

2.1.2 Stipulation and Agreement of Compromise and Settlement

[court]UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

[plaintiff]KYLE O. MCLAREN, et al.

Plaintiffs,

[vs]

[defendant]SEARS, ROEBUCK AND CO. and WESTERN AUTO SUPPLY COMPANY,
Defendants.

STIPULATION AND AGREEMENT OF COMPROMISE AND SETTLEMENT

This Stipulation and Agreement of Compromise and Settlement (the "Stipulation" or "Settlement") is entered into between the plaintiffs in the above-captioned consolidated adversary proceedings (the "Bankruptcy Court Action") and civil action (the "District Court Action") (collectively, the "Actions") now pending in the United States Bankruptcy Court for the District of Massachusetts (the "Bankruptcy Court") and the United States District Court for the District of Massachusetts (the "District Court"), respectively, and Sears, Roebuck and Co. ("Sears"), subject to the approval of the Bankruptcy Court and the District Court as provided for below:

WHEREAS:

A. The Bankruptcy Court Action was commenced in the Bankruptcy Court on March 31, 1997, with the filing of the McLaren adversary proceeding on behalf of a nationwide class of bankruptcy debtors who had entered into reaffirmation agreements with Sears that were not filed with the appropriate bankruptcy court as required by the U.S. Bankruptcy Code. The Caldas adversary proceeding was subsequently consolidated with McLaren. The complaints in the Bankruptcy Court Action, including as subsequently amended, alleged that Sears, pursuant to a regular policy and practice, obtained reaffirmation (or similar) agreements from individual debtors, by which the debtors agreed to repay all or part of their pre-petition indebtedness to Sears, and did not file such agreements with the bankruptcy court in which the debtors' Chapter 7 proceedings were pending, as required by the Bankruptcy Code. (The Bankruptcy Court Action also named Western Auto Supply Company ("Western Auto"), a subsidiary of Sears, as a defendant based on substantially the same allegations.) The complaints further alleged that Sears, acting pursuant to its written policies and procedures, deceived bankruptcy debtors by claiming or implying that such agreements would be filed with bankruptcy courts, that the agreements had legal effect as enforceable agreements, and that monies were due which were not in fact owed, and by threatening actions that Sears either did not intend to take or was not legally permitted to take.

B. The Bankruptcy Court Action further alleged that Sears policy and practice in soliciting bankruptcy debtors to execute reaffirmation agreements subject to the Bankruptcy Code without complying with the provisions of the Code, in collecting monies pursuant to such agreements, and by otherwise enforcing or attempting to enforce such agreements, abused the process of the bankruptcy courts by violating Bankruptcy Code provisions governing post-petition reaffirmation of debt, 11 U.S.C. § 524, the automatic stay provision of

the Bankruptcy Code, 11 U.S.C. § 362, and the discharge injunction granted under 11 U.S.C. § 524; constituted unfair and deceptive acts and practices in violation of the Massachusetts Consumer Protection Act (Mass. G.L. ch. 93A); and violated the state unfair and deceptive practices law of each state in which Sears has engaged in such practice.

C. The Bankruptcy Court Action alleged that plaintiffs and class members have been damaged by Sears conduct in that they have paid monies to Sears under illegal and unenforceable agreements, and have unwittingly deprived themselves of the protection of the Bankruptcy Code. For relief, the complaints prayed, among other things, for judgment declaring Sears conduct unlawful, ordering Sears to refund to debtors all payments made under such agreements, and assessing exemplary or punitive damages against Sears for its alleged willful violations of the Bankruptcy Code, as well as double or treble damages.

D. The District Court Action was commenced on May 20, 1997, by plaintiffs in that Action through the filing of a complaint in the District Court, wherein there was previously pending an action entitled United States of America v. Sears, Roebuck and Co., Civil No. 97-10839-JLT (the "United States Action"). The United States Action was commenced against Sears on April 17, 1997, by the United States acting through the United States Attorney for the District of Massachusetts, and alleged, like the Bankruptcy Court Action, that Sears induced individuals who filed for protection under the Bankruptcy Code to enter into reaffirmation agreements and that Sears failed to file all such agreements with the appropriate bankruptcy court. The complaint in the United States Action further alleged that Sears obtained unenforceable reaffirmation agreements by misrepresenting to debtors that the agreements would be binding on them and collected debts through the U.S. mails by virtue of reaffirmation agreements known by Sears to be unenforceable, in violation of 18 U.S.C. §§ 1341 and 1345. For relief, the complaint sought, among other things, an injunction against Sears ordering it to cease its practice and to file all reaffirmation agreements henceforth obtained with the appropriate bankruptcy court prior to entry of the debtor's order of discharge; an order requiring Sears to conduct a nationwide audit to identify each and every debtor from whom it obtained a reaffirmation agreement that was not filed with the bankruptcy court; an order that Sears impose a moratorium on billing and collecting from each debtor so identified; an order that Sears pay damages in the form of restitution to each debtor so identified; and an order that Sears pay penalties in an unspecified amount to the United States of America.

E. Plaintiffs commenced the District Court Action in the District Court since the United States Action, which was previously pending in that Court, arose out of the same subject matter as the Bankruptcy Court Action and in the belief that their filing of the District Court Action would facilitate their ability to further protect the interests of the class. In addition, the broader jurisdiction of the District Court enabled the plaintiffs' complaint in the District Court Action to assert additional claims arising out of Sears (and Western Auto's) failure to file all reaffirmation agreements with the appropriate bankruptcy court, over which claims the Bankruptcy Court could not exercise jurisdiction. In addition to the claims alleged in the Bankruptcy Court Action, the District Court Action alleged, on behalf of a nationwide class of debtors, that defendants' conduct constituted a violation of the federal Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq.* ("RICO"), and of the federal Truth in Lending Act, 15 U.S.C. § 1601 *et seq.* For relief, the District Court Action prayed, among other things, for judgment declaring defendants' conduct unlawful, ordering defendants to refund to debtors all payments made under the allegedly illegal and

unenforceable reaffirmation agreements, and assessing exemplary or punitive damages as well as double or treble damages.

F. The issues raised by the Bankruptcy Court Action and the District Court Action first came to the attention of the senior management of Sears on Friday, March 28, 1997. Sears represents that prior to March 28, 1997, no member of Sears senior management or of its board of directors knew that Sears had failed to file reaffirmation agreements with the appropriate bankruptcy courts in violation of the Bankruptcy Code or that Sears had sought to collect upon agreements that had not been so filed or upon reaffirmation agreements that had been filed but were subsequently disapproved or rejected by the bankruptcy courts or rescinded by the debtor. On that date, Sears senior management directed that an immediate audit be commenced in an effort to ascertain the scope and nature of the manner in which reaffirmation agreements had been handled by Sears, including the failure to file with the appropriate bankruptcy court. On Monday, March 31, 1997, Sears senior management directed that all reaffirmation agreements henceforth be filed with the appropriate bankruptcy court.

G. On April 9, 1997, Sears publicly acknowledged that the company had exercised flawed legal judgment and execution in failing to file all reaffirmation agreements with the appropriate bankruptcy court. In that connection, Sears also indicated that it would compensate bankruptcy debtors nationwide whose debt reaffirmations were not filed as required by the Bankruptcy Code during the period 1992 to date.

H. Sears thereafter expressed its desire to effect a global resolution of the reaffirmation agreement matter and discussions were commenced with counsel for plaintiffs. Sears discussions have also included the Attorney Generals of the United States; the United States Attorney for the District of Massachusetts, who commenced the United States Action; the Office of the United States Trustee for the District of Massachusetts; and the Boston Regional Office and the Consumer Protection Bureau of the United States Federal Trade Commission.

I. On April 14, 1997, the Bankruptcy Court entered an Order in a related proceeding initiated by the Bankruptcy Court's own Order to Show Cause Why Compensatory And Punitive Damages Should Not Be Imposed On Sears, Roebuck and Co. for Willful Violation Of The Discharge Order and Of 11 U.S.C. § 302(a) (filed on April 9, 1997 in In re Travis Amalfitano and others, Case No. 95-15260-CJK). The Bankruptcy Court's April 14, 1997 order, which was issued following a hearing in that Court held on April 11, 1997, ordered on the consent of Sears: (1) that Sears retain the services of Professor Readmore, the [Honorary Chair] Professor of Law at New York University School of Law and of counsel to the law firm of [Law Firm] (one of the firm's representing Sears in the Actions), to perform a legal review of Sears policies and procedures with regard to reaffirmation agreements and that Sears adopt Professor Readmore's recommendations to assure future compliance with the requirements of § 524 of the U.S. Bankruptcy Code; and (2) that no later than April 16, 1997 at 5:00 p.m., Sears cease sending billing statements and assessing interest charges to the approximately 2,700 debtors identified in that proceeding as having had reaffirmation agreements with Sears that were not filed with the bankruptcy court.

J. By Order dated April 16, 1997, the Bankruptcy Court, on Sears consent and noting that the plaintiffs and Sears had expressed a genuine interest in achieving an equitable, appropriate, national resolution of the issues raised in the Bankruptcy Court Action, conditionally certified a nationwide class for settlement purposes only. The Order appointed

the plaintiffs in the Bankruptcy Court Action as class representatives and plaintiffs' counsel ([Attorneys for Plaintiffs]) as class counsel.

K. On April 21, 1997, the District Court entered a Stipulated Order by which Sears, without making any admissions relating to the allegations in the United States Action and in furtherance of its stated desire to cooperate with all parties to achieve an appropriate resolution of the reaffirmation matter, assented to a preliminary injunction. The Stipulated Order provided in summary: (1) that Sears henceforth file all reaffirmation agreements with the appropriate bankruptcy court on or before the date of the debtor's order of discharge; (2) that Sears complete its then-ongoing national review to identify those debtors who filed Chapter 7 petitions in bankruptcy and from whom Sears obtained a reaffirmation agreement that was not filed with the appropriate bankruptcy court from January 1, 1992, to date; (3) that, specifically, Sears identify those debtors in three stages (by May 9, 1997--those debtors from August 1996 to the present; by June 3, 1997--those debtors from July 1994 through July 1996; and by August 15, 1997--those debtors from January 1, 1992 through June 1994); (4) that Sears provide the United States Attorney's Office with status reports every two weeks, beginning on May 1, 1997, regarding the identification process and the names and addresses of the debtors so identified; (5) that Sears cease all collection activities upon completion of the identification of the individuals in the groups set forth above; and (6) that Sears calculate the amounts charged and collected from the debtors as identified, inclusive of interest, finance and other charges relating to each such debtor's obligations to Sears as of the filing of the debtor's bankruptcy petition.

L. Class counsel have sought and obtained substantial formal and informal discovery from Sears. That discovery has included production of documents, depositions of Sears employees, and interviews of Sears employees. In addition, class counsel have conducted their own investigation into Sears practices and procedures by contacting members of the class and various debtors' counsel in other jurisdictions, and have engaged in extensive discussions with counsel for Sears with regard to Sears prior practices and procedures, its current practices and procedures, and other issues relevant to the Actions.

M. Class counsel, furthermore, have consulted and shared information and analyses regarding the Actions and this proposed Settlement with the Office of the United States Trustee of the District of Massachusetts, the United States Attorney's Office for the District of Massachusetts, and the Office of the Massachusetts Attorney General; and representatives of such governmental authorities have participated in settlement discussions with Sears that facilitated the agreement to the Settlement.

N. The Attorneys General of the United States support the Settlement and believe that it provides a fair, reasonable and adequate resolution of the claims of the nationwide class of debtors being settled.¹ In addition, the Federal Trade Commission has approved, subject to a statutory notice and comment period, and Sears has consented to an Agreement Containing Consent Order which provides, among other things, that the FTC will not institute action under Section 19 of the Federal Trade Commission Act if consumers receive full redress; such requirement is satisfied under the terms of the Settlement, so long as the amount paid in restitution is at least \$100 million (this amount could be adjusted upward or downward by not more than 25 percent based on Sears on-going nationwide review to identify eligible debtors).

1 These approvals are supported by the staffs of each office and are subject to final approval. The state Attorneys General group previously included 39 states and is anticipated to include 50 states.

O. Based on their review and analysis of the relevant facts and legal principles, class counsel believe that the terms and conditions of the Settlement are fair, reasonable and adequate, and beneficial to and in the best interests of plaintiffs and the proposed Settlement Class (as defined below). Class counsel have determined to execute this Stipulation and urge approval by the Bankruptcy Court and the District Court of the Settlement after considering the substantial damages that the Settlement Class will receive pursuant to the Settlement; the fact that the Settlement provides for members of the Settlement Class to receive such payments in the most expeditious and efficient manner practicable, and thus much sooner than would be possible were the claims asserted to be litigated through trial and appeal even if such claims were to be found to be meritorious in all respects; the fact that the Settlement provides for significant monetary benefits to the Settlement Class beyond the restitution damages paid with respect to unfiled (and otherwise unenforceable) reaffirmation agreements, including the amounts to be distributed out of a \$25 million fund being created by Sears, the elimination of finance charges on post-petition purchases, Sears agreement not to act upon its security interest in goods sold to members of the Settlement Class prior to their bankruptcy filing, the payment of interest by Sears, and Sears commitment to continue to extend credit to members of the Settlement Class provided for herein; the provision of the Settlement that obliges Sears, at its sole expense, to identify members of the Settlement Class from January 1, 1992 to date and to provide the benefits of the Settlement to such persons without their having to take any affirmative steps (including provisions that require Sears to bear the onus of incomplete and unavailable information by treating reaffirmation agreements for which there is no direct evidence of their having been filed with the bankruptcy court as having not been filed); the fact that the Settlement provides for payments to members of the Settlement Class who executed reaffirmation agreements before January 1, 1992, notwithstanding that such claims could be held barred by applicable statutes of limitations and/or the doctrine of laches; the defenses available to Sears for claims under state law that seek to go beyond the unenforceability of unfiled reaffirmation agreements under the U.S. Bankruptcy Code, including the possibility that any state law claims would be deemed to be preempted by the Bankruptcy Code; the defenses available to Sears for claims under the Bankruptcy Code, including whether persons whose reaffirmation agreements were not filed could obtain recoveries for violation of the discharge injunction; the defenses available to Sears for claims under RICO, including defenses based on the 18 U.S.C. § 1962(c) requirement of establishing a RICO "enterprise" distinct from the defendant, Sears; the defenses available to Sears with respect to the availability and amount of any punitive relief; Sears consent to the certification of a nationwide class of debtors; the provisions of the Settlement regarding Sears future practices and policies with regard to reaffirmation agreements and the ability to enforce such provisions by the Bankruptcy Court and the District Court that the Settlement provides; and the fact that the Settlement allows members of the Settlement Class to exclude themselves from the Settlement Class should they so desire and thereby not be precluded by the Settlement from individually seeking to pursue the claims alleged in the Actions or any other claims relating to the conduct of Sears at issue in the Actions.

P. Sears has agreed to the Settlement consistent with its acknowledgment that the company previously had exercised flawed legal judgment and execution in failing to file reaffirmation agreements. Sears considers it desirable that the Actions be settled on a global nationwide basis in order to achieve what it believes is a fair, responsible, and final resolution of the claims being settled.

In light of the foregoing, the parties propose to settle the Actions in accordance with the terms, provisions and conditions of this Stipulation as set forth below.

NOW, THEREFORE, IT IS STIPULATED AND AGREED, subject to approval by the Courts as provided hereinbelow pursuant to Rule 23 of the Federal Rules of Civil Procedure (and, in the case of the Bankruptcy Court Action, Bankruptcy Rule of Procedure 7023), by and between Sears (and Western Auto), and the plaintiffs for themselves and for the Settlement Class (defined below), that all claims, rights and causes of action, damages, losses and demands of any nature whatsoever, state or federal, including but not limited to claims arising under the U.S. Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, or any state or federal law regarding consumer or debtor fraud or unfair or deceptive trade practices, or otherwise (and including but not limited to whether for compensatory damages, consequential damages, restitution, punitive damages, contempt, sanctions, penalties, injunctive relief, declaratory relief, or otherwise), whether known or unknown, that are, could have been or might in the future be asserted by any of the plaintiffs or any member of the Settlement Class, whether directly, representatively or in any other capacity, against Sears, Western Auto or any of their present and former officers, directors, shareholders, employees, accountants, representatives, attorneys, subsidiaries, affiliated companies, divisions, successors, heirs, agents and assigns (the "Released Persons"), in connection with or that arise out of Sears (or Western Auto) obtaining of a reaffirmation agreement from a member of the Settlement Class, the nonfiling (or untimely filing) of any such agreement with the appropriate bankruptcy court, the solicitation or billing of or collecting under or any steps to enforce any such unfiled agreement (or any filed reaffirmation agreement that was subsequently disapproved or rejected by the bankruptcy court (or that was not approved by such court where approval was required for the enforceability of such agreement) or that was subsequently rescinded by the debtor), or any communications, representations or omissions by or on behalf of Sears (or Western Auto) with respect to any of the foregoing, or any acts, facts, transactions or occurrences, alleged or otherwise asserted or that could have been asserted in either of the Actions (all of which are hereinafter referred to as the "Settled Claims"), shall be compromised, settled, released and discharged with prejudice, upon and subject to the following terms and conditions:

1.1. Settlement Class. For settlement purposes only, the Actions shall proceed on behalf of a class (the "Settlement Class") defined as all individuals (a) who filed a petition for relief under the Bankruptcy Code; (b) who listed Sears as a creditor, against whom Sears filed a claim, or who owed a debt or alleged debt to Sears; (c) who, subsequent to the filing of the bankruptcy petition, executed an agreement with Sears purporting to reaffirm such debt or alleged debt or to redeem the applicable property, or which agreement is otherwise subject to the provisions of 11 U.S.C. § 524(c) (collectively referred to herein as "reaffirmation agreements"); and (d) such agreement either was not filed with the appropriate bankruptcy court in accordance with 11 U.S.C. § 524(c)(3) prior to the order of discharge, or was filed with the bankruptcy court and was either (i) disapproved or rejected by the bankruptcy court or not approved by such court when necessary to the enforceability of such agreement, or (ii) rescinded by the debtor.

1.2. The Settlement Class is thus defined on a nationwide basis, not limited to individuals whose petitions under the Bankruptcy Code were filed in any particular jurisdiction or region.

1.3. Reaffirmation agreements referred to herein include all agreements, whether written or oral; whether entered into during the pendency of the debtor's bankruptcy proceeding or following the issuance of the debtor's discharge by the bankruptcy court; and whether such agreements did or did not provide for the continued extension of credit to the debtor by Sears.

1.4. Excluded from the Settlement Class shall be any individuals who validly request exclusion in accordance with the procedures set forth in paragraph 17 of this Stipulation.

1.5. References to "Sears" in this paragraph (and paragraph 2) include Sears subsidiary, Western Auto.

2. Filing of all reaffirmation agreements. Sears and its agents, servants, employees, attorneys and all persons acting in concert and participation with them, shall henceforth file all reaffirmation agreements obtained from debtors pursuant to § 524(c) and (d) of the U.S. Bankruptcy Code (11 U.S.C.) with the appropriate U.S. Bankruptcy Court on or before the date that the debtor's order of discharge is entered, provided that the reaffirmation agreement is received by Sears not less than five business days prior to the date that the debtor's order of discharge is entered.

3.1. Identification of members of the Settlement Class from January 1, 1992 to date. Sears shall complete its ongoing national review to identify those persons who, from January 1, 1992 to April 1, 1997. (the date of the written directive that henceforth all reaffirmation agreements be filed as required by the Bankruptcy Code), filed Chapter 7 petitions in bankruptcy and from whom Sears obtained a reaffirmation agreement that was not properly filed with the appropriate bankruptcy court (or that was filed but later rescinded by the debtor or disapproved or rejected by the Bankruptcy Court, or not approved by the court where approval was required for the enforceability of the agreement) ("Identified Class Members").

3.2. Specifically, under the identification process, Sears has identified members of the Settlement Class who filed for bankruptcy during the period from August 1996 to the present, and during the period from July 1994 through July 1996. By August 15, 1997, Sears will identify members of the Settlement Class who filed for bankruptcy during the period from January 1, 1992, through June 1994.

3.3. The time periods and methodologies set forth in paragraph 3.2 above reflect Sears best current belief as to its ability to make such identifications and it is understood that Sears, in undertaking the tasks set forth in this paragraph 3, will use its best efforts to identify all individuals and to do so within the stated time periods.

3.4. Sears will provide class counsel a status report every two weeks, in conjunction with its reports to the U.S. Attorney's Office in accordance with the Stipulated Order in the United States Action, setting forth its efforts to date in identifying such individuals, and providing the names and last known addresses of each debtor so identified.

3.5. If after the dates specified above, Sears determines based upon further review of available data that a debtor previously identified as belonging to one of the above groups should not be so included or identifies a debtor who should have been included in one of the above groups that was not so included, Sears shall promptly delete or add such debtor as appropriate and notify class counsel in its next status report of such deletions or additions (and the reasons therefor).

3.6. In the identification process, Sears shall include in the Settlement Class all debtors who filed for bankruptcy from January 1, 1992 to April 1, 1997 whose Sears account records indicate the existence of a reaffirmation agreement (e.g., payment activity after

bankruptcy indicator removed from the account; account codes indicating reaffirmation) even if no original, copy or other evidence of the existence of such an agreement is located, absent contrary direct evidence that the reaffirmation agreement was filed with the bankruptcy court and not thereafter disapproved, rejected or rescinded.

3.7.1. In the event that Sears is unable to determine from evidence available to it whether a debtor's reaffirmation agreement was filed, Sears shall assume that the reaffirmation agreement was not filed and therefore shall include such debtor in the Settlement Class.

3.7.2. In the process of identifying members of the Settlement Class from January 1, 1992 to April 1, 1997, Sears shall not treat as filed any reaffirmation agreement unless it has a physical copy that is stamped with a court stamp reflecting its pre-discharge filing or if a review of either the actual court records or an electronic docket search conducted via PACER (or similar database) reflects its pre-discharge filing and does not indicate its disapproval or rejection by the Court. Sears may rely on PACER for indications that a reaffirmation agreement was filed (and whether it was subsequently disapproved or rejected by the court). Sears shall maintain either an electronic or paper copy of such report(s) until the Settlement becomes final. In the event that a reaffirmation agreement filed after an order of discharge in a case was nonetheless accepted by the court, it shall be treated by Sears as an unfiled reaffirmation (and therefore in the Settlement Class).

3.8. The identification process has been and shall continue to be conducted by Sears at its sole expense. The identification process will require Sears to access and utilize information for each of the approximately 110 million active credit card accounts it maintained during the period January 1, 1992 to April 1, 1997. Sears estimates that, for this period, it obtained reaffirmation agreements in approximately 510,000 cases, with a total dollar volume of reaffirmed debt (filed and unfiled) of approximately \$412 million. Sears estimates that the identification process (exclusive of the costs of its own internal personnel) will cost Sears in excess of \$10 million, including the costs of outside vendors of bankruptcy filing and related information being purchased by Sears.

3.9. The identification process conducted by Sears will be assisted in by Sears Internal Audit and [Auditors]. Both Sears Internal Audit and [Auditors] will participate in the testing of data collection activities and findings from corporate records and will assist Sears in managing the collection and analysis of data provided by outside vendors. They will also review data-matching results for the debtor identification process and review the application of payment methodologies set forth in this Stipulation. [Auditors] shall periodically report to class counsel as requested on these subjects.

4.1. Moratorium on billing. Within two business days after identification of a debtor as an Identified Class Member, Sears has implemented and shall continue to implement steps to cease all collection activities on that individual's Sears account, including instructing any collection agency to which the account of an Identified Class Member has been referred to cease all collection activities and return the account to Sears.

4.2. As to such accounts, Sears shall suspend all billing, including for both reaffirmed indebtedness and post-petition purchases, and suspend the accrual of any finance charges. In addition, any available "open to buy" credit for such accounts shall be maintained as available. Sears shall notify Identified Class Members in writing of any such activities relating to their accounts.

4.3. Following the calculation of the new balance of an individual account pursuant to paragraph 5, Sears may recommence the billing and collection of that account. No finance or

other charges shall be made on account of the moratorium on billing hereunder. Sears shall notify Identified Class Members in writing of any such activities relating to their accounts.

5.1. Payments to Identified Class Members. Sears shall remit to Identified Class Members, as damages, all amounts paid by them to Sears with respect to reaffirmed debt, with interest, as follows:

5.1.1. The amount of reaffirmed indebtedness for the account of each Identified Class Member shall be treated as a nullity and reset to \$0. All post-petition payments shall be deemed to have been made first on account of reaffirmed indebtedness (including all finance charges, late fee charges, returned check charges or other similar charges with respect thereto) (collectively, "finance charges"), and, to that extent, shall be payable back to such member, with interest as provided below, and the balance of the account shall be reset to reflect only the remaining balance on post-petition purchases.

5.1.2. If such person made no post-petition purchases, the balance of his or her account shall be reset to \$0. If the person made post-petition purchases, all finance charges attributable to such purchases shall be eliminated and the new balance of such person's account shall equal the amount of such post-petition purchases (as defined in paragraph 5.2.1).

5.1.3. If a person made post-petition payments in excess of the amount of reaffirmed debt plus finance charges on account of such reaffirmed debt, the amount payable to such person shall equal the sum of reaffirmed debt and finance charges on account of reaffirmed debt, and such excess shall reduce such person's new account balance calculated in accordance with paragraph 5.1.2. In no case shall the amount of such person's new account balance due exceed the balance of the account prior to giving effect to this Settlement. (If such would occur but for the preceding sentence, the amount by which the balance due is reduced as a result of the preceding sentence shall reduce the amount payable under paragraph 5.1.1.)

5.2. In performing the calculation, the following definitions and practices shall be followed:

5.2.1. Post-petition purchases shall consist of all purchases of merchandise, services or insurance (excluding CAPP (Credit Account Protection Plan) insurance) made on or after the date of the Identified Class Member's bankruptcy filing net of all returns, cancellations and adjustments on such purchases.

5.2.2. Post-petition payments shall consist of all payments (whether on account of finance charges or otherwise) received by Sears on or after the date of the Identified Class Member's bankruptcy filing.

5.2.3. The amount of finance charges on account of reaffirmed indebtedness shall be calculated on the basis of the highest rate charged on outstanding balances on or after the date of the Identified Class Member's bankruptcy filing, and any post-petition payments will be deemed first to apply to finance charges on account of reaffirmed amounts outstanding and then to principal with respect to such amounts.

5.2.4. The calculation has (and is intended to have) the effect of returning (with interest) finance charges previously assessed on reaffirmed indebtedness, and of removing finance charges previously assessed on post-petition purchases.

5.2.5. The interest payable under paragraph 5.1.1 shall be calculated as follows: All post-petition payments shall be recognized as if received by Sears on the first day of the billing cycle during which the payments were actually received. If an individual payment was received on account of reaffirmed indebtedness and is therefore payable in accordance with

paragraph 5.1.1, monthly interest at the annual rate of 10% shall be added to the amount of such individual payment to calculate the total amount payable under paragraph 5.1.1. Interest shall be calculated through the end of the most recently completed billing cycle prior to the date on which payment to the member of the Settlement Class is mailed.

5.3. The calculation of the compensation damages to Identified Class Members shall be made as of the date of the next billing cycle of each Identified Class Member (or, at Sears option, 30 days) following the date that the Settlement becomes final (or, at Sears option, following approval of the Settlement by the District Court).

5.4. Any amounts payable to an Identified Class Member shall be paid by a Sears check mailed by first class mail to such person's last known address. No part of such amounts may be paid in any other form (such as a gift certificate or coupon even if so requested by a member of the Settlement Class).

5.5. The damages to Identified Class Members shall be provided as soon as practicable following the Settlement becoming final (or, at Sears option, upon approval of the Settlement by the District Court).

5.6. Once the calculation of the new balance of an Identified Class Member under this paragraph 5 has been properly made by Sears, Sears shall be entitled to resume the billing and collecting of such account in the ordinary course, and any activity in or with respect to such account after such time shall for all purposes be unaffected by the Settlement.

5.7. Sears calculation of the compensation under this paragraph 5 (as well as paragraph 6 below) shall be overseen by the accounting firm of [Auditors]. [Auditors] shall be retained for this purpose by Sears at Sears sole expense, and shall periodically report to class counsel on the calculation process as requested.

5.8. The parties shall also retain a nationally recognized firm to act as Settlement Administrator, at Sears expense. The parties shall agree on the choice of the Settlement Administrator within 30 days of the execution of this Stipulation (and such choice shall be subject to reasonable approval by the Attorneys General of the United States who support the Settlement); absent such agreement, the parties shall submit their respective proposals to the Court, whose decision shall be final. The Settlement Administrator shall review the calculation of the amounts payable under paragraphs 5, 6 and 7 and shall perform the other tasks assigned to it in this Stipulation and the exhibits hereto.

5.9. In addition to the compensation described above, Sears shall pay each of the named plaintiffs \$2,500 for serving in the capacity of a representative of the plaintiff class, subject to approval of the Courts.

6.1. Payments to members of the Settlement Class other than Identified Class Members. Members of the Settlement Class other than Identified Class Members, including individuals who executed reaffirmation agreements with Sears prior to January 1, 1992, that were not filed with the bankruptcy court (or if filed, were thereafter disapproved, rejected or rescinded, or not approved where approval was required for enforceability), shall be eligible for compensation damages on the same basis as Identified Class Members, as follows:

6.2. Because Sears is unable as a practical matter to identify such persons from either its own records or records available from other sources, and does not have complete purchase and payment data for the pre-1992 period, members of the Settlement Class other than Identified Class Members may seek such compensation damages by filing a Proof of Claim in the form annexed as Exhibit A hereto [not reprinted herein]. The Proof of Claim, to be valid, must comply with the requirements set forth in the Proof of Claim. Proofs of Claim will be

processed by the Settlement Administrator in accordance with guidelines to be submitted by the parties to the Courts.

6.3. If the person filing a Proof of Claim is able to supply acceptable documentary information in the form of account statements (or other documentary evidence acceptable to the Settlement Administrator as) reflecting the record of his or her post-petition purchases from and cash payments to Sears, such person's Claim shall be calculated on the same basis as Identified Class Members' set forth in paragraph 5.

6.4. If such person does not supply such documentation, Sears shall use its reasonable best efforts to ascertain the record of such person's post-petition purchases from and cash payments to Sears; and if such information is obtained, such person's Claim shall be calculated on the same basis as Identified Class Members' set forth in paragraph 5.

6.5.1. If the Settlement Class member does not supply the information and Sears is not using its reasonable best efforts to produce the information necessary to calculate the person's Claim on the same basis as Identified Class Members set forth in paragraph 5, the total amount payable to such person under paragraphs 5 and 6 shall be calculated to represent the same percentage of that person's reaffirmed indebtedness (which must be established by documentary evidence) as the average percentage of reaffirmed indebtedness that Sears provides as compensation damages to Identified Class Members under paragraph 5. If the Settlement Class member cannot prove the amount of reaffirmed indebtedness in accordance with the guidelines to be submitted by the parties to the Courts, the total amount payable to such member nevertheless shall be calculated to represent the same percentage of that member's pre-petition indebtedness to Sears that was discharged by a bankruptcy court (which, together with some post-petition payment activity, must be established by documentary evidence as provided in the guidelines) as the average percentage of pre-petition indebtedness that Sears provides as compensation damages to Identified Class Members under paragraph 5. The average percentages to be used in calculating compensation damages under this paragraph shall be calculated by Sears as soon as practicable following the completion of the calculation of the compensation damages to be provided by Sears to Identified Class Members under paragraph 5.

6.5.2. If a person filing a Proof of Claim is able to supply documentary information acceptable to the Settlement Administrator substantiating his or her entitlement under the basis provided for Identified Class Members to an amount greater than would result were such person's Claim to be calculated under paragraph 6.5.1, such person's Claim shall be calculated to be such greater amount.

7. \$25 Million additional fund provided to Settlement Class Members. In addition to the amount payable to Settlement Class members under paragraphs 5 and 6, Sears shall provide a fund of \$25 million to be distributed to the members of the Settlement Class entitled to receive payments under paragraphs 5 and 6, as follows: Each such member shall receive the same share of the \$25 million fund as such member's pro rata share of the total amount payable by Sears to all Settlement Class members under paragraphs 5 and 6 (such amounts shall not include interest calculated under paragraph 5.3.5).

8. Cy pres fund for consumer education. In the event that the total amounts payable by Sears as compensation to members of the Settlement Class who executed reaffirmation agreements with Sears after January 1, 1992, ultimately aggregate less than \$100 million (separate and apart from the \$25 million payable under paragraph 7), that difference shall not be retained by Sears but rather shall be paid by Sears into a cy pres fund to be devoted to

consumer credit education (including personal bankruptcy education, consumer finance and debt collection issues and debtor counsel education). The cy pres fund shall be disbursed as directed by the Attorneys General of the United States (who support the Settlement).

9.1. Treatment of members of the Settlement Class who are deceased or cannot be located. Where a member of the Settlement Class is deceased, Sears will, upon receipt of proper notification and documentation, make the payment to such member's heirs or estate.

9.2. If a payment sent by Sears to a member of the Settlement Class in accordance with paragraphs 5, 6 or 7 is returned with a forwarding address provided by the Postal Service, Sears will cause it to be remailed to the address or addresses provided. If a mailing is returned without a forwarding address provided by the Postal Service, or is otherwise designated by the Postal Service as being an invalid address, Sears shall take reasonable steps (including skip-tracing) to locate the affected class member. If the cost of such effort does not exceed the amount due to such member by more than \$25, then no such steps need be taken. Amounts that cannot be paid to a member of the Class due to such an uneconomic tracing expense or failure of such tracing to return a valid address shall be directed to the Attorney General of the state of the last known address of such member, as determined by the Settlement Administrator, to be applied by the Attorney General for consumer protection purposes, or for other purposes as required by law.

9.3. If a class member's check is not cashed within six months, it shall be null and void (the checks may be stamped or printed with a legend to that effect) and Sears shall have no further obligation to make payment to such member. Amounts not paid due to failure of a member of the class to cash such a check shall be directed to the Attorney General of the state of the last known address of such member, as determined by the Settlement Administrator, to be applied by the Attorney General for consumer protection purposes, or for other purposes as required by law.

9.4. In the event that a check payable to a class member remains outstanding for any reason described in this paragraph 9, then the recipient's right to receive the amount payable shall terminate, and be deemed to be assigned to the Attorneys General of the United States to be applied as directed above, and Sears shall not have any obligation whatsoever to any person or State with respect to such amounts.

10.1. Continuation of extension of credit by Sears; credit reports. Sears shall continue to extend credit to members of the Settlement Class who at the time of the calculation described in paragraph 5 have an "open to buy" extension of credit, notwithstanding the voiding of reaffirmed debt amounts previously owed by such persons, it being understood that Sears shall treat its relationship with such persons on the same basis as its relationship with its credit customers generally, including with respect to the maintenance and adjustment of "open to buy" levels, fees, charges and all other matters.

10.2. Sears shall undertake to determine if it has made any negative reports to credit bureaus or similar organizations on account of nonpayments by members of the Settlement Class (whether Identified Class Members or other class members who file Proofs of Claim as provided for in the Settlement) based on reaffirmed indebtedness, and will advise such bureaus or organizations to correct such reports. Sears will also notify such members in writing of its communications with such organizations.

11. Waiver of Sears security interest. With respect to all members of the Settlement Class, Sears shall not seek to recover any of the goods sold by it in which Sears claimed a

security interest prior to such person's bankruptcy filing, and shall in all respects treat such security interest as waived.

12. Revision of Sears policies and procedures. Class counsel will review the revision of Sears policies and procedures regarding reaffirmation agreements already implemented and to be implemented by Sears pursuant to the recommendations of Professor Readmore, and shall consult with Professor Readmore as to such matters.

13. Western Auto. Members of the Settlement Class who executed reaffirmation agreements with Western Auto will be entitled to compensation on the same terms as other members of the Settlement Class who are not Identified Class Members.

14. Full settlement. The obligations of Sears under this Stipulation shall be in full settlement, compromise, release and discharge of the Settled Claims and each of them. Upon approval of the Settlement provided for in this Stipulation by the District Court, Sears, the Released Persons or any of them shall have no other or further liability or obligation to any member of the Settlement Class in any court or forum (state or federal) with respect to the Settled Claims, except as expressly provided herein.

15. Motion for entry of initial Order. As soon as practicable after this Stipulation has been executed, the parties shall jointly move the Bankruptcy Court and the District Court for approval of the Settlement. The parties shall apply jointly in each court for an order, in the forms annexed hereto as Exhibit B (the "Order") [not reprinted herein], providing, among other things (the provisions of subparagraph (d) being included only in the Order to be applied for in the District Court):

(a) that for purposes of settlement only, the Actions shall be maintained and proceed as a class action, pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, on behalf of the Settlement Class;

(b) that (i) the Notice of Pendency of Class Actions, Class Action Determination, Proposed Settlement of Class Actions, Settlement Hearings, and Right to Appear, in the form annexed hereto as Exhibit C (the "Notice") [not reprinted herein]; (ii) the Summary Notice of Class Action Determination, Proposed Settlement of Class Actions and Settlement Hearing in the form annexed hereto as Exhibit D (the "Summary Notice") [not reprinted herein], and the Notice Insert to be inserted in Sears billing statements in the form annexed hereto as Exhibit E (the "Notice Insert") [not reprinted herein]; and the Western Auto Notice Insert to be inserted in Western Auto billing statements in the form annexed hereto as Exhibit F (the "Western Auto Notice Insert"), are approved by the Court [not reprinted herein]; and that the mailing of the Notice in the manner and form set forth in the Order, the publication of the Summary Notice in the manner and form set forth in the Order, the insertion of the Notice Insert in Sears statements mailed to its credit customers for a full billing cycle, and the insertion of the Western Auto Notice Insert in Western Auto statements mailed to its credit customers for a full billing cycle, meet the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto;

(c) that a hearing or hearings (the "Settlement Hearing") shall be held before the Bankruptcy Court and the District Court, at the respective time and date to be set by the Courts, to determine whether the proposed Settlement of the Actions on the terms and conditions set forth in the Stipulation is fair, reasonable and adequate and should be approved by the Courts, and whether a judgment should be entered, and to consider such other matters as may properly come before the Court in connection with the Settlement Hearing; and

(d) that, pending decision by the Courts on whether to approve the Settlement, each member of the Settlement Class is barred and enjoined from instituting or prosecuting any action in state or other federal court against Sears, Western Auto or any of their present or former officers, directors, shareholders, employees, accountants, attorneys, representatives, subsidiaries, affiliated companies, divisions, successors, heirs, agents and assigns, which assert claims that are Settled Claims that would be released and discharged upon approval of the Settlement.

16. Order and Final Judgment. If the Settlement (including any modification thereto made with the consent of the parties as provided for herein), shall be approved by the Courts following a hearing, the parties shall jointly request the Courts each to enter an Order and Final Judgment ("Final Order"), among other things:

- (a) approving the Settlement as fair, reasonable and adequate and directing consummation of the Settlement in accordance with its terms and provisions;
- (b) dismissing the Bankruptcy Court Action and the District Court Action as to Sears and Western Auto with prejudice as against all plaintiffs and all members of the Settlement Class, without costs except as hereinafter provided, such dismissal to be subject only to compliance by the parties with the terms and conditions of the Stipulation and any order of the Courts with reference to the Stipulation;
- (c) permanently barring and enjoining the institution or prosecution by plaintiffs or any member of the Settlement Class, either directly or in any other capacity, of any action asserting claims that are Settled Claims;
- (d) releasing and discharging, on behalf of the Settlement Class and the plaintiffs, the Released Persons from all Settled Claims;
- (e) reserving continuing and exclusive jurisdiction over implementation of the Settlement, and over enforcement, construction and interpretation of this Stipulation; and
- (f) awarding attorneys' fees and expenses to class counsel, or reserving jurisdiction with respect thereto.

17.1. Requests for exclusion from the Settlement Class. Requests for Exclusion from the Settlement Class shall list the name, address and social security number or taxpayer identification number of the person seeking exclusion.

17.2. If a Request for Exclusion does not include all of the foregoing information, it shall not be a valid Request for Exclusion and the person filing such an invalid Request for Exclusion shall be a member of the Settlement Class. In addition, members of the Settlement Class requesting exclusion shall be requested to provide the court and year of such person's bankruptcy filing, Sears account number and the amount of indebtedness to Sears that the person reaffirmed, albeit the failure to provide such information shall not effect the validity of the Request for Exclusion. All persons who properly file Requests for Exclusion from the Settlement Class shall not be members of the Settlement Class and shall have no rights with respect to the Settlement.

17.3. Each potential Settlement Class member who does not submit a properly completed Request for Exclusion no later than twenty (20) days prior to the Settlement Hearing shall be included in the Settlement Class. For purposes of determining timeliness, a Request for Exclusion shall be deemed to have been submitted when posted, if a postmark is indicated on the envelope and it is mailed, postage prepaid and addressed in accordance with the instructions in the Notice or, otherwise, when received. Requests for Exclusion shall be submitted by mailing to the P.O. Box address referred to in the Notice.

18. Definition of finality. The approval by the Courts of the Settlement proposed by the Stipulation shall be considered final, and the Settlement shall be considered final (and Sears obligations hereunder shall arise) for purposes of this Stipulation, either (a) upon the entry by the Courts of the Final Order and when the applicable period for the appeal of such Final Orders shall each have expired without an appeal having been filed; or (b) if an appeal is taken, upon entry of an order affirming the Final Order and when the applicable period for the appeal of such affirmation of the Final Order shall have expired without an appeal having been filed, or upon entry of any stipulation dismissing any such appeal with no right of further prosecution of the appeal; or (c) if an appeal is taken from any decision affirming the Final Order, upon entry of an order in such appeal finally affirming the Final Order without right of further appeal or upon entry of any stipulation dismissing any such appeal with no right of further prosecution of the appeal. None of the obligations of Sears pursuant to the Settlement shall become effective until the Settlement becomes final. Notwithstanding the above, Sears shall have the option to declare the Settlement effective and final upon approval by the District Court (whether or not then approved by the Bankruptcy Court) or upon such approval having been finally affirmed on appeal or no appeal therefrom having been taken within the applicable time period limiting the taking of such an appeal.

19.1. Class counsel application for attorneys' fees and expenses. Provided that judicial approval of the Settlement has been obtained, class counsel intend to jointly apply for court approval of an award of attorneys' fees, plus reimbursement of expenses (including experts' fees). As an additional benefit to the Settlement Class, any attorneys' fees and expenses awarded to class counsel shall be paid by Sears and shall not diminish the benefits of the Settlement to the class. Class counsel's application for attorneys' fees and expenses may be made, at the option of class counsel, at or subsequent to the Settlement Hearing. Any attorneys' fees and expenses so awarded to class counsel shall not be payable unless and until the Final Order shall become final. Any attorneys' fees and expenses awarded to class counsel shall be paid as the Court may direct within ten business days after the Settlement becomes final.

19.2. Sears will pay the costs of all notices and settlement administration. Plaintiffs and their counsel shall have no responsibility for any such costs regardless of whether the Settlement is consummated. Except as provided in this Stipulation, Sears shall bear no other expenses, costs, damages or fees incurred by any plaintiffs, by any member of the Settlement Class, or by any of their attorneys, experts, advisors, agents or representatives.

20. Sears options to withdraw from the Settlement. Sears shall have the option to withdraw from the Settlement no later than three days before the Settlement Hearing in the event that valid Requests for Exclusion are received from persons who together number in excess of that number of which plaintiffs and Sears have agreed upon or whose aggregate reaffirmed indebtedness exceeds the amount that plaintiffs and Sears have agreed upon (which number and amount shall be kept confidential by the parties). In addition, Sears shall have the option to withdraw from the Settlement no later than three days before the Settlement Hearing if (a) any action asserting Settled Claims is allowed to be prosecuted notwithstanding the Settlement and the Orders provided for herein, or (b) Sears determines in good faith that the Settlement would not be effective to finally conclude all of the Settled Claims intended to be finally concluded by the Settlement. Sears shall also have the option to withdraw from the Settlement if the Settlement has not become final by December 31, 1997. In the event that Sears exercises such option to withdraw, a written notice of such withdrawal and the grounds

therefor shall be promptly delivered to all signatories to this Stipulation. As a result of any such withdrawal, this Stipulation, the Settlement proposed herein (including any modification thereto made with the consent of the parties as provided for herein) and any action taken or to be taken in connection therewith shall be terminated and shall become void and have no further force and effect except for the obligation of Sears to pay for any expense incurred in connection with the Notice and administration of the Settlement.

21. Effect of Settlement not being final. In the event that the Settlement as provided for in this Stipulation does not become final, or does not become effective for any reason other than the failure of any settling party to perform such party's obligations hereunder, then (except as the lack of the Settlement becoming final because of any appeal may be waived by Sears) the Stipulation shall become null and void and of no further force and effect, and all negotiations, proceedings, and statements relating thereto shall be without prejudice as to the rights of any and all parties hereto and their respective predecessors and successors, and all parties and their respective predecessors and successors shall be restored to their respective positions existing at the date of the Stipulation.

22. No admissions. This Stipulation and all negotiations, statements and proceedings in connection therewith shall not in any event be construed as, or deemed to be evidence of, an admission or concession on the part of Sears of any liability of or wrongdoing by it, and shall not be offered or received in evidence in any action or proceeding, or used in any way as an admission, concession or evidence of any liability or wrongdoing of any nature on the part of Sears, and shall not be construed as, or deemed to be evidence of, an admission or concession that the plaintiffs or any member of the Settlement Class have suffered any damage; and shall not be construed as, or deemed to be evidence of, an admission or concession on the part of the plaintiffs or any member of the Settlement Class that any of their claims asserted in the Actions are without merit or that damages recoverable in the Actions do not exceed the aggregate of the amounts payable pursuant to this Stipulation.

23. Due authority of attorneys. Each of the attorneys executing this Stipulation on behalf of one or more parties hereto warrants and represents that he or she has been duly authorized and empowered to execute this Stipulation on behalf of each such respective party.

24. Extensions of time. Without further order of the Courts, the parties may agree to reasonable extensions of time to carry out any of the provisions of this Stipulation.

25. Entire agreement. This Stipulation, including all Exhibits annexed hereto, constitutes the entire agreement among the parties with regard to the subject matter thereof. This Stipulation may not be modified or amended except in writing signed by all signatories hereto or their successors in interest.

26. Successors. This Stipulation upon becoming operative shall be binding upon and inure to the benefit of the settling parties hereto (including the Settlement Class) and their respective heirs, executors, administrators, successors and assigns and upon any corporation, partnership or other entity into or with which any settling party hereto may merge or consolidate.

27. Counterparts. This Stipulation may be executed in any number of actual or telecopied counterparts and by the different settling parties hereto on separate counterparts, each of which when so executed and delivered shall be an original. The executed signature page(s) from each actual or telecopied counterpart may be joined together and attached to one such original and shall constitute one and the same instrument.

28. Waivers. The waiver by any party of any breach of this Stipulation shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Stipulation.

29. Governing law. This Stipulation shall be construed and enforced in accordance with the internal laws of the Commonwealth of Massachusetts.

30. Retention of jurisdiction. The administration and consummation of the Settlement as provided herein shall be under the authority of the Bankruptcy Court and the District Court.

31. Additional discovery. Plaintiffs' obligations under this Stipulation are subject to plaintiffs' taking additional discovery (to which plaintiffs and Sears have agreed) within the next 30 days relating to the subject matter of the Actions. Plaintiffs shall have the option to withdraw from the Settlement in the event that they conclude in good faith, based upon such additional discovery, that the Settlement is not fair, reasonable and adequate, and beneficial to and in the best interests of the Settlement Class. In that event, the provisions of the last sentence of paragraph 20 shall apply.

[Attorney for Plaintiff]