

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

NO. CIV-2016-404-

UNDER Part 19 of the High Court Rules and section 239Y(4) of
the Companies Act 1993

**IN THE MATTER OF WYNYARD (NZ) LIMITED (ADMINISTRATORS
APPOINTED)** a duly incorporated company having its
registered office at Level 16, 45 Queen Street, Auckland

AND

IN THE MATTER OF NEALE JACKSON and GRANT ROBERT GRAHAM as
administrators of Wynyard (NZ) Limited (Administrators
Appointed) of Level 16, 45 Queen Street, Auckland

Applicants

**ORIGINATING APPLICATION WITHOUT NOTICE FOR ORDERS UNDER
SECTION 239Y OF THE COMPANIES ACT 1993**

Dated 4 November 2016

 **Simpson Grierson**
Barristers & Solicitors

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To: The Registrar of the High Court at Auckland

This document notifies you that –

1. On 3 November 2016, the applicants will apply to the Court for orders:
 - (a) that the period of 14 days for giving notice of termination of employment contracts (**Period**) under s 239Y(3) of the Companies Act 1993 (**Act**) be extended in respect of Wynyard (NZ) Limited (Administrators Appointed) (**Wynyard**);
 - (b) that the Period be extended to 29 November 2016;
 - (c) that without prejudice to the applicants' right to terminate under s 239Y(3) of the Act, the Period be extended on the following terms and conditions:
 - (i) Wynyard must continue to pay salaries and wages which accrue to employees of Wynyard under employment contracts from the date of the applicants' appointment until the date of termination of such contracts under s 239Y(3) or 29 November 2016, whichever is earlier (**Extended Period**);
 - (ii) Wynyard must pay annual leave which has accrued during the Extended Period to any employees of Wynyard who have their employment terminated during or at the end of the Extended Period;
 - (d) that within 2 working days of any orders being granted, notice of this originating application and any orders be given to employees of Wynyard by:
 - (i) posting notice on the website www.kordamentha.com; and
 - (ii) emailing a copy of those documents to each employee to the employee's email address by which Wynyard currently communicates with each employee;

- (e) the Court file in this proceeding shall be marked and treated as confidential and shall not be available for search by any person until 29 November 2016;
- (f) leave is granted to any employee to apply to modify or discharge these orders within 5 working days of service; and
- (g) leave is reserved to the applicants to apply further in respect of any ancillary orders arising out of the orders made.

2. The grounds on which each order is sought are as follows:

- (a) on 25 October 2016 the applicants were appointed as joint and several administrators of Wynyard;
- (b) the applicants were also appointed as administrators of Wynyard's sole shareholder, Wynyard Group Limited (Administrators Appointed). Wynyard also has four wholly owned subsidiaries in foreign jurisdictions, namely:
 - (i) Wynyard (UK) Limited (Administrators Appointed);
 - (ii) Wynyard (Australia) Pty Limited (Administrators Appointed);
 - (iii) Wynyard (Canada) Inc (which has been, or will shortly be, placed into a formal insolvency process); and
 - (iv) Wynyard (USA) Corporation (in Bankruptcy);(together, **Wynyard Group of Companies**);
- (c) the role of the applicants as administrators of Wynyard is to advance the objects of s 239A of the Act, being to provide for the business, property and affairs of Wynyard to be administered in a way that:
 - (i) maximises the chances of Wynyard, or as much as possible of its business, continuing in existence; or

- (ii) if that is not possible, results in a better return for the Wynyard creditors and shareholders than would result from an immediate liquidation of Wynyard;
- (d) under s 239Y(3) of the Act, the applicants are personally liable for payment of wages or salary that, during the administration of Wynyard, accrue under an employment contract that was entered into before the administration commenced, unless the applicants terminate the employment contract within 14 days of appointment, or the Court extends the 14 day period pursuant to s 239Y(4);
- (e) the 14 day period under s 239(3) of the Act currently ends on Tuesday 8 November 2016;
- (f) at the time of the applicants' appointment as administrators of Wynyard, Wynyard employed 135 employees located in Christchurch, Wellington, Auckland and the United Arab Emirates;
- (g) on 31 October 2016 the applicants determined that parts of Wynyard's business could not continue to trade during the administration, and on 31 October 2016 and 1 November 2016 the applicants terminated the employment of 80 employees of Wynyard relating to those parts of Wynyard's business pursuant to s 239Y(3) of the Act;
- (h) of the remaining 55 employees:
 - (i) 29 are considered to be key employees in respect of the "Cognevo" software business operated by Wynyard; and
 - (ii) 26 are considered to be an important part of Wynyard and will be necessary to facilitate sales of the Cognevo business and residual assets, and the success of the administration generally;

- (i) the applicants are in the process of negotiating a possible sale of the Cognevo business, which will likely be conditional on some or all of the remaining employees transferring to the purchaser on settlement of the sale;
- (j) the applicants do not wish to terminate immediately the remaining employees' employment contracts until they have determined whether a sale of the Cognevo business, and the transfer of some or all of the remaining employees, can be concluded. Any sale is unlikely to be fully concluded before 8 November 2016;
- (k) the extension sought under s 239(4) of the Act is to 29 November 2016, which corresponds to the last date the Watershed Meeting can be held by the applicants under the Act;
- (l) the applicants anticipate that a sale of the Cognevo business and residual assets will be concluded by 29 November 2016;
- (m) the potential sale of the Cognevo business is commercially sensitive and if the details of the proposed sale become public prior to the Watershed Meeting, it could adversely affect the sales process, and the progress of the administration to the detriment of Wynyard's creditors and employees; and
- (n) appearing in the affirmation of Neale Jackson affirmed in support of this application.

3. The application is made in reliance on High Court Rules 19.2(c), 19.7 to 19.11; s 239Y of the Act; and *Re Postie Plus Group Ltd (Administrators Appointed)* [2014] NZHC 1337, *Re WGL retail Holdings Ltd* [2011] NZCCLR 22 (HC), and *Re Nicholas Jermyn Ltd (Administrators Appointed)* [2016] NZHC 1050.

I certify that this application complies with the rules.

Date: 4 November 2016

Signature:



J C Caird
Solicitor for Applicants

This document is filed by JAMES CAMERON CAIRD solicitor for the applicants of the firm Simpson Grierson.

The address for service of the applicants is at the offices of Simpson Grierson, Level 27, 88 Shortland Street, Auckland.

Documents for service on the applicants may be left at that address for service or may be posted to the solicitor at Private Bag 92518, Auckland, or left for the solicitor at a document exchange for direction to DX CX10092 or transmitted to the solicitor by facsimile to +64-9-307 0331.