

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is entered into by and between Sears Holdings Management Corporation ("Defendant" or "Sears") on the one hand, and Michael Saunders ("Plaintiff") on the other hand (collectively the "Parties").

RECITALS

- A. On January 12, 2017, Plaintiff filed an action titled *Michael Saunders, on behalf of himself, and all others similarly situated v. Sears Holdings Management Corporation*, in the Superior Court of California, County of Napa, Case Number 17-CV-000034, alleging *inter alia* that Defendant violated Civil Code §§ 1749.45 *et seq.*, Civil Code §§ 1750 *et seq.*, and Business & Professions Code §§ 17200 *et seq.* (the "Action").
- B. Defendant filed an Answer in response to the Complaint, in which it generally denied all claims in the Complaint, and asserted numerous affirmative defenses.
- C. Prior to filing the Action, and thereafter, Plaintiff has advised Sears that he performed certain pre-litigation and additional litigation investigation. Following the filing of the Action, Plaintiff received and reviewed information provided by Defendant sufficient to fully evaluate the claims and defenses available to the Parties, as well the potential remedies and relief available.
- D. While Plaintiff and his counsel believe the claims asserted in the Complaint have merit, and Defendant and its counsel believe the claims asserted in the Complaint are without merit, that Defendant has complete defenses thereto and denies all allegations of wrongdoing, and further contends that a class could not be certified in this case for purposes of litigation, the Parties also have each looked at the uncertainties of trial and the benefits to be obtained under the proposed settlement and have considered the costs, risks, and delays associated with the continued prosecution of this complex and time-consuming litigation and the likely appeals of any rulings in favor of either Plaintiff or Defendant.
- E. Accordingly, it is now the intention of the Parties and the objective of this Agreement to avoid the costs of trial and settle and dispose of any and all Plaintiff's claims and causes of action in the Action.
- F. Now, therefore, it is hereby stipulated and agreed by the undersigned Parties, subject to the approval of the Court pursuant to California Rule of Court 3.769, that the settlement of this Action shall be effectuated pursuant to the terms and conditions set forth in this Agreement.

DEFINITIONS

Unless otherwise indicated above, the following shall be defined terms for purposes of this Agreement. Some of the definitions in this section use terms that are defined later in the section:

As used herein, the term "*Action*" means the pending civil action filed in the Superior Court of California for the County of Napa titled, *Michael Saunders, on behalf of himself, and all others similarly situated v. Sears Holdings Management Corporation*, Case Number 17-CV-000034, alleging *inter alia* that Defendant violated Civil Code §§ 1749.45 *et seq.*, Civil Code §§ 1750 *et seq.*, and Business & Professions Code §§ 17200 *et seq.*

- A. As used herein, the term "*Agreement*" means this Settlement Agreement and Release.
- B. As used herein, the term "*Plaintiff's Counsel*" means Eric A. Grover and Robert W. Spencer of the law firm Keller Grover LLP.
- C. As used herein, the term "*Class*" or "*Class Member*" means: "All consumers in California who possessed a Sears gift card which had a balance of less than \$10.00 but disposed of it between January 12, 2013 and the Date of Preliminary Approval upon being informed by a Sears employee in California that it could not be redeemed for cash."
- D. As used herein, the term "*Class Period*" means the period of time beginning four years prior to the date of the filing the Action through the Date of Preliminary Approval of the Agreement.
- E. As used herein, the term "*Complaint*" means the complaint initiating the Action.
- F. As used herein, the term "*Court*" means the Superior Court of California for the County of Napa.
- G. As used herein, the term "*Date of Preliminary Approval*" means the date this Agreement is preliminarily approved by the Court.
- H. As used herein, the term "*Defendant*" means Sears Holdings Management Corporation.
- J. As used herein, the term "*Defense Counsel*" means Gregory T. Parks, Tera M. Heintz, and Ashley A.H. Krupski of the law firm Morgan, Lewis & Bockius LLP.
- K. As used herein, the term "*Effective Date*" means the date of the later of (a) entry by the Court of the Final Approval Order and Judgment finally approving this Agreement, or (b) if there are objections to the settlement: (i) expiration of all potential appeal periods without a notice of appeal being filed of the Final Approval Order and Judgment; (ii) final affirmance of the Final Approval Order and Judgment by an appellate court as a result of any appeal(s), or final dismissal or denial of all such appeals (including any petitions for review, rehearing, certiorari, etc.); (iii) final disposition of any supplemental or

subsequent proceedings resulting from any appeal(s) which affirm and make final and not appealable the Final Approval Order and Judgment.

- L. As used herein, "**Final Approval Order and Judgment**" means an order finally approving the settlement of this Action and entering a judgment thereon, including the release of the Released Claims in Section 1.11.
- M. As used herein, "**Final Fairness Hearing**" means the hearing at which the Court decides whether to give final approval to this Agreement as fair, reasonable, and adequate.
- N. As used herein, the term "**Full Class Notice**" means the legal notice of the terms of the proposed settlement, as approved by Plaintiff's Counsel, Defense Counsel, and the Court, to be provided to Class Members pursuant to Section 2.2 (b) of this Agreement, the proposed language of which is attached hereto as **Exhibit 1**.
- O. As used herein, the term "**Parties**" means Michael Saunders and Sears Holdings Management Corporation. The term "**Party**" means either Plaintiff Michael Saunders or Sears Holdings Management Corporation, as indicated by the context.
- P. As used herein, the term "**Plaintiff**" means Michael Saunders.
- Q. As used herein, "**Preliminary Approval Order**" means an order preliminarily approving the proposed settlement of this Action in accordance with the terms of this Agreement, conditionally certifying the Class, approving the manner and method of Class Notice, and approving the manner and method of filing claims, objections and request for exclusion.
- R. As used herein, the term "**Released Claims**" means any and all claims, actions, causes of action, sums of money due, attorneys' fees and costs, suits, debts, covenants, contracts, agreements, promises, demands, statutory penalties or other amounts, or any liabilities whatsoever, whether known or unknown, which Plaintiff or the Settlement Class ever had against Defendant (defined as its respective current or former officers, directors, shareholders, employees, agents, attorneys, auditors, accountants, insurers, experts, parent companies, subsidiaries, affiliates, divisions, stockholders, heirs, executors, licensees, representatives, predecessors, successors and assigns) through the Date of Preliminary Approval, in connection with any and all claims and causes of action alleging that Defendant's gift card-related policies or procedures violated Civil Code §§ 1749.45 *et seq.*, Civil Code §§ 1750 *et seq.*, or Business & Professions Code §§ 17200 *et seq.* premised on any underlying gift card-related violation of Civil Code §§ 1749.45 *et seq.* or Civil Code §§ 1750 *et seq.* This definition of Released Claims is not intended to include any claims

alleging violations of Civil Code §§ 1750 *et seq.* or Business & Professions Code §§ 17200 *et seq.* unrelated to gift card-related claims.

With respect to the Released Claims only, the Parties acknowledge that they may hereafter discover facts in addition to, or different from, those which they now know or believe to be true with respect to the releases given in this Agreement, that they may have sustained or may yet sustain damages, costs or expenses that are presently unknown and that relate to the releases given in this Agreement. The Parties acknowledge, however, that they have negotiated, agreed upon, and entered into this Agreement in light of such possibilities. It is the intention of the Parties that, with respect to the Released Claims only, the foregoing releases shall be effective as a bar to any and all actions, fees, damages, losses, claims, liabilities and demands of whatsoever character, nature and kind, known or unknown, suspected or unsuspected, herein above specified to be so barred. In furtherance of this intention, and with respect to the Released Claims only, the Parties waive any and all rights that they have under state or federal statute or common law principles that would otherwise limit the effect of this Agreement to claims known or suspected as of the Effective Date. Specifically, with respect the Released Claims only, the Parties waive the effect and protections of Section 1542 of the California Civil Code which provides:

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

The Parties further acknowledge that the foregoing waiver of the provisions of Section 1542 of the California Civil Code with respect to the Released Claims only is part of the consideration hereunder. The Parties expressly consent that the releases set forth herein shall be given full force and effect in accordance with each and all of its express terms and provisions, including, with respect to the Released Claims only, those terms and provisions relating to unknown or unsuspected claims, demands, and causes of action, if any, to the same effect as those terms and provisions relating to any other claims, demands, and causes of action hereinabove specified. Each of the Parties further agrees and covenants that if the facts to which this Agreement is executed are found to be different from the facts now believed to be true, each of the Parties expressly accepts and assumes the risk of such possible difference in the facts and agrees that this Agreement shall be and remain fully effective notwithstanding such difference in facts.

- S. As used herein, the term “*Settlement Class*” or “*Settlement Class Member(s)*” means an individual Class Member who has not excluded himself or herself from the settlement.
- T. As used herein, the term “*Summary Class Notice*” means the abbreviated legal notice of the terms of the proposed settlement, as approved by Plaintiff’s Counsel, Defense Counsel, and the Court, which is to be provided to Class Members pursuant to Section 2.2 (a) of this Agreement, the proposed language of which is attached hereto as **Exhibit 2**.

SETTLEMENT TERMS AND RELEASE

1. SETTLEMENT TERMS.

1.1. Conditional Certification of the Class. For the purposes of the proposed settlement and the proceedings contemplated herein only, the Parties stipulate and agree that the Class shall be conditionally certified in accordance with the definition contained above as Definition C, that Plaintiff shall be conditionally appointed class representative for the Class, and that Plaintiff’s Counsel shall be conditionally appointed as counsel for the Class.

1.2. Compliance with the Law. Sears contends it has been its policy to comply with California gift card law, including without limitation, California Civil Code §§ 1749.45, *et seq.*, in all of its California locations, and Sears will continue to maintain and enforce that policy.

1.3. Review and Update Written Policy. Sears will review and, if necessary, update its written policies and procedures related to gift cards to ensure that they fully comply with California law and will provide copies of the current policies and procedures to Plaintiff’s Counsel within 120 days of the Effective Date. Sears will further ensure that documentation available to its store employees specifically notes that California law requires that a gift card must be redeemed for cash, upon a customer’s request, when the gift card balance falls below \$10.00.

1.4. Existing Employee Training. Sears agrees that, within 120 days of the Effective Date, it will send a reminder to each of its California stores that California law requires that a gift card must be redeemed for cash, upon a customer’s request, when the gift card balance falls below \$10.00. The reminder will instruct store management to share that message and reminder with all “member/customer facing” employees. A declaration from an authorized representative of Sears affirming the training has been completed is to be provided to Plaintiff’s Counsel within 130 days of the Effective Date.

1.5. New Employee Training. Sears agrees that, in addition to any written materials provided to new employees hired after the Effective Date describing Defendant’s policies and practices in regard to gift cards, Sears will include its gift card redemption policy as part of its California new hire orientation/training.

1.6. Employee Notice. By no later than 120 days after the Effective Date, Sears agrees to post in each store, in an area used for employee-notices, the following notice, no smaller than a 4 x 6 inches: "California law requires that a gift card must be redeemed for cash, upon a customer's request, when the gift card balance falls below \$10.00." The notice will remain posted in each store for a minimum of 12 consecutive months. Incidental non-compliance will not be considered a material breach of this Agreement.

1.7. Customer Notice. No later than the Effective Date, Sears will publish for at least 24 consecutive months, either on its "Gift Card" web page or on its "Terms and Conditions" web page, the following or similar language: "In certain states, Sears gift cards are redeemable for cash when they fall below a dollar threshold specified by state law."

1.8. Discarded Gift Cards. Sears agrees to participate in a claims process whereby Settlement Class Members claiming to have disposed of one or more Sears Hut gift card(s) with a remaining balance less than \$10.00 as a result of being informed by a Sears employee that redemption for cash was not permissible, will receive one gift card valued at \$9.99 which can be used or redeemed for cash at any Sears location in California, without any purchase requirement. Sears will make available up to 1,000 \$9.99 new gift cards upon the earlier of 12 months after the Effective Date or when 1,000 Settlement Class Members have submitted a claim. Plaintiff's Counsel will administer this process as described in Section 2.3, below.

1.9. Class Representative Service Award. The Parties have agreed that, subject to Court approval, a payment shall be made to Plaintiff in the amount of \$3,500.00 as consideration for Plaintiff's service as class representative in the Action. To facilitate Defendant's payment of this amount to Plaintiff, Plaintiff's Counsel shall provide to Defense Counsel a W-9 completed by Plaintiff. The payment required by this paragraph shall be made payable to Plaintiff using the name of the completed W-9 form delivered to Plaintiff's Counsel within 20 days from the Effective Date or within 20 days from the date Plaintiff's W-9 is delivered to Defense Counsel, whichever is later.

1.10. Attorneys' Fees and Costs. The Parties have, through arms-length negotiations, agreed that, subsequent to the Effective Date, and subject to Court approval, Defendant shall pay reasonable attorneys' fees and costs to Plaintiff's Counsel in the amount of \$46,500.00 in accordance with Code of Civil Procedure § 1021.5, based on the uncertainties of trial, the benefits to be obtained under the proposed settlement, and the costs, risks, and delays associated with the continued prosecution of this complex litigation, and the likely appeals of any rulings in favor of Plaintiff or Defendant. The payment required by this paragraph shall be delivered to Plaintiff's Counsel within 20 days from the Effective Date, or within 20 days from the date Plaintiff's Counsel's W-9 is delivered to Defense Counsel, whichever is later.

1.11. Upon the Effective Date, the Plaintiff and each Class Member who does not exclude himself or herself from the Class pursuant to Section 2.5, shall forever and irrevocably release, waive and hold harmless, all Released Claims they have or may have against Sears and each of its predecessors, successors, assigns, officers, directors, agents, attorneys,

employees, corporate affiliates, owners, parent or subsidiary corporation. The Final Approval Order and Judgment shall specifically order that this release is effective as to Plaintiff and each member of the Class who does not exclude himself or herself from the Class pursuant to Section 2.5 or it shall not be considered a Final Approval Order. The Parties shall take all actions necessary to give full effect to the release set forth herein and to incorporate it into any final order in this action.

1.12. Action Status If Settlement Not Approved. This Agreement is being entered into for settlement purposes only. If the Court does not approve the settlement, enter an order dismissing the Action or enter the Release contemplated in Section 1.11 for any reason, or if the Effective Date does not occur for any reason, then this Agreement will be deemed null and void *ab initio*. In that event, the Action will revert to the status that existed before the Agreement's execution date and no term or draft of this Agreement, or any part of the Parties' settlement discussions, negotiations, documentation or submissions seeking court approval will have any effect or be admissible into evidence, for any purpose, in the Action or any other proceeding.

2. CLASS SETTLEMENT PROCEDURES.

2.1. Settlement Approval. As soon as practicable after the signing of this Agreement, Plaintiff shall file a motion for a Preliminary Approval Order, in the form attached as Exhibit 4, preliminarily approving this Agreement as fair, reasonable and adequate; approving a conditionally certified Class for purposes of settlement only; and setting the date and time of the Final Fairness Hearing.

2.2. Class Notice. Subject to Court approval, within 15 days following entry of a Preliminary Approval Order:

- (a) Defendant shall, at its sole expense, arrange for the one-time publication of the Summary Class Notice in the California edition of USA Today (on Monday, Tuesday, Wednesday, or Thursday, at Defendant's election) of a 1/8-page (or larger). The publication must take place within 30 days of entry of a Preliminary Approval Order. No later than 30 calendar days before the Final Fairness Hearing, Defendant shall serve upon Plaintiff's Counsel a declaration confirming that the notice has been published.
- (b) Within 15 days following entry of a Preliminary Approval Order, Plaintiff's Counsel, at its sole expense, will publish the Full Class Notice on a landing-page associated with the website hosted by Keller Grover LLP.

2.3 Claim Directions. Instructions on how to make a claim with Plaintiff's Counsel shall be set forth on the settlement website landing-page described above within 15 days following the Date of Preliminary Approval, and the website landing-page shall be maintained until 60 days after the claims period has closed. To file a claim, a Settlement Class Member must declare under penalty of perjury that the Settlement Class Member had one or

more Sears gift cards with a balance less than \$10.00, was denied cash redemption upon request, and disposed of his or her Sears gift card(s) as a result. Claims may be filed online (exemplar Claim Form attached as Exhibit 3) or by U.S. Mail, as detailed in the Summary Class Notice and Full Class Notice. The claim form shall identify the Settlement Class Member's name, address, telephone number, and e-mail address. Settlement Class Members may submit claims through the earlier of 12 months after the Effective Date or when 1,000 Settlement Class Members have submitted a claim. No valid claim shall be paid until 30 days after the Effective Date. All valid claims made prior to the Effective Date will be honored within 30 days of the Effective Date. All other valid claims will be honored within 10 days of receipt of the claim. Plaintiff's Counsel shall email a \$9.99 gift card to the Settlement Class Member making the claim. Defendant shall supply sufficient batches of gift cards to Plaintiff's Counsel to administer the claims process, and shall replenish with a reasonable number of additional gift cards upon request from Plaintiff's Counsel. Plaintiff's Counsel shall bear all costs associated with processing claims and distributing the gift cards to Settlement Class Members who present valid claims.

2.4. Objections. As further explained in the Full Class Notice, any Class Member (other than the Class Representative or Class Members who request exclusion from the Settlement Class) who wants to object to the settlement must file a written objection with the Court and serve copies on Plaintiff's Counsel and Defense Counsel. All objections must be filed with the Court and served on counsel no later than 90 days from the Date of Preliminary Approval. Class Members who fail to make timely and specific objections in the manner stated will be deemed to have waived any objections and will be foreclosed from making any objections (whether by appeal or any other process) to the settlement.

2.5. Exclusion From The Settlement Class. As further explained in the Full Class Notice, any Class Member who wants to exclude himself or herself from the Settlement Class and not be bound by this Agreement must submit a written Request for Exclusion to Plaintiff's Counsel and Defense Counsel no later than 90 days from the Date of Preliminary Approval. Plaintiff's Counsel shall provide a list of all Class Members who have elected exclusion to the Court in advance of the entry of the Final Approval Order. Defendant may elect, at its sole discretion, to void this Agreement if the number of individuals excluding themselves from the Class or from the Settlement of the Action is greater than or equal to 250 Class Members.

2.6. Action Status If Settlement Not Approved. This Agreement is being entered into for settlement purposes only. If the Court does not approve the settlement or enter a Final Approval Order and Judgment for any reason, or if the Effective Date does not occur for any reason, then this Agreement will be deemed null and void *ab initio*. In that event (a) the Preliminary Approval Order and all of its provisions will be vacated by its own terms, including, but not limited to, vacating conditional certification of the Class, conditional appointment of Plaintiff as class representative and conditional appointment of Plaintiff's counsel as Plaintiff's Counsel, (b) the Action will revert to the status that existed before the Agreement's execution date, (c) no term or draft of this Agreement, or any part of the

Parties' settlement discussions, negotiations, documentation or briefing seeking court approval will have any effect or be admissible into evidence, for any purpose, in the Action or any other proceeding.

3. JUDGMENT.

3.1. Judgment and Enforcement. Pursuant to California Rules of Court, Rule 3.769(h), the Parties agree that should the Court grant final approval and enter judgment, the judgment shall include a provision for the retention of the Court's jurisdiction over the Parties to enforce the terms of the Agreement.

4. ADDITIONAL TERMS.

4.1. Defendant's Denial of Wrongdoing. This Agreement reflects the compromise and settlement of disputed claims among the Parties. Its constituent provisions, and any and all drafts, communications, and discussions relating thereto, shall not be construed as or deemed to be evidence of an admission or concession of any point of fact or law by any person or entity, including Defendant, and shall not be offered or received in evidence or requested in discovery in this Action or any other action or proceeding as evidence of an admission or concession. Defendant at all times denies wrongdoing with respect to the claims asserted in this Action and Defendant specifically denies that this case could be subject to class treatment for purposes of litigation.

4.2. Parties Represented by Counsel. The Parties hereby acknowledge that they have been represented in negotiations for and in the preparation of this Agreement by independent counsel of their own choosing, that they have read this Agreement and have had it fully explained to them by such counsel, and that they are fully aware of the contents of this Agreement and of its legal effect.

4.3. Authorization. Each Party warrants and represents that there are no liens or claims of lien or assignments in law or equity or otherwise of or against any of the claims or causes of action released herein and, further, that each Party is fully entitled and duly authorized to execute this Agreement.

4.4. Entire Agreement. This Agreement contains the entire agreement between the Parties and constitutes the complete, final, and exclusive embodiment of their agreement with respect to the subject matter hereof. This Agreement is executed without reliance upon any promise, representation, or warranty by any Party or any representative of a Party, other than those expressly set forth herein.

4.5. Construction and Interpretation. Neither Party nor any of the Parties' respective attorneys shall be deemed the drafter of this Agreement for purposes of interpreting any provision hereof in any judicial or other proceeding that may arise between or among them. This Agreement has been, and shall be construed to have been, drafted by all the Parties to it, so that any rule that construes ambiguities against the drafter shall have no force or effect.

4.6. Headings. The various headings used in this Agreement are solely for the convenience of the Parties and shall not be used to interpret this Agreement and are inserted only as a manner of convenience and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision thereof.

4.7. Modifications and Amendments. No amendment, change, or modification of this Agreement or any part thereof shall be valid unless in writing signed by the Parties or their counsel.

4.8. Governing Law. This Agreement is entered into in accordance with the laws of the State of California and shall be governed by and interpreted in accordance with those laws, and without regard to the conflict of laws principles thereof.

4.9. Further Assurances. Each of the Parties hereto shall execute and deliver any and all additional papers, documents and other assurances and shall do any and all acts or things reasonably necessary in connection with the performance of the Parties' obligations hereunder to carry out the express intent of the Parties hereto, including the execution of W-9s by Plaintiff and Plaintiff's Counsel.

4.10. Agreement Constitutes a Complete Defense. To the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceedings that may be instituted, prosecuted, or attempted in breach of or contrary to this Agreement.

4.11. Execution Date. This Agreement shall be deemed executed upon the last date of execution by all of the undersigned.

4.12. Severability. Should any paragraph, sentence, clause, or provision of this Agreement be held invalid or unenforceable, such provision shall be ineffective to the extent of such invalidity or unenforceability, without invalidating the remainder of such provision or the remaining portions of this Agreement.

4.13. Inadmissibility. This Agreement, whether approved or not approved, revoked, or made ineffective for any reason, and any proceedings related to this Agreement and any discussions relating thereto shall be inadmissible as evidence of any liability or wrongdoing whatsoever and shall not be offered as evidence of any liability or wrongdoing in any Court or other tribunal in any state, territory, or jurisdiction, or in any manner whatsoever.


4.14. Execution in Counterparts. This Agreement may be executed in any number of counterparts, which together shall constitute one instrument. Facsimile or electronic signatures will be considered as valid signatures as of the date hereof.

4.15. Waiver of Terms. A waiver of any term or condition of this Agreement will not be deemed to be, and may not be construed as, a waiver of any other term or condition hereof.


4.16. Enforcement of Agreement. In the event that one or more of the Parties to this Agreement institutes any legal action or other proceeding against any other Party to enforce the provisions of this Agreement or to declare rights and/or obligations under this Agreement, the successful Party or Parties shall be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

IN WITNESS WHEREOF, the Parties hereto have so AGREED:


DATED: 5/15/2017

By: 
Plaintiff Michael Saunders

DATED: 5/15/17

By: 
Eric A. Grover, Esq.
KELLER GROVER LLP
Counsel for Plaintiff

DATED: 5/11/17

By: 
Gregory T. Parks, Esq.
MORGAN, LEWIS &
BOCKIUS LLP
Counsel for Defendant

SEARS HOLDINGS MANAGEMENT CORPORATION

DATED: 5/11/17

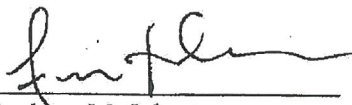
By: 
Andrew M. Johnstone
Deputy General Counsel

Exhibit 1

SUMMARY NOTICE OF CLASS ACTION SETTLEMENT

This Summary Notice informs you about the settlement of *Saunders v. Sears Holdings Management Corporation*, Napa County Superior Court Case No. 17-CV-000034. The settlement includes all consumers in California who possessed a Sears gift card with a balance of less than \$10.00 but disposed of it during the period January 12, 2013 through [insert date of preliminary approval], inclusive, upon being informed by a Sears employee in California that it could not be redeemed for cash. Sears has denied the claims. Nonetheless, Sears and the Class Representative have agreed to settle the dispute to avoid the uncertainty and costs of further litigation and trial.

What are my legal rights?

This notice is only a summary. You may obtain more complete information by visiting [insert website address] and viewing the Full Class Notice, by writing to the address at the bottom of this notice, or by calling Class Counsel Eric A. Grover at 1-415-543-1305.

To receive a settlement award, eligible Class Members must submit a timely and valid claim. If the settlement receives final approval, each Class Member who submits a timely and valid claim will receive a \$9.99 Sears gift card which can be used or redeemed for cash at any Sears location in California, without any purchase requirement.

Sears has also agreed to: (1) comply with California gift card law (Civil Code §§ 1749.45 *et seq.*) in all of its California locations; (2) review and, if necessary, update its written policies and procedures related to gift cards to ensure that they fully comply with California law and will provide copies of the current policies and procedures to Plaintiff's Counsel; (3) ensure that documentation available to its store employees specifically note that California law requires that a gift card must be redeemed for cash, upon a customer's request, when the gift card balance falls below \$10.00; (4) will send a reminder to each of its California stores that California law requires that a gift card must be redeemed for cash, upon a customer's request, when the gift card balance falls below \$10.00. The reminder will instruct store management to share that message and reminder to all "member/customer facing employees"; (5) include its gift card redemption policy as part of its California new hire orientation/training; (6) post in each store for 12 consecutive months, in the area used for employee-notices, the following notice, no smaller than a 4 x 6 inches: "California law requires that a gift card must be redeemed for cash, upon a customer's request, when the gift card balance falls below \$10.00"; and (7) publish for at least 24 consecutive months, either on its "Gift Card" web page or on its "Terms and Conditions" web page, the following or similar language: "In certain states, Sears gift cards with balances under \$10 are redeemable for cash when they fall below a dollar threshold specified by law."

Unless you take steps to exclude yourself from the settlement, you will be bound by all of the Court's orders if the Court approves the settlement, whether or not you submit a claim. This means you will not be able to make any claim that is covered by the settlement against Sears in the future.

If you wish to submit a claim, visit [insert website address] or contact Class Counsel Eric A. Grover at 1-415-543-1305 to get a claim form. The deadline to submit claims is the earlier of 12 months after the Effective Date (as explained at the settlement website) or when 1,000 Settlement Class Members have

submitted a valid claim. The date that is 12 months after the Effective Date will be posted on the settlement website. If 1,000 Settlement Class Members submit valid claims before that date, Class Counsel will announce the end of the claims period on the settlement website.

If you do not wish to be a member of the settlement class, you must submit a letter to Class Counsel at the address below postmarked by [insert date]. If you opt-out you cannot submit a claim form. Visit the settlement website for more information.

If you wish to object to the settlement, you must do so by submitting your objection to the Court and counsel for the parties by [insert date]. Visit the settlement website for more information.

A final hearing will be held on [insert date and time]. The Court will decide whether the settlement is fair, reasonable, and adequate. The Court will also determine attorneys' fees and costs and plaintiff's service award. You may attend the hearing, but you do not have to.

This is only a summary regarding the settlement. For detailed information including, the full text of the Settlement Agreement and Release, the Full Class Notice, and the Claim Form, visit [insert website address] or contact Class Counsel Eric A. Grover at Keller Grover LLP, 1965 Market Street, San Francisco, California 94103; telephone number 415-543-1305; email egrover@kellergrover.com.

Exhibit 2

FULL CLASS NOTICE

Saunders v. Sears Holdings Management Corporation
Napa County Superior Court
Case No. 17-CV-000034

READ THIS NOTICE CAREFULLY
YOUR LEGAL RIGHTS MAY BE AFFECTED

All consumers in California who possessed a Sears gift card with a balance of less than \$10.00 but disposed of it during the period January 12, 2013 through [insert date of preliminary approval], inclusive, upon being informed by a Sears employee in California that it could not be redeemed for cash. This settlement covers consumers in that circumstance. Please read the rest of this Notice to find out more.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

Participate in the Settlement	If you wish to receive a \$9.99 Sears Gift Card, read this Notice for information on how to file a claim. If you do not file a Claim by the earlier of 12 months after the Effective Date (defined below) or when 1,000 Settlement Class Members have submitted a valid claim, you will not receive a settlement gift card.
Exclude Yourself from the Settlement	If you do not want to participate in the settlement, you must send a letter requesting exclusion postmarked no later than [insert deadline] or else you will be bound by the settlement.
Object to the Settlement	If you wish to object to the settlement, you must follow the directions in this Notice. The deadline to object is [insert deadline].
Participate in the Hearing	If you submit a timely objection to the settlement, you may also indicate in the objection whether you wish to appear in court and be heard at the time of the final fairness hearing.
Do Nothing	If you do nothing with respect to this Notice, you will not receive any Settlement Payment and you will be bound by the terms of the settlement including the release of claims described below.

THESE RIGHTS AND OPTIONS, INCLUDING THE DEADLINES BY WHICH TO EXERCISE THEM, ARE EXPLAINED BELOW

What is the Case About?

The Settlement will resolve this class action case (“the Action”) involving an allegation that Sears failed to redeem gift cards, upon request, when the remaining balance on the gift card was less than \$10.00. Sears denies any wrongdoing. The parties concluded it is in their best interests to settle the Action to avoid the expense and uncertainty of ongoing litigation.

Am I a Class Member?

You are a Class Member if you are a California consumer who possessed a Sears gift card with a balance of less than \$10.00 but disposed of it during the period January 12, 2013 through [insert date of preliminary approval], inclusive, upon being informed by a Sears employee in California that it could not be redeemed for cash.

What Does The Settlement Provide?

Sears agrees to participate in a claims process whereby Settlement Class Members claiming to have disposed of one or more Sears gift card(s) with a remaining balance less than \$10.00 during the period January 12, 2013 through [insert date of preliminary approval], inclusive, as a result of being informed by a Sears employee that redemption for cash was not permissible, will receive one gift card valued at \$9.99 which can be used or redeemed for cash at any Sears location in California, without any purchase requirement. Sears will make available up to 1,000 total \$9.99 gift cards for the earlier of 12 months after the Effective Date (which is 30 days after the Settlement becomes final) or when 1,000 Settlement Class Members have submitted a valid claim.

Sears has also agreed to: (1) comply with California gift card law (Civil Code §§ 1749.45 *et seq.*) in all of its California locations; (2) review and, if necessary, update its written policies and procedures related to gift cards to ensure that they fully comply with California law and will provide copies of the current policies and procedures to Plaintiff’s Counsel; (3) ensure that its documentation available to its store employees specifically note that California law requires that a gift card must be redeemed for cash, upon a customer’s request, when the gift card balance falls below \$10.00; (4) will send a reminder to each of its California stores that California law requires that a gift card must be redeemed for cash, upon a customer’s request, when the gift card balance falls below \$10.00. The reminder will instruct store management to share that message and reminder to all “member/customer facing employees”; (6) post in each store for 12 consecutive months, in the area used for employee-notices, the following notice, no smaller than a 4 x 6 inches: “California law requires that a gift card must be redeemed for cash, upon a customer’s request, when the gift card balance falls below \$10.00”; and (7) publish for at least 24 consecutive months, either on its “Gift Card” web page or on its “Terms and Conditions” web page, the following or similar language: “In certain states, Sears gift cards with balances under \$10 are redeemable for cash when they fall below a dollar threshold specified by law.”

What Do I Need to Do To Receive a Settlement Payment?

You must complete a Claim Form and return it to the Class Counsel on time. You may obtain a hard copy Claim Form from the settlement website, [insert website address] or by writing to the Class Counsel c/o Keller Grover LLP, 1965 Market Street, San Francisco, California 94103. You also may submit a completed Claim Form online at the settlement website, [insert website address]. A Claim Form will not be considered timely unless it is returned to Class Counsel online or sent by mail postmarked no later than the earlier of 12 months after the Effective Date or when 1,000 Settlement Class Members have submitted a valid claim. The date that is 12 months after the Effective Date will be posted on the settlement website. If 1,000 Settlement Class Members submit valid claims before that date, Class Counsel will announce the end of the claims period on the settlement website.

What Am I Giving Up to Get Settlement Benefits or Stay In the Class?

Questions? Call 1-415-543-1305 or visit [insert website address]

Unless you exclude yourself, as described below, you will remain in the Class and be bound by the terms of the settlement and all of the Court's orders regardless of whether you submit a claim form. This means that you can't sue or be part of any other lawsuit against Sears or other Released Parties (defined below) about the issues in this case. Staying in the Class also means that you agree to the following release of claims, which describes the legal claims that you give up:

Release by the Settlement Class. Upon entry of the Final Approval Order and Judgment, the Class Representative and each Settlement Class Member, and their respective heirs, assigns, successors, agents, attorneys, executors, and representatives, shall be deemed to have and by operation of this Agreement and the Final Approval Order and Judgment shall have, fully, finally, irrevocably, and forever, released Sears Holdings Management Corporation and its current or former officers, directors, shareholders, employees, agents, attorneys, auditors, accountants, insurers, experts, parent companies, subsidiaries, affiliates, divisions, stockholders, heirs, executors, licensees, representatives, predecessors, successors and assigns through [enter date of preliminary approval], in connection with any and all claims and causes of action alleging that Sears' gift card-related policies or procedures violated Civil Code §§ 1749.45 *et seq.*, Civil Code §§ 1750 *et seq.*, or Business & Professions Code §§ 17200 *et seq.* premised on any underlying gift card-related violation of Civil Code §§ 1749.45 *et seq.* or Civil Code §§ 1750 *et seq.* This definition of Released Claims is not intended to include any claims alleging violations of Civil Code §§ 1750 *et seq.* or Business & Professions Code §§ 17200 *et seq.* unrelated to gift card-related claims.

When Can I Expect To Receive My Settlement Payment?

The Court will hold a hearing on [date], to decide whether to give final approval to the Settlement. If the Settlement is finally approved, all valid claims made prior to the Effective Date will be paid within 30 days of the Effective Date. All other valid claims will be paid within 10 days of receipt of the claim. Plaintiff's Counsel shall email a \$9.99 gift card to each Settlement Class Member making a valid claim.

Can I Exclude Myself From the Settlement?

If you want to keep the right to sue Sears or any of the Released Parties on your own at your own expense about the issues in this case, then you must take steps to exclude yourself from the settlement. This is also called "opting out" of the settlement. To exclude yourself from the settlement, you must send a letter by first class United States mail to Class Counsel, containing: (1) the title of the Action; (2) your full name, address, and telephone number; and (3) a statement that you request to be excluded from the Settlement Class. Be sure to include your name, address, telephone number, and signature. Your letter requesting exclusion from the settlement must be postmarked no later than [date] and mailed to:

Keller Grover LLP
1965 Market Street
San Francisco, California 94013

If you request exclusion from the settlement, you will not get any settlement benefits, and you cannot object to the terms of the settlement. You will not be legally bound by anything that happens in this lawsuit.

Do I Have a Lawyer in the Case?

The Court has appointed Eric A. Grover of Keller Grover LLP to represent you and other Class Members as Class Counsel. Class Counsel will be paid by Sears and you will not be charged for this. If you want to be represented by your own lawyer, you may hire one at your own expense.

How Will the Lawyers and the Class Representative Be Paid?

Questions? Call 1-415-543-1305 or visit [insert website address]

Class Counsel will ask the Court to approve payment of up to \$46,500.00 in attorneys' fees and out-of-pocket costs. The fees would pay Class Counsel for investigating the facts, litigating the case, negotiating the settlement, administering the claims process, and following through to make sure that its terms are carried out. Class Counsel also will ask the Court to approve a payment of \$3,500.00 to Plaintiff Michael Saunders for his service as Class Representative.

How Do I Tell the Court That I Don't Like the Settlement?

You can ask the Court to deny approval by filing an objection. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue.

Any objection to the proposed settlement must be in writing. All written objections and supporting papers must include: (1) the name and case number of the lawsuit; (2) the objector's full name and postal address; (3) a statement as to the basis of the objector's belief that he or she is a member of the Settlement Class; (4) all grounds for the objection including, if available, the factual and legal bases for the objection known to the objector or his or her counsel and the relief the objector is seeking; (5) the identity, postal address, and telephone number for all counsel who represent the objector, if any; and (6) a statement confirming whether the objector or the objector's counsel intends to appear personally at the final fairness hearing.

Objections must be filed with the Civil Clerk, Napa County Superior Court, located at 825 Brown Street, Napa, California 94559 and by mailing them to Plaintiff's Counsel (Eric A. Grover, Keller Grover LLP, 1965 Market Street, San Francisco, California 94103) and Defense Counsel (Tera M. Heintz, Morgan, Lewis & Bockius LLP, One Market Street, Spear Street Tower, San Francisco, California 94105). Objections must be filed with the Court and postmarked to counsel on or before [insert date] to be considered timely.

When and Where Will the Court Decide Whether to Approve the Settlement?

The Court will hold a final fairness hearing regarding the settlement at [time] on [date] at the Napa County Superior Court, Department [redacted], 825 Brown Street, Napa, California. At that hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will listen to people who have asked to speak at the hearing. The Court also will decide how much to pay to Class Counsel and the Class Representative. After the hearing, the Court will decide whether to approve the settlement. Class Counsel does not know how long those decisions will take.

The final fairness hearing date or time may be changed without further notice. Any change to the final fairness hearing date or time will be posted on the settlement website, [insert website address].

What Happens if I Do Nothing At All?

If you do nothing, you will remain in the Settlement Class and will be bound by the terms of the settlement and all of the Court's orders including the Release. This also means that you will not receive any settlement benefits and can't sue or be part of any other lawsuit against Sears or the Released Parties about the issues in this case.

Are There More Details About the Settlement?

This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the Settlement Agreement and Release. You can get a copy of the Settlement Agreement and Release and other case documents at the settlement website, [insert website address], by accessing the Court docket in this case through the Court's website at <https://portal.napa.courts.ca.gov/Secure/Home/Dashboard/29> and typing in the case number (17-CV-

Questions? Call 1-415-543-1305 or visit [insert website address]

000034), or by contacting Class Counsel Eric A. Grover at Keller Grover LLP, 1965 Market Street, San Francisco, California 94103; telephone number 415-543-1305; email eagrover@kellergrover.com.

PLEASE DO NOT CALL THE COURT, THE COURT CLERK'S OFFICE, SEARS OR DEFENSE COUNSEL WITH ANY QUESTIONS RELATED TO THE SETTLEMENT.

Questions? Call 1-415-543-1305 or visit [\[insert website address\]](#)

Exhibit 3

ELECTRONIC CLAIM FORM

To Make A Claim, Complete The Form Below:

[Fill in Boxes for Required Fields]

First Name

Last Name

Address

Email Address

Phone Number

YOU MUST READ AND CHECK THE DECLARATION BOX

☒ **DECLARATION: I AM A COMSUMER IN CALIFORNIA WHO POSSESSED A SEARS GIFT CARD WITH A BALANCE OF LESS THAN \$10.00 BUT DISPOSED OF IT DURING THE PERIOD JANUARY 12, 2013 THROUGH [insert date of preliminary approval], INCLUSIVE, UPON BEING INFORMED BY A SEARS EMPLOYEE IN CALIFORNIA THAT IT COULD NOT BE REDEEMED FOR CASH. I HAVE READ AND AGREE TO THE RELEASE OF CLAIMS CONTAINED IN THE SETTLEMENT AGREEMENT AND RELEASE AND FULL CLASS NOTICE. I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT.**

“Submit” Link Follows

Exhibit 4

1 ERIC A. GROVER (SBN 136080)
2 eagrover@kellergrover.com
3 ROBERT W. SPENCER (SBN 238491)
4 rspencer@kellergrover.com
5 **KELLER GROVER LLP**
6 1965 Market Street
7 San Francisco, California 94103
8 Telephone: (415) 543-1305
9 Fax: (415) 543-7861

10 Attorneys for Plaintiff Michael Saunders

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **IN AND FOR THE COUNTY OF NAPA**

13 MICHAEL SAUNDERS, on behalf of)
14 himself, and all others similarly situated,)

15 Plaintiff,)

16 v.)

17 SEARS HOLDINGS MANAGEMENT)
18 CORPORATION; and DOES 1 through 10,)
19 inclusive,)

20 Defendants.)

Case No: 17-CV-000034

CLASS ACTION

**[PROPOSED] ORDER GRANTING MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT
AGREEMENT AND RELEASE**

Date: June 21, 2017

Time: 8:30 a.m.

Dept.: F (Hon. Diane M. Price)

Action Filed: January 12, 2017

1 In May 2017, Plaintiff Michael Saunders (“Plaintiff”), individually and on behalf of the
2 proposed Class, and Defendant Sears Holdings Management Corporation (“Defendant”)
3 entered into a class action settlement, the terms and conditions of which are set forth in the
4 parties’ Settlement Agreement and Release (“Agreement”), which is attached as Exhibit A to
5 the Declaration of Eric A. Grover, filed with this Court on May 15, 2017. Unless otherwise
6 provided in this Order, all capitalized terms shall have the same meaning as set forth in the
7 Agreement.

8 A preliminary hearing was held before this Court on June 21, 2017, for the purpose of,
9 among other things, determining whether the proposed settlement terms are within the range of
10 possible approval at the final approval hearing. The Court, having reviewed the papers and
11 documents presented, having heard the statements of counsel, and having considered the
12 matter, hereby makes the following findings and rulings.

13 **IT IS HEREBY ORDERED:**

14
15 1. The Court GRANTS preliminary approval of the terms and conditions
16 contained in the Agreement. The Court finds that the terms of the Agreement are within the
17 range of possible approval at the final approval hearing.

18 2. The Court FINDS that the following class should be preliminarily
19 certified for settlement purposes only: “All consumers in California who possessed a Sears gift
20 card which had a balance of less than \$10.00 but disposed of it between January 12, 2013 and
21 [insert date of this Order] upon being informed by a Sears employee in California that it could
22 not be redeemed for cash.”

23 3. The Court APPOINTS as Class Counsel Keller Grover LLP. Keller
24 Grover LLP is also APPROVED to administer the claims process as set forth in the
25 Agreement.

26 4. The Court APPROVES Plaintiff Michael Saunders as Class
27 Representative.
28

1 5. The Court APPROVES the notice program set forth in the Agreement,
2 which includes the one-time publication of the Summary Class Notice in the California edition
3 of USA Today (on Monday, Tuesday, Wednesday, or Thursday, at Defendant’s election) of a
4 1/8-page (or larger) and publication of the Full Class Notice on a landing page associated with
5 the website hosted by Keller Grover LLP. The Court finds that the notice program described
6 in the Agreement constitutes the best notice practicable under the circumstances and is in full
7 compliance with the laws of the State of California, including without limitation, California
8 Code of Civil Procedure § 382, California Rules of Court 3.766 and 3.769, and the
9 requirements of due process. The Court further finds that the notice program fully and
10 accurately informs Class Members of all material elements of the Agreement, of each Class
11 Member’s right to submit a claim, of each Class Member’s right to be excluded from the
12 settlement, and of each Class Member’s right to object to the settlement. The notice program
13 shall be implemented on the timelines set forth in the Agreement.
14

15 6. The Court APPROVES the proposed procedure set forth in the
16 Agreement for Class Members to submit a claim.

17 7. The Court APPROVES the proposed procedure set forth in the
18 Agreement for Class Members to submit a request for exclusion from the settlement. Any
19 Class Member requesting exclusion from the settlement must mail a signed request for
20 exclusion to Class Counsel and Defense Counsel so that it is postmarked no later than 90 days
21 from the date of this Order. Any Class Member who submits a valid and timely request for
22 exclusion shall no longer be a member of the Class, shall be barred from participating in this
23 settlement and shall receive no benefit from this settlement.

24 8. The Court further ORDERS that, as provided for in the Agreement, each
25 Class Member shall be given a full opportunity to object to the settlement, including the plan
26 of distribution and the requests for attorneys’ fees, costs and Plaintiff’s service award. As
27 explained in the Agreement, any Class Member seeking to object to the settlement shall file
28 their objection with the Court and shall serve that objection on Class Counsel and Defense

1 Counsel no later than 90 calendar days from the date of this Order. Should any party wish to
2 file a written response to any written objection submitted by a Class Member, that response
3 shall be filed within 10 calendar days of the final approval hearing. However, the failure to file
4 a written response shall not bar any party from presenting oral argument or evidence
5 concerning any objection at the final approval hearing. Any Class Member who fails to file
6 and serve a timely written objection shall be foreclosed from objecting to the settlement unless
7 otherwise ordered by the Court.

8 9. To facilitate the claims procedure approved by the Court, the Court
9 hereby enjoins Plaintiff and all Class Members members from filing or prosecuting any claims,
10 suits or administrative proceedings regarding claims included in the definition of Released
11 Claims unless and until such Class Members have submitted a valid request for exclusion.

12 10. All proceedings in this action are stayed until further order of the Court,
13 except as may be necessary to implement the settlement or comply with the terms of the
14 Agreement or this Order.

15 11. The final approval hearing is scheduled for _____, 2017 at
16 _____ .m. in Department ____ of this Court. The date and time selected for the hearing
17 must appear in the Summary and Full Class Notice. If the motion for final approval of the
18 settlement will be unopposed, the motion and all supporting papers may be filed within 15
19 calendar days of the final approval hearing. The final approval hearing may be adjourned or
20 continued without further notice to the Class.

21
22 **IT IS SO ORDERED.**

23
24
25 Dated: _____, 2017

Hon. Diane M. Price
JUDGE OF THE SUPERIOR COURT

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Respectfully submitted,

Dated: May 16, 2017

KELLER GROVER LLP

By: EA Grover
Eric A. Grover
Attorneys for Plaintiff Michael Saunders and
Proposed Class Counsel