



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] ORDER AND FINAL JUDGMENT

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

WHEREAS, lead plaintiffs Whitebark Value Partners LP and Keith Edquist (“Lead Plaintiffs”), on behalf of themselves and on behalf of the Class (defined below), and 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”), have entered into a Stipulation and Agreement of Compromise, Settlement, and Release dated as of November 21, 2024 (the “Stipulation”) that provides, subject to the approval of the Court, for the complete dismissal of the Action on the merits with prejudice upon the terms and conditions set forth in the Stipulation (the “Settlement”);

WHEREAS, by Order dated _____, 202_ (the “Scheduling Order”), the Court (i) noted its prior certification of the Class; (ii) ordered that notice of the proposed Settlement be provided to potential Class Members; (iii) provided Class Members with the opportunity to object to the proposed

Settlement, the proposed Plan of Allocation, and/or Class Counsel's application for an award of attorneys' fees, costs and expenses; and (iv) scheduled a hearing regarding final approval of the Settlement;

WHEREAS, the Court conducted a hearing on _____, 202_ (the "Settlement Hearing") to consider, among other things, whether: (i) the terms and conditions of the Settlement are fair, reasonable, and adequate to the Class, and should therefore be approved; (ii) a Judgment should be entered dismissing the Action on the merits with prejudice, releasing the Released Claims against the respective Released Persons, and barring and enjoining prosecution of the Released Claims against the Released Persons; (iii) the proposed Plan of Allocation of the Net Settlement Fund proposed by Class Counsel is fair and reasonable, and should therefore be approved; (iv) whether and in what amount any Fee and Expense Award should be paid to Plaintiffs' Counsel out of the Settlement Fund; and (v) whether and in what amount Plaintiffs' Counsel should be authorized to pay an incentive fee to Lead Plaintiffs out of any Fee and Expense Award; and

WHEREAS, it appearing that due notice of the hearing has been given in accordance with the Scheduling Order; the Parties having appeared by their respective attorneys of record; the Court having heard and considered evidence in support of the proposed Settlement, Plan of Allocation, and application by Class Counsel for an award of attorneys' fees, costs and expenses; the attorneys for the

respective Parties having been heard; an opportunity to be heard having been given to all other Persons requesting to be heard in accordance with the Scheduling Order; the Court having determined that notice to members of the Class was adequate and sufficient; and the entire matter of the proposed Settlement having been heard and considered by the Court.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

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

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 Class Member, and it is further determined that Lead Plaintiffs, the Defendants, and the Class, as well as their transferees, heirs, executors, successors, transferees, and assigns, are bound by this Order and Final Judgment.

3. Notice has been given to Class Members pursuant to and in the manner prescribed in the Scheduling Order, proof of mailing and other dissemination of the Notice was filed with the Court, and the Court finds that the form and means of Notice was the best notice practicable under the circumstances

and in full compliance with Delaware Court of Chancery Rule 23, the requirements of due process, and all other applicable law and rules.

4. The Settlement as provided for in the Stipulation is approved as fair, reasonable, and adequate, and in the best interests of Lead Plaintiffs and the Class.

5. Pursuant to Court of Chancery Rule 23, the Court fully and finally approves the Settlement in all respects, and the Parties are hereby authorized and directed to consummate the Settlement in accordance with the terms, conditions, and provisions of the Stipulation, and the Register of Chancery is directed to enter and docket this Order and Final Judgment.

6. The Stipulation shall be binding upon and inure to the benefit of the Parties, the Released Plaintiff Persons, and the Released Defendant Persons.

7. Upon the Effective Date, Lead Plaintiffs, on behalf of themselves and the Released Plaintiff Persons, shall have fully, finally, and forever released, settled, and discharged the Released Defendant Persons from and with respect to every one of the Released Plaintiff Claims, and shall thereupon be forever barred and enjoined from commencing, instituting, prosecuting, or continuing to prosecute any Released Plaintiff Claims against any of the Released Defendant Persons.

8. Upon the Effective Date, the Defendants shall have fully, finally, and forever released, settled, and discharged the Released Plaintiff Persons from and

with respect to every one of the Released Defendant Claims, and shall thereupon be forever barred and enjoined from commencing, instituting, prosecuting, or continuing to prosecute any Released Defendant Claims against any of the Released Plaintiff Persons.

9. The following definitions apply to the releases above.

a. “Effective Date” means the first date by which all of the following events have been met or have been waived in writing: (i) the payment of the full Settlement Amount into the Escrow Account in accordance with Paragraph 4.1 of the Stipulation; (ii) the Court has entered this Order and Final Judgment, which is substantially in the form attached to the Stipulation as Exhibit C, including without limitation, the non-opt-out Class as defined in the Stipulation, the Releases substantially in the form set out in the Stipulation, and the dismissal with prejudice of the Action without the award of any damages, fees, costs, or expenses, except as provided for in the Stipulation; and (iii) this Order and Final Judgment has become Final.

b. “Final” means the expiration of all time to appeal or seek other review of the Judgment, or if any appeal or other review of the Judgment is filed and not dismissed, after the Judgment is upheld on appeal in all material respects and is no longer subject to further review or reargument to the Delaware Supreme Court. However, any appeal or other review pertaining solely to the Fee and

Expense Award, the Incentive Fee Award, or any Plan of Allocation shall not in any way delay or preclude the Judgment from becoming Final.

c. “Released Plaintiff Claims” means all claims and causes of action, including Unknown Claims, that (a) were alleged, asserted, set forth, or claimed in the Complaint against the Released Defendant Persons or (b) could have been alleged, asserted, set forth, or claimed in the Complaint or in any other court, tribunal, forum, or proceeding by Lead Plaintiffs or any Class Members individually, directly, derivatively, or in any other capacity as SHOS stockholders, against the Released Defendant Persons, whether based on state, local, foreign, federal, statutory, regulatory, common, or other law or rule, arising out of or relating to the allegations, transactions, facts, matters, representations, or omissions involved, set forth, or referred to in the Complaint, including all such claims relating to (i) the Controller Intervention; (ii) the Merger or any element, term, condition, or circumstance of the Merger or the sale process leading up to the Merger; (iii) any actions, deliberations, negotiations, discussions, offers, inquiries, solicitations of interest, indications of interest, bids, due diligence, or any act or omission in connection with the review of strategic alternatives available, including the process of deliberation or negotiation concerning the Merger; (iv) the consideration received by Lead Plaintiffs and the Class in connection with the Merger; and (v) any fiduciary obligations of the Released Defendant Persons

relating to the Controller Intervention, the Merger, the process of deliberation or negotiation leading to the Merger, or the disclosures respecting the Merger. Notwithstanding the foregoing, the Released Plaintiff Claims shall not include (x) claims solely to enforce the terms of the Settlement, or (y) claims for statutory appraisal against Sears Hometown Stores, Inc. (and only against Sears Hometown Stores, Inc.) pursuant to Section 262 of the Delaware General Corporation Law, subject to a setoff for any amounts received in this Settlement (collectively, the “Excluded Plaintiff Claims”).

d. “Released Plaintiff Persons” means Lead Plaintiffs, all other Class Members, and their respective trustees, officers, directors, employees, agents, advisors, experts, and attorneys (including Plaintiffs’ Counsel), in their capacities as such.

e. “Released Defendant Claims” means all claims and causes of action, including Unknown Claims, arising out of or relating to the Action other than claims relating to the enforcement of the Settlement, including all actions taken by Lead Plaintiffs in connection with the initiation, prosecution, and settlement of the Action. For the avoidance of doubt, the Released Defendant Claims do not include any claims: (x) based on conduct after the Effective Date; (y) to enforce the terms of the Settlement; or (z) any claim or defense against Appraisal Petitioner or its respective trustees, officers, directors, employees,

agents, advisors, experts, and attorneys (including Appraisal Petitioner’s Counsel), in their capacities as such, relating in any way to the Appraisal Action or Appraisal Petitioner’s claims in intervention, including its contention that it is entitled to damages or any portion of the Settlement Fund in this Action greater than amounts received by other Class Members (collectively, the “Excluded Defendant Claims”).

f. “Released Defendant Persons” means the Defendants, Defendants’ affiliates, and each of their respective predecessors, successors, Immediate Family members, partners, insurers, representatives, attorneys (including Defendants’ Counsel), experts, advisors, auditors, and accountants, in their capacities as such.

g. “Unknown Claims” means (i) any Released Plaintiff Claims that any Lead Plaintiff or any other Class Member does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Defendant Persons, or (ii) any Released Defendant Claims that any Defendant does not know or suspect to exist in his or her favor at the time of the release of the Released Plaintiff Persons, which, if known by him, her, or it, might have affected his, her, or its decision(s) with respect to the Settlement. With respect to any Released Claims, the Parties stipulate and agree that they shall expressly waive, and each of the other Class Members by operation of law shall be deemed to have waived, any

provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law or foreign law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

The Parties acknowledge, and each of the other Class Members by operation of law are deemed to acknowledge, that they may discover facts in addition to or different from those now known or believed to be true with respect to the Released Claims, but that it is the intention of the Parties, and by operation of law the other Class Members, to fully, finally, and forever extinguish all Released Claims, known or unknown, suspected or unsuspected, which now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery of additional or different facts. The Parties also acknowledge, and each other Class Member by operation of law is deemed to acknowledge, that the inclusion of “Unknown Claims” in the definition of Released Claims is separately bargained for and is a material element of the Settlement and was relied upon by each of the Parties in entering into this Stipulation.

10. The Parties represent and agree that the terms of the Settlement were negotiated at arm's length and in good faith and reflect a settlement that was reached voluntarily based upon adequate information and sufficient discovery and after consultation with experienced legal counsel.

11. Plaintiffs' Counsel are awarded attorneys' fees, costs and expenses in the sum of \$_____ (the "Fee and Expense Award"), which sum the Court finds to be fair and reasonable. Plaintiffs' Counsel are authorized to pay Lead Plaintiffs Whitebark Value Partners LP and Keith Edquist, solely from the Fee and Expense Award, an incentive fee of up to \$_____ each (the "Incentive Fee Award"), which amount the Court finds to be fair and reasonable in light of the benefits conferred by the Action and the Settlement. The Fee and Expense Award, including any amount awarded therefrom as an Incentive Fee Award, shall be paid solely out of the Settlement Fund in accordance with the terms of the Stipulation. Neither Lead Plaintiffs, nor Plaintiffs' Counsel, nor any Class Member shall make, or assist any other counsel in making, any application for an award of fees, costs or expenses or any incentive fee award in connection with this Action or the Settlement in any other jurisdiction from the Released Defendant Persons.

12. The Court hereby finds and concludes that the formula for the calculation of payments to Class Members as set forth in the Plan of Allocation stated in the Notice provides a fair and reasonable basis upon which to allocate the

proceeds of the Net Settlement Fund among Class Members with due consideration having been given to administrative convenience and necessity.

13. The Court may direct that residual Net Settlement Funds, if any, be redistributed to identified Class Members. But if redistribution is uneconomic, the Court may approve a transfer of the funds to the Combined Campaign for Justice.

14. The binding effect of this Order and Final Judgment and the obligations of Lead Plaintiffs, Class Members, and the Defendants under the Settlement shall not be conditioned upon or subject to the resolution of any appeal from this Order and Final Judgment that relates solely to the issue of attorneys' fees, costs and expenses or to any Plan of Allocation. No proceedings or Court order with respect to the Fee and Expense award or the Incentive Fee Award shall in any way disturb or affect this Judgment (including precluding the Judgment from becoming Final or otherwise being entitled to preclusive effect), and any such proceeding or Court order shall be considered separate from this Judgment.

15. The Parties and all Class Members shall be and are deemed bound by the Stipulation and this Order and Final Judgment. This Order and Final Judgment, including the release of all Released Plaintiff Claims against all Released Defendant Persons, shall have *res judicata*, collateral estoppel, and all other preclusive effects in all pending and future lawsuits, arbitrations, or other proceedings involving any of the Released Persons.

16. In the event the 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.

17. Neither this Judgment nor 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; or (iv) 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 that damages recoverable from the Defendants would not have exceeded the Settlement Amount.

18. 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 connection with Appraisal Petitioner's intervention), or in any other suit, action or proceeding whatsoever, whether civil, criminal, or administrative; *provided, however*, that the Defendants and the Released Defendant 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.

19. Without further order of the Court, the Parties may agree in writing to reasonable extensions of time to carry out any of the provisions of the Stipulation.

20. Without further order of the Court, the Parties may agree to and adopt such amendments, modifications, and expansions of the Stipulation and/or any of the Exhibits attached thereto to effectuate the Settlement that are not materially inconsistent with this Order and Final Judgment.

21. The Action is hereby dismissed on the merits with prejudice, on the merits, and without fees, costs or expenses (except as provided in Paragraph 11, *supra*).

22. Without affecting the finality of this Order and Final Judgment in any way, the Court reserves jurisdiction over all matters relating to the administration and consummation of the Settlement.

Vice Chancellor J. Travis Laster