

**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 **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**

**COMPENDIUM  
(PLAN FILING MOTION, RETURNABLE DECEMBER 21, 2015)**

December 18, 2015

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**TO: SERVICE LIST**

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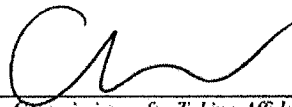
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# **TAB 1**

This is Exhibit "C" referred to in the Affidavit of Theresa Warnaar sworn December 19, 2015



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*Commissioner for Taking Affidavits (or as may be)*

**ANDREW WINTON**

70495/Place Vertu  
Montréal (St-Laurent Borough), Québec

LIMITED GUARANTY OF LEASE

This Limited Guaranty of Lease (this "Guaranty") is made as of this 27<sup>th</sup> day of May, 2011, by Target Corporation, a Minnesota corporation ("Guarantor") to and in favor of Place Vertu S.E.N.C. ("Landlord").

BACKGROUND

A. Zellers Inc. ("Zellers"), as tenant, and Landlord, as landlord, were parties to that certain Offer to Lease dated March 28, 2007, originally by and between Place Vertu S.E.N.C. and HBC Leasehold Property LP, notice of which has not been registered in the applicable land registry office (as amended, restated, supplemented or modified from time to time, referred to herein as the "Lease"), relating to certain premises occupied by Zellers as described in the Lease (the "Premises"), located in the Place Vertu Shopping Centre, located in the Borough of City of Montréal (St-Laurent Borough), Province of Québec (the "Shopping Centre").

B. Target Canada Co. (the "Tenant") wishes to acquire Zellers' interest in the Lease and Guarantor has agreed to provide this limited guaranty to the Landlord.

NOW THEREFORE, for and in consideration of \$10.00 and for other good and valuable consideration:

1. Guaranty. Guarantor hereby unconditionally, absolutely, continuingly and irrevocably guarantees to Landlord, in accordance with and subject to the terms of this Guaranty, the timely payment, observance and performance by Tenant of its obligations, agreements and liabilities arising under or pursuant to the Lease (as from time to time amended and including the self-insurance clause between Landlord and Tenant), direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due (collectively, "Tenant's Liabilities") and further agrees to pay all costs and expenses incurred by Landlord in enforcing this Guaranty, including, without limitation, all legal fees and disbursements. The liability of Guarantor with Tenant is joint and several. The obligations of Guarantor are as primary obligor and Guarantor shall be bound by this Guaranty as though it were Tenant named in the Lease.

2. Waivers.

2.1 General Waivers. Landlord shall not be required to prosecute collection or to proceed against Tenant or to seek to enforce or resort to any remedies against Tenant or any other person liable to Landlord on account of Tenant's Liabilities. Guarantor's liabilities shall in no way be prejudiced, waived, discharged, mitigated, reduced or released by reason of (i) the failure or delay by Landlord to enforce any of the terms, covenants or conditions in the Lease or to do or take any of the actions or



things described in the Lease, (ii) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets of Tenant (or its permitted assignees), the assignment or transfer of the Lease by Tenant or by any trustee, receiver, liquidator or other entity or any consent that Landlord gives to any such assignment or transfer, or the marshalling of assets and liabilities or the receivership, insolvency, bankruptcy, winding up, assignment for the benefit of creditors, reorganization, arrangement, composition with creditors or readjustment of, or other similar proceedings or any other inability to pay or perform affecting, Tenant (or its permitted assignees) or any of its respective assets, (iii) any allegation concerning, or contest of the legality or validity of the indemnification obligations under the Lease, (iv) any repossession of the Premises by Landlord provided that the net payments received by Landlord after deducting all costs and expenses of repossessing and reletting the Premises shall be credited from time to time by Landlord against the indebtedness of Guarantor under this Guaranty and Guarantor shall pay any balance owing to Landlord from time to time immediately upon demand, (v) any extension of time, indulgences or modifications which Landlord extends to or makes with Tenant under the Lease, or (vi) any waiver by Tenant of any of its rights under the Lease. Without limiting the above, but subject to Section 5 below, Landlord has the right to enforce this Guaranty regardless of any repudiation, disclaimer or assignment of the Lease pursuant to any receivership, bankruptcy winding-up or other creditors' proceedings, any release or discharge of the Tenant by the Landlord or by others, or any event that has the effect of terminating the Tenant's obligations under the Lease prior to what would have been its expiration. Notwithstanding the bankruptcy or insolvency of Tenant and notwithstanding any repudiation or disclaimer of the Lease, Guarantor's liability hereunder will continue. It is further provided that, if any trustee in bankruptcy of Tenant disclaims all interest in the Lease or if the Lease is repudiated, then, Guarantor will be deemed, upon thirty (30) days notice by Landlord, to have entered into a lease with Landlord, on the same terms and conditions as the Lease then prevailing (including without limitation, future rental increases), effective upon the effective date of such disclaimer, termination or repudiation.

- 2.2 Waiver of Suretyship Defenses. Guarantor hereby expressly waives the right to interpose all substantive and procedural defences of the law of guaranty and suretyship except the defences of prior payment or prior performance.
- 2.3 Waivers Relating to Lease. Without limiting the waivers set forth above, but subject to Sections 5 and 6 below, the liability of Guarantor under this Guaranty shall not be deemed to have been prejudiced, waived, discharged, mitigated, reduced or released by (i) the granting of any indulgence or extension of time to Tenant, (ii) the assignment of the

Lease, or the subletting or transfer of the Premises or Tenant's interest in the Lease in whole or in part by Tenant with or without Landlord's consent, (iii) the expiration of the term of the Lease, (iv) Tenant holding over beyond the term of the Lease, (v) the rejection, repudiation, disaffirmance or disclaimer of the Lease by any party in any action or proceeding, (vi) any defect or invalidity of the Lease, (vii) any amendment, supplement or replacement of the Lease by agreement between Tenant and Landlord, or (viii) the granting of extensions or renewals of the Lease and/or the granting of any release, compromise or settlement in connection with the Lease.

3. Tenant Default Notice. Landlord shall deliver to Guarantor notice of any default by Tenant under the Lease ("**Tenant Default Notice**") and afford Guarantor the same amount of time as such Tenant is provided under the Lease to cure such default but Landlord's failure to do so shall not prejudice, waive, discharge, mitigate, impair, affect, reduce or release Guarantor's obligations under this Guaranty; provided, however, in the event of such failure by Landlord, Landlord may not exercise its rights or remedies against Guarantor under this Guaranty until Landlord delivers such a copy of the applicable Tenant Default Notice to Guarantor, and Guarantor is afforded the same amount of time, commencing as of the date on which Landlord delivers such Tenant Default Notice to Guarantor, as Tenant is provided under the Lease to cure any such default or event of default or to cause the same to be cured. Landlord agrees to accept any such cure by or on behalf of Guarantor as though such cure has been effected directly by Tenant.

4. Governing Law and Amendments to this Guaranty. This Guaranty shall be governed by and construed in accordance with the laws of Canada and the Province in which the Shopping Centre is located. This Agreement is the sole agreement between Landlord and Guarantor and this Guaranty shall not be amended except in writing by Guarantor and Landlord.

5. Expiration of Guaranty. This Guaranty shall expire and be deemed automatically released by Landlord and of no further force and effect on the earlier to occur of: (1) the date (the "**Expiry Date**") that is ten (10) years next following the Execution Date (as defined below); (2) the date of expiration of the Term of the Lease (as the same may have been renewed or extended by Tenant from time to time) excluding any expiration that is deemed to occur as a result of default by Tenant under the Lease or the unenforceability of the Lease; (3) the date upon which the Lease is terminated or Tenant is otherwise released from its obligations under the Lease, as a result of default by Landlord; or (4) the date on which Tenant is released by Landlord from its obligations under the Lease other than the Lease being repudiated or disclaimed pursuant to bankruptcy or creditors' legislation. Notwithstanding the foregoing, this Guaranty shall continue with respect to any failure to pay or perform an obligation that pertained to any period up to and including the Expiry Date or any other default by Tenant relating to any period up to and including the Expiry Date; provided that notice of any claim under this Guaranty must be given within 2 years next following the Expiry Date.

6. Successors and Assigns.

- (a) This Guaranty shall be binding upon and enure to the benefit of Guarantor and Landlord and their respective successors and permitted assigns.
- (b) Any assignment by Landlord of any of its interests in the Lease (who has agreed in writing with Tenant to perform Landlord's obligations under the Lease and who is a transferee permitted by the terms of the Lease) operates automatically as an assignment to such assignee of the benefit of this Guaranty. Except as set forth above, neither this Guaranty nor any of the rights or obligations under this Guaranty are assignable or transferable by Landlord, without the prior written consent of Guarantor, acting reasonably.

7. Notices. Any notice, direction or other communication (a "Notice") given to Guarantor or Landlord pursuant to the Guaranty, including all notices regarding default, exercise of rights or remedies and approvals, must be in writing, sent by personal delivery, courier, facsimile (but not electronic mail) and addressed to:

to Guarantor at:	to Landlord at:
Target Corporation Property Development TPN-12th Floor Attn: Real Estate - Existing Stores 1000 Nicollet Mall Minneapolis, MN 55403	Place Vertu S.E.N.C. c/o Ivanhoe Cambridge Inc. Centre CDP Capital 1001, Square Victoria, Bureau C-500 Montréal, Québec H2Z 2B5

A Notice is deemed to be given and received (i) if sent by personal delivery or same-day courier, on the date of delivery if it is a Business Day and the delivery was made prior to 4:00 p.m. (local time in place of receipt) and otherwise on the next Business Day, (ii) if sent by overnight courier, on the next Business Day, or (iii) if sent by facsimile, on the Business Day when receipt thereof is confirmed. A party may change its address for service from time to time by providing a notice in accordance with the foregoing. Any subsequent notice must be sent to the party at its changed address. Any element of a party's address that is not specifically changed in a notice will be assumed to be changed. "Business Day" means any day of the year, other than a Saturday, Sunday or any day on which major banks are closed for business in Toronto, Ontario or Minneapolis, Minnesota.

8. Further Assurances. The parties will take such actions, including execution and delivery of such documents, instruments, petitions and certifications as may become necessary or appropriate to carry out the terms, provisions and intent of this Guaranty.

IN WITNESS WHEREOF, this Guaranty has been duly executed this \_\_\_\_\_ day of \_\_\_\_\_, 2011 (the "Execution Date").

TARGET CORPORATION

By: John Mulligan

Name: John Mulligan

Title: SVP Treasury and Accounting

Landlord accept the terms hereof this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

PLACE VERTU S.E.N.C.,

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

8. Further Assurances. The parties will take such actions, including execution and delivery of such documents, instruments, petitions and certifications as may become necessary or appropriate to carry out the terms, provisions and intent of this Guaranty.

IN WITNESS WHEREOF, this Guaranty has been duly executed this \_\_\_\_\_ day of \_\_\_\_\_, 2011 (the "Execution Date").

TARGET CORPORATION

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Landlord accept the terms hereof this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

PLACE VERTU S.E.N.C.

By: \_\_\_\_\_

Name: **Claude Dibr, csm**  
Senior Vice President  
and Chief Operating Officer

Title: \_\_\_\_\_

By: 

Name: **EMILIO ELISIO**  
Directeur, chef adjoint du  
Contentieux/Director, Assistant  
General Counsel

Title: \_\_\_\_\_



## **TAB 2**

Court File No.

*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

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TARGET CANADA PHARMACY (ONTARIO) CORP.,  
TARGET CANADA PHARMACY CORP., TARGET  
CANADA PHARMACY (SK) CORP., and TARGET  
CANADA PROPERTY LLC**

APPLICANTS

**AFFIDAVIT OF MARK J. WONG  
(Sworn January 14, 2015)**

I, Mark J. Wong, of the City of Mississauga, in the Province of Ontario, General Counsel and Secretary for the Applicant Target Canada Co. ("TCC"), MAKE OATH AND SAY:

1. This Affidavit is made in support of an Application by TCC and the other Applicants (together, the "**Applicants**") for relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). While the limited partnerships listed on Schedule A to this Affidavit (the "**Partnerships**") are not Applicants in this proceeding, the Applicants seek to have a stay of proceedings and other benefits of an Initial Order under the CCAA extended to the Partnerships, which are related to or carry on operations that are integral to the business of the Applicants.



2. I am General Counsel and Secretary for TCC, positions I have held since February 2012 and January 2015, respectively. I have been a Director of TCC since June 2012. I also hold the following positions with the other Applicants: (i) Director, Vice President and Secretary of Target Canada Health Co.; (ii) Director, President and Secretary of Target Canada Mobile GP Co.; (iii) Secretary of Target Canada Property LLC; (iv) Secretary and Vice President of Target Canada Pharmacy (Ontario) Corp.; (v) Director, Secretary and Vice President of Target Canada Pharmacy (BC) Corp.; (vi) Director, Secretary and Vice President of Target Canada Pharmacy (SK) Corp.; and (vii) Director, Secretary and Vice President of Target Canada Pharmacy Corp. As such, I have personal knowledge of the matters deposed to in this Affidavit. Where I have relied on other sources for information, I have specifically referred to such sources and verily believe them to be true. In preparing this Affidavit, I consulted with legal, financial and other advisors of TCC and Target Corporation (the ultimate parent corporation of the Applicants), and other members of the senior management teams of TCC and Target Corporation.

3. This Affidavit is organized in the following sections:

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**Introduction**

4. TCC is a large Canadian retailer. Its corporate headquarters are in Mississauga, Ontario. TCC is an operating Canadian subsidiary of the United States-based retailer Target Corporation and is indirectly wholly-owned by Target Corporation.
5. Target Corporation, founded in 1902 as Dayton Hudson Corporation and based in Minneapolis, Minnesota, is one of the largest retailers in the United States. It operates 1,801 stores in the United States and employs more than 350,000 people. Target Corporation is a public company. Its common stock is listed on the New York Stock Exchange under the symbol TGT.
6. TCC operates 133 stores across Canada and, as of January 12, 2015, employed approximately 17,600 people. All or nearly all of the employees work in Canada, with almost half working in Ontario. Other stakeholder groups include vendors of inventory, suppliers of services, franchisee pharmacists operating businesses in TCC stores, landlords and others.
7. The Applicants in this CCAA proceeding do not comprise the entire Target enterprise. The Applicants and Partnerships (together, the “**Target Canada Entities**”) consist of TCC and certain related entities solely involved in the Canadian retail operations (including the Canadian pharmacy operations) and the financing of certain leasehold improvements.
8. In early 2011, Target Corporation decided for the first time to expand its retail operations outside of the United States. At the time, Target Corporation’s leadership saw expansion into Canada as an opportunity to extend the Target shopping experience to a broader group of people and thereby expand its revenues and profits. They also believed that there were

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significant opportunities in the Canadian market that made their strategies well positioned to succeed.

9. TCC entered Canada in 2011 by purchasing certain leasehold interests, and ultimately accepting the assignment of some of those leases, from Zellers Inc. (“Zellers”). While TCC also intended to expand to other sites, the Zellers leases gave TCC immediate access to key locations in communities throughout Canada. TCC saw this as being more attractive than a typical greenfield expansion. TCC expected that this access would allow its operations to quickly reach an efficient scale. After renovations and leasehold improvements were complete, TCC opened at many of the former Zellers locations under the Target banner. The first stores opened in March 2013.

10. The financial returns for Canadian stores were expected to be in line with historical returns for U.S. store openings. This typically meant losses until the completion of the first full year of store operations, and profits thereafter. However, despite focused commitment and effort, Canadian consumers did not embrace the Target shopping experience in Canada to the same extent as consumers in the United States. In every quarter since TCC opened its first store, TCC has faced lower-than-expected sales and greater-than-expected losses. Sales for the 2013 fiscal year and the year-to-date 2014 fiscal year significantly missed expectations. As reported in Target Corporation’s consolidated financial statements, the Canadian segment of Target Corporation’s business has suffered a significant loss in every quarter since TCC opened stores in Canada.

<b>Quarter</b>	<b>Canadian Segment Earnings (Loss) before Interest and Taxes (USD)</b>
Q1 2013	(\$205 million)
Q2 2013	(\$169 million)
Q3 2013	(\$238 million)
Q4 2013	(\$329 million)
Q1 2014	(\$211 million)
Q2 2014	(\$204 million)
Q3 2014	(\$211 million)

11. TCC is completely operationally funded by its parent, Target Corporation, and related entities. TCC has put considerable financial pressure on Target Corporation and TCC continues to consume significant cash. It is projected that TCC's cumulative operating losses from its entry into the Canadian market to the end of the 2014 fiscal year (ending January 31, 2015) will be more than CAD \$2.5 billion pre-tax – more than triple the originally expected loss for that period. It is projected that TCC's operations would remain unprofitable for at least five years, and would require significant and continued funding from Target Corporation during that period.

12. TCC believes that it did not succeed due to the following principal issues, among others:

- (a) *Issues of scale:* TCC opened 133 stores across Canada in less than two years. This was, in part, an attempt to allow its operations to quickly reach an efficient scale. The breadth of the expansion stretched TCC's resources and limited TCC's ability to respond quickly and effectively to certain issues, including issues noted below.

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In addition, the opening of that many stores resulted in market densification – particularly in large cities served by more than one Target store – and reduced the impact of many of the new store openings.

- (b) *Supply chain issues:* Although TCC invested heavily in information technology to create synchronized retail, inventory and distribution systems for the Canadian operations, TCC has encountered significant supply chain issues. TCC stores were often: (i) out-of-stock for important merchandise, resulting in consumer dissatisfaction; and (ii) over-stocked on other merchandise, necessitating discounts to manage the inventory and impairing operating margins. These supply chain issues created a poor first impression in Canada and prevented TCC from offering the wide assortment of merchandise consistent with Canadian consumers' expectations. Although TCC has invested heavily and improved many of the initial supply chain issues, many potential customers appear to have returned to or maintained the shopping practices they had before TCC's entry into Canada.
- (c) *Pricing and product issues:* Many in the Canadian market expected TCC to follow Target's U.S. prices, which is a significant source of loyalty to the Target brand and a factor that differentiates Target from many of its competitors. Rather than match or reflect the U.S. prices in Canada, TCC's pricing model was designed to compete with other similar Canadian retailers and included generally higher prices than Target's U.S. stores. This appears to have limited TCC's ability to distinguish itself in the competitive Canadian retail marketplace. Many

Canadian consumers also expected TCC to carry the same products as U.S. Target stores. While Canadian stores carry many of the same products as Target's U.S. stores, the precise product mix could not be replicated in Canada.

- (d) *No online presence:* Although Target Corporation has an established and successful online retail business, TCC elected to focus on the build-out of the physical stores and improving store operations, and did not prioritize the establishment of an online retail business for Canadian customers. This turned out to be a significant competitive disadvantage as the retail market moves beyond traditional bricks-and-mortar stores. Target Corporation and TCC, along with their financial and other advisors, have analyzed a variety of options to overcome this absence – including extending the U.S. online Target.com retail business to Canada or establishing a stand-alone online Target.ca retail business – but none of these options are expected to stop the projected significant losses from TCC's operations, as discussed below.

13. TCC has been focused on finding a way to succeed in Canada, but recent results continue to fall below expectations. Beginning in Spring 2014, and continuing extensively over the past several months, TCC has added internal resources and consulted at great length with a variety of strategic, operational and financial advisors in an attempt to improve TCC's operations and identify strategies that could make the Canadian operations viable in the long term. Every one of TCC's retail stores was visited to assess strengths, opportunities and market potential. A variety of portfolio analyses were conducted to assess current and potential sales, gross margin performance, market demographics and site-specific attributes. Advisors and management

consultants visited all or substantially all of TCC's stores and assessed trade areas, mall quality, co-tenants and a variety of other store attributes and variables. However, these efforts did not yield forecasted financial improvements during the 2014 holiday season.

14. TCC and Target Corporation considered a wide range of options, including, among other things, closing underperforming stores; selling specific assets such as a portfolio of leases outside of an insolvency proceeding; improving logistics to improve performance; consolidating distribution operations; and a wide variety of combinations and other options. Even under the most optimistic scenarios, TCC and Target Corporation could not identify an option that would result in TCC breaking-even in the next five years.

15. TCC's operational funding is provided exclusively by Target Corporation and related entities. Target Corporation has invested more than CAD \$7 billion into the expansion into Canada since the start of 2011. Following the thorough review of TCC's performance described above and careful consideration of all options, I am informed by senior management of Target Corporation that the board of directors of Target Corporation has determined that, in its business judgement, it is in the best interest of its business and its shareholders to discontinue operations in Canada and focus on driving growth and building further momentum in its omnichannel U.S. business. Without further funding and financial support from Target Corporation, the Applicants are unable to meet their liabilities as they become due and are therefore insolvent.

16. Given the size and complexity of TCC's operations and the numerous stakeholders involved in the business, including the employees, the Target Canada Entities believe that a controlled and orderly wind down and liquidation through this CCAA proceeding,



to be supervised by the Court with the assistance of the Monitor, is the only practical method to ensure a fair and orderly process for all stakeholders. TCC and Target Corporation intend to wind down Canadian operations in a responsible and controlled manner and, as explained below, intend to treat stakeholders as fairly and equitably as the circumstances allow. Without the continued financial support of Target Corporation, the Target Canada Entities believe that they will be unable to meet their liabilities as they come due and the Target Canada Entities will be unable to continue to operate outside of the “breathing space” afforded by a CCAA proceeding. As described below, Target Corporation has agreed to provide debtor in possession financing to assist the Target Canada Entities in the orderly wind down process.

17. The Target Canada Entities intend to engage in an orderly wind down with the goal of developing a plan of compromise or arrangement to present to their creditors as part of these proceedings. Under the current circumstances, including the continuing expected losses from TCC’s ongoing operations, it is the Target Canada Entities’ view that the optimal way to effect an orderly wind down will be to liquidate TCC’s inventory and to attempt to sell its real estate portfolio, either en bloc, in groups, or individually. TCC is asking the Court to authorize TCC, in consultation with the Monitor, to solicit proposals from liquidators regarding the sale of the Target Canada Entities’ inventory in a liquidation process. The Target Canada Entities intend to return to Court following the solicitation of proposals to seek approval of a liquidation agreement and process for the sale of its inventory. The Target Canada Entities are also asking, as part of the proposed Initial Order, for the Court to approve TCC’s engagement of Lazard Freres & Co. LLC (“**Lazard**”) and Northwest Atlantic (Canada) Inc. (“**Northwest**”) as TCC’s financial advisor and real estate advisor, respectively, to develop and assist with a sales process for TCC’s real estate portfolio.

18. TCC's liquidity position continues to deteriorate. Subject to certain conditions including the granting of the proposed Initial Order, Target Corporation has agreed to provide TCC and its subsidiaries with an interim financing facility (the DIP Facility, as defined below) of up to USD \$175 million. TCC and its subsidiaries have an immediate need for funding. Without the DIP Facility, TCC is unable to meet its next payroll (due on January 16, 2015) and other obligations. In addition, without the DIP Facility, TCC and its subsidiaries are unable to continue their operations throughout an orderly wind down of the business and sale of its real estate and other assets. In an effort to be as fair as possible to the Target Canada Entities' stakeholders, Target Corporation has offered to provide the DIP Facility on terms that are advantageous to the Applicants and their stakeholders.

19. In an effort to provide a measure of financial security during the orderly wind down and to diminish the financial hardship TCC's employees may suffer, Target Corporation has agreed to fund an Employee Trust (defined below) to a maximum amount of CAD \$70 million, discussed further below, for the benefit of eligible employees of TCC to ensure payment of certain amounts, such as working notice following termination, should this Court grant CCAA protection. It is intended that the Employee Trust provide the employees with relief from any possible dispute from other creditors of the Target Canada Entities regarding the TCC employees' entitlement to receive the full amount of these employment benefits as part of the CCAA proceedings. No funds from the Target Canada Entities will be used to fund the Employee Trust. Target Corporation will not seek to recover from the Target Canada Entities' estates any amounts paid out of the Employee Trust. This approach is also intended to benefit other creditors by removing these employee claims from the creditor pool.

20. The Target Canada Entities are asking the Court to appoint representative counsel to represent TCC's employees in the CCAA proceedings to ensure their interests are adequately protected throughout, including by assisting with eligible claims under the Employee Trust.
21. Pursuant to an unsecured loan facility between TCC and its direct parent, Nicollet Enterprise 1 S.à r.l. ("NE1"), TCC owes NE1 approximately CAD \$3.1 billion. NE1 and TCC have entered into a Subordination and Postponement Agreement (defined below) in which NE1 agrees to subordinate all amounts owed by TCC to NE1 under their loan facility to the payment in full of proven claims against TCC, excluding NE1's proven claims.
22. The Target Canada Entities are also seeking, among other relief, the following as part of the proposed Initial Order: (i) approval of a key employee retention plan; (ii) authorization (but not the requirement) to pay pre-filing amounts with the consent of the Monitor to key entities in TCC's distribution network, cash collection network, and to other critical suppliers if required to ensure an orderly wind down for the benefit of TCC's stakeholders; (iii) approval to continue making payments for shared services provided by Target Corporation and certain of its subsidiaries; (iv) an Administration Charge, a KERP Charge, a Directors' Charge and a Financial Advisor Subordinated Charge (each defined herein); (v) a stay of proceedings against the Target Canada Entities; (vi) a temporary stay of proceedings against Target Corporation and related entities relating to claims that are derivative of claims against the Target Canada Entities; and (vii) a stay of potential rights, including termination rights and claims for rent reduction or abatement, asserted by third party tenants in commercial properties where Target stores, offices or warehouses are located that arise as a result of the making of the proposed Initial Order or the Target Canada Entities' circumstances.

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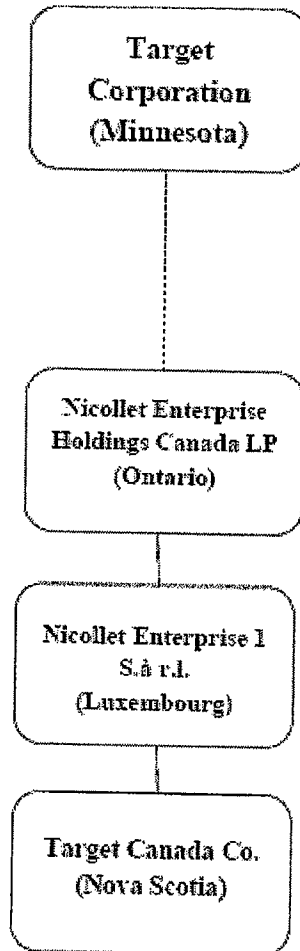
23. The Target Canada Entities require a stay of proceedings and related relief under the CCAA, including the temporary stay of proceedings against Target Corporation and related entities that are derivative of claims against the Target Canada Entities, in order to continue operating throughout the contemplated wind down and liquidation process. The stay will provide the Target Canada Entities with the breathing room to implement an orderly wind down, with the ultimate goal of developing a plan of arrangement for the benefit of their stakeholders.

#### **Corporate Structure of the Target Canada Entities**

24. TCC is a Nova Scotia unlimited liability company. The other Target Canada Entities are all either: (i) direct or indirect subsidiaries of TCC; or (ii) affiliates of TCC that have been involved in the financing of certain leasehold improvements. A copy of a chart showing the organizational structure of the Target Canada Entities and certain related entities as of today's date is attached as Exhibit A to this Affidavit.

#### **A. TCC**

25. As shown in the following chart, TCC is an indirect wholly-owned subsidiary of Target Corporation. The solid lines show a direct parent-subsidary relationship. The dotted lines show an indirect parent-subsidary relationship.



26. TCC is directly owned by NE1, an entity organized under the laws of Luxembourg. NE1 formerly operated under the name TSS 1 S.à r.l. NE1 owns all of the issued and outstanding shares of TCC. As explained below, NE1 has provided equity capital to TCC in the amount of approximately CAD \$2.6 billion and NE1 has lent TCC approximately CAD \$3.1 billion.

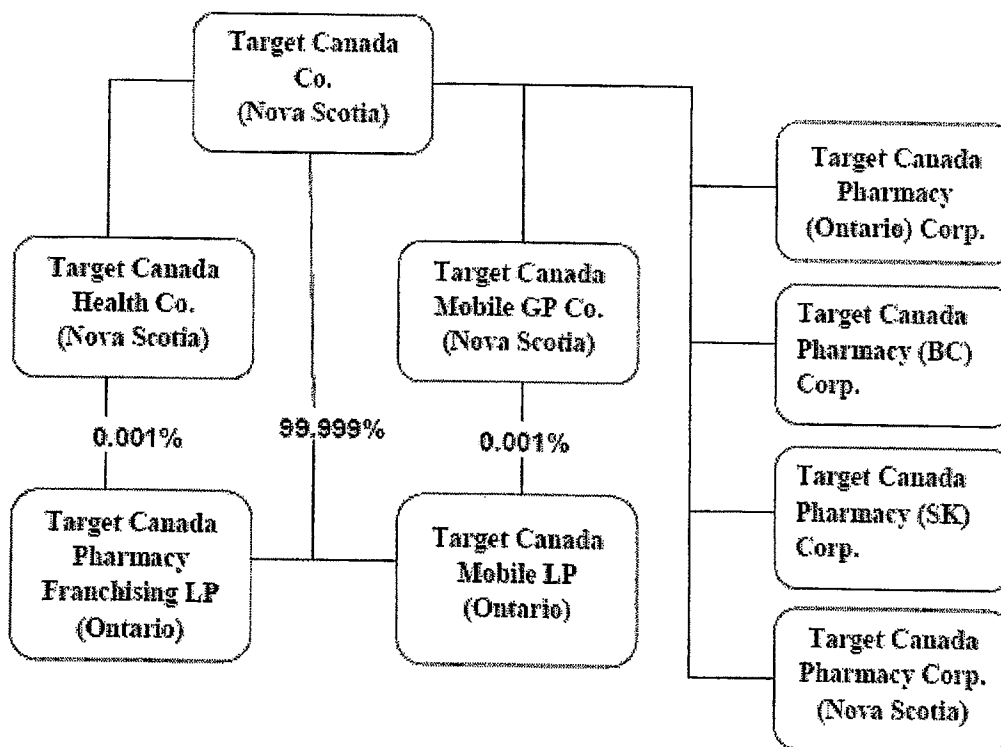
27. TCC is an indirect subsidiary of various entities, including Nicollet Enterprise Holdings Canada LP, all of which are subsidiaries of Target Corporation (which is incorporated under the laws of Minnesota).

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28. TCC has two directors: Pam Tomczik and me. I became a director of TCC on June 30, 2012. Ms. Tomczik is Vice President of Business Development with Target Corporation and became a director of TCC on December 5, 2014. A list of TCC's officers as of the swearing of this affidavit is attached as Exhibit B to this Affidavit. On January 14, 2015, TCC appointed Aaron Alt as Chief Executive Officer, President and Treasurer of TCC to manage and direct the fair and orderly wind down. Mr. Alt also is a Senior Vice President and the Treasurer of Target Corporation.

**B. TCC's Subsidiaries**

29. As described below, TCC directly or indirectly owns 100% of each of the subsidiaries in the following chart:



i. *TCC Pharmacy and TCC Health*

30. Target Canada Pharmacy Franchising LP ("**TCC Pharmacy**") is a limited partnership formed in Ontario on March 8, 2012. TCC is the limited partner of TCC Pharmacy and owns 99.999% of TCC Pharmacy. TCC Pharmacy's general partner is Target Canada Health Co. ("**TCC Health**"), a wholly-owned direct subsidiary of TCC organized as a Nova Scotia unlimited liability company and incorporated on March 1, 2012, which holds the remaining ownership interest.

31. As explained below, TCC Pharmacy has licensed to franchisees the right to operate Target-branded retail pharmacies within TCC stores (and, in Quebec, has licensed to a third party, which in turn has sub-licensed to third party franchisees, the right to operate co-branded Target and "Brunet" pharmacies within TCC stores). As a limited partnership, TCC Pharmacy has no officers or directors. All actions by TCC Pharmacy are taken on its behalf exclusively by TCC Health. I am a Director, and the Vice President and Secretary, of TCC Health.

32. TCC also owns all of the issued and outstanding shares of the following Applicants: Target Canada Pharmacy (Ontario) Corp. ("**TCC Pharmacy Ontario**"), Target Canada Pharmacy (BC) Corp., Target Canada Pharmacy (SK) Corp. and Target Canada Pharmacy Corp. (collectively, the "**Pharmacy Corporations**"). I am the Vice President and Secretary of each of the Pharmacy Corporations. I am also a Director of each of the Pharmacy Corporations except TCC Pharmacy Ontario.

33. TCC Pharmacy Ontario currently operates Target-branded and owned pharmacies in three TCC stores in Ontario. The other three Pharmacy Corporations do not currently carry on business. TCC Pharmacy Ontario holds a charter, commonly referred to as a “Pre-54”, that grants it an exemption that was grandfathered into the current legislation governing the ownership of pharmacies in Ontario. I am advised by Mark Austin of Osler, Hoskin & Harcourt LLP (“**Osler**”), counsel to the Target Canada Entities, and believe that, pursuant to the Ontario *Drug and Pharmacies Regulation Act*, corporate ownership of pharmacies is generally restricted to corporations where the majority of each class of shares is owned by and registered in the name of pharmacists or in the name of pharmacist health profession corporations, except that the share ownership restriction does not apply to a corporation that operated a pharmacy on May 14, 1954. In essence, the “Pre-54” exemption allows a qualified corporation to own and operate a retail pharmacy in Ontario if a majority of the directors are licensed pharmacists.

ii. ***TCC Mobile LP and TCC Mobile GP***

34. Target Canada Mobile LP (“**TCC Mobile**”) is a limited partnership formed in Ontario on May 18, 2012. TCC is the limited partner of TCC Mobile and owns 99.999% of TCC Mobile LP. TCC Mobile’s general partner is Target Canada Mobile GP Co. (“**TCC Mobile GP**”), a wholly-owned direct subsidiary of TCC organized as a Nova Scotia unlimited liability company and incorporated on May 15, 2012, which holds the remaining ownership interest.

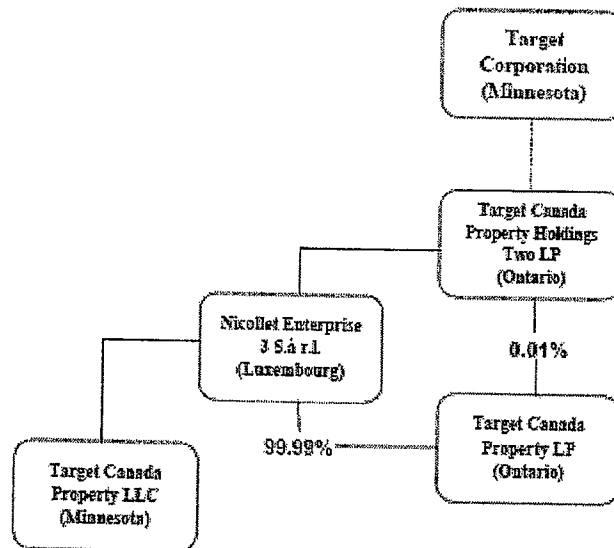
35. As explained below, TCC Mobile has licensed to Glentel Inc. (“**Glentel**”) the right to operate Target-branded kiosks to sell mobile phones and accessories within TCC stores. As a limited partnership, TCC Mobile has no officers or directors. All actions by TCC Mobile



are taken on its behalf exclusively by TCC Mobile GP. I am the sole director and officer (President and Secretary) of TCC Mobile GP.

C. Real Estate

36. Target Canada Property LLC (“TCC Propco”) is a limited liability company organized under the laws of Minnesota. As shown in the following chart, TCC Propco is directly owned by Nicollet Enterprise 3 S.à r.l. (“NE3”), an entity organized under the laws of Luxembourg, which owns all of the issued and outstanding shares of TCC Propco. NE3 is a wholly-owned indirect subsidiary of Target Corporation.



37. As described in further detail below, for almost all the retail store leases entered into by TCC, TCC subleased the properties to TCC Propco, which has made and financed real property improvements to the premises, including improvements to fixtures. TCC Propco subsequently sub-subleased the properties back to TCC. Initially, TCC entered into that sublease / sub-subleaseback relationship with another affiliated entity, Target Canada Property LP, a

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limited partnership organized under the laws of Ontario. Target Canada Property LP subsequently assigned all of its rights relating to the subleases and sub-subleases to, and all of Target Canada Property LP's obligations with respect to same were then assumed by, TCC Propco effective January 2014. Target Canada Property LP no longer carries on business. Given Target Canada Property LP's prior involvement in this sublease / sub-subleaseback arrangement, the Applicants are seeking to have the stay of proceedings extended to Target Canada Property LP.

38. As noted above, TCC Propco is a limited liability company organized under the laws of Minnesota. TCC Propco has assets situated in Canada. In addition to its leasehold interests, all of which are in respect of real property in Canada, TCC Propco holds Canadian Dollars in bank accounts located at a Canadian branch of Bank of America.

#### **Chief Place of Business**

39. The chief place of business of the Target Canada Entities is Ontario. TCC's head office and corporate headquarters is in Mississauga, Ontario. Approximately 800 employees work out of this office. Four of TCC's eleven other office locations are in Ontario. There are 55 operating TCC retail stores located in Ontario, which is the largest number of stores in any province where TCC operates. Almost half of the employees supporting TCC's operations work in Ontario. Two of TCC's three primary distribution centers are located in Ontario.

#### **The Business of the Target Canada Entities**

40. As noted above, TCC opened its first stores in the Canadian marketplace in 2013. Because of the wide variety of merchandise that Target specializes in selling, TCC's major competitors in Canada include not only major retailers such as Wal-Mart, The Bay and Sears, but

also major supermarket chains like Loblaws, electronic retailers like Best Buy and Future Shop, and home improvement stores like Canadian Tire, Home Depot, Rona and Lowes.

41. Target stores typically sell or carry the following categories of merchandise:
- (a) Apparel and accessories including clothing and apparel for all ages, as well as jewelry, accessories and shoes;
  - (b) Hardlines including electronics such as video game hardware and software, music, movies, books, computer software, sporting goods and toys;
  - (c) Household essentials including beauty products, pharmaceutical products, personal care, baby care, cleaning and paper products;
  - (d) Food and pet supplies including dry grocery, dairy, frozen food, beverages, candy, snacks, deli, bakery, produce and pet supplies; and
  - (e) Home furnishings and decor including furniture, lighting, kitchenware, small appliances, home decor, bed and bath, home improvement, automotive and seasonal merchandise such as patio furniture and holiday decor.

**A. Store Formats and Locations**

42. A typical TCC store has a footprint in the range of 80,000 to 125,000 total retail square feet and is located in a shopping mall or a large strip mall. TCC is usually an anchor tenant for the mall or shopping centre. As explained below, TCC stores typically contain an in-store Target-brand pharmacy, Target Mobile kiosk and a Starbucks cafe.

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43. As of the date of this Affidavit, TCC conducts business through 133 stores across Canada including at least one store in each Canadian province. All but three of these retail stores are leased. TCC also has seven “unopened” stores across Canada, all of which are leased. The following chart summarizes TCC’s current number of store locations by province:

<b>Province</b>	<b>Open Stores</b>	<b>Unopened Stores</b>
Alberta	15	
British Columbia	19	1
Manitoba	5	
New Brunswick	3	
Newfoundland	2	
Nova Scotia	4	
Ontario	55	6
PEI	1	
Quebec	26	
Saskatchewan	3	
<b>Total</b>	<b>133</b>	<b>7</b>

**B. Real Estate and Leases**

44. In January 2011, TCC agreed to pay approximately USD \$1.861 billion to purchase up to 220 leases from Zellers. TCC accepted the assignment of 135 leases from Zellers in three tranches in 2011 with the intent to renovate them and open TCC stores throughout Canada under the Target banner. TCC sold the right to acquire leasehold interests in 54 of the Zellers sites to third parties in exchange for approximately USD \$225 million, resulting in a final net purchase price for the 135 leases of approximately USD \$1.6 billion. TCC has since acquired, agreed to enter into or entered into four additional leases that are unrelated to the leases it acquired from Zellers.

i. *TCC Propco*

45. For almost all of its store leases, as indicated above, TCC has subleased the properties to TCC Propco, which made real property improvements and subsequently sub-leased the properties back to TCC. This relationship gives rise to a variety of payment obligations between TCC and TCC Propco, as described later in this Affidavit. TCC makes direct payments to TCC Propco for obligations under the sub-subleases. TCC makes direct, monthly payments to landlords for its lease obligations.

ii. *Landlords*

46. Many of TCC's store leases are held or managed by large retail landlords. Several of these landlords lease multiple locations to TCC. The leases are generally for a current term of 5 to 10 years, with most leases granting TCC the option to renew the lease beyond the existing term.

iii. *Lease Provisions*

47. Typical of retail leases in Canada, many of the leases contain provisions that impact TCC store operations.

**Canada Going-out-of-business Sales**

48. Many of the retail leases contain restrictions that relate to going out of business sales in one form or another. Some of these include blanket prohibitions. Others permit such sales related to the closing or bankruptcy of the existing operator, but restrict the length of the sales. Some include restrictions on selling products in bulk. Many leases also include restrictions

on TCC's ability to remove inventory, fixtures, chattels or other equipment from the premises, other than in the ordinary course of business.

### **Operating Covenants and Recapture Rights**

49. Many of the retail leases contain express or implied operating covenants. These covenants take a variety of forms including covenants to continuously operate the store for varying periods of time. Some of these leases include covenants that require the tenant to operate the store under the Target banner or as a retail department store. Some of the covenants require the tenant to operate using substantially the full store, while others only require the tenant to operate in an area of the premises. Certain of the leases for unopened stores include a covenant to open the store and operate it for at least one day. In addition, many of the retail leases include recapture rights that permit the landlord to take back the premises if the store ceases or significantly changes operations.

#### ***iv. Parent Indemnities and Guarantees***

50. Many of the retail leases are subject to a parent indemnity or guarantee by Target Corporation in favour of the landlord. All the indemnities and guarantees contain language providing that the indemnifiers' or guarantors' obligations are not affected by the bankruptcy or insolvency of the tenant or disclaimer of the lease. As set out below, the draft Initial Order proposes a temporal stay of any proceedings of any derivative claims against Target Corporation and its U.S. affiliates.

v. *Rights in Third Party Leases*

51. Many retail leases provide that tenants have certain rights against their landlords upon an anchor tenant's insolvency or upon an anchor tenant ceasing operations. For tenants of commercial properties where TCC's stores, offices or warehouses are located, the Target Canada Entities are asking the Court to stay rights, including but not limited to termination rights and reduction or abatement of rent, that tenants may have against the landlords, owners, operators or managers of the commercial properties that arise as a result of the Applicants' insolvency, or as a result of any steps taken by the Target Canada Entities pursuant to the proposed Initial Order.

vi. *Subleases and Licenses to Third Parties*

52. As explained below, TCC entered into sublease agreements with McMahon Distributeur Pharmaceutique Inc. ("**McMahon**") relating to the space within the TCC stores used for the operation of the pharmacies in Quebec. McMahon, in turn, has entered into further sublease agreements with the Quebec franchisees. The McMahon Agreement (as defined herein) provides that TCC or its affiliates can terminate the subleases between TCC and McMahon without notice if it is not reasonably possible for TCC to give notice on electing to cease operations at one or more stores.

53. TCC and related entities including TCC Pharmacy and TCC Mobile have also granted licenses to certain third parties to operate, for example, Target-branded pharmacies and Target Mobile kiosks in TCC stores.

vii. *Owned Stores*

54. TCC owns three open retail stores: one in each of Barrie, Ontario; Candiac, Quebec and Winnipeg, Manitoba. Attached as Exhibit C to this Affidavit are copies of the real property PIN identifiers and printouts for the stores located outside of Quebec. For the store in Candiac, Quebec, attached as part of Exhibit D is a printout of the index of immovables showing the registration of the sale of the property to TCC.

viii. *Owned Distribution Centres*

55. TCC owns three distribution centres in Canada: two in Ontario (Milton and Cornwall) and one in Calgary, Alberta. Attached as Exhibit E to this Affidavit are copies of the real property PIN identifiers and printouts for these distribution centres. As discussed below, the distribution centres are operated by a third party, Eleven Points Logistics Inc. ("**Eleven Points**") and are used to receive and inspect shipments, handle return of products, manage inventory, and prepare outbound shipments for transportation to TCC's stores.

ix. *Leases in Offices and Distribution Network*

56. TCC also has leased a variety of warehouse and office space as part of its office network and distribution network, including:

- (a) *Headquarters*: TCC leases the office and other space for its corporate headquarters in Mississauga, Ontario.



- (b) *Offices*: TCC leases additional office space in eleven other locations across Canada: four in Ontario, two in each of Quebec and Alberta, and one in each of BC, Manitoba and Nova Scotia.
- (c) *Additional Leases*: In addition to the three distribution centres that TCC owns, TCC currently leases additional office and warehouse space in various locations across Canada.

**C. Merchandising and Sourcing**

**i. *Canadian and U.S. Vendors***

57. Much of the merchandise sold in TCC stores is sourced from vendors located in Canada and the United States. For fiscal year-to-date through December 6, 2014, TCC made approximately CAD \$1 billion in payments for merchandise sourced from such vendors. Many vendors, either directly or through related entities, supply merchandise to both TCC's Canadian stores and Target Corporation's U.S. stores, and many of those cross-over vendors have operations in Canada. In addition, some of the merchandise sold in TCC's Canadian stores is supplied by Canadian-based vendors who do not supply Target Corporation's U.S. stores. In certain circumstances, Target Corporation has guaranteed certain obligations of the Target Canada Entities to vendors.

58. TCC uses an online ordering system (the "**POL System**") to issue purchase orders to its vendors. The POL System establishes conditions of contract and other related agreements. Payment is typically required only after TCC receives the merchandise. These agreements provide that TCC may cancel any purchase order at any time prior to shipment of the goods.

Upon commencement of this CCAA proceeding, to the extent possible, TCC intends to immediately cancel all purchase orders that have been placed but have not been shipped. For the remaining purchase orders, TCC intends to receive the merchandise and sell it in the contemplated liquidation process.

ii. *Overseas Merchandise Vendors*

59. Most of the merchandise supplied by “overseas” vendors is sourced by Target Sourcing Services Limited (“**Target Sourcing**”), a wholly-owned indirect subsidiary of Target Corporation, or certain related entities operating outside of Canada. For the twelve months ended November 30, 2014, TCC made approximately USD \$367 million in first cost import payments for overseas merchandise.

60. TCC pays overseas merchandise vendors through an arrangement that Target Corporation and TCC have entered into with JPMorgan Chase Bank, National Association (“**JPMorgan**”). JPMorgan pays these vendors either by way of a letter of credit that is typically issued approximately 60 days before the expected shipping date (approximately 15%-20% of all import payments) or open account transactions (approximately 80%-85% of all import payments). These payments are discussed in the section of this Affidavit regarding Cash Management.

61. Upon commencement of this CCAA proceeding, to the extent possible, TCC intends to immediately cancel all purchase orders that have been placed with overseas vendors but have not yet resulted in the transfer of title to TCC. For any purchase orders that JPMorgan

and/or TCC has already paid for or taken title to, TCC intends to receive the inventory and include it in the contemplated liquidation sale.

**D. Distribution**

62. The Milton, Cornwall and Calgary distribution centres, including associated offsite warehouse space, operate to supply and replenish products sold in TCC's stores. The vast majority of product sold in TCC's stores is replenished through the distribution centres.

63. The primary distribution centres are operated by a third party, Eleven Points, pursuant to a master services agreement effective June 8, 2012, and a series of related statements of work. Eleven Points is responsible for all services required to operate the distribution centres including receiving, verifying and inspecting shipments; preparing outbound shipments for tender to third party transportation providers for transportation to TCC's stores; and inventory management.

64. Merchandise arrives at the distribution centres and is either stored temporarily in the distribution centre or immediately transported to TCC's stores. As of January 3, 2015, there was merchandise with a retail value of approximately CAD \$202 million in the distribution centres.

65. Eleven Points also operates a return centre within the Milton distribution centre. The return centre serves to receive from all TCC stores unsold and damaged products for the purpose of distributing them back to vendors, or otherwise disposing of them through salvage or other means.

66. TCC engages third-party transportation companies to transport inventory between distribution centres and stores and from the Milton return centre to vendors. TCC does not have its own transportation capability. Ryder Integrated Logistics (“**Ryder**”) provides TCC with transportation management services. TCC contracts directly with Ryder and other transportation providers to move product. TCC has rented trucks from Ryder Truck Rental Canada Ltd. and trailers from Trailer Wizards Ltd., both of which have registered security interests against TCC under the *Personal Property Security Act*, R.S.O. 1990, c. P.10, as amended (the “**PPSA**”).

67. TCC believes that, given the amount of inventory at the distribution centres, the continued services of Eleven Points, Ryder and certain other transportation providers are critical to the success of the contemplated wind down and liquidation of TCC’s operations for the benefit of all stakeholders. Based on the historical integration of these transportation providers into TCC’s business, TCC believes that it would be unable to transition its business to different third-party transportation providers in time to serve TCC’s needs for the liquidation process.

68. TCC also must pay customs brokers, clearing houses, freight forwarders and other supply chain providers for costs incurred in transporting products from their source outside of Canada to the distribution centres and ultimately to the stores. As of January 3, 2015, TCC estimates that merchandise at cost of approximately CAD \$66 million was in transit to Canada or from Canadian ports to the distribution centres. TCC is seeking authority (but not the requirement) to pay, with the consent of the Monitor, transportation and logistics providers, customs brokers and other supply chain providers for amounts incurred before the commencement of these proceedings, if required, to ensure the continued flow of inventory

through its supply chain during the contemplated wind down process and to maximize recoveries to the estate from the inventory liquidation process.

69. For the vast majority of goods supplied by Canadian vendors, title passes to TCC upon TCC's receipt of the goods, which typically occurs at TCC's distribution centres.

70. A small proportion of product sold by TCC, such as goods from grocery vendors, is delivered directly to TCC's stores by the vendors. In addition, a small proportion of products, such as greeting cards, books and magazines are delivered directly to TCC stores under an arrangement by which the vendor holds title to the inventory until immediately before the sale, at which time title passes to TCC. (This is typically referred to as a "flash sale".) Carlton Cards Limited, Papyrus-Recycled Greetings Canada Ltd. and CMMI Canadian Mass Media Inc. have registered security interests in several provinces for goods that they provide under this type of arrangement.

#### **E. Pharmacies**

71. In most TCC stores across Canada, a Target-branded retail pharmacy operates within the store. The arrangements in respect of pharmacies differ between Quebec and the rest of Canada.

##### **i. *Canada (outside of Quebec)***

72. Outside of Quebec, there are 96 Target-branded retail pharmacies operating in TCC stores across Canada. Ninety-three of the pharmacies are operated by franchisees pursuant to separate agreements between each franchisee and TCC Pharmacy (as franchisor). These agreements grant to franchisees a specific license to operate the Target-branded pharmacy using

certain Target Pharmacy trade-marks. The franchisees are typically independent corporations which, in the majority of cases, are wholly owned by licensed pharmacists. A licensed pharmacist is a party to each franchise agreement. A licensed pharmacist must be present on the premises to operate the pharmacies. TCC Pharmacy Ontario currently operates the other three pharmacies.

73. The franchise agreements provide that no landlord and tenant relationship exists between TCC Pharmacy (or any of its affiliates) and any franchisee. TCC or its affiliate is the tenant under each TCC store lease and, pursuant to a pharmacy franchising agreement between TCC and TCC Pharmacy effective as of March 8, 2012, TCC or its affiliate has granted TCC Pharmacy the right to sublicense to franchisees a temporary license to use space within TCC stores for the operation of a Target-branded retail pharmacy. The franchise agreements provide that TCC Pharmacy may terminate the franchise agreement under various circumstances, including expiration or termination of the applicable retail store lease.

74. The franchise agreements provide that each franchisee operates as an independent business, with sole responsibility for all aspects of the employment relationship with its employees. The agreements explicitly provide that the franchisee's employees are not employees of TCC Pharmacy or TCC or its affiliates. My understanding is that most of the franchisees typically employ one additional pharmacist and up to two pharmacy technicians in addition to the franchisee pharmacist.

75. The franchise agreement requires franchisees to purchase and sell products that have been approved by TCC Pharmacy from suppliers designated by TCC Pharmacy. Pursuant to a wholesale distribution agreement between TCC and McKesson Canada Corporation

(“McKesson”) effective June 7, 2012, McKesson is the primary supplier of pharmaceutical, health and beauty products to the pharmacies. The agreement expires on December 31, 2016 but can be terminated by either party in the third contract year – i.e., January 1, 2015 to December 31, 2015 – upon 180 days’ notice.

76. The cash registers that pharmacies use to process sales of Schedule I & II drugs – commonly known as “behind-the-counter” drugs – operate on a point-of-sale system (“POS System”) that is segregated from the general POS Systems in TCC’s stores. The pharmacists are responsible for maintaining all cash and credit receipts from the sale of Schedule I & II drugs. Schedule III drugs – commonly known as “over-the-counter” drugs – and unscheduled drugs are sold through the general POS Systems in TCC’s stores.

77. Franchisees make monthly payments to TCC Pharmacy, including a franchise fee (based on sales), an operations fee (for, e.g., the computer system, utilities, etc.), a licensed space fee (based on fair market value of the licensed space) and an advertising fee (based on sales). In addition, for certain “over-the-counter” products, TCC provides a non-traditional form of inventory financing to franchisees, under which TCC orders and pays for certain products to be stocked in the pharmacy. TCC retains title to these products until immediately before the retail sale, at which time title passes to the franchisee. TCC Pharmacy makes a monthly payment to franchisees. The cash flow projections (described below) include the continuation of these payments post-filing as applicable as the arrangements with pharmacists will be wound down. In some provinces TCC Pharmacy also provides a rebate to franchisees in relation to certain generic drug purchases, where such payments are permitted by applicable legislation.

78. For the three pharmacies operated by TCC Pharmacy Ontario, TCC Pharmacy Ontario has agreements with managers of private health care plans and public health insurers who provide prescription drug insurance to certain populations such as senior citizens. These agreements allow for the payment for covered prescription drugs on behalf of the insured patient.

79. The inventory in pharmacies operated by franchisees is owned by either the franchisee or TCC, as set out in this table:

<b>Inventory</b>	<b>Examples</b>	<b>Owner</b>
Schedule I & II Drugs	Behind-the-counter drugs such as antibiotics	Franchisee
Schedule III Drugs	Over-the-counter drugs such as Tylenol or cough syrup	TCC
Unscheduled Drugs	Items such as vitamins or toothpaste	TCC

80. Pursuant to the franchise agreements, the patient data in the pharmacy systems belongs to the franchisee operating the pharmacy or, in the case of the three pharmacies operated by TCC Pharmacy Ontario, to TCC Pharmacy Ontario. Any equipment installed in the pharmacy, including all fixtures, furnishings, signs and equipment, is owned by TCC Pharmacy (or its affiliates).

81. I am advised by Mark Austin of Osler and believe that pharmacy regulations throughout Canada generally require a pharmacy operator to provide notice of the termination and closure of a pharmacy. I am further advised by Mr. Austin and believe that TCC Pharmacy Ontario, which operates three pharmacies in Ontario, will be required to provide written notice to the Ontario College of Pharmacists at least seven days before the pharmacies' closure. TCC Pharmacy Ontario intends to do so at the appropriate time.



ii. *Quebec*

82. In Quebec, pharmacies in TCC stores are intended to be co-branded with both the Target trade-mark and the "Brunet" trade-mark, which is owned by McMahon. There are currently 14 such pharmacies operating in Quebec.

83. Pursuant to a co-branding and services agreement dated as of August 9, 2013 between TCC, TCC Pharmacy, McMahon and McMahon's ultimate parent, Metro Inc. (the "**McMahon Agreement**"), TCC Pharmacy licensed to McMahon the right to use the Target trade-mark conjunctively with the "Brunet" trade-mark in respect of the pharmacies operating within TCC stores and granted to McMahon the right to enter into franchise agreements with third-party franchisees for the operation of the co-branded pharmacies within TCC stores. Neither TCC nor any of its affiliates is a party to the franchise agreements. McMahon pays TCC Pharmacy certain fees based on the franchisees' sales.

84. TCC entered into sublease agreements with McMahon relating to the space within the TCC stores used for the operation of the pharmacies. McMahon, in turn, has entered into further sublease agreements with the franchisees. The McMahon Agreement provides that TCC can terminate the subleases between TCC and McMahon without notice if it is not reasonably possible for TCC to give notice on TCC electing to cease operations in the TCC store where the pharmacy is operated. Moreover, each of the sublease agreements between TCC and McMahon provides that, notwithstanding anything to the contrary, the term of the sublease with McMahon will terminate automatically on the earlier of: (i) the expiry or earlier termination of the head lease between TCC and the landlord for any reason whatsoever; (ii) the closing of the TCC store for any reason whatsoever; (iii) the expiration or earlier termination, for any reason whatsoever,

of the McMahon Agreement; and (iv) the expiration or earlier termination, for any reason whatsoever, of the portion of the McMahon Agreement that relates to the pharmacy operated in the TCC store.

85. The only items of inventory that TCC or TCC Pharmacy owns in these pharmacies are sanitary protection and incontinence products. The McMahon Agreement provides that those products must be processed through TCC's POS System. All other inventory, including all "behind-the-counter" and "over-the-counter" products, is owned by McMahon or the franchisees.

**F. Glentel**

86. All TCC stores have a "Target Mobile" branded display kiosk that sells mobile phones and accessories. These kiosks are operated by Glentel, a third party, pursuant to an agreement between Glentel and TCC Mobile. The agreement with Glentel expires on March 31, 2016.

87. The agreement provides that Glentel operates as an independent business and has sole responsibility for all aspects of the employment relationship with its employees. Glentel provides its own POS System and cash management system at each TCC store. Glentel owns the inventory, including the mobile phones and accessories. The agreement includes a specific license to use the "Target Mobile" trade-mark in connection with the sale of products by Glentel in TCC's stores. In accordance with the agreement, Glentel makes quarterly payments to TCC Mobile based on certain revenue and net income that Glentel earns from operating the kiosks (or, if Glentel incurs a loss, TCC Mobile may be required to pay certain amounts to Glentel in accordance with the agreement).

88. The agreement explicitly provides that no landlord and tenant relationship exists between TCC Mobile (or any of its affiliates) and Glentel. Rather, the agreement provides that TCC Mobile has granted to Glentel a temporary license to use space within those TCC stores – including stores in Quebec – to operate the kiosks.

89. The agreement provides that either party can terminate the agreement if the 12-month projection under the agreement projects a Net Loss (within the meaning in the agreement).

**G. Starbucks**

90. Most TCC stores have a Starbucks-branded store operating within the TCC store. TCC and Starbucks Coffee Canada, Inc. (“**Starbucks**”) entered into a master licensing agreement effective February 1, 2012 (and subsequently amended) pursuant to which Starbucks granted TCC a non-exclusive license to use the Starbucks system and trademarks to construct and operate Starbucks stores within certain TCC stores. In consideration for the rights granted under the master licensing agreement, TCC pays Starbucks, among other amounts, a license fee for each Starbucks store and monthly royalty and advertising fees. The master licensing agreement provides that the license for a particular Starbucks store terminates immediately if the site ceases to operate as a TCC retail store. Upon any termination of the master licensing agreement, TCC must, among other things, immediately cease operating the Starbucks stores, de-identify each Starbucks store and return to Starbucks all products containing Starbucks’ licensed trademarks.

**H. Support Services of Target Corporation and Target Brands**

91. TCC relies extensively on Target Corporation and Target Corporation's subsidiary, Target Brands, Inc. ("**Target Brands**"), for administrative and business support services that are integral to TCC's operations. These services are performed pursuant to agreements between TCC and Target Brands and related corporations. Target Brands and its affiliates provide similar services for Target Corporation's U.S. operations and have the expertise and experience to provide these essential "shared" services much more efficiently and cost-effectively than TCC or a third party could.

**i. *Master Agreement***

92. Target Brands and TCC entered into a master agreement effective as of February 3, 2013 ("**Master Agreement**"), a copy of which is attached as Exhibit F to this Affidavit.

93. Pursuant to the Master Agreement, Target Brands provides TCC with a variety of services including administrative and business services, strategy and management consulting services, marketing and consulting services, retail support services and merchandising consulting services. In consideration for these services, on a monthly basis TCC pays Target Brands an arm's length fee as agreed between the parties from time to time.

94. All intellectual property ("**IP**") relating to the Target brand is owned by Target Brands. The Master Agreement also grants TCC a license to commercially use the IP in connection with TCC's retail operations within Canada and to sub-license the right to use the IP to related companies and third parties such as the pharmacy franchisees. The license also gives

TCC the right to manufacture and merchandise goods to be purchased by TCC and sold in its stores.

95. As permitted by the terms of the Master Agreement, Target Brands gave three months' notice of termination to TCC of the Master Agreement by letter dated January 14, 2015, a copy of which is attached as Exhibit G to this Affidavit. Such termination will be effective April 14, 2015 and the Master Agreement will no longer be in effect.

96. In its notice of termination, Target Brands waived the requirement for TCC to assign to Target Brands any Sublicenses (as defined in the Master Agreement) in effect at the time of termination of the Master Agreement. As such, all Sublicenses shall remain with TCC until their expiration or termination.

ii. *Administrative Services Agreement*

97. Concurrent with delivery of the notice of termination of the Master Agreement, Target Brands and TCC entered into an administrative services agreement dated as of January 14, 2015, effective as of April 14, 2015 ("**Administrative Services Agreement**"), a copy of which is attached as Exhibit H to this Affidavit. The Administrative Services Agreement was prepared by Target Brands and TCC in consultation with the proposed Monitor.

98. Pursuant to the Administrative Services Agreement, Target Brands will continue to provide TCC with a variety of services during the orderly wind down, including, among other things:

- (a) accounting, accounts payable, financial reporting and finance services;

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- (b) cash management services;
- (c) communication and public relations services;
- (d) human resources and payroll services;
- (e) legal services;
- (f) office administration services;
- (g) real estate services;
- (h) tax compliance services; and
- (i) other ad hoc merchandising systems support and consulting.

99. As determined by Target Brands and TCC in consultation with the proposed Monitor, such services to be provided by Target Brands are sufficient to address TCC's needs and requirements in connection with the orderly wind down of its Canadian retail operations. In addition, Target Brands has also agreed pursuant to the Administrative Services Agreement to provide such other services as may be agreed by Target Brands and TCC in consultation with the Monitor.

100. In consideration for the services to be provided by Target Brands under the Administrative Services Agreement, TCC will pay Target Brands on a monthly basis an arm's length fee as agreed between the parties from time to time. Target Brands and TCC have agreed to review the level of services from time to time and anticipate that such fee will be adjusted from time to time in consultation with the Monitor as the services provided by Target Brands are reduced during the CCAA proceeding.

101. The Administrative Services Agreement shall commence as of April 14, 2015 and shall continue until the earlier of: (i) the date on which the proposed stay pursuant to the CCAA Initial Order, as amended from time to time, finally expires without being extended; (ii) the date on which the CCAA proceedings are terminated; or (iii) January 15, 2016 (or such later date as the parties may agree, in consultation with the Monitor). The Administrative Services Agreement may be terminated by mutual agreement among the parties and approval of the Monitor.

iii. *Intellectual Property License Agreement*

102. Also concurrent with delivery of the notice of termination of the Master Agreement, Target Brands and TCC entered into an intellectual property license agreement dated as of January 14, 2015, effective as of April 14, 2015 ("**Intellectual Property License Agreement**"), a copy of which is attached as Exhibit I to this Affidavit. The Intellectual Property License Agreement was also prepared by Target Brands and TCC in consultation with the proposed Monitor.

103. The Intellectual Property License Agreement grants TCC a revocable, exclusive, non-sublicensable, royalty-free license to use the IP for all legal purposes in connection with TCC's orderly wind down of its Canadian retail operations.

104. As determined by Target Brands and TCC in consultation with the proposed Monitor, the IP license as granted pursuant to the Intellectual Property License Agreement is sufficient to facilitate TCC's orderly wind down of its retail operations.

105. The Intellectual Property License Agreement shall commence as of April 14, 2015 and shall continue until the earlier of: (i) the completion of the orderly wind down of TCC's retail operations and the final going out of business sale; (ii) June 30, 2015; or (iii) such later date as the parties may agree, in consultation with the Monitor. The Intellectual Property License Agreement may be terminated by mutual agreement among the Parties and approval of the Monitor.

iv. ***Design and Development Services Agreement***

106. Target Brands and TCC entered into a design and development services agreement effective as of February 3, 2013 (the "**Development Agreement**"), a copy of which is attached as Exhibit J to this Affidavit. Pursuant to the Development Agreement, Target Brands provided certain design and development services for goods purchased and sold by TCC in its retail operations.

107. By letter dated January 14, 2015, and in accordance with the terms of the Development Agreement, Target Brands gave three months' notice of termination to TCC of the Development Agreement, such termination to be effective on April 14, 2015. It is not expected that TCC will need these services after the termination date.

v. ***Buying Agency Agreement***

108. TCC is a party to a buying agency agreement with Target Brands and Target Sourcing in its capacity as trustee of Target Sourcing Services (a trust organized under the laws of China), a copy of which is attached as Exhibit K to this Affidavit. Under this agreement Target Sourcing or its affiliates source merchandise outside of Canada and the U.S. for sale in



TCC's retail stores. Target Sourcing also provides related services, including quality control; logistics; monitoring compliance with local laws and regulations and market conditions; and market research.

109. By letter dated January 14, 2015, and in accordance with the terms of the buying agency agreement, Target Brands gave three months' notice of termination to TCC and Target Sourcing, such termination to be effective on April 14, 2015. It is not expected that TCC will need these services after the termination date.

**I. Employees**

110. As of January 12, 2015, TCC employed approximately 17,600 people.

**i. *Store Level***

111. A typical Target store in Canada employs approximately 100 to 150 people. As of January 12, 2015, TCC employed approximately 16,700 people at the store level. The majority of these employees are "team members" (approximately 14,500) and "team leaders" (approximately 1,500) paid at hourly rates and, subject to eligibility based on length of service and hours worked, may receive benefits packages. During peak selling seasons, TCC hires temporary team members, but TCC does not currently employ any such employees. TCC also employs approximately 700 additional people, who are also "team leaders", at the store level who are compensated through base salary and benefits. TCC does not have any employees who are represented by a union.

ii. ***Management Group and Other Salaried Employees***

112. As of January 12, 2015, TCC employed approximately 127 people in its group and district offices and approximately 763 people at its headquarters in Mississauga, Ontario. All of these employees are compensated through base salary and benefits. In addition, some of these individuals are eligible to receive performance bonuses and certain directors, key management and officers are entitled to participate in a long-term incentive program involving stock options, Performance Share Units and Restricted Share Units in the stock of Target Corporation. There are no registered pension plans for TCC management or any other employees.

113. Subject to eligibility based on minimum length of service, all TCC employees – including hourly employees working at the store level – have the ability to participate in a combined group RRSP / Deferred Profit Sharing plan. TCC matches an employee’s contribution dollar-for-dollar up to five percent of the employee’s eligible compensation, subject to vesting provisions. This plan is managed by the Manufactures Life Insurance Company (“**Manulife**”). TCC makes payments to Manulife every two weeks based on contribution data provided by ADP Canada Co. (“**ADP**”), a third party funder that provides payroll services to TCC, as discussed below.

iii. ***Employees Seconded to TCC***

114. Approximately 70 employees have been seconded to work with TCC under a secondment agreement effective May 27, 2011 (the “**Secondment Agreement**”) between Target Corporation and other U.S. based entities (collectively, the “**Assigning Employers**”) and TCC. Most of these employees are based in Canada, although some commute from the U.S. These seconded employees are not compensated directly by TCC. TCC reimburses the Assigning

Employers for expenses related to the assigned employees. The Secondment Agreement provides that TCC may terminate the agreement without cause on 30 days notice. TCC's need for the seconded employees will likely decrease during the CCAA proceeding. Accordingly, TCC and the Assigning Employers have agreed to review and, subject to the agreement of the parties and in consultation with the Monitor, make any necessary adjustments to the provision of the seconded employees' services to TCC.

iv. *U.S.-Based Dedicated Employees*

115. Approximately 600 non-TCC employees are based in the U.S. and approximately 200 non-TCC employees are based in India but provide dedicated services to TCC. Those employees are paid by Target Corporation or an affiliate, and then those costs are billed to TCC as part of an intercompany charge pursuant to the Master Agreement.

v. *Employees By Province*

116. The following chart shows the approximate number of people employed by TCC in each province as of January 12, 2015. This chart does not include seconded employees, U.S.-based or India-based dedicated employees, or individuals employed by third parties such as Glentel, Eleven Points or the pharmacy franchisees.

Province	Store Level	Head, Group or District Offices	Total
Alberta	1,952	10	1,962
British Columbia	2,446	18	2,464
Manitoba	677	5	682
New Brunswick	290	0	290

Province	Store Level	Head, Group or District Offices	Total
Newfoundland	234	0	234
Nova Scotia	429	7	436
Ontario	7,203	808	8,011
PEI	108	0	108
Quebec	3,017	42	3,059
Saskatchewan	350	0	350
<b>Total</b>	<b>16,706</b>	<b>890</b>	<b>17,596</b>

vi. *Payroll*

117. TCC employees are paid every second Friday through ADP. TCC funds ADP on the Thursday before the pay date through an account at Bank of America. Most employee taxes and deductions are funded to ADP on a gross basis and ADP then makes the required payments.

J. REDcards®, Gift Cards and Warranties

118. Royal Bank of Canada (“RBC”) offers credit to TCC’s guests through a co-branded credit card: the Target RBC MasterCard. RBC and TCC entered into a Credit Card Program Agreement dated effective August 24, 2012. Under the agreement, the parties settle any amounts owing by one to the other on a monthly basis. Additionally, TCC offers guests a Target-branded debit card. In general, Total System Service, Inc. (“TSYS”), an unrelated third party, processes the Target-branded debit card payments pursuant to an agreement with TCC effective October 5, 2012. Collectively, TCC refers to these credit and debit cards as REDcards. Guests receive a 5 percent discount on most purchases when they use a REDcard at a TCC store. Upon the commencement of this proceeding, TCC intends to cease soliciting REDCards.

119. TCC also sells Target gift cards denominated in Canadian Dollars. A third party serves as the processor who tracks the outstanding gift cards, which are recorded as a liability in Target Corporation's consolidated financial statements. As at November 1, 2014 TCC recognized a liability of approximately CAD \$7 million on outstanding gift cards. TCC intends to continue to honour, but not sell, any Target gift cards during the contemplated liquidation process.

120. TCC also sells warranties and other service contracts offered by a third party that relate primarily to electronic merchandise. Upon the commencement of this proceeding, TCC intends to cease selling these service contracts and warranties.

**K. Retailing of Cultural Products: Undertakings**

121. In accordance with the *Investment Canada Act*, as consideration for being allowed by the Minister of Canadian Heritage to engage in the retailing of cultural products in Canada, TCC made contractual commitments, referred to as "Undertakings", to the Federal Government.

122. TCC has fully performed and, in some cases, its performance has materially exceeded, some of the non-cultural Undertakings: for example, TCC and its affiliates have made aggregate capital expenditures in Canada of approximately USD \$4.572 billion – approximately 33% in excess of the total capital expenditures required by the Undertakings.

123. The Undertakings specifically provide that if TCC ceases retailing cultural products the Undertakings related to cultural products cease to be effective. The only other Undertakings which would not be performed for their full term upon TCC's ceasing to operate in Canada prior to March 5, 2018 are Undertakings that require TCC to: (a) maintain a head office

in Canada; (b) ensure that at least 25% of the directors on TCC's board are Canadian; (c) ensure that Canadians are in management positions at TCC; (d) maintain a website that includes both English-language and French-language content; and (e) donate more than \$1 million to eligible charities by March 5, 2018. With regard to the last of the Undertakings in that list, Target Canada has contributed more than 50% of the total contribution required. In addition, during the orderly wind down, TCC may not be able to comply with the undertaking relating to employment.

### **The Financial Position of TCC and TCC Propco**

124. As a publicly traded company, Target Corporation files consolidated financial statements with the Securities and Exchange Commission in the United States. These financial statements include the consolidated results of both the U.S. and Canadian operations. A copy of Target Corporation's audited financial statements as of February 1, 2014 is attached as Exhibit L to this Affidavit. A copy of Target Corporation's interim financial statements as at November 1, 2014 is attached as Exhibit M to this Affidavit. These are Target Corporation's most recently filed audited and interim financial statements, respectively.

125. In its public reporting, Target Corporation provides information regarding the Canadian segment of its operations, including information regarding sales; cost of sales; selling, general and administrative expenses; depreciation and amortization; and earnings before interest and taxes.

126. TCC does not prepare stand-alone financial statements for the Canadian operations. As noted above, pursuant to the Master Agreement, Target Brands or its affiliates perform many of the core financial and accounting services for TCC. For the purposes of this application, TCC and Target Corporation have prepared stand-alone financial statements as at

November 1, 2014 for each of TCC (which consolidates the financial results of TCC and its subsidiaries) and TCC Propco, copies of which are attached as Exhibits N and O, respectively, to this Affidavit. These financial statements have not been audited.

A. TCC

i. *Assets*

127. As at November 1, 2014, TCC had total assets of approximately CAD \$5.408 billion. This included current assets of approximately CAD \$879 million and non-current assets of approximately CAD \$4.530 billion.

ii. *Current Assets*

128. As at November 1, 2014, TCC's current assets consisted of the following:

- (a) Inventory: approximately CAD \$683,555,000;
- (b) Cash and cash equivalents: approximately CAD \$12,692,000; and
- (c) Other current assets: approximately CAD \$182,551,000.

129. It is estimated that, as of the filing of this Affidavit on January 15, 2015, TCC will have cash on hand of approximately CAD \$1 million. As set out above, inventory comprises the vast majority of TCC's current assets. TCC and its affiliates routinely enter into arrangements with vendors – for example, with respect to greeting cards – whereby TCC does not purchase or pay for merchandise until the merchandise is sold. This merchandise is not included in inventory because of TCC's virtually simultaneous purchase and sale of this merchandise.

130. The other current assets include, among other amounts, approximately CAD \$40 million in prepaid expenses, approximately CAD \$23 million in debit balances owed from vendors, approximately CAD \$26 million in GST, HST and QST input tax credit receivables, approximately CAD \$24 million in current deferred tax assets and approximately CAD \$21 million in income receivables from vendors. The other current assets also include approximately CAD \$17 million in intercompany accounts receivable – primarily for rent payments and an administrative fee – from TCC Propco.

iii. *Non-Current Assets*

131. As at November 1, 2014, TCC's non-current assets consisted of the following:

- (a) Property and equipment (net of accumulated depreciation): approximately CAD \$3,764,534,000; and
- (b) Other non-current assets: approximately CAD \$765,160,000.

132. The vast majority of the property and equipment asset consists of buildings and improvements, which were recorded at approximately CAD \$3.554 billion. This amount is exclusive of the buildings and improvements asset that is reflected on TCC Propco's financial statements.

133. Target Corporation assesses its long-lived assets as part of its year-end financial reporting and when events or changes in circumstances indicate that the asset's carrying value may not be recoverable. Target Corporation expects that TCC will incur significant impairment



charges in light of its financial situation, which will materially reduce the carrying value of the assets.

iv. *Liabilities*

134. As at November 1, 2014, TCC had total liabilities of approximately CAD \$5.118 billion. This included current liabilities of approximately CAD \$689 million and non-current liabilities of approximately CAD \$4.429 billion.

135. As at November 1, 2014, TCC's current liabilities consisted of the following:

- (a) Accounts Payable: approximately CAD \$546,325,000;
- (b) Accrued and other current liabilities: approximately CAD \$128,748,000; and
- (c) Current portion of long-term debt and other borrowings related to capital leases: approximately CAD \$13,603,000.

136. Although the vast majority of the accounts payable liabilities are trade debts, approximately CAD \$109 million was payable to TCC Propco as at November 1, 2014. Approximately CAD \$70 million of that amount was paid on or about December 31, 2014 in the normal course, which payment covered the amounts owing quarterly under the sublease / sub-subleaseback arrangement. The CAD \$109 million payable also included a non-recurring amount of approximately CAD \$39 million for fixed asset overpayments that TCC Propco had made under the sublease / sub-subleaseback arrangement. The overall accounts payable liability included approximately CAD \$15 million owing to Target Brands in relation to the use of IP and

shared services. The other current liabilities included approximately CAD \$7 million relating to gift card liability.

137. As at November 1, 2014, TCC's non-current liabilities consisted of the following:

- (a) Long-term debt and other borrowings: CAD \$4,404,369,000; and
- (b) Other non-current liabilities: CAD \$25,130,000.

138. TCC's long-term debt consists primarily of the approximately CAD \$3.1 billion owing to NE1 under their loan facility agreement (discussed below) and approximately CAD \$1.3 billion in long-term debt relating to leases with third party landlords. In addition, TCC is obligated to make payments to TCC Propco under the sub-subleases, which non-current amounts are not reflected on the current financial statements but which would be recorded upon termination of the sub-subleases.

**B. TCC Propco**

**i. *Assets***

139. As at November 1, 2014, TCC Propco had total assets of approximately CAD \$1.632 billion. This included current assets of approximately CAD \$185 million and non-current assets of approximately CAD \$1.447 billion.

140. As at November 1, 2014, TCC Propco's current assets consisted of the following:

- (a) Cash and cash equivalents: approximately CAD \$36,860,000; and

- (b) Other current assets: approximately CAD \$148,270,000.

141. Cash on hand as of January 8, 2015 is approximately CAD \$77 million. The other current assets consist primarily of intercompany receivables from TCC relating to the sublease / sub-subleaseback arrangement. The primary source of income for TCC Propco is payments received from TCC.

142. As at November 1, 2014, TCC Propco's non-current assets consisted of property and equipment (net of accumulated depreciation) of approximately CAD \$1.427 billion. This reflects, among other things, the real property improvements that TCC Propco has made under the sublease / sub-subleaseback arrangement.

143. Target Corporation assesses its long-lived assets as part of its year-end financial reporting and when events or changes in circumstances indicate that the asset's carrying value may not be recoverable. Target Corporation expects that TCC Propco will incur significant impairment charges in light of its financial situation, which will materially reduce the carrying value of the assets.

ii. ***Liabilities***

144. As at November 1, 2014, TCC Propco had total liabilities of approximately CAD \$1.643 billion. TCC Propco's current liabilities consisted of the following:

- (a) Accounts Payable: approximately CAD \$100,609,000; and
- (b) Accrued and other current liabilities: approximately CAD \$8,483,000.

145. The accounts payable consisted of approximately CAD \$84 million in intercompany interest owing to Target Canada Property LP under their loan facility agreement (discussed below). The accounts payable also included approximately CAD \$17 million in intercompany payments to TCC, primarily for rent payments and an administrative fee, and approximately CAD \$440,000 to Target Corporation under their revolving credit facility (discussed below).

146. TCC Propco's non-current liabilities consisted of long-term debt and other borrowings of approximately CAD \$1.534 billion. This consisted primarily of the amount owing to Target Canada Property LP under their loan facility agreement.

### C. Revenue

147. The following chart shows the sales and earnings before interest and taxes ("EBIT") for each of the quarters that TCC has operated stores in Canada. The increasing sales in this chart reflect the opening of new stores in Canada throughout 2013 and 2014. The increase in sales in Q4 2013 reflects higher sales, as is typically seen by retailers, during the peak sales season in the lead-up to Christmas. These figures are taken from the Canadian segment results reported in the consolidated financial statements of Target Corporation. All figures in this chart are in USD millions.

	Q1 2013	Q2 2013	Q3 2013	Q4 2013	Q1 2014	Q2 2014	Q3 2014
<b>Sales</b>	86	275	333	623	393	449	479
<b>EBIT</b>	(205)	(169)	(238)	(329)	(211)	(204)	(211)

148. For the nine months ended November 1, 2014, TCC had total revenue of approximately CAD \$1.448 billion and net losses of approximately CAD \$700 million.

149. For the nine months ended November 1, 2014, TCC Propco had total revenue (all from lease revenue from TCC) of approximately CAD \$185 million and net losses of approximately CAD \$12 million. These losses were driven by interest expenses.

**D. Intercompany Funding**

150. The operational funding for TCC and TCC Propco is provided by their respective parent entities and, ultimately, by Target Corporation, which, either directly or indirectly through subsidiaries, has invested more than USD \$6.6 billion. This section describes the main sources of this funding, as summarized in the following chart and described below. The Target Canada Entities have only been able to maintain their operations to date as a result of amounts provided in the form of equity capital and amounts drawn under these loan agreements. The amounts in this chart are denominated in Canadian Dollars and are as at November 1, 2014.

	Source of Funds	Recipient	Type	Approximate Amount Provided (CAD\$)
Loan Facility (unsecured)	NE1	TCC	Debt	\$3.1 billion
Equity Capital	NE1	TCC	Equity	\$2.5 billion
Loan Facility (unsecured)	Target Canada Property LP	TCC Propco	Debt	\$1.5 billion
Credit Facility / Promissory Note	Target Corporation	TCC Propco	Debt	\$100 million

i. ***TCC's Loan Facility***

151. TCC's direct parent, NE1 has extended funding to TCC pursuant to an unsecured loan facility agreement effective May 18, 2011. Copies of the agreement and subsequent amendments to the agreement are attached as Exhibit P to this Affidavit. The maximum amount available under the loan facility is CAD \$4 billion. As of November 1, 2014, TCC owed NE1 approximately CAD \$3.1 billion. Effective September 1, 2014, the parties agreed that interest would no longer accrue on the outstanding principal balance. Interest was previously charged at a rate determined based on the time that amounts were drawn down, as provided in the agreement.

152. As previously described, NE1 and TCC have entered into a Subordination and Postponement Agreement dated January 12, 2015 (the "**Subordination and Postponement Agreement**") in which NE1 agrees to subordinate all amounts owed by TCC to NE1 under their loan facility to the payment in full of proven claims against TCC, excluding NE1's proven claims. A copy of the Subordination and Postponement Agreement is attached as Exhibit Q to this Affidavit.

ii. ***TCC's Equity Funding***

153. As at November 1, 2014, NE1 has provided equity capital to TCC in the amount of approximately CAD \$2.5 billion. As a result of the continuing and significant losses in TCC's operations, NE1 provided an additional approximately CAD \$62 million in the form of equity capital to TCC since November 1, 2014 to fund TCC's operations.

iii. ***TCC Propco's Loan Facility***

154. Coincident with Target Canada Property LP's assignment of its leasehold interests to TCC Propco effective January 2014, TCC Propco entered into a loan facility agreement in favour of Target Canada Property LP, pursuant to which TCC Propco has borrowed approximately CAD \$1.5 billion. This obligation was incurred primarily to pay for real property improvements in TCC's stores pursuant to the sublease / sub-subleaseback arrangement.

iv. ***TCC Propco's Revolving Credit Facility***

155. TCC Propco and Target Corporation were parties to a Revolving Line of Credit Agreement dated as of February 13, 2014 with a maximum amount of USD \$300 million. The agreement was terminated on January 9, 2015 and the outstanding balance of USD \$89 million due to Target Corporation was memorialized by a demand promissory note.

E. **Other Intercompany Obligations**

156. This section sets out certain other financial obligations between the Target Canada Entities and their related parties, as summarized in the following chart summarizing certain intercompany obligations as of November 1, 2014 and described below.

<b>Debtor</b>	<b>Creditor</b>	<b>Reason for Obligation</b>	<b>Approximate Amount Due</b>
TCC Propco	TCC	Lease Payments and Administrative Fee	CAD \$15.5 million
TCC	Target Brands	Shared Services and Royalties	USD \$16.3 million
TCC	Target Sourcing	Overseas Sourcing	USD \$0.6 million
TCC	TCC Pharmacy	Pharmacy Franchising	USD \$4 million

i. ***Real Property Improvements and Make Whole Payment***

157. As explained above, for almost all of the retail store leases, TCC has subleased the properties to TCC Propco, which then made real estate improvements and then sub-subleased the properties back to TCC. TCC Propco continues to pay for all leasehold improvements, which, to date, have amounted to approximately CAD \$1.45 billion. TCC makes payments of rent to TCC Propco under the sub-sublease arrangement, as more fully described in the following paragraph. Upon the termination of any of these subleases, the arrangement provides for a make whole payment from TCC to TCC Propco equal to the difference between the amount paid for the leasehold improvements and the amounts already repaid.

ii. ***Other Intercompany Amounts Owing between TCC and TCC Propco***

158. Monthly, TCC pays landlords directly for lease obligations of approximately USD \$8 million. TCC Propco reimburses TCC for those payments by remitting approximately USD \$8 million based on the sublease / sub-subleaseback arrangement, out of funds received by TCC Propco from TCC on a quarterly basis, as described in the next sentence. Quarterly, TCC transfers to TCC Propco approximately USD \$60 million of rent. This amount reflects its obligations under the sub-sublease (e.g. USD \$8 million for 3 months = USD \$24 million) plus additional rent of approximately USD \$36 million, covering TCC Propco's real property improvements. The most recent quarterly remittance was made on or about December 31, 2014. Annually, TCC Propco owes TCC an administrative fee of approximately USD \$9 million for property management, business services and procurement-type activities. As previously noted above, as at November 1, 2014, TCC also owed TCC Propco a non-recurring balance relating to



TCC's reimbursement of TCC Propco for miscellaneous expenses including fixed asset overpayments.

iii. *Shared Services*

159. In consideration for the shared services that Target Brands or its affiliates perform for TCC pursuant to the Master Agreement, on a monthly basis TCC pays Target Brands arm's length fees as agreed between the parties from time to time. These payments are typically in the range of approximately CAD \$15.2 million. As described above, Target Brands gave notice of termination of the Master Agreement, such termination will be effective April 14, 2015 and the Master Agreement will no longer be in effect. Concurrent with delivery of the notice of termination of the Master Agreement, Target Brands and TCC entered into the Administrative Services Agreement.

iv. *IP License*

160. In consideration for the IP license granted under the Master Agreement, TCC pays Target Brands an annual royalty payment amounting to 1.5% of TCC's net revenues, with provisions for adjustments if required by U.S. or Canadian tax authorities. For the 2014 fiscal year, TCC has paid Target Brands approximately USD \$40 million under the IP license. However, based on TCC's actual revenues, which have been lower than expected, Target Brands may be required to return a portion of that payment, depending on TCC's results at the end of the 2014 fiscal year. As described above, concurrent with delivery of the notice of termination of the Master Agreement, Target Brands and TCC entered into the Intellectual Property License Agreement.

v. *Buying Agency Agreement*

161. In consideration for the services provided by Target Sourcing under the buying agency agreement, TCC pays Target Sourcing an arm's length fee for sourcing and inspection services. As of November 1, 2014, TCC owed Target Sourcing approximately USD \$0.6 million. As described above, by letter dated January 14, 2015, Target Brands gave three months' notice of termination of the buying agency agreement to TCC, such termination to be effective on April 14, 2015. It is not expected that TCC will need these services after the termination date.

vi. *Pharmacy Franchising*

162. Pursuant to a pharmacy franchising agreement between TCC Pharmacy and TCC, TCC Pharmacy and TCC make monthly payments to each other. TCC Pharmacy pays TCC for support services such as advertising and rebate processing, administrative and business services, and the fair market value of the space licensed for the pharmacy operations. As of November 1, 2014, TCC owed TCC Pharmacy a true-up payment in the amount of approximately USD \$4 million.

**Cash Management System**

163. In the ordinary course of business, the Target Canada Entities use a centralized cash management system to monitor account activity and balances for each entity (the "**Cash Management System**"). These accounts are monitored daily and managed centrally by the treasury department of Target Corporation or its subsidiaries. The Cash Management System facilitates cash forecasting and reporting, monitoring collection and disbursement of funds, and control over the administration of various bank accounts required to effect the collection, disbursement and movement of cash.

164. In addition to the cash management services that Target Corporation and its subsidiaries provide to TCC, TCC provides cash management services for TCC Pharmacy and TCC Mobile pursuant to cash management agreements with each of TCC Pharmacy and TCC Mobile.

165. The Cash Management System relating to the Target Canada Entities involves four banks. In general terms, RBC and Toronto-Dominion Bank (“TD”) accounts act primarily as receipt or deposit accounts, whereas Bank of America accounts are primarily disbursement accounts. JPMorgan accounts are used primarily to pay vendors located outside of Canada and the United States. Except for certain US Dollar accounts at Bank of America, all of the accounts are located in Canada, regardless of the financial institution. Target Corporation has guaranteed the obligations of the Target Canada Entities to RBC, TD and Bank of America with respect to the Cash Management System.

A. **RBC**

166. In general terms, TCC’s Canadian Dollar accounts at RBC are organized as six deposit-only zero balance accounts that immediately feed into a master concentration account upon receiving deposits.

167. The US Dollar accounts at RBC are similarly organized: for example, US currency used in Canadian stores is deposited into a US Dollar denominated store depository account and immediately flows into a US Dollar denominated master concentration account.

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168. RBC provides two additional Canadian Dollar accounts. The first is a funding account in the name of TCC Propco. The second is a funding account in the name of NE3, which serves as a pass-through account for intercompany payments.

169. RBC and TCC have entered into a revolving overdraft credit facility allowing TCC to borrow up to USD \$10 million. However, this facility is not active; TCC only maintains it as a contingency.

**B. TD**

170. TD serves as TCC's merchant processor for all debit and credit cards other than REDCard debit cards. All of the TD accounts are denominated in Canadian dollars. In general terms, TCC's accounts at TD are organized as three deposit-only zero balance accounts – for receipts from each of credit cards, debit cards and gift cards – that immediately feed into a master concentration account. The credit card account processes payments from both the RBC Target MasterCard and third party credit cards. There is a second stream of accounts consisting of a deposit-only zero balance account relating to debit card bill payments that feeds into a master account.

171. TD also provides a Canadian Dollar denominated funding account in the name of NE1. This account is generally used for payments from NE1 to TCC.

172. TD and TCC have entered into an overdraft credit facility allowing TCC to borrow up to CAD \$10 million. However, this facility is not active; TCC only maintains it as a contingency.

**C. Bank of America**

173. As noted above, TCC's disbursements are generally paid out of accounts with Bank of America. The Canadian Dollar accounts are located in Canada; the US Dollar accounts are located in the United States. These disbursement accounts are generally not pre-funded. Funds are withdrawn on an as-needed basis from the RBC and TD master concentration accounts to fund the disbursements. The incoming funds then flow through either a Canadian Dollar or US Dollar denominated master disbursement account at Bank of America into the applicable disbursement account. If there are insufficient funds in the RBC and TD master concentration accounts to fund the disbursements, Target Corporation (or a related entity) will typically transfer the difference.

174. There are several other stand-alone Bank of America accounts that Target Canada and related entities use to make specific payments. TCC Propco also uses an account with Bank of America to make payments relating to leases.

**D. JPMorgan**

175. TCC pays overseas vendors through an arrangement that Target Corporation and TCC have with JPMorgan. JPMorgan pays the vendors either by way of a letter of credit that is typically issued approximately 60 days before the expected shipping date (approximately 15%-20% of all import payments) or open account transactions (approximately 80%-85% of all import payments).

176. For letters of credit, TCC typically approves the issuance of letters of credit on a vendor-by-vendor basis. JPMorgan typically funds the letters of credit directly from TCC's US Dollar-denominated trade account with JPMorgan before being reimbursed by TCC.

177. Target Corporation is jointly and severally liable with TCC for obligations to JPMorgan for any issued letters of credit and open account obligations. As of November 30, 2014, there were approximately USD \$24.8 million in outstanding, issued letters of credit and approximately USD \$41 million in open account approved outstanding invoices. TCC estimates that as of December 11, 2014, the estimated retail value of overseas goods in transit was approximately CAD \$183 million.

**E. Corporate Credit Cards**

178. TCC provides credit cards to certain of its management and employees pursuant to agreements with Amex Bank of Canada (“Amex”) and JPMorgan. The American Express credit cards are used by management for a variety of expenses, including business travel and business expenses. The MasterCard credit cards provided pursuant to the agreement with JPMorgan are used by certain operations employees as an alternative to petty cash. These cards are a critical component of TCC’s cash management and account functions, and the ability of the employees of the Target Canada Entities to use these cards is essential for the continued operation of their businesses. The Target Canada Entities are seeking authority to pay for amounts incurred through such credit cards before and after the commencement of these proceedings should it be necessary to do so. Target Corporation has issued an unsecured guarantee in favour of each of JPMorgan and Amex to keep the accounts open and running as part of this CCAA proceeding.

**The Urgent Need for Relief under the CCAA**

179. All of TCC's operational funding is provided exclusively by Target Corporation and related entities. Target Corporation has invested more than CAD \$7 billion into the expansion into Canada since the start of 2011.

180. Following the thorough review of TCC's performance described above and careful consideration of all options, I am informed by senior management of Target Corporation that the board of directors of Target Corporation has determined that, in its business judgement, it is in the best interest of its business and its shareholders to discontinue operations in Canada and focus on driving growth and building further momentum in its U.S. business.

181. Without further funding and financial support from Target Corporation, the Applicants are unable to meet their liabilities as they become due and are therefore insolvent. On January 14, 2015, the respective boards of directors of the Applicants resolved to commence this CCAA proceeding.

**Relief Sought**

182. Given the size and complexity of TCC's operations, the Target Canada Entities believe that this CCAA proceeding is the only practical method to ensure a fair and orderly wind down in the interests of all stakeholders. The Target Canada Entities urgently require a stay of proceedings and other protections provided by the CCAA so that they will have the breathing space to develop and conduct a controlled and orderly wind down of operations for the benefit of their stakeholders.

**A. DIP Financing**

183. Target Corporation and its subsidiaries are not willing to provide continued funding to TCC and its subsidiaries outside of a CCAA proceeding. TCC and its subsidiaries require interim financing to provide an immediate source of cash funding and to provide stability as part of this process and to fund operations during the implementation of the orderly wind down of its business as part of this CCAA proceeding. Subject to certain terms and conditions, Target Corporation (the “**DIP Lender**”) has agreed to provide a non-revolving credit facility (the “**DIP Facility**”) of USD \$175 million to TCC and its subsidiaries (the “**Borrower**”). No fees are payable under the DIP Facility and only 5% interest is being charged. The cash flow projections show an immediate funding need for TCC to meet payroll and other immediate obligations. The DIP term sheet is attached as Exhibit R to this Affidavit.

184. The funds available under the DIP Facility will be used to meet the Borrower’s immediate funding requirements during the CCAA proceedings in accordance with the cash flow projections discussed below (subject to cumulative variance of less than 20% as approved by the Monitor), including costs and expenses in connection with the CCAA proceedings. TCC believes that having access to sufficient funding to ensure there is enough flexibility and sufficient time to facilitate a process to maximize net realizations on all assets of the estate (including inventory and real estate assets) for the benefit of all stakeholders is crucial and necessary to provide stability as part of the CCAA proceedings. TCC consulted with the proposed Monitor, Alvarez & Marsal Canada Inc. (“**A&M**”), regarding the DIP Facility. Based on discussions with the proposed Monitor, TCC anticipates that the proposed DIP Facility will accommodate the Target Canada Entities’ anticipated liquidity requirements during the CCAA proceedings.



185. The Borrower has agreed to pay the DIP Lender interest on the outstanding principal amounts advanced under the DIP Facility and all other obligations owing under the DIP Facility, both before and after maturity, and until actual payment in full, at the rate of 5% per annum. Upon the occurrence of an event of default that is continuing the rate shall automatically become 7% per annum until the maturity date. However, no other fees are being charged by the DIP Lender, and the DIP Lender is not seeking reimbursement of its expenses. The maturity date is the earlier of (i) the date on which the proposed stay of proceedings pursuant to the Initial Order, as amended from time to time, finally expires without being extended, (ii) the date on which the CCAA proceedings are terminated or (iii) January 15, 2016, or such later date as may be agreed to in writing by the DIP Lender, in its sole discretion. All amounts outstanding under the DIP Facility shall be repaid in full on the maturity date, subject to the order of the Court. TCC and its subsidiaries are jointly and severally liable for the amounts borrowed under the DIP Facility and any interest thereon.

186. Other key elements of the DIP Facility are as follows:

- (a) Unless otherwise agreed by the DIP Lender, the Borrower shall make the following mandatory prepayments of the outstanding principal and interest amounts of the advances under the DIP Facility, if any, at the time of receipt of the net cash proceeds described below (subject to, among other things, payment or reserves for Court-ordered charges):
  - (i) 100% of the net cash proceeds received from the incurrence of indebtedness by the Borrower, which may only be incurred with the consent of the DIP Lender;

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- (ii) 100% of the net cash proceeds from the receipt of any extraordinary income or receipts (including, without limitation, insurance proceeds (excluding business interruption, workers compensation or liability insurance), tax refunds and similar receipts outside of the ordinary course) by the Borrower; and
  - (iii) 100% of the net cash proceeds of any sale or other disposition (including as a result of casualty or condemnation) by the Borrower of any assets other than inventory (whether such inventory is sold or disposed of through return to the vendor or wholesaler, the liquidation of the inventory by the Agent once appointed by the Court or otherwise).
- (b) All net cash proceeds payable to the DIP Lender from any of the events described above shall be applied, except as otherwise agreed to by the DIP Lender in writing, as follows:
  - (i) first, to pay accrued and unpaid interest on the obligations under the DIP Facility;
  - (ii) second, to repay any principal amounts outstanding in respect of the DIP Facility; and
  - (iii) third, the balance to be paid to the Borrower.
- (c) Any repayment of principal under the DIP Facility will not affect the remaining amount available under the DIP Facility.

- (d) Advances under the DIP Facility are contingent, among other things, on the issuance of the Initial Order, which shall be in full force and effect and shall grant the DIP Lender's Charge (as defined herein) and on the absence of an event of default or pending event of default.
- (e) Events of default include, among others: (i) a breach of covenanted reporting requirements that remains unremedied for three business days; (ii) a breach of any other covenant under the DIP term sheet that remains unremedied for more than 10 business days (including, among others, the failure to conclude substantially all of the contemplated liquidation of retail inventory by June 1, 2015); (iii) the expiration of the stay of proceedings in these CCAA proceedings; (iv) the delivery of updated cash flow projections that reflect a material adverse change to the Borrower or there occurs any negative variance greater than 20% for all expenditures, on a cumulative basis (other than timing variances); (v) a material payment by the Borrower of any kind not permitted by the Initial Order or the DIP term sheet; (vi) failure of the Borrower to pay principal or interest when due; and (vii) the proposal or filing of any plan of compromise or arrangement that is not acceptable to the DIP Lender if such plan of compromise or arrangement does not either provide for the repayment of the obligations under the DIP Facility in full by the maturity date or designate the DIP Lender as unaffected by such plan.

187. The entire amount of the DIP Facility is to be secured by a security interest on all real and personal property leased, owned or hereafter acquired by the Borrower. The amount actually borrowed by the Borrower is proposed to be secured by, among other things, a Court-

ordered charge on the Borrower's property (the "**DIP Lender's Charge**") that ranks in priority to all unsecured claims, but is subordinate to the Administration Charge, the KERP Charge, the Directors' Charge and the Financial Advisor Subordinated Charge (each of which is discussed and defined below), and any purchase money security interests.

188. The Target Canada Entities have not sought alternative financing proposals because they believe that the DIP Facility is being offered on more favourable terms than any other potentially available third-party financing and is in the best interests of TCC and its subsidiaries and their stakeholders.

189. The DIP Facility is crucial to the orderly wind down of the Canadian operations, as it will provide the Borrower with the necessary liquidity to operate during these proceedings and ensure there is enough flexibility and sufficient time to facilitate a process to maximize net realizations on their assets for the benefit of all stakeholders.

**B. Monitor**

190. It is proposed that A&M will act as Monitor in the CCAA proceedings if the proposed Initial Order is issued. A&M has consented to act as the Monitor of the Target Canada Entities.

191. TCC, with the assistance of A&M, has prepared 13-week cash flow projections, as required by the CCAA. A copy of the cash flow projections is attached as Exhibit S to this Affidavit. They show that TCC can continue operations during the proposed initial stay period.

192. I understand that A&M will file an initial pre-filing report with the Court as proposed Monitor in conjunction with the Target Canada Entities' request for relief under the CCAA.

193. In addition to other general powers, the proposed Initial Order includes powers relating to the wind down of TCC's operations to enable the Monitor to:

- (a) oversee the liquidation agent solicitation process and work closely with TCC and any liquidation agent in connection with the liquidation process;
- (b) oversee the development and implementation of the real estate portfolio sales process to be developed by Lazard and Northwest in consultation with the Target Canada Entities;
- (c) oversee the marketing and sales of other assets of the Target Canada Entities, in consultation with the Target Canada Entities;
- (d) oversee the controlled wind down of shared services and other intercompany arrangements with Target Corporation, in consultation with TCC; and
- (e) administer the Employee Trust, in consultation with the trustee thereof and Employee Representative Counsel.

**C. Key Employee Retention Plan**

194. The proposed Initial Order includes approval of a key employee retention plan (as set out below, the “KERP”) and granting of a Court-ordered charge up to the maximum aggregate amount of CAD \$6.5 million as security for payments under the KERP.

195. The KERP was developed by the Target Canada Entities, in consultation with A&M, to facilitate and encourage the continued participation of senior management and other key employees of the Target Canada Entities who are required to guide the business through the contemplated orderly wind down process and preserve value for stakeholders. The KERP will provide its participants with additional payments as an incentive to continue their employment for varying durations, as required, through the CCAA proceedings. These employees have significant experience and specialized expertise that cannot be easily replicated or replaced.

196. The Target Canada Entities propose to include the following employees in the KERP:

<b>Role</b>	<b>Approximate Number Required</b>	<b>Amount of KERP Payment</b>	<b>Estimated Maximum Cost (CAD\$)</b>
<b>(a) Senior and Operational Management</b>	21-26	Varies	\$770,000
<b>(b) Store Level Management</b>	520	8-12 weeks' salary	\$5.7 million (net of anticipated \$1.3 million payment to store team leaders from the Employee Trust)
<b>Total</b>			\$6.5 million

- (a) ***Senior and Operational Management:*** The Target Canada Entities are proposing that I, as a member of senior management, will be eligible to participate in the KERP. The identity of operational management employees eligible for the KERP is being finalized but is projected to include approximately 20 to 25 key employees who operate primarily out of TCC's head office in Mississauga, Ontario in the Human Resources, Legal, Distribution, Merchandising Store Operations and Property Development departments. These operational management employees will be needed for both the contemplated inventory liquidation and for the following period. The Target Canada Entities are proposing that these employees be eligible for payments under the KERP that, for most such employees, equal to 8 to 12 weeks of salary.

It is estimated that the KERP for operational and senior management will cost approximately CAD \$770,000.

- (b) ***Store Level Management:*** As each store is, in effect, its own individual operation and entity, TCC has identified four key individuals at each store, amounting to approximately 3% of the store employee population, whose continued participation going forward will be critical to executing the contemplated orderly wind down process. The following chart summarizes the categories of store level employees that the Target Canada Entities are proposing to include in the KERP:

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<b>Employee</b>	<b>Approximate Number Required</b>	<b>Maximum Amount of KERP Payment</b>	<b>Estimated Maximum Cost (CAD\$)</b>
<b>Store Team Leader</b>	117	12 weeks	\$1.8 million (net of anticipated \$1.3 million payment to store team leaders from the Employee Trust)
<b>Executive Team Leader, HR</b>	133	8 weeks	\$1.5 million
<b>Executive Team Leader, Logistics</b>	133	8 weeks	\$1.5 million
<b>Store Facilities Technician</b>	133	At least 8 weeks	\$0.9 million

- (i) The Store Team Leader is responsible for running the store and is the highest-level leadership position within a store. During the wind down process, TCC will rely on Store Team Leaders with respect to communications with store stakeholders including employees, clients, franchisees, as well as interactions with any liquidator. TCC considers this the most important role in the store. Accordingly, to ensure such employees' participation in an effective and orderly wind down process, TCC is proposing that they be paid additional compensation up to a maximum of 12 weeks' base salary, calculated as follows: 28 weeks' base salary (30 weeks' for Store Team Leaders in Manitoba) from the effective date of the employee's notice of termination less the sum of: (i) the total amount that the employee is paid in respect of services performed from the



effective date of the notice of termination; and (ii) any amount that the employee is eligible to receive as an Eligible Employee Claim under the Employee Trust (as discussed below). Examples of Store Team Leader KERP calculations are set out in Exhibit T to this Affidavit. The Target Canada Entities are proposing that approximately 117 store team leaders be eligible for participation under the KERP. It is estimated that providing these employees with an additional 12 weeks of salary would cost a maximum of approximately CAD \$3.1 million. However, under the terms of their individual employment agreements approximately 25 Store Team Leaders have an entitlement to more than 12 weeks' pay beyond the 16 week notice period, which entitlement will be eligible to be separately funded entirely under the Employee Trust. It is estimated that the other approximately 92 Store Team Leaders will be eligible to be paid either partially under the Employee Trust and partially under the KERP, or entirely under the KERP. It is estimated that the total amount payable under the Employee Trust will be approximately \$1.3 million and the total amount payable under the KERP will be approximately \$1.8 million. (The Store Team Leaders for the approximately 16 remaining stores are international assignees, and the Target Canada Entities do not propose to include such individuals in the KERP.)

- (ii) The Executive Team Leader, Human Resources is the store-level Human Resources professional and has primary responsibility at the store level for, among other things, scheduling and payroll, and will play a key role in

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employee communications. These employees are necessary to ensure proper scheduling continues in accordance with the change in operations, to make payroll calculations and to assist with ongoing workplace issues. It is estimated that providing these employees with a KERP equal to an additional 8 weeks of salary would cost approximately CAD \$1.5 million.

- (iii) The Executive Team Leader, Logistics is the store-level employee responsible for coordinating the store's receipt of inventory and placement of inventory in the store and will be crucial to any liquidation. It is estimated that providing these employees with a KERP equal to an additional 8 weeks of salary would cost approximately CAD \$1.5 million.
- (iv) The Store Facilities Technician is the store-level employee responsible for building operations and maintenance. TCC believes that their participation will contribute to the safe and smooth operation of the stores through the contemplated wind down process. Depending on the results of store closures, these technicians may also be necessary through the contemplated process of selling the leases. It is estimated that providing these employees with a KERP equal to an additional 8 weeks of salary would cost approximately CAD \$0.9 million.

197. Any payments under the KERP are conditional upon the employee continuing to provide services to TCC until such time as they are advised that they are no longer required to assist in the wind down, sales, or other matters in these proceedings. With the exception of the

senior management employee, the Target Canada Entities are proposing to make payments to each employee under the KERP with his or her final pay.

198. Assuming the Target Canada Entities are able to retain all of the key employees, the total amount payable under the KERP would be a maximum of approximately CAD \$6.5 million. The Target Canada Entities are seeking a charge (the “**KERP Charge**”) to secure the amounts payable under the KERP. The KERP Charge is proposed to rank immediately below the Administration Charge and immediately above the Directors’ Charge (both discussed below).

**D. Employee Trust**

199. TCC is asking the Court to approve a trust established for the benefit of employees of TCC (the “**Employee Trust**”), and funded by Target Corporation.

200. TCC and Target Corporation have always considered team members to be integral to Target’s business. However, given that TCC will be winding down its operations and ceasing to carry on business, it will be immediately providing notice of termination to the vast majority of its employees. TCC and Target Corporation wish to provide TCC employees with a measure of financial security during the wind down process. Target Corporation has therefore agreed to fund the Employee Trust to a maximum amount of CAD \$70 million (the “**Maximum Required Trust Contribution**”), discussed further below. If approved, the Employee Trust will provide funding for payment to employees of at least their full statutory or contractual termination entitlements even if they are not required to work for their entire notice period. It is intended that the Employee Trust protect the TCC employees against any dispute by any creditors of the Target Canada Entities regarding the employees’ entitlement to receive the full amount of these employments benefits under the CCAA proceedings.

201. In order to further benefit TCC employees and all other unsecured creditors of TCC, Target Corporation will not assert any right of subrogation against TCC in respect of amounts paid pursuant to the Employee Trust. The Employee Trust and not the estate will bear the costs associated with its establishment and administration.

202. The Employee Trust was established in consultation with A&M, and is supported by Employee Representative Counsel. The trust agreement provides that the proposed Monitor is the administrator and Hon. John D. Ground is the trustee. A copy of the proposed trust agreement is attached as Exhibit U to this Affidavit. All defined terms in this section are as set out in the trust agreement.

203. The trust agreement provides:

- (a) the beneficiaries of the Employee Trust ("**Eligible Employees**") include:
  - (i) active employees of TCC as of the date of the CCAA filing who have not given notice to, or received notice of termination from, TCC and who are terminated without cause by TCC following the CCAA filing;
  - (ii) inactive employees of TCC on approved disability leaves, statutory leaves, or authorized personal leaves as of the CCAA filing who have not given notice to, or received notice of termination from, TCC and who are terminated without cause by TCC following the CCAA filing; and
  - (iii) such other inactive employees of TCC on authorized leaves of absence as TCC and the Monitor may expressly agree.

- (iv) TCC employees who voluntarily leave their employment prior to being advised by TCC that their services are no longer needed are not eligible to receive payments funded by the Employee Trust.
  
- (b) the distribution by the Employee Trust to TCC for payment to an Eligible Employee will be equal to A minus B (the “**Eligible Employee Claim**”) where:
  - (i) A is the greatest of:
    - (I) such Eligible Employee’s statutory minimum termination entitlement under applicable employment standards legislation, including any statutorily required post-termination vacation pay;
  
    - (II) beginning from the Effective Date of Notice, 16 weeks’ Regular Wages for a Regular Work Week as well as the cost of TCC’s portion of premium contributions required to continue such Eligible Employee’s benefit coverage for such 16 week period to the extent permitted by the insurance carrier, but not less than minimum ESA entitlement; or
  
    - (III) contractual notice or pay in lieu required to be paid to such Eligible Employee pursuant to the terms of any applicable written employment agreement between TCC and the Eligible Employee, including the cost of TCC’s portion of premium contributions required to continue such Eligible Employee’s benefit coverage as required by such written

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employment agreement to the extent permitted by the insurance carrier, but not less than minimum ESA entitlements; and

- (ii) B is all amounts earned by such Eligible Employee up to their regular wages for a regular work week, inclusive of benefits and vacation pay, in respect of actual post-filing services provided following the Effective Date of Notice; provided however that B shall be deemed to be zero (0) for any such Eligible Employee whose written employment agreement specifically provides that the contractual termination entitlements cannot be reduced through working notice;
- (c) payments to employees of funds distributed by the Employee Trust will be made directly by TCC or by a third party payroll provider pursuant to TCC's existing payroll system. The Employee Trust will distribute funds to TCC on a pay period by pay period basis, based on estimates jointly developed by TCC and the Monitor, as administrator of the Employee Trust. Any surplus or deficiency from the previous pay period(s) will be reconciled in the next pay period. On or after the final distribution, TCC and the Monitor will consult and perform a final "true up"; and
- (d) a deemed release by each Eligible Employee of TCC, Target Corporation and other Releasees (as defined in the trust agreement) on the payment of a distribution from the Employee Trust in respect of an Eligible Employee Claim, to the extent of such distribution. This is proposed to operate as a "rolling release": that is, for each distribution funded from the Employee Trust, the

employee will be deemed to release all Releasees in respect of the Eligible Employee Claim for the amount he receives plus appropriate remittances or withholdings (the “**Payment Release**”). Once the final distribution has been made by the Employee Trust and paid by TCC, the Eligible Employee will be deemed to have released TCC, Target Corporation and the other Releasees in respect of the full amount of the Eligible Employee Claim, subject to any dispute, as described below. In the unlikely event the Maximum Required Trust Contribution is not sufficient to fund all such claims, only the Payment Release will apply.

- (e) contractual termination entitlements in excess of statutory minimum requirements will be subject to a release in accordance with the terms of the written employment contracts; and
- (f) only Eligible Employee Claims are covered.

204. For additional clarity, the Employee Trust does not cover damages or claims against TCC, Target Corporation or any related entities from any existing or potential litigation or other proceedings by TCC employees in respect of their employment. Any other employee claims or potential claims against TCC will be dealt with through the claims procedure, once established.

205. TCC is proposing that any dispute with respect to an Eligible Employee Claim must be made within 60 days of the final payment thereof by notice to the Administrator (Monitor) and Employee Representative Counsel (discussed below), specifying the grounds and particulars of the dispute. The deemed release will not come into effect for any Eligible

Employee who commences a dispute until the dispute is finally resolved. The directions of this Court for dispute resolution will be sought if necessary.

206. If approved, the first contribution to the Employee Trust will be \$52.5 million, payable by Target Corporation upon the making of the Initial Order. Target Corporation will provide further funding if required to satisfy Eligible Employee Claims to the Maximum Required Trust Contribution, following notice from the Administrator. If the Administrator considers there are excess funds, the Trustee, on the direction of the Administrator, may refund such excess to the Settlor.

207. The Employee Trust will be fully revocable until certain conditions set out below are fulfilled, as detailed in the trust agreement:

- (a) the Court grants the Initial Order which, among other things:
  - (i) approves and authorizes the creation of the Employee Trust on the terms and conditions set out in the trust agreement;
  - (ii) provides for a deemed release of claims by Eligible Employees no less favourable to TCC, Target Corporation and their affiliates than the Deemed Release Terms;
  - (iii) appoints the proposed Monitor to act in such capacity, and in addition to the other powers granted to the Monitor therein, authorizes and directs the Monitor to act as Administrator of the Employee Trust;



- (iv) declares that Target Corporation shall not be, and shall not be deemed to be, an employer or a common, related or successor employer with respect to any TCC Employee by virtue of settling the Employee Trust; and
- (v) establishes a stay of proceedings on substantially the terms and conditions requested by TCC; and
- (b) the Initial Order becomes a Final Order; and
- (c) notices of termination by TCC have been sent to Eligible Employees.

208. In summary, TCC is of the view the Employee Trust is of great benefit to its employees, estate and stakeholders because:

- (a) no funds from any of the Target Canada Entities will be used to fund the Employee Trust;
- (b) Target Corporation is the settlor of the Employee Trust and will provide all funds required, to the Maximum Required Trust Contribution;
- (c) Target Corporation will not assert any subrogation rights in respect of amounts paid out of the Employee Trust and will not seek to recover from TCC's estate any amounts paid out of the Employee Trust;
- (d) As discussed in respect of the KERP, the cost to the estate of the KERP will be reduced because of payments under the Employee Trust; and

- (e) the Employee Trust will bear the costs of its establishment and administration.

**E. Employee Representative Counsel**

209. The Target Canada Entities propose that the Court appoint Koskie Minsky LLP (“Koskie Minsky”) as Employee Representative Counsel, with Susan Philpott acting as senior counsel, to represent TCC’s employees, save and except directors and officers, including, but not limited to, assisting with questions regarding Eligible Employee Claims and other issues with respect to the Employee Trust.

210. I am advised by Sven Poysa of Osler and believe that Koskie Minsky has been appointed by the court as representative counsel in many CCAA and other restructurings, including, among others, *Air Canada*, *Nortel*, *Hollinger Canadian Publishing Holdings* and *Eaton’s*. I am advised by Mr. Poysa and believe that Koskie Minsky has extensive experience representing large groups of employees and former employees in matters involving employment-based claims for such things as termination entitlements and benefits in restructuring and liquidation situations. I am advised by Mr. Poysa and believe that Koskie Minsky also has extensive experience in establishing and advising members and trustees of employee benefit plans across Canada, and is uniquely qualified to represent TCC employees in the Proceeding.

211. I am also advised by Mr. Poysa and believe that Koskie Minsky has been consulted regarding the Employee Trust and supports the Court’s approval of the Employee Trust.

212. To the best of my knowledge, the employees have a common interest in these CCAA proceedings. I am not aware of any material conflict existing between the interests of

employees or groups of employees at this time. If any material conflict does arise in the future, Employee Representative Counsel may attend before the Court to seek directions at that time.

213. TCC is proposing that:

- (a) Employee Representative Counsel be appointed immediately, before the appointment of employees as Court-appointed representatives (the “**Employee Representatives**”), because of the importance of establishing the Employee Trust at the earliest possible time for the benefit of the employees, the estate and other stakeholders;
- (b) Employee Representative Counsel begin the process of identifying no more than seven employees to be nominated to the Court as Employee Representatives as soon as practicable, with the goal of two employees being selected from each of the three groups or regions in which TCC is organized, the Western, Central (Ontario) and Eastern (including Ottawa, Quebec and the Maritimes) Regions, and one from head office; and
- (c) opt-out rights be provided when the Employee Representatives are appointed.

214. TCC recognizes that the employees are an important stakeholder group and deserve adequate and meaningful representation in the CCAA proceeding.

215. I am advised by Mr. Poysa and believe that Koskie Minsky intends to: (i) establish a toll-free dedicated phone line and a dedicated email address through which TCC employees can obtain information about this CCAA proceeding; and (ii) post information for

TCC employees on the Koskie Minsky website, which will be regularly updated with information directed to TCC employees about the CCAA process, including a section for frequently asked questions.

216. TCC believes that Employee Representative Counsel will contribute to overall costs savings and a streamlining of the CCAA process by serving as a single point of contact between thousands of employees, the Target Canada Entities, the Monitor and the Court.

**F. Administration Charge**

217. In connection with its appointment, the Target Canada Entities propose that the Monitor, along with its counsel, counsel to the Target Canada Entities, the proposed financial advisor (Lazard, with respect to its Monthly Fee set out in the Financial Advisor Agreement, as discussed below), the real estate advisor to the Target Canada Entities (Northwest, as discussed below), the Employee Representative Counsel for the employees, and independent counsel for the Directors of the Target Canada Entities will be granted a Court-ordered charge on all of the present and future assets, property and undertakings of the Target Canada Entities as security for their respective fees and disbursements relating to services rendered in respect of the Target Canada Entities up to a maximum amount of CAD \$6.75 million (the "Administration Charge"). The Administration Charge is proposed to have first priority over all other charges.

**G. Directors' and Officers' Protection**

218. The Target Canada Entities believe that an orderly wind down will only be possible with the continued participation of their respective boards of directors and key management and employees who are essential to the viability of the orderly wind down of TCC's business.

219. I am advised by Shelley Obal of Osler and believe that, in certain circumstances, directors can be held liable for certain obligations of a company owing to employees and government entities, which may include unpaid accrued wages; unpaid accrued vacation pay; and unremitted sales, goods and services, and harmonized sales taxes.
220. It is my understanding that TCC's present and former directors and officers who are or were employed by TCC are among the potential beneficiaries under a liability insurance policy that covers an aggregate annual limit of USD \$25 million. I do not believe that this insurance policy provides sufficient coverage against the potential liability that I or other directors could incur in relation to this CCAA proceeding.
221. Certain of TCC's directors and officers who are employed by Target Corporation or certain of its subsidiaries may also be covered under a separate liability insurance policy in the amount of approximately USD \$450 million. However, I am advised by such directors and officers and believe that they are concerned about whether this policy would fully insulate them from a Canadian statutory liability in their roles as directors and officers of a Canadian corporation. In addition, I understand that there may be competing claims against the US policy as it is a broad policy that covers many other individuals in many other circumstances.
222. In light of the potential liabilities and the uncertainty surrounding available indemnities and insurance, I and the other directors and officers have indicated to the Target Canada Entities that our continued service and involvement in this proceeding is conditional upon the granting of an Order under the CCAA which grants a charge in favour of the directors and officers of the Target Canada Entities in the amount of CAD \$64 million on the property of the Target Canada Entities (the "**Directors' Charge**"). The Directors' Charge would act as

security for indemnification obligations for the Directors' potential liabilities as set out above. As noted above, the Directors' Charge is proposed to stand in priority to the proposed Financial Advisor Subordinated Charge and DIP Lender's Charge, but would be subordinate to the proposed Administration Charge and KERP Charge. The Directors' Charge is necessary so that the Target Canada Entities may benefit from their directors' and officers' experience with the business and guide TCC's liquidation and wind down efforts.

#### **H. Payments During this CCAA Proceeding**

223. During the course of this CCAA proceeding, TCC intends to make payments for goods and services supplied post-filing as set out in the cash flow projections described above and as permitted by the draft Initial Order. TCC is proposing in the Initial Order that TCC be authorized, with the consent of the Monitor, but not required, to make certain payments, including payments owing in arrears, to certain critical third parties that provide services that are integral to TCC's ability to operate during, and implement, its controlled and orderly wind down process. These third parties include key logistics or supply chain providers, customs brokers and clearing houses; parties providing freight forwarding, transportation and logistics services; armoured truck carriers; and financial institutions providing corporate credit cards, including Amex and JPMorgan, as well those involved in the cash management system. In addition, the draft order provides for the Target Canada Entities' ability to pay other categories of suppliers with the consent of the Monitor up to a maximum amount of \$10 million.

#### **I. Inventory Liquidation Process**

224. As part of the overall wind down process for the Canadian business, the Target Canada Entities are seeking the Court's approval to, in consultation with the Monitor, meet immediately with liquidation firms to solicit proposals, assess such proposals and, on subsequent

approval of the Court, enter into an agreement with a liquidator selected as part of this solicitation process.

**J. Approval of TCC's Engagement of Lazard and Northwest**

**i. *Lazard***

225. TCC is asking the Court to approve TCC's engagement of Lazard as TCC's financial advisor to develop and assist with a sales process for TCC's real estate portfolio. In the event that the Court grants the Initial Order, the Target Canada Entities will return to Court to seek approval of such process. It is my understanding that a copy of TCC's engagement letter with Lazard (the "**Financial Advisor Agreement**") will be attached as a confidential appendix to the pre-filing report of the proposed Monitor.

226. TCC solicited proposals from three investment banks and selected Lazard. TCC consulted the proposed Monitor on these proposals and the selection of Lazard. I believe that Lazard's significant experience and expertise will greatly benefit TCC. It is my understanding that Lazard is one of the world's leading investment banking and financial advisory firms, offering a broad range of corporate advisory services including, among other things, general financial advice, corporate restructurings and divestitures. It is my further understanding that Lazard has extensive worldwide experience in the reorganization and restructuring of companies, both out-of-court and in U.S. and Canadian restructuring cases.

227. As set out above, the Target Canada Entities propose that Lazard's monthly fee under the Financial Advisor Agreement (the "**Monthly Fee**") will be covered by the Administration Charge discussed above. In addition, the Target Canada Entities propose that

Lazard will be granted a Court-ordered charge on all of the present and future assets, property and undertakings of the Target Canada Entities with respect to its fees under the Financial Advisor Agreement other than its Monthly Fee thereunder (the “**Transaction Fee**”), which charge shall not exceed an aggregate amount of \$3 million (the “**Financial Advisor Subordinated Charge**”), as security for the Transaction Fee. The Financial Advisor Subordinated Charge is proposed to stand in priority to the proposed DIP Lender’s Charge, but would be subordinate to the proposed Administration Charge, KERP Charge and Directors’ Charge.

ii. *Northwest*

228. TCC is asking the Court to approve TCC’s engagement of Northwest as TCC’s real estate advisor to provide local knowledge and expertise regarding real estate market conditions and activity, and to advise and consult with Lazard in the development of a sales process for TCC’s real estate portfolio. A copy of the TCC’s proposed agreement with Northwest (the “**Real Estate Advisor Agreement**”) is attached as Exhibit V to this Affidavit.

229. It is my understanding that North West specializes in, among other things, services relating to retail leasehold interests, and has significant experience and expertise regarding retail leases in malls and other retail-related real property, including distribution centres and warehouses. In addition, North West has knowledge of, and direct experience with, many of the leases in the Target Canada Entities’ real estate portfolio. It is my further understanding that Northwest is licensed to act as a real estate broker, should it be necessary for Northwest to act in that capacity in relation to the sale of the Target Canada Entities’ real estate portfolio.



**K. Stay of Derivative Claims against Target Corporation**

230. As noted above, the draft Initial Order proposes, subject to certain exceptions regarding the Cash Management System, a temporary stay of any proceeding against or in respect of Target Corporation arising out of or in connection with any obligation of Target Corporation that is derivative of the primary liability of any of the Target Canada Entities.

231. The Target Canada Entities believe that this relief is necessary to allow the Target Canada Entities to have sufficient “breathing space” under the CCAA to focus their resources on a fair and orderly wind down process. Any derivative litigation against Target Corporation would necessarily require the participation of the Target Canada Entities and would result in a significant distraction of remaining senior management from the goals of this proceeding.

232. It is the intention of the Target Canada Entities to establish a CCAA claims process during these CCAA proceedings. The amount of these derivative claims against Target Corporation, if any, will not be known until a claims process with respect to such claims has been completed.

**L. Chapter 15 Proceedings**

233. A Chapter 15 recognition proceeding under the US Bankruptcy Code may be necessary in respect of some or all of the Target Canada Entities. As described herein, TCC Propco is a limited liability company organized under the laws of Minnesota and there are numerous relationships and flows of funds between the Target Canada Entities and entities located in the United States that may necessitate the filing of a Chapter 15 proceeding.

234. Out of an abundance of caution and to prevent delay should a Chapter 15 proceeding prove necessary, the Target Canada Entities are seeking in the Initial Order to have the Monitor authorized but not required to act as a foreign representative and commence proceedings under Chapter 15 with respect to all or some of the Target Canada Entities.

235. In all of the circumstances, including those set out below, the centre of main interest (the “COMI”) of the Target Canada Entities is in Canada. With respect to the Target Canada Entities other than TCC Propco:

- (a) each of the Target Canada Entities is incorporated or organized under the laws of Canada or provinces of Canada;
- (b) the registered office of each of the Target Canada Entities is located in Canada;
- (c) TCC’s retail operations are headquartered in Mississauga, Ontario;
- (d) the vast majority of the assets of each of the Target Canada Entities are located in Canada;
- (e) the corporate tax returns of each of the Target Canada Entities are filed in Canada;
- (f) substantially all of the employees of the Target Canada Entities are located in Canada and are paid on Canadian payroll;
- (g) the compensation and benefits paid to substantially all of the employees of the Target Canada Entities are regulated in Canada; and

(h) certain of the Target Canada Entities hold real property assets located in Canada.

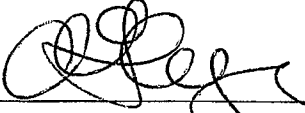
236. For TCC Propco, although it is a Minnesota limited liability company, it has been established solely to facilitate the build-out of TCC's Canadian stores and only operates in Canada.

### **Conclusion**

237. I believe that the Target Canada Entities and Target Corporation have made every reasonable effort, and assessed every available option, in their extensive efforts to find a way to succeed in Canada. However, no way was identified that could stop the significant losses projected for the foreseeable future. Given Target Corporation's decision to cease funding TCC and to effect an orderly and responsible wind down of its subsidiaries' Canadian operations, TCC has no means to continue operating. I believe that the contemplated CCAA proceeding is the optimal method – indeed, the only viable method – to effect a fair and orderly wind down process for the benefit of all stakeholders.

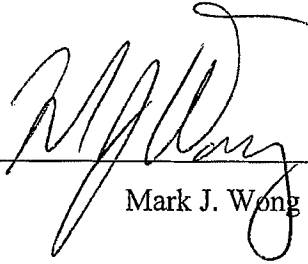
238. TCC and Target Corporation intend to wind down Canadian operations in a responsible and controlled manner and intend to treat stakeholders as fairly and equitably as the circumstances allow. The Target Canada Entities are asking the Court to approve the Employee Trust to provide a measure of financial security for employees and a DIP Facility that has been offered on favourable terms and to facilitate the orderly wind down. I am confident that granting the Initial CCAA Order sought by the Target Canada Entities is in the best interests of the Target Canada Entities and their stakeholders.

SWORN BEFORE ME at the City of  
Toronto, on the 14<sup>th</sup> day of January,  
2015.



Commissioner for taking Affidavits

Alexis Beale



Mark J. Wong

**SCHEDULE A**

**Partnerships**

1. Target Canada Pharmacy Franchising LP
2. Target Canada Mobile LP
3. Target Canada Property LP

# **TAB 3**



Court File No.  
CV-15-1022-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE ) THURSDAY, THE 15TH  
REGIONAL SENIOR JUSTICE ) DAY OF JANUARY, 2015  
MORAWETZ )

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., 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**")

**INITIAL ORDER**

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Mark J. Wong sworn January 14, 2015 and the Exhibits thereto (the "**Wong Affidavit**") and the pre-filing report dated January 14, 2015 of Alvarez & Marsal Canada Inc. ("**A&M**") in its capacity as Proposed Monitor of the Applicants (the "**Pre-Filing Report**"), and on hearing the submissions of counsel for the Applicants and the partnerships listed on Schedule "A" hereto (the "**Partnerships**", and collectively with the Applicants, the "**Target Canada Entities**"), Target Corporation, A&M, the Directors and Employee Representative Counsel, and on reading the consent of A&M to act as the Monitor,

**SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

**APPLICATION**

2. THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies. Although not Applicants, the Partnerships shall enjoy the benefits of the protections and authorizations provided by this Order.

**PLAN OF ARRANGEMENT**

3. THIS COURT ORDERS that the Applicants, individually or collectively, shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**"), between, *inter alia*, one or more of the Target Canada Entities and one or more classes of their applicable secured and/or unsecured creditors as the Applicants deem appropriate.

4. THIS COURT ORDERS that the amounts owing by Target Canada Co. ("**TCC**") to Nicollet Enterprise 1 S.à r.l. shall be subordinated and postponed to the proven claims of the unsecured creditors of TCC.

**POSSESSION OF PROPERTY AND OPERATIONS**

5. THIS COURT ORDERS that the Target Canada Entities shall remain in possession and control of their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Target Canada Entities shall continue to carry on business in a manner consistent with the preservation of the value of their business (the "**Business**") and Property. The Target Canada Entities shall each be authorized and empowered to continue to retain and employ the employees, advisors, consultants, agents, experts, appraisers, valuers, brokers, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty to retain such further



Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. THIS COURT ORDERS that the Target Canada Entities shall be entitled to continue to utilize the central cash management system currently in place as described in the Wong Affidavit or, with the consent of the Monitor and the DIP Lender (as defined herein), replace it with another substantially similar central cash management system (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System (including, without limitation, Royal Bank of Canada, The Toronto-Dominion Bank, Bank of America and JPMorgan Chase Bank, National Association (“**JPMorgan**”)) shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Target Canada Entities of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Target Canada Entities, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

7. THIS COURT ORDERS that the Target Canada Entities (other than Target Canada Property LLC and Target Canada Property LP) (collectively, the “**DIP Entities**”) shall segregate all cash and non-cash receipts arising out of or in connection with the sale of the following Property of the DIP Entities (the “**DIP Property**”), which receipts shall be held in trust by the DIP Entities as follows:

- (a) net cash proceeds of any sale or other disposition (including as a result of casualty or condemnation) by the DIP Entities of any DIP Property other than inventory (whether such inventory is sold or disposed of through return to the vendor or wholesaler, the liquidation of the inventory by a liquidation agent if appointed by the Court in connection with the Liquidation Agent Solicitation Process (as defined herein) or otherwise), which shall be held in trust for and on behalf of the DIP Lender (as defined herein) and applied, except as otherwise agreed by the DIP Lender in

writing as follows, pursuant to and in accordance with the Term Sheet (as defined herein):

- (i) first, to pay accrued and unpaid interest on, and expenses in respect of, the DIP Obligations (as defined herein);
- (ii) second, to repay any principal amounts or other DIP Obligations outstanding; and
- (iii) third, the balance to be paid to the DIP Entities.

8. THIS COURT ORDERS that the Target Canada Entities shall be entitled but not required to pay the following expenses whether incurred prior to, on or after this Order to the extent that such expenses are incurred and payable by the Target Canada Entities:

- (a) all outstanding and future wages, salaries, employee benefits (including, without limitation, employee medical, dental and similar benefit plans or arrangements), vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements, and all other payroll processing expenses;
- (b) all outstanding or future amounts owing in respect of customer rebates, refunds, discounts or other amounts on account of similar customer programs or obligations;
- (c) all outstanding or future amounts related to honouring gift cards issued before or after the date of this Order;
- (d) the fees and disbursements of any Assistants retained or employed by the Target Canada Entities at their standard rates and charges;
- (e) with the consent of the Monitor, amounts owing for goods or services actually supplied to the Target Canada Entities prior to the date of this Order by:
  - (i) logistics or supply chain providers, including customs brokers and freight forwarders and security and armoured truck carriers;
  - (ii) providers of credit, debit and gift card processing related services; and

- (iii) other third party suppliers up to a maximum aggregate amount of \$10,000,000, if, in the opinion of the Target Canada Entities, the supplier is critical to the Orderly Wind-down (as defined herein); and
- (f) any and all sums due and owing to Amex Bank of Canada and JPMorgan in respect of credit cards issued to management and employees of the Target Canada Entities.

9. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Target Canada Entities shall be entitled but not required to pay all reasonable expenses incurred by them in carrying on the Business in the ordinary course during the Orderly Wind-down after this Order, and in carrying out the provisions of this Order and any other Order of this Court, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Target Canada Entities following the date of this Order.

10. THIS COURT ORDERS that the Target Canada Entities shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from the Target Canada Entities' employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services taxes, harmonized sales taxes or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Target Canada Entities in connection with the sale of goods and services by the Target Canada Entities, but only where such Sales Taxes are accrued or collected after the date of this Order, or

where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order;

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business, workers' compensation or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Target Canada Entities; and
- (d) taxes under the *Income Tax Act* (Canada) or other relevant taxing statute giving rise to any statutory deemed trust amounts in favour of the Crown in right of Canada or any Province thereof or any political subdivision thereof or any other taxation authority.

11. THIS COURT ORDERS that, except as specifically permitted herein, the Target Canada Entities are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by any one of the Target Canada Entities to any of their creditors as of the date of this Order; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of the Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business or pursuant to this Order or any other Order of the Court.

#### **ORDERLY WIND-DOWN**

12. THIS COURT ORDERS that the Target Canada Entities shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the term sheet (the "**Term Sheet**") governing the DIP Facility (as defined herein), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their respective businesses or operations, and to dispose of redundant or non-material assets not exceeding \$1,000,000 in any one transaction or \$5,000,000 in the aggregate;
- (b) terminate the employment of such of their employees or temporarily lay off such of their employees as the relevant Target Canada Entity deems appropriate;

- (c) pursue all offers for sales of material parts of the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any sale (except as permitted by paragraph 12(a)) above;
- (d) in consultation with, and with the oversight of, the Monitor, engage in discussions with and solicit proposals and agreement(s) from third parties in respect of the liquidation of the inventory, furniture, equipment and fixtures located in and/or forming part of the Property (the "**Liquidation Agent Solicitation Process**") and return to Court for approval of such agreement(s); and
- (e) to apply to this Court for such approval, vesting or other Orders as may be necessary to consummate sale transactions for all or any part of the Property,

all of the foregoing to permit the Target Canada Entities to proceed with an orderly wind-down of the Business (the "**Orderly Wind-down**").

#### **REAL PROPERTY LEASES**

13. THIS COURT ORDERS that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Target Canada Entities shall pay, without duplication, all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts normally payable to the landlord under its lease, but for greater certainty, excluding accelerated rent) or as otherwise may be negotiated between the applicable Target Canada Entity and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

14. THIS COURT ORDERS that the Target Canada Entities shall provide each of the relevant landlords with notice of the relevant Target Canada Entity's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the relevant Target Canada Entity's entitlement to remove any such fixture under the provisions of the lease, such fixture

shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the relevant Target Canada Entity, or by further Order of this Court upon application by the Target Canada Entities on at least two (2) days' notice to such landlord and any such secured creditors. If any of the Target Canada Entities disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the relevant Target Canada Entity's claim to the fixtures in dispute.

15. THIS COURT ORDERS that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA by any of the Target Canada Entities, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the relevant Target Canada Entity and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Target Canada Entities in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

16. THIS COURT ORDERS that, notwithstanding anything to the contrary in any real property lease or elsewhere, the Target Canada Entities shall have no obligation to stock or re-stock and/or operate from any of its locations and/or remodel, fixture or open any new or renovated stores during these proceedings.

#### **STAY OF PROCEEDINGS**

17. THIS COURT ORDERS that until and including February 13, 2015, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Target Canada Entities or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the written consent of the Target Canada Entities and the Monitor, or with leave of this Court, and any and

all Proceedings currently under way against or in respect of the Target Canada Entities or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

18. THIS COURT ORDERS that during the Stay Period, no Person having any agreements or arrangements with the owners, operators, managers or landlords of commercial shopping centres or other commercial properties (including retail, office and industrial (warehouse) properties) in which there is located a store, office or warehouse owned or operated by the Target Canada Entities shall take any Proceedings or exercise any rights or remedies under such agreements or arrangements that may arise upon and/or as a result of the making of this Order, the declarations of insolvency by the Target Canada Entities or as a result of any steps taken by the Target Canada Entities pursuant to this Order and, without limiting the generality of the foregoing, no Person shall terminate, accelerate, suspend, modify, determine or cancel any such arrangement or agreement or be entitled to exercise any rights or remedies in connection therewith.

19. THIS COURT ORDERS that during the Stay Period, no Proceeding shall be commenced or continued against or in respect of Target Corporation and its direct and indirect subsidiaries (other than the Target Canada Entities) (collectively, "Target US") arising out of or in connection with any right, remedy or claim of any Person (as defined herein) against Target US in connection with any indebtedness, indemnity, liability or obligation of any kind whatsoever of Target US under contract, statute or otherwise, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by indemnity, guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including the right or ability of any Person to advance a claim for contribution, indemnity or otherwise, with respect to any matter, action, cause or chose in action, whether existing at present or commenced in future, which indebtedness, indemnity, liability or obligation is derivative of the primary liability of the Target Canada Entities except with the written consent of the Target Canada Entities and Target US and the Monitor, or with leave of this Court; provided that this paragraph shall not apply to any present or future bank providing the Cash Management System (including, without limitation, Royal Bank of Canada, The Toronto-Dominion Bank, Bank of America and

JPMorgan) in connection with any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

20. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “Persons” and each being a “Person”) against or in respect of the Target Canada Entities or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the prior written consent of the Target Canada Entities and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Target Canada Entities to carry on any business which the Target Canada Entities are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien, and provided further that this paragraph shall not apply to any present or future bank providing the Cash Management System (including, without limitation, Royal Bank of Canada, The Toronto-Dominion Bank, Bank of America and JPMorgan) in connection with any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

#### **NO INTERFERENCE WITH RIGHTS**

21. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence or permit in favour of or held by the Target Canada Entities, except with the written consent of the relevant Target Canada Entity and the Monitor, or leave of this Court. Without limiting the foregoing, no right, option, remedy, and/or exemption in favour of the relevant Target Canada Entity shall be or shall be deemed to be negated, suspended, waived and/or terminated as a result of this Order.

#### **CONTINUATION OF SERVICES**

22. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Target Canada Entities or statutory or regulatory mandates for the supply



of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, cash management services, payroll and benefits services, pharmaceutical services, insurance, warranty services, transportation services, freight services, security and armoured truck carrier services, utility, customs clearing, warehouse and logistics services or other services to the Business or the Target Canada Entities, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Target Canada Entities, and that the Target Canada Entities shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Target Canada Entities in accordance with normal payment practices of the Target Canada Entities or such other practices as may be agreed upon by the supplier or service provider and each of the Target Canada Entities and the Monitor, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

23. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Target Canada Entities. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

#### **KEY EMPLOYEE RETENTION PLAN**

24. THIS COURT ORDERS that the Key Employees Retention Plan (the "KERP"), as described in the Wong Affidavit, is hereby approved and the Target Canada Entities are authorized to make payments contemplated thereunder in accordance with the terms and conditions of the KERP.

25. THIS COURT ORDERS that the key employees referred to in the KERP shall be entitled to the benefit of and are hereby granted a charge (the "KERP Charge") on the Property, which charge shall not exceed an aggregate amount of \$6.5 million to secure

amounts owing to such key employees under the KERP. The KERP Charge shall have the priority set out in paragraphs 63 and 65 herein.

### **EMPLOYEE TRUST**

26. THIS COURT ORDERS that the creation of the Employee Trust, as defined and described in the Wong Affidavit, is hereby approved on substantially the terms and conditions set out in the Employee Trust Agreement, including without limitation the appointments of Hon. John D. Ground as trustee and the Monitor as administrator (the “**Administrator**”) of the Employee Trust and authorizes and directs the Monitor to act in such capacity.

27. THIS COURT ORDERS that TCC is authorized to process or cause to be processed all amounts received from the Employee Trust, including making payments to the Beneficiaries (as defined in the Employee Trust Agreement), subject to and in accordance with the terms and conditions of the Employee Trust Agreement.

28. THIS COURT ORDERS that the amounts received by TCC from the Employee Trust in the hands of TCC and when paid to any payment processor shall be deemed to be held in trust for and on behalf of the Beneficiaries, subject to and in accordance with the Employee Trust Agreement and shall not constitute property of TCC, including, without limitation, under the CCAA and the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) and shall not be subject to the claims of any person other than as provided under the Employee Trust Agreement.

29. THIS COURT ORDERS that the creation, establishment, funding and administration of the Employee Trust shall not, in whole or in part, directly or indirectly, (a) cause Target US to be or be deemed to be, or (b) in any way be relied upon to claim or assert that Target US is or is deemed to be, either (i) an employer or (ii) a common or related employer under contract, statute, common law or otherwise of any employee of the Target Canada Entities.

30. THIS COURT ORDERS that:

- (a) each Beneficiary shall be deemed to release the Releasees (as defined in the Employee Trust Agreement) on the payment of a distribution from the Employee Trust in respect of such Beneficiary’s Eligible Employee Claim (as defined in the

Employee Trust Agreement), to the extent of such distribution (the “**Payment Release**”); and

- (b) each Beneficiary shall be deemed to release the Releasees in respect of the full amount of the Beneficiary’s Eligible Employee Claim 60 days after the final payment to such Beneficiary under the Employee Trust or such later date as the Monitor in its sole discretion may designate, provided that the Beneficiary has not, on or before such date, provided notice of dispute to the Monitor and Employee Representative Counsel (as defined herein) substantially in the manner and form attached as Schedule “B”; provided further that in the event of any insufficiency of Trust funds to cover an individual’s total Eligible Employee Claim, only the Payment Release shall be effective and there shall be no deemed full and final release of the full Eligible Employee Claim.

#### **EMPLOYEE REPRESENTATIVE COUNSEL**

31. THIS COURT ORDERS that Koskie Minsky LLP (“**Employee Representative Counsel**”) is hereby appointed as counsel for all employees other than officers and directors (the “**Employees**”) of the Target Canada Entities in these proceedings, any proceeding under the BIA or in any other proceeding respecting the insolvency of the Applicants which may be brought before this Honourable Court (the “**Insolvency Proceedings**”), for any issues affecting the Employees in the Insolvency Proceedings including, without limitation, with respect to the Employee Trust Agreement and the Claims Process (as defined in the Employee Trust Agreement).

32. THIS COURT ORDERS that the Employee Representative Counsel shall commence the process of identifying no more than 7 Employees to be nominated as Court-appointed representatives (the “**Employee Representatives**”) as soon as practicable. The Employee Representatives, once appointed, shall represent the Employees in the Insolvency Proceedings, including, without limitation, for the purpose of settling or compromising claims by the Employees in the Insolvency Proceedings.

33. THIS COURT ORDERS that notice of the appointment of Employee Representative Counsel shall be provided to the Employees by:

- (a) referring thereto in a letter to be sent to the Employees, other than former employees, by Target Canada Entities, no later than January 19, 2015;
- (b) postings in each place of work;
- (c) notice on the Monitor's Website (as defined herein) and on the Representative Counsel's website; and
- (d) referring thereto in the notices provided for in paragraph 69 below.

34. THIS COURT ORDERS that the Target Canada Entities shall provide to Employee Representative Counsel, without charge:

- (a) the names, last known address and last known email addresses (if any) of all the Employees as well as applicable data regarding their entitlements, subject to a confidentiality agreement and to only be used for the purposes of these proceedings; and
- (b) upon request of Employee Representative Counsel, such documents and data as may be relevant to matters relating to the issues in these proceedings, including documents and data pertaining to the various benefits, termination allowance plans, severance and termination payments and other arrangements for group health, life insurance, retirement and severance payments, including up to date financial information regarding the funding and investments of any of these arrangements.

35. THIS COURT ORDERS that all reasonable fees and disbursements as may have been incurred by the Employee Representative Counsel prior to the date of this Order or which shall be incurred by the Employee Representative Counsel shall be paid by the Target Canada Entities on a weekly basis, forthwith upon the rendering of accounts to the Target Canada Entities. In the event of any disagreement regarding such fees, such matters may be remitted to this Court for determination.

36. THIS COURT ORDERS that Employee Representative Counsel is authorized to take all steps and to do all acts necessary or desirable to carry out the terms of this Order, including

dealing with any Court, regulatory body or other government ministry, department or agency, and to take all such steps as are necessary or incidental thereto.

37. THIS COURT ORDERS that Employee Representative Counsel shall have no liability as a result of its appointment or the fulfilment of its duties in carrying out the provisions of this Order save and except for any gross negligence or wilful misconduct on its part.

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

38. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Target Canada Entities with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Target Canada Entities whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Target Canada Entities, if one is filed, is sanctioned by this Court or is refused by the creditors of the Target Canada Entities or this Court.

#### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

39. THIS COURT ORDERS that the Target Canada Entities shall jointly and severally indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Target Canada Entities after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

40. THIS COURT ORDERS that the directors and officers of the Target Canada Entities shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$64 million, as security for the indemnity provided in paragraph 39 of this Order. The Directors' Charge shall have the priority set out in paragraphs 63 and 65 herein.

41. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 39 of this Order.

#### **APPROVAL OF ADVISOR AGREEMENTS**

42. THIS COURT ORDERS that the agreement dated January 14, 2015 engaging Lazard Freres & Co. LLC ("**Lazard**") as financial advisor to TCC in connection with the sales process for the real property assets held by the Target Canada Entities (the "**Real Property Portfolio Sales Process**") in the form attached as a confidential appendix to the Pre-Filing Report (the "**Financial Advisor Agreement**"), and the retention of Lazard under the terms thereof, is hereby ratified and approved and the Target Canada Entities are authorized and directed to make the payments contemplated thereunder in accordance with the terms and conditions of the Financial Advisor Agreement.

43. THIS COURT ORDERS that Confidential Appendix "A" to the Pre-Filing Report shall be and is hereby sealed, kept confidential and shall not form part of the public record.

44. THIS COURT ORDERS that the agreement dated January 14, 2015 engaging Northwest Atlantic (Canada) Inc. ("**Northwest**") to provide real estate advisory services, including any required brokerage services, to TCC in respect of the Real Property Portfolio Sales Process in the form attached as Exhibit V to the Wong Affidavit (the "**Real Estate Advisor Agreement**"), and the retention of Northwest under the terms thereof, is hereby ratified and approved and the Target Canada Entities are authorized and directed to make the payments contemplated thereunder in accordance with the terms and conditions of the Real Estate Advisor Agreement.

45. THIS COURT ORDERS that Lazard and Northwest shall consult with and report to the Monitor on a regular basis in connection with the Real Property Portfolio Sales Process.

**APPOINTMENT OF MONITOR**

46. THIS COURT ORDERS that Alvarez & Marsal Canada Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Target Canada Entities with the powers and obligations set out in the CCAA or set forth herein and that the Target Canada Entities and their direct and indirect shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Target Canada Entities pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

47. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Target Canada Entities' receipts and disbursements;
- (b) assist with the wind-down of the Business and operations of the Target Canada Entities;
- (c) liaise with Assistants with respect to all matters relating to the Property, the Business and such other matters as may be relevant to the proceedings herein;
- (d) oversee and consult with Lazard and Northwest with respect to the Real Property Portfolio Sales Process;
- (e) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, the Shared Services, the Orderly Wind-down and such other matters as may be relevant to the proceedings herein;
- (f) assist the Target Canada Entities, to the extent required by the Target Canada Entities, in their dissemination to the DIP Lender and its counsel of financial and other information as agreed to between the Target Canada Entities and the DIP Lender

which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;

- (g) advise the Target Canada Entities in their preparation of the Target Canada Entities' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis in accordance with the Term Sheet;
- (h) advise the Target Canada Entities in their development of the Plan and any amendments to the Plan;
- (i) assist the Target Canada Entities, to the extent required by the Target Canada Entities, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (j) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Target Canada Entities, to the extent that is necessary to adequately assess the Target Canada Entities' business and financial affairs or to perform its duties arising under this Order;
- (k) oversee and consult with the Target Canada Entities, any liquidation agent selected through the Liquidation Agent Solicitation Process and any Assistants retained (including brokers), to the extent required, with any and all wind-down activities and/or any marketing or sale of the Property and the Business or any part thereof;
- (l) administer the Employee Trust, in its role as Administrator thereof, in consultation with the Trustee thereof, TCC and Employee Representative Counsel;
- (m) be at liberty to engage independent legal counsel or such other persons, or utilize the services of employees of its affiliates, as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;



- (n) be at liberty to serve as a “foreign representative” of the Applicants in any proceeding outside Canada;
- (o) assist the Target Canada Entities, to the extent required by the Target Canada Entities, with any matters relating to any foreign proceeding commenced in relation to any of the Target Canada Entities, including retaining independent legal counsel, agents, experts, accountants or such other persons as the Monitor deems necessary or desirable respecting the exercise of this power; and
- (p) perform such other duties as are required by this Order or by this Court from time to time.

48. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

49. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

50. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Target Canada Entities and the DIP Lender with information provided by the Target Canada Entities in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Target Canada Entities is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Target Canada Entities may agree.

51. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, including for greater certainty in the Monitor's capacity as Administrator of the Employee Trust, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

52. THIS COURT ORDERS that the Monitor, counsel to the Monitor, counsel to the Target Canada Entities and counsel to the Directors shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to or subsequent to the date of this Order by the Target Canada Entities as part of the costs of these proceedings. The Target Canada Entities are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor, counsel for the Target Canada Entities and counsel to the Directors on a weekly basis and, in addition, the Target Canada Entities are hereby authorized to pay to the Monitor, counsel to the Monitor, counsel to the Target Canada Entities and counsel to the Directors retainers in the aggregate amount of \$1,000,000 to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

53. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

54. THIS COURT ORDERS that the Monitor, counsel to the Monitor, counsel to the Target Canada Entities, counsel to the Directors, Employee Representative Counsel, Lazard (with respect to its Monthly Fee set out in the Financial Advisor Agreement) and Northwest shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$6.75 million, as security for their professional fees and disbursements incurred at their respective standard rates and charges, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 63 and 65 hereof.

55. THIS COURT ORDERS that Lazard shall be entitled to the benefit of and is hereby granted a charge (the "**Financial Advisor Subordinated Charge**") on the Property with respect to its fees under the Financial Advisor Agreement other than its Monthly Fee thereunder (the "**Transaction Fee**"), which charge shall not exceed an aggregate amount of \$3 million, as security for the Transaction Fee. The Financial Advisor Subordinated Charge shall have the priority set out in paragraphs 63 and 65 hereof.

#### **DIP FINANCING**

56. THIS COURT ORDERS that the DIP Entities are hereby authorized and empowered to obtain and borrow, on a joint and several basis, under a credit facility from Target Corporation (the "**DIP Lender**") in order to finance the DIP Entities' working capital requirements and other general corporate purposes and allow them to make such other payments as permitted under this Order and the Term Sheet (the "**DIP Facility**"), provided that borrowings under the DIP Facility shall not exceed US\$175 million unless permitted by further Order of this Court.

57. THIS COURT ORDERS that the DIP Facility shall be on the terms and subject to the conditions set forth in the Term Sheet.

58. THIS COURT ORDERS that the DIP Facility and the Term Sheet be and are hereby approved and the DIP Entities are hereby authorized and directed to execute and deliver the Term Sheet.

59. THIS COURT ORDERS that the DIP Entities are hereby authorized and empowered to execute and deliver the promissory note as is contemplated by the Term Sheet (the

“**Promissory Note**”), and the DIP Entities are hereby authorized and directed to pay and perform all of their respective indebtedness, interest, liabilities and obligations to the DIP Lender under and pursuant to the Term Sheet and the Promissory Note as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

60. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the “**DIP Lender’s Charge**”) on the DIP Property, as security for any and all obligations of the DIP Entities under the DIP Facility, the Term Sheet and the Promissory Note (including on account of principal, interest, fees, expenses and other liabilities) (the aggregate of all such obligations being the “**DIP Obligations**”), which DIP Lender’s Charge shall be in the aggregate amount of the DIP Obligations outstanding at any given time. The DIP Lender’s Charge shall not secure an obligation that exists before this Order is made. The DIP Lender’s Charge shall have the priority set out in paragraphs 63 and 65 hereof.

61. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender’s Charge or the Promissory Note;
- (b) upon the occurrence of an event of default under the Term Sheet, the Promissory Note or the DIP Lender’s Charge, the DIP Lender, upon 3 business days’ prior written notice to the DIP Entities and the Monitor and on application to the Court, may exercise any and all of its rights and remedies against the DIP Entities or the DIP Property under or pursuant to the Term Sheet, the Promissory Note and the DIP Lender’s Charge, including without limitation, to cease making advances to the DIP Entities and set off and/or consolidate any amounts owing by the DIP Lender to the DIP Entities against the obligations of the DIP Entities to the DIP Lender under the Term Sheet, the Promissory Note or the DIP Lender’s Charge, to give notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the DIP Entities and for the appointment of a trustee in bankruptcy of the DIP Entities; and

- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the DIP Entities or the DIP Property.

62. THIS COURT ORDERS AND DECLARES that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Target Canada Entities, or any of them, under the CCAA, or any proposal filed by the Target Canada Entities, or any of them, under the BIA, with respect to any advances made under the DIP Facility, the Term Sheet or the Promissory Note.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

63. THIS COURT ORDERS that the priorities of the Administration Charge, the KERP Charge, the Directors' Charge, the Financial Advisor Subordinated Charge and the DIP Lender's Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$6.75 million);

Second – KERP Charge (to the maximum amount of \$6.5 million);

Third – Directors' Charge (to the maximum amount of \$64 million);

Fourth – Financial Advisor Subordinated Charge (to the maximum amount of \$3 million); and

Fifth – DIP Lender's Charge.

64. THIS COURT ORDERS that the filing, registration or perfection of the Administration Charge, the KERP Charge, the Directors' Charge, the Financial Advisor Subordinated Charge, and the DIP Lender's Charge, (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

65. THIS COURT ORDERS that each of the Administration Charge, the KERP Charge, the Directors' Charge and the Financial Advisor Subordinated Charge shall constitute a charge

on the Property and the DIP Lender's Charge shall constitute a charge on the DIP Property and such Charges (other than the DIP Lender's Charge) shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person, except for any Person who is a "secured creditor" as defined in the CCAA. For greater certainty, the DIP Lender's Charge shall rank behind all Encumbrances in favour of any Person.

66. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Target Canada Entities shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Administration Charge, the KERP Charge, the Directors' Charge and the Financial Advisor Subordinated Charge, unless the Target Canada Entities also obtain the prior written consent of the Monitor and the beneficiaries of the Administration Charge, the KERP Charge, the Directors' Charge and the Financial Advisor Subordinated Charge, or further Order of this Court.

67. THIS COURT ORDERS that the Administration Charge, the KERP Charge, the Directors' Charge, the Financial Advisor Subordinated Charge, the Term Sheet, the Promissory Note and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Target Canada Entities, or any of them, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Term Sheet or the Promissory Note shall create or be deemed

to constitute a breach by any of the Target Canada Entities of any Agreement to which they are a party;

- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Target Canada Entities entering into the Term Sheet, the creation of the Charges, or the execution, delivery or performance of the Promissory Note; and
- (c) the payments made by the Target Canada Entities pursuant to this Order, the Term Sheet or the Promissory Note, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

68. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the relevant Target Canada Entity's interest in such real property leases.

#### **SERVICE AND NOTICE**

69. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) and La Presse a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send or cause to be sent, in the prescribed manner, a notice to every known creditor who has a claim against the Target Canada Entities of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of individuals who are creditors publicly available.

70. THIS COURT ORDERS that any employee of any of the Target Canada Entities that receives a notice of termination from any of the Target Canada Entities shall be deemed to have received such notice of termination by no more than the seventh day following the date such notice of termination is delivered, if such notice of termination is sent by ordinary mail, expedited parcel or registered mail.

71. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Guide") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL: <http://www.alvarezandmarsal.com/targetcanada> (the "Monitor's Website").

72. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Guide is not practicable, the Target Canada Entities and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Target Canada Entities' creditors or other interested parties at their respective addresses as last shown on the records of the Target Canada Entities and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

#### **GENERAL**

73. THIS COURT ORDERS that the Target Canada Entities or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

74. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Target Canada Entities, the Business or the Property.

75. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give



effect to this Order and to assist the Target Canada Entities, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Target Canada Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Target Canada Entities and the Monitor and their respective agents in carrying out the terms of this Order.

76. THIS COURT ORDERS that each of the Target Canada Entities and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including acting as the foreign representative of the Target Canada Entities to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1330, as amended, and to act as foreign representative in respect of any such proceedings and any ancillary relief in respect thereto.

77. THIS COURT ORDERS that any interested party (including the Target Canada Entities and the Monitor) may apply to this Court to vary or amend this Order at the comeback motion scheduled for February 11, 2015, on not less than seven (7) calendar days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

78. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

JAN 15 2015

MJ

 R.S.W.

**SCHEDULE "A"**  
**PARTNERSHIPS**

Target Canada Pharmacy Franchising LP  
Target Canada Mobile LP  
Target Canada Property LP

**SCHEDULE "B"**  
**NOTICE OF DISPUTE REGARDING ELIGIBLE EMPLOYEE CLAIM**

I, \_\_\_\_\_ (insert name and employee number if known), am disputing that I have been paid in full in respect of my Eligible Employee Claim, as such term is defined in the Employee Trust Agreement. **\*\*Please see the Monitor's website at [www.alvarezandmarsal.com/targetcanada](http://www.alvarezandmarsal.com/targetcanada) or Employee Representative Counsel's website at [www.kmlaw.ca](http://www.kmlaw.ca) for further information.\*\***

I am a \_\_\_\_\_ (insert position) in the Target Canada Co. store located at \_\_\_\_\_ (insert address/location).

The basis for my objection is:  
(insert full particulars regarding dispute, including all facts and calculations on which you are relying)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Based on the foregoing, I claim that I am owed the sum of \$\_\_\_\_\_.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

Signature: \_\_\_\_\_

Address: \_\_\_\_\_

Tel: \_\_\_\_\_

Email: \_\_\_\_\_

**METHOD OF DELIVERY:**

This notice of dispute must be sent to Employee Representative Counsel and to the Monitor at the following addresses:

To Employee Representative Counsel:

Koskie Minsky LLP  
20 Queen Street West  
Suite 900, Box 52  
Toronto, ON M5H 3R3

Attention: Susan Philpott  
Fax: (416) 204-2897  
Email: targetemployees@kmlaw.ca

To the Monitor at:

Alvarez & Marsal Canada Inc.  
Royal Bank Plaza, South Tower  
200 Bay Street, Suite 2900  
P.O. Box 22  
Toronto, ON M5J 2J1

Attention: Target Canada Monitor  
Fax: (416) 847-5201  
Email: targetcanada.monitor@alvarezandmarsal.com

**NOTE: THIS MUST BE SENT TO EMPLOYEE REPRESENTATIVE COUNSEL AND THE MONITOR NO LATER THAN 45 DAYS AFTER YOU RECEIVE YOUR LAST PAYMENT FROM TCC PAYROLL.**

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.

Applicants

Court File No. **CN-15-108320-1**

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

PROCEEDING COMMENCED AT  
TORONTO

**INITIAL ORDER**

**OSLER, HOSKIN & HARCOURT LLP**  
Box 50, 1 First Canadian Place  
Toronto, Canada M5X 1B8

Tracy Sandler (LSUC #: 32443N)  
Jeremy Dacks (LSUC #: 41851R)  
Shawn Irving (LSUC #: 50035U)  
Robert Carson (LSUC #: 57364H)

Tel: (416) 362-2111  
Fax: (416) 862-6666

Lawyers for the Applicants

Matter No: 1159785



**TAB 4**

**CITATION:** Target Canada Co. (Re), 2015 ONSC 303  
**COURT FILE NO.:** CV-15-10832-00CL  
**DATE:** 2015-01-16

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** 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., 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.

**BEFORE:** Regional Senior Justice Morawetz

**COUNSEL:** *Tracy Sandler* and *Jeremy Dacks*, for the 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”)

*Jay Swartz*, for the Target Corporation

*Alan Mark*, *Melaney Wagner*, and *Jesse Mighton*, for the Proposed Monitor,  
Alvarez and Marsal Canada ULC (“Alvarez”)

*Terry O’Sullivan*, for The Honourable J. Ground, Trustee of the Proposed  
Employee Trust

*Susan Philpott*, for the Proposed Employee Representative Counsel for employees  
of the Applicants

**HEARD and ENDORSED:** January 15, 2015

**REASONS:** January 16, 2015

**ENDORSEMENT**

[1] Target Canada Co. (“TCC”) and the other applicants listed above (the “Applicants”) seek relief under the *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (the “CCAA”). While the limited partnerships listed in Schedule “A” to the draft Order (the “Partnerships”) are not applicants in this proceeding, the Applicants seek to have a stay of proceedings and other benefits of an initial order under the CCAA extended to the Partnerships, which are related to or carry on operations that are integral to the business of the Applicants.



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[2] TCC is a large Canadian retailer. It is the Canadian operating subsidiary of Target Corporation, one of the largest retailers in the United States. The other Applicants are either corporations or partners of the Partnerships formed to carry on specific aspects of TCC's Canadian retail business (such as the Canadian pharmacy operations) or finance leasehold improvements in leased Canadian stores operated by TCC. The Applicants, therefore, do not represent the entire Target enterprise; the Applicants consist solely of entities that are integral to the Canadian retail operations. Together, they are referred as the "Target Canada Entities".

[3] In early 2011, Target Corporation determined to expand its retail operations into Canada, undertaking a significant investment (in the form of both debt and equity) in TCC and certain of its affiliates in order to permit TCC to establish and operate Canadian retail stores. As of today, TCC operates 133 stores, with at least one store in every province of Canada. All but three of these stores are leased.

[4] Due to a number of factors, the expansion into Canada has proven to be substantially less successful than expected. Canadian operations have shown significant losses in every quarter since stores opened. Projections demonstrate little or no prospect of improvement within a reasonable time.

[5] After exploring multiple solutions over a number of months and engaging in extensive consultations with its professional advisors, Target Corporation concluded that, in the interest of all of its stakeholders, the responsible course of action is to cease funding the Canadian operations.

[6] Without ongoing investment from Target Corporation, TCC and the other Target Canada Entities cannot continue to operate and are clearly insolvent. Due to the magnitude and complexity of the operations of the Target Canada Entities, the Applicants are seeking a stay of proceedings under the CCAA in order to accomplish a fair, orderly and controlled wind-down of their operations. The Target Canada Entities have indicated that they intend to treat all of their stakeholders as fairly and equitably as the circumstances allow, particularly the approximately 17,600 employees of the Target Canada Entities.

[7] The Applicants are of the view that an orderly wind-down under Court supervision, with the benefit of inherent jurisdiction of the CCAA, and the oversight of the proposed monitor, provides a framework in which the Target Canada Entities can, among other things:

- a) Pursue initiatives such as the sale of real estate portfolios and the sale of inventory;
- b) Develop and implement support mechanisms for employees as vulnerable stakeholders affected by the wind-down, particularly (i) an employee trust (the "Employee Trust") funded by Target Corporation; (ii) an employee representative counsel to safeguard employee interests; and (iii) a key employee retention plan (the "KERP") to provide essential employees who agree to continue their employment and to contribute their services and expertise to the Target Canada Entities during the orderly wind-down;

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- c) Create a level playing field to ensure that all affected stakeholders are treated as fairly and equitably as the circumstances allow; and
- d) Avoid the significant maneuvering among creditors and other stakeholders that could be detrimental to all stakeholders, in the absence of a court-supervised proceeding.

[8] The Applicants are of the view that these factors are entirely consistent with the well-established purpose of a CCAA stay: to give a debtor the “breathing room” required to restructure with a view to maximizing recoveries, whether the restructuring takes place as a going concern or as an orderly liquidation or wind-down.

[9] TCC is an indirect, wholly-owned subsidiary of Target Corporation and is the operating company through which the Canadian retail operations are carried out. TCC is a Nova Scotia unlimited liability company. It is directly owned by Nicollet Enterprise 1 S. à r.l. (“NE1”), an entity organized under the laws of Luxembourg. Target Corporation (which is incorporated under the laws of the State of Minnesota) owns NE1 through several other entities.

[10] TCC operates from a corporate headquarters in Mississauga, Ontario. As of January 12, 2015, TCC employed approximately 17,600 people, almost all of whom work in Canada. TCC’s employees are not represented by a union, and there is no registered pension plan for employees.

[11] The other Target Canada Entities are all either: (i) direct or indirect subsidiaries of TCC with responsibilities for specific aspects of the Canadian retail operation; or (ii) affiliates of TCC that have been involved in the financing of certain leasehold improvements.

[12] A typical TCC store has a footprint in the range of 80,000 to 125,000 total retail square feet and is located in a shopping mall or large strip mall. TCC is usually the anchor tenant. Each TCC store typically contains an in-store Target brand pharmacy, Target Mobile kiosk and a Starbucks café. Each store typically employs approximately 100 – 150 people, described as “Team Members” and “Team Leaders”, with a total of approximately 16,700 employed at the “store level” of TCC’s retail operations.

[13] TCC owns three distribution centres (two in Ontario and one in Alberta) to support its retail operations. These centres are operated by a third party service provider. TCC also leases a variety of warehouse and office spaces.

[14] In every quarter since TCC opened its first store, TCC has faced lower than expected sales and greater than expected losses. As reported in Target Corporation’s Consolidated Financial Statements, the Canadian segment of the Target business has suffered a significant loss in every quarter since TCC opened stores in Canada.

[15] TCC is completely operationally funded by its ultimate parent, Target Corporation, and related entities. It is projected that TCC’s cumulative pre-tax losses from the date of its entry into the Canadian market to the end of the 2014 fiscal year (ending January 31, 2015) will be more than \$2.5 billion. In his affidavit, Mr. Mark Wong, General Counsel and Secretary of TCC, states that this is more than triple the loss originally expected for this period. Further, if TCC’s operations are not wound down, it is projected that they would remain unprofitable for at least 5

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years and would require significant and continued funding from Target Corporation during that period.

[16] TCC attributes its failure to achieve expected profitability to a number of principal factors, including: issues of scale; supply chain difficulties; pricing and product mix issues; and the absence of a Canadian online retail presence.

[17] Following a detailed review of TCC's operations, the Board of Directors of Target Corporation decided that it is in the best interests of the business of Target Corporation and its subsidiaries to discontinue Canadian operations.

[18] Based on the stand-alone financial statements prepared for TCC as of November 1, 2014 (which consolidated financial results of TCC and its subsidiaries), TCC had total assets of approximately \$5.408 billion and total liabilities of approximately \$5.118 billion. Mr. Wong states that this does not reflect a significant impairment charge that will likely be incurred at fiscal year end due to TCC's financial situation.

[19] Mr. Wong states that TCC's operational funding is provided by Target Corporation. As of November 1, 2014, NE1 (TCC's direct parent) had provided equity capital to TCC in the amount of approximately \$2.5 billion. As a result of continuing and significant losses in TCC's operations, NE1 has been required to make an additional equity investment of \$62 million since November 1, 2014.

[20] NE1 has also lent funds to TCC under a Loan Facility with a maximum amount of \$4 billion. TCC owed NE1 approximately \$3.1 billion under this Facility as of January 2, 2015. The Loan Facility is unsecured. On January 14, 2015, NE1 agreed to subordinate all amounts owing by TCC to NE1 under this Loan Facility to payment in full of proven claims against TCC.

[21] As at November 1, 2014, Target Canada Property LLC ("TCC Propco") had assets of approximately \$1.632 billion and total liabilities of approximately \$1.643 billion. Mr. Wong states that this does not reflect a significant impairment charge that will likely be incurred at fiscal year end due to TCC Propco's financial situation. TCC Propco has also borrowed approximately \$1.5 billion from Target Canada Property LP and TCC Propco also owes U.S. \$89 million to Target Corporation under a Demand Promissory Note.

[22] TCC has subleased almost all the retail store leases to TCC Propco, which then made real estate improvements and sub-sub leased the properties back to TCC. Under this arrangement, upon termination of any of these sub-leases, a "make whole" payment becomes owing from TCC to TCC Propco.

[23] Mr. Wong states that without further funding and financial support from Target Corporation, the Target Canada Entities are unable to meet their liabilities as they become due, including TCC's next payroll (due January 16, 2015). The Target Canada Entities, therefore state that they are insolvent.

[24] Mr. Wong also states that given the size and complexity of TCC's operations and the numerous stakeholders involved in the business, including employees, suppliers, landlords, franchisees and others, the Target Canada Entities have determined that a controlled wind-down

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of their operations and liquidation under the protection of the CCAA, under Court supervision and with the assistance of the proposed monitor, is the only practical method available to ensure a fair and orderly process for all stakeholders. Further, Mr. Wong states that TCC and Target Corporation seek to benefit from the framework and the flexibility provided by the CCAA in effecting a controlled and orderly wind-down of the Canadian operations, in a manner that treats stakeholders as fairly and as equitably as the circumstances allow.

[25] On this initial hearing, the issues are as follows:

- a) Does this court have jurisdiction to grant the CCAA relief requested?
  - a) Should the stay be extended to the Partnerships?
  - b) Should the stay be extended to “Co-tenants” and rights of third party tenants?
  - c) Should the stay extend to Target Corporation and its U.S. subsidiaries in relation to claims that are derivative of claims against the Target Canada Entities?
  - d) Should the Court approve protections for employees?
  - e) Is it appropriate to allow payment of certain pre-filing amounts?
  - f) Does this court have the jurisdiction to authorize pre-filing claims to “critical” suppliers;
  - g) Should the court should exercise its discretion to authorize the Applicants to seek proposals from liquidators and approve the financial advisor and real estate advisor engagement?
  - h) Should the court exercise its discretion to approve the Court-ordered charges?

[26] “Insolvent” is not expressly defined in the CCAA. However, for the purposes of the CCAA, a debtor is insolvent if it meets the definition of an “insolvent person” in section 2 of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (“BIA”) or if it is “insolvent” as described in *Stelco Inc. (Re)*, [2004] O.J. No. 1257, [*Stelco*], leave to appeal refused, [2004] O.J. No. 1903, leave to appeal to S.C.C. refused [2004] S.C.C.A. No. 336, where Farley, J. found that “insolvency” includes a corporation “reasonably expected to run out of liquidity within [a] reasonable proximity of time as compared with the time reasonably required to implement a restructuring” (at para 26). The decision of Farley, J. in *Stelco* was followed in *Prizm Income Fund (Re)*, [2011] O.J. No. 1491 (SCJ), 2011 and *Canwest Global Communications Corp. (Re)*, [2009] O.J. No. 4286, (SCJ) [*Canwest*].

[27] Having reviewed the record and hearing submissions, I am satisfied that the Target Canada Entities are all insolvent and are debtor companies to which the CCAA applies, either by reference to the definition of “insolvent person” under the *Bankruptcy and Insolvency Act* (the “BIA”) or under the test developed by Farley J. in *Stelco*.

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[28] I also accept the submission of counsel to the Applicants that without the continued financial support of Target Corporation, the Target Canada Entities face too many legal and business impediments and too much uncertainty to wind-down their operations without the “breathing space” afforded by a stay of proceedings or other available relief under the CCAA.

[29] I am also satisfied that this Court has jurisdiction over the proceeding. Section 9(1) of the CCAA provides that an application may be made to the court that has jurisdiction in (a) the province in which the head office or chief place of business of the company in Canada is situated; or (b) any province in which the company’s assets are situated, if there is no place of business in Canada.

[30] In this case, the head office and corporate headquarters of TCC is located in Mississauga, Ontario, where approximately 800 employees work. Moreover, the chief place of business of the Target Canada Entities is Ontario. A number of office locations are in Ontario; 2 of TCC’s 3 primary distribution centres are located in Ontario; 55 of the TCC retail stores operate in Ontario; and almost half the employees that support TCC’s operations work in Ontario.

[31] The Target Canada Entities state that the purpose for seeking the proposed initial order in these proceedings is to effect a fair, controlled and orderly wind-down of their Canadian retail business with a view to developing a plan of compromise or arrangement to present to their creditors as part of these proceedings. I accept the submissions of counsel to the Applicants that although there is no prospect that a restructured “going concern” solution involving the Target Canada Entities will result, the use of the protections and flexibility afforded by the CCAA is entirely appropriate in these circumstances. In arriving at this conclusion, I have noted the comments of the Supreme Court of Canada in *Century Services Inc. v. Canada (Attorney General)*, [2010] SCC 50 (“*Century Services*”) that “courts frequently observe that the CCAA is skeletal in nature”, and does not “contain a comprehensive code that lays out all that is permitted or barred”. The flexibility of the CCAA, particularly in the context of large and complex restructurings, allows for innovation and creativity, in contrast to the more “rules-based” approach of the BIA.

[32] Prior to the 2009 amendments to the CCAA, Canadian courts accepted that, in appropriate circumstances, debtor companies were entitled to seek the protection of the CCAA where the outcome was not going to be a going concern restructuring, but instead, a “liquidation” or wind-down of the debtor companies’ assets or business.

[33] The 2009 amendments did not expressly address whether the CCAA could be used generally to wind-down the business of a debtor company. However, I am satisfied that the enactment of section 36 of the CCAA, which establishes a process for a debtor company to sell assets outside the ordinary course of business while under CCAA protection, is consistent with the principle that the CCAA can be a vehicle to downsize or wind-down a debtor company’s business.

[34] In this case, the sheer magnitude and complexity of the Target Canada Entities business, including the number of stakeholders whose interests are affected, are, in my view, suited to the flexible framework and scope for innovation offered by this “skeletal” legislation.

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[35] The required audited financial statements are contained in the record.

[36] The required cash flow statements are contained in the record.

[37] Pursuant to s. 11.02 of the CCAA, the court may make an order staying proceedings, restraining further proceedings, or prohibiting the commencement of proceedings, "on any terms that it may impose" and "effective for the period that the court considers necessary" provided the stay is no longer than 30 days. The Target Canada Entities, in this case, seek a stay of proceedings up to and including February 13, 2015.

[38] Certain of the corporate Target Canada Entities (TCC, TCC Health and TCC Mobile) act as general or limited partners in the partnerships. The Applicants submit that it is appropriate to extend the stay of proceedings to the Partnerships on the basis that each performs key functions in relation to the Target Canada Entities' businesses.

[39] The Applicants also seek to extend the stay to Target Canada Property LP which was formerly the sub-leasee/sub-sub lessor under the sub-sub lease back arrangement entered into by TCC to finance the leasehold improvements in its leased stores. The Applicants contend that the extension of the stay to Target Canada Property LP is necessary in order to safeguard it against any residual claims that may be asserted against it as a result of TCC Propco's insolvency and filing under the CCAA.

[40] I am satisfied that it is appropriate that an initial order extending the protection of a CCAA stay of proceedings under section 11.02(1) of the CCAA should be granted.

[41] Pursuant to section 11.7(1) of the CCAA, Alvarez & Marsal Inc. is appointed as Monitor.

[42] It is well established that the court has the jurisdiction to extend the protection of the stay of proceedings to Partnerships in order to ensure that the purposes of the CCAA can be achieved (see: *Lehndorff General Partner Ltd. (1993)*, 17 CBR (3d) 24 (Ont. Gen. Div.); *Re Prizm Income Fund*, 2011 ONSC 2061; *Re Canwest Publishing Inc.* 2010 ONSC 222 ("*Canwest Publishing*") and *Re Canwest Global Communications Corp.*, 2009 CarswellOnt 6184 ("*Canwest Global*").

[43] In these circumstances, I am also satisfied that it is appropriate to extend the stay to the Partnerships as requested.

[44] The Applicants also seek landlord protection in relation to third party tenants. Many retail leases of non-anchored tenants provide that tenants have certain rights against their landlords if the anchor tenant in a particular shopping mall or centre becomes insolvent or ceases operations. In order to alleviate the prejudice to TCC's landlords if any such non-anchored tenants attempt to exercise these rights, the Applicants request an extension of the stay of proceedings (the "Co-Tenancy Stay") to all rights of these third party tenants against the landlords that arise out of the insolvency of the Target Canada Entities or as a result of any steps taken by the Target Canada Entities pursuant to the Initial Order.

[45] The Applicants contend that the authority to grant the Co-Tenancy Stay derives from the broad jurisdiction under sections 11 and 11.02(1) of the CCAA to make an initial order on any

terms that the court may impose. Counsel references *Re T. Eaton Co.*, 1997 CarswellOnt 1914 (Gen. Div.) as a precedent where a stay of proceedings of the same nature as the Co-Tenancy Stay was granted by the court in Eaton's second CCAA proceeding. The Court noted that, if tenants were permitted to exercise these "co-tenancy" rights during the stay, the claims of the landlord against the debtor company would greatly increase, with a potentially detrimental impact on the restructuring efforts of the debtor company.

[46] In these proceedings, the Target Canada Entities propose, as part of the orderly wind-down of their businesses, to engage a financial advisor and a real estate advisor with a view to implementing a sales process for some or all of its real estate portfolio. The Applicants submit that it is premature to determine whether this process will be successful, whether any leases will be conveyed to third party purchasers for value and whether the Target Canada Entities can successfully develop and implement a plan that their stakeholders, including their landlords, will accept. The Applicants further contend that while this process is being resolved and the orderly wind-down is underway, the Co-Tenancy Stay is required to postpone the contractual rights of these tenants for a finite period. The Applicants contend that any prejudice to the third party tenants' clients is significantly outweighed by the benefits of the Co-Tenancy Stay to all of the stakeholders of the Target Canada Entities during the wind-down period.

[47] The Applicants therefore submit that it is both necessary and appropriate to grant the Co-Tenancy Stay in these circumstances.

[48] I am satisfied the Court has the jurisdiction to grant such a stay. In my view, it is appropriate to preserve the status quo at this time. To the extent that the affected parties wish to challenge the broad nature of this stay, the same can be addressed at the "comeback hearing".

[49] The Applicants also request that the benefit of the stay of proceedings be extended (subject to certain exceptions related to the cash management system) to Target Corporation and its U.S. subsidiaries in relation to claims against these entities that are derivative of the primary liability of the Target Canada Entities.

[50] I am satisfied that the Court has the jurisdiction to grant such a stay. In my view, it is appropriate to preserve the status quo at this time and the stay is granted, again, subject to the proviso that affected parties can challenge the broad nature of the stay at a comeback hearing directed to this issue.

[51] With respect to the protection of employees, it is noted that TCC employs approximately 17,600 individuals.

[52] Mr. Wong contends that TCC and Target Corporation have always considered their employees to be integral to the Target brand and business. However, the orderly wind-down of the Target Canada Entities' business means that the vast majority of TCC employees will receive a notice immediately after the CCAA filing that their employment is to be terminated as part of the wind-down process.

[53] In order to provide a measure of financial security during the orderly wind-down and to diminish financial hardship that TCC employees may suffer, Target Corporation has agreed to fund an Employee Trust to a maximum of \$70 million.

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[54] The Applicants seek court approval of the Employee Trust which provides for payment to eligible employees of certain amounts, such as the balance of working notice following termination. Counsel contends that the Employee Trust was developed in consultation with the proposed monitor, who is the administrator of the trust, and is supported by the proposed Representative Counsel. The proposed trustee is The Honourable J. Ground. The Employee Trust is exclusively funded by Target Corporation and the costs associated with administering the Employee Trust will be borne by the Employee Trust, not the estate of Target Canada Entities. Target Corporation has agreed not to seek to recover from the Target Canada Entities estates any amounts paid out to employee beneficiaries under the Employee Trust.

[55] In my view, it is questionable as to whether court authorization is required to implement the provisions of the Employee Trust. It is the third party, Target Corporation, that is funding the expenses for the Employee Trust and not one of the debtor Applicants. However, I do recognize that the implementation of the Employee Trust is intertwined with this proceeding and is beneficial to the employees of the Applicants. To the extent that Target Corporation requires a court order authorizing the implementation of the employee trust, the same is granted.

[56] The Applicants seek the approval of a KERP and the granting of a court ordered charge up to the aggregate amount of \$6.5 million as security for payments under the KERP. It is proposed that the KERP Charge will rank after the Administration Charge but before the Directors' Charge.

[57] The approval of a KERP and related KERP Charge is in the discretion of the Court. KERPs have been approved in numerous CCAA proceedings, including *Re Nortel Networks Corp.*, 2009 CarswellOnt 1330 (S.C.J.) [*Nortel Networks (KERP)*], and *Re Grant Forest Products Inc.*, 2009 CarswellOnt 4699 (Ont. S.C.J.). In *U.S. Steel Canada Inc.*, 2014 ONSC 6145, I recently approved the KERP for employees whose continued services were critical to the stability of the business and for the implementation of the marketing process and whose services could not easily be replaced due, in part, to the significant integration between the debtor company and its U.S. parent.

[58] In this case, the KERP was developed by the Target Canada Entities in consultation with the proposed monitor. The proposed KERP and KERP Charge benefits between 21 and 26 key management employees and approximately 520 store-level management employees.

[59] Having reviewed the record, I am of the view that it is appropriate to approve the KERP and the KERP Charge. In arriving at this conclusion, I have taken into account the submissions of counsel to the Applicants as to the importance of having stability among the key employees in the liquidation process that lies ahead.

[60] The Applicants also request the Court to appoint Koskie Minsky LLP as employee representative counsel (the "Employee Representative Counsel"), with Ms. Susan Philpott acting as senior counsel. The Applicants contend that the Employee Representative Counsel will ensure that employee interests are adequately protected throughout the proceeding, including by assisting with the Employee Trust. The Applicants contend that at this stage of the proceeding, the employees have a common interest in the CCAA proceedings and there appears to be no



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material conflict existing between individual or groups of employees. Moreover, employees will be entitled to opt out, if desired.

[61] I am satisfied that section 11 of the CCAA and the *Rules of Civil Procedure* confer broad jurisdiction on the court to appoint Representative Counsel for vulnerable stakeholder groups such as employee or investors (see *Re Nortel Networks Corp.*, 2009 CarswellOnt 3028 (S.C.J.) (Nortel Networks Representative Counsel)). In my view, it is appropriate to approve the appointment of Employee Representative Counsel and to provide for the payment of fees for such counsel by the Applicants. In arriving at this conclusion, I have taken into account:

- (i) the vulnerability and resources of the groups sought to be represented;
- (ii) the social benefit to be derived from the representation of the groups;
- (iii) the avoidance of multiplicity of legal retainers; and
- (iv) the balance of convenience and whether it is fair and just to creditors of the estate.

[62] The Applicants also seek authorization, if necessary, and with the consent of the Monitor, to make payments for pre-filing amounts owing and arrears to certain critical third parties that provide services integral to TCC's ability to operate during and implement its controlled and orderly wind-down process.

[63] Although the objective of the CCAA is to maintain the status quo while an insolvent company attempts to negotiate a plan of arrangement with its creditors, the courts have expressly acknowledged that preservation of the status quo does not necessarily entail the preservation of the relative pre-stay debt status of each creditor.

[64] The Target Canada Entities seek authorization to pay pre-filing amounts to certain specific categories of suppliers, if necessary and with the consent of the Monitor. These include:

- a) Logistics and supply chain providers;
- b) Providers of credit, debt and gift card processing related services; and
- c) Other suppliers up to a maximum aggregate amount of \$10 million, if, in the opinion of the Target Canada Entities, the supplier is critical to the orderly wind-down of the business.

[65] In my view, having reviewed the record, I am satisfied that it is appropriate to grant this requested relief in respect of critical suppliers.

[66] In order to maximize recovery for all stakeholders, TCC indicates that it intends to liquidate its inventory and attempt to sell the real estate portfolio, either en bloc, in groups, or on an individual property basis. The Applicants therefore seek authorization to solicit proposals from liquidators with a view to entering into an agreement for the liquidation of the Target Canada Entities inventory in a liquidation process.

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[67] TCC's liquidity position continues to deteriorate. According to Mr. Wong, TCC and its subsidiaries have an immediate need for funding in order to satisfy obligations that are coming due, including payroll obligations that are due on January 16, 2015. Mr. Wong states that Target Corporation and its subsidiaries are no longer willing to provide continued funding to TCC and its subsidiaries outside of a CCAA proceeding. Target Corporation (the "DIP Lender") has agreed to provide TCC and its subsidiaries (collectively, the "Borrower") with an interim financing facility (the "DIP Facility") on terms advantageous to the Applicants in the form of a revolving credit facility in an amount up to U.S. \$175 million. Counsel points out that no fees are payable under the DIP Facility and interest is to be charged at what they consider to be the favourable rate of 5%. Mr. Wong also states that it is anticipated that the amount of the DIP Facility will be sufficient to accommodate the anticipated liquidity requirements of the Borrower during the orderly wind-down process.

[68] The DIP Facility is to be secured by a security interest on all of the real and personal property owned, leased or hereafter acquired by the Borrower. The Applicants request a court-ordered charge on the property of the Borrower to secure the amount actually borrowed under the DIP Facility (the "DIP Lenders Charge"). The DIP Lenders Charge will rank in priority to all unsecured claims, but subordinate to the Administration Charge, the KERP Charge and the Directors' Charge.

[69] The authority to grant an interim financing charge is set out at section 11.2 of the CCAA. Section 11.2(4) sets out certain factors to be considered by the court in deciding whether to grant the DIP Financing Charge.

[70] The Target Canada Entities did not seek alternative DIP Financing proposals based on their belief that the DIP Facility was being offered on more favourable terms than any other potentially available third party financing. The Target Canada Entities are of the view that the DIP Facility is in the best interests of the Target Canada Entities and their stakeholders. I accept this submission and grant the relief as requested.

[71] Accordingly, the DIP Lenders' Charge is granted in the amount up to U.S. \$175 million and the DIP Facility is approved.

[72] Section 11 of the CCAA provides the court with the authority to allow the debtor company to enter into arrangements to facilitate a restructuring under the CCAA. The Target Canada Entities wish to retain Lazard and Northwest to assist them during the CCAA proceeding. Both the Target Canada Entities and the Monitor believe that the quantum and nature of the remuneration to be paid to Lazard and Northwest is fair and reasonable. In these circumstances, I am satisfied that it is appropriate to approve the engagement of Lazard and Northwest.

[73] With respect to the Administration Charge, the Applicants are requesting that the Monitor, along with its counsel, counsel to the Target Canada Entities, independent counsel to the Directors, the Employee Representative Counsel, Lazard and Northwest be protected by a court ordered charge and all the property of the Target Canada Entities up to a maximum amount of \$6.75 million as security for their respective fees and disbursements (the "Administration

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Charge”). Certain fees that may be payable to Lazard are proposed to be protected by a Financial Advisor Subordinated Charge.

[74] In *Camwest Publishing Inc.*, 2010 ONSC 222, Pepall J. (as she then was) provided a non-exhaustive list of factors to be considered in approving an administration charge, including:

- a. The size and complexity of the business being restructured;
- b. The proposed role of the beneficiaries of the charge;
- c. Whether there is an unwarranted duplication of roles;
- d. Whether the quantum of the proposed Charge appears to be fair and reasonable;
- e. The position of the secured creditors likely to be affected by the Charge; and
- f. The position of the Monitor.

[75] Having reviewed the record, I am satisfied, that it is appropriate to approve the Administration Charge and the Financial Advisor Subordinated Charge.

[76] The Applicants seek a Directors’ and Officers’ charge in the amount of up to \$64 million. The Directors Charge is proposed to be secured by the property of the Target Canada Entities and to rank behind the Administration Charge and the KERP Charge, but ahead of the DIP Lenders’ Charge.

[77] Pursuant to section 11.51 of the CCAA, the court has specific authority to grant a “super priority” charge to the directors and officers of a company as security for the indemnity provided by the company in respect of certain obligations.

[78] I accept the submissions of counsel to the Applicants that the requested Directors’ Charge is reasonable given the nature of the Target Canada Entities retail business, the number of employees in Canada and the corresponding potential exposure of the directors and officers to personal liability. Accordingly, the Directors’ Charge is granted.

[79] In the result, I am satisfied that it is appropriate to grant the Initial Order in these proceedings.

[80] The stay of proceedings is in effect until February 13, 2015.

[81] A comeback hearing is to be scheduled on or prior to February 13, 2015. I recognize that there are many aspects of the Initial Order that go beyond the usual first day provisions. I have determined that it is appropriate to grant this broad relief at this time so as to ensure that the status quo is maintained.


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[82] The comeback hearing is to be a “true” comeback hearing. In moving to set aside or vary any provisions of this order, moving parties do not have to overcome any onus of demonstrating that the order should be set aside or varied.

[83] Finally, a copy of Lazard’s engagement letter (the “Lazard Engagement Letter”) is attached as Confidential Appendix “A” to the Monitor’s pre-filing report. The Applicants request that the Lazard Engagement Letter be sealed, as the fee structure contemplated in the Lazard Engagement Letter could potentially influence the structure of bids received in the sales process.

[84] Having considered the principles set out in *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002] 211 D.L.R (4<sup>th</sup>) 193 2 S.C.R. 522, I am satisfied that it is appropriate in the circumstances to seal Confidential Appendix “A” to the Monitor’s pre-filing report.

[85] The Initial Order has been signed in the form presented.



Regional Senior Justice Morawetz

**Date:** January 16, 2015



# **TAB 5**

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

**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 **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**

Applicants

**NOTICE OF MOTION**

**(Motion for Approval of Agency Agreement and Inventory Liquidation Process,  
Approval of Real Property Portfolio Sales Process and Stay Extension)**

The Applicants will make a motion before a judge of the Ontario Superior Court of Justice (Commercial List) on February 4, 2015 at 8:30 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

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

**THE MOTION IS FOR:**

1. An Order substantially in the form attached at Tab 3 of the Motion Record, *inter alia*:
  - (a) if necessary, abridging the time for service of this Notice of Motion and the Motion Record and dispensing with service on any person other than those served;

- (b) approving the Real Property Portfolio Sales Process attached as Schedule "B" to the draft Order at Tab 3 of the Motion Record, and authorizing and directing the Target Canada Entities, the Monitor and Lazard (each as defined in the Initial Order of Regional Senior Justice Morawetz dated January 15, 2015 (the "Initial Order")) to take any and all actions as may be necessary or desirable to implement and carry out the Real Property Portfolio Sales Process;
  - (c) extending the Stay Period (as defined in paragraph 17 of the Initial Order) until and including May 15, 2015 and ordering that the extension of the Stay Period set out herein shall not in any way affect the "comeback rights" of any interested party set out in paragraph 77 of the Initial Order; and
  - (d) approving the First Report of the Monitor and the activities described therein;
2. An Order in substantially the form attached at Tab 4 of the Motion Record, *inter alia*:
- (a) approving the Agency Agreement between a contractual joint venture composed of Merchant Retail Solutions ULC, Gordon Brothers Canada ULC and GA Retail Canada, ULC (collectively, the "Agent") and certain of the Target Canada Entities in the form attached as Exhibit "D" to the Affidavit of Mark Wong sworn January 29, 2015, at Tab 2D of the Motion Record, and the transactions contemplated thereunder; and
  - (b) authorizing the Agent to conduct the sale in accordance with the draft Order at Tab 4 of the Motion Record, the Agency Agreement and the Sales Guidelines attached to the Agency Agreement; and
  - (c) authorizing and directing the Target Canada Entities to take any and all actions as may be necessary or desirable to implement the Agency Agreement and each of the transactions contemplated therein; and
3. Such further and other relief as this Court may deem just.



**THE GROUNDS FOR THE MOTION ARE:**

1. The Target Canada Entities were granted protection from their creditors under the CCAA pursuant to the Initial Order of the Ontario Superior Court of Justice (Commercial List) dated January 15, 2015;
2. Alvarez & Marsal Canada Inc. was appointed in the Initial Order to act as the Monitor in the CCAA proceeding;
3. Capitalized terms not otherwise defined herein have the meaning given to them in the Initial Order;

**Approval of the Real Property Portfolio Sales Process**

4. The Target Canada Entities have designed a process (the “Real Property Portfolio Sales Process”) by which they will seek to sell all or substantially all of TCC’s leases and real property under the supervision of the Court and the Monitor;
5. The Real Property Portfolio Sales Process was designed by the Target Canada Entities and their financial advisor (Lazard), in consultation with the Monitor and the Target Canada Entities’ real estate advisor (Northwest);
6. The Real Property Portfolio Sales Process is designed in a manner that is expected to maximize the realization on the value of the Target Canada Entities’ real estate portfolio for the benefit of all stakeholders;
7. The approval of the Real Property Portfolio Sales Process is supported by the Monitor;

**Approval of the Agency Agreement and Inventory Liquidation Process**

8. The Target Canada Entities, with oversight of the Monitor, have engaged in a process to select an Agent to conduct or consult on the liquidation of the inventory, furniture, equipment and fixtures located in and/or forming part of the Property of the Target Canada Entities (the “Inventory Liquidation Process”);

9. The process of selecting the Agent was fair and reasonable;
10. The terms of the Agency Agreement, and the process and transactions contemplated thereunder, are fair and reasonable;
11. The process and transactions contemplated under the Agency Agreement were designed by the Target Canada Entities in consultation with the Monitor, and are expected to maximize the value of the Target Canada Entities' inventory, furniture, equipment and fixtures for the benefit of all stakeholders;
12. The approval of the Agency Agreement and the Inventory Liquidation Process are supported by the Monitor;

#### **Stay Extension**

13. The Initial Order granted a stay of proceedings until February 13, 2015, or such later date as this Court may order;
14. Since the granting of the Initial Order, the Target Canada Entities, in close consultation and with the assistance of the Monitor, have been working diligently to stabilize their business and operations as part of these CCAA proceedings;
15. The Target Canada Entities have made substantial progress in implementing the controlled and orderly wind down of their businesses; however, numerous issues continue to arise on a daily basis that require the urgent attention of the remaining management team of the Target Canada Entities;
16. Extending the Stay Period will allow the Target Canada Entities to continue to pursue the controlled and orderly wind down of their businesses and engage in communications and consultations with their stakeholders;
17. Extending the Stay Period will also allow the Inventory Liquidation Process and Real Property Portfolio Sales Process to unfold;

18. The extension of the Stay Period is not intended to affect the "comeback rights" of any interested party set out in paragraph 77 of the Initial Order;
19. The Target Canada Entities have been acting and continue to act in good faith and with due diligence in these CCAA proceedings;
20. It is just and convenient and in the interests of the Target Canada Entities and their respective stakeholders that the requested Orders should be granted and the Stay Period extended;
21. The extension of the Stay Period is supported by the Monitor;
22. The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;
23. Rules 1.04, 1.05, 2.03, 3.02, 16 and 37 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended and section 106 of the Ontario *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended; and
24. Such further and other grounds as counsel may advise and this Court may permit.

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

1. The Affidavit of Mark Wong sworn January 29, 2015 and the exhibits attached thereto;
2. The Affidavit of Mark Wong sworn January 14, 2015 and the exhibits attached thereto;
3. The Pre-Filing Report and First Report of the Monitor;
4. The Initial Order dated January 15, 2015; and
5. Such further and other evidence as counsel may advise and this Court may permit.

January 29, 2015

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Lawyers for the Applicants

**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.*

Applicants

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

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

PROCEEDING COMMENCED AT  
TORONTO

**NOTICE OF MOTION**

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Matter No: 1159785



**TAB 6**

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

*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 **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**

APPLICANTS

**AFFIDAVIT OF MARK J. WONG  
 (Sworn January 29, 2015)**

**(Motion for Approval of Agency Agreement and Inventory Liquidation Process,  
 Approval of Real Property Portfolio Sales Process and Stay Extension)**

I, Mark J. Wong, of the City of Mississauga, in the Province of Ontario, General Counsel and Secretary for the Applicant Target Canada Co. ("TCC"), MAKE OATH AND SAY:

1. I am General Counsel and Secretary for TCC. I am a director and/or officer of each of the other Applicants. As such, I have personal knowledge of the matters deposed to herein. Where I have relied on other sources for information, I have specifically referred to such sources and verily believe them to be true. In preparing this Affidavit, I consulted with representatives of Alvarez & Marsal Canada Inc. (the "**Monitor**"), members of the senior management team of TCC, and legal, financial and other advisors of TCC.



2. I swear this Affidavit in support of the motion brought by the Applicants and the Partnerships listed on Schedule "A" hereto (collectively, the "**Target Canada Entities**") seeking Orders, substantially in the forms attached to the Motion Record, among other things: (i) approving the Inventory Liquidation Process (defined below); (ii) approving the Real Property Portfolio Sales Process (defined below); and (iii) extending the stay of proceedings to May 15, 2015.

### **Background**

3. The Target Canada Entities were granted protection from their creditors under the CCAA pursuant to an initial order of the Ontario Superior Court of Justice (Commercial List) dated January 15, 2015 (the "**Initial Order**"). Alvarez & Marsal Canada Inc. was appointed in the Initial Order to act as the Monitor in the CCAA proceeding.

4. The Initial Order, a copy of which is attached as Exhibit A to this Affidavit, granted, among other things, a stay of proceedings until February 13, 2015, or such later date as this Honourable Court may order.

5. Further details regarding the background to this proceeding are set out in my Affidavit sworn January 14, 2015 (the "**Initial Order Affidavit**"). Except where so stated, capitalized terms not otherwise defined herein have the meaning ascribed to them in the Initial Order Affidavit. A copy of the Initial Order Affidavit without exhibits is attached as Exhibit B to this Affidavit.

### **Efforts to Date to Stabilize Businesses**

6. Since the granting of the Initial Order, the Target Canada Entities, in close consultation and with the assistance of the Monitor, have been working diligently to stabilize their businesses and operations as part of these CCAA proceedings. The Target Canada Entities have responded and continue to respond to numerous creditor and stakeholder inquiries on a daily basis. All 133 open stores in Canada have remained operational since the granting of the Initial Order. As part of their stabilization efforts, the Target Canada Entities have worked closely with the Monitor to develop and implement a proactive communication and consultation plan with their stakeholders.

7. The efforts of the Target Canada Entities and the Monitor have been generally successful in stabilizing the businesses; however, numerous issues continue to arise on a daily basis which require the urgent attention of the remaining management team at the Target Canada Entities.

#### **A. Employees**

8. On or about January 15, 2015, letters were sent to more than 17,000 employees of TCC, advising employees that the Target Canada Entities had applied for and been granted protection from their creditors under the CCAA. TCC has issued notices of termination to the vast majority of its employees. TCC's head office in Mississauga is now operating with a reduced team focused on implementing the orderly wind down of the Target Canada Entities' businesses.

9. The Target Canada Entities, through their counsel, have had numerous discussions and communications with Employee Representative Counsel since the granting of

the Initial Order. I am advised by Mr. Sven Poysa of Osler, Hoskin & Harcourt LLP, counsel for the Target Canada Entities, and believe that Employee Representative Counsel has taken the following steps in accordance with its mandate: (i) established a toll-free dedicated phone line and a dedicated email address through which TCC employees can obtain information about this CCAA proceeding; (ii) posted information for TCC employees on the Koskie Minsky LLP website, which is being regularly updated; (iii) held two sessions for TCC's head office employees; and (iv) responded to inquiries from employees. I am also advised by Mr. Poysa and believe that, in accordance with paragraph 32 of the Initial Order, Employee Representative Counsel has sought interested employees to act as employee representatives in this CCAA proceeding and has discussed this role with interested employees.

10. Target Corporation made the first contribution to the Employee Trust in the amount of CAD \$52.5 million. As noted in the Initial Order Affidavit, Target Corporation will provide further funding if required to satisfy Eligible Employee Claims to the Maximum Required Trust Contribution, following notice from the Administrator. The estimated amount of funding required has been updated since the Initial Order was issued based on subsequent events. Accordingly, Target Corporation has agreed to increase the Maximum Required Trust Contribution from CAD \$70 million to CAD \$90 million to ensure the Employee Trust has sufficient funds to meet its objectives. The incremental amount of CAD \$37.5 million is expected to be received in trust by the Monitor's counsel by January 30, 2015.

**B. Pharmacies**

11. On January 15, 2015, TCC Pharmacy sent a courtesy notice to each of the applicable pharmacy colleges across Canada to advise that, as a result of the CCAA filing, TCC Pharmacy will be winding down its operations, which will result in the closure and/or relocation

of all 93 Target-branded pharmacies in Canada (outside of Quebec) and 14 Target/Brunet co-branded pharmacies in Quebec. As explained in the Initial Order Affidavit, the arrangements in respect of pharmacies in TCC stores differ between Quebec and the rest of Canada.

i. *Quebec*

12. In Quebec, the Target Canada Entities and McMahon (the franchisor for the Quebec pharmacies) have consulted with each other and worked cooperatively to begin the orderly wind down of pharmacy operations, in consultation with the Monitor. McMahon has proposed a staggered closing schedule in which all pharmacies in TCC's Quebec stores will be closed by no later than February 11, 2015. On January 23, 2015, TCC gave McMahon 30 days' notice of the termination of all of the sublease agreements between TCC and McMahon. The termination was given on 30 days' notice to ensure that the pharmacies have sufficient time to wind down their pharmacy operations and comply with the regulatory requirements relating to the closure of pharmacies. TCC has advised McMahon that, if a franchisee vacates the premises before the end of the 30 day period, TCC is willing to terminate the applicable sublease agreement with McMahon immediately. On January 28, 2015, with the consent of the Monitor, TCC and TCC Pharmacy sent McMahon a disclaimer notice disclaiming the McMahon Agreement.

ii. *Rest of Canada*

13. For the pharmacies operating in TCC's stores in the rest of Canada, the Target Canada Entities are engaging with the franchisees in an effort to implement an orderly wind down of the pharmacy operations as quickly as possible, and to ensure that the interests of the pharmacies' patients are protected, including in accordance with the pharmacies' regulatory

obligations. On January 26, 2015, with the consent of the Monitor, TCC Pharmacy delivered disclaimer notices to all of the pharmacy franchisees in respect of the franchise agreements with the pharmacy franchisees and all other ancillary and related agreements.

14. The Target Canada Entities have taken the following steps, among others, to implement the orderly wind down of pharmacy operations across Canada:

- (a) TCC Pharmacy has communicated extensively with its franchisees regarding the orderly wind down of the TCC pharmacy operations. On the date that this CCAA proceeding was commenced, TCC Pharmacy held a telephone call with franchisees to, among other things, outline several steps that the franchisees were required to take in relation to their patients – including safeguarding their patient files and communicating with their patients. The call was recorded and replayed later that day for franchisees who could not attend the initial call. In addition, the Target Canada Entities established a dedicated email account to respond to questions from franchisees. The Target Canada Entities, in consultation with their legal advisors, prepared responses to the questions and sent the responses to all franchisees (unless the issue was unique to a particular franchisee).
- (b) The Target Canada Entities are seeking to make the transition for the pharmacy patients as convenient as possible in the circumstances. Accordingly, the Target Canada Entities are working to facilitate the transfer of the existing telephone and fax numbers to the franchisee pharmacists should they re-open at new locations. The Target Canada Entities hope that this will minimize disruption and help to

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ensure patients continue to receive care from the pharmacists with whom they have an existing relationship.

(c) The Target Canada Entities have confirmed to the franchisees that the rights and obligations relating to patient files for a particular pharmacy belong to the franchisee operating that pharmacy. The Target Canada Entities have encouraged franchisees to transfer the patient files to a new pharmacy expeditiously. Among other things, this will help patients move to a new pharmacy more quickly. The patient data is located on the computer systems used by the franchisees, all of which systems are provided by Kroll Computer Systems Inc. (“Kroll”). It is expected that the franchisees will enter into agreements directly with Kroll to obtain the patient data and ensure that it is properly safeguarded and transferred. The Target Canada Entities are working directly with Kroll to ensure that the patient data will be transferred to the franchisees.

(d) The Target Canada Entities intend to send closing checklists to each franchisee and store team leader in a TCC store in which there is a pharmacy. These checklists are expected to contribute to an orderly wind down, including by reminding the franchisees to comply with their pharmacy regulatory obligations and provide notice to the pharmacies’ patients regarding the closure of the pharmacies and transfer of their patient files.

15. For the three pharmacies operated by TCC Pharmacy Ontario, the Target Canada Entities are similarly working to wind down operations in an orderly and efficient manner. TCC Pharmacy Ontario is considering its options for the Schedule I and Schedule II (*i.e.*, “behind-the-

counter”) drug inventory owned by the three pharmacies operated by TCC Pharmacy Ontario and the orderly transfer of its patient files. TCC Pharmacy Ontario is also in the process of attempting to market and sell its “Pre-54” charter to third parties.

**C. Suppliers and other Third Parties**

16. Since filing for CCAA protection, the Target Canada Entities, in close consultation with the Monitor, have been in contact with an extensive number and wide variety of creditors and suppliers. The Target Canada Entities are working diligently with the Monitor to attempt to consensually resolve creditor and supplier issues as they arise as part of the stabilization of the business. This includes considering requests for critical supplier status, dealing with the ongoing needs of the business and operations and answering general questions about the CCAA process and how the orderly wind down of the business will affect the particular supplier or other creditors. Further, counsel for the Target Canada Entities, the Monitor and counsel for the Monitor met with counsel representing a number of suppliers on January 26, 2015 to discuss various supplier issues.

17. In addition to the pharmacy franchise agreements discussed above, the Target Canada Entities have disclaimed more than 50 agreements with the consent of the Monitor, including a variety of agreements relating to services that will no longer be required as part of the orderly wind down.

18. Further, the Target Canada Entities have made arrangements to mutually terminate agreements with, and wind down services provided by, certain significant stakeholders as follows:

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- (a) *Glentel*: With the approval of the Monitor, TCC Mobile and Glentel Inc. (“*Glentel*”) have agreed to a mutual termination of the agreement between TCC Mobile and Glentel. Glentel has removed its inventory, equipment and supplies from all 133 TCC stores. Glentel has agreed that amounts owing will be dealt with as part of the claims process in the CCAA proceeding.
- (b) *Starbucks*: With the approval of the Monitor, TCC and Starbucks Coffee Canada, Inc. (“*Starbucks*”) have agreed to a mutual termination of the master licensing agreement between TCC and Starbucks and an orderly wind down of the Starbucks-branded stores operating within TCC stores. Starbucks-branded stores ceased operating in all TCC stores on or before January 23, 2015. The parties are in the process of finalizing the mutual termination agreement.

**D. Landlords**

19. The Target Canada Entities have implemented a communications plan with respect to landlords as part of the CCAA filing. Discussions have occurred directly between the Target Canada Entities and landlords and between counsel for the Target Canada Entities and/or the Monitor and counsel for landlords. A representative of Lazard Freres & Co. LLC (the “**Financial Advisor**”) has participated in most of these meetings.

20. In particular, during the week commencing January 26, 2015, representatives of the Target Canada Entities and the Monitor met in person or by phone with counsel, and in some cases business representatives, for several large retail landlords who hold or manage, in aggregate, the majority of the TCC store leases. Counsel for the Target Canada Entities provided information to the landlords in respect of the CCAA proceedings, generally, and in respect of the



proposed Inventory Liquidation Process and Real Property Portfolio Sales Process, as such terms are defined below, specifically. The Target Canada Entities, with the assistance of the Monitor and the Financial Advisor, intend to continue to consult with landlords throughout these processes and throughout this CCAA proceeding.

**E. DIP Financing**

21. On January 15, 2015, the Borrower drew USD \$35 million from the DIP Facility. A portion of these funds were used to meet TCC's scheduled payroll payment of approximately CAD \$17.4 million, which was made to TCC's employees (through ADP) on January 16, 2015.

22. On January 20, 2015, the Borrower made a repayment to the DIP Facility of approximately USD \$16 million pursuant to the mandatory prepayment terms under the DIP Facility, resulting in a current outstanding balance of approximately USD \$19 million owing under the DIP Facility.

**Proposed Inventory Liquidation Process**

23. Paragraph 12(d) of the Initial Order provides that the Target Canada Entities shall have the right to "in consultation with, and with the oversight of the Monitor, engage in discussions with and solicit proposals and agreement(s) from third parties in respect of the liquidation of the inventory, furniture, equipment and fixtures located in and/or forming part of the Property [...] and return to Court for approval of such agreement(s)".

24. In order to maximize the value of their inventory and furniture, equipment and fixtures (the "Inventory & FF&E") for the benefit of their stakeholders, the Target Canada Entities are seeking the Court's approval of an agency agreement regarding the liquidation of

their inventory and a process (the “**Inventory Liquidation Process**”) to liquidate TCC’s Inventory & FF&E contemplated therein (including the Sales Guidelines attached thereto). The Inventory Liquidation Process was designed by the Target Canada Entities in consultation with the Monitor. It is my understanding that the Monitor supports the approval of the Agency Agreement (defined below) and the Inventory Liquidation Process.

25. On January 20, 2015, the Target Canada Entities and the Monitor commenced a formal request for proposal (“**RFP**”) process to solicit proposals from third party liquidation firms to conduct or consult on an orderly liquidation of the Inventory & FF&E, including the Inventory & FF&E located in TCC’s retail stores, distribution centres and corporate head office in Mississauga, Ontario.

26. On that date, the Monitor sent a solicitation letter and related documents (including template draft agreements) to a list of five potential liquidators that had been selected based on their qualifications and prior experience handling large-scale liquidations, including large-scale liquidations in Canada. I am advised by the Monitor that they are five of the most experienced liquidation firms operating in the North American marketplace. Copies of the solicitation letter and RFP are attached as Exhibit C to this Affidavit. The letter invited the liquidation firms to submit equity and/or fee bids for the purpose of selecting an agent or a consultant, on an exclusive basis, to assist the Target Canada Entities in the liquidation of the Inventory & FF&E. In general, equity proposals would involve the liquidator conducting the liquidation process and guaranteeing a net minimum amount that would be paid to TCC, whereas fee proposals would involve the liquidator consulting on the liquidation process in exchange for

a percentage fee of the sales. The letter stated that all proposals needed to be received by the Monitor by no later than 3:00 pm ET on January 23, 2015.

27. Each liquidator who returned an executed confidentiality agreement was given access to a virtual data room which contained financial and other information concerning the Inventory & FF&E.

28. Three sets of proposals were received on January 23, 2015. Of the five liquidators solicited (collectively, the “**Participating Liquidators**”), one submitted a proposal on its own and two proposals were submitted by joint ventures formed by the remaining four liquidators. Each Participating Liquidator provided both equity and consulting proposals for consideration.

29. Following a careful review of the proposals, the Target Canada Entities, in consultation with the Monitor, invited each Participating Liquidator to participate in an auction, which took place on January 27, 2015 in Toronto, Ontario. The Target Canada Entities, in consultation with the Monitor, selected the proposal from a contractual joint venture composed of Merchant Retail Solutions ULC, Gordon Brothers Canada ULC and GA Retail Canada ULC (collectively, the “**Agent**”). The Agent’s proposal provides for the best guaranteed recovery for stakeholders. Both the Target Canada Entities and the Monitor were of the view that the Agent’s proposal was the most favourable of those submitted.

30. The members of the contractual joint venture have extensive experience in conducting retail liquidations. On an average annual basis, they collectively conduct more than 100 store closing transactions worldwide. Among them, they have led the inventory dispositions for a wide variety of former retailers, including Borders and Circuit City, and have conducted

nearly all major retail liquidations in Canada, including Eatons, Dylex, Bombay, Linens N Things, Saan Stores, Joggers, Athletes World, Bernard Trottier, Sportmart, and, currently, Mexx. In addition, members of the contractual joint venture conducted the liquidation of the inventory and FF&E in the Zellers stores.

31. On January 29, 2015, the Agent and the Target Canada Entities entered into an agency agreement (the “**Agency Agreement**”), a copy of which is attached as Exhibit D to this Affidavit. Capitalized terms in this section that are not otherwise defined have the meaning given to them in the Agency Agreement. It is my understanding that the Monitor supports the selection of the Agent and the Target Canada Entities entering into the Agency Agreement. The Agency Agreement is subject to Court approval.

32. The Agency Agreement provides that the Agent will serve as the exclusive agent and mandatary of TCC, TCC Pharmacy and TCC Pharmacy Ontario (collectively, the “**Company**”) for the limited purpose of conducting the Sale in TCC’s retail stores, distribution centres and corporate head office, in whole, in accordance with the terms of the Agency Agreement.

33. As a guaranty of the Agent’s performance, the Agent has guaranteed that the Company shall receive a net minimum amount (the “**Guaranteed Amount**”) equal to 74% of the aggregate “Cost Value” of the Merchandise, computed in accordance with the Agency Agreement, and subject to adjustment in accordance with the Agency Agreement if: (i) the aggregate Cost Value of the Merchandise is less than CAD \$445 million or greater than CAD \$475 million; and/or (ii) the Cost Value of the Merchandise as a percentage of the Retail Price of the Merchandise exceeds 63%. To secure the Agent’s obligations under the Agency Agreement,

including the obligation to pay the Guaranteed Amount, the Expenses, the Additional Agent Fee, the Company Sharing Amount, and other amounts due to the Company under the Agency Agreement, the Agent shall deliver to the Company one or more irrevocable and unconditional standby letters of credit in the aggregate original face amount equal to CAD \$50 million, in accordance with the terms of the Agency Agreement.

34. Some of the key terms of the Agency Agreement include:
- (a) If the Court issues the proposed Order approving the Agency Agreement, the Sale will commence within one calendar day of the making of the Order, or such other date as the parties may mutually agree in writing.
  - (b) The Agency Agreement is conditional upon the Company having obtained an Order of this Court by no later than February 4, 2015 substantially in the form attached to the Agency Agreement.
  - (c) The Sale Term will end on the Sale Termination Date, which is defined as the date on which the Sale terminates, which date shall be no later than May 15, 2015 with respect to the stores, no later than April 30, 2015 with respect to the distribution centres and no later than March 31, 2015 with respect to the corporate office.
  - (d) All sales of Merchandise in TCC's stores will be recorded using TCC's existing POS System to ensure accurate sales audit functions, as well as accurate calculations of Proceeds. All Proceeds will be collected by TCC and deposited in

- 15 -

the existing accounts on a daily basis and reconciled on a weekly basis. During each "Weekly Sale Reconciliation" during the Sale Term, all Proceeds will be disbursed as follows:

- (i) first, to the Company, to reimburse the Company for Expenses paid by the Company during the previous week subject to the Weekly Sale Reconciliation;
  - (ii) second, to the Agent, to reimburse the Agent for Expenses paid by the Agent during the previous week subject to the Weekly Sale Reconciliation;
  - (iii) third, to the Company, until payment in full of the Guaranteed Amount;
  - (iv) fourth, to the Agent, until the Agent has received an amount equal to six percent of the aggregate Cost Value of the Merchandise; and
  - (v) fifth, (x) fifty percent to Agent; and (y) fifty percent to the Company.
- (e) The Agent will have the exclusive right to dispose of all FF&E in accordance with the Agency Agreement. In consideration of its services selling the FF&E, the Agent will receive a commission on the sale of any FF&E during the Sale equal to 20% of the "FF&E Proceeds". In addition, the Company will reimburse the Agent for the Agent's reasonable out of pocket expenses reasonably attributed to the disposition of FF&E. All gross proceeds of FF&E will be deposited by the Agent on a daily basis in an account to be designated by the Company.

- (f) The Agent only has the right to supplement the Merchandise in the Sale with additional goods procured by the Agent if such additional goods are of like kind and no lesser quality to the Merchandise and provided that such goods shall be limited to 5% of the aggregate Cost Value of the Merchandise at the Sale Commencement Date. The Agent will pay the Company five percent of the gross proceeds (excluding Sale Taxes) for such goods. The Agent and Company agree that such Additional Goods are, and shall be construed as, a true consignment from Agent to the Company in all respects.
- (g) To the extent that there is Merchandise or FF&E remaining at the Sale Termination Date, such remaining Merchandise or FF&E shall be deemed transferred to the Agent free and clear of all Encumbrances and the Agent shall use commercially reasonable efforts to dispose of all such remaining Merchandise or FF&E by bulk sale, wholesale or otherwise. The proceeds received by the Agent from such disposition shall constitute Proceeds or FF&E Proceeds, as applicable, under the Agency Agreement. To the extent that any of the remaining Merchandise includes any Merchandise with logos, brand names or other intellectual property of or under license to the Company, the Agent and the Company shall agree on the disposition of such Merchandise.
- (h) The Company will retain all rights and responsibilities in respect of any "Excluded Goods" – including, among other goods, Scheduled Drugs, inventory owned by Glentel, and Starbucks products containing licensed trademarks – but the Agent will assist the Company in dealing with any Excluded Goods,

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including, without limitation, by selling, removing or returning any of the Excluded Goods to such parties as may be identified by the Company, in each case at the Company's sole cost and expense. If the Company elects at the beginning of the Sale Term to have the Agent sell some or all of the Excluded Goods (the Company having obtained all necessary approvals from third parties, or authorizations as may be required), the Agent shall accept such Excluded Goods to be sold as part of the Sale at prices and through sales channels mutually acceptable to the Company and the Agent. The Agent shall be entitled to receive a fee equal to 20% of the proceeds (excluding Sales Tax).

- (i) The Agent shall be unconditionally responsible for all Expenses incurred in conducting the Sale during the Sale Term, which Expenses shall be paid by Agent in accordance with the Agency Agreement.
- (j) All sales of Merchandise and FF&E will be "final sales" and "as is" and all advertisements and sales receipts will reflect the same.
- (k) Subject to the provisions of the proposed Order approving the Agency Agreement, the Company will provide such employees as the Agent may designate from time to time in connection with the conduct of the Sale. The Agent may, in its discretion, stop using any such employee at any time during the Sale. The employees at all times remain the employees of the Company.

35. The Agency Agreement is also subject to certain guidelines (the "**Sales Guidelines**"), which are attached as Schedule "G" to the Agency Agreement. The Target Canada



Entities prepared the Sales Guidelines in consultation with the Monitor. The Sales Guidelines provide, among other things:

- (a) Except as otherwise set out in any Court Order, subsequent written agreement between TCC and the landlord, or the Sales Guidelines, the Sale shall be conducted in accordance with the terms of the applicable leases.
- (b) The Sale shall be conducted so that each store remains open during the normal hours of operation provided for in the applicable leases until the Vacate Date for the store, as provided in the Agency Agreement.
- (c) All display and hanging signs used in connection with the Sale shall be professionally produced and hung in a professional manner. No signs shall advertise the Sale as a “going-out-of-business” or “bankruptcy” sale.
- (d) The purchasers of FF&E shall only be permitted to remove the FF&E through the back shipping areas after regular store business hours, with the landlords’ supervision if required by the landlords, in accordance with the Initial Order and the proposed Order approving the Agency Agreement and Inventory Liquidation Process.
- (e) The Agent shall not conduct any auctions of merchandise or FF&E at any of the locations.

36. The Company and the Monitor will have the right to monitor the Sale and activities attendant thereto and be present in all Locations at all times.

37. In addition to all of the foregoing, the Target Canada Entities and the Monitor intend to consider issues raised by stakeholders as they arise. In particular, the Target Canada Entities intend to consult with their landlords throughout this process. As noted above, counsel for the Target Canada Entities has already met with counsel for certain of the landlords regarding the proposed Inventory Liquidation Process.

38. A subset of the retail leases for TCC's stores include provisions prohibiting going-out-of-business, liquidation and/or bankruptcy sales. In addition, some of the retail leases contain express operating covenants. These covenants take a variety of forms including covenants to continuously operate the store for varying periods of time. Some of the retail leases also include recapture rights that permit the landlord to take back the premises if the store ceases operations. As indicated previously, the Sales Termination Date is to be no later than May 15, 2015. However, the Target Canada Entities have been advised by the Agent that the operations at many stores may cease well before May 15, 2015, with Sales at some stores to be completed potentially as early as the end of March 2015.

39. I believe that the contemplated sales process will benefit all of the Target Canada Entities' stakeholders. It is my understanding that the Agent is familiar with the types of lease restrictions described above, has good relationships with many of the landlords from prior transactions, and is experienced in dealing with the types of landlord concerns that may arise in the type of process contemplated in this CCAA proceeding.

40. The Agency Agreement contemplates the creation of a Court-ordered charge in favour of the Agent on all of the Merchandise, Proceeds, the FF&E Proceeds (to the extent of the FF&E Commission) and the proceeds of the Sale of Designated Company Consignment Goods

(to the extent of the Agent's commission with respect thereof) to secure all amounts due and owing to the Agent under the Agency Agreement. The Agent's services are crucial to the controlled and orderly wind down of the Target Canada Entities' businesses. In the Target Canada Entities' view, this represents the best way to maximize the value of the Inventory & FF&E and to maximize the amounts available for the benefit of all stakeholders. The Target Canada Entities believe that engaging a professional liquidator to undertake a sale of the Inventory & FF&E will produce better results for the Target Canada Entities than an attempt by the Target Canada Entities to sell their remaining Inventory & FF&E without such professional assistance.

41. The Target Canada Entities believe that it is crucial to begin a sales process immediately in order to implement the orderly wind down of the business and to maximize the amounts available to their respective stakeholders. I am advised by the Monitor and believe that the Monitor supports the proposed Inventory Liquidation Process, including the proposed timeline.

#### **Proposed Real Estate Interest Sales Process**

42. The Target Canada Entities are also seeking at this time the Court's approval of a process (the "**Real Property Portfolio Sales Process**") by which they will seek to sell all or substantially all of TCC's Leases and Real Property under the supervision of the Court and the Monitor. The purpose of the Real Property Portfolio Sales Process is to seek proposals from Qualified Bidders and to implement one or a combination of such proposals. The process is intended to be flexible and may result in sales, dispositions, assumptions, assignments, disclaimers, terminations, and other transaction forms.

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43. The Real Property Portfolio Sales Process was designed by the Target Canada Entities and the Financial Advisor, in consultation with the Monitor and Northwest Atlantic (Canada) Inc. (the “**Broker**”). The Initial Order approved the appointment of the Financial Advisor and the Broker in connection with the contemplated sales process for the real estate portfolio held by the Target Canada Entities.

44. I am advised by Tim Pohl of Lazard and believe that the Real Property Portfolio Sales Process is designed to maximize the value of the Target Canada Entities’ real estate portfolio for the benefit of the stakeholders, based on the experience and expertise of the Financial Advisor in conducting the types of processes contemplated therein, and the local market experience and in-depth understanding of the individual properties of the Broker.

45. The proposed Real Property Portfolio Sales Process is attached as Exhibit E to this Affidavit. Capitalized terms that are not otherwise defined in this section of my Affidavit have the meaning given to them in that document.

46. It is my understanding that the Monitor supports the request to approve and implement the Real Property Portfolio Sales Process. The Monitor will supervise, in all respects, the Real Property Portfolio Sales Process, including the Financial Advisor’s performance under its engagement by TCC in connection therewith. In addition, as explained below, at the end of the process, the Target Canada Entities will apply to this Court for an Order approving any Successful Bid(s), or Qualified Bid(s) as applicable, and authorizing TCC to enter into any and all necessary agreements with respect to the Successful Bid(s), or Qualified Bid(s) as applicable, and to undertake such other actions as may be necessary or appropriate to give effect to them.

47. The Target Canada Entities have been advised by the Financial Advisor that the sales process is expected to be more effective and maximize recovery for the estate if all of the leases and real property are dealt with in a single, holistic process. Although the process is flexible and may result in multiple transactions, the Financial Advisor has advised that going to market in a piecemeal approach would likely result in a lower overall recovery for the estate. It is my understanding that the Monitor also supports dealing with all of the leases and real property in a single process.

48. The proposed process provides that: (i) as soon as reasonably practicable the Monitor will cause notice of the Real Property Portfolio Sales Process to be published in the national editions of *The Globe and Mail* and *The Wall Street Journal* and posted on the Monitor's website; and (ii) the Financial Advisor will distribute an initial offering summary to interested parties identified by the Financial Advisor, Broker and TCC, inviting such parties to express an interest in making an offer to acquire all or some of the Leases and Real Property.

49. A summary of key dates for the Real Property Portfolio Sales Process is as follows (these dates can be extended in accordance with the terms of the proposed process):

**Phase 1**

- (a) Phase 1 Bid Deadline – March 5, 2015

**Phase 2**

- (b) Stalking Horse Bid Deadline<sup>1</sup> – March 26, 2015
- (c) Qualified Bid Deadline – April 23, 2015
- (d) Targeted Outside Date – May 15, 2015

50. The Real Property Portfolio Sales Process is expected to proceed in two phases:

i. *Phase 1 – Solicitation of Non-Binding Letters of Intent*

51. For a period from the date that an Order approving the Real Property Portfolio Sales Process is issued until the Phase 1 Bid Deadline (set as 5:00 p.m. ET on March 5, 2015 or as extended in accordance with the proposed process), the Financial Advisor (with the assistance of TCC and the Broker) will solicit indications of interest to acquire all or a portion of the Leases and Real Property of the Target Canada Entities.

52. Subject to the terms of the Real Property Portfolio Sales Process, each party who has executed a satisfactory confidentiality agreement will receive a confidential information memorandum describing the opportunity and will receive access to an electronic data room containing information relating to the Leases and Real Property.

53. Interested parties that wish to pursue a sales proposal will be required to deliver a non-binding letter of intent (“LOI”) by the Phase 1 Bid Deadline.

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<sup>1</sup> As explained below, the Target Canada Entities, in their reasonable business judgement and in consultation with the Monitor and Financial Advisor, may select one or more bids to serve as “Stalking Horse Bids”.

54. Within five (5) business days of the Phase 1 Bid Deadline, the Target Canada Entities will, in consultation with the Monitor and Financial Advisor, assess “Qualified LOIs” and determine if there is a reasonable prospect of obtaining a “Qualified Bid”. The Target Canada Entities will consider, among other things: the form and amount of consideration being offered; the effect of accepting sales proposals that are not on an *en bloc* basis; the financial ability of the bidder to consummate the proposed transaction; the anticipated conditions to closing (including any required regulatory and landlord approvals); the estimated time required to complete the proposed transaction and whether it is reasonably likely to close on or before the Targeted Outside Date of May 15, 2015 (as may be extended); and such other criteria as the Target Canada Entities may determine in consultation with the Monitor and the Financial Advisor. If it is determined that there is a reasonable prospect of obtaining a Qualified Bid, the Target Canada Entities will continue the Real Property Portfolio Sales Process and proceed to Phase 2.

ii. ***Phase 2 – Qualified Bids***

55. The Target Canada Entities, in consultation with the Monitor and Financial Advisor, and after considering the criteria set out above, may invite certain “Competing Bidders” to participate in Phase 2. Subject to the terms of the Real Property Portfolio Sales Process, each Competing Bidder and its legal and financial advisors will be granted access to additional due diligence materials.

56. The Target Canada Entities, in their reasonable business judgement and in consultation with the Monitor and Financial Advisor, may select one or more bids to serve as “Stalking Horse Bids”. A Competing Bidder who wishes to submit a “Stalking Horse Bid” must

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deliver a Qualified Bid in accordance with the rules applicable to Qualified Bids to the Financial Advisor on or before the Stalking Horse Bid Deadline (set as 5:00 p.m. ET on March 26, 2015 or as extended in accordance with the proposed process).

57. If one or more Stalking Horse Bids is received, the Target Canada Entities, exercising their reasonable business judgement and in consultation with the Monitor and Financial Advisor, will select the Stalking Horse Bid(s) they consider most favourable and shall negotiate and attempt to settle the terms of a definitive agreement in respect of such Stalking Horse Bid(s). A definitive agreement negotiated and settled will be a "Selected Stalking Horse Bid". It is contemplated that there may be more than one Selected Stalking Horse Bid, depending on whether a Competing Bidder intends to bid for all, or only some, of the Leases and/or Real Property, provided that only one Selected Stalking Horse Bid may be selected in respect of any particular Lease and/or Real Property. The Target Canada Entities reserve the right, taking into account all other factors (including execution risk), to choose one or more bidders as Selected Stalking Horse Bidders that did not offer the highest purchase price for the Leases and/or Real Property.

58. With the consent of the Monitor, and in consultation with the Financial Advisor, the Target Canada Entities may grant each Selected Stalking Horse Bidder the following bid protections: (i) a Break-Up Fee not to exceed 3% of the negotiated purchase price of the applicable Leases and/or Real Properties; and/or (ii) an expense reimbursement of documented and reasonable out of pocket costs in pursuing the opportunity to consummate a Sale Proposal to a maximum amount of \$150,000 in the aggregate. A Selected Stalking Horse Bid shall only be entitled to payment of the Break-Up Fee and/or Expense Reimbursement, as applicable, if the



Target Canada Entities consummate transactions for the applicable leases and/or property with bidders other than the Selected Stalking Horse Bidder. The Target Canada Entities have been advised by the Financial Advisor that these bid protections, including the percentage of the Break-Up Fee and the amounts of the Expense Reimbursement, are reasonable in the circumstances, based on the Financial Advisor's experience in similar transactions and the Canadian market.

59. A "Qualified Bidder" who wishes to submit a "Qualified Bid" must deliver a Qualified Bid to the Financial Advisor on or before the Qualified Bid Deadline (set as April 23, 2015 or as extended in accordance with the proposed process). Any Competing Bidder who wishes to become a Qualified Bidder must submit a Qualified Bid satisfying the conditions set out in the Real Property Portfolio Sales Process. The conditions include, among other things, a final binding proposal in the form of a duly authorized and executed purchase agreement based on the Form of Purchase Agreement to be provided to potential Qualified Bidders; a letter stating that the offer is irrevocable unless and until certain conditions are met; a list of the Leases and/or Real Property to be subject to the bid; the details of any liabilities to be assumed by the Competing Bidder; and a Deposit in the form of a wire transfer payable to the Monitor on behalf of the Target Canada Entities, in trust, in an amount equal to 10% of the purchase price for the Leases and/or Real Property proposed to be acquired. The Target Canada Entities, with the consent of the Monitor and in consultation with the Financial Advisor, may waive compliance with any one or more of the requirements with respect to Qualified Bids.

60. The Target Canada Entities, in consultation with the Monitor and Financial Advisor, may engage in negotiations with the Qualified Bidders and accept revisions to Qualified Bids, in their discretion.

61. The Target Canada Entities, in consultation with the Monitor and Financial Advisor, will determine which is the most favourable bid with respect to the Leases and Real Property, taking into account, among other things: the form and amount of consideration being offered; whether the Qualified Bid maximizes value for the Leases and/or Real Property, including the effect of accepting Sales Proposals which are not on an *en bloc* basis; the demonstrated financial capability of the Qualified Bidder to consummate the proposed transaction; the conditions to closing (including any regulatory and landlord approvals); the terms and provisions of any proposed transaction documentation; the estimated time required to complete the proposed transaction and whether, in the Target Canada Entities' reasonable business judgement, in consultation with the Monitor, it is reasonably likely to close on or before the Targeted Outside Date (set as May 15, 2015 or as extended in accordance with the proposed process); and such other criteria as the Target Canada Entities may, in consultation with the Monitor and Financial Advisor, determine.

62. Following the submission of any Qualified Bids, the Target Canada Entities, in consultation with the Financial Advisor and the Monitor, shall commence one or more Auctions on or about April 28, 2015. Only Qualified Bidders for the Leases and/or Real Property to be auctioned (and their financial and legal advisors) will be entitled to participate in the Auction. (Selected Stalking Horse Bids are deemed to be Qualified Bids.) The terms of the Auction are described in the Real Property Portfolio Sales Process and may be modified by the Target

Canada Entities with the consent of the Monitor, and in consultation with the Financial Advisor. The highest and best bid at the conclusion of the auction (as determined by the Target Canada Entities in their reasonable business judgement and in consultation with the Monitor and Financial Advisor) will become a Successful Bid. The Target Canada Entities reserve the right to choose one or more Successful Bids that did not offer the highest purchase price(s). (The entity with the next-highest or otherwise second best Qualified Bid at the Auction shall be required to serve as a "Backup Bidder" and required to keep its Backup Bid open and irrevocable until the earlier of: (i) the Outside Backup Date; and (ii) the closing of the transaction with the Successful Bidder.)

63. The Target Canada Entities will apply to the Court for an Order: (i) approving the Successful Bid(s) and, for leases and/or real property not subject to an Auction, the applicable Qualified Bids, and (ii) authorizing TCC to enter into any and all necessary agreements with respect to these bid(s) and to undertake such other actions as may be necessary or appropriate to give effect to these bid(s).

64. The sale of the Leases and Real Property will be on an "as is, where is" basis and without surviving representations or warranties of any kind, nature, or description, except to the extent set forth in a definitive sales agreement executed with a Successful Bidder (or Qualified Bidder or Backup Bidder, as applicable). It is intended that all of the right, title and interest of TCC in and to the Leases and Real Property or any portion thereof to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests thereon (including the Court-ordered charges in this CCAA proceeding), pursuant to a vesting Order to be sought from this Honourable Court, except to the extent set forth in a

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definitive sales agreement executed with a Successful Bidder (or Qualified Bidder or Backup Bidder, as applicable).

65. The Target Canada Entities, with the consent of the Monitor and the DIP Lender and in consultation with the Financial Advisor, may at any time amend the Real Property Portfolio Sales Process and/or impose additional terms and conditions and otherwise seek to modify the Real Property Portfolio Sales Process.

66. The Target Canada Entities intend to consult with their landlords as they proceed through the Real Property Portfolio Sales Process. The Real Property Portfolio Sales Process provides that the Monitor and the Financial Advisor will communicate with the landlords from time to time, as appropriate, in connection with their respective interests in the process.

67. Some of the leases contain provisions that restrict assignment of the leases without the landlord's consent, though almost all of the leases provide that, if such consent is required, it cannot be unreasonably withheld. Some of the leases also contain provisions giving the landlord the option to terminate the lease if TCC elects to assign the lease.

68. The Target Canada Entities believe that a comprehensive sales process is warranted at this time. The Real Property Portfolio Sales Process is designed in a manner that is expected to maximize the realization on the value of the Target Canada Entities' real estate portfolio for the benefit of all stakeholders. The Target Canada Entities do not believe that there is any better viable alternative to the proposed Real Property Portfolio Sales Process. In addition, the Target Canada Entities believe that it is necessary to execute the process quickly as part of their orderly wind down of operations in Canada.

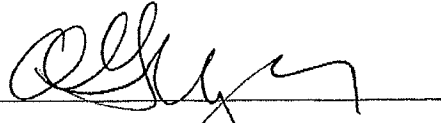
**Stay Extension**

69. The Target Canada Entities are seeking to extend the Stay Period (as defined in paragraph 17 of the Initial Order) up to and including May 15, 2015. This will allow the processes described above to unfold and allow the Target Canada Entities to focus on the orderly wind down of the businesses, with the oversight of the Monitor, for the benefit of all stakeholders. May 15, 2015 is the Targeted Outside Date under the Real Property Portfolio Sales Process and is also the date by which the Inventory Liquidation Process is expected to be completed.

70. The Target Canada Entities have confirmed, in consultation with the Monitor, that they have sufficient cash flow to carry on their business until May 15, 2015. I understand that the Monitor will file updated cash flows with the Court prior to the hearing of this motion.

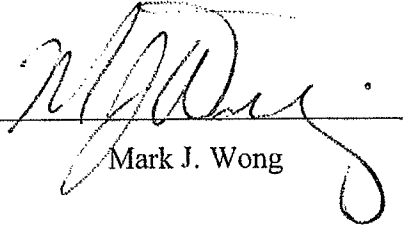
71. I believe that the Target Canada Entities have acted, and continue to act, in good faith and with due diligence in pursuing the controlled and orderly wind down of their businesses. I do not believe that any creditor will suffer any material prejudice if the Stay Period is extended as requested. I am informed by the Monitor that it supports the request to extend the Stay Period. Finally, I am advised by my counsel and believe that the extension of the Stay Period at this time is not intended to affect the exercise of “comeback rights” of stakeholders pursuant to the Initial Order.

SWORN BEFORE ME at the City of  
Toronto, on the 29<sup>th</sup> day of January,  
2015.



Commissioner for taking Affidavits

Alexis Beale



Mark J. Wong



**TAB 7**



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

**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 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**

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**RESPONDING FACTUM OF  
THE CADILLAC FAIRVIEW CORPORATION LIMITED  
AND ITS AFFILIATES  
(Motion for Process Approval and Stay Extension Orders)  
(Returnable on February 4, 2015)**

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Corporation Limited and its affiliates

**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 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**

**RESPONDING FACTUM OF  
THE CADILLAC FAIRVIEW CORPORATION LIMITED  
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(Motion for Process Approval and Stay Extension Orders)  
(Returnable on February 4, 2015)**

**PART I – OVERVIEW**

1. This factum is filed by The Cadillac Fairview Corporation Limited and its affiliates (collectively, “Cadillac Fairview”) in response to the motion of Target Canada Co. and certain of its affiliates<sup>1</sup> (collectively, “Target Canada”) for orders, among other things: (a) approving the Agency Agreement, Inventory Liquidation Process and Real Property Portfolio Sales Process (each, as defined in the Affidavit of Mark J. Wong sworn January 29, 2015); and (b) granting an extension of the Stay of Proceedings (as defined below) to May 15, 2015 (the “Process Approval and Stay Extension Orders”).

2. Cadillac Fairview’s position is as follows:

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<sup>1</sup> Target Canada Co.’s affiliates include 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.

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- (a) Cadillac Fairview does not object to the approval of an inventory liquidation process and a real property sale process; however, Target Canada has elected to design such processes in a way that does material harm to Cadillac Fairview's interests as a landlord.
- (b) The approval of the Agency Agreement and the Inventory Liquidation Process in the form sought by Target Canada contemplates an unlawful, unilateral amendment of the terms of the Cadillac Fairview Leases (as defined below) on a go-forward basis (i.e. as opposed to merely staying defaults or breaches as at the date of the commencement of the within proceedings). The Court is being asked, inappropriately, to rewrite a contract between parties and to bind Cadillac Fairview against its wishes to this new economic bargain going forward. This Court does not have the requisite authority to approve such unilateral contract amendments. Moreover, in the event that this Court does have the requisite authority, this Court should decline to exercise such authority in the present case. An appropriate liquidation process that achieves the legitimate objectives of Target Canada may be approved by this Court without the necessity for the extraordinary relief sought by Target Canada.
- (c) Target Canada has not met its burden under the test for an extension of the Stay of Proceedings and, in any event, it is premature to extend the Stay of Proceedings prior to the Comeback Hearing that has been scheduled for February 11, 2015.

## **PART II - FACTS**

### **Initial Order, Comeback Hearing and Process Approval and Stay Extension Orders**

3. On January 15, 2014, Target Canada sought and obtained from the Ontario Superior Court of Justice an Initial Order (the "Initial Order") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") that, among other things, granted a stay of proceedings in respect of Target Canada (the "Stay of Proceedings") and scheduled a Comeback Hearing on February 11, 2015. In connection therewith, Regional Senior

Justice Morawetz made an endorsement on January 16, 2015, providing that “[t]he comeback hearing is to be a ‘true’ comeback hearing.”<sup>2</sup>

4. Target Canada is, by its own admission, a defunct company. It is in liquidation, and there is no going concern value. There will be no continuing business, no continued employment for its employees. It is a *de facto* bankrupt company in all but name only.

5. As a defunct company, Target Canada has no interest in the outcome of the liquidation of its assets. Conversely, Target Canada’s landlords collectively have the largest prospective economic interest in the cessation of Target Canada.

6. Despite being defunct and having no interest in the outcome of its liquidation, Target Canada is attempting to direct its own liquidation contrary to the expressed wishes of, and in a manner that is material prejudicial to, its principal economic stakeholders.

7. On January 29, 2015, Target Canada served a motion record in connection with its motion for the Process Approval and Stay Extension Orders to be heard on February 4, 2015, which date is prior to the Comeback Hearing.

8. Cadillac Fairview intends to file additional materials in connection with, and appear at, the Comeback Hearing. Arguments made herein are without prejudice to any arguments that Cadillac Fairview may make at the Comeback Hearing.

#### **Cadillac Fairview Leases**

9. Target Canada leases certain retail space from Cadillac Fairview pursuant to certain lease agreements (the “Cadillac Fairview Leases”). The Cadillac Fairview Leases relate to the following properties:

- i) Chinook Centre;
- ii) Les Promenades Saint-Bruno;
- iii) Les Galeries D’Anjou (co-owned with Ivanhoe Cambridge and managed by Cadillac Fairview);

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<sup>2</sup> *Re Target Canada Co.*, CV-15-10832-00CL, Endorsement of Morawetz RSJ, January 16, 2015, at para. 82, Cadillac Fairview’s Brief of Authorities, at Tab 1.

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- iv) Market Mall (co-owned with Ivanhoe Cambridge and managed by Cadillac Fairview); and
- v) Masonville Place.

10. The approval of the Agency Agreement and the Inventory Liquidation Process in the form sought by Target Canada would result in the unilateral amendment the Cadillac Fairview Leases, to the detriment of Cadillac Fairview.

### PART III – ISSUES

11. The following issues are before this Court and addressed below:
- A. Does this Court have the requisite authority to unilaterally amend the terms of the Cadillac Fairview Leases and bind Cadillac Fairview to such unilaterally amended leases on a go-forward basis; that is, to excuse going forward the non-performance of Target Canada or its agents of those obligations that it does not wish to be bound by under the Cadillac Fairview Leases while simultaneously ordering Cadillac Fairview to continue to perform its obligations under the Cadillac Fairview Leases?
  - B. In the event that this Court has the requisite authority to unilaterally amend the terms of the Cadillac Fairview Leases, should this Court exercise such authority in the present case and what is the test that the Court is to employ in making that determination?
  - C. Should this Court extend the Stay of Proceedings at this time ahead of the comeback hearing?

### PART IV – LAW AND ARGUMENT

#### **Issue A: This Court does not have the authority to approve unilateral contractual changes that bind parties against their wishes going forward**

12. Cadillac Fairview submits that, as a matter of, *inter alia*:
- (a) contract law;
  - (b) insolvency law; and
  - (c) agency law,

this Court does not have the requisite authority to unilaterally amend the terms of the Cadillac Fairview Leases in the manner sought by Target Canada.

*(a) Contract Law*

13. It is a well-established principle of contract law that a Court cannot - and will not - rewrite the terms of a bargain between two parties. This principle has been consistently enunciated in legal texts and in case law.

14. Geoff R. Hall, in *Canadian Contractual Interpretation, 2nd Edition*, in the course of considering a more limited power to imply terms in an existing contract, emphasizes that this power is limited and must be used cautiously, and says that:

this power cannot be used either to rewrite the parties' contract or to contradict the express wording they have chosen. ... The prohibition against rewriting the parties' contract is very consistent with the overarching approach to the interpretation of contracts in Canada.<sup>3</sup>

15. In other words, the bargain made between contractual parties can be interpreted by a Court (and a Court may even go so far in some circumstances as to imply terms), but the express terms of a contract cannot be rewritten or created other than by the contracting parties themselves. There is a clear limit to the Court's authority in this regard.

16. This principle has consistently been supported by Canadian courts. In the case of *G. Ford Homes Ltd. v. Draft Masonry (York) Co.*, the Ontario Court of Appeal held that courts must be cognizant of the "time-honoured caution" that, "[c]ertainly a court will not rewrite a contract for the parties."<sup>4</sup>

17. The principle that a contract must be agreed upon by the contracting parties as a matter of contract law, and the Court does not have the ability to step in and rewrite contractual terms, has also been enunciated by the Supreme Court of Canada. In the case of *Pacific National Investments Ltd. v. Victoria (City)*, a real estate developer purchased land that the City of Victoria wished to develop. The parties entered into an agreement for certain infrastructure to be built with zoning changes being a condition precedent. When the City "down-zoned" the lots

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<sup>3</sup> Hall, Geoff R. *Canadian Contractual Interpretation Law, 2nd Ed.* (Markham: LexisNexis Canada, 2012), at pp. 155-156, Cadillac Fairview's Brief of Authorities, at Tab 2.

<sup>4</sup> [1983] O.J. No. 3181, 43 O.R. (2d) 401 at para. 403 (Ont. C.A.), Cadillac Fairview's Brief of Authorities, at Tab 3.

such that much of the agreed development could not be built, the developer commenced an action against the City for breach of contract. In considering the contractual issues, the Supreme Court commented on the Court's role in reviewing contracts in general. Justice Binnie held that:

[t]he general rule, of course, is that it is not the function of the court to rewrite a contract for the parties. Nor is it their role to relieve one of the parties against the consequences of an improvident contract.<sup>5</sup>

18. This case has been cited in numerous other cases, including by the Supreme Court of Canada in *Jedfro Investments (U.S.A.) Ltd. v. Jacyk Estate*.<sup>6</sup> In that case, three investors entered into a joint venture agreement to purchase, develop and sell property. When the investors became unable to meet their payment obligations and the property was foreclosed upon, one investor, the Appellant, commenced an action against the other two investors for breach of the joint venture agreement. In concluding that the Appellant was not entitled to a return of the initial investment, the Supreme Court found that the parties had contracted voluntarily to invest the money and never provided for a right to have the money repaid. Chief Justice McLachlin cited the case of *Pacific National*, holding once again that, "it is not the function of the court to rewrite a contract for the parties."<sup>7</sup>

19. In the present case, Target Canada is asking this Court to do what it is expressly, as a matter of contract law, not permitted to do. Target Canada is seeking to maintain its contracts rather than disclaiming them, but to have the Court approve sweeping unilateral changes that amount to a re-writing of the contracts. Target Canada wishes to have the benefit of an economic arrangement with its landlords that it did not bargain for, and to achieve this unilaterally through having this Court force that bargain on landlords such as Cadillac Fairview. Such an approval would undermine commercial efficacy and the negotiation process for such contracts, as well as well-established principles of contract law, to the detriment of Cadillac Fairview.

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<sup>5</sup> *Pacific National Investment Ltd. v. Victoria (City)* 2004 SCC 75, 2004 CSC 75, at para. 31, Cadillac Fairview's Brief of Authorities, at Tab 4.

<sup>6</sup> 2007 SCC 55, at para. 34, Cadillac Fairview's Brief of Authorities, at Tab 5.

<sup>7</sup> *Ibid.*, at para. 34.

*(b) Insolvency Law*

I. Unilateral Amendments of Leases

20. There is no basis in insolvency law for disregarding the principles enumerated above, and there is no statutory or inherent jurisdiction to depart from these principles. On the contrary, these principles have been repeatedly tested and upheld.

21. Within the context of the CCAA, the principle that a court should not rewrite contractual terms takes on enhanced significance because CCAA debtor companies are already provided with special powers in respect of their contractual obligations. Parliament turned its mind to the question of the rights to be given to a debtor in CCAA with respect to contracts. If a debtor finds a contract to be onerous, it is provided with an extraordinary remedy not available outside of the insolvency process whereby it is permitted to disclaim most contracts so that they have no requirement to perform on a go-forward basis. However, what the CCAA does *not* permit is the unilateral modification of contractual terms going forward when a debtor opts not to disclaim; the debtor is not permitted both to maintain a contract and to amend the contract's terms to be more favourable to the debtor. Put colloquially, a debtor may not pick and choose in its discretion the parts of a contract that it is prepared to honour going forward and to use the Court as a means to bind the counterparty to perform its obligations unamended. The debtor's statutory remedy is disclaimer, and not unilateral contract modification going forward. This is visible in case law dealing with the CCAA process.

22. The case of *Re Allarco Entertainment Inc.* involved an initial order that varied the terms of a contract by establishing a different payment structure than that negotiated between the parties. In examining whether this variance was correct, the Alberta Court of Queen's Bench held that:

at the stage of the initial order, it would be inappropriate for a court to attempt to draw up a contract for the parties. What the parties have negotiated in a contract should generally be presumed to be a fair and reasonable price for the service provided.<sup>8</sup>

23. The Court held that, on a go-forward basis, the contract must be performed according to its terms if not repudiated. Commenting specifically on the CCAA, the Court further held that:

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<sup>8</sup> *Re Allarco Entertainment Inc.* 2009 ABQB 503, at para. 46, Cadillac Fairview's Brief of Authorities, at Tab 6.



[g]iven the respect for contracts in the common law, explicit statutory provisions are required to give courts the jurisdiction to impose unilateral variations in contracts. Such explicit authority is not given to courts in the CCAA at the initial order stage.<sup>9</sup>

24. The case of *Allarco* was followed by the Quebec Superior Court in *Re AbitibiBowater Inc.*<sup>10</sup> In that case, Justice Gascon considered whether a trust agreement could be amended by a CCAA debtor company. In refusing to approve the amendment, the Court held that:

Under these circumstances, the Court considers that the Trust Agreement entered into between BCFPI and RTC cannot be amended and that BCFPI cannot ask the Court to modify it. This negotiation belongs to the parties themselves. It is not for the Court to substitute itself to this process.

It is inappropriate for a Court to attempt to draw up a contract for the parties when these parties do not agree to modify its contractual terms. Contracts represent a law which private parties have agreed applies to them and they normally cannot be varied by the Courts. This remains true as well in the context of a CCAA restructuring.<sup>11</sup>

25. In the case of *Re Canadian Airlines Corp.*,<sup>12</sup> the Alberta Court of Queen's Bench, in considering classification schemes (not unilateral amendments of contracts), commented broadly on the CCAA and Court's place in changing the relative legal positions of parties within a restructuring. The Court held that, "while the CCAA grants the court the authority to alter the legal rights of parties other than the debtor company without their consent, the court will not permit a confiscation of rights or an injustice to occur."<sup>13</sup> This case underscores that: (a) express statutory authority is required to alter the rights of parties; and (b) no alteration of rights is permitted where it amounts to a confiscation of rights or causes an injustice.

26. In the present case, the rights of Cadillac Fairview - contractually bargained for between sophisticated parties - would be confiscated if the unilateral amendment of the Contracts were approved as requested, since there would be no opportunity for the parties to settle on terms that

<sup>9</sup> *Ibid.*, at para. 54.

<sup>10</sup> 2010 QCCS 4218, Cadillac Fairview's Brief of Authorities, at Tab 7.

<sup>11</sup> *Ibid.*, at paras. 109-110.

<sup>12</sup> [2000] A.J. No. 1693, 19 C.B.R. (4th) 12, Cadillac Fairview's Brief of Authorities, at Tab 8.

<sup>13</sup> *Ibid.*, at para. 22.

are mutually acceptable. Simply put, Target Canada proposes that the Court be used to take from Cadillac Fairview various rights that it has under the Cadillac Fairview Leases.

27. Within the context of insolvency law, then, a Court does not have the power to approve unilateral contractual changes by the debtor going forward. Such a power would be severely prejudicial to the other contracting party, who would be forced to accept and perform going forward a contract on different (i.e. materially less favourable) terms than it bargained for. A CCAA debtor is already given an extraordinary remedy – that of repudiation – and this is the remedy that is to be used if a debtor wants to be freed from its contractual obligations.

28. In the present case, Target Canada is asking that this principle be ignored. The Court does not have the authority as a matter of insolvency law to approve the requested changes to the Contracts.

29. In *Richter & Partners Inc. v. Westwood Mall (Mississauga) Ltd.*<sup>14</sup>, the Court refused to grant an assignment of leases sought by a trustee in bankruptcy pursuant to the *Commercial Tenancies Act* (Ontario) because the assignment contemplated a change of use from that set out in the lease. The Court held that it could only override the lease provisions to the extent explicitly granted such authority by statute. Although there was statutory authority to override a consent requirement for assignment of the leases, there was no express statutory authority to override other terms of the lease, including restrictions on use. As such, the assignment was not lawful and was refused by the Court.

30. It should be noted that Cadillac Fairview is not objecting to the *quid pro quo* that is statutorily established by the CCAA (i.e. a contractual counterparty is stayed with respect to defaults existing at the time of the CCAA filing, but that going forward a debtor must fully perform a contract that it wishes to continue, failing which it may repudiate such contract).

31. That is, Cadillac Fairview fully accepts that it is stayed from acting on any existing defaults, monetary or otherwise, existing as at the date of the commencement of the within CCAA proceedings. This is statutorily provided by the CCAA. The CCAA also expressly deals with certain other contractual issues, such as negating the effect of a contractual *ipso facto* clause. Again, this is statutorily provided and is directed at the fundamental goal underlying the

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<sup>14</sup> [2001] O.J. No. 5021 (Ont. S.C.J. [Commercial List]), Cadillac Fairview's Brief of Authorities, at Tab 9.

CCAA of temporarily maintaining a status quo so as to allow a debtor company to reorganize (albeit not to allow a *de facto* bankrupt debtor to liquidate under the CCAA).

32. Importantly, Target Canada is not seeking relief consistent with the temporary maintenance of a status quo (to which the CCAA's provisions re: contracts are directed); on the contrary, Target Canada is seeking to fundamentally alter the status quo going forward by re-writing its contracts and selectively seeking permission to ignore those portions of its leases not to its liking.

33. The importance of maintaining the status quo has been emphasized in legal commentary and case law. Houlden and Morawetz, in their analysis of the CCAA, say that, "The fundamental purpose of the CCAA [is] to preserve the *status quo* while the debtor prepares a plan."<sup>15</sup> This point has been supported overwhelmingly by Canadian courts. In the case of *Re Forest & Marine Financial Corp.*, the British Columbia Court of Appeal held that preserving the status quo is the "fundamental purpose" of the CCAA.<sup>16</sup>

34. In the case of *Century Services Inc. v. Canada (A.G.)*, the Supreme Court of Canada considered judicial decision making under the CCAA. Justice Deschamps held that, within a CCAA case, "A court must first of all provide the conditions under which the debtor can attempt to reorganize. This can be achieved by staying enforcement actions by creditors to allow the debtor's business to continue, preserving the status quo."<sup>17</sup> She further held that, "The CCAA creates conditions for preserving the status quo while attempts are made to find common ground amongst stakeholders for a reorganization that is fair to all."<sup>18</sup>

35. A primary purpose of the CCAA would be frustrated if Target Canada were permitted to make unilateral changes to its contracts. Justice Farley of the Ontario Superior Court held in the case of *Re JTI-Macdonald Corp.* that, "a CCAA stay order...is to be used as a shield, not a sword."<sup>19</sup> In other words, the CCAA stay is to be used to preserve the status quo, and not to

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<sup>15</sup> Houlden, L.W. and Geoffrey B. Morawetz. *Houlden and Morawetz Bankruptcy and Insolvency Analysis*, available on Westlaw, at N§63, Cadillac Fairview's Brief of Authorities, at Tab 10.

<sup>16</sup> 2009 BCCA 319, at para. 26, Cadillac Fairview's Brief of Authorities, at Tab 11.

<sup>17</sup> [2010] 3 S.C.R. 379, at para. 60, Cadillac Fairview's Brief of Authorities, at Tab 12.

<sup>18</sup> *Ibid.*, at para. 77.

<sup>19</sup> 2005 CarswellOnt 1201, at para. 6, Cadillac Fairview's Brief of Authorities, at Tab 13. See also *Re New Skeena Forest Products Inc.*, 2005 BCCA 192, at para. 33, Cadillac Fairview's Brief of Authorities, at Tab 14.

permit the debtor to change the status quo in its favour at the expense of the stayed parties, which is what Target Canada is seeking to do.

36. As discussed below, the relief sought by Target Canada is inconsistent with the objects of the Act. Accordingly, this Court cannot have a discretion in such circumstances; there is no jurisdiction - statutory, inherent or otherwise - to order an outcome that is so fundamentally at odds with the objects of the CCAA.

## II. Augmentation of Inventory

37. On the specific issue of augmentation, it is the position of Cadillac Fairview that the augmentation of Target Canada merchandise that is to be sold in premises leased from Cadillac Fairview pursuant to the Agency Agreement with other non-Target Canada merchandise should not be permitted. To the extent that there is to be any augmentation, it should be limited in scope to the delivery of outstanding Target Canada orders from Target Canada's suppliers and any augmentation should be further limited in scale in order to prevent undue prejudice to Cadillac Fairview and its tenants that would otherwise result.

38. This Court has previously recognized that it is necessary to limit the scope and scale of augmentation in the restructuring or liquidation of retail companies.<sup>20</sup> In *Re T. Eaton Co.*, Justice Farley restricted the liquidation of augmented merchandise from leased premises as follows:

While it would include merchandise which has been purchased, it would not include merchandise which has not in fact been ordered. Even where there is a binding agreement between Eaton's and the supplier, the question would appear to be whether Eaton's could reasonably extricate itself from the obligation. However, augmentation merchandise would appear to include goods which have been effectively paid for, although not directly so — e.g. where Eaton's has provided a letter of credit from a financial institution to the supplier. It would also appear that where the supplier has labeled or otherwise fairly indelibly identified Eaton's on or with the goods to the objective observer, then these would be appropriate augmentation goods. In this analysis what we are looking at are goods which are Eaton's in the sense of beneficial title having passed even if the goods have not been paid for.

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<sup>20</sup> *Re T. Eaton Co.*, [1999] O.J. No. 3277 at paras. 9-11 (Ont. S.C.J. [Commercial List]), Cadillac Fairview's Brief of Authorities, at Tab 15.

Eaton's would be contractually obligated to pay for such goods (subject of course to any mitigation). Thus while these goods would not be in Eaton's direct hands in the sense of their being in its stores or warehouses, these goods would be Eaton's responsibility.<sup>21</sup>

39. Likewise, in order to prevent undue prejudice to Cadillac Fairview and its tenants in the present case, it is necessary for the augmentation of merchandise to be limited. Subject to the foregoing and in keeping with its desire to be a constructive participant in Target Canada's CCAA case, Cadillac Fairview is prepared to work with Target Canada in order to arrive at a consensual arrangement in this respect.

*(c) Agency Law*

40. In addition to asking this Court to ignore clear contract and insolvency law, Target Canada is likewise asking this Court to ignore established agency law.

41. Target Canada is seeking to have this Court impose an outcome that is fundamentally inconsistent with agency law, one in which Target Canada's agents will have greater rights and powers that Target Canada itself has, as principal. Such a result would undermine the very foundations of agency law by permitting the agent to achieve results that are incapable of being achieved by the principal, as can be seen with reference to the Supreme Court of Canada's definition of agency in *R. v. Kelly*<sup>22</sup>:

[28] In *The Law of Agency*, 5th ed. (London: Butterworths, 1983), Fridman suggests at p. 9 the following definition of agency:

Agency is the relationship that exists between two persons when one, called the *agent*, is considered in law to represent the other, called the *principal*, in such a way as to be able to affect the principal's legal position in respect of strangers to the relationship by the making of contracts or the disposition of property. [emphasis in original]

[29] The principal must be able to place trust and confidence in the agent since the agent has the authority to affect the legal position of the principal. This is perhaps the focus of the relationship. **In essence the agent acts to achieve the same results that would have been obtained if the principal had**

<sup>21</sup> *Ibid.*, at para. 10.

<sup>22</sup> [1992] 2 S.C.R. 170, Cadillac Fairview's Brief of Authorities, at Tab 16.

**acted on his or her own account.** The influence the agent can have on the affairs of the principal and the power to take action on behalf of the principal are significant. They are of such great significance that it follows as the night the day that the agent must always act in the best interests of the principal.<sup>23</sup> [emphasis added]

42. As a matter of Canadian agency law, it is a fundamental maxim that an agent can have no greater powers than those of the principal. The agency relationship only invests the agent with “a facsimile of the principal’s own power”.<sup>24</sup> Accordingly, permitting Target Canada’s agents to have greater rights and powers than Target Canada itself has, as principal, would be inconsistent with the Supreme Court of Canada’s definition of agency.

43. The authority of Target Canada’s liquidation agents is circumscribed by the terms of the existing Cadillac Fairview Leases to which Target Canada is a party, as the rights that are capable of being granted by Target Canada to the liquidation agent cannot be greater than the rights of Target Canada pursuant to the Cadillac Fairview Leases.

**Issue B: In the event that this Court has the requisite authority to unilaterally amend the terms of the Cadillac Fairview Leases, this Court should decline to exercise such authority in the present case**

44. Cadillac Fairview submits that this Court does not have the authority to approve unilateral changes to the Cadillac Fairview Leases. If this is to be found to be in error, it is necessary for Target Canada to:

- i) identify with specificity the basis of the Court’s authority; that is, the Court cannot have ambiguous statutory or inherent or “gap filling” jurisdiction in the face of such clear insolvency, contract and agency law, and Target Canada must identify the Court’s clear and unambiguous authority to depart from such clearly established law; and
- ii) identify both: (a) the relevant test that this Court is to consider in determining whether it is appropriate to exercise its jurisdiction to unilaterally amend the Cadillac Fairview Leases; and (b) the source of such test (i.e. rather than baldly

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<sup>23</sup> *Ibid.*, at paras. 28-29.

<sup>24</sup> Fridman, Gerald. *Canadian Agency Law*, 2d ed. (Markham: LexisNexis Canada, 2012), at p. 13, Cadillac Fairview’s Brief of Authorities, at Tab 17.

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asserting that a particular test ought to be applied, there must be some principled basis employed in identifying that test as being the relevant and appropriate test).

45. Even if this Court does have authority to do as requested by Target Canada, and irrespective of whatever test for the exercise of such discretion proposed by Target Canada, this Court should not exercise its discretion in this case for the following reasons:

- (a) extraordinary relief should only be granted where truly necessary, and there is no necessity in the present case;
- (b) as a defunct company, Target Canada's wishes should not be determinative; and
- (c) there is no evidence lead by Target Canada to support a finding that any reasonable test for the exercise of discretion has been met.

***(a) The extraordinary relief sought by Target Canada is unnecessary***

46. Where a Court is asked to do something extraordinary (including something fundamentally at odds with existing case law and for which there is no express statutory authority), it ought to be satisfied that there is a compelling case for such relief, not only as a matter of law but as a matter of practicality. A Court ought not grant extraordinary relief that is not required.

47. This Court has overseen firsthand over a dozen retail liquidation proceedings under the CCAA in recent years (and there have been many other such cases before other courts across Canada). This Court has seen, time and time again, that:

- i) robust liquidations that benefit creditors may be carried out - and have been carried out - without the necessity of unilaterally rewriting and overriding leases, there being no precedent in these previous cases where such extraordinary relief was needed or granted;
- ii) the absence of this extraordinary relief in past cases has never led to chaos or curtailed the conduct of a successful liquidation process;
- iii) landlords have consistently behaved in a reasonable manner, consensually negotiating reasonable parameters on liquidation sales with debtors and liquidators, without the need for the courts to intervene; and

- iv) a consensual, negotiated solution has in every case to date proven attainable.

In short, this Court has considerable reason to be confident based on prior similar cases that the relief sought by Target Canada is unnecessary, and that denying the relief sought will not adversely affect the liquidation process.

48. There are numerous protections and safeguards already in place in the within CCAA proceedings to ensure that a proper liquidation process may unfold, including without undue interference or distraction.

49. Most importantly, the Initial Order contains a broad stay of proceedings in favour of Target Canada. If, in the course of conducting a liquidation process, Target Canada or its agents breach any of its real property leases, the affected landlord is stayed from exercising any “self-help” remedies. Such affected landlord would: (a) engage in reasonable discussion with Target Canada, the Monitor and/or the liquidators, with a view to resolving the issue; and (b) failing such resolution, return to Court.

50. Importantly, if the terms of any of Target Canada’s leases prove to be at issue, and such issue cannot be resolved, the Court can be confident that the parties will return to the Court and that it, at that time - when these issues are ripe - may then decide what relief to grant, if any (including whether to refuse to lift the stay or to otherwise deny such landlord relief).

51. As this Court is well aware, in the many prior retail liquidation CCAA cases heard by this Court, the debtors, liquidators and landlords were consistently able to resolve their issues without a return to Court.

52. The existing stay of proceedings in favour of Target Canada is sufficiently broad so as to make the relief sought by Target Canada presently (i.e. a unilateral amendment of leases going forward) unnecessary. Accordingly, it would be improper for the Court to exercise its jurisdiction to grant unnecessary extraordinary relief.

***(b) Discretion ought not be exercised at the behest of a defunct company***

53. Cadillac Fairview submits that a Court, in deciding whether to exercise discretion to grant extraordinary relief, ought not to be swayed by the wishes of a defunct company such as Target Canada.



54. Though it is well-known that the CCAA affords courts broad discretionary powers, such powers, must, and do, have their limits. The Supreme Court of Canada in *Century Services*<sup>25</sup> expressed such limits as follows:

The first question concerns the boundary between a court's statutory authority under the CCAA and a court's residual authority under its inherent and equitable jurisdiction when supervising a reorganization. In authorizing measures during CCAA proceedings, courts have on occasion purported to rely upon their equitable jurisdiction to advance the purposes of the Act or their inherent jurisdiction to fill gaps in the statute. Recent appellate decisions have counselled against purporting to rely on inherent jurisdiction, holding that the better view is that courts are in most cases simply construing the authority supplied by the CCAA itself. (citations omitted)<sup>26</sup>

55. The Supreme Court of Canada also anchored the exercise of judicial authority under the CCAA to the remedial purposes of the Act:

The general language of the CCAA should not be read as being restricted by the availability of more specific orders. However, the requirements of appropriateness, good faith, and due diligence are baseline considerations that a court should always bear in mind when exercising CCAA authority. Appropriateness under the CCAA is assessed by inquiring whether the order sought advances the policy objectives underlying the CCAA. The question is whether the order will usefully further efforts to achieve the remedial purpose of the CCAA — avoiding the social and economic losses resulting from liquidation of an insolvent company. I would add that appropriateness extends not only to the purpose of the order, but also to the means it employs. Courts should be mindful that chances for successful reorganizations are enhanced where participants achieve common ground and all stakeholders are treated as advantageously and fairly as the circumstances permit.<sup>27</sup>

56. In these proceedings, the purpose of permitting the debtor to continue to carry on business and, where possible, avoid the social and economic costs of liquidating its assets<sup>28</sup> is

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<sup>25</sup> *Supra.*, at note 17.

<sup>26</sup> *Ibid.*, at para. 64.

<sup>27</sup> *Ibid.*, at para 70.

<sup>28</sup> *Ibid.*, at para. 15.

spent: the debtor is not carrying on business and will never carry on business again with the resulting social and economic costs of liquidating its assets already being felt.

57. As a result, it would be inappropriate for the CCAA court to grant the relief sought by Target Canada on the basis of a purported discretion that cannot be reconciled to these purposes and underlying objects of the CCAA in the exercise of its statutory or inherent jurisdiction.

58. Furthermore, it is clear that Target Canada, as a defunct entity, has no legitimate interests in the conduct of its liquidation. If the within proceedings were a bankruptcy under the *Bankruptcy and Insolvency Act* rather than a disguised bankruptcy under the CCAA, there would be no doubt that Target Canada, as a bankrupt, had no personal interest in the outcome of the liquidation of its estate and would lack power or standing to direct or influence this process.

59. At best, and since it has no *bona fide* personal interest in this liquidation, Target Canada may purport to want the extraordinary relief that it is seeking because it will benefit: (a) Target U.S., its parent company; (b) the liquidators; or (c) other non-landlord creditors of Target Canada.

60. It is inappropriate for Target Canada to advocate a position on behalf of these other persons, and the Court ought not decide to exercise its discretion based on such position taken by Target Canada:

- i) **Target U.S.** Target U.S. is independently represented in these proceedings and its interests ought not be pursued by Target Canada. In any event, the interests of Target U.S. (including in respect of guarantees that it has given to many landlords) ought not to determine this issue and the exercise of the Court's discretion.
- ii) **Liquidators.** Undeniably, the liquidators stand to make greater profit from the demise of Target Canada should they be able to circumvent Target Canada's leases. The Court ought not to be swayed in granting the extraordinary relief sought by Target Canada by the desire for greater profits by liquidators, and the interests of the liquidators in making money in no circumstances should be given priority over the interests of one of the largest - if not the largest - creditor groups, being the landlords of Target Canada.

- iii) **Non-Landlord Creditors.** A significant number of non-landlord creditors of Target Canada are represented in these proceedings. As of the writing of this Factum, not one such creditor has advocated on the record in favour of unilateral amendments to the leases as benefitting such person. If any non-landlord creditor believes that its interests would be best served by unilateral amendments to the leases, it is incumbent that they come forward and advocate in favour of this position. It is not appropriate that Target Canada, a defunct company, purport to advocate for extraordinary relief on their behalf. A bankrupt company would have no such standing to influence the exercise of the Court's discretion. If there is to be any "weighing of interests" applied in the Court's consideration of a possible exercise of its discretion, the interests to be weighed are those of the landlords and the other creditors. Target Canada has no interests to be weighed.

*(c) Even if there were a test, there is no evidence to support a finding that any reasonable test has been met*

61. Because the approval of unilateral contractual amendments is unprecedented, the Court would be required to articulate the basis for its authority to approve the amendments, the test that must be met, and the evidence supporting the conclusion that the test has been satisfied. Because of the dearth of evidence on these points, the present case does not lend itself to the enunciation of a precedential test.

62. It is not clear what test Target Canada is advocating be applied by this Court in determining whether to exercise its discretion (e.g. a balancing of interest? some fairness and/or reasonability test? etc.). Regardless, whatever test is appropriate, Target Canada has failed to meet such test and to provide the Court with sufficient evidence as to its meeting the test.

63. At a minimum, whatever test is applied, the Court ought not to exercise its discretion in a manner that is inconsistent with the objects and policies underlying the CCAA. A disguised bankruptcy conducted under the CCAA is already fundamentally inconsistent with the objects of the Act. Further, as noted above, another fundamental object of the Act is to preserve the status quo for a temporary period of time. Given how inconsistent the relief sought by Target Canada is with the objects of the Act, there is no basis on which the Court ought to find it appropriate to exercise its discretion in favour of Target Canada.

64. Whichever test is used, there is no reasonable basis on which to conclude that the approval should be granted. Liquidations have been conducted for the benefit of bankrupt and liquidating estates for many years without any demonstrated need for the unilateral amendment of contractual terms. The basis on which such relief is being sought in the present case is that it would yield a more valuable contract for the debtor, which has never been a permitted justification for this type of relief before. The unilateral amendment of the Cadillac Fairview Leases in the manner sought by Target Canada would be unprecedented and, even if this Court has the authority to approve such amendment, the Court should not exercise its discretion in this case.

**Issue C: The Stay of Proceedings should not be extended at this time**

65. Target Canada has not met its burden under the test for an extension of the Stay of Proceedings and, in any event, it is premature to extend the Stay of Proceedings at this time. The Stay of Proceedings provided for in the Initial Order is set to expire on February 13, 2015. The Initial Order also provided for a Comeback Hearing to be held on February 11, 2015. Target Canada now seeks to pre-empt this Court-ordered schedule of events by moving on February 4, 2015, for an extension of the Stay of Proceedings to May 15, 2015.

66. Pursuant to Section 11.02 of the CCAA, the Court may extend the stay of proceedings with respect to a debtor company or debtor companies where:

- (a) circumstances exist that make the order appropriate; and
- (b) the applicant has acted and is acting in good faith and with due diligence.<sup>29</sup>

***(a) The circumstances do not warrant an extension of the Stay of Proceedings***

67. The circumstances do not exist to warrant the extension of the Stay of Proceedings in the present case at the present time. There is a Comeback Hearing scheduled for February 11, 2015, that is meant to be a “true” Comeback Hearing in accordance with the Endorsement. It would be fundamentally unfair to approve a lengthy extension of the Stay of Proceedings before the date of the Comeback Hearing if it is to be a true Comeback Hearing.

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<sup>29</sup> CCAA, section 11.02.

68. In addition, there is no prejudice to Target Canada in waiting until the Comeback Hearing on February 11, 2015, particularly given that the hearing is already scheduled and no additional cost would be incurred. The Stay of Proceedings is a live issue that will be discussed during the hearing on February 11, 2015, and the Comeback Hearing would be undermined if an extension were granted at this time. In addition, an extension of the stay at the present time presupposes that a CCAA case is appropriate in the present case and would have the result of pre-determining any applications that are to be brought at the Comeback Hearing to move this case to a bankruptcy prior to parties having the opportunity to tender evidence on this point. This is a matter better left to the Comeback Hearing.

69. The granting of an approval for the liquidation of Target Canada's estate does not necessitate or make appropriate the granting of a corresponding extension of the CCAA stay. Should the CCAA stay ultimately not be extended and a bankruptcy ensue, that same liquidation process would presumably be conducted in the bankruptcy process. The Court may commit to a liquidation process at this time without also committing to a continuation of the CCAA process.

*(b) It is premature to determine whether or not Target Canada has acted and is acting in good faith and with due diligence*

70. It is premature at this time to determine whether or not the applicant has acted and is acting in good faith and with due diligence. Such a determination requires an analysis of Target Canada's conduct to date. Since only a short time has elapsed since the Initial Order was granted, this analysis would be better left to the Comeback Hearing when this Court will have the benefit of additional evidence in this regard. The basis for such a determination would only be strengthened by following the existing Court-ordered schedule of events and waiting until February 4, 2015, to make such a determination, as there will be a more complete record before this Court at that time, including, among other things, potential evidence with respect to the appropriateness of Target Canada's liquidation proceeding as a bankruptcy as opposed to a CCAA case and greater visibility of the positions of other parties in interest with respect to the myriad issues engaged by the Initial Order.

**PART V – RELIEF REQUESTED**

71. For the reasons set forth herein, Cadillac Fairview respectfully requests that this Court:

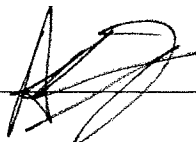
- (a) strike the provisions of the Process Approval and Stay Extension Orders that purport to unilaterally amend the terms of the Cadillac Fairview Leases; and
- (b) decline to extend the Stay of Proceedings at the present time.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 3rd day of February, 2015.



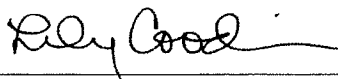
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David Bish



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Adam M. Slavens



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Lily Coodin

Lawyers for The Cadillac Fairview Corporation  
Limited and its affiliates

**SCHEDULE “A”  
LIST OF AUTHORITIES**

- Century Services Inc. v. Canada (A.G.)*, [2010] 3 S.C.R. 379.
- Fridman, Gerald. *Canadian Agency Law*, 2d ed. (Markham: LexisNexis Canada, 2012).
- G. Ford Homes Ltd. v. Draft Masonry (York) Co.*, [1983] O.J. No. 3181, 43 O.R. (2d) 401 (Ont. C.A.).
- Hall, Geoff R. *Canadian Contractual Interpretation Law*, 2nd Ed. (Markham: LexisNexis Canada, 2012).
- Houlden, L.W. and Geoffrey B. Morawetz. *Houlden and Morawetz Bankruptcy and Insolvency Analysis*, available on Westlaw, at N§63.
- Jedfro Investments (U.S.A.) Ltd. v. Jacyk Estate*, 2007 SCC 55.
- Pacific National Investment Ltd. v. Victoria (City)*, 2004 SCC 75, 2004 CSC 75.
- R. v. Kelly*, [1992] 2 S.C.R. 170.
- Re AbitibiBowater Inc.*, 2010 QCCS 4218.
- Re Allarco Entertainment Inc.*, 2009 ABQB 503.
- Re Canadian Airlines Corp.*, [2000] A.J. No. 1693, 19 C.B.R. (4th) 12.
- Re Forest & Marine Financial Corp.*, 2009 BCCA 319.
- Re JTI-Macdonald Corp.*, 2005 CarswellOnt 1201.
- Re New Skeena Forest Products Inc.*, 2005 BCCA 192.
- Re T. Eaton Co.*, [1999] O.J. No. 3277 at paras. 9-11 (Ont. S.C.J. [Commercial List]).
- Re Target Canada Co.*, CV-15-10832-00CL, Endorsement of Morawetz RSJ, January 16, 2015.
- Richter & Partners Inc. v. Westwood Mall (Mississauga) Ltd.*, [2001] O.J. No. 5021 (Ont. S.C.J. [Commercial List]).

**SCHEDULE "B"**  
**RELEVANT STATUTES**

1. *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended  
**Stays, etc. — initial application**

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 30 days,

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;

(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.

**Stays, etc. — other than initial application**

(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.

**Restriction**

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.



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., 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

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

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

**RESPONDING FACTUM OF**  
**THE CADILLAC FAIRVIEW CORPORATION**  
**LIMITED AND ITS AFFILIATES**  
**(Motion for Process Approval and**  
**Stay Extension Orders)**  
**(Returnable on February 4, 2015)**

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**TAB 8**

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

**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 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**

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**OUTLINE OF SUBMISSIONS OF  
RIOCAN MANAGEMENT INC. AND CERTAIN OF ITS AFFILIATES AND  
KINGSETT CAPITAL INC. AND CERTAIN OF ITS AFFILIATES  
(Motion for Process Approval and Stay Extension Orders)  
(Returnable on February 4, 2015)**

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and certain of its affiliates and (ii) Kingsett  
Capital Inc. and certain of its affiliates

## PART I - BACKGROUND

1. These submissions are jointly filed by (i) RioCan Management Inc. and certain of its affiliates (collectively, "**RioCan**") and (ii) Kingsett Capital Inc. and certain of its affiliates (collectively, "**Kingsett**"). RioCan and Kingsett are each landlords of Target Canada (defined below), and each obtained a guarantee or indemnity from the U.S. parent corporation, Target Corp. ("**Target U.S.**"), in respect of some or all of its leases. RioCan is Target Canada's single largest landlord with 26 leased properties. Kingsett is the landlord for 5 of Target Canada's leased premises, one of which is a joint venture with RioCan.
2. Approximately two years ago, Target U.S., a major U.S. retailer came into Canada and, through a Canadian start-up subsidiary, opened for business by taking over a large number of properties with existing leases. Two years later, it has failed and declared its intention to liquidate and vacate Canada.
3. Rather than turning over the business and assets to a Trustee in Bankruptcy for realization and distribution, Target U.S. has instead asked the Court (defined below) to allow it, through its almost-defunct Canadian start-up, to control its own liquidation and, in the process, to tie up all of the assets and rights of the suppliers and landlords, and even to attempt to alter and override their rights in certain important respects.
4. On January 15, 2015, Target Canada Co. and certain of its affiliates (collectively, "**Target Canada**") sought and obtained an *ex parte* Initial Order from the Ontario Superior Court of Justice (Commercial List) (the "**Court**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (as amended, the "**CCAA**"). The Initial Order, among other things: (i) granted a stay of proceedings in respect of Target Canada; (ii) granted a stay of proceedings in respect of Target U.S. and its direct and indirect subsidiaries (other than Target Canada) (the "**Parent Stay**"); and (iii) scheduled a full "comeback hearing" for February 11, 2015. In connection with the granting of the Initial Order, Regional Senior Justice Morawetz made an Endorsement dated January 16, 2015, providing, among other things, that "[t]he comeback hearing is to be a 'true' comeback hearing."

5. By notice of motion served after 10:00 p.m. on January 29, 2015, Target Canada has brought a motion returnable February 4, 2015, a week in advance of the comeback hearing, for an order, among other things:

- (a) approving an Agency Agreement, Inventory Liquidation Process and Real Property Portfolio Sales Process (each as defined in the Affidavit of Mark J. Wong, sworn January 29, 2015); and
- (b) granting an extension of the Stay of Proceedings (as defined in the Initial Order), which is currently set to expire on February 13, 2015, to May 15, 2015.

6. On February 2, 2015, counsel to various of Target Canada's landlords met with counsel to Target Canada, the Monitor, the Monitor's counsel and counsel to Target U.S. The purpose of the meeting was to discuss the landlords' issues and concerns with respect to the various orders being sought by Target Canada, including the terms of the Initial Order.

7. At that meeting, counsel for RioCan and Kingsett provided the other parties present with a mark-up (the "**RPPSP Mark-up**") to the Real Property Portfolio Sales Process (the "**RPPSP**") that had been included in Target Canada's January 29 motion record. The RPPSP Mark-up had been previously circulated to counsel for the various other landlords in attendance (in person or phone) at the meeting, and each had expressed support for the changes being sought.

## PART II - ARGUMENT

### *A. General Concerns Regarding the CCAA Proceeding and the Parent Stay*

8. As a preliminary matter, it is important to note that this proceeding is not in any way a restructuring or reorganization as is contemplated by the CCAA. It is a liquidation or de facto bankruptcy situation. In fact, the Affidavit of Mark J. Wong sworn January 15, 2015 in support of the Initial Order (the "**Initial Affidavit**") explicitly states that "TCC and Target Corporation intend to wind down Canadian operations in a responsible and controlled manner...". While this Court has permitted the CCAA to be used for liquidations in certain instances, those liquidations generally result from a failed (but attempted) restructuring under the CCAA, or are otherwise

justified due to the complexity of the situation. It is submitted that neither is the case with respect to Target Canada.

9. Although Target Canada has attempted to frame this proceeding as unique and in need of special treatment under the CCAA, it strains credulity to suggest that something as clear as this liquidation – a liquidation of a company that has been operating for approximately two years – cannot be conducted under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (as amended, the "BIA") more efficiently and effectively. However, in respect of this liquidation, tens of millions of dollars will be expended in fees and costs (the 13-week cash flow filed in support of the extension of the Stay Period estimates that approximately \$28 million of professional fees will be incurred by Target Canada in the first 4 months of the CCAA proceeding), there are or will be court-ordered secured charges, stays of proceedings for non-CCAA applicants, a manufactured (and likely to be disputed) claims process (notwithstanding that one already exists under the BIA) and, ultimately, either a distribution under a statute which has no distribution provisions (or conversion to a BIA proceeding at the appropriate time) or a Plan of Arrangement (including all the cost that entails).

10. The liquidation (or wind down of operations in a responsible and controlled manner) of the Target Entities is precisely the type of situation envisaged by the BIA and for which it has been used for over a century. Target Canada is insolvent and is ceasing its operations permanently. It is therefore Target Canada's creditors that have the primary interest in maximizing value for Target Canada's assets in order to obtain a distribution of the proceeds, if any. Target Canada itself no longer has any independent interest; in fact, it will very likely cease to exist in the very near future. Accordingly, there is no compelling reason why Target Canada should remain in charge of its liquidation process, and not a Trustee in Bankruptcy under the BIA. Canadian insolvency law allows for debtor-in-possession restructurings under the CCAA and the proposal provisions under the BIA, but liquidations that are intended as such from the outset are to be administered by officers of the Court that have a fiduciary duty to maximize value for the benefit of creditors. There is nothing unique about the current situation facing Target Canada. It is a classic bankruptcy circumstance.

11. The Initial Order provides for the Parent Stay, which is a stay in favour of a non-CCAA applicant. The appropriateness of the Parent Stay is an issue for the "comeback hearing", and not for this motion, but it need be said that this is a significant issue for RioCan and Kingsett. Those issues will no doubt be addressed at the comeback hearing on February 11, but RioCan and Kingsett consider it important to outline their concerns at this time to better explain the issues that arise now in respect of the RPPSP. RioCan and Kingsett submit that Target Canada's liquidation should have proceeded by way of a bankruptcy under the well-established regime of the BIA. To the extent that Target Canada and the Court believe it is appropriate for the liquidation to be conducted under the CCAA as Target Canada has proposed, RioCan and Kingsett submit that this proceeding should be a CCAA that is effectively an analog to a bankruptcy under the BIA in all respects and that there should be a clear pronouncement by the Court to that effect to avoid further misunderstanding and to provide the type of certainty and expectation that the BIA provides.

12. It is submitted that the Court must be particularly careful and circumspect when allowing a clear and straightforward liquidation to proceed as a CCAA proceeding because of the prejudice that can be suffered down the line and because there is already a statute to deal with such situations, without extra cost, extra orders and processes that need to be manufactured and extra uncertainty. It is further submitted that those issues must be dealt with up front, before matters progress too far and the legitimate rights of parties are trampled by the inertia of the CCAA proceedings.

***B. Issues Regarding Real Property Portfolio Sales Process***

13. Most of the proposed changes sought in the RPPSP Mark-up fall into one or more of the following categories: (i) the RPPSP should be run by the Monitor, not Target Canada; (ii) the time limits proposed by Target Canada (in consultation with its advisors) and supported by the Monitor should be strictly adhered to; and (iii) no landlord rights should be affected in any respect by the RPPSP.



**(i) The RPPSP should be run by the Monitor, not Target Canada**

14. As noted, Target Canada is proposing to liquidate and no longer has any independent or real interest to speak of. Its assets are being sold by professional advisors, and the legal entities comprising Target Canada will likely cease to exist in legal or practical terms shortly after the completion of the liquidation processes.

15. The parties that have an economic interest in the RPPSP are Target Canada's landlords and other creditors. They are the ones that will benefit from a successful process by way of increased recoveries.

16. It is submitted that the fact that the debtor has no independent interest in the liquidation process is precisely the reason liquidations under the BIA are conducted by a Trustee in Bankruptcy, and not the debtor. The Trustee in Bankruptcy is an officer of the Court and has a fiduciary duty to the creditors. The role of the Trustee in Bankruptcy is to maximize value for creditors generally and not to advance interests of one creditor or stakeholder group over the interests of another. The Trustee in Bankruptcy is answerable to the creditors and is directed by the Inspectors (who are elected by the creditors), as opposed to having the process run by the almost-defunct debtor. Creditors can take some degree of comfort knowing that they will be treated fairly and in accordance with the priority regime in the BIA.

17. In this case, Target Canada, an insolvent enterprise that will cease to exist in the near term, is proposing that it conduct the liquidation process and, among other things, determine which offer is the "most favourable". The term "most favourable" is difficult to define in any event, but it seems very problematic in the context of Target Canada. What is most favourable from the perspective of an insolvent company that is about to cease to exist, and why is that perspective relevant?

18. RioCan and Kingsett submit that the liquidation process should be run by the Monitor, an officer of the Court with a duty to all stakeholders. That is consistent with how the process would be run if this were a bankruptcy under the BIA. In addition, if the proceeding is converted into a bankruptcy, the transition of the RPPSP from the Monitor to the Trustee in Bankruptcy

would be much more seamless. It is therefore most appropriate that the Monitor run the process, which the Monitor has not objected to doing.

**(ii) The time limits proposed by Target Canada (in consultation with its advisors) and supported by the Monitor should be strictly adhered to**

19. Under the BIA, there is a finite period within which leases are to be dealt with. In Ontario, the rights of the Trustee In Bankruptcy include: (i) the ability to retain the leased premises for a period of 3 months following the date of bankruptcy; (ii) the ability to elect to retain the leased premises for the whole or any portion of the unexpired term of a lease and any renewal thereof; (iii) the ability to assign the lease with rights of renewal, if any, to a third party even if the lease prohibits assignment; and (iv) the ability to disclaim or surrender the lease within 3 months of the date of bankruptcy. Accordingly, under the BIA, a lease will generally be dealt with one way or another within 3 months of the date of bankruptcy.

20. Under the proposed RPPSP, Target Canada originally proposed to give itself to May 15, 2015 to complete the sale process, a period of 4 months from the date of the Initial Order. In its revised draft, it has actually given itself until June 30, 2015 just to enter into a definitive agreement (as opposed to closing the transaction(s)). In addition, the proposed sales process contemplates the possibility of endless extensions to virtually each stage of the process.

21. Even the proposed "Outside Date" of June 30, 2015, which RioCan and Kingsett submit is far too long a time period, does not result in finality to the process. Target Canada proposes that if a definitive agreement is not entered into with respect to a particular lease by June 30, 2015, upon a request by the relevant landlord, Target Canada will bring a motion for advice and directions. If this were a bankruptcy, the landlords would have certainty and finality within 3 months from the date of bankruptcy (certainly not more than 5 months after the date of filing).

22. RioCan and Kingsett submit that the liquidation process should have definitive deadlines, subject of course to the Monitor's ability to return to Court to seek an extension for very good reasons to any timeline on notice to the Service List. The timeline was created by Target Canada with the assistance of two professional advisors with extensive experience in liquidation processes and the leasing market, respectively, and was supported by the Monitor. It also

contemplates that leases may not be dealt with until 4 months (and now 5.5 months with the proposed changes by Target Canada) after the Initial Order was granted. It is submitted that the Court should not permit the Monitor and/or Target Canada to extend the timelines at their discretion and without hearing the objections of others, including landlords. This process must yield certainty for the landlords and other stakeholders within a reasonable time period.

23. In that vein, the RPPSP Mark-up contains provisions that provide in essence that if there is no interest with respect to a particular lease after the lease has been sufficiently marketed, upon a request by the applicable landlord to be released from any stay of proceedings with respect to such lease, Target Canada will forthwith disclaim such lease, provided that the merchandise liquidation process has been completed at the applicable premises. This proposed change is to provide greater certainty for the landlords that this process will not keep them in a process for a longer period of time than is required.

**(iii) No landlord rights should be affected by the sales process**

24. With respect to this issue, RioCan and Kingsett adopt paragraphs 12 – 64 of the Responding Factum of The Cadillac Fairview Corporation Limited and its affiliates.

*Other Issues*

25. With respect to other issues not specifically dealt with in this Outline of Submissions, RioCan and Kingsett adopt the submissions in the Responding Factum of The Cadillac Fairview Corporation Limited and its affiliates.

**(i) Stay extension**

26. With respect to Target Canada's proposed extension of the Stay Period, RioCan and Kingsett submit that the extension of the stay should be considered at the comeback hearing on February 11 as was originally intended and adopt the submissions in the Responding Factum of The Cadillac Fairview Corporation Limited and its affiliates. In any event, if the Court determines that it is appropriate to grant the extension at this time, RioCan and Kingsett submit that paragraph 5 of the draft order approving the extension be deleted and replaced with the following:

THIS COURT ORDERS that nothing in this Order, including the extension of the Stay Period set out herein, shall (i) in any way affect the "comeback rights" of any interested party, including as set out in paragraph 77 of the Initial Order and in the Endorsement of Morawetz R.S.J. dated January 16, 2015, (ii) in any way preclude or prejudice any argument that any interested party may make with respect to the Initial Order, including any challenges to any stay of proceedings contained therein, (iii) in any way preclude or prejudice any argument that any interested party may make that the within proceedings be terminated and the liquidation of Target Canada be continued pursuant to bankruptcy proceedings under the *Bankruptcy and Insolvency Act*.

27. RioCan and Kingsett do not anticipate that Target Canada or the Monitor will have any objection to that proposed language given that both have indicated through counsel that any extension of the Stay Period is truly without prejudice to all rights and arguments.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 4<sup>th</sup> day of February, 2015.

Bennett Jones LLP

**BENNETT JONES LLP**

Lawyers for (i) RioCan Management Inc. and certain of its affiliates and (ii) Kingsett Capital Inc. and certain of its affiliates

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., 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

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

OUTLINE OF SUBMISSIONS OF  
RIOCAN MANAGEMENT INC. AND CERTAIN OF ITS AFFILIATES AND  
KINGSETT CAPITAL INC. AND CERTAIN OF ITS AFFILIATES

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# TAB 9

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

**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 OR 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.**

**SECOND REPORT OF THE MONITOR  
ALVAREZ & MARSAL CANADA INC.**

**FEBRUARY 9, 2015**

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**Appendix A – List of the Applicants and Partnerships**

**Appendix B – First Report of the Monitor**

**Appendix C – Letter dated February 3, 2015 from Goodmans LLP to Sutts, Strosberg LLP**

## 1.0 INTRODUCTION

1.1 On January 15, 2015, Target Canada Co. (“**TCC**”) and those companies listed in **Appendix “A”** (collectively, the “**Applicants**”), together with the Partnerships also listed in **Appendix “A”** (the “**Partnerships**”, and collectively with the Applicants, the “**Target Canada Entities**”), applied for and were granted protection by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). Pursuant to an Order of this Court dated January 15, 2015 (the “**Initial Order**”), Alvarez & Marsal Canada Inc. (“**A&M**”) was appointed Monitor of the Target Canada Entities in the CCAA proceedings (the “**Monitor**”). The proceedings commenced by the Applicants under the CCAA are referred to herein as the “**CCAA Proceedings**”.

1.2 In connection with the CCAA Proceedings, the Monitor has provided to this Court the First Report of the Monitor (the “**First Report**”) dated January 30, 2015 and the Supplemental Report to the First Report (the “**First Supplemental Report**”) dated February 3, 2015, and A&M has provided to this Court the Pre-Filing Report of the Proposed Monitor (the “**Pre-Filing Report**”) dated January 14, 2015 (collectively, the “**Prior Reports**”). The Prior Reports, Initial Order and other Court-filed documents and notices in these CCAA Proceedings are available on the Monitor’s website at [www.alvarezandmarsal.com/targetcanada](http://www.alvarezandmarsal.com/targetcanada). For ease of reference, the First Report is attached as **Appendix B** to this Second Report.

1.3 The Initial Order, among other things:

- (a) granted a stay of proceedings (the “**Stay**”) through February 13, 2015 (the “**Stay Period**”) in favour of the Target Canada Entities;
- (b) provided the Target Canada Entities with the ability to, among other things, engage in discussions with and solicit proposals and agreement(s) from third

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parties in respect of the liquidation of the inventory, furniture, equipment and fixtures located in and/or forming part of the Property (the “**Liquidation Agent Solicitation Process**”) and return to Court for approval of such agreement(s);

- (c) approved the engagement of Lazard Frères & Co. LLC (“**Lazard**”) as financial advisor and of Northwest Atlantic (Canada) Inc. (“**Northwest**”) as broker advisor;
- (d) authorized and directed the DIP Entities to enter into and borrow under the DIP Facility provided by Target Corporation;
- (e) approved the creation of the Employee Trust on substantially the terms and conditions set out in the Employee Trust Agreement, including without limitation, the appointments of Hon. John D. Ground as trustee (the “**Trustee**”) and the Monitor as administrator (the “**Administrator**”) of the Employee Trust;
- (f) approved the Key Employees Retention Plan (“**KERP**”);
- (g) appointed Koskie Minsky LLP (“**Koskie Minsky**” or “**Employee Representative Counsel**”) as counsel for all employees other than officers and directors (the “**Employees**”) of the Target Canada Entities in these CCAA Proceedings, any proceeding under the *Bankruptcy and Insolvency Act* (the “**BIA**”) or in any other proceeding respecting the insolvency of the Applicants which may be brought before this Court (the “**Insolvency Proceedings**”) for any issues affecting the Employees in the Insolvency Proceedings including, without limitation, with respect to the Employee Trust Agreement and the Claims Process (as defined in the Employee Trust Agreement);

- (h) provided the Target Canada Entities with the ability, but not the requirement, to pay, among other things, the following expenses whether incurred prior to, on or after the Initial Order to the extent that such expenses are incurred and payable by the Target Canada Entities:
- (i) all outstanding and future wages, salaries, employee benefits (including, without limitation, employee medical, dental and similar benefit plans or arrangements), vacation pay and expenses payable on or after the date of the Initial Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements, and all other payroll processing expenses;
  - (ii) all outstanding or future amounts owing in respect of customer rebates, refunds, discounts or other amounts on account of similar customer programs or obligations;
  - (iii) all outstanding or future amounts related to honouring gift cards issued before or after the date of the Initial Order;
  - (iv) the fees and disbursements of any Assistants retained or employed by the Target Canada Entities at their standard rates and charges;
  - (v) with the consent of the Monitor, amounts owing for goods and services actually supplied to the Target Canada Entities prior to the date of the Initial Order by:
    - (A) logistics or supply chain providers, including customs brokers and freight forwarders and security and armoured truck carriers;

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- (B) providers of credit, debit and gift card processing related services;
  - (C) other third party suppliers up to a maximum aggregate amount of \$10 million, if, in the opinion of the Target Canada Entities, the supplier is critical to the Orderly Wind-down; and
  - (D) any and all sums due and owing to Amex Bank of Canada and JPMorgan in respect of credit cards issued to management and employees of the Target Canada Entities; and
- (i) approved the Administration Charge, the KERP Charge, the Directors' Charge, the Financial Advisor Subordinated Charge and the DIP Lender's Charge in the amounts and relative priority as set out in the Pre-Filing Report.
- 1.4 On January 29, 2015, the Applicants brought a motion returnable February 4, 2015 for, among other things, Orders:
- (a) approving the Agency Agreement (defined below), including the Sales Guidelines attached thereto (the "**Sales Guidelines**");
  - (b) approving the Real Property Portfolio Sales Process; and
  - (c) extending the Stay Period to May 15, 2015.
- 1.5 On February 4, 2015, this Court issued an order (the "**Approval Order – Agency Agreement**") approving: (i) the Agency Agreement, including the Sales Guidelines, entered into between TCC, Target Canada Pharmacy Corp. and Target Canada Pharmacy (Ontario) Corp. (collectively, "**Target Canada**"), and a contractual joint venture comprised of Merchant Retail Solutions ULC, Gordon Brothers Canada ULC and GA Retail Canada, ULC (collectively, the "**Agent**") on January 29, 2015 (the "**Agency Agreement**"), and certain related relief; and (ii) the granting of

the Agent's Charge and Security Interest (as defined in the Approval Order – Agency Agreement).

1.6 The Approval Order – Agency Agreement, authorized the Agent to conduct the Sale of inventory and furniture, fixtures and equipment in accordance with the Order, the Agency Agreement and the Sales Guidelines, and to advertise and promote the Sale within the Stores (each as defined in the Approval Order – Agency Agreement) in accordance with the Sales Guidelines. The Inventory Liquidation Process commenced in the retail stores on February 5, 2015.

1.7 Also, on February 4, 2015, this Court issued an Endorsement providing that:

- (a) the Court will determine the terms of the Real Property Portfolio Sales Process upon a motion returnable on February 11, 2015;
- (b) pending the determination of the terms of the Real Property Portfolio Sales Process:
  - (i) Lazard is authorized to contact prospective interested parties;
  - (ii) Lazard is authorized to provide such interested parties with a “teaser” and form of confidentiality agreement (“CA”);
  - (iii) Lazard and the Applicants are authorized to negotiate the terms of such CAs and the Applicants are authorized to enter into such agreements;
  - (iv) Interested parties are permitted to undertake due diligence, including: (i) receiving a confidential information memorandum (“CIM”) from Lazard; (ii) being permitted access to the data room; and (iii) conducting site visits, if requested; and