

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

1291079 ONTARIO LIMITED

Plaintiff

- and -

SEARS CANADA INC.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

Notice published under the *Class Proceedings Act, 1992*

TO ALL CANADIAN SEARS HOMETOWN STORE DEALERS

If you operated a Sears Hometown Store in Canada under a Dealer Agreement and Trade Mark Agreement on or after July 5, 2011 this Notice will be important to you. A legal claim against Sears Canada Inc. ("Sears") has been certified as a Class Proceeding (the "Class Proceeding") by the Ontario Superior Court of Justice. The Class Proceeding will deal with claims alleged against Sears which, if proven, could entitle you to various relief including a monetary payment.

This Notice is published by Order of the Ontario Superior Court of Justice dated September 8, 2014 (the "Certification Order") and deals with:

1. Nature of the Class Proceeding and Common Issues;
2. Inclusion In/Opting Out of the Class Proceeding;
3. Possible Financial Consequences of the Class Proceeding; and
4. Other Matters.

1. Nature of the Class Proceeding and Common Issues

This action is brought by 1291079 Ontario Limited (the "Representative Plaintiff") against Sears on behalf of the following class:

All corporations, partnerships, and individuals carrying on business as a Sears Hometown Store under a Dealer Agreement with Sears at

any time from July 5, 2011 to the date of sending of the notice of certification.

The Representative Plaintiff claims damages and other relief against Sears for breach of the duty of good faith and fair dealing, breach of contract, misrepresentations as defined under the applicable provincial franchise legislation, and for unjust enrichment.

Sears denies all allegations made by the plaintiff and fully intends to defend this action. None of the allegations made by the plaintiff has been proven in Court and remain to be determined at a future trial. In certifying this action as a class proceeding, the Court has made no determination as to the merits of the plaintiff's claims.

This action will proceed to trial to determine the following common issues:

- (a) Has Sears Canada, at any time since July 5, 2011 breached its obligations under the Dealer Agreements with each of the class members, including the asserted obligation to exercise contractual discretion in good faith, by:
 - (i) Failing to increase commission paid to class members;
 - (ii) Changing commissions paid to class members in August 2012;
 - (iii) Selling directly to customers located within the class members' Market Areas (as defined in their respective Dealer Agreements), or, alternatively, by failing to pay commission to the class members for goods sold directly to customers located within the class members' Market Areas through direct channels;
 - (iv) Changing local store advertising subsidies;
 - (v) Failing to provide a monthly accounting of how compensation was calculated; or
 - (vi) Imposing handling fees payable by customers on catalogues sales made by dealers?
- (b) Has Sears Canada been unjustly enriched by any of the acts or omissions in (a) (i) to (vi) above?
- (c) If liability is established, what is the appropriate measure of damages or compensation, if any, for the class?
- (d) Is Sears Canada a "franchisor" within the meaning of the *Arthur Wishart Act (Franchise Disclosure)*, 2000, S.O. 2000, c. 3 (*Arthur Wishart Act*)? If so:

- (i) Did Sears breach the duty of fair dealing under s. 3 of the *Arthur Wishart Act* by any of the acts or omissions set out in (a) (i) to (vi) above, and, if so, what are the damages for the class?
- (ii) Was Sears required to deliver to each class member a disclosure document within the meaning of s. 5 of the *Arthur Wishart Act* at least fourteen days before the class member signed a Dealer Agreement or any material amendment thereof, and if so, were the provisions of s.5(3) of the *Act* otherwise complied with? If s.5 was not complied with, what are the damages for the class under s.7?

2. Inclusion In / Opting Out of the Class

A. Automatic inclusion in the Class

If you carried on business in Canada as a Sears Hometown Store dealer under a Dealer Agreement on or after July 5, 2011 and until the date of sending of this notice, then you are automatically included in the Class. No steps are necessary to “join” the Class.

B. How to be excluded from the Class

If you do **not** wish to be included in the Class, you must fill out the attached coupon and send it to Sotos LLP, the lawyers for the Class, or alternatively, send Sotos LLP an email, or some other legible, written, signed request to opt-out containing substantially the same information as the Opt-Out Coupon. The deadline for opting out is June 17, 2015, which is 90 days after the date on this notice. If your written request to opt out is not received by that date, you will remain a member of the Class.

C. Consequences of opting out

If you opt out of the Class, you will not be affected by any decision the Court makes on the common issues whether favourable or not.

3. Possible Financial Consequences of the Class Proceeding

In determining the common issues in the Certification Order, the Court will decide whether Sears should pay any monies to the Class Members.

Class Members may be required to participate in some stages of the lawsuit, particularly in the distribution of monies, if any are awarded. The determination of how any recovery should be distributed to each individual Class Member will be made either by the Court or by a process to be supervised and sanctioned by the Court. Some individual participation may be required by Class Members in determining the amount of money to which the Class Member is entitled during this stage of the process.

If the Class Proceeding is not successful, Class Members other than the representative plaintiff will not be responsible for any legal costs or face any other financial obligations arising from the proceedings.

Whether or not the Class Proceeding is successful, all Class Members who do not opt out will be bound by the judgment. This means, for example, that after the Class Proceeding has concluded a Class Member cannot start its own individual claim against Sears based on the same or similar allegations.

4. Other matters

Dismissal as against Sears Roebuck and Co.

Pursuant to a motion by plaintiff's counsel, Justice Gray has dismissed the action as against Sears Roebuck and Co. and granted leave to amend the Statement of Claim accordingly. Investigations made by plaintiff's counsel have confirmed that Sears Roebuck does not have the obligations to the class members under the dealer agreements that the plaintiff alleges have been breached by the defendants and, moreover, that Sears Roebuck would not qualify as a "franchisor's associate" under the Wishart Act.

Retainer Agreement

The Representative Plaintiff has retained the law firm of Sotos LLP to represent the Class in the Class Proceeding. The law firm will be paid legal fees only if the Class Proceeding is successful. The Representative Plaintiff has agreed that the law firm's fees will be 25% of the amount recovered plus disbursements, in addition to any costs Sears is required to pay. The retainer agreement and any fees charged by class counsel must be approved by the Court.

For further information about the class action lawsuit you may contact:

Sotos LLP, Suite 1200, 180 Dundas St. West, Toronto, Ontario M5G 1Z8, Attention: Andy Seretis (aseretis@sotosllp.com) or Rory McGovern (rmcgovern@sotosllp.com), telephone (416) 977-0007.

The statement of claim and other court papers in this action, including the Order of the Ontario Superior Court of Justice dated September 8, 2014, are available for inspection at the Ontario Superior Court of Justice (Milton Courthouse), 491 Steeles Ave. E., Milton, ON, L9T 1Y7 and on Sotos LLP's website: <http://www.sotosllp.com/class-actions/sears/>.

PLEASE DO NOT CALL the Ontario Superior Court of Justice or the Registrar of the Court. They will not be able to answer your questions about the lawsuit.

March 18, 2015

OPT OUT COUPON

TO:

SOTOS LLP

Barristers and Solicitors
Suite 1200
180 Dundas Street West
Toronto, Ontario M5G 1Z8

Attention: Rory McGovern

Facsimile: (416) 977-0717

Email: rmcgovern@sotosllp.com

I wish to opt out of the Sears Canada class action lawsuit.

Signature

Name of Company:
(please print)

Store No:

Address:

Postal code:

Telephone:

Note: To opt out, this coupon must be completed and received at the above address before June 17, 2015.