

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR THE COUNTY OF KING

WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association,  
  
Petitioner,  
  
vs.  
  
ONLINESHOES.COM INC., a Washington corporation; SHOES.COM, INC., a Delaware corporation,  
  
Respondents.

No. 17-2-02462-7 SEA

RECEIVER'S MOTIONS FOR ORDER  
(1) ALLOWING CLAIMS OF DANIEL GERLER AND CALERES INVESTMENT COMPANY, INC., and  
(2) AUTHORIZING DISTRIBUTION OF ESTATE PROPERTY TO DANIEL GERLER AND CALERES INVESTMENT COMPANY, INC.

**I. RELIEF REQUESTED**

Pursuant to RCW 7.60.190(6)(a) and (b), Oswego Group LLC, doing business as Inverness Group ("Receiver"), hereby moves the Court (the "Motion") for the entry of an order (1) allowing the secured claims of Daniel Gerler ("Gerler") and Caleres Investment Company, Inc. ("Caleres", and, together with Gerler, the "Priority Secured Creditors"), in the amounts described below, (2) authorizing the Receiver to immediately (a) distribute the Litigation Claim (defined below) and pay \$1,500,000 to Gerler as an interim distribution on account of the Gerler Secured Claim (defined below), and (b) pay \$235,000 to Caleres as a final distribution on account of the Caleres Secured Claim (defined below), and (3) granting such other and further relief as the Court may deem just and equitable.

1           There is currently pending a parallel receivership proceeding in British Columbia,  
2 Canada, for Shoes.com Technologies Inc., and Shoeme Technologies Limited (the “Canadian  
3 Receivership”).<sup>1</sup> The relief sought in this Motion is conditioned on the receiver in the  
4 Canadian Receivership administering its estates consistent with the terms of a settlement  
5 agreement between the Priority Secured Creditors.

6           This Motion is based upon the records and files herein and the accompanying  
7 Declaration of John L. Davidson (“Davidson Decl.”).

8   **II.     INTRODUCTION**

9           As detailed below, the assets in this Receivership Estate (defined below) are subject  
10 to the first and second priority security interests of the Priority Secured Creditors, but are  
11 insufficient to pay them in full. As a result, the Receiver does not expect there to be any  
12 distribution to other creditors.

13           The Priority Secured Creditors have each asserted that the other’s claims and security  
14 interests are subject to attack, resulting in one of these creditors receiving substantially all of  
15 the Receivership Estate’s assets. Pursuant to a settlement between the Priority Secured  
16 Creditors their dispute has been conditionally resolved. Their settlement is conditioned on  
17 distributions in this proceeding and the Canadian Receivership in accordance with the terms  
18 of the settlement.

19           Most importantly, the Priority Secured Creditors’ settlement avoids the costs,  
20 uncertainty and delay of litigation between the only parties who have a stake in the  
21 remaining assets of the Receivership Estate. The Receiver supports distribution in  
22 accordance with the settlement.

23 \ \ \

24 \ \ \

---

25 \_\_\_\_\_  
26           <sup>1</sup> *Deans Knight Capital Management Ltd. v. Shoeme Technologies Limited and Shoes.com Technologies, Inc.* (SCBC, Vancouver Registry, Action S-171026).

1 **III. STATEMENT OF FACTS**

2 A. Procedural Background and Sale of Estate Assets.

3 1. Pursuant to this Court’s Stipulated Order Appointing General Receiver (the  
4 “Receivership Order”), the Receiver was appointed general receiver on February 2, 2017 (the  
5 “Receivership Date”) for the estates of Shoes.com, Inc. (“Shoes.com”), and Onlineshoes.com  
6 Inc. (“OLS”) (together, the “Receivership Estate”). (Davidson Decl., ¶ 2).

7 2. On February 28, 2017, the Receiver filed the Receiver’s Motion for Orders:  
8 (1) Approving the Sale of Assets Free and Clear of Liens, Claims, Encumbrances and  
9 Interests; (2) Approving Bid and Auction Procedures; (3) Scheduling Hearing to Approve  
10 Sale of Assets; and (4) Approving Assumption and Assignment of Executory Contracts (the  
11 “Sale Motion”). (Davidson Decl., ¶ 3).

12 3. On March 28, pursuant to the Court-approved bid and auction procedures and  
13 the Sale Motion, the Receiver sold substantially all of the assets of the Receivership Estate at  
14 public auction, subject to approval of the Court. (Davidson Decl., ¶ 4).

15 4. On April 3, the Court granted the Sale Motion and entered the Order (1)  
16 Approving Sale of Assets Free and Clear of Liens, Claims, Encumbrances and Interests, (2)  
17 Approving Assumption and Assignment of Executory Contracts, and (3) Granting Related  
18 Relief (the “Sale Approval Order”).<sup>2</sup> (Davidson Decl., ¶ 5).

19 5. Pursuant to both (A) the Sale Approval Order and, (B) the April 3, 2017,  
20 Asset Purchase and Sale Agreement attached thereto (“Agreement”), on April 21, 2017, the  
21 Sale closed. Pursuant to the terms of the Agreement, the Receiver received \$6,590,720 (net  
22 of certain costs paid at closing and subject to a final inventory adjustment to the purchase  
23 price that can only increase the net sale proceeds to the Receivership Estate). (Davidson  
24 Decl., ¶ 6).

25 \_\_\_\_\_  
26 <sup>2</sup> Capitalized terms not otherwise defined have the meanings ascribed to them in the Sale Approval Order.

1           6. Pursuant to RCW 7.60.260(2)(ii) and the terms of the Sale Approval Order,  
2 the security interests and liens of secured creditors attach to the sale proceeds to the same  
3 extent and priority as such security interests and liens had attached to the Purchased Assets.

4           B. Previous Payments by the Receiver to Secured Creditors, and  
5           Remaining Receivership Estate Assets.

6           7. On June 12, 2017, the Court entered the Agreed Order (1) Allowing Claim of  
7 Wells Fargo, and (2) Authorizing Payment of Wells Fargo's Secured Claim. Pursuant to the  
8 order, the Receiver paid Wells Fargo \$4,195,771.03, plus accruing interest and attorneys'  
9 fees, in full satisfaction of Wells Fargo's secured claim. (Davidson Decl., ¶ 7).

10           8. On September 29, 2017, the Court entered the Agreed Order on Motion of  
11 GEODIS Logistics, LLC for Order Directing Payment of its Secured Claim. Pursuant to the  
12 order, the Receiver paid GEODIS Logistics \$237,500.00, and the balance of GEODIS  
13 Logistics' claim was disallowed. (Davidson Decl., ¶ 8).

14           9. As a result of the sale of substantially all of the Receivership Estate's assets,  
15 and the payments to Wells Fargo and GEODIS Logistics, the Receivership Estate currently  
16 holds the following assets: (a) approximately \$2 million in cash proceeds from the asset Sale,  
17 (b) interest in funds held back from the asset Sale proceeds and subject to recovery by final  
18 adjustment, if any, based on the final inventory count and agreement between Buyer and  
19 Sellers under the terms of the Sale, (c) certain accounts receivable (the "Accounts  
20 Receivable"),<sup>3</sup> and (d) OLS's pre-receivership litigation claims against Wells Fargo  
21 Merchant Services, Inc., and Wells Fargo Bank, NA ("Defendants"), which were previously  
22 pending in Suffolk County, New York (the "Litigation Claim").<sup>4</sup> (Davidson Decl., ¶ 9).

23 <sup>3</sup> Subject to a final determination by the Receiver, the Receiver assumes that the  
24 Accounts Receivable have no net recoverable value for the Receivership Estate. (Davidson  
25 Decl., ¶ 10).

26 <sup>4</sup> The Litigation Claim lawsuit was dismissed, without prejudice, pursuant to a  
Stipulation of Discontinuance entered on June 8, 2017. (Davidson Decl., ¶ 11 and Exhibit  
1). Pursuant to the Stipulation, any applicable statutes of limitation are tolled through March  
30, 2018, subject to the holder of the Litigation Claim timely conferring in good faith with  
Defendants' counsel. (*Id.*, at ¶ B).

1           10.     The Litigation Claim is comprised of claims against OLS's former credit card  
2 payment processor for breach of contract and misrepresentation. (Davidson Decl., ¶ 11, and  
3 Exhibit 2, at ¶¶ 41-47 and 48-57). However, as reflected in the Amended Complaint filed in  
4 the case, the misrepresentation claims primarily relate to Defendants' alleged failure to  
5 perform the parties' contract, and how assurances from Defendants kept OLS from  
6 terminating the agreement sooner than it did. (*Id.*, at ¶¶ 39-40 and 54).<sup>5</sup>

7           11.     The Receiver has reviewed the Litigation Claim with its conflicts counsel.  
8 Although there can be no certainty as to its precise value given the time, risks, and delay  
9 inherent in litigation, and uncertainty as to the underlying merits of the Litigation Claim, the  
10 Receiver estimates that the value of the Litigation Claim, excluding the costs of prosecuting  
11 the claims, is between \$0 and \$50,000. (Davidson Decl., ¶ 13). As of the date of this  
12 Motion, the Receiver does not have authority to use the Priority Secured Creditors' cash  
13 collateral to pay legal expenses that would be incurred to prosecute the Litigation Claim.

14           B.     The Gerler and Caleres Secured Claims.

15                   (i)     *Daniel Gerler's Secured Claim.*

16           12.     On July 8, 2014, Daniel Gerler loaned \$3,000,000 to Shoes.com Holdings  
17 (USA) Inc., f/k/a A12345 Holdings Inc. ("Holdings"). The original promissory note was  
18 amended by the December 23, 2014, Amended and Restated Secured Convertible  
19 Subordinated Promissory Note (the "Gerler Note").<sup>6</sup> The loan was purchase money  
20 financing provided by Gerler in connection with the sale of his 100% equity ownership of

21 \_\_\_\_\_  
22           <sup>5</sup> As reflected in the Amended Complaint, OLS also asserted claims for conversion  
23 and attorneys' fees. The conversion claims relate to funds held by Defendants, substantially  
24 all of which have since been returned to OLS and the Receivership Estate. Such funds are  
25 proceeds of inventory, and therefore would be part of the Priority Secured Creditors'  
26 collateral under any circumstance. (Davidson Decl., ¶ 12). The claim for attorneys' fees is  
likewise based on the provisions of the party's contract. (Davidson Decl., Exhibit 2, at ¶¶  
62-65).

<sup>6</sup> Copies of documents referenced but not submitted with this Motion may be  
obtained upon request to counsel for the Receiver, Alex Poust (ph.: 503.222.9981; email:  
apoust@schwabe.com).

1 Gerler & Son, Inc., now known as OLS<sup>7</sup> to Holdings. (Davidson Decl., ¶ 14).

2 13. On July 8, 2014, OLS executed a Security Agreement, pursuant to which it  
3 granted a security interest to Gerler in substantially all of OLS's assets, including but not  
4 limited to its inventory, accounts receivable, general intangibles, and proceeds therefrom (the  
5 "OLS Collateral"). OLS did not execute a guaranty of Holdings' performance of the Gerler  
6 Note. (Davidson Decl., ¶ 15).

7 14. On July 8, 2014, Gerler perfected its security interest in the OLS Collateral by  
8 filing a Financing Statement with the Washington Department of Licensing, at document  
9 number 2014-189-7473-4. (*Id.*, ¶ 16).

10 15. On March 18, 2015, Shoes.com executed a Guaranty Agreement, pursuant to  
11 which it guaranteed Holdings' performance of the Gerler Note. At the same time, Shoes.com  
12 also executed a Security Agreement pursuant to which it granted Gerler a security interest in  
13 substantially all of Shoes.com's assets, including but not limited to its inventory, accounts  
14 receivable, general intangibles, and proceeds therefrom (the "Shoes.com Collateral").  
15 (Davidson Decl., ¶ 17).

16 16. Gerler perfected his security interests in the Shoes.com Collateral by filing a  
17 financing statement with the Delaware Department of State on June 28, 2016, at document  
18 number 2016 4680076. (Davidson Decl., ¶ 18). The OLS Collateral and the Shoes.com  
19 Collateral are referred to collectively as the "Gerler Collateral."

20 17. On March 28, 2017, Gerler submitted his Proof of Claim to the Receiver (the  
21 "Gerler Proof of Claim"), which includes copies of the Gerler Note, Shoes.com Guaranty  
22 Agreement, the Security Agreements, and the Financing Statements. The amount of Gerler's  
23 claim, which is secured by the Gerler Collateral, is the principal amount of \$3,000,000, plus  
24 interest of \$13,750.00 accrued through March 28, 2017, plus interest thereafter at the rate of

25 \_\_\_\_\_  
26 <sup>7</sup> After the stock sale, Gerler & Son, Inc., changed its name to "Onlineshoes.com  
Inc."

1 5.50% per annum (\$458.33 per day) (the “Gerler Secured Claim”). (Davidson Decl., ¶ 19).

2 (ii) *Caleres Investment Company’s Secured Claim.*

3 18. On December 12, 2014, Caleres loaned \$7,500,000 to Holdings, as  
4 memorialized by a Secured Convertible Note (the “Caleres Note”). The loan from Caleres  
5 was purchase money financing for Holdings in connection with its purchase of the equity  
6 interests in Shoes.com. (Davidson Decl., ¶ 20).

7 19. That same day, OLS, Shoes.com and certain other parties executed a  
8 Guarantee and Security Agreement. Pursuant to that agreement, OLS and Shoes.com  
9 guaranteed Holdings’ performance of the Caleres Note. (*Id.*, ¶ 21).

10 20. In addition, pursuant to the Guarantee and Security Agreement, (a) OLS  
11 granted a security interest in its “Collateral Records” and inventory, and (b) Shoes.com  
12 granted a security interest in its Collateral Records, inventory, and domain names, to Caleres,  
13 as collateral for Holdings’ performance of the Caleres Note (the “Caleres Collateral”).  
14 (Davidson Decl., ¶ 22).

15 21. Caleres perfected its security interests in the Caleres Collateral by filing  
16 financing statements with the Washington Department of Licensing on December 15, 2014,  
17 at document number 2014-349-2922-0 (with respect to OLS), and with the Delaware  
18 Department of State on December 12, 2014, at document number 2014 5056494 (with  
19 respect to Shoes.com). (Davidson Decl., ¶ 23).

20 22. On March 27, 2017, Caleres submitted its Proof of Claim to the Receiver (the  
21 “Caleres Proof of Claim”), which includes copies of the Guaranty and Security Agreement  
22 and the Financing Statements. As of February 1, 2017, the amount of Caleres’ secured claim  
23 was the principal amount of \$7,500,000, plus accrued interest of \$46,027.52, plus interest  
24 accruing interest thereafter at the rate of 9.0% per annum (\$1,849.32 per day), plus attorneys’  
25 fees and costs (the “Caleres Secured Claim”). (Davidson Decl., ¶ 24).

26 23. The amounts claimed in the Gerler Proof of Claim and the Caleres Proof of

1 Claim are consistent with the books and records of OLS and Shoes.com. (Davidson Decl., ¶  
2 25).

3 24. The Receiver has analyzed the Gerler Secured Claim and the Caleres Secured  
4 Claim and determined, in the exercise of his judgment, that (a) they should be allowed in the  
5 amounts and security interest priorities described above, and (b) there is likely no meritorious  
6 basis to seek disallowance of the claims, in whole or in part. Consequently, objecting to  
7 either claim is unlikely to benefit the Receivership Estate or its creditors. (Davidson Decl., ¶  
8 26).

9 C. The Priority Secured Creditors' Settlement Agreement.

10 25. Gerler and Caleres, the first and second priority secured creditors<sup>8</sup> in the  
11 Receivership Estate's assets, entered a Settlement Agreement on October 31, 2017. (See  
12 Davidson Decl., ¶ 27 and Exhibit 3 (the "Settlement Agreement").

13 26. Among other things, the Settlement Agreement provides that, except for  
14 \$235,000 (the "Caleres US Proceeds"), Caleres waives all of its right, title and interest to the  
15 Receivership Estates' assets and assigns any such interests to Gerler. In turn, Gerler waives  
16 any claim to the Caleres US Proceeds, and assigns any such interests to Caleres. Gerler also  
17 waives any claims to sale proceeds in the Canadian Receivership, and assigns his interest in  
18 any such claims to Caleres. (Settlement Agreement, p. 2, at ¶ 1).

19 27. The Settlement Agreement is conditioned on the Receiver and the receiver in  
20 the Canadian Receivership administering their respective receivership estates in a manner

---

21 <sup>8</sup> Gerler and Caleres have priority security interests because the claims of the other  
22 significant secured creditors have either been paid, disallowed, or withdrawn. Specifically,  
23 (1) Wells Fargo's claim has been paid in full, (2) the unpaid balance of GEODIS Logistics'  
24 claim has been disallowed by order of this Court, and (3) Deans Knight Capital Management  
25 Ltd. has withdrawn its secured claim in this proceeding. In addition to those three creditors,  
26 four other creditors have submitted claims that allege a lien or security interest in  
Receivership Estate assets and which, in the aggregate, total approximately \$50,000. The  
Receiver believes that these claims will ultimately be disallowed in substantial part. In any  
event, after making distributions requested by this Motion the Receivership Estate will still  
retain sufficient proceeds to pay them in full pending further order of this Court. (Davidson  
Decl., ¶ 28).



1 consistent with the terms of the Settlement Agreement. (Settlement Agreement, at ¶ 2). The  
2 Receiver supports distribution from the Receivership Estate consistent with the terms of the  
3 Settlement Agreement. (Davidson Decl., ¶ 29).

### 4 III. STATEMENT OF THE ISSUES

5 28. The Motion presents the following issues:

6 A. Whether pursuant to RCW 7.60.190(6)(a) the Court should enter an order  
7 allowing the Gerler Secured Claim and the Caleres Secured Claim.

8 B. Whether pursuant to RCW 7.60.190(6)(b) the Court should enter an order  
9 authorizing the Receiver, subject to the conditions described in the Settlement Agreement, to  
10 pay \$235,000 to Caleres as a final distribution on the Caleres Secured Claim.

11 C. Whether pursuant to RCW 7.60.190(6)(b) the Court should enter an order  
12 authorizing the Receiver, subject to the conditions described in the Settlement Agreement, to  
13 pay \$1,500,000 to Gerler and distribute the Litigation Claim as an interim distribution on the  
14 Gerler Secured Claim.

15 D. Whether the Litigation Claim is a general intangible under RCW 62A.9A-  
16 102(a)(42).

### 17 IV. EVIDENCE RELIED UPON

18 29. This Motion is supported by the record and files herein, the Receivership  
19 Order, and the accompanying Declaration of John L. Davidson.

### 20 V. AUTHORITY

21 A. Allowance and Payment of Claims Under RCW 7.60.190(6)(a),  
22 (b), and RCW 7.60.210(4).

23 30. Washington's receivership statute provides that claims may be allowed, and  
24 estate property may be distributed, on written notice. RCW 7.60.190(6)(a) and (b). Any  
25 hearing on claim allowance and/or distribution of estate property shall be set not less than 30  
26 days following notice of the hearing. (*Id.*). Here, the hearing on this Motion is scheduled

1  
2 more than 30 days after it was served, on December 11, 2017.

3 31. The receivership statute also provides that a claim, executed and served in  
4 accordance with RCW 7.60.210, “constitutes prima facie evidence of the validity and amount  
5 of the claim.” RCW 7.60.210(4). Here, Gerler has submitted the Gerler Proof of Claim and  
6 Caleres has submitted the Caleres Proof of Claim to the Receiver, which provide prima facie  
7 evidence of their validity and amount. In addition, the amounts claimed in the Gerler Proof  
8 of Claim and the Caleres Proof of Claim are consistent with the books and records of OLS  
9 and Shoes.com.

10 32. As recited in the Settlement Agreement, each of the Priority Secured Creditors  
11 alleged that the other’s claim was subject to attack. Because of the amounts claimed by the  
12 Priority Secured Creditors, unless both claims were to be substantially disallowed, there will  
13 be no estate assets available for other creditors.<sup>9</sup>

14 33. The Receiver has analyzed the Gerler Secured Claim and the Caleres Secured  
15 Claim and determined, in the exercise of his judgment, that (a) they should be allowed in the  
16 amounts and security interest priorities described above, and (b) there is likely no meritorious  
17 basis to seek disallowance of the claims, in whole or in part. Consequently, objecting to  
18 either claim is unlikely to benefit the Receivership Estate or its creditors.

19 34. Further, even if there were a meritorious basis to challenge either of the  
20 claims, there would still be no recovery for other creditors unless both claims were  
21 disallowed in substantially their entire amounts. Washington’s receivership statute does not  
22 require a receiver to pursue all potential claims where, as here, there is no apparent merit to

23  
24 <sup>9</sup> Unlike the Gerler Collateral, the Caleres Collateral does not include “general  
25 intangibles” such as the Litigation Claim. Consequently, if only the Gerler Secured Claim  
26 was disallowed, the Receiver’s recovery (if any) on account of the Litigation Claim would  
benefit the Receivership Estate and its unsecured creditors. The Receiver does not, however,  
have court authority to use Caleres’ cash collateral to pay the legal expenses to prosecute the  
Litigation Claim.

1 the claims or likely benefit to the Receivership Estate and its creditors. Rather, the statute  
2 provides simply that a receiver has the “right to sue... in all cases **necessary or proper** for  
3 the conduct of the receivership.” RCW 7.60.160(1) (emphasis added). Here, although  
4 Gerler and Caleres initially claimed that the other creditor’s claims were subject to attack, the  
5 Receiver has not discovered a meritorious basis to seek disallowance of either claim, let  
6 alone both, such that there would be any benefit to the Receivership Estate or its creditors.

7 35. Simply put, Gerler and Caleres are the real parties in interest with respect to  
8 the remaining assets of the Receivership Estate. As such, their agreement for how to allocate  
9 the remaining Receivership Estate’s assets is supported by the Receiver, and should be  
10 approved by this Court. Accordingly, the Receiver requests that this Court (a) allow the  
11 Gerler Secured Claim and the Caleres Secured Claim, and (b) authorize the Receiver to  
12 immediately (i) distribute the Litigation Claim and pay \$1,500,000 to Gerler as an interim  
13 distribution on account of the Gerler Secured Claim, and (ii) pay \$235,000 to Caleres as a  
14 final distribution on account of the Caleres Secured Claim.

15 B. The Litigation Claim is a General Intangible that is Collateral for  
16 the Gerler Secured Claim.

17 36. The Gerler Collateral includes general intangibles. A general intangible is  
18 broadly defined under the Uniform Commercial Code (“UCC”) as “any personal property,  
19 including things in action...other than commercial tort claims...” RCW 62A.9A-102(a)(42).  
20 A borrower’s pledge of a right to proceeds from a lawsuit (other than a tort claim) thus  
21 constitutes a general intangible. Clark, *The Law of Secured Transactions Under the Uniform*  
22 *Commercial Code*, § 1.03[2] (A.S. Pratt 3d Ed. 2013). “The term ‘general intangibles’ is  
23 residual in nature; it picks up all personal property that does not fall within one of the other  
24 Article 9 categories.” *Id.*

25 37. Besides the definition being a “catch-all,” courts have concluded that “things  
26 in action” in the definition of “general intangibles” includes lawsuits. *See, e.g., In re*

1 *Wiersma*, 283 B.R. 294, 303 (Bankr. D. Idaho 2002), *rev'd on other grounds*, 483 F3d 933  
2 (9<sup>th</sup> Cir 2007). Therefore, unless the Litigation Claim is a commercial tort claim,” it is a  
3 general intangible that is part of the Gerler Collateral.

4 38. The UCC defines a commercial tort claim, in part, as a “claim arising in tort  
5 with respect to which ...the claimant is an organization....” RCW 62A.9A-102(13).

6 39. Although there is not much case law on this subject, the Litigation Claim is a  
7 general intangible. In *In re Wiersma*, the Idaho Bankruptcy Court concluded that a lawsuit  
8 with both contract and tort claims is a general intangible, even if the breach of contract  
9 results from the negligence of the breaching party -- so long as the negligence relates to  
10 performance of the contract. *In re Wiersma*, 283 B.R. at 302-03. Here, as in *Wiersma*, the  
11 Litigation Claim includes both breach of contract and tort claims. However, as detailed  
12 above, the tort claim that was asserted by OLS (misrepresentation), relates principally to the  
13 defendants’ alleged failure to perform the parties’ agreement.<sup>10</sup> The claim for attorneys’ fees  
14 is likewise a contract-based claim. Finally, the conversion claim has been largely resolved  
15 by the Defendants’ prior return of substantially all of the funds that were the subject of that  
16 claim. Accordingly, the Litigation Claim is, in the Receiver’s considered opinion, a general  
17 intangible that is part of the Gerler Collateral.

## 18 VI. CONCLUSION

19 WHEREFORE, the Receiver respectfully requests that the Court enter an order (1)  
20 allowing the Gerler Secured Claim and the Caleres Secured Claim, in the amounts and with  
21 the priorities described above, (2) authorizing the Receiver to immediately (a) distribute the  
22 Litigation Claim and pay \$1,500,000 to Gerler as an interim distribution on account of the  
23 Gerler Secured Claim, and (b) pay \$235,000 to Caleres as a final distribution on account of  
24 the Caleres Secured Claim, and (3) granting such other and further relief as the Court may

25 <sup>10</sup> Amended Complaint, ¶¶ 39-40 (summarizing the alleged damages as being caused  
26 by defendants’ failure to “comply with their obligations [to OLS] under the Agreement” and  
their gross mischaracterization of their services.”

1 deem just and equitable. A proposed form of order is submitted herewith.

2 Dated this 11<sup>th</sup> day of December, 2017.

3 SCHWABE, WILLIAMSON & WYATT, P.C.

4 By: /s/ Claire L. Rootjes  
5 Alex I. Poust, WSBA #22660  
6 [apoust@schwabe.com](mailto:apoust@schwabe.com)  
7 Claire L. Rootjes, WSBA #42178  
8 [crootjes@schwabe.com](mailto:crootjes@schwabe.com)  
9 1420 5<sup>th</sup> Avenue, Suite 3400  
10 Seattle, WA 98101  
11 Attorneys for Oswego Group LLC, dba  
12 Inverness Group, Receiver  
13 *I certify that this memorandum contains*  
14 *4,050 words, in compliance with the*  
15 *Local Civil Rules.*

**CERTIFICATE OF SERVICE**

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on the 11<sup>th</sup> day of December, 2017, I arranged for service of the foregoing *RECEIVER'S MOTIONS FOR ORDER (1) ALLOWING CLAIMS OF DANIEL GERLER AND CALERES INVESTMENT COMPANY, INC., and (2) AUTHORIZING DISTRIBUTION OF ESTATE PROPERTY* to the parties to this action as follows:

<p>Bruce W. Leaverton, Esq., WSBA #15329 leavertonb@lanepowell.com Greg Fox, Esq., WSBA #30559 foxg@lanepowell.com Lane Powell, P.C. 1420 Fifth Avenue, Suite 4100 Seattle, WA 98101-2338 Telephone: 206.223.7000 Facsimile: 206.223.7107 Counsel for Wells Fargo Bank National Association Via email and U.S. Mail</p>	<p>John R. Rizzardi, Esq., WSBA #9388 jrizzardi@cairncross.com <u>Jennifer K. Faubion, Esq., WSBA #39880</u> jfaubion@cairncross.com Cairncross &amp; Hempelmann P.S. 524 Second Avenue, Suite 500 Seattle, WA 98104-2323 Telephone: 206.587.0700 Facsimile: 206.587.2308 <i>Counsel for Onlineshoes.com, Inc. and Shoes.com, Inc</i> Via email and U.S. Mail</p>
<p>George S. Treperinas, Esq., WSBA #15434 gtreperinas@karrtuttle.com Karr Tuttle Campbell 701 Fifth Avenue, Suite 3300 Seattle, WA 98104 Telephone: 206.223.1313 Facsimile: 206.682.7100 Counsel for Caleres Investments Co., An interested party Via email and U.S. Mail</p>	<p>Lorne W. Segal, Esq. lorne.segal@gowlingwlg.com Gowling WLG (Canada) LLP 160 Elgin Street, Suite 2600 Ottawa, ON K1P 1C3 CANADA Telephone: 613.233.1781 Facsimile: 613.563.9869 <i>Counsel for Caleres Investments Co., an interested party</i> Via email and U.S. Mail</p>
<p>Bradley R. Duncan, Esq., WSBA #36436 brad.duncan@hcmp.com Amit D. Ranade, Esq., WSBA #34878 amit.ranade@hcmp.com Hillis Clark Martin &amp; Peterson, P.S. 999 Third Avenue, Suite 4600 Seattle, WA 98104 Telephone: 206.623.1745 Facsimile: 206.623.7789 Counsel for Secured Creditor Daniel Gerler Via email and U.S. Mail</p>	<p>Alan J. Wenokur, Esq., WSBA #13679 alan@wrlawgroup.com Wenokur Riordan PLLC 600 Stewart Street, Suite 1300 Seattle, WA 98101 Telephone: 206.682.6224 <i>Counsel for Creditor GEODIS</i> Via email</p>

<p>1 Paul Jennings, Esq.  2 pjennings@bassberry.com  3 Bass, Berry &amp; Sims, PLC  4 150 Third Avenue South, Suite 2800  5 Nashville, TN 37201  6 Telephone: 615.742.6200  7 Facsimile: 615.742.6293  8 Counsel for Creditor GEODIS  9 Via email and U.S. Mail</p>	<p>Tevia Jeffries, Esq.  tevia.jeffries@dentons.com  Dentons Canada LLP  250 Howe Street, 20th Floor  Vancouver, BC V6C 3R8  CANADA  Telephone: 604.691.6427  Co-Counsel for Deans Knight Capital Mgmt.  Via email and U.S. Mail</p>
<p>6 Robert G. Hanseman, Esq.  7 rhanseman@ssdlaw.com  8 Sebaly Shillito + Dyer  9 1900 Kettering Tower  10 40 N. Main Street  11 Dayton, OH 45423-1013  12 Telephone: 937.222.2500  13 <i>Counsel for Crown Credit Corp.</i>  14 <i>Via email and U.S. Mail</i></p>	<p>Todd M. Martin, Esq.  tmartin@alvarezandmarsal.com  Tom Powell, Esq.  tpowell@alvarezandmarsal.com  Alvarez &amp; Marsal Canada Inc.  Commerce Place  400 Burrard Street, Suite 1680  Vancouver, BC V6C 3A6  CANADA  Telephone: 604.638.7440  Facsimile: 604.638.7441  Canadian Receiver  Via email and U.S. Mail</p>
<p>13 Mark J. Kalla, Esq.  14 mkalla@laplibra.com  15 Lapp, Libra, Thomson, Stoebner &amp; Pusch,  16 Chartered  17 120 South 6<sup>th</sup> Street, Suite 2500  18 Minneapolis, MN 55402  19 Direct: 612.343.4964  20 Facsimile: 612.338.6651  21 <i>Counsel for Red Wing Brands of America, Inc.</i>  22 <i>Via email and U.S. Mail</i></p>	<p>Kara C. Herschkowitz, Esq., WSBA #40569  Nordstrom, Inc.  1700 7<sup>th</sup> Avenue, Suite 700  Seattle, WA 98101-4404  Telephone: 206.303.2546  <i>Counsel for Nordstrom, Inc.</i>  <i>Via U.S. Mail only</i></p>
<p>19 Magnus C. Verbrugge, Esq.  20 mverbrugge@blg.com  21 Bordon Ladner Gervais LLP  22 1200 Waterfront Centre  23 200 Burrard Street  24 P. O. Box 48600  25 Vancouver, BC V7X 1T2  26 CANADA  Telephone: 604.640.4198  Facsimile: 604.622.5898  Counsel for the Canadian Receiver  Via email and U.S. Mail</p>	<p>Karen Ruby  karen.ruby@nordstrom.com  Via email only</p>

<p>1 Katriana L. Samiljan, Esq., WSBA #28672  2 ksamiljan@bskd.com  3 Bush Kornfeld, LLP  4 601 Union Street, Suite 5000  5 Seattle, WA 98101-2373  6 Telephone: 206.292.2110  7 Facsimile: 206.292.2104  8 <i>Counsel for Wolverine Outdoors, Inc. and Tiger  9 Capital Group, LLC  10 Via email and U.S. Mail</i></p>	<p>ROBERT W. FERGUSON  Attorney General  Zachary Mosner, Esq., WSBA #9566  zacharym@atg.wa.gov  Assistant Attorney General  Bankruptcy &amp; Collections Unit  800 Fifth Avenue, Suite 2000  Seattle, WA 98104-3188  Telephone: 206.389.2187  Facsimile: 206.587.5150  Counsel for State of Washington, Departments  of  Revenue and Labor &amp; Industries  Via email and U.S. Mail</p>
<p>9 Mark D. Northrup, Esq., WSBA #16947  10 mark.northrup@millernash.com  11 Miller Nash Graham &amp; Dunn  12 2801 Alaskan Way, Suite 300  13 Seattle, WA 98121  14 Telephone: 206.777.7536  15 Counsel for Wal-Mart Stores, Inc.  16 Via email and U.S. Mail</p>	<p>Anthony DiTirro, Esq.  TDiTirro@rosenthalinc.com  Rosenthal &amp; Rosenthal, Inc.  1370 Broadway  New York, NY 10018  Telephone: 212.366.1464  Counsel for Rosenthal &amp; Rosenthal, Inc.  Via email and U.S. Mail</p>
<p>14 Katherine A. Seabright, Esq., WSBA #48330  15 <a href="mailto:kseabright@riddellwilliams.com">kseabright@riddellwilliams.com</a>  16 Riddell Williams, P.S.  17 1001 Fourth Avenue, Suite 4500  18 Seattle, WA 98154-1192  19 Telephone: 206.624.3600  20 Facsimile: 206.389.1708  21 <i>Counsel for Creditor Microsoft Corporation and  22 Microsoft Licensing GP  23 Via email and U.S. Mail</i></p>	<p>Michael M. Eiedelman  Vedder Price P.C.  222 N. LaSalle Street  Chicago, IL 60601  Email: <a href="mailto:meiedelman@vedderprice.com">meiedelman@vedderprice.com</a>  <i>Counsel for Shoes Joint Venture LLC  Via email and U.S. Mail</i></p>

21 /s/ Rebekah A. Davies  
22 Rebekah A. Davies, Legal Assistant