

January 30, 2019

Eddie Lampert
Chairman, Sears Holdings
Chairman and CEO, ESL Investments
1170 Kane Concourse, Suite 200
Bay Harbor Islands, FL 33154

Dear Mr. Lampert:

I am writing to seek information about your management plans for Sears and to ensure that you prioritize the long-term viability of the iconic American retailer and its workers.

On January 17th, Sears Holding's Board of Directors reportedly accepted your approximately \$5.2 billion offer to buy the retailer out of bankruptcy.¹ If approved in bankruptcy court, the deal would save nearly 425 stores and 45,000 Sears employees, shrinking the retail chain and reorganizing under the control of your hedge fund, ESL Investments.² ESL would acquire "substantially all of the company's assets," including valuable real estate holdings.³

If your offer is accepted and approved, Sears will remain open and tens of thousands of American workers will keep their jobs in the short term. But I am concerned that under your leadership, Sears may continue to struggle and employees will continue to face uncertainty and anxiety over their future employment, and ongoing risks to their benefits and economic security.

Many large retailers are struggling amidst major changes to the economy, and these changes have had a negative impact on Sears. But Sears also appears to be suffering from a unique set of problems as a result of your leadership – and now it appears that the same company you brought to the brink of liquidation could be back in your control without any substantial changes in leadership or governance.

As Chairman of Sears for 14 years, you have made more than a billion dollars off of the company while burying it in debt, closing stores, and firing hundreds of thousands of workers. Sears entered Chapter 11 bankruptcy on October 15, 2018 with \$11.34 billion in liabilities, most of which the company took on after you took over as Chairman in late 2004.⁴ As Chairman, you

¹ Twice, "Sears Lives To Fight Another Day," Alan Wolf, Jan. 17, 2019, <https://www.twice.com/retailing/sears-lives-to-fight-another-day>.

² *Id.*

³ *Id.*

⁴ Bloomberg, "Sears Goes Bankrupt, Mired in Debt and Deserted by Shoppers," Rick Green, Dawn McCarty, and Tiffany Kary, Oct. 14, 2018, <https://www.bloomberg.com/news/articles/2018-10-15/sears-said-to-be-filing-for-bankruptcy-protection-monday-morning>.

made a series of decisions that benefited you, your hedge fund, and other investors' short-term profits at the expense of the company's long-term success and its workers.

Soon after taking over Sears Holding Company in 2004, you took "an ax to the company's operating expense[s] and capital expense[s]," choosing to reward investors, including your own hedge fund, rather than invest in the stores.⁵ Between 2006 and 2010, Sears bought back approximately \$5.3 billion worth of stock—more than twice as much as the company spent on capital expenditures during that period.⁶ In fact, you spent more money on stock buybacks that boosted investors' short-term profits than you now are willing to spend to save the entire company from bankruptcy. These decisions left Sears strapped with debt and unable to adapt to a rapidly changing retail market. If the company is to survive bankruptcy, this approach must change.

Over the last 15 years, you have served as Chairman of the Board; CEO of Sears; and as a primary investor, creditor, and landlord to Sears.⁷ Serving in these roles allowed you to purchase Sears' assets with your investment fund when the company began to fail, personally profiting off the struggles that you helped create. You face "a litany of potential charges: fraudulent transfer, breach of fiduciary duty, equitable subordination, and debt recharacterization," as a result of your "siphon[ing] value away from the company on favorable terms," including by removing Sears properties for "substantially less than fair value while burdening them with unfavorable leases of those same properties."⁸

These inherent conflicts of interest and the decisions you made while running the company have short-changed Sears' workers, leaving a company with a long, proud history in American retail on its last legs. As Sears emerges from bankruptcy, these conflicts must be eliminated, and Sears' workers and the American public must be certain that you are doing everything you can to keep the retail chain healthy over the long-term.

I am pleased at reports that your recent offer includes a \$43 million severance fund that covers all workers who have been laid off by Sears since October 15, 2018, and those who may be laid off as Sears emerges from bankruptcy. While I am hopeful for Sears workers, I am concerned about your commitment to the company's employees given your history of slashing jobs. Under your management, thousands of stores have closed. More than 200,000 workers have lost their jobs. And you are being sued for mismanagement of employee retirement money resulting in a

⁵ *Id.*

⁶ *Id.*; The Motley Fool, "Sears Holdings: The Pension Is Not the Problem," Adam Levine-Weinberg, Sept. 18, 2018, <https://www.fool.com/investing/2018/09/18/sears-holdings-the-pension-is-not-the-problem.aspx>.

⁷ "Mr. Lampert is chairman and chief executive of Sears Holdings, its biggest shareholder and among its biggest lenders, through his hedge fund, ESL Investments. He is also chairman of, and a major investor in, Seritage Growth Properties, a real-estate investment trust that ranks among Sears's biggest landlords." Wall Street Journal, "Dismantling Sears to Save It," Merrill Sherman and Theo Francis, Dec. 7, 2017, <https://www.wsj.com/graphics/lampert/?ns=prod/accounts-wsj>.

⁸ *Id.*

\$1.4 billion shortfall in the company's pension fund, a shortfall that the Pension Benefit Guaranty Corporation (PBGC) will likely be forced to cover.⁹

On January 23, 2019, the Unsecured Creditors Committee (UCC) of Sears filed a 570 page motion detailing the allegedly fraudulent activities you and your firm pursued over the course of your tenure as Chairman and CEO of Sears.¹⁰ These include allegations of falsified financial projections, insider trading, unnecessary spin-offs, and excessive buybacks for ownership gains that demonstrate an established pattern of stripping value from Sears for your personal profit.¹¹ The UCC motion alleges that you and your firm have created "the perfect blueprint for future bad actors to steal all of a company's assets and get away with it."¹²

Simply put, it appears that you have enriched yourself while driving the company into bankruptcy. Or as one hedge fund manager put it: you are a "practitioner of 'predatory capitalism.'"¹³ And now you are set to take full ownership of the newly restructured Sears, putting you back in charge of the iconic retail chain and its tens of thousands of employees.

Sears needs a steady hand with a long-term commitment to the company's success if the company hopes to reverse its recent slide and survive in the ever-changing retail industry. According to Moody's, "major hurdles to [Sears'] long-term business will remain."¹⁴ In fact, numerous chains – including Gymboree,¹⁵ RadioShack,¹⁶ American Apparel,¹⁷ and Wet Seal¹⁸ – have recently been bought out of bankruptcy only to fail again after failing to make the necessary changes to the company.

A bankruptcy judge is set to make a final decision on your offer on February 4th, 2019. To ensure you are committed to the long-term success of Sears and the protection of its workers, I ask that you answer the following questions by February 14, 2019.

⁹ Pension Benefit Guaranty Corporation, "PBGC to Pay Pension Benefits," Jan. 18, 2019, <https://www.pbgc.gov/news/press/releases/pr19-01>.

¹⁰ US Bankruptcy Court of the Southern District of NY, Motion of the Official Committee of Unsecured Creditors of sears Holdings Corporation, Jan. 23, 2019, <https://restructuring.primeclerk.com/sears/Home-DownloadPDF?id1=MTI4MDI4&id2=0>.

¹¹ *Id.*

¹² *Id.*

¹³ Institutional Investor, "Eddie Lampert Shattered Sears, Sullied his Reputation, and Lost Billions of Dollars. Or Did He?" Michelle Celarier, Dec. 3, 2018, <https://www.institutionalinvestor.com/article/b1c33fqdnh21s/Eddie-Lampert-Shattered-Sears-Sullied-His-Reputation-and-Lost-Billions-of-Dollars-Or-Did-He>.

¹⁴ Twice, "Sears Lives To Fight Another Day," Alan Wolf, Jan. 17, 2019, <https://www.twice.com/retailing/sears-lives-to-fight-another-day>.

¹⁵ The Real Deal, "Gymboree files for bankruptcy again, closing some 900 North American stores," Jan. 19, 2019, <https://therealdeal.com/chicago/2019/01/19/gymboree-files-for-bankruptcy-again-closing-some-900-north-american-stores/>.

¹⁶ Fortune, "RadioShack is Officially Going Bankrupt Again," Reuters, Mar. 9, 2017, <http://fortune.com/2017/03/08/radioshack-bankrupt-chapter-11/>.

¹⁷ USA today, "American Apparel topples into bankruptcy again," Nathan Bomey, Nov. 14, 2016, <https://www.usatoday.com/story/money/2016/11/14/american-apparel-chapter-11-bankruptcy/93788450/>.

¹⁸ Chain Store Age, "Chapter 22: Why Some Retailers Emerge from Bankruptcy Only to File Again," David Berliner and Nick Weber, Oct. 5, 2017, <https://www.chainstoreage.com/insights/chapter-why-some-retailers-emerge-bankruptcy-only-file-again/>.

1. How will you balance Sears' debt burden with the need to invest in the company, its operations, and its workers to ensure its long-term viability? Please provide specific details of your offer and your long-term plans.
2. What specific steps will you be taking to reduce the number of Sears employees who lose their jobs, and to protect workers' and retirees' pensions and other benefits? Will you provide severance payments for workers who lose their jobs under your plan to emerge from bankruptcy?
3. Will you commit to a 5-year freeze on stock buybacks in order to better ensure the company's long-term success?
4. What cost-cutting efforts will you pursue before closing additional stores or firing additional employees? Please provide specific details.
5. How will you avoid conflicts of interest that have plagued you at Sears and ESL Investments in the past? Please provide specific details of your offer and your plan moving forward.
6. Will your offer relieve the PBGC of any of the \$1.4 billion burden from the underfunded Sears pension without cutting any of the benefits earned by workers and retirees?
7. How will you guarantee fair and reasonable severance packages for all employees who have lost their jobs since October 2018, and those who will lose their jobs in the future? Please provide specific details of your offer and your plan moving forward.
8. How will you address concerns from unsecured creditors amidst lawsuits against you from your prior management of Sears? Please provide specific details of your offer and your plan moving forward.

Sincerely,



Elizabeth Warren
United States Senator