

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

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF SEARS CANADA INC., 9370-2751  
QUÉBEC INC., 191020 CANADA 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.

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(Employee Claims Process and Retiree Claims Process)

February 16, 2018

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# Tab 1

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

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF SEARS CANADA INC., 9370-2751  
QUÉBEC INC., 191020 CANADA 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

**NOTICE OF MOTION**

(Employee Claims Process and Retiree Claims Process)

The Applicants will make a motion before a judge of the Ontario Superior Court of Justice (Commercial List) on February 22, 2018 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

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

**THE MOTION IS FOR:**

1. An Order (the “**Employee and Retiree Claims Procedure Order**”) substantially in the form attached to the Motion Record, *inter alia*:
  - (a) if necessary, abridging the time for service of this Notice of Motion and the Motion Record and dispensing with service on any person other than those served;
  - (b) establishing claims procedures for the identification and quantification of Employee Claims and Retiree Claims (both as defined in the proposed Employee and Retiree

Claims Procedure Order) against the Applicants and SearsConnect (collectively, the “**Sears Canada Entities**”) and the current and former directors and officers of the Sears Canada Entities;

- (c) expanding and clarifying the mandate of Koskie Minsky LLP in its capacity as representative counsel for active employees and retirees with respect to pension and other postemployment benefit matters as previously set out in the Pension Representative Counsel Order dated July 13, 2017 (the “**Pension Representative Counsel**”); and
- (d) clarifying the mandate of Ursel Phillips Fellows Hopkinson LLP in its capacity as representative counsel for current and former non-unionized employees as previously set out in the Employee Representative Counsel Order dated July 13, 2017 (“**Employee Representative Counsel**”, and collectively with the Pension Representative Counsel, “**Representative Counsel**”);

2. Such further and other relief as this Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

***Background***

- 1. Any terms not defined herein have the meaning given to them in the proposed Employee and Retiree Claims Procedure Order;
- 2. The Sears Canada Entities were granted protection from their creditors under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) pursuant to the Initial Order of the Ontario Superior Court of Justice (Commercial List) dated June 22, 2017, as amended and restated (the “**Initial Order**”);
- 3. FTI Consulting Canada Inc. was appointed to act as the Monitor (the “**Monitor**”) in the CCAA proceeding;
- 4. On December 8, 2017, the Court made an Order (the “**Claims Procedure Order**”) establishing a claims procedure for the identification and quantification of certain claims against

the Sears Canada Entities, and the current and former directors and officers of the Sears Canada Entities (the “**Claims Process**”);

5. Certain categories of claims were excluded from the Claims Process, including Employee Claims and Pensioner Claims (both as defined in the Claims Procedure Order);

6. The Claims Procedure Order provided that the Applicants would seek approval of an Employee Claims Process and a Retiree Claims Process, which would be developed in consultation with Employee Representative Counsel, Pension Representative Counsel, Morneau Shepell Ltd., in its capacity as administrator of the Sears Canada Inc. Registered Retirement Plan (the “**Pension Plan Administrator**”), the Ontario Superintendent of Financial Services, as administrator of the Pension Benefits Guarantee Fund (the “**Superintendent**”), and the Monitor, as appropriate;

7. The Claims Procedure Order also expanded the mandates of Representative Counsel to, among other things, permit them to assist in the establishment and implementation of an Employee Claims Process and a Retiree Claims Process, respectively;

*Development of Employee and Retiree Claims Processes*

8. The Sears Canada Entities expect that the claims of their employees, former employees, retirees, and their survivors will be a significant category of claims against them in the aggregate;

9. An individualized assessment of each employee’s or retiree’s claim(s) is impractical and would consume an enormous amount of time and resources, to the detriment of all stakeholders, including employees and retirees;

10. The Sears Canada Entities and the Monitor, in consultation with Representative Counsel, determined that it would be appropriate to establish an acceptable process and/or methodology for the quantification of Employee Claims and Retiree Claims given the large number of employees and retirees with claims, the complex nature of those claims, the challenge of submitting individual proofs of claim, and the potential need for actuarial or other individualized legal advice;

11. Therefore, the Sears Canada Entities, in consultation with the Monitor, have engaged in negotiations with (i) Employee Representative Counsel, its financial advisor, and unions representing the Sears Canada Entities' unionized employees to develop the Employee Claims Process, and (ii) Pension Representative Counsel, the Pension Plan Administrator, the Superintendent and/or their respective legal and financial advisors to develop the Retiree Claims Process;

***Methodologies Proposed in Employee and Retiree Claims Procedure Order***

12. The proposed Employee and Retiree Claims Procedure Order would, if granted, approve certain methodologies that will be used to quantify the claims of Employees and Retirees described below:

- (a) The “**Termination Claims Methodology**” will be used to calculate any right or claim of an Employee against any of the Sears Canada Entities in respect of the termination of the Employee’s employment, whether under contract, common law, statute or otherwise, including for termination and severance pay and for damages for loss of employment-related perquisites and benefits (including employee discounts) during their notice period (“**Termination Claims**”);
- (b) The “**Retiree Benefit Claims Methodology**” will be used to calculate any right or claim of a Retiree against any of the Sears Canada Entities in respect of primary coverage entitlements with respect to health and dental post-employment benefits and/or life insurance benefits (“**Retiree Benefit Claims**”);
- (c) The “**Lifetime Discount Claims Methodology**” will be used to value any claim of a Retiree against any of the Sears Canada Entities with respect to the lifetime discount awarded as a post-employment benefit to certain current and former employees of the Sears Canada Entities (“**Lifetime Discount Claim**”);
- (d) The “**Sears Pension Claim Methodology**” will be the approach taken in valuing any claim against the Sears Canada Entities or their Directors and/or Officers with respect to the wind-up deficit under the defined benefit component of the Sears

Canada Inc. Registered Retirement Plan to be submitted through a Proof of Claim by the Pension Plan Administrator, Pension Representative Counsel and/or the Superintendent (the “**Sears Pension Claims**”);

13. The Applicants believe that the Employee and Retiree Claims Processes represent a fair and reasonable balancing of the interests of the Applicants’ stakeholders, provide fair and reasonable methods for determining the claims of the Sears Canada Entities’ Employees and Retirees, and were developed through a fair and reasonable process;

14. The Monitor has indicated that it supports the proposed Employee and Retiree Claims Processes;

***Role of Representative Counsel***

15. The Employee and Retiree Claims Procedure Order expands Pension Representative Counsel’s mandate, and provides that all unionized Retirees shall be represented by Pension Representative Counsel pursuant to the Pension Representative Counsel Order dated July 13, 2017 *nunc pro tunc*, unless any such unionized Retiree opts-out of such representation in writing;

16. The Employee and Retiree Claims Procedure Order clarifies that Representative Counsel are authorized to take a number of specific steps in the Employee and Retiree Claims Processes which are set out in detail in the proposed Employee and Retiree Claims Procedure Order;

***Other Grounds***

17. It is just and convenient and in the interests of the Applicants and their respective stakeholders that the requested Order be granted;

18. The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;

19. Rules 1.04, 1.05, 2.03, 3.02, 16 and 37 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended and section 106 of the Ontario *Courts of Justice Act*, R.S.O. 1990, c. C-43 as amended; and

20. Such further and other grounds as counsel may advise and this Court may permit.

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

1. The Affidavit of Becky Penrice sworn February 16, 2018;
2. The Thirteenth Report of the Monitor to be filed; and
3. Such further and other evidence as counsel may advise and this Court may permit.

February 16, 2018

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Lawyers for the Applicants

**TO: SERVICE LIST**

Court File No: CV-17-11846-00CL

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., 9370-2751 QUÉBEC INC., 191020 CANADA 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 MOTION**  
 (Employee Claims Process and Retiree Claims Process)

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## Tab 2

*Ontario*  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF SEARS CANADA INC., 9370-2751 QUÉBEC INC., 191020 CANADA 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

**AFFIDAVIT OF BECKY PENRICE**

Affirmed February 16, 2018

(Employee Claims Process and Retiree Claims Process)

I, Becky Penrice, of the Town of Georgetown, in the Province of Ontario, AFFIRM AND SAY:

1. I am the Executive Vice President and Chief Operating Officer of the Applicant Sears Canada Inc. ("**Sears Canada**"). I am also a director of each of the other Applicants. As such, I have personal knowledge of the matters deposed to in this Affidavit. Where I have relied on other sources for information, I have specifically referred to such sources and believe them to be true. In preparing this Affidavit, I have consulted with legal and other advisors to Sears Canada as well as other members of the senior management team of Sears Canada.

2. This Affidavit is affirmed in support of a motion by the Applicants seeking an Order (the "**Employee and Retiree Claims Procedure Order**") substantially in the form attached to the

Motion Record establishing claims procedures for the identification and quantification of Employee Claims and Retiree Claims (both as defined below) against the Applicants and SearsConnect (collectively, the “**Sears Canada Entities**”) and the current and former directors and officers of the Sears Canada Entities.

3. Capitalized terms used in this Affidavit but not defined herein have the meaning given to them in the Affidavit of Billy Wong sworn June 22, 2017 (the “**Initial Order Affidavit**”) or in the proposed Employee and Retiree Claims Procedure Order.

## **Background**

4. On June 22, 2017, the Sears Canada Entities were granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), pursuant to an initial order of the Ontario Superior Court of Justice (Commercial List) (the “**Initial Order**”). The Initial Order, among other things, appointed FTI Consulting Canada Inc. to act as monitor in these CCAA proceedings (the “**Monitor**”).

5. On July 13, 2017, the Court made (i) the Employee Representative Counsel Order appointing Ursel Phillips Fellows Hopkinson LLP to act as representative counsel for current and former non-unionized employees for the purposes set out in the Employee Representative Counsel Order (“**Employee Representative Counsel**”); and (ii) the Pension Representative Counsel Order appointing Koskie Minsky LLP to act as representative counsel for active employees and retirees with respect to pension and other post-employment benefit matters as set out in the Pension Representative Counsel Order (“**Pension Representative Counsel**” and, together with Employee Representative Counsel, “**Representative Counsel**”).

6. On July 13, 2017, the Court also made an Order that, among other things, (i) authorized the suspension of the special payments with respect to the defined benefit component (the “**DB Component**”) of the Sears Canada Inc. Registered Retirement Plan (the “**Sears Pension Plan**”) effective October 1, 2017; (ii) approved the suspension of payments with respect to the Sears Canada Inc. Supplementary Retirement Plan (the “**Supplemental Plan**”) effective October 1, 2017; and (iii) approved the suspension of payments with respect to life insurance, medical and dental benefits provided to eligible retirees under the post-retirement benefit plan (“**OPEBs**”) effective October 1, 2017.

7. On December 8, 2017, the Court made an Order (the “**Claims Procedure Order**”) establishing a claims procedure for the identification and quantification of certain claims against the Sears Canada Entities and the current and former directors and officers of the Sears Canada Entities (the “**Claims Process**”). Certain categories of claims were excluded from the Claims Process, including Employee Claims and Pensioner Claims (both as defined in the Claims Procedure Order). Instead, the Claims Procedure Order provided that the Applicants would return to Court to seek approval of an Employee Claims Process (as defined in the Claims Procedure Order) and a Retiree Claims Process (called the “**Pensioner Claims Process**” in the Claims Procedure Order), which would be developed in consultation with Employee Representative Counsel, Pension Representative Counsel, Morneau Shepell Ltd., in its capacity as administrator of the Sears Canada Inc. Registered Retirement Plan (the “**Pension Plan Administrator**”), the Ontario Superintendent of Financial Services, as administrator of the Pension Benefits Guarantee Fund (the “**Superintendent**”), and the Monitor, as appropriate.

8. Further, the Claims Procedure Order expanded the mandates of Employee Representative Counsel and Pension Representative Counsel to, among other things, permit them to assist in the

establishment and implementation of an Employee Claims Process and a Retiree Claims Process, respectively.

9. The Applicants, in consultation with the Monitor, have worked closely with Employee Representative Counsel in developing the proposed Employee Claims Process and with Pension Representative Counsel, the Pension Plan Administrator and the Superintendent in developing the proposed Retiree Claims Process. The Applicants are seeking Court approval for both claims processes in this motion.

### **Development of the Employee and Retiree Claims Processes**

#### **A. The Need for the Employee and Retiree Claims Processes**

10. The Sears Canada Entities and the Monitor, in consultation with Representative Counsel, determined that, given the large number of employees and retirees with claims, the complex nature of those claims, the challenge of submitting individual proofs of claim, and the potential need for actuarial or other legal advice, it would be appropriate to establish an acceptable process and/or methodology for the quantification of employee and retiree claims. Conducting an individualized assessment of each employee's or retiree's claims would consume an enormous amount of time and resources, to the detriment of all stakeholders, including employees and retirees. The development of a streamlined procedure to deal with employee and retiree claims is intended to facilitate the timely determination of claims against the Sears Canada Entities in order to allow for distribution to creditors, whether through a of a plan of arrangement or otherwise.

11. As such, the Sears Canada Entities have worked closely with the Monitor, Representative Counsel, the Pension Plan Administrator and the Superintendent to develop the methodologies and processes described in this affidavit.

**i. *Employees - Number and Complexity of Claims***

12. The Sears Canada Entities expect that the employment-related claims of their current and former employees will be a significant category of claims in these CCAA proceedings. Over 22,000 employees have been terminated, resigned or otherwise ceased employment during these CCAA proceedings and thus may have entitlements to notice or payment in lieu of notice. The vast majority of terminated employees received a period of working notice, but the period was not necessarily sufficient to satisfy these employees' legal entitlements. Other employees were terminated with little or no working notice due to the exigencies of the CCAA proceeding. Approximately 600 former employees who were terminated without cause before the Filing Date may have a claim for salary continuance payments that were discontinued as a result of the CCAA filing.

13. The Sears Canada Entities and the Monitor, in consultation with Employee Representative Counsel, concluded that an individualized assessment of each employee's entitlements on termination is not practically feasible under the circumstances for a number of reasons, including:

- (a) *Variety of potential legal frameworks:* I am advised by Sven Poysa of Osler, Hoskin & Harcourt LLP and believe that employees in Canada who are terminated without cause have entitlements under two distinct but overlapping regimes: (i) statutory minimum entitlements under employment standards legislation; and (ii) an entitlement to "reasonable" notice on termination or pay-in-lieu at common law or under the *Civil Code of Québec*. The common law entitlement to reasonable notice can be displaced by agreement, but a close and highly technical reading of an agreement is required to determine whether it effectively modifies an employee's entitlements upon termination.

- (b) Fact-specific determinations: I am further advised by Mr. Poysa and believe that determining reasonable notice on termination takes into account a number of factors (commonly referred to as the *Bardal* factors), including the employee's age, position, and length of service. An employee's common law entitlement, if any, would also be subject to the employee's duty to mitigate his or her damages, which is generally achieved by actively pursuing alternative employment with a new employer and is also a fact-specific determination for which obtaining and verifying the necessary details from each employee would not be feasible under the circumstances. Contractual entitlements may or may not be subject to a duty to mitigate depending on the specific terms of the contract.
- (c) Impact of Sears Canada policies: Sears Canada had policies regarding severance pay that may have formed the basis of termination provisions in certain employees' offer letters and may, therefore, impact the quantum of employees' claims. Before 2016, Sears Canada had a general policy and practice (the "**Pre-2016 Severance Policy**") to provide all employees terminated without cause with 2 weeks' pay per year of service with a cap at 78 weeks. In 2016, Sears Canada amended its general policy and practice (the "**Post-2016 Severance Policy**") to provide for an enhanced formula of 4 weeks' pay per year of service for managers and above, while also introducing a reduced cap of 52 weeks for all employees. As of the Filing Date, Sears Canada had employees with service varying from a few weeks to 35 years or more, and there would be significant variation in the forms of offer letters over the years. In certain cases, employees may not have received or accepted an offer letter. Further, offer letters were generally stored locally in employee files across the

country, and tracking down and reviewing 22,000 personnel files is impracticable given available resources.

**ii. Retirees – Number and Complexity of Claims**

14. Similarly, the Sears Canada Entities expect that some of their current and former employees, or surviving spouses or others whose claim derives from former employees, may have significant claims, in the aggregate, based on their pension or other post-retirement entitlements. On the Filing Date, the Sears Canada Entities maintained a number of pension arrangements and provided post-retirement benefits (which are described in detail in the Initial Order Affidavit).

15. Potential Claimants may have claims based on (i) the wind-up deficit in the DB Component of the Sears Pension Plan (as at December 31, 2016, there were approximately 17,600 people entitled to the benefits under the DB Component of the Sears Pension Plan); (ii) the wind-up deficit with respect to benefits under the Supplemental Plan secured under a retirement compensation arrangement (“**RCA**”) or the discontinuance of payments under the Supplemental Plan that were not secured under an RCA (as at October 1, 2017, there were fewer than 110 people entitled to the benefits under the Supplemental Plan); (iii) the discontinuance of OPEBs (as at October 1, 2017, approximately 4,300 people had the primary coverage entitlement to OPEBs<sup>1</sup>); and (iv) the cessation of the lifetime discount awarded as a post-employment benefit to certain current and former employees of the Sears Canada Entities (the “**Lifetime Discount**”) (as at October 1, 2017, approximately 16,400 people were entitled to the Lifetime Discount). Many retirees would have claims under more than one of these categories, but there would be some retirees who would have

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<sup>1</sup> Of these, approximately 2,000 had OPEB coverage that extended to include a spouse or dependent.

a claim under only one category. In particular, there are a significant number of retirees who would only have a claim with respect to the Lifetime Discount.

16. As with the employment-related claims discussed above, an individualized assessment of the entitlement of each retiree with respect to OPEBs and the Lifetime Discount is not practically feasible under the circumstances for a number of reasons, including:

- (a) *Complexity of legal framework:* I am advised by Anthony Devir of Osler, Hoskin & Harcourt LLP and believe that the entitlement of a retiree to a retiree benefit, such as any retiree health and dental benefit, retiree life insurance and Lifetime Discount, is dependent on whether the retiree has a vested right to receive such retiree benefit and/or whether the Sears Canada Entities have properly reserved the right to alter or eliminate the provision of that particular retiree benefit. To determine either question would require an analysis of the general communications to employees prior to the date of retirement of that retiree, together with any specific communication to the particular individual in question, both with respect to the description of the benefit coverage that may have been “promised” as of the date of retirement and with respect to any general or specific reservation of the right to amend or terminate the applicable retiree benefit plan. To the extent that the level of retiree benefit coverage was increased after a person retired, it would be necessary to determine whether the provision of such increased retiree benefit coverage was provided on a voluntary, non-binding basis or whether there was any consideration flowing to the Sears Canada Entity for such increased retiree benefit coverage.

(b) *Fact-specific determinations*: I am further advised by Mr. Devir and believe that in addition to needing to review and consider any individual communications to any retiree, any determination of the claim with respect to any individual retiree would depend on an analysis of factors specific to that retiree, such as the life expectancy for that retiree (based on a broad range of factors), the degree of past usage by the retiree of the retiree benefit in question and assumptions regarding future usage, individual tax rates applicable to each retiree, and evidence of the overall health of the retiree and associated insurability of such retiree for life insurance and health and dental coverage.

17. Given the complex legal frameworks and other challenges outlined above, if individual employees and retirees were required to submit individual proofs of claim, it is likely that a large number of inconsistent calculations and assessments would be received and significant costs would be incurred in processing and resolving disputes over such proofs of claim.

**B. Negotiations for the Employee Claims Process**

18. The Sears Canada Entities, in consultation with the Monitor, worked closely with Employee Representative Counsel and its financial advisor to develop a uniform approach to employee termination entitlements that will apply to the claims of all employees and former employees represented by Employee Representative Counsel (“**ERC Employees**”), and to develop a streamlined process for valuing and resolving disputes regarding their claims. After numerous discussions and face-to-face meetings as well as extensive sharing of documentation and employee information, the Sears Canada Entities, the Monitor and Employee Representative Counsel have agreed upon an approach to quantify the termination claims for all ERC Employees.

19. In addition, the Sears Canada Entities engaged in discussions with the unions representing their approximately 350 unionized employees (the “**Unionized Employees**”) to reach an agreement on how to address and value the claims of Unionized Employees.

**C. Negotiations for the Retiree Claims Process**

20. The Sears Canada Entities, in consultation with the Monitor, worked closely with Pension Representative Counsel, the Pension Plan Administrator, the Superintendent and/or their respective legal and financial advisors to develop an approach for addressing claims in respect of the wind-up deficit under the DB Component of the Sears Pension Plan. As discussed in greater detail below, the proposed Employee and Retiree Claims Procedure Order contemplates that the Pension Plan Administrator, Pension Representative Counsel, and/or the Superintendent will submit a proof of claim in respect of the wind-up deficit with respect to the DB Component of the Sears Pension Plan, instead of requiring members of the DB Component of the Sears Pension Plan to submit individual proofs of claim with respect to any anticipated consequential shortfall in their respective individual pension entitlements payable from the Sears Pension Plan.<sup>2</sup> The parties have agreed on the proposed approach that will be used to value this claim.

21. In addition, the Sears Canada Entities, in consultation with the Monitor, worked closely with Pension Representative Counsel and its financial advisor to develop a uniform approach that will apply to all claims that could be asserted by current and former employees represented by Pension Representative Counsel (“**PRC Retirees**”) based on entitlements to benefits under the Supplemental Plan, to OPEBs or to the Lifetime Discount, and to develop a streamlined process

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<sup>2</sup> To the extent that a claim is made based on statutory deemed trust provisions, the draft order contemplates that the Pension Plan Administrator, Pension Representative Counsel, and/or the Superintendent will submit a proof of claim in respect of this claim on behalf of the Sears Pension Plan beneficiaries. The proposed Employee and Retiree Claims Procedure Order provides that individual Retirees will not be permitted to submit individual claims in respect of any entitlement with respect to the DB Component of the Sears Pension Plan or with respect to the wind-up deficiency.

for resolving disputes regarding these claims. After numerous discussions and face-to-face meetings as well as extensive sharing of documentation and information, the Sears Canada Entities, the Monitor and Pension Representative Counsel have agreed upon an approach that will govern the claims of all PRC Retirees based on their entitlements under the Supplemental Plan, to OPEBs, and to the Lifetime Discount.

### **Overview of the Employee and Retiree Claims Processes**

22. At a high level, the proposed Employee and Retiree Claims Procedure Order provides for a two-track process for addressing all of the potential claims that may be asserted by employees and retirees against the Sears Canada Entities and their current and former officers and directors.

23. The first track is a “negative notice” process that will govern all claims related to the termination of employment (including for termination and severance pay and for damages for loss of employment-related perquisites and benefits during employees’ notice periods), and all claims based on entitlements to OPEBs. The Monitor will provide a notification to each known Claimant that will either set out the Claimant’s individual claim or contain instructions for Claimants to access a web portal where his/her individual claim will be set out. The Sears Canada Entities, in consultation with the Monitor, will calculate these claims in accordance with the methodologies proposed in the Employee and Retiree Claims Procedure Order using the relevant personal information regarding the Claimant as recorded in the Sears Canada Entities’ books and records (the “**Personal Information**”). The Claimant will then have an opportunity to review and, if applicable, correct, the Personal Information used to calculate his/her claims and, in some limited cases, to propose alternative methodologies for valuing those claims. The Employee and Retiree Claims Procedure Order also approves mechanisms for resolving and, where needed, adjudicating any disputes with respect to the Personal Information or (where applicable) the methodologies used to value a claim.

24. The second track will apply to all other claims of employees and retirees. Claimants (or the applicable Representative Counsel) will be permitted to submit proofs of claim for any claims not covered by the first track, including any claims against any current and former directors and/or officers of the Sears Canada Entities, with three exceptions: (i) claims relating to the obligation to fund the wind-up deficit under the DB Component of the Sears Pension Plan will be submitted through an omnibus proof of claim by the Pension Plan Administrator, Pension Representative Counsel, and/or the Superintendent on behalf of applicable Claimants; (ii) claims relating to entitlements under the Supplemental Plan will be submitted through an omnibus proof of claim by Pension Representative Counsel on behalf of applicable Claimants; and (iii) claims relating to the Lifetime Discount or any Warranty Claims will be deemed to have been submitted through proofs of claim by the Sears Canada Entities on behalf of applicable Claimants. These proofs of claim (with the exception of claims relating to the Lifetime Discount and Warranty Claims) will then be reviewed by the Monitor, and allowed or disallowed, with any disputes to be settled or resolved in accordance with procedures provided in the Employee and Retiree Claims Procedure Order.

25. I believe that the Employee and Retiree Claims Processes represent a fair and reasonable balancing of the interests of the Applicants' stakeholders, provide fair and reasonable methods for determining the claims of the Sears Canada Entities' employees and retirees, and were developed through a fair and reasonable process. I am advised by Mr. Poysa and believe that employee claims have been determined by way of a court-approved methodology in previous insolvency proceedings such as Nortel Networks Corporation and its affiliates (Court File No. 09-CL-7950) and Danier Leather (Court File No. 31-2084381).

A. **Affected Claims and Claimants**

26. The proposed Employee and Retiree Claims Procedure Order is designed to govern all of the claims of the following Claimants:

- (a) *Employees:* (i) Active or inactive union or non-union employees of any one of the Sears Canada Entities on or after the Filing Date, including employees of any one of the Sears Canada Entities who received notice of termination of employment dated on or after the Filing Date or who resigned or otherwise ceased employment on or after the Filing Date; and (ii) former employees of any one of the Sears Canada Entities, including, without limitation, any former employee who was terminated for cause at any time, any former employee who received notice, on or after the Filing Date, of the cessation of his or her termination or severance payments, and any former employee who has an outstanding active action, claim or complaint as of the Filing Date (collectively, the “**Employees**”). The Employees affected by the Employee and Retiree Claims Procedure Order include the ERC Employees, Employees who have opted-out of representation by Employee Representative Counsel (the “**Opt-Out Employees**”), the Unionized Employees, and senior management employees who are not represented by Employee Representative Counsel (“**Senior Management**”, collectively with the Opt-Out Employees and Unionized Employees, the “**Non-ERC Employees**”).
- (b) *Retirees:* Any Person with (i) entitlements under the Sears Pension Plan; (ii) entitlements under the Supplemental Plan; (iii) primary coverage entitlements with respect to health and dental post-employment benefits and/or life insurance benefits (“**OPEB Entitlements**”); (iv) entitlements to the Lifetime Discount (including, for greater certainty, current and former Employees who qualify for this discount by virtue of satisfying applicable age and

service eligibility criteria); or (v) entitlements under any other pension or retirement plan of the Sears Canada Entities. The Retirees affected by the Employee and Retiree Claims Procedure Order include the PRC Retirees and Retirees who are not represented by Pension Representative Counsel (“**Non-PRC Retirees**”).<sup>3</sup>

27. The proposed Employee and Retiree Claims Procedure Order provides mechanisms for identifying and quantifying the following categories of claims:

- (a) *Termination Claims*: any right or claim of an Employee against any of the Sears Canada Entities in respect of the termination of the Employee’s employment, whether under contract, common law, statute or otherwise, including for termination and severance pay and for damages for loss of employment-related perquisites and benefits (including employee discounts) during their notice period;
- (b) *Other Employee Claims*: any other rights or claims of any Employee against any of the Sears Canada Entities or any rights or claims of any Employee against any of the Directors and/or Officers, including in connection with any indebtedness, liability or obligation of any kind whatsoever of any such Sears Canada Entity, Director and/or Officer to such Employee, arising before, on or after the Filing Date, for amounts owing to him or her (together with Termination Claims, the “**Employee Claims**”);

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<sup>3</sup> Non-PRC Retirees include (i) unionized Retirees who notify Pension Representative Counsel in writing that they wish to opt out of representation by Pension Representative Counsel, (ii) Retirees who are or were previously a member of senior management of any of the Sears Canada Entities, and (iii) Retirees who opted out of representation by the Pension Representative Counsel.

- (c) *Sears Pension Claims*: any claim against the Sears Canada Entities or their Directors and/or Officers with respect to the wind-up deficit under the DB Component of the Sears Pension Plan to be submitted through a Proof of Claim by the Pension Plan Administrator, Pension Representative Counsel and/or the Superintendent;
- (d) *Supplemental Plan Claims*: any claim against the Sears Canada Entities or their Directors and/or Officers with respect to entitlements of a Retiree under the Supplemental Plan;
- (e) *Retiree Benefit Claims*: any right or claim of a Retiree against any of the Sears Canada Entities in respect of OPEB Entitlements;
- (f) *Lifetime Discount Claims*: any claim of a Retiree against any of the Sears Canada Entities with respect to a Lifetime Discount;
- (g) *Other Retiree Claims*: any other rights or claims of any Retiree against any of the Sears Canada Entities or any rights or claims of any Retiree against any Directors and/or Officers, including in connection with any indebtedness, liability or obligation of any kind whatsoever of any such Sears Canada Entity, Director and/or Officer to such Retiree, arising before, on or after the Filing Date, for amounts owing to him or her (together with the Sears Pension Claims, Supplemental Plan Claims, Retiree Benefit Claims and Lifetime Discount Claims, the “**Retiree Claims**”);
- (h) *Warranty Claims*: any claim of a Retiree or Employee against any of the Sears Canada Entities with respect to Warranties; and

- (i) *D&O Claims*: any Other Employee Claim or Other Retiree Claim that is asserted against a Director or Officer under the proposed Employee and Retiree Claims Procedure Order.

**B. Methodology for Valuing Termination Claims**

28. The proposed Employee and Retiree Claims Procedure Order seeks approval of the “**Termination Claims Methodology**” that is described in this section and that will be used to value the Termination Claims of all Employees.<sup>4</sup> The Termination Claims Methodology divides the Employees into eight categories for purposes of valuing their Termination Claims: (i) ERC Employees who were terminated without cause and do not have enhanced contractual entitlements; (ii) ERC Employees who resigned; (iii) ERC Employees who were receiving severance payments that ceased on or after the Filing Date; (iv) ERC Employees who were terminated for cause; (v) ERC Employees who were terminated without cause and who have enhanced contractual entitlements; (vi) Non-ERC Employees with enhanced contractual entitlements (*i.e.*, Senior Management); (vii) Unionized Employees; and (viii) Opt-Out Employees.<sup>5</sup>

**i. *ERC Employees terminated without cause and without enhanced contractual entitlements***

29. There are approximately 15,100 ERC Employees who were terminated without cause and who do not have enhanced contractual entitlements, and they constitute the vast majority of Employees. The Termination Claims Methodology quantifies their Termination Claims in two steps.

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<sup>4</sup> An illustrative summary of the Termination Claims Methodology is included in a schedule to the Order.

<sup>5</sup> The Sears Canada Entities have determined estimated termination dates for all Employees still employed by the Sears Canada Entities. These estimated termination dates will be used in the calculation of the Termination Claims of these Employees.

30. The Sears Canada Entities, the Monitor and Employee Representative Counsel agreed that, at the first step, the notice period to which the Employee is entitled is deemed to be the greatest of the Employee's entitlements under the following:

- (a) The applicable employment standards legislation;
- (b) The Pre-2016 Severance Policy;
- (c) The Post-2016 Severance Policy; and
- (d) An agreed upon severance formula (the "**Common Law Severance Formula**").

31. I am advised by Mr. Poysa and believe that the Common Law Severance Formula is predicated on common law principles and takes into account an Employee's length of service, position, and age. It was developed based on the Sears Canada Entities', the Monitor's and Employee Representative Counsel's experience and knowledge of termination entitlements in the retail industry with consideration given to the applicable jurisprudence. A description of the Common Law Severance Formula is included as Schedule "A" to this Affidavit.

32. Where applicable, the notice period will be reduced by any period of working notice given to an Employee (such resulting period of non-working notice, the "**Severance Pay Period**").

33. At the second step, the Sears Canada Entities, the Monitor and Employee Representative Counsel agreed that the Employee's Termination Claim will consist of:

- (a) The Employee's base salary or hourly rate (the "**Base Wages**") during the Severance Pay Period;

- (b) An additional agreed-upon percentage of Base Wages (the “**Benefits Gross-Up**”) to compensate the Employee for any and all additional damages or other losses during the Severance Pay Period. The Benefit Gross Up will vary depending on the categories of benefits the Employee participated in, which could include one or more of the following: (i) health and dental benefits; (ii) life insurance coverage; and (iii) defined contribution pension plan contributions, as well as the potential tax consequences associated with receiving a lump-sum payment;<sup>6</sup> and
- (c) An additional flat amount of \$175 in respect of damages for the loss of associate discount and associate assistance plan.

34. I am advised by Mr. Poysa and believe that the Benefits Gross-Up reflects the concept that employees are generally entitled to be “made whole” during the applicable notice period. The percentage of Benefits Gross-Up varies according to the Employee’s level (more senior Employees had greater benefit entitlements, and thus have a higher Benefits Gross-Up percentage). The percentage was generally determined with reference to the cost of replacement coverage (including an adjustment to account for tax impact), which I am advised by Mr. Poysa and believe is generally seen as the most appropriate methodology for determining lost benefit coverage. A list of the Benefits Gross-Up for each Employee level is included as Schedule “B” to this Affidavit.

35. The Termination Claims Methodology will be binding on all ERC Employees who were terminated without cause and do not have enhanced contractual entitlements if it is approved by the Court. However, as discussed below, these ERC Employees will have the opportunity to review

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<sup>6</sup> If an Employee did not participate in any benefit plans, the Benefits Gross-Up does not apply.

and, if applicable, correct the Personal Information used to calculate their Termination Claims in accordance with the Termination Claims Methodology.

**ii. *ERC Employees and Non-ERC Employees who resigned***

36. Where an Employee resigned during the post-Filing period (whether or not during the period of working notice), that Employee's Termination Claim will be valued at nil. However, any Employee in Ontario with five or more years of service who resigned during their statutory notice period will have a Termination Claim equal to their statutory severance pay in accordance with the requirements of the Ontario *Employment Standards Act, 2000*, S.O. 2000, c. 41.<sup>7</sup>

37. Employees who resigned during the post-Filing period will be permitted to contest the Sears Canada Entities' assertion that they resigned voluntarily by submitting a Request for Correction (described below). If an Employee establishes that his/her resignation was not voluntary or if the Sears Canada Entities do not maintain the assertion of a voluntary resignation, then this Employee will have a Termination Claim for an amount no greater than the amount of the Termination Claim of an Employee terminated without cause under the applicable portion of the Termination Claims Methodology (as described in subsections i, v, vi, vii, or viii, as applicable).

38. The Termination Claims Methodology will be binding on all ERC Employees who resigned if it is approved by the Court. However, as discussed below, these ERC Employees will have the opportunity to review and, if applicable, correct the Personal Information used to calculate their Termination Claims in accordance with the Termination Claims Methodology. Non-ERC Employees have the opportunity to review and, if applicable, correct the Personal Information

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<sup>7</sup> There are no similar legislative provisions in other provinces.

used to calculate their Termination Claims or to propose an alternate method of valuing their Termination Claims.<sup>8</sup>

**iii. *ERC Employees and Non-ERC Employees who were receiving severance payments that ceased on or after the Filing Date***

39. Certain Employees were terminated by the Sears Canada Entities prior to the Filing Date but continued to receive severance payments after their termination. On or after the Filing Date, these Employees were notified that the Sears Canada Entities had entered into these CCAA proceedings and that their severance payments ceased on the Filing Date.

40. The Termination Claims Methodology provides that the Termination Claims of Employees whose severance payments ceased on the Filing Date will be valued at the amount of severance payments that remained to be paid by the Sears Canada Entities as of the Filing Date.

41. The Termination Claims Methodology will be binding on all ERC Employees whose severance payments ceased on the Filing Date if it is approved by the Court. However, as discussed below, these ERC Employees will have the opportunity to review and, if applicable, correct the Personal Information used to calculate their Termination Claims in accordance with the Termination Claims Methodology. Non-ERC Employees have the opportunity to review and, if applicable, correct the Personal Information used to calculate their Termination Claims or to propose an alternate method of valuing their Termination Claims.<sup>9</sup>

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<sup>8</sup> In the case of a Union Employee, only a Union Representative (defined below) will be permitted to propose an alternative methodology for valuing their Termination Claim.

<sup>9</sup> In the case of a Union Employee, only a Union Representative will be permitted to propose an alternative methodology for valuing their Termination Claim.

**iv. *ERC Employees terminated for cause***

42. Approximately 750 Employees were terminated for cause by the Sears Canada Entities since the Filing Date, all but 5 of whom are represented by Employee Representative Counsel.<sup>10</sup> The Termination Claims Methodology provides that the Termination Claims of Employees terminated for cause after the Filing Date will be valued at nil, but they will be permitted to contest the Sears Canada Entities' assertion that they were terminated for cause by submitting a Request for Correction (described below). If cause is not established or if the Sears Canada Entities do not maintain the assertion of cause, then these Employees will have a Termination Claim for an amount no greater than the amount of the Termination Claim of an ERC Employee terminated without cause under the Termination Claims Methodology (as described above in subsection i).

43. The Termination Claims Methodology will be binding on all ERC Employees who were terminated for cause if it is approved by the Court. However, as discussed below, these ERC Employees will have the opportunity to review and, if applicable, correct the Personal Information used to calculate their Termination Claims in accordance with the Termination Claims Methodology.

**v. *ERC Employees terminated without cause and who have enhanced contractual entitlements***

44. Approximately 25 ERC Employees had negotiated enhanced termination entitlements as part of their employment agreements. The Termination Claims Methodology provides that their Termination Claims will be calculated to be the greater of (i) the entitlement under the applicable employment agreement and (ii) the entitlement under the methodology described above in

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<sup>10</sup> The 5 Non-ERC Employees terminated for cause after the Filing Date were Unionized Employees and their Termination Claims will be determined in accordance with the Termination Claims Methodology for Unionized Employees as set out in subparagraph viii. below.

subsection i. Should the Termination Claims Methodology be approved by the Court, these Employees will only be permitted to review and, if applicable, correct the Personal Information used to calculate their Termination Claims (as discussed below). They will not be able to propose any alternate method of valuing their Termination Claims.

**vi. *Non-ERC Employees with enhanced contractual entitlements***

45. Approximately 30 Non-ERC Employees, all of whom are members of Senior Management, were terminated without cause, all but seven of whom had negotiated enhanced termination entitlements as part of their employment agreements. The Termination Claims Methodology provides that their Termination Claims will be calculated to be the greater of (i) the entitlement under the applicable employment agreement and (ii) the entitlement under the methodology described above in subsection i. As discussed below, these Employees will have the opportunity to review and, if applicable, correct the Personal Information used to calculate their Termination Claims or to propose an alternate method of valuing their Termination Claims.

**vii. *Unionized Employees***

46. There are approximately 350 Unionized Employees. The Unionized Employees are represented by three unions: Unifor, Local 40 (“**Unifor**”), which represents Unionized Employees in Ontario; the International Brotherhood of Electrical Workers, Local 213 (the “**IBEW**”), which represents Unionized Employees in British Columbia; and the Syndicat des Métallos, local 9153 (the “**Métallos**”), which represents Unionized Employees in Québec. The Termination Claims Methodology provides that Unionized Employees’ Termination Claims will be valued at the greater of (i) their entitlement under the applicable collective agreement and (ii) the applicable minimum standards legislation. As discussed below, these Employees will have the opportunity to review and, if applicable, correct the Personal Information used to calculate their Termination

Claims in accordance with the above described Termination Claims Methodology.<sup>11</sup> In addition, a Unionized Employee's bargaining agent (the "**Union Representative**") will be permitted to propose an alternative methodology for valuing their Termination Claim. The unions representing the Unionized Employees have agreed with this approach to valuing these Termination Claims.

**viii. *Opt-Out Employees***

47. There are 8 Employees who have opted out of representation by Employee Representative Counsel and who were terminated without cause on or after the Filing Date. For such Employees, their Termination Claims will be calculated using the methodology described in subsection i above in the same way as ERC Employees terminated without cause and without enhanced contractual entitlements. However, this methodology will not be binding on such Employees. They will have the opportunity to review and, if applicable, correct the Personal Information used to calculate their Termination Claims in accordance with the Termination Claims Methodology or to propose an alternate method of valuing their Termination Claims.

**C. Methodology for Valuing Retiree Benefit Claims**

48. The proposed Employee and Retiree Claims Procedure Order seeks approval of the "**Retiree Benefit Claims Methodology**" that is described in this section and that will be used to value the Retiree Benefit Claims of all Retirees.<sup>12</sup>

**i. *Health and Dental Claims***

49. Retiree health and dental benefits were provided by the Sears Canada Entities to covered participants at no cost to the covered participants on a self-insured basis. In addition to providing

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<sup>11</sup> In addition, the 5 Unionized Employees terminated for cause after the Filing Date will be permitted to contest the Sears Canada Entities' assertion that they were terminated for cause by submitting a Request for Correction.

<sup>12</sup> An illustrative summary of the Retiree Benefit Claims Methodology is included in a schedule to the Order.

coverage to eligible retired employees of the Sears Canada Entities (the “**Retirees with Primary Coverage**”), the Sears retiree health and dental benefits plan (the “**Health and Dental Plan**”) also provided coverage to eligible spouses and dependents. If a Retiree with Primary Coverage dies, any eligible spouse becomes the Retiree with Primary Coverage.

50. As of September 30, 2017 there were approximately 6,300 individuals (including retirees, eligible spouses and dependants) with coverage under the Health and Dental Plan. For Retirees who were alive as of October 1, 2017 and whose OPEB Entitlements included health and dental benefits, the claim for the loss of future health and dental coverage is determined for each individual Retiree with Primary Coverage as follows:

- (a) determine the approximate annual cost to obtain health and dental insurance coverage (single or couple coverage, or coverage that includes dependents, as applicable) that replaces the health and dental coverage provided under the Health and Dental Plan (the “**Annual Replacement Cost**”) by:
  - (i) determining the average of the annual premiums offered to Ontario residents by Sun Life and Manulife to Retirees whose coverage ceased under the Health and Dental Plan as of October 1, 2017; and
  - (ii) adding an additional amount to compensate for the fact that the coverage provided by Sun Life and Manulife on average only provided replacement coverage at approximately 80% of the coverage provided under the Health and Dental Plan;
- (b) assume that the Annual Replacement Cost would increase at a rate of 6% per year (the “**Annual Rate Increase**”). I am advised by Mr. Devir and believe that the Annual Rate Increase is intended to reflect the fact that: (i) the cost of providing health and dental care (including the cost of semi-private hospital coverage and of prescription drugs) increases each year at rates that are higher than the general rate of inflation and that premium costs to obtain such health and dental coverage will

correspondingly increase and (ii) premiums for health and dental coverage typically increase for individuals as they age (over and above general inflationary increases);<sup>13</sup>

- (c) determine the Retiree's life expectancy as at October 1, 2017 (in years and months), based on the age of the Retiree as at October 1, 2017 and the Statistics Canada Life Expectancy Tables<sup>14</sup> and add that period of life expectancy to October 1, 2017 to determine a predicted date of death (the "**Life Expectancy Date**");
- (d) assume that the Retiree incurs the Annual Replacement Cost each year (increased each year by the Annual Rate Increase) through to his or her Life Expectancy Date;
- (e) determine the present value as at October 1, 2017 of the amount determined under paragraph (d) above using an annual discount rate of 2.34%;<sup>15</sup> and
- (f) adjust the amount determined under paragraph (e) above to reflect the tax impact of this change of health and dental coverage, assuming a marginal tax rate of 10%. This tax adjustment is intended to recognize that while Retirees previously received health and dental benefits under the Health and Dental Plan on a non-taxable basis, any payment received with respect to health and dental benefit claims would be a taxable payment to the Retiree.

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<sup>13</sup> For example, the premium for coverage for a single person age 85-99 was more than 19% higher than the premium for the same coverage for a single person age 65-69.

<sup>14</sup> Found at <http://www5.statcan.gc.ca/cansim/a26?lang=eng&retrLang=eng&id=0530003&pattern=&csid=>

<sup>15</sup> I am advised by Mr. Devir and believe that this discount rate is based on the yield on Government of Canada zero coupon bonds with a maturity of 12.6 years (representing the average remaining life expectancy of the Retirees entitled to health and dental benefits).

ii. *Life Insurance*

51. As of October 1, 2017, there were approximately 3,600 individuals who had life insurance coverage that formed part of the OPEB Entitlements. This life insurance coverage was provided through an insurance policy issued by Sun Life Assurance Company of Canada (“**Sun Life**”). The amount of the life insurance coverage provided to Retirees was based on the life insurance coverage that the individual had while employed by the applicable Sears Canada Entities (for each Retiree, the “**Retiree Life Insurance Amount**”). The Retiree Life Insurance Amount for each Retiree remained unchanged once it was determined. The Sears Canada Entities paid the required premiums under the policy with Sun Life for the period ending September 30, 2017. As a result, Sun Life treated the policy as terminated and offered covered Retirees with the option to, within 30 days, convert to an individual policy with the same coverage amount.

52. With respect to Retirees whose OPEB Entitlements included life insurance coverage, if the Retiree died prior to October 1, 2017, the Retiree is entitled to full payment from Sun Life of the Retiree Life Insurance Amount. Further, Sun Life advised the Sears Canada Entities that it would pay the full amount of the Retiree Life Insurance Amount with respect to any covered Retiree who died in the 30 day conversion period. Therefore, any Retiree who died prior to October 31, 2017 should also receive full payment from Sun Life and should not have a claim with respect to life insurance coverage from the Sears Canada Entities.

53. Pursuant to the Retiree Benefit Claims Methodology, for Retirees who were alive as of October 31, 2017 whose OPEB Entitlements included life insurance coverage, the life insurance claim is determined as for each individual Retiree as follows:

- (a) determine the Retiree’s life expectancy as at October 1, 2017 (in years and months), based on the age of the Retiree as at October 1, 2017 and the Statistics Canada Life

Expectancy Tables, and add that period of life expectancy to October 1, 2017 to determine a Life Expectancy Date; and

- (b) determine the present value as at October 1, 2017 of the Retiree Life Insurance Amount applicable to that Retiree using a discount rate of 2.29%<sup>16</sup> and assuming that the Retiree Life Insurance Amount is payable when the Retiree reaches his or her Life Expectancy Date.

**D. Supplemental Plan Claims**

54. The Supplemental Plan is an unregistered pension plan that provides pension benefits in addition to pension benefits provided under the Sears Pension Plan to certain eligible individuals. As noted above, as at October 1, 2017, there were fewer than 110 people entitled to the benefits under the Supplemental Plan, all but three of which are represented by Pension Representative Counsel. For most of these individuals, the pension entitlements under the Supplemental Plan were secured through a funded arrangement (an RCA).

55. The Sears Canada Entities and the Monitor, in consultation with Pension Representative Counsel and its actuarial advisor, propose that Pension Representative Counsel will submit an omnibus Proof of Claim and/or an omnibus D&O Proof of Claim on behalf of all Retirees with entitlements under the Supplemental Plan (including those Retirees who are not represented by Pension Representative Counsel). The three Non-PRC Retirees with entitlements under the Supplemental Plan may submit a separate Proof of Claim or D&O Proof of Claim with respect to such entitlements. No PRC Retiree with entitlements with respect to the Supplemental Plan will

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<sup>16</sup> I am advised by Mr. Devir and believe that this discount rate is based on the yield on Government of Canada zero coupon bonds with a maturity that corresponds with the estimated duration of the Life Expectancy Dates of the Retirees entitled to life insurance coverage.

be permitted to submit a Proof of Claim or D&O Proof of Claim with respect to any such entitlements.

**E. Lifetime Discount Claims**

56. The proposed Employee and Retiree Claims Procedure Order seeks approval of the “**Lifetime Discount Claims Methodology**” that is described in this section and that will be used to value the Lifetime Discount Claims of all Retirees.

57. As at October 1, 2017, approximately 16,400 individuals (including retirees, eligible household members and current and former Employees who qualify for this discount by virtue of satisfying any applicable age and service eligibility criteria) are eligible for the Lifetime Discount (the “**Lifetime Discount Card Holders**”).

58. Only approximately 57% of Lifetime Discount Card Holders used the Lifetime Discount during the 12 months between October 2016 and September 2017. The total value of the Lifetime Discount provided to eligible participants during this period was \$1,968,306. Averaged across all Lifetime Discount Card Holders<sup>17</sup> results in an average annual savings received by using the Lifetime Discount of \$120 per eligible participant.

59. While the Sears Canada Entities have the names of all Lifetime Discount Card Holders, they do not have complete data regarding the personal information (such as dates of birth) of each Lifetime Discount Card Holder nor do they have data regarding historical usage by each Lifetime Discount Card Holder. It is therefore difficult to determine the value of the loss of the Lifetime Discount to any particular individual on a yearly or monthly basis. Moreover, it is impossible to

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<sup>17</sup> Excluding the approximately 115 Employees who qualified for this discount by virtue of satisfying any applicable age and service eligibility criteria.

determine the life expectancy of each individual Lifetime Discount Card Holder in order to make reasonable assumptions regarding the period over which the lost Lifetime Discount benefits should be assessed.

60. As a result, the Sears Canada Entities, the Monitor and Pension Representative Counsel have agreed to deem the claim for each Lifetime Discount Card Holder to be \$840, based on a projected savings of \$120 per year for an additional 7 years of usage. The Employee and Retiree Claims Procedure Order provides that the Sears Canada Entities will be deemed to have submitted proofs of claim in this amount for Lifetime Discount Card Holders. The Sears Canada Entities, the Monitor and Pension Representative Counsel believe that this is a fair and reasonable estimate considering the lack of sufficient individualized data, the usage rate of the Lifetime Discount and the fact that the Sears Canada Entities did not have an obligation to keep stores open indefinitely at a location easily accessible by Lifetime Discount Card Holders (which may have affected the ability of Lifetime Discount Card Holders to make use of their Lifetime Discount over time).

**F. The Sears Pension Claims**

61. The proposed Employee and Retiree Claims Procedure Order contemplates that the Pension Plan Administrator, Pension Representative Counsel and/or the Superintendent will file a Proof of Claim in respect of the Sears Pension Claims. No individual Retiree with entitlements with respect to the DB Component of the Sears Pension Plan will be permitted to submit a Proof of Claim or D&O Proof of Claim with respect to any such entitlements or with respect to the wind-up deficit under the DB Component of the Sears Pension Plan. The proposed Employee and Retiree Claims Procedure Order seeks approval of the “**Sears Pension Claim Methodology**” that is described in this section and that will be used to value any Sears Pension Claim.

62. The Sears Canada Entities, the Monitor, the Pension Plan Administrator, Pension Representative Counsel and the Superintendent have also agreed on the proposed approach that will be taken in quantifying the Sears Pension Claims subject to certain permitted variances. In particular, subject to subparagraph (e) below, these parties have agreed that the Sears Pension Claims will consist of an estimate of the amount by which the wind-up liabilities with respect to the Sears Pension Plan (calculated as set out in sub paragraphs (a) – (c) below) exceed the market value of the assets held in the Sears Pension Plan as of September 30, 2017 (adjusted as set out in subparagraph (d) below):

- (a) *Preliminary Wind-up Liability Estimate*: An estimate of the wind-up liability under the Sears Pension Plan will be calculated as of September 30, 2017 (the “**Preliminary Wind-up Liability Estimate**”)<sup>18</sup> using (i) statutory mortality assumptions applicable as of September 30, 2017 for the purposes of a hypothetical wind-up valuation and estimating the cost of purchasing all required annuities, (ii) demographic assumptions summarized in the December 31, 2015 actuarial valuation report for the Sears Pension Plan that was filed with the Financial Services Commission of Ontario, as adjusted and corrected as appropriate, and (iii) the statutory economic assumptions as at September 30, 2017 outlined in the following table:

Interest Rate – Commuted Values	2.60% for 10 years, 3.50% thereafter
Interest Rate – Annuity Purchase (Non Indexed)	3.06% per year

<sup>18</sup> In preparing the Preliminary Wind-up Liability Estimate, the Pension Plan Administrator may rely on Sears Pension Plan data and valuation projections provided to it by the prior actuary for the Sears Pension Plan. Further, I understand that when providing the Preliminary Wind-up Liability Estimate, the Pension Plan Administrator will provide an opinion that identifies the assumptions and methodology used, and that confirms that the assumptions and the methodology used are consistent with actuarial standards and appropriate for providing an estimate of the wind-up deficit under the Sears Pension Plan.

Post Retirement Indexation Rate	0.5% per year
Duration of liabilities assumed to be settled by annuity purchase	10.05 years

- (b) *Increase for potential adverse deviations:* The Preliminary Wind-up Liability Estimate will be increased by including a provision for adverse deviations (currently estimated to be equal to 2% of that estimate) because (i) the ultimate cost of annuities to settle pension liabilities could be higher than the amount reflected in the Preliminary Wind-up Liability Estimate and (ii) the costs incurred by the Pension Plan Administrator could be higher than those included in the Preliminary Wind-up Liability Estimate.
  
- (c) *Contingency reserve:* Due to the fact that the Pension Plan Administrator has not been able to complete a full review and verification of the data upon which the Preliminary Wind-up Liability Estimate will be calculated, the Preliminary Wind-up Liability Estimate will be increased by including a contingency reserve (currently estimated to be 1.5% of the Preliminary Wind-up Liability Estimate) as an allowance for data issues, such as members appearing with a claim who were not included in the data.
  
- (d) *Adjustment for costs and losses from liquidation of assets:* I understand that, in anticipation of the wind-up of the Sears Pension Plan, the Pension Plan Administrator has liquidated certain investments in constructing an immunized portfolio. In liquidating such assets, I understand that the Pension Plan Administrator incurred liquidation costs and certain losses due to the fact that it sold certain illiquid instruments which yielded less than the quoted September 30<sup>th</sup>

market value of the assets. To take into account these liquidation costs and losses, I understand that the market value of the assets as at September 30, 2017 will be decreased by an amount currently estimated to be \$7 million.

- (e) *Estimate to be calculated as of wind-up date:* The above estimate is being prepared as at September 30, 2017 as that was the last estimate prepared by the prior actuary for Sears Canada. The assumptions described in (a) will need to be adjusted as of the wind-up date (which is expected to be October 1, 2017). Ultimately the wind-up assets and liabilities and the Sears Pension Claim will be calculated as of the wind-up date.

63. If approved by the Court, the Sears Pension Claim Methodology will be final and binding on the Pension Plan Administrator, Pension Representative Counsel, the Superintendent and on all Retirees with entitlements under the DB Component of the Sears Pension Plan.

**G. Notice of Employee and Retiree Claims Processes**

64. The proposed Employee and Retiree Claims Procedure Order contemplates two kinds of notice being provided: (i) a “negative notice” for Termination Claims and Retiree Benefit Claims; and (ii) a call for Other Employee Claims, Other Retiree Claims, Supplemental Plan Claims, and Sears Pension Claims, including D&O Claims.

**i. Negative notice for Termination Claims and Retiree Benefit Claims**

65. The Sears Canada Entities, in consultation with the Monitor and Representative Counsel, have developed certain “**Claims Packages**” for the different categories of Employees and Retirees discussed above.<sup>19</sup> The Claims Packages, to the extent applicable to the intended recipient, will:

- (a) explain the Employee and Retiree Claims Processes as they apply to the recipient;
- (b) set out the recipient’s Termination Claim or Retiree Benefit Claim, calculated in accordance with the Employee and Retiree Claims Procedure Order using the Employee’s or Retiree’s Personal Information (such as age, service and position) recorded in the Sears Canada Entities’ books and records;
- (c) explain how the recipient Employee or Retiree can make corrections to the Personal Information used to calculate their Termination Claim or Retiree Benefit Claim;
- (d) state whether the recipient Employee or Retiree has the ability to propose an alternate methodology for valuing their Termination Claim or Retiree Benefit Claim and explain the process for doing so if the recipient intends to propose an alternative methodology; and
- (e) explain how Employees and Retirees who believe that they have additional claims (*i.e.* Other Employee Claims or Other Retiree Claims, including D&O Claims) can obtain and file the applicable proof of claim in accordance with the Employee and Retiree Claims Procedure Order.

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<sup>19</sup> These Claims Packages include an ERC Employee Package, a Non-ERC Employee Package, a PRC Retiree Package, a Non-PRC Retiree Package, and a Proof of Claim Package.

66. The Employee and Retiree Claims Procedure Order provides that by March 5, 2018 the Monitor will cause (i) an ERC Employee Package to be sent to each known ERC Employee; (ii) a Non-ERC Employee Package to be sent to each Non-ERC Employee; (iii) a PRC Retiree Package to be sent to each known PRC Retiree; (iv) a Non-PRC Retiree Package to be sent to each known Non-PRC Retiree; and (vii) a Retiree Letter to be sent to each known Retiree who has any entitlements under the DB Component of the Sears Pension Plan and/or under the Supplemental Plan<sup>20</sup> but who does not have any OPEB Entitlements, based on the books and records of the Sears Canada Entities (“**DB Only Retiree**”).

67. I understand that the Monitor intends to provide the Claims Packages to Employees in the following manner:

- (a) An email will be sent to approximately 19,000 Employees for whom the Sears Canada Entities have email addresses on file asking Employees to log into a web portal maintained by the Monitor to view their Claims Package and correct any Personal Information relating to their Termination Claim. If an Employee does not log into the portal within 7 days, a further notification will be sent. If an Employee does not log into the portal within 14 days, the Claims Package will be mailed to that Employee.
- (b) The Claims Packages will be mailed to approximately 2,000 Employees for whom the Sears Canada Entities do not have email addresses on file.

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<sup>20</sup> Including, for greater certainty, any active Employee with such entitlements.

- (c) Summaries of the Termination Claims for Unionized Employees and/or copies of the Claims Packages for Unionized Employees will also be provided to the applicable Union Representative, upon request.

68. The Claims Packages that will be sent to Retirees will be sent by mail to the last address the Sears Canada Entities have on file.

**ii. *Additional steps to provide notice of Employee and Retiree Claims Processes***

69. In addition to providing the Claims Packages to applicable Employees and Retirees, the proposed Employee and Retiree Claims Procedure Order provides that the following steps will be taken to give notice of the Employee and Retiree Claims Processes:

- (a) The Monitor shall, by 5:00 p.m. on March 5, 2018, cause a Proof of Claim Package to be sent to each Claimant who the Sears Canada Entities have advised the Monitor may have an outstanding action, claim, or complaint as of the Filing Date but who was not sent a Claims Package in accordance with the previous section of this Affidavit, at the last known physical or electronic address recorded in the books and records of the Sears Canada Entities.
- (b) The Monitor shall cause the Notice to Claimants to be published at least three times, beginning the week of February 26, 2018, in The Globe and Mail (National Edition) and the electronic edition of La Presse, and in such other publications and with such frequency as is determined by the Monitor in consultation with the Sears Canada Entities. The Notice to Claimants will be in substantially the form attached to the proposed Employee and Retiree Claims Procedure Order and will, among other things, state that any Retirees with entitlements to a Lifetime Discount or Warranty are not required to file a Proof of Claim in connection with any Lifetime Discount

Claim or Warranty Claim because all Proofs of Claim with respect to such Claims will be deemed to have been properly submitted by the Sears Canada Entities on behalf of each eligible Retiree based on the Sears Canada Entities' books and records.

- (c) The Monitor shall cause the Notice to Claimants and blank copies of the Claims Packages (excluding any blank Termination Claim Statement or Retiree Benefit Claim Statement) to be posted to the Monitor's Website by no later than 5:00 p.m. on February 27, 2018.
- (d) The Applicants shall cause the Notice to Claimants to be posted to the my.sears.ca portal by 5:00 p.m. on February 27, 2018.
- (e) Employee Representative Counsel shall cause the Notice to Claimants and a blank copy of the ERC Employee Package (excluding any blank Termination Claim Statement) to be posted to Employee Representative Counsel's Website by 5:00 p.m. on February 27, 2018.
- (f) Pension Representative Counsel shall cause the Notice to Claimants and a blank copy of the PRC Retiree Package (excluding any blank Retiree Benefit Claim Statement) to be posted to Pension Representative Counsel's Website by 5:00 p.m. on February 27, 2018.

70. If any Claimant requests documents or information relating to the Employee or Retiree Claims Processes prior to the Proof of Claim Bar Date (defined below), the Monitor will send the Claimant a Proof of Claim Package, and will direct the Claimant to the documents posted on the Monitor's Website or otherwise respond to the request for documents or information as the

Monitor (in consultation with the Sears Canada Entities and, where the Monitor deems appropriate, Representative Counsel, the Pension Plan Administrator and/or the Superintendent) considers appropriate. In addition, if the Sears Canada Entities or the Monitor become aware of any further Employee Claims or Retiree Claims after the mailings discussed above have occurred, the Monitor will send such potential Claimant a Proof of Claim Package or another Claims Package, as the Monitor (in consultation with the Sears Canada Entities and, where the Monitor deems appropriate, Representative Counsel, the Pension Plan Administrator and/or the Superintendent) deems appropriate, or may direct the potential Claimant to the documents posted on the Monitor's Website.

**H. Adjudicating Disputes Regarding Termination Claims and Retiree Benefit Claims**

71. Any Employee or Retiree who disagrees with the Personal Information set out in their Claims Package will be required to submit a **"Request for Correction"**, which must be received by the Monitor by 5:00 p.m. on May 7, 2018 (the **"Request for Correction Bar Date"**). In addition, an Employee who was terminated for cause and who wishes to challenge the Sears Canada Entities' assertion of cause and an Employee who resigned during the post-Filing period and who wishes to challenge the Sears Canada Entities' assertion that he or she resigned voluntarily must submit a Request for Correction by the Request for Correction Bar Date. Employees and Retirees will be asked to submit all such Requests for Correction on the Monitor's online web portal, but will also be able to deliver a Request for Correction to the Monitor by mail should they so wish.

72. The Monitor will, in consultation with the Sears Canada Entities, consider each Request for Correction. The Monitor will either accept the revisions and send a Notice of Acceptance to the Claimant, or disallow the corrections (in part or in whole) and send a Notice of Disallowance

(Personal Information). A Claimant who wishes to dispute a Notice of Disallowance (Personal Information) will be required to deliver a Notice of Dispute (Personal Information), along with the reasons for the dispute, to the Monitor by no later than thirty days after the date on which the Claimant is deemed to receive the Notice of Disallowance (Personal Information), or such other date as may be agreed to by the Monitor in writing. If a dispute raised in a Notice of Dispute (Personal Information) is not settled within a time period or in a manner satisfactory to the Monitor, in consultation with the Sears Canada Entities, the Monitor will refer the dispute to a Claims Officer or the Court for adjudication at its election.

73. As noted above, Non-ERC Employees and Non-PRC Retirees will be permitted to propose alternative methodologies for valuing their Termination Claims or Retiree Benefit Claims. Any Non-ERC Employees and Non-PRC Retirees who wish to do so will be required to submit a Notice of Proposed Revision containing a proposed alternative methodology.<sup>21</sup> All Notices of Proposed Revision must be received by the Monitor by 5:00 p.m. on May 7, 2018 (the “**Notice of Proposed Revision Bar Date**”).

74. The Monitor, in consultation with the Sears Canada Entities, will review each Notice of Proposed Revision received on or before the Notice of Proposed Revision Bar Date, and shall accept, revise or reject the methodology proposed in such Notice of Proposed Revision. In the event that an alternative methodology proposed in a Notice of Proposed Revision is not agreed to by the Monitor or is not successfully negotiated with the Claimant (or the Union Representative on behalf of a Unionized Employee) within a time period or in a manner satisfactory to the

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<sup>21</sup> Where a Non-ERC Employee is a Unionized Employee, the Union Representative will submit the Notice of Proposed Revision on behalf of such Unionized Employee. Any Non-PRC Retiree is permitted to submit a Notice of Proposed Revision on his/her own behalf, regardless of whether such Non-PRC Retiree is or was represented by a union at any time in relation to his or her employment with any of the Sears Canada Entities.

Monitor, in consultation with the Sears Canada Entities, the Monitor shall refer the dispute to a Claims Officer or the Court for adjudication at its election.

75. If an Employee or Retiree does not submit a Request for Correction, Notice of Proposed Revision or a Notice of Dispute (Personal Information) within the applicable timeline, he or she will be deemed to have accepted the calculation of the Termination Claim or Retiree Benefit Claim as set out in the Claims Package or Notice of Disallowance (Personal Information) sent to that Employee or Retiree, and will be barred from asserting any other Termination Claim or Retiree Benefit Claim.

**I. Determining Other Employee Claims, Other Retiree Claims, Supplemental Plan Claims, and Sears Pension Claims**

76. The Employee and Retiree Claims Procedure Order also provides a mechanism for determining Other Employee Claims, Other Retiree Claims, Supplemental Plan Claims, and Sears Pension Claims (including D&O Claims). The procedure for determining these claims is similar to the one approved in the Claims Procedure Order, and includes the following steps:

- (a) *Filing Proofs of Claim*: Any Claimant that wishes to assert Other Employee Claims or Other Retiree Claims (including D&O Claims) will file a Proof of Claim or D&O Proof of Claim, as applicable, with the Monitor on or before 5:00 p.m. on April 9, 2018 (the “**Proof of Claim Bar Date**”). Pension Representative Counsel will also file a Proof of Claim for the Supplemental Plan Claim by the Proof of Claim Bar Date. Pension Representative Counsel, the Pension Plan Administrator and/or the Superintendent will also file a Proof of Claim for the Sears Pension Claim by the Proof of Claim Bar Date. As described above, Retirees will not be required to file any Proofs of Claim in respect of any Lifetime Discount Claim because all Proofs of Claim with respect to such potential Claims will be deemed to have been

properly submitted on their behalf. Further, Claimants will not be required to submit Proofs of Claim in respect of any Warranty Claims as all such Claims will be also be deemed to have been properly submitted on behalf of each applicable Claimant.

- (b) Review of Proofs of Claim: The Monitor, in consultation with the Sears Canada Entities and, in the case of D&O Claims, with the applicable Directors and Officers and any counsel for such Directors and Officers, shall review each Proof of Claim and D&O Proof of Claim, and shall accept, revise or reject each such Claim. However, the Monitor shall not accept or revise any portion of a D&O Claim absent consent of the applicable Directors and Officers or further Order of the Court.
- (c) Response to Claimant: The Monitor shall notify Claimants that their Claims have been revised or rejected and provide reasons by sending a Notice of Disallowance (Proof of Claim) by no later than July 31, 2018 or such later date as ordered by the Court.
- (d) Disputes: Any Claimant who intends to dispute a Notice of Disallowance (Proof of Claim) shall deliver a completed Notice of Dispute (Proof of Claim), along with the reasons for the dispute, to the Monitor by no later than thirty days after the Claimant is deemed to receive the Notice of Disallowance (Proof of Claim), or such other date as may be agreed to by the Monitor in writing (in consultation with the Sears Canada Entities and, in the case of a D&O Claim, any applicable Directors and Officers). In the event that a dispute raised in a Notice of Dispute (Proof of Claim) is not settled within a time period or in a manner satisfactory to the Monitor, in consultation with the Sears Canada Entities and the applicable Directors and

Officers in respect of any D&O Claim, the Monitor shall refer the dispute raised in the Notice of Dispute (Proof of Claim) to a Claims Officer or the Court for adjudication at its election. Any Claimant who wishes to challenge the method of adjudication elected by the Monitor may apply to the Court to determine the appropriate method of adjudication.

77. A Claimant (or any person on behalf of a Claimant) who does not file a Proof of Claim or D&O Proof of Claim, as applicable, on or before the Proof of Claim Bar Date is forever barred, estopped and enjoined from asserting or enforcing any Other Employee Claim, Other Retiree Claim, Supplemental Plan Claim or Sears Pension Claim against any of the Sears Canada Entities or any Directors or Officers. All such Claims shall be forever extinguished, and the Claimant will not be permitted to vote at any Meeting on account of such Claims, will not be entitled to receive further notice with respect to the Employee or Retiree Claims Processes or these proceedings unless the Monitor and/or the Sears Canada Entities become aware that such Employee or Retiree has any other Claim, and will not be permitted to participate in any distribution under any Plan on account of such Other Employee Claim, Other Retiree Claim, Supplemental Plan Claim or Sears Pension Claim.

**J. Role of Representative Counsel**

78. The Employee and Retiree Claims Procedure Order expands Pension Representative Counsel's mandate, and provides that a unionized Retiree shall be represented by Pension Representative Counsel pursuant to the Pension Representative Counsel Order dated July 13, 2017 *nunc pro tunc*, unless any such unionized Retiree opts-out of such representation in writing.

79. The Employee and Retiree Claims Procedure Order provides that Representative Counsel are authorized to take a number of steps in the Employee and Retiree Claims Processes including

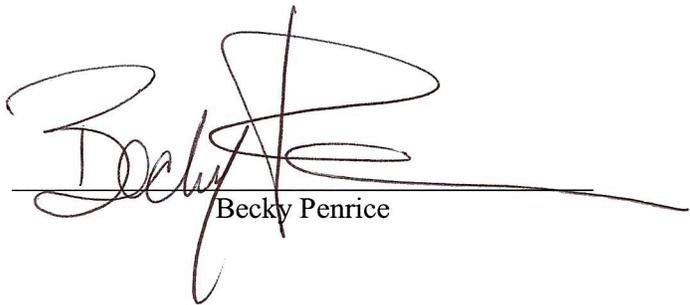
engaging in discussions with the Monitor and the Sears Canada Entities with respect to Personal Information, filing (or assisting in filing) Requests for Correction, Proofs of Claim, D&O Proofs of Claim or Notices of Dispute on behalf of ERC Employees or PRC Retirees (as applicable), participating in the adjudication, resolution or settlement of Termination Claims or Retiree Benefit Claims (as applicable), and assisting ERC Employees or PRC Retirees with Other Employee Claims or Other Retiree Claims that, in the judgment of the Representative Counsel, are *bona fide* claims that have not been dealt with through the Termination Claims Methodology, Retiree Benefit Claims Methodology, Lifetime Discount Claims Methodology or Sears Pension Claim Methodology (as applicable).

**Prior Payments to Employees from Employee Hardship Fund**

80. During the course of these CCAA proceedings, certain payments have been made to Employees from the Employee Hardship Fund established by the Order of this Court made August 18, 2017 (the “**Employee Hardship Fund Order**”). The Employee Hardship Fund Term Sheet, that was approved by the Employee Hardship Fund Order, provided that any Hardship Payments made to the former employees of the Sears Canada Entities would be deducted from “any payments on claims that may be allowed in any claims process conducted by the Sears Canada Entities in the CCAA Proceedings”. As a result, any distributions paid to any Employee will be reduced on a dollar-for-dollar basis by the amount of any Hardship Payments made to that Employee.

AFFIRMED BEFORE ME at the City of  
 Toronto, in the Province of Ontario on  
 February 16, 2018.

  
 Commissioner for Taking Affidavits

}   
 Becky Penrice

**Schedule “A”**  
**Common Law Severance Formula**

The Common Law Severance Formula is one of the mechanisms that may be used to determine the notice period of various Employees under the Termination Claims Methodology. The notice period will be determined as follows: (i) a base amount determined by the Employee’s position, plus (ii) additional weeks based on completed years of service and the Employee’s age. In addition, the Common Law Severance Formula includes a minimum and maximum entitlement that each Employee will be subject to depending on their position.<sup>22</sup>

<b>Position</b>	<b>Base</b>	<b>Additional weeks per complete year of service</b>	<b>Additional weeks based on age</b>	<b>Minimum/Maximum</b>
Part Time Associate	2 weeks	2 weeks / year	Add 4 weeks if over 55 at termination	Minimum: 2 weeks Maximum: 52 weeks
Full Time Associate	4 weeks	2 weeks / year	Add 2 weeks if 40-45 at termination Add 3 weeks if 46-50 at termination Add 4 weeks if 51-55 at termination Add 5 weeks if 56-60 at termination Add 8 weeks if over 60 at termination	Minimum: 4 weeks Maximum: 78 weeks
Supervisors	6 weeks	2.5 weeks / year	Add 2 weeks if 40-45 at termination Add 3 weeks if 46-50 at termination Add 4 weeks if 51-55 at termination Add 5 weeks if 56-60 at termination Add 8 weeks if over 60 at termination	Minimum: 6 weeks Maximum: 78 weeks
Managers	8 weeks	3 weeks / year	Add 2 weeks if 40-45 at termination Add 3 weeks if 46-50 at termination Add 4 weeks if 51-55 at termination Add 5 weeks if 56-60 at termination	Minimum: 8 weeks Maximum: 78 weeks

<sup>22</sup> As noted above in paragraph 32, where applicable, the notice period will be reduced by any period of working notice given to an Employee.

Divisional Vice Presidents	10 weeks	4 weeks / year	Add 8 weeks if over 60 at termination Add 2 weeks if 40-45 at termination Add 5 weeks if 46-50 at termination Add 8 weeks if 51-55 at termination Add 10 weeks if over 56 at termination	Minimum: 10 weeks Maximum: 104 weeks
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**Schedule ‘B’**  
**Benefits Gross-Up**

The Benefits Gross-Up for each level of Employee with respect to their participation in various benefits are as follows:

<b>Position</b>	<b>Life Insurance, Health and Dental (including Tax Impact)</b>	<b>Defined Contribution Plan (including Tax Impact)</b>
Part Time Associate	9.9%	3.1%
Full Time Associate	8.4%	4.3%
Supervisors	7.0%	3.2%
Managers	3.8%	3.3%
Divisional Vice Presidents	4.4%	3.2%

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., 9370-2751 QUÉBEC INC., 191020 CANADA 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, 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

Court File No: CV-17-11846-00CL

Applicants

*Ontario*  
 SUPERIOR COURT OF JUSTICE  
 COMMERCIAL LIST  
 Proceeding commenced at Toronto

**AFFIDAVIT OF BECKY PENRICE**  
 (Employee and Retiree Claims Processes)

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Lawyers for the Applicants

## Tab 3

Court File No. CV-17-11846-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.	)	THURSDAY, THE 22 <sup>nd</sup>
JUSTICE HAINEY	)	DAY OF FEBRUARY, 2018
	)	

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., 9370-2751 QUÉBEC INC., 191020 CANADA 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**”)

**EMPLOYEE AND RETIREE CLAIMS PROCEDURE ORDER**

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the “**CCAA**”) for an order establishing a claims procedure for the identification and quantification of Employee Claims and Retiree Claims (each as defined below) against (i) the Applicants and SearsConnect (collectively, the “**Sears Canada Entities**”) and (ii) the current and former directors and officers of the Sears Canada Entities, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the Affidavit of Becky Penrice sworn on February 16, 2018 including the exhibits thereto (the “**Penrice Affidavit**”), the

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Thirteenth Report of FTI Consulting Canada Inc., in its capacity as monitor (the “**Monitor**”), filed, and on hearing the submissions of respective counsel for the Applicants, the Monitor, Pension Representative Counsel (as defined below), Employee Representative Counsel (as defined below), the Pension Plan Administrator (as defined below), the Superintendent (as defined below), and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of ● sworn ●,

**SERVICE**

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

**SCOPE**

2. THIS COURT ORDERS that except as otherwise specifically set out herein, this Order shall apply only to Claims as defined in this Order.

**DEFINITIONS AND INTERPRETATION**

3. THIS COURT ORDERS that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Amended and Restated Initial Order in these proceedings dated June 22, 2017 as amended, restated, supplemented and/or modified from time to time (the “**Initial Order**”).

4. THIS COURT ORDERS that for the purposes of this Order the following terms shall have the following meanings:

- (a) “**Advisors**” means, collectively, any actuarial, financial, legal and other advisors and assistants;

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- (b) “**Agent**” means the contractual joint venture comprised of Gordon Brothers Canada ULC, Merchant Retail Solutions ULC, Tiger Capital Group, LLC and GA Retail Canada ULC;
- (c) “**Agency Agreements**” means: (i) the Amended and Restated Agency Agreement between Sears Canada Inc. and the Agent dated July 12, 2017 and amended and restated on July 14, 2017, and (ii) the Amended and Restated Agency Agreement between Sears Canada Inc. and the Agent dated October 10, 2017;
- (d) “**Bar Date**” means the Proof of Claim Bar Date, the Request for Correction Bar Date or the Notice of Proposed Revision Bar Date, as applicable;
- (e) “**Business Day**” means a day, other than a Saturday, Sunday or statutory holiday, on which banks are generally open for business in Toronto, Ontario;
- (f) “**CCAA Proceedings**” means the CCAA proceedings commenced by the Applicants in the Court under Court File No. CV-17-11846-00CL;
- (g) “**Claim**” means any Employee Claim or Retiree Claim, including, for greater certainty, any D&O Claim, provided however that in any case “**Claim**” shall not include an Excluded Claim;
- (h) “**Claims Website**” means, collectively, the online employee claims portal and the online retiree claims portal, each to be maintained by the Monitor for the purposes of this Employee and Retiree Claims Process;
- (i) “**Claimant**” means any Person with an entitlement to an Employee Claim or a Retiree Claim that has been asserted by or on behalf of such Person;

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- (j) “**Claims Officer**” means the individuals designated by the Court pursuant to paragraph 70 of this Order;
- (k) “**Claims Package**” means an ERC Employee Package, Non-ERC Employee Package, PRC Retiree Package, Non-PRC Retiree Package or Proof of Claim Package, as applicable, each to be sent by the Monitor in accordance with the terms of this Order;
- (l) “**Claims Procedure Order**” means the Claims Procedure Order issued by the Court on December 8, 2017, as may be amended from time to time;
- (m) “**Court**” means the Ontario Superior Court of Justice (Commercial List);
- (n) “**CPO Claim**” means any General Creditor Claim, Construction Claim or Intercompany Claim (each as defined in the Claims Procedure Order);
- (o) “**D&O Claim**” means any Sears Pension Claim, Supplemental Plan Claim, Other Employee Claim or Other Retiree Claim against a Director or Officer under this Order (including, for greater certainty, any D&O Claim in respect of termination and severance pay, damages for loss of employment-related perquisites and benefits, and/or damages for loss of OPEB Entitlements);
- (p) “**D&O Proof of Claim**” means the proof of claim form to be filed by Claimants in respect of any D&O Claim, substantially in the form attached as Schedule “●” hereto, which shall include all available supporting documentation in respect of such D&O Claim;

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- (q) **“D&O Proof of Claim Instruction Letter”** means the letter containing instructions for completing the D&O Proof of Claim form, substantially in the form attached as Schedule “●” hereto;
- (r) **“DB Only Retiree”** means: (i) any Retiree who has any entitlements under the defined benefit component of the Sears Pension Plan (including, for greater certainty, any active Employee with such entitlements), and (ii) any Retiree who has any entitlements under the Supplemental Plan (including, for greater certainty, any active Employee with such entitlements), but in either case, who does not have any OPEB Entitlements, based on the books and records of the Sears Canada Entities;
- (s) **“Director”** means anyone who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, a director or *de facto* director of any of the Sears Canada Entities, in such capacity;
- (t) **“Duplicate Claim”** means a Claim that is asserted against a Sears Canada Entity or a Director or Officer that duplicates in whole or in part another Claim or CPO Claim, and includes a Claim or any portion thereof that is based on an obligation or legal right asserted in another Claim or CPO Claim;
- (u) **“Employee”** means any (i) active or inactive union or non-union employee of any one of the Sears Canada Entities on or after the Filing Date, including an employee of any one of the Sears Canada Entities who received notice of termination of employment dated on or after the Filing Date or who resigned or otherwise ceased employment on or after the Filing Date; and (ii) former employee of any one of the Sears Canada Entities, including without limitation any former employee who was

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terminated for cause at any time, any former employee who received notice, on or after the Filing Date, of the cessation of his or her termination or severance payments, and any former employee who has an outstanding active action, claim or complaint as of the Filing Date;

(v) “**Employee Claim**” means each of the following:

- (i) Termination Claims;
- (ii) Warranty Claims; and
- (iii) Other Employee Claims;

including any Employee Claim arising through subrogation against any Sears Canada Entity or Director or Officer, provided however that in any case “**Employee Claim**” shall not include an Excluded Claim;

(w) “**Employee and Retiree Claims Process**” means the procedures outlined in this Order in connection with the solicitation and assertion of Employee Claims and Retiree Claims against the Sears Canada Entities and/or the Directors and Officers;

(x) “**Employee Representative Counsel**” means Ursel Phillips Fellows Hopkinson LLP;

(y) “**Employee Representative Counsel Order**” means the Employee Representative Counsel Order issued by the Court dated July 13, 2017, as may be amended from time to time;

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- (z) **“Employee Representative Counsel’s Website”** means <http://www.upfhlaw.ca/areas-of-practice/sears-canada-employees-and-former-employees/>;
- (aa) **“Employee Representatives”** means Paul Webber, Nancy Demeter, Sheena Wrigglesworth, Barb Wilser and Darrin Whitney, or such other representatives as may be duly appointed by the Court from time to time;
- (bb) **“Employee Request for Correction”** means the request form, substantially in the form attached as Schedule “●” hereto, or in an electronic form acceptable to the Monitor, to be submitted by an Employee to the Monitor requesting a correction to the Personal Information set out in the Termination Claim Statement or Monitor Corrected Claim Statement, if applicable, provided to such Employee;
- (cc) **“ERC Employee”** means any Employee represented by Employee Representative Counsel;
- (dd) **“ERC Employee Letter”** means the letter to ERC Employees, substantially in the form attached as Schedule “●” hereto, which shall, among other things, provide a link to access the Claims Website (where an Employee may submit an Employee Request for Correction and which will include a link to the Proof of Claim Package);
- (ee) **“ERC Employee Package”** means a document package, which shall include: (i) the ERC Employee Letter; (ii) an individualized Termination Claim Statement, and (iii) such other materials as the Monitor, in consultation with the Sears Canada

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Entities and Employee Representative Counsel, may consider appropriate or desirable;

- (ff) **“Excluded Claim”** means any:
  - (i) CPO Claim;
  - (ii) Claim that may be asserted by any beneficiary of the Administration Charge, the FA Charge, the KERP Priority Charge, the Directors’ Priority Charge, the KERP Subordinated Charge and the Directors’ Subordinated Charge and any other charges granted by the Court in the CCAA Proceedings, with respect to such charges;
  - (iii) Claim by the Agent under the Agency Agreements;
  - (iv) Monitor Claim; and
  - (v) Claim that may be asserted by any of the Sears Canada Entities against any Directors and/or Officers;

and for greater certainty, shall include any Excluded Claim arising through subrogation;

- (gg) **“Filing Date”** means June 22, 2017;
- (hh) **“Grievance Claim”** means any grievance (or part of such grievance) by an Employee against any Sears Canada Entity, where that grievance (or part of such grievance) is (i) pursuant to a collective agreement with such Sears Canada Entity, (ii) for monetary compensation, and (iii) is not covered in a Termination Claim

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Statement or Monitor Corrected Claim Statement, if applicable, and the Termination Claims Methodology. Where part of a grievance is for monetary compensation, and part of the same grievance is for other relief, only that part of the grievance that is for monetary compensation shall be a Grievance Claim for the purposes of this Order;

- (ii) “**Indemnification Claim**” means any claim of any Employee against one or more of the Sears Canada Entities for indemnification and/or contribution arising from such Employee’s service to any Sears Canada Entity;
  
- (jj) “**Lifetime Discount**” means the lifetime associate discount awarded as a post-employment benefit to certain current and former employees of the Sears Canada Entities who qualified for such discount by virtue of satisfying applicable age and service eligibility criteria (and, for greater certainty, such current and former employees shall be included in the definition of “Retiree” for the purposes of this Order);
  
- (kk) “**Lifetime Discount Claim**” means any claim against the Sears Canada Entities with respect to a Lifetime Discount, which, for greater certainty, will be calculated for the purposes of this Employee and Retiree Claims Process in accordance with the Lifetime Discount Claims Methodology;
  
- (ll) “**Lifetime Discount Claims Methodology**” means the methodology and assumptions for the calculation of Lifetime Discount Claims, as described in paragraphs 56 to 60 of the Penrice Affidavit;

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- (mm) “**Meeting**” means any meeting of the creditors of the Sears Canada Entities called for the purpose of considering and voting in respect of a Plan;
- (nn) “**Monitor Claim**” means a Claim (as defined in the Claims Procedure Order), including a D&O Claim (as defined in the Claims Procedure Order) and any claim pursued in accordance with section 36.1 of the CCAA, that may be asserted by the Monitor;
- (oo) “**Monitor Corrected Claim Statement**” means a revised Termination Claim Statement or Retiree Benefit Claim Statement, as applicable, to be sent by the Monitor to a Claimant if any errors are independently discovered by or made known to the Monitor in the Personal Information that affect the amount of the Termination Claim or Retiree Benefit Claim, as applicable, of such Claimant;
- (pp) “**Monitor’s Website**” means <http://cfcanada.fticonsulting.com/searscanada/>;
- (qq) “**Non-ERC Employee**” means any of the following Employees: (i) Unionized Employees; (ii) any Employee who is currently or was previously a member of senior management of any of the Sears Canada Entities and who was not eligible for representation by Employee Representative Counsel; and (iii) any Employee who was eligible for representation by Employee Representative Counsel and who opted out of such representation in accordance with the requirements contained in the Employee Representative Counsel Order;
- (rr) “**Non-ERC Employee Letter**” means the letter to Non-ERC Employees, substantially in the form attached as Schedule “●” hereto, which shall, among other things: (i) provide a link to access the Claims Website (where an Employee may

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submit an Employee Request for Correction and which will include a link to the Proof of Claim Package), and (ii) instruct such Non-ERC Employees to contact the Monitor to obtain a Notice of Proposed Revision;

- (ss) “**Non-ERC Employee Package**” means a document package, which shall include:
  - (i) the Non-ERC Employee Letter; (ii) an individualized Termination Claim Statement, and (iii) such other materials as the Monitor, in consultation with the Sears Canada Entities, may consider appropriate or desirable;
  
- (tt) “**Non-PRC Retiree**” means any Retiree with OPEB Entitlements who is not represented by Pension Representative Counsel, including without limitation: (i) any unionized Retiree who notifies Pension Representative Counsel in writing that such Retiree wishes to opt out of representation by Pension Representative Counsel; (ii) any Retiree who is currently or was previously a member of senior management of any of the Sears Canada Entities and who was not eligible for representation by Pension Representative Counsel, and (iii) any Retiree who was eligible for representation by Pension Representative Counsel and who opted out of such representation in accordance with the requirements contained in the Pension Representative Counsel Order;
  
- (uu) “**Non-PRC Retiree Letter**” means the letter to Non-PRC Retirees, substantially in the form attached as Schedule “●” hereto, which shall, among other things, provide a link to access the Claims Website (where a Retiree may submit a Retiree Request for Correction and which will include a link to the Proof of Claim Package);
  
- (vv) “**Non-PRC Retiree Package**” means a document package, which shall include: (i) the Non-PRC Retiree Letter; (ii) an individualized Retiree Benefit Claim

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Statement; (iii) a Retiree Request for Correction form; (iv) a Notice of Proposed Revision form, and (v) such other materials as the Monitor, in consultation with the Sears Canada Entities, may consider appropriate or desirable;

- (ww) “**Notice of Acceptance**” means a notice, substantially in the form attached as Schedule “●” hereto, or in an electronic form acceptable to the Monitor, advising a Claimant that the Monitor has accepted a change to such Claimant’s Personal Information and that such Claimant’s Termination Claim or Retiree Benefit Claim amount, as applicable, shall be revised as outlined therein (or that no changes to such Claim amount shall be made as a result of the change to such Claimant’s Personal Information);
- (xx) “**Notice of Disallowance**” means a Notice of Disallowance (Personal Information) or Notice of Disallowance (Proof of Claim), as the case may be;
- (yy) “**Notice of Disallowance (Personal Information)**” means a notice, substantially in the form attached as Schedule “●” hereto, advising a Claimant that the Monitor has disallowed all or part of the changes that have been requested by such Claimant in a Request for Correction;
- (zz) “**Notice of Disallowance (Proof of Claim)**” means a notice, substantially in the form attached as Schedule “●” hereto, advising a Claimant that the Monitor has disallowed all or part of such Claimant’s Claim as set out in a Proof of Claim or D&O Proof of Claim filed by or on behalf of such Claimant;
- (aaa) “**Notice of Dispute**” means a Notice of Dispute (Personal Information) or a Notice of Dispute (Proof of Claim), as the case may be;

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- (bbb) “**Notice of Dispute (Personal Information)**” means a notice, substantially in the form attached as Schedule “●” hereto, delivered to the Monitor by a Claimant who has received a Notice of Disallowance (Personal Information), notifying the Monitor of his/her intention to dispute such Notice of Disallowance (Personal Information), with reasons for such dispute;
- (ccc) “**Notice of Dispute (Proof of Claim)**” means a notice, substantially in the form attached as Schedule “●” hereto, delivered to the Monitor by a Claimant who has received a Notice of Disallowance (Proof of Claim) in respect of such Claimant’s Proof of Claim or D&O Proof of Claim, as applicable, notifying the Monitor of his/her intention to dispute such Notice of Disallowance (Proof of Claim), with reasons for such dispute;
- (ddd) “**Notice of Proposed Revision**” means a notice, substantially in the form attached as Schedule “●” hereto, delivered to the Monitor by a Non-ERC Employee (or, where such Non-ERC Employee is a Unionized Employee, by the Union Representative on behalf of such Unionized Employee) or Non-PRC Retiree, who has received a Termination Claim Statement, Retiree Benefit Claim Statement or Monitor Corrected Claim Statement, notifying the Monitor of such Claimant’s intention to revise the methodology used to calculate the Claim contained in such Termination Claim Statement, Retiree Benefit Claim Statement or Monitor Corrected Claim Statement, with a description of the proposed revisions to the calculation of such Claimant’s Termination Claim or Retiree Benefit Claim, as applicable, and the reasons for such proposed revisions;
- (eee) “**Notice of Proposed Revision Bar Date**” means 5:00 p.m. on May 7, 2018;

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- (fff) “**Notice to Claimants**” means the notice to Claimants, substantially in the form attached as Schedule “●” hereto, to be published by the Monitor and posted on the Monitor’s Website, Employee Representative Counsel’s Website, and Pension Representative Counsel’s Website, each in accordance with the terms of this Order, which shall include, without limitation, a notice to all Retirees with entitlements to a Lifetime Discount or Warranty stating that Proofs of Claim are not required to be filed in connection with any such Lifetime Discount or Warranty because all Proofs of Claim with respect to such Lifetime Discounts and Warranties will be deemed to have been properly submitted by the Sears Canada Entities on behalf of each eligible Retiree, based on the books and records of the Sears Canada Entities;
- (ggg) “**Officer**” means anyone who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, an officer or *de facto* officer of any of the Sears Canada Entities, in such capacity;
- (hhh) “**OPEB Entitlement**” means any entitlement to health and dental post-employment benefits and/or life insurance benefits, each as provided by any of the Sears Canada Entities as a post-employment benefit;
- (iii) “**Order**” means this Employee and Retiree Claims Procedure Order;
- (jjj) “**Other Employee Claim**” means: (i) any right or claim of any Employee against any of the Sears Canada Entities that is not a Termination Claim or a Warranty Claim, and (ii) any right or claim of any Employee against any Directors and/or Officers, in either case, including any right or claim in connection with any indebtedness, liability or obligation of any kind whatsoever of any such Sears Canada Entity, Director and/or Officer to such Employee, arising before, on or after

the Filing Date, including without limitation any Indemnification Claims or Grievance Claims;

(kkk) “**Other Retiree Claim**” means: (i) any right or claim of any Retiree, the Pension Plan Administrator and/or Superintendent against any of the Sears Canada Entities that is not a Sears Pension Claim, Supplemental Plan Claim, Retiree Benefit Claim, Lifetime Discount Claim or Warranty Claim, and (ii) any right or claim of any Retiree, the Pension Plan Administrator and/or Superintendent against any Directors and/or Officers that is not a Sears Pension Claim or Supplemental Plan Claim, in either case, including any right or claim in connection with any indebtedness, liability or obligation of any kind whatsoever of any such Sears Canada Entity, Director and/or Officer to such Retiree or in respect of the Sears Pension Plan or Supplemental Plan, arising before, on or after the Filing Date;

(lll) “**Pension Plan Administrator**” means Morneau Shepell Ltd. in its capacity as administrator of the Sears Pension Plan;

(mmm) “**Pension Plan Administrator’s Website**” means [https://www.pensionwindups.morneaushepell.com/en/plan\\_info/SRRP/plan\\_info.asp](https://www.pensionwindups.morneaushepell.com/en/plan_info/SRRP/plan_info.asp);

(nnn) “**Pension Representative Counsel**” means Koskie Minsky LLP;

(ooo) “**Pension Representative Counsel Order**” means the Representative Counsel Order for Pensions and Post-Retirement Benefits issued by the Court dated July 13, 2017, as may be amended from time to time;

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- (ppp) “**Pension Representative Counsel’s Website**” means <https://kmlaw.ca/cases/sears-canada/>;
- (qqq) “**Pensioner Representatives**” means Bill Turner, Ken Eady and Larry Moore, or such other representatives as may be duly appointed by the Court from time to time;
- (rrr) “**Person**” means any individual, firm, corporation, limited or unlimited liability company, general or limited partnership, association, trust (including a real estate investment trust), unincorporated organization, joint venture, government or any agency or instrumentality thereof or any other entity;
- (sss) “**Personal Information**” means the personal information relating to a particular Employee or Retiree based on the Sears Canada Entities’ books and records as at the date of this Order and updated from time to time, contained in a Termination Claim Statement or Retiree Benefit Claim Statement, as such Personal Information may be amended as a result of a Request for Correction accepted by the Monitor, as a result of a Monitor Corrected Claim Statement, or as a result of a determination pursuant to the dispute resolution mechanisms set out in this Order;
- (ttt) “**Plan**” means, as further defined in the Initial Order, any proposed plan of compromise or arrangement that may be filed in respect of any or all of the Sears Canada Entities pursuant to the CCAA as the same may be amended, supplemented or restated from time to time in accordance with the terms thereof;
- (uuu) “**PRC Retiree**” means any Retiree with OPEB Entitlements who is represented by Pension Representative Counsel;

- (vvv) “**PRC Retiree Package**” means a document package, which shall include: (i) the Retiree Letter; (ii) an individualized Retiree Benefit Claim Statement; (iii) a Retiree Request for Correction form, and (iv) such other materials as the Monitor, in consultation with the Sears Canada Entities and Pension Representative Counsel, may consider appropriate or desirable;
- (www) “**Pre-Filing Period**” means the period prior to the Filing Date;
- (xxx) “**Proof of Claim**” means the proof of claim form, substantially in the form attached as Schedule “●” hereto, to be filed by Claimants in respect of any Sears Pension Claim, Supplemental Plan Claim, Other Employee Claim or Other Retiree Claim against any of the Sears Canada Entities;
- (yyy) “**Proof of Claim Bar Date**” means 5:00 p.m. on April 9, 2018;
- (zzz) “**Proof of Claim Instruction Letter**” means the letter containing instructions for completing the Proof of Claim form, substantially in the form attached as Schedule “●” hereto;
- (aaa) “**Proof of Claim Package**” means a document package, which shall include: (i) a Proof of Claim form; (ii) a Proof of Claim Instruction Letter; (iii) a D&O Proof of Claim form; (iv) a D&O Proof of Claim Instruction Letter; and (v) such other materials as the Monitor, in consultation with the Sears Canada Entities, may consider appropriate or desirable;
- (bbbb) “**Request for Correction**” means an Employee Request for Correction or a Retiree Request for Correction, as applicable;

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(cccc) “**Request for Correction Bar Date**” means the later of: (i) 5:00 p.m. on May 7, 2018, and (ii) where a Claimant receives a Monitor Corrected Claim Statement, the date that is thirty (30) days after the date on which such Claimant is deemed to receive such Monitor Corrected Claim Statement;

(dddd) “**Restructuring Period**” means the period on or after the Filing Date;

(eeee) “**Retiree**” means any Person with any (i) entitlements under the Sears Pension Plan; (ii) entitlements under the Supplemental Plan; (iii) primary coverage entitlements with respect to any OPEB Entitlements; (iv) entitlements to the Lifetime Discount (including, for greater certainty, current and former Employees who qualify for this discount by virtue of satisfying applicable age and service eligibility criteria); or (v) entitlements under any other pension or retirement plan of the Sears Canada Entities;

(ffff) “**Retiree Benefit Claim**” means any right or claim of any Retiree against any of the Sears Canada Entities in respect of any OPEB Entitlements as calculated in accordance with the Retiree Benefit Claims Methodology, which, for greater certainty, shall include any derivative health and dental coverage claim of any eligible spouse and/or dependant of such Retiree, and which will be set out in a Retiree Benefit Claim Statement;

(gggg) “**Retiree Benefit Claim Statement**” means an individual claim statement, substantially in the form attached as Schedule “●” hereto, to be prepared by the Sears Canada Entities, in consultation with the Monitor and with the assistance of Pension Representative Counsel, which shall include the amount of such individual

Claimant's Retiree Benefit Claim, as calculated in accordance with the Retiree Benefit Claims Methodology;

(hhh) "**Retiree Benefit Claims Methodology**" means the methodology and assumptions for the calculation of Retiree Benefit Claims, as described in paragraphs 48 to 53 of the Penrice Affidavit and illustrated in Schedule "B" hereto;

(iii) "**Retiree Claim**" means each of the following (which, for greater certainty, may be asserted by or on behalf of a Retiree, including by Pension Representative Counsel or the Pension Plan Administrator and/or the Superintendent, as appropriate):

- (i) Sears Pension Claims;
- (ii) Supplemental Plan Claims;
- (iii) Retiree Benefit Claims;
- (iv) Lifetime Discount Claims;
- (v) Warranty Claims; and
- (vi) Other Retiree Claims;

including any Retiree Claim arising through subrogation against any Sears Canada Entity or Director or Officer, provided however that in any case "**Retiree Claim**" shall not include an Excluded Claim;

(jjj) "**Retiree Letter**" means the letter to PRC Retirees and DB Only Retirees, substantially in the form attached as Schedule "●" hereto, which shall, among other things, provide a link to access the Claims Website (where a Retiree may submit a

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Retiree Request for Correction and which will include a link to the Proof of Claim Package);

(kkkk) “**Retiree Request for Correction**” means the request form, substantially in the form attached as Schedule “●” hereto, or in an electronic form acceptable to the Monitor, to be submitted by a Retiree to the Monitor requesting a correction to the Personal Information set out in the Retiree Benefit Claim Statement or Monitor Corrected Claim Statement, if applicable, provided to such Retiree;

(llll) “**Sears Pension Claim**” means any right or claim against the Sears Canada Entities or any Directors and/or Officers with respect to the Wind-Up Deficiency, including, for greater certainty, any claim based on statutory deemed trust obligations with respect to the Wind-Up Deficiency (and, for greater certainty, no individual Retiree with entitlements with respect to the defined benefit component of the Sears Pension Plan shall be permitted to submit a Proof of Claim or D&O Proof of Claim with respect to such entitlements or with respect to the Wind-Up Deficiency);

(mmmm) “**Sears Pension Claim Methodology**” means the methodology and assumptions for the calculation of any Sears Pension Claim, as described in paragraphs 61 to 63 of the Penrice Affidavit;

(nnnn) “**Sears Pension Plan**” means the Sears Canada Inc. Registered Retirement Plan (Reg. #0360065), a pension plan registered under the Ontario *Pension Benefits Act*, R.S.O. 1990, c. P.8 and *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) with a defined benefit component and a defined contribution component;

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- (oooo) “**Superintendent**” means the Ontario Superintendent of Financial Services as administrator of the Pension Benefits Guarantee Fund;
- (pppp) “**Supplemental Plan**” means the Sears Canada Inc. Supplementary Retirement Plan, a non-registered supplemental pension plan maintained to provide enhanced pension benefits to eligible members of the defined benefit component of the Sears Pension Plan that are not provided under the Sears Pension Plan;
- (qqqq) “**Supplemental Plan Claim**” means any right or claim against the Sears Canada Entities or any Directors and/or Officers with respect to entitlements of a Retiree under the Supplemental Plan (and, for greater certainty, no Retiree who is represented by Pension Representative Counsel shall be permitted to submit a Proof of Claim or D&O Proof of Claim with respect to such entitlements);
- (rrrr) “**Termination Claim**” means any right or claim of any Employee against any of the Sears Canada Entities in respect of the termination of such Employee’s employment, whether under contract, common law, statute or otherwise, including for termination and severance pay and for damages for loss of employment-related perquisites and benefits (including employee discounts) during his/her period of entitlement to working notice, which, for greater certainty, will be calculated for the purposes of this Employee and Retiree Claims Process in accordance with the Termination Claims Methodology and set out in a Termination Claim Statement;
- (ssss) “**Termination Claim Statement**” means an individual claim statement, substantially in the form attached as Schedule “●” hereto, or in an electronic form acceptable to the Monitor, to be prepared by the Sears Canada Entities, in consultation with the Monitor and with the assistance of Employee Representative

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Counsel, which shall include the amount of such individual Claimant's Termination Claim, as calculated in accordance with the Termination Claims Methodology;

(tttt) **“Termination Claims Methodology”** means the methodology and assumptions for the calculation of Termination Claims, as described in paragraphs 28 to 47 of the Penrice Affidavit and illustrated in Schedule “A” hereto;

(uuuu) **“Union Representative”** means a representative of the bargaining agent representing Unionized Employees;

(vvvv) **“Unionized Employee”** means any Employee represented by a union pursuant to a collective agreement in connection with such Employee's employment with any of the Sears Canada Entities;

(wwww) **“Warranty”** means a customer warranty provided by any one of the Sears Canada Entities, including any Sears Protection Agreement but excluding any manufacturer's warranty;

(xxxx) **“Warranty Claim”** means any claim of a Claimant in this Employee and Retiree Claims Process against the Sears Canada Entities with respect to a Warranty; and

(yyyy) **“Wind-Up Deficiency”** means the wind-up deficit with respect to the defined benefit component of the Sears Pension Plan.

5. THIS COURT ORDERS that all references as to time herein shall mean local time in Toronto, Ontario, Canada, and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day unless otherwise indicated herein, and any reference to

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an event occurring on a day that is not a Business Day shall mean the next following day that is a Business Day.

6. THIS COURT ORDERS that all references to the word “including” shall mean “including without limitation”, all references to the singular herein include the plural, the plural include the singular, and any gender includes all genders.

### **GENERAL PROVISIONS**

7. THIS COURT ORDERS that any Claim denominated in a foreign currency shall be converted to Canadian dollars at the Bank of Canada exchange rate in effect at the Filing Date. For reference, the exchange rate that will be applied to Claims denominated in U.S. dollars is 1.3241 CAD/USD.

8. THIS COURT ORDERS that, notwithstanding any other provisions of this Order, the solicitation by the Monitor of Proofs of Claim and D&O Proofs of Claim, the delivery by the Monitor of Claims Packages and the Retiree Letter, and the filing by any Claimant of any Proof of Claim or D&O Proof of Claim shall not, for that reason only, grant any Person any rights, including without limitation, in respect of the nature, quantum and priority of his/her Claims or his/her standing in the CCAA Proceedings or any other proceedings, except as specifically set out in this Order (provided that this exception shall not apply in respect of paragraphs 19 to 21 of this Order or to the Sears Pension Claim Methodology).

9. THIS COURT ORDERS that the Monitor, in consultation with the Sears Canada Entities and the applicable Directors and Officers in respect of any D&O Claim, is hereby authorized to use reasonable discretion as to the adequacy of compliance with respect to the manner in which any forms delivered hereunder are completed and executed and the time in which they are submitted, and may, where the Monitor, in consultation with the Sears Canada Entities and the

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applicable Directors and Officers in respect of any D&O Claim, is satisfied that a Claim has been adequately proven, waive strict compliance with the requirements of this Order, including in respect of the completion, execution and time of delivery of such forms; provided that it is recognized and understood that certain Claims will be contingent in nature and/or based on estimates and assumptions which may be subject to change, and therefore will not contain particulars of such Claims that are not yet known as at the time they are filed.

**TERMINATION CLAIMS METHODOLOGY**

10. THIS COURT ORDERS that the Termination Claims Methodology is hereby approved.

11. THIS COURT ORDERS that the Termination Claims of ERC Employees and Non-ERC Employees shall be calculated by the Sears Canada Entities in consultation with the Monitor and with the assistance of Employee Representative Counsel and its Advisors as well as Union Representatives, where appropriate, in accordance with the Termination Claims Methodology based on the Personal Information relating to such Employee.

12. THIS COURT ORDERS AND DECLARES that:

- (a) the Termination Claims Methodology shall be final and binding on all ERC Employees;
- (b) the Termination Claims Methodology shall be final and binding on any Non-ERC Employees who do not submit a Notice of Proposed Revision (or, in the case of a Unionized Employee, do not have a Union Representative submit a Notice of Proposed Revision on such Unionized Employee's behalf) by the Notice of Proposed Revision Bar Date;

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- (c) no: (i) ERC Employee, or (ii) Non-ERC Employee who did not submit a Notice of Proposed Revision (or, in the case of a Unionized Employee, did not have a Union Representative submit a Notice of Proposed Revision on such Unionized Employee's behalf) by the Notice of Proposed Revision Bar Date, shall directly or indirectly assert, advance, re-assert or re-file any Termination Claim that is not calculated in accordance with the Termination Claims Methodology; and
- (d) any Termination Claim that is directly or indirectly asserted, advanced, re-asserted or re-filed by an ERC Employee or by a Non-ERC Employee who did not submit a Notice of Proposed Revision (or, in the case of a Unionized Employee, did not have a Union Representative submit a Notice of Proposed Revision on such Unionized Employee's behalf) by the Notice of Proposed Revision Bar Date that is not calculated in accordance with the Termination Claims Methodology shall be disallowed.

**RETIREE BENEFIT CLAIMS METHODOLOGY**

- 13. THIS COURT ORDERS that the Retiree Benefit Claims Methodology is hereby approved.
- 14. THIS COURT ORDERS that any Retiree Benefit Claim of a Retiree shall be calculated by the Sears Canada Entities in consultation with the Monitor and with the assistance of Pension Representative Counsel and its Advisors, where appropriate, in accordance with the Retiree Benefit Claims Methodology based on the Personal Information relating to such Retiree.
- 15. THIS COURT ORDERS AND DECLARES that:
  - (a) the Retiree Benefit Claims Methodology shall be final and binding on all PRC Retirees;

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- (b) the Retiree Benefit Claims Methodology shall be final and binding on all Non-PRC Retirees who do not submit a Notice of Proposed Revision by the Notice of Proposed Revision Bar Date;
- (c) no: (i) PRC Retiree, or (ii) Non-PRC Retiree who did not file a Notice of Proposed Revision by the Notice of Proposed Revision Bar Date, shall directly or indirectly assert, advance, re-assert or re-file any Retiree Benefit Claim that is not calculated in accordance with the Retiree Benefit Claims Methodology; and
- (d) any Retiree Benefit Claim that is directly or indirectly asserted, advanced, re-asserted or re-filed by a PRC Retiree or by a Non-PRC Retiree who did not file a Notice of Proposed Revision by the Notice of Proposed Revision Bar Date that is not calculated in accordance with the Retiree Benefit Claims Methodology shall be disallowed.

**LIFETIME DISCOUNT CLAIMS METHODOLOGY**

16. THIS COURT ORDERS that the Lifetime Discount Claims Methodology is hereby approved.

17. THIS COURT ORDERS AND DECLARES that:

- (a) the Lifetime Discount Claims Methodology shall be final and binding on all Retirees eligible to submit a Lifetime Discount Claim;
- (b) the Sears Canada Entities shall be deemed to have submitted Lifetime Discount Claims calculated in accordance with the Lifetime Discount Claims Methodology on behalf of each known Retiree eligible to submit a Lifetime Discount Claim, based on the books and records of the Sears Canada Entities;

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- (c) no Retiree shall directly or indirectly assert, advance, re-assert or re-file any Lifetime Discount Claim; and
- (d) any Lifetime Discount Claim that is directly or indirectly asserted, advanced, re-asserted or re-filed by any Retiree shall be disallowed.

**SEARS PENSION CLAIM METHODOLOGY**

- 18. THIS COURT ORDERS that the Sears Pension Claim Methodology is hereby approved.
- 19. THIS COURT ORDERS that only Pension Representative Counsel, the Pension Plan Administrator and the Superintendent may submit a Proof of Claim and/or D&O Proof of Claim with respect to any Sears Pension Claim. The Monitor shall deal with any such Proofs of Claim and/or D&O Proofs of Claim in accordance with paragraphs 65 and 69 below. For greater certainty, no individual Retiree with entitlements with respect to the defined benefit component of the Sears Pension Plan shall be permitted to submit a Proof of Claim or D&O Proof of Claim with respect to any such entitlements or with respect to the Wind-Up Deficiency.
- 20. THIS COURT ORDERS that any Sears Pension Claim shall be calculated pursuant to the Sears Pension Claim Methodology. For the purposes of the preparation and submission of any Proof of Claim or D&O Proof of Claim relating to a Sears Pension Claim only, the Pension Plan Administrator, Pension Representative Counsel and/or the Superintendent shall be entitled, without independent investigation, to rely on the books and records of the Sears Canada Entities and any information provided by the Sears Canada Entities, and shall not be liable for any claims or damages resulting from any errors or omissions in the Sears Canada Entities' books, records or information.
- 21. THIS COURT ORDERS AND DECLARES that:

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- (a) the Sears Pension Claim Methodology shall be final and binding on the Pension Plan Administrator, Pension Representative Counsel, the Superintendent and on all Retirees with entitlements under the defined benefit component of the Sears Pension Plan;
- (b) Sears Pension Claims: (i) may only be submitted by the Pension Plan Administrator, Pension Representative Counsel, and/or the Superintendent, each in accordance with the Sears Pension Claim Methodology and the requirements under this Order (which, for greater certainty, may be adjusted in accordance with the Sears Pension Claim Methodology after the Proof of Claim Bar Date), and (ii) shall not, directly or indirectly, be asserted, advanced, re-asserted or re-filed by any other Person that is not the Pension Plan Administrator, Pension Representative Counsel or the Superintendent;
- (c) any Sears Pension Claim that is directly or indirectly asserted, advanced, re-asserted or re-filed by any Person other than the Pension Plan Administrator, Pension Representative Counsel or the Superintendent, or any Sears Pension Claim that is not calculated in accordance with the Sears Pension Claim Methodology, shall be disallowed;
- (d) the Monitor shall provide a copy of any Sears Pension Claim received to the Pension Plan Administrator, Pension Representative Counsel and the Superintendent, as appropriate;
- (e) each of the Pension Plan Administrator, Pension Representative Counsel and the Superintendent shall be given written notice by the Monitor of any determination

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by the Monitor, including as to quantum and/or priority, of any Sears Pension Claim submitted in accordance with this Order; and

- (f) the Pension Plan Administrator, Pension Representative Counsel and the Superintendent shall be given written notice by the Monitor of, and are entitled to participate in (i) any hearing before a Claims Officer concerning a Sears Pension Claim, and (ii) any hearing before the Court concerning a Sears Pension Claim, and any appeals therefrom.

#### **SUPPLEMENTAL PLAN CLAIMS**

22. THIS COURT ORDERS that Pension Representative Counsel shall, on behalf of all Retirees with entitlements under the Supplemental Plan, submit a Proof of Claim and/or D&O Proof of Claim with respect to any Supplemental Plan Claims of such Retirees. No Retiree represented by Pension Representative Counsel shall be permitted to submit a Proof of Claim or D&O Proof of Claim with respect to any Supplemental Plan Claim of such Retiree. For greater certainty, any Retiree not represented by Pension Representative Counsel who has entitlements under the Supplemental Plan may submit a separate Proof of Claim or D&O Proof of Claim with respect to such entitlements, and the Monitor shall deal with any such Proofs of Claim and/or D&O Proofs of Claim in accordance with paragraph 69 below.

23. THIS COURT ORDERS that any Supplemental Plan Claim submitted by Pension Representative Counsel shall be calculated by Pension Representative Counsel and its Advisors. Pension Representative Counsel and its Advisors shall be entitled, without independent investigation, to rely on the books and records of the Sears Canada Entities and any information provided by the Sears Canada Entities, and shall not be liable for any claims or damages resulting from any errors or omissions in the Sears Canada Entities' books, records or information.

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24. THIS COURT ORDERS AND DECLARES that:

- (a) any Supplemental Plan Claims submitted by Pension Representative Counsel shall be final and binding on all Retirees represented by Pension Representative Counsel who have entitlements under the Supplemental Plan;
- (b) any Supplemental Plan Claims submitted by Pension Representative Counsel shall be final and binding on all Retirees not represented by Pension Representative Counsel who do not submit any other Proof of Claim or D&O Proof of Claim in respect of their entitlements under the Supplemental Plan before the Proof of Claim Bar Date;
- (c) no Retiree represented by Pension Representative Counsel shall directly or indirectly assert, advance, re-assert or re-file any Supplemental Plan Claim; and
- (d) any Supplemental Plan Claim that is directly or indirectly asserted, advanced, re-asserted or re-filed by any Retiree represented by Pension Representative Counsel shall be disallowed.

**MONITOR'S ROLE**

25. THIS COURT ORDERS that, in addition to its prescribed rights, duties, responsibilities and obligations under the CCAA, the Initial Order and any other orders of the Court in the CCAA Proceedings, the Monitor is hereby directed and empowered to implement the Employee and Retiree Claims Process set out herein and to take such other actions and fulfill such other roles as are authorized by this Order or incidental thereto.

26. THIS COURT ORDERS that the Monitor (a) shall have all of the protections given to it by the CCAA, the Initial Order, any other orders of the Court in the CCAA Proceedings, and this

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Order, or as an officer of the Court, including the stay of proceedings in its favour; (b) shall incur no liability or obligation as a result of the carrying out of the provisions of this Order, including in respect of its exercise of discretion as to the completion, execution or time of delivery of any documents to be delivered hereunder, other than in respect of its gross negligence or wilful misconduct; (c) shall be entitled, without independent investigation, to rely on the books and records of the Sears Canada Entities and any information provided by the Sears Canada Entities; and (d) shall not be liable for any claims or damages resulting from any errors or omissions in the Sears Canada Entities' books, records or information.

27. THIS COURT ORDERS that the Sears Canada Entities and their current officers, directors, employees, agents and representatives shall fully cooperate with the Monitor in the exercise of its powers and discharge of its duties and obligations under this Order.

#### **EMPLOYEE REPRESENTATIVE COUNSEL'S ROLE**

28. THIS COURT ORDERS that, unless otherwise directed by the Court, Employee Representative Counsel may, on behalf of any ERC Employee: (a) engage in discussions with the Monitor and the Sears Canada Entities with respect to Personal Information; (b) assist in filing an Employee Request for Correction, Proof of Claim, D&O Proof of Claim, or Notice of Dispute on behalf of an Employee where requested to do so by the Employee; (c) file a Proof of Claim or a D&O Proof of Claim on behalf an Employee; (d) participate in the adjudication, resolution or settlement of any Termination Claim; and (e) assist an ERC Employee with an Other Employee Claim that, in the judgment of Employee Representative Counsel, is a *bona fide* claim that has not been dealt with through the Termination Claims Methodology; provided however that nothing in this paragraph 28 shall relieve an ERC Employee of his or her responsibility to review the Claims Package provided to him or her (including the Termination Claim Statement), to review the

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Personal Information upon which the Claim will be calculated, and to submit an Employee Request for Correction, a Proof of Claim, a D&O Proof of Claim, or a Notice of Dispute where such Employee wishes to do so and is entitled to do so in accordance with the procedures and within the time limits set out in this Order.

29. THIS COURT ORDERS that Employee Representative Counsel, the Employee Representatives and any Advisors retained by Employee Representative Counsel: (a) shall have no personal liability or obligations as a result of the performance of their duties in carrying out the provisions of this Order, save and except for liability arising out of gross negligence or wilful misconduct; (b) shall be entitled, without independent investigation, to rely on the books and records of the Sears Canada Entities and any information provided by the Sears Canada Entities; and (c) shall not be liable for any claims or damages resulting from any errors or omissions in the Sears Canada Entities' books, records or information.

30. THIS COURT ORDERS that, subject to existing confidentiality agreements, the Employee Representative Counsel Order and applicable law: (a) the Sears Canada Entities and the Monitor shall cooperate with Employee Representative Counsel in the exercise of its powers and discharge of its duties and obligations under this Order, and (b) Employee Representative Counsel shall cooperate with the Monitor and the Sears Canada Entities in the exercise of their respective powers and discharge of their respective duties and obligations under this Order.

**PENSION REPRESENTATIVE COUNSEL'S ROLE**

31. THIS COURT ORDERS that all unionized Retirees shall be represented by Pension Representative Counsel pursuant to the Pension Representative Counsel Order *nunc pro tunc*, unless any such unionized Retiree specifically notifies Pension Representative Counsel in writing

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that such Retiree wishes to opt-out of representation by the Pensioner Representatives and Pension Representative Counsel.

32. THIS COURT ORDERS that, unless otherwise directed by the Court, Pension Representative Counsel may, on behalf of any Retiree represented by Pension Representative Counsel: (a) engage in discussions with the Monitor and the Sears Canada Entities with respect to Personal Information; (b) assist in filing a Retiree Request for Correction, Proof of Claim, D&O Proof of Claim, or Notice of Dispute on behalf of a Retiree where requested to do so by the Retiree; (c) file a Proof of Claim or D&O Proof of Claim on behalf of a Retiree; (d) participate in the adjudication, resolution or settlement of any Retiree Benefit Claim; and (e) assist a Retiree with an Other Retiree Claim that, in the judgment of Pension Representative Counsel, is a *bona fide* claim that has not been dealt with through the Retiree Benefit Claims Methodology, the Lifetime Discount Claims Methodology, the Sears Pension Claim Methodology or otherwise; provided however that nothing in this paragraph 31 shall relieve a Retiree of his or her responsibility to review the Claims Package provided to him or her (including the Retiree Benefit Claim Statement), to review the Personal Information upon which the Claim will be calculated, and to submit a Retiree Request for Correction, a Proof of Claim, a D&O Proof of Claim, or a Notice of Dispute where such Retiree wishes to do so and is entitled to do so in accordance with the procedures and within the time limits set out in this Order.

33. THIS COURT ORDERS that Pension Representative Counsel, the Pensioner Representatives and any Advisors retained by Pension Representative Counsel: (a) shall have no personal liability or obligations as a result of the performance of their duties in carrying out the provisions of this Order, save and except for liability arising out of gross negligence or wilful misconduct; (b) shall be entitled, without independent investigation, to rely on the books and

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records of the Sears Canada Entities and any information provided by the Sears Canada Entities; and (c) shall not be liable for any claims or damages resulting from any errors or omissions in the Sears Canada Entities' books, records or information.

34. THIS COURT ORDERS that, subject to existing confidentiality agreements, the Pension Representative Counsel Order and applicable law: (a) the Sears Canada Entities and the Monitor shall cooperate with Pension Representative Counsel, the Pension Plan Administrator and the Superintendent in the exercise of their respective powers and discharge of their respective duties and obligations under this Order, and (b) Pension Representative Counsel, the Pension Plan Administrator and the Superintendent shall cooperate with the Monitor and the Sears Canada Entities in the exercise of their respective powers and discharge of their respective duties and obligations under this Order.

#### **NOTICE OF EMPLOYEE AND RETIREE CLAIMS PROCESS**

35. THIS COURT ORDERS that the Monitor shall cause the Notice to Claimants to be published at least three (3) times, beginning the week of February 26, 2018, in The Globe and Mail (National Edition) and the electronic edition of La Presse, and in such other publications and with such frequency as is determined by the Monitor in consultation with the Sears Canada Entities.

36. THIS COURT ORDERS that the Monitor shall cause the Notice to Claimants and blank copies of the Claims Packages (excluding any blank Termination Claim Statement or Retiree Benefit Claim Statement) to be posted to the Monitor's Website by no later than 5:00 p.m. on February 27, 2018.

37. THIS COURT ORDERS that the Applicants shall cause the Notice to Claimants to be posted to the my.sears.ca portal, as soon as practicable but no later than 5:00 p.m. on February 27, 2018.

38. THIS COURT ORDERS that Employee Representative Counsel shall cause the Notice to Claimants and a blank copy of the ERC Employee Package (excluding any blank Termination Claim Statement) to be posted to Employee Representative Counsel's Website, as soon as practicable but no later than 5:00 p.m. on February 27, 2018.

39. THIS COURT ORDERS that Pension Representative Counsel shall cause the Notice to Claimants and a blank copy of the PRC Retiree Package (excluding any blank Retiree Benefit Claim Statement) to be posted to Pension Representative Counsel's Website, as soon as practicable but no later than 5:00 p.m. on February 27, 2018.

40. THIS COURT ORDERS that as soon as practicable, but no later than 5:00 p.m. on March 5, 2018, the Monitor shall cause: (a) an ERC Employee Package to be sent to each known ERC Employee; (b) a Non-ERC Employee Package to be sent to each known Non-ERC Employee; (c) a PRC Retiree Package to be sent to each known PRC Retiree; (d) a Non-PRC Retiree Package to be sent to each known Non-PRC Retiree; and (e) a Retiree Letter to be sent to each known DB Only Retiree, each at the last known physical or electronic address recorded in the books and records of the Sears Canada Entities and in accordance with the terms of this Order.

41. THIS COURT ORDERS that as soon as practicable, but no later than 5:00 p.m. on March 5, 2018, the Monitor shall cause a Proof of Claim Package to be sent to each Claimant who the Sears Canada Entities have advised the Monitor may have an outstanding active action, claim or complaint as of the Filing Date but who was not sent a package or a letter in accordance with paragraph 40 above, at the last known physical or electronic address recorded in the books and records of the Sears Canada Entities.

42. THIS COURT ORDERS that to the extent any Claimant requests documents or information relating to the Employee and Retiree Claims Process prior to the Proof of Claim Bar

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Date, the Monitor shall forthwith send such Claimant a Proof of Claim Package, and shall direct such Claimant to the documents posted on the Monitor's Website or otherwise respond to the request for documents or information as the Monitor (in consultation with the Sears Canada Entities and, where the Monitor deems appropriate, Employee Representative Counsel, Pension Representative Counsel, the Pension Plan Administrator and/or the Superintendent) may consider appropriate in the circumstances. If the Sears Canada Entities or the Monitor become aware of any further Claims after the mailings contemplated in paragraph 40 and 41 herein, the Monitor shall forthwith send such potential Claimant a Proof of Claim Package or other Claims Package, as the Monitor (in consultation with the Sears Canada Entities and, where the Monitor deems appropriate, Employee Representative Counsel, Pension Representative Counsel, the Pension Plan Administrator and/or the Superintendent) deems appropriate, or may direct such potential Claimant to the documents posted on the Monitor's Website.

43. THIS COURT ORDERS that the Employee and Retiree Claims Process and the forms of Notice to Claimants, Proof of Claim Instruction Letter, D&O Proof of Claim Instruction Letter, Proof of Claim, D&O Proof of Claim, Termination Claim Statement, Retiree Benefit Claim Statement, Employee Request for Correction, Retiree Request for Correction, Notice of Acceptance, Notice of Disallowance (Personal Information), Notice of Disallowance (Proof of Claim), Notice of Dispute (Personal Information), Notice of Dispute (Proof of Claim), Notice of Proposed Revision, ERC Employee Letter, Non-ERC Employee Letter, Retiree Letter and Non-PRC Retiree Letter are hereby approved, subject to any minor non-substantive changes to the forms as the Monitor and the Sears Canada Entities (in consultation with Employee Representative Counsel and Pension Representative Counsel, as appropriate) may consider necessary or desirable to be made from time to time.

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44. THIS COURT ORDERS that the sending of the Claims Packages and the Retiree Letter to the applicable Persons and the publication of the Notice to Claimants, in accordance with this Order, shall constitute good and sufficient service and delivery of notice of this Order and the Bar Dates on all Persons who may be entitled to receive notice and who may wish to assert a Claim, and no other notice or service need be given or made and no other document or material need be sent to or served upon any Person in respect of this Order.

**FILING OF REQUESTS FOR CORRECTION**

45. THIS COURT ORDERS that if the Monitor independently discovers or is made aware of any errors in the Personal Information that would affect the amount of a Termination Claim or Retiree Benefit Claim of a Claimant, the Monitor has the discretion to correct those errors. If any such errors are discovered and corrections are made by the Monitor, the Monitor shall send a Monitor Corrected Claim Statement together with the applicable Request for Correction to such Claimant, who will have the right to submit such Request for Correction by the Request for Correction Bar Date or such other date as may be agreed to by the Monitor in writing.

46. THIS COURT ORDERS that if: (i) an Employee disputes the Personal Information contained in his/her Termination Claim Statement or Monitor Corrected Claim Statement, as applicable, or (ii) a Retiree disputes the Personal Information contained in his/her Retiree Benefit Claim Statement or Monitor Corrected Claim Statement, as applicable, such Employee or Retiree, as applicable, shall deliver to the Monitor the applicable Request for Correction. All Requests for Correction must be received by the Monitor by no later than the Request for Correction Bar Date.

47. THIS COURT ORDERS that: (a) if an Employee's Request for Correction is not received by the Monitor on or before the Request for Correction Bar Date or such Employee's Request for Correction is received and accepted by the Monitor through a Notice of Acceptance, the Personal

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Information contained in his/her Termination Claim Statement, Monitor Corrected Claim Statement or Notice of Acceptance, as applicable, shall be deemed to be correct and confirmed in all respects, shall be final and binding on such Employee, and such Employee shall be barred from making any Termination Claim inconsistent with such Personal Information; and (b) if a Retiree's Request for Correction is not received by the Monitor on or before the Request for Correction Bar Date or such Retiree's Request for Correction is received and accepted by the Monitor through a Notice of Acceptance, the Personal Information contained in his/her Retiree Benefit Claim Statement, Monitor Corrected Claim Statement or Notice of Acceptance, as applicable, shall be deemed to be correct and confirmed in all respects, shall be final and binding on such Retiree, and such Retiree shall be barred from making any Retiree Benefit Claim inconsistent with such Personal Information.

#### **FILING OF NOTICES OF PROPOSED REVISION**

48. THIS COURT ORDERS that a Notice of Proposed Revision with respect to a Unionized Employee's Termination Claim may only be submitted by a Union Representative on behalf of such Unionized Employee (and, for greater certainty, no Unionized Employee shall be permitted to submit a Notice of Proposed Revision on his/her own behalf). For greater certainty, any Non-PRC Retiree shall be permitted to submit a Notice of Proposed Revision on his/her own behalf, regardless of whether such Non-PRC Retiree is or was represented by a union at any time in relation to such Non-PRC Retiree's employment with any of the Sears Canada Entities.

49. THIS COURT ORDERS that only Non-ERC Employees (or, where such Non-ERC Employee is a Unionized Employee, the Union Representative on behalf of such Unionized Employee) and Non-PRC Retirees shall be permitted to file a Notice of Proposed Revision with respect to the determination of their Termination Claim or Retiree Benefit Claim, as applicable.

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50. THIS COURT ORDERS that: (a) if a Non-ERC Employee (or a Union Representative on behalf of a Unionized Employee) disputes the application of the Termination Claims Methodology to determine such Non-ERC Employee's Termination Claim; or (b) if a Non-PRC Retiree disputes the application of the Retiree Benefit Claims Methodology to determine such Non-PRC Retiree's Retiree Benefit Claim, such Claimant (or in the case of a Unionized Employee, the Union Representative on behalf of such Unionized Employee) shall deliver to the Monitor a Notice of Proposed Revision containing a proposed alternative methodology to be used to determine his/her Termination Claim or Retiree Benefit Claim, as applicable. All Notices of Proposed Revision must be received by the Monitor by no later than the Notice of Proposed Revision Bar Date.

51. THIS COURT ORDERS that if a Notice of Proposed Revision is not submitted by an eligible Claimant and received by the Monitor on or before the Notice of Proposed Revision Bar Date: (a) the Termination Claims Methodology or the Retiree Benefit Claims Methodology, as applicable, shall be deemed to be confirmed in all respects by such Claimant and shall be final and binding on such Claimant, such that the only remaining element of such Claimant's Termination Claim or Retiree Benefit Claim that may be subject to revision shall be the Personal Information to be applied to such methodology (to the extent that any Request for Correction has been submitted in accordance with paragraphs 45 and 47 above), and (b) the Claimant shall be barred from making any further Termination Claim or Retiree Benefit Claim.

**FILING OF PROOFS OF CLAIM**

52. THIS COURT ORDERS that any Claimant (or any Union Representative or other Person on behalf of any Claimant, including without limitation the Pension Plan Administrator, Pension Representative Counsel or the Superintendent with respect to any Sears Pension Claim or Other Retiree Claim, Employee Representative Counsel with respect to any Other Employee Claim, or

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Pension Representative Counsel with respect to any Supplemental Plan Claim) that intends to assert a Sears Pension Claim, Supplemental Plan Claim, Other Employee Claim or Other Retiree Claim, including any D&O Claim relating to any of the foregoing, shall file a Proof of Claim or D&O Proof of Claim, as applicable, with the Monitor on or before the Proof of Claim Bar Date. Any Claimant (or other Person on behalf of such Claimant) who submits a Proof of Claim or D&O Proof of Claim must specify whether such Claim relates to the Pre-Filing Period or to the Restructuring Period. For the avoidance of doubt, a Proof of Claim or D&O Proof of Claim, as applicable, must be filed by every such Claimant (or other Person on behalf of such Claimant) in respect of every such Claim or D&O Claim, regardless of whether or not a legal proceeding in respect of such Claim or D&O Claim has been previously commenced.

53. THIS COURT ORDERS that any Claimant (or other Person on behalf of such Claimant) who is eligible to assert a Sears Pension Claim, Supplemental Plan Claim, Other Employee Claim or Other Retiree Claim, including any D&O Claim relating to any of the foregoing, and who does not file a Proof of Claim or D&O Proof of Claim, as applicable, so that such Proof of Claim or D&O Proof of Claim is received by the Monitor on or before the Proof of Claim Bar Date, or such later date as the Monitor (in consultation with the Sears Canada Entities, the applicable Directors and Officers in respect of any D&O Claim and, where the Monitor deems appropriate, Employee Representative Counsel, Pension Representative Counsel, the Pension Plan Administrator and/or the Superintendent) may agree in writing or the Court may otherwise direct:

- (a) be and is hereby forever barred, estopped and enjoined from asserting or enforcing any such Claim or D&O Claim and all such Claims or D&O Claims shall be forever extinguished;

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- (b) will not be permitted to vote at any Meeting on account of such Claim(s) or D&O Claim(s);
- (c) will not be entitled to receive further notice with respect to the Employee and Retiree Claims Process or these proceedings unless the Monitor and/or the Sears Canada Entities become aware that such Claimant has any other Claim; and
- (d) will not be permitted to participate in any distribution under any Plan on account of such Claim(s) or D&O Claim(s).

54. THIS COURT ORDERS that the provisions of paragraphs 52 and 53 herein shall not apply to any Lifetime Discount Claims or to any Warranty Claims. Proofs of Claim with respect to any Lifetime Discount Claim and any Warranty Claim shall each be deemed to have been properly submitted in accordance with the applicable requirements of this Order by the Sears Canada Entities on behalf of each eligible Claimant, based on the books and records of the Sears Canada Entities. For greater certainty, no Claimant shall be entitled to any additional Claim against the Sears Canada Entities with respect to any Lifetime Discount or Warranty.

**ADJUDICATION OF TERMINATION CLAIMS OR RETIREE BENEFIT CLAIMS**

***Requests for Correction***

55. THIS COURT ORDERS that the Monitor shall provide, upon request: (i) summaries of Termination Claims of Unionized Employees or copies of Non-ERC Employee Packages sent to Unionized Employees to the applicable Union Representative; and (ii) copies of any Requests for Correction received by it to the appropriate Representative Counsel or Union Representative.

56. THIS COURT ORDERS that the Monitor, in consultation with the Sears Canada Entities, shall review each Request for Correction submitted in accordance with this Order and received on

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or before the Request for Correction Bar Date, and shall, no later than July 31, 2018 and with a copy to the appropriate Representative Counsel for such Claimant, if applicable:

- (a) accept all of the corrections requested, in which case the Monitor shall cause to be sent to such Claimant a Notice of Acceptance, which will include the value of the Claimant's Termination Claim or Retiree Benefit Claim, as applicable, after applying the revised Personal Information to the Termination Claims Methodology or the Retiree Benefit Claims Methodology, as appropriate; or
- (b) disallow the corrections requested (in whole or in part), in which case the Monitor shall cause to be sent to such Claimant a Notice of Disallowance (Personal Information).

57. THIS COURT ORDERS that any Claimant who intends to dispute a Notice of Disallowance (Personal Information) hereof shall:

- (a) deliver a completed Notice of Dispute (Personal Information), along with the reasons for the dispute, to the Monitor by no later than thirty (30) days after the date on which the Claimant is deemed to receive the Notice of Disallowance (Personal Information), or such other date as may be agreed to by the Monitor in writing; and
- (b) in the event that a dispute raised in a Notice of Dispute (Personal Information) is not settled within a time period or in a manner satisfactory to the Monitor, in consultation with the Sears Canada Entities, the Monitor shall refer the dispute raised in the Notice of Dispute (Personal Information) to a Claims Officer or the Court for adjudication at its election.

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58. THIS COURT ORDERS that where a Claimant who receives a Notice of Disallowance (Personal Information) does not submit a completed Notice of Dispute (Personal Information) by the time set out in paragraph 57(a), such Claimant's Personal Information shall be deemed to be as set out in the Notice of Disallowance (Personal Information), and such Claimant shall have no further right to dispute same and shall be barred from making any Claim inconsistent with such Personal Information.

*Notices of Proposed Revision*

59. THIS COURT ORDERS that the Monitor, in consultation with the Sears Canada Entities, shall review each Notice of Proposed Revision submitted in accordance with this Order and received on or before the Notice of Proposed Revision Bar Date, and shall accept, revise or reject the methodology proposed in such Notice of Proposed Revision.

60. THIS COURT ORDERS that, where a Union Representative has submitted a Notice of Proposed Revision on behalf of a Unionized Employee, only the Union Representative shall be entitled to negotiate the methodology proposed in such Notice of Proposed Revision with the Monitor on behalf of such Unionized Employee.

61. THIS COURT ORDERS that, in the event that an alternative methodology proposed in a Notice of Proposed Revision is not agreed to by the Monitor or is not successfully negotiated with the Claimant (or the Union Representative on behalf of a Unionized Employee) within a time period or in a manner satisfactory to the Monitor, in consultation with the Sears Canada Entities, the Monitor shall refer the dispute to a Claims Officer or the Court for adjudication at its election. For greater certainty, any party may file additional evidence, documentation, reports or information on any hearing to determine the methodology to be applied to calculate an applicable Claimant's Termination Claim or Retiree Benefit Claim, as applicable, and no party shall object

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to the filing of such additional evidence on the basis that such evidence, documentation, report or information was not included in the initial Termination Claim Statement or Retiree Benefit Claim Statement, Notice of Proposed Revision or Request for Correction, if submitted.

**ADJUDICATION OF PROOFS OF CLAIM AND D&O PROOFS OF CLAIM**

62. THIS COURT ORDERS that the Monitor, in consultation with the Sears Canada Entities, shall review each Proof of Claim submitted in accordance with this Order and received on or before the Proof of Claim Bar Date, and shall accept, revise or reject each Claim set forth in each such Proof of Claim.

63. THIS COURT ORDERS that the Monitor shall promptly deliver a copy of any D&O Proofs of Claim, Notices of Disallowance (Proof of Claim) with respect to any D&O Claim, and Notices of Dispute (Proof of Claim) with respect to any D&O Claim, to the applicable Directors and Officers named therein.

64. THIS COURT ORDERS that the Monitor, in consultation with the Sears Canada Entities and the applicable Directors and Officers named in any D&O Proof of Claim, and any counsel for such Directors and Officers, shall review each D&O Proof of Claim submitted in accordance with this Order and received on or before the Proof of Claim Bar Date. The Monitor shall accept, revise or reject each Claim set forth in each such D&O Proof of Claim, provided that the Monitor shall not accept or revise any portion of a D&O Claim absent consent of the applicable Directors and Officers or further Order of the Court.

65. THIS COURT ORDERS that the Monitor shall notify the Claimant who has delivered such Proof of Claim or D&O Proof of Claim, as applicable, that such Claim has been revised or rejected and the reasons therefor, by sending a Notice of Disallowance (Proof of Claim) by no later than July 31, 2018 or such later date as ordered by the Court on application by the Monitor. However,

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this July 31, 2018 deadline shall not apply to any Proof of Claim or D&O Proof of Claim filed in respect of any Sears Pension Claim.

66. THIS COURT ORDERS that any Claimant who intends to dispute a Notice of Disallowance (Proof of Claim) in respect of any Proof of Claim or D&O Proof of Claim, as applicable, hereof shall:

- (a) deliver a completed Notice of Dispute (Proof of Claim), along with the reasons for the dispute, to the Monitor by no later than thirty (30) days after the date on which the Claimant is deemed to receive the Notice of Disallowance (Proof of Claim), or such other date as may be agreed to by the Monitor (in consultation with the Sears Canada Entities and any applicable Directors and Officers in respect of any D&O Claim) in writing; and
- (b) in the event that a dispute raised in a Notice of Dispute (Proof of Claim) is not settled within a time period or in a manner satisfactory to the Monitor (in consultation with the Sears Canada Entities and the applicable Directors and Officers in respect of any D&O Claim), the Monitor shall refer the dispute raised in the Notice of Dispute (Proof of Claim) to a Claims Officer or the Court for adjudication at its election. Any Claimant who wishes to challenge the method of adjudication elected by the Monitor may apply to the Court to determine the appropriate method of adjudication. For greater certainty, any party may file additional evidence, documentation, reports or information on any hearing to resolve the issues raised in a Notice of Dispute (Proof of Claim) and no party will object to the filing of such additional evidence on the basis that such evidence,

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documentation, report or information was not included in the initial Proof of Claim, D&O Proof of Claim or Notice of Disallowance (Proof of Claim).

67. THIS COURT ORDERS that where a Claimant who receives a Notice of Disallowance (Proof of Claim) does not submit a completed Notice of Dispute (Proof of Claim) by the time set out in paragraph 66(a), such Claimant's Claim or D&O Claim shall be deemed to be as set out in the Notice of Disallowance (Proof of Claim) and such Claimant shall have no further right to dispute same.

68. THIS COURT ORDERS that the Monitor, in consultation with the Sears Canada Entities and the applicable Directors and Officers in respect of any D&O Claim, may refer any Claim to a Claims Officer or the Court for adjudication at its election by sending written notice to the applicable parties at any time. Any Claimant who wishes to challenge the method of adjudication elected by the Monitor may apply to the Court to determine the appropriate method of adjudication.

69. THIS COURT ORDERS that the Monitor and the Sears Canada Entities shall attempt to identify all Duplicate Claims and shall attempt to resolve such Duplicate Claims with the Person or Persons who submitted such Duplicate Claims. The Monitor and the Sears Canada Entities may at any time seek direction from the Court with respect to the process and procedures for resolving Duplicate Claims, on notice to the Person or Persons who have submitted such Duplicate Claims (and to the applicable Directors and Officers in respect of any Duplicate Claim that is a D&O Claim).

#### **CLAIMS OFFICER**

70. THIS COURT ORDERS that the Hon. Mr. James Farley, Q.C. and the Hon. Mr. Dennis O'Connor, Q.C., and such other Persons as may be appointed by the Court from time to time on application of the Monitor or the Sears Canada Entities (in consultation with Employee

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Representative Counsel, Pension Representative Counsel, the Pension Plan Administrator and/or the Superintendent, as applicable), be and are hereby appointed as Claims Officers for the Employee and Retiree Claims Process.

71. THIS COURT ORDERS that a Claims Officer shall determine the validity and amount of disputed Claims, the accuracy of any disputed Personal Information, and the methodology to be applied to any disputed Termination Claim or Retiree Benefit Claim, in accordance with this Order and to the extent necessary may determine whether any Claim or part thereof constitutes an Excluded Claim and shall provide written reasons. A Claims Officer shall determine all procedural matters which may arise in respect of his or her determination of these matters, including the manner in which any evidence may be adduced. A Claims Officer shall have the discretion to determine by whom and to what extent the costs of any hearing before a Claims Officer shall be paid.

72. THIS COURT ORDERS that the Monitor, the Claimant (or any Person on behalf of a Claimant, including any Union Representative, Employee Representative Counsel, Pension Representative Counsel, the Pension Plan Administrator or the Superintendent), the Sears Canada Entities and the applicable Directors and Officers in respect of any D&O Claim may, within ten (10) days of such party receiving notice of a Claims Officer's determination of the value of a Claimant's Claim, the accuracy of a Claimant's Personal Information, or the methodology to be applied to a Claimant's Termination Claim or Retiree Benefit Claim, appeal such determination or any other matter determined by the Claims Officer in accordance with paragraph 70 or otherwise to the Court by filing a notice of appeal, and the appeal shall be initially returnable for scheduling purposes within ten (10) days of filing such notice of appeal.

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73. THIS COURT ORDERS that, if no party appeals the determination of value of a Claim, of accuracy of a Claimant's Personal Information or of the methodology to be applied to a Claimant's Termination Claim or Retiree Benefit Claim, by a Claims Officer in accordance with the requirements set out in paragraph 72 above, the decision of the Claims Officer in determining the value of the Claim, the accuracy of the Personal Information or the methodology to be applied to a Claimant's Termination Claim or Retiree Benefit Claim shall be final and binding upon the Sears Canada Entities, the Monitor, the applicable Directors and Officers in respect of a D&O Claim and the Claimant, and there shall be no further right of appeal, review or recourse to the Court from the Claims Officer's final determination.

#### **NOTICE OF TRANSFEREES**

74. THIS COURT ORDERS that, from the date of this Order until seven (7) days prior to the date fixed by the Court for any distribution in the CCAA Proceedings or any other proceeding, including a bankruptcy, leave is hereby granted to permit a Claimant to provide to the Monitor notice of assignment or transfer of a Claim to any third party, and that no assignment or transfer of a partial Claim shall be permitted.

75. THIS COURT ORDERS that, subject to the terms of any subsequent Order of this Court, if, after the Filing Date, the holder of a Claim transfers or assigns the whole of such Claim to another Person, neither the Monitor nor the Sears Canada Entities shall be obligated to give notice to or otherwise deal with the transferee or assignee of such Claim in respect thereof unless and until actual notice of transfer or assignment, together with satisfactory evidence of such transfer or assignment, shall have been received and acknowledged by the Monitor in writing and thereafter such transferee or assignee shall, for the purposes hereof, constitute the "Claimant" in respect of the whole of such Claim. Any such transferee or assignee of a Claim shall be bound by any notices

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given or steps taken in respect of such Claim in accordance with this Order prior to receipt and acknowledgement by the Monitor of satisfactory evidence of such transfer or assignment. A transferee or assignee of a Claim takes the Claim subject to any rights of set-off to which the Sears Canada Entities and/or the applicable Directors and Officers may be entitled with respect to such Claim. For greater certainty, a transferee or assignee of a Claim is not entitled to set-off, apply, merge, consolidate or combine any Claim assigned or transferred to it against or on account or in reduction of any amounts owing by such Person to the Sears Canada Entities or the applicable Directors and Officers.

**SERVICE, NOTICE AND DELIVERY**

76. THIS COURT ORDERS that, notwithstanding anything to the contrary in this Order but subject to paragraph 77 below, the Monitor may send, serve and deliver or cause to be sent, served and delivered, to a Claimant or other interested Person, any notice, communication or other document required by this Order (a) by forwarding a copy thereof by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email to such Claimant or other interested Person at the physical or electronic address, as applicable, last shown on the books and records of the Sears Canada Entities or, where applicable, as set out in such Claimant's Proof of Claim, D&O Proof of Claim or Request for Correction; or (b) if such Claimant has successfully logged-in to the Claims Website, by uploading or updating such notice, communication or other document to or on the Claims Website, and sending an email notification to such Claimant.

77. THIS COURT ORDERS that the Monitor may, to satisfy its obligations under paragraph 40 of this Order to ERC Employees and Non-ERC Employees with email addresses listed on the books and records of the Sears Canada Entities, serve and deliver or cause to be served and delivered to each such ERC Employee and Non-ERC Employee an email notice of this Employee

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and Retiree Claims Process, which shall include a link to the Claims Website and certain information that will allow each such ERC Employee and Non-ERC Employee to log-in the Claims Website to access his/her ERC Employee Package or Non-ERC Employee Package, as applicable; provided however, that in the event that any such ERC Employee or Non-ERC Employee does not successfully log-in to the Claims Website within 14 days of receipt of such email notice (according to the access records to be maintained by the Monitor), the Monitor shall serve and deliver or cause to be served and delivered the applicable ERC Employee Package or Non-ERC Employee Package by prepaid ordinary mail or courier to the physical address of such ERC Employee or Non-ERC Employee as last shown on the books and records of the Sears Canada Entities.

78. THIS COURT ORDERS that, notwithstanding anything to the contrary in this Order, a Claimant may send, serve and deliver or cause to be sent, served and delivered, to the Monitor, any notice, communication or other document required by this Order (a) by forwarding a copy thereof in writing and substantially in the form, if any, provided for in this Order, by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email, addressed to:

FTI Consulting Canada Inc., Sears Canada Monitor  
TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P.O. Box 101  
Toronto, ON M5K 1G8

Attention: Sears Canada Employee and Retiree Claims Process  
Email in respect of Employee Claims: [SearsEmployeeClaimSite@fticonsulting.com](mailto:SearsEmployeeClaimSite@fticonsulting.com)  
Email in respect of Retiree Claims: [SearsRetireeClaimSite@fticonsulting.com](mailto:SearsRetireeClaimSite@fticonsulting.com)  
Fax: 416-649-8101

or (b) if such Claimant has successfully logged-in to the Claims Website, by submitting such notice, communication or other document in accordance with the instructions provided on the

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Claims Website. Any notice, communication or other document delivered by a Claimant shall be deemed received upon actual receipt by the Monitor thereof during normal business hours on a Business Day, or if delivered outside of normal business hours, the next Business Day.

79. THIS COURT ORDERS that such service and delivery of any documents in connection with this Employee and Retiree Claims Process shall be deemed to have been received: (a) if sent by ordinary mail, on the third Business Day after mailing to an address within Ontario, the fifth Business Day after mailing to an address within Canada (other than within Ontario), and the tenth Business Day after mailing to an address internationally; (b) if sent by courier or personal delivery, on the next Business Day following dispatch; or (c) if delivered by facsimile transmission, email or submission on the Claims Website, by 5:00 p.m. on a Business Day, on such Business Day and if delivered after 5:00 p.m. or other than on a Business Day, on the following Business Day.

80. THIS COURT ORDERS that if, during any period during which notices or other communications are being given pursuant to this Order, a postal strike or postal work stoppage of general application should occur, such notices or other communications sent by ordinary or registered mail and then not received shall not, absent further Order of this Court, be effective and notices and other communications given hereunder during the course of any such postal strike or work stoppage of general application shall only be effective if given by courier, personal delivery, facsimile transmission or email in accordance with this Order.

**MISCELLANEOUS**

81. THIS COURT ORDERS that at any time, the Monitor or the Sears Canada Entities may request additional information from a Claimant with respect to Personal Information, a proposed methodology contained in a Notice of Proposed Revision, a Sears Pension Claim, a Supplemental Plan Claim, or any Other Employee Claim or Other Retiree Claim made by such Claimant, and,

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where such Claimant has filed a Proof of Claim or D&O Proof of Claim, the Monitor may request that such Claimant file a revised Proof of Claim or D&O Proof of Claim.

82. THIS COURT ORDERS that the Sears Canada Entities, the Monitor, Employee Representative Counsel, Pension Representative Counsel and the Pension Plan Administrator may from time to time apply to this Court to extend the time for any action which the Sears Canada Entities, the Monitor, Employee Representative Counsel, Pension Representative Counsel or the Pension Plan Administrator is required to take if such extension is reasonably required to carry out its duties and obligations pursuant to this Order and for advice and directions concerning the discharge of its powers and duties under this Order or the interpretation or application of this Order.

83. THIS COURT ORDERS that nothing in this Order shall prejudice the rights and remedies of any Directors or Officers or other Persons under the Directors' Priority Charge, the Directors' Subordinated Charge or any applicable insurance policy or prevent or bar any Person from seeking recourse against or payment from the Sears Canada Entities' insurance or any Director's or Officer's liability insurance policy or policies that exist to protect or indemnify the Directors or Officers or other Persons, whether such recourse or payment is sought directly by the Person asserting a Claim from the insurer or derivatively through the Director or Officer or any Sears Canada Entity; provided, however, that nothing in this Order shall create any rights in favour of such Person under any policies of insurance nor shall anything in this Order limit, remove, modify or alter any defence to such Claim available to the insurer pursuant to the provisions of any insurance policy or at law; and further provided that any Claim or portion thereof for which the Person receives payment directly from, or confirmation that he or she is covered by, the Sears Canada Entities' insurance or any Director's or Officer's liability insurance or other liability insurance policy or policies that exist to protect or indemnify the Directors or Officers or other

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Persons shall not be recoverable as against a Sears Canada Entity or Director or Officer as applicable.

84. THIS COURT ORDERS that this Order shall have full force and effect in all provinces and territories in Canada.

85. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Sears Canada Entities, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Sears Canada Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Sears Canada Entities and the Monitor and their respective agents in carrying out the terms of this Order.

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## SCHEDULE A

### SUMMARY OF TERMINATION CLAIMS METHODOLOGY

#### **i. ERC Employees terminated without cause and without enhanced contractual entitlements**

ERC Employees terminated without cause and without enhanced contractual entitlements are entitled to a Termination Claim calculated as follows:

##### **Step 1: Calculate “Severance Pay Period”**

*Determine* the longest notice period out of those provided by:

1. Applicable employment standards legislation;
2. The Pre-2016 Severance Policy (as further described in the Penrice Affidavit);
3. The Post-2016 Severance Policy (as further described in the Penrice Affidavit); and
4. The Common Law Severance Formula.<sup>1</sup>

*Subtract* any working notice given to the Employee from the notice period selected.

##### **Step 2: Calculate “Termination Claim”**

###### **Step 2A: Calculate “Base Wages”**

*Calculate* the wages the Employee would have been paid during the Severance Pay Period (calculated above) based on the Employee’s base salary or hourly rate.

###### **Step 2B: Calculate “Benefits Gross-Up”**

*Gross-up* the Employee’s Base Wages (calculated above) by the percentage prescribed in Schedule B to the Penrice Affidavit.<sup>2</sup>

###### **Step 2C: Add Amount in respect of Damages for Loss of Associate Discount and Associate Assistance Plan**

*Add* \$175 in respect of damages for the loss of associate discount and associate assistance plan.

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<sup>1</sup> This Formula is set out in Schedule A to the Penrice Affidavit. It establishes a notice period based on an Employee’s position, years of service and age. The formula also creates maximum and minimum notice periods for Employees based on their respective positions.

<sup>2</sup> Schedule B provides for a gross-up for Employee benefits based on the Employee’s position and the Employee’s level of participation in certain benefit plans. If an Employee did not participate in any benefit plans, the gross-up does not apply.

**ii. Employees who resigned**

Employees who resigned during the post-filing period (whether or not during the working notice period) are not entitled to any Termination Claim amount. The only exception to this rule is for Employees in Ontario with five or more years of service who resigned during their statutory notice period. These Employees shall be entitled to severance pay in accordance with the Ontario *Employment Standards Act, 2000*, SO 2000, c 41. Employees who resigned are permitted to contest the assertion that they resigned voluntarily by submitting a Request for Correction (as further described in the Penrice Affidavit).

This methodology is not binding on Non-ERC Employees. Such Employees will be provided the opportunity to propose an alternate method of valuing their Termination Claims (except in the case of Unionized Employees, where only Union Representatives will be able to propose an alternate method of valuing the Termination Claims on behalf of the members they represent).

**iii. Employees who were receiving severance payments that ceased on or after the Filing Date**

The Termination Claims of Employees whose severance payments ceased on or after the Filing Date will be valued at the amount of severance payments that remained to be paid by the Sears Canada Entities as of the Filing Date.

This methodology is not binding on Non-ERC Employees. Such Employees will be provided the opportunity to propose an alternate method of valuing their Termination Claims (except in the case of Unionized Employees, where only Union Representatives will be able to propose an alternate method of valuing the Termination Claims on behalf of the members they represent).

**iv. ERC Employees terminated for cause**

ERC Employees who were terminated for cause after the Filing Date are not entitled to any Termination Claim amount. Such Employees are permitted to contest the assertion that they were terminated for cause by submitting a Request for Correction (as further described in the Penrice Affidavit).<sup>3</sup>

**v. ERC Employees terminated without cause and who have enhanced contractual entitlements**

ERC Employees who have negotiated enhanced termination entitlements as part of their written employment agreements are entitled to a Termination Claim calculated as follows:

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<sup>3</sup> Unionized Employees who were terminated for cause will be subject to section vii of this methodology.

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The greater of:

1. The Employee's entitlement under the applicable employment agreement; and
2. The Employee's entitlement under the methodology described in section i above.

**vi. Non-ERC Employees with enhanced contractual entitlements**

Non-ERC Employees who have negotiated enhanced termination entitlements as part of their employment agreements are entitled to a Termination Claim calculated as follows:

The greater of:

1. The Employee's entitlement under the applicable employment agreement; and
2. The Employee's entitlement under the methodology described in section i above.

However, this methodology is not binding on such Employees and they will be provided the opportunity to propose an alternate method of valuing their Termination Claims.

**vii. Unionized Employees**

Unionized Employees are entitled to a Termination Claim calculated as follows:

The greater of:

1. The Employee's entitlement under the applicable collective agreement; and
2. The Employee's entitlement under the applicable minimum standards legislation.

However, this methodology is not binding on such Employees and Union Representatives will be provided the opportunity to propose an alternate method of valuing the Termination Claims of the members they represent.

**viii. Opt-Out Employees**

Employees who have opted out of representation by Employee Representative Counsel and who were terminated without cause on or after the Filing Date are entitled to a Termination Claim calculated using the methodology described in section i above.

However, this methodology is not binding on such Employees and they will be provided the opportunity to propose an alternate method of valuing their Termination Claims.

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## SCHEDULE B

### SUMMARY OF RETIREE BENEFIT CLAIMS METHODOLOGY

#### **i. Health and Dental Claims**

For Retirees who were alive as of October 1, 2017 and whose OPEB Entitlements included health and dental benefits, the claim for the loss of future health and dental coverage is determined for each individual Retiree with Primary Coverage<sup>4</sup> as follows:

*Calculate* the present value<sup>5</sup> of all future Annual Replacement Costs<sup>6</sup> the Retiree is expected to incur until the Retiree's Life Expectancy Date.<sup>7</sup>

*Adjust* the result of the above calculation to reflect the tax impact of the change of health and dental coverage, assuming a marginal tax rate of 10%.<sup>8</sup>

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<sup>4</sup> A Retiree with Primary Coverage is any eligible retired employee of the Sears Canada Entities or, if the eligible retired employee of the Sears Canada Entities with Primary Coverage died and had an eligible spouse at that time, the eligible spouse.

<sup>5</sup> Present value is calculated as at October 1, 2017 using a discount rate of 2.34% and assuming that the Annual Replacement Cost will increase at a rate of 6% per year.

<sup>6</sup> Annual Replacement Cost is calculated by: (i) determining the average of the annual premiums offered to Ontario residents by Sun Life and Manulife to Retirees whose coverage ceased under the Health and Dental Plan as of October 1, 2017; and (ii) adding an additional amount to compensate for the fact that the coverage provided by Sun Life and Manulife on average only provided replacement coverage at approximately 80% of the coverage provided under the Health and Dental Plan.

<sup>7</sup> Life Expectancy Date is calculated by determining the Retiree's life expectancy as at October 1, 2017 (in years and months), based on the age of the Retiree as at October 1, 2017 and the Statistics Canada Life Expectancy Tables, and adding that period of life expectancy to October 1, 2017 to determine the period over which the health and dental coverage is assumed to be provided.

<sup>8</sup> This tax adjustment is intended to recognize that: (i) while Retirees previously received health and dental benefits under the Health and Dental Plan on a non-taxable basis, any payment received with respect to health and dental benefit claims would be a taxable payment to the Retiree, and (ii) the payment would be made as a lump-sum amount that would need to generate income (which would be taxable income) in order to provide for future premiums.

**ii. Life Insurance**

Life insurance claims for Retirees who were alive as of October 31, 2017 whose OPEB Entitlements included life insurance coverage are determined as follows:

*Calculate* the present value<sup>9</sup> of the Retiree Life Insurance Amount<sup>10</sup> applicable to the Retiree assuming that the Retiree Life Insurance Amount is payable when the Retiree reaches his or her Life Expectancy Date.<sup>11</sup>

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<sup>9</sup> Present value is calculated as at October 1, 2017 using a discount rate of 2.29%.

<sup>10</sup> Retiree Life Insurance Amount is the amount of life insurance coverage provided to the Retiree after he or she retired, such amount of coverage being based on the life insurance coverage that the individual had while employed by the applicable Sears Canada Entities.

<sup>11</sup> Life Expectancy Date is calculated by determining the Retiree's life expectancy as at October 1, 2017 (in years and months), based on the age of the Retiree as at October 1, 2017 and the Statistics Canada Life Expectancy Tables, and adding that period of life expectancy to October 1, 2017.

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., 9370-2751 QUÉBEC INC., 191020 CANADA INC., THE CUT INC., SEARS CONTACT SERVICES INC., INTIUM LOGISTICS SERVICES INC., INTIUM COMMERCE LABS INC., INTIUM 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

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**EMPLOYEE AND RETIREE CLAIMS PROCEDURE ORDER**


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**MOTION RECORD OF THE APPLICANTS**  
(Employee Claims Process and Retiree Claims Process)

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