



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

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

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

**[PROPOSED] SCHEDULING ORDER
WITH RESPECT TO NOTICE AND SETTLEMENT HEARING**

WHEREAS, a consolidated stockholder class action is pending in this Court, styled *In re Sears Hometown and Outlet Stores, Inc. Stockholders Litigation*, Consol. C.A. No. 2019-0798-JTL (the “Action”);

WHEREAS, a Stipulation and Agreement of Compromise, Settlement, and Release, dated as of November 21, 2024 (the “Stipulation”) has been entered into by and among: (i) lead plaintiffs Whitebark Value Partners LP and Keith Edquist (“Lead Plaintiffs”), on behalf of themselves and on behalf of the Class (defined below), and (ii) defendants Edward S. Lampert, ESL Investments, Inc., ESL Partners, LP, RBS Partners, LP, Transform Holdco LLC, and Hometown Midco LLC (the “Defendants,” and collectively with Lead Plaintiffs, the “Parties”);

WHEREAS, the Stipulation provides, subject to the approval of this Court, for the dismissal of the Action on the merits with prejudice upon the terms and conditions set forth in the Stipulation (the “Settlement”); and

WHEREAS, in accordance with the Stipulation, the Parties have made an application, pursuant to Court of Chancery Rule 23, for entry of a scheduling order in accordance with the Stipulation, approving the form and content of the notice of

the Settlement to the Class, and scheduling the date and time for the Settlement Hearing.

NOW, upon consent of the Parties, after review and consideration of the Stipulation filed with the Court and the Exhibits attached thereto, and after due deliberation,

IT IS HEREBY ORDERED, this ____ day of _____, 202_ that:

1. Except for terms defined herein, the Court adopts and incorporates the definitions in the Stipulation for purposes of this Order.

2. The Court has jurisdiction over the subject matter of the Action, and all matters relating to the Settlement of the Action, as well as personal jurisdiction over all of the Parties and each of the Class Members.

3. Pursuant to a stipulated order dated February 3, 2021, Dkt. 90, as amended by a stipulated order dated January 18, 2023, Dkt. 176, the Court certified the following non-opt-out class under Delaware Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2) (the “Class”):

all record holders and beneficial owners of SHOS common stock who held such shares as of the date of the Merger (i.e., October 23, 2019) (the “Class Shares”) in their capacities as holders of Class Shares, together with their heirs, assigns, transferees, and successors-in-interest, in each case in their capacity as holders of Class Shares. Excluded from the Class are (i) Defendants (previously defined as Edward S. Lampert, ESL Investments Inc., ESL Partners LP, RBS Partners, LP, Transform Holdco LLC, Transform Merger Corporation, Josephine Linden,

Alberto Franco, and John E. Tober), as well as Will Powell, E.J. Bird, James F. Gooch, and William K. Phelan (collectively, the “Dismissed Parties” and each a “Dismissed Party”) and each of Defendants’ and the Dismissed Parties’ Immediate Family members, affiliates, investors, partners, limited partners, legal representatives, heirs, estates, successors, or assigns; and (ii) any entity in which any Defendant or Dismissed Party has had a direct or indirect controlling interest (each an “Excluded Person” and, collectively, the “Excluded Persons”).

4. Pursuant to the stipulated orders referenced above, the Court appointed Lead Plaintiffs as class representatives for the Class and Labaton Keller Sucharow LLP, Prickett, Jones & Elliott, P.A., and Andrews & Springer LLC as Class Counsel.

5. Pursuant to the stipulated orders referenced above, the Court found that each element required for certification of the Class pursuant to Court of Chancery Rules 23(a), 23(b)(1) and 23(b)(2) was met in that: (a) the members of the Class (collectively, the “Class Members”) are so numerous that joinder of all members is impracticable; (b) there are numerous questions of law and fact that are common to all Class Members; (c) the claims of Lead Plaintiffs are typical of the claims of the Class, including because their interests arise from the same alleged course of conduct that gives rise to claims of other Class Members, and the claims of Lead Plaintiffs and the Class employ the same legal theories; (d) in connection with the prosecution of the Action, Lead Plaintiffs would fairly and adequately represent and protect the

interests of the Class because their interests are not antagonistic to those of any other Class Members and Class Counsel are highly qualified, have significant relevant experience, and are capable of conducting the litigation; (e) the prosecution of separate actions by individual Class Members would create a risk of inconsistent or varying adjudications for individual Class Members, and conflicting adjudications for individual Class Members might, as a practical matter, be dispositive of the interests of other Class Members who are not parties to the adjudications, and might substantially impair or impede their ability to protect their interests; and (f) Defendants allegedly acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

6. A hearing (the “Settlement Hearing”) will be held on _____, 202__, at __:__ .m., either in person at the Court of Chancery of the State of Delaware, New Castle County, Leonard L. Williams Justice Center, 500 North King Street, Wilmington, Delaware 19801, or remotely by telephone or videoconference (in the discretion of the Court) to, among other things:

a. determine whether the proposed Settlement on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate to the Class, and should be approved by the Court;

b. determine whether a Judgment, substantially in the form attached as Exhibit C to the Stipulation, should be entered, dismissing the Action on the merits and with prejudice, releasing the Released Claims against the respective Released Persons, and barring and enjoining prosecution of the Released Claims against the Released Persons;

c. determine whether the proposed Plan of Allocation of the Net Settlement Fund proposed by Class Counsel is fair and reasonable, and should therefore be approved;

d. determine whether and in what amount any Fee and Expense Award should be paid to Plaintiffs' Counsel out of the Settlement Fund;

e. determine whether and in what amount Plaintiffs' Counsel should be authorized to pay an incentive fee to Lead Plaintiffs solely from any Fee and Expense Award;

f. hear and rule on any objections to the Settlement, the proposed Plan of Allocation of the Net Settlement Fund proposed by Class Counsel, to the application by Class Counsel for an award of attorneys' fees, costs and expenses, or any application by Lead Plaintiffs for an Incentive Fee Award; and

g. consider any other matters that may properly be brought before the Court in connection with the Settlement.

7. The Court may adjourn or reconvene the Settlement Hearing, or any adjournment thereof, including the consideration of the application for attorneys' fees, costs and expenses, without further notice to Class Members other than oral announcement at the Settlement Hearing or any adjournment thereof, or a notation on the docket in the Action, and the Court retains jurisdiction over the Parties and all Class Members to consider all further applications arising out of or connected with the proposed Settlement.

8. The Court may decide to hold the Settlement Hearing remotely by video or teleconference without further notice to the Class. Any Class Member (or the Class Member's counsel) who wishes to appear at the Settlement Hearing should consult the Court's docket and/or the Settlement website for any change in the format of the hearing.

9. The Court may approve the Settlement at or after the Settlement Hearing, according to the terms and conditions of the Stipulation, as it may be modified by the Parties, without further notice to Class Members. The Court may approve the Plan of Allocation proposed by Class Counsel or a modified plan of allocation at or after the Settlement Hearing, without further notice to Class Members. Further, the Court may render its judgment and order the payment of attorneys' fees, costs and expenses at or after the Settlement Hearing, with such

modifications as may be consented to by the Parties and without further notice of any kind.

10. The Court approves A.B. Data, Ltd. as the Settlement Administrator to provide notice to the Class and administer the Settlement, including the allocation and distribution of the Settlement Fund. The Court further approves and directs the Initial Payment pursuant to Paragraph 4.1(a) of the Stipulation.

11. The Court approves, in form and substance, the Notice of Pendency of Stockholder Class Action and Proposed Settlement, Settlement Hearing, and Right to Appear attached as Exhibit B to the Stipulation (the “Notice”).

12. The Court finds that the mailing of the Notice in substantially the manner set forth in this Order constitutes the best notice practicable under the circumstances to all persons entitled to such notice of the Settlement Hearing and the proposed Settlement, and meets the requirements of Delaware Court of Chancery Rule 23, the requirements of due process, and all other applicable law and rules.

13. Beginning not later than fifteen (15) business days from the date of entry of this Order (such date that is fifteen (15) business days after the date of entry of this Order, the “Notice Date”), A.B. Data, Ltd. shall cause the Notice, substantially in the form attached as Exhibit B to the Stipulation, to be mailed by U.S. first-class mail, or other mail service if mailed outside the United States, postage prepaid, to each potential Class Member who may be identified through

reasonable effort at their last known address based on the records of A.B. Data, Ltd. collected in connection with the Partial Settlement. All stockholders of record who held SHOS common stock on behalf of beneficial owners and who receive the Notice shall be requested to either: (i) within seven (7) calendar days of receipt of the Notice, request from A.B. Data, Ltd. sufficient copies of the Notice to forward to all such beneficial owners and within seven (7) calendar days of receipt of those Notices forward them to all such beneficial owners; or (ii) within seven (7) calendar days of receipt of the Notice, provide a list of the names, addresses, and, if available, email addresses of all such beneficial owners to A.B. Data, Ltd., in which event A.B. Data, Ltd. shall promptly mail the Notice to such beneficial owners. Upon full compliance with this Order, such nominees may seek reimbursement of their reasonable expenses actually incurred in complying with this Order by providing A.B. Data, Ltd. with proper documentation supporting the expenses for which reimbursement is sought.

14. Not later than the Notice Date, A.B. Data, Ltd. shall cause the Stipulation and the Notice to be posted on the Settlement website, www.searsstockholderssettlement.com, from which copies of the Notice and Stipulation may be downloaded.

15. All costs and expenses that are incurred by A.B. Data, Ltd. and Class Counsel in connection with: (i) providing notice to the Class; and (ii) administering

the Settlement, including the costs and expenses incurred in connection with the Escrow Account shall be paid from the Settlement Fund in accordance with the Stipulation without further order of the Court.

16. A.B. Data, Ltd. is authorized and directed to prepare any tax returns and any other tax reporting form for or in respect to the Settlement Fund, to pay from the Settlement Fund any Taxes owed with respect to the Settlement Fund, and to otherwise perform all obligations with respect to Taxes and any reporting or filings in respect thereof without further order of the Court in a manner consistent with the provisions of the Stipulation.

17. At least ten (10) calendar days prior to the date of the Settlement Hearing, Lead Plaintiffs shall file with the Court proof of mailing of the Notice and publication of the Summary Notice.

18. The contents of the Settlement Fund that will be held in the Escrow Account shall be deemed and considered to be *in custodia legis* of the Court, and shall remain subject to the exclusive jurisdiction of the Court, until such time as they shall be distributed pursuant to the Stipulation and the Class Distribution Order.

19. Unless the Court orders otherwise, any Class Member may enter an appearance in the Action, at the Class Member's own expense, individually or through counsel of the Class Member's own choice, by filing with the Register in Chancery and delivering a notice of appearance to Class Counsel and the

Defendants' Counsel, at the addresses set forth in Paragraph 20 below, such that it is received no later than thirty (30) calendar days prior to the Settlement Hearing, or as the Court may otherwise direct. Any Class Member who does not enter an appearance will be represented by Class Counsel and shall be deemed to have waived and forfeited any rights the Class Member may otherwise have to appear separately at the Settlement Hearing.

20. Any Class Member may file a written objection to the proposed Settlement, Plan of Allocation, and/or Class Counsel's application for an award of attorneys' fees, costs and expenses ("Objector"), if the Class Member has any cause why the proposed Settlement, Plan of Allocation, and/or application for an award of attorneys' fees, costs and expenses should not be approved; *provided, however*, that, unless otherwise directed by the Court for good cause shown, no Objector shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement, Plan of Allocation, and/or application for an award of attorneys' fees, costs and expenses unless that person or entity has filed a written objection with the Register in Chancery, Court of Chancery of the State of Delaware, New Castle County, Leonard L. Williams Justice Center, 500 North King Street, Wilmington, Delaware 19801, and served (electronically by File & Serve*Xpress*, by hand, by first-class U.S. Mail, or by express service) copies of the objection upon each of the following counsel at the following addresses and email addresses such that they are

received electronically and in hard copy no later than thirty (30) calendar days prior to the Settlement Hearing:

Ned Weinberger
LABATON KELLER SUCHAROW LLP
222 Delaware Avenue, Suite 1510
Wilmington, DE 19801
nweinberger@labaton.com

Michael A. Pittenger
POTTER ANDERSON & CORROON LLP
1313 N. Market Street, 6th Floor
Wilmington, DE 19801
mpittenger@potteranderson.com

Samuel L. Closic
PRICKETT, JONES & ELLIOTT, P.A.
1310 King Street
Wilmington, DE 19801
SLClosic@prickett.com

Counsel for Defendants and Cross-Claimants Edward S. Lampert, ESL Investments, Inc., ESL Partners, LP, RBS Partners, LP, Transform Holdco LLC, and Hometown Midco LLC

Peter B. Andrews
David M. Sborz
ANDREWS & SPRINGER LLC
4001 Kennett Pike, Suite 250
Wilmington, DE 19807
pandrews@andrewsspringer.com
dsborz@andrewsspringer.com

Class Counsel

Counsel for the Parties are directed to promptly furnish each other with copies of any objections that come into their possession.

21. Any objections must: (i) identify the case name and civil action number, “*In re Sears Hometown and Outlet Stores, Inc. Stockholders Litigation*, Consol. C.A. No. 2019-0798-JTL”; (ii) state the name, address, and telephone number of the Objector and, if represented by counsel, the name, address, and telephone number of the Objector’s counsel; (iii) be signed by the Objector;

(iv) contain a specific, written statement of the objection(s) and the specific reason(s) for the objection(s), including any legal and evidentiary support the Objector wishes to bring to the Court's attention, and if the Objector has indicated that he, she, or it intends to appear at the Settlement Hearing, the identity of any witnesses the Objector may call to testify and any exhibits the Objector intends to introduce into evidence at the hearing; and (v) include documentation sufficient to prove that the Objector is a member of the Class (i.e., held shares of SHOS common stock at the close of business on October 23, 2019). Documentation establishing that an Objector is a member of the Class must consist of copies of monthly brokerage account statements or an authorized statement from the Objector's broker containing the transactional and holding information found in an account statement.

22. Any person who fails to object in the manner described above shall be deemed to have waived the right to object (including any right of appeal) and shall be forever barred from raising such objection in this Action or any other action or proceeding or otherwise contesting the Settlement, Plan of Allocation, and application for attorneys' fees, costs and expenses in the Action or any other proceeding and will otherwise be bound by the Judgment to be entered and the releases to be given. Class Members who do not object need not appear at the Settlement Hearing or take any other action to indicate their approval.

23. At least forty-five (45) calendar days prior to the Settlement Hearing, Lead Plaintiffs shall file any opening briefs in support of the proposed Settlement and Plan of Allocation, and Class Counsel shall file their application for an award of attorneys' fees, costs and expenses, including any supporting affidavit(s). At least seven (7) calendar days prior to the date of the Settlement Hearing, the Parties shall file any reply in response to any objections to the Settlement or the Plan of Allocation, and Class Counsel shall file any reply in response to any objections to their application for an award of attorney's fees, costs and expenses.

24. Pending final determination of whether the Settlement should be approved, the Court bars and enjoins Lead Plaintiffs and all other Class Members from commencing, instituting, or prosecuting, or in any way participating in the commencement, institution, or prosecution, of any suit, action, or proceeding asserting any of the Released Plaintiff Claims against any of the Released Defendant Persons.

25. Neither the Settlement nor any act or omission in connection therewith is intended or shall be deemed or argued to be evidence of or to constitute an admission or concession by: (a) the Defendants as to (i) the truth of any fact alleged by Lead Plaintiffs; (ii) the validity of any claims or other issues raised, or which might be or might have been raised, in the Action (including in any appeal or in connection with Appraisal Petitioner's intervention) or in any other litigation or

proceeding; (iii) the deficiency of any defense or argument that has been or could have been asserted in the Action (including in any appeal) or in connection with Appraisal Petitioner's intervention or in any litigation or proceeding; (iv) the validity of any arguments that could have been asserted in the briefing on open issues in connection with the final judgment or on appeal or in connection with Appraisal Petitioner's intervention; or (v) any wrongdoing, fault, liability, or damages of any kind by any of them, which each of them expressly denies; or (b) Lead Plaintiffs that any of their claims are without merit, that any of the Defendants had meritorious defenses or arguments on appeal, or that damages recoverable from the Defendants (including pre- and post-judgment interest) would not have exceeded the Settlement Amount.

26. Neither the Settlement nor any act or omission in connection therewith shall be admissible, referred to, interpreted, construed, deemed, invoked, offered, or received in evidence or otherwise used by any Person in the Action (including in any appeal), or in any other suit, action or proceeding whatsoever, whether civil, criminal, or administrative; *provided, however*, that the Defendants and the Released Persons may file the Stipulation and/or the Judgment in any action that has been or may be brought against them in order to support a claim or defense based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue

preclusion or similar defense or counterclaim or in connection with any insurance litigation.

27. In the event the proposed Settlement (or any amendment thereof by the Parties) is terminated or rendered null and void for any reason: (i) any judgment related to the Settlement entered in the Action and any related orders entered by the Court shall in all events be treated as vacated, *nunc pro tunc*; (ii) all proceedings in the Action shall revert to their statuses as of immediately prior to the execution of the Term Sheet on August 2, 2024; (iii) the Parties shall jointly petition the Court for a revised schedule to address open issues and a form of final order and judgment; and (iv) the Parties shall proceed in all respects as if the Settlement and the Stipulation (other than the paragraphs of the Stipulation identified in Paragraph 12.2 of the Stipulation) had not been entered into by the Parties.

28. The Court may, for good cause, extend any of the deadlines set forth in this Order without further notice to the Class.

29. The Court retains exclusive jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

Vice Chancellor J. Travis Laster