

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF **NORDSTROM CANADA RETAIL,
INC., NORDSTROM CANADA HOLDINGS, LLC** and
NORDSTROM CANADA HOLDINGS II, LLC

APPLICANTS

SANCTION AND VESTING ORDER FACTUM

March 13, 2024

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TO: SERVICE LIST

PART I - NATURE OF THIS MOTION

1. The Applicants seek an order (the “**Sanction and Vesting Order**”), among other things: (i) sanctioning the Consolidated Plan of Compromise and Arrangement dated December 13, 2023 (as amended, the “**Plan**”) and authorizing its implementation; and (ii) extending the Stay Period (and by extension, the Co-Tenancy Stay) until and including June 28, 2024.¹

2. The Nordstrom Canada Entities, with the oversight of the Monitor and the support of Nordstrom US as Plan Sponsor, have negotiated a global resolution to these proceedings under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (“**CCAA**”). If sanctioned by this Court, the proposed Plan will complete the orderly wind-down of the Nordstrom Canada Entities’ business in a timely and efficient manner, maximizing distributions to their creditors.²

3. The meeting of the Affected Creditors (the “**Creditors’ Meeting**”) was held on March 1, 2024. The Plan received unanimous approval from Affected Creditors holding Proven Claims that were present and voting in person or by proxy (or who were deemed to vote). This fully satisfies the statutorily-required majority of votes necessary for Plan approval.³ It is also a strong indicator that the Plan is fair and reasonable and deserving of sanction by this Court.

4. The Nordstrom Canada Entities submit that the Plan will provide Affected Creditors with a greater benefit than would result from a non-consolidated plan or results that could have been achieved in a bankruptcy.⁴ Upon implementation of the Plan, the Nordstrom Canada Entities expect that Affected Creditors will receive distributions of approximately 72% to 75% of their

¹ The facts supporting this factum are set out in the Affidavit of Misti Heckel, sworn March 8, 2024 (“**Sanction Affidavit**”). Capitalized terms have the same meaning as in the Sanction Affidavit unless otherwise specified.

² Sanction Affidavit at para. 4.

³ Sanction Affidavit at para. 5.

⁴ Sanction Affidavit at para. 52.

Affected Claims that are Proven Claims.⁵ The Monitor supports the Plan, as do Employee Representative Counsel and the Nordstrom Canada Entities' former Landlords, who collectively filed the vast majority of Claims in the Claims Process by quantum.⁶

5. The Plan satisfies the well-established criteria for sanction by this Court: there has been strict compliance with all statutory requirements; nothing has been done or purported to be done that is not authorized by the CCAA or prior orders of this Court; and the Plan is fair and reasonable.

6. The Applicants submit that this Court should therefore sanction the Plan and extend the Stay Period, as requested, to permit its implementation.

PART II - SUMMARY OF FACTS

A. Background

7. The Applicants obtained the initial order on March 2, 2023 (the “**Initial Order**”). The stay of proceedings and other benefits and authorizations of the Initial Order were extended to Canada Leasing LP. This Court subsequently granted an Amended and Restated Initial Order on March 10, 2023. The Stay Period has been extended on a number of subsequent occasions, most recently to April 5, 2024.

8. On May 30, 2023, the Court granted an order (the “**Claims Procedure Order**”) establishing a process (the “**Claims Process**”) to determine the nature, quantum, and validity of claims against the Nordstrom Canada Entities and their directors and officers.

⁵ Sanction Affidavit at para. 6. This projection is based on the most up-to-date information available, and is subject to the caveats and limitations described in the Monitor's Eighth Report dated February 21, 2024.

⁶ Sanction Affidavit at para. 4.

9. On December 20, 2023, the Court granted an order (the “**Meeting Order**”) that, among other things: accepted the filing of the Plan; authorized the Nordstrom Canada Entities to call and hold the Creditors’ Meeting; and extended the Stay Period until and including April 5, 2024.⁷

B. Progress of the CCAA Proceedings

10. In addition to obtaining unanimous approval of the Plan at the Creditors’ Meeting, the Nordstrom Canada Entities, in close consultation with the Monitor, have made significant progress in these CCAA proceedings since the Meeting Order’s issuance, including the following:⁸

- (a) Claims Process: The Nordstrom Canada Entities have continued to work closely with the Monitor to resolve creditor Claims. Of the 742 Claims that had been filed with the Monitor as of February 20, 2024, 699 have now been resolved.⁹
- (b) Agreements with Landlords: The transactions for the Vaughan Mills and Deerfoot Meadows Nordstrom Rack Leases under the Winners Agreement closed on February 1, 2024. Net proceeds of approximately \$408,000 were paid to Canada Leasing LP.¹⁰ The Nordstrom Canada Entities have entered into separate settlement agreements with each Supporting Rack Landlord in respect of, among other things, such Landlords’ Proven Claims pursuant to the Claims Procedure Order and the Plan (each a “**Supporting Rack Landlord Settlement Agreement**”).¹¹
- (c) Termination of Employee Trust: After receiving the confirmations required to terminate and wind-up the Employee Trust, the Monitor delivered the Employee

⁷ Sanction Affidavit at para. 11.

⁸ Sanction Affidavit at para. 12.

⁹ Sanction Affidavit at paras. 13-16; Eighth Report of the Monitor dated February 21, 2024 (“**Eighth Report**”) at paras. 7.4-7.8.

¹⁰ Sanction Affidavit at para. 20. This amount is net of \$175,000 in withholding taxes, which will be subject to either payment to the CRA or return to Canada Leasing LP in accordance with the CRA’s forthcoming instructions.

¹¹ Sanction Affidavit at para. 23.

Trust Termination Certificate on December 28, 2023. The Trustee and the Administrator have engaged MNP LLP to prepare the tax return and related reporting required as a result of the termination of the Employee Trust, which the Monitor anticipates will be completed by the end of March 2024.¹²

- (d) Letter Agreement with the CRA: Pursuant to the CRA Agreement, NIL delivered an original irrevocable standby letter of credit in the amount of \$39,298,779 to the Minister on December 20, 2023 and a replacement standby letter of credit was subsequently delivered by NIL in accordance with the agreement. The Minister vacated the CRA NCH Assessments on January 10, 2024, and new Notices of Assessment were issued to NIL.¹³ These actions have satisfied a condition precedent to the implementation of the Plan.¹⁴

C. Key Features of the Plan¹⁵

11. The Plan includes a single class of Affected Creditors for voting and distribution purposes. An Affected Creditor was deemed to be a “Convenience Class Creditor” if their Proven Claims in the aggregate were less than or equal to \$15,000, or were in excess of that amount but they elected to be treated as such. Certain Claims are to be unaffected by the Plan and will not be compromised.¹⁶

¹² Sanction Affidavit at para. 27.

¹³ Sanction Affidavit at para. 31.

¹⁴ Sanction Affidavit at para. 32.

¹⁵ The terms, mechanics, and effect of the Plan are described in detail in the Seventh Heckel Affidavit sworn December 13, 2023 (the “**Meeting Order Affidavit**”).

¹⁶ These include: any Excluded Claim, Claim in respect of the Administrative Reserve Costs, FLS Landlord Guarantee Claim, Priority Claim, and Insured Claim. See Sanction Affidavit at para. 33.

12. The Nordstrom Canada Entities will use all of their available cash to establish the Consolidated Cash Pool, NCL ITC Cash Pool, Administrative Reserve Account, and Disputed Claims Reserve Account.¹⁷

13. On the Initial Distribution Date, each Other Priority Claim Creditor and Convenience Class Creditor will receive a distribution in the full amount of its Other Priority Claim or Convenience Class Claim, respectively. Each Affected Creditor with a Proven Claim will receive an initial distribution in an amount equal to its Pro Rata Share of the Cash in the Consolidated Cash Pool Account on that date, with further distributions to follow (except for the Supporting Rack Landlords, each of which will receive the full amount required to be paid under its Supporting Rack Landlord Settlement Agreement, with no further distributions to be made to them under the Plan).¹⁸ Nordstrom US will receive certain amounts distributed to the FLS Landlords pursuant to the Plan in accordance with the FLS Landlord Settlement Agreements.

14. From and after the Initial Distribution Date, distributions will be made to each Affected Creditor with a Disputed Claim that has become a Proven Claim. Once there are no remaining Disputed Claims, additional actions on the Final Distribution Date include Nordstrom Canada's payment, on behalf of itself and each of the other Nordstrom Canada Entities, of any final Administrative Reserve Costs from the Administrative Reserve Account.¹⁹

15. As discussed below, on the Plan Implementation Date certain parties will be granted a release subject to certain specified carve-outs.²⁰ In accordance with the Initial Order, the FLS Landlord Guarantee Claims are excluded from the release in the Plan. The FLS Landlords and

¹⁷ Sanction Affidavit at para. 33.

¹⁸ Sanction Affidavit at para. 33.

¹⁹ Sanction Affidavit at para. 33.

²⁰ Sanction Affidavit at para. 33(e).

Nordstrom US have reached agreements, outside of the Plan, that resolve all FLS Landlord Guarantee Claims and contractually release Nordstrom US from such claims.²¹

16. The implementation of the Plan is conditional upon the fulfilment or waiver of certain conditions precedent, which the Nordstrom Canada Entities expect will be satisfied if the Sanction and Vesting Order is granted.²² The Plan Implementation Date will occur as soon as reasonably possible, likely in April 2024.²³

17. The Plan also contemplates the transfer of customer-related data derived from the operation of the Nordstrom Canada Entities' business including, but not limited to, the Canada customer list(s) (the "**Canada Customer Data**") to Nordstrom US (or its designee) on the Plan Implementation Date.²⁴ The proposed Sanction and Vesting Order authorizes and orders that the Nordstrom Canada Entities disclose all personal information in their custody or control contained within the Canada Customer Data (the "**Personal Information**") to Nordstrom US pursuant to certain provisions of privacy legislation.²⁵ It also requires that Nordstrom US impose security safeguards, limit use and disclosure, and give effect to individuals' withdrawals of consents with respect to the Personal Information.²⁶

18. According to Hilco Valuation Services' independent valuation, which the Monitor believes is reasonable, the Canada Customer Data is of nominal value on a standalone basis, with a total net value of \$200,000. The Plan provides that this amount reduces to \$17,461,179 the remaining balance of the NINC-NCRI Services Claim, a Pre-Filing Claim by the Plan Sponsor against

²¹ Meeting Order Affidavit at para. 16.

²² Sanction Affidavit at paras. 37-38.

²³ Sanction Affidavit at para. 40.

²⁴ Sanction Affidavit at paras. 34-35.

²⁵ *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, s. 7(3)(c); *Personal Information Protection Act*, S.B.C. 2003, c. 63, s. 18(1)(i); *Personal Information Protection Act*, S.A. 2003, c. P-6.5, s. 20(e).

²⁶ Sanction Affidavit at para. 35.

Nordstrom Canada for unpaid fees relating to the provision of shared services and the licensing of intellectual property pursuant to the License and Services Agreement.²⁷

D. The Creditors' Meeting

19. As described further below, the Monitor provided appropriate notice of the Creditors' Meeting in accordance with the Meeting Order.²⁸ The Creditors' Meeting was held virtually on March 1, 2024.²⁹ The quorum requirement was satisfied and the meeting properly constituted.³⁰

20. The Plan was unanimously approved by the Affected Creditors present and voting in person or by proxy (or deemed to vote).³¹ According to the Monitor's tabulation, a total of 515 Affected Claims, representing approximately \$33.8 million in value, were voted (or were deemed to have voted).³² The 515 Affected Claims included 367 Convenience Class Claims deemed to be voted in favour of the Plan, representing \$2,310,076 in value, and 2 Disputed Claims, representing approximately \$77,080 in value, which were also voted in favour of the Plan.³³

PART III - ISSUES AND THE LAW

21. The issues on this motion are whether:

- (a) the Court should approve the Plan as fair and reasonable and grant the Sanction and Vesting Order; and
- (b) the Stay Period should be extended until and including June 28, 2024.

²⁷ Sanction Affidavit at para. 36.

²⁸ See para. 24(b) below.

²⁹ Sanction Affidavit at para. 46.

³⁰ Sanction Affidavit at para. 48.

³¹ Ninth Report of the Monitor dated March 6, 2024 ("**Ninth Report**") at para. 2.5.

³² As a result of the FLS Landlord Settlement Agreements, the Claims of the FLS Landlords were not voted at the Creditors' Meeting.

³³ Ninth Report at paras. 2.3-2.5; Sanction Affidavit at para. 50.

A. The Court Can and Should Approve the Plan

22. Section 6(1) of the CCAA provides that the Court has discretion to sanction a plan of compromise or arrangement if the plan has achieved the requisite “double majority” vote: a majority of creditors in number representing two-thirds in value present in person or by proxy. The effect of the Court’s approval is to bind the company and its creditors.

23. In seeking a Court’s approval of a plan of compromise or arrangement under the CCAA, the debtor company must satisfy well-established criteria:

- (a) there must be strict compliance with all statutory requirements;
- (b) nothing has been done or purported to be done that is not authorized by the CCAA and prior orders of the Court in the CCAA proceedings; and
- (c) the plan must be fair and reasonable.³⁴

(a) There Has Been Strict Compliance with Statutory Requirements

24. To determine whether there has been strict compliance with all statutory requirements, the Court typically considers a number of factors.³⁵ The Applicants have satisfied all of these requirements. In particular:

- (a) Definition of “Debtor Company”: In granting the Initial Order, the Court determined that the Applicants are affiliated debtor companies with total claims

³⁴ *Laurentian University of Sudbury*, [2022 ONSC 5645](#) at para. 23 [*Laurentian*]; *Lydian International Limited (Re)*, [2020 ONSC 4006](#) at para. 22 [*Lydian International*].

³⁵ *Canadian Airlines Corp. (Re)*, [2000 ABQB 442](#) at para. 62 [*Canadian Airlines*], leave to appeal ref’d [2000 ABCA 238](#), variation ref’d [2001 ABCA 9](#), leave to appeal ref’d [\[2001\] 2 S.C.R. xii \(note\)](#); *Laurentian* at para. 24; *Lydian International* at para. 24.

against them in excess of \$5 million, that each is a “company” for the purposes of s. 2 of the CCAA, and that each is insolvent.³⁶

- (b) Notice of Meeting: The Applicants and the Monitor have complied with all of the requirements in the Meeting Order to disseminate materials concerning the Plan and the Creditors’ Meeting to the Affected Creditors and other interested persons.³⁷

On December 28, 2023, the Monitor caused the Meeting Materials to be posted on the Monitor’s Website and served on the Service List. The Meeting Materials were also sent by email to each Affected Creditor (other than Represented Employees) on January 10 or January 11, 2024 and to Employee Representative Counsel on behalf of Represented Employees on January 10, 2024.³⁸ The Monitor published notice of the Creditors’ Meeting in *The Globe and Mail* (National Edition) on January 15, 2024.³⁹ On February 16, 2024, the Monitor reminded Affected Creditors whose economic interest should have caused them to submit a Convenience Class Claim Election of the deadline to do so.⁴⁰ Employee Representative Counsel placed a notice on its website to assist employees in their consideration of the Plan and was proactive in communicating with employees about the ability to elect down into the Convenience Class pursuant to the Plan.⁴¹

- (c) Classification: The Affected Creditors voted as a single class, in accordance with the classification approved by this Court in granting the Meeting Order.⁴²

³⁶ *Nordstrom Canada Retail, Inc.*, [2023 ONSC 1422](#) at paras. 25-27.

³⁷ Sanction Affidavit at para. 41.

³⁸ Sanction Affidavit at para. 44.

³⁹ Sanction Affidavit at para. 42.

⁴⁰ Sanction Affidavit at para. 43.

⁴¹ Sanction Affidavit at para. 45.

⁴² Ninth Report at para. 2.4; Meeting Order at para. 5.

(d) Constitution and Voting: The Creditors' Meeting was properly constituted and the voting was carried out in accordance with the Meeting Order.⁴³

(e) Majority Vote: The required double majority of Affected Creditors approved the Plan.⁴⁴ In fact, approval was unanimous, surpassing the required threshold.⁴⁵

25. Under ss. 6(3) to 6(6) of the CCAA, the Court may not sanction a plan unless it contains specified provisions concerning Crown, employee, and pension claims. These provisions are satisfied here. The Plan provides that the following amounts are Administrative Reserve Costs that are to be paid in full from the Administrative Reserve no later than the Initial Distribution Date:

- (a) Government Priority Claims enumerated in section 6(3) of the CCAA;
- (b) Post-Filing Tax Claims encompassing any unremitted source deductions arising after the Filing Date to which section 6(4) of the CCAA would apply; and
- (c) Employee Priority Claims enumerated in section 6(5) of the CCAA.⁴⁶

26. As the Nordstrom Canada Entities do not participate in any prescribed pension plans, s. 6(6) of the CCAA does not apply.⁴⁷ Finally, in compliance with s. 6(8) of the CCAA, the Plan does not provide for any recovery for equity holders.⁴⁸

27. Accordingly, the Applicants submit that the statutory prerequisites to the sanction of the Plan have been satisfied.

⁴³ Sanction Affidavit at para. 48; Ninth Report at paras. 2.2-2.5.

⁴⁴ CCAA, s. 6(1).

⁴⁵ Sanction Affidavit at para. 50.

⁴⁶ Eighth Report at para. 4.26.

⁴⁷ Eighth Report at para. 4.26.

⁴⁸ Eighth Report at para. 4.10.

(b) No Unauthorized Steps Were Taken by the Nordstrom Canada Entities

28. In determining whether anything has been done – or is purported to have been done – that is not authorized by the CCAA, the Court should rely on the parties and their stakeholders and the reports of the Monitor.⁴⁹

29. The Monitor has filed nine reports detailing the activities of the Nordstrom Canada Entities throughout these CCAA proceedings. Demonstrably, the Nordstrom Canada Entities have acted in good faith and with due diligence, as noted by the Court in extending the stay of proceedings on several occasions. The Plan complies with the requirements under the CCAA and the orders of this Court.⁵⁰ There is no suggestion that anything has been done that is not authorized either by the CCAA or this Court.

(c) The Plan is Fair and Reasonable

30. In considering whether a plan is fair and reasonable, courts consider the relative degrees of prejudice that would flow from granting or refusing the relief sought, as well as whether the plan represents a reasonable and fair balancing of interests in light of the other commercial alternatives available.⁵¹ The meaning of “fairness” and “reasonableness” are “necessarily shaped by the unique circumstances of each case.”⁵² Perfection is not required.⁵³

31. In assessing whether a proposed plan is fair and reasonable, the Court considers a number of factors, all of which strongly support this Court’s approval of the Plan:⁵⁴

⁴⁹ *Re: Canwest Global Communications Corp.*, [2010 ONSC 4209](#) at para. 17 [*Canwest Global*].

⁵⁰ Sanction Affidavit at para. 54.

⁵¹ *Canwest Global* at para. 19, citing *Canadian Airlines* at para. 3; *Re AbitibiBowater Inc.*, [2010 QCCS 4450](#) at para. 33 [*AbitibiBowater*]; *Laurentian* at para. 31.

⁵² *Canadian Airlines* at para. 94.

⁵³ *Laurentian* at para. 31, citing *AbitibiBowater* at para. 33.

⁵⁴ *Laurentian* at para. 32, citing *Canwest Global* at para. 21.

- (a) Classification: The Affected Creditors were classified in a single class to reflect their commonality of interest as unsecured creditors of one or more of the Nordstrom Canada Entities.⁵⁵ In granting the Meeting Order, this Court was satisfied that the Nordstrom Canada Entities had properly classified the Creditors for voting and distribution purposes, including the proposed treatment of the Convenience Class.⁵⁶ There was no objection to this classification at the Meeting Order Hearing.
- (b) Approval by Majority: The Plan – a product of the Nordstrom Canada Entities’ extensive discussions and/or negotiations with stakeholders over many months in consultation with the Monitor and with the support of the Plan Sponsor – received the Affected Creditors’ unanimous approval at the Creditors’ Meeting.⁵⁷ Such overwhelming creditor support creates an inference that the Plan is fair and reasonable. None of the Affected Creditors present at the Creditors’ Meeting in person or by proxy voted against the Plan, let alone raised any objection to their treatment under the Plan. This is an extremely strong indication that the interests of Affected Creditors are treated equitably under the Plan.⁵⁸
- (c) Recovery on Bankruptcy: The Monitor has expressed the view that the Affected Creditors as a whole will derive a greater benefit from the implementation of the Plan than the results that could have been achieved in a bankruptcy.⁵⁹ The Monitor and the Nordstrom Canada Entities estimate that Affected Creditors will receive

⁵⁵ Seventh Report of the Monitor dated December 14, 2023 at para. 8.22.

⁵⁶ *Nordstrom Canada Retail, Inc.*, [2023 ONSC 7194](#) at para. 5 [*Meeting Order Endorsement*].

⁵⁷ Sanction Affidavit at paras. 51, 53.

⁵⁸ *Canadian Airlines* at para. 97.

⁵⁹ Eighth Report at para. 10.4.

distributions of approximately 72% to 75% of their Affected Claims that are Proven Claims.⁶⁰ The Monitor cites developments in these CCAA proceedings that contributed to a superior outcome for creditors, including maximizing the value of the Nordstrom Canada Entities' property during the Liquidation Sale, resolving a vast majority of claims under the Claims Process, and obtaining Nordstrom US's financial and operational support.⁶¹

- (d) Alternatives to the Plan: The Nordstrom Canada Entities submit that the Affected Creditors will derive a greater benefit from the consolidated Plan than they would from a non-consolidated plan.⁶² The legal basis for the filing of a consolidated Plan was discussed in detail in the Applicants' Meeting Order Factum. In granting the Meeting Order, this Court generally observed that the Applicants had addressed "the legal issues that require determination at this stage of the CCAA proceedings." This Court was satisfied that the consolidated Plan should be accepted for filing.⁶³
- (e) No Oppression of Creditors: No Affected Creditor has raised any objection to the treatment of their Affected Claims under the Plan, let alone alleged that they are treated oppressively under the Plan.
- (f) No Unfairness to Shareholders: As the Affected Creditors are not all being paid in full, there is no unfairness to shareholders in receiving no recoveries under the Plan. In fact, this is a legal requirement under the CCAA.

⁶⁰ Eighth Report at para. 8.2.

⁶¹ Eighth Report at para. 5.30.

⁶² Sanction Affidavit at para. 52.

⁶³ Meeting Order Endorsement at paras. 5-6. For a fulsome discussion of the appropriateness of filing a consolidated plan, see the Applicants' [Meeting Order Factum](#) filed December 15, 2023 at paras. 47-54.

- (g) Public Interest: The Plan permits significant, timely recoveries without costly litigation and delay. It provides a greater benefit to the Affected Creditors than results that could have been achieved in a bankruptcy of the Nordstrom Canada Entities.⁶⁴

(d) The Releases are Fair and Reasonable

32. Article 7.1 of the Plan provides for customary releases of the following parties, subject to certain carve-outs:⁶⁵

- (a) the Nordstrom Canada Entities Released Parties, consisting of each of the Nordstrom Canada Entities and their respective Directors, Officers, current and former employees, advisors, legal counsel and agents;
- (b) the Third Party Released Parties, consisting of:
- (i) the Monitor, A&M, and their respective affiliates, and each of their current and former directors, officers, employees, representatives, advisors, legal counsel and agents;
 - (ii) counsel to the Directors and Officers;
 - (iii) the Trustee; and
 - (iv) Employee Representative Counsel; and
- (c) the Plan Sponsor Released Parties, consisting of the Plan Sponsor (Nordstrom US), the Plan Sponsor Subsidiaries and their current and former directors, officers and employees and their respective advisors, legal counsel and agents.⁶⁶

⁶⁴ Sanction Affidavit at para. 52.

⁶⁵ The releases apply to the extent permitted by law and expressly do not apply to liability for criminal, fraudulent, or other wilful misconduct.

⁶⁶ Sanction Affidavit at 33; Plan at s. 7.1; Eighth Report at para. 5.12.

33. It is well-established that this Court has jurisdiction, in appropriate circumstances, to sanction plans containing releases in favour of third parties.⁶⁷ In addition to approving releases of parties like directors and officers, courts have also sanctioned plans releasing other third parties that contributed to a plan, including the debtor's affiliates, employee representatives and others.⁶⁸

34. In determining whether to approve a third-party release, the Court will take into account the particular circumstances of the case and the objectives of the CCAA.⁶⁹ Courts consider the following factors, none of which alone is determinative:

- (a) whether the parties to be released from claims are necessary and essential to the restructuring of the debtor;
- (b) whether the claims to be released are rationally connected to the purpose of the plan and necessary for it;
- (c) whether the plan could succeed without the releases;
- (d) whether the parties being released are contributing to the plan;
- (e) whether the release benefits the debtors as well as the creditors generally;
- (f) whether the creditors who voted on the plan had knowledge of the nature and effect of the releases; and

⁶⁷ *Metcalfe & Mansfield Alternative Investments II Corp. (Re)*, [2008 ONCA 587](#) [*Metcalfe*] at para. 61, leave to appeal ref'd [2008 CanLII 46997](#) (S.C.C.).

⁶⁸ *Sino-Forest Corporation (Re)*, [2012 ONSC 7050](#) at paras. 70-74, leave to appeal ref'd [2013 ONCA 456](#), leave to appeal ref'd [2014 CanLII 11054](#) (S.C.C.) (releasing the debtor's subsidiaries); *Target Canada Co., Re*, 2016 ONSC 3651 at paras. 40-47, reproduced below in Schedule "C" [*Target*] (releasing the debtor's parent company, who was also the plan sponsor); *Laurentian* at paras. 39-45 (releasing a university with which the debtor had a relationship); *Lydian International* at paras. 50-64 (releasing senior lenders).

⁶⁹ *Target* at para. 38; *SkyLink Aviation Inc. (Re)*, [2013 ONSC 2519](#) at para. 30.

- (g) whether the releases are fair and reasonable and not overly broad or offensive to public policy.⁷⁰

35. This Court has already applied the factors cited above to approve a release in favour of the Employee Trust Trustee of any claims relating to its activities as trustee.⁷¹

36. Each of the Released Parties has been essential to and has contributed in tangible and material ways to the orderly wind-down of the Nordstrom Canada Entities and the development of the Plan. The Monitor has expressed the view that:

- (a) The Nordstrom Canada Entities Released Parties have been essential to the restructuring, as they have been responsible for overseeing critical business functions and wind-down activities, resolving creditor and stakeholder issues in a timely manner, and developing the Plan to effect a global resolution of all matters in connection with the Nordstrom Canada Entities' exit from the Canadian marketplace.⁷²
- (b) The Third Party Released Parties contributed significantly to the restructuring process. Employee Representative Counsel's involvement in these CCAA proceedings enabled employee claims and issues arising from the former employees' employment with Nordstrom Canada to be resolved in a productive, efficient and timely manner. The Employee Trust Trustee was key in providing enhanced and timely recoveries to Nordstrom Canada's employees through the Employee Trust from the outset of these CCAA proceedings.⁷³ The Monitor, with

⁷⁰ *Metcalf* at para. 113; *Laurentian* at para. 40, citing *Lydian International* at para. 54.

⁷¹ *Nordstrom Canada Retail, Inc.*, [2023 ONSC 5450](#) at paras. 15-19.

⁷² Eighth Report at para. 5.13.

⁷³ Eighth Report at para. 5.15.

the assistance of its counsel, has filed nine reports detailing the progress of these CCAA proceedings and has overseen the Nordstrom Canada Entities' negotiations to resolve these CCAA proceedings.⁷⁴

- (c) The Plan Sponsor Released Parties, particularly the Plan Sponsor, made significant contributions essential to the orderly wind-down of the Nordstrom Canada Entities and development of the Plan.⁷⁵ While the Plan Sponsor benefits from the Plan, which is the culmination of the orderly wind-down of its subsidiaries' business activities in Canada,⁷⁶ its involvement was essential to the timely resolution of these CCAA proceedings, leading to higher and quicker recoveries for Affected Creditors.⁷⁷ The Plan Sponsor's efforts included:
- (i) establishing the Employee Trust and providing it with \$15.2 million of aggregate funding (the Plan Sponsor will not recover approximately \$3.6 million to \$4.1 million of its subrogated claim for certain of these amounts under the Plan), permitting eligible employees to obtain payment in full of their statutory entitlements on a timely basis;
 - (ii) facilitating a resolution of the FLS Landlords' claims (by far the largest third-party claims filed in the Claims Process) in a consensual and timely manner, avoiding protracted litigation that could have delayed the resolution of these CCAA proceedings;
 - (iii) causing its wholly-owned subsidiary NIL to enter into the CRA Agreement, removing a large contingent claim (arising from an approximately \$36 million tax assessment of the applicant entity) from the CCAA estate that would have delayed the development of the Plan and distributions to Affected Creditors;
 - (iv) providing approximately 47% of the cash that will fund the Plan by paying the approximately \$70 million Net NCRI Transfer Pricing Claim to the Consolidated Cash Pool for the benefit of Affected Creditors in accordance with the Transfer Pricing Policy without opposition or delay; and

⁷⁴ Sanction Affidavit at para. 4.

⁷⁵ Eighth Report at para. 5.17.

⁷⁶ Sanction Affidavit at para. 33.

⁷⁷ Eighth Report at para. 5.18.

- (v) not recovering on over \$300 million of the NIL Canada Expansion Loan Claim and other claims of approximately \$1 million.⁷⁸

37. In addition, the Plan Sponsor has made a number of other contributions, including providing shared services, maintaining the books and records, entering into a new administrative services agreement for shared services and DIP financing if required, and entering into the Credit Agreement Amendment.⁷⁹ As in *Target*, the Plan Sponsor's economic contributions have "demonstrably increased the available recoveries for Affected Creditors."⁸⁰

38. The releases are rationally connected to the Plan's objective of completing an orderly, timely wind-down of the Nordstrom Canada Entities and a global resolution of these CCAA proceedings.⁸¹ In particular, the Monitor considers that the Plan's timeliness and level of anticipated recovery for Affected Creditors could not have been achieved without the Plan Sponsor's concerted involvement.⁸² The release of the Plan Sponsor was, in turn, a necessary precondition to the contributions that it made under the Plan and the support it provided in these CCAA proceedings, making it essential to the Plan's success.⁸³ The releases also protect the Nordstrom Canada Entities Released Parties and give effect to the compromises in the Plan, and facilitate the implementation of the Plan which benefits the Nordstrom Canada Entities and Affected Creditors generally.

39. All Affected Creditors received full notice of the terms of the Plan and the releases contained therein, including through the Letter to Creditors distributed pursuant to the Meeting Order, and the Plan received unanimous approval of those Affected Creditors present and voting

⁷⁸ Eighth Report at paras. 5.17-5.20.

⁷⁹ Meeting Order Affidavit at para. 118.

⁸⁰ *Target* at para. 43.

⁸¹ Meeting Order Affidavit at para. 9.

⁸² Eighth Report at para. 5.18.

⁸³ Meeting Order Affidavit at para. 116.

in person or by proxy (or deemed to vote) at the Creditors' Meeting. This fact creates a strong presumption that the proposed releases in the Plan are fair and reasonable and are not excessive in scope.

B. Stay Extension Should be Granted

40. The Stay Period has been extended a number of times, most recently to April 5, 2024.⁸⁴ The Applicants submit that the extension of the Stay Period until and including June 28, 2024 should be granted, as they continue to act in good faith and with due diligence.⁸⁵ Extending the Stay Period is necessary to permit the Nordstrom Canada Entities to implement the Plan. Maintaining the Co-Tenancy Stay during the next stage of the case will continue to provide stability to these CCAA proceedings.⁸⁶

PART IV - NATURE OF THE ORDER SOUGHT

41. For all of the reasons above, the Applicants submit that this Honourable Court should grant the requested Sanction and Vesting Order and related relief requested by the Applicants.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 13th day of March, 2024:



OSLER, HOSKIN & HARCOURT LLP
per Marleigh Dick

P.O Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Lawyers for the Applicants

⁸⁴ Sanction Affidavit at para. 55.

⁸⁵ CCAA, ss. 11.02(2)-(3); Sanction Affidavit at para. 59.

⁸⁶ Sanction Affidavit at para. 57.

SCHEDULE “A” – LIST OF AUTHORITIES

Case Law

1. *Canadian Airlines Corp. (Re)*, [2000 ABQB 442](#), leave to appeal ref'd [2000 ABCA 238](#), variation ref'd [2001 ABCA 9](#), leave to appeal ref'd [\[2001\] 2 S.C.R. xii \(note\)](#)
2. *Laurentian University of Sudbury*, [2022 ONSC 5645](#)
3. *Lydian International Limited (Re)*, [2020 ONSC 4006](#)
4. *Metcalf & Mansfield Alternative Investments II Corp. (Re)*, [2008 ONCA 587](#), leave to appeal ref'd [2008 CanLII 46997](#) (S.C.C.)
5. *Nordstrom Canada Retail, Inc.*, [2023 ONSC 1422](#)
6. *Nordstrom Canada Retail, Inc.*, [2023 ONSC 5450](#)
7. *Nordstrom Canada Retail, Inc.*, [2023 ONSC 7194](#)
8. *Re AbitibiBowater Inc.*, [2010 QCCS 4450](#)
9. *Re: Canwest Global Communications Corp.*, [2010 ONSC 4209](#)
10. *Sino-Forest Corporation (Re)*, [2012 ONSC 7050](#), leave to appeal ref'd [2013 ONCA 456](#), leave to appeal ref'd [2014 CanLII 11054](#) (S.C.C.)
11. *SkyLink Aviation Inc. (Re)*, [2013 ONSC 2519](#)
12. *Target Canada Co., Re*, 2016 ONSC 3651

SCHEDULE “B”
TEXT OF STATUTES, REGULATIONS & BY-LAWS

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

Definitions

2 (1) In this Act, ...

company means any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province, any incorporated company having assets or doing business in Canada, wherever incorporated, and any income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the *Bank Act*, telegraph companies, insurance companies and companies to which the *Trust and Loan Companies Act* applies;
(*compagnie*)

...

debtor company means any company that

(a) is bankrupt or insolvent,

(b) has committed an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* or is deemed insolvent within the meaning of the *Winding-up and Restructuring Act*, whether or not proceedings in respect of the company have been taken under either of those Acts,

(c) has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act*, or

(d) is in the course of being wound up under the *Winding-up and Restructuring Act* because the company is insolvent; (*compagnie débitrice*)

...

Compromises to be sanctioned by court

6 (1) If a majority in number representing two thirds in value of the creditors, or the class of creditors, as the case may be — other than, unless the court orders otherwise, a class of creditors having equity claims, — present and voting either in person or by proxy at the meeting or meetings of creditors respectively held under sections 4 and 5, or either of those sections, agree to any compromise or arrangement either as proposed or as altered or modified at the meeting or meetings, the compromise or arrangement may be sanctioned by the court and, if so sanctioned, is binding

(a) on all the creditors or the class of creditors, as the case may be, and on any trustee for that class of creditors, whether secured or unsecured, as the case may be, and on the company; and

(b) in the case of a company that has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act* or is in the course of being wound up under the *Winding-up and Restructuring Act*, on the trustee in bankruptcy or liquidator and contributories of the company.

...

Restriction — certain Crown claims

(3) Unless Her Majesty agrees otherwise, the court may sanction a compromise or arrangement only if the compromise or arrangement provides for the payment in full to Her Majesty in right of Canada or a province, within six months after court sanction of the compromise or arrangement, of all amounts that were outstanding at the time of the application for an order under section 11 or 11.02 and that are of a kind that could be subject to a demand under

(a) subsection 224(1.2) of the *Income Tax Act*;

(b) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts; or

(c) any provision of provincial legislation that has a purpose similar to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, and the sum

(i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a *province providing a comprehensive pension plan* as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a *provincial pension plan* as defined in that subsection.

Restriction — default of remittance to Crown

(4) If an order contains a provision authorized by section 11.09, no compromise or arrangement is to be sanctioned by the court if, at the time the court hears the application for sanction, Her Majesty in right of Canada or a province satisfies the court that the company is in default on any remittance of an amount referred to in subsection (3) that became due after the time of the application for an order under section 11.02.

Restriction — employees, etc.

(5) The court may sanction a compromise or an arrangement only if

(a) the compromise or arrangement provides for payment to the employees and former employees of the company, immediately after the court's sanction, of

(i) amounts at least equal to the amounts that they would have been qualified to receive under paragraph 136(1)(d) of the *Bankruptcy and Insolvency Act* if the company had become bankrupt on the day on which proceedings commenced under this Act, and

(ii) wages, salaries, commissions or compensation for services rendered after proceedings commence under this Act and before the court sanctions the compromise or arrangement, together with, in the case of travelling salespersons, disbursements properly incurred by them in and about the company's business during the same period; and

(b) the court is satisfied that the company can and will make the payments as required under paragraph (a).

Restriction — pension plan

(6) If the company participates in a prescribed pension plan for the benefit of its employees, the court may sanction a compromise or an arrangement in respect of the company only if

(a) the compromise or arrangement provides for payment of the following amounts that are unpaid to the fund established for the purpose of the pension plan:

(i) an amount equal to the sum of all amounts that were deducted from the employees' remuneration for payment to the fund,

(ii) if the prescribed pension plan is regulated by an Act of Parliament,

(A) an amount equal to the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, that was required to be paid by the employer to the fund, and

(A.1) an amount equal to the sum of all special payments, determined in accordance with section 9 of the *Pension Benefits Standards Regulations, 1985*, that were required to be paid by the employer to the fund referred to in sections 81.5 and 81.6 of the *Bankruptcy and Insolvency Act* to liquidate an unfunded liability or a solvency deficiency,

(A.2) any amount required to liquidate any other unfunded liability or solvency deficiency of the fund as determined on the day on which proceedings commence under this Act,

(B) an amount equal to the sum of all amounts that were required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the *Pension Benefits Standards Act, 1985*,

(C) an amount equal to the sum of all amounts that were required to be paid by the employer to the administrator of a pooled registered pension plan, as defined in subsection 2(1) of the *Pooled Registered Pension Plans Act*, and

(iii) in the case of any other prescribed pension plan,

(A) an amount equal to the amount that would be the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, that the employer would be required to pay to the fund if the prescribed plan were regulated by an Act of Parliament, and

(A.1) an amount equal to the sum of all special payments, determined in accordance with section 9 of the *Pension Benefits Standards Regulations, 1985*, that would have been required to be paid by the employer to the fund referred to in sections 81.5 and 81.6 of the *Bankruptcy and Insolvency Act* to liquidate an unfunded liability or a solvency deficiency if the prescribed plan were regulated by an Act of Parliament,

(A.2) any amount required to liquidate any other unfunded liability or solvency deficiency of the fund as determined on the day on which proceedings commence under this Act,

(B) an amount equal to the sum of all amounts that would have been required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the *Pension Benefits Standards Act, 1985*, if the prescribed plan were regulated by an Act of Parliament,

(C) an amount equal to the sum of all amounts that would have been required to be paid by the employer in respect of a prescribed plan, if it were regulated by the *Pooled Registered Pension Plans Act*; and

(b) the court is satisfied that the company can and will make the payments as required under paragraph (a).

...

Payment — equity claims

(8) No compromise or arrangement that provides for the payment of an equity claim is to be sanctioned by the court unless it provides that all claims that are not equity claims are to be paid in full before the equity claim is to be paid.

Stays, etc. — other than initial application

11.02(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

...

Personal Information Protection and Electronic Documents Act, S.C. 2000, c. 5

Disclosure without knowledge or consent

7(3) For the purpose of clause 4.3 of Schedule 1, and despite the note that accompanies that clause, an organization may disclose personal information without the knowledge or consent of the individual only if the disclosure is

...

(c) required to comply with a subpoena or warrant issued or an order made by a court, person or body with jurisdiction to compel the production of information, or to comply with rules of court relating to the production of records;

...

Personal Information Protection Act, S.B.C. 2003, c. 63

Disclosure of personal information without consent

18 (1) An organization may only disclose personal information about an individual without the consent of the individual, if

...

(i) the disclosure is for the purpose of complying with a subpoena, warrant or order issued or made by a court, person or body with jurisdiction to compel the production of personal information,

...

Personal Information Protection Act, S.A. 2003, c. P-6.5

Disclosure without consent

20 An organization may disclose personal information about an individual without the consent of the individual but only if one or more of the following are applicable:

...

(e) the disclosure of the information is for the purpose of complying with a subpoena, warrant or order issued or made by a court, person or body having jurisdiction to compel the production of information or with a rule of court that relates to the production of information;

...

SCHEDULE “C”

2016 ONSC 3651

Ontario Superior Court of Justice

Target Canada Co., Re

2016 CarswellOnt 21083, 2016 ONSC 3651, 274 A.C.W.S. (3d) 259, 42 C.B.R. (6th) 330

In the Matter of the Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended

In the Matter of a plan of compromise or arrangement of Target Canada Co., Target Canada Health Co., Target Canada Mobile GP Co., Target Canada Pharmacy (BC) Corp., Target Canada Pharmacy (Ontario) Corp., Target Canada Pharmacy Corp., Target Canada Pharmacy (SK) Corp., and Target Canada Property LLC

Morawetz J.

Heard: June 2, 2016

Judgment: June 2, 2016

Docket: CV-15-10832-00CL

Counsel: Jeremy Dacks, John MacDonald, Shawn Irving, for Applicants, Target Canada Co., Target Canada Health Co., Target Canada Mobile GP Co., Target Canada Pharmacy (BC) Corp., Target Canada Pharmacy (Ontario) Corp., Target Canada Pharmacy Corp., Target Canada Pharmacy (SK) Corp., and Target Canada Property LLC

Jay Swartz, for Target Corporation

William Sasso, Sharon Strosberg, Jacqueline Horvat, for Pharmacy Franchisee Association of Canada

Susan Philpott, for Employees of Applicants

Alan Mark, Melaney Wagner, Graham Smith, Francy Kussner, for Monitor, Alvarez & Marsal Inc.

Jane Dietrich, for Merchant Retail Solutions ULC, Gordon Brothers Canada ULC and G.A. Retail Canada ULC

Andrew Hodhod, for Bell Canada

Harvey Chaiton, for Directors and Officers

Morawetz J. (orally):

1 Target Canada Co. (“TCC”), the other applicants listed above and certain related partnerships, (collectively, the “Target Canada Entities”), obtained relief under the *Companies’ Creditors Arrangement Act*, (the “CCAA”) by an Initial Order dated January 15, 2015, (the “Initial Order”). Alvarez & Marsal Canada Inc. was appointed in the Initial Order to act as the

Monitor in this proceeding (the “Monitor”). The reasons which gave rise to the Initial Order are reported as *Target Canada Co., Re*, 2015 ONSC 303 (Ont. S.C.J.) . Those reasons set out the factual background giving rise to the CCAA filing. The Initial Order granted a stay of proceedings until February 13, 2015, which was later extended eight times, most recently to June 6, 2016.

2 Today the Applicants bring this motion for Court sanction of their Second Amended and Restated Joint Plan of Compromise and Arrangement dated May 19, 2016 (the “Amended Plan”) and to obtain an order extending the Stay Period until September 23, 2016 to allow for the implementation of the Amended Plan and the continuation of the Claims Process for the benefit of all stakeholders.

3 The facts with respect to this motion are set out in the Sanction Affidavit of Mark J. Wong. Additional facts, including the background to, and mechanics of, the Amended Plan are described in the Meeting Order Affidavit of Mark J. Wong. In addition, factual information is also contained in the 28th Report of the Monitor.

4 Counsel for the Applicants submits that the Amended Plan is the product of extensive negotiations and consultations with key stakeholders, including Landlord Guarantee Creditors, Landlord Non-Guarantee Creditors, Target Corporation and the Consultative Committee, all with the assistance of the Monitor.

5 Noteworthy, each of the Monitor, the Landlords and the Consultative Committee of creditors support the Amended Plan.

6 The Amended Plan has been designed to isolate and address Claims against Propco and Property LP, on one hand, and TCC and the remaining Target Canada Entities on a consolidated basis, on the other. The Amended Plan provides for the consolidation for Plan purposes of the Target Canada Entities other than Propco and Property LP. The Monitor has commented on the impact of the substantive consolidation of the estates of the Target Canada Entities for the purposes of this proceeding. Such commentary contained in Monitor’s 27th report.

7 I note that there is no opposition to the proposed consolidation, which has been brought to the attention of the affected creditors and I am satisfied that the effect of such consolidation is not prejudicial to the position of any creditor or creditor group.

8 The primary features of the Amended Plan are summarized in Meeting Order Affidavit, the Sanction Affidavit and the Monitor’s Report. Some of the more significant features include:

- a. Affected Creditors voted on the Amended Plan as a single class.
- b. Affected Creditors with Proven Claims that are less than or equal to \$25,000 (the “Convenience Class Creditors”) will be paid in full. Affected Creditors with Proven Claims in excess of \$25,000 had the option to elect to be treated for all purposes as Convenience Class Creditors.
- c. Landlord Guarantee Creditors will be paid the full amount of their Proven Claims on the Initial Distribution Date.

d. Landlord Non-Guarantee Creditors will be paid, in addition to their Pro Rata Share of their Proven Claims, a Landlord Non-Guaranteed Creditor Equalization Amount.

e. Other Affected Creditors with Proven Claims will receive their Pro Rata Share of the remaining TCC Cash Pool.

f. All CCAA Charges will be discharged, except the Directors' Charge and the Administrative Charge.

g. The Target Canada Entities will transfer their remaining IP assets to Target Corporation's designees and the Pharmacy Shares to the Pharmacy Purchaser.

h. The Employee Trust will be terminated in accordance with the Amended Plan and any surplus funds returned to Target Corporation.

9 On November, 27, 2015 the Target Canada Entities brought a motion to file their original Plan of Compromise and Arrangement, ("the Original Plan"), and an Order authorizing the Target Canada Entities to call and hold a creditors' meeting to vote on it. I dismissed the motion on January 13, 2016, for reasons released on January 15, 2016 (the "January 15 Endorsement"). The reasons are reported as *Target Canada Co., Re* (2015), 2016 ONSC 316 (Ont. S.C.J.). Among other things, the Applicants' motion was dismissed as the Original Plan violated paragraph 19A of the Initial Order by seeking to compromise the Landlord Guarantee Claims without the consent of such affected Landlords.

10 After the January 15 Endorsement was issued, the Target Canada Entities continued their negotiations with the Landlords to develop framework for a consensual resolution that would preserve Target Corporation's agreement to maintain the subordination contained in the Original Plan, while the same time addressing certain Landlords' concerns and complying with the January 15th Endorsement.

11 On March 4, 2016 the Target Canada Entities announced that agreements had been entered into with all of the Landlord Guarantee Creditors and all of the Landlord Non-Guarantee Creditors.

12 The terms of these Agreements were disclosed and explained to Affected Creditors and to this Court prior to Creditors' Meeting.

13 The Landlord Guarantee Creditor Settlement Agreement and the Landlord Non-Guarantee Creditor Consent and Support Agreements are conditional upon (a) the Amended Plan's approval by the Affected Creditors; (b) sanction by this Court; and (c) Plan Implementation.

14 On April 13, 2016 an order was issued permitting the Applicants to put the Amended Plan before the Affected Creditors for approval at the Creditors' Meeting.

15 On April 14, 2016 the Monitor published the Meeting Materials on its website. The Meeting Materials were sent to Affected Creditors on April 19, 2016. In addition, notices were published in major national and US newspapers at the end of April.

16 The Creditors' Meeting was held on May 25, 2016. The required quorum was present and the meeting was properly constituted.

17 According to the Monitor's tabulation, 100% in number representing 100% in value of the Affected Creditors holding Proven Claims that were present in person or by proxy and voting at the Meeting, voted (or were deemed to vote) to approve the Resolution in favour of the Amended Plan. According to the Monitor's tabulation, 1246 Affected Creditors representing approximately \$554 million in value voted (or were deemed to vote pursuant to the Meeting Order) at the Creditors' Meeting.

18 Based on the most up-to-date information from the Monitor, the Target Canada Entities expect that, subject to certain exceptions, Affected Creditors will be paid in a range from 71% to 80% of their Proven Claims.

19 The issue on this motion is:

a. Should this Court approve the Amended Plan as fair and reasonable?

20 Pursuant to section 6(1) of the CCAA, the court has the discretion to sanction a plan of compromise or arrangement where the requisite double-majority of creditors has approved the plan.

21 The general requirements for court approval of the CCAA Plan are well-established:

a. there must be strict compliance with all statutory requirements;

b. all materials filed and procedures carried out must be examined to determine if there has been anything done or purported to have been done, which is not authorized by the CCAA; and

c. the plan must be fair and reasonable.

22 See *SkyLink Aviation Inc., Re*, 2013 ONSC 2519 (Ont. S.C.J. [Commercial List]).

23 Having reviewed the record and hearing the submissions, I am satisfied that the foregoing test for approval has been met. In arriving at this conclusion, I have taken into account the following:

(a) In granting the Initial Order, it was determined that the Applicants qualified as debtor companies under section 2 of the CCAA and that the Applicants were insolvent;

(b) Affected Creditors were classified for the purposes of voting and receiving distributions under the Amended Plan and they voted on the Amended Plan as a single class; and

(c) The Monitor published the required notices and provided copies of the Meeting Materials to Affected Creditors;

(d) Affected Creditors were provided with Target Canada's letter to creditors containing an overview of the terms of the Amended Plan, as well as a letter from the Consultative Committee of creditors communicating the Consultative Committee's support of the Amended Plan and recommendation that Affected Creditors vote in favour of the Amended Plan;

(e) the Creditors' Meeting was properly-constituted;

(f) 100% in number representing 100% in value voted in favour of the Plan. Such unanimous approval of the Amended Plan far exceeds the required statutory majority under section 6(1).

24 Sections 6(2), 6(5) and 6(6) of the CCAA provide that the Court may not sanction the plan unless the plan contains specified provisions concerning crown claims, employee claims and pension claims. I am satisfied that all of these requirements have been met.

25 The claims of Affected Creditors are not being paid in full. In compliance with section 6(8) of the CCAA, the Amended Plan does not provide for any recovery for equity holders. In addition, Target Corporation, the indirect shareholder of TCC and the largest single creditor of TCC, has agreed to subordinate the majority of its Intercompany Claims.

26 I also note that the Monitor is of the view that the Amended Plan complies with the requirements of the CCAA, including the requirements under section 6 of the CCAA.

27 Having reviewed the record, I am satisfied that the statutory prerequisites to sanction the Amended Plan have been satisfied. I am also satisfied that no unauthorized steps have been taken in placing the Amended Plan before the Court to be sanctioned.

28 In assessing whether a proposed plan is fair and reasonable, the Court will consider the following:

- a. whether the claims have been properly classified and whether the requisite majority of creditors approved the plan;
- b. what creditors would receive on bankruptcy or liquidation as compared to the plan;
- c. alternatives available to the plan;
- d. oppression of the rights of creditors;
- e. unfairness to shareholders; and
- f. the public interest.

29 (See to *Sino-Forest Corp., Re*, 2012 ONSC 7050 (Ont. S.C.J. [Commercial List]) ("Sino-Forest").

30 I am satisfied that each of these factors supports approval of the Amended Plan.

31 In arriving at this conclusion, I have taken into account the following:

- a. Classification and Creditor Approval: The Amended Plan was unanimously approved.
- b. Recovery on Bankruptcy: The Monitor has expressed the view that recoveries under the Amended Plan are well in excess of those that would have been received on a

bankruptcy of the Target Canada Entities. Recoveries against TCC in a bankruptcy would be 30%, as compared to the expected range of 71 to 80% under the Amended Plan.

c. Alternatives to the Amended Plan: The Amended Plan is the only alternative to bankruptcy.

d. No Oppression of Creditors: I am satisfied that the pre-insolvency rights and priorities of Affected Creditors are respected under the Amended Plan.

e. No Unfairness to Shareholders: Given that Affected Creditors are not being paid in full, there is no unfairness to shareholders in receiving no recovery.

f. Public interest: The Amended Plan resolves the Proven Claims against Target Canada Entities in a manner that is efficient and timely, and which avoids costly litigation.

32 Article 7.1 of the Amended Plan provides for full and final releases in favour of:

a. The Target Canada Released Parties;

b. The Third-Party Released Parties (which includes the Monitor and its affiliates, their directors, officers, employees, legal counsel, agents and advisors, as well as the Pharmacists' Representative Counsel and members of the Consultative Committee and their advisors);

c. It also provides a released in favour of the Plan Sponsor Released Parties, (Target Corporation and its subsidiaries other than the Target Canada Entities and the NE1, the HBC Entities and their respective directors, officers, employees, legal counsel agents and advisors), except in respect of the Landlord Guarantee Claims.

33 Finally, there is also release of the Employee Trust Released Parties.

34 It is accepted that Canadian courts have jurisdiction to sanction plans that containing releases in favour of third parties. In *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.* (2008), 92 O.R. (3d) 513 (Ont. C.A.) the Court of Appeal held that the CCAA Court has the jurisdiction to approve a plan of compromise or arrangement that includes third-party releases, stating that a release negotiated in favour of a third-party as part of the "compromise" or "arrangement" that reasonably relates to the proposed restructuring falls within the objectives and flexible framework of the CCAA.

35 There must be a reasonable connection between the third-party claim being compromised in the plan and the restructuring achieved by the plan to warrant inclusion of the third-party release in the plan.

36 In considering whether to approve releases in favour of third parties, the factors to be considered by the court include:

a. Whether the parties to be released from claims were necessary and essential to the restructuring of the debtor;

- b. Whether the claims to be released were rationally connected to the purpose of the plan and necessary for it;
- c. Whether the plan could succeed without the releases;
- d. Whether the parties being released were contributing to the plan;
- e. Whether the release benefitted the debtors as well as the creditors generally;
- f. Whether the creditors voting on the plan had knowledge of the nature and the effect of the releases or;
- g. Whether the releases were fair and reasonable and not overly broad.

37 (See *Metcalf, Cline Mining Corp.*, 2015 ONSC 662; and *Kitchener Frame Ltd., Re*, 2012 ONSC 234 (Ont. S.C.J. [Commercial List]).)

38 In determining whether to approve a third-party release, the Court will take into account the particular circumstances of the case and the objectives of the CCAA. No single factor set out above will be determinative.

39 (See *Skylink and Cline Mining*.)

40 Courts have approved releases that benefit affiliates of the debtor corporation where the *Metcalf* criteria is satisfied. In *Sino-Forest*, the subsidiaries of the debtor company were entitled to the benefit from the release under the plan as they were contributing their assets to satisfy the obligations of the debtor company for the benefit of affected creditors. It is not uncommon for CCAA courts to approve third-party releases in favour of person, such as directors or officers or other third parties, who could assert contribution and indemnity claims against the debtor company.

41 (See *Skylink and Cline Mining*.)

42 In my view, each of the Released Parties has contributed in tangible and material ways to the orderly wind down the Target Canada Entities' businesses. I accept that without the Releases, it is unlikely that all of the Released Parties would have been prepared to support the Amended Plan. The Releases are a significant part of the various compromises that were required to achieve the Amended Plan. They are a necessary element of the global, consensual resolution of this CCAA proceeding.

43 In particular, the economic contributions by Target Corporation, as Plan Sponsor, have demonstrably increased the available recoveries for Affected Creditors, as attested by the Monitor. Target Corporation's material direct and indirect contributions as Plan Sponsor include:

- a. subordinating a number of Intercompany Claims against TCC;
- b. partially subordinating various other Intercompany Claims;
- c. a cash contribution of approximately \$25.45 million towards the aggregate Landlord Guaranteed Enhancement;

d. a net cash contribution of approximately \$4.1 million to fund the Landlord Non-Guaranteed Creditor Equalization;

e. a cash contribution of \$700,000 towards costs of certain Landlord Guaranteed Creditors;

f. funding the Employee Trust in the amount of \$95 million.

44 I am satisfied that the Releases are appropriately narrow and rationally connected to the overall purposes of the Amended Plan. The Plan Sponsor Released Parties are not released from the Landlord Guarantee Claims, which are separately resolved in the Landlord Guarantee Creditors Settlement Agreement. Nor will Target Corporation be released under the Amended Plan from any indemnity or guarantee in favour of any Director, Officer or employee.

45 I am also satisfied that the Releases apply to the extent permitted by law and expressly do not apply to liability for criminal, fraudulent or other willful misconduct, or to other claims that are not permitted to be compromised or released under the CCAA.

46 Full disclosure of the Releases was made to the Affected Creditors in the Meeting Order Affidavit, in the Amended Plan and in the Letter to Creditors. The terms of the Release were also disclosed to creditors in the Original Plan. No party has objected to the scope of the Releases as contained in the Amended Plan.

47 Having considered the Record and the applicable law, I am satisfied that the Amended Plan represents an equitable balancing of the interests of all Stakeholders in accordance with the provisions and obligations of the CCAA and I find that the Amended Plan is both fair and reasonable to all Stakeholders. The Amended Plan is sanctioned and approved.

48 The Applicants have also requested an extension of the stay period to September 23, 2016. It is clear that the CCAA proceedings have to be extended so as to permit Plan Implementation to occur and to provide sufficient time to complete post implementation details. I am satisfied the parties are working in good faith and with due diligence in this matter and that there are sufficient resources available to fund the Applicants during the proposed extension period. The extension of the stay period is approved. In order to accommodate my schedule, the stay period is extended to September 26, 2016, being three days longer than the requested period. The Applicants also request an extension of the Notice of Objection Bar Date to the Plan Implementation Date. This request is reasonable in the circumstances and it is ordered that the Notice of Objection Bar Date expire on the Plan Implementation Date.

49 The motion is therefore granted and the Sanction Order has been signed by me.

50 In closing, I would like to thank all parties and their representatives for the manner in which this proceeding has been conducted. All parties and their counsel, by working in a constructive and cooperative manner, have made a contribution to the Amended Plan. It is very rare to have a CCAA plan of this magnitude supported by 100 percent of the affected creditors who voted at the creditors' meetings. This Sanctioned Amended Plan represents the best outcome from this unfortunate commercial venture.

Motion granted.

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, C. C-36, AS AMENDED**

Court File No: CV-23-00695619-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
NORDSTROM CANADA RETAIL, INC., NORDSTROM CANADA HOLDINGS, LLC
and NORDSTROM CANADA HOLDINGS II, LLC

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT TORONTO

SANCTION AND VESTING ORDER FACTUM

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