

**Bougadis, Chang LLP**  
BARRISTERS

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January 31, 2017

**VIA EMAIL**

**T PHARMACY LTD.**

c/o Stavros Gavrilidis and Dan Dimovski  
1349 Grand Marais Road West  
Windsor, ON N9E 1E2

**PHARMACY FRANCHISEE ASSOCIATION OF CANADA**

c/o Stavros Gavrilidis and Dan Dimovski  
1349 Grand Marais Road West  
Windsor, ON N9E 1E2

Mr. William V. Sasso  
Ms. Sharon Strosberg  
**SUTTS, STROSBURG LLP**  
600 – 251 Goyeau Street  
Windsor, ON N9A 6V4

*Former lawyers for T Pharmacy Ltd.*

Mr. Alan Mark  
Ms. Francy Kussner  
Mr. Jesse Mighton  
**GOODMANS LLP**  
333 Bay Street, Suite 3400  
Toronto, ON M5H 2S7

*Lawyers for the Monitor*

Mr. Jeremy Dacks  
Mr. Shawn Irving  
Ms. Christine Jackson  
**OSLER HOSKIN HARCOURT LLP**  
100 King Street West, Suite 6200  
Toronto, ON M5X 1B8

*Lawyers for Target Entities*

**AND TO: SERVICE LIST**

Dear Sirs / Madams:

**Re: Target Canada CCAA Proceedings**  
**Court File No.: CV-15-10832-00CL**  
**Our File No.: 161-332-002**

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Further to Mr. Mighton's correspondence, dated January 20, 2017, this is to advise that our law firm will be proceeding with its removal motion in this matter in writing, as opposed, pursuant to Rule 37.12.1(4).

In this regard, enclosed please find the Amended Notice of Motion, dated January 31, 2017, and the Factum for a Motion in Writing, served upon you pursuant to the *Rules*.

Trusting the above is satisfactory.

Yours very truly,

**BOUGADIS, CHANG LLP**

A handwritten signature in black ink, appearing to read 'George A. Bougadis', is written over the printed name and firm name.

**George A. Bougadis**  
GAB/bg  
Encl.

Counsel.13

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

**IN THE MATTER OF *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 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  
(THE "APPLICANTS")**

**AMENDED NOTICE OF MOTION**

The law firm of Bougadis, Chang LLP will make a motion to the Court, **in writing**, at  
360 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard:

- [ ☒ ] in writing under subrule 37.12.1(3) because it is unopposed  
[ ☒ ] in writing as an opposed motion under subrule 37.12.1(4)  
[        ] orally.

**THIS MOTION IS FOR:**

1. An Order removing George A. Bougadis and the law firm of Bougadis, Chang LLP as lawyers of record for T Pharmacy Ltd. and Pharmacy Franchisee Association of Canada;
2. An Order that T Pharmacy Ltd. and Pharmacy Franchisee Association of Canada may be served by regular mail at their last known address for service: 1349 Grand Marais Road West, Windsor, Ontario, N9E 1E2;

3. An Order that pursuant to Rules 15.04(6) and 15.04(7):

Rule 15.04(6): A client that is a corporation shall, within 30 days after being served with the order removing the lawyer from the record,

- (a) appoint a new lawyer of record by serving a notice under subrule 15.03 (2); or
- (b) obtain and serve an order under subrule 15.01 (2) granting it leave to be represented by a person other than a lawyer.

Rule 15.04(6): If the corporation fails to comply with subrule (6),

- (a) the court may dismiss its proceeding or strike out its defence; and
- (b) in an appeal,
  - (i) a judge of the appellate court may, on motion, dismiss the corporation's appeal, or
  - (ii) the court hearing the appeal may deny it the right to be heard.

4. A charging Order in favour of Bougadis, Chang LLP on any monies payable to T Pharmacy Ltd. and Pharmacy Franchisee Association of Canada pursuant to settlement or judgment in this matter, for an amount to be agreed upon or assessed, for Bougadis, Chang LLP's disbursements (currently totaling: \$599.97, inclusive of HST), legal fees (currently totaling: \$15,286.58, inclusive of HST), and interest on outstanding legal account (i.e. 2% per month compounded to 28.8% per annum), and in priority to any and all other charges that may hereafter exist on T Pharmacy Ltd. and Pharmacy Franchisee Association of Canada's file, pertaining to this matter;

5. An Order that Bougadis, Chang LLP be allowed to make costs submissions to Regional Senior Judge Morawetz, on its own behalf, at the same time that Pharmacist Representative Counsel, i.e. Sutts, Strosberg LLP, makes its cost submissions to Regional Senior Judge Morawetz in this matter;

6. An Order that T Pharmacy Ltd. and Pharmacy Franchisee Association of Canada provide a copy of this Order to any legal representative retained by them in this matter;

7. An Order that T Pharmacy Ltd. and Pharmacy Franchisee Association of Canada shall forthwith notify Bougadis, Chang LLP, in writing, by mail and fax, after their claims in this matter are disposed of, whether such disposition occurs by settlement, dismissal, discontinuance or Judgment, and provide the particulars of the disposition, including, but not limited to, the amount of settlement or Judgment, if any, a copy of any release, Notice of Discontinuance, or order, and the name, address, telephone number, fax number, and e-mail address of any representative that acted on their behalf after the date of this Order;
8. An Order that, pursuant to s. 137 (2) of the *Court of Justice Act*, R.S.O. 1990, c. C. 43, the Supplemental Affidavit of George A. Bougadis, if ~~this motion does not proceed in writing and oral submissions required and~~ if filed in support of the within Motion, be treated as confidential, sealed, and not form part of the public record;
9. An Order granting Bougadis, Chang LLP its costs of this Motion on a substantial indemnity basis, if attendance of the parties is required ~~opposed by any party, only~~; and,
10. Such further and other relief as counsel may advise and this Honourable Court may permit.

**THE GROUNDS FOR THE MOTION ARE:**

1. The law firm of Bougadis, Chang LLP is the current lawyer of record for T Pharmacy Ltd. and Pharmacy Franchisee Association of Canada in this matter;
2. There has been a fundamental breakdown of the lawyer and client relationship between Bougadis, Chang LLP and T Pharmacy Ltd. and Pharmacy Franchisee Association of Canada;
3. Rules 1.04, 2.01, 2.03, 15, 15.04, 16, 37, and 57 of the *Rules of Civil Procedure*;
4. Section 34 of the *Solicitors' Act*, R.S.O. 1990, c. S.15;

5. Section 137 (2) of the *Court of Justice Act*, R.S.O. 1990, c. C. 43; and,
6. Upon such further and reasonable grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Motion:

1. This Form;
2. Pleadings in this proceeding;
3. Affidavit of George A. Bougadis with its Exhibits;
4. Supplemental Affidavit of George A. Bougadis with the solicitor and client privileged Exhibits (~~if filed~~); and,
5. Moving Party's Factum for a Motion in Writing and Book of Authorities; and,
6. Such further and other material as counsel may advise and this Honourable Court may permit.

**DATE:** January 31 ~~19~~, 2017

**BOUGADIS, CHANG LLP**  
Barristers  
300 - 55 Adelaide Street East  
Toronto, Ontario  
M5C 1K6

**George A. Bougadis**

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Lawyers for T Pharmacy Ltd. and  
Pharmacy Franchisee Association  
of Canada

**TO: T PHARMACY LTD.**  
c/o Stavros Gavrilidis and Dan Dimovski  
1349 Grand Marais Road West  
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**AND TO: PHARMACY FRANCHISEE ASSOCIATION OF CANADA**  
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**AND TO: SUTTS, STROSBURG LLP**  
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Lawyers for Target Entities

**AND TO: SERVICE 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 TARGET CANADA CO., et al.**

Court File No.: CV-15-10832-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding Commenced at TORONTO

**AMENDED NOTICE OF MOTION**

**BOUGADIS, CHANG LLP**

Barristers

300 - 55 Adelaide Street East  
Toronto, ON M5C 1K6

**George A. Bougadis**

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Lawyers for T Pharmacy Ltd. and  
Pharmacy Franchisee Association  
of Canada

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

**IN THE MATTER OF *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 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 (THE "APPLICANTS")**

**FACTUM FOR A MOTION IN WRITING  
OF THE MOVING PARTY, BOUGADIS, CHANG LLP**

**PART I –NATURE OF MOTION:**

1. Bougadis, Chang LLP brings this Motion for an Order removing itself as a lawyer of record for Pharmacy Franchisee Association of Canada and T Pharmacy Ltd., and a charging Order in favour of Bougadis, Chang LLP with respect its outstanding legal fees, due to a fundamental breakdown of the lawyer and client relationship between Bougadis, Chang LLP and Pharmacy Franchisee Association of Canada and T Pharmacy Ltd.

**PART II - FACTS:**

2. The law firm of Bougadis, Chang LLP was retained by Pharmacy Franchisee Association of Canada and T Pharmacy Ltd. with respect to this matter on October 4, 2016 and November 2, 2016, respectively, on an hourly basis. George A. Bougadis, a Partner at Bougadis, Chang LLP, has carriage of this file.

**Reference: Affidavit of George A. Bougadis, sworn January 19, 2017, at para. 2;  
Bougadis, Chang LLP's Motion Record, dated January 30, 2017, at TAB 2.**

3. There has been a fundamental breakdown of the lawyer and client relationship between Bougadis, Chang LLP and Pharmacy Franchisee Association of Canada and T Pharmacy Ltd. in this matter, resulting from Pharmacy Franchisee Association of Canada and T Pharmacy Ltd.'s ongoing failure to satisfy Bougadis, Chang LLP's legal account.

**Reference: Affidavit of George A. Bougadis, sworn January 19, 2017, at para. 3; Bougadis, Chang LLP's Motion Record, dated January 30, 2017, at TAB 2.**

4. In particular, Bougadis, Chang LLP's legal account for legal services rendered in this matter, dated December 13, 2016, totaling: \$15,886.55 (i.e. \$599.97 in disbursements and \$15,286.58 in legal fees) plus applicable interest at 2% per month compounded to 28.8% per annum, has not been paid Pharmacy Franchisee Association of Canada and T Pharmacy Ltd. to date.

**Reference: Affidavit of George A. Bougadis, sworn January 19, 2017, at para. 4; Bougadis, Chang LLP's Motion Record, dated January 30, 2017, at TAB 2.**

5. Bougadis, Chang LLP brings this Motion, in writing, as opposed, for an Order removing itself as a lawyer of record for Pharmacy Franchisee Association of Canada and T Pharmacy Ltd., and a charging Order in favour of Bougadis, Chang LLP with respect its outstanding legal fees, due to a fundamental breakdown of the lawyer and client relationship between Bougadis, Chang LLP and Pharmacy Franchisee Association of Canada and T Pharmacy Ltd.

**Reference: Amended Notice of Motion, dated January 30, 2017, at paras. 1-2; Bougadis, Chang LLP's Motion Record, dated January 30, 2017, at TAB 1.**

6. Bougadis, Chang LLP, also, seeks an Order allowing Bougadis, Chang LLP to make costs submissions to Regional Senior Judge Morawetz, on its own behalf, at the same time that Pharmacist Representative Counsel, i.e. Sutts, Strosberg LLP, makes its cost submissions to Regional Senior Judge Morawetz in this matter.

**Reference: Amended Notice of Motion, dated January 30, 2017, at paras. 1-2; Bougadis, Chang LLP's Motion Record, dated January 30, 2017, at TAB 1.**

7. Bougadis, Chang LLP, also, relies on the relevant statements and/or facts in relation to this matter, as contained in the Supplemental Affidavit of George A. Bougadis with the solicitor and client privileged Exhibits filed in support of the within motion (to be treated as confidential, sealed, and not form part of the public record, pursuant to s. 137 (2) of the *Court of Justice Act*, R.S.O. 1990, c. C. 43, subject to this Honourable Court's discretion).

### **PART III – LAW & SUMBISSIONS:**

8. Where the issues of fact and law are not complex, the Moving Party may propose in the Notice of Motion that the Motion be heard in writing without the attendance of the parties.

**Reference: *Rules of Civil Procedure, R.R.O., Reg. 194, Rule 37.12.1(4).***

9. Where the Responding Party delivers a notice that the party intends to make oral argument, the Moving Party may either attend the hearing and make oral argument or not attend and rely on the party's Motion Record and Factum.

**Reference: *Rules of Civil Procedure, R.R.O., Reg. 194, Rule 37.12.1(6).***

10. Bougadis, Chang LLP submits that the issues of fact and law in the within motion are not complex, and that this motion, therefore, should proceed in writing, as opposed, and without the attendance of the parties.
11. Bougadis, Chang LLP will be relying on its Motion Record, Supplemental Affidavit, and Factum, without attendance, if it is the Responding Parties, Pharmacy Franchisee Association of Canada and T Pharmacy Ltd.'s intention to make oral arguments in relation to the within motion.
12. Subject to the rules about criminal proceedings and the direction of the tribunal, where, after reasonable notice, the client fails to provide a retainer or funds on account of disbursements or fees, a lawyer may withdraw unless serious prejudice to the client would result.

**Reference: *Ontario Rules of Professional Conduct; Rule 3.7-3.***

13. Bougadis, Chang LLP states that Pharmacy Franchisee Association of Canada and T Pharmacy Ltd. has not paid or offered to pay Bougadis, Chang LLP's legal account for legal services rendered in this matter, dated December 13, 2016, totaling: \$15,886.55, to date.
14. Bougadis, Chang LLP further states that Pharmacy Franchisee Association of Canada and T Pharmacy Ltd.'s ongoing failure to pay Bougadis, Chang LLP's legal account for legal services rendered in this matter, dated December 13, 2016, constitutes a fundamental breakdown of the lawyer and client relationship and is sufficient ground for Bougadis, Chang LLP to be removed from the record for these parties.
15. Bougadis, Chang LLP further submits that its withdrawal as counsel of record for Pharmacy Franchisee Association of Canada and T Pharmacy Ltd. in this matter will not result in serious prejudice to these entities in this matter.
16. Where a solicitor has been employed to prosecute or defend a proceeding in the Superior Court of Justice, the Court may, on motion, declare the solicitor to be entitled to a charge on the property recovered or preserved through the instrumentality of the solicitor for the solicitor's fees, costs, charges and disbursements in the proceeding.

**Reference: *Solicitors Act*, R.S.O., Section 34(1).**

17. Bougadis, Chang LLP relies on s. 34(1) of the *Solicitors Act* and seeks a relevant charging Order in its favour for its outstanding legal fees, disbursements, and HST thereon, and interest on the outstanding legal account on any monies payable T Pharmacy Ltd. and Pharmacy Franchisee Association of Canada pursuant to settlement or judgment in this matter.

**PART IV - RELIEF REQUESTED**

18. Bougadis, Chang LLP seeks the following relief:

- a) An Order removing George A. Bougadis and the law firm of Bougadis, Chang LLP as

lawyers of record for T Pharmacy Ltd. and Pharmacy Franchisee Association of Canada;

- b) An Order that T Pharmacy Ltd. and Pharmacy Franchisee Association of Canada may be served by regular mail at their last known address for service: 1349 Grand Marais Road West, Windsor, Ontario, N9E 1E2;
- c) An Order that pursuant to Rules 15.04(6) and 15.04(7):

Rule 15.04(6): A client that is a corporation shall, within 30 days after being served with the order removing the lawyer from the record,

- (a) appoint a new lawyer of record by serving a notice under subrule 15.03 (2);
- or
- (b) obtain and serve an order under subrule 15.01 (2) granting it leave to be represented by a person other than a lawyer.

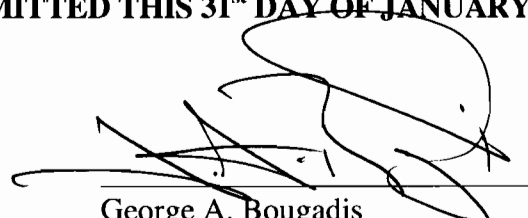
Rule 15.04(6): If the corporation fails to comply with subrule (6),

- (a) the court may dismiss its proceeding or strike out its defence; and
- (b) in an appeal,
  - (i) a judge of the appellate court may, on motion, dismiss the corporation's appeal, or
  - (ii) the court hearing the appeal may deny it the right to be heard.

- d) A charging Order in favour of Bougadis, Chang LLP on any monies payable to T Pharmacy Ltd. and Pharmacy Franchisee Association of Canada pursuant to settlement or judgment in this matter, for an amount to be agreed upon or assessed, for Bougadis, Chang LLP's disbursements (currently totaling: \$599.97, inclusive of HST), legal fees (currently totaling: \$15,286.58, inclusive of HST), and interest on outstanding legal account (i.e. 2% per month compounded to 28.8% per annum), and in priority to any and all other charges that may hereafter exist on T Pharmacy Ltd. and Pharmacy Franchisee Association of Canada's file, pertaining to this matter;

- e) An Order that Bougadis, Chang LLP be allowed to make costs submissions to Regional Senior Judge Morawetz, on its own behalf, at the same time that Pharmacist Representative Counsel, i.e. Sutts, Strosberg LLP, makes its cost submissions to Regional Senior Judge Morawetz in this matter;
- f) An Order that T Pharmacy Ltd. and Pharmacy Franchisee Association of Canada provide a copy of this Order to any legal representative retained by them in this matter;
- g) An Order that T Pharmacy Ltd. and Pharmacy Franchisee Association of Canada shall forthwith notify Bougadis, Chang LLP, in writing, by mail and fax, after their claims in this matter are disposed of, whether such disposition occurs by settlement, dismissal, discontinuance or Judgment, and provide the particulars of the disposition, including, but not limited to, the amount of settlement or Judgment, if any, a copy of any release, Notice of Discontinuance, or order, and the name, address, telephone number, fax number, and e-mail address of any representative that acted on their behalf after the date of this Order; and,
- h) An Order that, pursuant to s. 137 (2) of the *Court of Justice Act*, R.S.O. 1990, c. C. 43, the Supplemental Affidavit of George A. Bougadis, filed in support of the within Motion, be treated as confidential, sealed, and not form part of the public record.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 31<sup>st</sup> DAY OF JANUARY, 2017.**



George A. Bougadis  
**BOUGADIS, CHANG LLP**

Lawyers for T Pharmacy Ltd. and  
Pharmacy Franchisee Association  
of Canada

## **SCHEDULE “A”**

### **Relevant Statutory Provisions**

#### ***Rules of Civil Procedure, R.R.O., Reg. 194***

##### **RULE 37.12.1**

##### **HEARING WITHOUT ORAL ARGUMENT**

###### ***Consent motions, unopposed motions and motions without notice***

**37.12.1** (1) Where a motion is on consent, unopposed or without notice under subrule 37.07 (2), the motion may be heard in writing without the attendance of the parties, unless the court orders otherwise.

(2) Where the motion is on consent, the consent and a draft order shall be filed with the notice of motion.

(3) Where the motion is unopposed, a notice from the responding party stating that the party does not oppose the motion and a draft order shall be filed with the notice of motion.

###### ***Opposed Motions in Writing***

(4) Where the issues of fact and law are not complex, the moving party may propose in the notice of motion that the motion be heard in writing without the attendance of the parties, in which case,

- (a) the motion shall be made on at least fourteen days notice;
- (b) the moving party shall serve with the notice of motion and immediately file, with proof of service in the court office where the motion is to be heard, a motion record, a draft order and a factum entitled factum for a motion in writing, setting out the moving party’s argument;
- (c) the motion may be heard in writing without the attendance of the parties, unless the court orders otherwise.

(5) Within ten days after being served with the moving party’s material, the responding party shall serve and file, with proof of service, in the court office where the motion is to be heard,

- (a) a consent to the motion;
- (b) a notice that the responding party does not oppose the motion;
- (c) a motion record, a notice that the responding party agrees to have the motion heard and determined in writing under this rule and a factum entitled factum for a motion in writing, setting out the party’s argument; or
- (d) a notice that the responding party intends to make oral argument, along with any material intended to be relied upon by the party.

(6) Where the responding party delivers a notice under subrule (5) that the party intends to make oral argument, the moving party may either attend the hearing and make oral argument or not attend and rely on the party’s motion record and factum.



## ***Ontario Rules of Professional Conduct***

### **RULE 3.7-3:**

#### **Non-payment of Fees**

3.7-3 Subject to the rules about criminal proceedings and the direction of the tribunal, where, after reasonable notice, the client fails to provide a retainer or funds on account of disbursements or fees, a lawyer may withdraw unless serious prejudice to the client would result.

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## ***Solicitors Act, R.S.O. 1990, c. S. 15***

### **SECTION 34(1):**

#### **Charge on property for costs**

34(1) Where a solicitor has been employed to prosecute or defend a proceeding in the Superior Court of Justice, the court may, on motion, declare the solicitor to be entitled to a charge on the property recovered or preserved through the instrumentality of the solicitor for the solicitor's fees, costs, charges and disbursements in the proceeding.

**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 TARGET CANADA CO., et al.**

Court File No.: CV-15-10832-00CL

***ONTARIO***  
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Proceeding Commenced at **TORONTO**

**FACTUM FOR A MOTION IN WRITING  
OF MOVING PARTY, BOUGADIS, CHANG LLP**

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