

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

BETWEEN:

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 SEARS CANADA INC., CORBEIL
ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC.,
SEARS CONTACT SERVICES INC., INITIUM LOGISTICS
SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM
TRADING AND SOURCING CORP., SEARS FLOOR COVERING
CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC.,
6988741 CANADA INC., 10011711 CANADA INC., 1592580
ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA
INC., 168886 CANADA INC., AND 3339611 CANADA INC.

(each, an "Applicant", and collectively, the "Applicants")

**CROSS-MOTION RECORD
(Returnable April 13, 2018)**

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**NOTICE OF CROSS-MOTION
(Returnable April 13, 2018)**

R.R. Donnelley ("RRD") and Moore Canada Corporation ("Moore") (fourth parties in a proceeding commenced by Sears Canada Inc. ("Sears")), will make a cross-motion in response to a motion brought by DGA North American Inc. ("DGANAI") and DGA Fulfilment Services Inc. ("DGAFSI") (collectively, "DGA") (third party in the proceedings commenced by Sears), before a Judge of the Ontario Superior Court of Justice (Commercial List) on Friday April 13, 2018 at 10:00 a.m. or as soon after that time as the cross-motion can be heard at the courthouse at 330 University Avenue, Toronto, Ontario, M5G 1R7.

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

THE MOTION IS FOR:

- (a) A declaration that the stay of proceedings ordered in the Initial Order dated June 22, 2017 (the "Initial Order"), granted in an application made by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C., c.C-36, as amended (the "Sears CCAA Proceedings"), which stay has currently been extended to April 27, 2018, applies to the proceedings in Court File Nos. CV-15-522235, CV-15-522235-00B1, CV-15-522235-00B2, CV-15-522235-00A1, and CV-15-522235-00A2 (the "Superior Court Proceedings");
- (b) in the alternative, and to the extent the stay of proceedings granted in the Initial Order does not apply to the Superior Court Proceedings, an order lifting the stay of proceedings ordered in the Sears CCAA Proceedings in respect of Sears Canada Inc. ("Sears") for the limited purpose of requiring Sears to produce relevant and material documents and a representative for examination for discovery in the Superior Court Proceedings, and an order directing Sears to produce the following documents, and a representative for examination for discovery in the Superior Court Proceedings:
- (i) any documents in Sears possession, power, or control relating to Consumer Intelligence Group Inc. ("CIG"), DGA Fulfillment Services Inc. or DGA North American Inc.'s satisfaction with the Sears catalogue onsert and Sears MasterCard insert programs in 2014 (for example, as pleaded in Sears Reply and Defence to Counterclaim

dated May 25, 2015 filed in the Superior Court Proceedings, at para 15);

(ii) any documents in Sears possession, power, or control relating to audits, spot checks or other efforts undertaken by Sears to look into or verify the number of inserts or onserts placed in Sears catalogues or MasterCard statements in 2014 (for example, as pleaded in Sears Reply and Defence to Counterclaim dated May 25, 2015 filed in the Superior Court Proceedings, at para 22); and

(iii) any other documents that Sears has already collected in relation to the Superior Court Proceedings and that can be produced without undue effort on Sears' part;

(c) In the further alternative, and to the extent any aspects of the Superior Court Proceedings are not already stayed, an order staying those aspect(s) of the Superior Court Proceedings until the expiration of the stay in the Sears CCAA Proceedings or such other time that Sears agrees to, or the Court orders Sears to, produce the documents above and a representative for discovery in the Superior Court Proceedings, unless otherwise dealt with by the Court prior to that time;

(d) Costs of this motion; and

(e) such further and other relief as counsel may request and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Background and Procedural History

- (f) The Superior Court Proceedings were initiated as a result of Sears commencing an action against CIG on February 18, 2015 (Court File No. CV-15-522235) (the “Main Action”). In response, CIG defended the Main Action, counterclaimed against Sears, and also issued a third party claim against DGA on May 8, 2015 (Court File No. CV-15-522235-A1);
- (g) Subsequently, Sears issued a third party claim against RRD (Court File No. CV-15-522235-A2) on June 5, 2015, and DGAFSI and CIG issued fourth party claims against RRD and Moore on April 27, 2016 and May 17, 2016 respectively (Court File Nos. CV-15-522235-B1 and CV-15-522235-00B2);
- (h) In response, RRD and Moore filed defences in the third and fourth party claims and counterclaimed against Sears, CIG, and DGAFSI in both fourth party claims (Court File Nos. CV-15-522235-B1 and CV-15-522235-00B2);
- (i) The various claims and defences of all the parties in the Superior Court Proceedings are intertwined and share a common factual matrix;

Status of Superior Court Proceedings

- (j) In the spring of 2017, counsel for Sears, CIG, DGA, RRD and Moore agreed to a discovery plan in connection with the Superior Court Proceedings;

- (k) Subsequently, the timelines set out in Discovery Plan were extended by mutual agreement with oral examinations for discovery scheduled during September, 2017;
- (l) To date, affidavits of documents have not been exchanged and oral examinations for discovery have not taken place in the Superior Court Proceedings;

Sears CCAA Proceedings and Stay

- (m) On June 22, 2017, the Applicants sought and obtained the Initial Order granting the Applicants certain protections pursuant the *Companies' Creditors Arrangement Act*, c.C-36, as amended, which provided for a stay of proceedings for an initial thirty (30) day period (subject to further extensions by the Court) stating the following at para 14:

THIS COURT ORDERS that until and including July 22, 2017, 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 Sears Canada Entities or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with written consent of the Sears 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 Sears Canada Entities or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court. [emphasis added]

- (n) The Initial Order was amended and restated on July 13, 2017 resulting in an Amended and Restated Initial Order (the "Amended and Restated Initial

Order”). The Amended and Restated Initial Order extended the stay of proceedings to October 4, 2017;

- (o) The stay of proceedings in the Sears CCAA Proceedings has been extended multiple times, with the current extension granted pursuant to an Order dated January 22, 2018 extending the stay of proceedings to April 27, 2018;

Dispute Regarding Effect of the Stay Granted in the Sears CCAA Proceedings on the Superior Court Proceedings

- (p) On or around June 24, 2017, counsel for Sears wrote to counsel for the other parties in the Superior Court Proceedings advising them about the Initial Order and suggesting that in light of the stay granted in the Initial Order, the dates for discovery scheduled in the Superior Court Proceedings should be vacated;
- (q) Counsel for RRD, Moore and CIG agreed that the stay granted in the Initial Order applied to the Superior Court Proceedings and the dates scheduled for discovery should be vacated;
- (r) Counsel for DGA disputed the effect of the stay on the Superior Court Proceedings and took the position that CIG, DGA, RRD and Moore should proceed with discoveries in the Superior Court Proceedings;
- (s) RRD, Moore and CIG maintained that there could not be a trial of some aspects of the Superior Court Proceedings without others (particularly given the early stage of the Sears CCAA Proceedings) and, because of the

complexity of the proceeding, the intertwined nature of all the claims and the common factual matrix, it would be ineffective, inefficient and prejudicial for some aspects of the Superior Court Proceedings to move forward without others;

- (t) Without prejudice to the above position, RRD and Moore offered to proceed with documentary discovery in the Superior Court Proceedings and suggested that the parties other than Sears produce relevant documents on mutually agreeable dates and then monitor how the Sears CCAA Proceedings unfold to determine next steps for the Superior Court Proceedings
- (u) In response, DGA's counsel indicated that this was unacceptable to DGA and stated his clients' intention to bring a motion to compel the parties, save for Sears, to comply with a discovery plan;
- (v) Subsequently, on February 22, 2018, DGA served a Motion Record in the Superior Court Proceedings seeking an order compelling CIG, RRD and Moore to adhere to a discovery plan to be set by the Court;

The Stay of proceedings granted in the Initial Order applies to the Superior Court Proceedings

- (w) Pursuant to the wording of the Initial Order, "all Proceedings currently under way against or in respect of the Sears Canada Entities or affecting the Business or the Property are hereby stayed and suspended";

- (x) The Superior Court Proceedings are related and intertwined with a common factual matrix and each party claiming, counter-claiming or cross-claiming against multiple other parties;
- (y) Sears is an integral party in the Superior Court Proceedings;
- (z) The Superior Court Proceedings were initiated by Sears and involve several claims against or in respect of Sears;
- (aa) Although DGA does not have a direct claim against Sears, the responses of CIG, RRD and Moore to DGA's respective claims against them involve multiple allegations and claims against or in respect of Sears (including claims for contribution and indemnity against Sears);

Alternatively, the Stay in the Sears CCAA Proceedings should be lifted for the limited purpose of Sears' participation in discovery in the Superior Court Proceedings

- (bb) Given the nature of the claims and defences in the Superior Court Proceedings, the relationship between the parties, and the role of Sears in the events and issues resulting in the Superior Court Proceedings, Sears' evidence is essential for RRD and Moore's defences, counter-claims and cross-claims against CIG and DGA;
- (cc) Sears was involved in the Superior Court Proceedings before the Sears CCAA Proceedings, has had ample opportunity to gather the evidence being requested, and had agreed to a discovery plan prior to the Sears CCAA Proceedings;

- (dd) RRD and Moore have made a narrow and tailored request for documents that are both relevant and material to the Superior Court Proceedings;
- (ee) The specific documents RRD and Moore are seeking relate to issues pleaded in Sears' own pleadings in the Superior Court Proceedings
- (ff) Sears counsel already has at least some of the documents relating to the Superior Court Proceedings and is willing to produce them;
- (gg) It is in the interests of justice to lift the stay for the limited purpose being requested by RRD and Moore;

In the further alternative, a stay should be granted in respect of the Superior Court Proceedings

- (hh) RRD, Moore and CIG's defences, claims, counter-claims and cross-claims against Sears in the Superior Court Proceedings are all stayed pursuant to the Initial Order;
- (ii) Given the common factual background and the substantial overlap in the issues in the Superior Court Proceedings, and the importance of Sears' evidence for the resolution of those issues (including for DGA's claims against RRD, Moore, and CIG), there is prejudice to RRD and Moore if they are ordered to continue with the Superior Court Proceedings without any Sears' involvement;
- (jj) There is no prejudice to DGA if the Superior Court Proceedings are stayed until the expiration of the stay in the Sears CCAA Proceedings or such time

that Sears agrees to produce, or the Court orders Sears to produce, the requested documents and a representative for examinations for discovery;

- (kk) The balance of convenience weighs in favour of the requested stay;
- (ll) Rules 3.02, 37, and 39 of the *Rules of Civil Procedure*;
- (mm) Section 106 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
- (nn) Section 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended;
- (oo) Such further and other grounds as the lawyers may advise.

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

- (pp) The affidavit of Monica Singh, sworn • March, 2018, and exhibits thereto;
- (qq) The Motion Record of DGA dated February 22, 2018;
- (rr) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

March 28, 2018

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AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

Applicants

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

Proceeding commenced at Toronto

**NOTICE OF CROSS-MOTION
(RETURNABLE APRIL 13, 2018)**

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AFFIDAVIT OF MONICA SINGH

I, Monica Singh, of the City of Toronto in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a legal assistant at the law firm Blake, Cassels & Graydon LLP ("Blakes"), lawyers for R.R. Donnelley and Sons Company ("RRD") and Moore Canada Corporation ("Moore"), Third and Fourth Parties in Superior Court File Nos. CV-15-522235;00A1;00A2;00B1;00B2 (the "Superior Court Proceedings"), and as such have knowledge of the matters deposed to in this affidavit. Where I do not have personal knowledge, I have stated the source of my knowledge and in all cases believe it to be true.

Main Action – Superior Court File No. CV-15-522235

2. On or around February 18, 2015, Sears Canada Inc. ("Sears") issued a Statement of Claim in Superior Court File No. CV-15-522235 against the defendant, Consumer

Intelligence Group Inc. ("CIG"). A copy of the Statement of Claim is attached as Exhibit "A".

- 3. On or around May 1, 2015, CIG served its Statement of Defence and Counterclaim, a copy of which is attached as Exhibit "B".
- 4. On or around May 25, 2015, Sears served its Reply and Defence to CIG's Counterclaim, a copy of which is attached as Exhibit "C".
- 5. On or around June 8, 2015, CIG served its Reply to Sears Defence to CIG's Counterclaim, a copy of which is attached as Exhibit "D".

CIG's Third Party Claim Against DGA – Superior Court File No. CV-15-522235-A1

- 6. On or around May 8, 2015, CIG issued a Third Party Claim against DGA Fulfillment Services Inc. ("DGAFSI") and DGA North American Inc. ("DGANAI") (collectively, "DGA") in Superior Court File No. CV-15-522235-A1. A copy of CIG's Third Party Claim is attached as Exhibit "E".
- 7. On or around August 20, 2015, DGA served its Third Party Defence and Counterclaim against CIG, a copy of which is attached as Exhibit "F".
- 8. On or around May 6, 2016, CIG served its Reply and Defence to Counterclaim to DGA's Third Party Defence and Counterclaim, a copy of which is attached as Exhibit "G".

Sears Third Party Claim Against RRD and Moore - Superior Court File No. CV-15-522235-A2

- 9. On or around June 5, 2015, Sears issued a Third Party Claim against RRD in Superior Court File No. CV-15-522235-A2, a copy of which is attached as Exhibit "H".

10. On or around May 5, 2016, RRD served its Third Party Defence, a copy of which is attached as Exhibit "I".

DGAFSI's Fourth Party Claim Against RRD and Moore- Superior Court File No. CV-15-522235-00B1

11. On or around April 27, 2016, DGAFSI issued a Fourth Party Claim against RRD and Moore in Superior Court File No. CV-15-522235-B1, a copy of which is attached as Exhibit "J".

12. On or around June 13, 2016, RRD and Moore served a Fourth Party Defence and Counterclaim, a copy of which is attached as Exhibit "K".

13. On or around July 4, 2016, Sears served a Defence and Crossclaim to the Fourth Party Counterclaim of RRD and Moore, a copy of which is attached as Exhibit "L".

14. Also on July 4, 2016, CIG served a Reply and Defence to Counterclaim to the Fourth Party Defence and Counterclaim of RRD and Moore, a copy of which is attached as Exhibit "M".

15. On or around July 13, 2016, Sears served a Defence to the Counterclaim of RRD and Moore, a copy of which is attached as Exhibit "N".

16. On or around November 2, 2016, DGANA1 served a Defence to Sears' Crossclaim, a copy of which is attached as Exhibit "O".

CIG's Fourth Party Claim Against Sears, RRD and Moore - Superior Court File N o. CV-15-522235-00B2

17. On or around May 17, 2016, CIG issued a Fourth Party Claim against Sears, RRD and Moore, a copy of which is attached as Exhibit "P".

18. On or around June 28, 2016, Sears filed a Defence and Crossclaim to CIG's Fourth Party Claim, a copy of which is attached as Exhibit "Q".
19. On or around July 8, 2016, RRD and Moore filed a Defence and Crossclaim to CIG's Fourth Party Claim, a copy of which is attached as Exhibit "R".

Correspondence Between the Parties since the Initial Order

20. On June 24, 2017, Mr. Jayson Thomas, counsel for Sears in the Superior Court Proceedings, wrote to counsel for DGA, CIG, Moore and RRD advising that an initial order was issued granting Sears protections under the Companies' Creditors Arrangement Act, R.S.C., c.C-36, as amended (the "Sears CCAA Proceedings"), including a stay of proceedings (the "Initial Order"). He suggested that the examination dates scheduled for September 2017 be vacated. On Tuesday, June 27, 2017, counsel for DGA, CIG, RRD, Moore and Sears exchanged emails discussing the effect of the Initial Order and the need for a call to discuss further. A copy of this email chain is attached as Exhibit "S".
21. Telephone calls between counsel for DGA, RRD and Moore took place on Wednesday, June 28, 2017 and Thursday, August 3, 2017 to discuss the matter.
22. Subsequently, on August 14, 2017, counsel for RRD and Moore wrote to counsel for DGA and CIG advising regarding RRD and Moore's position that there could not be a trial of some aspects of the proceedings without the others and also that, because of the complexity of the proceeding, the intertwined nature of all the claims and the common factual matrix, it would be ineffective, inefficient and prejudicial for some aspects of the proceeding to move forward without others. Without prejudice to this position, counsel for RRD and Moore offered to proceed with documentary discovery in the Superior Court

Proceedings and to produce relevant documents on mutually agreeable dates, while monitoring how the Sears CCAA Proceedings unfold.

23. In response, DGA's counsel indicated that this was unacceptable to DGA and stated that his clients' intention was to bring a motion to compel the parties, save for Sears, to comply with a timetable. Between August 14, 2017 and October 5, 2017, counsel for DGA, CIG, Moore and RRD exchanged emails with respect to scheduling DGA's motion and potential cross-motions by CIG, RRD and Moore (together, the "Motions"). A copy of the email chain dated August 14 2017 to October 5, 2017 between counsel for DGA, CIG, RRD and Moore is attached as Exhibit "T".
24. On October 11, 2017, counsel for DGA wrote to Mr. Evan Cobb, counsel for FTI Consulting Canada Inc. (the "Monitor") in the Sears CCAA Proceedings in connection with the scheduling of the Motions before Justice Hainey on November 22, 2017. Mr. Cobb replied on October 12, 2017 and copied Mr. Jeremy Dacks, counsel for the Applicants in the Sears CCAA Proceedings. Mr. Dacks replied on the same day suggesting a call be set up the following week. A call between counsel was scheduled for October 30, 2017. Subsequently, in emails exchanged between October 31, 2017 and November 2, 2017, time for the Motions was scheduled before Justice Hainey for March 2, 2018. A copy of this email chain dated October 11, 2017 to November 2, 2017 is attached as Exhibit "U".
25. On February 6, 2018, Mr. Cobb wrote to counsel for Sears, CIG, RRD and Moore requesting an update with respect to the court time scheduled for March 2, 2018. That same day, counsel for CIG wrote back to Mr. Cobb advising that nothing further had been heard from counsel for DGA. A copy of this correspondence dated February 6, 2018 is attached as Exhibit "V".

26. On February 20, 2018, counsel for DGA responded to Mr. Cobb's email of February 6, 2018 advising that DGA's motion material would be circulated shortly. That same day, Mr. Cobb responded indicating that since he had not received any update on the matter, unless the matter was very straight forward and on consent, it may be necessary to move the Motions to another date. A copy of this email exchange is attached as Exhibit "W".
27. On February 21, 2018, counsel for RRD and Moore wrote to counsel for Sears and the Monitor requesting their position on a potential cross-motion to be brought by RRD and Moore in response to DGA's motion. A copy of this letter is attached as Exhibit "X".
28. On the evening of February 22, 2018 (at 6:40pm), counsel for DGA emailed DGA's Motion Record dated February 22, 2018 for DGA's motion to be heard on March 2, 2018.
29. On Monday, February 26, 2018 CIG's counsel wrote to DGA's counsel stating, among other things, that DGA's materials were served late and not in accordance with the Rules, and proposing a short adjournment so that responding cross-motion materials can be served.
30. The same day, Sears' counsel responded stating that if there was going to be a cross-motion seeking relief against Sears, their position would be that DGA's motion ought to be adjourned. In a subsequent email, Sears counsel also stated in response to RRD and Moore's counsel's letter of February 21, 2018 that Sears would be prepared to produce documents already collected in connection with the Superior Court Proceedings but was not prepared to do an exhaustive search of its records or to put forward a discovery representative. The parties subsequently agreed to the date of April 13, 2018 for the hearing of DGA's motion as well as any cross-motions by RRD, Moore, and CIG. A copy

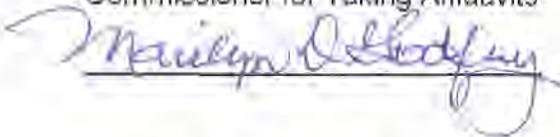
of the email chain dated February 26, 2018 to February 27, 2018 between counsel for the Monitor, Sears, CIG, DGA, RRD and Moore is attached as Exhibit "Y".

SWORN before me at the City of Toronto, in the Province of Ontario,

THIS 27th DAY OF MARCH, 2018


Monica Singh

Commissioner for Taking Affidavits



Marilyn Dianne Godfrey, a Commissioner, etc.
Province of Ontario, for Blake, Cassels & Graydon LLP,
Barristers and Solicitors.
Expires March 5, 2021.

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

Applicants

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

Proceeding commenced at Toronto

AFFIDAVIT OF MONICA SINGH

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Barristers & Solicitors
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Lawyers for R.R. Donnelley & Sons Company and
Moore Canada Corporation

A

This is Exhibit "A" referred to in the Affidavit of
Monica Singh sworn before me on March 27, 2018.

Marilyn D. Godfrey

A COMMISSIONER FOR OATHS IN AND FOR ONTARIO

*Marilyn Dianne Godfrey, a Commissioner, etc.
Province of Ontario, for Blake, Cassels & Graydon LLP,
Barristers and Solicitors.
Expires March 5, 2021.*

CN-15-522235
Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

(Court Seal)

SEARS CANADA INC.

Plaintiff

and

CONSUMER INTELLIGENCE GROUP INC.

Defendant



STATEMENT OF CLAIM

TO THE DEFENDANT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$750.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

Date Feb 18/15 Issued by 
Local Registrar

Address of court office: 393 University Avenue, 10th Floor
Toronto, Ontario
M5G 1E6

TO: Consumer Intelligence Group Inc
431, Richmond Street East
2nd Floor
Toronto, Ontario
M5A 1R1

AND TO: Consumer Intelligence Group Inc.
Kevin Klein
100 Lombard Street, Suite 104
Toronto, Ontario
M5C 1M3

I. The Plaintiff claims:

- (a) payment of the sum of \$377,023.78;
- (b) prejudgment interest and post-judgment interest pursuant to sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (c) its costs of this action on a substantial indemnity basis; and
- (d) Such further and other Relief as to this Honourable Court may seem just.

The Parties

2. The Plaintiff, Sears Canada Inc. ("Sears") is a corporation incorporated pursuant to the laws of Canada and *inter alia* carries on business as a retailer throughout Canada, and has its head office in Toronto, Ontario.

3. The Defendant, Consumer Intelligence Group Inc. ("CIG") is a corporation incorporated pursuant to the laws of Canada and *inter alia* carries on business as a media brokerage service company, and has its head office in Toronto, Ontario.

The Agreement

4. Sears and the Defendant entered into an agreement alongside related arrangements (the "Agreement"), which governed the relationship between Sears and the Defendant at all material times.

5. Amongst other forms of media, Sears creates and publishes numerous general merchandise catalogues throughout the year for its customers. And as was the parties' practice, the Defendant purchased media space, inserting its onsert advertisement within Sears' merchandise catalogues (the "Catalogue Onserts").

6. Pursuant to the Agreement, Sears and the Defendant also engaged in similar business arrangements surrounding the purchase of media space within Sears' MasterCard Program (the "MasterCard Insert").

7. Pursuant to the Agreement, the Defendant, in connection with the Catalogue Onsert and the Mastercard Insert, incurred certain monetary obligations to Sears ("Supplier's Monetary Obligations").

8. Full particulars of the Supplier's Monetary Obligations incurred by the Defendant are stated in invoices and other documentation which have been previously provided to the Defendant.

Refusal to Pay

9. Despite repeated demands, the Defendant has failed or refused to pay the balance owing to the Plaintiff in the amount of \$377,023.78.

10. The Defendant therefore remains indebted to the Plaintiff in the amount of \$377,023.78.

Unjust Enrichment

11. The Defendant has been unjustly enriched based on its failure to pay the amounts owing to Sears to which it is contractually bound.

12. Sears has suffered corresponding deprivation as a result of the Defendant's failure to pay the amounts owed to Sears.

13. There is no juristic reason for the unjust enrichment of the Defendant and the corresponding deprivation of Sears.

14. As a result of the conduct of the Defendant, Sears has suffered damages, will continue to suffer damages and therefore claims the damages sustained as a result

15. The Plaintiff proposes that this action be tried at the City of Toronto.

-6-

February 17, 2015

LEIGH A. LAMPERT (LSUC #51680H)
Senior Corporate Counsel
Sears Canada Inc.
290 Yonge Street, Suite 700
Toronto, Ontario M5B 2C3

TEL: (416) 941-4411
FAX: (416) 941-2321

Lawyer for the Plaintiff

SEARS CANADA INC.

Plaintiff

-and- CONSUMER INTELLIGENCE GROUP INC.

Defendant

CV-15-522235

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF CLAIM

LEIGH A. LAMPERT (LSUC #51680H)
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290 Yonge Street, Suite 700
Toronto, Ontario M5B 2C3

TEL: (416) 941-4411
FAX: (416) 941-2321

Lawyer for the Plaintiff

B

This is Exhibit "B" referred to in the Affidavit of
Monica Singh sworn before me on March 27, 2018.



A COMMISSIONER FOR OATHS IN AND FOR ONTARIO

*Marilyn Dianne Godfrey, a Commissioner, etc.
Province of Ontario, for Blake, Cassels & Graydon LLP,
Barristers and Solicitors,
Expires March 5, 2021.*

Court File No. CV-15-522235

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

SEARS CANADA INC.

Plaintiff

- and -

CONSUMER INTELLIGENCE GROUP INC.

Defendant

STATEMENT OF DEFENCE AND COUNTERCLAIM

- 1. The defendant, Consumer Intelligence Group Inc. ("CiG"), admits the allegations in paragraph 3 of the Statement of Claim.
- 2. Except as expressly admitted herein, CiG denies each and every other allegation contained in the Statement of Claim. CiG specifically denies that the plaintiff, Sears Canada Inc. ("Sears"), is entitled to the relief claimed in paragraph 1 of the Statement of Claim.
- 3. CiG has no knowledge with respect to the allegations contained in paragraph 2 of the Statement of Claim.

The Parties

- 4. CiG is a marketing intelligence and direct media company. One of the products CiG offers its clients is media brokerage services. As part of this service, CiG finds advertising opportunities for its clients, purchases media space on their behalf and makes the necessary arrangements to have their advertisements published in that media space.
- 5. Sears is a retailer that, among other things, sells media space in its merchandising catalogues (the "Onsert Program"). Sears also sells media space as inserts in its credit card statements (the "Credit Card Program").



CiG Purchased Sears Media Space as a Broker for one of its Clients, DGA

6. In or around September 2013, CiG began booking media for DGA North American Inc. and its related company DGA Fulfillment Services Inc. (collectively, "DGA") in the Sears Onsert Program.

7. In a February 4, 2014 letter of intent addressed to CiG (the "Letter of Intent"), DGA agreed to deliver a minimum of 23 inserts for the Onsert Program and 22 inserts for the Credit Card Program prior to January 31, 2015, at a preferred volume rate.

8. CiG functioned as a broker between Sears and DGA for the purchase of media space within the Onsert Program and the Credit Card Program. Under this arrangement:

- (a) DGA would periodically deliver a purchase order to CiG for the purchase of media space in either a particular issue of Sears' merchandising catalogue (in the case of the Onsert Program) or in credit card statements of a particular month (in the case of the Credit Card Program). The purchase order specified the quantity of inserts that were to be distributed;
 - (b) CiG would communicate with Sears and complete the Sears booking form to purchase the media space on behalf of DGA. The Sears booking form indicated, among other things, the printing specifications and delivery instructions for the inserts. CiG also provided the estimated quantity of inserts for the order;
 - (c) DGA would arrange to have the inserts printed and delivered to the shipment facility specified in the Sears booking form. DGA was invoiced directly by the printer for these printing costs; and
 - (d) Sears would issue an invoice to CiG for the purchase of the media space, which was calculated based on the quantity of inserts Sears purported to distribute. CiG would then issue an invoice to DGA for the amount set out in Sears' invoice, plus an additional fee for CiG's brokerage services.
-

9. The booking form drafted by Sears and the invoices issued by Sears, in addition to other representations and warranties provided by Sears and relied upon by CiG and DGA, formed the agreement between Sears and CiG.

10. There was no master services agreement between CiG and Sears for the purchase of media space for DGA, under either the Onsert Program or the Credit Card Program.

11. Sears sold CiG media space in the Onsert Program and the Credit Card Program with an express or implied warranty that the program would be carried out with the requisite skill and that the final product would be of merchantable quality.

12. CiG states that Sears was fully aware of and approved CiG's role as an intermediary between Sears and DGA, and at all times understood that its services and products would have to meet DGA's standards and specifications.

13. CiG further states that Sears drafted the booking form and was aware that CiG and DGA relied upon it having been drafted correctly, with all necessary specifications listed.

Problems with the Onsert Program and Credit Card Program

14. In or around May 2014, DGA advised CiG that it was concerned about the performance of the Onsert Program and the Credit Card Program. According to DGA, response to the Onsert Program and Credit Card Program was well below a conservative estimate of the expected response rate and well below historical averages, based on the response rate DGA had previously enjoyed under both programs. CiG subsequently advised Sears of DGA's concerns.

15. On or around September 15, 2014, CiG requested that Sears provide it with machine-based audit reports in order to demonstrate whether the inserts were, in fact, being inserted into the Sears catalogues and credit card statements as agreed.

16. On or around October 8, 2014, DGA advised CiG that it performed a physical audit of a random sample of the "25'4 Wish Book", one of the Sears merchandising catalogues within which DGA had directed CiG to purchase media space. DGA advised CiG that a majority of the "25'4 Wish Book" catalogues were incorrect - the audit found that certain copies of the

catalogue had multiple inserts for the same product, while other copies of the catalogue were missing certain inserts entirely.

17. On or around October 8, 2014, CiG brought the DGA audit to Sears' attention.

18. On or around October 22, 2014, CiG met with Sears at Sears' offices to discuss a number of CiG's and DGA's concerns with the Onsert Program and Credit Card Program, including the performance of the program, inventory reporting from Sears, and the billed versus actual insertion quantities. CiG also made another request for the machine-based audit reports.

19. On or around October 31, 2014, Sears advised CiG that the errors identified by DGA with the "25'4 Wish Book" inserts had been due to the caliper (or thickness) of the paper used for the inserts. Sears advised CiG that DGA's inserts were less than the minimum caliper required for the machines used to insert the material into the merchandising catalogues. As a result, the machines had either picked up multiple inserts or missed inserts entirely during the insertion process.

20. On or around October 31, 2014, Sears also advised that the machine-based audits for the Onsert Program were not available due to the fact that the machines used to insert the material into the merchandising catalogues were "very old". Sears further advised that they would review whether machine-based audits were available for the Credit Card Program.

21. On or around November 19, 2014, at CiG's request to address the caliper issue with the Onsert Program, Sears advised CiG that, moving forward, all inserts for the Onsert Program were required to be of a minimum caliper.

22. The stipulation that the inserts must have a particular caliper was not specified in the Sears booking form for the Onsert Program, nor was it otherwise communicated to CiG or, to the best of CiG's knowledge, DGA prior to October 31, 2014.

23. All of the CiG-brokered Onsert Program orders DGA placed with Sears prior to October 31, 2014 would have been affected by this caliper issue.

24. Due to Sears' failure to advise either CiG or DGA of the caliper specifications, the Onsert Program orders placed by CiG for DGA were not carried out by Sears in the manner agreed, and were not of merchantable quality. Sears breached the express and implied terms of its Onsert Program agreement with CiG.

25. Through its discussions with Sears, CiG also learned that in addition to its general concerns with the Credit Card Program, Sears had not performed one of the DGA bookings under the Credit Card Program as agreed. On or around April 23, 2014, DGA had submitted a purchase order to CiG for media space in Sears' June 2014 credit card statements (the "June Inserts"). CiG submitted the corresponding booking form to Sears on or around April 25, 2014. The booking form specified that the June Inserts were to be included with the June credit card statements. Sears subsequently confirmed this booking by email.

26. Despite the above confirmation, the June Inserts were not included with Sears' June credit card statements. Rather, the June Inserts were included with Sears' July credit card statements. Neither CiG nor, to the best of CiG's knowledge, DGA were advised that the June Inserts were going to be included in the July credit card statements, contrary to what was agreed to with Sears. By including the June Inserts with the July credit card statements, Sears rendered the inserts useless and breached the express and implied terms of its agreement with CiG.

CiG is Owed a "Make Good" Program

27. In or around May 2014, in response to CiG's initial concerns with the Credit Card Program, Sears agreed to provide CiG with two "make good" programs. These "make good" programs were to be applied to cover the cost of two future bookings for the same quantity of inserts.

28. Sears has only applied one of these two "make good" programs, and has invoiced CiG for subsequent bookings to which the remaining "make good" program should have been applied.

29. Sears has not deducted the one outstanding "make good" program from the amounts it claims is otherwise owed to it by CiG or DGA. If Sears is entitled to any damages, which is

denied, CiG claims the right to set-off as against any such damages the amounts owed by Sears for the one outstanding "make good" program owed to CiG and mentioned above. CiG pleads and relies upon the relevant provisions of section 111 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43 and upon the principles of legal and equitable set-off.

DGA is Only Paying for Work Performed

30. As a result of the problems with the Onsert Program and Credit Card Program, DGA has only made partial payment to CiG for the media space purchased from Sears. CiG understands that these partial payments were based on DGA's assessment of the percentage of inserts that were actually included by Sears in the relevant merchandising catalogue or credit card statement, less the printing cost of the inserts that were not included.

31. CiG has remitted all partial payments from DGA to Sears, less the percentage of those partial payments that account for CiG's brokerage fees.

32. CiG states that Sears has not met its contractual obligations to CiG for the DGA orders in the Onsert Program and Credit Card Program. Sears has been adequately compensated for the work it performed that met the agreed to standards of the programs, and is not entitled to further payment.

33. CiG denies that it has been unjustly enriched. CiG has only received partial payment from DGA for the media space purchases at issue, and duly remitted the amounts of such payments that were intended for Sears. Further, Sears failed to deliver on the programs and delivered a substandard product and, as such, neither CiG nor DGA were enriched.

34. CiG therefore requests that the within action be dismissed as against it, with costs on a substantial indemnity scale.

COUNTERCLAIM

35. CiG counterclaims against Sears for:

- (a) damages in the amount of \$114,500.00 for lost profits, breach of contract, and negligence;

- 7 -

- (b) pre-judgment and post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
- (c) its costs of these proceedings on a substantial indemnity basis; and
- (d) such further and other relief as this Honourable Court may deem just.

36. CiG repeats and relies upon the allegations contained in its Statement of Defence.

37. On account of the problems with the Onsert Program and the Credit Card Program, DGA has only made partial payments to date. CiG has not been paid the full commission that it otherwise would have received had Sears not breached the terms of its agreement with CiG and delivered a substandard product under the Onsert Program and Credit Card Program.

38. As a result of the problems with the Onsert Program and the Credit Card Program, summarized above, DGA stopped purchasing media space in both programs. DGA has not met the intended volumes set out in the Letter of Intent, on which CiG relied.

39. CiG proposes that this Counterclaim be tried together with the main action.

May 1, 2015

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Lawyers for the Defendant

- 8 -

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Fax: 416-941-2321

Lawyer for the Plaintiff

Court File No: CV-15-522235

BEARS CANADA INC.
and
CONSUMER INTELLIGENCE GROUP
INC.
Plaintiff Defendant

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

STATEMENT OF DEFENCE

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Lawyers for the Defendant

Served on Fax: 416-941-2321

C

This is Exhibit "C" referred to in the Affidavit of **Monica Singh** sworn before me on March 27, 2018.



A COMMISSIONER FOR OATHS IN AND FOR ONTARIO

*Marilyn Dianne Godfrey, a Commissioner, etc.
Province of Ontario, for Blake, Cassels & Graydon LLP,
Barristers and Solicitors.
Expires March 5, 2021.*

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

SEARS CANADA INC.

Plaintiff/
Defendant by Counterclaim

- and -

CONSUMER INTELLIGENCE GROUP INC.

Defendant/
Plaintiff by Counterclaim

- and -

DGA NORTH AMERICAN INC. and DGA FULFILLMENT SERVICES INC.

Third Parties

REPLY AND DEFENCE TO COUNTERCLAIM

1. Except as otherwise provided in this Reply and Defence to Counterclaim and/or in its Statement of Claim, the Plaintiff, Sears Canada Inc. ("Sears"), denies each and every allegation contained in the Statement of Defence and Counterclaim and puts the Defendant to the strict proof thereof.

Sears and the Defendant Agree to Run Advertisements for DGA in the Year 2014

2. In or around late January 2014, Sears and the Defendant discussed the Defendant's placement of advertisements in Sears' catalogues (the "Catalogue Inserts") and in Sears' MasterCard statements (the "MasterCard Inserts").

3. These advertisements would be placed by the Defendant on behalf of its own clients, DGA North American Inc. ("DGA NA") and DGA Fulfillment Services Inc. ("DGA Fulfillment") (collectively "DGA").

4. Pursuant to the aforementioned discussions, on January 28, 2014, Sears and the Defendant agreed on the price Sears would charge the Defendant in the year 2014 for placing advertisements on behalf of DGA in Sears' catalogues and credit card statements, based on the volume of advertisements placed.

5. At no time did Sears have any agreement or contract directly with DGA concerning the placement of advertisements, nor did Sears have any direct dealings with DGA.

6. Sears understands that on February 4, 2014, DGA NA delivered what it referred to as a "non-binding" letter of intent to the Defendant. In this letter, DGA confirmed its understanding that it would endeavour to deliver a specified quantity of inserts to Sears in relation to future Catalogue Inserts and MasterCard Inserts for the upcoming year, at prices agreed upon between DGA and the Defendant. This letter was not addressed to Sears.

7. The Defendant began placing advertisements on behalf of DGA following the aforementioned agreement it reached with Sears. In this regard:

- (a) the Defendant would send DGA's creative content to Sears for approval;
 - (b) upon receiving Sears' approval, the Defendant would complete a booking form confirming the Catalogue Inserts or MasterCard inserts to be placed in the appropriate program;
 - (c) contrary to the allegation contained at paragraph 9 of the Statement of Defence and Counterclaim, the booking form did not form part of the contract between Sears and the Defendant. Rather, the booking form was created on the basis of the requirements of Sears' third party printing services provider, R.R. Donnelley & Sons Company ("RRD"), and was provided to the Defendant to facilitate its bookings;
-

- (d) upon the Defendant's submission of the booking form, the Defendant and/or DGA would either arrange for the delivery of DGA's printed content to RRD to be placed into the appropriate Sears' catalogues or MasterCard statements. Alternatively, the Defendant and/or DGA would have DGA's content printed at RRD, after which RRD would attend to placing that content into the appropriate program; and
- (e) Sears would invoice the Defendant for the actual number of onserts or inserts included in its catalogues or credit card statements. In accordance with the parties' practice and the terms of Sears' invoices to which the Defendant expressly or impliedly agreed, those invoices were payable in full within 30 days.

8. Contrary to the allegation contained in paragraph 12 of the Statement of Defence and Counterclaim, Sears had no understanding about DGA's standards and specifications, save and except the creative content that would be forwarded to Sears by the Defendant for any given booking. At no time were any of DGA's standards and/or specifications communicated to Sears aside from the aforementioned content.

9. Further in this regard, and contrary to the allegation contained in paragraph 11 of the Statement of Defence and Counterclaim, Sears denies that there were any express or implied warranties with respect to the orders placed by the Defendant in relation to the Catalogue Onserts or MasterCard Inserts.

10. The parties had a straightforward agreement in which the Defendant would book advertisements for its own clients in Sears' catalogues and MasterCard statements, and RRD would carry out the assembly of the onserts and inserts into the catalogues and statements, respectively. No warranties from Sears could be provided or were in fact provided under the circumstances.

11. Sears has no knowledge of the invoicing arrangements and payment terms that existed between the Defendant and DGA as Sears did not have direct dealings or a contractual relationship with DGA. At all times, the Defendant remained contractually obligated to pay

Sears for the bookings it made with Sears, regardless of any arrangements or terms it had between itself and DGA.

The Alleged Problems with the Programs

The June Inserts are Placed in the July MasterCard Statements at the Defendant's Request

12. On or about May 29, 2014, the Defendant made a last minute cancellation of DGA's June 2014 MasterCard Insert placement. This cancellation was made in writing.

13. Contrary to the allegations contained in paragraphs 25 and 26 of the Statement of Defence and Counterclaim, Sears did not breach its agreement with the Defendant by failing to include these inserts in its June MasterCard statements.

14. Sears did not place the June inserts in the June MasterCard statements at the Defendant's express request and instead, placed them in the July MasterCard statements with the Defendant's approval.

DGA is Dissatisfied with the Results of the MasterCard Program in the Fall of 2014

15. On or about September 25, 2014, the Defendant confirmed that the Catalogue Onsert program was continuing to perform. However, the Defendant advised that the MasterCard Insert program was struggling and requested machine-based audit information relating to the MasterCard Insert program.

16. Notwithstanding the absence of any contractual obligation to do so, Sears requested the machine-based audit information relating to the MasterCard Insert program from RRD.

17. However, Sears' MasterCards are administered by JPMorgan Chase Bank N.A. ("JP Morgan"), and JP Morgan holds the printing contract directly with RRD for the MasterCard statements. RRD therefore indicated that JP Morgan would have to make the request and/or consent to the release of the information.

18. Ultimately, JP Morgan refused to release the requested information.

19. To date, the Defendant has provided Sears with nothing to support its assertion, or DGA's assertion, that any issues experienced by DGA in connection with the MasterCard Insert program arose from any errors in the insertion of DGA's advertisement in the MasterCard statements.

DGA Alleges Errors with the Onsert Program for the First Time in October 2014

20. On October 8, 2014, the Defendant advised Sears for the first time of alleged issues with the Catalogue Onsert program.

21. In particular, the Defendant advised that DGA claimed to have conducted an informal audit of a total of 8 catalogues retrieved from 3 Sears' locations, and that of the 8 catalogues audited, 3 had the correct number of inserts, 2 had all required inserts but contained multiples of certain inserts, and 3 were missing items.

Sears Promptly Investigates the Concerns Raised by DGA through the Defendant

22. In response to the Defendant's concerns, Sears promptly conducted a comprehensive Canada-wide audit of 66 catalogues. On October 15, 2014, Sears advised the Defendant that from its own audit, only one duplicate onsert was found in a single catalogue, such that the "spoilage" or error rate was lower than the 2% industry standard.

23. In addition to conducting its own audit, Sears made inquiries to RRD about the concerns raised by the Defendant. In response, RRD advised Sears that:

- (a) RRD requests a paper stock thickness of .007 for 2 page onserts, as the use of a thinner stock creates the potential to pull multiple onserts;
- (b) the potential to pull multiple onserts is always a possibility; and
- (c) RRD factors a 2% "spoilage" rate into each job.

24. Notwithstanding the absence of any contractual requirement to do so, Sears further requested machine-based audit information from RRD at the Defendant's request for the

Catalogue Onserts. However, the machines used to insert the Catalogue Onserts did not have the capability of providing such information. The Defendant was advised of this by Sears.

25. Following a meeting Sears had with the Defendant on October 31, 2014, it was decided that the paper caliper used would be .007 moving forward. Sears confirmed this with the Defendant on November 19, 2014 as this was the ideal caliper of paper thickness, although not the only acceptable one.

26. However, contrary to the allegation made at paragraph 19 of the Statement of Defence and Counterclaim, Sears denies that it advised the Defendant that the use of thinner paper stock was the cause of the "errors identified by DGA".

27. Indeed, Sears' own investigation led it to the conclusion that the allegation of the magnitude of those "errors" was either factually inaccurate or an anomaly. Even with DGA's use of the thinner paper stock, Sears' audit confirmed that the margin of error or spoilage remained well within the 2% industry standard.

28. Throughout the aforementioned period, and notwithstanding its allegations of "errors" with the MasterCard Insert program and its more recent complaints about the Catalogue Onsert program, the Defendant continued to book advertisements for DGA with Sears under both programs and continued to make payments or partial payments on some invoices rendered by Sears.

29. To date, the Defendant has provided Sears with nothing to support its assertion, or DGA's assertion, that any issues experienced by DGA in connection with the Catalogue Onsert program arose from any errors in the insertion of DGA's advertisements onto Sears' catalogues, aside from the information conveyed by the Defendant with respect to DGA's alleged audit of 8 catalogues.

The Make Good Programs

30. To the extent that the Defendant alleges at paragraphs 27 to 29 of the Statement of Defence and Counterclaim that Sears offered to provide two "make good" programs to the Defendant to compensate it for any act, omission, fault or neglect on Sears' part with respect to

any MasterCard Insert bookings made by the Defendant, Sears denies those allegations and puts the Defendant to the strict proof thereof.

31. Sears further denies that it has any obligation to provide the Defendant with any "make good" programs for which the Defendant is entitled to a credit or to set off against any amounts owed to Sears.

Sears is Not Liable to the Defendant

32. Sears denies that it is liable to the Defendant in the manner alleged in the Statement of Defence and Counterclaim, or in any other manner, and puts the Defendant to the strict proof thereof.

33. Sears specifically denies that it failed to carry out the Defendant's bookings in either the Catalogue Onsert or MasterCard Insert programs in accordance with its contractual obligations and puts the Defendant to the strict proof of its allegations to the contrary.

34. Indeed, the Defendant only made an allegation of issues with respect to the Catalogue Onsert program for the first time in October of 2014, just weeks after the Defendant confirmed that this program was in fact "continuing to perform", and only after DGA experienced poor results from its advertisements in the MasterCard program for reasons entirely unrelated to any fault on Sears' part.

35. Sears pleads that to the extent that DGA has failed to pay the Defendant for its bookings with Sears, the same is a mere attempt by DGA to pass on to Sears the losses it experienced from its own failed advertising program.

The Defendant has Sustained No Damages

36. Sears denies that the Defendant has sustained any damages or losses for which it is liable, and puts the Defendant to the strict proof thereof.

37. With respect to the allegation contained at paragraph 38 of the Statement of Defence and Counterclaim that DGA has not met the intended volumes of advertisements set out

in the above-noted letter of intent, Sears pleads that the letter of intent was expressly described by DGA as "non binding" and provided only that DGA would endeavour to deliver the specified quantity of advertisements.

38. Accordingly, Sears pleads that the Defendant's expectations concerning DGA's endeavoured quantity of advertising placements, and its reliance on the letter of intent, was not reasonable and does not itself give rise to a claim for damages or losses.

39. In any event, DGA's failure to meet the intended volumes was not caused by any act, omission, fault or neglect on Sears' part.

40. In the alternative, if the Defendant has sustained any losses and damages for which Sears is liable, which is expressly denied, Sears pleads that such damages or losses were caused or contributed to by the Defendant's own acts, omissions, fault or neglect.

41. In this regard, Sears pleads that the Defendant has failed to take all reasonable steps to enforce its contractual right to collect payment from DGA for the advertisements it booked with Sears on DGA's behalf.

42. Regardless of the Defendant's failure to take such steps, the Defendant remains contractually obligated to pay Sears for the advertisements it booked with Sears.

43. Further and in the alternative, Sears pleads that the damages or losses allegedly sustained by the Defendant, which are specifically denied, are excessive, exaggerated and remote, and puts the Defendant to the strict proof thereof.

44. In the further alternative, Sears pleads that the Defendant has failed, refused or neglected to take reasonable, prudent or proper steps to mitigate any damages or losses it allegedly sustained.

45. Sears pleads that the Defendant's Counterclaim ought to be dismissed as against it, with costs on a substantial indemnity basis including H.S.T. thereon.

May 25, 2015

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 SEARS CANADA INC.
Plaintiff / Defendant by Counterclaim

-and-

 CONSUMER INTELLIGENCE GROUP INC.
Defendant / Plaintiff by Counterclaim

Court File No. CV-15-522235

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

REPLY AND DEFENCE TO COUNTERCLAIM

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Sears Canada Inc.

D

This is Exhibit "D" referred to in the Affidavit of **Monica Singh** sworn before me on March 27, 2018.

Marilyn D. Godfrey

A COMMISSIONER FOR OATHS IN AND FOR ONTARIO

*Marilyn Dianne Godfrey, a Commissioner, etc.
Province of Ontario, for Blake, Cassels & Graydon LLP,
Barristers and Solicitors.
Expires March 5, 2021.*

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

SEARS CANADA INC.

Plaintiff

- and -

CONSUMER INTELLIGENCE GROUP INC.

Defendant

- and -

DGA NORTH AMERICAN INC. and DGA FULFILLMENT SERVICES INC.

Third Parties

REPLY TO DEFENCE TO COUNTERCLAIM

1. The defendant, Consumer Intelligence Group Inc. ("CiG") admits the allegations set out in paragraph 3 of the Reply and Defence to Counterclaim of the plaintiff, Sears Canada Inc. ("Sears").
2. CiG denies each and every other allegation contained in the Reply and Defence to Counterclaim, except to the extent expressly admitted herein.
3. CiG repeats, adopts and relies as part of the pleadings herein the allegations and facts as pleaded in its Statement of Defence and Counterclaim. Any and all capitalized terms used herein have the same meaning ascribed to them in the Statement of Defence and Counterclaim.

Payment of Invoices

4. With respect to the allegations in subparagraph 7(e) and paragraph 11 of the Reply and Defence to Counterclaim, CiG denies that it was the parties' practice, or that it at any time agreed, that Sears' invoices were payable in full within thirty (30) days.
5. The agreement between CiG and Sears was that in accordance with industry practice as well as the parties' past practice, CiG would only make payment to Sears upon receipt of payment from DGA.

DGA's Standards and Specifications

6. With respect to the allegations in paragraph 8 of the Reply and Defence to Counterclaim, CiG and DGA adhered to Sears' specifications at all material times. At no time material to this action did Sears advise CiG that the caliper thickness needed to meet certain specifications or that it failed to meet certain specifications.

Warranties

7. In relation to the allegations in paragraph 10 of the Reply and Defence to Counterclaim, Sears provided CiG with an implied warranty that, *inter alia*,
 - a. Sears and its third party printing services provider, R.R. Donnelley & Sons Company ("RRD") would carry out the assembly of the onserts and inserts into the catalogues and statements in a good and workmanlike manner;
 - b. The Onsert Program and the Credit Card Program would be carried out with requisite skill;
 - c. The final product would be of merchantable quality;
 - d. The final product would be delivered on time;
 - e. None of the catalogues would have multiple inserts of the same product;
 - f. All of the catalogues would have the requisite number of inserts;

- g. The Onsert Program and the Credit Card Program could be properly completed regardless of the caliper (thickness) of the paper used by DGA; and
- h. CiG and DGA would receive that which they bargained for.

Cancellation of the Credit Card Program

- 8. By May 29, 2014, the results of the Onsert Program and the Credit Card Program continued to be very poor and Sears continued to refuse to produce the machine-based audits to CiG.
- 9. As a result of the foregoing, CiG temporarily cancelled the Credit Card Program until such time as it received the requested information from Sears and the parties were able to ascertain the cause of the ongoing problems with both programs.
- 10. By this time, the inserts for the Credit Card Program, which were supposed to be included in the June MasterCard statements, had already been delivered to Sears. Without obtaining CiG's approval, and while the Credit Card Program was temporarily cancelled, Sears arbitrarily proceeded with the Credit Card Program and included the inserts destined for the June MasterCard statements into the July MasterCard statements.
- 11. In or around this time, CiG did not consent to having Sears proceed with the Credit Card Program, or to including the inserts destined for the June MasterCard statements into the July MasterCard statements. As such, CiG is not liable to pay for the same.

Sears' Audits

- 12. In order to ascertain the cause of the problems with both programs, CiG has repeatedly requested machine-based audits from Sears, which are complete and available. Sears has failed, refused, and/or neglected to provide CiG with any of its available machine-based audits.
- 13. In or around October, 2014, CiG, once again, requested machine-based audits. CiG denies that in response to the request, Sears performed a "comprehensive Canada-wide

audit of 66 catalogues" or that the "spoilage" rate was lower than the 2% industry standard.

CiG's Booking of Business with Sears

14. In or around October, 2014, CiG had other programs with Sears for other clients, and continued to book advertisements with Sears for those other clients and to make payments to Sears in relation to the same.
15. CiG continued to book DGA's advertisements with Sears based upon the representation from Sears that machine-based audits would be produced, and due to the fact that DGA had product (i.e. advertisements) that it had paid for and that needed to be rolled out. CiG had no other option but to proceed with booking advertisements for DGA on a smaller scale until the issues with the Onsert Program and the Credit Card Program were resolved.
16. With respect to the allegations in paragraph 34 of the Reply and Defence to Counterclaim, CiG raised concerns with Sears about the Onsert Program and the Credit Card Program prior to October 2014.
17. CiG expressly denies that it first raised concerns about these programs only after DGA experienced poor results from its advertisements in the Credit Card Program.
18. CiG states that as a result of the foregoing, Sears is contributorily negligent for the damages that it alleges it has suffered, and CiG pleads and relies on the *Negligence Act*, R.S.O. 1990, c. N.1, as amended, in relation to the same.

Date: June 8, 2015

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Lawyers for the Third Parties

E

This is Exhibit "E" referred to in the Affidavit of
Monica Singh sworn before me on March 27, 2018.



A COMMISSIONER FOR OATHS IN AND FOR ONTARIO

*Marilyn Dianne Godfrey, a Commissioner, etc.
Province of Ontario, for Blake, Cassels & Graydon LLP,
Barristers and Solicitors.
Expires March 5, 2021.*

Court File No. CV-15-522235 *00A1*

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

SEARS CANADA INC.

Plaintiff

- and -

CONSUMER INTELLIGENCE GROUP INC.

Defendant

- and -



DGA NORTH AMERICAN INC. and DGA FULFILLMENT SERVICES INC.

Third Parties

THIRD PARTY CLAIM

TO THE THIRD PARTY

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by way of a third party claim in an action in this court.

The action was commenced by the plaintiff against the defendant for the relief claimed in the statement of claim served with this third party claim. The defendant has defended the action on the grounds set out in the statement of defence served with this third party claim. The defendant's claim against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS THIRD PARTY CLAIM, you or an Ontario lawyer acting for you must prepare a third party defence in Form 29B prescribed by the Rules of Civil Procedure, serve it on the lawyers for the other parties or, where a party does not have a lawyer, serve it on the party, and file it, with proof of service, WITHIN TWENTY DAYS after this third party claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your third party defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a third party defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your third party defence.

- 2 -

YOU MAY ALSO DEFEND the action by the plaintiff against the defendant by serving and filing a statement of defence within the time for serving and filing your third party defence.

IF YOU FAIL TO DEFEND THIS THIRD PARTY CLAIM, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE AMOUNT OF THE THIRD PARTY CLAIM AGAINST YOU, and \$5,000 for costs, within the time for serving and filing your third party defence, you may move to have the third party claim dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the amount of the third party claim and \$400.00 for costs and have the costs assessed by the court.

Date May 8, 2015

Issued by J. Kelly
Local registrar

Address of court office 393 University Ave., 10th Floor
Toronto, ON M5G 1E6

TO: DGA North American Inc.
80 Travail Road, Unit 1 & 2
Markham, ON
L8S 3J1

AND TO: DGA Fulfillment Services Inc.
68B Leek Crescent
Richmond Hill, ON
L4B 1H1

- 3 -

CLAIM

1. The defendant, Consumer Intelligence Group Inc. ("CiG"), claims against the third parties, DGA North American Inc. and DGA Fulfillment Services Inc. (collectively, "DGA") for:

- (a) Full contribution and indemnity in respect of any amounts that CiG may be found to owe or that are otherwise determined to be payable by CiG to the Plaintiff ("Sears") in the main action herein;
- (b) Damages for lost profits and breach of contract in the amount of 15 percent of any amounts that CiG may be found to owe or that are otherwise determined to be payable by CiG to Sears;
- (c) Judgment for the sum of \$433,738.41, which amount is due and owing to CiG pursuant to its ongoing agreement to book media for DGA in the Sears Onset Program and the Credit Card Program and in respect of which invoices have been duly rendered to DGA;
- (d) In the alternative to (c), above, damages in the amount of \$433,738.41 for breach of contract;
- (e) Additionally, or in the further alternative, payment for services rendered or damages in an amount to be assessed on a *quantum meruit* basis;
- (f) Pre-judgment and post-judgment interest pursuant to the provisions of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (g) CiG's costs in the main action, including the counterclaim, and of this third party claim, on a substantial indemnity basis; and
- (h) Such further and other relief as this Honourable Court may deem just.

2. CiG repeats and relies upon the statements set out in its Statement of Defence and Counterclaim to the main action herein. Unless otherwise noted, all capitalized terms refer to those defined in the Statement of Defence and Counterclaim.

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Parties

3. CiG is a corporation incorporated pursuant to the laws of the Province of Ontario and carries on business providing, *inter alia*, direct and digital media brokerage services.
4. DGA North American Inc. is a company incorporated pursuant to the laws of Ontario, with its head office in Brampton, Ontario.
5. DGA Fulfillment Services Inc. is a company incorporated pursuant to the laws of the Province of Ontario, with its head office in Brampton, Ontario.
6. Sears is a corporation incorporated pursuant to the laws of the Province of Ontario and carries on business as a retailer of consumer goods throughout Canada.

Claim for Contribution and Indemnity and Loss of Profit

7. In or around September 2013 and until December 2014, DGA retained CiG to provide media brokerage services to DGA. In particular, DGA retained CiG to arrange for DGA's promotional materials to be distributed by Sears under its Onsert Program and its Credit Card Program. CiG fulfilled all of its contractual obligations to DGA.
 8. In the main action, Sears has claimed against CiG for payment in respect of DGA's participation in its Onsert Program and Credit Card Program.
 9. In its defence to the main action, CiG has denied Sears' allegations of breach of contract, unjust enrichment and entitlement to relief as claimed in paragraph 1 of the Statement of Claim. However, to the extent that CiG is found liable to Sears for any claimed losses, CiG pleads that such amounts are owed to it by DGA pursuant to the agreements entered into between CiG and DGA for the purchase of media space in the Onsert Program and the Credit Card Program. CiG states that it is entitled to contribution and indemnity from DGA in respect of the claim made by Sears.
 10. Furthermore, to the extent that CiG is found liable to Sears for any amount, CiG pleads that DGA is liable to CiG for the same amount, plus an additional 15 percent of such
-

- 5 -

amount as commission pursuant to the agreements entered into between CiG and DGA for the purchase of media space in the Onsert Program and the Credit Card Program.

Claim on Unpaid Invoices

11. It was a term of the agreements entered into between CiG and DGA for the purchase of media space in the Onsert Program and the Credit Card Program that CiG would render invoices to DGA upon receipt of invoices from Sears for booking the media. DGA agreed to pay CiG's invoices in full upon receipt.

12. Pursuant to its agreements with DGA, CiG booked media for DGA in both the Onsert Program and the Credit Card Program from in or around September 2013 to in or around December 2014.

13. Between July 31, 2014 and December 9, 2014, CiG delivered the following invoices to DGA for which it has not received payment:

<u>Date</u>	<u>Invoice No.</u>	<u>Amount</u>
July 31, 2014	600006	\$4,999.18
July 31, 2014	600018	\$18,404.41
July 31, 2014	600019	\$5,845.74
July 31, 2014	600015	\$24,255.37
July 31, 2014	600011	\$24,255.45
August 24, 2014	600012	\$40,536.92
August 24, 2014	600013	\$41,143.23
August 29, 2014	600022	\$25,453.25
August 29, 2014	600014	\$41,143.23
September 15, 2014	600020	\$24,250.15
September 17, 2014	600023	\$27,096.71
September 18, 2014	600024	\$27,096.71

<u>Date</u>	<u>Invoice No.</u>	<u>Amount</u>
October 31, 2014	600026	\$23,859.41
October 31, 2014	600027	\$23,859.41
October 31, 2014	600025	\$25,061.57
November 27, 2014	600028	\$24,248.13
December 9, 2014	600030	\$16,114.77
December 9, 2014	600031	\$16,114.77
Total:		\$433,738.41

14. DGA has failed, refused and/or neglected to pay a portion or all of the above-noted amounts, in breach of the terms of its agreements with CiG for the purchase of media space in the Onsert Program and the Credit Card Program. As a result, the amount of \$433,738.41 remains due and owing from DGA to CiG.

15. Additionally and alternatively, CiG pleads and relies upon the doctrine of *quantum meruit* in this claim for damages herein. CiG pleads that it provided labour and services on behalf of DGA in relation to booking media for the Onsert Program and the Credit Card Program. The labour and services were provided at the request, and for the benefit, of DGA. CiG is, therefore, entitled to be compensated by DGA on a *quantum meruit* basis for the value of its labour and services provided on behalf of DGA.

16. CiG pleads and relies upon the *Negligence Act*, R.S.O. 1990, c. N.1, as amended, and the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended.

17. CiG requests that this third party claim be tried with the main action herein.

- 7 -

May 8, 2015

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Lawyers for the Defendant/
Plaintiff by Third Party Claim

SEARS CANADA INC. -and- CONSUMER INTELLIGENCE GROUP INC. -and- DGA NORTH AMERICAN INC. et al.
Plaintiff Defendant Third Parties

Court File No. CV-15-522235

AAA

**ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO**

THIRD PARTY CLAIM

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Lawyers for the Defendant

F

This is Exhibit "F" referred to in the Affidavit of
Monica Singh sworn before me on March 27, 2018.



A COMMISSIONER FOR OATHS IN AND FOR ONTARIO

*Marilyn Dinane Godfrey, a Commissioner, etc.
Province of Ontario, for Blake, Cassels & Graydon LLP,
Barristers and Solicitors.
Expires March 5, 2021.*

Court File No.: CV-15-522235-00A1

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

SEARS CANADA INC.

Plaintiff
(Defendant by Counterclaim)

- and -

CONSUMER INTELLIGENCE GROUP INC.

Defendant
(Plaintiff by Counterclaim)

- and -

**DGA NORTH AMERICAN INC., DGA FULFILLMENT SERVICES INC.
and R.R. DONNELLY & SONS COMPANY**

Third Parties

**THIRD PARTY DEFENCE AND COUNTERCLAIM OF DGA NORTH
AMERICAN INC. and DGA FULFILLMENT SERVICES INC.**

DEFENCE

1. In respect of the allegations contained in the Defendants' (hereafter referred to as "CIG") Third Party Claim, these third parties, DGA North American Inc. and DGA Fulfillment Services Inc. (hereafter referred to as "DGAFSI") admit the allegations contained in paragraphs 3 and 7 save for the last sentence in paragraph 7 which DGAFSI denies, 8, 11, and 12.
2. In respect of the allegations contained in paragraphs 4 and 5 of CIG's Third Party Claim DGAFSI states that its head office is now located in Markham, Ontario.
3. DGAFSI denies the allegations contained in the remaining paragraphs of CIG's Third Party Claim.
4. In respect of the allegations contained in CIG's Statement of Defence and Counterclaim in the main action, which CIG repeats and relies upon in its Third Party Claim, DGAFSI admits the allegations contained in paragraphs 4 to 8, 11 to 16 and 22 to 30.

5. DGAFSI has no knowledge of the allegations contained in paragraphs 9, 10, 17 to 21 and 31 to 33 of CIG's Statement of Defence and Counterclaim in the main action.
6. DGAFSI denies the allegations contained in the remaining paragraphs of CIG's Statement of Defence and Counterclaim in the main action.
7. In respect of the allegations contained at paragraph 6 of CIG's Statement of Defence and Counterclaim in the main action and paragraph 7 of CIG's Third Party Claim DGAFSI states that only DGA Fulfillment Services Inc. contracted with CIG. DGA North American Inc. did not contract with CIG.
8. While DGAFSI paid CIG for media space purchased from the Plaintiff Sears Canada Inc. (hereafter "Sears") based upon its assessment of the inserts that were actually included in the Sears Catalogue Inserts and Sears' Master Card Inserts programs DGAFSI has since discovered it has a substantial claim for the costs it incurred in respect of the Sears' Programs and for the profit it has lost as a result of the fact that the insets it contracted to be inserted into the Sears' Programs were not inserted or were improperly inserted.

History Prior to Involvement of Moore Canada

9. Prior to February of 2014, DGAFSI had a 20 year history of selling products through the various Sears' programs in place from time to time. In or about 2012 Sears announced that it was restructuring and all future participation in its programs would be done through its exclusive agent.
10. In 2013 Sears appointed CIG to be its agent. DGAFSI contracted with CIG to participate in the Sears' Programs in 2013.
11. In 2013 DGAFSI used Universal Printing, a Quebec based printing company, to print the inserts it used in the Sears' Programs and was instructed to have Universal Printing deliver the inserts to RR Donnelley & Sons Company (hereafter referred to as "RR Donnelley") for RR Donnelley to insert them into the various Sears' programs.

12. In February of 2014 DGAFSI provided CIG with a letter of intent confirming its participation in the Sears' Catalogue Inserts and Sears' Master Card Inserts Programs for 2014. The letter provided that DGAFSI will endeavor to deliver a minimum of 45 inserts to Sears comprising of 23 inserts for the Sears Canada Catalogue Inserts program and 22 inserts for the Sears Canada credit card Inserts program. Again for those programs inserts were to be delivered to RR Donnelley who would insert them into the Sears' material.
13. In April of 2014 CIG informed DGAFSI that there was an error in the packaging of the French and English inserts RR Donnelley had received from Universal Printing. At that time CIG informed DGAFSI that RR Donnelly would no longer accept inserts from Universal Printing. Shortly after informing DGAFSI of RR Donnelley's refusal to accept inserts printed by Universal Printing, Andrew Varga, a representative from RR Donnelley, contacted DGAFSI advising that if Moore Canada Corporation ("Moore Canada") an RR Donnelley company, were hired to print the inserts he would not only manage the printing but because RR Donnelley was also responsible for inserting the inserts in the Sears' Programs he would manage the insertion as well.
14. After the running of some test programs and based upon Mr. Varga's representation that he would manage DGAFSI's inserts, DGAFSI transferred the printing of its inserts for the Sears' Programs to RR Donnelley's printing company, Moore Canada.

Problems following the hiring of Moore Canada to Print the Inserts

15. Shortly after commencing to use Moore Canada for its printing needs for the inserts, it became apparent to DGAFSI that the responses to the Sears' Programs were nowhere near the levels that it had historically experienced with the Sears' Programs.
16. In September DGAFSI requested machine based audit reports from CIG to confirm what inserts were inserted into the Sears' Programs rather than simply relying upon the signed declarations it had been receiving.
17. CIG responded that it was told by RR Donnelley that the insert machines were not capable of producing an audit.

18. In October DGAFSI conducted an audit of a sampling of Sears' Catalogues and discovered that a majority of the catalogues did not contain the inserts DGAFSI had contracted with CIG to be inserted or contained duplicates.
19. DGAFSI requested a site visit to the RR Donnelley insertion facility to view the insertion machines in operation inserting its inserts.
20. DGAFSI representatives Carol Good and Pauline Peng-Skinner attended at the RR Donnelley inserting plant in late June of 2014 with Andrew Varga. Carol Good was in attendance because she has substantial experience in the insertion business and is very knowledgeable as to how insertion machines work.
21. Upon Carol Good observing that the machines were not always picking up the DGAFSI inserts even though the contract with CIG stipulated that DGAFSI's inserts were to be "full" (that is always inserted) and not randomly selected, Mr. Varga immediately terminated the visit and quickly ushered Ms. Good and Ms. Peng-Skinner out of the building.
22. DGAFSI was not told that the inserts were required to be of a minimum caliper until May 4 when CIG's representative, Kevin Klein informed DGAFSI's representative Ms. Peng-Skinner of that fact. By that time DGAFSI had spent hundreds of thousands of dollars on printing and on purchasing products to fill anticipated orders which did not materialize by reason of the fact that its inserts were not inserted into the Sears' Programs or were wrongly inserted into the Programs.

CIG's Breach of Contract and Negligence

23. DGAFSI states that CIG is in breach of its contract with DGAFSI to provide brokerage services to it including purchasing media space on its behalf and making the necessary arrangements to have DGAFSI's advertisements distributed in the Sears' Onsert and Sears' Credit Card Programs.
24. DGAFSI further states that CIG was negligent in not properly auditing and overseeing the insertion program to ensure that the DGAFSI inserts were in fact being inserted into the Sears' Programs.

25. DGAFSI further states that CIG was negligent in causing false declarations regarding the actual number of inserts inserted into the Sears' Programs to be delivered to DGAFSI.
26. DGAFSI pleads and relies upon the *Negligence Act*, R.S.O. 1990 c. N. 1 as amended.
27. DGAFSI denies that it received any benefit whatsoever from the Sears' 2014 Programs and states that it has suffered substantial losses as a result of the collective failures of CIG, RR Donnelley and Moore Canada to ensure that the inserts it had contracted with CIG to be inserted in the Sears' Programs were in fact inserted into those programs.
28. DGAFSI denies that it is indebted to CIG in the amount CIG has claimed and denies that any further amount is owed to CIG.
29. DGAFSI denies that it is obligated to indemnify CIG for any amount CIG is found obligated to pay Sears.
30. DGAFSI therefore asks that the Third Party Claim against it be dismissed with costs on a substantial indemnity basis.

COUNTERCLAIM

31. DGAFSI claims as against CIG for the following:
 - (a) damages for breach of contract in the amount of \$3,475,000.00;
 - (b) damages for CIG's negligence in the amount of \$3,475,000.00;
 - (c) punitive and exemplary damages in the amount of \$500,000.00;
 - (d) pre-judgment and post-judgment interest in accordance with the Courts of Justice Act, R.S.O. 1990, c. C.43
 - (e) its costs of this action on a substantial indemnity basis; and

(f) such further and other relief as this Honourable Court may deem just.

32. DGAFSI pleads and relies upon the allegations contained in its Statement of Defence to the Third Party Claim.
33. DGAFSI states that CIG breached the contract it entered into with DGAFSI and as a result DGAFSI has suffered damages.
34. DGAFSI further states that CIG owed a duty of care to DGAFSI, which duty included informing DGAFSI of any requirement respecting the caliber of inserts required by the RR Donnelley insertion machines. DGAFSI states that CIG breached this duty of care by failing to inform DGAFSI in a timely fashion of those requirements.
35. In addition to the costs DGAFSI has incurred and its loss of profit from the inserts that were inserted and the inserts it had planned to insert into the Sears' Programs, DGAFSI's reputation in the fulfillment business has been seriously diminished by the failure to properly insert its inserts into the Sears' Programs.
36. In March of 2014 DGAFSI ran a promotion for a 53 piece flatware set. At that time it caused to be delivered to RR Donnelley inserts advertising that promotion. The inserts were to have gone out then in the Sears' Program. There were very few sales. In August 2014 DGAFSI ran another promotion for a 65 piece flatware set. Again it caused inserts advertising that promotion to be delivered to RR Donnelley at that time.
37. Orders were received in September and October and filled resulting in numerous customer complaints that what they had ordered was the 53 piece flatware set not the 65 piece flatware set. It was apparent to DGAFSI that in the August mailing RR Donnelley had included inserts for the 53 piece flatware promotion. These inserts were from the inserts delivered to RR Donnelley in March of 2014 that were to have been inserted in the spring promotion and which were not inserted into a Sears' Program until many months later.
38. DGAFSI states that in its letter of intent dated February 4 2014 delivered to CIG, DGAFSI intended to deliver a minimum of 45 insets to Sears over the fiscal period of February 2, 2014 to January 31, 2015. Each of those insets would contain 1,820,000 actual insets.

- 39. DGAFSI has historically earned a profit of \$30.00 on merchandise sales and a \$10.00 on shipping and handling fees it collected for a total profit of \$40.00 for every 1000 inserts it sent out on various Sears' Programs over the years.
- 40. DGAFSI states that as a result of CIG's breach of contract and or breach of its duty of care DGAFSI has suffered damages the details of which will be provided to CIG prior to trial.
- 41. DGAFSI proposes that this counterclaim be tried in Toronto together with the Third Party Claim and the main action.

Dated: August 20 2015

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R.R. Donnelley & Sons Company

Court File No. CV-15-52235-00A1

SEARS CANADA INC. v. CONSUMER INTELLIGENCE GROUP INC. v. DGA NORTH AMERICAN INC. ET AL
Plaintiff Defendant Third Parties

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceedings Commenced at TORONTO

**THIRD PARTY DEFENCE AND
COUNTER CLAIM**

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American Inc. and DGA Fulfillment Services
Inc.*

G

This is Exhibit "G" referred to in the Affidavit of
Monica Singh sworn before me on March 27, 2018.



A COMMISSIONER FOR OATHS IN AND FOR ONTARIO

*Marilyn Dianne Godfrey, a Commissioner, etc.
Province of Ontario, for Blake, Cassels & Graydon LLP,
Barristers and Solicitors.
Expires March 5, 2021.*

Court File No. CV-15-522235-00A1

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

SEARS CANADA INC.

Plaintiff

- and -

CONSUMER INTELLIGENCE GROUP INC.

Defendant

- and -

**DGA NORTH AMERICAN INC. and DGA FULFILLMENT SERVICES INC.
and R.R. DONNELLY & SONS COMPANY**

Third Parties

**REPLY AND DEFENCE TO COUNTERCLAIM OF THE DEFENDANT,
CONSUMER INTELLIGENCE GROUP INC.,
TO THE THIRD PARTY DEFENCE AND COUNTERCLAIM OF
DGA NORTH AMERICAN INC. AND DGA FULFILLMENT SERVICES INC.**

1. The defendant/plaintiff by Third Party Claim, Consumer Intelligence Group ("CiG") admits the allegations set out in paragraph 1 of the Third Party Defence and Counterclaim of DGA North American Inc. ("DGA NA") and DGA Fulfillment Services Inc. ("DGA FS") (collectively "DGA").
2. CiG has no knowledge of the allegations set out in paragraphs 9, 19 and 20 of the Third Party Defence and Counterclaim of DGA.
3. Except to the extent expressly admitted to herein, CiG denies each and every other allegation contained in the Third Party Defence and Counterclaim of DGA, and in particular denies that DGA is entitled to any of the relief claimed in paragraph 31 therein.

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4. CiG repeats, adopts and relies as part of the pleadings herein the pleadings and statements of fact contained in its Statement of Defence and Counterclaim, its Reply to Defence to Counterclaim in the main action and its Third Party Claim in the third party action.

5. CiG was retained by DGA in or about February 2014 to provide broker services in connection with purchasing media space in Sears' Onsert Program and its Credit Card Program (together, the "**Sears Programs**"), as outlined in paragraph 8 of CiG's Statement of Defence and Counterclaim. Contrary to the allegations contained in paragraph 7 of their Third Party Defence and Counterclaim, both DGA NA and DGA FS retained CiG. Further, both DGA NA and DGA FS requested and received the full benefit of CiG's services, and both are responsible for paying CiG for its services.

6. With respect to paragraph 8 of the Third Party Defence and Counterclaim, CiG's contractual obligations to DGA were restricted to purchasing media space with Sears on behalf of DGA. At no time was CiG retained to provide services relating to, and at no time did it agree to be responsible for or have any duty to advise DGA on, the actual printing or insertion of DGA's inserts into the Sears' Programs. To the contrary, DGA was responsible for making its own arrangements for the printing and insertion of its inserts, and in this regard DGA retained Moore Canada Corporation ("**Moore**"), an affiliate of Sears' service provider RR Donnelly & Sons Company ("**RRD**"), to print DGA's inserts and to ensure the inserts were properly inserted into the Sears Programs. DGA did not consult with or rely upon CiG to advise it on the processes relating to the printing and physical insertion of the inserts or to audit the inserts.

7. Further, in or about April 2014 RRD confirmed to CiG that RRD would be ensuring that any and all inserts produced by Moore for DGA would meet or exceed both RRD's and Sears' delivery expectations.

8. In or around May 2014, after Moore started to manage both the printing and insertion of the inserts, DGA complained to CiG that the responses to its promotion utilizing the inserts under the Sears Programs were significantly below the levels that DGA had historically experienced. CiG immediately conveyed DGA's concerns to Sears.

- 3 -

9. On or about September 15, 2014, in response to DGA's complaints of poor performance of the Sears Programs, DGA requested machine-based audit reports from CiG in order to verify whether all of the intended inserts had actually been inserted into the Sears Programs. CiG promptly communicated the request to Sears.

10. In or around October 2014, CiG was notified by DGA and RRD that RRD's machines were frequently picking up multiple inserts or missing inserts entirely during the insertion process.

11. On or about October 31, 2014, Sears advised CiG that the machine-based audits for the Onsert Program were not available due to the fact that the machines used to insert the material into the merchandising catalogues were "very old" and were not capable of producing the requested reports.

12. DGA did obtain audit reports directly from RRD in respect of the Credit Card Program. However, DGA complained that the reports lacked the information DGA was seeking. RRD refused to produce or otherwise disclose the information sought by DGA.

13. Sears subsequently purported to explain the errors in the inserts on the fact that selective insertion of the inserts was occurring due to a computer-based "waterfall matrix" that selected certain groups of credit card insert recipients based upon various models and consumer-based preferences. Sears had never previously advised CiG of any such waterfall matrix or that not all of DGA's inserts would be inserted into the Sears Programs.

14. To date, and despite repeated requests, Sears has failed to produce or otherwise disclose further details regarding the waterfall matrix to CiG.

15. Then, in October 2014, Sears for the first time suggested that the errors in the insertions were being caused in part by the fact that DGA's insert were below the minimum caliper (thickness) and that going forward all inserts would have to meet minimum caliper requirements. No such minimum caliper requirements had ever been communicated by Sears to CiG or were required under CiG's contract with Sears, and CiG had no reason to have expected there were any such requirements.

- 4 -

16. To the extent a minimum caliper was required for DGA's inserts, RRD and Moore were aware or should have been aware of this requirement and owed a duty to DGA to advise it of these requirements in a timely fashion and to ensure that DGA's inserts met these requirements and were printed and inserted into the Sears Programs properly.

17. CiG denies that it breached its agreement with DGA as alleged in paragraph 23 of the Third Party Defence and Counterclaim of DGA. CiG booked media space for DGA with Sears in accordance with the terms of its agreements with DGA and in accordance with industry standards and guidelines, and fulfilled all of its obligations to DGA.

18. CiG denies that it had any duty whatsoever to audit or oversee the insertion program to ensure that DGA's inserts were being inserted into the Sears Programs. DGA retained and relied upon RRD and Moore, and not CiG, to audit and oversee the insertion program. CiG's obligation was simply to book the media space and acting as a broker between Sears and DGA, and it fulfilled all of its obligations in this regard.

19. With respect to the allegations contained in paragraph 24 of the Third Party Defence and Counterclaim of DGA, CiG denies that it was negligent or breached any duties it may be found to have owed to DGA.

20. With respect to the allegations in paragraph 25 of the Third Party Defence and Counterclaim of DGA, as DGA well knew any and all information provided to DGA in terms of the actual number of inserts for the Sears Programs were received by CiG directly from Sears. CiG was not permitted to independently audit or confirm the figures provided by Sears in any manner whatsoever, nor was CiG obligated to do so pursuant to its agreements with DGA. CiG had no reason to believe that the information it received from Sears and provided to DGA was incorrect, and was not negligent in providing to DGA the information it had received from Sears.

21. In response to the allegations in paragraph 27 of the Third Party Defence and Counterclaim of DGA, CiG states that DGA did receive a benefit from the Onsert Program and the Credit Card Program and relies upon DGA's acknowledgement of same in its pleadings in the within action.

- 5 -

22. CiG denies that it breached its contract with DGA or any other duty it may be found to have owed to DGA, as alleged in paragraphs 33 and 34 of the Third Party Defence and Counterclaim of DGA.

23. With respect to the allegations in paragraphs 36 and 37 of the Third Party Defence and Counterclaim of DGA, CiG states that at all material times it complied with any and all instructions provided by DGA and conveyed those instructions to Sears as and when required. To the extent that there were any errors in completing the printing and insertion properly and in accordance with the instructions of DGA, such errors were caused by and were the responsibility of Sears, RRD and Moore, or any one of them, and not CiG.

24. CiG denies that DGA has suffered any damages, loss of profits or damage to reputation as alleged or at all, and puts DGA to the strict proof thereof.

25. In the alternative, if DGA has suffered any such losses, same were caused in whole or in part by the negligence of DGA, Sears, RRD and Moore, and were in no way caused or contributed to by CiG. CiG states that as a result of the foregoing, each of DGA, Sears, RRD and Moore are contributorily liable for any damages and losses which may be proven by DGA. CiG pleads and relies upon the *Negligence Act*, R.S.O. 1990, c. N.1, as amended.

26. In the further alternative, CiG states that such damages and losses are excessive, too remote and not recoverable at law. Further, DGA has failed to mitigate the same and as such is precluded at law from recovering any damages against CiG whatsoever.

27. CiG states that DGA has failed to plead the requisite elements of the causes of action set out in paragraph 31 of the Third Party Defence and Counterclaim and has failed to particularize its damages. As a result, CiG requests that DGA's counterclaim be dismissed with costs on a substantial indemnity basis.

28. CiG pleads and relies on the doctrines of legal and/or equitable set-off, and claims the right to set-off its claims against DGA against any amounts for which it may be found liable to DGA in the within third party action.

- 6 -

29. CiG requests that DGA's counterclaim be dismissed, with costs on a substantial indemnity basis.

May 6, 2016

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- 7 -

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Lawyers for the Third Party,
R.R. Donnelly & Sons Company

Н

This is Exhibit "H" referred to in the Affidavit of
Monica Singh sworn before me on March 27, 2018.



A COMMISSIONER FOR OATHS IN AND FOR ONTARIO

*Marilyn Dianne Godfrey, a Commissioner, etc.
Province of Ontario, for Blake, Cassels & Graydon LLP,
Barristers and Solicitors.
Expires March 5, 2021.*

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:



SEARS CANADA INC.

Plaintiff/
Defendant by Counterclaim

- and -

CONSUMER INTELLIGENCE GROUP INC.

Defendant/
Plaintiff by Counterclaim

- and -

DGA NORTH AMERICAN INC. and DGA FULFILLMENT SERVICES INC.

Third Parties

- and -

R.R. DONNELLY & SONS COMPANY

Third Party

THIRD PARTY CLAIM

TO THE THIRD PARTY

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by way of a third party claim in an action in this court.

The action was commenced by the plaintiff against the defendant for the relief claimed in the statement of claim served with this third party claim. The defendant has defended the action on the grounds set out in the statement of defence served with this third party claim. The defendant's claim against you is set out in the following pages.

-2-

IF YOU WISH TO DEFEND THIS THIRD PARTY CLAIM, you or an Ontario lawyer acting for you must prepare a third party defence in Form 29B prescribed by the Rules of Civil Procedure, serve it on the lawyers for the other parties or, where a party does not have a lawyer, serve it on the party, and file it, with proof of service, WITHIN TWENTY DAYS after this third party claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your third party defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a third party defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your third party defence.

YOU MAY ALSO DEFEND the action by the plaintiff against the defendant by serving and filing a statement of defence within the time for serving and filing your third party defence.

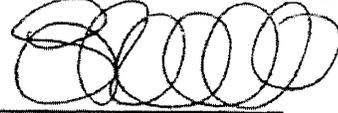
IF YOU FAIL TO DEFEND THIS THIRD PARTY CLAIM, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE AMOUNT OF THE THIRD PARTY CLAIM AGAINST YOU, and \$1,500.00 for costs, within the time for serving and filing your third party defence, you may move to have the third party claim dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the amount of the third party claim and \$400 for costs and have the costs assessed by the court.

Date:

June 5, 2015

Issued by:



Local Registrar
393 University Avenue, 10th Floor
Toronto, ON M5G 1E6

TO:

R.R. Donnelly & Sons Company
6100 Vipond Drive
Mississauga, ON L5T 2X1

CLAIM

1. The Defendant by Counterclaim, Sears Canada Inc. ("Sears"), claims against the Third Party, R.R. Donnelly & Sons Company ("RRD"):

- (a) contribution, indemnity, and/or other relief over with respect to any judgment, interest and/or costs awarded to the Plaintiff by Counterclaim, Consumer Intelligence Group Inc. ("CIG"), in its Counterclaim as against Sears;
- (b) a declaration that the alleged damages sustained by CIG were caused by the fault or neglect of RRD, and not Sears;
- (c) a declaration of the proportionate fault or neglect of RRD in respect of any damages sought by CIG in its Counterclaim;
- (d) damages in the amount of \$377,023.78;
- (e) Sears' costs of this Third Party Claim and its defence of the Counterclaim of CIG on a substantial indemnity basis, including Goods and Services Tax thereon, in accordance with the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended; and
- (f) such further and other relief as this Honourable Court may deem just.

2. Sears repeats and relies upon the allegations set out in the Statement of Claim and in its Reply and Defence to Counterclaim as though pleaded herein.

The Parties

3. Sears is a company incorporated pursuant to the laws of Canada and *inter alia* carries on business as a retailer throughout Canada, with its head office in Toronto, Ontario.

4. CIG is a company incorporated pursuant to the laws of Ontario and *inter alia* carries on business as a media brokerage service company, with its head office in Toronto, Ontario.

5. DGA North American Inc. ("DGA NA") and DGA Fulfillment Services Inc. ("DGA Fulfillment") (collectively, DGA) are companies incorporated pursuant to the laws of Ontario and *inter alia* carry on business as marketing and advertising companies, with their head offices in Brampton, Ontario.

6. RRD is a company incorporated pursuant to the laws of Delaware and *inter alia* carries on business as a provider of commercial printing services, with its Canadian office located in Mississauga, Ontario.

Background

7. Sears creates and publishes numerous general merchandise catalogues throughout the year for its customers.

8. In the year 2014, CIG purchased media space, inserting its onsert advertisements within Sears' merchandise catalogues (the "Catalogue Onserts"). Additionally, CIG purchased media space within Sears' MasterCard program, and specifically, within MasterCard statements sent to Sears' MasterCard holders (the "MasterCard Inserts").

9. CIG made the aforementioned purchases on behalf of its customer, DGA.

10. Sears outsourced the printing and production of its merchandise catalogues and MasterCard statements, together with the printing and production of the Catalogue Onserts and MasterCard Inserts, to RRD.

11. Sears commenced the main action herein against CIG to recover the sum of \$377,023.78 owed to Sears from its purchase of media space in Sears' merchandise catalogues and MasterCard statements on behalf of DGA.

12. CIG has defended the main action and advanced a Counterclaim against Sears, alleging *inter alia*, that the orders it placed on behalf of DGA for the Catalogue Onserts and MasterCard Inserts were not of merchantable quality, and specifically, that some of the merchandise catalogues had multiple inserts for the same product, while other copies of the catalogue were missing certain inserts entirely.

13. On October 9, 2014, in response to concerns raised by CIG concerning alleged issues with the Catalogue Onserts, Sears made inquiries to RRD as to why multiple onserts may appear in a given catalogue. In response, RRD advised Sears that:

- (a) RRD requests a paper stock thickness of .007 for 2 page onserts, as the use of a thinner stock creates the potential to pull multiple onserts;
- (b) the potential to pull multiple onserts is always a possibility; and
- (c) RRD factors a 2% "spoilage" rate into each job.

14. Prior to RRD's aforementioned response, Sears was not advised that RRD requests a paper stock thickness of .007 for 2 page onserts due to the potential risk of pulling multiple onserts arising from the use of a thinner paper stock.

If There Were Defects with the Sears Catalogues and MasterCard Statements, RRD is Responsible

15. Sears has denied all liability to CIG in connection with CIG's allegations that Sears failed to carry out its bookings in the merchandise catalogues or MasterCard statements in accordance with its contractual obligations and has put CIG to its allegations to the contrary.

16. However, if it is found that the Catalogue Inserts and MasterCard Inserts purchased by CIG on behalf of DGA were not properly placed in the Sears' catalogues and MasterCard statements – in that there were multiple inserts in some instances and missing inserts in others, Sears pleads that the same was caused solely, or alternatively contributed to, by the acts, omissions, fault and/or neglect of RRD in carrying out the printing and production of the catalogues and MasterCard statements.

17. Accordingly, if it is found that Sears is liable to CIG because the Sears' catalogues and MasterCard statements were either missing inserts or had multiple inserts, or because of any other defect caused by RRD in the production and/or assembly of those catalogues or statements, Sears pleads that RRD ought to be ordered to fully indemnify Sears for any amounts found to be owed by Sears to CIG.

18. In this regard, Sears pleads and relies upon the *Negligence Act*, R.S.O. 1990, c. N.1, as amended, and in particular, Sections 1 and 2.

19. Further, if it is found that CIG is not indebted to Sears as alleged in the Statement of Claim due to the failure to RRD to properly print and/or assemble the Catalogue Inserts and MasterCard Inserts into Sears' catalogues and MasterCard statements, or because of any other defect caused by RRD in the production and/or assembly of those catalogues or statements, Sears

pleads that RRD breached the contractual and/or common law duties it owed to Sears as a result and that RRD is therefore liable to it in the amount of \$377,023.78.

20. In this regard, Sears pleads that but for the breach by RRD of the duties owed to Sears, Sears would have collected the aforementioned amount from CIG on its outstanding invoices.

21. Sears requests that this Third Party Claim be tried with the Counterclaim of CIG herein.

June 5, 2015

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Counterclaim,
Sears Canada Inc.

SEARS CANADA INC.
Plaintiff / Defendant by Counterclaim

-and-

CONSUMER INTELLIGENCE GROUP INC.
Defendant / Plaintiff by Counterclaim
DDAS
Court File No. CV-15-522235

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

THIRD PARTY CLAIM

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Sears Canada Inc.



This is Exhibit "I" referred to in the Affidavit of
Monica Singh sworn before me on March 27, 2018.


A COMMISSIONER FOR OATHS IN AND FOR ONTARIO

*Marilyn Dianne Godfrey, a Commissioner, etc.
Province of Ontario, for Blake, Cassels & Graydon LLP,
Barristers and Solicitors.
Expires March 5, 2021.*

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

SEARS CANADA INC.

Plaintiff
(Defendant by Counterclaim)

- and -

CONSUMER INTELLIGENCE GROUP INC.

Defendant
(Plaintiff by Counterclaim)

- and -

DGA NORTH AMERICAN INC., DGA FULFILLMENT SERVICES INC., and
R.R. DONNELLEY & SONS COMPANY

Third Parties

**THIRD PARTY DEFENCE
OF R.R. DONNELLEY & SONS COMPANY**

1. Except as expressly admitted herein, R.R. Donnelley & Sons Company (“RRD”) denies each and every allegation in Sears Canada Inc.’s (hereinafter “Sears”) Third Party Claim, including the allegations in Sears’ Statement of Claim and its Reply and Defence to Counterclaim. RRD specifically denies the allegations contained in paragraphs 10 and 13-21 of Sears’ Third Party Claim and denies that Sears is entitled to any of the relief claimed against RRD in paragraph 1 of Sears’ Third Party Claim.

2. RRD has no knowledge or insufficient knowledge in respect of the allegations contained in paragraphs 3, 4, 5, 7-9, 11, 12 of Sears’ the Third Party Claim.

3. In respect of allegations contained in Sears' Statement of Claim incorporated by reference at paragraph 2 of Sears' Third Party Claim, RRD has no knowledge or insufficient knowledge of the allegations contained in paragraphs 1 through 14.

4. In respect of allegations contained in Sears' Reply and Defence to Counterclaim incorporated by reference at paragraph 2 of Sears' Third Party Claim, RRD has no knowledge or insufficient knowledge of the allegations contained in paragraphs 2-6, 7a, 7b, 8-9, 11-15, 19-22, 25-35 of Sears' Reply and Defence to Counterclaim.

RRD and Moore Canada

5. RRD is a company incorporated pursuant to the laws of Delaware and *inter alia* carries on business as a provider of commercial printing, and digital and supply chain services, with its head office located in Chicago, Illinois.

6. Moore Canada Corporation (doing business as RR Donnelley) ("Moore Canada") is a subsidiary of RRD incorporated pursuant to the laws of Nova Scotia, with its head office located at 6100 Vipond Drive, Mississauga, Ontario.

RRD's Relationship with Sears and Insertion of Onserts in Sears' Catalogues

7. Pursuant to a Joinder Agreement to Master Purchase Agreement dated January 1, 2010 between RRD, Sears Holdings Publishing Company LLC, and Sears, and related documents and agreements (the "Sears Agreements"), RRD provides printing and other services to Sears. These services include printing, binding, finishing and delivery of Sears' merchandise catalogues ("Sears Catalogues") and the placement of third party advertisements ("Onserts") into packages containing Sears Catalogues, at Sears' direction.

8. Specifically, for each print run of Sears Catalogues, Sears provides RRD with a “Run List” that sets out details regarding the Onserts that are to be placed with the Sears Catalogues for that particular run. At all material times, RRD acted in accordance with the Sears Agreements and the “Run List” provided by Sears when placing Onserts with the Sears Catalogues.

9. RRD uses automated insertion machines at RRD’s plant at 2801 W. Old RTE 30, Warsaw, Indiana (the “Warsaw Plant”) for placing Onserts into packages containing Sears’ Catalogues. The Onserts must meet RRD’s standard specifications in order for the insertion machines to operate optimally and to avoid or minimize the risk of multiple Onserts being placed in a package or a package not getting an Onsert at all. These specifications include paper thickness of .007 for two-page Onserts (the “Onsert Specification”). Requests for placement of Onserts that do not conform to the Onsert Specification require RRD’s prior approval and are subject to the risk that the insertion machine may not operate optimally and may place multiple Onserts in a package.

10. At all material times, Sears was aware of RRD’s Onsert Specification and the risk associated with the use of non-conforming Onserts. RRD specifically denies the assertion at paragraphs 13 and 14 of Sears’ Third Party Claim that Sears was not advised of RRD’s Onsert Specification prior to October 9, 2014. RRD had provided Sears with the Onsert Specification on more than one occasion prior to October 9, 2014 and at least as early as December 2013.

11. RRD factors a 2% “spoilage” rate (i.e. margin of error) when determining the number of Onserts inserted in a particular run of Sears Catalogues. This is a conservative estimate, consistent with industry standard, and the actual number of Onserts inserted may be higher. At all material times, including prior to Oct 9, 2014, Sears was aware of RRD’s insertion machines and the spoilage rate associated with the insertion of Onserts.

12. RRD denies the allegation in paragraph 10 of Sears' Third Party Claim that Sears outsourced the printing and production of Onserts for DGA North American Inc. and DGA Fulfillment Services (collectively "DGA") to RRD. Pursuant to the Sears Agreements, RRD has been involved in the placement of DGA's Onserts into packages containing Sears Catalogues but not their printing.

13. RRD pleads that at all material times DGA's printed Onserts were delivered to RRD at the Warsaw Plant and RRD placed those Onserts in packages containing Sears Catalogues in accordance with Sears Agreements and instructions.

14. RRD denies that it has breached any contractual or other duty owed to Sears. RRD further denies that there were any errors, omissions, neglect and/or fault by RRD in the insertion of DGA's Onserts and puts Sears to the strict proof thereof.

15. With respect to paragraph 13 of Sears' Third Party Claim and paragraph 23 of Sears Reply and Defence to Counterclaim, RRD states that, on or around October 9, 2014, Sears asked RRD to provide information regarding the number of DGA Onserts included in the "Wishbook" catalogue that had been printed in August, 2014. RRD provided Sears with the requested information on October 9, 2014, which showed, *inter alia*, the number of DGA Onserts received by RRD for the Wishbook and the number of DGA Onserts inserted into the Wishbook for that particular run based on the "spoilage" rate estimate of 2%, which Sears already had knowledge of.

RRD's Relationship with JPMorgan and Insertion of Inserts into Sears' MasterCard Statements

16. Contrary to the allegation in paragraph 10 of Sears' Third Party Claim, RRD is not involved in providing printing services to Sears in connection with Sears' MasterCard statements.

17. Sears' MasterCards are administered by JPMorgan Chase Bank, National Association ("JPMorgan"). Pursuant to an agreement between Moore Canada and JPMorgan (the "JPMorgan Agreement"), the terms of which are confidential, Moore Canada provides various services to JPMorgan. Those services include printing of Sears' MasterCard statements ("MasterCard Statements") and insertion of third party advertisements ("Inserts") into envelopes containing MasterCard Statements, in accordance with JPMorgan's specifications and instructions.

18. RRD pleads that, at all material times, Moore Canada (not RRD) has provided services in connection with the MasterCard Statements to JPMorgan (not Sears) and, in doing so, at all material times, Moore Canada acted in accordance with the JPMorgan Agreement and JPMorgan's instructions when inserting Inserts with the MasterCard Statements.

19. Sears is not a party to the JPMorgan Agreement and, at no time, did RRD or Moore Canada have any agreement or contract directly with Sears concerning the printing of MasterCard Statements or the printing or insertion of Inserts, including any Inserts for DGA, with those statements.

20. RRD does not owe any contractual and/or other common law duties to Sears with respect to the MasterCard Statements or the insertion of Inserts for DGA into the MasterCard Statements.

21. In any event, RRD denies that there was any error, omission, neglect and/or default in the insertion of DGA's Inserts into the MasterCard Statements and puts Sears to the strict proof thereof.

RRD Not Liable to Sears

22. RRD denies that it is liable to Sears in the manner alleged in Sears' Third Party Claim, or in any other manner, and puts Sears to the strict proof thereof.

23. RRD specifically denies that to the extent Sears is found liable to Consumer Intelligence Group Inc., the same is the fault of RRD and/or that RRD caused or contributed to DGA's Onserts to not be properly placed in packages containing Sears Catalogues or DGA's Inserts to not be properly inserted into envelopes containing the MasterCard Statements. RRD has not been negligent and, at all material times, RRD has acted in accordance with its agreements with Sears and followed Sears' directions.

24. If it is found that certain Sears Catalogues or MasterCard Statements did not receive a DGA Onsert or a DGA Insert, RRD pleads that the same was caused solely, or alternatively contributed to, by the acts, omissions, fault and/or neglect of Sears, JP Morgan and/or DGA.

Sears has Sustained No Damages

25. RRD denies that Sears has sustained any damages or losses for which it is liable, and puts Sears to the strict proof thereof.

26. In the alternative, if Sears has sustained any losses or damages for which RRD is liable, which is expressly denied, RRD pleads that such damages or losses were caused or contributed to by Sears own acts, omissions, fault or neglect.

27. In the further alternative, RRD pleads that the damages or losses allegedly sustained are excessive, exaggerated, remote, unavailable at law, unmitigated, and unconnected with any alleged act or omission on RRD's part, and puts Sears to the strict proof thereof.

May 5, 2016

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Lawyers for the third parties, DGA North American Inc. and DGA Fulfillment Services Inc.

SEARS CANADA INC.
Plaintiff

-and- CONSUMER INTELLIGENCE
GROUP INC.
Defendant

-and- DGA NORTH AMERICAN INC. AND DGA
FULFILLMENT SERVICES INC. et al.
Third Parties

Court File No. CV-15-522235-00A2

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**THIRD PARTY DEFENCE OF
RR DONNELLEY & SONS COMPANY**

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Lawyers for the third party, RR Donnelley & Sons
Company

J

This is Exhibit "J" referred to in the Affidavit of **Monica Singh** sworn before me on March 27, 2018.



A COMMISSIONER FOR OATHS IN AND FOR ONTARIO

*Marilyn Dianne Godfrey, a Commissioner, etc.
Province of Ontario, for Blake, Cassels & Graydon LLP,
Barristers and Solicitors.
Expires March 5, 2021.*

Court File No.: CV-15-522235- 00B1

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

SEARS CANADA INC.

Plaintiff
(Defendant by Counterclaim)

- and -

CONSUMER INTELLIGENCE GROUP INC.

Defendant
(Plaintiff by Counterclaim)

- and -

**DGA NORTH AMERICAN INC., DGA FULFILLMENT SERVICES INC.
and R.R. DONNELLY & SONS COMPANY**

Third Parties

- and -

R.R. DONNELLEY & SONS COMPANY and MOORE CANADA CORPORATION

Forth Parties

FOURTH PARY CLAIM

TO THE FOURTH PARTIES:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the third party DGA Fulfillment Services Inc. The claim made against you is set out in the following pages.

The action was commenced by the plaintiff against the defendant for the relief claimed in the statement of claim served with this fourth party claim. The relief claimed by the defendant against the third parties DGA North American Inc. and DGA Fulfillment Services Inc. is set in the attached third party claim served with this fourth party claim. The relief claimed by the third party DGA Fulfillment Services Inc. against the defendant is set out in the attached third party defence and counterclaim of DGA North American Inc. and DGA Fulfillment Services Inc. served with this fourth party claim. The relief claimed by the plaintiff against the third party R.R. Donnelley is set out in the third party claim of the plaintiff served with this fourth party claim.



IF YOU WISH TO DEFEND THIS FOURTH PARTY CLAIM you or an Ontario lawyer acting for you must prepare a statement of defence in Form 29 b prescribed by the Rules of Civil Procedure, serve it on the lawyers for the other parties, or where a party does not have a lawyer, serve it on the party, and file it, with proof of service, in this Court Office, **WITHIN TWENTY DAYS** after this fourth party claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period of serving and filing your fourth party defence is forty days. If you are served outside of Canada and the United States of America, the period is sixty days.

Instead of serving and filing a fourth party defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rule of Civil Procedure. This will entitle you to ten more days within which to serve and file your fourth party defence.

IF YOU FAIL TO DEFEND THIS FOURTH PARTY CLAIM JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BE CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE AMOUNT OF THE FOURTH PARTY CLAIM, and \$3,000.00 for costs, within the time for serving and filing your fourth party defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the amount of the fourth party claim and \$400.00 for costs and have the costs assessed by the court.

Date: April 27 2016

Issued by: 

Local Registrar
795 University Avenue, 10th Floor
Toronto, Ontario M5G 1E6

TO: R.R. DONNELLEY
6100 Vipond Drive
Mississauga, ON
Toronto, ON M5H 3P5

AND TO: MOORE CORPORATION
6100 Vipond Drive
Mississauga, ON
Toronto, ON M5H 3P5

CLAIM

1. **THE THIRD PARTY DGA FULFILLMENT SERVICES INC. ("DGAFSI") CLAIMS AGAINST THE FOURTH PARTIES:**
 - (a) Contribution in respect of any amounts that DGAFSI may be found liable to pay to the defendant Consumer Intelligence Group Inc. ("CIG") in the third party action herein;
 - (b) damages for breach of contract in the amount of \$3,475,000.00;
 - (c) damages for negligence in the amount of \$3,475,000.00;
 - (d) punitive and exemplary damages in the amount of \$500,000.00;
 - (e) pre-judgment and post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C.43
 - (f) its costs of this action on a substantial indemnity basis; and
 - (g) such further and other relief as this Honourable Court may deem just.

2. DGAFSI repeats and relies upon the statements set out in the third party defence and counterclaim of DGA North American Inc. and DGA Fulfillment Services Inc.

3. DGAFSI is an Ontario corporation.

4. R.R. Donnelley and Sons Company ("RRD") is a Delaware corporation with an office located in Mississauga Ontario and an insertion facility located in Toronto, Ontario. RRD is in the business of, among other things, inserting advertising material into envelopes and other packages to be mailed to various lists of recipients.

5. Moore Canada Corporation ("Moore Canada") is a Canadian Corporation with an office located in Mississauga Ontario and is in the printing business.
6. Sears Canada Inc. ("Sears") is a Canadian corporation and carries on business as a retailer with its head office in Toronto, Ontario.
7. CIG is a Canadian corporation and carries on business as a brokerage service company with its head office in Toronto, Ontario.
8. Sears appointed CIG to be its agent in respect of its programs in 2013.
9. In February of 2014 DGAFSI contracted with CIG to participate in Sears Catalogue Inserts and Sears' Master Card Inserts Programs for 2014.
10. Prior to February of 2014, DGAFSI and DGA North American Inc. ("DGANAP") had a 20 year history of selling products through the various Sears' Programs in place from time to time. DGAFSI and DGANAI had used Universal Printing, a Quebec based printing company, to print the inserts it used in the Sears' Programs. DGAFSI and DGANAI had been instructed to have Universal Printing deliver the inserts to RRD for RRD to insert them into the various Sears' Programs.
11. In April of 2014 CIG informed DGAFSI that there was an error in the packaging of the French and English inserts RRD had received from Universal Printing. At that time CIG informed DGAFSI that RRD would no longer accept inserts from Universal Printing.
12. Shortly after informing DGAFSI of RRD's refusal to accept inserts printed by Universal Printing, Andrew Varga, a representative from RRD contacted DGAFSI advising that if Moore Canada (a sister company of RRD) was hired to print the inserts he would not only manage the printing but because RRD was also responsible for inserting the inserts in the Sears' Programs he would manage the insertion as well.
13. After the running of some test programs and based upon Mr. Varga's representation that he would manage DGAFSI's inserts, DGAFSI transferred the printing of its inserts for the Sears' Programs to Moore Canada.

14. Shortly after commencing to use Moore Canada for its printing needs for the inserts, it became apparent to DGAFSI that the responses to the Sears' Programs were nowhere near the levels that it had historically experienced with the Sears' Programs.
15. DGAFSI requested a site visit to the RR Donnelley insertion facility to view the insertion machines in operation inserting its inserts. Its representatives attended the RRD inserting plant in Toronto, Ontario in late June of 2014 with Andrew Varga. DGAFSI's representative had substantial experience in the insertion business and was very knowledgeable as to how insertion machines work.
16. Upon DGAFSI's representative observing that the machines were not always picking up the DGAFSI inserts even though the contract with CIG stipulated that DGAFSI's inserts were to be "full" (always inserted) and not randomly selected, Mr. Varga immediately terminated the visit and quickly ushered the DGAFSI representatives out of the building.
17. Unbeknown to DGAFSI for the inserts to be properly picked up and inserted by RRD's insertion equipment the paper on which the inserts were printed was required to be of a minimum thickness.
18. In September DGAFSI requested machine based audit reports from CIG to confirm what inserts were inserted into the Sears' Programs rather than simply relying upon the signed declarations it had been receiving.
19. CIG responded that it was told by RRD that the insert machines were not capable of producing an audit.
20. In October DGAFSI conducted an audit of a sampling of Sears' Catalogues and discovered that a majority of the catalogues did not contain the inserts DGAFSI had contracted with CIG to be inserted or contained duplicates.
21. DGAFSI was not told that the inserts were required to be of a minimum caliper until May 4 of 2015 which was long after it had spent hundreds of thousands of dollars on printing

and on purchasing products to fill anticipated orders which did not materialize by reason of the fact that its inserts were not inserted into the Sears' Programs or were wrongly inserted into the Programs.

22. DGAFSI also discovered that RRD had not inserted its inserts into Sears's mailings in a timely fashion as it had contracted to do.
23. In March of 2014 DGAFSI ran a promotion for a 53 piece flatware set. At that time it caused to be delivered to RRD inserts advertising that promotion. The inserts were to have gone out then in the Sears' Spring Program. There were very few sales.
24. In August of 2014 DGAFSI ran another promotion for a flatware set. This promotion was for a 65 piece set. Again DGAFSI's inserts advertising the 65 piece flatware set promotion were delivered to RRD and were to have been inserted in the Sears August Program.
25. Orders were then received in September and October and filled resulting in numerous customer complaints that what they had ordered was the 53 piece flatware set not the 65 piece flatware set.
26. It was apparent to DGAFSI that in the August mailing RRD had included inserts for the 53 piece flatware promotion. These inserts were from the inserts delivered to RRD in March of 2014 that were to have been inserted in the Sears' Spring Program and which were not inserted into a Sears' Program until August.
27. DGAFSI states that RRD breached its contract with DGAFSI by not properly inserting DGAFSI's materials into the Sears' Programs at all or in a timely manner.
28. In addition DGAFSI states that RRD owed it a duty of care to ensure that its material was properly inserted into the Sears' Programs.

29. DGAFSI further states that RRD was negligent in not properly inserting DGAFSI's materials into the Sears' Programs at all or in timely manner which negligence has caused DGAFSI substantial damage.
30. DGAFSI states that Moore Canada breached its contract with DGAFSI by not delivering inserts which were compatible with RRD's insertion equipment.
31. DGAFSI states that Moore Canada owed it a duty of care to provide its advertising material in a format suitable to be used in RRD's insertion equipment.
32. DGAFSI further states that Moore Canada was negligent in not delivering inserts which it should have known were not compatible with RRD's insertion equipment thereby causing DGAFSI damage.
33. DGAFSI pleads and relies upon the *Negligence Act*, R.S.O. 1990 c. N. 1 as amended.
34. DGAFSI states that in its letter of intent dated February 4 2014 delivered to CIG, DGAFSI intended to deliver a minimum of 45 insets to Sears over the fiscal period of February 2, 2014 to January 31, 2015. Each of those inserts would contain 1,820,000 actual inserts.
35. DGAFSI has historically earned a profit of \$30.00 on merchandise sales and a \$10.00 on shipping and handling fees it collected for a total profit of \$40.00 for every 1000 inserts it sent out on various Sears' Programs prior to 2014.
36. DGAFSI states that in addition to the costs it has incurred and its loss of profit from the inserts that were inserted and the inserts it had planned to insert into the Sears' Programs, DGAFSI's reputation in the fulfillment business has been seriously diminished by the failure to properly insert its inserts into the Sears' Programs.
37. DGAFSI states that as a result of RRD's and Moore Canada's breach of contract and or breach of its duty of care to DGAFSI, DGAFSI has suffered damages the details of which will be provided prior to trial.

38. DGAFSI proposes that this counterclaim be tried in Toronto together with main action and the third party action.

Date: April 26 2016

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DGA North American Ind. and
DGA Fulfillment Services Inc.*

Court File No. CV-15-52235-0081

SEARS Canada Inc. v. Consumer Intelligence Group v. DGA & R.R. Donnelly v. R.R. Donnelley and Moore Canada
Plaintiff Defendant Third Parties Third Parties Fourth Parties

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceedings Commenced at TORONTO

FOURTH PARTY CLAIM

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*Lawyers for the Third Parties, DGA North
American Inc. and DGA Fulfillment Services
Inc.*

K

This is Exhibit "K" referred to in the Affidavit of
Monica Singh sworn before me on March 27, 2018.



A COMMISSIONER FOR OATHS IN AND FOR ONTARIO

*Marilyn Dianne Godfrey, a Commissioner, etc.
Province of Ontario, for Blake, Cassels & Graydon LLP,
Barristers and Solicitors.
Expires March 5, 2021.*

Court File No. CV-15-522235-00B1

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

SEARS CANADA INC.

Plaintiff
(Defendant by Counterclaim)

- and -

CONSUMER INTELLIGENCE GROUP INC.

Defendant
(Plaintiff by Counterclaim)

- and -

DGA NORTH AMERICAN INC., DGA FULFILLMENT SERVICES INC., and
R.R. DONNELLEY & SONS COMPANY

Third Parties

- and -

R.R. DONNELLEY & SONS COMPANY and MOORE CANADA CORPORATION

Fourth Parties

AND BETWEEN:

R.R. DONNELLEY & SONS COMPANY and MOORE CANADA CORPORATION

Plaintiffs by Counterclaim

- and -

DGA FULFILLMENT SERVICES INC., CONSUMER INTELLIGENCE
GROUP INC. and SEARS CANADA INC.

Defendants to the Counterclaim

**FOURTH PARTY DEFENCE AND COUNTERCLAIM
OF R.R. DONNELLEY & SONS COMPANY
AND MOORE CANADA CORPORATION**

-2-

1. Except as expressly admitted herein, R.R. Donnelley & Sons Company (“RRD”) and Moore Canada Corporation (“Moore Canada”) deny each and every allegation in the Fourth Party Claim of DGA Fulfillment Services Inc.’s (hereinafter “DGA”), including the allegations in DGA’s Third Party Defence and Counterclaim incorporated therein at paragraph 2. RRD and Moore Canada specifically deny the allegations contained in paragraphs 4-5, 12, 15-17, 22-24, 26-33, 36-37 of DGA’s Fourth Party Claim and deny that DGA is entitled to any of the relief claimed against RRD or Moore Canada in paragraph 1 of DGA’s Fourth Party Claim. RRD and Moore Canada specifically deny the allegations contained in paragraphs 13-14, 19-21, and 27 of DGA’s Third Party Defence and Counterclaim.

2. RRD and Moore Canada have no knowledge or insufficient knowledge in respect of the allegations contained in paragraphs 3, 6-11, 14, 18-21, 25, 34-35 of DGA’s Fourth Party Claim.

3. In respect of allegations contained in DGA’s Third Party Defence and Counterclaim incorporated by reference at paragraph 2 of DGA’s Fourth Party Claim, RRD and Moore Canada have no knowledge or insufficient knowledge of the allegations contained in paragraphs 1 -12, 15-18, 22-26, 28-29.

RRD and Moore Canada

4. RRD is a company incorporated pursuant to the laws of Delaware and *inter alia* carries on business as a provider of commercial printing, and digital and supply chain services, with its head office located in Chicago, Illinois.

5. Moore Canada Corporation (doing business as R.R. Donnelley) (“Moore Canada”) is a subsidiary of RRD incorporated pursuant to the laws of Nova Scotia, with its head office located in Mississauga, Ontario.

RRD’s Relationship with Sears and Insertion of Onserts in Sears Catalogues

6. Pursuant to agreements between RRD and Sears Canada Inc. (“Sears”) (the “Sears Agreements”), to which DGA is not a party, RRD provides printing and other services to Sears. These services include printing, binding, finishing and delivery of Sears’ merchandise catalogues (“Sears Catalogues”) and the placement of third party advertisements (“Onserts”) into packages containing Sears Catalogues, at Sears’ direction. The third parties for which RRD is engaged in placing Onserts with Sears Catalogues are Sears customers, not RRD’s. From time to time, RRD has been involved in placing Onserts provided by DGA with Sears Catalogues.

7. RRD and Moore Canada plead that, at all material times, RRD (not Moore Canada) has provided services to Sears in connection with Sears Catalogues, and in doing so, at all material times, RRD acted in accordance with the Sears Agreements and Sears’ instructions when inserting Onserts for DGA into packages with the Sears Catalogues.

8. For each print run of Sears Catalogues, Sears provides RRD with a “Run List” that sets out details regarding the Onserts that are to be placed with the Sears Catalogues for that particular run. At all material times, RRD acted in accordance with the Sears Agreements, the “Run List” provided by Sears, and Sears instructions, when placing Onserts with the Sears Catalogues.

9. DGA is not a party to the Sears Agreements and, at no time, did RRD or Moore Canada have any agreement or contract directly with DGA regarding the printing, binding, finishing or delivery of Sears Catalogues or the insertion of any Onserts for DGA (“DGA’s Onserts”), with those catalogues. RRD was also never involved in printing DGA’s Onserts. At all material times, DGA was Sears’ customer in connection with the insertion of its Onserts, which were delivered to RRD’s plant at 2801 W. Old RTE 30, Warsaw, Indiana (“Warsaw Plant”) by the party (or its agent) retained directly by DGA with respect to the printing of DGA’s Onserts.

10. RRD uses automated insertion machines at its Warsaw Plant for placing Onserts into packages containing Sears’ Catalogues. The Onserts must meet RRD’s standard specifications in order for the insertion machines to operate optimally and to avoid or minimize the risk of multiple Onserts being placed in a package or a package not getting an Onsert at all. These specifications include paper thickness of .007 for two-page Onserts (the “Onsert Specification”). Requests for placement of Onserts that do not conform to the Onsert Specification require RRD’s prior approval and are subject to the risk that the insertion machine may not operate optimally and may place multiple Onserts in a package. At all material times, Sears has been aware of RRD’s Onsert Specification. RRD expects Sears to communicate with its customer regarding this specification and to advise them of the risk associated with delivery of non-conforming Onserts. RRD has no obligation to, and does not, directly communicate with Sears customers in this regard.

11. RRD factors a 2% “spoilage” rate (i.e. margin of error) when determining the number of Onserts inserted in a particular run of Sears Catalogues. This is a conservative estimate, consistent with industry standard, and the actual number of Onserts inserted is often higher. At all material times, Sears was also aware of this spoilage rate.

12. RRD and Moore Canada deny that they owe any contractual and/or other common law duties with regards to insertion of DGA's Inserts. In any event, RRD further denies that there were any errors, omissions, neglect and/or default by RRD in the insertion of DGA's Inserts into Sears Catalogues and puts DGA to the strict proof thereof.

Moore Canada's Relationship with JPMorgan and Insertion of Inserts into Sears' MasterCard Statements

13. Sears' MasterCards are administered by JPMorgan Chase Bank, National Association ("JPMorgan"). Pursuant to an agreement between Moore Canada and JPMorgan (the "JPMorgan Agreement"), the terms of which are confidential and to which DGA is not a party, Moore Canada provides various services to JPMorgan. Those services include printing of Sears' MasterCard statements ("MasterCard Statements") and insertion of third party advertisements ("Inserts") into envelopes containing MasterCard Statements, in accordance with JPMorgan's specifications and instructions. The third parties for which Moore Canada is engaged in inserting Inserts with MasterCard Statements are JPMorgan and/or Sears Customers, not Moore Canada's or RRD's. From time to time, Moore Canada has been involved in inserting Inserts provided by DGA with the MasterCard Statements.

14. RRD and Moore Canada plead that, at all material times, Moore Canada (not RRD) has provided services in connection with the MasterCard Statements to JPMorgan and, in doing so, at all material times, Moore Canada acted in accordance with the JPMorgan Agreement and JPMorgan's instructions when inserting Inserts for DGA with the MasterCard Statements.

15. For each print cycle of MasterCard Statements, JPMorgan provides Moore Canada with instructions that set out the details regarding the Inserts that are to be inserted into envelopes with MasterCard Statements for that particular month. At all material times, Moore Canada acted

in accordance with the JP Morgan Agreement and the instructions provided by JPMorgan when placing Inserts with the MasterCard Statements.

16. DGA is not a party to the JPMorgan Agreement and, at no time, did RRD or Moore Canada have any agreement or contract directly with DGA concerning the printing of MasterCard Statements or the insertion of any Inserts for DGA ("DGA Inserts"), with those statements. At all material times, DGA was JPMorgan's and/or Sears' customer in connection with the insertion of its Inserts, which were delivered to Moore Canada's plant at 6100 Vipond Drive, Mississauga, Ontario ("Vipond Plant") by the party (or its agent) retained directly by DGA with respect to the printing of DGA's Inserts.

17. Moore Canada uses automated insertion machines at its Vipond Plant for placing Inserts into envelopes with MasterCard Statements. Moore Canada's standard specification for Inserts requires a minimum paper thickness of .049 for an Insert (the "Insert Specification"). At all material times, JPMorgan has been aware of Moore Canada's Insert Specification. Moore Canada expects JPMorgan to communicate with its customer regarding this specification and to advise them of the risk associated with delivery of non-conforming Inserts. Moore Canada has no obligation to, and does not, directly communicate with JPMorgan's customers in this regard.

18. Occasionally an insertion machine may jam resulting in a re-print of the affected MasterCard Statement and loss of an Insert. Moore Canada estimates the rate of loss of Inserts of any third party as a result of this to be less than 2%. This is a conservative estimate, consistent with industry standard, and the actual number of Inserts lost is often lower.

19. Moore Canada is not involved in the Warsaw Plant insertion of Inserts and was not aware of the specifications and/or "spoilage" rate associated with Inserts.

20. Moore Canada and RRD deny that they owe any contractual and/or other common law duties to DGA with respect to the MasterCard Statements or the insertion of DGA's Inserts into the MasterCard Statements. In any event, Moore Canada denies that there was any error, omission, neglect and/or default in the insertion of DGA's Inserts into the MasterCard Statements and puts DGA to the strict proof thereof.

Printing of DGA's Onserts and Inserts

21. The Sears Agreements and the JP Morgan Agreement respectively involve placement and insertion of third party advertisements with Sears Catalogues and MasterCard Statements by RRD and Moore Canada, but not their printing. Often, third parties will have their advertisements printed independently and they are then provided to RRD or Moore Canada, as the case may be, simply for insertion. On occasion, third parties place print orders directly with RRD or Moore Canada. In such cases, RRD and Moore Canada print advertisements pursuant to their agreement with that third party and insert them into the Sears Catalogues or MasterCard Statements pursuant to their contract with Sears or JPMorgan, as the case may be.

22. DGA has never engaged or contracted with RRD in connection with the printing of DGA's advertisements. As such, RRD does not owe any contractual and/or other common law duties to DGA with respect to the printing of DGA's Onserts or Inserts.

23. Beginning in or about April, 2014 until November, 2014, DGA placed orders with Moore Canada for the printing of some of its advertisements. Moore Canada printed (or caused to be printed) and delivered those advertisements in accordance with DGA's specifications.

24. Specifically, before placing each order, DGA provided Moore Canada with its printing specifications for the advertisement. Moore Canada then provided DGA with a quotation based on those specifications. If the quotation was acceptable to DGA, it issued a Purchase Order to Moore Canada for printing its advertisement. Moore Canada then printed the advertisement and shipped it to the location specified by DGA on the Purchase Order.

25. The advertisements Moore Canada printed for DGA included Onserts and Inserts. Moore Canada outsourced the printing of DGA's Inserts and Onserts to PointOne Graphics. PointOne Graphics printed the Inserts and Onserts in accordance with DGA's specifications, pursuant to its agreement with Moore Canada, and shipped DGA's Inserts and Onserts to the locations specified by DGA on the Purchase Order. Pursuant to DGA's instructions, DGA's Onserts were shipped to RRD's Warsaw Plant and DGA's Inserts were shipped to Moore Canada's Vipond Plant.

26. At all material times, Moore Canada printed and shipped the DGA's Onserts and DGA's Inserts, or caused them to be printed and shipped, in accordance with DGA's specifications and Purchase Orders.

Universal Printing

27. Prior to engaging Moore Canada to print its Inserts and Onserts, DGA was using Universal Printing for its printing. Contrary to paragraphs 11 and 12 of DGA's Fourth Party Claim, RRD or Moore Canada never indicated that they would not accept DGA's Inserts or Onserts from Universal Printing. In or around April 2014, Moore Canada received a shipment of DGA Inserts that were not properly bulk packaged (or banded) and that had French and English advertisements mixed together. This was contrary to the mandatory banding requirement for all

Inserts. Moore Canada promptly communicated this requirement to DGA. DGA then hired Moore Canada to fix its April Inserts, as well as its May Inserts, by bundling them properly and delivering them back to the Vipond Plant. Subsequently, DGA retained Moore Canada to print its Inserts and Onserts.

Discussions with Andrew Varga

28. Mr. Varga is an Account Manager at Moore Canada. He does not manage the process relating to insertion of Inserts with MasterCard Statements for JPMorgan at the Vipond Plant or the insertion of Onserts with Sears Catalogues at the Warsaw Plant.

29. Contrary to the allegations at paragraphs 12 and 13 of DGA's Fourth Party Claim, Moore Canada denies that Mr. Andrew Varga represented to DGA that he would manage the insertion process with respect to DGA's Inserts or Onserts. Moore Canada specifically denies that Mr. Varga made any representations with respect to Moore Canada's ability to manage the insertion of DGA's Onserts into Sears Catalogues, which takes place in the U.S. at RRD's Warsaw Plant. With respect to DGA's Inserts, Moore Canada pleads that Mr. Varga simply told DGA's representatives in late June 2014 that they could contact him directly if there was any issue with DGA's Inserts and offered that he would reach out to the relevant individuals at Moore Canada who manage Moore Canada's relationship with JPMorgan (which relationship governs the insertion of Inserts into MasterCard Statements) if contacted by DGA, but denies that there was any representation with respect to managing the insertion process.

30. With respect to paragraph 13 of DGA's Fourth Party Claim, Moore Canada denies that it ran any test programs with respect to DGA's Inserts or Onserts prior to DGA retaining Moore Canada to print DGA's Inserts and Onserts.

June Site Visit and Audit Requests

31. On or about late June, 2014, Ms. Pauline Peng-Skinner and Ms. Carol Good, representatives of DGA, visited the Vipond Plant ("June Site Visit"). In the course of that visit, Mr. Varga gave them a tour of the plant. They also observed the automated insertion process for Inserts. In response to some of their questions, Mr. Varga informed Ms. Good and Ms. Peng-Skinner that he could not provide them with information regarding the insertion process as that process was governed by Moore Canada's contract with JPMorgan, to which DGA is not a party, and is carried out in accordance with JPMorgan's instructions.

32. Contrary to the allegations at paragraph 16 of DGA's Fourth Party Claim, Mr. Varga did not terminate the visit or usher the DGA representatives out of the building. Rather, throughout the June Site Visit, the relationship between DGA and Moore Canada was amicable. Moreover, DGA and Moore Canada discussed expanding their business relationship after the tour of the plant.

33. Shortly after the June Site Visit, DGA requested Moore Canada to provide it with machine-based audit information relating to DGA's Inserts being inserted into envelopes with MasterCard Statements. As Moore Canada's contract with respect to printing and inserting of Inserts into MasterCard Statements is with JPMorgan, Moore Canada advised DGA that any audit information was proprietary to JPMorgan and, as a result, the request for and disclosure of such information would have to be made by and/or consented to by JPMorgan.

Subsequently, and despite having no contractual obligation to do so, RRD asked JPMorgan for its consent to provide DGA with the information DGA had requested with respect to DGA's Inserts. JPMorgan consented to this request. Moore Canada then provided DGA with information from June 2014 with respect to the quantity of DGA's Inserts that were inserted into MasterCard

Statements. At all material times, Moore Canada inserted DGA's Inserts in accordance with JPMorgan's instructions.

Insertion of Flatware Onserts for Sears

34. Contrary to the allegations at paragraphs 22 through 27 of DGA's Fourth Party Claim, RRD denies that there has been any error, omission, neglect and/or default in the insertion of DGA's Onserts relating to flatware. At all material times in 2014, RRD inserted DGA's flatware Onserts in accordance with Sears Agreements and Sears' instructions.

35. In or around May 13, 2014 (not March as alleged at paragraph 23 of DGA's Fourth Party Claim), RRD received a shipment of DGA Onserts for a 53 piece flatware set ("53pp Flatware Onsert"). The 53pp Flatware Onsert was inserted in May 2014 with the 20'4 run of Sears Catalogues in accordance with the Sears Agreements and Sears' instructions.

36. In or around June 24, 2014, RRD received a shipment of DGA Onserts for a 65 piece flatware set ("65pp Flatware Onsert"). The 65pp Flatware Onsert was inserted in July 2014 with the 10'4 run of Sears Catalogues in accordance with the Sears Agreements and Sears' instructions.

37. In or around July 22, 2014, RRD received a shipment of additional DGA Onserts for a 65 piece flatware set ("Second 65pp Flatware Onsert"). The Second 65pp Flatware Onsert was inserted later in July 2014 with the 25'4 run of Sears Catalogues in accordance with the Sears Agreements and Sears' instructions.

38. In or around August 13, 2014, RRD received a second shipment of DGA Onserts for a 53 piece flatware set ("Second 53pp Flatware Onsert"). The Second 53pp Flatware Onsert was

inserted in August 2014 with the 12'4 run of Sears Catalogues in accordance with Sears Agreements and Sears' instructions.

39. In or around September 11, 2014, RRD received a third shipment of DGA Onserts for a 65 piece flatware set ("Third 65pp Flatware Onsert"). The Third 65pp Flatware Onsert was inserted in September 2014 with the 18'4 run of Sears Catalogues in accordance with the Sears Agreements and Sears' instructions.

40. In or around October 16, 2014, RRD received a fourth shipment of DGA Onserts for a 65 piece flatware set ("Fourth 65pp Flatware Onsert"). The Fourth 65pp Flatware Onsert was inserted later in in October 2014 with the 05'5 run of Sears Catalogues in accordance with the Sears Agreements and Sears' instructions.

41. At all material times, RRD acted in accordance with the Sears Agreements and Sears' instructions when inserting DGA's Onserts with Sears Catalogues.

RRD and/or Moore Canada Not Liable to DGA

42. RRD and Moore Canada deny that either is liable to DGA in the manner alleged in DGA's Fourth Party Claim, or in any other manner, and put DGA to the strict proof thereof.

43. RRD and Moore Canada specifically deny that, to the extent DGA is found liable to Consumer Intelligence Group Inc. ("CIG") in CIG's Third Party Claim, the same is the fault of RRD and/or Moore Canada and that RRD and/or Moore Canada caused or contributed to DGA's Onserts to not be properly placed in packages containing Sears Catalogues or DGA's Inserts to not be properly inserted into envelopes containing the MasterCard Statements. RRD and/or Moore Canada have not been negligent and, at all material times, RRD and Moore Canada have acted in

accordance with their respective agreements with Sears and JPMorgan and pursuant to their respective directions.

44. If it is found that certain Sears Catalogues or MasterCard Statements did not receive a DGA Onsert or a DGA Insert, RRD and Moore Canada plead that the same was caused solely, or alternatively contributed to, by the acts, omissions, fault and/or neglect of Sears, JP Morgan, CIG, and/or DGA. For example, from time to time, RRD and/or Moore Canada printed more Sears Catalogues and MasterCard Statements in a particular run than the number of Onserts or Inserts DGA had provided. Furthermore, Sears and JPMorgan were at all material times responsible for providing RRD and Moore Canada with instructions on the Onserts and Inserts to be included with Sears Catalogues or MasterCard Statements, as the case may be. To the extent Sears' or JPMorgan's instructions with respect to DGA's Inserts or Onserts were not in accordance with Sears' or JPMorgan's agreements with DGA, such is the fault of Sears and/or JPMorgan, not RRD and Moore Canada. Moreover, Sears and JPMorgan have been aware of RRD and Moore Canada's Onsert and Insert Specifications. RRD and Moore Canada expect Sears and JPMorgan to communicate with its customers regarding these specifications and to advise them of the risk associated with delivery of non-conforming Onserts and Inserts. Sears and JP Morgan were responsible for providing that information to DGA.

45. RRD and Moore Canada plead and rely on the *Negligence Act*, R.S.O. 1990, c.N.1., as amended, and in particular, section 3.

DGA has Sustained No Damages

46. RRD and Moore Canada deny that DGA has sustained any damages or losses for which it is liable, and put DGA to the strict proof thereof.

47. In the alternative, if DGA has sustained any losses or damages for which RRD and/or Moore Canada is liable, which is expressly denied, RRD and Moore Canada plead that such damages or losses were caused or contributed to by DGA's own acts, omissions, fault or neglect.

48. In the further alternative, RRD and Moore Canada plead that the damages or losses allegedly sustained are excessive, exaggerated, remote, unavailable at law, unmitigated, and unconnected with any alleged act or omission on RRD and/or Moore Canada's part, and puts DGA to the strict proof thereof.

COUNTERCLAIM

49. Moore Canada claims against DGA for the following:

- (a) Full contribution and indemnity in respect of any amounts that Moore Canada may be found to owe or that are otherwise determined to be payable by Moore Canada to CIG in the Fourth Party Action bearing Court File No. CV-15-522235-00B2 (the "CIG Fourth Party Claim");
- (b) A declaration that the damages that are alleged to have been suffered by CIG in CIG Fourth Party Claim were caused or contributed to by the fault or neglect of DGA;
- (c) payment in the sum of \$41,342.42, which amount is due and owing to Moore Canada pursuant to its contract with DGA for the printing of DGA's Inserts and DGA's Onserts and in respect of which invoices have been duly rendered to DGA but have not been paid;

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- (d) In the alternative, damages for breach of contract in the amount of \$41,342.42;
- (e) In the further alternative, payment for services rendered or damages in an amount to be assessed on a *quantum meruit* basis;
- (f) Pre-judgment and post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (g) Moore Canada's costs of this Fourth Party Claim, including the counterclaim herein, on a substantial indemnity basis; and
- (h) Such further and other relief as this Honourable Court may deem just.

50. RRD claims against DGA for the following:

- (a) Full contribution and indemnity in respect of any amounts that RRD may be found to owe or that are otherwise determined to be payable by RRD to Sears in the Third Party Action bearing Court File No. CV-15-522235-A2 (the "Sears Third Party Claim");
- (b) Full contribution and indemnity in respect of any amounts that RRD may be found to owe or that are otherwise determined to be payable by RRD to CIG in the CIG Fourth Party Claim;
- (c) A declaration that the damages that are alleged to have been suffered by Sears in the Sears Third Party Claim and by CIG in the CIG Fourth Party Claim were caused or contributed to by the fault or neglect of DGA;

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- (d) Pre-judgment and post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (e) RRD's costs of this Fourth Party Claim, including the counterclaim herein, the Sears Third Party Claim, and the CIG Fourth Party Claim, on a substantial indemnity basis; and
- (f) Such further and other relief as this Honourable Court may deem just.

51. RRD and Moore Canada claim against CIG for the following:

- (a) Full contribution and indemnity in respect of any amounts that RRD or Moore Canada may be found to owe or that are otherwise determined to be payable by RRD or Moore Canada to DGA in the Fourth Party Action bearing Court File No. CV-15-522235-00B1 (the "DGA Fourth Party Claim");
- (b) Full contribution and indemnity in respect of any amounts that RRD or Moore Canada may be found to owe or that are otherwise determined to be payable by RRD or Moore Canada to Sears in the Sears Third Party Claim;
- (c) A declaration that the damages that are alleged to have been suffered by Sears in the Sears Third Party Claim and by DGA in the DGA Fourth Party Claim were caused or contributed to by the fault or neglect of CIG;
- (d) Pre-judgment and post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

- (e) RRD's costs of DGA's Fourth Party Claim, including the counterclaim herein, the Sears Third Party Claim, and the CIG Fourth Party Claim, on a substantial indemnity basis; and
- (f) Such further and other relief as this Honourable Court may deem just.

52. RRD and Moore Canada claim against Sears for the following:

- (a) Full contribution and indemnity in respect of any amounts that RRD or Moore Canada may be found to owe or that are otherwise determined to be payable by RRD or Moore Canada to DGA in the DGA Fourth Party Claim;
- (b) A declaration that the damages alleged to have been suffered by DGA in the DGA Fourth Party Claim are the fault or neglect of Sears;
- (c) Pre-judgment and post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (d) RRD's costs of DGA's Fourth Party Claim, including the counterclaim herein, the Sears Third Party Claim, and the CIG Fourth Party Claim, on a substantial indemnity basis; and
- (e) Such further and other relief as this Honourable Court may deem just.

53. Moore Canada and RRD repeat and rely on their statements set out in the Fourth Party Defence and Counterclaim above, as well as RRD's Third Party Defence in the Sears Third Party Claim. Unless otherwise noted, all capitalized terms used herein refer to those defined in the

Fourth Party Defence and Counterclaim and RRD's Third Party Defence in the Sears Third Party Claim.

Claim for Payment from DGA

54. It was a term of the agreements entered into between Moore Canada and DGA for the printing of DGA's Inserts and DGA's Onserts that DGA would render invoices to DGA upon delivery of the Inserts and Onserts to their respective delivery locations as set out in the Purchase Orders.

55. Between September 17, 2014 and November 12, 2014, Moore Canada delivered the following invoices to DGA:

<u>Date</u>	<u>Invoice #</u>	<u>Amount</u>
September 17, 2014	607024997	\$15,752.20
September 17, 2014	607024999	\$15,752.20
October 1, 2014	607052533	\$15,895.00
October 22, 2014	607084763	\$9779.00
October 22, 2014	607084764	\$9779.00
November 12, 2014	607122089	\$21,000.00
TOTAL		\$87,957.40

56. DGA paid Moore Canada a total of \$46,614.98, leaving \$41,342.42 unpaid.

57. DGA has failed, refused and/or neglected to pay \$41,342.42 in breach of its agreements with Moore Canada for the printing of DGA's Inserts and DGA's Onserts. As a result, the amount \$41,342.42 remains due and owing from DGA to Moore Canada.

58. Additionally and/or alternatively, Moore Canada pleads and relies on the doctrine of *quantum meruit* in its claim for damages herein. Moore Canada pleads that it provided labour and services at the request of, and for the benefit of, DGA. Moore Canada is therefore entitled to be compensated by DGA on a *quantum meruit* basis for the value of its labour and services provided to DGA.

59. Moore Canada requests that this counterclaim be tried together with the main action.

Claims for contribution and indemnity in Sears Third Party Claim

60. In the main action (Court File. No. CV-15-522325), Sears has claimed against CIG for payment in respect of CIG's purchase of media space in Sears' catalogues and MasterCard programs. CIG counterclaimed against Sears for damages for lost profits, breach of contract and negligence. On June 5, 2015, Sears issued the Sears Third Party Claim for contribution and indemnity against RRD in respect of CIG's counterclaim.

61. In its Third Party Defence in the Sears Third Party Claim, RRD has denied any liability with respect to the allegations. Notwithstanding, if it is found that RRD is liable to Sears for any claimed losses in the Sears Third Party Claim, RRD pleads that it is entitled to contribution and indemnity from DGA and CIG in respect of any such liability.

Claims for contribution and indemnity in DGA Fourth Party Claim

62. CIG, the defendant in the main action, issued a third party claim against DGA (Court File No. CV-15-522325-00A1) (“CIG’s Third Party Claim”) for contribution and indemnity, damages for lost profits and breach of contract, and payment of monies in respect of certain invoices. DGA issued the DGA Fourth Party Claim against RRD and Moore Canada for contribution and indemnity, breach of contract, and negligence.

63. In the Fourth Party Defence and Counterclaim, RRD and Moore Canada have denied any liability with respect to the allegations. Notwithstanding, if it is found that RRD and/or Moore Canada is liable to DGA for any claimed losses in the DGA Fourth Party Claim, RRD and Moore Canada plead that each is entitled to contribution and indemnity from CIG and Sears in respect of any such liability.

Claims for contribution and indemnity in CIG’s Fourth Party Claim

64. The Third Party, DGA, counterclaimed against CIG for breach of contract and negligence in respect of CIG’s Third Party Claim. CIG issued a Fourth Party Claim against RRD, Moore Canada and Sears.

65. RRD and Moore Canada intend to deny any liability with respect to the allegations. Notwithstanding, if it is found that RRD and/or Moore Canada is liable to CIG for any claimed losses in the CIG Fourth Party Claim, RRD and Moore Canada plead that each is entitled to contribution and indemnity from DGA in respect of any such liability.

66. RRD and Moore Canada plead and rely on the *Negligence Act*, R.S.O. 1990, c. N.1, as amended, and in particular, sections 1 and 2, for the claims above.

67. RRD and Moore Canada request that this counterclaim be heard with, or immediately after, the main action.

June 13, 2016

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Plaintiff

Defendant

Third Parties

Fourth Party

Court File No. CV-15-522235-00B1

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

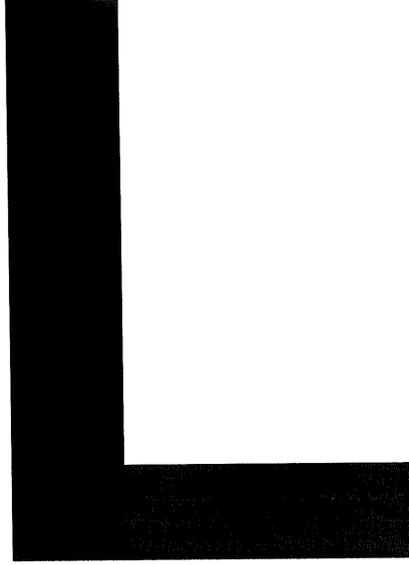
**FOURTH PARTY DEFENCE
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Lawyers for the Fourth Parties, R.R. Donnelley & Sons
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This is Exhibit "L" referred to in the Affidavit of
Monica Singh sworn before me on March 27, 2018.



A COMMISSIONER FOR OATHS IN AND FOR ONTARIO

*Marilyn Dianne Godfrey, a Commissioner, etc.
Province of Ontario, for Blake, Cassels & Graydon LLP,
Barristers and Solicitors.
Expires March 5, 2021.*

Court File No. CV-15-522235-00B1

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN :

SEARS CANADA INC.

Plaintiff
(Defendant by Counterclaim)

- and -

CONSUMER INTELLIGENCE GROUP INC.

Defendant
(Plaintiff by Counterclaim)

- and -

DGA NORTH AMERICAN INC. and DGA FULFILLMENT SERVICES INC.
and R.R. DONNELLY & SONS COMPANY

Third Parties

- and -

R.R. DONNELLY & SONS COMPANY and MOORE CANADA
CORPORATION

Fourth Parties

AND BETWEEN :

R.R. DONNELLY & SONS COMPANY and MOORE CANADA
CORPORATION

Plaintiffs by Counterclaim

- and -

DGA FULFILLMENT SERVICES INC., CONSUMER INTELLIGENCE
GROUP INC. and SEARS CANADA INC.

Defendants to the Counterclaim

**DEFENCE AND CROSSLCAIM OF SEARS CANADA INC.
TO THE COUNTERCLAIM OF R.R. DONNELLY & SONS COMPANY
AND MOORE CANADA CORPORATION**

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1. Except as otherwise provided in this Defence to the Counterclaim of R.R. Donnelly & Sons Company (“RRD”) and Moore Canada Corporation (“Moore”), the Plaintiff and Defendant by Counterclaim, Sears Canada Inc. (“Sears”), denies each and every allegation contained in the Counterclaim of RRD and Moore and puts them to the strict proof thereof. Sears specifically denies the allegations contained at paragraphs 10, 11, 12 and 63 of the Counterclaim of RRD and Moore.

2. Except as otherwise provided in this Defence to the Counterclaim of RRD and Moore, Sears has no knowledge or insufficient knowledge with which to plead in response to the allegations contained at paragraphs 2, 3, 15, 16, 17, 19, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 54, 55, 56, 57, 58 of the Counterclaim of RRD and Moore.

3. Sears repeats and relies upon the allegations contained in the Statement of Claim, Sears’ Reply and Defence to the Counterclaim of Consumer Intelligence Group (“CIG”), and Sears’ Third Party Claim initiated against RRD, as though pleaded herein in their entirety. All capitalized terms used herein refer to the terms defined in the aforementioned pleadings.

4. Contrary to the allegations contained at paragraph 10 of the Counterclaim of RRD and Moore, Sears was not at all material times aware of RRD’s standard specifications for its onserts. Rather, it was not until October 9, 2014, when Sears made inquiries to RRD as to why multiple onserts may appear in a given catalogue in response to concerns raised by CIG concerning alleged issues with the Catalogue Onserts, that RRD advised Sears that:

- (a) RRD requests a paper stock thickness of .007 for 2 page onserts, as the use of a thinner stock creates the potential to pull multiple onserts;
- (b) the potential to pull multiple onserts is always a possibility; and
- (c) RRD factors a 2% “spoilage” rate into each job.

5. Prior to RRD’s aforementioned response, Sears was not advised that RRD requests a paper stock thickness of .007 for 2 page onserts due to the potential risk of pulling

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multiple inserts arising from the use of a thinner paper stock or that RRD factors a 2% spoilage rate into each job.

6. Thus, if it is found that the Catalogue Inserts and MasterCard Inserts purchased by CIG on behalf of DGA were not properly placed in the Sears' catalogues and MasterCard statements – in that there were multiple inserts in some instances and missing inserts in others, Sears pleads that the same was caused solely, or alternatively contributed to, by the acts, omissions, fault and/or neglect of RRD and/or Moore in carrying out the printing and production of the catalogues and MasterCard statements.

7. Sears denies that it is liable to RRD and/or Moore for contribution, indemnity or any other relief over in relation to any liability adjudged against them to any other party in this proceeding, as alleged in the Counterclaim of RRD and Moore or otherwise, and puts RRD and Moore to the strict proof thereof.

8. Sears pleads that the Counterclaim of RRD and Moore ought to be dismissed as against it, with costs on a substantial indemnity basis including H.S.T. thereon.

CROSSCLAIM

9. Sears claims against the remaining Defendants to the Counterclaim of RRD and Moore, Consumer Intelligence Group Inc. ("CIG") and DGA Fulfillment Services Inc. ("DGA"), for:

- (a) contribution, indemnity, and/or other relief over with respect to any judgment, interest and/or costs awarded to RRD and/or Moore as against Sears in relation to the Counterclaim;
- (b) a declaration that any liability imposed on Sears in relation to the Counterclaim was caused by the fault or neglect of CIG and/or DGA;
- (c) a declaration of the proportionate fault or neglect of CIG and DGA in respect of any claim for contribution or indemnity sought by RRD and Moore in their Counterclaim as against Sears;

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- (d) Sears' costs of the defence of this Counterclaim on a substantial indemnity basis, including Goods and Services Tax thereon, in accordance with the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended; and
- (e) such further and other relief as this Honourable Court may deem just.

10. If it is found that Sears is liable to RRD or Moore in relation to the Counterclaim, Sears pleads that any liability was caused, or alternatively, contributed to by the acts, omissions, fault or neglect of CIG and/or DGA, but not by Sears.

11. Sears pleads and relies upon the *Negligence Act*, R.S.O. 1990, c. N.1, as amended, and in particular, Sections 1 and 2 thereof.

12. Sears proposes that this Crossclaim be tried together with the Counterclaim, or alternatively, one after the other, as this Honourable Court may direct.

July 4, 2016

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SEARS CANADA INC.
Plaintiff / Defendant by Counterclaim

-and-

CONSUMER INTELLIGENCE GROUP INC.
Defendant / Plaintiff by Counterclaim

Court File No. CV-15-522235-00B1

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT TORONTO

**DEFENCE AND CROSSCLAIM OF SEARS
CANADA INC. TO THE COUNTERCLAIM OF R.R.
DONNELLY & SONS COMPANY AND MOORE
CANADA CORPORATION**

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M M

This is Exhibit "M" referred to in the Affidavit of
Morica Singh sworn before me on March 27, 2018.



A COMMISSIONER FOR OATHS IN AND FOR ONTARIO

*Marilyn Dianne Godfrey, a Commissioner, etc.
Province of Ontario, for Blake, Cassels & Graydon LLP,
Barristers and Solicitors.
Expires March 5, 2021.*

Court File No. CV-15-522235-00B1

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

SEARS CANADA INC.

Plaintiff
(Defendant by Counterclaim)

- and -

CONSUMER INTELLIGENCE GROUP INC.

Defendant
(Plaintiff by Counterclaim)

- and -

DGA NORTH AMERICAN INC., DGA FULFILLMENT SERVICES INC.,
and R.R. DONNELLEY & SONS COMPANY

Third Parties

- and -

R.R. DONNELLEY & SONS COMPANY and MOORE CANADA CORPORATION

Fourth Parties

AND BETWEEN:

R.R. DONNELLEY & SONS COMPANY and MOORE CANADA CORPORATION

Plaintiffs by Counterclaim

- and -

DGA FULFILLMENT SERVICES INC., CONSUMER INTELLIGENCE GROUP INC. and
SEARS CANADA INC.

Defendants to the Counterclaim

**REPLY AND DEFENCE TO COUNTERCLAIM
OF CONSUMER INTELLIGENCE GROUP INC.
TO THE FOURTH PARTY DEFENCE AND COUNTERCLAIM OF
R.R. DONNELLEY & SONS COMPANY
AND MOORE CANADA CORPORATION**

1. The defendant to the counterclaim, Consumer Intelligence Group Inc. ("CiG") admits the allegations set out in paragraph 4 of the Fourth Party Defence and Counterclaim of R.R. Donnelley & Sons Company ("RRD") and Moore Canada Corporation ("Moore").
2. Except to the extent expressly admitted to herein, CiG denies each and every other allegation contained in the Fourth Party Defence and Counterclaim of RRD and Moore, and in particular denies that RRD and/or Moore are entitled to the relief claimed against CiG in paragraph 51 of the Fourth Party Defence and Counterclaim.
3. CiG repeats, adopts and relies upon the statements and allegations set out in its Statement of Defence, and Reply and Defence to Counterclaim in the main action herein, its Third Party Claim, and Reply and Defence to Counterclaim in the third party action bearing Court File No. CV-15-522235-00A1, and its Fourth Party Claim bearing Court File No. CV-15-522235-00B2. Any and all capitalized terms used herein have the same meaning ascribed to them in the above-noted pleadings.
4. For the purposes of this Reply and Defence to Counterclaim only, CiG pleads and relies upon the allegations made by RRD and Moore against DGA and Sears in RRD and Moore's Fourth Party Defence and Counterclaim bearing Court File No. CV-15-522235-00B1.
5. CiG was retained by DGA in or about February 2014 to provide broker services in connection with purchasing media space in the Sears Programs. Both DGA NA and DGA FS retained CiG. Further, both DGA NA and DGA FS requested and received the full benefit of CiG's services, and both are responsible for paying CiG for its services.
6. CiG's contractual obligations to DGA were restricted to purchasing media space with Sears on behalf of DGA. At no time was CiG retained to provide services relating to, and at no time did it agree to be responsible for or have any duty to advise DGA on, the actual printing or insertion of DGA's inserts into the Sears Programs.
7. To the contrary, DGA was responsible for making its own arrangements for the printing and insertion of its inserts, and in this regard DGA retained Moore and/or RRD to print DGA's inserts and to ensure the inserts were properly inserted into the Sears Programs.

DGA did not consult with or rely upon CiG to advise it on the processes relating to the printing and physical insertion of the inserts or to audit the inserts.

8. Further, in or about April 2014 RRD confirmed to CiG that RRD would be ensuring that any and all inserts produced by Moore for DGA would meet or exceed both RRD's and Sears' delivery expectations.

9. In or around May 2014, after Moore started to manage both the printing and insertion of the inserts, DGA complained to CiG that the responses to its promotion utilizing the inserts under the Sears Programs were significantly below the levels that DGA had historically experienced. CiG immediately conveyed DGA's concerns to Sears.

10. On or about September 15, 2014, in response to DGA's complaints of poor performance of the Sears Programs, DGA requested machine-based audit reports from CiG in order to verify whether all of the intended inserts had actually been inserted into the Sears Programs. CiG promptly communicated the request to Sears.

11. In or around October 2014, CiG was notified by DGA and RRD that RRD's machines were frequently picking up multiple inserts or missing inserts entirely during the insertion process.

12. On or about October 31, 2014, Sears advised CiG that the machine-based audits for the Onsert Program were not available due to the fact that the machines used to insert the material into the merchandising catalogues were "very old" and were not capable of producing the requested reports.

13. DGA did obtain audit reports directly from RRD in respect of the Credit Card Program. However, DGA complained that the reports lacked the information DGA was seeking. RRD refused to produce or otherwise disclose the information sought by DGA.

14. Sears subsequently purported to explain the errors in the inserts on the fact that selective insertion of the inserts was occurring due to a computer-based "waterfall matrix" that selected certain groups of credit card insert recipients based upon various models and consumer-based preferences. Sears had never previously advised CiG of any such waterfall matrix or that not all of DGA's inserts would be inserted into the Sears Programs.

15. To date, and despite repeated requests, Sears has failed to produce or otherwise disclose further details regarding the waterfall matrix to CiG.

16. Then, in October 2014, Sears for the first time suggested that the errors in the insertions were being caused in part by the fact that DGA's inserts were below the minimum caliper (thickness) and that going forward all inserts would have to meet minimum caliper requirements. No such minimum caliper requirements had ever been communicated by Sears to CiG or were required under CiG's contract with Sears, and CiG had no reason to have expected there were any such requirements.

17. To the extent a minimum caliper was required for DGA's inserts, RRD and Moore were aware or should have been aware of this requirement and owed a duty to DGA to advise it of these requirements in a timely fashion and to ensure that DGA's inserts met these requirements and were printed and inserted into the Sears Programs properly.

18. CiG booked media space for DGA with Sears in accordance with the terms of its agreements with DGA and in accordance with industry standards and guidelines, and fulfilled all of its obligations to DGA. CiG's obligation was simply to book the media space and acting as a broker between Sears and DGA, and it fulfilled all of its obligations in this regard.

19. At all material times, CiG complied with any and all instructions provided by DGA and conveyed those instructions to Sears as and when required. To the extent that there were any errors in completing the printing and insertion properly and in accordance with the instructions of DGA, such errors were caused by and were the responsibility of Sears, RRD, Moore and/or DGA, or any one of them, not CiG.

20. DGA retained and relied upon RRD and Moore, and not CiG, to audit and oversee the insertion program.

21. Sears, together with DGA, RRD and Moore, were responsible for, or otherwise performed, all printing, production, insertion and packaging of Sears' merchandise catalogues and MasterCard statements, including the Sears Programs.

22. With respect to the allegations in paragraph 27 of the Fourth Party Defence and Counterclaim of RRD and Moore, subsequent to RRD's refusal to accept inserts printed by Universal Printing, Andrew Varga ("**Varga**"), a representative of RRD, advised both CiG and

DGA that RRD and Moore could resolve the on-going issues concerning the binding and delivery of the Sears Programs if the printing of these programs was performed by RRD and/or Moore.

23. With respect to the allegations in paragraph 33 of the Fourth Party Defence and Counterclaim of RRD and Moore, CiG states that Moore refused to provide DGA with machine-based audit information relating to the Credit Card Program. Instead, Sears purported to explain the errors in the inserts on the fact that selective insertion of the inserts was occurring due to a computer-based "waterfall matrix" that selected certain groups of credit card insert recipients based upon various models and consumer-based preferences.

24. The "waterfall matrix" was not an audit but, rather, a delivery matrix of what was to be performed in the future.

25. CiG denies that RRD and Moore have suffered any damages, loss of profits or damage to reputation, as alleged or at all, and puts RRD and Moore to the strict proof thereof.

26. CiG further denies that RRD and Moore are entitled to full (or any) contribution and indemnity from itself in respect of any amounts that RRD or Moore may be found to owe or that are otherwise determined to be payable by RRD or Moore:

- (a) to DGA in the Fourth Party Action bearing Court File No. CV-15-522235-00B1 ("**DGA's Fourth Party Claim**"); or
- (b) to Sears in the Third Party Claim bearing Court File No. CV-15-522235-00A2 ("**Sears' Third Party Claim**").

27. CiG denies that DGA and Sears have suffered any damages, as alleged or at all, in DGA's Fourth Party Claim and Sears' Third Party Claim, respectively.

28. In the alternative, if RRD, Moore, Sears and/or DGA have suffered damages, loss or profits or damage to reputation, as alleged or at all, which is not admitted but specifically denied, such damages and losses were caused in whole or in part by the negligence of RRD, Moore, Sears and/or DGA, and were in no way caused or contributed to by CiG.

29. In the further alternative, CiG states that such damages and losses are excessive, too remote and not recoverable at law. Further, RRD and Moore have failed to mitigate their

damages and losses and as such are precluded at law from recovering any damages, or claiming contribution and indemnity, from CiG.

30. With respect to the allegations in paragraphs 44 and 51 of the Fourth Party Defence and Counterclaim of RRD and Moore, CiG denies that the damages that are alleged to have been suffered by Sears, DGA, RRD and Moore, which are not admitted but denied, were caused solely, or alternatively contributed to, by any acts, omissions, fault and/or neglect of CiG.

31. As a result of the foregoing, each of RRD, Moore, Sears and/or DGA are contributorily liable for any and all damages and losses for which they may be entitled and are proven. CiG pleads and relies upon the *Negligence Act*, R.S.O. 1990, c. N.1, as amended.

32. CiG pleads and relies upon the doctrines of legal and/or equitable set-off, and claims the right to set-off its claims against RRD and/or Moore against any amounts for which it may be found liable to RRD and/or Moore in the within action.

33. CiG requests that RRD and Moore's counterclaim be dismissed, with costs on a substantial indemnity scale.

July 4, 2016

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SEARS CANADA INC.
Plaintiff

-and-

CONSUMER INTELLIGENCE GROUP INC.
Defendant

Court File No. CV-15-522235-00B1

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

**REPLY AND DEFENCE TO COUNTERCLAIM
OF CONSUMER INTELLIGENCE GROUP INC.
TO THE FOURTH PARTY DEFENCE AND
COUNTERCLAIM OF R.R. DONNELLEY & SONS
COMPANY AND MOORE CANADA CORPORATION**

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Lawyers for the Defendant to the Counterclaim, Consumer
Intelligence Group Inc.

N

This is Exhibit "N" referred to in the Affidavit of
Monica Singh sworn before me on March 27, 2018.



A COMMISSIONER FOR OATHS IN AND FOR ONTARIO

Marilyn Dianne Godfrey, a Commissioner, etc.
Province of Ontario, for Blake, Cassels & Graydon LLP,
Barristers and Solicitors.
Expires March 5, 2021.

Court File No. CV-15-522235-00B1

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN :

SEARS CANADA INC.

Plaintiff
(Defendant by Counterclaim)

- and -

CONSUMER INTELLIGENCE GROUP INC.

Defendant
(Plaintiff by Counterclaim)

- and -

DGA NORTH AMERICAN INC. and DGA FULFILLMENT SERVICES INC.
and R.R. DONNELLY & SONS COMPANY

Third Parties

- and -

R.R. DONNELLY & SONS COMPANY and MOORE CANADA
CORPORATION

Fourth Parties

AND BETWEEN :

R.R. DONNELLY & SONS COMPANY and MOORE CANADA
CORPORATION

Plaintiffs by Counterclaim

- and -

DGA FULFILLMENT SERVICES INC., CONSUMER INTELLIGENCE
GROUP INC. and SEARS CANADA INC.

Defendants to the Counterclaim

**DEFENCE OF SEARS CANADA INC. TO THE COUNTERCLAIM OF R.R.
DONNELLY & SONS COMPANY AND MOORE CANADA
CORPORATION**

-2-

1. Except—as otherwise provided in this Defence to the Counterclaim of R.R. Donnelly & Sons Company (“RRD”) and Moore Canada Corporation (“Moore”), the Plaintiff and Defendant by Counterclaim, Sears Canada Inc. (“Sears”), denies each and every allegation contained in the Counterclaim of RRD and Moore and puts them to the strict proof thereof. Sears specifically denies the allegations contained at paragraphs 10, 11, 12 and 63 of the Counterclaim of RRD and Moore.

2. Except as otherwise provided in this Defence to the Counterclaim of RRD and Moore, Sears has no knowledge or insufficient knowledge with which to plead in response to the allegations contained at paragraphs 2, 3, 15, 16, 17, 19, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 54, 55, 56, 57, 58 of the Counterclaim of RRD and Moore.

3. Sears repeats and relies upon the allegations contained in the Statement of Claim, Sears’ Reply and Defence to the Counterclaim of Consumer Intelligence Group (“CIG”), and Sears’ Third Party Claim initiated against RRD, as though pleaded herein in their entirety. All capitalized terms used herein refer to the terms defined in the aforementioned pleadings.

4. Contrary to the allegations contained at paragraph 10 of the Counterclaim of RRD and Moore, Sears was not at all material times aware of RRD’s standard specifications for its onserts. Rather, it was not until October 9, 2014, when Sears made inquiries to RRD as to why multiple onserts may appear in a given catalogue in response to concerns raised by CIG concerning alleged issues with the Catalogue Onserts, that RRD advised Sears that:

- (a) RRD requests a paper stock thickness of .007 for 2 page onserts, as the use of a thinner stock creates the potential to pull multiple onserts;
- (b) the potential to pull multiple onserts is always a possibility; and
- (c) RRD factors a 2% “spoilage” rate into each job.

5. Prior to RRD’s aforementioned response, Sears was not advised that RRD requests a paper stock thickness of .007 for 2 page onserts due to the potential risk of pulling

multiple onserts arising from the use of a thinner paper stock or that RRD factors a 2% spoilage rate into each job.

6. Thus, if it is found that the Catalogue Onserts and MasterCard Inserts purchased by CIG on behalf of DGA were not properly placed in the Sears' catalogues and MasterCard statements – in that there were multiple inserts in some instances and missing inserts in others, Sears pleads that the same was caused solely, or alternatively contributed to, by the acts, omissions, fault and/or neglect of RRD and/or Moore in carrying out the printing and production of the catalogues and MasterCard statements.

7. Sears denies that it is liable to RRD and/or Moore for contribution, indemnity or any other relief over in relation to any liability adjudged against them to any other party in this proceeding, as alleged in the Counterclaim of RRD and Moore or otherwise, and puts RRD and Moore to the strict proof thereof.

8. Sears pleads that the Counterclaim of RRD and Moore ought to be dismissed as against it, with costs on a substantial indemnity basis including H.S.T. thereon.

9. If it is found that Sears is liable to RRD or Moore in relation to the Counterclaim, Sears pleads that any liability was caused, or alternatively, contributed to by the acts, omissions, fault or neglect of CIG and/or DGA, but not by Sears.

10. Sears pleads and relies upon the *Negligence Act*, R.S.O. 1990, c. N.1, as amended, and in particular, Sections 1 and 2 thereof.

July 13, 2016

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DGA North American Inc. and DGA Fulfillment Services Inc.

SEARS CANADA INC.
Plaintiff / Defendant by Counterclaim

-and-

CONSUMER INTELLIGENCE GROUP INC.
Defendant / Plaintiff by Counterclaim

Court File No. CV-15-522235-00B1

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

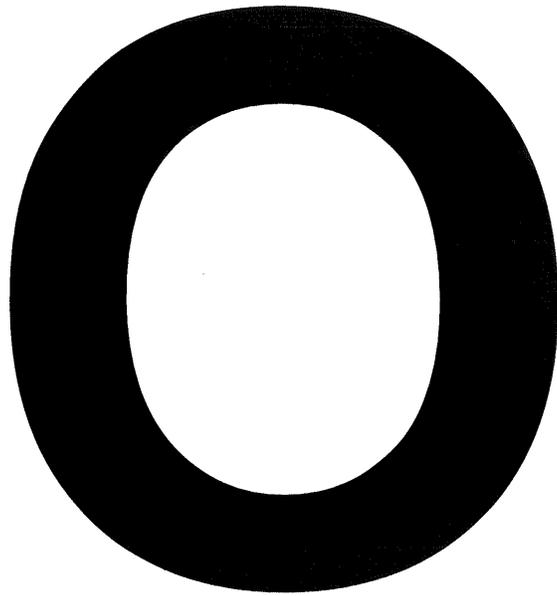
**DEFENCE AND CROSSCLAIM OF SEARS
CANADA INC. TO THE COUNTERCLAIM OF R.R.
DONNELLY & SONS COMPANY AND MOORE
CANADA CORPORATION**

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Lawyers for the Plaintiff and Defendant by Counterclaim,
Sears Canada Inc.



This is Exhibit "O" referred to in the Affidavit of
Monica Singh sworn before me on March 27, 2018.


A COMMISSIONER FOR OATHS IN AND FOR ONTARIO

*Mardyn Dianne Godfrey, a Commissioner, etc.
Province of Ontario, for Blake, Cassels & Graydon LLP,
Barristers and Solicitors.
Expires March 5, 2021.*

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

SEARS CANADA INC.

Plaintiff
(Defendant by Counterclaim)

- and -

CONSUMER INTELLIGENCE GROUP INC.

Defendant
(Plaintiff by Counterclaim)

- and -

**DGA NORTH AMERICAN INC., DGA FULFILLMENT SERVICES INC.
and R.R. DONNELLY & SONS COMPANY**

Third Parties

**R.R. DONNELLY & SONS COMPANY and MOORE CANADA
CORPORATION**

Fourth Parties

AND BETWEEN:

**R.R. DONNELLY & SONS COMPANY and MOORE CANADA
CORPORATION**

Plaintiffs by Counterclaim

-and-

**DGA FULFILLMENT SERVICES INC., CONSUMER INTELLIGENCE
GROUP INC. and SEARS CANADA INC.**

Defendants to the Counterclaim

**DEFENCE OF DGA NORTH AMERICAN INC. TO THE CROSSCLAIM
OF SEARS CANADA INC.**

1. In respect of the allegations contained in the Plaintiff's (hereinafter referred to as "Sears") Defence and Crossclaim to the counterclaim of R.R. Donnelly & Sons Company and

Moore Canada Corporation DGA North American Inc. (hereafter referred to as "DGA") denies it is in any way responsible for any liability that may be imposed upon Sears.

- 2. DGA pleads and relies upon the allegations contained in its Statement of Defence and Counterclaim to the Third Party Claim and in its Fourth Party Statement of Claim.

Dated: November 2 2016

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R.R. Donnelley & Sons Company and Moore Canada Corporation*

SEARS Canada Inc. v. **Consumer Intelligence Group** v. **DGA & R.R. Donnelly** v. **R.R. Donnelley and Moore Canada**
Plaintiff Defendant Third Parties Fourth Parties

R.R. Donnelley and Moore Canada v. **DGA Fulfillment et al**
Plaintiffs by Counterclaim Defendants to the Counterclaim

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceedings Commenced at TORONTO

DEFENCE OF DGA NORTH AMERICAN
TO THE CROSSCLAIM OF SEARS CANADA

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Inc.*

P

This is Exhibit "P" referred to in the Affidavit of
Monica Singh sworn before me on March 27, 2018.



A COMMISSIONER FOR OATHS IN AND FOR ONTARIO

*Marilyn Dianne Godfrey, a Commissioner, etc.
Province of Ontario, for Blake, Cassels & Graydon LLP,
Barristers and Solicitors.
Expires March 5, 2021.*

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

SEARS CANADA INC.

Plaintiff

- and -

CONSUMER INTELLIGENCE GROUP INC.

Defendant

- and -

DGA NORTH AMERICAN INC. and DGA FULFILLMENT SERVICES INC.

Third Parties

- and -

R.R. DONNELLEY & SONS COMPANY, MOORE CANADA CORPORATION
and SEARS CANADA INC.

Fourth Parties

FOURTH PARTY CLAIM

TO THE FOURTH PARTIES

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by way of a fourth party claim in an action in this court.

The action was commenced by the plaintiff against the defendant for the relief claimed in the statement of claim served with this fourth party claim. The defendant has defended the action on the grounds set out in the statement of defence and counterclaim served with this fourth party claim. The relief claimed by the defendant against the third parties, DGA North American Inc. and DGA Fulfillment Services Inc. (collectively "DGA") is set out in the enclosed Third Party Claim bearing Court File No. CV-15-522235-00A1. DGA's Third Party Defence and Counterclaim, and the defendant's Reply to Defence to Counterclaim are served



with this Fourth Party Claim. The defendant's claim against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS FOURTH PARTY CLAIM, you or an Ontario lawyer acting for you must prepare a fourth party defence in Form 29B prescribed by the Rules of Civil Procedure, serve it on the lawyers for the other parties or, where a party does not have a lawyer, serve it on the party, and file it, with proof of service, WITHIN TWENTY DAYS after this fourth party claim is served on you, if you are served in Ontario.

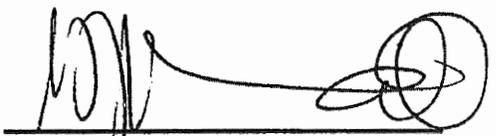
If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your fourth party defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a fourth party defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your fourth party defence.

IF YOU FAIL TO DEFEND THIS FOURTH PARTY CLAIM, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE AMOUNT OF THE FOURTH PARTY CLAIM AGAINST YOU, and \$5,000 for costs, within the time for serving and filing your fourth party defence, you may move to have the fourth party claim dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the amount of the fourth party claim and \$400.00 for costs and have the costs assessed by the court.

Date May 17th, 2016

Issued by 
Local registrar

S. Chandrasekhar
Registrar

Address of court office 393 University Ave., 10th Floor
Toronto, ON M5G 1E6

TO: **R.R. Donnelley & Sons Company**
6100 Vipond Drive
Mississauga, ON M5H 3P5

or

35 West Wacker Drive
Chicago, IL, USA 60601

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AND TO: Moore Canada Corporation
6100 Vipond Drive, Units 14 & 15
Mississauga, ON M5H 3P5

AND TO: Sears Canada Inc.
290 Yonge Street, Suite 700
Toronto, ON M5B 2C3

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CLAIM

1. The defendant, Consumer Intelligence Group Inc. ("CiG"), claims against the fourth parties, R.R. Donnelley & Sons Company ("RRD"), Moore Canada Corporation ("Moore") and Sears Canada Inc. ("Sears") (collectively the "**Fourth Parties**") for:

- (a) Full contribution and indemnity in respect of any amounts that CiG may be found to owe or that are otherwise determined to be payable or are payable by CiG to the third parties, DGA North American Inc. and DGA Fulfillment Services Inc. (collectively "**DGA**") in the Third Party Action bearing Court File No. CV-15-522235-00A1 (the "**DGA Third Party Claim**");
- (b) A Declaration that the damages that are alleged to have been suffered by DGA in its counterclaim in the DGA Third Party Claim were caused or contributed to by the fault or neglect of RRD, Moore and/or Sears;
- (c) Damages in the amount of \$3,475,000 for negligence;
- (d) Pre-judgment and post-judgment interest pursuant to the provisions of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (e) CiG's costs in the main action, the DGA Third Party Claim, and this fourth party claim, on a substantial indemnity basis; and
- (f) Such further and other relief as this Honourable Court may deem just.

2. CiG repeats and relies upon the statements set out in its Statement of Defence and Counterclaim, and Reply to Defence to Counterclaim in the main action herein, as well as its Third Party Claim and Reply and Defence to Counterclaim in the DGA Third Party Claim. Unless otherwise noted, all capitalized terms used herein refer to those defined in the Statement of Defence and Counterclaim and Reply to Defence to Counterclaim in the main action, and Third Party Claim of CiG in the DGA Third Party Claim.

Parties

3. CiG is a corporation incorporated pursuant to the laws of the Province of Ontario and carries on business providing, *inter alia*, direct and digital media brokerage services.
4. DGA North American Inc. is a company incorporated pursuant to the laws of the Province of Ontario, with its head office in Brampton, Ontario.
5. DGA Fulfillment Services Inc. is a company incorporated pursuant to the laws of the Province of Ontario, with its head office in Brampton, Ontario.
6. RRD is a corporation incorporated pursuant to the laws of the State of Delaware and carries on the business of, *inter alia*, inserting advertising material into envelopes and other packages to be mailed to various lists of recipients out of its office located in Mississauga, Ontario. RRD's head office is located in Chicago, Illinois. RRD owed a duty of care to CiG.
7. Moore is a corporation incorporated pursuant to the laws of the Province of Nova Scotia and carries on business in the printing industry out of its office located in Mississauga, Ontario. Moore is a company that is related to, or otherwise a subsidiary of, RRD. Moore owed a duty of care to CiG.
8. Sears is a corporation incorporated pursuant to the laws of the Province of Ontario and carries on business as a retailer of consumer goods throughout Canada. Sears owed a duty of care to CiG.

Claim for Contribution and Indemnity and Loss of Profit in the Main Action

9. In or around September 2013 and until December 2014, DGA retained CiG to provide media brokerage services to DGA. In particular, DGA retained CiG to arrange for DGA's promotional materials to be distributed by Sears under its Onsert Program and its Credit Card Program. CiG fulfilled all of its contractual obligations to DGA.
10. In the main action, Sears has claimed against CiG for payment in respect of DGA's participation in its Onsert Program and Credit Card Program.

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11. In its defence to the main action, CiG has denied Sears' allegations of breach of contract, unjust enrichment and entitlement to relief as claimed in paragraph 1 of the Statement of Claim. However, to the extent that CiG is found liable to Sears for any claimed losses, CiG pleaded in the DGA Third Party Claim that such amounts are owed to it by DGA pursuant to the agreements entered into between CiG and DGA for the purchase of media space in the Onsert Program and the Credit Card Program. CiG stated in the DGA Third Party Claim that it is entitled to contribution and indemnity from DGA in respect of the claim made by Sears.

12. Furthermore, to the extent that CiG is found liable to Sears for any amount, CiG also pleaded in the DGA Third Party Claim that DGA is liable to CiG for the same amount, plus an additional 15 percent of such amount as commission pursuant to the agreements entered into between CiG and DGA for the purchase of media space in the Onsert Program and the Credit Card Program.

Claim for Contribution and Indemnity and Loss of Profit – the DGA Third Party Claim

13. In the DGA Third Party Claim, and as set out above, CiG claimed full contribution and indemnity, damages for lost profits and breach of contract in the amount of 15 percent of any amounts that CiG may be found to owe to Sears, together with Judgment for the sum of \$433,738.41, which amount is due and owing to CiG pursuant to its ongoing agreement to book media for DGA in the Onsert Program and the Credit Card Program.

14. In its Third Party Defence and Counterclaim in the DGA Third Party Claim, DGA alleged that it suffered substantial losses as a result of the collective failures of CiG, RRD and Moore, and claimed damages against CiG for breach of contract and negligence in the amount of \$3,475,000.

15. In its Reply and Defence to Counterclaim in the DGA Third Party Claim, CiG denied DGA's allegations of, *inter alia*, breach of contract and negligence. CiG alleged that its contractual obligations to DGA were restricted to purchasing media space with Sears on behalf of DGA, and that DGA was responsible for making its own arrangements for the

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printing and insertion of inserts, and that DGA retained RRD and/or Moore to print DGA's inserts and to ensure the inserts were properly inserted into the Sears Programs.

16. To the extent that CiG is found liable to DGA for any claimed losses in the DGA Third Party Claim, CiG pleads that such amounts are owed to it by RRD, Moore and/or Sears as a result of their acts and/or omissions, or otherwise arising out of the agreements entered into between two or more of DGA, RRD, Moore and/or Sears, for the printing and insertion of DGA's inserts into the Sears Programs. CiG pleads that it is entitled to contribution and indemnity from RRD, Moore and Sears in respect of the counterclaim made by DGA in the DGA Third Party Claim.

Warranties

17. At all times material to this action, Sears provided CiG with an implied warranty that, *inter alia*,

- (a) Sears, together with its fourth party printing suppliers, RRD and Moore, would carry out the assembly of the onserts and inserts into the catalogues and statements in a good and workmanlike manner;
- (b) The Onsert Program and the Credit Card Program would be carried out with requisite skill and in accordance with industry standards;
- (c) The final product would be of merchantable quality;
- (d) The final product would be delivered on time;
- (e) None of the catalogues would have multiple inserts of the same product;
- (f) All of the catalogues would have the requisite number of inserts;
- (g) The Onsert Program and the Credit Card Program could be properly completed regardless of the caliper (thickness) of the paper used by DGA; and
- (h) CiG and DGA would receive that which they bargained for.

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18. As a result of the allegations set out herein and in the above-noted pleadings, CiG pleads that Sears breached the implied warranties that it provided to CiG.

Particulars of Negligence

19. CiG states that Sears, together with RRD and Moore, were responsible for, or otherwise performed, all printing, production, insertion and packaging of Sears' merchandise catalogues and MasterCard statements, including the Onsert Program and the Credit Card Program.

20. At paragraph 24 of its Reply and Defence to Counterclaim in the DGA Third Party Claim, CiG denied that DGA suffered any damages, loss of profits or damages to reputation as alleged or at all, and put DGA to the strict proof thereof.

21. At paragraph 25 of its Reply and Defence to Counterclaim in the DGA Third Party Claim, CiG pleaded, in the alternative, that if DGA suffered any such losses, same were caused in whole or in part by the negligence of DGA, Sears, RRD and Moore and were in no way caused or contributed to by CiG.

22. With respect to the particulars of RRD, Moore and Sears' negligence, one or more of them failed, refused and/or neglected to, *inter alia*:

- (a) Ensure that the Onsert Program was being placed or otherwise inserted into Sears' catalogues in accordance with all contractual requirements or as otherwise agreed to between the parties;
- (b) Ensure that the Credit Card Program was being placed or otherwise inserted into envelopes containing MasterCard Statements in accordance with all contractual requirements or as otherwise agreed to between the parties;
- (c) Ensure that DGA's inserts were being inserted into the Sears Programs in accordance with all contractual requirements or as otherwise agreed to between the parties;

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- (d) Ensure that their machines were picking-up the inserts and onserts and inserting them into the appropriate Sears program;
- (e) Insert DGA's inserts into the Sears Programs in a timely manner or at all;
- (f) Deliver inserts that were compatible with RRD's insertion requirements;
- (g) Provide advertising material in a format suitable to be used in RRD's insertion equipment;
- (h) Finalize, publish and/or produce the Sears Programs that contained the requisite number of onserts or inserts, if at all;
- (i) Advise CiG in relation to minimum caliper requirements or any caliper requirements;
- (j) Advise CiG that a "waterfall matrix" would be used in relation to the Sears Programs;
- (k) Ensure that machine-based audits were available for the Sears Programs;
- (l) Provide audit reports to CiG in relation to the Sears Programs;
- (m) Provide CiG with certain information in relation to the Sears Programs; and
- (n) In the alternative, when audit reports or information were provided, the same lacked the information sought.

Service Outside of Ontario

23. CiG pleads and relies upon Rule 17.02 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended, and states that it is permitted, without a Court Order, to serve this Fourth Party Claim on RRD outside of Ontario because CiG's claim against RRD consists of claims:

- (a) in respect of a contract where the breach of the contract has been committed in Ontario, even though the breach was preceded or accompanied by a breach

outside Ontario that rendered impossible the performance of the part of the contract that ought to have been performed in Ontario (Rule 17.02(f)(iv));

- (b) in respect of a tort committed in Ontario (Rule 17.02(g));
- (c) against a person ordinarily resident or carrying on business in Ontario (Rule 17.02(p)); and
- (d) properly the subject matter of a fourth party claim under the *Rules* (Rule 17.02(q)).

24. CiG pleads and relies upon the *Negligence Act*, R.S.O. 1990, c. N.1, as amended, the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, and their respective regulations.

25. CiG requests that this fourth party claim be tried with the counterclaim of DGA in the Third Party Claim bearing Court File No. CV-15-522235-00A1.

May 16, 2016

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Lawyers for the Defendant/
 Plaintiff by Fourth Party Claim

Q

This is Exhibit "Q" referred to in the Affidavit of
Monica Singh sworn before me on March 27, 2018.



A COMMISSIONER FOR OATHS IN AND FOR ONTARIO

*Marilyn Dianne Godfrey, a Commissioner, etc.
Province of Ontario, for Blake, Cassels & Graydon LLP,
Barristers and Solicitors.
Expires March 5, 2021.*

Court File No. CV-15-522235-00B2

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

SEARS CANADA INC.

Plaintiff

- and -

CONSUMER INTELLIGENCE GROUP INC.

Defendant

- and -

DGA NORTH AMERICAN INC. and DGA FULFILLMENT SERVICES INC.

Third Parties

- and -

R.R. DONNELLY & SONS COMPANY, MOORE CANADA CORPORATION
and SEARS CANADA INC.

Fourth Parties

**DEFENCE AND CROSSLCAIM OF SEARS CANADA INC.
TO THE FOURTH PARTY CLAIM OF
CONSUMER INTELLIGENCE GROUP INC.**

1. Except as otherwise provided in this Defence to Fourth Party Claim, the Plaintiff and Fourth Party, Sears Canada Inc. ("Sears"), denies each and every allegation contained in the Fourth Party Claim of Consumer Intelligence Group Inc. ("CIG") as made against Sears and puts CIG to the strict proof thereof.

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2. Sears repeats and relies upon the allegations contained in the Statement of Claim and in Sears' Reply and Defence to the Counterclaim of CIG as though pleaded herein in their entirety. All capitalized terms used herein refer to the terms defined in the Statement of Claim and Sears' Reply and Defence to the Counterclaim of CIG.

3. In CIG's counterclaim against Sears in the main action herein, CIG alleged *inter alia* that there were problems with the Onsert Program and the Credit Card Program, and that as a result, DGA only made partial payments to CIG and that CIG had not been paid the full commission it otherwise would have received had Sears not breached the terms of its agreement with CIG and delivered a substandard product under the Onsert Program and the Credit Card Program.

4. In its Reply and Defence to Counterclaim, Sears denied any problems with respect to the Onsert Program and the Credit Card Program, as alleged by CIG or otherwise, and denied liability to CIG as alleged in the Counterclaim, or at all, among other defences raised in response to CIG's allegations. Sears repeats and relies upon those defences in response to this Fourth Party Claim in their entirety.

5. Further in this regard, Sears specifically denies that it breached any contractual or common law duty of care owed to CIG, which duties are not admitted but are expressly denied, and/or that it breached any express or implied warranties allegedly Sears provided to CIG, which warranties are not admitted but are expressly denied. Sears puts CIG to the strict proof of its allegation that any such duties were owed and/or breached by Sears, and that any such warranties were given and/or breached by Sears.

6. Further, and in the alternative, to the extent that the Fourth Party Claim purports to advance a claim for damages against Sears independent from its claim for contribution and indemnity for any amounts adjudged owed by CIG to DGA, Sears pleads that such a claim is duplicative and constitutes an improper multiplicity of proceedings as CIG has already advanced a claim for damages against Sears in relation to its Counterclaim, as aforementioned.

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7. In this regard, Sears pleads that any claim for damages advanced by CIG independent from CIG's claim for contribution and indemnity are limited to those claims advanced in CIG's aforementioned Counterclaim against Sears in the main action herein.

8. Sears pleads that the Fourth Party Claim ought to be dismissed as against it, with costs on a substantial indemnity basis including H.S.T. thereon.

CROSSCLAIM

9. Sears claims against the Fourth Party Defendants, R.R. Donnelly & Sons Company ("RRD") and Moore Canada Corporation ("Moore"), for:

- (a) contribution, indemnity, and/or other relief over with respect to any judgment, interest and/or costs awarded to CIG as against Sears;
- (b) a declaration that any alleged damages sustained by CIG or any liability imposed on CIG were caused by the fault or neglect of RRD and/or Moore;
- (c) a declaration of the proportionate fault or neglect of RRD and/or Moore, in respect of any claim for damages, contribution or indemnity sought by CIG;
- (d) Sears' costs of the defence of this Fourth Party Claim on a substantial indemnity basis, including Goods and Services Tax thereon, in accordance with the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended; and
- (e) such further and other relief as this Honourable Court may deem just.

10. If it is found that CIG sustained any losses or damages and/or that CIG is liable to DGA, which is denied, Sears pleads that any such losses, damages or liability was caused, or alternatively, contributed to by the acts, omissions, fault or neglect of RRD and Moore, but not by Sears.

11. Further in this regard, Sears repeats and relies upon the allegations made against RRD in Sears' Third Party Claim against RRD under Court File No. CV-15-522235-00A2, as though pleaded herein in their entirety.

12. Sears pleads and relies upon the *Negligence Act*, R.S.O. 1990, c. N.1, as amended, and in particular, Sections 1 and 2 thereof.

13. Sears proposes that this Crossclaim be tried together with the Fourth Party Claim, or alternatively, one after the other, as this Honourable Court may direct.

June 28, 2016

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Lawyers for the Defendant / Plaintiff
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-5-

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SEARS CANADA INC.
Plaintiff / Defendant by Counterclaim

-and-

CONSUMER INTELLIGENCE GROUP INC.
Defendant / Plaintiff by Counterclaim

Court File No. CV-15-522235-00B2

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT TORONTO

**DEFENCE AND CROSSCLAIM OF SEARS
CANADA INC. TO FOURTH PARTY CLAIM OF
CONSUMER INTELLIGENCE GROUP INC.**

LEIGH A. LAMPERT (LSUC # 51680HD)
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Fax: 416-941-2321

Lawyers for the Plaintiff and Fourth Party,
Sears Canada Inc.

R

This is Exhibit "R" referred to in the Affidavit of
Monica Singh sworn before me on March 27, 2018.



A COMMISSIONER FOR OATHS IN AND FOR ONTARIO

*Marilyn Dianne Godfrey, a Commissioner, etc.
Province of Ontario, for Blake, Cassels & Graydon LLP,
Barristers and Solicitors.
Expires March 5, 2021.*

Court File No. CV-15-522235-00B2

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

SEARS CANADA INC.

Plaintiff

- and -

CONSUMER INTELLIGENCE GROUP INC.

Defendant

- and -

DGA NORTH AMERICAN INC., DGA FULFILLMENT SERVICES INC.,

Third Parties

- and -

R.R. DONNELLEY & SONS COMPANY, MOORE CANADA CORPORATION
and SEARS CANADA INC.

Fourth Parties

**FOURTH PARTY DEFENCE AND CROSSCLAIM OF
R.R. DONNELLEY & SONS COMPANY AND MOORE CANADA CORPORATION**

1. Except as expressly admitted herein, R.R. Donnelley & Sons Company (“RRD”) and Moore Canada Corporation (“Moore Canada”) deny each and every allegation in Consumer Intelligence Group Inc.’s (hereinafter “CIG”) Fourth Party Claim, CIG’s Statement of Defence and Counterclaim in the main action, CIG’s Reply to Defence to Counterclaim in the main action, its Third Party Claim against DGA North American Inc. and DGA Fulfillment Services Inc. (together, “DGA”), and its Reply and Defence to Counterclaim in the Third Party Claim, all of

which are incorporated in CIG's Fourth Party Claim at paragraph 2. RRD and Moore Canada specifically deny that CIG is entitled to any of the relief claimed against RRD or Moore Canada in paragraph 1 of CIG's Fourth Party Claim.

2. RRD and Moore Canada have no knowledge or insufficient knowledge in respect of the allegations contained in paragraphs 3-5, 8-12, 17-18 of CIG's Fourth Party Claim.

3. In respect of allegations contained in CIG's Statement of Defence and Counterclaim in the main action incorporated by reference at paragraph 2 of CIG's Fourth Party Claim, RRD and Moore Canada have no knowledge or insufficient knowledge of the allegations contained in paragraphs 4-18, 27-33, 37-38.

4. In respect of allegations contained in CIG's Reply to Defence to Counterclaim in the main action incorporated by reference at paragraph 2 of CIG's Fourth Party Claim, RRD and Moore Canada have no knowledge or insufficient knowledge of the allegations contained in paragraphs 4-6, 8-18.

5. In respect of allegations contained in the DGA Third Party Claim incorporated by reference at paragraph 2 of CIG's Fourth Party Claim, RRD and Moore Canada have no knowledge or insufficient knowledge of the allegations contained in paragraphs 1-16.

6. In respect of the allegations contained in the CIG's Reply and Defence to Counterclaim in the DGA Third Party Claim, RRD and Moore Canada have no knowledge or insufficient knowledge of the allegations contained in paragraphs 5-6, 8-9, 11, 13-15, 17, 19-22, 24, 26-28.

7. RRD and Moore Canada repeat and rely on the statements set out in RRD's Third Party Defence to Sears' Third Party Claim and RRD and Moore Canada's Fourth Party Defence and Counterclaim to DGA's Fourth Party Claim.

RRD and Moore Canada

8. RRD is a company incorporated pursuant to the laws of Delaware and inter alia carries on business as a provider of commercial printing, and digital and supply chain services, with its head office located in Chicago, Illinois.

9. Moore Canada Corporation (doing business as R.R. Donnelley) ("Moore Canada") is a subsidiary of RRD incorporated pursuant to the laws of Nova Scotia, with its head office located in Mississauga, Ontario.

RRD's Relationship with Sears and Insertion of Onserts in Sears Catalogues

10. Pursuant to agreements between RRD and Sears Canada Inc. ("Sears") (the "Sears Agreements"), to which CIG is not a party, RRD provides printing and other services to Sears. These services include printing, binding, finishing and delivery of Sears' merchandise catalogues ("Sears Catalogues") and the placement of third party advertisements ("Onserts") into packages containing Sears Catalogues, at Sears' direction. The third parties for which RRD is engaged in placing Onserts with Sears Catalogues are Sears customers, not RRD's. From time to time, RRD has been involved in placing Onserts provided by DGA ("DGA's Onserts") with Sears Catalogues.

11. RRD and Moore Canada plead that, at all material times, RRD (not Moore Canada) has provided services to Sears in connection with Sears Catalogues, and in doing so, at all material

times, RRD acted in accordance with the Sears Agreements and Sears' instructions when inserting DGA's Onserts into packages with the Sears Catalogues.

12. For each print run of Sears Catalogues, Sears provides RRD with a "Run List" that sets out details regarding the Onserts that are to be placed with the Sears Catalogues for that particular run. At all material times, RRD acted in accordance with the Sears Agreements, the "Run List" provided by Sears, and Sears instructions, when placing Onserts with the Sears Catalogues. At all material times, CIG was Sears' customer in connection with the insertion of DGA's Onserts, which were delivered to RRD's plant at 2801 W. Old RTE 30, Warsaw, Indiana ("Warsaw Plant") by the party (or its agent) retained directly by DGA with respect to the printing of DGA's Onserts.

13. CIG is not a party to the Sears Agreements and, at no time, did RRD or Moore Canada have any agreement or contract directly with CIG regarding the printing, binding, finishing, or delivery of Sears Catalogues, or the printing or insertion of any of DGA's Onserts, with those catalogues.

14. RRD and Moore Canada deny that they owe any duties to CIG, contractual, at common law, or otherwise, with respect to the Sears Catalogues or the insertion of DGA's Onserts into Sears Catalogues. RRD further denies that there were any errors, omissions, neglect and/or fault by RRD in the insertion of DGA's Onserts into Sears Catalogues and puts CIG to the strict proof thereof.

Moore Canada's Relationship with JPMorgan and Insertion of Inserts into Sears' MasterCard Statements

15. Sears' MasterCards are administered by JPMorgan Chase Bank, National Association ("JPMorgan"). Pursuant to an agreement between Moore Canada and JPMorgan (the "JPMorgan Agreement"), the terms of which are confidential and to which CIG is not a party, Moore Canada

provides services to JPMorgan. Those services include printing of Sears' MasterCard statements ("MasterCard Statements") and insertion of third party advertisements ("Inserts") into envelopes containing MasterCard Statements, in accordance with JPMorgan's specifications and instructions. The third parties for which Moore Canada is engaged in inserting Inserts with MasterCard Statements are JPMorgan and/or Sears' customers not Moore Canada's or RRD's. From time to time, Moore Canada has been involved in inserting Inserts provided by DGA ("DGA's Inserts") with the MasterCard Statements for JPMorgan.

16. RRD and Moore Canada plead that, at all material times, Moore Canada (not RRD) has provided services in connection with the MasterCard Statements to JPMorgan and, in doing so, at all material times, Moore Canada acted in accordance with the JPMorgan Agreement and JPMorgan's instructions when inserting DGA's Inserts with the MasterCard Statements.

17. For each print cycle of MasterCard Statements, JPMorgan provides Moore Canada with instructions that set out the details regarding the Inserts that are to be inserted into envelopes with MasterCard Statements for that particular month. At all material times, Moore Canada acted in accordance with the JP Morgan Agreement and the instructions provided by JPMorgan when placing Inserts with the MasterCard Statements.

18. CIG is not a party to the JPMorgan Agreement and, at no time, did RRD or Moore Canada have any agreement or contract directly with CIG concerning the printing of MasterCard Statements or the printing or insertion of any of DGA's Inserts with those statements. At all material times, CIG was JPMorgan's and/or Sears' customer in connection with the insertion of DGA's Inserts, which were delivered to Moore Canada's plant at 6100 Vipond Drive,

Mississauga, Ontario ("Vipond Plant") by the party (or its agent) retained directly by DGA with respect to the printing of DGA's Inserts.

19. Moore Canada and RRD deny that they owe any duties to CIG, contractual, at common law or otherwise, with respect to the MasterCard Statements or the insertion of DGA's Inserts into the MasterCard Statements. In any event, Moore Canada further denies that there was any error, omission, neglect and/or fault in the insertion of DGA's Inserts into the MasterCard Statements and puts CIG to the strict proof thereof.

Paragraph 22 of CIG's Fourth Party Claim

20. With respect to paragraph 22 (a), (b), and (c) of CIG's Fourth Party Claim, RRD and Moore Canada plead that at all material times, DGA's Onserts and DGA's Inserts were inserted into Sears Catalogues and MasterCard Statements in accordance with RRD and/or Moore Canada's agreements with, and instructions from, Sears and JPMorgan, as the case may be. RRD and Moore Canada deny that they failed, refused and/or neglected to fulfill any contractual or other requirements. RRD and Moore Canada further deny that either had any contract, either oral or written, with CIG or DGA in respect of the insertion of DGA's Onserts and Inserts into Sears Catalogues and MasterCard Statements.

21. With respect to paragraph 22(d), (e), and (h), RRD and Moore Canada deny that there were any errors, omissions, neglect and/or fault in the insertion of DGA's Inserts or DGA's Onserts into MasterCard Statements or Sears Catalogues for which RRD or Moore Canada are liable to CIG. To the extent it is found that certain Sears Catalogues or MasterCard Statements did not receive a DGA Onsert or DGA Insert, such was not caused by RRD or Moore Canada's negligence but the result of agreement with and/or direction or instruction from Sears, DGA and/or JPMorgan and

was caused solely, or alternatively, contributed to, by the acts, omissions, fault and/or neglect of CIG, Sears, DGA and/or JPMorgan.

22. With respect to paragraph (i) and (j), RRD and Moore Canada deny that either had any obligation to communicate with CIG in respect of minimum caliper or other requirements relating to the insertion of third party advertising into Sears Catalogues or MasterCard Statements. At all material times, Sears and/or JPMorgan were aware of RRD and Moore Canada's specifications with respect to Inserts and Onserts and were obligated to communicate those specifications to their customers.

23. With respect to paragraph 22(k), (l), (m) and (n), RRD and Moore Canada deny that they owe any duty or obligation, whether contractual, at common law, or otherwise, that would require RRD and/or Moore Canada to ensure availability of machine based audits and provide audit reports or information to CIG with respect to the insertion of Inserts and Onserts and puts CIG to the strict proof thereof.

24. With respect to paragraph 22(f) and (g), Moore Canada pleads that it simply printed DGA's Inserts and Onserts in accordance with the specifications and Purchase Orders provided by DGA. CIG has never engaged or contracted with RRD or Moore Canada in connection with the printing of DGA's advertisements. As such, neither RRD nor Moore Canada owe any duties to CIG, contractual, at common law, or otherwise, with respect to the printing of DGA's Onserts or Inserts.

RRD and/or Moore Canada Not Liable to CIG

25. RRD and Moore Canada deny that either is liable to CIG in the manner alleged in CIG’s Fourth Party Claim, or in any other manner, and put CIG to the strict proof thereof.

26. RRD and Moore Canada specifically deny that, to the extent CIG is found liable to DGA in DGA’s counterclaim commenced in Court File No. CV-15-522235-00A1, the same is the fault of RRD and/or Moore Canada and that RRD and/or Moore Canada caused or contributed to any alleged damages suffered by DGA. RRD and/or Moore Canada have not been negligent and, at all material times, RRD and Moore Canada have acted in accordance their respective agreements with Sears and JPMorgan and pursuant to their respective directions, as well as relevant industry standards.

27. If it is found that certain Sears Catalogues or MasterCard Statements did not receive a DGA Onsert or a DGA Insert, RRD and Moore Canada plead that the same was caused solely, or alternatively contributed to, by the acts, omissions, fault and/or neglect of Sears, JP Morgan, CIG, and/or DGA. For example, from time to time, RRD and/or Moore Canada printed more Sears Catalogues and MasterCard Statements in a particular run than the number of Onserts or Inserts DGA had provided. Furthermore, Sears and JPMorgan were at all material times responsible for providing RRD and Moore Canada with instructions on the Onserts and Inserts to be included with Sears Catalogues or MasterCard Statements, as the case may be. To the extent Sears’ or JPMorgan’s instructions with respect to DGA’s Inserts or Onserts were not in accordance with Sears’ or JPMorgan’s agreements with CIG and/or DGA, such is the fault of Sears and/or JPMorgan, not RRD and Moore Canada. Moreover, at all material times, Sears and JPMorgan have been aware of RRD and Moore Canada’s Onsert and Insert Specifications and were

responsible for communicating those specifications to their customers and to advise them of the risk associated with delivery of non-conforming Onserts and Inserts. To the extent Sears and JPMorgan did not communicate that information to CIG and/or DGA, such is not the fault of RRD or Moore Canada.

28. RRD and Moore Canada plead and rely on the *Negligence Act*, R.S.O. 1990, c.N.1., as amended, and in particular, section 3.

DGA has Sustained No Damages

29. RRD and Moore Canada deny that CIG has sustained any damages or losses for which it is liable, and put CIG to the strict proof thereof.

30. In the alternative, if CIG has sustained any losses or damages for which RRD and/or Moore Canada is liable, which is expressly denied, RRD and Moore Canada plead that such damages or losses were caused or contributed to by CIG's own acts, omissions, fault or neglect.

31. In the further alternative, RRD and Moore Canada plead that the damages or losses allegedly sustained are excessive, exaggerated, remote, unavailable at law, unmitigated, and unconnected with any alleged act or omission on RRD and/or Moore Canada's part, and puts CIG to the strict proof thereof.

CROSSCLAIM

32. RRD and Moore Canada claim against Sears for the following:

- (a) Full contribution and indemnity in respect of any amounts that Moore Canada and/or RRD may be found to owe or that are otherwise determined to be payable by

Moore Canada or RRD to CIG in this Fourth Party Claim bearing Court File No. CV-15-522235-00B2 (“CIG’s Fourth Party Claim:”);

- (b) A declaration that the damages that are alleged to have been suffered to CIG in CIG’s Fourth Party Claim were caused or contributed to by the fault or neglect of Sears;
- (c) Pre-judgment and post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (d) Moore Canada’s costs of CIG’s Fourth Party Claim, including the crossclaim herein, on a substantial indemnity basis; and
- (e) Such further and other relief as this Honourable Court may deem just.

33. RRD and Moore Canada repeat and rely on the statements set out in the Fourth Party Defence and Crossclaim above, as well as RRD’s Third Party Defence in Sears’ Third Party Claim and RRD and Moore Canada’s Fourth Party Defence and Counterclaim in DGA’s Fourth Party Claim.

34. The Third Parties, DGA, counterclaimed against CIG for breach of contract and negligence in respect of CIG’s Third Party Claim. CIG issued this Fourth Party Claim against RRD, Moore Canada and Sears.

35. RRD and Moore Canada have denied any liability with respect to the allegations in CIG’s Fourth Party Claim. Notwithstanding, if it is found that RRD and/or Moore Canada is liable to CIG

for any claimed losses in the CIG Fourth Party Claim, RRD and Moore Canada plead that each is entitled to contribution and indemnity from Sears in respect of any such liability.

36. RRD and Moore Canada plead and rely on the *Negligence Act*, R.S.O. 1990, c. N.1, as amended, and in particular, sections 1 and 2, for the claims above.

37. RRD and Moore Canada request that this crossclaim be heard together with CIG's Fourth Party Claim or one after the other.

July 8, 2016

BLAKE, CASSELS & GRAYDON LLP
Barristers & Solicitors
199 Bay Street
Suite 4000, Commerce Court West
Toronto ON M5L 1A9

Rahat Godil LSUC #54577F
Tel: 416-863-4008
Rahat.godil@blakes.com

Kaley Pulfer LSUC #58413T
Tel: 416-863-2756
kaley.pulfer@blakes.com
Fax: 416.863.2653

Lawyers for the Fourth Parties, R.R. Donnelley
& Sons Company and Moore Canada
Corporation

TO: **FOGLER, RUBINOFF LLP**
Lawyers
77 King Street West, Suite 3000
TD Centre North Tower
Toronto, Ontario M5K 1G8

Ian P. Katchin LSUC #53559V
Tel: 416.864.7613
Fax: 416.941.8852

Lawyers for the Defendant/
Plaintiff by Fourth Party

AND TO: **BRANNAN MEIKELJOHN**
Barristers
Rosedale Square, 1055 Yonge Street
Suite 200, Toronto, Ontario M4W 2L2

Gordon A. Meiklejohn (21042Q)

Tel: 416.926.3797
Fax: 416.926.3712

Lawyers for the Third Parties, DGA North American
Inc. and DGA Fulfillment Services Inc.

AND TO: **JASON W. THOMAS**
Thomas Law Professional Corporation
10 King Street East, Suite 1400
Toronto ON M3K2A7

Jason W. Thomas LSUC #55394N
Tel: 647-347-5450
Fax: 647-723-7431

Lawyer for the plaintiff Sears Canada Inc.

SEARS CANADA INC - and - -CONSUMER INTELLIGENCE INC. - and - DGA NORTH AMERICAN INC.et al. - and - R.R. DONNELLEY & SONS COMPANY, et al.

Plaintiff

Defendant

Third Parties

Fourth Party

Court File No. CV-15-522235-00B2

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**FOURTH PARTY DEFENCE AND CROSSCLAIM OF
R.R. DONNELLEY & SONS COMPANY AND MOORE
CANADA CORPORATION**

BLAKE, CASSELS & GRAYDON LLP

Barristers & Solicitors
199 Bay Street

Suite 4000, Commerce Court West
Toronto ON M5L 1A9

Rahat Godil LSUC #54577F

Tel: 416-863-4008
rahat.godil@blakes.com

Kaley Pulfer LSUC #58413T

Tel: 416-863-2756
kaley.pulfer@blakes.com
Fax: 416.863.2653

Lawyers for the Fourth Parties, R.R. Donnelley & Sons
Company and Moore Canada Corporation (doing business
as RR Donnelley)

S

This is Exhibit "S" referred to in the Affidavit of
Monica Singh sworn before me on March 27, 2018.


A COMMISSIONER FOR OATHS IN AND FOR ONTARIO

*Marilyn Dianne Godfrey, a Commissioner, etc.
Province of Ontario, for Blake, Cassels & Graydon LLP,
Barristers and Solicitors.
Expires March 5, 2021.*

SINGH, MONICA

From: Jayson Thomas <jthomas@toronto-law.com>
Sent: Tuesday, June 27, 2017 7:09 PM
To: Katchin, Ian P.; GODIL, RAHAT; Gordon Meiklejohn
Cc: DIMATTEO, CHRISTOPHER; Pham, Michelle; DOUGAN, LAURA
Subject: Re: CIG ats Sears

All,

Whatever clarification is needed, I trust that it is sufficiently clear that I no longer need to be involved in your discussion (which is not to say that it hasn't been a pleasure).

Best,

Jayson

Jayson W. Thomas
Tel. 647.347.5450
Fax. 647.723.7431
jthomas@toronto-law.com

Thomas Law P.C.
77 King Street West
Suite 3000, P.O. Box 95
TD Centre North Tower
Toronto, ON M5K 1K7
www.toronto-law.com

On 2017-06-27, 6:47 PM, "Katchin, Ian P." <ikatchin@foglers.com> wrote:

>Counsel,

>

>I think that we can all agree that further clarification is needed on
>the reach of the Initial Order on the various actions that underlie the
>above-noted matter.

>

>In the interim, a call is necessary. I am available at 2:00 p.m.
>tomorrow. I am in Milton on a Summary Judgment Motion on Thursday and
>Friday and, hence, not available.

>

>Please confirm your availability and I will circulate a call-in number.

>

>Regards,

>
>lan
>
>-----Original Message-----
>From: GODIL, RAHAT [mailto:RAHAT.GODIL@blakes.com]
>Sent: Tuesday, June 27, 2017 6:23 PM
>To: Gordon Meiklejohn <gam@bmbarristers.com>; Jayson Thomas
><jthomas@toronto-law.com>; Katchin, Ian P. <ikatchin@foglers.com>
>Cc: DIMATTEO, CHRISTOPHER <CHRISTOPHER.DIMATTEO@blakes.com>; Pham,
>Michelle <mpham@foglers.com>; DOUGAN, LAURA <LAURA.DOUGAN@blakes.com>
>Subject: RE: CIG ats Sears

>
>Counsel,
>
>We disagree with your interpretation of Justice Hainey's order and
>don't see how this matter can proceed without Sears. While our client
>would like to move forward, in light of all the defences and
>counterclaims against Sears which the parties have, we don't see how
>this matter can effectively and efficiently proceed without Sears. As suggested by Mr.
>Katchin, I think we should have a call to discuss next steps. Perhaps
>the stay will not be extended past July 22, 2017 and we can conduct the
>discoveries in September but we have concerns about portions of the
>actions proceeding while others are stayed, particularly given the
>nature of the claims at issue and the wording of the order. We are
>happy to discuss further.

>
>Rahat
>
>Rahat Godil
>Partner
>rahat.godil@blakes.com
>Dir: 416 863 4009

>
>
>-----Original Message-----
>From: Gordon Meiklejohn [mailto:gam@bmbarristers.com]
>Sent: Tuesday, June 27, 2017 5:00 PM
>To: Jayson Thomas; GODIL, RAHAT; Katchin, Ian P.
>Cc: DIMATTEO, CHRISTOPHER; Pham, Michelle; DOUGAN, LAURA
>Subject: RE: CIG ats Sears

>
>Jayson as I wrote earlier Justice Hainey's order only stays the claims
>against Sears. There is no language in his order that stays this
>entire action as is being suggested.
>
>Should the Monitor chose to proceed with Sear's claim it should do so
>in a timely fashion.
>
>While I doubt very much that the Monitor is interested in prosecuting
>this claim, nevertheless, I ask if you have not already done so, that
>you seek instructions respecting their intention.
>

>There is no reason not to proceed with the discoveries as arranged
>(save for Sears).

>
>-----Original Message-----

>From: Jayson Thomas [mailto:jthomas@toronto-law.com]
>Sent: Tuesday, June 27, 2017 4:39 PM
>To: GODIL, RAHAT <RAHAT.GODIL@blakes.com>; Katchin, Ian P.
><ikatchin@foglers.com>; Gordon Meiklejohn <gam@bmbarristers.com>
>Cc: DIMATTEO, CHRISTOPHER <CHRISTOPHER.DIMATTEO@blakes.com>; Pham,
>Michelle <mpham@foglers.com>; DOUGAN, LAURA <LAURA.DOUGAN@blakes.com>
>Subject: Re: CIG ats Sears

>
>Counsel,

>
>Regardless of how integral Sears may be, the action against it is
>stayed so its involvement, at least as a party, is barred by Justice
>Hailey's order pending a further order beyond the initial period. I am
>out of the office from tomorrow through to July 9. That said, I have
>no instructions to take any further steps in this action in light of
>the Initial Order.
>If that changes, I will advise you.

>
>Best,

>
>Jayson W. Thomas
>Tel. 647.347.5450
>Fax. 647.723.7431
>jthomas@toronto-law.com

>
>Thomas Law P.C.
>77 King Street West
>Suite 3000, P.O. Box 95
>TD Centre North Tower
>Toronto, ON M5K 1K7
>www.toronto-law.com

>
>
>
>
>
>
>
>

>On 2017-06-27, 4:35 PM, "GODIL, RAHAT" <RAHAT.GODIL@blakes.com> wrote:

>
>>Counsel,

>>
>>We are agreeable to having a call to discuss this and how to deal with
>>discoveries in this matter. The Initial Order appears to stay this
>>entire proceeding (including the counterclaims and the various third
>>party/fourth party claims). Moreover, given the complexity of this
>>litigation and the fact that Sears is integral to the claims and
>>defences of all of the parties, Sears' involvement is necessary. Can

>>we all get on a call this week to discuss how to move forward? We are
>>available tomorrow between 11am-3pm and generally available on
>>Thursday. Please let us know what works for others.
>>
>>Thanks,
>>Rahat
>>
>> Rahat Godil
>>Partner
>>rahat.godil@blakes.com
>>Dir: 416 863 4009
>>
>>
>>
>>
>>Blake, Cassels & Graydon LLP
>>199 Bay Street, Suite 4000, Toronto ON M5L 1A9
>>Tel: 416-863-2400 Fax: 416-863-2653
>><http://www.blakes.com> | <http://twitter.com/BlakesLaw> |
>><http://www.blakes.com/English/Resources/Bulletins/Pages/unsubscribe.as>
>>p
>>x
>>
>>Blake, Cassels & Graydon LLP | Barristers & Solicitors | Patent &
>>Trade-mark Agents This email communication is CONFIDENTIAL AND LEGALLY
>>PRIVILEGED. If you are not the intended recipient, please notify me at
>>the telephone number shown above or by return email and delete this
>>communication and any copy immediately. Thank you.
>>
>>L'information paraissant dans ce message électronique est CONFIDENTIELLE.
>>Si ce message vous est parvenu par erreur, veuillez immédiatement m'en
>>aviser par téléphone ou par courriel et en détruire toute copie. Merci.
>>
>>-----Original Message-----
>>From: Katchin, Ian P. [mailto:ikatchin@foglers.com]
>>Sent: Tuesday, June 27, 2017 10:04 AM
>>To: 'Gordon Meiklejohn'; Jayson Thomas; GODIL, RAHAT
>>Cc: DIMATTEO, CHRISTOPHER; Pham, Michelle
>>Subject: RE: CIG ats Sears
>>
>>Counsel,
>>
>>We should likely have a call to discuss how all the actions proceed
>>given the Initial Order. I foresee concerns that certain actions may
>>proceed, while all other actions against Sears are stayed. Most of
>>the parties have claims against Sears, either on their own or seeking
>>contribution and indemnity (as part of a defence). I do not believe
>>that a Court will be too keen to preclude certain parties from
>>advancing their pleaded defences and counterclaims.
>>
>>Regards,
>>

>>lan P. Katchin
>>T 416.864.7613
>>
>>
>>-----Original Message-----
>>From: Gordon Meiklejohn [mailto:gam@bmbarristers.com]
>>Sent: Tuesday, June 27, 2017 8:45 AM
>>To: Jayson Thomas <jthomas@toronto-law.com>; Katchin, Ian P.
>><ikatchin@foglers.com>; GODIL, RAHAT <RAHAT.GODIL@blakes.com>
>>Cc: DIMATTEO, CHRISTOPHER <CHRISTOPHER.DIMATTEO@blakes.com>; Pham,
>>Michelle <mpham@foglers.com>
>>Subject: RE: CIG ats Sears
>>
>>The CCAA order will stay the action as against Sears but my client has
>>an action as against the other defendants which we wish to proceed
>>with and I suggest we maintain the September dates. Between now and
>>then I suggest you obtain instructions from the Monitor respecting
>>proceeding with its claim against CIG. .
>>
>>Gordon A. Meiklejohn
>>BRANNAN MEIKLEJOHN
>>Tel. 416.926.3797
>>
>>
>>-----Original Message-----
>>From: Jayson Thomas [mailto:jthomas@toronto-law.com]
>>Sent: June-24-17 7:43 AM
>>To: Katchin, Ian P.; Gordon Meiklejohn; GODIL, RAHAT
>>Cc: DIMATTEO, CHRISTOPHER; Pham, Michelle
>>Subject: Re: CIG ats Sears
>>
>>Dear Counsel,
>>
>>As you are now likely aware, an initial order was issued this week
>>granting my client certain protections under the CCAA, including a
>>stay of any proceedings against it. I have yet to hear from the
>>receiver as to its intentions with respect to Sears' action, which led
>>to the counterclaim and various third/fourth party claims that followed.
>>However, in light of the stay, I would suggest that the examination
>>dates be vacated. I will follow up with you once I have further
>>information.
>>
>>Best,
>>
>>Jayson W. Thomas
>>Tel. 647.347.5450
>>Fax. 647.723.7431
>>jthomas@toronto-law.com
>>
>>Thomas Law P.C.
>>77 King Street West
>>Suite 3000, P.O. Box 95

T

This is Exhibit "T" referred to in the Affidavit of
Monica Singh sworn before me on March 27, 2018.



A COMMISSIONER FOR OATHS IN AND FOR ONTARIO

Marilyn Dianne Godfrey, a Commissioner, etc.
Province of Ontario, for Blake, Cassels & Graydon LLP,
Barristers and Solicitors.
Expires March 5, 2021.

SINGH, MONICA

From: Katchin, Ian P. <ikatchin@foglers.com>
Sent: Thursday, October 05, 2017 10:48 PM
To: Gordon Meiklejohn
Cc: GODIL, RAHAT; Jayson Thomas; DOUGAN, LAURA; Pham, Michelle; Nordence Dinis
Subject: Re: Sears ats CIG Motion re Discovery Plan

Gord,

That looks fine to me.

Ian

Sent from my iPhone

> On Oct 5, 2017, at 15:47, Gordon Meiklejohn <gam@bmbarristers.com> wrote:

>

> How about his one.

>

> -----Original Message-----

> From: GODIL, RAHAT [mailto:RAHAT.GODIL@blakes.com]

> Sent: Thursday, October 5, 2017 3:43 PM

> To: Gordon Meiklejohn <gam@bmbarristers.com>; 'Katchin, Ian P.'

> <ikatchin@foglers.com>; 'Jayson Thomas' <jthomas@toronto-law.com>

> Cc: DOUGAN, LAURA <LAURA.DOUGAN@blakes.com>; Pham, Michelle

> <mpham@foglers.com>; Nordence Dinis <ndinis@bmbarristers.com>

> Subject: RE: Sears ats CIG Motion re Discovery Plan

>

> I would suggest changing the last part to "cross motions for relief to be determined, including stay of the third and fourth party claims and/or compelling Sears participation in the proceeding"

>

> Rahat Godil

> Partner

> rahat.godil@blakes.com

> Dir: 416 863 4009

>

>

> -----Original Message-----

> From: Gordon Meiklejohn [mailto:gam@bmbarristers.com]

> Sent: Thursday, October 05, 2017 3:38 PM

> To: 'Katchin, Ian P.'; GODIL, RAHAT; 'Jayson Thomas'

> Cc: DOUGAN, LAURA; Pham, Michelle; Nordence Dinis

> Subject: RE: Sears ats CIG Motion re Discovery Plan

>

> Attached is a revised Motion Request Form.

>

> Please advise if you have any further changes you wish me to make to it.

>

>

> Gordon A. Meiklejohn

>

> Rosedale Square, 1055 Yonge Street, Suite 200 Toronto, Ontario M4W 2L2

> Tel. 416.926.3797 Ext 225; Fax 416.926.3712

> NOTE: This e-mail message is intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you have received this message in error, or are not the named recipient(s), please immediately notify the sender and delete this e-mail message.

>

>

>

>

> -----Original Message-----

> From: Katchin, Ian P. [mailto:ikatchin@foglers.com]

> Sent: Thursday, October 5, 2017 3:32 PM

> To: Gordon Meiklejohn <gam@bmbarristers.com>; 'GODIL, RAHAT'

> <RAHAT.GODIL@blakes.com>; 'Jayson Thomas' <jthomas@toronto-law.com>

> Cc: DOUGAN, LAURA <LAURA.DOUGAN@blakes.com>; Pham, Michelle

> <mpham@foglers.com>; Nordence Dinis <ndinis@bmbarristers.com>

> Subject: RE: Sears ats CIG Motion re Discovery Plan

>

> Gord,

>

> Simply put in that there may be cross-motions for relief to be determined, including XXX.

>

> Thanks.

>

> Ian

>

> -----Original Message-----

> From: Gordon Meiklejohn [mailto:gam@bmbarristers.com]

> Sent: Thursday, October 05, 2017 3:29 PM

> To: 'GODIL, RAHAT' <RAHAT.GODIL@blakes.com>; Katchin, Ian P.

> <ikatchin@foglers.com>; 'Jayson Thomas' <jthomas@toronto-law.com>

> Cc: DOUGAN, LAURA <LAURA.DOUGAN@blakes.com>; Pham, Michelle

> <mpham@foglers.com>; Nordence Dinis <ndinis@bmbarristers.com>

> Subject: RE: Sears ats CIG Motion re Discovery Plan

>

> A review of the history of the matter will confirm my description was accurate.

>

> I will include a reference to a cross motion.

>

> I would have thought it would have been to compel Sears to participate but if you want to make it for a stay so be it.

>

>

> Gordon A. Meiklejohn

>

> Rosedale Square, 1055 Yonge Street, Suite 200 Toronto, Ontario M4W 2L2

> Tel. 416.926.3797 Ext 225; Fax 416.926.3712

> NOTE: This e-mail message is intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you have received this message in error, or are not the named recipient(s), please immediately notify the sender and delete this e-mail message.

>

>

>

> -----Original Message-----

> From: GODIL, RAHAT [mailto:RAHAT.GODIL@blakes.com]

> Sent: Thursday, October 5, 2017 3:24 PM

> To: Gordon Meiklejohn <gam@bmbarristers.com>; 'Katchin, Ian P.'

> <ikatchin@foglers.com>; 'Jayson Thomas' <jthomas@toronto-law.com>

> Cc: DOUGAN, LAURA <LAURA.DOUGAN@blakes.com>; Pham, Michelle

> <mpham@foglers.com>; Nordence Dinis <ndinis@bmbarristers.com>

> Subject: RE: Sears ats CIG Motion re Discovery Plan

>

> Gord,

>

> We object to your characterization of "collective resistance to dealing with this action". There is no basis for this. We have a difference of opinion but have been responsive to your concerns and were agreeable to proceeding outside of Commercial List because that is where you previously indicated you wanted to bring your motion. We also agreed to the new date when you proposed to move to the Commercial List. There is therefore no basis for your comments.

>

> We think we can possibly deal with all of this in 1.5 hours, assuming we all agree that half hour is sufficient for each party's argument and there are no major surprises in anyone's motion materials. We note that to date we have not seen your materials or even your notice of motion.

>

> We ask that you add the following sentence in section D of the Request before sending to court: It is expected that there will be a cross-motion by the respondents to stay the third and fourth party claims to the extent they are not already stayed.

>

> Thanks

> Rahat

>

> Rahat Godil

> Partner

> rahat.godil@blakes.com

> Dir: 416 863 4009

>

>

> -----Original Message-----

> From: Gordon Meiklejohn [mailto:gam@bmbarristers.com]

> Sent: Thursday, October 05, 2017 3:05 PM

> To: 'Katchin, Ian P.'; GODIL, RAHAT; 'Jayson Thomas'

> Cc: DOUGAN, LAURA; Pham, Michelle; Nordence Dinis

> Subject: RE: Sears ats CIG Motion re Discovery Plan

>

> I asked for 2 , Joanne Nicoara, the Commercial List Trial Coordinator indicated we can only have 1 hour that day before Hailey J. I called her just now and got 1.5 hours.

>

> I suggested months ago that one of you take the necessary steps to arrange for an attendance in the Commercial List. Nobody did which fits with your collective resistance to dealing with this action.

>

> In my view there is no issue that our matter proceed since Justice Hailey's stay only applies to Sears. If your response is to ask him to compel Sears participation in our action, in my view 1.5 hours is ample time for Justice Hailey to deal with that issue.

>

> That's fine if you want to specify the delivery of your material by November 9 and factums on November 13 and 16th.
 >
 > Depending upon what is in the motion records I may not file a factum but simply deliver some authorities.
 >
 > The form I will file is attached. If you have any comments please provide them to me today.

> Joanne S. Nicoara
 > Commercial/Estates Trial Coordinator

> -----Original Message-----

> From: Katchin, Ian P. [mailto:ikatchin@foglers.com]
 > Sent: Thursday, October 5, 2017 2:46 PM
 > To: 'GODIL, RAHAT' <RAHAT.GODIL@blakes.com>; Gordon Meiklejohn
 > <gam@bmbarristers.com>; 'Jayson Thomas' <jthomas@toronto-law.com>
 > Cc: DOUGAN, LAURA <LAURA.DOUGAN@blakes.com>; Pham, Michelle
 > <mpham@foglers.com>; Nordence Dinis <ndinis@bmbarristers.com>
 > Subject: RE: Sears ats CIG Motion re Discovery Plan

> Gord,

> I agree with Rahat. 2 hours is what I believe we discussed.

> Also, I am out of the country from Oct. 22nd to the 29th. There's no way I can get materials to you by Nov. 1st. I can possibly do the 9th or 10th.

> What about moving factum by the 13th and responding facta by the 16th? That is in line with the Rules.

> Ian

> -----Original Message-----

> From: GODIL, RAHAT [mailto:RAHAT.GODIL@blakes.com]
 > Sent: Thursday, October 05, 2017 2:42 PM
 > To: Gordon Meiklejohn <gam@bmbarristers.com>; 'Jayson Thomas'
 > <jthomas@toronto-law.com>; Katchin, Ian P. <ikatchin@foglers.com>
 > Cc: DOUGAN, LAURA <LAURA.DOUGAN@blakes.com>; Pham, Michelle
 > <mpham@foglers.com>; Nordence Dinis <ndinis@bmbarristers.com>
 > Subject: RE: Sears ats CIG Motion re Discovery Plan

> Counsel,

> We had previously discussed 2 hours for the motions. I am not sure 1 hour will be sufficient to deal with all issues. While we may not need full 2 hours, I think to be safe we should be booking at least 2 hours. Regarding factums, I would have thought we should receive yours first and then we should respond. Are you not planning to file a factum?

> We are considering the dates you have proposed and would appreciate if you please send us the form you intend to send to the court before sending it so that we can all review and sign off on it before it goes to the court.

> Thanks,

> Rahat

>
 > Rahat Godil
 > Partner
 > rahat.godil@blakes.com
 > Dir: 416 863 4009
 >
 >
 >
 >
 > Blake, Cassels & Graydon LLP
 > 199 Bay Street, Suite 4000, Toronto ON M5L 1A9
 > Tel: 416-863-2400 Fax: 416-863-2653
 > <http://www.blakes.com> | <http://twitter.com/BlakesLaw> |
 > <http://www.blakes.com/English/Resources/Bulletins/Pages/unsubscribe.as>

> px
 >
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>
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>
 > -----Original Message-----
 > From: Gordon Meiklejohn [mailto:gam@bmbarristers.com]
 > Sent: Thursday, October 05, 2017 2:35 PM
 > To: 'Jayson Thomas'; GODIL, RAHAT; 'Katchin, Ian P.'
 > Cc: DOUGAN, LAURA; 'Pham, Michelle'; Nordence Dinis
 > Subject: RE: Sears ats CIG Motion re Discovery Plan

>
 > Counsel you will receive shortly from our law clerk my request form we are sending to the Commercial Court office requesting the one hour motion before Hailey J. on November 22.

>
 > I propose that I deliver to you our motion material by October 18 and you then deliver your responding material by November 1 and anyone wishing to deliver a factum do so by November 14.

>
 >
 > Gordon A. Meiklejohn
 >
 > Rosedale Square, 1055 Yonge Street, Suite 200 Toronto, Ontario M4W 2L2
 > Tel. 416.926.3797 Ext 225; Fax 416.926.3712
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>
 >
 >
 >
 > -----Original Message-----
 > From: Jayson Thomas [mailto:jthomas@toronto-law.com]
 > Sent: Wednesday, September 27, 2017 11:19 AM
 > To: Gordon Meiklejohn <gam@bmbarristers.com>; 'GODIL, RAHAT'

> <RAHAT.GODIL@blakes.com>; 'Katchin, Ian P.' <ikatchin@foglers.com>
> Cc: DOUGAN, LAURA <LAURA.DOUGAN@blakes.com>; 'Pham, Michelle'
> <mpham@foglers.com>; Nordence Dinis <ndinis@bmbarristers.com>
> Subject: Re: Sears ats CIG Motion re Discovery Plan
>
> I've forwarded your emails to Sears' CCAA counsel at Oslers. They will likely be taking the lead, but I should be in a position to confirm that shortly.
>
> Jayson W. Thomas
> Tel. 647.347.5450
> Fax. 647.723.7431
> jthomas@toronto-law.com
>
> Thomas Law P.C.
> 77 King Street West
> Suite 3000, P.O. Box 95
> TD Centre North Tower
> Toronto, ON M5K 1K7
> www.toronto-law.com
>
>
>
>
>
>
>
>
>> On 2017-09-26, 7:54 PM, "Gordon Meiklejohn" <gam@bmbarristers.com> wrote:
>>
>> Yes. You indicated you had issue you wanted dealt with on a cross
>> motion and you had indicated earlier you thought it should be in the
>> Commercial Court so I ask about his availability. This is when he
>> can do it. Since it is his order we are dealing with it makes sense
>> to go before him if he is available. If you and Ian can attend then
>> I will have to arrange to get Sears counsel there, either Thomas or its CCAA counsel.
>>
>> -----Original Message-----
>> From: GODIL, RAHAT [mailto:RAHAT.GODIL@blakes.com]
>> Sent: Tuesday, September 26, 2017 1:19 PM
>> To: Gordon Meiklejohn <gam@bmbarristers.com>; 'Katchin, Ian P.'
>> <ikatchin@foglers.com>
>> Cc: 'jthomas@toronto-law.com' <jthomas@toronto-law.com>; DOUGAN,
>> LAURA <LAURA.DOUGAN@blakes.com>; 'Pham, Michelle'
>> <mpham@foglers.com>; Nordence Dinis <ndinis@bmbarristers.com>
>> Subject: RE: Sears ats CIG Motion re Discovery Plan
>>
>> Gord, just to clarify, are you proposing moving the motions currently
>> planned for Nov 27 to Nov 22 before Justice Hailey?
>>
>> Rahat Godil
>> Partner
>> rahat.godil@blakes.com
>> Dir: 416 863 4009

>>

>>

>> -----Original Message-----

>> From: Gordon Meiklejohn [mailto:gam@bmbarristers.com]

>> Sent: Tuesday, September 26, 2017 10:05 AM

>> To: GODIL, RAHAT; 'Katchin, Ian P.'

>> Cc: 'jthomas@toronto-law.com'; DOUGAN, LAURA; 'Pham, Michelle';

>> Nordence Dinis

>> Subject: Re: Sears ats CIG Motion re Discovery Plan

>>

>> I have spoken to the trial co ordinator of the commercial list and we

>> can attend before Justice Hainey on November 22 to deal with the

>> issue of the application of his stay. Order to our matter. Let me

>> know if you are available.

>>

>> Sent from my BlackBerry 10 smartphone on the Rogers network.

>> Original Message

>> From: Gordon Meiklejohn

>> Sent: Monday, September 18, 2017 11:11 AM

>> To: 'GODIL, RAHAT'; 'Katchin, Ian P.'

>> Cc: 'jthomas@toronto-law.com'; DOUGAN, LAURA; 'Pham, Michelle';

>> Nordence Dinis

>> Subject: RE: Sears ats CIG Motion re Discovery Plan

>>

>>

>> I suggest that the outcome of my motion will address your issue that

>> this action cannot proceed in the face of the CCAA matter.

>>

>> I will provide our material shortly.

>>

>>

>> Gordon A. Meiklejohn

>>

>> Rosedale Square, 1055 Yonge Street, Suite 200 Toronto, Ontario M4W

>> 2L2 Tel. 416.926.3797 Ext 225; Fax 416.926.3712

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>>

>>

>>

>> -----Original Message-----

>> From: GODIL, RAHAT [mailto:RAHAT.GODIL@blakes.com]

>> Sent: Monday, September 18, 2017 10:57 AM

>> To: Gordon Meiklejohn <gam@bmbarristers.com>; 'Katchin, Ian P.'

>> <ikatchin@foglers.com>

>> Cc: 'jthomas@toronto-law.com' <jthomas@toronto-law.com>; DOUGAN,

>> LAURA <LAURA.DOUGAN@blakes.com>; 'Pham, Michelle'

>> <mpham@foglers.com>; Nordence Dinis <ndinis@bmbarristers.com>

>> Subject: RE: Sears ats CIG Motion re Discovery Plan

>>
>> Gord,
>>
>> Thanks for letting us know about the motion date. It would be a waste
>> of everyone's time if parties had to come back on two different dates
>> though. Since the issues are intertwined and will involve similar
>> arguments, both motions should be heard together. If everyone agrees
>> that all issues can be dealt with in 2 hours, then that's fine. Based
>> on our discussions to date, we expect that 2 hours should suffice.
>> However, in the event that we think additional time is necessary once
>> we receive your motion materials or you think 2 hours is not
>> sufficient to deal with all issues, the parties will need to request
>> additional time from the court for the same day.
>>
>> Thanks,
>> Rahat
>>
>> Rahat Godil
>> Partner
>> rahat.godil@blakes.com
>> Dir: 416 863 4009
>>
>> -----Original Message-----
>> From: Gordon Meiklejohn [mailto:gam@bmbarristers.com]
>> Sent: Friday, September 15, 2017 3:42 PM
>> To: GODIL, RAHAT; 'Katchin, Ian P.'
>> Cc: 'jthomas@toronto-law.com'; DOUGAN, LAURA; 'Pham, Michelle';
>> Nordence Dinis
>> Subject: RE: Sears ats CIG Motion re Discovery Plan
>>
>> I have booked a Judge's Motion for Monday November 27 for two hours.
>> I do not anticipate being more than 30 minutes. I do not wish to
>> request
>> 3 hours since that will require an attendance at CPC court.
>>
>> My material will follow shortly but it basically will consist of the
>> communications settling the terms of the Discovery Plan and the
>> communications wherein the defendants refuse to adhere to the plan
>> due to the Sears CCAA.
>>
>> If you require additional time for whatever motion you wish to bring
>> then I suggest you secure another date. I am told Judges are
>> available almost any time after November 22 for an hour or two.
>>
>> Gordon A. Meiklejohn
>>
>> Rosedale Square, 1055 Yonge Street, Suite 200 Toronto, Ontario M4W
>> 2L2 Tel. 416.926.3797 Ext 225; Fax 416.926.3712
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>>

>>

>>

>> -----Original Message-----

>> From: GODIL, RAHAT [mailto:RAHAT.GODIL@blakes.com]

>> Sent: Thursday, September 7, 2017 10:38 AM

>> To: Gordon Meiklejohn <gam@bmbarristers.com>; 'Katchin, Ian P.'

>> <ikatchin@foglers.com>

>> Cc: 'jthomas@toronto-law.com' <jthomas@toronto-law.com>; DOUGAN,

>> LAURA <LAURA.DOUGAN@blakes.com>; 'Pham, Michelle'

>> <mpham@foglers.com>; Nordence Dinis <ndinis@bmbarristers.com>

>> Subject: RE: Sears ats CIG Motion re Discovery Plan

>>

>> Counsel,

>>

>> Nov 24, 27, 28 and 29 are good for us. How much time are you thinking

>> of booking? We should discuss timing for the hearing and allow time

>> for any cross-motions. It would also be useful to agree on a

>> timetable for delivery of motion materials. Please include us on your

>> communications with the court.

>>

>> Thanks,

>> Rahat

>>

>> Rahat Godil

>> Partner

>> rahat.godil@blakes.com

>> Dir: 416 863 4009

>>

>>

>> -----Original Message-----

>> From: Gordon Meiklejohn [mailto:gam@bmbarristers.com]

>> Sent: Wednesday, September 06, 2017 7:08 PM

>> To: 'Katchin, Ian P.'; GODIL, RAHAT

>> Cc: 'jthomas@toronto-law.com'; DOUGAN, LAURA; 'Pham, Michelle';

>> Nordence Dinis

>> Subject: RE: Sears ats CIG Motion re Discovery Plan

>>

>> Counsel I attempted to get a motion date for October 11 to 12 but no luck.

>>

>> Only date I can get that I can do in October is the 4th. Anyone

>> available then?

>>

>> If not can you provide me with your November dates after the 20th

>> since I have a trial during the week of the 13th.

>>

>>

>> Gordon A. Meiklejohn

>>

>> Rosedale Square, 1055 Yonge Street, Suite 200 Toronto, Ontario M4W

>> 2L2 Tel. 416.926.3797 Ext 225; Fax 416.926.3712

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>>

>>

>>

>> -----Original Message-----

>> From: Gordon Meiklejohn

>> Sent: Thursday, August 24, 2017 1:00 PM

>> To: 'Katchin, Ian P.' <ikatchin@foglers.com>; 'GODIL, RAHAT'

>> <RAHAT.GODIL@blakes.com>

>> Cc: jthomas@toronto-law.com; DOUGAN, LAURA <LAURA.DOUGAN@blakes.com>;

>> Pham, Michelle <mpham@foglers.com>; Nordence Dinis

>> <ndinis@bmbarristers.com>

>> Subject: RE: Sears ats CIG Motion re Discovery Plan

>>

>> Thanks. Once I hear from Ms. Godil I will see what date we can get.

>>

>> -----Original Message-----

>> From: Katchin, Ian P. [mailto:ikatchin@foglers.com]

>> Sent: Thursday, August 24, 2017 12:59 PM

>> To: 'GODIL, RAHAT' <RAHAT.GODIL@blakes.com>; Gordon Meiklejohn

>> <gam@bmbarristers.com>

>> Cc: jthomas@toronto-law.com; DOUGAN, LAURA <LAURA.DOUGAN@blakes.com>;

>> Pham, Michelle <mpham@foglers.com>; Nordence Dinis

>> <ndinis@bmbarristers.com>

>> Subject: RE: Sears ats CIG Motion re Discovery Plan

>>

>> Counsel,

>>

>> I prefer the 10th, 11th or 12th. I have a trial starting on the 16th

>> for

>> 2 weeks.

>>

>> Regards,

>>

>> Ian P. Katchin

>> T 416.864.7613

>>

>>

>> -----Original Message-----

>> From: GODIL, RAHAT [mailto:RAHAT.GODIL@blakes.com]

>> Sent: Thursday, August 24, 2017 12:57 PM

>> To: Gordon Meiklejohn <gam@bmbarristers.com>; Katchin, Ian P.

>> <ikatchin@foglers.com>

>> Cc: jthomas@toronto-law.com; DOUGAN, LAURA <LAURA.DOUGAN@blakes.com>;

>> Pham, Michelle <mpham@foglers.com>; Nordence Dinis

>> <ndinis@bmbarristers.com>

>> Subject: RE: Sears ats CIG Motion re Discovery Plan

>>

>> Sorry, just seeing this now after I responded to the other email.
>> Will get back to you on these dates shortly.
>>
>> Rahat Godil
>> Partner
>> rahat.godil@blakes.com
>> Dir: 416 863 4009
>>
>>
>> -----Original Message-----
>> From: Gordon Meiklejohn [mailto:gam@bmbarristers.com]
>> Sent: Thursday, August 24, 2017 12:51 PM
>> To: 'Katchin, Ian P.'; GODIL, RAHAT
>> Cc: jthomas@toronto-law.com; DOUGAN, LAURA; Pham, Michelle; Nordence
>> Dinis
>> Subject: RE: Sears ats CIG Motion re Discovery Plan
>>
>> Sorry wrong again. Upon closer look I am to be there for both days,
>> the 25th from 7 am to 11 am and on the 26th for the day.
>>
>> The event is at my golf club, St. George's out in the west end.
>>
>> So, can I get dates from everyone as to their availability on either
>> of October 10, 11, 12 or 13 ?
>>
>> Thanks. Sorry for the miscommunication respecting dates.
>>
>> GAM
>>
>> -----Original Message-----
>> From: Katchin, Ian P. [mailto:ikatchin@foglers.com]
>> Sent: Thursday, August 24, 2017 12:40 PM
>> To: Gordon Meiklejohn <gam@bmbarristers.com>; 'GODIL, RAHAT'
>> <RAHAT.GODIL@blakes.com>
>> Cc: jthomas@toronto-law.com; DOUGAN, LAURA <LAURA.DOUGAN@blakes.com>;
>> Pham, Michelle <mpham@foglers.com>
>> Subject: RE: Sears ats CIG Motion re Discovery Plan
>>
>> Gord,
>>
>> Most importantly - which event? Those games are for a great cause.
>>
>> The 25th works for me.
>>
>> Regards,
>>
>> Ian
>>
>> Ian P. Katchin
>> T 416.864.7613
>>
>>

>> -----Original Message-----

>> From: Gordon Meiklejohn [mailto:gam@bmbarristers.com]

>> Sent: Thursday, August 24, 2017 12:28 PM

>> To: 'GODIL, RAHAT' <RAHAT.GODIL@blakes.com>; Katchin, Ian P.

>> <ikatchin@foglers.com>

>> Cc: jthomas@toronto-law.com; DOUGAN, LAURA <LAURA.DOUGAN@blakes.com>;

>> Pham, Michelle <mpham@foglers.com>

>> Subject: RE: Sears ats CIG Motion re Discovery Plan

>>

>> Sorry folks but I just learned the event for the Invictus Games that

>> I volunteered for is on the 26th. I thought it was the 25th.

>>

>> I can get us before a general division judge on the 25th. Can

>> everyone do that date?

>>

>> I will touch base with our damage expert and ask when he expects to

>> have a report to us.

>>

>>

>> Gordon A. Meiklejohn

>>

>> Rosedale Square, 1055 Yonge Street, Suite 200 Toronto, Ontario M4W

>> 2L2 Tel. 416.926.3797 Ext 225; Fax 416.926.3712

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>>

>>

>> -----Original Message-----

>> From: GODIL, RAHAT [mailto:RAHAT.GODIL@blakes.com]

>> Sent: Monday, August 21, 2017 3:48 PM

>> To: Gordon Meiklejohn <gam@bmbarristers.com>; Katchin, Ian P.

>> <ikatchin@foglers.com>

>> Cc: jthomas@toronto-law.com; DOUGAN, LAURA <LAURA.DOUGAN@blakes.com>;

>> Pham, Michelle <mpham@foglers.com>

>> Subject: RE: Sears ats CIG

>>

>> Counsel,

>>

>> September 26 works for us to have the motion heard before a judge.

>> Gord, will you be contacting the Court for scheduling the motion? It

>> would be helpful for us to agree on a timetable for the delivery of

>> materials and the timing for the hearing of the motion in advance.

>> Please let us know when we can expect to have your materials.

>>

>> Gord, could you please also advise when we will receive your damages

>> report? Do you still intend to deliver it in August?

>>

>> Thanks,

>> Rahat

>>

>> Rahat Godil

>> Partner

>> rahat.godil@blakes.com

>> Dir: 416 863 4009

>>

>>

>> -----Original Message-----

>> From: Gordon Meiklejohn [mailto:gam@bmbarristers.com]

>> Sent: Friday, August 18, 2017 2:27 PM

>> To: GODIL, RAHAT; Katchin, Ian P.

>> Cc: jthomas@toronto-law.com; DOUGAN, LAURA; Pham, Michelle

>> Subject: RE: Sears ats CIG

>>

>> This matter is not on the commercial so unless the defendants get it
>> transferred to the commercial list it cannot go before a Judge on the
>> commercial list.

>>

>> I can schedule it for a Judge on the 25th or 26th in the general
>> division. If in the meantime you get it transferred then we can
>> ascertain the availability of a commercial list judge to hear it on
>> the 25th or 26th.

>>

>> Ms. Godil please get back to us as to your availability on those dates.

>>

>> If either of you want to request it be transferred to the commercial
>> list let me know what you need from me.

>>

>>

>> Gordon A. Meiklejohn

>>

>> Rosedale Square, 1055 Yonge Street, Suite 200 Toronto, Ontario M4W

>> 2L2 Tel. 416.926.3797 Ext 225; Fax 416.926.3712

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>>

>>

>>

>> -----Original Message-----

>> From: GODIL, RAHAT [mailto:RAHAT.GODIL@blakes.com]

>> Sent: Friday, August 18, 2017 2:21 PM

>> To: Katchin, Ian P. <ikatchin@foglers.com>

>> Cc: Gordon Meiklejohn <gam@bmbarristers.com>;

>> jthomas@toronto-law.com; DOUGAN, LAURA <LAURA.DOUGAN@blakes.com>;

>> Pham, Michelle <mpham@foglers.com>

>> Subject: Re: Sears ats CIG

>>

>> Counsel,

>>
>> I am out of the office today and Laura has been in a hearing. We are
>> seeking instructions and hopeful that the 25th/26th should work but
>> will need to get back to you because of a potential conflict that has arisen.
>> We also need to seek instructions on proceeding before a master but
>> our view is that this matter is not appropriate for a master and we
>> agree that the motion should be before a judge on the commercial list.
>>
>> Rahat
>>
>> On Aug 18, 2017, at 2:15 PM, Katchin, Ian P.
>> <ikatchin@foglers.com<mailto:ikatchin@foglers.com>> wrote:
>>
>> Gord,
>>
>> I am available on the 25th and 26th of September.
>>
>> I do not necessarily agree that this is a Master's motion. From my
>> perspective, the issue is the interpretation of an Order of a Judge,
>> for which a Master does not have jurisdiction. Accordingly, any
>> Motion ought to be scheduled before a Judge, if not one on the Commercial List.
>>
>> Regards,
>>
>> Ian P. Katchin
>> T 416.864.7613
>> From: Gordon Meiklejohn [mailto:gam@bmbarristers.com]
>> Sent: Thursday, August 17, 2017 12:16 PM
>> To: 'GODIL, RAHAT'
>> <RAHAT.GODIL@blakes.com<mailto:RAHAT.GODIL@blakes.com>>; Katchin, Ian P.
>> <ikatchin@foglers.com<mailto:ikatchin@foglers.com>>;
>> 'jthomas@toronto-law.com<mailto:jthomas@toronto-law.com>'
>> <jthomas@toronto-law.com<mailto:jthomas@toronto-law.com>>
>> Cc: 'DOUGAN, LAURA'
>> <LAURA.DOUGAN@blakes.com<mailto:LAURA.DOUGAN@blakes.com>>
>> Subject: RE: Sears ats CIG
>>
>> I have spoken to the court office and dates are available in
>> September for a master's motion.
>>
>> We had scheduled discoveries for September 11, 12, 13, 25 & 26.
>>
>> I propose using one of those dates for a motion to compel the
>> parties, save for Sears, to comply with a timetable.
>>
>> Please advise as to your availability.
>>
>>
>> Gordon A. Meiklejohn
>> <image001.png>
>> Rosedale Square, 1055 Yonge Street, Suite 200 Toronto, Ontario M4W
>> 2L2 Tel. 416.926.3797 Ext 225; Fax 416.926.3712

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>>
>>
>> From: Gordon Meiklejohn
>> Sent: Monday, August 14, 2017 11:54 AM
>> To: 'GODIL, RAHAT'
>> <RAHAT.GODIL@blakes.com<mailto:RAHAT.GODIL@blakes.com>>; Katchin, Ian P.
>> (ikatchin@foglers.com<mailto:ikatchin@foglers.com>)
>> <ikatchin@foglers.com<mailto:ikatchin@foglers.com>>;
>> jthomas@toronto-law.com<mailto:jthomas@toronto-law.com>
>> Cc: DOUGAN, LAURA
>> <LAURA.DOUGAN@blakes.com<mailto:LAURA.DOUGAN@blakes.com>>
>> Subject: RE: Sears ats CIG

>>
>> This is not acceptable to DGA .
>>
>> As we discussed during our telephone conference call last week, if
>> your position is that this matter cannot move forward without Sears
>> than it is for you to make application to the Commercial Court to
>> require that Sears participate.
>>
>> DGA does not require Sears participation as our client's claims are
>> against CIG and your clients not Sears.
>>
>> I will obtain dates for a motion to fix a timetable and circulate
>> those dates.

>>
>>
>> Gordon A. Meiklejohn
>> <image001.png>
>> Rosedale Square, 1055 Yonge Street, Suite 200 Toronto, Ontario M4W
>> 2L2 Tel. 416.926.3797 Ext 225; Fax 416.926.3712
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>>
>>
>> From: GODIL, RAHAT [mailto:RAHAT.GODIL@blakes.com]
>> Sent: Monday, August 14, 2017 11:45 AM
>> To: Katchin, Ian P.
>> (ikatchin@foglers.com<mailto:ikatchin@foglers.com>)
>> <ikatchin@foglers.com<mailto:ikatchin@foglers.com>>; Gordon
>> Meiklejohn <gam@bmbarristers.com<mailto:gam@bmbarristers.com>>;
>> jthomas@toronto-law.com<mailto:jthomas@toronto-law.com>
>> Cc: DOUGAN, LAURA

>> <LAURA.DOUGAN@blakes.com<mailto:LAURA.DOUGAN@blakes.com>>

>> Subject: Sears ats CIG

>>

>> Counsel,

>> Further to our conversation last week, we have spoken to our client

>> and can advise as follows. In light of the stay that Sears is subject

>> to, we do not think that this proceeding can move forward. In

>> particular, there cannot be a trial of some aspects of the proceeding without the others.

>> In addition, due to the complexity of the proceeding, the intertwined

>> nature of all of the claims and the common factual matrix, it would

>> also be ineffective, inefficient and prejudicial for some aspects of

>> the proceeding to move forward without others. Without prejudice to

>> this position, RRD and Moore are nevertheless willing to proceed with

>> documentary discovery in this matter and producing their relevant

>> documents on mutually agreeable dates. Subject to everyone else's

>> views, we propose that RRD, Moore, CIG and DGA move forward with

>> exchanging documents and then monitor how the Sears CCAA proceeding

>> unfolds to determine the next steps for this proceeding. Please let

>> us know if this is acceptable.

>> Thanks,

>> Rahat

>>

>> Rahat Godil

>> Partner

>> rahat.godil@blakes.com<mailto:rahat.godil@blakes.com>

>> Dir: 416 863 4009

>>

>>

>> _____

>>

>> <image002.gif>

>>

>>

>>

>> Blake, Cassels & Graydon LLP

>> 199 Bay Street, Suite 4000, Toronto ON M5L 1A9

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> <Commercial Court Motion Request Form (October 5 2017).pdf>

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U

This is Exhibit "U" referred to in the Affidavit of
Monica Singh sworn before me on March 27, 2018.



A COMMISSIONER FOR OATHS IN AND FOR ONTARIO

*Marilyn Diane Godfrey, a Commissioner, etc.
Province of Ontario, for Blake, Cassels & Graydon LLP,
Barristers and Solicitors.
Expires March 5, 2021.*

NGO, AMY

From: Cobb, Evan <evan.cobb@nortonrosefulbright.com>
Sent: Thursday, November 02, 2017 8:17 PM
To: GODIL, RAHAT; Gordon Meiklejohn
Cc: Dacks, Jeremy; Katchin, Ian P.; DOUGAN, LAURA; Irving, Shawn; Azzopardi, Teresa
Subject: RE: Sears Canada v CIG et al Action # CV-15-52235-00A1 & 00B1

Thanks to all for your responses.

We'll book for March 2.

Evan Cobb
 Partner

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.
 Royal Bank Plaza, South Tower, Suite 3800
 200 Bay Street, P.O. Box 84, Toronto, ON M5J 2Z4 Canada

T: +1 416.216.1929 | F: +1 416.216.3930

evan.cobb@nortonrosefulbright.com
 NORTON ROSE FULBRIGHT

-----Original Message-----

From: GODIL, RAHAT [mailto:RAHAT.GODIL@blakes.com]
Sent: November-02-17 7:08 PM
To: Gordon Meiklejohn
Cc: Dacks, Jeremy; Katchin, Ian P.; Cobb, Evan; DOUGAN, LAURA; Irving, Shawn; Azzopardi, Teresa
Subject: Re: Sears Canada v CIG et al Action # CV-15-52235-00A1 & 00B1

Works for us too

Regards,
 Rahat Godil

> On Nov 2, 2017, at 6:24 PM, Gordon Meiklejohn <gam@bmbarristers.com> wrote:

>
 > Thanks Jeremy. March 2 is fine.
 >
 >
 > Gordon A. Meiklejohn
 >

> -----Original Message-----

> **From:** Dacks, Jeremy [mailto:JDacks@osler.com]
 > **Sent:** Thursday, November 2, 2017 6:10 PM
 > **To:** Katchin, Ian P. <ikatchin@foglars.com>; 'Cobb, Evan' <evan.cobb@nortonrosefulbright.com>; Gordon Meiklejohn <gam@bmbarristers.com>
 > **Cc:** GODIL, RAHAT <RAHAT.GODIL@blakes.com>; DOUGAN, LAURA <LAURA.DOUGAN@blakes.com>; Irving, Shawn <SIrving@osler.com>; Azzopardi, Teresa <TAzzopardi@osler.com>
 > **Subject:** RE: Sears Canada v CIG et al Action # CV-15-52235-00A1 & 00B1
 >

> Osler will not be the hold up on this one. One of us will ensure that we are available if March 2 is preferable to the group. Thx.

>
> -----Original Message-----
> From: Katchin, Ian P. [mailto:ikatchin@foglers.com]
> Sent: Thursday, November 02, 2017 6:08 PM
> To: 'Cobb, Evan' <evan.cobb@nortonrosefulbright.com>; Gordon Meiklejohn <gam@bmbarristers.com>
> Cc: GODIL, RAHAT <RAHAT.GODIL@blakes.com>; Dacks, Jeremy <JDacks@osler.com>; DOUGAN, LAURA
<LAURA.DOUGAN@blakes.com>; Irving, Shawn <SIrving@osler.com>; Azzopardi, Teresa <TAzzopardi@osler.com>
> Subject: RE: Sears Canada v CIG et al Action # CV-15-52235-00A1 & 00B1
>
> Thanks Evan.
>
> March 2nd is preferable as I am in the same set of examinations on March 1st.
>
> Jeremy - are you able to make March 2nd or are you only available on March 1st?
>
> Ian
>
> Ian P. Katchin
> T 416.864.7613
>
>
> -----Original Message-----
> From: Cobb, Evan [mailto:evan.cobb@nortonrosefulbright.com]
> Sent: Thursday, November 02, 2017 5:37 PM
> To: Gordon Meiklejohn <gam@bmbarristers.com>; Katchin, Ian P. <ikatchin@foglers.com>
> Cc: GODIL, RAHAT <RAHAT.GODIL@blakes.com>; Dacks, Jeremy <JDacks@osler.com>; DOUGAN, LAURA
<LAURA.DOUGAN@blakes.com>; Irving, Shawn <SIrving@osler.com>; Azzopardi, Teresa <TAzzopardi@osler.com>
> Subject: RE: Sears Canada v CIG et al Action # CV-15-52235-00A1 & 00B1
>
> The Commercial List office has now advised that we can reserve March 1 or March 2 at this time and assuming no
unexpected matters come up in the meantime, that should be our date. However, the CL office generally doesn't book
time that far off into the future and they cannot rule out the possibility that something unexpected may come up and bump
us to an alternative date around March 1 or March 2.
>
> Shall I go ahead and reserve one of those dates?
>
> Thanks.
>
> Evan Cobb
> Partner
>
> Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.
> Royal Bank Plaza, South Tower, Suite 3800
> 200 Bay Street, P.O. Box 84, Toronto, ON M5J 2Z4 Canada
>
> T: +1 416.216.1929 | F: +1 416.216.3930
>
> evan.cobb@nortonrosefulbright.com
> NORTON ROSE FULBRIGHT
>
>
>
> -----Original Message-----
> From: Gordon Meiklejohn [mailto:gam@bmbarristers.com]
> Sent: October-31-17 2:11 PM
> To: 'Katchin, Ian P.'; Cobb, Evan
> Cc: GODIL, RAHAT; Dacks, Jeremy; DOUGAN, LAURA; Irving, Shawn; Azzopardi, Teresa
> Subject: RE: Sears Canada v CIG et al Action # CV-15-52235-00A1 & 00B1
>
> Or February (avoiding family day).
>

> Gordon A. Meiklejohn

>

> -----Original Message-----

> From: Katchin, Ian P. [mailto:ikatchin@foglers.com]

> Sent: Tuesday, October 31, 2017 12:37 PM

> To: 'Cobb, Evan' <evan.cobb@nortonrosefulbright.com>; Gordon Meiklejohn <gam@bmbarristers.com>

> Cc: GODIL, RAHAT <RAHAT.GODIL@blakes.com>; Dacks, Jeremy <JDacks@osler.com>; DOUGAN, LAURA <LAURA.DOUGAN@blakes.com>; Irving, Shawn <SIrving@osler.com>; Azzopardi, Teresa <TAzzopardi@osler.com>

> Subject: RE: Sears Canada v CIG et al Action # CV-15-52235-00A1 & 00B1

>

> Counsel,

>

> I have discoveries out of town in two matters on those dates. The discoveries involve 5 parties, many of whom are from outside of the GTA. I cannot re-schedule them.

>

> Are there other dates on which His Honour is available in March?

>

> Ian

>

> Ian P. Katchin

> T 416.864.7613

>

>

> -----Original Message-----

> From: Cobb, Evan [mailto:evan.cobb@nortonrosefulbright.com]

> Sent: Tuesday, October 31, 2017 12:11 PM

> To: Katchin, Ian P. <ikatchin@foglers.com>; Gordon Meiklejohn <gam@bmbarristers.com>

> Cc: GODIL, RAHAT <RAHAT.GODIL@blakes.com>; Dacks, Jeremy <JDacks@osler.com>; DOUGAN, LAURA <LAURA.DOUGAN@blakes.com>; Irving, Shawn <SIrving@osler.com>; Azzopardi, Teresa <TAzzopardi@osler.com>

> Subject: RE: Sears Canada v CIG et al Action # CV-15-52235-00A1 & 00B1

>

> Further to our call yesterday, the Commercial List office has indicated that Justice Hainey would be available for two hours on February 27th or 28th.

>

> Would those days work for this group for the proposed motion?

>

> Thanks.

>

> Evan Cobb

> Partner

>

> Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.

> Royal Bank Plaza, South Tower, Suite 3800

> 200 Bay Street, P.O. Box 84, Toronto, ON M5J 2Z4 Canada

>

> T: +1 416.216.1929 | F: +1 416.216.3930

>

> evan.cobb@nortonrosefulbright.com

> NORTON ROSE FULBRIGHT

>

>

>

> -----Original Message-----

> From: Katchin, Ian P. [mailto:ikatchin@foglers.com]

> Sent: October-26-17 7:32 AM

> To: Gordon Meiklejohn

> Cc: Cobb, Evan; GODIL, RAHAT; Dacks, Jeremy; DOUGAN, LAURA; Irving, Shawn; Azzopardi, Teresa

> Subject: Re: Sears Canada v CIG et al Action # CV-15-52235-00A1 & 00B1

>

> I have a meeting at 3:00 pm on Monday but I can push it back for a few minutes to let this call take place.

>

> Ian
>
> Sent from my iPhone
>
>> On Oct 26, 2017, at 05:07, Gordon Meiklejohn <gam@bmbarristers.com> wrote:
>>
>> I did not receive any responses to the email I circulated on Tuesday suggesting we speak at 3 p.m. on Monday.
>>
>> Is everyone on for Monday at 3 p.m. ?
>>
>>
>> Gordon A. Meiklejohn
>>
>>
>> -----Original Message-----
>> From: Gordon Meiklejohn
>> Sent: Tuesday, October 24, 2017 8:31 AM
>> To: 'Cobb, Evan' <evan.cobb@nortonrosefulbright.com>; GODIL, RAHAT
>> <RAHAT.GODIL@blakes.com>; Dacks, Jeremy <JDacks@osler.com>
>> Cc: Katchin, Ian P. <ikatchin@foglers.com>; DOUGAN, LAURA
>> <LAURA.DOUGAN@blakes.com>; Irving, Shawn <SIrving@osler.com>;
>> Azzopardi, Teresa <TAzzopardi@osler.com>
>> Subject: RE: Sears Canada v CIG et al Action # CV-15-52235-00A1 & 00B1
>>
>> I can do Monday. I am in Florida so will call in.
>>
>> Ian can I ask you to provide us with a call in number.
>>
>> How about 3 p.m. ?
>>
>>
>> Gordon A. Meiklejohn
>>
>>
>>
>>
>> -----Original Message-----
>> From: Cobb, Evan [mailto:evan.cobb@nortonrosefulbright.com]
>> Sent: Monday, October 23, 2017 10:20 PM
>> To: GODIL, RAHAT <RAHAT.GODIL@blakes.com>; Dacks, Jeremy
>> <JDacks@osler.com>
>> Cc: Katchin, Ian P. <ikatchin@foglers.com>; Gordon Meiklejohn
>> <gam@bmbarristers.com>; DOUGAN, LAURA <LAURA.DOUGAN@blakes.com>;
>> Irving, Shawn <SIrving@osler.com>; Azzopardi, Teresa
>> <TAzzopardi@osler.com>
>> Subject: RE: Sears Canada v CIG et al Action # CV-15-52235-00A1 & 00B1
>>
>> Fine for me as well. Thanks.
>>
>> Evan Cobb
>> Partner
>>
>> Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.
>> Royal Bank Plaza, South Tower, Suite 3800
>> 200 Bay Street, P.O. Box 84, Toronto, ON M5J 2Z4 Canada
>>
>> T: +1 416.216.1929 | F: +1 416.216.3930
>>
>> evan.cobb@nortonrosefulbright.com
>> NORTON ROSE FULBRIGHT
>>

>>
>>
>>
>> -----Original Message-----
>> From: GODIL, RAHAT [mailto:RAHAT.GODIL@blakes.com]
>> Sent: October-23-17 7:43 PM
>> To: Dacks, Jeremy
>> Cc: Katchin, Ian P.; Gordon Meiklejohn; Cobb, Evan; DOUGAN, LAURA;
>> Irving, Shawn; Azzopardi, Teresa
>> Subject: Re: Sears Canada v CIG et al Action # CV-15-52235-00A1 & 00B1
>>

>> That works for me.

>>
>> Regards,
>> Rahat Godil

>>
>>> On Oct 23, 2017, at 7:02 PM, Dacks, Jeremy <JDacks@osler.com> wrote:
>>>
>>> I can currently make a call work between 2:00 and 5:00 pm next Monday.
>>>

>>> -----Original Message-----
>>> From: Katchin, Ian P. [mailto:ikatchin@foglers.com]
>>> Sent: Monday, October 23, 2017 6:21 PM
>>> To: Dacks, Jeremy <JDacks@osler.com>; GODIL, RAHAT
>>> <RAHAT.GODIL@blakes.com>; Gordon Meiklejohn <gam@bmbarristers.com>
>>> Cc: Cobb, Evan <evan.cobb@nortonrosefulbright.com>; DOUGAN, LAURA
>>> <LAURA.DOUGAN@blakes.com>; Irving, Shawn <SIrving@osler.com>;
>>> Azzopardi, Teresa <TAzzopardi@osler.com>
>>> Subject: RE: Sears Canada v CIG et al Action # CV-15-52235-00A1 &
>>> 00B1

>>>
>>> Counsel,
>>>
>>> I am out of the country until next Sunday and will not be able to make a call until my return.
>>>
>>> Please confirm a time for a call next Monday afternoon.

>>>
>>> Regards,
>>>
>>> Ian

>>> -----Original Message-----
>>> From: Dacks, Jeremy [mailto:JDacks@osler.com]
>>> Sent: Monday, October 23, 2017 1:25 PM
>>> To: GODIL, RAHAT <RAHAT.GODIL@blakes.com>; Gordon Meiklejohn
>>> <gam@bmbarristers.com>
>>> Cc: Cobb, Evan <evan.cobb@nortonrosefulbright.com>; Katchin, Ian P.
>>> <ikatchin@foglers.com>; DOUGAN, LAURA <LAURA.DOUGAN@blakes.com>;
>>> Irving, Shawn <SIrving@osler.com>; Azzopardi, Teresa
>>> <TAzzopardi@osler.com>
>>> Subject: RE: Sears Canada v CIG et al Action # CV-15-52235-00A1 &
>>> 00B1

>>>
>>> 5:00 pm is fine with me.

>>> -----Original Message-----
>>> From: GODIL, RAHAT [mailto:RAHAT.GODIL@blakes.com]
>>> Sent: Monday, October 23, 2017 1:24 PM
>>> To: Dacks, Jeremy <JDacks@osler.com>; Gordon Meiklejohn
>>> <gam@bmbarristers.com>
>>> Cc: Cobb, Evan <evan.cobb@nortonrosefulbright.com>; Katchin, Ian P.

>>> <ikatchin@foglers.com>; DOUGAN, LAURA <LAURA.DOUGAN@blakes.com>;
 >>> Irving, Shawn <Sirving@osler.com>; Azzopardi, Teresa
 >>> <TAzzopardi@osler.com>
 >>> Subject: RE: Sears Canada v CIG et al Action # CV-15-52235-00A1 &
 >>> 00B1

>>>
 >>> Unfortunately, I will be in a meeting at that time but can do a call before 3:30 or at 5pm on Wednesday.

>>>
 >>> Rahat Godil
 >>> Partner
 >>> rahat.godil@blakes.com
 >>> Dir: 416 863 4009

>>>
 >>> -----Original Message-----

>>> From: Dacks, Jeremy [mailto:JDacks@osler.com]
 >>> Sent: Monday, October 23, 2017 1:21 PM
 >>> To: Gordon Meiklejohn; GODIL, RAHAT
 >>> Cc: Cobb, Evan; Katchin, Ian P.; DOUGAN, LAURA; Irving, Shawn;
 >>> Azzopardi, Teresa
 >>> Subject: RE: Sears Canada v CIG et al Action # CV-15-52235-00A1 &
 >>> 00B1

>>>
 >>> Good afternoon. Would counsel be available to discuss this matter at 4:00 pm on Wednesday afternoon?

>>>
 >>> If so, my assistant can send out a calendar invite.

>>>
 >>> Thanks,
 >>> Jeremy

>>> -----Original Message-----

>>> From: Gordon Meiklejohn [mailto:gam@bmbarristers.com]
 >>> Sent: Monday, October 23, 2017 11:10 AM
 >>> To: 'GODIL, RAHAT' <RAHAT.GODIL@blakes.com>
 >>> Cc: Dacks, Jeremy <JDacks@osler.com>; Cobb, Evan
 >>> <evan.cobb@nortonrosefulbright.com>; Katchin, Ian P.
 >>> <ikatchin@foglers.com>; DOUGAN, LAURA <LAURA.DOUGAN@blakes.com>;
 >>> Wasserman, Marc <MWasserman@osler.com>
 >>> Subject: RE: Sears Canada v CIG et al Action # CV-15-52235-00A1 &
 >>> 00B1

>>>
 >>> That was the plan until I attempted to involve the monitor and sear's lawyers and have yet to receive their agreement to proceed on November 22.

>>>
 >>> I too would like to hear from them.

>>>
 >>> Gordon A. Meiklejohn
 >>>
 >>> Rosedale Square, 1055 Yonge Street, Suite 200 Toronto, Ontario M4W
 >>> 2L2 Tel. 416.926.3797 Ext 225; Fax 416.926.3712

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 >>>
 >>> -----Original Message-----

>>> From: GODIL, RAHAT [mailto:RAHAT.GODIL@blakes.com]
 >>> Sent: Monday, October 23, 2017 9:29 AM
 >>> To: Gordon Meiklejohn <gam@bmbarristers.com>

>>> Cc: Dacks, Jeremy <JDacks@osler.com>; Cobb, Evan
 >>> <evan.cobb@nortonrosefulbright.com>; Katchin, Ian P.
 >>> <ikatchin@foglers.com>; DOUGAN, LAURA <LAURA.DOUGAN@blakes.com>;
 >>> Wasserman, Marc <MWasserman@osler.com>
 >>> Subject: Re: Sears Canada v CIG et al Action # CV-15-52235-00A1 &
 >>> 00B1

>>>
 >>> Gord, I believe you had agreed to deliver your motion materials on October 18. I note that we have not yet received any motion materials.

>>>
 >>> We would also appreciate hearing from Sears counsel about Sears' intent with respect to its claims in this proceeding, as that might impact our position with respect to the motions.

>>>
 >>> We can be available for a call this week, if necessary.

>>>
 >>> Rahat

>>>
 >>>> On Oct 23, 2017, at 9:09 AM, Gordon Meiklejohn <gam@bmbarristers.com> wrote:

>>>>
 >>>> Mr. Dacks and Mr. Cobb:

>>>>
 >>>> Attached is the request form I sent to the Commercial Court seeking to confirm a motion before Hainey J. for him to deal with the issue of the effect of his stay order in the Sears CCAA action on a general division action commenced by Sears. My email to Mr.s Cobb sent on October 11 sets out the gist of the matter.

>>>>
 >>>> I attach the pleadings in the main action and the third and fourth party claims.

>>>>
 >>>> The Motion date I am seeking to confirm is November 22. Please advise if you consent to the motion proceeding at that time. If you are not willing to proceed on November 22 I suggest we obtain a 9:30 appointment with Justice Hainey to schedule the motion.

>>>>
 >>>> Gordon A. Meiklejohn

>>>> [Description: BM_logo_small]

>>>> Rosedale Square, 1055 Yonge Street, Suite 200 Toronto, Ontario M4W

>>>> 2L2 Tel. 416.926.3797 Ext 225; Fax 416.926.3712

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>>>>
 >>>>
 >>>>
 >>>>
 >>>>

>>>> From: Dacks, Jeremy [mailto:JDacks@osler.com]

>>>> Sent: Thursday, October 12, 2017 9:57 AM

>>>> To: GODIL, RAHAT <RAHAT.GODIL@blakes.com>; Cobb, Evan

>>>> <evan.cobb@nortonrosefulbright.com>; Gordon Meiklejohn

>>>> <gam@bmbarristers.com>

>>>> Cc: 'Katchin, Ian P.' <ikatchin@foglers.com>; DOUGAN, LAURA

>>>> <LAURA.DOUGAN@blakes.com>; Wasserman, Marc <MWasserman@osler.com>

>>>> Subject: RE: Sears Canada v CIG et al Action # CV-15-52235-00A1 &

>>>> 00B1

>>>>
 >>>> Counsel.

>>>>
 >>>> As you know, my firm is acting for Sears Canada in its CCAA Proceedings.

>>>>
 >>>> The e-mail that Mr. Cobb copied me on this morning is the first time that this matter was drawn to our attention and we have no information whatsoever concerning this litigation.

>>>>

>>>> We are in the process of preparing for tomorrow's court hearing and, due to the importance of the matters being dealt with tomorrow, are fully engaged in that process and unavailable for a call today.

>>>>

>>>> In the circumstances, I think it would make sense for someone to forward the relevant materials to ourselves and counsel for the Monitor and we can set up a time to discuss this matter towards the end of next week.

>>>>

>>>> Jeremy

>>>>

>>>> [cid:image002.gif@01D34BDD.F7045BF0]

>>>>

>>>> Jeremy Dacks

>>>> Partner

>>>>

>>>>

>>>>

>>>> 416.862.4923

>>>>

>>>> DIRECT

>>>>

>>>> 647.406.1500

>>>>

>>>> MOBILE

>>>>

>>>> 416.862.6666

>>>>

>>>> FACSIMILE

>>>>

>>>> jdacks@osler.com<mailto:jdacks@osler.com>

>>>>

>>>>

>>>>

>>>>

>>>> Osler, Hoskin & Harcourt LLP

>>>> Box 50, 1 First Canadian Place

>>>> Toronto, Ontario, Canada M5X 1B8

>>>>

>>>> [cid:image003.gif@01D34BDD.F7045BF0]<http://www.osler.com/>

>>>>

>>>>

>>>>

>>>>

>>>> From: GODIL, RAHAT [mailto:RAHAT.GODIL@blakes.com]

>>>> Sent: Thursday, October 12, 2017 9:50 AM

>>>> To: Cobb, Evan

>>>> <evan.cobb@nortonrosefulbright.com<mailto:evan.cobb@nortonrosefulbri

>>>> gh

>>>> t.com>>; Gordon Meiklejohn

>>>> <gam@bmbarristers.com<mailto:gam@bmbarristers.com>>

>>>> Cc: 'Katchin, Ian P.'

>>>> <ikatchin@foglers.com<mailto:ikatchin@foglers.com>>; Dacks, Jeremy

>>>> <JDacks@osler.com<mailto:JDacks@osler.com>>; DOUGAN, LAURA

>>>> <LAURA.DOUGAN@blakes.com<mailto:LAURA.DOUGAN@blakes.com>>

>>>> Subject: RE: Sears Canada v CIG et al Action # CV-15-52235-00A1 &

>>>> 00B1

>>>>

>>>> Counsel,

>>>>

>>>> Can you please also advise about Sears' intent with respect to its claim(s) in this proceeding. Given the recent developments, I think it would be helpful for all parties if you can shed some light on that so we can take that into account for the motions.

>>>>

>>>> If it is useful for all of us to get on a call, I am available this morning until 11am and in the afternoon between 3-5pm.

>>>>

>>>> Please also include Laura Dougan on all emails.

>>>>

>>>> Thanks,

>>>> Rahat

>>>>

>>>> Rahat Godil

>>>> Partner

>>>> rahat.godil@blakes.com<mailto:rahat.godil@blakes.com>

>>>> Dir: 416 863 4009

>>>>

>>>>

>>>>

>>>> [cid:image004.gif@01D34BDD.F7045BF0]

>>>>

>>>>

>>>>

>>>> Blake, Cassels & Graydon LLP

>>>> 199 Bay Street, Suite 4000, Toronto ON M5L 1A9

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>>>>

>>>>

>>>> From: Cobb, Evan [mailto:evan.cobb@nortonrosefulbright.com]

>>>> Sent: Thursday, October 12, 2017 8:07 AM

>>>> To: Gordon Meiklejohn

>>>> Cc: GODIL, RAHAT; 'Katchin, Ian P.'; Dacks, Jeremy

>>>> Subject: RE: Sears Canada v CIG et al Action # CV-15-52235-00A1 & 00B1

>>>>

>>>> Mr. Meiklejohn,

>>>>

>>>> I have copied Jeremy Dacks of Osler, counsel to the Applicants, on this email.

>>>>

>>>> Can we speak at some time today to determine next steps?

>>>>

>>>> Thank you.

>>>>

>>>> Evan Cobb

>>>> Partner

>>>>

>>>> Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.

>>>> Royal Bank Plaza, South Tower, Suite 3800

>>>> 200 Bay Street, P.O. Box 84, Toronto, ON M5J 2Z4 Canada

>>>>

>>>> T: +1 416.216.1929 | F: +1 416.216.3930

>>>>

>>>> evan.cobb@nortonrosefulbright.com<mailto:evan.cobb@nortonrosefulbrig

>>>> ht

>>>> .com>

>>>> NORTON ROSE FULBRIGHT

>>>>

>>>>

>>>> From: Gordon Meiklejohn [mailto:gam@bmbarristers.com]

>>>> Sent: October-12-17 7:51 AM

>>>> To: Cobb, Evan

>>>> Cc: 'GODIL, RAHAT'; 'Katchin, Ian P.'

>>>> Subject: RE: Sears Canada v CIG et al Action # CV-15-52235-00A1 &

>>>> 00B1

>>>>

>>>> Mr. Cobb I expect you are being kept very busy with the Sears CCAA matter but can you or someone else in your office let us know if you are content to have Justice Hainey deal with this issue on November 22 and if so, please authorize me to sign the request form on your behalf, or whether you wish to attend a 9:30 with him, ideally tomorrow to speak to this. We wish to get this issue addressed so we can move on with the action.

>>>>

>>>>

>>>> Gordon A. Meiklejohn

>>>> [Description: BM_logo_small]

>>>> Rosedale Square, 1055 Yonge Street, Suite 200 Toronto, Ontario M4W

>>>> 2L2 Tel. 416.926.3797 Ext 225; Fax 416.926.3712

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>>>>

>>>>

>>>>

>>>> From: Gordon Meiklejohn

>>>> Sent: Wednesday, October 11, 2017 3:11 PM

>>>> To: 'evan.cobb@nortonrosefulbright.com'

>>>> <evan.cobb@nortonrosefulbright.com<mailto:evan.cobb@nortonrosefulbri

>>>> gh

>>>> t.com>>

>>>> Cc: 'GODIL, RAHAT'

>>>> <RAHAT.GODIL@blakes.com<mailto:RAHAT.GODIL@blakes.com>>; 'Katchin,

>>>> Ian P.' <ikatchin@foglers.com<mailto:ikatchin@foglers.com>>

>>>> Subject: RE: Sears Canada v CIG et al Action # CV-15-52235-00A1 &

>>>> 00B1

>>>>

>>>> Mr. Cobb if you need to deal with this at a 9:30 before Hainey J. I understand the Sears CCAA is back before him on Friday. I can ask that it be dealt with as urgent at a 9:30 before him that day. Please advise if this is acceptable to you.

>>>>

>>>> From: Gordon Meiklejohn

>>>> Sent: Wednesday, October 11, 2017 2:21 PM

>>>> To: 'evan.cobb@nortonrosefulbright.com'

>>>> <evan.cobb@nortonrosefulbright.com<mailto:evan.cobb@nortonrosefulbri

>>>> gh

>>>> t.com>>

>>>> Cc: 'GODIL, RAHAT'

>>>> <RAHAT.GODIL@blakes.com<mailto:RAHAT.GODIL@blakes.com>>; Katchin,

>>>> Ian P. <ikatchin@foglers.com<mailto:ikatchin@foglers.com>>

>>>> Subject: Sears Canada v CIG et al Action # CV-15-52235-00A1 & 00B1

>>>>

>>>> Mr. Cobb:

>>>>

>>>> Further to the voice mail I left on your phone just now I confirm I am counsel to DGA FSI. It is a defendant to a third party claim in this action and the plaintiff in a forth party claim.

>>>>

>>>> The other defendants have taken the position in this action that Justice Hainey's stay order in the Sears Canada CCAA action either stays the third and forth party claims in this action, or prevents them from proceeding, or they require an order directing that Sears Canada participate in this action (the general division action).

>>>>

>>>> I am attempting to move the general division action along taking the position the CCAA stay only applies to Sears Canada.

>>>>

>>>> I have arranged to attend before Hainey J. on a 1 hour motion on November 22 to deal with the matter.

>>>>

>>>> Jayson Thomas was acting for Sears Canada up until the commencement of the CCAA action.

>>>>

>>>> Attached is our Motion request form. All parties save for Sears Canada have approved it.

>>>>

>>>> Would you please get back to me, by phone or email, to discuss the matter. Thanks.

>>>>

>>>> Gordon A. Meiklejohn

>>>> [Description: BM_logo_small]

>>>> Rosedale Square, 1055 Yonge Street, Suite 200 Toronto, Ontario M4W

>>>> 2L2 Tel. 416.926.3797 Ext 225; Fax 416.926.3712

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>>>> *****

>>>> <image001.png>

>>>> <image002.gif>

>>>> <image003.gif>

>>>> <image004.gif>

>>>> <Commercial Court Motion Request Form (October 7 2017 .doc.pdf>

>>>> <Statement of Claim.pdf> <Statement of Defence and Counterclaim.pdf>

>>>> <Reply and Defence to Counterclaim (Sears).pdf> <Reply to Defence to

>>>> Counterclaim (Consumer).pdf> <Third Party Claim (Sears).pdf> <Third

>>>> Party Claim (CIG).pdf> <Issued Fourth Party Claim (April 27

>>>> 2016).pdf>

>>>>

>>>>

>>>>

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>>>> _____

>>>>

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V

This is Exhibit "V" referred to in the Affidavit of
Monica Singh sworn before me on March 27, 2018.



A COMMISSIONER FOR OATHS IN AND FOR ONTARIO

*Marilyn Dianne Godfrey, a Commissioner, etc.
Province of Ontario, for Blake, Cassels & Graydon LLP,
Barristers and Solicitors.
Expires March 5, 2021.*

DOUGAN, LAURA

From: Katchin, Ian P. <ikatchin@foglers.com>
Sent: Tuesday, February 06, 2018 9:58 AM
To: 'Cobb, Evan'; Gordon Meiklejohn; 'Dacks, Jeremy'
Cc: GODIL, RAHAT; DOUGAN, LAURA; Irving, Shawn; Azzopardi, Teresa
Subject: RE: Sears Canada v CIG et al Action # CV-15-52235-00A1 & 00B1

Evan,

We have heard nothing further from Mr. Meiklejohn on this issue.

Regards,

Ian P. Katchin
T 416.864.7613

-----Original Message-----

From: Cobb, Evan [mailto:evan.cobb@nortonrosefulbright.com]
Sent: Tuesday, February 6, 2018 8:19 AM
To: Gordon Meiklejohn <gam@bmbarristers.com>; 'Dacks, Jeremy' <JDacks@osler.com>; Katchin, Ian P. <ikatchin@foglers.com>
Cc: GODIL, RAHAT <RAHAT.GODIL@blakes.com>; DOUGAN, LAURA <LAURA.DOUGAN@blakes.com>; Irving, Shawn <Sirving@osler.com>; Azzopardi, Teresa <TAzzopardi@osler.com>
Subject: RE: Sears Canada v CIG et al Action # CV-15-52235-00A1 & 00B1

All,

Can this group provide NRF and Osler with an update on the current status of this matter including the lift stay request?

We have court time scheduled for March 2nd but we do not know if any parties still wish to proceed with the lift stay motion.

Thanks.

Evan Cobb
Partner

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84, Toronto, ON M5J 2Z4 Canada

T: +1 416.216.1929 | F: +1 416.216.3930

evan.cobb@nortonrosefulbright.com
NORTON ROSE FULBRIGHT

w

This is Exhibit "W" referred to in the Affidavit of
Monica Singh sworn before me on March 27, 2018.



A COMMISSIONER FOR OATHS IN AND FOR ONTARIO

Marilyn Diane Godfrey, a Commissioner, etc.
Province of Ontario, for Blake, Cassels & Graydon LLP,
Barristers and Solicitors.
Expires March 5, 2021.

NGO, AMY

From: Cobb, Evan <evan.cobb@nortonrosefulbright.com>
Sent: Tuesday, February 20, 2018 11:00 AM
To: Gordon Meiklejohn; 'Dacks, Jeremy'; Katchin, Ian P.
Cc: GODIL, RAHAT; DOUGAN, LAURA; Irving, Shawn; Azzopardi, Teresa
Subject: RE: Sears Canada v CIG et al Action # CV-15-52235-00A1 & 00B1

Mr. Meiklejohn,

Thank you for your email.

We did not receive any updates on this matter until today and certain other items are now also expected to be on the agenda for March 2nd.

Unless the matter is very straight-forward and on consent, it may be necessary to move the motion to another date. We will wait to receive materials but the description of motions and cross motions set out below suggests this may take some time for the court to hear and determine.

Regards,

Evan Cobb
Partner

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84, Toronto, ON M5J 2Z4 Canada

T: +1 416.216.1929 | F: +1 416.216.3930

evan.cobb@nortonrosefulbright.com
NORTON ROSE FULBRIGHT

-----Original Message-----

From: Gordon Meiklejohn [mailto:gam@bmbarristers.com]
Sent: February-20-18 8:53 AM
To: Cobb, Evan; 'Dacks, Jeremy'; Katchin, Ian P.
Cc: GODIL, RAHAT; DOUGAN, LAURA; Irving, Shawn; Azzopardi, Teresa
Subject: RE: Sears Canada v CIG et al Action # CV-15-52235-00A1 & 00B1

Nothing has been resolved so we will have to proceed.

My motion material seeking an order in the general division file that the discovery plan the parties agreed to in the summer be implemented with the necessary modifications to it to update the dates will be circulated shortly.

I am told that the defendants will then bring a cross motion seeking certain relief which I leave to them.

Gordon A. Meiklejohn

Rosedale Square, 1055 Yonge Street, Suite 200 Toronto, Ontario M4W 2L2 Tel. 416.926.3797 Ext 225; Fax 416.926.3712

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X

This is Exhibit "X" referred to in the Affidavit of
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*Marilyn Dianne Godfrey, a Commissioner, etc.
Province of Ontario, for Blake, Cassels & Graydon LLP,
Barristers and Solicitors.
Expires March 5, 2021.*

NGO, AMY

From: DOUGAN, LAURA
Sent: Wednesday, February 21, 2018 7:42 PM
To: Cobb, Evan (evan.cobb@nortonrosefulbright.com); jdacks@osler.com
Cc: Gordon Meiklejohn; ikatchin@foglers.com; sirving@osler.com; GODIL, RAHAT
Subject: Sears Canada v CIG et al Action # CV-15-52235-00A1;A2;B1;B2
Attachments: Letter from R. Godil dated February 21, 2018.pdf

Counsel,

Please see the attached correspondence from R. Godil.

Laura Dougan
Associate
Laura.Dougan@blakes.com
Dir: 416-863-2187



Blakes, Cassels & Graydon LLP
 Barristers & Solicitors
 Patent & Trade-mark Agents
 199 Bay Street
 Suite 4000, Commerce Court West
 Toronto ON M5L 1A9 Canada
 Tel: 416-863-2400 Fax: 416-863-2653

February 21, 2018

VIA EMAIL

Rahat Godil

Partner

Dir: 416 863 4009

rahat.godil@blakes.com

Reference: 00089459/000049

Evan Cobb - evan.cobb@nortonrosefulbright.com
 Norton Rose Fulbright
 Royal Bank Plaza, Suite 3800,
 South Tower, 200 Bay Street,
 P.O. Box 84
 Toronto Ontario M5J 2Z4

Jeremy Dacks - jdacks@osler.com
 Osler, Hoskin & Harcourt LLP
 100 King Street West
 1 First Canadian Place
 Suite 6200, P.O. Box 50
 Toronto ON M5X 1B8

**RE: Sears Canada CCAA Application CV-17-11846-00CL
 Sears v. Consumer Intelligence Group Inc et al. Court File Nos. CV-15-522235; CV-15-522235-00A1; CV-15-522235-00B1; CV-15-522235-A2; CV-15-522235-B2 (the "Actions")**

Dear Counsel:

We act for R.R. Donnelley & Sons Company ("RRD") and Moore Canada Corporation ("Moore") in the above-noted Actions, and are writing with respect to Mr. Meiklejohn and Mr. Cobb's emails of yesterday and the court time currently scheduled for March 2, 2018.

We have not yet received any motion materials from Mr. Meiklejohn, counsel for the third party DGA Fulfilment Services Inc. ("DGA"). We understand that Mr. Meiklejohn had previously indicated that DGA intended to bring a motion to obtain the Court's interpretation of the effect of Justice Halney's stay order in the CCAA application and to seek an order that the discovery plan previously agreed to by the parties in the Actions be implemented with modifications. In response, our clients and Consumer Intelligence Group Inc. ("CIG") had indicated that they may have to bring cross-motions for relief to be determined. The parties agreed to the March 2, 2018 date for hearing DGA's motion, and any cross-motions brought in response by RRD, Moore or CIG. To date, we have not received DGA's notice of motion or any other materials. Once received, we will review them and respond as necessary, including serving any necessary cross-motion materials.

33320832 2



As you know, RRD and Moore's position is that the Actions are stayed pursuant to the Amended and Restated Initial Order of Justice Hailey dated July 13, 2017.

Without prejudice to this position and without limiting our right to seek other relief, in the event DGA pursues its anticipated motion and is successful, we expect to pursue a cross-motion seeking a stay and/or seeking a lifting of the stay in respect of Sears Canada Inc. ("Sears") for the limited purpose of requiring Sears to produce a representative for examination for discovery and for the production of documents. In particular, we expect to seek:

- (a) any documents in Sears possession, power, or control relating to CIG or DGA's satisfaction with the Sears catalogue onsert and Sears MasterCard Insert programs in 2014 (for example, as pleaded in Sears Reply and Defence to Counterclaim dated May 25, 2015 at para 15); and
- (b) any documents in Sears possession, power, or control relating to Sears audits, spot checks or other efforts to look into or verify the number of inserts or onserts placed in Sears catalogues or MasterCard statements in 2014 (for example, as pleaded in Sears Reply and Defence to Counterclaim dated May 25, 2015 at para 22).

Since we have yet to receive DGA's motion materials we reserve the right to supplement or modify the relief we will be seeking. However, in the interest of time, we ask that Sears and the Monitor please indicate, in the meantime, what their respective positions would be with respect to a motion seeking a lifting of the stay for the purposes described above.

We are also happy to have a discussion with all parties if motion(s) and unnecessary use of scarce judicial resources can be avoided.

Yours very truly

By: Rahat Godil

xm

cc: Laura Dougan
Gordon Metkiefjohn
Ian Kefchin
Shawn Irving

Y

This is Exhibit "Y" referred to in the Affidavit of
Monica Singh sworn before me on March 27, 2018.

Marilyn D. Godfrey

A COMMISSIONER FOR OATHS IN AND FOR ONTARIO

**Marilyn Dianne Godfrey, a Commissioner, etc.
Province of Ontario, for Blake, Cassels & Graydon LLP,
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Expires March 5, 2021.**

NGO, AMY

From: Cobb, Evan <evan.cobb@nortonrosefulbright.com>
Sent: Tuesday, February 27, 2018 5:01 PM
To: Gordon Meiklejohn; GODIL, RAHAT; 'Irving, Shawn'; Dacks, Jeremy; 'Katchin, Ian P.'
Cc: DOUGAN, LAURA; Azzopardi, Teresa; Pham, Michelle; Ma, Catherine
Subject: RE: Sears Canada v CIG et al Action # CV-15-52235-00A1 & 00B1

We have asked the Commercial List office to confirm we are scheduled for that date.

Evan Cobb
 Partner

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.
 Royal Bank Plaza, South Tower, Suite 3800
 200 Bay Street, P.O. Box 84, Toronto, ON M5J 2Z4 Canada

T: +1 416.216.1929 | F: +1 416.216.3930

evan.cobb@nortonrosefulbright.com
 NORTON ROSE FULBRIGHT

-----Original Message-----

From: Gordon Meiklejohn [mailto:gam@bmbarristers.com]
 Sent: February-27-18 4:50 PM
 To: Cobb, Evan; 'GODIL, RAHAT'; 'Irving, Shawn'; Dacks, Jeremy; 'Katchin, Ian P.'
 Cc: DOUGAN, LAURA; Azzopardi, Teresa; Pham, Michelle; Ma, Catherine
 Subject: RE: Sears Canada v CIG et al Action # CV-15-52235-00A1 & 00B1

Evan appears all are in agreement to proceed on April 13.

Gordon A. Meiklejohn

Rosedale Square, 1055 Yonge Street, Suite 200 Toronto, Ontario M4W 2L2 Tel. 416.926.3797 Ext 225; Fax 416.926.3712

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From: Katchin, Ian P. [mailto:ikatchin@foglers.com]
 Sent: Tuesday, February 27, 2018 3:21 PM
 To: Gordon Meiklejohn <gam@bmbarristers.com>; 'Cobb, Evan' <evan.cobb@nortonrosefulbright.com>; 'GODIL, RAHAT' <RAHAT.GODIL@blakes.com>; 'Irving, Shawn' <SIrving@osler.com>; Dacks, Jeremy <JDacks@osler.com>
 Cc: DOUGAN, LAURA <LAURA.DOUGAN@blakes.com>; Azzopardi, Teresa <TAzzopardi@osler.com>; Pham, Michelle <mpham@foglers.com>; Ma, Catherine <catherine.ma@nortonrosefulbright.com>
 Subject: RE: Sears Canada v CIG et al Action # CV-15-52235-00A1 & 00B1

Please go ahead Evan.

Ian

-----Original Message-----

From: Gordon Meiklejohn [mailto:gam@bmbarristers.com]
 Sent: Tuesday, February 27, 2018 10:32 AM
 To: 'Cobb, Evan' <evan.cobb@nortonrosefulbright.com>; Katchin, Ian P. <ikatchin@foglers.com>; 'GODIL, RAHAT' <RAHAT.GODIL@blakes.com>; 'Irving, Shawn' <Sirving@osler.com>; Dacks, Jeremy <JDacks@osler.com>
 Cc: DOUGAN, LAURA <LAURA.DOUGAN@blakes.com>; Azzopardi, Teresa <TAzzopardi@osler.com>; Pham, Michelle <mpham@foglers.com>; Ma, Catherine <catherine.ma@nortonrosefulbright.com>
 Subject: RE: Sears Canada v CIG et al Action # CV-15-52235-00A1 & 00B1

Thanks Evan. I ask you to book it please.

Gordon A. Meiklejohn

Rosedale Square, 1055 Yonge Street, Suite 200 Toronto, Ontario M4W 2L2 Tel. 416.926.3797 Ext 225; Fax 416.926.3712

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-----Original Message-----

From: Cobb, Evan [mailto:evan.cobb@nortonrosefulbright.com]
 Sent: Tuesday, February 27, 2018 10:29 AM
 To: Katchin, Ian P. <ikatchin@foglers.com>; 'GODIL, RAHAT' <RAHAT.GODIL@blakes.com>; Gordon Meiklejohn <gam@bmbarristers.com>; 'Irving, Shawn' <Sirving@osler.com>; Dacks, Jeremy <JDacks@osler.com>
 Cc: DOUGAN, LAURA <LAURA.DOUGAN@blakes.com>; Azzopardi, Teresa <TAzzopardi@osler.com>; Pham, Michelle <mpham@foglers.com>; Ma, Catherine <catherine.ma@nortonrosefulbright.com>
 Subject: RE: Sears Canada v CIG et al Action # CV-15-52235-00A1 & 00B1

Justice Hainey is available on April 13th.

If all parties confirm we should book that date, we will go ahead.

Thanks.

Evan Cobb
 Partner

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.
 Royal Bank Plaza, South Tower, Suite 3800
 200 Bay Street, P.O. Box 84, Toronto, ON M5J 2Z4 Canada

T: +1 416.216.1929 | F: +1 416.216.3930

evan.cobb@nortonrosefulbright.com
 NORTON ROSE FULBRIGHT

-----Original Message-----

From: Katchin, Ian P. [mailto:ikatchin@foglers.com]
 Sent: February-26-18 6:52 PM
 To: 'GODIL, RAHAT'; Gordon Meiklejohn; 'Irving, Shawn'; Cobb, Evan; Dacks, Jeremy
 Cc: DOUGAN, LAURA; Azzopardi, Teresa; Pham, Michelle
 Subject: RE: Sears Canada v CIG et al Action # CV-15-52235-00A1 & 00B1

Counsel,

The 13th of April works for me.

Ian

-----Original Message-----

From: GODIL, RAHAT [mailto:RAHAT.GODIL@blakes.com]
 Sent: Monday, February 26, 2018 3:25 PM
 To: Gordon Meiklejohn <gam@bmbarristers.com>; 'Irving, Shawn' <SIrving@osler.com>; 'Cobb, Evan' <evan.cobb@nortonrosefulbright.com>; Katchin, Ian P. <ikatchin@foglers.com>; Dacks, Jeremy <JDacks@osler.com>
 Cc: DOUGAN, LAURA <LAURA.DOUGAN@blakes.com>; Azzopardi, Teresa <TAzzopardi@osler.com>; Pham, Michelle <mpham@foglers.com>
 Subject: RE: Sears Canada v CIG et al Action # CV-15-52235-00A1 & 00B1

I can't do the 10th but I can do April 13.

Rahat Godil
 Partner
 rahat.godil@blakes.com
 Dir: 416 863 4009

-----Original Message-----

From: Gordon Meiklejohn [mailto:gam@bmbarristers.com]
 Sent: Monday, February 26, 2018 2:32 PM
 To: 'Irving, Shawn'; GODIL, RAHAT; 'Cobb, Evan'; Katchin, Ian P.; Dacks, Jeremy
 Cc: DOUGAN, LAURA; Azzopardi, Teresa; Pham, Michelle
 Subject: RE: Sears Canada v CIG et al Action # CV-15-52235-00A1 & 00B1

I can do April 10 or 13.

Gord

-----Original Message-----

From: Irving, Shawn [mailto:SIrving@osler.com]
 Sent: Monday, February 26, 2018 2:17 PM
 To: GODIL, RAHAT <RAHAT.GODIL@blakes.com>; Gordon Meiklejohn <gam@bmbarristers.com>; 'Cobb, Evan' <evan.cobb@nortonrosefulbright.com>; Katchin, Ian P. <ikatchin@foglers.com>; Dacks, Jeremy <JDacks@osler.com>
 Cc: DOUGAN, LAURA <LAURA.DOUGAN@blakes.com>; Azzopardi, Teresa <TAzzopardi@osler.com>; Pham, Michelle <mpham@foglers.com>
 Subject: RE: Sears Canada v CIG et al Action # CV-15-52235-00A1 & 00B1

Counsel,

Neither Mr. Dacks nor I are available the week of April 2. Any other day than that week would work in April.

In terms of our position, Sears Canada does not consent to a lifting of the stay against Sears Canada. That said, as I mentioned to Ian, we would be prepared to make production of the documents that Sears Canada has already collected in connection with these proceedings. We are not prepared to do an exhaustive search of our records to identify all documents that may be relevant to the action, and we are not prepared to put forward a discovery representative or otherwise participate in the proceedings.

Shawn

-----Original Message-----

From: GODIL, RAHAT [mailto:RAHAT.GODIL@blakes.com]
 Sent: Monday, February 26, 2018 1:32 PM
 To: Gordon Meiklejohn <gam@bmbarristers.com>; 'Cobb, Evan' <evan.cobb@nortonrosefulbright.com>; Irving, Shawn <SIrving@osler.com>; Katchin, Ian P. <ikatchin@foglers.com>; Dacks, Jeremy <JDacks@osler.com>

Cc: DOUGAN, LAURA <LAURA.DOUGAN@blakes.com>; Azzopardi, Teresa <TAzzopardi@osler.com>; Pham, Michelle <mpham@foglers.com>
 Subject: RE: Sears Canada v CIG et al Action # CV-15-52235-00A1 & 00B1

Counsel,

RRD and Moore would be agreeable to a short adjournment, as proposed by CIG and recommended by the Monitor. As mentioned in our correspondence of last week, we do intend to bring a cross-motion. If the adjournment is contested, we will deliver our notice of cross-motion in advance of Friday. However, given the late timing of DGA's materials, we may not be able to deliver responding and supporting materials.

Gord, we have received your materials electronically and do not require a hard copy of the materials.

Jeremy/Shawn, could you please provide Sears' position with respect to our motion seeking a lifting of the stay for the limited purpose of discovery, as set out in our February 21 letter?

With respect to the dates being proposed, we can do April 5th if that works for everyone.

Thanks
 Rahat

Rahat Godil
 Partner
 rahat.godil@blakes.com
 Dir: 416 863 4009

-----Original Message-----

From: Gordon Meiklejohn [mailto:gam@bmbarristers.com]
 Sent: Monday, February 26, 2018 12:51 PM
 To: 'Cobb, Evan'; 'Irving, Shawn'; Katchin, Ian P.; Dacks, Jeremy
 Cc: GODIL, RAHAT; DOUGAN, LAURA; Azzopardi, Teresa; Pham, Michelle
 Subject: RE: Sears Canada v CIG et al Action # CV-15-52235-00A1 & 00B1

Evan I cannot do the 19th as I am in Florida.

I can do the 29, 30th, April 5 and then various dates in April.

Gordon A. Meiklejohn

Rosedale Square, 1055 Yonge Street, Suite 200 Toronto, Ontario M4W 2L2 Tel. 416.926.3797 Ext 225; Fax 416.926.3712

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-----Original Message-----

From: Cobb, Evan [mailto:evan.cobb@nortonrosefulbright.com]
 Sent: Monday, February 26, 2018 12:27 PM
 To: Gordon Meiklejohn <gam@bmbarristers.com>; 'Irving, Shawn' <SIrving@osler.com>; Katchin, Ian P. <ikatchin@foglers.com>; Dacks, Jeremy <JDacks@osler.com>
 Cc: GODIL, RAHAT <RAHAT.GODIL@blakes.com>; DOUGAN, LAURA <LAURA.DOUGAN@blakes.com>; Azzopardi, Teresa <TAzzopardi@osler.com>; Pham, Michelle <mpham@foglers.com>
 Subject: RE: Sears Canada v CIG et al Action # CV-15-52235-00A1 & 00B1

We have time booked on the 19th. We could try to fit this in on that date if that is sufficient time for other parties to prepare responding materials. If that date does not work, we will need to start looking for additional dates.

Evan Cobb
Partner

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84, Toronto, ON M5J 2Z4 Canada

T: +1 416.216.1929 | F: +1 416.216.3930

evan.cobb@nortonrosefulbright.com
NORTON ROSE FULBRIGHT

-----Original Message-----

From: Gordon Meiklejohn [mailto:gam@bmbarristers.com]
Sent: February-26-18 11:39 AM
To: 'Irving, Shawn'; Katchin, Ian P.; Cobb, Evan; Dacks, Jeremy
Cc: GODIL, RAHAT; DOUGAN, LAURA; Azzopardi, Teresa; Pham, Michelle
Subject: RE: Sears Canada v CIG et al Action # CV-15-52235-00A1 & 00B1

There always was to be relief sought against Sears, that is why the motion is before Hainey J.

Again what date are you suggesting Evan?

Gordon A. Meiklejohn

Rosedale Square, 1055 Yonge Street, Suite 200 Toronto, Ontario M4W 2L2 Tel. 416.926.3797 Ext 225; Fax 416.926.3712

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-----Original Message-----

From: Irving, Shawn [mailto:SIrving@osler.com]
Sent: Monday, February 26, 2018 10:36 AM
To: Katchin, Ian P. <ikatchin@foglers.com>; Gordon Meiklejohn <gam@bmbarristers.com>; 'Cobb, Evan' <evan.cobb@nortonrosefulbright.com>; Dacks, Jeremy <JDacks@osler.com>
Cc: GODIL, RAHAT <RAHAT.GODIL@blakes.com>; DOUGAN, LAURA <LAURA.DOUGAN@blakes.com>; Azzopardi, Teresa <TAzzopardi@osler.com>; Pham, Michelle <mpham@foglers.com>
Subject: RE: Sears Canada v CIG et al Action # CV-15-52235-00A1 & 00B1

If there is to be a cross-motion seeking specific relief as against Sears Canada, it is our position that the motion ought to be adjourned.

-----Original Message-----

From: Katchin, Ian P. [mailto:ikatchin@foglers.com]
Sent: Monday, February 26, 2018 7:53 AM
To: 'Gordon Meiklejohn' <gam@bmbarristers.com>; 'Cobb, Evan' <evan.cobb@nortonrosefulbright.com>; Dacks, Jeremy <JDacks@osler.com>
Cc: GODIL, RAHAT <RAHAT.GODIL@blakes.com>; DOUGAN, LAURA <LAURA.DOUGAN@blakes.com>; Irving, Shawn <SIrving@osler.com>; Azzopardi, Teresa <TAzzopardi@osler.com>; Pham, Michelle <mpham@foglers.com>
Subject: RE: Sears Canada v CIG et al Action # CV-15-52235-00A1 & 00B1

Gord,

I have reviewed your client's Motion Record, which was delivered via email on Thursday evening. The parties set aside March 2nd in early November, over 3.5 months ago. Your client's materials were served late and not in accordance with the Rules.

I am in discoveries this entire week (except for Friday) and, as a result, am not in a position to respond to your client's Motion before the hearing scheduled for March 2nd.

The relief sought in your client's Motion does not address whether the stay granted under the Initial Order applies vis-à-vis the actions. I believe that this issue must be determined prior to any relief being granted in your client's Motion.

Additionally, I understand from speaking with Sears' counsel that although Sears has set aside certain documents relating to this action, the exact scope of those documents is currently unknown. Also, Sears is not prepared to produce a representative for examinations absent a Court Order. I understand that this is due to, amongst other things, very limited resources.

I am in the process of seeking instructions on a cross-motion to compel a rep from Sears to attend discoveries and for a Declaration in relation to the applicability of the stay. I am not certain whether RRD and Moore's counsel is doing the same.

Subject to hearing from counsel to RRD, Moore and Sears, as well as the Monitor, I propose that we agree to a short adjournment of your client's Motion to another date in March so that proper instructions can be obtained, responding materials can be delivered, and any cross-motions can be served.

I invite counsel for RRD, Moore and Sears to comment as applicable.

I look forward to hearing from you.

Regards,

Ian

-----Original Message-----

From: Gordon Meiklejohn [mailto:gam@bmbarristers.com]

Sent: Thursday, February 22, 2018 6:40 PM

To: 'Cobb, Evan' <evan.cobb@nortonrosefulbright.com>; 'Dacks, Jeremy' <JDacks@osler.com>; Katchin, Ian P. <ikatchin@foglers.com>

Cc: GODIL, RAHAT <RAHAT.GODIL@blakes.com>; DOUGAN, LAURA <LAURA.DOUGAN@blakes.com>; Irving, Shawn <SIrving@osler.com>; Azzopardi, Teresa <TAzzopardi@osler.com>

Subject: RE: Sears Canada v CIG et al Action # CV-15-52235-00A1 & 00B1

Counsel attached please find our client's Motion Record, returnable March 2 at 10:00 a.m. at 330 University Avenue.

I ask that you let me know if service by way of this emailed copy of the Motion Record is sufficient or if you want me to provide you with a hard copy.

Gordon A. Meiklejohn

Brannan Meiklejohn Barristers

Rosedale Square, 1055 Yonge Street, Suite 200 Toronto, Ontario M4W 2L2 Tel. 416.926.3797 Ext 225; Fax 416.926.3712

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-----Original Message-----

From: Cobb, Evan [mailto:evan.cobb@nortonrosefulbright.com]

Sent: Tuesday, February 6, 2018 8:19 AM

To: Gordon Meiklejohn <gam@bmbarristers.com>; 'Dacks, Jeremy' <JDacks@osler.com>; Katchin, Ian P. <ikatchin@foglers.com>

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

Applicants

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

Proceeding commenced at Toronto

**CROSS-MOTION RECORD
(RETURNABLE APRIL 13, 2018)**

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Toronto ON M5L 1A9

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Lawyers for R.R. Donnelley & Sons Company and Moore
Canada Corporation