

**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 (the
"Applicants")

**SUBMISSIONS OF
PHARMACISTS' REPRESENTATIVE COUNSEL
(Motion to Accept Filing of a Plan and Authorize Creditors' Meeting
to Vote on the Plan - returnable December 21, 2015)**

PART I - OVERVIEW & SUMMARY OF SUBMISSIONS

1. These submissions are filed by Pharmacists' Representative Counsel on behalf of the Pharmacy Franchisee Association of Canada ("PFAC") and the Pharmacy Franchisees in response to the motion by the Target Canada Entities ("Applicants") for an order seeking, among other things, the acceptance for filing of the Joint Plan of Compromise and Arrangement in respect of the Target Canada Entities dated November 27, 2015 ("the Plan") and authorization for the holding of a meeting of unsecured creditors ("Affected Creditors") to consider and vote on the Plan.
2. Pharmacists' Representative Counsel will submit on the return of the motion:

- (a) The court has clear jurisdiction to grant the Meeting Order, the Affected Creditors are appropriately classified for voting purposes, and the motion for a Meeting Order putting the Plan to a vote of the Affected Creditors of the Target Canada Entities should be granted;
- (b) As a matter of law, a CCAA plan of compromise or arrangement can provide for third party releases in circumstances where those releases are reasonably connected to the proposed plan. The determination of whether third party releases should be permitted in the Plan is properly addressed at the Sanction Hearing when the results of the Affected Creditors' vote are known and the overall fairness of the Plan can be better assessed;
- (c) The votes of Claim Types of Affected Creditors should be separately tabulated for the purpose of submissions at the Sanction Hearing;
- (d) The monetary values to be ascribed to the votes of the Pharmacy Franchisees and other Affected Creditors disputing the assessments of their Claims by the Monitor are to be the values determined under the Claims Adjudication Process rather than on the values ascribed thereto by the Monitor; and
- (e) Information possessed by the Target Canada Entities, Target Corporation as the Plan Sponsor, and the Monitor that would reasonably permit the Affected Creditors to assess the Plan -- including information about the Class Type assessments by the Monitor and the settlement between Target

Corporation and RioCan -- must be disclosed prior to the meeting of Affected Creditors.

PART II - SUMMARY OF FACTS

3. Pharmacists' Representative Counsel relies upon the facts set out in the Applicants' motion record and the Monitor's Twenty-Third Report.

4. While it has been reported by the Monitor that there was broad-based consultation in the negotiations that led to the Plan, Pharmacists' Representative Counsel, PFAC and/or the Pharmacy Franchisees individually were not asked to participate in the negotiations and were not consulted with respect to such negotiations.

5. The Plan was first presented to the Pharmacists' Representative Counsel and the Pharmacy Franchisees on November 27, 2015 in the subject motion material and the Monitor's Twenty-Third Report.

6. In paragraph 4.9 of the Twenty-Third Report, the Monitor reports that it received Pre-Filing Claims and Restructuring Period Claims, excluding any Inter-Company Claims filed, as follows:

Target Canada Co., et al Summary of Claims as Filed Against the Target Canada Entities by Claim Type		
Total Claimants	1,710	
Claim Type	Claims Filed	Amount (2)
Landlords	102	\$ 1,920,356,017
Suppliers/Vendors	1,371	537,720,374
Pharmacy Franchisees	92	152,838,174
Government Agencies	13	10,725,103

Litigation	60	7,897,160
Employees	70	1,192,809
Other	<u>2</u>	<u>2</u>
Total Claims	1,710	\$2,630,729,640
Notes:		
<i>(1) The above summary does not include the potential impact of "marker claims" or Restructuring Period Claims that have yet to be filed.</i>		
<i>(2) All amounts converted to CAD using the exchange rate prescribed in the Claims Procedure Order (\$1.1932 CAD/\$1.00 USD).</i>		

7. In paragraph 5.2 of the Twenty-Third Report, the Monitor estimates the total allowable Affected Creditors' Claims at between \$784 million and \$892 million. The Monitor provides no further breakdown by Claim Type of the estimated allowable claims of the Affected Creditors.

8. As noted above, the total value of the 92 Pharmacy Franchisees' Claims as filed with the Monitor is \$152,838,174. As stated in section 4.13 of the Monitor's Twenty-Third Report, the Monitor in consultation with the Target Canada Entities was in the process of reviewing and adjudicating the Claims as filed at the time of the Twenty-Third Report.

9. While not yet reported to the Court, the Pharmacy Franchisees' Claims have been collectively valued by the Monitor at approximately \$18 million in Notices of Revision or Disallowance delivered to the Pharmacists' Representative Counsel and the Pharmacy Franchisees on December 1-2, 2015.

10. As set out in paragraph 52(e) of the affidavit of Mark J. Wong sworn November 27, 2015, Affected Creditors holding disputed Claims will be entitled to one (1) vote at the dollar value set out in the Notice of Revision or Disallowance sent by the Monitor to

the Affected Creditor and the Monitor will tabulate these votes separately for the purpose of reporting to the Court at the Sanction Hearing.

PART III - ISSUES AND THE LAW

MEETING ORDER

11. The core issue on this motion is whether the Court should grant a Meeting Order. As detailed in the factum of the Applicants, the Court has clear jurisdiction to grant the Meeting Order.

12. It is the advice of Pharmacists' Representative Counsel that the Pharmacy Franchisees' Claims have been significantly under-valued by the Monitor and Notices of Dispute of Revision or Disallowance should be filed on behalf of each Pharmacy Franchisee. Accordingly, the Claims Adjudication Process in the Claims Procedure Order must be engaged to determine the value of the Pharmacy Franchisees' Claims for voting purposes.

13. Pharmacists' Representative Counsel will ask that the votes of the Pharmacy Franchisees and the other Claim Types of Affected Creditors be separately tabulated and further submissions on the value of such claims should be reserved for the Sanction Hearing.

JURISDICTION TO PERMIT THIRD PARTY RELEASES

14. As dealt with in detail in the factums submitted in favor and in opposition to the Meeting Order, in *Metcalf & Mansfield Alternative Investments II Corp. (Re)*, 2008 ONCA 587, leave to appeal to the Supreme Court of Canada dismissed, 2008 CanLII 46997, it was determined that the CCAA permits the inclusion of third party releases in a plan of compromise or arrangement where those releases are reasonably connected to the proposed restructuring plan.

15. Further submissions on whether third party releases are appropriate in respect of the Plan are properly reserved for and made at the Sanction Hearing when the results of the Affected Creditors' vote are known and the overall fairness of the Plan can be better assessed.

16. To the extent that assertions are made in opposition to the motion that third party guarantees cannot be compromised in a CCAA plan, Pharmacists' Representative Counsel respectfully disagrees. As stated above, any further submissions on the question of whether this is an appropriate case for the compromise of third party guarantees is properly dealt with at the Sanction Hearing.

INFORMATION DISCLOSURE

17. On the question of disclosure of information, the Target Canada Entities seek an order that they be entitled to place the Plan before the Affected Creditors and allow them to exercise their business judgment in determining whether to support it. The Affected Creditors are entitled to make informed decisions on whether they support the Plan and must have available to them all information which will reasonably assist in evaluating

the suitability of the Plan and the consequences of the acceptance or rejection of the Plan.

18. It is submitted respectfully that the Applicants, Target Corporation as Plan Sponsor and the Monitor should be directed to provide such information to Affected Creditors prior to any meeting of Affected Creditors. That information should include the Monitor's valuations of the Claim Types of Affected Creditors, the settlement and voting of RioCan's claim, and any other information that may reasonably affect the Affected Creditors' assessment of the Plan.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 18th day of December, 2015.



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SCHEDULE “A” - LIST OF AUTHORITIES

Metcalf & Mansfield Alternative Investments II Corp. (Re), 2008 ONCA 587 (CanLII),
leave to appeal to the Supreme Court of Canada dismissed, 2008 CanLII 46997

SCHEDULE "B" - RELEVANT STATUTES

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PROCEEDING COMMENCED AT
TORONTO

**SUBMISSIONS OF
PHARMACISTS' REPRESENTATIVE COUNSEL,
SUTTS, STROSBURG LLP
(Motion to Accept Filing of a Plan and Authorize Creditors'
Meeting to Vote on the Plan - returnable December 21, 2015)**

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