Mary Avenue | Winnipeg, MB R3C 3Z5

204 957.6402 v  
204 957.1696 f

**Bar Admissions:** Manitoba, Ontario and Nunavut

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**From:** Bruce Taylor <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>  
**Sent:** December 10, 2020 12:57 PM  
**To:** Wayne M. Onchulenko <[WOnchulenko@ltglc.ca](mailto:WOnchulenko@ltglc.ca)>

Cc: Ross McFadyen <[RAM@tdslaw.com](mailto:RAM@tdslaw.com)>; Melanie LaBossiere <[MML@tdslaw.com](mailto:MML@tdslaw.com)>  
Subject: FW: Nygard [LAW-TDS.FID1853952]

Wayne, I have received the message below. Please confirm that it is sent to us on your behalf.

Regards,

G. Bruce Taylor  
P 204-934-2566  
C 204-295-5241  
"he/him"

From: Greg <[Greg@elij.ca](mailto:Greg@elij.ca)>  
Sent: Thursday, December 10, 2020 12:50 PM  
To: Levene Tadman Golub / Wayne Onchulenko <[wonchulenko@lglc.ca](mailto:wonchulenko@lglc.ca)>; Bruce Taylor <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>  
Subject: RE: Nygard [LAW-TDS.FID1853952]

**Bruce – I am sending this on behalf of Wayne due to the urgent meeting request below**

From: Bruce Taylor <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>  
Sent: December 8, 2020 11:53 PM  
To: Wayne M. Onchulenko <[WOnchulenko@lglc.ca](mailto:WOnchulenko@lglc.ca)>  
Cc: Ross McFadyen <[RAM@tdslaw.com](mailto:RAM@tdslaw.com)>; Melanie LaBossiere <[MML@tdslaw.com](mailto:MML@tdslaw.com)>  
Subject: RE: Nygard [LAW-TDS.FID1853952]

1

Wayne, earlier today, you confirmed to the Court that your clients had agreed that all records would be preserved. A day hasn't yet passed, and your clients already seem to be backtracking on that position and re-opening this discussion.

**We are moving forward with listing the documents that can be deleted. The only difference between us is when the documents for deletion are identified.**

2

You heard the concerns raised by counsel for the Jane Doe Plaintiffs, and also heard me describe to the Court that at some point in future circumstances *might* arise that in which the Receiver would have a comfort level seeking an Order permitting the deletion of files/records. I very much emphasized "might". As you can appreciate, the Receiver does not want to put itself in a position where the Receiver is somehow making determinations on what might be relevant and producible in the various litigation cases.

**There are some files/records that could not be relevant to this or any other litigation. The "test files" are an example.**

**Further, if a file is corrupt (there is an agreement that a high percentage will be corrupt), and is determined to be "not relevant," it should be deleted. The receiver can obtain Court approval for the deletion.**

3

For the purposes of your argument for copies of the "Fawcett Review" documents, you have taken the position (reiterated by Justice Edmond) that "relevance" is a very broad concept for the purposes of production in litigation. The flip side of that is that the Receiver and the Court have to be mindful of the same broad relevance test in preserving documents. For that reason, the starting point expressed to the Court (with which you agreed today) is that the attempt will be to preserve all records and documents .

**We agreed to preserving all the records and documents because of the time constraints of the sale of the Inkster building not because we agree that all of the records and documents are relevant and therefore need to be saved.**

**This why we are creating a list of records/documents to delete during the migration process when we have to examine the files to determine how they will be stored or deleted.**

4

We don't mean to be facetious, but the circumstances have not changed since this morning. We're not sure why you would re-open this discussion at this point, particularly when our understanding is that the servers you have listed will be stored as low priority data, at a cumulative monthly storage cost of approximately \$5.51. Please see below. The costs to deal with your messages/suggestion (even without a phone call to discuss your message, and whatever follow up would then be required) already well exceed the prospective savings.

**The Judge directed us to work together to reduce all costs.**

**We must take into account the cost of migration and deleting files/documents that are not relevant. The cost to do this examination again at a later point in time is not being taken into consideration by your client.**

**The most efficient way is to deal with it now in conjunction with the migration.**

5

You have also asked if documents can be deleted if "everyone" agrees. "Everyone" might have to include the US litigants who are represented in the receivership proceedings (and perhaps parties in other cases who have not to date appeared in these proceedings). After hearing Mark Abramowitz today, it appears unlikely that Jane Doe counsel would agree to the deletion of any records at this point; certainly not without the opportunity to first have access to and look at what is suggested be deleted (or accept some other attestation that they considered credible). We're not sure that is a precedent that is best to be set or one that you are intending. In any event, it is not yet clear what circumstances might support the Court making an Order to delete records.

**We agree that we should not have Class Action counsel involved in making decisions about preservation of files/records particularly when their class action has not yet been certified.**

6

We also expect that Jane Doe counsel (and others) would be surprised to have this issue arise so closely following this morning's hearing. More than one party is likely to question the credibility of what they heard in Court today.

**The other counsel should know we are following the Courts direction to work towards cost savings by way of least expensive storage costs and NO migration costs where the documents are not relevant.**

7

I don't think a call is necessary. We have your list, and your suggestion that these servers could be deleted. The Receiver can bear this in mind as the receivership moves forward and events unfold. If your goal, at this point, in regard to these servers, was simply to bring your suggestion to the attention of the Receiver so that it could be kept in mind, then a call is not necessary.

**Our goal is to follow the directions of the Court and work towards costs savings by way of least expensive storage costs and no migration costs where the files/records are not relevant.**

8

**A call is a part of following the Court's direction.**

**Does 5pc today (Thu10) work for you?**

Identifier

Storage Costs

IKNT272	\$0.10
IKNTAXUPGRADE	\$0.13
IKNTAX-TEST	\$0.23
IKNT86A	\$0.55
IKNT25X	\$4.08
IKNT275	\$0.08
IKNT273	\$0.08
IKNT274	\$0.08
IKNT306	\$0.08
IKNT308A	\$0.08
<b>Total</b>	<b>\$5.51</b>

Regards,

G. Bruce Taylor  
P 204-934-2566  
C 204-295-5241  
"he/him"

**From:** Wayne M. Onchulenko <[WOnchulenko@tglc.ca](mailto:WOnchulenko@tglc.ca)>

**Sent:** Tuesday, December 8, 2020 6:49 PM

**To:** Bruce Taylor <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>

**Subject:** FW: Nygard

Hi Bruce

Just in case you did not receive my email of 6:12 pc asking for an urgent 1:30pm Wed 9 meeting the following should be helpful.

Now that the Judge has agreed that migration can start immediately (Wed9), it is appropriate to delete the documents that are clearly not needed during this process.

We had our expert produce this for you so you can see the first ten servers to which I referred to in my previous email.

## **Extracted from “AWS – Costing by Server”**

	Identifier	VM Comments	Expert/Consultant comments
1	IKNT272	AX Staging AOS	Test AX custom code prior to installing
2	IKNTAXUPGRADE	New AXupgrade test machine as per MWM NOV7 2019	Test AX software upgrades
3	IKNTAX-TEST	AX Test	Used for staff training / testing on AX
4	IKNT86A	Merchant Test	Test software upgrades for Retail control software
5	IKNT25X	IKNT25 Dev/Staging Server	General testing of in house software development
6	IKNT275	AX DEV AOS	Used for staff training / testing on AX
7	IKNT273	Dev - Web Apps	Used for developing In House software
8	IKNT274	Dev - Web Services	Used for developing In House software
9	IKNT306	AS400 Terminal Rational Developer install	Used for developing AS400 software changes
10	IKNT308A	Vista Application Dev	Used for developing HR system software changes

If 1:30 meeting is not convenient, what time do you suggest?

**Wayne M Onchulenko\***



700- 330 St. Mary Avenue | Winnipeg, MB R3C 3Z5

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204 957.1696 f

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## **APPENDIX C**

Hi!

Your files are encrypted.

All files for this computer has extension: .ca29ac

Your filenames can be changed too, except extensions for free decrypt.

--

If for some reason you read this text before the encryption ended, this can be understood by the fact that the computer slows down, and your heart rate has increased due to the ability to turn it off, then we recommend that you move away from the computer and accept that you have been compromised. Rebooting/shutdown will cause you to lose files without the possibility of recovery.

--

Our encryption algorithms are very strong and your files are very well protected, the only way to get your files back is to cooperate with us and get the decrypter program.

Do not try to recover your files without a decrypter program, you may damage them and then they will be impossible to recover.

--

For us this is just business and to prove to you our seriousness, we will decrypt you few files for free. Just open our website, upload the encrypted files and get the decrypted files for free.

Additionally, you must know that your sensitive data has been stolen by our analyst experts and if you choose to no cooperate with us, you are exposing yourself to huge penalties with lawsuits and government if we both don't find an agreement. We have seen it before; cases with multi million costs in fines and lawsuits, not to mention the company reputation and losing clients trust and the medias calling non-stop for answers. Come chat with us and you could be surprised on how fast we both can find an agreement without getting this incident public.

--

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WE HIGHLY SUGGEST THAT YOU DON'T CONTACT THE AUTHORITIES REGARDING THIS INCIDENT BECAUSE IF YOU DO, THEN AUTHORITIES WILL MAKE THIS PUBLIC WHICH COMES WITH A COST FOR YOUR ENTERPRISE. THE RECOVERY PROCESS OF YOUR FILES WILL BE FASTER IF YOU COME AND CHAT WITH US EARLY. IF YOU CHOOSE TO COOPERATE, YOU WILL SEE THAT WE ARE PROFESSIONALS WHO GIVES GOOD SUPPORT.

\*\*\*

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1.Download and install tor-browser: <https://torproject.org/>

2.Open our website: pb36hu4spl6cyjdfhing7h3pw6dhpK32ifemawkujj4gp33ejzdg3did.onion

If the website is not available, open another one: rnfdsGm6wb6j6su5txkekW4u4y47kp2eatvu7d6xhyn5cs4lt4pdrqqd.onion

3.Put your personal code in the input form:

```
{code_ca29ac:
w9S68P7aQUdK+SaaP0Sxue4GkrBg7VK7M3/vyXErtG3voWCMIw
jg6NzIWpR7xAwuztLUwCYyOfKZ75Lvi2T8OQ4CL/LXEhpmd9Mc
s5SsKcoKN6EDJHkovUqDo+5+J/kg2BrFFuMoTC8T0hc1rcOqFX
mmaQh5B6/Mtb7ufbJQqhezRBxGJf8JUJROzVt5HXKY/jHddTXt
ap3BMZWOK5/RXj7Gwq9+z/hnN+aOxIn9RUFyefB/Gz2UKc06
HcsFu2nLL1JWEW8WE/p3p7olBpog2S7D7pjtxBFA==}
```

## **APPENDIX D**

[Payment](#)[Stolen data](#)[Free decrypt](#)[FAQ](#)[Chat](#)[Logout](#)

**All your files are encrypted..**

The only way to decrypt your files, is buying the decryptor.

Your user key is: **20DE7533**, you can use it to log in again.

The system is automated. After you make the payment and transaction have 3 network confirmations, you'll be able to download decryptor.

*Note: We saw alot of companies spending time and money, trying to recover their files, but in last case they still come and ask our help.  
Cooperating with us, you will avoid damaging your company reputation.*

Invoice for payment

**EXPIRED**

Status: **Waiting for payment**

You can buy the decrypter program for your network.

**Payment expired! New price: 3700000S (197.74460000 BTC)**

Decrypter for: **ALL NETWORK / ALL COMPUTERS / ALL FILES**

Bitcoin address: **3Ny4eja23YcHeN1Sy8eaZKMMu187sbnqNB**

Amount for payment: **197.74460000 BTC**

You paid: **0.00000000 BTC**

## **APPENDIX E**

Payment Stolen data Free decrypt FAQ Chat Logout

**Your data has been stolen.**  
**The news about your company being hacked and the publication of stolen data will take place in two stages.**  
**Phase one:** Publishing news about your company's hacking will cause irreparable damage to your reputation  
**Second stage:** Publishing stolen data that will cause financial damage to Your company and customers.  
Address of the public blog where the publication is being prepared:  
[rnfds6m6wb6j6su5txkxkw4u4y47kp2eatvu7d6xhyn5cs4lt4pdrqqd.onion/blog](https://rnfds6m6wb6j6su5txkxkw4u4y47kp2eatvu7d6xhyn5cs4lt4pdrqqd.onion/blog)  
To cancel the publication of news and stolen data in public access, you must pay.

**THIS NEWS IS PUBLISHED**

Nygaard International

**Stolen secret data publication after: 5d 10h 18m 50s**

Secret data: HIDDEN DATA Password: HIDDEN DATA

Nygaard International began as a sportswear manufacturer, founded in 1967 by Peter Nygaard in Winnipeg, Canada.  
In 1978 the company expanded into the United States and in 1987 Peter Nygaard opened the company's international sales and marketing team in Toronto, Canada.  
While it was active the company had corporate facilities in:  
New York, New York, United States (World Headquarters, Research and Design)  
Winnipeg, Manitoba, Canada (IT/Retail/Services/Design & Merchandising, Production & Distribution)  
Toronto, Ontario, Canada (International Sales & Marketing Team)  
The corporation also had manufacturing facilities in Shanghai, Tianjin, Sri Lanka, Indonesia and Mexico.

1_DualDesk	9/18/2018 10:18 AM	File folder
Abe R	7/10/2019 2:23 PM	File folder
ACCTg - RTL - THP	3/16/2020 9:09 AM	File folder
Aged PRK Action Plan	12/13/2018 3:09 PM	File folder
Archive	4/24/2019 12:26 AM	File folder
ARTS3 - Production	5/3/2019 6:42 PM	File folder
Attribute Rankings2010	10/22/2015 8:30 AM	File folder
AUG04-PDC-Standard Of Excellence	4/12/2016 3:06 PM	File folder
Aviation	12/2/2015 9:36 AM	File folder
AX Testing	4/15/2019 4:38 PM	File folder
AIRPT	6/19/2020 11:19 AM	File folder
B2B SLS	3/24/2020 4:14 PM	File folder
BAH Article Files	10/3/2019 9:44 AM	File folder
Bahanas - Working - Boxing	8/6/2019 4:18 PM	File folder
Biotech	5/20/2015 8:25 PM	File folder
BNPictures	3/5/2020 5:04 PM	File folder
BNS_SHARE	6/1/2017 5:08 PM	File folder
BOO Reporting	3/2/2020 7:50 AM	File folder
EPA - ZOW	10/4/2019 2:59 AM	File folder
Care-Content Instructions	2/24/2020 9:57 AM	File folder
Cargo File	10/15/2019 3:31 PM	File folder
CDA - Shipping Docs	9/29/2020 4:58 PM	File folder

# APPENDIX F

1_DualDesk	9/18/2018 10:18 AM	File folder
Abe R	7/10/2019 2:23 PM	File folder
ACCTg - RTL - TMP	3/16/2020 9:09 AM	File folder
Aged PPK Action Plan	12/13/2018 3:09 PM	File folder
Archive	4/24/2019 12:26 AM	File folder
ART53 - Production	5/3/2019 6:42 PM	File folder
Attribute Rankings2010	10/22/2015 8:38 AM	File folder
AUG04-PDC-Standard Of Excellence	4/12/2016 3:06 PM	File folder
Aviation	12/2/2015 9:36 AM	File folder
AX Testing	4/15/2019 4:38 PM	File folder
AXRPT	6/19/2020 11:19 AM	File folder
B2B SLS	3/24/2020 4:14 PM	File folder
BAH Article Files	10/3/2019 9:44 AM	File folder
Bahamas - Working - Boxing	8/6/2019 4:18 PM	File folder
Biotech	5/20/2015 8:25 PM	File folder
BNPictures	3/5/2020 5:04 PM	File folder
BNS_SHARE	6/1/2017 5:08 PM	File folder
BOD Reporting	3/2/2020 7:50 AM	File folder
BPA - ZDW	10/4/2019 2:59 AM	File folder
Care-Content Instructions	2/24/2020 9:57 AM	File folder
Cargo Fire	10/15/2019 3:31 PM	File folder
CDA - Shipping Docs	9/29/2020 4:58 PM	File folder
CFC Admin	5/20/2020 10:47 PM	File folder
CFC Bulk Fabric	3/23/2020 3:59 AM	File folder
CFC Fabric Sourcing	12/9/2019 11:15 PM	File folder
CFC Finance	2/19/2020 7:58 PM	File folder
CFC Inspection Report	8/12/2019 3:03 AM	File folder
CFC Parcel	7/6/2018 2:46 AM	File folder
CFC Retail	6/21/2016 2:52 AM	File folder
CFC Time Accrual	4/27/2017 10:45 PM	File folder
China - Vendor List	5/12/2015 2:40 AM	File folder
China QC Attendance	2/28/2017 11:51 PM	File folder
Competitor -Flyers - Weekly	1/4/2016 5:43 AM	File folder
CONST Project	8/24/2019 12:27 PM	File folder
Contacts - Review	8/19/2014 12:13 PM	File folder



Design - Shanghai - Library	10/24/2019 2:35 PM	File folder
Dillards Specialist Program	10/12/2018 3:51 PM	File folder
DS Fixture Count	5/16/2017 4:33 PM	File folder
EA - NCBR - Review	10/21/2020 3:48 PM	File folder
ECOMM	1/24/2019 4:53 PM	File folder
Fabric Mall Visit Report	10/31/2019 8:50 PM	File folder
FedEx Report	8/11/2014 2:25 PM	File folder
FI	10/24/2019 9:34 AM	File folder
Finance	4/3/2020 10:30 AM	File folder
Finance-Interdivisional	3/10/2017 2:30 PM	File folder
G/S	3/30/2020 8:55 AM	File folder
HR - Events - Critical Path	6/3/2020 8:57 AM	File folder
HR IX CORP	3/4/2020 2:53 PM	File folder
HR TRNG - ASSOC	7/8/2019 12:45 PM	File folder
HZR - Bottoms - Pictures	9/16/2019 12:48 PM	File folder
IC Rev Grp	7/16/2014 8:55 AM	File folder
ICOM2	1/8/2020 4:22 PM	File folder
IK - Screens - Daily RPTG	2/28/2020 6:54 AM	File folder
IK - Visitor - Daily Log Sheet	1/6/2020 3:42 PM	File folder
Images	6/2/2016 8:44 AM	File folder
Images - RFX - Web	8/14/2019 4:24 PM	File folder
IND SLS Reports	11/28/2018 2:45 PM	File folder
Info Move	6/5/2018 6:09 PM	File folder
Info Transfer	9/14/2017 8:38 AM	File folder
Inspection Reports	7/28/2015 8:28 AM	File folder
Intercompany Agreements	6/25/2019 9:50 AM	File folder
IT	4/1/2020 12:53 PM	File folder
IT - Hardware - Contract ASSOC info	2/3/2019 12:52 PM	File folder
IT File Transfer	11/14/2017 1:02 PM	File folder
Labels	1/2/2020 11:09 AM	File folder
LASC - HR	12/19/2019 9:39 AM	File folder
LASC - Shipping Docs	12/30/2019 2:34 PM	File folder
LASC MGR	3/9/2020 10:45 AM	File folder
Marina Admin	6/4/2020 3:20 PM	File folder
Market - Shopping - Photos	10/31/2014 8:55 PM	File folder

Hiring PKG - CDA	2/28/2020 4:26 PM	File folder	
Hiring PKG - USA	3/23/2020 3:23 PM	File folder	
Hiring PKG RTL - Current	3/6/2020 9:26 AM	File folder	
HR - LEAVE - DOC	3/6/2020 3:24 PM	File folder	
HR ADMIN	12/7/2020 4:08 PM	File folder	
INFO - CORP - photos & CORP book	2/28/2020 4:23 PM	File folder	
INFO - Benefits	3/6/2020 3:27 PM	File folder	
INFO - EXEC ACCOM - Comparison	2/28/2020 4:24 PM	File folder	
INFO - Perform Job DESCs	9/24/2019 8:40 AM	File folder	
POC - MTG records	11/23/2016 11:26 AM	File folder	
Recruitment	3/11/2020 5:02 PM	File folder	
Recruitment - Career Focus Program	1/28/2020 12:07 PM	File folder	
Recruitment - Co-op Programs	6/9/2016 11:36 AM	File folder	
Recruitment ADMIN	1/28/2020 12:19 PM	File folder	
Stats	3/11/2020 12:08 PM	File folder	
TO	5/31/2018 8:38 AM	File folder	
TRNG Material	1/18/2019 12:29 PM	File folder	
POC MAR19 - HR - Jayson H.ppt	3/15/2019 5:08 PM	PPT File	532 KB

17 Yard Rentals	4/21/2020 10:51 AM	File folder	
BPA - PJN - confidential	2/3/2020 7:21 PM	File folder	
COM COR - Pictures for EKTS	5/12/2019 8:52 PM	File folder	
CRITICAL COMCOR INFO - 2018	11/4/2019 4:01 PM	File folder	
CRITICAL COMCOR INFO 2019	2/20/2020 8:09 PM	File folder	
DESKTOP - CRJC DOC - COM COR	5/4/2020 3:36 PM	File folder	
FACILITY PHOTOS	2/18/2020 6:13 PM	File folder	
Gate Info	10/5/2019 10:11 PM	File folder	
Manuals	2/18/2020 6:14 PM	File folder	
payroll 2019	6/18/2020 12:53 PM	File folder	
PHONE LISTS	5/4/2020 3:27 PM	File folder	
backup concor.pst	3/18/2020 9:46 PM	PST File	5,548,521 KB
Copy of Weekly Staff Schedule - NOV21 - DE...	12/16/2019 4:07 PM	XLSX File	48 KB
Marina Admin - Shortcut	6/4/2020 3:20 PM	Shortcut	1 KB
PP - Invite List DEC14.xlsx	12/15/2019 5:35 PM	XLSX File	9,975 KB
PP - Invite list OCT-19.xlsx	12/15/2019 12:00 AM	XLSX File	9,972 KB
STAFF INDIVIDUAL SCHEDULE DEC-19.xlsx	12/26/2019 6:39 PM	XLSX File	38 KB

## **APPENDIX G**

[← Back to enter page](#)

## NetWalker Blog

[← Previous page](#)

[Next page ►](#)

<https://www.tierney.com/>

Secret data: HIDDEN DATA

Password:

**Secret data publication in: 6d 11h 31m 09s**

Here at Tierney, we are constantly working to bring you the best technology solutions for your large or small business, school, government building, campus, house of worship, or nonprofit organization. Our focus is on the customer, and we know that means our offerings cannot stop at the products. We are dedicated to bringing you a line of products, and services to support projects of any size from start to finish.

We also know that taking care of our customers requires taking care of our employees which we strive to do every day. Team Tierney is focused on communication, a positive work environment, a culture of growth, and doing the right thing; we believe these intentions transfer d...

[Nygard International](#)

Secret data: HIDDEN DATA

Password:

**Secret data publication in: 5d 10h 15m 20s**

Nygård International began as a sportswear manufacturer, founded in 1967 by Peter Nygård in Winnipeg, Canada.

In 1978 the company expanded into the United States and in 1987 Peter Nygård opened the company's international sales and marketing team in Toronto, Canada.

While it was active the company had corporate facilities in:

New York, New York, United States (World Headquarters, Research and Design)  
Winnipeg, Manitoba, Canada (IT/Retail/Services/Design & Merchandising, Production & Distribution)  
Toronto, Ontario, Canada (International Sales & Marketing Team)  
The corporation also had manufacturing facilities in Shanghai, Tianjin, Sri Lanka, Indonesia and Mexi...

[INNOTECH encrypted and stolen data innotech-windows.com](#)

Secret data: <https://dropmefiles.com/ua/vn/...>

Password:

Secret data: <https://dropmefiles.com/ua/vn/...>

Password:

Secret data: <https://dropmefiles.com/ua/vn/...>

Password:

Secret data: <https://dropmefiles.com/ua/vn/...>

Password:

**THE SECRET DATA IS PUBLISHED**

Stolen many data: db email-SQL/DOC and etc.  
innotech-windows.com CANADA encrypted

<https://www.thorite.co.uk/>

Secret data: <https://dropmefiles.com/1bCb?r>

Password:

Secret data: <https://files.fm/w/7pj48q3>

Password:

Secret data: <https://easyupload.io/r82w2y>

Password:

**THE SECRET DATA IS PUBLISHED**

At Thorite we offer the most comprehensive range of market leading, cost-effective industrial compressed air, pneumatic and electro-mechanical motion control and process equipment and solutions in the UK.

We are a key link in the industrial supply chain, installing and maintaining industrial air compressor systems, design and build process and automation control systems and even providing cutting-edge customer training in all aspects of industrial automation and process control.

We offer one of the largest ranges of industrial air tools and pumps from the leading manufacturers backed up with comprehensive spares, maintenance and repair service.

## **APPENDIX H**

**From:** Wayne M. Onchulenko <[WOnchulenko@ltglc.ca](mailto:WOnchulenko@ltglc.ca)>  
**Sent:** Thursday, December 24, 2020 11:32 AM  
**To:** Bruce Taylor <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>  
**Subject:** RE: Nygard Receivership - Peter Nygard DEFA Order request [LAW-TDS.FID1853952]

See my response in red

**Wayne M Onchulenko\***



700- 330 St. Mary Avenue | Winnipeg, MB R3C 3Z5

204 957.6402 v  
204 957.1696 f

**Bar Admissions:** Manitoba, Ontario and Nunavut

\* Services provided through Wayne M. Onchulenko Law Corporation

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 please think green before printing this email

**From:** Bruce Taylor <[GBT@tdslaw.com](mailto:GBT@tdslaw.com)>  
**Sent:** December 10, 2020 4:45 PM  
**To:** Wayne M. Onchulenko <[WOnchulenko@ltglc.ca](mailto:WOnchulenko@ltglc.ca)>  
**Cc:** Ross McFadyen <[RAM@tdslaw.com](mailto:RAM@tdslaw.com)>; Melanie LaBossiere <[MML@tdslaw.com](mailto:MML@tdslaw.com)>  
**Subject:** Nygard Receivership - Peter Nygard DEFA Order request [LAW-TDS.FID1853952]

Wayne, attached are:

- A. Greg Fenske email dated October 16, 2020, attaching a "server review log"; and
- B. email correspondence from October 16, 2020 listing request Outlook email accounts .

The lists described in A and B above comprise the Peter Nygard DEFA electronic records search request.

1. Paragraph 6 of the DEFA Order provides for the development of an Electronic Search Protocol. The Receiver is not requiring such a protocol in regard to this request.
2. Paragraph 9(a) of the DEFA Order requires details of the relevant litigation proceedings and evidence satisfactory to the Receiver as to the need for Litigation Records. You have presented this request to the Receiver and the Court on the basis that the listed records are records that are not all necessarily relevant to litigation but

that (i) are required to be searched by Mr. Nygard and his counsel to identify documents that are likely to be relevant to and producible in litigation proceedings involving Mr. Nygard, and (ii) you expect are include all such relevant documents. In your email correspondence with us, you have identified certain litigation involving Mr. Nygard, the issues that you consider arise in that litigation in respect of which document production would be required and the nature of documents you consider to be relevant (see your December 1 email to us). Please insert in the attached lists a summary identification of the litigation to which each listed item/email account appears to you to relate (which we understand from you will be informed by counsel's guidance as to relevance) and return the completed lists to us. This allows you in a simple and summary way to provide further information respecting paragraph 9(a). Once we receive your response, the Receiver may (or may not) have additional questions as to the details of the relevant litigation. In this regard, we note that Justice Edmond expressed that "relevance" for the purposes of document production in litigation is broadly interpreted. **We have been advised by New York counsel that the entire list ( and more including some of the documents we did not think would be relevant) would be considered to be relevant for discovery in regards to the class action litigation.**

3. For your information:

- (i) as to A, the files/folders requested can be provided by means of an external hard drive . These files/folders are currently being reviewed by the Nygard IT staff and the Receiver. We note that Mr. Fenske's email of October 16, 2020 attaching the "server review log" indicated that copying the data could take approximately 100 hours (over 4 million files); however, in order to adjust for paragraph (4) below, the copy cannot be accomplished in approximately 100 hours and the Receiver will provide an update in due course. The time to address these extremely broad search parameters that you have provided may be quite substantial.
- (ii) as to B, the Receiver will be required to use KLD, as the Receiver's ED Firm, for the purposes of this search as Nygard IT advised it does not have the capabilities to copy email accounts. In this regard, note that, pursuant to the production of records in response to the SDNY subpoenas, your firm has already been provided with copies of the Outlook email accounts of Peter Nygard, Angela Dyborn, Marten Dyborn, Tiina Tulikorpi, Gregory Fenske, and Lili Micic. The Receiver assumes that you are not asking for another copy of those accounts. Please confirm. **We confirm**

Note that the DEFA Order provides that total search hours are not to exceed 16 hours. The Receiver is prepared to waive this limitation, on the express understanding that it remains entitled to rely on such limitation in regard to future search requests.

4. The records/email accounts to be provided in response to this search request will include data up to and including March 17, 2020.

5. You confirmed to the Court on December 8, 2020, that Mr. Nygard would pay the costs of this records request. Paragraph 21 of the DEFA Order requires that Mr. Nygard pay the fees, disbursements and costs of the Receiver, its legal counsel and KLD in advance of the commencement of the search, in an amount to be fixed by the Receiver. The Receiver notes that, in particular, the email accounts you are requesting will be costly to search and "copy". Once we have your confirmation that you do not wish the search to include the email accounts of the above-noted individuals, the Receiver will obtain an estimate of cost from KLD, and then we will advise you as to the amount to be paid in advance of the commencement of the search or the provision of any search results. **We will await your estimate before confirming you should proceed. Do you have a rough estimate?**

6. In due course, the Receiver will provide an invoice respecting the costs described in paragraph 22 of the DEFA Order, to be paid prior to the delivery of or access to the requested records.

Regards,

**G. Bruce Taylor**

Partner

He/him

P 204-934-2566

C 204-295-5241

F 204-934-0506

E [gbt@tdslaw.com](mailto:gbt@tdslaw.com)

W [tdslaw.com/gbt](http://tdslaw.com/gbt)

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