

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**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 FACTUM OF LOU PHARMA CORP. AND  
NASER GHASEMLOU**

November 25, 2016

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Lawyers for Lou Pharma Corp. and Naser  
Ghasemlou

**TO: Service List**

## PART I - OVERVIEW

1. Lou Pharma Corp. (the “**Claimant**”) seeks leave of this Honorable Court to file its Proof of Claim in respect of damages of \$618,000 sustained as a result of the early termination by Target Canada Franchising, LP (“**Target**”) of the Pharmacy Franchise Agreement among Target, as Franchisor, Lou Pharma Corp., as Franchisee, and Naser Ghasemlou, as Pharmacist (the “**Franchise Agreement**”).
2. The Claimant’s Proof of Claim was not filed prior to the bar date established by the Court due to inadvertence and a misunderstanding of the process. The claimant has acted in good faith, and admission of its late claim will not result in any real prejudice to the process.

## PART II - FACTS

3. Pursuant to the Franchise Agreement, Target granted the Claimant the right to operate a Target pharmacy franchise in Calgary Alberta, commencing in January 2014.<sup>1</sup>
4. At the end of January 2015, Mr. Ghasemlou, the sole shareholder, officer, and director of the Claimant received a Notice of Disclaimer from Target, terminating the Franchise Agreement. Mr. Ghasemlou is 61 years old, was born and raised in Iran, and immigrated to Canada in 1999. He is not familiar with the legal process in Canada generally and has not previously had exposure to a claims bar process in any insolvency or restructuring proceeding.<sup>2</sup>

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<sup>1</sup> Affidavit of Naser Ghasemlou sworn November 14, 2016, paragraph 4.

<sup>2</sup> Affidavit of Naser Ghasemlou, paragraphs 1, 3, and 8.

5. Unfortunately, despite his efforts to obtain alternative employment as a pharmacist, Mr. Ghasemlou has been unsuccessful in doing so and has been unable to earn any income during the period following the closure of the Target pharmacy franchise.<sup>3</sup>

6. In the summer of 2015, Mr. Ghasemlou returned to Iran to assist in caring for his ill mother, and remained in Iran for the entire months of June, July and most of August 2015. He did not receive the claim package or notice of the need to file a claim under the Claims Procedure Order until September 2016.<sup>4</sup> The Claimant was not aware until September 2016 of the Order appointing representative counsel for the Target pharmacy franchisees or the requirement therein to opt out of such representation prior to March 25, 2016. The Claimant wishes to opt out and seeks leave of the Court, if necessary, to do so.<sup>5</sup>

7. Promptly after learning of the Claims Procedure Order, Mr. Ghasemlou retained legal counsel to assist him in filing a late claim, and notified the Monitor and its counsel that the Claimant was seeking consent to file a late claim.<sup>6</sup>

8. The Claimant's Proof of Claim has been prepared on a basis which is consistent with the treatment afforded by the Monitor to other Target pharmacy franchisees and reflects the rulings of the Honourable Dennis O'Connor, Q.C. with respect to the common issues referred to him as

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<sup>3</sup> Affidavit of Naser Ghasemlou, paragraph 6.

<sup>4</sup> Affidavit of Naser Ghasemlou, paragraphs 8 and 9.

<sup>5</sup> Affidavit of Naser Ghasemlou, paragraph 9.

<sup>6</sup> Affidavit of Naser Ghasemlou, paragraph 10.

the Claims Officer appointed to determine the validity and amount of the Target pharmacy franchisee claims.<sup>7</sup>

9. The Claimant has at all times intended to pursue its claims for damages against Target and its failure to do so prior to the claims bar date was entirely unintentional.<sup>8</sup>

10. The total amount of the claim is \$618,459.00. Although that amount is not material in relation to the total amount of all claims against Target, the amount is of significance to the Claimant. Current reserves are sufficient to satisfy payment to the Claimant, as well as distributions to the other known late claimants, should such claims be admitted and accepted by the Monitor.<sup>9</sup>

### **PART III – ISSUES, LAW & AUTHORITIES**

11. *Re Blue Range Resource Corp.*<sup>10</sup> is widely cited as the governing judicial authority for the exercise of the Court's discretion to grant permission for the late filing of claims. In *Blue Range*, Justice Whittmann set out the following criteria to be considered in determining whether to grant permission for the late filing of claims:

- (a) Was the delay caused by inadvertence and if so, did the claimant act in good faith?

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<sup>7</sup> Affidavit of Naser Ghasemlou, paragraph 12.

<sup>8</sup> Affidavit of Naser Ghasemlou, paragraph 13.

<sup>9</sup> Monitor's 32<sup>nd</sup> Report dated October 31, 2016, para. 6.4.

<sup>10</sup> *Blue Range Resource Corp.*, 2000 ABCA 285

- (b) What is the effect of permitting the claim in terms of the existence and impact of any relevant prejudice caused by the delay?
- (c) If relevant prejudice is found can it be alleviated by attaching appropriate conditions to an order permitting late filing? and
- (d) If relevant prejudice is found which cannot be alleviated, are there any other considerations which may warrant an order permitting late filing?<sup>11</sup>

12. Inadvertence includes carelessness, negligence and accidents, and is unintentional.<sup>12</sup>

13. The fact that other creditors will receive less money if late claims are allowed does not constitute relevant prejudice. Allowing all legitimate creditors to share in the available proceeds is an integral part of the formal insolvency and restructuring process. The test for prejudice is whether the creditors, by reason of the late filings, lose a realistic opportunity to do anything that they otherwise might have done.<sup>13</sup>

14. Ultimately, in *Blue Range*, Justice Whittmann allowed the late filing of claims notwithstanding the fact that the meeting to vote on the Plan of Arrangement had already taken place, as he found that there would be no prejudice to other creditors or to the debtor company.<sup>14</sup>

15. In the case at bar, the Claimant asserted its claim within a reasonable time after receiving notice of the claims bar date. In addition, there is no evidence that the Claimant acted in bad faith. On the contrary, the Claimant's failure to file the Proof of Claim in a timely manner was entirely accidental and the result of the Claimant not having received a claims package or notice

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<sup>11</sup> *Blue Range, supra* at para. 26

<sup>12</sup> *Blue Range, supra* at para 27

<sup>13</sup> *Blue Range, supra* at para. 40

<sup>14</sup> *Blue Range, supra* at para. 42

of the claims bar date. It appears that the claims package was misplaced or lost given the Claimant's absence from Canada during the summer of 2015 when the Claims Procedure Order was granted and claims packages were distributed.

16. There is no real prejudice which would result from admission of this late claim. The amount claimed is not material in terms of the total distribution to Target's creditors and the Monitor has reserved sufficient funds in order to permit payment of the claim, in full, should it be admitted and allowed. In addition, as the Claimant has filed its claim on a basis consistent with the Monitor's treatment of claims by other Target pharmacy franchises, and the rulings of the Honorable Dennis O'Connor, the Monitor will not be required to incur significant professional fees in order to resolve the claim.

#### **PART V - ORDER REQUESTED**

17. The Claimant therefore respectfully requests that this Court authorize the filing of its late claim.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 25<sup>th</sup> day of November, 2016.



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**SCHEDULE "A"**  
**LIST OF AUTHORITIES**

1. *Blue Range Resource Corp.*, 2000 ABCA 285

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

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PROCEEDING COMMENCED AT  
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