

Congress of the United States
Washington, DC 20510

May 30, 2019

Edward S. Lampert
Chairman and CEO
ESL Investments
1170 Kane Concourse, Suite 200
Bay Harbor Islands, FL 33154

Dear Mr. Lampert:

We write to express our alarm at reports that you are seeking to “back out of an agreement to pay [\$43 million] for the severance” payments of thousands of dedicated Sears employees who have been laid off since the company filed for bankruptcy.¹ When Sen. Warren wrote to you earlier this year to express reservations about your offer to purchase Sears out of bankruptcy following your disastrous tenure leading the company, you responded with assurances that you would prioritize the interests of Sears workers. You said that you “believe strongly in creating value for all stakeholders, especially the employees,” and you promised that “[e]ligible employees of the new Sears will be entitled to the same severance benefits as they were entitled to as employees of Sears Holdings prior to the Chapter 11 filing.”² But new reports of your efforts to avoid paying millions of dollars in severance payments to laid-off workers indicate that you are betraying the commitment you made to Sen. Warren, to the bankruptcy court, and most importantly, to the tens of thousands of workers who have lost their jobs and face uncertain futures after your exploitative tenure at Sears.

Last October, Sears filed for Chapter 11 bankruptcy protection, following years of reports that you and your company, ESL Investments, stripped assets from Sears and failed to make new investments, leading to large financial losses and ceding market share.³ In January, ESL won an auction to purchase the company out of bankruptcy for \$5.2 billion, a deal that was approved by a judge in February over the objections of Sears’s unsecured creditors.⁴

Soon after Sears approved your bid to buy the company, Sen. Warren wrote to you expressing concern about the future of the company and its tens of thousands of employees under your continued ownership, particularly following years of increasing debt, hundreds of thousands

¹ USA Today, “Sears buyer Eddie Lampert wants to avoid up to \$43M in severance pay from bankruptcy,” Nathan Bomey, May 28, 2019, <https://www.usatoday.com/story/money/2019/05/28/sears-worker-severance-eddie-lampert-esl-investments/1261845001/>.

² Letter from Edward S. Lampert to Senator Elizabeth Warren, February 19, 2019.

³ Reuters, “Sears sues Lampert, claiming he looted assets and drove it into bankruptcy,” Jonathan Stempel and Jessica DiNapoli, April 18, 2019, <https://www.reuters.com/article/us-sears-lawsuit/sears-sues-lampert-claiming-he-looted-assets-and-drove-it-into-bankruptcy-idUSKCN1RU1V3>.

⁴ Reuters, “U.S. bankruptcy judge approves sale of Sears to Chairman Lampert,” Mike Spector and Jessica DiNapoli, February 7, 2019, <https://www.reuters.com/article/us-sears-bankruptcy-lampert/u-s-bankruptcy-judge-approves-sale-of-sears-to-chairman-lampert-idUSKCN1PW2O7>.

of layoffs, and store closings.⁵ Prior to the October bankruptcy filing, you reportedly spent 15 years slashing expenses and loading the company with debt to benefit the short-term profits of your hedge fund and its investors at the expense of Sears’s workers, customers, suppliers, and creditors. Despite these strong concerns, Sen. Warren wrote in her letter that she was pleased that your offer to buy the company included a \$43 million commitment to pay severance to workers who lost their jobs after Sears filed for bankruptcy in October.⁶

In your February 19, 2019 response to Sen. Warren’s letter, you repeated this promise. You wrote that “eligible employees of the new Sears will be entitled to the same severance benefits as they were entitled to as the employees of Sears Holdings prior to the Chapter 11 filing on October 15, 2018.... In addition, the ESL transaction assures severance payments to employees who lost their jobs after October 15, 2018 and did not join the new Sears.”⁷

But new reports indicate that you are seeking to shirk your commitment to compensate workers who were laid off following the October bankruptcy filing, by asking a federal bankruptcy judge to “release [you] from [your] obligation” to make these \$43 million in severance payments.⁸ The failure to make those payments would amount to a broken promise on your part, and a betrayal of hard-working Sears employees—some of whom have worked at the company for decades—who are relying on the severance that they have been promised to pay rent, care for children, and put food on the table. Workers have already suffered dearly for years of management failures at Sears as executives sought to cut promised compensation to the company’s workers while walking away with millions in bonuses for themselves.⁹ Regardless of the ongoing disputes you may have with Sears’s leadership or creditors, we strongly urge you to ensure that the tens of thousands of employees to whom you have promised severance will receive those hard-earned, desperately needed funds.

In order to better understand your plans to fulfill your promises to tens of thousands of laid-off Sears workers, we ask that you provide answers to the following questions no later than June 14, 2019.

1. Will you keep the commitment that you made in your bid to buy Sears out of bankruptcy, and in your February letter to Sen. Warren, to “assure[] severance payments to employees who lost their jobs after October 15, 2018 and did not join the new Sears?”¹⁰

⁵ Letter from Senator Elizabeth Warren to Eddie Lampert, January 30, 2019,

<https://www.warren.senate.gov/imo/media/doc/2019.01.30%20Letter%20to%20Sears%20.pdf>.

⁶ *Id.* See also Reuters, “Sears chairman confirms new \$5 billion bid to save bankrupt retailer,” Jessica DiNapoli, Mike Spector, and Aishwarya Venugopal, January 10, 2019, <https://www.reuters.com/article/us-sears-bankruptcy-lampert/sears-chairman-confirms-new-5-billion-bid-to-save-bankrupt-retailer-idUSKCN1P41TJ>.

⁷ Letter from Edward S. Lampert to Senator Elizabeth Warren, February 19, 2019.

⁸ USA Today, “Sears buyer Eddie Lampert wants to avoid up to \$43M in severance pay from bankruptcy,” Nathan Bomey, May 28, 2019, <https://www.usatoday.com/story/money/2019/05/28/sears-worker-severance-eddie-lampert-esl-investments/1261845001/>.


⁹ Vox, “After Sears declared bankruptcy, employees are fighting for severance pay,” Chavie Lieber, December 3, 2018, <https://www.vox.com/the-goods/2018/12/3/18124450/sears-bankruptcy-eddie-lampert-workers-severance>.

¹⁰ Letter from Eddie Lampert to Senator Elizabeth Warren, February 19, 2019

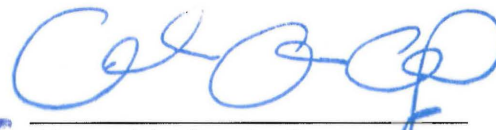
- a. If not, why not?
2. Will you keep your commitment that “eligible employees of the new Sears will be entitled to the same severance benefits as they were entitled to as employees of Sears Holdings prior to the Chapter 11 filing on October 15, 2018?”¹¹
 - a. If not, why not?
3. Are you seeking to withhold any other payments, or not take any other actions, that you promised to make in your bid to buy Sears out of bankruptcy and/or in your February letter to Sen. Warren?
4. You wrote in your last letter to Sen. Warren that “I intend to prioritize the ability to keep people employed and expect to create new employment opportunities from the redevelopment of our significant real estate assets.”¹² How many employees do you expect will be laid off as a result of your plan to bring the company out of bankruptcy? How many additional stores do you expect will close?
 - a. What steps are you taking to minimize these outcomes?

Thank you for your attention to this important matter.

Sincerely,



Elizabeth Warren
United States Senator



Alexandria Ocasio-Cortez
Member of Congress

¹¹ *Id.*

¹² *Id.*