

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

In re:

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

Debtors in a Foreign Proceeding.

Chapter 15

Case No. 20-10828 (SMB)

Joint Administration Requested

**ORDER GRANTING PROVISIONAL RELIEF PURSUANT
TO SECTIONS 105(a) AND 1519 OF THE BANKRUPTCY CODE²**

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

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

(b) Nygard International Partnership (“International”); Nygard Properties Ltd. (“Properties”); Nygard Enterprises Ltd. (“Enterprises”); 4093887 Canada Ltd. (“4093887”); and 4093889 Canada Ltd. (“4093889”) (collectively, the “Canadian Debtors,” and together with the U.S. Debtors, the “Debtors”), each of which placed in a receivership on March 18, 2020 by order (the “Receivership Order”), attached as **Exhibit 1**, of the Court of Queen’s Bench Manitoba (the “Canadian Court”), Court File No. CI 20-01-26627 (the “Canadian Proceeding”), for entry of a

¹ The Debtors in these Chapter 15 cases, along with the last four digits of each Debtor’s U.S. Federal Employer Identification Number (“FEIN”) or Canada Revenue Agency Business Registration Number (“CRA”) , are: Nygard Holdings (USA) Limited (FEIN 3048), Nygard Inc. (FEIN 0509), Nygard NY Retail, LLC (FEIN 1672), Fashion Ventures, Inc. (FEIN 0956), Nygard International Partnership (FEIN 1535), Nygard Properties Ltd. (CRA 0003), Nygard Enterprises Ltd. (FEIN 7127), 4093887 Canada Ltd. (FEIN 1534), 4093879 Canada Ltd. (FEIN 1533).

² References to sections and chapters are references to sections and chapters of the Bankruptcy Code unless otherwise stated.

provisional order under sections 105(a) and 1519(a) of title 11 of the United States Code (the “Bankruptcy Code”); and upon this Court’s review and consideration of the Motion, the Verified Petition and the Benchaya Declaration; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and 11 U.S.C. §§ 105(a) and 1519; and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P); and venue being proper before this Court pursuant to 28 U.S.C. § 1410(1) and (3); and appropriate, sufficient, and timely notice of the filing of the Motion and the hearing thereon having been given pursuant to Rule 2002(q) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”); and upon the record established at such hearing; and the Court having found and determined that the provisional relief is **necessary to avoid immediate and irreparable harm to the Debtors**; ~~sought in the Motion is in the best interest of the Debtors, their creditors, and parties in interest, and is in the interest of international comity and not inconsistent with United States policy,~~ and that the legal and factual basis set forth in the Motion establish just cause for the relief granted herein; and no objections or other responses having been filed that have not been overruled, withdrawn or otherwise resolved; and after due deliberation and sufficient cause appearing therefor: [SMB: 3/26/20]

IT IS HEREBY ORDERED:

1. The relief requested in the Motion is GRANTED **to the extent indicated** effective immediately on an interim basis and continuing until the entry of an order of this Court recognizing the Canadian Proceeding as “foreign main proceeding” as defined in section 1502(4) and the Foreign Representative as a “foreign representative” as defined in section 101(24) (unless otherwise extended pursuant to section 1519(b)), or such order of the Court, solely as following:
[SMB: 3/26/20]

- a. The Foreign Representative shall be the representative of the Debtors with full and sole authority to administer the Debtors' assets and affairs in the United States on a provisional basis, as provided pursuant to the Receivership Order, which Receivership Order shall be given full force and effect pending the hearing on recognition (currently scheduled for April 14, 2020 at 10:00 a.m. (Eastern)).
 - b. Sections 362 and 365 shall apply, as provided below, with respect to each of the Debtors and the property of each of the Debtors that is located within the territorial jurisdiction of the United States. Without limiting the generality of the foregoing, the Provisional Relief Order shall impose a stay within the territorial jurisdiction of the United States of:
 - (i) the creation, perfection, seizure, attachment, enforcement, or execution of liens or judgments against the Debtors' property in the United States or from ~~transferring, encumbering or otherwise disposing of or interfering with the~~ Debtors' assets or agreements in the United States; **and**
 - (ii) ~~the act to collect, assess, or recover a claim against any of the Debtors that arose before the commencement of the Debtors' chapter 15 cases;~~
 - (iii) ~~the setoff of any debt owing to any of the Debtors that arose before the commencement of the Debtors' chapter 15 cases against any claim against any of the Debtors;~~
 - (iv) ~~the transfer, relinquishment or disposal of any property of the Debtors to any entity (as the term "entity" is defined in section 101(15)) other than the Foreign Representative and its expressly authorized representatives and agents; and~~
 - (v) **to the extent prohibited by 11 U.S.C. § 365(e)**, the termination, modification, refusal to perform, or otherwise acceleration of obligations or exercise of remedies under any contract with any of the Debtors on the basis of (i) the insolvency or financial condition of the Debtors at any time before the closing of these cases; (ii) the commencement of the Canadian Proceeding, the entry of the Receivership Order, or the commencement of these chapter 15 cases; or (iii) the appointment of and taking possession by the Receiver of the Debtors' assets and contracts. **[SMB: 3/26/20]**
 - ~~c. For counterparties to the Debtors' executory contracts and unexpired leases, section 365(e) shall apply with respect to each of the Debtors and the property of each of the Debtors that is located within the territorial jurisdiction of the United States. **[SMB: 3/26/20]**~~
 - d. The Foreign Representative shall have the rights and protections to which the Foreign Representative is entitled under ~~chapter 15, including, but not limited to, the protections limiting the jurisdiction of United States courts over the Foreign Representative in accordance with~~ 11 U.S.C. § 1510 ~~and the granting of additional relief in accordance with section 1519(a)(3).~~ **[SMB: 3/26/20]**
2. Notwithstanding anything to the contrary contained herein, this Order does not stay

or otherwise enjoin the continuation of **any lawsuits within the territorial jurisdiction of the**

United States to which any Debtor is a party, including the lawsuit captioned, *Blueprint Clothing Corp., a California corporation v. Nygard International Partnership, Nygard Inc., and Dillard's Inc.*, pending in the United States District Court for the Central District of California as Case No. 2:18-cv-09687 (SJO). **[SMB: 3/26/20]**

~~3. The Foreign Representative, in connection with his appointment as the Debtors' Receiver in the Canadian Proceeding or as the "foreign representative" in these chapter 15 cases, and the Debtors are hereby granted the full protections and rights available pursuant to section 1519(a)(1)-(2).~~ **[SMB: 3/26/20]**

~~4. The Foreign Representative, the Debtors and each of their successors, representatives, advisors, or counsel shall be entitled to the limits on jurisdiction contained in sections 306 and 1510.~~ **[SMB: 3/26/20]**

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

6. This Order shall be served on: (i) the United States Trustee for the Southern District of New York (Attn: Paul K. Schwartzberg, Esq.); (ii) the Debtors; (iii) Peter J. Nygard; (iv) all persons or bodies authorized to administer foreign proceedings of the Debtors, including the Canadian Proceeding; (v) all entities against whom provisional relief is being sought under section 1519 of the Bankruptcy Code; (vi) all parties to litigation pending in the United States to which any of the Debtors is a party at the time of the filing of the Petition; and (vii) all parties that have filed a notice of appearance in these chapter 15 cases.

7. Service in accordance with this Order shall be deemed good and sufficient service and adequate notice for all purposes. The Foreign Representative, the Debtors, and their respective

agents are authorized to serve or provide any notices required under the Bankruptcy Rules or Local Rules.

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

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

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

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

Dated: March 26, 2020
New York, New York

/s/ *Stuart M. Bernstein*
STUART M. BERNSTEIN
United States Bankruptcy Judge

Issued at 11:19 a.m.

EXHIBIT 1

Receivership Order