

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SEARS CANADA INC., 9370-2751 QUEBEC 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**")

**CROSS-MOTION RECORD OF
CONSUMER INTELLIGENCE GROUP INC.
(CROSS-MOTION RETURNABLE APRIL 13, 2018)**

March 28, 2018

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**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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., 9370-2751 QUEBEC 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**")

NOTICE OF CROSS-MOTION

THE DEFENDANT, Consumer Intelligence Group Inc. ("**CiG**") in the Superior Court of Justice action bearing Court File No. CV-15-522235 (the "**Main Action**"), will make a Cross-Motion in response to a Motion brought by DGA North American Inc. and DGA Fulfillment Services Inc. (collectively "**DGA**") in the Main Action to a Judge of the Commercial List, on April 13, 2018, at the Court House, 330 University Ave., Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard

<input type="checkbox"/>	in writing under subrule 37.12.1(1) because it is on consent:
<input type="checkbox"/>	in writing as an opposed motion under subrule 37.12.1(4);
<input checked="" type="checkbox"/>	orally.

THE MOTION IS FOR:

1. A Declaration that the stay of proceedings ordered in paragraph 14 of the Order of Justice Hainey granted in these proceedings on June 22, 2017 (the "**Initial Order**"), which stay has been extended to April 27, 2018, applies in respect of the following proceedings:
 - a. The Main Action
 - b. Court File No. CV-15-522235-00A1 (the "**CiG Third Party Action**")
 - c. Court File No. CV-15-522235-00A2 (the "**Sears Third Party Action**")
 - d. Court File No. CV-15-522235-00B1 (the "**DGA Fourth Party Action**")
 - e. Court File No. CV-15-522235-00B2 (the "**CiG Fourth Party Action**")
(collectively the "**Actions**")
2. In the alternative, in the event that the stay of proceedings granted in the Initial Order does not apply to the Actions, an Order lifting the stay of proceedings granted in the Initial Order in respect of Sears Canada Inc. ("**Sears**") for the limited purpose of requiring Sears to:
 - a. Produce to all parties in the Actions an Affidavit of Documents pursuant to Rule 30 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended (the "**Rules**"), together with all Schedule "A" productions referenced therein within 60 days from the date of the Order; and
 - b. An Order that Sears shall produce a representative to be examined for discovery in the Actions within 120 days from the date of the Order;
3. In the further alternative, and to the extent that any Actions, or parts thereof, are not stayed pursuant to the Initial Order, an Order staying the Actions, or parts thereof, until such time as Sears agrees to, or this Honourable Court orders Sears to:

- a. Produce its Affidavit of Documents, together with its Schedule "A" productions, set out in subparagraph 2(a), above; and
 - b. Produce a representative to participate in examinations for discovery in the Actions;
4. Costs of this Motion on a substantial indemnity basis, together with applicable taxes and disbursements; and
 5. Such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

The Actions

1. All of the Actions arise from Sears' claims against CiG in the Main Action and, in particular, the sale of media space and the placement of advertisements in Sears' merchandising catalogues (the "**Onsert Program**") and credit card statements (the "**Credit Card Program**");
2. The pleadings are voluminous. They total 18 sets of pleadings. They include a main action, two third party actions, two fourth party actions, and a variety of counterclaims and crossclaims set out therein. The claims and defences of all of the parties are intertwined and share a common factual matrix;
3. **Schedule "A"** to this Notice of Cross-Motion includes a flowchart that illustrates the various actions, parties, claims, and damages claimed in the Actions;

The Parties

4. The plaintiff, Sears, carried on business as a retailer throughout Canada. It sold space in its merchandise catalogues through its Onsert Program. It also sold space in its credit card statements through its Credit Card Program;

5. The defendant, CiG, is a marketing intelligence and direct media company. It finds advertising opportunities for clients, purchases media space and their behalf, and makes the arrangements to have their advertisements published in that space;
6. The third parties, DGA North American Inc. and DGA Fulfillment Services Inc. (collectively "**DGA**"), retained CiG to arrange for DGA's promotional materials to be distributed by Sears under its Onsert Program and Credit Card Program;
7. The fourth party, Moore Canada Corporation ("**Moore**"), carries on business in the printing industry. Moore printed the inserts for DGA for the Onsert Program and Credit Card Program;
8. The fourth party, R.R. Donnelley & Sons Company ("**RRD**"), is a provider of commercial printing services, which includes inserting advertising material into envelopes and other packages for mailing. RRD inserted the advertisements for DGA into the Onsert Program and Credit Card Program. RRD and Moore are related companies;
9. It is alleged by DGA that after the Onsert Program and Credit Card Programs were circulated, the responses were nowhere near the levels that DGA had historically experienced with Sears;
10. Certain parties have failed to pay each-other amounts due and owing under their respective contracts. Allegations of liability have been made by, and against, all of the parties;

Pleadings Close

11. By November 2, 2016, pleadings in all five Actions closed;

The Discovery Plan

12. Between November 2016 and in or around June 2017, the parties negotiated the terms of a Discovery Plan and set aside dates in September 2017 for discoveries;

13. By June 2017, a Discovery Plan had not been executed by the parties;

The Initial Order

14. On June 22, 2017, the Honourable Mr. Justice Hainey signed the Initial Order;
15. Paragraph 14 of the Initial Order contains a stay of proceedings provision, which states as follows:

NO PROCEEDINGS AGAINST THE SEARS CANADA ENTITIES, THE BUSINESS OR THE PROPERTY

14. **THIS COURT ORDERS** that until and including July 22, 2017, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Sears Canada Entities or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the written consent of the Sears Canada Entities and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Sears Canada Entities or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

16. The plaintiff, Sears, falls under the definition of the "Sears Canada Entities";
17. The stay of proceedings in the Initial Order has been extended on several occasions. The current extension granted pursuant to an Order, dated January 22, 2018, extends the stay of proceeding to April 27, 2018;

Does the Stay Apply to the Actions?

18. Subsequent to the release of the Initial Order, the parties disagreed as to whether or not the Actions should proceed;
19. DGA served a Notice of Motion on Feb. 22, 2018 and seeks a timetable/discovery plan for the Actions. DGA's Motion is returnable on April 13, 2018;

20. DGA's Motion does not address the Initial Order. Nor does it refer to the fact that the actions by and against Sears, which is an integral party to all Actions, are stayed;
21. CiG is taking the position that the scope of the stay granted in the Initial Order applies to the Actions. Hence, none of the Actions can proceed unless and until a determination is made on the actual scope of the stay of proceedings granted in the Initial Order;
22. CiG is also taking the position that if the Actions proceed, the participation of Sears, both in terms of documentary discovery and for examinations for discovery, is warranted;
23. CiG has scheduled a Cross-Motion returnable on April 13, 2018 for, *inter alia*, certain relief in relation to the above;
24. The fourth parties, RRD and Moore, have also brought a Cross-Motion returnable on April 13, 2018 and are seeking similar relief to that which is claimed by CiG;
25. The Actions cannot proceed unless and until the parties receive clarification on the scope of the stay of proceedings in the Initial Order and its effect on the Actions;
26. CiG will be significantly prejudiced should it be required to proceed with the Actions (both in terms of proceeding with its claims and defending the claims of DGA, RRD and Moore) without documentary production from Sears and being able to examine Sears for discovery;
27. There is no prejudice to DGA should the Actions be stayed until the CCAA proceedings expire, or such time as Sears agrees to participate in the Actions or this Honourable Court orders Sears to do so;
28. The balance of convenience weighs in favour of granting the stay;

29. Rules 1, 3, 37, 39 and 57 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; sections 97 and 106 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended; and the *Companies' Creditors Arrangement Act*, R.S.C. c. C.36, as amended; and
30. Such further and other grounds as counsel may advise and this Honourable Court permits.

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

1. The Affidavit of Michelle Pham, sworn March 28, 2018, together with exhibits attached thereto;
2. The pleadings and proceedings herein; and
3. Such further and other material as counsel may advise and this Honourable Court may permit.

March 28, 2018

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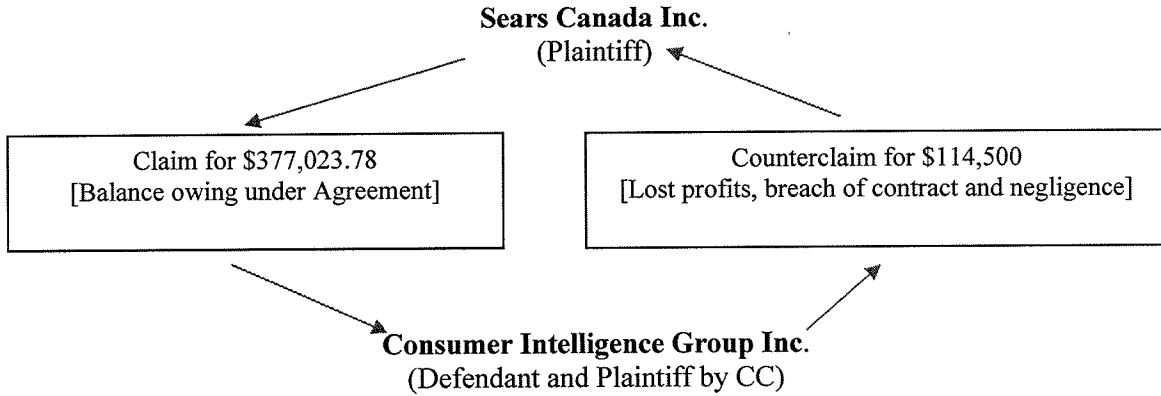
tab A

SCHEDULE "A"

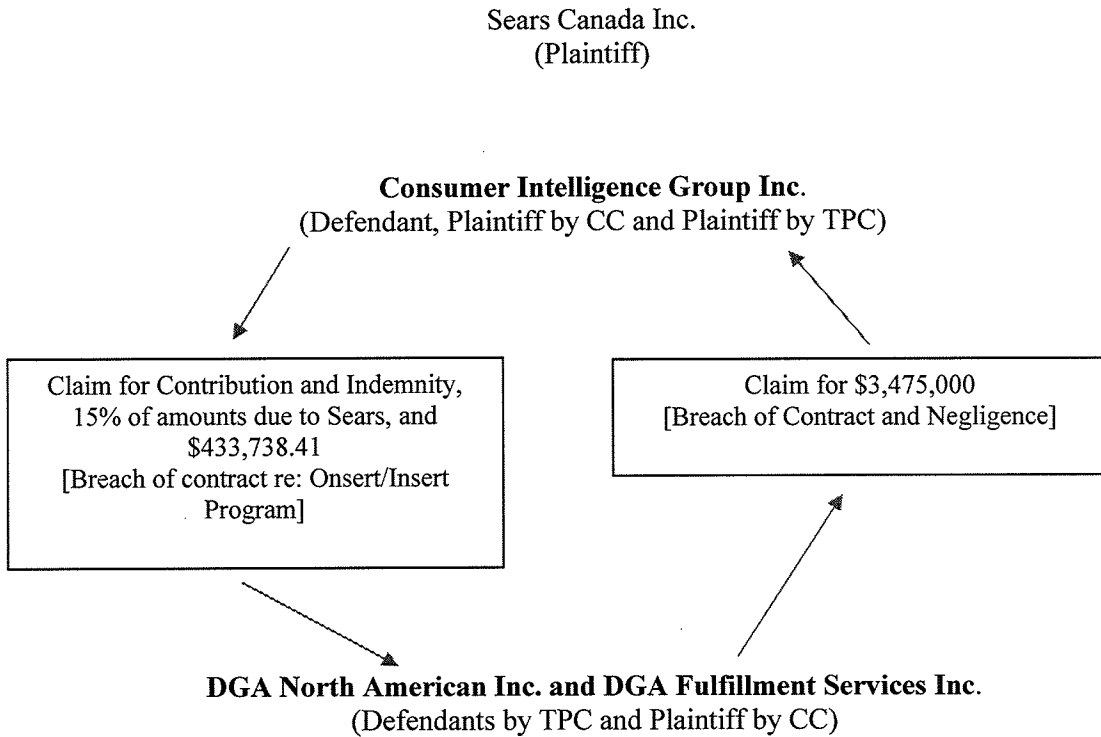
Consumer Intelligence Group Inc. ats Sears Canada Inc.

Pleadings Flowchart

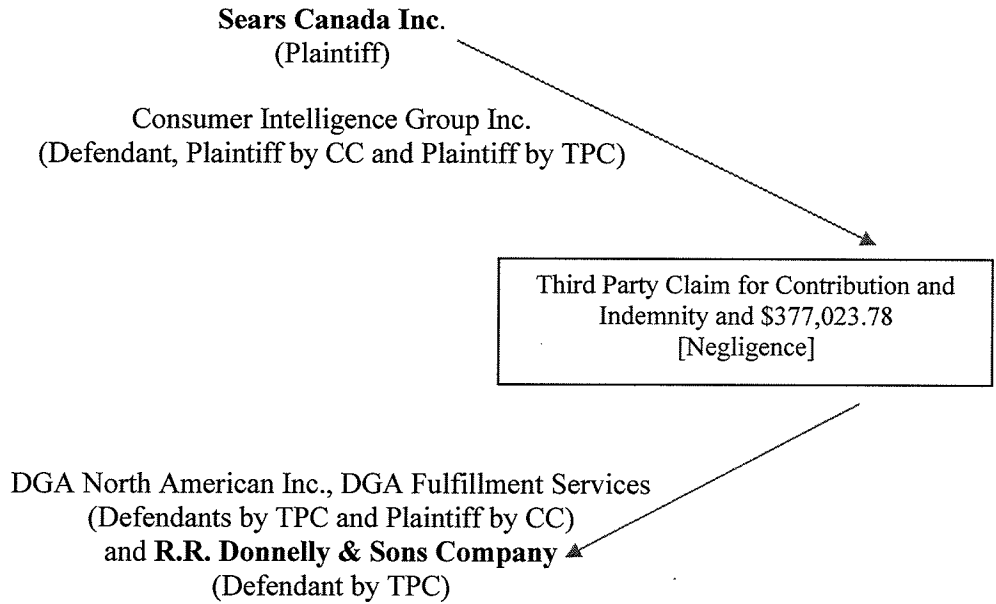
Main Action



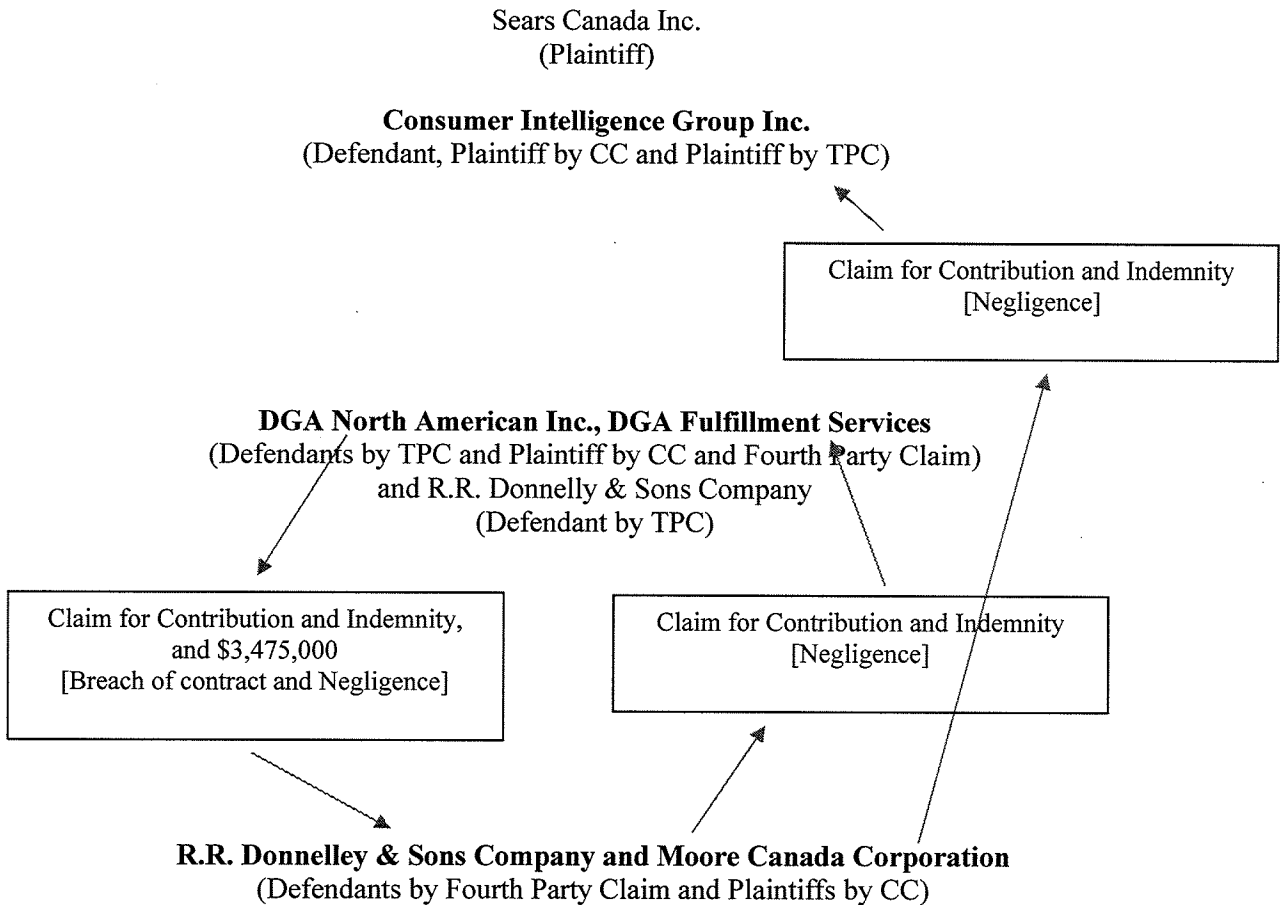
Third Party Action (A1)



Third Party Action (A2)



Fourth Party Action (B1)



Fourth Party Action (B2)

Sears Canada Inc.
(Plaintiff)

Consumer Intelligence Group Inc.
(Defendant, Plaintiff by CC and Plaintiff by TPC and FPC)

Claim for Contribution and Indemnity and
\$3,475,000
[Negligence]

DGA North American Inc., DGA Fulfillment Services
(Defendants by TPC and Plaintiff by CC and Fourth Party Claim)

R.R. Donnelley & Sons Company, Moore Canada Corporation and Sears Canada Inc.
(Defendants by Fourth Party Claim)

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

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF CROSS-MOTION

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tab 2

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

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

AFFIDAVIT OF MICHELLE PHAM
(SWORN MARCH 28, 2018)

I, Michelle Pham, of the City of Brampton, in the Regional Municipality of Peel, MAKE OATH AND SAY:

1. I am a Legal Assistant with the law firm of Fogler, Rubinoff LLP, Lawyers for the defendant, Consumer Intelligence Group Inc. ("**CiG**") in the Superior Court of Justice action bearing Court File No. CV-15-522235 (the "**Main Action**") and, as such, have knowledge of the following matters to which I hereinafter depose. To the extent that I refer to information that is not within my personal knowledge, I have stated the source of that information and verily believe it to be true.

2. I swear this Affidavit in support of CiG's Motion for, *inter alia*, a Declaration that that the stay of proceedings ordered in paragraphs 14 and 17 of the Order of Justice Hainey granted in these proceedings on June 22, 2017 (the "**Initial Order**") applies in respect of the following proceedings:

- (a) The Main Action
- (b) Court File No. CV-15-522235-00A1 (the "**CiG Third Party Action**")

- (c) Court File No. CV-15-522235-00A2 (the "**Sears Third Party Action**")
- (d) Court File No. CV-15-522235-00B1 (the "**DGA Fourth Party Action**")
- (e) Court File No. CV-15-522235-00B2 (the "**CiG Fourth Party Action**")
(collectively the "**Actions**")

and in response to the Motion brought by DGA North American Inc. and DGA Fulfillment Services Inc. (collectively "**DGA**") returnable on April 13, 2018, and for no other or improper purpose.

The Parties

3. The plaintiff in the Main Action, Sears Canada Inc. ("**Sears**"), carried on business as a retailer throughout Canada. It sold media space in its merchandising catalogues (the "**Onsert Program**") and credit card statements (the "**Credit Card Program**").

4. The defendant in the Main Action, CiG, is a marketing intelligence and direct media company. It finds advertising opportunities for clients, purchases media space and their behalf, and makes the arrangements to have their advertisements published in that space.

5. The third parties, DGA, retained CiG to arrange for DGA's promotional materials to be distributed by Sears under its Onsert Program and Credit Card Program.

6. The fourth party, Moore Canada Corporation ("**Moore**"), carries on business in the printing industry.

7. The fourth party, R.R. Donnelley & Sons Company ("**RRD**"), is a provider of commercial printing services, which includes inserting advertising material into envelopes and other packages for mailing.

The Pleadings

8. Attached as **Exhibit "A"** is a flowchart that illustrates the various actions, parties, claims, and damages claimed in the Actions. A chronology of the pleadings is set out below.

The Main Action

9. On February 18, 2015, Sears commenced the Main Action by the issuance of its Statement of Claim, a copy of which is attached as **Exhibit "B"**.

10. On May 1, 2015, CiG delivered its Statement of Defence and Counterclaim, a copy of which is attached as **Exhibit "C"**.

11. On May 28, 2015, Sears delivered its Reply and Defence to Counterclaim, a copy of which is attached as **Exhibit "D"**.

12. On June 8, 2015, CiG delivered its Reply to Defence to Counterclaim, a copy of which is attached as **Exhibit "E"**.

The CiG Third Party Action

13. On May 8, 2015, CiG commenced a third party action against DGA. A copy of the Third Party Claim is attached as **Exhibit "F"**.

14. On August 18, 2015, DGA delivered its Third Party Defence and Counterclaim, a copy of which is attached as **Exhibit "G"**.

15. On May 6, 2016, CiG delivered its Reply and Defence to Counterclaim, a copy of which is attached as **Exhibit "H"**.

The Sears Third Party Action

16. On June 5, 2015, Sears commenced a third party action against RRD. A copy of the Third Party Claim is attached as **Exhibit "I"**.

17. On May 5, 2016, RRD delivered its Third Party Defence, a copy of which is attached as **Exhibit "J"**.

The DGA Fourth Party Action

18. On April 27, 2016, DGA commenced a fourth party action against RRD and Moore. A copy of the Fourth Party Claim is attached as **Exhibit "K"**.

19. On June 13, 2016, RRD and Moore delivered their Fourth Party Defence and Counterclaim, a copy of which is attached as **Exhibit "L"**.
20. On July 4, 2016, CiG delivered its Reply and Defence to Counterclaim to the Fourth Party Defence and Counterclaim of RRD and Moore, a copy of which is attached as **Exhibit "M"**.
21. On July 13, 2016, Sears delivered its Defence to the Counterclaim of RRD and Moore, a copy of which is attached as **Exhibit "N"**.
22. On July 4, 2016, Sears delivered its Defence and Crossclaim to the Counterclaim of RRD and Moore, a copy of which is attached as **Exhibit "O"**.
23. On November 2, 2016, DGA delivered its Defence to the Crossclaim of Sears, a copy of which is attached as **Exhibit "P"**.

The CiG Fourth Party Action

24. On May 17, 2016, CiG commenced its fourth party action against RRD, Moore and Sears. A copy of the Fourth Party Claim is attached as **Exhibit "Q"**.
25. On June 28, 2016, Sears delivered its Fourth Party Defence and Crossclaim to the Fourth Party Claim of CiG, a copy of which is attached as **Exhibit "R"**.
26. On July 8, 2016, RRD and Moore delivered their Fourth Party Defence and Crossclaim, a copy of which is attached as **Exhibit "S"**.

Pleadings Close

27. By November 2, 2016, pleadings in all five Actions closed.

The Discovery Plan

28. Between November 2016 and in or around June 2017, the parties negotiated the terms of a Discovery Plan and set aside dates in September 2017 for discoveries.
29. On November 2, 2016, Gordon Micklejohn, counsel for DGA sent a letter to opposing counsel enclosing DGA's Defence to the Crossclaim of Sears, together with a draft of a

Discovery Plan. Attached as **Exhibit "T"** is a copy of the correspondence, together with its attachments.

30. Between April 28 to June 24, 2017, counsel for the parties exchanged emails in relation to the Discovery Plan and the Sears' CCAA proceedings. Attached hereto and marked as **Exhibit "U"** to this my Affidavit is a true copy of the correspondence between the parties.

31. By June 2017, a Discovery Plan had not been executed by the parties.

32. On June 27, 2017, counsel for the parties exchanged emails with respect to the applicability of the stay in the Initial Order. Attached as **Exhibit "V"** is a copy of the correspondence between the parties on June 27, 2017.

33. Between August 14, 2017 and August 17, 2017, the parties exchanged emails regarding the applicability of the stay in the Initial Order and attending to a Master's motion to deal with the issue. Attached as **Exhibit "W"** is a copy of the correspondence between the parties from August 14, 2017 and August 17, 2017.

34. Between October 3, 2017 and October 10, 2017, counsel for the parties exchanged emails with respect to scheduling a Motion to deal with moving the Actions forward. Attached as **Exhibit "X"** is a copy of the correspondence between the parties between October 3, 2017 and October 10, 2017.

35. On February 26, 2018, Ian P. Katchin, counsel to CiG, sent an email to counsel advising that CiG would bring a cross-motion to compel a representative from Sears to attend discoveries and a Declaration in relation to the applicability of the stay. Attached as **Exhibit "Y"** is a copy of the email from Mr. Katchin.

The Initial Order

36. On June 22, 2017, the Honourable Mr. Justice Hainey signed the Initial Order, a copy of which is attached as **Exhibit "Z"**.

37. Paragraph 14 of the Initial Order contains a stay of proceedings provision, which states as follows:

**NO PROCEEDINGS AGAINST THE SEARS CANADA ENTITIES, THE
BUSINESS OR THE PROPERTY**

14. **THIS COURT ORDERS** that until and including July 22, 2017, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Sears Canada Entities or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the written consent of the Sears Canada Entities and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Sears Canada Entities or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

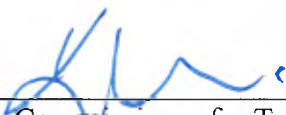
38. I am advised by Ian P. Katchin and verily believe that the stay of proceedings has been extended on multiple occasions, with the current extension granted pursuant to an Order dated January 22, 2018 extending the stay to April 27, 2018.

DGA's Motion for a Timetable

39. On February 22, 2018, DGA served a Motion Record seeking, *inter alia*, a timetable/discovery plan for the Actions.

40. I swear this Affidavit in support of the relief set out in CiG's Notice of Cross-Motion and in response to DGA's Motion and for no other or improper purpose.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario on March 28, 2018.



Commissioner for Taking Affidavits
(or as may be)

Kyle H.E. Kuepfer

}



MICHELLE PHAM

This is Exhibit "A" referred to in the Affidavit of Michelle Pham
sworn March 28, 2018

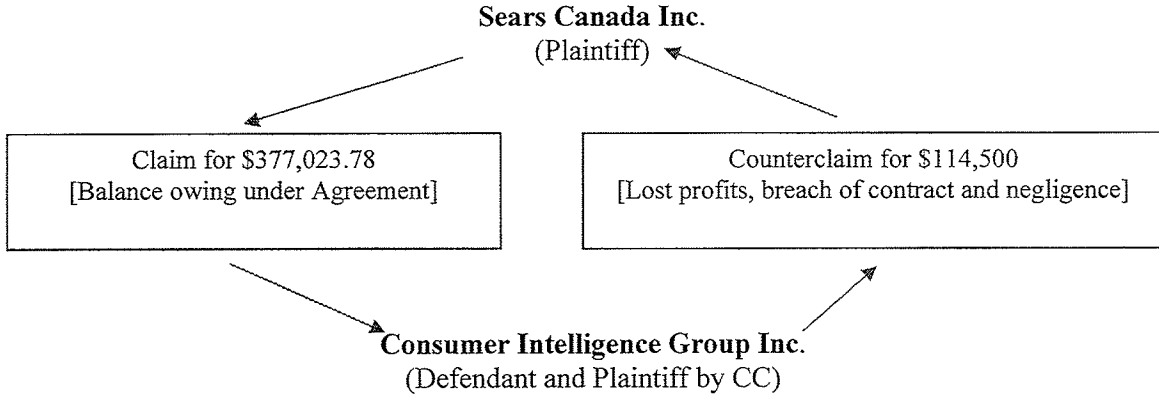


Commissioner for Taking Affidavits (or as may be)

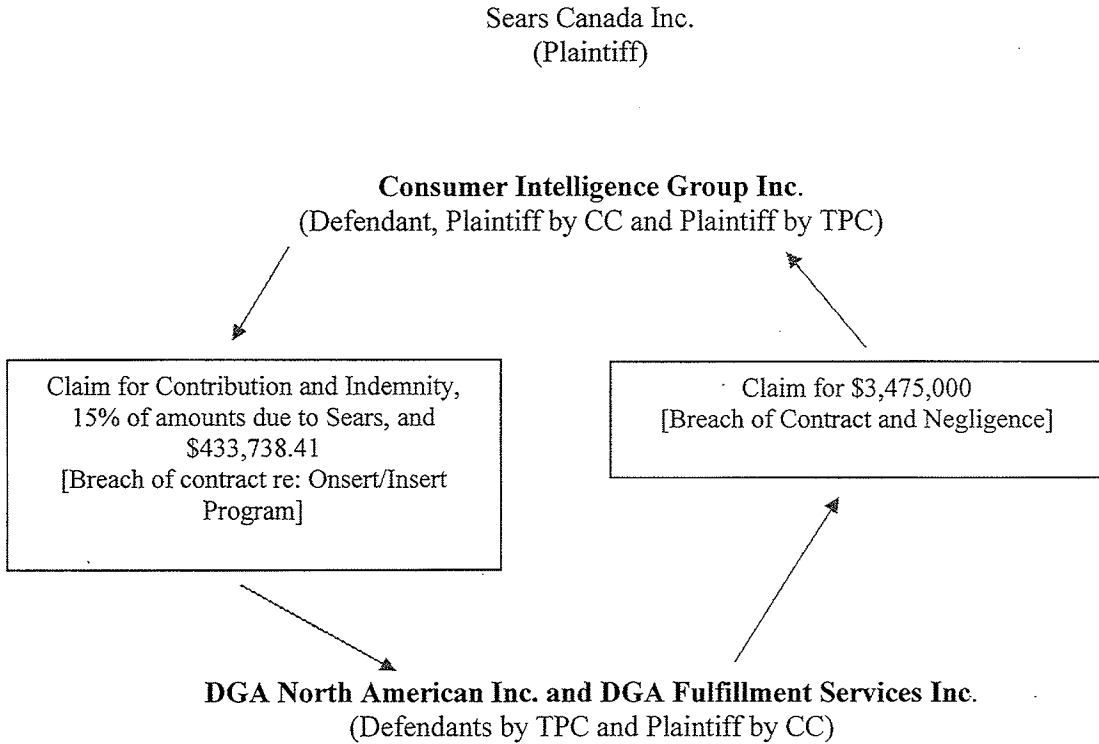
Consumer Intelligence Group Inc. ats Sears Canada Inc.

Pleadings Flowchart

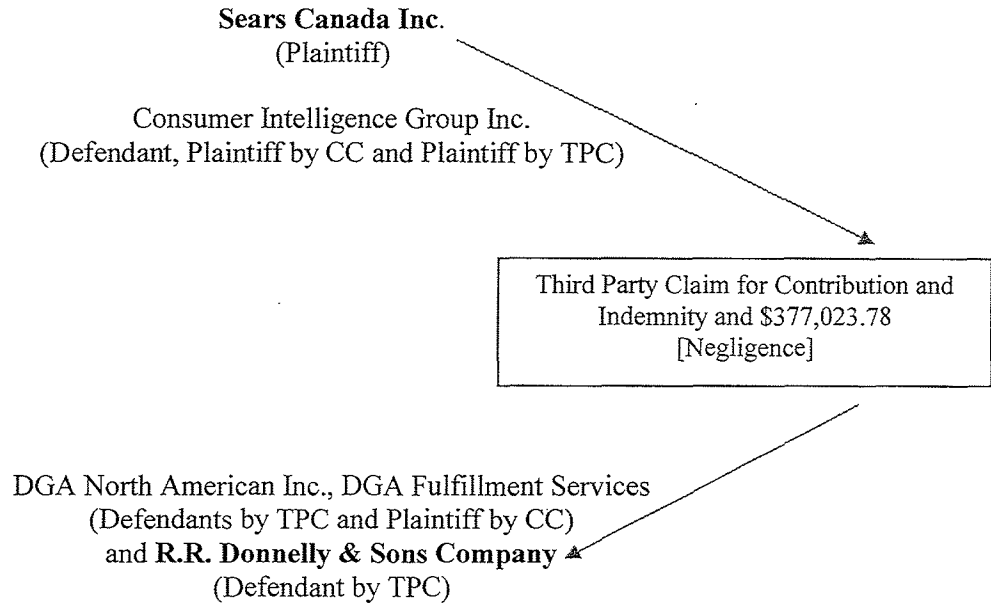
Main Action



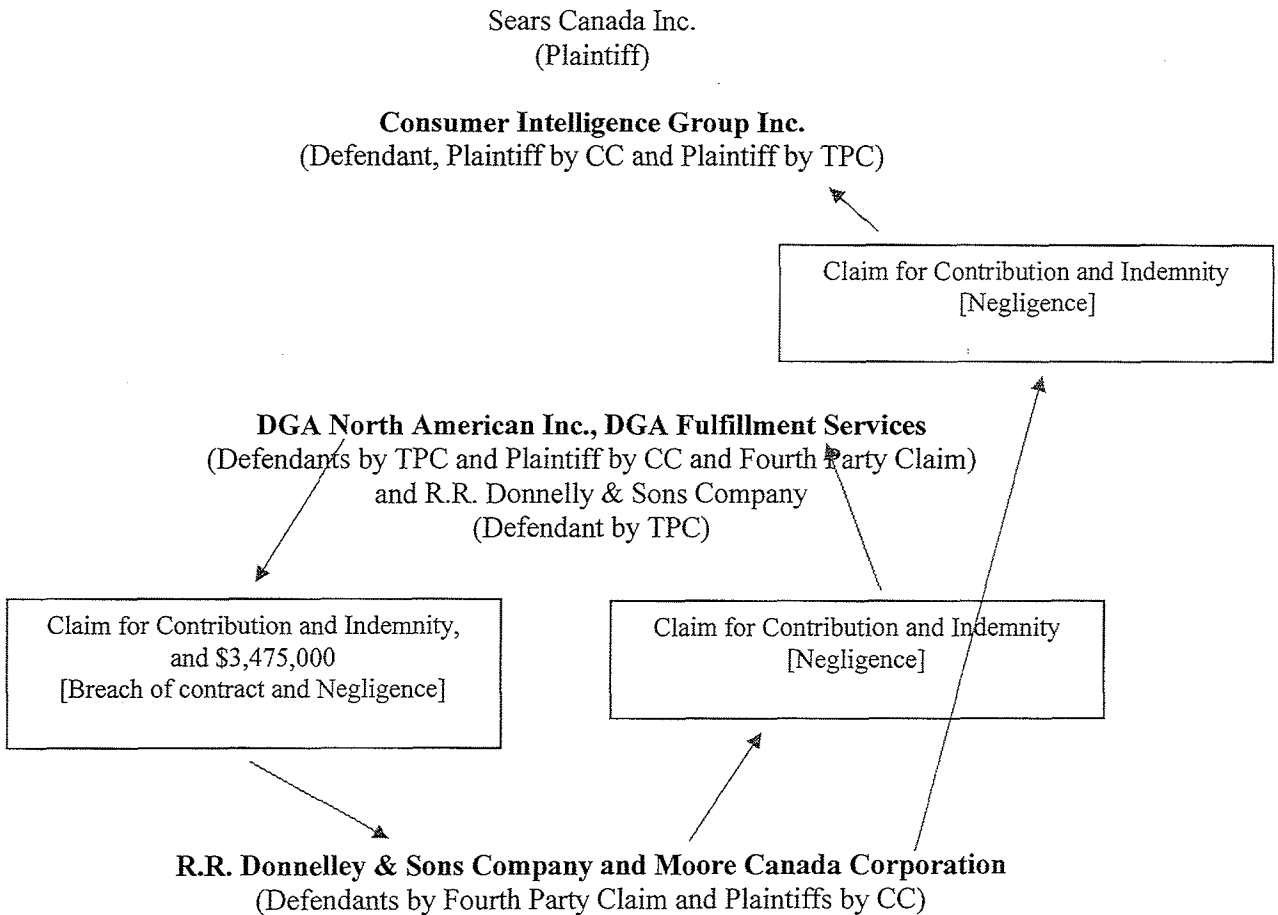
Third Party Action (A1)



Third Party Action (A2)



Fourth Party Action (B1)



Fourth Party Action (B2)

Sears Canada Inc.
(Plaintiff)

Consumer Intelligence Group Inc.
(Defendant, Plaintiff by CC and Plaintiff by TPC and FPC)

Claim for Contribution and Indemnity and
\$3,475,000
[Negligence]

DGA North American Inc., DGA Fulfillment Services
(Defendants by TPC and Plaintiff by CC and Fourth Party Claim)

R.R. Donnelley & Sons Company, Moore Canada Corporation and Sears Canada Inc.
(Defendants by Fourth Party Claim)

This is Exhibit "B" referred to in the Affidavit of Michelle Pham
sworn March 28, 2018

A handwritten signature in blue ink, appearing to be the initials 'KH' followed by a flourish.

Commissioner for Taking Affidavits (or as may be)

CN-15-522235
Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

(Court Seal)

SEARS CANADA INC.

Plaintiff

and

CONSUMER INTELLIGENCE GROUP INC.

Defendant



STATEMENT OF CLAIM

TO THE DEFENDANT(S)

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

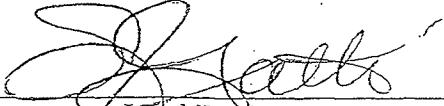
IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof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

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

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

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

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

Date Feb 18/15 Issued by 
Local Registrar
Address of
court office: 393 University Avenue, 10th Floor
Toronto, Ontario
M5G 1E6

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

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

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

The Parties

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

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

The Agreement

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

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

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

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

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

Refusal to Pay

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

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

Unjust Enrichment

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

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

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

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

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

February 17, 2015

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

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

Lawyer for the Plaintiff

SEARS CANADA INC.

Plaintiff

-and-

CONSUMER INTELLIGENCE GROUP INC.

Defendant

CW-15-522235
Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF CLAIM

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

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

Lawyer for the Plaintiff

This is Exhibit "C" referred to in the Affidavit of Michelle Pham
sworn March 28, 2018



Commissioner for Taking Affidavits (or as may be)

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

SEARS CANADA INC.

Plaintiff

- and -

CONSUMER INTELLIGENCE GROUP INC.

Defendant

STATEMENT OF DEFENCE AND COUNTERCLAIM

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

The Parties

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

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

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

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

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

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

9. The booking form drafted by Sears and the invoices issued by Sears, in addition to other representations and warranties provided by Sears and relied upon by CiG and DGA, formed the agreement between Sears and CiG.
10. There was no master services agreement between CiG and Sears for the purchase of media space for DGA, under either the Onsert Program or the Credit Card Program.
11. Sears sold CiG media space in the Onsert Program and the Credit Card Program with an express or implied warranty that the program would be carried out with the requisite skill and that the final product would be of merchantable quality.
12. CiG states that Sears was fully aware of and approved CiG's role as an intermediary between Sears and DGA, and at all times understood that its services and products would have to meet DGA's standards and specifications.
13. CiG further states that Sears drafted the booking form and was aware that CiG and DGA relied upon it having been drafted correctly, with all necessary specifications listed.

Problems with the Onsert Program and Credit Card Program

14. In or around May 2014, DGA advised CiG that it was concerned about the performance of the Onsert Program and the Credit Card Program. According to DGA, response to the Onsert Program and Credit Card Program was well below a conservative estimate of the expected response rate and well below historical averages, based on the response rate DGA had previously enjoyed under both programs. CiG subsequently advised Sears of DGA's concerns.
15. On or around September 15, 2014, CiG requested that Sears provide it with machine-based audit reports in order to demonstrate whether the inserts were, in fact, being inserted into the Sears catalogues and credit card statements as agreed.
16. On or around October 8, 2014, DGA advised CiG that it performed a physical audit of a random sample of the "25'4 Wish Book", one of the Sears merchandising catalogues within which DGA had directed CiG to purchase media space. DGA advised CiG that a majority of the "25'4 Wish Book" catalogues were incorrect – the audit found that certain copies of the

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

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

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

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

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

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

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

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

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

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

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

CiG is Owed a "Make Good" Program

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

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

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

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

DGA is Only Paying for Work Performed

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

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

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

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

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

COUNTERCLAIM

35. CiG counterclaims against Sears for:

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

- (b) pre-judgment and post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
 - (c) its costs of these proceedings on a substantial indemnity basis; and
 - (d) such further and other relief as this Honourable Court may deem just.
36. CiG repeats and relies upon the allegations contained in its Statement of Defence.
37. On account of the problems with the Onsert Program and the Credit Card Program, DGA has only made partial payments to date. CiG has not been paid the full commission that it otherwise would have received had Sears not breached the terms of its agreement with CiG and delivered a substandard product under the Onsert Program and Credit Card Program.
38. As a result of the problems with the Onsert Program and the Credit Card Program, summarized above, DGA stopped purchasing media space in both programs. DGA has not met the intended volumes set out in the Letter of Intent, on which CiG relied.
39. CiG proposes that this Counterclaim be tried together with the main action.

May 1, 2015

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Lawyers for the Defendant

TO: **Leigh A. Lampert** LSUC#:51680H
Senior Corporate Counsel
Sears Canada Inc.
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Tel: 416-941-4411

Fax: 416-941-2321

Lawyer for the Plaintiff

SEARS CANADA INC.

and

CONSUMER INTELLIGENCE GROUP
INC.

Court File No: CV-15-522235

Plaintiff

Defendant

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

STATEMENT OF DEFENCE

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Fax: 416-865-7048

Lawyers for the Defendant

Served on Fax: 416-941-2321

This is Exhibit "D" referred to in the Affidavit of Michelle Pham
sworn March 28, 2018

A handwritten signature in blue ink, consisting of stylized cursive letters, positioned above a horizontal line.

Commissioner for Taking Affidavits (or as may be)

Court File No. CV-15-522235

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

SEARS CANADA INC.

Plaintiff/
Defendant by Counterclaim

- and -

CONSUMER INTELLIGENCE GROUP INC.

Defendant/
Plaintiff by Counterclaim

- and -

DGA NORTH AMERICAN INC. and DGA FULFILLMENT SERVICES INC.

Third Parties

REPLY AND DEFENCE TO COUNTERCLAIM

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Alleged Problems with the Programs

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

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

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

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

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

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

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

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

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

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

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

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

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

Sears Promptly Investigates the Concerns Raised by DGA through the Defendant

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

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

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

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

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

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

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

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

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

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

The Make Good Programs

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

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

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

Sears is Not Liable to the Defendant

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

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

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

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

The Defendant has Sustained No Damages

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

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

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

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

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

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

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

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

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

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

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

May 25, 2015

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SEARS CANADA INC.
Plaintiff / Defendant by Counterclaim

-and-

CONSUMER INTELLIGENCE GROUP INC.
Defendant / Plaintiff by Counterclaim

Court File No. CV-15-522235

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

REPLY AND DEFENCE TO COUNTERCLAIM

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Sears Canada Inc.

This is Exhibit "E" referred to in the Affidavit of Michelle Pham
sworn March 28, 2018



Commissioner for Taking Affidavits (or as may be)

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

SEARS CANADA INC.

Plaintiff

- and -

CONSUMER INTELLIGENCE GROUP INC.

Defendant

- and -

DGA NORTH AMERICAN INC. and DGA FULFILLMENT SERVICES INC.

Third Parties

REPLY TO DEFENCE TO COUNTERCLAIM

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

Payment of Invoices

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

DGA's Standards and Specifications

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

Warranties

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

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

Cancellation of the Credit Card Program

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

Sears' Audits

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

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

CiG's Booking of Business with Sears

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

Date: June 8, 2015

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Lawyers for the Third Parties

SEARS CANADA INC.
Plaintiff

-and-

CONSUMER INTELLIGENCE GROUP INC.
Defendant

Court File No. CV-15-522235

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
TORONTO

REPLY TO DEFENCE TO COUNTERCLAIM

FOGLER, RUBINOFF LLP

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Lawyers for the Defendant

This is Exhibit "F" referred to in the Affidavit of Michelle Pham
sworn March 28, 2018



Commissioner for Taking Affidavits (or as may be)

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

SEARS CANADA INC.

Plaintiff

- and -

CONSUMER INTELLIGENCE GROUP INC.

Defendant

- and -

DGA NORTH AMERICAN INC. and DGA FULFILLMENT SERVICES INC.

Third Parties

THIRD PARTY CLAIM

TO THE THIRD PARTY

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

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

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

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

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



- 2 -

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

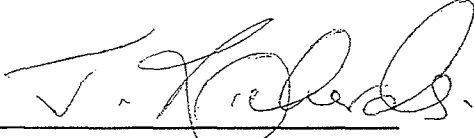
IF YOU FAIL TO DEFEND THIS THIRD PARTY CLAIM, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

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

Date

May 8th, 2015

Issued by


Local registrar

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

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

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

CLAIM

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

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

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

Parties

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

Claim for Contribution and Indemnity and Loss of Profit

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

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

Claim on Unpaid Invoices

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

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

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

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

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

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

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

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

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

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May 8, 2015

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Plaintiff by Third Party Claim

SEARS CANADA INC.
Plaintiff

-and- CONSUMER INTELLIGENCE GROUP INC.
Defendant

-and- DGA NORTH AMERICAN INC. et al.
Third Parties

Court File No. CV-15-522235

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ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

THIRD PARTY CLAIM

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Lawyers for the Defendant

This is Exhibit "G" referred to in the Affidavit of Michelle Pham
sworn March 28, 2018



Commissioner for Taking Affidavits (or as may be)

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

History Prior to Involvement of Moore Canada

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

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

Problems following the hiring of Moore Canada to Print the Inserts

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

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

CIG's Breach of Contract and Negligence

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

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

COUNTERCLAIM

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

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

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

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

Dated: August 18 2015

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

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceedings Commenced at TORONTO

**THIRD PARTY DEFENCE AND
COUNTER CLAIM**

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

This is Exhibit "H" referred to in the Affidavit of Michelle Pham
sworn March 28, 2018

A handwritten signature in blue ink, consisting of stylized cursive letters, positioned above a horizontal line.

Commissioner for Taking Affidavits (or as may be)

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

SEARS CANADA INC.

Plaintiff

- and -

CONSUMER INTELLIGENCE GROUP INC.

Defendant

- and -

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

Third Parties

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

May 6, 2016

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R.R. Donnelly & Sons Company

SEARS CANADA INC.
Plaintiff

-and- CONSUMER INTELLIGENCE GROUP INC.
Defendant

-and- DGA NORTH AMERICAN INC. et al.
Third Parties

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

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

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

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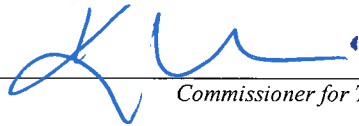
Ian P. Katchin (LSUC#: 53559V)

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Lawyer for the Defendant

This is Exhibit "I" referred to in the Affidavit of Michelle Pham
sworn March 28, 2018

A handwritten signature in blue ink, consisting of stylized cursive letters, positioned above a horizontal line.

Commissioner for Taking Affidavits (or as may be)

Court File No. CV-15-522235

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ONTARIO
SUPERIOR COURT OF JUSTICE

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D'ÉTAT DES LIEUX
FAIT À TORONTO LE
20 JUILLET 2015
REGISTRAR

THIS IS TO CERTIFY THAT THIS
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OF JUSTICE AT TORONTO, IS A
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DATED AT TORONTO THIS
DAY OF JULY 2015
REGISTRAR

SEARS CANADA INC.,

Plaintiff/
Defendant by Counterclaim

- and -

CONSUMER INTELLIGENCE GROUP INC.,

Defendant/
Plaintiff by Counterclaim

- and -

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



THIRD PARTY CLAIM

TO THE THIRD PARTY

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

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

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

-2-

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

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

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

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

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

Date: June 5, 2015.

Issued by:

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

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

CLAIM

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

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

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

The Parties

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

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

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

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

Background

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

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

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

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

-5-

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

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

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

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

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

-6-

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

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

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

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

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

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

-7-

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

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

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

-5-
June 2, 2015

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

SEARS CANADA INC.
Plaintiff / Defendant by Counterclaim

-and-

CONSUMER INTELLIGENCE GROUP INC.
Defendant / Plaintiff by Counterclaim

Court File No. CV-15-522235

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Leigh Sears	PER: [Signature]
SOLICITOR FOR THE AVOCAT POUR LE	Canada

ONTARIO
SUPERIOR COURT OF JUSTICE

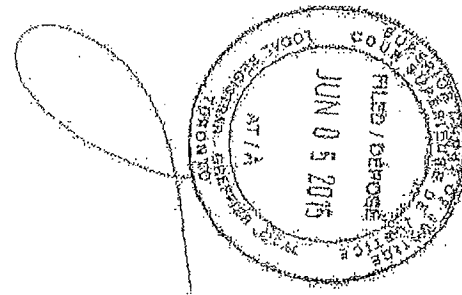
PROCEEDING COMMENCED AT TORONTO

THIRD PARTY CLAIM

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



This is Exhibit "J" referred to in the Affidavit of Michelle Pham
sworn March 28, 2018



Commissioner for Taking Affidavits (or as may be)

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

SEARS CANADA INC.

Plaintiff
(Defendant by Counterclaim)

- and -

CONSUMER INTELLIGENCE GROUP INC.

Defendant
(Plaintiff by Counterclaim)

- and -

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

Third Parties

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

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

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

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

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

RRD and Moore Canada

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RRD Not Liable to Sears

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

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

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

Sears has Sustained No Damages

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

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

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

May 5, 2016

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SEARS CANADA INC. -and-
Plaintiff

CONSUMER INTELLIGENCE
GROUP INC.
Defendant

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

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

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Lawyers for the third party, RR Donnelley & Sons
Company

This is Exhibit "K" referred to in the Affidavit of Michelle Pham
sworn March 28, 2018



Commissioner for Taking Affidavits (or as may be)

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

SEARS CANADA INC.

Plaintiff
(Defendant by Counterclaim)

- and -

CONSUMER INTELLIGENCE GROUP INC.

Defendant
(Plaintiff by Counterclaim)

- and -

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

Third Parties

- and -

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

Forth Parties

FOURTH PARY CLAIM

TO THE FOURTH PARTIES:

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

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



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

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

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

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

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

27 AS

Date: April 26 2016

[Signature]

Issued by:

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

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

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

CLAIM

1. **THE THIRD PARTY DGA FULFILLMENT SERVICES INC. ("DGAFSI") CLAIMS AGAINST THE FOURTH PARTIES:**
 - (a) Contribution in respect of any amounts that DGAFSI may be found liable to pay to the defendant Consumer Intelligence Group Inc. ("CIG") in the third party action herein;
 - (b) damages for breach of contract in the amount of \$3,475,000.00;
 - (c) damages for negligence in the amount of \$3,475,000.00;
 - (d) punitive and exemplary damages in the amount of \$500,000.00;
 - (e) pre-judgment and post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C.43
 - (f) its costs of this action on a substantial indemnity basis; and
 - (g) such further and other relief as this Honourable Court may deem just.
2. DGAFSI repeats and relies upon the statements set out in the third party defence and counterclaim of DGA North American Inc. and DGA Fulfillment Services Inc.
3. DGAFSI is an Ontario corporation.
4. R.R. Donnelley and Sons Company ("RRD") is a Delaware corporation with an office located in Mississauga Ontario and an insertion facility located in Toronto, Ontario. RRD is in the business of, among other things, inserting advertising material into envelopes and other packages to be mailed to various lists of recipients.

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

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

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

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

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

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

Date: April 26 2016

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

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceedings Commenced at TORONTO

FOURTH PARTY CLAIM

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*Lawyers for the Third Parties, DGA North
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Apr. 28, 2016 2:38PM Brannan Meiklejohn Barristers No. 4095 P. 12

This is Exhibit "L" referred to in the Affidavit of Michelle Pham
sworn March 28, 2018



Commissioner for Taking Affidavits (or as may be)

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

SEARS CANADA INC.

Plaintiff
(Defendant by Counterclaim)

- and -

CONSUMER INTELLIGENCE GROUP INC.

Defendant
(Plaintiff by Counterclaim)

- and -

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

Third Parties

- and -

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

Fourth Parties

AND BETWEEN:

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

Plaintiffs by Counterclaim

- and -

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

Defendants to the Counterclaim

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

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

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

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

RRD and Moore Canada

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Printing of DGA's Inserts and Inserts

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

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

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

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

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

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

Universal Printing

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

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

Discussions with Andrew Varga

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

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

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

June Site Visit and Audit Requests

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

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

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

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

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

Insertion of Flatware Inserts for Sears

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

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

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

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

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

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

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

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

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

RRD and/or Moore Canada Not Liable to DGA

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

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

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

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

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

DGA has Sustained No Damages

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

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

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

COUNTERCLAIM

49. Moore Canada claims against DGA for the following:

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

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

50. RRD claims against DGA for the following:

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

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

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

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

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

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

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

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

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

Claim for Payment from DGA

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

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

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

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

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

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

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

Claims for contribution and indemnity in Sears Third Party Claim

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

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

Claims for contribution and indemnity in DGA Fourth Party Claim

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

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

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

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

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

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

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

June 13, 2016

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Plaintiff

Defendant

Third Parties

Fourth Party

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**FOURTH PARTY DEFENCE
AND COUNTERCLAIM**

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This is Exhibit "M" referred to in the Affidavit of Michelle Pham
sworn March 28, 2018



Commissioner for Taking Affidavits (or as may be)

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

SEARS CANADA INC.

Plaintiff
(Defendant by Counterclaim)

- and -

CONSUMER INTELLIGENCE GROUP INC.

Defendant
(Plaintiff by Counterclaim)

- and -

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

Third Parties

- and -

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

Fourth Parties

AND BETWEEN:

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

Plaintiffs by Counterclaim

- and -

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

Defendants to the Counterclaim

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

1. The defendant to the counterclaim, Consumer Intelligence Group Inc. ("CiG") admits the allegations set out in paragraph 4 of the Fourth Party Defence and Counterclaim of R.R. Donnelley & Sons Company ("RRD") and Moore Canada Corporation ("Moore").

2. Except to the extent expressly admitted to herein, CiG denies each and every other allegation contained in the Fourth Party Defence and Counterclaim of RRD and Moore, and in particular denies that RRD and/or Moore are entitled to the relief claimed against CiG in paragraph 51 of the Fourth Party Defence and Counterclaim.

3. CiG repeats, adopts and relies upon the statements and allegations set out in its Statement of Defence, and Reply and Defence to Counterclaim in the main action herein, its Third Party Claim, and Reply and Defence to Counterclaim in the third party action bearing Court File No. CV-15-522235-00A1, and its Fourth Party Claim bearing Court File No. CV-15-522235-00B2. Any and all capitalized terms used herein have the same meaning ascribed to them in the above-noted pleadings.

4. For the purposes of this Reply and Defence to Counterclaim only, CiG pleads and relies upon the allegations made by RRD and Moore against DGA and Sears in RRD and Moore's Fourth Party Defence and Counterclaim bearing Court File No. CV-15-522235-00B1.

5. CiG was retained by DGA in or about February 2014 to provide broker services in connection with purchasing media space in the Sears Programs. Both DGA NA and DGA FS retained CiG. Further, both DGA NA and DGA FS requested and received the full benefit of CiG's services, and both are responsible for paying CiG for its services.

6. CiG's contractual obligations to DGA were restricted to purchasing media space with Sears on behalf of DGA. At no time was CiG retained to provide services relating to, and at no time did it agree to be responsible for or have any duty to advise DGA on, the actual printing or insertion of DGA's inserts into the Sears Programs.

7. To the contrary, DGA was responsible for making its own arrangements for the printing and insertion of its inserts, and in this regard DGA retained Moore and/or RRD to print DGA's inserts and to ensure the inserts were properly inserted into the Sears Programs.

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

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

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

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

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

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

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

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

15. To date, and despite repeated requests, Sears has failed to produce or otherwise disclose further details regarding the waterfall matrix to CiG.
16. Then, in October 2014, Sears for the first time suggested that the errors in the insertions were being caused in part by the fact that DGA's inserts were below the minimum caliper (thickness) and that going forward all inserts would have to meet minimum caliper requirements. No such minimum caliper requirements had ever been communicated by Sears to CiG or were required under CiG's contract with Sears, and CiG had no reason to have expected there were any such requirements.
17. To the extent a minimum caliper was required for DGA's inserts, RRD and Moore were aware or should have been aware of this requirement and owed a duty to DGA to advise it of these requirements in a timely fashion and to ensure that DGA's inserts met these requirements and were printed and inserted into the Sears Programs properly.
18. CiG booked media space for DGA with Sears in accordance with the terms of its agreements with DGA and in accordance with industry standards and guidelines, and fulfilled all of its obligations to DGA. CiG's obligation was simply to book the media space and acting as a broker between Sears and DGA, and it fulfilled all of its obligations in this regard.
19. At all material times, CiG complied with any and all instructions provided by DGA and conveyed those instructions to Sears as and when required. To the extent that there were any errors in completing the printing and insertion properly and in accordance with the instructions of DGA, such errors were caused by and were the responsibility of Sears, RRD, Moore and/or DGA, or any one of them, not CiG.
20. DGA retained and relied upon RRD and Moore, and not CiG, to audit and oversee the insertion program.
21. Sears, together with DGA, RRD and Moore, were responsible for, or otherwise performed, all printing, production, insertion and packaging of Sears' merchandise catalogues and MasterCard statements, including the Sears Programs.
22. With respect to the allegations in paragraph 27 of the Fourth Party Defence and Counterclaim of RRD and Moore, subsequent to RRD's refusal to accept inserts printed by Universal Printing, Andrew Varga ("Varga"), a representative of RRD, advised both CiG and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

July 4, 2016

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and DGA Fulfillment Services Inc.

SEARS CANADA INC.
Plaintiff

-and- CONSUMER INTELLIGENCE GROUP INC.
Defendant

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

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

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

FOGLER, RUBINOFF LLP

Lawyers

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Intelligence Group Inc.

This is Exhibit "N" referred to in the Affidavit of Michelle Pham
sworn March 28, 2018

A handwritten signature in blue ink, consisting of stylized cursive letters, positioned above a horizontal line.

Commissioner for Taking Affidavits (or as may be)

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN :

SEARS CANADA INC.

Plaintiff
(Defendant by Counterclaim)

- and -

CONSUMER INTELLIGENCE GROUP INC.

Defendant
(Plaintiff by Counterclaim)

- and -

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

Third Parties

- and -

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

Fourth Parties

AND BETWEEN :

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

Plaintiffs by Counterclaim

- and -

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

Defendants to the Counterclaim

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

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

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

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

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

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

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

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

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

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

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

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

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

July 13, 2016

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SEARS CANADA INC.
Plaintiff / Defendant by Counterclaim

-and-

CC

NTELLIGENCE GROUP INC.
Defendant / Plaintiff by Counterclaim

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

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

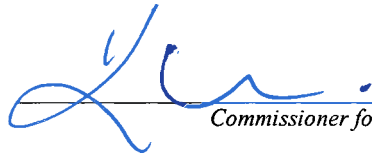
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Lawyer for the Plaintiff,
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Lawyers for the Plaintiff and Defendant by Counterclaim,
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This is Exhibit "O" referred to in the Affidavit of Michelle Pham
sworn March 28, 2018

A handwritten signature in blue ink, consisting of stylized cursive letters, positioned above a horizontal line.

Commissioner for Taking Affidavits (or as may be)

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN :

SEARS CANADA INC.

Plaintiff
(Defendant by Counterclaim)

- and -

CONSUMER INTELLIGENCE GROUP INC.

Defendant
(Plaintiff by Counterclaim)

- and -

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

Third Parties

- and -

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

Fourth Parties

AND BETWEEN :

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

Plaintiffs by Counterclaim

- and -

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

Defendants to the Counterclaim

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

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

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

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

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

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

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

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

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

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

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

CROSSCLAIM

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

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

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

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

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

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

July 4, 2016

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Canada Corporation

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SEARS CANADA INC.
Plaintiff / Defendant by Counterclaim

-and-

CC

NTELLIGENCE GROUP INC.
Defendant / Plaintiff by Counterclaim

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

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

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

This is Exhibit "P" referred to in the Affidavit of Michelle Pham
sworn March 28, 2018

A handwritten signature in blue ink, consisting of stylized, cursive letters that appear to be 'K' and 'L' followed by a period.

Commissioner for Taking Affidavits (or as may be)

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

SEARS CANADA INC.

Plaintiff
(Defendant by Counterclaim)

- and -

CONSUMER INTELLIGENCE GROUP INC.

Defendant
(Plaintiff by Counterclaim)

- and -

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

Third Parties

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

Fourth Parties

AND BETWEEN:

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

Plaintiffs by Counterclaim

-and-

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

Defendants to the Counterclaim

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

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

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

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

Dated: November 2 2016

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Defendants by Counterclaim
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DGA Fulfillment Services Inc.*

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*Lawyers for the Defendant/Plaintiff by Counterclaim
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*Lawyers for the Forth Parties and Plaintiffs by Counterclaim
R.R. Donnelley & Sons Company and Moore Canada Corporation*

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceedings Commenced at **TORONTO**

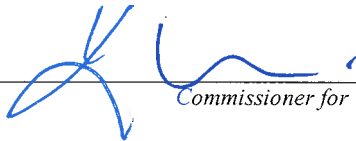
DEFENCE OF DGA NORTH AMERICAN
TO THE CROSSCLAIM OF SEARS CANADA

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

This is Exhibit "Q" referred to in the Affidavit of Michelle Pham
sworn March 28, 2018



Commissioner for Taking Affidavits (or as may be)

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

SEARS CANADA INC.

Plaintiff

- and -

CONSUMER INTELLIGENCE GROUP INC.

Defendant

- and -

DGA NORTH AMERICAN INC. and DGA FULFILLMENT SERVICES INC.

Third Parties

- and -

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

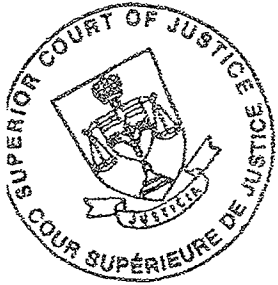
Fourth Parties

FOURTH PARTY CLAIM

TO THE FOURTH PARTIES

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

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



- 2 -

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

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

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

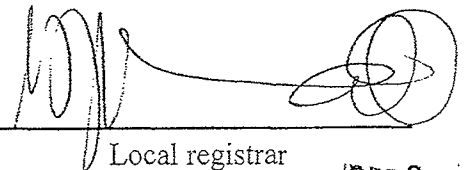
Instead of serving and filing a fourth party defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your fourth party defence.

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

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

Date May 17th, 2016

Issued by



Local registrar

S. Chandrasekhar
Registrar

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

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

or

35 West Wacker Drive
Chicago, IL, USA 60601

- 3 -

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

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

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CLAIM

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

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

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

Parties

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

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

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

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

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

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

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

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

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

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

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

Warranties

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

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

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

Particulars of Negligence

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

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

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

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

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

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

Service Outside of Ontario

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

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

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

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

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

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

May 16, 2016

FOGLER, RUBINOFF LLP

Lawyers

77 King Street West

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Fax: 416.941.8852

Lawyers for the Defendant/

Plaintiff by Fourth Party Claim

SEARS CANADA
INC.

and

CONSUMER
INTELLIGENCE
GROUP INC.
Defendant.

and

DGA NORTH
AMERICAN INC.
et al.
Third Parties

and

RR DONNELLEY
& SONS
COMPANY et al
Fourth Parties

Court File No: CV-15-522235 OOB

Plaintiff

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

FOURTH PARTY CLAIM

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Lawyers for the Defendant

This is Exhibit "R" referred to in the Affidavit of Michelle Pham sworn March 28, 2018



Commissioner for Taking Affidavits (or as may be)

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN :

SEARS CANADA INC.

Plaintiff

- and -

CONSUMER INTELLIGENCE GROUP INC.

Defendant

- and -

DGA NORTH AMERICAN INC. and DGA FULFILLMENT SERVICES INC.

Third Parties

- and -

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

Fourth Parties

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

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

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

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

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

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

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

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

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

CROSSCLAIM

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

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

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

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

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

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

June 28, 2016

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

SEARS CANADA INC.
Plaintiff / Defendant by Counterclaim

-and-

CC

NTELLIGENCE GROUP INC.
Defendant / Plaintiff by Counterclaim

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

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

LEIGH A. LAMPERT (LSUC # 51680H)

Senior Corporate Counsel
Sears Canada Inc.
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Toronto, ON M5B 2C3

Tel: 416-941-4411
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Lawyers for the Plaintiff and Fourth Party,
Sears Canada Inc.

This is Exhibit "S" referred to in the Affidavit of Michelle Pham
sworn March 28, 2018

A handwritten signature in blue ink, appearing to be 'K. M.', is written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

SEARS CANADA INC.

Plaintiff

- and -

CONSUMER INTELLIGENCE GROUP INC.

Defendant

- and -

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

Third Parties

- and -

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

Fourth Parties

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

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

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

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

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

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

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

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

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

RRD and Moore Canada

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Paragraph 22 of CIG's Fourth Party Claim

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

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

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

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

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

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

RRD and/or Moore Canada Not Liable to CIG

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

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

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

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

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

DGA has Sustained No Damages

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

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

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

CROSSCLAIM

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

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

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

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

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

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

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

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

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

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

July 8, 2016

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

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

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

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

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

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

Lawyers for the Defendant/
Plaintiff by Fourth Party

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

Gordon A. Meiklejohn (21042Q)

Tel: 416.926.3797
Fax: 416.926.3712

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

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

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

Lawyer for the plaintiff Sears Canada Inc.

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

Plaintiff

Defendant

Third Parties

Fourth Party

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

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

BLAKE, CASSELS & GRAYDON LLP

Barristers & Solicitors

199 Bay Street

Suite 4000, Commerce Court West

Toronto ON M5L 1A9

Rahat Godil LSUC #54577F

Tel: 416-863-4008

rahat.godil@blakes.com

Kaley Pulfer LSUC #58413T

Tel: 416-863-2756

kaley.pulfer@blakes.com

Fax: 416.863.2653

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

This is Exhibit "T" referred to in the Affidavit of Michelle Pham
sworn March 28, 2018

A handwritten signature in blue ink, consisting of a stylized 'K' followed by a series of loops and a final flourish.

Commissioner for Taking Affidavits (or as may be)



BRANNAN MEIKLEJOHN
BARRISTERS

**TELEFACSIMILE
TRANSMISSION COVER PAGE**

TO: Rahat Godil
BLAKE, CASSELS & GRAYDON LLP (416) 863-2653
AND TO: Ian P. Katchin (416) 941-8852
FOGLER RUBINOFF LLP
AND TO: Jayson W. Thomas (647) 723-7431
THOMAS LAW P.C.C

FROM: Gordon A. Meiklejohn
RE: DGA et al ats Consumer Intelligence Group Inc.
DATE Wednesday, November 02, 2016
PAGES: 13 (Including cover page)

MESSAGE:

NOTES: Service by facsimile transmission pursuant to Rule 16.05 of the *Rules of Civil Procedure*

URGENT

RETURN TELEFAX: 416 926-3712

In the event the complete transmission has not been received please telephone Nordence Dinis 416 926-3797 ext. 220

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Rosedale Square, 1055 Yonge Street, Suite 200, Toronto, Ontario, M4W 2L2
Tel: 416 926 3797 | Fax: 416 926 3712



**BRANNAN MEIKLEJOHN
BARRISTERS**

*Gordon A. Meiklejohn
416 926-3797 ext. 225
gam@bmbarristers.com*

BY FAX ONLY

November 2 2016

Mr. Ian P. Katchin
FOGLER RUBINOFF LLP
Lawyers
77 King Street West
Suite 3000, P.O. Box 95
TD Centre North Tower
Toronto, Ontario M5K 1G8

Mr. Jayson W. Thomas
THOMAS LAW P.C.
10 King Street E., Suite 1400
Toronto, Ontario M5C 1C3

Ms. Rahat Godil
BLAKE, CASSELS & GRAYDON LLP
Barristers & Solicitors
190 Bay Street, Suite 4000
Commerce Court West
Toronto, Ontario M5L 1A9

Dear Counsel:

Re: DGA ats Consumer Intelligence Group Inc.

In reviewing my file I note I did not deliver a defence to the Crossclaim raised by Sears in its defence to the Counterclaim of R.R. Donnelly and Moore.

Our clients defence is attached using the same style of cause Mr. Law did.

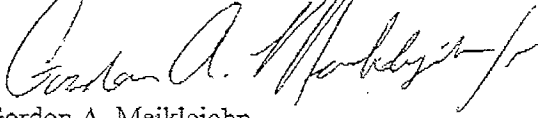
I would like to move this matter along and to that end I enclose a rough draft of a Discovery Plan.

Would each of you provide me with your input so we can finalize it, exchange Affidavits of Documents and schedule Examinations for Discovery.

Rosedale Square, 1055 Yonge Street, Suite 200, Toronto, Ontario M4W 2L2
Tel: 416 926 3797 | Fax: 416 926 3712

I look forward to your responses.

Yours very truly,
BRANNAN MEIKLEJOHN



Gordon A. Meiklejohn

GAM/nd

Attachments

c. client

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

SEARS CANADA INC.

Plaintiff
(Defendant by Counterclaim)

- and -

CONSUMER INTELLIGENCE GROUP INC.

Defendant
(Plaintiff by Counterclaim)

- and -

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

Third Parties

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

Fourth Parties

AND BETWEEN:

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

Plaintiffs by Counterclaim

-and-

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

Defendants to the Counterclaim

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

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

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

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

Dated: November 2 2016

BRANNAN MEIKLEJOHN
Barristers
Rosedale Square
1055 Yonge Street, Suite 200
Toronto, Ontario M4W 2L2

Gordon A. Meiklejohn
LSUC # 21042Q
Gina Saccoccio Brannan, Q.C.
LSUC # 20862F

Tel: (416) 926-3797
Fax: (416) 926-3712

*Lawyers for the Third Parties and
Defendants by Counterclaim
DGA North American Inc. and
DGA Fulfillment Services Inc.*

TO: FOGLER, RUBINOFF LLP
Lawyers
77 King Street West
Suite 3000, P.O. Box 95
Toronto Dominion Centre
Toronto, ON M5K 1G8
D. Brent McPherson (LSUC #37214K)
Tel: (416) 365-3730
Fax: (416) 865-7048

Ian P. Katchin (LSUC #53559V)
Tel: (416) 864-7613
Fax: (416) 865-7048

*Lawyers for the Defendant/Plaintiff by Counterclaim
Consumer Intelligence Group Inc.*

AND TO: THOMAS LAW P.C.
10 King Street East,
Suite 1400
Toronto, ON M5C 1C3

Jayson W. Thomas (LSUC #55394N)
Tel: (416) 647-347-5450
Fax: (416) 647-723-7431

*Lawyer for the Plaintiff and Defendant by
Counterclaim Sears Canada Inc.*

AND TO: BLAKE, CASSELS & GRAYDON LLP
Barristers & Solicitors
199 Bay Street
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Toronto, ON M5L 1A9

Rahat Godil (LSUC #54577F)
Tel: (416) 863-4009
Fax: (416) 863-2653

*Lawyers for the Forth Parties and Plaintiffs by Counterclaim
R.R. Donnelley & Sons Company and Moore Canada Corporation*

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceedings Commenced at TORONTO

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

BRANNAN MEIKLEJOHN
Barristers
Rosedale Square,
1055 Yonge Street, Suite 200
Toronto, Ontario M4W 2L2

Gordon A. Meiklejohn (21042Q)
Gina Saccoccio Brannan, Q.C. (20862F)
Tel. No. 416-926-3797
Fax No. 416-926-3712

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

Nov. 2, 2016 12:32PM

Brannan Meiklejohn Barristers

No. 4563 P. 7/13

2108

Court File No.: CV-15-522225

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

SEARS CANADA INC.

Plaintiff

- and -

CONSUMER INTELLIGENCE GROUP INC.

Defendant

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

SEARS CANADA INC.

Plaintiff
(Defendant by Counterclaim)

- and -

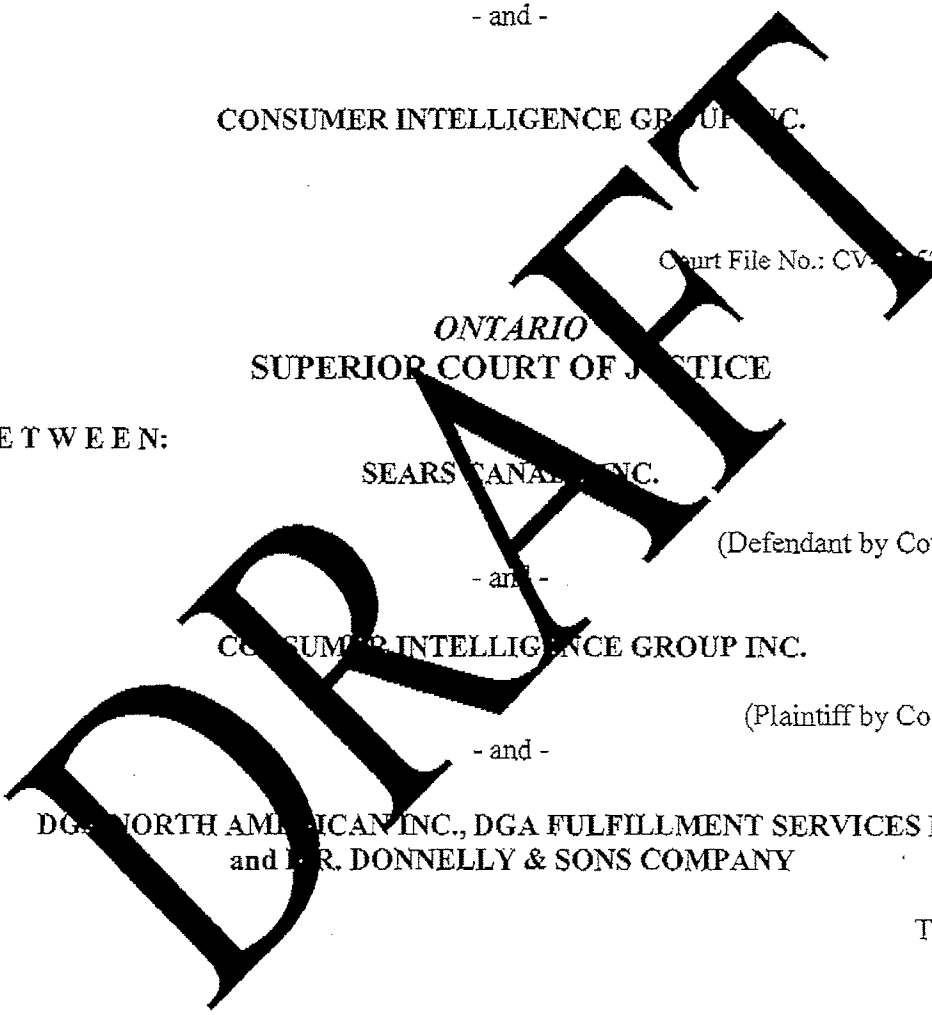
CONSUMER INTELLIGENCE GROUP INC.

Defendant
(Plaintiff by Counterclaim)

- and -

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

Third Parties



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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

SEARS CANADA INC.

Plaintiff
(Defendant by Counterclaim)

- and -

CONSUMER INTELLIGENCE GROUP INC.

Defendant
(Plaintiff by Counterclaim)

- and -

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

Third Parties

- and -

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

Forth Parties

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

SEARS CANADA INC.

Plaintiff

- and -

CONSUMER INTELLIGENCE GROUP INC.

Defendant

- and -

DRAFT

DGA NORTH AMERICAN INC., DGA FULFILLMENT SERVICES INC.

Third Parties

- and -

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

Forth Parties

DISCOVERY PLAN

THE PARTIES BY THEIR RESPECTIVE LAWYERS agree to the following Discovery Plan:

1. Scope of Documentary Discovery:

The parties shall produce every document that is relevant to any matter in issue raised in the pleadings and that is in their possession, power or control for which privilege is not being claimed.

2. Affidavit of Documents

(a) **Delivery Deadline:** The parties shall serve a sworn Affidavit of Documents by January 31 2017.

(b) **Format of the Documentary Production:** The parties will delivery paper copies of the documents referred to in Schedule A to their respective Affidavits of Documents, tabbed and indexed at the time of the delivery of the Affidavits of Document on or before January 31 2017.

(c) **Costs of Documentary Production:** The reasonable costs as set out in a Disbursement Invoice, of photocopying productions for the other party shall be paid by the party receiving the productions

3. **Conduct of Oral Discovery:**

The plaintiff will make himself available, a representative of the defendant will make himself/herself available and the Third Parties will make themselves available for oral examinations for discovery.

The parties agree that no more than 5 hours is required by each party. The Parties agree that oral examinations for will be completed by June 30, 2017.

4. **Names of Persons Intended to be Produced for Oral Examination for Discovery:**

Party	Person Produced	Length	Location
The Plaintiff	Representative of Sears Canada Inc.	No more than 5 hours	Toronto
The Defendant	Representative of Consumer Intelligence Group Inc.		
Third Party	Representative of DGA North America and USA Fulfillment Services	No more than 5 hours	Toronto
Third Party	Representative of R.R. Connelly & Sons Company	No more than 5 hours	Toronto
Fourth Party	Representative of Moore Canada Corporation	No more than 5 hours	Toronto

5. **Scope of Oral Discovery:**

Each party shall answer all oral discovery questions that are relevant to any matter in issue raised in the pleadings or are made relevant by Rule 31.06 of the *Rules of Civil Procedure, R.R.O. 1990, Reg. 194, as amended*.

6. **Motions Arising from Examinations for Discovery:**

The parties agree that any Motions arising from the conduct of the Examinations for Discovery are to be completed (subject to the Court's timetable) by July 31 2017.

7. **Amendments to the Discovery Plan:**

The parties acknowledge that, in the event additional information becomes available through the course of the action, it may become apparent that:

- (a) it is impracticable or impossible for a party to comply with the terms of this Discovery Plan, or to do so in a time-efficient or cost-efficient manner; or
- (b) further steps beyond those set out in the Discovery Plan are required in order for a party to obtain access to relevant documents in the action;

the parties agree to negotiate in good faith with respect to any amendments to the Discovery Plan requested by a party on this basis, and to seek the assistance of the Court in appropriate circumstances in order to resolve disagreements between the parties.

DATED AT TORONTO THIS NOVEMBER 2016

BRANNAN MEIKLEJOHN
 Per: Gordon A. Meiklejohn
Lawyers for the Third Parties
DGA North America Inc. and DGA Fulfillment Services Inc.

DATED AT TORONTO THIS NOVEMBER 2016

THOMAS LAW P.C.
 Per: Jayson W. Thomas
Lawyers for the Plaintiff/Defendant by Counterclaim,
Sears Canada Inc.

DATED AT TORONTO THIS NOVEMBER 2016

FOGLER, RUBINOFF LLP

Per: Ian P. Katchin

*Lawyers for Defendant/Plaintiff by Counterclaim,
Consumer Intelligence Company*

DATED AT TORONTO THIS NOVEMBER 2016

BLAKE, CASSELS & GRAYDON LLP

Per: Rahat Godil

*Lawyers for the Forth Parties and Plaintiffs by Counterclaim
R.R. Donnelley & Sons Company and The Canada Corporation*

DRAFT

This is Exhibit "U" referred to in the Affidavit of Michelle Pham
sworn March 28, 2018



Commissioner for Taking Affidavits (or as may be)

Pham, Michelle

From: Jayson Thomas <jthomas@toronto-law.com>
Sent: Saturday, June 24, 2017 7:43 AM
To: Katchin, Ian P.; 'Gordon A. Meiklejohn'; GODIL, RAHAT
Cc: DIMATTEO, CHRISTOPHER; Pham, Michelle
Subject: Re: CIG ats Sears

Dear Counsel,

As you are now likely aware, an initial order was issued this week granting my client certain protections under the CCAA, including a stay of any proceedings against it. I have yet to hear from the receiver as to its intentions with respect to Sears' action, which led to the counterclaim and various third/fourth party claims that followed. However, in light of the stay, I would suggest that the examination dates be vacated. I will follow up with you once I have further information.

Best,

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

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

On 2017-06-16, 2:07 PM, "Katchin, Ian P." <ikatchin@foglers.com> wrote:

>Correct.

>

>Ian

>

>Ian P. Katchin

>T 416.864.7613

>

>

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

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

>Sent: Friday, June 16, 2017 2:01 PM

>To: Katchin, Ian P. <ikatchin@foglers.com>; Jayson Thomas

><jthomas@toronto-law.com>; GODIL, RAHAT <RAHAT.GODIL@blakes.com>
>Cc: DIMATTEO, CHRISTOPHER <CHRISTOPHER.DIMATTEO@blakes.com>; Pham,
>Michelle <mpham@foglers.com>
>Subject: RE: CIG ats Sears

>
>Thanks Ian.

>
>So its Moore on the 11th, Sears on the 12th, DGA on the 13th, CIG on
>the 25th and Donnelley on the 26th.

>
>
>Gordon A. Meiklejohn

>
>Rosedale Square, 1055 Yonge Street, Suite 200 Toronto, Ontario M4W 2L2
>Tel. 416.926.3797 Ext 225; Fax 416.926.3712

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

>
>-----Original Message-----
>From: Katchin, Ian P. [mailto:ikatchin@foglers.com]
>Sent: June-16-17 1:55 PM
>To: Gordon A. Meiklejohn; Jayson Thomas; GODIL, RAHAT
>Cc: DIMATTEO, CHRISTOPHER; Pham, Michelle
>Subject: RE: CIG ats Sears

>
>Counsel,
>
>I have Sears on the 12th and DGA on the 13th in my calendar. The other
>dates are fine.

>
>Ian
>
>Ian P. Katchin
>T 416.864.7613

>
>
>-----Original Message-----
>From: Gordon A. Meiklejohn [mailto:gam@bmbarristers.com]
>Sent: Friday, June 16, 2017 1:50 PM
>To: Jayson Thomas <jthomas@toronto-law.com>; GODIL, RAHAT
><RAHAT.GODIL@blakes.com>; Katchin, Ian P. <ikatchin@foglers.com>
>Cc: DIMATTEO, CHRISTOPHER <CHRISTOPHER.DIMATTEO@blakes.com>; Javed,
>Iqra <ijaved@foglers.com>
>Subject: RE: CIG ats Sears

>
>So to confirm, we will conduct discoveries in September at Victory
>downtown.

>

>We will do the Moore representative on September 11.
>
>I offered the Plaintiff's representative on any of September 13, 14 or
>15. Unless I missed it, a date has not been selected.
>
>CIG's representative will be done on September 25 and RR Donnelley's on
>September 26.
>
>Please advise as to the date for the Plaintiff's representative and I
>will then circulate a further amended discovery plan.
>
>
>Gordon A. Meiklejohn
>
>Rosedale Square, 1055 Yonge Street, Suite 200 Toronto, Ontario M4W 2L2
>Tel. 416.926.3797 Ext 225; Fax 416.926.3712
>
>NOTE: This e-mail message is intended only for the named recipient(s)
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>and/or exempt from disclosure under applicable law. If you have
>received this message in error, or are not the named recipient(s),
>please immediately notify the sender and delete this e-mail message.
>
>
>-----Original Message-----
>From: Jayson Thomas [mailto:jthomas@toronto-law.com]
>Sent: June-01-17 8:14 AM
>To: GODIL, RAHAT; Katchin, Ian P.
>Cc: Gordon A. Meiklejohn; DIMATTEO, CHRISTOPHER; Javed, Iqra
>Subject: Re: CIG ats Sears
>
>Fine with me as well.
>
>Jayson W. Thomas
>Tel. 647.347.5450
>Fax. 647.723.7431
>jthomas@toronto-law.com
>
>Thomas Law P.C.
>77 King Street West
>Suite 3000, P.O. Box 95
>TD Centre North Tower
>Toronto, ON M5K 1K7
>www.toronto-law.com
>
>
>
>
>
>
>
>
>On 2017-05-31, 10:23 PM, "GODIL, RAHAT" <RAHAT.GODIL@blakes.com> wrote:

>
 >>We are ok with Victory downtown.
 >>
 >>Regards,
 >>Rahat Godil
 >>
 >>On May 31, 2017, at 10:04 PM, Katchin, Ian P.
 >><ikatchin@foglers.com<mailto:ikatchin@foglers.com>> wrote:
 >>
 >>Counsel,
 >>
 >>Can we firm up a venue for the discoveries? I propose either Victory
 >>or Network downtown, or Network at Yonge & Sheppard.
 >>
 >>Please let me know what you prefer.
 >>
 >>Regards,
 >>
 >>Ian
 >>
 >>From: GODIL, RAHAT [mailto:RAHAT.GODIL@blakes.com]
 >>Sent: Wednesday, May 31, 2017 2:14 PM
 >>To: Katchin, Ian P.
 >><ikatchin@foglers.com<mailto:ikatchin@foglers.com>>;
 >>Gordon A. Meiklejohn
 >><gam@bmbarristers.com<mailto:gam@bmbarristers.com>>;
 >>Jayson Thomas
 >><jthomas@toronto-law.com<mailto:jthomas@toronto-law.com>>
 >>Cc: DIMATTEO, CHRISTOPHER
 >><CHRISTOPHER.DIMATTEO@blakes.com<mailto:CHRISTOPHER.DIMATTEO@blakes.co
 >>m
 >>>>; Javed, Iqra <ijaved@foglers.com<mailto:ijaved@foglers.com>>
 >>Subject: RE: CIG ats Sears
 >>
 >>Counsel,
 >>
 >>I think we can schedule RRD's witness for Sept 26. Assuming her
 >>recovery goes well, she can be available on that date.
 >>
 >>Thanks,
 >>Rahat
 >>
 >>Rahat Godil
 >>Partner
 >>rahат.godil@blakes.com<mailto:rahат.godil@blakes.com>
 >>Dir: 416 863 4009
 >>
 >>From: Katchin, Ian P. [mailto:ikatchin@foglers.com]
 >>Sent: Friday, May 26, 2017 10:34 AM
 >>To: GODIL, RAHAT; Gordon A. Meiklejohn; Jayson Thomas
 >>Cc: DIMATTEO, CHRISTOPHER; Javed, Iqra
 >>Subject: RE: CIG ats Sears

>>
 >>Counsel,
 >>
 >>Unfortunately, I am at a pre-trial conference on Sept. 27th. Does the
 >>26th work for everyone?
 >>
 >>Ian
 >>
 >>Ian P. Katchin
 >>T 416.864.7613
 >>From: GODIL, RAHAT [mailto:RAHAT.GODIL@blakes.com]
 >>Sent: Friday, May 26, 2017 10:17 AM
 >>To: Gordon A. Meiklejohn
 >><gam@bmbarristers.com<mailto:gam@bmbarristers.com>>; Katchin, Ian P.
 >><ikatchin@foglers.com<mailto:ikatchin@foglers.com>>; Jayson Thomas
 >><jthomas@toronto-law.com<mailto:jthomas@toronto-law.com>>
 >>Cc: DIMATTEO, CHRISTOPHER
 >><CHRISTOPHER.DIMATTEO@blakes.com<mailto:CHRISTOPHER.DIMATTEO@blakes.co
 >>m
 >>>>
 >>Subject: RE: CIG ats Sears
 >>
 >>Counsel,
 >>
 >>I have just heard back regarding the availability of RRD's
 >>representative. She can be available on September 27. She will need to
 >>travel and my understanding is that based on recovery time and the
 >>medical advice she has received she will not be able to travel the
 >>week of September 11. Please confirm if Sept 27 works for everyone.
 >>
 >>Thanks,
 >>Rahat
 >>
 >>Rahat Godil
 >>Partner
 >>rahata.godil@blakes.com<mailto:rahata.godil@blakes.com>
 >>Dir: 416 863 4009
 >>
 >>From: GODIL, RAHAT
 >>Sent: Wednesday, May 24, 2017 3:28 PM
 >>To: 'Gordon A. Meiklejohn'; Katchin, Ian P.; Jayson Thomas
 >>Cc: PULFER, KALEY; DIMATTEO, CHRISTOPHER
 >>Subject: RE: CIG ats Sears
 >>
 >>Counsel,
 >>
 >>As I have mentioned before, one of our representatives is available on
 >>September 11 or September 25. He will be Moore Canada's representative.
 >>RRD's representative has been in surgery so we are confirming her
 >>availability but expect she will be available during the weeks of
 >>September 11 or 25 (as previously indicated). I will follow up and
 >>confirm her availability as soon as possible.

>>
>>Thanks,
>>Rahat
>>
>>Rahat Godil
>>Partner
>>rahat.godil@blakes.com<mailto:rahat.godil@blakes.com>
>>Dir: 416 863 4009
>>
>>From: Gordon A. Meiklejohn [mailto:gam@bmbarristers.com]
>>Sent: Wednesday, May 24, 2017 3:12 PM
>>To: Katchin, Ian P.; Jayson Thomas; GODIL, RAHAT
>>Cc: PULFER, KALEY; DIMATTEO, CHRISTOPHER
>>Subject: RE: CIG ats Sears
>>
>>Would someone from Blakes please deal with this and confirm the dates
>>we are to discover your clients.
>>
>>Right now we have a client from Blakes scheduled for September 11 but
>>we do not know which one, Moore or RR Donnelley. Would someone confirm
>>who it is and on what date the other defendant's representative is
>>available to be discovered.
>>
>>On September 12 we have Sears.
>>
>>The plaintiffs' representative is available on any of September 13, 14
>>and 15.
>>
>>CiG is on September 25.
>>
>>I have suggested setting aside September 26 as a backup date.
>>
>>Again I ask that someone from Blakes confirm dates for us.
>>
>>
>>Gordon A. Meiklejohn
>><image001.png>
>>Rosedale Square, 1055 Yonge Street, Suite 200 Toronto, Ontario M4W 2L2
>>Tel. 416.926.3797 Ext 225; Fax 416.926.3712
>>NOTE: This e-mail message is intended only for the named recipient(s)
>>above and may contain information that is privileged, confidential
>>and/or exempt from disclosure under applicable law. If you have
>>received this message in error, or are not the named recipient(s),
>>please immediately notify the sender and delete this e-mail message.
>>
>>From: Katchin, Ian P. [mailto:ikatchin@foglers.com]
>>Sent: May-11-17 2:49 PM
>>To: Gordon A. Meiklejohn; Jayson Thomas; GODIL, RAHAT
>>Cc: PULFER, KALEY; DIMATTEO, CHRISTOPHER
>>Subject: RE: CIG ats Sears
>>
>>Sure - that works.

>>

>>Ian P. Katchin

>>T 416.864.7613

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

>>Sent: Thursday, May 11, 2017 2:47 PM

>>To: Katchin, Ian P.

>><ikatchin@foglers.com<mailto:ikatchin@foglers.com>>;

>>Jayson Thomas

>><jthomas@toronto-law.com<mailto:jthomas@toronto-law.com>>;

>>GODIL, RAHAT <RAHAT.GODIL@blakes.com<mailto:RAHAT.GODIL@blakes.com>>

>>Cc: PULFER, KALEY

>><KALEY.PULFER@blakes.com<mailto:KALEY.PULFER@blakes.com>>; DIMATTEO,

>>CHRISTOPHER

>><CHRISTOPHER.DIMATTEO@blakes.com<mailto:CHRISTOPHER.DIMATTEO@blakes.co

>>m

>>>>

>>Subject: RE: CIG ats Sears

>>

>>Fine with me. Do we set aside the 26th as the unplanned contingencies

>>date?

>>

>>

>>Gordon A. Meiklejohn

>><image001.png>

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

>>Tel. 416.926.3797 Ext 225; Fax 416.926.3712

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>>

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

>>Sent: May-11-17 2:36 PM

>>To: Gordon A. Meiklejohn; Jayscn Thomas; GODIL, RAHAT

>>Cc: PULFER, KALEY; DIMATTEO, CHRISTOPHER

>>Subject: RE: CIG ats Sears

>>

>>I propose Sept. 25th for CiG.

>>

>>Ian

>>

>>Ian P. Katchin

>>T 416.864.7613

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

>>Sent: Thursday, May 11, 2017 12:53 PM

>>To: Jayson Thomas

>><jthomas@toronto-law.com<mailto:jthomas@toronto-law.com>>; Katchin,

>>Ian P. <ikatchin@foglers.com<mailto:ikatchin@foglers.com>>; GODIL,

>>RAHAT <RAHAT.GODIL@blakes.com<mailto:RAHAT.GODIL@blakes.com>>

>>Cc: PULFER, KALEY

>><KALEY.PULFER@blakes.com<mailto:KALEY.PULFER@blakes.com>>; DIMATTEO,

>>CHRISTOPHER
>><CHRISTOPHER.DIMATTEO@blakes.com<mailto:CHRISTOPHER.DIMATTEO@blakes.co
>>m .
>>>>
>>Subject: RE: CIG ats Sears
>>
>>Sorry counsel. I note the weeks Ms. Godil is suggesting are the 11th
>>and the 25th.
>>
>>I therefore suggest keeping open Monday September 25 as the day to
>>deal unplanned contingencies.
>>
>>
>>Gordon A. Meiklejohn
>><image001.png>
>>Rosedale Square, 1055 Yonge Street, Suite 200 Toronto, Ontario M4W 2L2
>>Tel. 416.926.3797 Ext 225; Fax 416.926.3712
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>>please immediately notify the sender and delete this e-mail message.
>>
>>From: Gordon A. Meiklejohn
>>Sent: May-11-17 12:48 PM
>>To: 'Jayson Thomas'; Katchin, Ian P.; GODIL, RAHAT
>>Cc: PULFER, KALEY; DIMATTEO, CHRISTOPHER
>>Subject: RE: CIG ats Sears
>>
>>Those dates are fine.
>>
>>Ms. Godil would you please advise if it is the Moore representative
>>you are producing on September 11 and the date when the Donnelley
>>representative will be produced.
>>
>>My client is available on any of September 13, 14 or 15.
>>
>>Since we also need a date for Ian's client I suggest we keep open the
>>Monday of the following week as you have suggested for unplanned
>>contingencies.
>>
>>Please confirm.
>>
>>Gordon A. Meiklejohn
>><image001.png>
>>Rosedale Square, 1055 Yonge Street, Suite 200 Toronto, Ontario M4W 2L2
>>Tel. 416.926.3797 Ext 225; Fax 416.926.3712
>>NOTE: This e-mail message is intended only for the named recipient(s)
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>>and/or exempt from disclosure under applicable law. If you have
>>received this message in error, or are not the named recipient(s),
>>please immediately notify the sender and delete this e-mail message.

>>
>>From: Jayson Thomas [mailto:jthomas@toronto-law.com]
>>Sent: May-11-17 9:28 AM
>>To: Katchin, Ian P.; Gordon A. Meiklejohn; GODIL, RAHAT
>>Cc: PULFER, KALEY; DIMATTEO, CHRISTOPHER
>>Subject: Re: CIG ats Sears
>>
>>Further to my email below, my client and I are both available during
>>the weeks of September 11 and 25.
>>
>>It would be helpful to confirm a schedule now of who is to be examined
>>on particular dates so that the witnesses are not unnecessarily
>>holding dates. I will start with a proposal:
>>
>> 1. Moore's representative on September 11;
>> 2. my client's representative on September 12;
>> 3. Mr. Meiklejohn's client on September 13; and
>> 4. once we hear back from Ian, we can confirm when his client's
>>examination will occur (ideally on the 14th so that the 15th is left
>>open for unplanned contingencies).
>>Subject to Ian's confirmation, is everyone in agreement?
>>
>>Jayson W. Thomas
>>Tel. 647.347.5450
>>Fax. 647.723.7431
>>jthomas@toronto-law.com<mailto:jthomas@toronto-law.com>
>>
>>Thomas Law P.C.
>>77 King Street West
>>Suite 3000, P.O. Box 95
>>TD Centre North Tower
>>Toronto, ON M5K 1K7
>>www.toronto-law.com<http://www.toronto-law.com>
>>
>>
>>
>>From: Jayson Thomas
>><jthomas@toronto-law.com<mailto:jthomas@toronto-law.com>>
>>Date: Thursday, May 11, 2017 at 9:02 AM
>>To: "Katchin, Ian P."
>><ikatchin@foglers.com<mailto:ikatchin@foglers.com>>, "Gordon A.
>>Meiklejohn" <gam@bmbarristers.com<mailto:gam@bmbarristers.com>>,
>>"GODIL, RAHAT" <RAHAT.GODIL@blakes.com<mailto:RAHAT.GODIL@blakes.com>>
>>Cc: "PULFER, KALEY"
>><KALEY.PULFER@blakes.com<mailto:KALEY.PULFER@blakes.com>>, "DIMATTEO,
>>CHRISTOPHER"
>><CHRISTOPHER.DIMATTEO@blakes.com<mailto:CHRISTOPHER.DIMATTEO@blakes.co
>>m
>>>>
>>Subject: Re: CIG ats Sears
>>
>>i am available both weeks as well and will confirm my client's

>>availability shortly. To be clear: we are vacating the June dates
>>entirely?

>>

>>Jayson W. Thomas

>>Tel. 647.347.5450

>>Fax. 647.723.7431

>>jthomas@toronto-law.com<mailto:jthomas@toronto-law.com>

>>

>>Thomas Law P.C.

>>77 King Street West

>>Suite 3000, P.O. Box 95

>>TD Centre North Tower

>>Toronto, ON M5K 1K7

>>www.toronto-law.com<http://www.toronto-law.com>

>>

>>

>>

>>From: "Katchin, Ian P."

>><ikatchin@foglers.com<mailto:ikatchin@foglers.com>>

>>Date: Wednesday, May 10, 2017 at 9:10 PM

>>To: "'Gordon A. Meiklejohn'"

>><gam@bmbarristers.com<mailto:gam@bmbarristers.com>>, "GODIL, RAHAT"

>><RAHAT.GODIL@blakes.com<mailto:RAHAT.GODIL@blakes.com>>, Jayson Thomas

>><jthomas@toronto-law.com<mailto:jthomas@toronto-law.com>>

>>Cc: "PULFER, KALEY"

>><KALEY.PULFER@blakes.com<mailto:KALEY.PULFER@blakes.com>>, "DIMATTEO,

>>CHRISTOPHER"

>><CHRISTOPHER.DIMATTEO@blakes.com<mailto:CHRISTOPHER.DIMATTEO@blakes.co

>>m

>>>>

>>Subject: RE: CIG ats Sears

>>

>>Counsel,

>>

>>I am confirming my client's availability.

>>

>>I am available those weeks.

>>

>>Ian

>>

>>Ian P. Katchin

>>T 416.864.7613

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

>>Sent: Wednesday, May 10, 2017 7:01 PM

>>To: GODIL, RAHAT

>><RAHAT.GODIL@blakes.com<mailto:RAHAT.GODIL@blakes.com>>;

>>jthomas@toronto-law.com<mailto:jthomas@toronto-law.com>; Katchin, Ian P.

>><ikatchin@foglers.com<mailto:ikatchin@foglers.com>>

>>Cc: PULFER, KALEY

>><KALEY.PULFER@blakes.com<mailto:KALEY.PULFER@blakes.com>>; DIMATTEO,

>>CHRISTOPHER

>><CHRISTOPHER.DIMATTEO@blakes.com<mailto:CHRISTOPHER.DIMATTEO@blakes.co

>>m
>>>>
>>Subj: RE: CIG ats Sears
>>
>>I suggest we then schedule examinations now for the week of September 11.
>>
>>Messrs. Thomas and Katchin can you advise as to your availability and
>>your client's availability that week.
>>
>>
>>Gordon A. Meiklejohn
>><image001.png>
>>Rosedale Square, 1055 Yonge Street, Suite 200 Toronto, Ontario M4W 2L2
>>Tel. 416.926.3797 Ext 225; Fax 416.926.3712
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>>and/or exempt from disclosure under applicable law. If you have
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>>please immediately notify the sender and delete this e-mail message.
>>
>>From: GODIL, RAHAT [mailto:RAHAT.GODIL@blakes.com]
>>Sent: May-10-17 5:29 PM
>>To: Gordon A. Meiklejohn;
>>jthomas@toronto-law.com<mailto:jthomas@toronto-law.com>;
>>ikatchin@foglers.com<mailto:ikatchin@foglers.com>
>>Cc: PULFER, KALEY; DIMATTEO, CHRISTOPHER
>>Subject: RE: CIG ats Sears
>>
>>Counsel,
>>
>>One of our representatives is in surgery so we haven't been able to
>>confirm her availability but I wanted to get back to you. We expect
>>that she will be available during one of the weeks we mentioned before
>>(i.e.
>>weeks of Sept 11 and 25). We can also confirm that our other
>>representative is available during those weeks. Specifically, he is
>>available on September 11 and 25. If those dates don't work, I am
>>happy to canvass other dates during that period. Please confirm if
>>those weeks work for you and your clients so we can amend the
>>discovery plan accordingly.
>>
>>Thanks,
>>Rahat
>>
>>Rahat Godil
>>Partner
>>rahat.godil@blakes.com<mailto:rahat.godil@blakes.com>
>>Dir: 416 863 4009
>>
>>From: Gordon A. Meiklejohn [mailto:gam@bmbarristers.com]
>>Sent: Tuesday, May 02, 2017 1:38 PM
>>To: GODIL, RAHAT;

>>jthomas@toronto-law.com<mailto:jthomas@toronto-law.com>;
>>ikatchin@foglers.com<mailto:ikatchin@foglers.com>
>>Cc: PULFER, KALEY; DIMATTEO, CHRISTOPHER
>>Subject: RE: CIG ats Sears
>>
>>The plan contemplates amendments but your client has done absolutely
>>nothing to co-operate to advance the matter including not responding
>>to numerous requests to provide us with dates when their
>>representative is available to be discovered.
>>
>>I suggest we start with that in light of the difficulties we have
>>encountered in extracting a date from your office and then work
>>backwards.
>>
>>Please provide us now with dates when you and your client are
>>available for discoveries. We can then make the necessary amendments
>>to the agreed upon discovery plan.
>>
>>Gordon A. Meiklejohn
>><image002.png>
>>Rosedale Square, 1055 Yonge Street, Suite 200 Toronto, Ontario M4W 2L2
>>Tel. 416.926.3797 Ext 225; Fax 416.926.3712
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>>please immediately notify the sender and delete this e-mail message.
>>
>>From: GODIL, RAHAT [mailto:RAHAT.GODIL@blakes.com]
>>Sent: May-01-17 10:04 AM
>>To: Gordon A. Meiklejohn;
>>jthomas@toronto-law.com<mailto:jthomas@toronto-law.com>;
>>ikatchin@foglers.com<mailto:ikatchin@foglers.com>
>>Cc: PULFER, KALEY; DIMATTEO, CHRISTOPHER
>>Subject: RE: CIG ats Sears
>>
>>Counsel,
>>
>>We appreciate your email but unfortunately cannot proceed on the
>>current dates. My colleague agreed to the dates in the discovery plan
>>before we knew the volume of documents that need to be reviewed prior
>>to productions. We are working diligently and don't intend to be
>>unreasonable but do require a change to the timetable. The timetable
>>currently provides for oral discoveries to be completed by end of
>>August and we are simply requesting that deadline be extended by a few
>>weeks.
>>While this may cause some inconvenience (which we regret), there's no
>>prejudice to any of the parties in proceeding in this manner and
>>request that we agree on mutually agreeable dates in September as
>>proposed by my colleague. I note that the Discovery Plan contemplates
>>amendments in these circumstances.
>>

>>Best,
>>Rahat
>>
>>Rahat Godil
>>Partner
>>rahат.godil@blakes.com<mailto:rahат.godil@blakes.com>
>>Dir: 416 863 4009
>>
>>From: Gordon A. Meiklejohn [mailto:gam@bmbarristers.com]
>>Sent: Friday, April 28, 2017 5:06 PM
>>To: DE CARVALHO, CATHY;
>>jthomas@toronto-law.com<mailto:jthomas@toronto-law.com>;
>>ikatchin@foglers.com<mailto:ikatchin@foglers.com>
>>Cc: GODIL, RAHAT; PULFER, KALEY
>>Subject: RE: CIG ats Sears
>>
>>Thank you for your letter.
>>
>>We have agreed upon a discovery plan which included a timetable for
>>the delivery of affidavits of documents and discoveries in June not
>>September.
>>
>>I ask that you adhere to the discovery plan already agreed upon.
>>
>>
>>Gordon A. Meiklejohn
>><image002.png>
>>Rosedale Square, 1055 Yonge Street, Suite 200 Toronto, Ontario M4W 2L2
>>Tel. 416.926.3797 Ext 225; Fax 416.926.3712
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>>and/or exempt from disclosure under applicable law. If you have
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>>please immediately notify the sender and delete this e-mail message.
>>
>>From: DE CARVALHO, CATHY [mailto:CATHY.DECARVALHO@blakes.com]
>>Sent: April-28-17 1:08 PM
>>To: Gordon A. Meiklejohn;
>>jthomas@toronto-law.com<mailto:jthomas@toronto-law.com>;
>>ikatchin@foglers.com<mailto:ikatchin@foglers.com>
>>Cc: GODIL, RAHAT; PULFER, KALEY
>>Subject: CIG ats Sears
>>
>>Dear Counsel,
>>
>>Please see attached letter from Chris DiMatteo.
>>
>>Regards,
>>
>>Cathy de Carvalho
>>Legal Assistant to Paul Schabas
>>and Christopher DiMatteo

>>cathy.decarvalho@blakes.com<mailto:cathy.decarvalho@blakes.com>
 >>Dir: 416-863-3066
 >>
 >>
 >>_____

>>
 >>
 >><image003.gif>
 >>
 >>
 >>
 >>Blake, Cassels & Graydon LLP
 >>199 Bay Street, Suite 4000, Toronto ON M5L 1A9
 >>Tel: 416-863-2400 Fax: 416-863-2653
 >>blakes.com<http://www.blakes.com> |
 >>Twitter<http://twitter.com/BlakesLaw/> |
 >>Unsubscribe<http://www.blakes.com/English/Resources/Bulletins/Pages/un
 >>s
 >>ubs
 >>cribe.aspx>
 >>
 >>
 >>
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 >>Trade-mark Agents This email communication is CONFIDENTIAL AND LEGALLY
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 >>communication and any copy immediately. Thank you.
 >>
 >>
 >>
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 >>aviser par téléphone ou par courriel et en détruire toute copie. Merci.
 >>
 >>
 >>
 >>
 >>_____

>>
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 >>
 >>P Before printing, please consider the environment.
 >>_____

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>>

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>>

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>> _____

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>>without reading or copying it.

>>

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>>

>> _____

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>>without reading or copying it.

>>

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>>

>

>

> _____

>

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>without reading or copying it.

>

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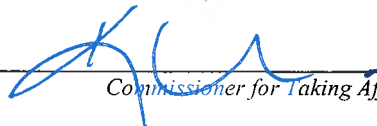
>

>This communication may be solicitor/client privileged and contains
>confidential information intended only for the persons to whom it is
>addressed. Any other distribution, copying or disclosure is strictly
>prohibited. If you have received this message in error, please notify
>us immediately and delete this message from your mail box and trash
>without reading or copying it.

>

>P Before printing, please consider the environment.

This is Exhibit "V" referred to in the Affidavit of Michelle Pham
sworn March 28, 2018



Commissioner for Taking Affidavits (or as may be)

Pham, Michelle

From: Jayson Thomas <jthomas@toronto-law.com>
Sent: Tuesday, June 27, 2017 5:04 PM
To: Gordon Meiklejohn; GODIL, RAHAT; Katchin, Ian P.
Cc: DIMATTEO, CHRISTOPHER; Pham, Michelle; DOUGAN, LAURA
Subject: Re: CIG ats Sears

I do not disagree with you, Gord. You are all at liberty to do as you like, subject to any further order concerning the CCAA proceeding.

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

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

On 2017-06-27, 5:00 PM, "Gordon Meiklejohn" <gam@bmbarristers.com> wrote:

>Jayson as I wrote earlier Justice Hainey's order only stays the claims
 >against Sears. There is no language in his order that stays this
 >entire action as is being suggested.

>

>Should the Monitor chose to proceed with Sear's claim it should do so
 >in a timely fashion.

>

>While I doubt very much that the Monitor is interested in prosecuting
 >this claim, nevertheless, I ask if you have not already done so, that
 >you seek instructions respecting their intention.

>

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

>

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

>From: Jayson Thomas [mailto:jthomas@toronto-law.com]
 >Sent: Tuesday, June 27, 2017 4:39 PM
 >To: GODIL, RAHAT <RAHAT.GODIL@blakes.com>; Katchin, Ian P.
 ><ikatchin@foglers.com>; Gordon Meiklejohn <gam@bmbarristers.com>

>Cc: DIMATTEO, CHRISTOPHER <CHRISTOPHER.DIMATTEO@blakes.com>; Pham,
>Michelle <mpham@foglers.com>; DOUGAN, LAURA <LAURA.DOUGAN@blakes.com>
>Subject: Re: CIG ats Sears
>
>Counsel,
>
>Regardless of how integral Sears may be, the action against it is
>stayed so its involvement, at least as a party, is barred by Justice
>Hainey's order pending a further order beyond the initial period. I am
>out of the office from tomorrow through to July 9. That said, I have
>no instructions to take any further steps in this action in light of
>the Initial Order.
>If that changes, I will advise you.
>
>Best,
>
>Jayson W. Thomas
>Tel. 647.347.5450
>Fax. 647.723.7431
>jthomas@toronto-law.com
>
>Thomas Law P.C.
>77 King Street West
>Suite 3000, P.O. Box 95
>TD Centre North Tower
>Toronto, ON M5K 1K7
>www.toronto-law.com
>
>
>
>
>
>
>
>
>On 2017-06-27, 4:35 PM, "GODIL, RAHAT" <RAHAT.GODIL@blakes.com> wrote:
>
>>Counsel,
>>
>>We are agreeable to having a call to discuss this and how to deal with
>>discoveries in this matter. The Initial Order appears to stay this
>>entire proceeding (including the counterclaims and the various third
>>party/fourth party claims). Moreover, given the complexity of this
>>litigation and the fact that Sears is integral to the claims and
>>defences of all of the parties, Sears' involvement is necessary. Can
>>we all get on a call this week to discuss how to move forward? We are
>>available tomorrow between 11am-3pm and generally available on
>>Thursday. Please let us know what works for others.
>>
>>Thanks,
>>Rahat
>>
>> Rahat Godil

This is Exhibit "W" referred to in the Affidavit of Michelle Pham
sworn March 28, 2018



Commissioner for Taking Affidavits (or as may be)

Pham, Michelle

Subject: RE: Sears ats CIG

From: Gordon Meiklejohn [mailto:gam@bmbarristers.com]
Sent: Thursday, August 17, 2017 12:16 PM
To: 'GODIL, RAHAT' <RAHAT.GODIL@blakes.com>; Katchin, Ian P. <ikatchin@foglers.com>; 'jthomas@toronto-law.com' <jthomas@toronto-law.com>
Cc: 'DOUGAN, LAURA' <LAURA.DOUGAN@blakes.com>
Subject: RE: Sears ats CIG

I have spoken to the court office and dates are available in September for a master's motion.

We had scheduled discoveries for September 11, 12, 13, 25 & 26.

I propose using one of those dates for a motion to compel the parties, save for Sears, to comply with a timetable.

Please advise as to your availability.

Gordon A. Meiklejohn



Rosedale Square, 1055 Yonge Street, Suite 200
Toronto, Ontario M4W 2L2
Tel. 416.926.3797 Ext 225; Fax 416.926.3712

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From: Gordon Meiklejohn
Sent: Monday, August 14, 2017 11:54 AM
To: 'GODIL, RAHAT' <RAHAT.GODIL@blakes.com>; Katchin, Ian P. (ikatchin@foglers.com) <ikatchin@foglers.com>; jthomas@toronto-law.com
Cc: DOUGAN, LAURA <LAURA.DOUGAN@blakes.com>
Subject: RE: Sears ats CIG

This is not acceptable to DGA .

As we discussed during our telephone conference call last week, if your position is that this matter cannot move forward without Sears than it is for you to make application to the Commercial Court to require that Sears participate.

DGA does not require Sears participation as our client's claims are against CIG and your clients not Sears.

I will obtain dates for a motion to fix a timetable and circulate those dates.

Gordon A. Meiklejohn



Rosedale Square, 1055 Yonge Street, Suite 200
 Toronto, Ontario M4W 2L2
 Tel. 416.926.3797 Ext 225; Fax 416.926.3712

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From: GODIL, RAHAT [<mailto:RAHAT.GODIL@blakes.com>]
Sent: Monday, August 14, 2017 11:45 AM
To: Katchin, Ian P. (ikatchin@foglery.com) <ikatchin@foglery.com>; Gordon Meiklejohn <gam@bmbarristers.com>; jthomas@toronto-law.com
Cc: DOUGAN, LAURA <LAURA.DOUGAN@blakes.com>
Subject: Sears ats CIG

Counsel,

Further to our conversation last week, we have spoken to our client and can advise as follows. In light of the stay that Sears is subject to, we do not think that this proceeding can move forward. In particular, there cannot be a trial of some aspects of the proceeding without the others. In addition, due to the complexity of the proceeding, the intertwined nature of all of the claims and the common factual matrix, it would also be ineffective, inefficient and prejudicial for some aspects of the proceeding to move forward without others. Without prejudice to this position, RRD and Moore are nevertheless willing to proceed with documentary discovery in this matter and producing their relevant documents on mutually agreeable dates. Subject to everyone else's views, we propose that RRD, Moore, CIG and DGA move forward with exchanging documents and then monitor how the Sears CCAA proceeding unfolds to determine the next steps for this proceeding. Please let us know if this is acceptable.

Thanks,

Rahat

Rahat Godil
 Partner
rahathgodil@blakes.com
 Dir: 416 863 4009

Blakes

Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
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This is Exhibit "X" referred to in the Affidavit of Michelle Pham
sworn March 28, 2018



Commissioner for Taking Affidavits (or as may be)

Pham, Michelle

Subject: RE: Sears Canada CCAA and Sears Canada v CIG action number CV-15-522235

From: Jayson Thomas [mailto:jthomas@toronto-law.com]

Sent: Tuesday, October 10, 2017 5:30 PM

To: Gordon Meiklejohn <gam@bmbarristers.com>; 'GODIL, RAHAT' <RAHAT.GODIL@blakes.com>; Katchin, Ian P. <ikatchin@foglers.com>

Subject: Re: Sears Canada CCAA and Sears Canada v CIG action number CV-15-522235

Gord,

I am advised by Sears' CCAA counsel that any proceedings involving Sears must be on notice to its Monitor, who is represented by Evan Cobb of Norton Rose. If you intend to seek Sears' participation in this matter going forward, you will need to contact Evan directly. In light of today's news, you may need to be patient in awaiting a response from his office.

As indicated below, my engagement in this action has been terminated. I would therefore ask you to remove me from your communications with all counsel on this matter moving forward.

Best,

Jayson W. Thomas

Tel. 647.347.5450

Fax. 647.723.7431

jthomas@toronto-law.com

Thomas Law P.C.

77 King Street West

Suite 3000, P.O. Box 95

TD Centre North Tower

Toronto, ON M5K 1K7

www.toronto-law.com

From: Gordon Meiklejohn <gam@bmbarristers.com>

Date: Tuesday, October 10, 2017 at 4:56 PM

To: Jayson Thomas <jthomas@toronto-law.com>, "'GODIL, RAHAT'" <RAHAT.GODIL@blakes.com>, "Katchin, Ian P." <ikatchin@foglers.com>

Subject: RE: Sears Canada CCAA and Sears Canada v CIG action number CV-15-522235

Jayson absent you receiving an answer from Oslers can you just give me the name of the lawyer there who has carriage of the matter and I will email them with the motion request form and or attending on a 9:30 to deal with it.

From: Jayson Thomas [mailto:jthomas@toronto-law.com]

Sent: Tuesday, October 10, 2017 12:57 PM

To: Gordon Meiklejohn <gam@bmbarristers.com>; 'GODIL, RAHAT' <RAHAT.GODIL@blakes.com>; Katchin, Ian P. <ikatchin@foglers.com>

Subject: Re: Sears Canada CCAA and Sears Canada v CIG action number CV-15-522235

I will try to get an answer from CCAA counsel today for you, Gord. However, I cannot have you sign for me in light of the fact of the termination of my engagement pursuant to the stay order presently in place.

Jayson W. Thomas

Tel. 647.347.5450

Fax. 647.723.7431

jthomas@toronto-law.com

Thomas Law P.C.

77 King Street West

Suite 3000, P.O. Box 95

TD Centre North Tower

Toronto, ON M5K 1K7

www.toronto-law.com

From: Gordon Meiklejohn <gam@bmbarristers.com>
Date: Tuesday, October 10, 2017 at 9:48 AM
To: "'GODIL, RAHAT'" <RAHAT.GODIL@blakes.com>, "Katchin, Ian P." <ikatchin@foglery.com>
Cc: Jayson Thomas <jthomas@toronto-law.com>
Subject: RE: Sears Canada CCAA and Sears Canada v CIG action number CV-15-522235

Mr. Thomas?

From: GODIL, RAHAT [<mailto:RAHAT.GODIL@blakes.com>]
Sent: Tuesday, October 10, 2017 9:46 AM
To: Katchin, Ian P. <ikatchin@foglery.com>; Gordon Meiklejohn <gam@bmbarristers.com>; 'JUS-G-MAG-CSD-Toronto-SCJ Commercial List' <MAG.CSD.To.SCJCom@ontario.ca>
Cc: Jayson Thomas <jthomas@toronto-law.com>
Subject: RE: Sears Canada CCAA and Sears Canada v CIG action number CV-15-522235

Me too.

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

Blakes

Blake, Cassels & Graydon LLP
 199 Bay Street, Suite 4000, Toronto ON M5L 1A9
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From: Katchin, Ian P. [<mailto:ikatchin@foglery.com>]
Sent: Tuesday, October 10, 2017 9:44 AM
To: 'Gordon Meiklejohn'; 'JUS-G-MAG-CSD-Toronto-SCJ Commercial List'
Cc: GODIL, RAHAT; Jayson Thomas
Subject: RE: Sears Canada CCAA and Sears Canada v CIG action number CV-15-522235

Gord,

Go ahead for me.

Ian

Ian P. Katchin
 T 416.864.7613

From: Gordon Meiklejohn [<mailto:gam@bmbarristers.com>]
Sent: Tuesday, October 10, 2017 9:42 AM
To: 'JUS-G-MAG-CSD-Toronto-SCJ Commercial List' <MAG.CSD.To.SCJCom@ontario.ca>
Cc: 'GODIL, RAHAT' <RAHAT.GODIL@blakes.com>; Katchin, Ian P. <ikatchin@foglery.com>; Jayson Thomas <jthomas@toronto-law.com>
Subject: RE: Sears Canada CCAA and Sears Canada v CIG action number CV-15-522235

Counsel can I sign the request form on your behalf?

From: JUS-G-MAG-CSD-Toronto-SCJ Commercial List [<mailto:MAG.CSD.To.SCJCom@ontario.ca>]
Sent: Tuesday, October 10, 2017 9:41 AM
To: Gordon Meiklejohn <gam@bmbarristers.com>
Cc: 'GODIL, RAHAT' <RAHAT.GODIL@blakes.com>; 'Katchin, Ian P.' <ikatchin@foglery.com>; Jayson Thomas <jthomas@toronto-law.com>
Subject: RE: Sears Canada CCAA and Sears Canada v CIG action number CV-15-522235
Importance: High

If you have consent, you are allowed to sign on behalf of all of them. ☺
 Hope that helps,

Joanne S. Nicoara
 Commercial/Estates Trial Coordinator
 Superior Court of Justice
 330 University Ave., 7th Floor
 Toronto, ON M5G 1R7

Tel CL: 416-327-5043, Tel EST: 416-326-2940
 Fax: 416-327-6228
Toronto.commercialist@jus.gov.on.ca
Toronto.estates@ontario.ca

From: Gordon Meiklejohn [<mailto:gam@bmbarristers.com>]
Sent: October-10-17 9:40 AM
To: JUS-G-MAG-CSD-Toronto-SCJ Commercial List
Cc: 'GODIL, RAHAT'; 'Katchin, Ian P.'; Jayson Thomas
Subject: RE: Sears Canada CCAA and Sears Canada v CIG action number CV-15-522235

Sorry Joanne. I did not know you needed the signatures of the others. I will request it and resend it.

Ms. Godil, Mr. Katchin and Mr. Thomas would each of you initial the request form and send it to me and I will in turn scan them into one document and send it to Ms. Nicoara.

Gordon A. Meiklejohn



Rosedale Square, 1055 Yonge Street, Suite 200
 Toronto, Ontario M4W 2L2
 Tel. 416.926.3797 Ext 225; Fax 416.926.3712

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From: JUS-G-MAG-CSD-Toronto-SCJ Commercial List [<mailto:MAG.CSD.To.SCJCom@ontario.ca>]
Sent: Tuesday, October 10, 2017 9:28 AM
To: Gordon Meiklejohn <gam@bmbarristers.com>
Cc: 'GODIL, RAHAT' <RAHAT.GODIL@blakes.com>; 'Katchin, Ian P.' <ikatchin@foglers.com>; Jayson Thomas <jthomas@toronto-law.com>
Subject: RE: Sears Canada CCAA and Sears Canada v CIG action number CV-15-522235
Importance: High

Hi Gordon,

I absolutely cannot book 1.5 hours with one signature.
 You need the consent of the other parties to book your motion.
 If you cannot obtain consent, then your only option would be to bring a 9:30am CA to book your matter.

Joanne S. Nicoara
 Commercial/Estates Trial Coordinator

Superior Court of Justice
330 University Ave., 7th Floor
Toronto, ON M5G 1R7
Tel CL: 416-327-5043, Tel EST: 416-326-2940
Fax: 416-327-6228
Toronto.commercialist@jus.gov.on.ca
Toronto.estates@ontario.ca

From: Gordon Meiklejohn [<mailto:gam@bmbarristers.com>]
Sent: October-07-17 11:45 AM
To: JUS-G-MAG-CSD-Toronto-SCJ Commercial List
Cc: 'GODIL, RAHAT'; 'Katchin, Ian P.'; Jayson Thomas
Subject: RE: Sears Canada CCAA and Sears Canada v CIG action number CV-15-522235

Hello Joanne.

Attached please find the request form for the Motion before Hainey J. on November 22 2017.

Any questions let me know.

Gordon A. Meiklejohn



Rosedale Square, 1055 Yonge Street, Suite 200
Toronto, Ontario M4W 2L2
Tel. 416.926.3797 Ext 225; Fax 416.926.3712

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From: JUS-G-MAG-CSD-Toronto-SCJ Commercial List [<mailto:MAG.CSD.To.SCJCom@ontario.ca>]
Sent: Tuesday, October 3, 2017 8:12 AM
To: Gordon Meiklejohn <gam@bmbarristers.com>
Subject: RE: Sears Canada CCAA and Sears Canada v CIG action number CV-15-522235

Hi Gordon,

I was away for a few days.

Please send me a request form to book whatever matter you wish for Sears and I will get it approved by Hainey J and book it accordingly.

Joanne S. Nicoara

Commercial/Estates Trial Coordinator
Superior Court of Justice
330 University Ave., 7th Floor
Toronto, ON M5G 1R7
Tel: 416-326-2947
Fax: 416-327-6228
joanne.nicoara@ontario.ca

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Before printing, please consider the environment.

This is Exhibit "Y" referred to in the Affidavit of Michelle Pham sworn March 28, 2018



Commissioner for Taking Affidavits (or as may be)

Pham, Michelle

Subject: RE: Sears Canada v CIG et al Action # CV-15-52235-00A1 & 00B1

From: Katchin, Ian P.
Sent: Monday, February 26, 2018 7:53 AM
To: 'Gordon Meiklejohn' <gam@bmbarristers.com>; 'Cobb, Evan' <evan.cobb@nortonrosefulbright.com>; 'Dacks, Jeremy' <JDacks@osler.com>
Cc: GODIL, RAHAT <RAHAT.GODIL@blakes.com>; DOUGAN, LAURA <LAURA.DOUGAN@blakes.com>; Irving, Shawn <Sirving@osler.com>; Azzopardi, Teresa <TAzzopardi@osler.com>; Pham, Michelle <mpham@foglers.com>
Subject: RE: Sears Canada v CIG et al Action # CV-15-52235-00A1 & 00B1

Gord,

I have reviewed your client's Motion Record, which was delivered via email on Thursday evening. The parties set aside March 2nd in early November, over 3.5 months ago. Your client's materials were served late and not in accordance with the Rules.

I am in discoveries this entire week (except for Friday) and, as a result, am not in a position to respond to your client's Motion before the hearing scheduled for March 2nd.

The relief sought in your client's Motion does not address whether the stay granted under the Initial Order applies vis-à-vis the actions. I believe that this issue must be determined prior to any relief being granted in your client's Motion.

Additionally, I understand from speaking with Sears' counsel that although Sears has set aside certain documents relating to this action, the exact scope of those documents is currently unknown. Also, Sears is not prepared to produce a representative for examinations absent a Court Order. I understand that this is due to, amongst other things, very limited resources.

I am in the process of seeking instructions on a cross-motion to compel a rep from Sears to attend discoveries and for a Declaration in relation to the applicability of the stay. I am not certain whether RRD and Moore's counsel is doing the same.

Subject to hearing from counsel to RRD, Moore and Sears, as well as the Monitor, I propose that we agree to a short adjournment of your client's Motion to another date in March so that proper instructions can be obtained, responding materials can be delivered, and any cross-motions can be served.

I invite counsel for RRD, Moore and Sears to comment as applicable.

I look forward to hearing from you.

Regards,

Ian

This is Exhibit "Z" referred to in the Affidavit of Michelle Pham
sworn March 28, 2018



Commissioner for Taking Affidavits (or as may be)

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.

)

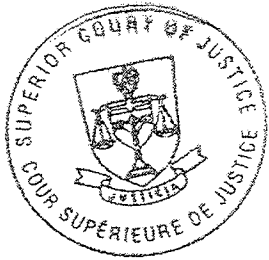
THURSDAY, THE 22ND

JUSTICE HAINEY

)

DAY OF JUNE, 2017

)



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

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

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

INITIAL ORDER

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCA"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Billy Wong sworn June 22, 2017, and the Exhibits thereto (collectively, the "Wong Affidavit"), and the pre-filing report dated June 22, 2017 of FTI Consulting Canada Inc. ("FTI"), in its capacity as the proposed Monitor of the Applicants (the "Pre-Filing Report"), and on hearing the submissions of counsel to the Applicants and Sears Connect LP (the "Partnership", and collectively with the Applicants, the "Sears Canada

Entities”), counsel to the Board of Directors (the “**Board of Directors**”) of Sears Canada Inc. (“**SCI**”) and the Special Committee of the Board of Directors (the “**Special Committee**”) of SCI, counsel to FTI, counsel to Wells Fargo Capital Finance Corporation Canada (the “**DIP ABL Agent**”), as administrative agent under the DIP ABL Credit Agreement (as defined herein), and counsel to GACP Finance Co., LLC (the “**DIP Term Agent**”), as administrative agent under the DIP Term Credit Agreement (as defined herein), Koskie Minsky LLP as counsel for Store Catalogue Retiree Group, counsel for the Financial Services Commission of Ontario, and on reading the consent of FTI to act as the Monitor.

SERVICE

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

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies. Although not an Applicant, the Partnership shall enjoy the benefits of the protections and authorizations provided by this Order.

PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that the Applicants, individually or collectively, shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”).

POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the Sears Canada Entities shall remain in possession and control of their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). For greater certainty, the “**Property**” includes all inventory, assets, undertakings and property of the Sears Canada Entities in the possession or control of the Hometown Dealers (as defined in the Wong Affidavit) and all inventory, assets, undertakings and property of the Sears Canada

Entities in the possession or control of the Corbeil Franchisees (as defined in the Wong Affidavit). Subject to further Order of this Court, the Sears Canada Entities shall continue to carry on business in a manner consistent with the preservation of the value of their business (the “**Business**”) and Property. The Sears Canada Entities shall each be authorized and empowered to continue to retain and employ the employees, independent contractors, advisors, consultants, agents, experts, accountants, counsel and such other persons (collectively, “**Assistants**”) currently retained or employed by them, with liberty, subject to the terms of the Definitive Documents (as defined herein) to retain such further Assistants, as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. **THIS COURT ORDERS** that the Sears Canada Entities shall be entitled to continue to utilize the central cash management services currently in place as described in the Wong Affidavit, or, with the consent of the Monitor, the DIP ABL Agent on behalf of the DIP ABL Lenders (as defined herein) and the DIP Term Agent on behalf of the DIP Term Lenders (as defined herein), replace it with another substantially similar central cash management services (the “**Cash Management System**”) and that any present or future bank or other institution providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Sears Canada Entities of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Sears Canada Entities, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System; provided, however, that no bank or other institution providing such Cash Management System shall be obliged to extend any overdraft credit, on an aggregate net basis, directly or indirectly in connection therewith and further provided that, to the extent any overdraft occurs, on an aggregate net basis, the Sears Canada Entities shall make arrangements to repay such overdraft forthwith.

6. **THIS COURT ORDERS** that the Sears Canada Entities, subject to availability under, and in accordance with the terms of the DIP Facilities (as defined herein) and the Definitive Documents, and subject to further Order of this Court, shall be entitled but not required to pay the following expenses whether incurred prior to, on or after this Order to the extent that such expenses are incurred and payable by the Sears Canada Entities:

- (a) all outstanding and future wages, salaries, commissions, employee and retiree benefits (including, without limitation, medical, dental, life insurance and similar benefit plans or arrangements), pension benefits or contributions, vacation pay, expenses, and director fees and expenses, payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements (but not including termination or severance payments), and all other payroll, pension and benefits processing and servicing expenses;
- (b) all outstanding and future amounts owing to or in respect of Persons working as independent contractors in connection with the Business;
- (c) all outstanding or future amounts owing in respect of customer rebates, refunds, discounts or other amounts on account of similar customer programs or obligations;
- (d) all outstanding or future amounts related to honouring customer obligations, whether existing before or after the date of this Order, including customer financing, product warranties, pre-payments, deposits, gift cards, Sears Club programs (including redemptions of Sears Club points) and other customer loyalty programs, offers and benefits, in each case incurred in the ordinary course of business and consistent with existing policies and procedures;
- (e) the fees and disbursements of any Assistants retained or employed by the Sears Canada Entities at their standard rates and charges; and
- (f) with the consent of the Monitor, amounts owing for goods or services actually supplied to the Sears Canada Entities prior to the date of this Order by:

- (i) logistics or supply chain providers, including customs brokers and freight forwarders, fuel providers, repair, maintenance and parts providers, and security and armoured truck carriers, and including amounts payable in respect of customs and duties for goods;
- (ii) providers of information, internet, and other technology, including e-commerce providers and related services;
- (iii) providers of credit, debit and gift card processing related services; and
- (iv) other third party suppliers up to a maximum aggregate amount of \$25 million, if, in the opinion of the Sears Canada Entities, the supplier is critical to the business and ongoing operations of the Sears Canada Entities.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein and subject to the terms of the Definitive Documents, the Sears Canada Entities shall be entitled but not required to pay all reasonable expenses incurred by them in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order and any other Order of this Court, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance (including environmental remediation) and security services; and
- (b) payment for goods or services actually supplied to the Sears Canada Entities following the date of this Order.

8. **THIS COURT ORDERS** that the Sears Canada Entities shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from the Sears Canada Entities' employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

- (b) all goods and services taxes, harmonized sales taxes or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Sears Canada Entities in connection with the sale of goods and services by the Sears Canada Entities, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order;
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business, workers' compensation or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Sears Canada Entities; and
- (d) taxes under the *Income Tax Act* (Canada) or other relevant taxing statutes to the extent that such taxing statutes give rise to statutory deemed trust amounts in favour of the Crown in right of Canada or any Province thereof or any political subdivision thereof or any other taxation authority.

9. **THIS COURT ORDERS** that, except as specifically permitted herein, the Sears Canada Entities are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by any one of the Sears Canada Entities to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of the Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business or pursuant to this Order or any further Order of this Court.

RESTRUCTURING

10. **THIS COURT ORDERS** that the Sears Canada Entities shall, subject to such requirements as are imposed by the CCAA, and subject to the terms of the Definitive Documents, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their Business or operations, and to dispose of redundant or non-material assets not exceeding \$2 million in any one transaction or \$5 million in the aggregate in any series of related transactions, provided that, with respect to leased premises, the Sears Canada Entities may, subject to the requirements of the CCAA and paragraphs 11 to 13 herein, vacate, abandon or quit the whole (but not part of) and may permanently (but not temporarily) cease, downsize or shut down any of their Business or operations in respect of any leased premises;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as the relevant Sears Canada Entity deems appropriate; and
- (c) pursue all avenues of refinancing, restructuring, selling and reorganizing the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing, restructuring, sale or reorganization,

all of the foregoing to permit the Sears Canada Entities to proceed with an orderly restructuring of the Sears Canada Entities and/or the Business (the “**Restructuring**”).

REAL PROPERTY LEASES

11. **THIS COURT ORDERS** that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Sears Canada Entities shall pay, without duplication, all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under its lease, but for greater certainty, excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of any or all of the Sears Canada Entities or the making of this Initial Order) or as otherwise may be negotiated between the applicable Sears Canada Entity and the landlord from time to time (“**Rent**”), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

12. **THIS COURT ORDERS** that the Sears Canada Entities shall provide each of the relevant landlords with notice of the relevant Sears Canada Entity's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the entitlement of a Sears Canada Entity to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the relevant Sears Canada Entity, or by further Order of this Court upon application by the Sears Canada Entities on at least two (2) days' notice to such landlord and any such secured creditors. If any of the Sears Canada Entities disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the relevant Sears Canada Entity's claim to the fixtures in dispute.

13. **THIS COURT ORDERS** that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA by any of the Sears Canada Entities, then: (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the relevant Sears Canada Entity and the Monitor 24 hours' prior written notice; and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the relevant Sears Canada Entity in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE SEARS CANADA ENTITIES, THE BUSINESS OR THE PROPERTY

14. **THIS COURT ORDERS** that until and including July 22, 2017, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the

Sears Canada Entities or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the written consent of the Sears Canada Entities and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Sears Canada Entities or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. **THIS COURT ORDERS** that during the Stay Period, no Person having any agreements or arrangements with the owners, operators, managers or landlords of commercial shopping centres or other commercial properties (including retail, office and industrial (warehouse) properties) in which there is located a store, office or warehouse owned or operated by the Sears Canada Entities shall take any Proceedings or exercise any rights or remedies under such agreements or arrangements that may arise upon and/or as a result of the making of this Order, the insolvency of, or declarations of insolvency by, any or all of the Sears Canada Entities, or as a result of any steps taken by the Sears Canada Entities pursuant to this Order and, without limiting the generality of the foregoing, no Person shall terminate, accelerate, suspend, modify, determine or cancel any such arrangement or agreement or be entitled to exercise any rights or remedies in connection therewith.

16. **THIS COURT ORDERS** that during the Stay Period, no Person having any agreements or arrangements with the Hometown Dealers or the Corbeil Franchisees shall take any Proceedings or exercise any rights or remedies under such agreements or arrangements that may arise upon and/or as a result of the making of this Order, the insolvency of, or declarations of insolvency by, any or all of the Sears Canada Entities, or as a result of any steps taken by the Sears Canada Entities pursuant to this Order and, without limiting the generality of the foregoing, no Person shall terminate, accelerate, suspend, modify, determine or cancel any such arrangement or agreement or be entitled to exercise any rights or remedies in connection therewith.

17. **THIS COURT ORDERS** that during the Stay Period all rights and remedies, of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Sears Canada Entities or the Monitor or their respective employees and representatives acting in

such capacities, or affecting the Business or the Property, are hereby stayed and suspended, except with the written consent of the Sears Canada Entities and the Monitor, or leave of this Court, provided that nothing in this Order shall: (a) empower the Sears Canada Entities to carry on any business that the Sears Canada Entities are not lawfully entitled to carry on; (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (c) prevent the filing of any registration to preserve or perfect a security interest; or (d) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

18. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence or permit in favour of or held by the Sears Canada Entities, except with the written consent of the Sears Canada Entities and the Monitor, or leave of this Court. Without limiting the foregoing, no right, option, remedy, and/or exemption in favour of the relevant Sears Canada Entity shall be or shall be deemed to be negated, suspended, waived and/or terminated as a result of this Order.

CONTINUATION OF SERVICES

19. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Sears Canada Entities or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all trademark license and other intellectual property, computer software, communication and other data services, centralized banking services, payroll and benefit services, insurance, warranty services, transportation services, freight services, security and armoured truck carrier services, utility, customs clearing, warehouse and logistics services or other services to the Business or the Sears Canada Entities are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply or license of such goods, services, trademarks and other intellectual property as may be required by the Sears Canada Entities, and that the Sears Canada Entities shall be entitled to the continued use of the trademarks and other intellectual property currently licensed to, used or owned by the Sears Canada Entities, premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by

the Sears Canada Entities in accordance with normal payment practices of the Sears Canada Entities or such other practices as may be agreed upon by the supplier or service provider and each of the Sears Canada Entities and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

20. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Sears Canada Entities. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

KEY EMPLOYEE RETENTION PLAN

21. **THIS COURT ORDERS** that the Key Employee Retention Plan (the “**KERP**”), as described in the Wong Affidavit, is hereby approved and the Sears Canada Entities are authorized to make payments contemplated thereunder in accordance with the terms and conditions of the KERP.

22. **THIS COURT ORDERS** that the key employees referred to in the KERP (the “**Key Employees**”) shall be entitled to the benefit of and are hereby granted the following charges on the Property, which charges shall not exceed: (a) an aggregate amount of \$4.6 million (the “**KERP Priority Charge**”) to secure the first \$4.6 million payable to the Key Employees under the KERP; and (b) an aggregate amount of \$4.6 million (the “**KERP Subordinated Charge**”) to secure any other payments to the Key Employees under the KERP. The KERP Priority Charge and the KERP Subordinated Charge shall have the priority set out in paragraphs 46, 47 and 49 hereof.

APPROVAL OF FINANCIAL ADVISOR AGREEMENT

23. **THIS COURT ORDERS** that the agreement dated May 15, 2017 engaging BMO Nesbitt Burns Inc. (the “**Financial Advisor**”) as financial advisor to SCI and attached as Confidential Appendix C to the Pre-Filing Report (the “**Financial Advisor Agreement**”), and the retention of the Financial Advisor under the terms thereof, is hereby ratified and approved

and SCI is authorized and directed *nunc pro tunc* to make the payments contemplated thereunder in accordance with the terms and conditions of the Financial Advisor Agreement.

24. **THIS COURT ORDERS** that the Financial Advisor shall be entitled to the benefit of and is hereby granted a charge (the “**FA Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$3.3 million, as security for the fees and disbursements payable under the Financial Advisor Agreement, both before and after the making of this Order in respect of these proceedings. The FA Charge shall have the priority set out in paragraphs 46, 47 and 49 hereof.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

25. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Sears Canada Entities with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Sears Canada Entities whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Sears Canada Entities, if one is filed, is sanctioned by this Court or is refused by the creditors of the Sears Canada Entities or this Court.

DIRECTORS’ AND OFFICERS’ INDEMNIFICATION AND CHARGE

26. **THIS COURT ORDERS** that the Sears Canada Entities shall jointly and severally indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Sears Canada Entities after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director’s or officer’s gross negligence or wilful misconduct.

27. **THIS COURT ORDERS** that the directors and officers of the Sears Canada Entities shall be entitled to the benefit of and are hereby granted the following charges on the Property, which charges shall not exceed: (a) an aggregate amount of \$44 million (the “**Directors’**

Priority Charge”); and (b) an aggregate amount of \$19.5 million (the “Directors’ Subordinated Charge”), respectively, and in each case, as security for the indemnity provided in paragraph 26 of this Order. The Directors’ Priority Charge and the Directors’ Subordinated Charge shall have the priority set out in paragraphs 46, 47 and 49 hereof.

28. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary: (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors’ Priority Charge and the Directors’ Subordinated Charge; and (b) the Sears Canada Entities’ directors and officers shall only be entitled to the benefit of the Directors’ Priority Charge and the Directors’ Subordinated Charge to the extent that they do not have coverage under any directors’ and officers’ insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 26 of this Order.

APPOINTMENT OF MONITOR

29. **THIS COURT ORDERS** that FTI is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Business and financial affairs of the Sears Canada Entities with the powers and obligations set out in the CCAA or set forth herein and that the Sears Canada Entities and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Sears Canada Entities pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor’s functions.

30. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Sears Canada Entities’ receipts and disbursements;
- (b) liaise with the Sears Canada Entities and the Assistants and, if determined by the Monitor to be necessary, the Hometown Dealers and Corbeil Franchisees, with respect to all matters relating to the Property, the Business, the Restructuring and such other matters as may be relevant to the proceedings herein;

- (c) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, the Restructuring and such other matters as may be relevant to the proceedings herein;
- (d) assist the Sears Canada Entities, to the extent required by the Sears Canada Entities, in their dissemination of financial and other information to the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent, the DIP Term Lenders and each of their respective counsel and financial advisors, pursuant to and in accordance with the Definitive Documents;
- (e) advise the Sears Canada Entities in their preparation of the Sears Canada Entities' cash flow statements and any reporting required by the Definitive Documents, which information shall be reviewed with the Monitor and delivered to the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent, the DIP Term Lenders and each of their respective counsel and financial advisors, pursuant to and in accordance with the Definitive Documents;
- (f) advise the Sears Canada Entities in their development of the Plan and any amendments to the Plan;
- (g) assist the Sears Canada Entities, to the extent required by the Sears Canada Entities, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (h) have full and complete access to the Property (including any Property in the possession of the Hometown Dealers and the Corbeil Franchisees), including the premises, books, records, data, including data in electronic form, and other financial documents of the Sears Canada Entities, to the extent that is necessary to adequately assess the Business and the Sears Canada Entities' financial affairs or to perform its duties arising under this Order;
- (i) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

- (j) assist the Sears Canada Entities, to the extent required by the Sears Canada Entities, with any matters relating to any foreign proceeding commenced in relation to any of the Sears Canada Entities, including retaining independent legal counsel, agents, experts, accountants, or such other persons as the Monitor deems necessary or desirable respecting the exercise of this power; and
- (k) perform such other duties as are required by this Order or by this Court from time to time.

31. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

32. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

33. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Sears Canada Entities, the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent and the DIP Term Lenders with information provided by the Sears Canada Entities in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor

shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Sears Canada Entities is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Sears Canada Entities may agree.

34. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

35. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, counsel to the Sears Canada Entities and counsel to the Board of Directors and the Special Committee shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to or subsequent to the date of this Order, by the Sears Canada Entities as part of the costs of these proceedings. The Sears Canada Entities are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor, counsel to the Sears Canada Entities and counsel to the Board of Directors and the Special Committee on a weekly basis and, in addition, the Sears Canada Entities are hereby authorized to pay to the Monitor, counsel to the Monitor, counsel to the Sears Canada Entities and counsel to the Board of Directors and the Special Committee, retainers in the aggregate amount of \$700,000, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

36. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

37. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, counsel to the Sears Canada Entities and counsel to the Board of Directors and the Special Committee shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$5 million, as security for their professional fees and disbursements incurred at their respective standard rates and charges, both

before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 46, 47 and 49 hereof.

DIP FINANCING

38. **THIS COURT ORDERS** that the Sears Canada Entities are hereby authorized and empowered to obtain and borrow or guarantee, as applicable, on a joint and several basis, under:

- (a) the Senior Secured Superpriority Debtor-in-Possession Amended and Restated Credit Agreement dated as of June 22, 2017 and attached to the Wong Affidavit as Exhibit K, among the Sears Canada Entities, the DIP ABL Agent and the lenders from time to time party thereto (the “**DIP ABL Lenders**”) (as may be amended, restated, supplemented and/or modified, subject to approval of this Court in respect of any amendment that the Monitor determines to be material, the “**DIP ABL Credit Agreement**”), in order to finance the Sears Canada Entities’ working capital requirements and other general corporate purposes and capital expenditures, all in accordance with the Definitive Documents, provided that borrowings under DIP ABL Credit Agreement shall not exceed \$300 million unless permitted by further Order of this Court (the “**DIP ABL Credit Facility**”); and
- (b) the Senior Secured, Superpriority Debtor-in-Possession Credit Agreement dated as of June 22, 2017 and attached to the Wong Affidavit as Exhibit K, among the Sears Canada Entities, the DIP Term Agent and the lenders from time to time party thereto (the “**DIP Term Lenders**”) (as may be amended, restated, supplemented and/or modified, subject to approval of this Court in respect of any amendment that the Monitor determines to be material, the “**DIP Term Credit Agreement**”), in order to finance the Sears Canada Entities’ working capital requirements and other general corporate purposes and capital expenditures, all in accordance with the Definitive Documents, provided that borrowings under the DIP Term Credit Agreement shall not exceed \$150 million unless permitted by further Order of this Court (the “**DIP Term Credit Facility**”, and together with the DIP ABL Credit Facility, the “**DIP Facilities**”).

39. **THIS COURT ORDERS** that the DIP Facilities shall be on the terms and subject to the conditions set forth in the DIP ABL Credit Agreement, the DIP Term Credit Agreement and the other Definitive Documents.

40. **THIS COURT ORDERS** that the Sears Canada Entities are hereby authorized and empowered to execute and deliver the DIP ABL Credit Agreement, the DIP Term Credit Agreement and such mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, and including any schedules (as amended and updated from time to time) thereto, the "**Definitive Documents**"), as are contemplated by the DIP ABL Credit Agreement and the DIP Term Credit Agreement or as may be reasonably required by the DIP ABL Agent on behalf of the DIP ABL Lenders and the DIP Term Agent on behalf of the DIP Term Lenders pursuant to the terms thereof, as applicable, and the Sears Canada Entities are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent and the DIP Term Lenders under and pursuant to the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

41. **THIS COURT ORDERS** that the DIP ABL Agent and the DIP ABL Lenders shall be entitled to the benefit of and are hereby granted a charge (the "**DIP ABL Lenders' Charge**") on the Property as security for any and all Obligations (as defined in the DIP ABL Credit Agreement) other than the Prepetition Obligations (as defined in the DIP ABL Credit Agreement) (including on account of principal, interest, fees, expenses and other liabilities, and the aggregate of all such obligations, the "**DIP ABL Obligations**"), which DIP ABL Lenders' Charge shall be in the aggregate amount of the DIP ABL Obligations outstanding at any given time under the DIP ABL Credit Agreement. The DIP ABL Lenders' Charge shall not secure an obligation that exists before this Order is made. The DIP ABL Lenders' Charge shall have the priority set out in paragraphs 46, 47 and 49 hereof.

42. **THIS COURT ORDERS** that the DIP Term Agent and the DIP Term Lenders shall be entitled to the benefit of and are hereby granted a charge (the "**DIP Term Lenders' Charge**") on the Property as security for any and all Obligations (as defined in DIP Term Credit Agreement) (including on account of principal, interest, fees, expenses and other liabilities, and the aggregate of all such obligations, the "**DIP Term Obligations**"), which DIP Term Lenders' Charge shall

be in the aggregate amount of the DIP Term Obligations outstanding at any given time under the DIP Term Credit Agreement. The DIP Term Lenders' Charge shall not secure an obligation that exists before this Order is made. The DIP Term Lenders' Charge shall have the priority set out in paragraphs 46, 47 and 49 hereof.

43. **THIS COURT ORDERS** that SCI's reimbursement obligation with respect to the letters of credit outstanding under the Wells Fargo Credit Agreement (as defined in the Wong Affidavit) prior to the date of this Order and which are drawn upon on or after the date of this Order shall be deemed to form part of the DIP ABL Credit Facility and shall be included as DIP ABL Obligations for the purposes of determining the amount of the DIP ABL Lenders' Charge.

44. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP ABL Agent on behalf of the DIP ABL Lenders, as applicable, may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the DIP ABL Lenders' Charge, the DIP ABL Credit Agreement or any of the other Definitive Documents;
- (b) the DIP Term Agent on behalf of the DIP Term Lenders, as applicable, may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the DIP Term Lenders' Charge, the DIP Term Credit Agreement or any of the other Definitive Documents;
- (c) upon the occurrence of an event of default under the DIP ABL Credit Agreement, the other related Definitive Documents or the DIP ABL Lenders' Charge, the DIP ABL Agent and the DIP ABL Lenders, as applicable, may, subject to the provisions of the DIP ABL Credit Agreement with respect to the giving of notice or otherwise, and in accordance with the DIP ABL Credit Agreement, the other related Definitive Documents and the DIP ABL Lenders' Charge, as applicable, cease making advances to the Sears Canada Entities, make demand, accelerate payment and give other notices; provided that, the DIP ABL Agent and the DIP ABL Lenders must apply to this Court on seven (7) days' prior written notice (which may include the service of materials in connection with such an application to this Court) to the Sears Canada Entities, the DIP Term Agent, the DIP Term Lenders and the Monitor, to enforce

against or exercise any other rights and remedies with respect to the Sears Canada Entities or any of the Property (including to set off and/or consolidate any amounts owing by the DIP ABL Agent and the DIP ABL Lenders to the Sears Canada Entities against the obligations of the Sears Canada Entities to the DIP ABL Agent and the DIP ABL Lenders under the DIP ABL Credit Agreement, the other related Definitive Documents or the DIP ABL Lenders' Charge), to appoint a receiver, receiver and manager or interim receiver, or to seek a bankruptcy order against the Sears Canada Entities and to appoint a trustee in bankruptcy of the Sears Canada Entities;

- (d) upon the occurrence of an event of default under the DIP Term Credit Agreement, the other related Definitive Documents or the DIP Term Lenders' Charge, the DIP Term Agent and the DIP Term Lenders, as applicable, may, subject to the provisions of the DIP Term Credit Agreement with respect to the giving of notice or otherwise, and in accordance with the DIP Term Credit Agreement, the other related Definitive Documents and the DIP Term Lenders' Charge, as applicable, cease making advances to the Sears Canada Entities, make demand, accelerate payment and give other notices; provided that, the DIP Term Agent and the DIP Term Lenders must apply to this Court on seven (7) days' prior written notice (which may include the service of materials in connection with such an application to this Court) to the Sears Canada Entities, the DIP ABL Agent, the DIP ABL Lenders and the Monitor, to enforce against or exercise any other rights and remedies with respect to the Sears Canada Entities or any of the Property (including to set off and/or consolidate any amounts owing by the DIP Term Agent and the DIP Term Lenders to the Sears Canada Entities against the obligations of the Sears Canada Entities to the DIP Term Agent and the DIP Term Lenders under the DIP Term Credit Agreement, the other related Definitive Documents or the DIP Term Lenders' Charge), to appoint a receiver, receiver and manager or interim receiver, or to seek a bankruptcy order against the Sears Canada Entities and to appoint a trustee in bankruptcy of the Sears Canada Entities; and
- (e) the foregoing rights and remedies of the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent and the DIP Term Lenders shall be enforceable against any trustee

in bankruptcy, interim receiver, receiver or receiver and manager of the Sears Canada Entities or the Property.

45. **THIS COURT ORDERS AND DECLARES** that the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent and the DIP Term Lenders shall be treated as unaffected in any plan of arrangement or compromise filed by the Sears Canada Entities or any of them under the CCAA, or any proposal filed by the Sears Canada Entities or any of them under the *Bankruptcy and Insolvency Act* of Canada (the “BIA”), with respect to any advances made under the DIP ABL Credit Agreement, the DIP Term Credit Agreement and the other Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

46. **THIS COURT ORDERS** that the priorities of the Administration Charge, the FA Charge, the DIP ABL Lenders’ Charge, the DIP Term Lenders’ Charge, the Directors’ Priority Charge, the Directors’ Subordinated Charge, the KERP Priority Charge and the KERP Subordinated Charge (collectively, the “Charges”), as among them, with respect to ABL Priority Collateral (as defined in the Intercreditor Agreement dated March 20, 2017 and attached as Exhibit J to the Wong Affidavit) shall be as follows:

First – Administration Charge, to the maximum amount of \$5 million, and the FA Charge, to the maximum amount of \$3.3 million, on a *pari passu* basis;

Second – KERP Priority Charge, to the maximum amount of \$4.6 million;

Third – Directors’ Priority Charge, to the maximum amount of \$44 million;

Fourth – DIP ABL Lenders’ Charge, to the maximum amount of the quantum of the DIP ABL Obligations at the relevant time;

Fifth – the DIP Term Lenders’ Charge, to the maximum amount of the quantum of the DIP Term Obligations at the relevant time;

Sixth – KERP Subordinated Charge, to the maximum amount of \$4.6 million; and

Seventh – the Directors’ Subordinated Charge, to the maximum amount of \$19.5 million.

47. **THIS COURT ORDERS** that the priorities of the Charges as among them, with respect to all Property other than the ABL Priority Collateral shall be as follows:

First – Administration Charge, to the maximum amount of \$5 million, and the FA Charge, to the maximum amount of \$3.3 million, on a *pari passu* basis;

Second – KERP Priority Charge, to the maximum amount of \$4.6 million;

Third – Directors’ Priority Charge, to the maximum amount of \$44 million;

Fourth – DIP Term Lenders’ Charge, to the maximum amount of the quantum of the DIP Term Obligations at the relevant time;

Fifth – DIP ABL Lenders’ Charge, to the maximum amount of the quantum of the DIP ABL Obligations at the relevant time;

Sixth – KERP Subordinated Charge, to the maximum amount of \$4.6 million; and

Seventh – the Directors’ Subordinated Charge, to the maximum amount of \$19.5 million.

48. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

49. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property, and such Charges shall rank in priority to all other security interests, trusts (including constructive trusts), liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (including without limitation any deemed trust that may be created under the Ontario *Pension Benefits Act*) (collectively, “**Encumbrances**”) other than (a) any Person with a properly perfected purchase money security interest under the *Personal Property Security Act* (Ontario) or such other applicable provincial legislation that has not been served with notice of this Order; and (b) statutory super-priority deemed trusts and liens for unpaid employee source deductions.

50. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Sears Canada Entities shall not grant any Encumbrances over any of the Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Sears Canada Entities also obtain the prior written consent of the Monitor, the DIP ABL Agent on behalf of the DIP ABL Lenders, the DIP Term Agent on behalf of the DIP Term Lenders and the other beneficiaries of affected Charges, or further Order of this Court.

51. **THIS COURT ORDERS** that the Charges, the DIP ABL Credit Agreement, the DIP Term Credit Agreement, and the other Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) thereunder shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) that binds the Sears Canada Entities, and notwithstanding any provision to the contrary in any Agreement:

- (i) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP ABL Credit Agreement, the DIP Term Credit Agreement or the other Definitive Documents shall create or be deemed to constitute a breach by the Sears Canada Entities of any Agreement to which it is a party;
- (ii) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Sears Canada Entities entering into the DIP ABL Credit Agreement and the DIP Term Credit Agreement, the creation of the Charges, or the execution, delivery or performance of the other Definitive Documents; and
- (iii) the payments made by the Sears Canada Entities pursuant to this Order, the DIP ABL Credit Agreement, the DIP Term Credit Agreement or the other Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

52. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the relevant Sears Canada Entity's interest in such real property leases.

53. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order, the L/C Collateral Account (as defined in the DIP ABL Credit Agreement) shall be deemed to be subject to a lien, security, charge and security interest in favour of the DIP ABL Agent solely for the reimbursement obligation of SCI related to the letters of credit issued under the Wells Fargo Credit Agreement which remain undrawn from and after the Comeback Motion (as defined herein). The Charges as they may attach to the L/C Collateral Account, including by operation of law or otherwise: (a) shall rank junior in priority to the lien, security, charge and security interest in favour of the DIP ABL Agent in respect of the L/C Collateral Account; and (b) shall attach to the L/C Collateral Account only to the extent of the rights, if any, of any Sears Canada Entity to the return of any cash from the L/C Collateral Account in accordance with the DIP ABL Credit Agreement.

CORPORATE MATTERS

54. **THIS COURT ORDERS** that SCI be and is hereby relieved of any obligation to call and hold an annual meeting of its shareholders until further Order of this Court.

55. **THIS COURT ORDERS** that SCI be and is hereby relieved of any obligation to appoint any new directors until further Order of this Court.

SERVICE AND NOTICE

56. **THIS COURT ORDERS** that the Monitor shall: (a) without delay, publish in The Globe and Mail (National Edition) and La Presse a notice containing the information prescribed under the CCAA; and (b) within five days after the date of this Order, (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send or cause to be sent, in the prescribed manner, a notice to every known creditor who has a claim against the Sears Canada Entities of more than \$1,000 (excluding individual employees, former employees with pension and/or retirement savings plan entitlements, and retirees and other beneficiaries who have entitlements under any pension or retirement savings plans), and (iii) prepare a list showing the

names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of the individuals who are creditors publicly available.

57. **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the “**Service List**”). The Monitor shall post the Service List, as may be updated from time to time, on the Monitor’s Website (as defined herein) as part of the public materials to be made available thereon in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

58. **THIS COURT ORDERS** that any employee of any of the Sears Canada Entities that receives a notice of termination from any of the Sears Canada Entities shall be deemed to have received such notice of termination by no more than the seventh day following the date such notice of termination is delivered, if such notice of termination is sent by ordinary mail, courier or registered mail.

59. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/sci/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: cfcanada.fticonsulting.com/searscanada (the “**Monitor’s Website**”).

60. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Sears Canada Entities and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Sears Canada Entities’ creditors or other

interested parties at their respective addresses as last shown on the records of the Sears Canada Entities and that any such service or distribution by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

61. **THIS COURT ORDERS** that the Applicants, the Monitor, the Financial Advisor, the DIP Term Agent on behalf of the DIP Term Lenders and the DIP ABL Agent on behalf of the DIP ABL Lenders, and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS).

COMEBACK MOTION

62. **THIS COURT ORDERS** that the comeback motion shall be heard on July 13, 2017 (the "Comeback Motion").

GENERAL

63. **THIS COURT ORDERS** that the Sears Canada Entities or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

64. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Sears Canada Entities, the Business or the Property.

65. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, 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.

66. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including acting as the foreign representative of the Applicants to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1515, as amended, and to act as foreign representative in respect of any such proceedings and any ancillary relief in respect thereto, and to take such other steps as may be authorized by the Court.


67. **THIS COURT ORDERS** that any interested party (including the Sears Canada Entities and the Monitor) may apply to this Court to vary or amend this Order at the Comeback Motion on not less than seven (7) calendar days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

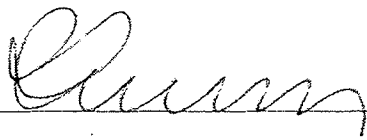
68. **THIS COURT ORDERS** that Confidential Appendix B and Confidential Appendix C to the Pre-Filing Report shall be and are hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

69. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

JUN 22 2017

PER / PAR: 


C. Irwin
Registrar

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

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at Toronto

INITIAL ORDER

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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 QUEBEC 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**")

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**AFFIDAVIT OF MICHELLE PHAM
(SWORN MARCH 28, 2018)**

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985 C. C-3

UNDEED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., 9370-2751 QUEBEC 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**")

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**CROSS-MOTION RECORD
OF CONSUMER INTELLIGENCE GROUP INC.**

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