



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

IN RE SEARS HOMETOWN AND  
OUTLET STORES, INC.  
STOCKHOLDER LITIGATION

CONSOLIDATED  
C.A. No. 2019-0798-JTL

**LEAD PLAINTIFFS' MOTION FOR FIRST ADMINISTRATIVE ORDER**

Whitebark Value Partners LP and Keith Edquist (together, the “Lead Plaintiffs”) respectfully move for entry of the first administrative order authorizing two actions.<sup>1</sup> First, Lead Plaintiffs seek approval for settlement administrator A.B. Data, Ltd. Class Action Administration Company (“A.B. Data” or the “Settlement Administrator”) to make an initial distribution of the Net Settlement Fund,<sup>2</sup> as set forth in this motion (“Motion”) and the accompanying Affidavit of Jack Ewashko (the “Initial Distribution”). Second, Lead Plaintiffs request authorization to reserve \$11,740.56 from the Net Settlement Fund to cover the Settlement Administrator’s anticipated fees and expenses related to the Initial Distribution. In support of this Motion, Lead Plaintiffs state as follows:

1. This Motion seeks approval of the Initial Distribution under a partial settlement between Lead Plaintiffs and defendants Josephine Linden, Alberto Franco, and John E. Tober (the “Settling Defendants,” and together with

---

<sup>1</sup> Capitalized terms not defined herein have the meanings set forth in the Stipulation and Agreement of Compromise, Settlement, and Release, dated February 10, 2023 (“Stipulation”) (Dkt. 205).

<sup>2</sup> Stipulation at ¶ 3.20.

Lead Plaintiffs, the “Settling Parties”). The Settlement arises from this action brought on behalf of former public stockholders of Sears Hometown and Outlet Stores, Inc. (“SHOS”) challenging its \$2.25-per-share merger with Transform Holdco LLC and its affiliates (“Transform”).

2. On December 29, 2022, the Non-Settling Defendants filed a Notice of Suggestion of Pendency of Bankruptcy and Automatic Stay of Proceedings (“Notice”). The Notice disclosed that, on December 12, Sears Hometown Stores, Inc. (“Debtor”)—the successor to defendant Transform Merger Corporation—and its subsidiary had filed voluntary petitions for relief under 11 U.S.C. §§ 101-1532 in the United States Bankruptcy Court for the District of Delaware.<sup>3</sup>

3. On February 10, 2023, the Settling Parties filed the Stipulation.<sup>4</sup> Section 11 of the Stipulation required Debtor’s cooperation in providing Class Counsel and the Settlement Administrator with SHOS’s stockholder register as of October 23, 2019 (“Stockholder Register”).<sup>5</sup>

4. On March 6, 2023, the Court entered the Scheduling Order, initially setting the Settlement Hearing for May 9, 2023, later rescheduled to November 3, 2023.<sup>6</sup> Class Counsel retained A.B. Data as the

---

<sup>3</sup> Dkt. 168; *see also* Stipulation at ¶ RR; Affidavit at ¶ 4.

<sup>4</sup> Dkt. 205.

<sup>5</sup> *See* Stipulation at ¶ 11; Affidavit at ¶ 5.

<sup>6</sup> Dkts. 223, 269.

Settlement Administrator.<sup>7</sup> Jack Ewashko, A.B. Data’s Director of Case Management, has managed the Settlement’s administration and will oversee the Initial Distribution of the Net Settlement Fund to Eligible Class Members.<sup>8</sup>

5. In March 2023, A.B. Data mailed the Notice to potential Class Members.<sup>9</sup>

6. On March 15 and 17, 2023, Class Counsel requested the Stockholder Register from the Non-Settling Defendants under Section 11 of the Stipulation.<sup>10</sup> On March 17, counsel for the Non-Settling Defendants responded, noting SHOS was in Chapter 7 liquidation and trustee Jeffrey Burtch (“Trustee”), now controlled its records.<sup>11</sup>

7. On March 23, 2023, Class Counsel spoke with Mark Felger, counsel to the Trustee (“Trustee’s Counsel”).<sup>12</sup> He confirmed the estate held SHOS’s records but was unaware of the Stockholder Register’s location.<sup>13</sup> Trustee’s Counsel agreed

---

<sup>7</sup> Affidavit at ¶ 2.

<sup>8</sup> *See id.* at ¶ 6.

<sup>9</sup> Dkt. 265; Affidavit at ¶ 7.

<sup>10</sup> Affidavit at ¶ 8.

<sup>11</sup> *See* Status Report from David M. Sborz, dated April 14, 2023 (Dkt. 234), at 2; Affidavit at ¶ 8.

<sup>12</sup> Affidavit at ¶ 9.

<sup>13</sup> *Id.*

to forward the request to Debtor’s counsel and suggested contacting Non-Settling Defendants’ counsel for more information.<sup>14</sup>

8. On April 19, 2023, A.B. Data received a DTCC Security Position Report identifying 86 DTCC Participants holding a total of 9,986,814 shares of SHOS common stock as of October 23, 2019 (“DTCC Security Position Report”).<sup>15</sup> The DTCC Security Position Report contains each participant’s identification number, name, and the number of shares held.<sup>16</sup>

9. On August 7, 2023, A.B. Data received from Trustee’s Counsel the Stockholder Register, identifying 222 record holders with 23,621 shares of SHOS common stock—all deemed Eligible Shares.<sup>17</sup> The Stockholder Register contains the names, addresses, and the number of shares held by each SHOS record holder.<sup>18</sup>

10. On November 3, 2023, the Court approved the Settlement.<sup>19</sup> Settling Defendants or their insurers paid \$3,100,000.00 into the Escrow Account. After deducting the \$931,000 Expense Award<sup>20</sup> and

---

<sup>14</sup> *Id.* For a more detailed account of Class Counsel’s efforts to obtain the Stockholder Register, *see* the Affidavit of Jack Ewashko Regarding Mailing of Notice, dated October 24, 2023 (Dkt. 265).

<sup>15</sup> Defined in the Stipulation as the “DTCC Allocation Report.” *See* Stipulation at ¶ 11.3(c).

<sup>16</sup> Affidavit at ¶ 10.

<sup>17</sup> Stipulation at ¶ 3.10; *see also* Affidavit at ¶ 11.

<sup>18</sup> Affidavit at ¶ 11.

<sup>19</sup> Order and Final Judgment (“Final Order”) (Dkt. 268); Affidavit at ¶ 12.

<sup>20</sup> Stipulation at ¶ 3.14. Affidavit at ¶ 12.

Notice and Administration Costs, A.B. Data will distribute the Net Settlement Fund to Eligible Class Members per the Court’s approved Plan of Allocation.<sup>21</sup>

11. On January 23, 2024, A.B. Data received information identifying two dissenting stockholders holding a combined 258,308 shares—all deemed Eligible Shares.<sup>22</sup>

12. Between April 8, 2023 and April 24, 2024, Settling Defendants’ Counsel provided A.B. Data with a list of Excluded Parties holding 20,000 Excluded Shares,<sup>23</sup> along with the name and address of the financial institution where the shares were held. A.B. Data worked to successfully obtain confirmation for the Excluded Parties, which will block payment to those parties.<sup>24</sup>

13. The Plan of Allocation provides for *pro rata* distribution among Eligible Class Members (the “Recovery Amount”).<sup>25</sup>

14. Subject to Court approval, A.B. Data will notify each DTCC Participant of the number of Eligible Shares that, according to the DTCC Security Position Report, the DTCC Participant’s customers held on the

---

<sup>21</sup> Affidavit at ¶ 12.

<sup>22</sup> The Granted Stipulation and Order Amending Order for Class Certification, dated January 18, 2023 (Dkt. 176) amended the Class definition to include SHOS stockholders who dissented in the Merger. *See also* Affidavit at ¶ 13.

<sup>23</sup> Stipulation at ¶ 11.3(b); Affidavit at ¶ 14.

<sup>24</sup> Affidavit at ¶ 14.

<sup>25</sup> Stipulation at ¶ 11.10; Notice at ¶ 69; Affidavit at ¶ 15.

Merger date. If the DTCC Participant held shares on behalf of an Excluded Person, A.B. Data will provide the Excluded Person's stockholdings and account information to the DTCC Participant. A.B. Data will instruct DTCC Participants to distribute the Recovery Amount to Eligible Class Members and similarly direct that no Excluded Persons be paid. A.B. Data will provide each DTCC Participant its share of the Net Settlement Fund by check or wire transfer.<sup>26</sup>

15. A.B. Data will instruct that, where an Eligible Closing Date Record Holder (*i.e.*, an Eligible Class Member listed on the Stockholder Register) is not also the beneficial holder, it is the responsibility of that Eligible Closing Date Record Holder to distribute the Recovery Amount to the beneficial holder.<sup>27</sup> A.B. Data will distribute each Eligible Closing Date Record Holder's share of the Net Settlement Fund by check or wire transfer.<sup>28</sup>

16. After deducting for the Expense Award and Notice and Administration Costs through May 2025 and reserving \$11,740.56 in anticipated costs for the Initial Distribution, the remaining Net Settlement Fund is \$2,050,514.59 (including interest).<sup>29</sup>

---

<sup>26</sup> Affidavit at ¶ 16.

<sup>27</sup> *Id.* at ¶ 17.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at ¶ 18.

17. The Initial Distribution will pay approximately \$0.20 per Eligible Share—\$2,050,514.59 divided by 10,248,743 Eligible Shares (“Per-Share Recovery”).<sup>30</sup>

18. DTCC Participants will be directed to distribute payments to Eligible Closing Date Beneficial Holders in accordance with the Plan of Allocation.<sup>31</sup>

19. A.B. Data will also wire distribution payments to Cannon Square, LLC and Quadre Investments, L.P., using the wiring instructions provided by their counsel.

20. For Closing Non-Nominee Record Positions, A.B. Data will issue checks and distribution registers, sending payments by prepaid first-class mail to the addresses provided by the transfer agent. To encourage prompt cashing and reduce administrative costs, each check will state: “CASH PROMPTLY, VOID AND SUBJECT TO RE-DISTRIBUTION IF NOT CASHED WITHIN 180 DAYS OF ISSUE DATE.”<sup>32</sup>

21. As of May 30, 2025, A.B. Data has incurred \$107,010.11 in Notice and Administration Costs for services including: coordinating with DTCC on the

---

<sup>30</sup> *Id.* at ¶ 19.

<sup>31</sup> *Id.* at ¶ 20.

<sup>32</sup> *Id.* at ¶ 22.

Security Position Report, suppression letters, and the Initial Distribution; working with brokerage firms to obtain suppression letters for Excluded Parties; and maintaining the Settlement Website and toll-free hotline.<sup>33</sup>

22. A.B. Data anticipates \$11,740.56 in additional costs for the Initial Distribution and requests that this amount be reserved from the Net Settlement Fund, to be paid to A.B. Data as costs accrue and are approved by Class Counsel. Any unused amount will be returned to the Net Settlement Fund. If actual costs exceed \$11,740.56 and funds remain post-distribution, A.B. Data may recover the excess, with Class Counsel's approval, before any second distribution or transfer, without further Court order.<sup>34</sup>

23. Under Court of Chancery Rule 23, if any funds remain in the Escrow Account six months after the Initial Distribution, A.B. Data will reallocate them to Eligible Class Members who were located and cashed the initial payment, if economically feasible. If not, the remaining balance will be transferred to the Combined Campaign for Justice.<sup>35</sup>

---

<sup>33</sup> *Id.* at ¶ 23.

<sup>34</sup> *Id.* at ¶ 24.

<sup>35</sup> *See* Ct. Ch. R. 23(f)(6)(B); *see also* Affidavit at ¶ 25.

## **CONCLUSION**

Class Counsel respectfully moves that the Court enter the proposed Administrative Order authorizing the Settlement Administrator to make the Initial Distribution of the Net Settlement Fund, subject to reserving \$11,740.56 for the Settlement Administrator's fees and out-of-pocket expenses related to the Initial Distribution.

***[SIGNATURE PAGE FOLLOWS]***

ANDREWS & SPRINGER LLC

/s/ David M. Sborz

Peter B. Andrews (Bar No. 4623)  
Craig J. Springer (Bar No. 5529)  
David M. Sborz (Bar No. 6203)  
4001 Kennett Pike, Suite 250  
Wilmington, DE 19807  
(302) 504-4957  
pandrews@andrewsspringer.com  
cspringer@andrewsspringer.com  
dsborz@andrewsspringer.com

*Of Counsel:*

David Schwartz  
John Vielandi  
LABATON KELLER  
SUCCHAROW LLP  
140 Broadway  
New York, NY 10005  
(212) 907-0700

*Co-Lead Counsel for Co-Lead Plaintiffs:*

Carl L. Stine  
Adam J. Blander  
WOLF POPPER LLP  
845 Third Avenue  
New York, NY 10022  
(212) 759-4600

*Executive Committee for Co-Lead Plaintiffs:*

Donald J. Enright  
Elizabeth K. Tripodi  
LEVI & KORSINSKY, LLP  
1101 30th Street, N.W., Suite 115  
Washington, D.C. 20007  
(202) 524-4290

LABATON KELLER  
SUCCHAROW LLP

Ned Weinberger (Bar No. 5256)  
Mark Richardson (Bar No. 6575)  
Michael C. Wagner (Bar No. 6955)  
Jiahui (Rose) Wang (Bar No. 7127)  
222 Delaware Avenue, Suite 1510  
Wilmington, DE 19801  
(302) 573-2540  
nweinberger@labaton.com  
mrichardson@labaton.com  
mwagner@labaton.com  
rwang@labaton.com

PRICKETT, JONES & ELLIOTT, P.A.  
Samuel L. Closic (Bar No. 5468)  
1310 King Street  
Wilmington, DE 19801  
(302) 888-6500  
slclosic@prickett.com

*Co-Lead Counsel for Lead Plaintiffs*

Words: 1,556 of 3,000 word limit

Dated: June 10, 2025