

**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., 9845488 CANADA 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.

(the "Applicants")

**MOTION RECORD
(CDTel Motion)
(returnable April 12, 2021)**

January 27, 2021

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TO: **THE SERVICE LIST**

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TAB 1

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

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

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(the "**Applicants**")

FRESH AS AMENDED NOTICE OF MOTION

FTI Consulting Canada Inc., in its capacity as Court-appointed monitor (the "**Monitor**") in the proceedings of the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the "**CCAA**") will make a motion to a Judge of the Ontario Superior Court of Justice (Commercial List), on April 12, 2021 at 10:00 am or as soon after that time as the motion can be heard via Zoom videoconference.

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

THE MOTION IS FOR AN ORDER:

- (a) directing CDTel Inc. ("**CDTel**") within 30 days to make payment for outstanding fees owing to Sears Connect ("**Sears**") under the Sears Connect Telecommunications Services Agreement dated January 1, 2015 (the "**Agreement**") from October 1, 2017 to April 30, 2020 in the amount of \$2,038,330.50;

- (b) directing CDTel within 15 days to deliver necessary records that will allow the Monitor to determine the amounts that CDTel owes Sears from May 1, 2020 to December 31, 2020. For greater certainty, these records include excel files showing the LD Net Revenue and ComparAction Net Revenue (as both terms are defined below) on a monthly basis for that period;
- (c) directing CDTel within 30 days to make payment for outstanding fees owing to Sears under the Agreement from May 1, 2020 to December 31, 2020, at the following rates: 24% of the LD Net Revenue with respect to the LD Program, and 15% of the ComparAction Net Revenue with respect to the ComparAction Program (as such terms are defined below);
- (d) directing CDTel to deliver necessary records within 15 days following the end of each month to allow the Monitor to determine the fees payable to Sears in accordance with the end of term provisions of the Agreement from January 1, 2021 until there are no longer any customers enrolled in the ComparAction Program and LD Program (“**Enrolled Customers**”). For greater certainty, CDTel shall pay to Sears residual fees equal to: (i) 5% of the ComparAction Net Revenue from all Enrolled Customers for as long as such Enrolled Customers remain enrolled in the ComparAction Program; and (ii) the applicable percentage (as set out in the Churn Table attached as Schedule 2 of the Agreement) of the LD Net Revenue from all Enrolled Customers for as long as such Enrolled Customers remain enrolled in the LD Program;
- (e) directing CDTel to remit residual fees within 30 days following the end of each month in accordance with the end of term provisions of the Agreement from January 1, 2021 until there are no longer any Enrolled Customers; and

(f) directing that CDTel cease using any intellectual property belonging to Sears, including without limitation, the Brand Name (as defined below).

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

THE GROUNDS FOR THE MOTION ARE:

1 On June 22, 2017, the Applicants in these proceedings sought and obtained an initial order (as amended and restated on July 13, 2017, the “**Initial Order**”) under the CCAA. The Initial Order, among other things, appointed FTI Consulting Canada Inc. as Monitor of the Applicants;

2 The relief granted pursuant to the Initial Order was also extended to Sears Connect, a partnership forming part of the operations of the Applicants;

3 CDTel, a wholly owned subsidiary of CanadaDirect Holdings Inc., is a service provider and reseller of telecommunications products and services;

4 Before 2015, Sears directly managed, administered and provided certain long distance telecommunications products and services that were marketed and branded under the name “Sears Connect” (the “**Brand Name**”);

The CDTel Agreement

5 On January 1, 2015, Sears and CDTel entered into the Agreement, wherein Sears agreed to assign to CDTel all rights in and to Sears’ long distance telecommunications service (“**LD Program**”). Pursuant to the Agreement, CDTel also has the right to provide another long distance service program using CDTel’s proprietary billing system to existing and new customers (“**ComparAction Program**”);

6 In return, pursuant to section 7.02 of the Agreement, CDTel is obligated to remit to Sears residual fees on a monthly basis equal to:

- (a) 24% of the previous month's LD Program net revenue ("**LD Net Revenue**"), and
- (b) 10% for months 1-6 of the ComparAction Program net revenue ("**ComparAction Net Revenue**"), (ii) 12.5% for months 7-12 of the ComparAction Net Revenue, and (iii) 15% for all months thereafter of the ComparAction Net Revenue;

7 Given the fee structure above, Sears' ability to confirm the amount of, and ultimately collect, the residual fees is wholly dependent upon CDTel providing Sears with information regarding the LD Net Revenue and ComparAction Net Revenue on a monthly basis;

CDTel Purports to Terminate the Agreement

8 On or around November 1, 2017, CDTel advised Sears that CDTel was terminating the Agreement pursuant to section 9.03 of the Agreement, which provides that, among other things, either party could terminate the Agreement if the other party filed for protection under the CCAA;

9 On November 7, 2017, the Monitor advised CDTel that the Initial Order prevented CDTel from ceasing to perform its obligations under the Agreement. The Monitor further advised that the purported termination of the Agreement by CDTel was contrary to section 34(1) of the CCAA, which expressly states that no party may terminate a contract with a debtor company by reason of (a) the commencement of proceedings under the CCAA, or (b) insolvency;

CDTel Fails to Provide Monthly Reporting

10 CDTel has failed to provide the necessary reporting that would allow the Monitor, on behalf of Sears, to determine the total amount of fees owing to Sears from October 2017 to the present;

CDTel Fails to Pay Residual Fees

11 CDTel's last payment was made in or around May 2018 in respect of residual fees for the period ending December 31, 2017;

12 Since then, CDTel has failed to remit any residual fees in accordance with its obligations under the Agreement despite repeated attempts by the Monitor to collect payment;

Breach of the Initial Order, CCAA and the Agreement

13 CDTel's purported termination of the Agreement, its misplaced reliance upon the "end of term procedures" pursuant to section 9.04 of the Agreement as a result of Sears' commencement of the CCAA proceedings, its failure to provide the necessary monthly reporting and its failure to pay outstanding residual fees constitute contraventions of (a) the Initial Order, (b) section 34(1) of the CCAA, and (c) the Agreement;

14 CDTel's purported termination of the Agreement is also contrary to the common law anti-deprivation rule;

Other Grounds

15 The provisions of the CCAA and the inherent and equitable jurisdiction of this Court;

16 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; and

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

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

- 1 The Forty-Fourth Report of the Monitor; and
- 2 Such further and other evidence as counsel may advise and this Court may permit.

January 27, 2021

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TO: **THE SERVICE LIST**

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS
CANADA INC., et al.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at TORONTO

NOTICE OF MOTION
(CDTel Motion)
(returnable April 12, 2021)

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TAB 2

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

**SEARS CANADA INC.,
AND RELATED APPLICANTS**

FORTY-FOURTH REPORT OF FTI CONSULTING CANADA INC., AS MONITOR

January 27, 2021

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

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ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC. AND
3339611 CANADA INC.

APPLICANTS

**FORTY-FOURTH REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR**

A. INTRODUCTION

1. On June 22, 2017, Sears Canada Inc. (“**Sears Canada**”) and a number of its operating subsidiaries (collectively, with Sears Canada, the “**Applicants**”) sought and obtained an initial order (as amended and restated on July 13, 2017, the “**Initial Order**”), under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). The relief granted pursuant to the Initial Order was also extended to Sears Connect, a partnership forming part of the operations of the Applicants (and together with the Applicants, the “**Sears Canada Entities**”). The proceedings commenced under the CCAA by the Applicants are referred to herein as the “**CCAA Proceedings**”.

2. The Initial Order, among other things:
 - (a) appointed FTI Consulting Canada Inc. as monitor of the Sears Canada Entities (the “**Monitor**”) in the CCAA Proceedings; and
 - (b) granted an initial stay of proceedings against the Sears Canada Entities until July 22, 2017 (the “**Stay Period**”), The Stay Period was most recently extended to July 31, 2021 by Order of the Court granted on January 25, 2021.
3. On October 13, 2017, the Court issued, among other orders, an order approving an agreement and a process for the liquidation of the inventory and furniture, fixtures and equipment at all remaining Sears Canada retail locations.
4. The liquidation is now completed and all Sears Canada retail locations are closed.
5. In connection with the CCAA Proceedings, the Monitor has provided forty-three reports and twenty-five supplemental reports (collectively, the “**Prior Reports**”), and prior to its appointment as Monitor, FTI Consulting Canada Inc. also provided to this Court a pre-filing report of the proposed Monitor dated June 22, 2017 (the “**Pre-Filing Report**”). The Pre-Filing Report, the Prior Reports, and other Court-filed documents and notices in these CCAA Proceedings are, or will be made, available on the Monitor’s website at <http://cfcanada.fticonsulting.com/searscanada/>.

B. PURPOSE

6. The purpose of this forty-fourth report of the Monitor (the “**Forty-Fourth Report**”) is to provide the Monitor’s recommendation for an order:
 - (a) directing CDTel Inc. (“**CDTel**”) within 30 days to make payment for outstanding fees owing to Sears Connect (“**Sears**”) under the Sears Connect Telecommunications Services Agreement dated January 1, 2015 (the “**Agreement**”) from October 1, 2017 to April 30, 2020 in the amount of \$2,038,330.50;

- (b) directing CDTel within 15 days to deliver necessary records that will allow the Monitor to determine the amounts that CDTel owes Sears from May 1, 2020 to December 31, 2020. For greater certainty, these records include excel files showing the LD Net Revenue and ComparAction Net Revenue (as both terms are defined below) on a monthly basis for that period;
- (c) directing CDTel within 30 days to make payment for outstanding fees owing to Sears under the Agreement from May 1, 2020 to December 31, 2020, at the following rates: 24% of the LD Net Revenue with respect to the LD Program, and 15% of the ComparAction Net Revenue with respect to the ComparAction Program (as such terms are defined below);
- (d) directing CDTel to deliver necessary records within 15 days following the end of each month to allow the Monitor to determine the fees payable to Sears in accordance with the end of term procedures of the Agreement from January 1, 2021 until there are no longer any customers enrolled in the ComparAction Program and LD Program (“**Enrolled Customers**”). For greater certainty, CDTel shall pay to Sears residual fees equal to: (i) 5% of the ComparAction Net Revenue from all Enrolled Customers for as long as such Enrolled Customers remain enrolled in the ComparAction Program; and (ii) the applicable percentage (as set out in the Churn Table attached as Schedule 2 of the Agreement) of the LD Net Revenue from all Enrolled Customers for as long as such Enrolled Customers remain enrolled in the LD Program;
- (e) directing CDTel to remit residual fees within 30 days following the end of each month in accordance with the end of term provisions of the Agreement from January 1, 2021 until there are no longer any Enrolled Customers; and
- (f) directing that CDTel cease using any intellectual property belonging to Sears, including without limitation, the Brand Name (as defined below).

C. TERMS OF REFERENCE

7. In preparing this Forty-Fourth Report, the Monitor has relied upon audited and unaudited financial information of the Sears Canada Entities, the Sears Canada Entities' books and records, certain financial information prepared by the Sears Canada Entities, and discussions with, among others, employees of the Sears Canada Entities (collectively, the "**Information**").
8. Except as otherwise described in this Forty-Fourth Report, the Monitor has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants of Canada Handbook*.
9. Future-oriented financial information reported in or relied on in preparing this Forty-Fourth Report is based on assumptions regarding future events. Actual results will vary from these forecasts and such variations may be material.
10. The Monitor has prepared this Forty-Fourth Report in connection with its request for the orders listed above at paragraph 6. The Forty-Fourth Report should not be relied on for any other purpose.
11. Unless otherwise indicated, all dollar amounts referenced herein are in Canadian Dollars.

D. CDTEL AGREEMENT

12. CDTel, a wholly owned subsidiary of CanadaDirect Holdings Inc., is a service provider and reseller of telecommunications products and services. Before 2015, Sears Connect, a limited partnership ("**Sears**"), through its general partner, Sears Connect Inc. directly managed, administered and provided certain long distance telecommunications products and services that were marketed under the name "Sears Connect" (the "**Brand Name**").
13. On January 1, 2015, Sears and CDTel entered into the Agreement, wherein Sears agreed to assign to CDTel all rights in and to Sears' long distance telecommunications service ("**LD Program**"). Pursuant to the Agreement, CDTel also has the right to provide another long distance service program using CDTel's proprietary billing system to existing and

new customers (“**ComparAction Program**”, and together with the LD Program, the “**Programs**”). A copy of the Agreement is attached hereto as Confidential Appendix “A”.

14. In return, pursuant to section 7.02 of the Agreement, CDTel is obligated to remit to Sears residual fees on a monthly basis equal to:
 - (a) 24% of the previous month’s LD Program net revenue (“**LD Net Revenue**”), and
 - (b) 10% for months 1-6 of the ComparAction Program net revenue (“**ComparAction Net Revenue**”), (ii) 12.5% for months 7-12 of the ComparAction Net Revenue, and (iii) 15% for all months thereafter of the ComparAction Net Revenue.
15. The Agreement has an initial term of 5 years with automatic renewals for successive one-year periods unless terminated upon 6 months written notice from either party. The expiry of the initial term of the Agreement was December 31, 2019, and automatically renewed for one year on January 1, 2020, in accordance with section 9.01 of the Agreement.

E. CDTEL PURPORTS TO TERMINATE THE AGREEMENT

16. On or around November 1, 2017, CDTel advised Sears that CDTel was terminating the Agreement pursuant to section 9.03 of the Agreement, which provides that either party may terminate the Agreement upon the occurrence of a party’s inability to pay its debts generally or the commencement of insolvency proceedings, including proceedings pursuant to the CCAA.
17. On November 7, 2017, the Monitor sent a letter to CDTel to advise that the Initial Order prevented CDTel from ceasing to perform its obligations under the Agreement. The Monitor also advised that the purported termination of the Agreement by CDTel was contrary to section 34(1) of the CCAA, which expressly states that no party may terminate a contract with a debtor company by reason of (a) the commencement of proceedings under the CCAA, or (b) insolvency. As a result, the Monitor advised CDTel that it could not unilaterally terminate the Agreement, that the Agreement remained in full force and effect and that CDTel must comply with its obligations under the Agreement. A copy of the Monitor’s letter to CDTel dated November 7, 2017 is attached hereto as Appendix “B”.

18. On March 2, 2018, CDTel provided a report showing the amount of commissions payable from October 2017 to and including December 2017. A copy of the March 2, 2018 report is attached as Appendix “C”.
19. Despite the Monitor’s position that the Agreement remained in full force and effect and that CDTel was precluded from relying upon the end of term provisions in section 9.04(a) of the Agreement (the “**End of Term Procedures**”), the CDTel report shows that CDTel applied a reduced rate of 5% in reliance upon the End of Term Procedures.

F. CDTEL FAILS TO PAY RESIDUAL FEES

20. CDTel’s last payment was made in or around May 2018 in respect of residual fees for the period ending December 31, 2017 and calculated based upon the 5% reduced rate for both the LD Program and the ComparAction Program. Since then, CDTel has failed to remit any residual fees in accordance with its obligations under the Agreement despite attempts by the Monitor or its counsel to receive payment. A copy of the Monitor’s letter to CDTel dated May 6, 2019 inquiring about the status of the outstanding residual fees is attached as “Appendix D”.
21. On January 31, 2020, the Monitor contacted CDTel to schedule a motion to seek the relief sought in this motion. A copy of this letter is attached hereto as Appendix “E”.
22. On or around February 5, 2020, counsel for CDTel advised that CDTel was prepared to provide the necessary documents to avoid a motion.

G. CDTEL’S MONTHLY REPORTING

23. Pursuant to section 6.05 of the Agreement, CDTel is obligated to provide to Sears weekly reporting regarding revenues, sales, customer counts, minutes of use and other customer metrics. For the purposes of calculating the amounts owing by CDTel to Sears, the Monitor has requested reporting on a monthly basis. Copies of the Monitor’s letters dated February 19, 2020, March 9, 2020 and October 15, 2020 requesting the necessary reporting is attached hereto as Appendices “F”, “G” and “H”, respectively.

24. On March 4, 2020, September 28, 2020 and November 27, 2020, after protracted delays, CDTel provided the Monitor with monthly records for the period beginning October 1, 2017 and ending April 30, 2020. CDTel provided these records without prejudice to its position that the Agreement was terminated effective November 1, 2017. Based on CDTel's records, the Monitor has determined that the amount of outstanding residual fees owing by CDTel to Sears from October 2017 to April 2020 is \$2,038,330.50. This amount is calculated based on the Monitor's position that the Agreement was not terminated effective November 1, 2017. A copy of the excel spreadsheet showing the Monitor's calculation based on CDTel's records is attached hereto as Appendix "I".

H. CDTEL PROVIDES ALTERNATIVE TERMINATION DATE

25. On June 26, 2020, without prejudice to CDTel's position that the Agreement was, in its view, properly terminated effective November 1, 2017 as a result of Sears' CCAA proceedings, CDTel wrote to the Monitor to provide its 6 months written notice to terminate the Agreement in accordance with section 9.01 of the Agreement, which is reproduced below:

Section 9.01 Term. Unless terminated earlier in accordance with the terms of this Agreement, this Agreement shall take effect as of the Effective Date and shall continue in full force and effect for a period of five (5) years (the "Term"). This Agreement shall renew automatically on the same terms and conditions at the end of the Term for successive one year periods, unless terminated upon six (6) months written notice from one party to the other or unless terminated earlier in accordance with the terms of the Agreement.

As such, CDTel advised that December 31, 2020 was, in its view, the alternative termination date. A copy of the CDTel letter dated June 26, 2020 is attached hereto as Appendix "J".

26. The Monitor believes that it is reasonable to accept CDTel's alternative termination date of December 31, 2020, provided that: (i) CDTel provide the necessary monthly reporting for the period beginning May 1, 2020 to December 31, 2020, and to remit the fees owing for that period; (ii) CDTel provide the necessary monthly reporting from January 1, 2021 onward and to remit the fees payable to Sears in accordance with the End of Term Procedures; and (iii) CDTel immediately cease using any intellectual property, including

the Brand Name, in any of CDTel's materials and websites, including without limitation, the Sears Connect website that CDTel continues to or has hosted and operated to enroll customers at the following URL: <https://searsld.ca/> (the "Sears Connect Website").

I. END OF TERM PROCEDURES

27. After December 31, 2020, CDTel is obligated to continue paying residual fees in accordance with the End of Term Procedures until there are no longer any Enrolled Customers in both Programs. The End of Term Procedures are reproduced below:

Section 9.04 End of Term Procedures. Upon termination or expiration of this Agreement, CDTel will (i) cease immediately its marketing acquisition program for enrollment into the LD Program and/or the ComparAction Program and take one of either options (a) or (b) set out below. Except as other provided in this Section 9.04 (as per Sears election):

(a) Continue providing the LD Program and ComparAction Program to the Enrolled Customers but without reference to Sears or use of any Sears Trade-Marks or any other Sears involvement in the program in which case:

(i) CDTel will, at its expense, notify the Enrolled Customers that Sears' involvement in the program is ending. The content of any such notice is to be pre-approved by Sears which approval shall not be unreasonably withheld or delayed; and

(ii) CDTel will continue to pay Sears a residual fee of (x) five (5) percent residual fee of the Net Program Revenue from all Enrolled Customers for as long as such Enrolled Customers remain enrolled in the ComparAction Program and (y) the applicable percentage set out in the Churn Table for Net Program Revenue from all Enrolled Customers for as long as such Enrolled Customers remain enrolled in the LD Program, and the Minimum Residual Fee payments set out in Section 7.03 shall no longer be payable and the Card Share obligations set out in Section 6.04 shall no longer be applicable.

(b) Continue providing the LD Program and the ComparAction Program to the Enrolled Customers by licensing the Sears Trade Marks from Sears, in which case CDTel will continue to pay to Sears a residual fee of twenty four (24%) percent and a fee of fifteen (15%) percent of Net Program Revenue from all Enrolled Customers under the LD Program and the ComparAction Program respectively for as long as such Enrolled Customer remains enrolled in either the LD Program or the ComparAction Program. [*emphasis added*]

28. Accordingly, after December 31, 2020 and provided that CDTel ceases using any of Sears' intellectual property, CDTel is required to pay Sears residual fees at the following end of term rates:
- (a) **ComparAction Program:** the rate for the ComparAction is reduced from 15% to 5%; and
 - (b) **LD Program:** the rate for the LD Program is dictated by the churn table that is included in Schedule 2 of the Agreement (the "**Churn Table**").
29. To calculate the applicable rate pursuant to the Churn Table, CDTel is required to deliver the number of Enrolled Customers for the LD Program. CDTel has previously provided information regarding the number of "billed accounts" with respect to the LD Program for the period November 2017 to April 2020. However, CDTel has not provided clarification regarding the distinction between the number of Enrolled Customers and billed accounts. As such, the Monitor requires CDTel to deliver within 15 days following the end of each month starting January 1, 2021, both the number of Enrolled Customers and billed accounts to gain clarity on this issue. In the alternative, the Monitor requires a determination by the Court that these two metrics are the same for the purposes of calculating the applicable end of term LD Program rate, in which case, the Monitor requests monthly reporting of the number of Enrolled Customers.

J. CDTEL CONTINUES TO USE THE SEARS BRAND NAME

30. Despite CDTel's position that it has unilaterally terminated the Agreement effective November 1, 2017, it appears that CDTel has used intellectual property belonging to Sears, including the Brand Name, on the Sears Connect Website until at least December 15, 2020. On that date, the Monitor shared a draft of this Forty-Fourth Report with counsel for CDTel to schedule this motion. Between December 15, 2020 and the date of this Report, CDTel appears to have taken down the Sears Connect Website. Before it was taken down, the telephone numbers listed on the Sears Connect Website were active and connected callers to a CDTel customer service representative for enrollment purposes. A screenshot of the Sears Connect Website taken on December 15, 2020 is attached as Appendix "K".

31. Notwithstanding the fact that CDTel could not have terminated the Agreement effective November 1, 2017 due to the commencement of these CCAA proceedings, CDTel's continued use of the Brand Name prevents CDTel from relying upon the End of Term Procedures to support its position that it owes residual fees at reduced rates since November 2017.

K. SUMMARY OF REQUESTED ORDERS

32. In summary, the requested orders can be grouped into the following three categories: (a) outstanding fees owing from October 2017 to April 2020; (b) reporting and outstanding fees from May 2020 to December 2020; and (c) reporting and fees payable from January 2021 onward until there are no longer any Enrolled Customers.

(a) For the period from October 1, 2017 to April 30, 2020.

- (i) **Payment** – Based on the documents that CDTel has delivered to the Monitor to date, the Monitor requests that CDTel pay Sears outstanding fees in the amount of \$1,874,451.70 (before HST) with respect to the LD Program and outstanding fees in the amount of \$10,698.61 (before HST) with respect to the ComparAction Program, for a combined total of \$2,038,330.50¹ (including HST);

(b) For the period from May 1, 2020 to December 31, 2020.

- (i) **Reporting** – The Monitor requests that CDTel deliver documentation showing the LD Net Revenue and ComparAction Net Revenue on a monthly basis for this period; and
- (ii) **Payment** – The Monitor requests that CDTel pay fees owing to Sears for this period at the following rates: 24% of the LD Net Revenue with respect to the LD Program, and 15% of the ComparAction Net Revenue with respect to the ComparAction Program;

¹ Note: This total amount owing for the period October 2017 to April 2020 includes an adjustment for residual fees paid by CDTel based on end of term rates for the months of October, November and December 2017.

(c) January 1, 2021 onward:

- (i) **Reporting** – The Monitor requests that CDTel deliver documentation showing the number of Enrolled Customers and billed accounts for the LD Program and excel files showing the LD Net Revenue and ComparAction Net Revenue on a monthly basis from January 1, 2021 onward until there are no longer any Enrolled Customers in both Programs. The Monitor requests that CDTel deliver the foregoing documentation within 15 days following the end of each month;
- (ii) **Payment** – In accordance with the End of Term Procedures, the Monitor requests that CDTel pay to Sears residual fees within 30 days following the end of each month from January 1, 2021 onward at the following end of term rates: (A) 5% of the ComparAction Net Revenue from all Enrolled Customers for as long as such Enrolled Customers remain enrolled in the ComparAction Program; and (B) the applicable percentage as set out in the Churn Table of the LD Net Revenue from all Enrolled Customers for as long as such Enrolled Customers remain enrolled in the LD Program; and
- (iii) **Cease and Desist** – CDTel shall immediately cease using any intellectual property, including the Brand Name, in any of CDTel’s materials and websites.

L. MONITOR’S RECOMMENDATION

- 33. The proposed orders will result in the recovery of material funds owing to the estate of the Sears Canada Entities. The Monitor recommends the approval of the orders substantially in the form attached to the Monitor’s motion record.

The Monitor respectfully submits to the Court this, its Forty-Fourth Report.

Dated this 27th day of January, 2021.

FTI Consulting Canada Inc.
in its capacity as Monitor of
the Sears Canada Entities

A handwritten signature in blue ink, appearing to read 'S Bissell', with a long horizontal stroke extending to the left.

Steven Bissell
Managing Director

CONFIDENTIAL APPENDIX "A"

APPENDIX “B”



Barristers & Solicitors / Patent & Trade-mark Agents

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 Royal Bank Plaza, South Tower, Suite 3800
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nortonrosefulbright.com

Virginie Gauthier
 +1 416.216.4853
Virginie.Gauthier@nortonrosefulbright.com

Your reference

Our reference
 1000299972

November 7, 2017

Sent By E-mail

Renno Vathilakis Inc.
 (o/a Renno & Vathilakis)
 1621 Sherbrooke Street West
 Montreal, Qc
 H3H 1E2

Email: mvathilakis@renvath.com

Attention: Michael Vathilakis

- and to -

CDTel Inc.
 c/o CanadaDirect Holdings Inc.
 743 Renaud St.
 Dorval, Qc
 H9P 2N1

Email: aharari@canadadirect.ca

Attention: Alain Harari, President & CEO

Dear Sirs:

Sears Connect Telecommunications Services Agreement

We are counsel to FTI Consulting Canada Inc. in its capacity as Court-appointed Monitor to Sears Canada Inc. ("**Sears Canada**") and its affiliates in their restructuring proceedings under the *Companies' Creditors Arrangement Act* ("**CCAA**").

We were provided with copies of various correspondence between Sears Canada and CDTel Inc. ("**CanadaDirect**") including a copy of your letter dated November 1, 2017, in which you purport to terminate the Sears Connect Telecommunications Services Agreement between CanadaDirect and Sears Canada dated January 1, 2015 (as may have been amended or extended, the "**Agreement**").

We are also aware that as the date of this letter, CanadaDirect owes Sears Canada \$334,825.34 (the "**Outstanding Amount**") under the Agreement and that this amount has been outstanding for some time now. We understand that CanadaDirect may have sent a cheque in the amount of \$134,000 but it has not been received by Sears Canada.

Please be advised that by Order of Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated June 22, 2017 (as amended, the "**Initial Order**"), during the Stay Period (which has been most recently extended until January 22, 2018), no Person (as each such term is defined in the Initial Order) shall terminate their agreement with Sears Canada or cease to perform their obligations thereunder, except with the consent of Sears Canada and the Monitor or with leave of the Court. We also note that, pursuant to the Initial Order, all Persons having agreements with Sears Canada for the supply of goods or services are restrained from discontinuing or terminating the provision of such goods or services. A copy of the Initial Order

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November 7, 2017

NORTON ROSE FULBRIGHT

can be found on the Monitor's website at www.cfcanadafticonsulting.com. Further, we bring to your attention that the purported termination of the Agreement by CanadaDirect is contrary to Section 34(1) of the CCAA, which expressly states that no party may terminate a contract with a debtor company by reason of (1) commencement of proceedings under the CCAA, or (2) insolvency. Section 34(5) of the CCAA confirms that any provision contained in any agreement that is contrary to the foregoing is of no force or effect.

Accordingly, the purported termination by CanadaDirect of the Agreement is in direct contravention of the Initial Order and the termination provisions relied upon by CanadaDirect are of no force or effect. As a result, it is Sears Canada's position that the Agreement remains in full force and the provisions of Section 9.04 of the Agreement referenced in your correspondence have not been engaged. Furthermore, Sears Canada expects CanadaDirect's compliance with its obligations under the Agreement.

We ask that you advise us without further delay of when Sears Canada can expect the payment of the Outstanding Amount. Further, should you wish to engage with Sears Canada as to an appropriate process to wind-down your relationship, please feel free to reach out to Pam Murphy at Sears Canada.

We look forward to your prompt attention to this matter.

Yours very truly,


Virginie Gauthier

VG/ls

Copy to: Jim Robinson, *FTI Consulting Canada Inc.*
 Sandra Abitan, *Osler, Hoskin & Harcourt LLP*
 Sean Stidwill, *Osler, Hoskin & Harcourt LLP*
 Pamela Murphy, *Sears Canada Inc.*
 Daniel Westreich, *Sears Canada Inc.*
 Marc Dadouche, *CanadaDirect*

APPENDIX “C”

Sears Connect Long Distance Data compiled on February 16, 2018

Sears ComparAction

- ▶ Active Status - 433 Customers
- ▶ Blocked Status - 31 Customers
- ▶ Inactive Status - 1208 Customers
- ▶ Average Churn - 4.57%/month
- ▶ Average Billed Revenue per Customer - \$6.75

Sears Connect

- ▶ Active Status - 40,566 Customers
- ▶ Pending Status - 2 Customers
- ▶ Blocked Status - 105 Customers
- ▶ Inactive Status - 43,990 Customers
- ▶ Average Churn - 3.2%/month
- ▶ Average Billed Revenue per Customer - \$6.75/month

Commissions

- ▶ Here is the details of commissions for the last three months (Net of taxes)

Month	Brand	Commissions	Commissions %
Oct-17	Sears Connect	\$ 49,364.72	17%
Oct-17	Sears ComparAction	\$ 555.64	10%
Nov-17	Sears Connect	\$ 17,335.58	5%
Nov-17	Sears ComparAction	\$ 150.43	5%
Dec-17	Sears Connect	\$ 13,765.95	5%
Dec-17	Sears ComparAction	\$ 145.70	5%

APPENDIX “D”

May 6, 2019

Sent By E-mail

Michael Vathilakis
Renno & Vathilakis
145 St-Pierre Street
Suite 201
Montreal, QC H2Y 2L6

 **NORTON ROSE FULBRIGHT**

Barristers & Solicitors / Patent & Trade-mark Agents

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nortonrosefulbright.com

Virginie Gauthier
+1 416.216.4853
Virginie.Gauthier@nortonrosefulbright.com

Dear Michael:

Re: Sears Connect LP and CDTel Inc.

As you are aware, we are counsel to FTI Consulting Canada Inc. in its capacity as Court-appointed monitor (the "**Monitor**") in the *Companies' Creditors Arrangement Act* proceedings of Sears Canada Inc. and certain of its affiliates, including Sears Connect LP ("**Sears Connect**"). You may also remember that we exchanged correspondence at the end of 2017 and in the beginning of 2018 with respect to the potential settlement of amounts and the wind-down of the business relationship between Sears Connect and CDTel Inc. ("**CDTel**").

In its recent review of Sears Connect's files, the Monitor has noted that CDTel has not made any payments to Sears Connect since receipt of a payment in June 2018 for commissions accruing in the month of December 2017 despite the fact that the Sears Connect Telecommunications Services Agreement requires CDTel to continue to make payments on a monthly basis and your assurances that payments would be received.

The Monitor would like to re-engage in discussions in order to understand the quantum of commissions owing for all of 2018 and for the period January 1 through March 31, 2019.

Would you please let us know when you would be available for a call next week to discuss? We look forward to hearing from you.

Yours very truly,



Virginie Gauthier

VG/

Copy to: Steve Bissell, FTI Consulting Canada Inc.

CAN_DMS: \127208491\2

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APPENDIX “E”

January 31, 2020

Sent By E-mail

Renno Vathilakis Inc.
(o/a Renno & Vathilakis)
1621 Sherbrooke Street West
Montreal, Quebec
H3H 1E2

Email: mvathilakis@renvath.com

Attention: Michael Vathilakis

AND TO

CDTel Inc.
c/o CanadaDirect Holdings Inc.
743 Renaud St.
Dorval, Quebec
H0P 2N1

Email: aharari@canadadirect.ca

Attention: Alain Harari, President & CEO

Dear Sirs:

Notice of Motion re: Sears Connect Telecommunications Services Agreement

As you are aware, we are counsel to FTI Consulting Inc. in its capacity as Court-appointed monitor (the **Monitor**) in the *Companies' Creditors Arrangement Act* proceedings of Sears Canada Inc. and certain of its affiliates including Sears Connect LP (**Sears Connect**).

We had previously delivered a letter to you on May 6, 2019, to re-engage in settlement discussions with respect to the amounts owing to Sears Connect by your client, CDTel Inc. (**CDTel**), pursuant to the Sears Connect Telecommunications Services Agreement dated January 1, 2015 (the **Agreement**). We have not received a response to our letter.

In the circumstances, we have instructions to bring a motion to seek an order, among others, compelling your client to produce certain documentation and to remit all outstanding amounts owing to Sears Connect pursuant to the Agreement. For your reference, please see enclosed our draft Notice of Motion.

In order to fix a date for that motion, it is necessary for us to attend a 9:30 appearance before Justice Hainey at the Commercial List. Please advise by February 7th, 2020, which of the following dates you prefer for the 9:30 appearance: February 14th, 19th, 20th or 21st.

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 **NORTON ROSE FULBRIGHT**

Barristers & Solicitors / Patent & Trade-mark Agents

Norton Rose Fulbright Canada LLP
222 Bay Street, Suite 3000, P.O. Box 53
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Your reference

Our reference
1000299972

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Renno Vathilakis Inc.
January 31, 2020

 **NORTON ROSE FULBRIGHT**

If I do not hear from you by February 7th, I will go forward and book February 20th to obtain a date for our motion.

Please be advised that the Commercial List courtrooms are located on the 8th floor at 330 University Avenue.

Yours very truly,



Peter Tae-Min Choi
Associate

PC/em

Encl.

APPENDIX “F”

Norton Rose Fulbright Canada LLP
222 Bay Street, Suite 3000, P.O. Box 53
Toronto, Ontario M5K 1E7 Canada

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nortonrosefulbright.com

Peter Tae-Min Choi
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peter.choi@nortonrosefulbright.com

Your reference

Our reference
1000299972

February 19, 2020

Sent By E-mail

Renno Vathilakis Inc.
(o/a Renno & Vathilakis)
1621 Sherbrooke Street West
Montreal, Quebec
H3H 1E2

Email: mvathilakis@renvath.com**Attention: Michael Vathilakis**

Dear Mr. Vathilakis:

Notice of Motion re: Sears Connect Telecommunications Services Agreement

We write further to our letter dated January 31, 2020 wherein we requested that you provide us with your availability to attend a 9:30 appearance before Justice Hainey at the Commercial List regarding the proposed motion involving your client, CDTel Inc. (**CDTel**).

You called us on February 7, 2020 to advise that CDTel was willing to re-engage in settlement discussions in an effort to avoid a motion hearing. You further advised that CDTel was willing and able to produce documentation that would allow the Monitor to calculate the outstanding fees owing pursuant to the Sears Connect Telecommunications Services Agreement between Sears Connect LP and CDTel dated January 1, 2015 (the **Agreement**).

On February 18, 2020, you called us to advise that your client is (or will soon be) in the process of preparing and/or collecting any and all necessary supporting documentation that would allow the Monitor to calculate and/or confirm the amounts owing under the Agreement (the **Supporting Documents**).

We ask that you provide us with copies of the Supporting Documents by no later than **5:00 pm** (Toronto time) on **March 4, 2020**. If we do not receive the Supporting Documents by then, we have instructions to proceed with the motion without further notice to you.

Yours very truly,



Peter Tae-Min Choi
Associate

PC/em

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APPENDIX “G”

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Peter Tae-Min Choi
+1 416.216.2474
peter.choi@nortonrosefulbright.com

Your reference

Our reference
1000299972

March 9, 2020

Sent By E-mail

Neil Paris
Paris & Co.
161 Bay Street, Suite 2700
Toronto, Ontario, M5J 2S1

nparis@parislaw.ca

Re: Residual fees owing by CDTel Inc. ("CDTel") to Sears Connect LP ("SCLP") pursuant to the Sears Connect Telecommunications Services Agreement dated January 1, 2015 (the "Agreement")

Dear Mr. Paris:

We write in response to the documentation that CDTel delivered on March 4, 2020, and to request further documentation as described below.

The Agreement is in full force and effect

Based on the documentation provided, which is consistent with previous correspondence from your client, CDTel's determination of the Residual Fees (as defined in the Agreement) owing to SCLP assumes a termination of the Agreement effective November 1, 2017. Under this assumption, CDTel applies a 5% rate to Net Program Revenues (both from LD and ComparAction customers) in calculating the outstanding Residual Fees owing to SCLP for the period January 2018 to December 2019.

The Monitor has previously advised CDTel that the Initial Order obtained by Sears Canada Inc. and its affiliates (including SCLP) in the CCAA proceedings operates to prevent the termination by CDTel Inc. of the Agreement, or the exercise of any other remedy under the Agreement as a result of, or in connection with, the commencement by SCLP of the CCAA Proceedings. The Monitor further advised that the purported termination of the Agreement by CDTel was contrary to Section 34(1) of the CCAA, which expressly states that no party may terminate a contract with a debtor company by reason of (a) the commencement of proceedings under the CCAA, or (b) insolvency. We enclose a copy of the Initial Order for your reference.

Pursuant to the provisions of the Initial Order and s. 34(1) of the CCAA, it is the Monitor's view that the Agreement remains in full force and effect and therefore the use of termination scenario rates of 5% to calculate the Residual Fees is incorrect.

Residual fees owing under the Agreement

Pursuant to section 7.02 of the Agreement, CDTel is required to pay to Sears, on a monthly basis, residual fees equal to: (a) 24% of the LD Program net revenues, and (b) 15% of the ComparAction program net revenues. Based on these rates and the data CDTel recently provided, the total amount of the outstanding residual fees owing by CDTel between October 2017 and December 2019 is **\$1,807,307**. We enclose a copy of an Excel file prepared by the Monitor that combines all of CDTel's supporting month-end Excel files to arrive at that figure. It

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is the Monitor's view that while the Agreement is in force, Residual Fees will continue to accrue and are owing to SCLP. The calculation of the amounts owing as of December 2019 reflects limitations in the data provided by CDTel and not an acceptance by the Monitor that Residual Fees ceased to accrue after that date.

We note that CDTel previously made payments for the months of October 2017, November 2017 and December 2017, but applied reduced rates as set forth in the table below:

	LD Program	ComparAction Program	Residual Fees Paid
October 2017	17%	10%	\$56,410
November 2017	5%	5%	\$19,759
December 2017	5%	5%	\$15,720
		Total	\$91,889

As you will see from the Monitor's Excel file, the payment of these amounts is captured in the calculation of the outstanding Residual Fees owing by CDTel through December 2019.

Further documentation

Notwithstanding the Monitor's position that CDTel is prohibited from terminating the Agreement and relying on the "end of term procedures" provided for under section 9.04(a) of the Agreement, the Monitor requests further documentation to confirm the applicable rates under those end of term procedures.

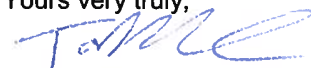
Under section 9.04(a), the Residual Fees payable for the ComparAction program drops to 5% rate post-termination. The effective rate for the LD Program post-termination, however, is based on the number of "Enrolled Customers" as per the chart attached as "Schedule 2" to the Agreement. To date, and despite repeated requests, CDTel has not provided the Monitor with the Enrolled Customers data. As such, the Monitor is unable to apply the applicable rate(s) for the LD Program.

Based on the foregoing, the Monitor requests the following documentation:

1. Enrolled Customers data, on a monthly basis, from December 2017 through February 2020 for the LD Program;
2. Excel support files for the Residual Fees payable for the months of October 2017, November 2017, December 2017, January 2020 and February 2020 (in the same format that CDTel provided on March 4, 2020); and
3. Copies of the notices that CDTel delivered to the Enrolled Customers informing them that Sears' involvement in the programs was ending pursuant to section 9.04(a)(i) of the Agreement.

Appreciating that you have only recently taken carriage of this file, I am more than happy to discuss any of the foregoing at your earliest convenience.

Yours very truly,



Peter Tae-Min Choi
Associate

PC/em

Enclosures

APPENDIX “H”



October 15, 2020

Sent By E-mail

Neil Paris
Paris & Co.
161 Bay Street, Suite 2700
Toronto, Ontario, M5J 2S1

nparis@parislaw.ca

Norton Rose Fulbright Canada LLP
222 Bay Street, Suite 3000, P.O. Box 53
Toronto, Ontario M5K 1E7 Canada

F: +1 416.216.3930
nortonrosefulbright.com

Peter Tae-Min Choi
+1 416.216.2474
peter.choi@nortonrosefulbright.com

Our reference
1000299972

Re: Residual fees owing by CDTel Inc. (“CDTel”) to Sears Connect LP (“SCLP”) pursuant to the Sears Connect Telecommunications Services Agreement dated January 1, 2015 (the “Agreement”)

Dear Mr. Paris:

We acknowledge receipt of your letter dated September 28, 2020 and copies of certain documentation from your client. Please be advised that the Monitor is in the process of reviewing the materials. For now, we have two preliminary comments.

1. Although we appreciate that CDTel delivered only what we formally requested in our March 2020 letter wherein we asked for supporting documentation up to and including February 2020, we did not foresee it taking CDTel almost 6 months to deliver the documents. As such, the information that CDTel has provided— though it may have been current at the time of our March 2020 letter – is now insufficient. If your client wishes to enter into meaningful settlement discussions with the Monitor, the Monitor requires information that is current.
2. There is inconsistency in the number of enrolled customers that CDTel has provided. In March 2018, CDTel provided the Monitor with a PowerPoint presentation that showed it had 40,566 enrolled customers as of February 16, 2018. However, in the excel spreadsheet titled “Sears connect_count accounts.xlsx” that it recently provided, CDTel states that it had 24,723 enrolled customers as of February 2018. Could CDTel please explain this inconsistency? For your reference, I attach the March 2018 PowerPoint presentation from CDTel.

While the Monitor considers its options at this juncture on how best to proceed, including bringing a motion before Justice Hainey to seek the relief as set out in our notice of motion, we ask that CDTel (a) provide the necessary documentation up to and including September 30, 2020, and (b) clarify the inconsistency in enrolled customers, as described above, by no later than October 26, 2020.

Yours very truly,

Peter Tae-Min Choi
Associate

Enclosure

CAN_DMS: \135786046

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APPENDIX “I”

CCAA Proceedings of Sears Canada Inc. and Affiliates**CDTel Product Residual Fees Payable: October 2017 to April 2020 [1]***Amounts in CAD*

Residual Fees	October 2017 to April 2020
LD Program	
[A] LD Net Program Revenue [2]	7,810,215.41
[B] Rate applicable to LD Program Net Program Revenue	24%
[C] LD Program Residual Fee Payable [C = A x B]	1,874,451.70
ComparAction Program	
[D] ComparAction Net Program Revenue [2]	71,324.09
[E] Rate applicable to Net Program Revenue	15%
[F] ComparAction Program Residual Fee Payable [F = D x E]	10,698.61
TOTAL - Residual Fees Payable [= C + F]	1,885,150.31
HST on Residual Fees Payable @ 13%	245,069.54
TOTAL - Residual Fees Payable + HST	2,130,219.85
Residual Fees Paid [3]	(91,889.36)
Cummulative - Residual Fees Payable at April 30, 2020	2,038,330.50

Notes:

[1] The calculation of Residual Fees payable by CDTel Inc. ("CDTel") to Sears Connect LP ("SCLP") is based on s. 7.0 of the Telecommunications Services Agreement (the "Agreement") between Sears Connect LP ("SCLP") and CDTel dated January 1, 2015.

[2] LD and Comparaction Program net revenues as reported by CDTel.

[3] Source: SCLP books and records, includes actual payments received in respect of the reporting period October through December 2017.

CCAA Proceedings of Sears Canada Inc. and Affiliates**CDTel Product Residual Fees Payable: October 2017 to April 2020 [1]**

Amounts in CAD

Residual Fees	Oct-17	Nov-17	Dec-17	Jan-18	Feb-18	Mar-18	Apr-18	May-18	Jun-18	Jul-18	Aug-18	Sep-18	Oct-18	Nov-18	Dec-18
LD Program															
[A] LD Net Program Revenue [2]	290,381	346,712	275,319	296,189	313,169	326,811	268,479	297,413	273,350	249,380	282,230	262,070	247,291	258,038	221,150
[B] Rate applicable to LD Program Net Program Revenue	24%	24%	24%	24%	24%	24%	24%	24%	24%	24%	24%	24%	24%	24%	24%
[C] LD Program Residual Fee Payable [C = A x B]	69,691	83,211	66,077	71,085	75,161	78,435	64,435	71,379	65,604	59,851	67,735	62,897	59,350	61,929	53,076
ComparAction Program															
[D] ComparAction Net Program Revenue [2]	5,556	3,009	2,914	2,987	2,075	3,195	2,692	2,949	2,529	2,853	2,551	1,945	2,514	1,674	2,409
[E] Rate applicable to Net Program Revenue	15%	15%	15%	15%	15%	15%	15%	15%	15%	15%	15%	15%	15%	15%	15%
[F] ComparAction Program Residual Fee Payable [F = D x E]	833	451	437	448	311	479	404	442	379	428	383	292	377	251	361
TOTAL - Residual Fees Payable [= C + F]	70,525	83,662	66,514	71,534	75,472	78,914	64,839	71,822	65,983	60,279	68,118	63,189	59,727	62,180	53,437
HST on Residual Fee Payable @ 13%	9,168	10,876	8,647	9,299	9,811	10,259	8,429	9,337	8,578	7,836	8,855	8,215	7,765	8,083	6,947
TOTAL - Residual Fees Payable + HST	79,693	94,538	75,160	80,833	85,283	89,173	73,268	81,158	74,561	68,115	76,973	71,403	67,492	70,264	60,384
Residual Fees Paid [3]	(56,410)	(19,759)	(15,720)	-	-	-	-	-	-	-	-	-	-	-	-
Cummulative - Residual Fees Payable at April 30, 2020	23,283	98,062	157,502	238,335	323,618	412,791	486,059	567,217	641,778	709,893	786,867	858,270	925,761	996,025	1,056,409

Notes:

[1] The calculation of Residual Fees payable by CDTel Inc. ("CDTel") to Sears Connect LP ("SCLP") is based on s. 7.0 of the Telecommunications Services Agreement (the "Agreement") between Sears Connect LP ("SCLP") and CDTel dated January 1, 2015.

[2] LD and Comparaction Program net revenues as reported by CDTel.

[3] Source: SCLP books and records, includes actual payments received in respect of the reporting period October through December 2017.

CCAA Proceedings of Sears Canada Inc. and Affiliates

CDTel Product Residual Fees Payable: October 2017 to April 2020 [1]

Amounts in CAD

Residual Fees	Jan-19	Feb-19	Mar-19	Apr-19	May-19	Jun-19	Jul-19	Aug-19	Sep-19	Oct-19	Nov-19	Dec-19	Jan-20	Feb-20	Mar-20	Apr-20
LD Program																
[A] LD Net Program Revenue [2]	277,677	214,413	272,788	223,483	248,398	209,980	228,677	227,217	222,441	219,848	212,403	197,235	226,866	198,889	189,513	232,409
[B] Rate applicable to LD Program Net Program Revenue	24%	24%	24%	24%	24%	24%	24%	24%	24%	24%	24%	24%	24%	24%	24%	24%
[C] LD Program Residual Fee Payable [C = A x B]	66,642	51,459	65,469	53,636	59,616	50,395	54,882	54,532	53,386	52,763	50,977	47,336	54,448	47,733	45,483	55,778
ComparAction Program																
[D] ComparAction Net Program Revenue [2]	2,664	1,709	2,100	2,401	1,892	1,570	2,153	1,678	1,832	1,679	1,442	1,666	1,708	1,276	1,910	1,792
[E] Rate applicable to Net Program Revenue	15%	15%	15%	15%	15%	15%	15%	15%	15%	15%	15%	15%	15%	15%	15%	15%
[F] ComparAction Program Residual Fee Payable [F = D x E]	400	256	315	360	284	236	323	252	275	252	216	250	256	191	287	269
TOTAL - Residual Fees Payable [= C + F]	67,042	51,715	65,784	53,996	59,899	50,631	55,205	54,784	53,661	53,015	51,193	47,586	54,704	47,925	45,770	56,047
HST on Residual Fee Payable @ 13%	8,715	6,723	8,552	7,019	7,787	6,582	7,177	7,122	6,976	6,892	6,655	6,186	7,112	6,230	5,950	7,286
TOTAL - Residual Fees Payable + HST	75,757	58,438	74,336	61,016	67,686	57,213	62,382	61,905	60,636	59,907	57,848	53,772	61,816	54,155	51,720	63,333
Residual Fees Paid [3]	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Cumulative - Residual Fees Payable at April 30, 2020	1,132,167	1,190,605	1,264,941	1,325,957	1,393,643	1,450,856	1,513,238	1,575,143	1,635,780	1,695,687	1,753,535	1,807,307	1,869,123	1,923,278	1,974,997	2,038,330.50

Notes:

[1] The calculation of Residual Fees payable by CDTel Inc. ("CDTel") to Sears Connect LP ("SCLP") is based on s. 7.0 of the Telecommunications Services Agreement (the "Agreement") between Sears Connect LP ("SCLP") and CDTel dated January 1, 2015.

[2] LD and Comparaction Program net revenues as reported by CDTel.

[3] Source: SCLP books and records, includes actual payments received in respect of the reporting period October through December 2017.

APPENDIX “J”



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WITHOUT PREJUDICE

June 26, 2020

Peter Choi
Norton Rose Fulbright
222 Bay Street
Suite 3000, P.O. Box 53
Toronto, ON M5K 1E7

SENT BY EMAIL

RE: CDTel and Sears – Sears Connect Telecommunications Services Agreement

Your file reference: 1000299972

Dear Mr. Choi

As you know, we represent CDTel Inc. (“CDTel”). We are writing with regard to the ongoing negotiations between CDTel and FTI Consulting Canada Inc., the Monitor for Searsconnect (“Sears”).

It remains CDTel’s position, as outlined in previous correspondence, that CDTel properly terminated the *Sears Connect Telecommunications Services Agreement* (“Agreement”) pursuant to ss. 9.03(b) and (c) on November 1, 2017.

Without prejudice to that position, CDTel recognizes that according to the Monitor’s Notice of Motion dated January 24, 2020, the Monitor considers the Agreement to be ongoing and renewing yearly as per s. 9.01 of the Agreement. As such, in the alternative event that the Court endorses the Monitor’s position, this letter serves as formal six-month notice that CDTel intends to terminate the Agreement under s. 9.01 and invoke the End of Term Procedures set out in s. 9.04(a). The alternative termination date would thus be December 31, 2020.

Based on the Notice of Motion, we understand it is your position that Justice Hainey’s Initial Order of June 22, 2017, and its subsequent extensions prevent CDTel from terminating the agreement without either the Monitor’s consent or a court order. Please advise immediately if the Monitor will consent to terminate the agreement as outlined above, without prejudice to CDTel’s position that the agreement was properly terminated on November 1, 2017.



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Given the ongoing court restrictions as a result of COVID-19, if the Monitor does not consent, we will seek a motion for leave to terminate the agreement as soon as courts re-open.

Best regards,

NP:cd

cc. Client; Virginie Gauthier

APPENDIX “K”

- LONG DISTANCE PROGRAM
- HOW YOU SAVE
- PLAN FEATURES
- CALLING CARDS AND TOLL FREE NUMBERS
- USAGE SUMMARY
- FAQ
- CONTACT US
- PAYMENT UPDATE


ComparAction Program

The Sears Connect ComparAction program is another example of Sears bringing exclusive benefits to our loyal customers. Sears Connect has been offering residential services for almost 25 years! We are excited to bring you a NEW Long Distance program called: The Sears Connect ComparAction program.

Contact Us at 1-855-422-0395



**THE NEW SEARS CLUB[™] REWARDS PROGRAM
GET MORE AT SEARS!**



EARN REWARDS WITH EVERY PURCHASE!

Whether you use cash, debit or any credit card accepted by Sears Canada, you earn 1 Sears Club[™] Point for every 1 dollar[^] you spend at Sears.

Join Today

Why Choose Sears Connect ComparAction?

In addition to helping you save money every month, there are many advantages to switching your long distance to Connect ComparAction, including:

- ✓ You keep your current home phone number
- ✓ There are no contracts and no costs to sign up with us
- ✓ Easy to understand statements that detail your calls so you know exactly what you are paying for
- ✓ Earn 5X the Sears Club[™] Points*
- ✓ The opportunity to earn valuable Sears Club[™] Points on your long distance expenditure



Enroll Now: **1-855-422-0395**

[^]Customer must register their Sears Club Rewards Card in order to redeem points and take advantage of Sears Club Rewards Program offers and benefits. Earn 1 Sears Club point for every dollar you spend at Sears whether you use cash, debit or any credit card accepted by Sears Canada. Points are awarded on net purchases, excluding applicable taxes, gift cards, pre-paid credit cards and services (e.g. delivery). Not combinable with any other points offers. Ask an associate for details. Visit Sears.ca/sears club for full terms and conditions. *Earn a bonus 5x the Sears Club[™] Points with ComparAction one month after the long distance charges are applied to account based on the standard earning of 5 base point per \$1 spent at Sears before taxes. No Sears Club[™] Points will be earned for outstanding long distance charges. The Sears Club Rewards Program is administered by Sears Canada Inc. Sears[®] is a registered trademark of Sears, licensed for use in Canada. The trademark "Sears Club" is used under license by Sears Canada Inc. © Sears Canada Inc., 2016. All rights reserved.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**FORTY-FOURTH REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA
INC., IN ITS CAPACITY AS MONITOR**

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Lawyers for FTI Consulting Canada Inc., in its
capacity as Monitor

TAB 3

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	MONDAY, THE 12TH
)	
JUSTICE HAINEY)	DAY OF APRIL, 2021

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., 9845488
CANADA 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

**ORDER
(CDTel Motion)**

THIS MOTION, made by FTI Consulting Canada Inc., in its capacity as monitor (the "**Monitor**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for, *inter alia*, an order: (a) directing CDTel Inc. ("**CDTel**") to produce necessary documents that will allow the Monitor to determine the amount of fees that CDTel owes Sears Connect ("**Sears**") under the Sears Connect Telecommunications Services Agreement dated January 1, 2015 (the "**Agreement**"); (b) directing CDTel to remit outstanding fees owing to Sears; (c) directing CDTel to continue performing its reporting obligations and remitting fees to Sears pursuant to the Agreement until there are no longer any Enrolled Customers (as defined below); and (d) directing CDTel to cease using any intellectual property belonging to Sears, was heard this day via Zoom videoconference due to the COVID-19 crisis;

ON READING the Motion Record of the Monitor, the Forty-Fourth Report of the Monitor dated January 27, 2021 (the "**Report**"), and on hearing the submissions of counsel for the Monitor and CDTel, no one else appearing although duly served as appears from the Affidavit of Service of ● sworn ●, 2021, filed;

1. **THIS COURT ORDERS** that the time for service of the Motion Record in support of this Motion and the Report is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** CDTel within 30 days to make payment for outstanding fees owing to Sears under the Agreement from October 1, 2017 to April 30, 2020 in the amount of \$2,038,330.50.
3. **THIS COURT ORDERS** CDTel within 15 days to deliver necessary records that will allow the Monitor to determine the amounts that CDTel owes Sears from May 1, 2020 to December 31, 2020. For greater certainty, these records include excel files showing the LD Net Revenue and ComparAction Net Revenue (as both terms are defined in the Report) on a monthly basis for that period.
4. **THIS COURT ORDERS** CDTel within 30 days to make payment for outstanding fees owing to Sears under the Agreement from May 1, 2020 to December 31, 2020, at the following rates: 24% of the LD Net Revenue with respect to the LD Program, and 15% of the ComparAction Net Revenue with respect to the ComparAction Program (as such terms are defined in the Report).
5. **THIS COURT ORDERS** CDTel to deliver necessary records within 15 days following the end of each month to allow the Monitor to determine the fees payable to Sears in accordance with the end of term provisions of the Agreement from January 1, 2021 onward until there are no longer

any customers enrolled in the ComparAction Program and LD Program (“**Enrolled Customers**”). For greater certainty, CDTel shall pay to Sears residual fees equal to: (i) 5% of the ComparAction Net Revenue from all Enrolled Customers for as long as such Enrolled Customers remain enrolled in the ComparAction Program; and (ii) the applicable percentage (as set out in the Churn Table attached as Schedule 2 of the Agreement) of the LD Net Revenue from all Enrolled Customers for as long as such Enrolled Customers remain enrolled in the LD Program.

6. **THIS COURT ORDERS** CDTel to remit residual fees within 30 days following the end of each month in accordance with the end of term provisions of the Agreement from January 1, 2021 onward until there are no longer any Enrolled Customers.

7. **THIS COURT ORDERS** CDTel to cease using any intellectual property belonging to Sears, including without limitation, the Brand Name (as defined in the Report).

8. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, or elsewhere 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, or to assist the Sears Canada Entities and the Monitor and their respective agents in carrying out the terms of this Order.

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., ET AL.

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

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

Proceeding commenced at TORONTO

**ORDER
(CDTel Motion)**

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Lawyers for FTI Consulting Canada Inc., as Monitor

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS
CANADA INC., et al.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**MOTION RECORD
(CDTel Motion)
(returnable April 12, 2021)**

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