

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

RYAN FLANAGAN, derivatively on
behalf of nominal defendant SEARS
HOLDINGS CORPORATION,

Plaintiff,

v.

EDWARD S. LAMPERT, STEVEN
T. MNUCHIN, THOMAS J. TISCH,
ANN N. REESE, WILLIAM C.
KUNKLER, III, PAUL G.
DEPODESTA, CESAR L.
ALVAREZ, KUNAL S. KAMLANI,
ESL INVESTMENTS, INC. and
SERITAGE GROWTH
PROPERTIES,

Defendants,

and

SEARS HOLDINGS
CORPORATION, a Delaware
corporation,

Nominal Defendant.

C.A. No. _____

VERIFIED STOCKHOLDER DERIVATIVE COMPLAINT

Plaintiff Ryan Flanagan (“Plaintiff”), derivatively, on behalf of nominal defendant Sears Holdings Corporation (“Sears” or the “Company”), brings the following Verified Stockholder Derivative Complaint (the “Complaint”) against

(a) certain current members of the board of directors of Sears (the “Board” or the “Individual Defendants”), (b) Edward S. Lampert (“Lampert”) and ESL Investments, Inc. (“ESL”), Sears’ controlling stockholder, and (c) Seritage Growth Properties (“Seritage”). The allegations of the Complaint are based on the knowledge of Plaintiff as to himself, and on information and belief, including the investigation of counsel and review of publicly available information.

INTRODUCTION

1. Delaware law will protect corporations when a controlling stockholder engineers a deal that harms the company resulting in the controller receiving unfair consideration. This case seeks redress for a scheme by which the controlling stockholder of a Delaware corporation extracted valuable assets on unfair terms for his own benefit, avoiding a minority stockholder vote, leaving the company with a depleted asset-base in exchange for insufficient consideration.

2. Sears was formed in 2005 by the merger of Sears Roebuck & Co. and Kmart Holdings Corporation. Sears was once considered the third largest home appliance retailer in the United States after Wal-Mart and Target. In addition to home appliances, the Company was once a leading retailer of tools, lawn and garden, fitness and automotive repair equipment. Sears is a holding company and operates roughly 1,870 retail locations in the U.S. and Canada through its affiliates under the mastheads of Sears and Kmart.

3. Lampert, through his hedge fund ESL, is the unquestioned leader and *de facto* controlling stockholder of Sears. Lampert owns roughly 62,260,584 shares of Sears' common stock resulting in 53.2%¹ control of the Company. Lampert is also the Chief Executive Officer ("CEO") and Chairman of Sears' Board and is given tremendous deference without any challenge from Sears' Board. For example, according to Sears' most recent annual 10-K filing, Sears has "delegated authority to direct investment of our surplus cash to our Chairman and Chief Executive Officer, Edward S. Lampert, subject to various limitations" The rationale for this tremendous deference is easily explainable.

4. Article 2, Section 3 of Sears' Amended and Restated Bylaws allows for the removal of directors, "with or without cause, from office at any time by stockholders in accordance with Delaware law." Thus, pursuant to 8 Del. C. § 141(k), Sears' entire Board may be removed, with or without cause, by a majority of the holders of common stock (i.e. Lampert). Sears also gives Lampert significant control and deference to invest the Company's surplus cash.

5. Since Lampert took control of Sears in 2005, the Company's financial performance has decayed. Lampert adopted a strategy of letting stores go under-served by refusing to allocate capital towards renovation or inventory. Rather than

¹ As disclosed in the Seritage Prospectus (as defined later herein), ESL's common stock ownership of Sears includes shares issuable to ESL upon the exercise of warrants held by ESL.

reinvesting capital and improving the business, Lampert forced the Company into pursuing a series of conflicted transactions that accumulated more debt on Sears' balance sheet. These capital infusions, while providing short-term liquidity to the Company, are unfair to the Company and solely benefitted Lampert placing him in a prime, protected position should the Company file for bankruptcy. Under Lampert's leadership, Lampert has been telling investors for almost decade that a turnaround is on the horizon, despite several successive years of falling sales and market share erosion.

6. Between 2005 and 2010, when Sears was still generating profits, Sears recorded net income of almost \$3.8 billion. Instead of reinvesting profits to repair and improve decaying store fronts, Lampert made the Company spend roughly \$5.8 billion on share repurchases at a time when a majority of businesses were cutting their share repurchases back to adjust to the recession and constrained consumer spending. Since 2005, the Company's cash on its balance sheet declined from \$4.4 billion to just \$250 million in 2014. Sales at Sears and Kmart also declined under Lampert's tenure from \$49.1 billion in 2005 to \$31.2 billion in 2014.

7. In 2014, Lampert engineered a series of related-party transactions with the Company that were purportedly advertised as "fair," injecting short-term cash into the Company, but ultimately were designed to protect Lampert's interests

and increase the value of his debt investment at the expense of the Company. In a matter of two months, from September 2014 to October 2014, Lampert: (1) extracted a \$400 million loan from Sears with ESL receiving an option to pick 25 top producing properties presumably worth dramatically more than the loan amount; (2) sold the Company's majority stake (roughly 40 million shares) in its Canadian subsidiary primarily to Lampert's and ESL's benefit for \$380 million; and (3) issued 8% senior notes and warrants through a debt offering to raise an additional \$625 million. As a result of these deals, Lampert and ESL collectively own roughly 30% of Sears' debt.

8. In what appears to be a round-trip transaction to extinguish Sears' debt to Lampert, the Company officially announced on April 1 2015, that it was going to spinoff and sell several valuable properties to Seritage, a Maryland-based real estate investment trust ("REIT"). The transaction is structured as a subscription rights offering ("Rights Offering"), where current Sears' stockholders are given one transferable right to purchase one half of one share of Seritage Class A common stock for \$29.58 per share. The subscription rights will be listed on the New York Stock Exchange ("NYSE") under the symbol "SRGRT." The Class A common shares will be traded under the NYSE under the ticker symbol "SRG."

9. As disclosed on June 10, 2015 by Seritage's final prospectus (the "Prospectus"), Sears agreed to a sale-leaseback transaction (the "Sale-Leaseback")

involving 235 real estate properties for which Sears would receive roughly \$2.7 billion (both the Rights Offering and Sale-Leaseback will be collectively referred to as the “Spin-off”). In addition to the sale of 235 properties, Sears is also selling three (3) 50% joint venture interests in an additional 31 properties (the “JV Properties”). Once the Sears’ properties are sold to Seritage, Seritage has agreed, subject to a master lease agreement (“Master Lease Agreement”) and JV Master Lease Agreement (the “JV Master Lease Agreement”), to lease a substantial majority of the 235 properties² and JV Properties back to Sears.

10. The terms of the Spin-off are nothing short of unfair and discriminatory to Sears but rewarding to Lampert. Sears’ stockholders won’t see a dime of the \$2.7 billion due to Sears’ indebtedness to Lampert. The Sale-Leaseback of Sears’ properties will inevitably create additional financial stress on a struggling cash-burning enterprise. Specifically, Sears will be responsible to pay Seritage roughly \$140 million a year to rent properties it once owned. In addition, Sears is also bound by a one-sided Master Lease Agreement, which creates significant uncertainty as to the future viability of current leases. In particular, the Master Lease Agreement provides Seritage a direct recapture privilege to claw back up to 50% of the space at any Sears or Kmart store among the 235 properties

² Accordingly to the Prospectus, 11 of the 235 properties will not be leased directly back to Sears but instead will be leased to third-parties.

being sold. With respect to the JV Properties, the JV Master Lease Agreement allows Seritage the right to recapture up to 100% of the Sears stores located on the JV Properties. The public markets have further confirmed the unfairness of the Spin-off because since the Company's official announcement of the Rights Offering on April 1st, Sears' stock price has dropped more than 31% as of June 18, 2015.

11. Lampert's interests are not aligned with Sears' or public stockholders and stands to reap significant benefits not shared with the Company or minority stockholders. Mainly, upon closing of the Spin-off, Lampert will receive, among other things: (1) non-economic voting shares in Seritage and (2) a right to purchase all units of the Operating Partnership (as defined herein) not already owned by Seritage. It also appears that a significant portion of Lampert's debt to Sears will be repaid.

12. Further exacerbating the unfairness of the Spin-off, the Prospectus also reveals nothing about whether the Rights Offering and Sale-Leaseback were reviewed and approved by Sears' Audit Committee, casting doubt about what steps, if any, were taken by the Board to address the conflicted nature of the transaction. Paragraph 28 of Sears' Audit Committee Charter expressly requires the Company's Audit Committee to "Review and approve all related party transactions, as defined by applicable NASDAQ rules." Yet nothing in Sears'

public filings indicates what review, if any, was taken by the Audit Committee and whether it approved the Rights Offering and Sale-Leaseback.

13. The Individual Defendants, having no protectionary conflict cleansing mechanisms in place, sat complacently allowing Lampert to appropriate a majority of Sears' most valuable properties for himself on unfair terms at a discount. By this action, Plaintiff seeks to hold (a) Lampert and ESL accountable for malfeasance and breaches of fiduciary duty in their capacity as Sears' controlling stockholder, (b) the Individual Defendants accountable for their breaches of fiduciary duty and (c) Seritage accountable for its aiding and abetting Lampert, ESL and the Individual Defendants' breaches of fiduciary duty.

THE PARTIES

14. Plaintiff Ryan Flanagan is a stockholder of Sears and has been a stockholder of Sears at all material times alleged in this Complaint.

15. Nominal defendant Sears is a retailer of home appliances, tools, lawn and garden, fitness, and automotive repair equipment. With about 1,870 retail stores in the US and Canada, Sears Holdings operates through subsidiaries, including Sears, Roebuck and Co. and Kmart. The Company operates a network of stores with approximately 1,725 full-line and specialty retail stores in the United States, operating through Kmart and Sears. Sears is incorporated in the State of Delaware and has its corporate headquarters at 3333 Beverly Road, Hoffman

Estates, IL 60179. Sears's stock trades on the NASDAQ Stock Exchange ("NASDAQ") under the ticker symbol "SHLD".

16. Defendant Lampert serves as the Executive Chairman of Sears' Board and has held such position since March 2005. Lampert is the Chief Executive Officer ("CEO") of Sears and has held such position since February 2013. Lampert is one of the controlling members of Sears. Lampert is also the CEO and co-founder of ESL Investments Inc., a privately owned hedge fund, based in Greenwich, Connecticut. According to the Seritage Prospectus, Lampert and ESL own roughly 62,260,584 shares of Sears' common stock and effectively controls 53.2% of any vote by common stockholders. As a result of the ESL Exchange Agreement, ESL will own roughly 44.9% of Seritage's Operating Partnership and will own a majority of the Class B voting shares of Seritage. In 2014, Sears awarded Lampert 152,483 shares of restricted stock worth roughly \$5,702,363.

17. Defendant Steven T. Mnuchin ("Mnuchin") has been a director of Sears since March 2005. Mnuchin sits on both the Nominating & Corporate Governance Committee and Finance Committee at Sears. He previously served as a director for Kmart Corporation and Kmart Holding Corporation from April 2003 until March 2005. From December 2002 to August 2003, Mnuchin also served as Vice Chairman of Defendant ESL. According to Sears' Form 424B3 filed with the SEC on February 22, 2005, Mnuchin is also a limited partner in one of the ESL

affiliates.

18. Defendant Thomas J. Tisch (“Tisch”) has been a director of Sears since March 2005. Tisch sits on both the Compensation Committee and Audit Committee at Sears. From April 2003 to March 2005 Tisch served as a director on the boards of Kmart Corporation and Kmart Holding Corporation. According to Sears’ Form 424B3 filed with the SEC on February 22, 2005, Tisch is also a limited partner in one of the ESL affiliates.

19. Defendant Ann N. Reese (“Reese”) has been a director of Sears since March 2005. Reese previously served as a director of both Kmart Corporation and Kmart Holding Corporation from April 2003 to March 2005. Reese is Chairwoman of Sears’ Compensation Committee and also serves as the Chairwoman of the Company’s Audit Committee.

20. Defendant William C. Kunkler, III (“Kunkler”) has been a director of Sears since September 2009. Kunkler is a member of the Company’s Audit Committee and Finance Committee.

21. Defendant Paul G. Depodesta (“Depodesta”) has been a director of Sears since December 2012. Depodesta is a member of the Company’s Compensation Committee and Nominating & Corporate Governance Committee.

22. Defendant Cesar L. Alvarez (“Alvarez”) has been a director of Sears since December 2013. Alvarez is a member of the Company’s Nominating &

Corporate Governance Committee. He is also a board member of Fairholme Funds, Inc. an affiliate of Fairholme Capital Management, Sears' second largest stockholder, which owns roughly 24.6% of the Sears' common stock.

23. Defendant Kunal S. Kamlani ("Kamlani") has been a director of Sears since December 2014. Kamlani is a member of the Company's Audit Committee and Finance Committee.

24. Defendant ESL is a private Delaware corporation and maintains its business at 1170 Kane Concourse, Suite 200, Bay Harbour, FL 33154. ESL is primarily managed by Lampert who co-founded ESL in 1988. Currently, Lampert is the CEO and Chairman of ESL. ESL, which was named after Lampert's initials, primarily invests in public equity and fixed income markets. It also invests in convertible securities, derivatives, swaps, and options. According to the Seritage Prospectus, Lampert and ESL own roughly 62,260,584 shares of Sears' common stock and effectively controls 53.2% of any vote by common stockholders. Moreover, pursuant to the ESL Exchange Agreement, ESL will own approximately 44.9% of Seritage's Operating Partnership and will control a majority of Seritage's Class B voting shares.

25. Defendant Seritage is a Maryland real estate investment trust that was formed on June 3, 2015, which maintains offices at 3333 Beverly Road, Hoffman Estates, IL 60179. Seritage conducts its operations through Seritage Growth

Properties, L.P. (the “Operating Partnership”), a Delaware Operating Partnership formed on April 22, 2015. Following the Rights Offering, Seritage will be a publicly traded, self-administered, self-managed REIT primarily engaged in the real property business through its investment in the Operating Partnership.

SUBSTANTIVE ALLEGATIONS

Lampert’s Failed Leadership of Sears

26. As noted once by Forbes “No other business has the brand recognition of Sears.”³ Sears is a broad-line retailer that sells apparel, tools, consumer electronics, appliances, sporting equipment, general goods and groceries through stores in a variety of formats located in the U.S. and Canada, some of which are independently owned and operated. Sears Holdings Corporation, the entity, is only 10 years old, having been formed when Sears, the storied 125-year-old retailer that was once the largest in the U.S., merged its operations with that of Kmart, a similarly long lived retailer and household name. Lampert took control of former Sears affiliate Sears Roebuck & Company in 2005 and then merged it with Kmart, a company Lampert acquired out of bankruptcy, to officially form Sear Holdings Corporation.

³ David Vinjamuri, FORBES, “Can Sears Be Saved? Four Strategies For Success,” Jan. 10, 2013, <http://www.forbes.com/sites/davidvinjamuri/2012/01/10/can-sears-be-saved-four-strategies-for-success/>

27. Sears is undeniably Lampert's Company. He is the CEO, Chairman of the Board and largest stockholder. Through the ownership of his own hedge fund, ESL, Lampert effectively controls 53.2% of the vote of Sears' common stock. Contrary to CEOs of other public corporations, Lampert runs Sears in his best interests instead of the best interests of stockholders. Lampert, who runs Sears from his exclusive \$38 million dollar mansion in Indian Creek, Florida, only visits Company headquarters twice per year.⁴ According to Sears most recent 10-K filing, the Company even gives Lampert free reign to invest available capital of the Company:

Our Board of Directors has delegated authority to direct investment of our surplus cash to our Chairman and Chief Executive Officer, Edward S. Lampert, subject to various limitations that have been or may be from time to time adopted by the Board of Directors and/or Finance Committee of the Board of Directors.

28. Sears also has given Lampert wide-discretion to pursue investment opportunities in the best interest of ESL, through a "renounced interest exception" subject to very limited situations:

Further, to clarify the expectations that the Board of Directors has with respect to the investment of our surplus cash, the Board has renounced, in accordance with Delaware law, any interest or expectancy of the Company associated with any investment

⁴ Mina Kimes, BLOOMBERG BUSINESS, "At Sears, Eddie Lampert's Warring Divisions Model Adds to the Troubles," Jul. 11, 2013, <http://www.bloomberg.com/bw/articles/2013-07-11/at-sears-eddie-lamperts-warring-divisions-model-adds-to-the-troubles>

opportunities in securities that may come to the attention of Mr. Lampert or any employee, officer, director or advisor to ESL and its affiliated investment entities (each, a "Covered Party") who also serves as an officer or director of the Company other than (a) investment opportunities that come to such Covered Party's attention directly and exclusively in such Covered Party's capacity as a director, officer or employee of the Company, (b) control investments in companies in the mass merchandising, retailing, commercial appliance distribution, product protection agreements, residential and commercial product installation and repair services and automotive repair and maintenance industries and (c) investment opportunities in companies or assets with a significant role in our retailing business, including investment in real estate currently leased by the Company or in suppliers for which the Company is a substantial customer representing over 10% of such companies' revenues, but excluding investments of ESL that were existing as of May 23, 2005.

29. Lampert also holds millions of Sears' debt further solidifying his influence on Sears. In particular, pursuant to Sears' Proxy Statement on Schedule 14A (the "Proxy") filed with the SEC on March 17, 2015, Lampert and ESL hold over \$900 million in total between short and long-term debt (\$200 million of which has since been paid back), equating to roughly 30% of Sears' total debt. The Proxy also discloses additional debt obligations owed to Lampert and ESL granting him substantial negotiation leverage and control:

Secured Short-Term Loan

In September 2014, the Company, through Sears, Sears Development Co., and Kmart Corporation ("Borrowers"), entities wholly-owned and controlled, directly or indirectly by the Company, entered into a \$400 million secured short-term loan (the "Loan") with JPP II, LLC and JPP, LLC (together, the "Lender"), entities affiliated with ESL.

* * *

Senior Secured Notes and Subsidiary Notes

At January 31, 2015, Mr. Lampert and ESL held an aggregate of \$205 million of principal amount of the Company's 6 5/8% Senior Secured Notes due 2018 and an aggregate of \$3 million of principal amount of unsecured notes issued by [Sears Roebuck Acceptance Corp.].

Senior Unsecured Notes and Warrants

At January 31, 2015, Mr. Lampert and ESL held an aggregate of \$299 million of principal amount of the Company's 8% Senior Unsecured Notes due 2019 and 10,530,633 warrants to purchase shares of Sears Holdings' common stock.

30. Since 2005, Lampert's goal has been clear, use Sears' failures and struggles to bolster his hedge fund ESL. As noted by Fortune, "Sears is shrinking seems obvious. *But that appears to be by design*, at least to some extent. In fact Lampert hinted that a leaner, but more profitable Sears was his goal."⁵ Since Lampert took control of the Company (but before he became CEO in 2013) Sears made four (4) CEO changes. Revenues at Sears have declined every year since 2005; the Company has not even turned a profit since 2010. Cash on Sears' balance sheet declined from \$4.4 billion in 2005 to just \$250 million at the end of 2014:

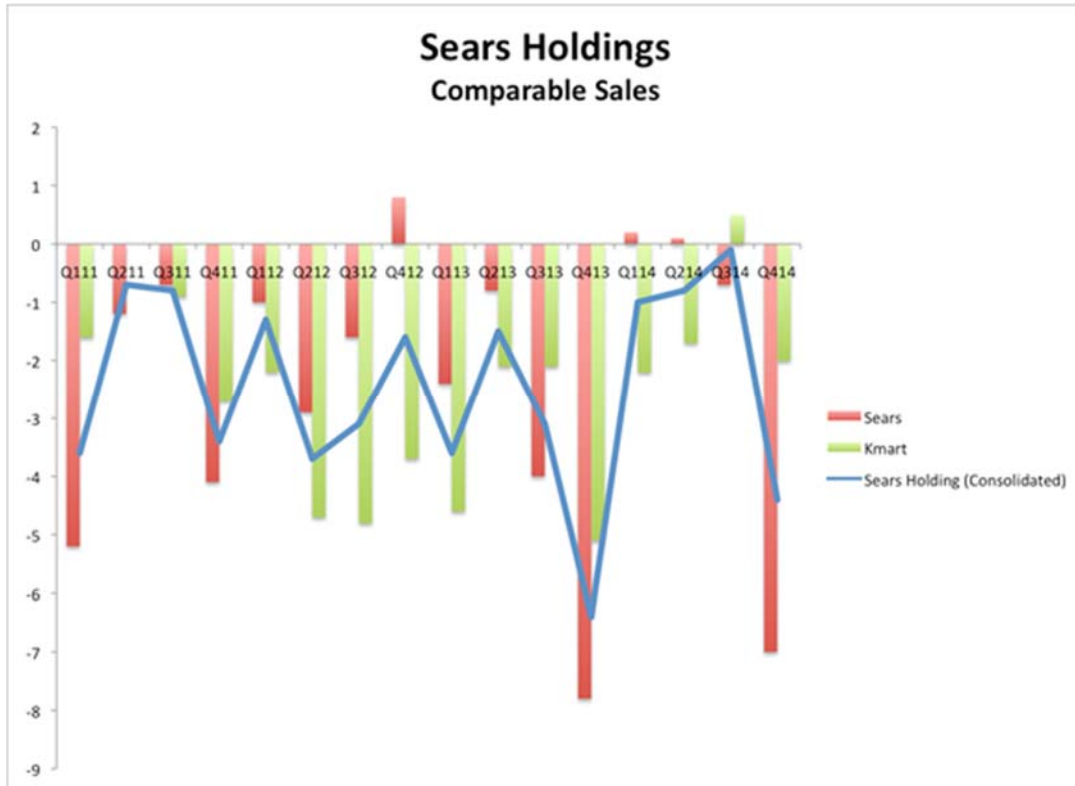
⁵ Phil Wahba, FORTUNE, "Eddie Lampert's Incredible Shrinking Sears Empire," Feb. 26, 2015, <http://fortune.com/2015/02/26/sears-earnings/> (emphasis added).

Sears Holdings			
	Net Income	Cash & Equivalents	Stock Buybacks
2005	\$4,858	\$4,440	\$590
2006	\$1,490	\$3,968	\$816
2007	\$826	\$1,622	\$2,926
2008	\$53	\$1,173	\$678
2009	\$280	\$1,689	\$424
2010	\$139	\$1,375	\$394
2011	(\$3,120)	\$747	\$183
2012	(\$1,054)	\$609	\$0
2013	(\$1,116)	\$1,028	\$0
2014	(\$1,810)	\$250	\$0

31. Prior to 2010, when Sears was turning a profit, Lampert used available cash to buy back the Company’s high-priced stock to increase per-share earnings. From 2005 to 2010, Sears recorded net income of almost \$2.8 billion, but spent over \$5.8 billion on share repurchases. At the time, the repurchases defied logic, taking place during a time when many other businesses were reducing their share buybacks to adjust to the recession and decrease in consumer spending.

32. Had Lampert been interested in restoring the Sears’ brand, Lampert could easily have used the Company’s profitability to reinvest in stores and bolster inventory in order to remake the stores into destinations shoppers wanted to visit. As Lampert made clear in his 2014 annual letter to stockholders, Lampert purposively dismissed spending “hundreds of millions of dollars more in décor and fixtures.”

33. Sales have also evaporated under Lampert's tenure, with revenues falling from \$49.1 billion in 2005 to \$31.2 billion in 2014.



Lampert Engages In Highly Conflicted Deals With the Company For the Benefit of Himself

34. After years of failed operations, Lampert more recently entered into a series of conflicted related-party deals with the Company. Between September 2014 and October 2014, the Company entered into three (3) deals that dramatically decreased Sears' asset base and benefitted Lampert. First, on September 16, 2014, Sears announced that the Company took a \$400 million loan from ESL and Lampert. The loan was secured by liens on 25 properties but the loan also gave Lampert the option to substitute one or more of the properties with others of its

choice. Second, on October 2, 2014, the Company announced a subscription rights offering whereby Sears sold roughly 40 million shares (a majority of its stake) in its Canadian affiliate, Sears Canada Inc. mainly to Lampert and ESL. Sears Canada Inc. now trades publicly on the NASDAQ exchange under the symbol “SRSC.” Finally, on October 21, 2014, Sears announced another conflicted financing deal where the Company offered 8% senior notes and warrants. The notes carried an 8% interest rate. Lampert and ESL purchased roughly \$300 million worth of notes.

35. As a result of these highly-conflicted, related-party deals, Lampert and ESL own roughly 30% of Sears’ debt.

Terms of the Spin-off and Rights Offering Are Announced

36. In continuing Sears’ accumulation of debt, the Company, along with Seritage, announced that it was going to Spin-off a majority of its most valuable real estate properties to Seritage, an entity controlled by Lampert. On April 1, 2015, Seritage filed an S-11 Registration Statement announcing the Rights Offering for, in part, 53,298,899 Class A Seritage common shares, by which Sears would sell certain properties to Seritage in exchange for roughly \$2.7 billion.

37. Additional information about the Spin-off and subsequent Rights Offering was later disclosed in Seritage’s Fourth Amended S-11 Registration Statement that was filed with the SEC on June 8, 2015. Subsequently, the terms of

the Spin-off and Rights Offering were memorialized in Seritage's final Prospectus two days later on June 10, 2015.

38. As disclosed in the Prospectus, Sears is selling 235 properties to Seritage in exchange for roughly \$2.7 billion. As part of the Spin-off, Seritage has agreed to leaseback 224 properties to Sears and charge Sears rent for such leases subject to a Master Lease Agreement (11 of the 235 properties will be leased to third parties per the Prospectus).

39. The Company further announced that all common stockholders holding stock as of June 11, 2015, would receive, for every one Sears common share, one transferable subscription right to purchase one half of one Seritage Class A common share for \$29.58 per share. The subscription rights will be listed on the New York Stock Exchange ("NYSE") under the symbol "SRGRT." The Class A common shares are non-voting shares, and therefore Sears' stockholders will have no voting rights in Seritage. Sears stockholders will have the right to oversubscribe for additional Seritage shares.

40. Additionally, Sears is also selling its 50% interest in three valuable joint ventures involving 31 additional properties (as referred to as the "JV Properties") with the three largest domestic mall operators in the U.S: (1) General Growth Properties, (2) Simon Property Group, and (3) The Macerich Company. In each of these joint ventures, each partner is paying 50% of the value of properties

directly to Sears. Similar to the 224 properties being sold to Seritage, a majority of the JV Properties will be leased back to Sears subject to the terms of the JV Master Lease Agreement. The Prospectus summarizes the mechanics of the Spin-off as follows:

Following the Transaction, Seritage Growth will be a publicly traded, self-administered, self-managed REIT primarily engaged in the real property business through its investment in Operating Partnership. Initially, our portfolio will consist of 235 properties (the “Acquired Properties”) that are owned (or, in one case, ground-leased) by Sears Holdings Corporation (together with its subsidiaries, “Sears Holdings” or “SHC”), as of the date of this prospectus. In addition, we will own three 50% joint venture interests in an additional twelve, ten and nine properties (collectively, the “JV Properties”), respectively, which joint venture interests are owned by Sears Holdings as of the date of this prospectus and will be sold to us in the Transaction. We will lease (or sublease) a substantial majority of the space at all but eleven of the Acquired Properties (such eleven properties, the “Third Party Properties”) back to Sears Holdings under a master lease agreement (the “Master Lease”), with the remainder of such space leased to third-party tenants. The Third Party Properties, which do not currently contain a Sears Holdings store, will not have any space leased to Sears Holdings, and will instead be leased solely to third-party tenants. A substantial majority of the space at the JV Properties is also leased to Sears Holdings by GS Portfolio Holdings LLC (the “GGP JV”), a joint venture between Sears Holdings and a subsidiary of General Growth Properties, Inc. (together with its subsidiaries, “GGP”), SPS Portfolio Holdings LLC (the “Simon JV”), a joint venture between Sears Holdings and a subsidiary of Simon Property Group, Inc. (together with its subsidiaries, “Simon”), or MS Portfolio LLC (the “Macerich JV” and, together with the GGP JV and the Simon JV, each, a “JV”), a joint venture between Sears Holdings and a subsidiary of The Macerich Company (together with its subsidiaries, “Macerich”), as applicable, in each case under a separate master lease with each JV (the “JV Master Leases”). We will acquire Sears Holdings’ 50% interest in each of the JVs in the Transaction.

We expect to generate revenues primarily by leasing our properties to tenants, including both Sears Holdings and third-party tenants, who will operate retail stores (and potentially other uses) in the leased premises, a business model common to many publicly traded REITs. In addition to revenues generated under the Master Lease through rent payments from Sears Holdings, we expect to generate revenue through leases to third-party tenants under existing and future leases for space at our properties, including the Acquired Properties. In addition, we will have an interest in the JV Properties through our 50% interest in each JV. The Master Lease provides us with the right to recapture up to approximately 50% of the space within the Sears or Kmart stores located at the Acquired Properties (the “Stores”) (subject to certain exceptions), in addition to all of any automotive care centers which are free-standing or attached as “appendages” to the Stores, and all outparcels or outlots, as well as certain portions of parking areas and common areas, at the Acquired Properties leased to Sears Holdings under the Master Lease. We will have the right to reconfigure and rent the recaptured space to third-party tenants on potentially superior terms determined by us and for our own account. The JV Master Leases provide each JV with a similar right in respect of its JV Properties (other than one property owned by the Macerich JV). We also have the right to recapture 100% of the space within the Sears Holdings main store located on each of 21 identified Acquired Properties by making a specified lease termination payment to Sears Holdings, after which we expect to be able to reposition and re-lease those stores and potentially generate additional revenue.

Lampert Stands On Both Sides of the Spin-off and Will Receive Disparate Consideration

41. The Spin-off and related transactions are nothing more than a convoluted method of extracting Sears’ last valuable assets while handsomely rewarding Lampert. Using his leverage as Sears’ controlling stockholder, Lampert deliberately designed a transaction on terms are patently unfair that not only evade

a stockholder vote, but also certain REIT guidelines in order to preserve Seritage's "tax exempt" status while still giving Lampert majority control.

42. As explained in the Prospectus, Seritage will have three (3) classes of stock: Class A Common Shares (non-voting), Class B Non-Economic Shares and Class C Non-Voting Shares. Unfortunately, however, Sears' minority stockholders are not entitled to receive any right, option or interest in Seritage's Class B or Class C stock.

43. As currently structured, Lampert and ESL may own up to 9.6% of Seritage's Class A shares, which have no voting rights. However, through Lampert's corporate engineering, he will have majority voting control over Seritage through his 100% ownership of Class B voting stock:

Name of Beneficial Owner	Common Shares Class A		Non-Economic Shares Class B		Non-Voting Shares Class C		% of Total Voting Power	% Economic Rights (Class A and Class C Shares)
	Number of Shares Beneficially Owned	Percent ⁽¹⁾	Number of Shares Beneficially Owned	Percent ⁽¹⁾	Number of Shares Beneficially Owned	Percent ⁽¹⁾		
<i>Beneficial owners of 5% or more of Seritage Growth common shares:</i>								
ESL Investments, Inc. and related entities ⁽²⁾ 1170 Kane Concourse Bay Harbour, Florida 33154	959,133	4.54%	1,228,680	100%	—	—	9.80%	3.20%
Fairholme Capital Management, L.L.C. and related entities ⁽⁴⁾ 4400 Biscayne Boulevard, 9th Floor Miami, Florida 33137	3,589,908 ⁽⁵⁾	16.97%	—	—	9,527,194 ⁽⁵⁾	100%	16.05%	11.7%
Force Capital Management, LLC ⁽⁶⁾ 767 Fifth Avenue, 12th Floor New York, NY 10153	2,821,729 ⁽⁷⁾	13.37%	—	—	—	—	12.64%	9.6%
<i>Trustees, proposed trustees and executive officers:</i>								
Benjamin Schall	100	*	—	—	—	—	*	*
James Bry	—	*	—	—	—	—	*	*
Matthew Fernand	—	*	—	—	—	—	*	*
David S. Fawer	—	*	—	—	—	—	*	*
Edward S. Lampert	959,133	4.54%	1,228,680	100%	—	—	9.80%	3.20%
Kenneth T. Lombard	—	*	—	—	—	—	*	*
John T. McClain	—	*	—	—	—	—	*	*
Kenneth T. Lombard	—	*	—	—	—	—	*	*
All directors, proposed directors and executive officers as a group (8 persons)	959,233	*	1,228,680	100%	—	—	9.80%	3.20%

* Less than one percent

44. Seritage, while formed as a Maryland-based REIT, is an umbrella partnership REIT or “UPREIT.” The REIT has shares of stock but is operated and controlled by the Operating Partnership (which will hold a majority of the 235 properties as well as JV Properties) and is an investment structure by which capital

gains tax liability can be deferred or avoided completely.⁶ The owners of the REIT contribute property to the partnership in exchange for partnership units. The partnership units are worth the same as the contributed property, resulting in a tax-free event. Not only does the UPREIT structure avoid capital gains taxes, it avoids violating Internal Revenue Code sections 856(a)(6) and 856(h), also referred to as the “5/50 Rule.” The 5/50 Rule provides that no more than 50% of the ownership of a REIT may be held by five or fewer individuals.

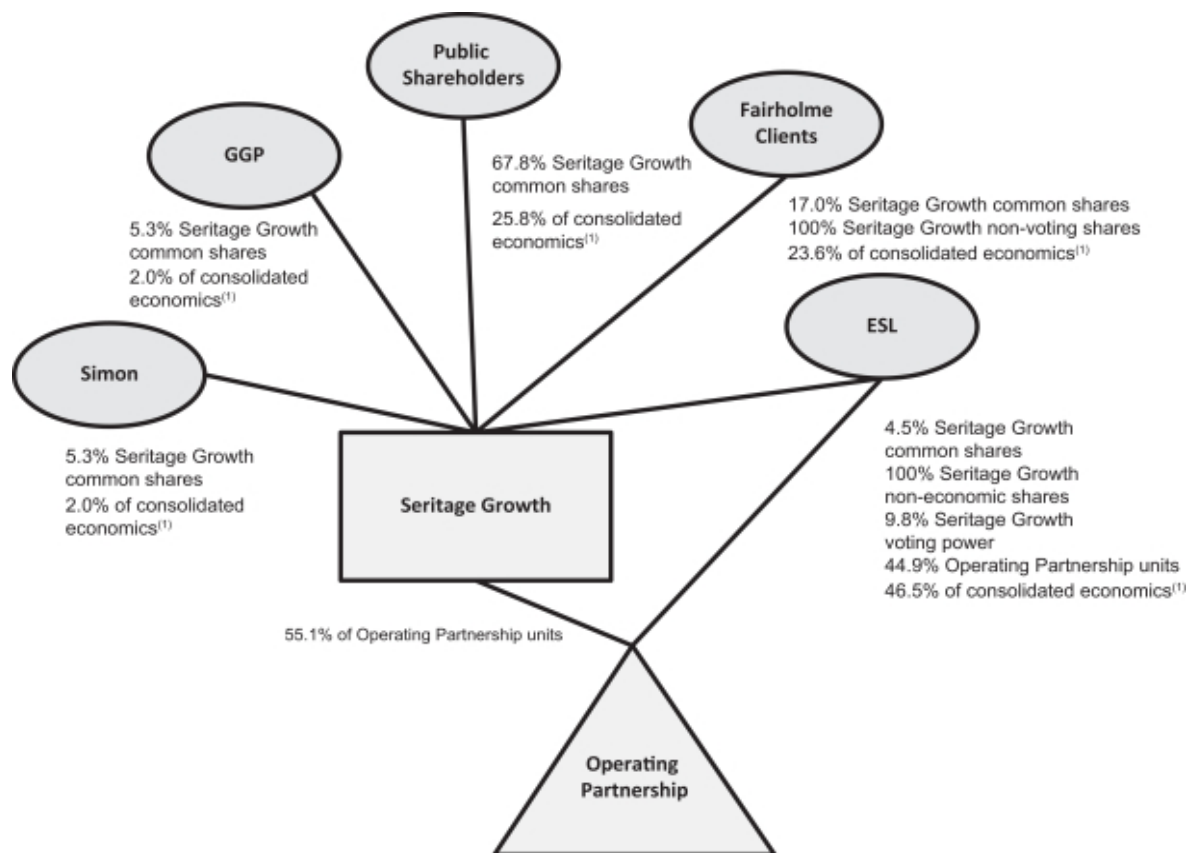
45. In order to sidestep the triggering of the 5/50 Rule, the Operating Partnership, Seritage and ESL entered into the ESL Exchange Agreement whereby ESL will receive certain subscription rights and have the ability to exchange those subscription rights for units of the Operating Partnership (which are of equal value to the Class A Shares). If these exchange rights are exercised, ESL will own up to 44.9% of the Operating Partnership with Seritage owning the remaining units. In pertinent part, the Prospectus provides the following:

Seritage Growth, Operating Partnership and ESL intend to enter into an exchange agreement (the “ESL Exchange Agreement”) pursuant to which ESL will have the right to exchange ESL’s subscription rights that if exercised would result in ESL receiving in excess of 3.1% of the Seritage Growth common shares, together with an amount of cash equal to the aggregate amount ESL would have paid had it exercised such subscription rights in the rights offering plus the value of the

⁶ Bob Howard, THE LOS ANGELES TIMES, “UPREIT Transaction Can Cut Down on Capital Gains Tax,” Jul. 28, 1998, <http://articles.latimes.com/1998/jul/28/business/fi-7760>

Seritage Growth non-economic shares, for Seritage Growth non-economic shares having 5.4% of the voting power of Seritage Growth but not entitled to dividends or distributions and Operating Partnership units. The ESL Exchange Agreement will permit ESL to participate in the over-subscription privilege with respect to subscription rights it exchanges to the same extent as if it had exercised such rights. Immediately following the closing of the Transaction, ESL is expected to hold approximately 44.9% of the Operating Partnership units and Seritage Growth is expected to hold approximately 55.1% of the Operating Partnership units, and ESL is expected to hold approximately 4.5% of the Seritage Growth common shares and Seritage Growth non-economic shares having 9.8% of the voting power of Seritage Growth. ESL, which is expected to hold all of the Seritage Growth non-economic shares immediately following this offering, is expected to agree with us that upon any sale or other transfer to a non-affiliate of any of its Operating Partnership units, it will surrender to Seritage Growth a pro rata portion of the Seritage Growth non-economic shares that it holds prior to the sale or other transfer, whereupon the surrendered Seritage Growth non-economic shares will be cancelled and the aggregate voting power of ESL in Seritage Growth will be proportionately reduced.

46. Lampert's Spin-off scheme and corporate structure effectively avoids violating the 5/50 Rule while still obtaining majority control of Seritage. The pro-forma ownership structure upon the closing of the Rights Offering can be illustrated as follows:



47. As part of Lampert’s elaborate Spin-off transaction, Sears’ second largest stockholder, Fairholme, is also being handsomely rewarded and receiving different consideration than what minority public stockholders will receive. In particular, the Prospectus discloses that Seritage and Fairholme have entered into a “Fairholme Exchange Agreement” whereby Fairholme and certain of its clientele, have the right to exchange subscription rights for their own class of stock -- Class C common stock. As explained in the Prospectus:

The Non-Voting Shares Offering and Excess Share Waivers are intended to allow certain Fairholme Clients, which (in the aggregate) own a significant number of shares of Sears Holdings common stock and therefore will receive a significant number of subscription rights,

to purchase interests in us in excess of the amounts they would otherwise be able to purchase in light of regulatory and tax considerations[.] (Emphasis Added).

48. Further adding to the unfairness of the Spin-off, the Sale-Leaseback of Sears' properties will inevitably create additional financial stress on Sears that has a colossal cash-burn rate. As the Prospectus already disclosed, Sears will be responsible to pay Seritage roughly \$140 million a year to rent properties it once owned.

49. In addition to the rent, the lease agreements that the Company executed are discriminatory. As disclosed in the Prospectus, the Sale-Leaseback portion of the Spin-off is subject to a Master Lease Agreement and JV Master Lease Agreement. Both agreements require Seritage to leaseback certain properties to Sears but on terms that clearly favor Lampert. For example, the Master Lease Agreement provides Seritage a direct recapture privilege to claw back up to 50% of the space at any Sears or Kmart (presumably Sears' most valuable properties) store among the 235 properties being sold. With respect to the JV Properties, the JV Master Lease Agreement provides a similar right, and allows Seritage the right to recapture up to 100% of the Sears stores located on the JV Properties.

50. The Spin-off has been widely criticized. As Jeffrey Donnelly and Tamara Figue of Wells Fargo Securities recently stated, "In general we feel

retailer-sponsored real-estate investment trusts (REITs) are structurally flawed . . . REIT spinoffs sponsored by retailers such as Sears are structurally disadvantaged and rarely succeed.”⁷ Jason Lail, of real estate research firm SNL Financial, stated “I don’t see how the REIT spinoff would help Sears in regards to being more competitive in today’s world.”⁸ Andrew Maguire, a REIT advisor, further commented by stating “Although cash from the sale can be put back into the company, a sale-leaseback would add an additional financial obligation [the payment of rent] to the retailer’s existing operational expenses.”⁹ Sears’ stockholders are also discontent with the Spin-off and have been dumping shares, causing Sears’ stock price to drop more than 31% since April 1, 2015 (based on Sears’ closing price as of June 18, 2015).

51. Years after Lampert has been neglecting stores and ignoring a weakening balance sheet, its clear that Lampert’s intent all along was to pursue a self-interested deal that, in the end, primarily satisfies Sears’ debt to himself. The end of a once retail giant has come down to the extraction of the Company’s most valuable assets to its controlling stockholder, leaving a shell entity behind.

⁷ Jeffrey D. Donnelly and Tamara Figue, BARRONS, “A Sears REIT Wouldn’t See Smooth Sailing,” Nov. 7, 2014, <http://online.barrons.com/articles/a-sears-reit-wouldnt-see-smooth-sailing-1415622619>

⁸ Jennifer Duell Popovec, NATIONAL REAL ESTATE INVESTOR ONLINE, “Is A REIT Structure the Solution to Sears’ Woes?,” Mar. 5, 2015, <http://nreionline.com/leasing/reit-structure-solution-sears-woes>

⁹ *Id.*

Without even a stockholder vote, or a recommendation from the Board, Sears stockholders are now left with an underfunded Company strapped with more debt than it had before the announcement of the Spin-off.

DERIVATIVE ALLEGATIONS

52. Plaintiff brings this action derivatively to redress injuries suffered by the Company as a direct result of breaches of fiduciary duties by Defendants.

53. Plaintiff currently owns Sears stock and has owned Sears stock continuously during this relevant period.

54. Plaintiff will adequately and fairly represent the interests of Sears and its stockholders in enforcing and prosecuting the Company's rights and has retained counsel competent and experienced in stockholder derivative litigation.

DEMAND ON THE DEMAND BOARD IS EXCUSED AS FUTILE

55. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

56. Plaintiff has not made a demand on the eight-member Demand Board¹⁰ to investigate or initiate the claims asserted herein because demand is excused as futile.

¹⁰ The "Demand Board" consists of the eight members of the Sears Board as of the date of this Complaint: Lampert, Mnuchin, Tisch, Reese, Kunkler, Depodesta, Alvarez, and Kamlani.

57. Such demand would be futile and useless, and is thereby excused, for at least three independent reasons: (a) a majority of the Demand Board was either interested in the Spin-off and/or lacks independence from Lampert, who is personally interested in the Spin-off and holds a majority of Sears' common stock and could unilaterally remove any of the Individual Defendants from office; (b) the Rights Offering is subject to *entire fairness review*; and (c) the Spin-off was not the product of a valid exercise of business judgment.

I. At Least Half of the Members of the Eight-Member Board Were Either Interested in the Spin-off or Lack Independence from Lampert and ESL

58. **Defendant Lampert**, in all aspects, controls Sears. He is the CEO and controls the day-to-day operations of the Company. Lampert is also the Chairman and majority stockholder of Sears controlling 53.2% of the vote of the common stockholders. In addition to his voting control, Sears has also delegated authority to Lampert to invest any surplus cash of the Company, "subject to various limitations."

59. Lampert is also the co-founder, beneficial owner, CEO and Chairman of ESL. As disclosed in the Prospectus, Seritage will be a publicly traded, self-administered, self-managed REIT engaged in business through its investment in the Operating Partnership. Seritage and the Operating Partnership have entered into a certain ESL Exchange Agreement, giving ESL the right to exchange

subscription rights for units of the Operating Partnership. This exchange will have a substantial impact on the ownership of the Operating Partnership. Upon completion of the Rights Offering, ESL and Lampert are expected to have a substantial 44.9% ownership interest in the Operating Partnership. For these reasons, Lampert is personally interested in the Rights Offering and it would be antithetical to his economic interests to aggressively pursue claims relating to the Spin-off.

60. Article II, Section 3 of Sears' Amended and Restated By-Laws (filed with the SEC on January 24, 2014) provides that "any director may be removed, with or without cause, from office at any time by stockholders in accordance with Delaware law." Sears' Certificate of Incorporation does not place any restrictions on the removal of the Individual Defendants. Thus, pursuant to 8 Del. C. § 141(k), Sears' entire Board may be removed, with or without cause, by Lampert (the holder of a majority of the shares). If any of the Individual Defendants were to take adverse positions to Lampert's economic interest, Lampert could use his majority control to terminate and remove that director.

61. **Defendant Mnuchin**, has a longstanding friendship with Lampert. As highlighted in an article in the *Huffington Post*,¹¹ Mnuchin and Lampert were

¹¹ Peter Dreier, THE HUFFINGTON POST, "Steve Mnuchin, Meet Rose Gudiel," Oct. 3, 2011, <http://www.huffingtonpost.com/peter-dreier/steve-mnuchin-meet-rose->

roommates while attending Yale University. After leaving his career at investment banking firm Goldman Sachs, Mnuchin was recruited by Lampert and became ESL's Vice Chairman in December 2002. According to Sears' Form 424B3 filed with the SEC on February 22, 2005, Mnuchin is also a limited partner investor in one of the ESL affiliates. In April 2003, Lampert asked Mnuchin to join the board of directors of Kmart Holding Corporation where Mnuchin served as a director until March 2005. Shortly after Kmart merged with Sears Roebuck, Lampert asked Mnuchin to join Sears' Board where Mnuchin currently serves as a director.

62. **Defendant Tisch**, would not be able to disinterestedly consider a demand to aggressively pursue claims adverse to the economic interest of Lampert and ESL. Similar to Mnuchin, Tisch also has a longstanding friendship with Lampert. Tisch and his family currently own roughly 20% of Loews Corporation and became major investors in ESL in 1992 according to Sears' Form 424B3 filed with the SEC on February 22, 2005. In April 2003, Lampert asked Tisch to serve as a member of the boards of Kmart Corporation and Kmart Holding Corporation. Tisch served as a member of Kmart Holding Corporation until March 2005. When Kmart merged with Sears Roebuck, Lambert again asked Tisch to serve as a member of Sears' Board. Since March 2005, Tisch has served as a member of Sears' Board.

63. **Defendant Alvarez**, would not be able to disinterestedly consider a demand to aggressive pursue claims adverse to the economic interests of Lampert. Similar to Mnuchin and Tisch, Alvarez also has an indirect economic interest in the Spin-off because Fairholme and certain of its clients will receive the right to exchange subscription rights for roughly 9.5 million shares of Seritage Class C common stock.

64. **Defendant Reese** would not be able to disinterestedly consider a demand to aggressive pursue claims adverse to the economic interests of Lampert. Similar to Mnuchin and Tisch, Reese has also been a loyal participant of Lampert controlled companies. For example, Reese previously served as a director to both Kmart Corporation and Kmart Holding Corporation from April 2003 to March 2005. Additionally, Reese is also the Chairwoman of Sears' Compensation Committee and, therefore, is able to control Lampert's compensation. In 2014, Sears awarded Lampert 152,483 shares of restricted stock worth roughly \$5,702,363. If Reese, as Chairwoman of the Compensation Committee, were to take action adverse to Lampert's economic interest, Lampert could use his majority control to remove Reese from the Board.

65. **Defendants Kunkler, Depodesta, and Kamlani** are similarly not able to act disinterestedly from Lampert. As explained herein, Lampert controls a majority of Sears's outstanding voting power and can summarily replace any

director who acts against his wishes. This threat of removal from office compromises the independence of each and every member of the Sears Board.

II. Demand is Excused as a Matter of Law Because the Sale of Company Assets to Lampert, ESL and Seritage is Subject to Entire Fairness

66. Demand is excused as a matter of law because Sears's concession to sell 235 of its most valuable properties as part of its agreement to the Spin-off is subject to entire fairness review.

67. The Spin-off is subject to entire fairness scrutiny for two independent reasons: (a) because Lampert – Sears's controlling stockholder – stood on both sides of the transaction; and (b) because, as detailed in the immediately preceding section, a majority of the members of the Board were either interested in the Spin-off or otherwise not independent of Lampert.

68. Lampert is Sears's controlling stockholder and concedes as much in its public filings. For example, in Sears' Annual 10-K Filings with the SEC for several years, the Company has warned stockholders that:

Affiliates of our Chairman and Chief Executive Officer, whose interests may be different than your interests, exert substantial influence over our Company.

Affiliates of Edward S. Lampert, our Chairman and Chief Executive Officer, collectively own approximately 49% of the outstanding shares of our common stock. These affiliates are controlled, directly or indirectly, by Mr. Lampert. Accordingly, these affiliates, and thus Mr. Lampert, have substantial influence over many, if not all, actions to be taken or approved by our stockholders, including the election of

directors and any transactions involving a change of control.

(Emphasis Added).

III. The Rights Offering Was Not the Product of a Valid Exercise of Business Judgment

69. As detailed herein, the process leading to the Spin-off was fatally flawed and heavily conflicted. The Board's decisions to, among other things, agree to relinquish 235 of Sears' most valuable properties for inadequate consideration while not providing any recommendation to stockholders was not valid exercises of business judgment.

70. The terms of the Spin-off are so one-sided, they are beyond the bounds of reasonable judgment.

71. Thus, demand on the Board is excused as futile.

COUNT I

CLAIM FOR BREACH OF FIDUCIARY DUTY AGAINST LAMPERT AND ESL IN THEIR CAPACITY AS SEARS' CONTROLLING STOCKHOLDER

72. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

73. As detailed herein, Lampert and his investment firm ESL, together, through their combined 53.2% economic and voting interests in Sears, is Sears' controlling stockholder. As a controlling stockholder, Lampert and ESL owe Sears the utmost fiduciary duties of due care, good faith, candor and loyalty.

74. The terms of the Spin-off are unfair to Sears and provide improper benefits to Lampert and ESL.

75. The process by which the Spin-off was orchestrated was also improper and unduly influenced by and in favor of Lampert and ESL.

76. Lampert was – and continues to be – the direct recipient of the improper benefits flowing from the Spin-off. Those benefits were derived by improper and unlawful means.

77. Lampert and ESL have breached their fiduciary duties by exploiting their control over the Company and influence over the Board in an asset sale transaction that is not entirely fair.

78. The Company has been harmed as a result of the Spin-off by transferring the Company's most valuable properties to Lampert and ESL on unfair terms for insufficient consideration.

COUNT II

CLAIM FOR BREACH OF FIDUCIARY DUTY AGAINST THE INDIVIDUAL DEFENDANTS

79. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

80. The Individual Defendants, as current Sears directors, owe or owed Sears the utmost fiduciary duties of due care, good faith, candor and loyalty. By virtue of their positions as current and former directors and/or officers of Sears and/or their exercise of control and ownership over the business and corporate affairs of the Company, the Individual Defendants have, and at all relevant times had, the power to control and influence and did control and influence and cause the Company to engage in the practices complained of herein. Each of the Individual Defendants, as members of the Board were required to, among other things: (a) use their ability to control and manage Sears in a fair, just and equitable manner; and (b) act in furtherance of the best interests of Sears and its stockholders, and not in furtherance of their own.

81. The Director Defendants breached their fiduciary duties by, among

other things, (a) allowing Lampert and ESL to improperly influence the process that culminated in the Spin-off and (b) agreeing to the Spin-off on terms unfair to the Company and its public stockholders in a massive related-party transaction.

82. As a result of the Individual Defendants' breaches of fiduciary duty, Sears received inadequate compensation and has been harmed.

COUNT III

CLAIM FOR BREACH OF FIDUCIARY DUTY AGAINST LAMPERT

83. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

84. Lampert, as an *officer* of Sears, is not entitled to the benefit from the exculpatory provision in Sears' Restated Certification of Incorporation (filed on March 24, 2005), which states, in pertinent part, the following:

A *director* of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the General Corporation Law of the State of Delaware as the same exists on the date hereof or may hereafter be amended.

(Emphasis Added).

85. Defendant Lampert, in his capacity as Sears' Chief Executive Officer, owed Sears the fiduciary duties of loyalty, due care and good faith. To fulfill these fiduciary duties, Lampert is obliged to act in the best interests of Sears' and its

public stockholders and not sacrifice those interests in favor of his own interests.

86. In negotiating the Rights Offering, Lampert breached his fiduciary duties of loyalty and care as Sears' CEO by placing his own interest ahead of Sears' public stockholders. Lampert abused his position of authority as CEO by orchestrating a plan to have Sears transfer 235 of its most valuable properties in exchange for inadequate consideration. In doing so, Lampert stripped Sears a majority of its most valuable assets causing harm to Sears.

87. As a result of Lampert's breaches of fiduciary duty, the Company has been and will continue to be harmed.

COUNT IV

CLAIM FOR AIDING AND ABETTING AGAINST SERITAGE

88. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

89. Seritage has acted and is acting with knowledge of, or with reckless disregard to, the fact that the Individual Defendants, Lampert and ESL are in breach of their fiduciary duties to Sears and has participated in such breaches of fiduciary duties.

90. Seritage knowingly aided and abetted the Individual Defendants' wrongdoing alleged herein. In so doing, Seritage rendered substantial assistance in order to effectuate the Individual Defendants' plan to consummate the Spin-off in

breach of their fiduciary duties.

91. The Company has no adequate remedy at law.

RELIEF REQUESTED

WHEREFORE, Plaintiff demands judgment as follows:

- a. Finding that demand on the Sears Board is excused as futile;
- b. Finding that Lampert and ESL, in their capacity as Sears' controlling stockholder, are liable for breaching their fiduciary duties owed to Sears and its public stockholders;
- c. Finding the Individual Defendants liable for breaching their fiduciary duties;
- d. Rescinding the Spin-off and related transactions to the extent feasible;
- e. Declaring that the Spin-off is not entirely fair to the Company;
- f. Declaring that Seritage has aided and abetted the Individual Defendants and Lampert in their breaches of fiduciary duties owed to Plaintiff, the common stockholders and the Company;
- g. Awarding Sears compensatory damages, together with pre- and post-judgment interest;
- h. Awarding Plaintiff the costs and disbursements of this action, including attorneys', accountants', and experts' fees; and
- i. Awarding such other and further relief as is just and equitable.

Dated: June 19, 2015

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