

**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**

**RESPONDING SUBMISSIONS OF THE MONITOR,  
ALVAREZ & MARSAL CANADA INC., TO COSTS  
SUBMISSIONS OF THE OBJECTING LANDLORDS**

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1. These submissions are filed by Alvarez and Marsal Canada Inc., in its capacity as the Monitor in the within proceedings (the “**Monitor**”), in response to the Costs Submissions of the Objecting Landlords filed February 5, 2016.
2. In connection with their opposition to the Applicants’ motion for an order accepting the filing of the Applicants’ joint plan of compromise or arrangement (the “**Plan**”) and authorizing the calling of a meeting (the “**Meeting Order Motion**”), the Objecting Landlords each request that their costs, at a partial indemnity rate, in an aggregate amount of \$311,300 be borne by the estate of the Applicants.
3. Costs orders are rarely made in proceedings under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”), with the result that each party bears its own costs. The Courts have held there are sound policy reasons that underlie this approach, including the reality that the amount of funds available for distribution is limited given the insolvency of the debtor company and parties ought not to expect to recover their litigation costs.<sup>1</sup>
4. The Monitor is of the view that the circumstances relating to the Applicants’ Meeting Order Motion and the objections thereto by a limited number of landlords do not justify departing from the usual result in CCAA proceedings that each party bears its own costs, in particular:
  - (a) the Applicants brought forward their Plan on a timely basis (as requested by the Court and their stakeholders) in good faith, which Plan provided significant value to unsecured creditors as a result of the Plan Sponsor’s subordination;
  - (b) the Plan Sponsor’s subordination was conditional on the Plan affecting all claims, including guarantee claims; and
  - (c) the Applicants, with the assistance of the Monitor, were in discussions with the landlords, including the Objecting Landlords, both prior to and after the filing of the Plan, in an attempt to reach a consensual resolution and address the concerns of the Objecting Landlords. Those discussions continue. The result of those

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<sup>1</sup> *Re Indalex Ltd.*, 2011 ONCA 578.

discussions may have been an amended Plan put forward for voting at the meeting requested by the Applicants in their Meeting Order Motion that included the consensual resolution of issues raised by the Objecting Landlords. Indeed, that continues to be the Applicants' stated objective.

5. There was no conduct on the part of the Applicants or the other creditors that would warrant the imposition of a cost penalty on the estate. The Applicants, with their Plan Sponsor, proposed a plan, with substantial benefits for creditors, which was properly brought forward for consideration.

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

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Proceeding commenced at Toronto

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