

Congress of the United States
Washington, DC 20510

May 23, 2019

The Honorable Steven T. Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Secretary Mnuchin:

On April 18, 2019, Sears Holding Corporation (Sears) filed a lawsuit “suing its former chairman, Eddie Lampert, as well as former board members...for allegedly stripping [Sears] of billions of dollars as it collapsed into bankruptcy.”¹ As a former member of Sears’ board, you were named as a defendant in the lawsuit. In light of this recent lawsuit, as well as the recent decision of the Pension Benefit Guaranty Corporation (PBGC) to take responsibility for Sears’ two pension plans,² we write to request information about your role as a Sears board member and the Treasury Department’s continued involvement in decisions related to Sears.

In October 2018, Sears, an iconic American retailer, filed for bankruptcy—driven into financial ruin, in large part, as a result of decisions made by its CEO and Chairman, Eddie Lampert.³ Lampert, your former college roommate and close friend,⁴ first acquired Sears in 2005 when his hedge fund, ESL Investments, purchased the company.⁵ You were an investor in that fund and served on its board.⁶ Lampert’s ownership of Sears facilitated your involvement with the company. In May 2003, you joined the board of directors of the ESL Investments-owned Kmart Holdings Corporation⁷; when Kmart merged with Sears in March 2005, you joined the board of

¹ The Washington Post, “Sears is suing Steven Mnuchin and other former board members,” Abha Bhattarai, April 19, 2019, https://www.washingtonpost.com/business/2019/04/19/sears-is-suing-steven-mnuchin-other-former-board-members/?utm_term=.bb3383ef8dab.

² Pension Benefit Guaranty Corporation, “Questions and Answers for Participants in the Sears Holdings Corporation Pension Plans,” <https://www.pbgc.gov/Questions-and-Answers-for-Sears-Participants>.

³ Bloomberg, “Sears Goes Bankrupt, Mired in Debt and Deserted by Shoppers,” Rick Green, Dawn McCarty, and Tiffany Kary, October 14, 2018, <https://www.bloomberg.com/news/articles/2018-10-15/sears-said-to-be-filing-for-bankruptcy-protection-monday-morning>.

⁴ Fortune, “Steven Mnuchin, Who Sat on Sears’ Board for Years, Could Impact the Pensions of Thousands of Workers,” October 16, 2018, <http://fortune.com/2018/10/16/steven-mnuchin-eddie-lampert-sears-bankruptcy-pensions/>.

⁵ CNN Business, “Sears’ Extraordinary History: A Timeline,” Chris Isidore, <https://www.cnn.com/interactive/2018/10/business/sears-timeline/index.html>.

⁶ The Washington Post, “Sears is suing Steven Mnuchin and other former board members,” Abha Bhattarai, April 19, 2019, https://www.washingtonpost.com/business/2019/04/19/sears-is-suing-steven-mnuchin-other-former-board-members/?utm_term=.bb3383ef8dab.

⁷ Sears Holdings Corporation, “Sears Holdings Announces Board Change,” December 2, 2016, <https://searsholdings.com/press-releases/pr/2014>.

the new Sears Holding Corporation.⁸ You served on Sears' board of directors until December 2016.⁹

While ESL Investments had operational control of the Sears Holding Corporation, the company engaged in questionable financial engineering and other managerial decisions that enriched executives while decimating Sears' long-term growth and sustainability—ultimately resulting in Sears' bankruptcy and tens of thousands of lost jobs. For example:

- Upon taking over Sears Holdings Corporation, Lampert took “an ax to the company’s operating expense[s] and capital expense[s],”¹⁰ rewarding investors, such as his own hedge fund, rather than investing in the growth of the company. Between 2005 and 2008, Sears bought back nearly \$6 billion worth of stock, which was more than double what it spent on capital expenditures.¹¹
- Lampert loaded Sears with large amounts of debt, contributing to its inability to adapt to a changing retail environment. In FY2005, the company had a net debt-to-equity ratio of -0.04, and by FY2013, the ratio was 1.48.¹²
- Lampert “closed over 3,500 stores and fired more than 250,000 workers” during his tenure at Sears.¹³ Lampert imposed cost-cutting initiatives that led to sales declines and store closures.¹⁴ In addition to closing unprofitable stores, Lampert also sold off some of its profitable stores to raise cash.¹⁵
- Lampert sold off Sears' valuable real estate assets and then pocketed the profit, leaving the company in a precarious financial state. According to reports, “in 2015, Lampert split off 235 of Sears’s most profitable stores and 31 other Sears real-estate holdings, selling it to a publicly traded real-estate investment trust (REIT) called Seritage Growth Properties for \$2.7 billion.”¹⁶ ESL Investments owns more than 43 percent of Seritage, and

⁸ U.S. Securities and Exchange Commission, “Form 424B3,” February 22, 2005, <https://www.sec.gov/Archives/edgar/data/1310067/000104746905004282/a2152336z424b3.htm>.

⁹ Complaint at Sears Holdings Corporation v. Lampert, No. 10-ap-08250 (Bankr. S.D.N.Y.), https://www.wsj.com/public/resources/documents/sears_lampert.pdf.

¹⁰ Institutional Investor, “Eddie Lampert Shattered Sears, Sullied His Reputation, and Lost Billions of Dollars. Or Did He?,” December 3, 2019, <https://www.institutionalinvestor.com/article/b1c33fqdnhf21s/Eddie-Lampert-Shattered-Sears-Sullied-His-Reputation-and-Lost-Billions-of-Dollars-Or-Did-He>.

¹¹ CNN Business, “How Sears wasted \$6 billion that could have kept it out of bankruptcy,” Chris Isidore, October 30, 2018, <https://www.cnn.com/2018/10/30/business/sears-share-repurchase/index.html>.

¹² Complaint at Sears Holdings Corporation v. Lampert, No. 10-ap-08250 (Bankr. S.D.N.Y.), https://www.wsj.com/public/resources/documents/sears_lampert.pdf.

¹³ The Motley Fool, “Sears Survives as Judge Approves Sale to Lampert,” Rich Duprey, February 12, 2019, <https://www.fool.com/investing/2019/02/12/sears-survives-as-judge-approves-sale-to-lampert.aspx>.

¹⁴ Money, “‘I Have No Hope.’ Sears Workers Are Worried About Their Jobs After Eddie Lampert’s Takeover,” Jennifer Calfas, January 16, 2019, <http://money.com/money/5504466/sears-workers-eddie-lampert-jobs-doomed/>.

¹⁵ Complaint at Sears Holdings Corporation v. Lampert, No. 10-ap-08250 (Bankr. S.D.N.Y.), https://www.wsj.com/public/resources/documents/sears_lampert.pdf.

¹⁶ The American Prospect, “How Sears Was Guttled by Its Own CEO,” David Dayen, October 17, 2018, <https://prospect.org/article/how-sears-was-guttled-its-own-ceo>.

Lampert currently serves as its Chairman.¹⁷ Sears paid \$349 million to Seritage in rent, as well as other expenses, in 2015.¹⁸

In their recent lawsuit, Sears creditors accuse you and five other members of the Sears board of “assisting” Lampert in “transferr[ing] billions of dollars of the Company’s assets to its shareholders” at the expense of the company as a whole.¹⁹ Sears Holding Corporation also states that during the “asset stripping,” which Lampert himself would describe as a “death spiral,” or “cannibalizing core assets to meet ordinary course obligations,” Lampert and other defendants had no plan to return the company to profitability.²⁰ The company only avoided collapse by entering into emergency secured loans with Lampert and ESL Lenders. As Sears creditors state, “[Lampert and the ESL Defendants] breached their fiduciary duties by engaging in this self-dealing and the Directors breached their fiduciary duties by approving these loans.”²¹ The creditors also argue, “Had Defendants not taken these improper and illegal actions, Sears would have had billions of dollars more to pay its third-party creditors today and would not have endured the amount of disruption, expense, and job losses resulting from its recent bankruptcy filing.”²²

In your current role as Treasury Secretary, you have had the opportunity to intervene on behalf of Sears and in favor of Lampert’s interests. After Sears declared bankruptcy but while Lampert still served as the Chairman of the Board of Sears,²³ Sears Holdings Corporation transferred responsibility of the company’s two pension plans, underfunded by about \$1.4 billion, to the Pension Benefit Guaranty Corporation (PBGC).²⁴ PBGC took responsibility for the pension plans of more than 90,000 workers, as Sears Holdings Corporation was no longer able to pay the benefits owed to employees in these plans.²⁵ As Secretary of the Treasury, you are, along with the Secretary of Commerce and Secretary of Labor, one of three members of the board of directors that oversees the PBGC. You stated in your confirmation hearing that you would recuse yourself from any official PBGC actions related to Sears,²⁶ and your ethics agreement required

¹⁷ CNBC, “How Sears CEO Lampert cashes in as stores cash out,” Nathan Bomey, March 22, 2017, <https://www.cnbc.com/2017/03/22/how-sears-ceo-lampert-cashes-in-as-stores-cash-out.html>.

¹⁸ The American Prospect, “How Sears Was Gutted by Its Own CEO,” David Dayen, October 17, 2018, <https://prospect.org/article/how-sears-was-gutted-its-own-ceo>.

¹⁹ Complaint at Sears Holdings Corporation v. Lampert, No. 10-ap-08250 (Bankr. S.D.N.Y.), https://www.wsj.com/public/resources/documents/sears_lampert.pdf.

²⁰ Complaint at Sears Holdings Corporation v. Lampert, No. 10-ap-08250 (Bankr. S.D.N.Y.), https://www.wsj.com/public/resources/documents/sears_lampert.pdf.

²¹ *Id.*

²² *Id.*

²³ Reuters, “Eddie Lampert steps down as chairman of Sears’ board,” Nivedita Balu, February 14, 2019, <https://www.reuters.com/article/us-sears-bankruptcy-lampert/eddie-lampert-steps-down-as-chairman-of-sears-board-idUSKCN1Q333L>.

²⁴ Pension Benefit Guaranty Corporation, “Questions and Answers for Participants in the Sears Holdings Corporation Pension Plans,” <https://www.pbgc.gov/Questions-and-Answers-for-Sears-Participants>.

²⁵ Chicago Tribune, “Feds move to take over Sears pension plans, will cover ‘vast majority’ of benefits for retailer’s 90,000 retirees,” <https://www.chicagotribune.com/business/ct-biz-sears-bankruptcy-pension-plans-pbpc-takes-control-20190118-story.html>.

²⁶ Senate Finance Committee, “Hearing to Consider the Anticipated Nomination of Steven Mnuchin to be Secretary of the Treasury,” January 19, 2017, <https://www.finance.senate.gov/hearings/hearing-to-consider-the-anticipated-nomination-of-steven-terner-mnuchin-to-be-secretary-of-the-treasury>.

you to do so for one year after your confirmation, but the current status of your recusal requirements—and the exact types of decisions you are recused from—are unclear.²⁷

We are deeply concerned by the financial engineering and potentially illegal activity that took place at Sears Holding Corporation while you served on the company's board. In addition, we are concerned that, as Treasury Secretary, you are in position to take actions that benefit Sears' shareholders and owners at the expense of workers and taxpayers. Therefore, we ask that you answer the following questions no later than June 13, 2019:

1. While you served on the board of directors for Sears Holdings Corporation and ESL investments, how did you advise Lampert and other Sears leaders on:
 - a. Lampert's decision to buy back nearly \$6 billion worth of Sears stock between 2005 and 2010 and take "an ax to the company's operating expense[s] and capital expense[s]" in the process?
 - b. Lampert's decision to load Sears with large amounts of debt, leaving the company with a net debt-to-equity ratio of 1.48 by 2013?
 - c. Lampert's decision to "repeatedly [spin] off major assets to [] shareholders" "beginning in 2011 and 2012" at the expense of the business?²⁸
 - d. Lampert's decision to "split off 235 of Sears's most profitable stores and 31 other Sears real-estate holdings, selling it to a publicly traded real-estate investment trust (REIT) called Seritage Growth Properties for \$2.7 billion," leaving Sears in a precarious financial state?
 - e. Other cost-cutting decisions that led to over 3,500 store closures and 20,000 job losses?
2. As a board member for the PBGC, did you participate in any discussions or decisions regarding Sears' underfunded pension plans? Did any member of Sears' senior leadership, including Lampert and other current or former members of the board of directors, communicate with you, or attempt to communicate with you, about the PBGC decision? If so, please provide copies of that communication.
3. In your January 10, 2017 ethics agreement, you stated that for one year you would "not participate personally and substantially in any particular matter involving specific parties in which" you knew that Sears Holdings, Inc., "is a party or represents a party."²⁹

²⁷ Letter from Steven T. Mnuchin to Rochelle F. Granat, Assistant General Counsel and Designated Agency Ethics Official, U.S. Department of Treasury, January 10, 2017, [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/9F453E3359DE2640852583D300430B9E/\\$FILE/Mnuchin%20Steven%20T.%20AMENDED%20EA%20\(4-4-19\).pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/9F453E3359DE2640852583D300430B9E/$FILE/Mnuchin%20Steven%20T.%20AMENDED%20EA%20(4-4-19).pdf).

²⁸ Complaint at Sears Holdings Corporation v. Lampert, No. 10-ap-08250 (Bankr. S.D.N.Y.), https://www.wsj.com/public/resources/documents/sears_lampert.pdf.

²⁹ Letter from Steven T. Mnuchin to Rochelle F. Granat, Assistant General Counsel and Designated Agency Ethics Official, U.S. Department of Treasury, January 10, 2017,

- a. Have you sought or received any waivers from this agreement?
- b. Have you sought any advice from the Treasury Department's Designated Agency Ethics Official regarding decisions related to Sears, and if so, have you followed this advice?
- c. Since the one-year deadline has passed, have you been involved in any Treasury or PBGC actions related to Sears or Lampert? If so, please describe these actions.

Sincerely,



Elizabeth Warren
United States Senator



Alexandria Ocasio-Cortez
Member of Congress