

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GARY CAUDILL, SYLVESTOR J.
DEROSA, STEVEN D. FORD, SR.,
JAMES HILTON, DAVID MCKILLOP,
DONALD MURPHY, SUZANNE J.
NOVAK, AND GREGORY TILL, on
behalf of themselves and those similarly
situated,,

Plaintiffs,

v.

SEARS TRANSITION PAY PLAN, as
amended and restated January 1, 2004,
SEARS ROEBUCK AND CO., SEARS
HOME IMPROVEMENT PRODUCTS,
INC. and SEARS HOLDINGS
CORPORATION, as Plan Administrators
and Employers, jointly and severally.,

Defendants.

Case No. 2:06-cv-12866

Hon. ARTHUR TARNOW

Magistrate Judge:
Virginia M. Morgan

**DEFENDANTS' ANSWER TO PLAINTIFFS' COMPLAINT (CLASS ACTION)
AND AFFIRMATIVE DEFENSES**

Now Come Defendants, Sears Transition Pay Plan, Sears, Roebuck and Co., Sears Home Improvement Products, Inc. and Sears Holdings Corporation, by and through their counsel, Miller, Canfield, Paddock and Stone, PLC and respond to Plaintiffs' Complaint in the manner set forth below. With respect to the numbered paragraphs of the Complaint, Defendants state:

I. INTRODUCTION

1. In response to the allegations in Paragraph 1 of Plaintiffs' Complaint, Defendants state that they understand that this lawsuit purports to be a class action brought under the Employee Retirement Income Security Act ("ERISA"), 29 USC §1001 *et seq.*, in regard to certain claims being made by former employees of Defendant Sears Roebuck and Company, but deny any liability to Plaintiffs or the purported class members they seek to represent under ERISA or for any other reason. All remaining or other allegations in this paragraph are denied.

2. In response to the allegations in Paragraph 2 of Plaintiffs' Complaint, Defendants state that Sears, Roebuck and Co. sold heating, ventilation, and air conditioning products as well as the installation services of those products; certain of those products and services were transferred to Sears Home Improvement Products, Inc. All remaining or other allegations in this paragraph are denied.

3. In response to the allegations in Paragraph 3 of Plaintiffs' Complaint, Defendants state that prior to the transfer of HVAC products and installation services to Sears Home Improvement Products, Inc., Sears Roebuck and Co. employed outside sales persons who sold heating, ventilation and air conditioning products as well as the installation service related to those products ("HVAC Outside Sales Associates"). The HVAC Outside Sales Associates were paid on either a base wage plus commission basis or a draw against commission basis; worked from their homes; were reimbursed for certain business-related expenses, including mobile telephone use, mileage and postage; were paid an hourly rate for certain hours designated as vacation, holidays and personal

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days; and that that hourly rate was calculated quarterly using the earnings of the prior four quarters.

4. In response to the allegations in Paragraph 4 of Plaintiffs' Complaint, Defendants state that Sears, Roebuck and Co. acquired American Home Improvement Company and Spraytech; that these two companies, among others, were eventually combined to form Sears Home Improvement Products, Inc. which is a wholly-owned subsidiary of Sears, Roebuck and Co. All remaining or other allegations in this paragraph are denied.

5. Defendants deny the allegations in Paragraph 5 of Plaintiffs' Complaint.

6. In response to the allegations in Paragraph 6 of Plaintiffs' Complaint, Defendants state that in early 2004 Sears, Roebuck and Co. announced to its employees that the HVAC Outside Sales Associates would be transferred to Sears Home Improvement Products, Inc. All remaining and other allegations in this paragraph are denied.

7. In response to the allegations in Paragraph 7 of Plaintiffs' Complaint, Defendants state that, once they began reporting to Sears Home Improvement Products, Inc., the HVAC Outside Sales Associates continued to be paid on a commission basis; that they were not paid an additional hourly rate for hours designated as vacation, holidays or personal days; and that they were not reimbursed for certain business expenses including mobile telephone use, mileage or postage. Defendants further state that the HVAC Outside Sales Associates transferred to Sears Home Improvement Products, Inc. were expected to accommodate the customer's schedule, and were given a

geographic region which, in some cases, might have been larger than the territory for which they had been responsible when reporting directly to Sears, Roebuck and Co. All remaining or other allegations in this paragraph are denied.

8. In response to the allegations in Paragraph 8 of Plaintiffs' Complaint, Defendants state that Sears Home Improvement Products was, and is, a wholly owned subsidiary of Sears, Roebuck and Co. and Sears, Roebuck and Co. is currently a wholly owned subsidiary of Sears Holdings Corporation. All remaining or other allegations in this paragraph are denied.

9. In response to the allegations in Paragraph 9 of Plaintiffs' Complaint, Defendants state that the Transition Pay Plan as of January 1, 2004 speaks for itself. All remaining or other allegations in this paragraph are denied.

10. In response to the allegations in Paragraph 10 of Plaintiffs' Complaint, Defendants state that the Transition Pay Plan as of January 1, 2004 speaks for itself. All remaining or other allegations in this paragraph are denied.

11. In response to the allegations in Paragraph 11 of Plaintiffs' Complaint, Defendants state that the Transition Pay Plan was amended on October 15, 2004. The amended Plan speaks for itself. All remaining or other allegations in this paragraph are denied.

12. In response to the allegations in Paragraph 12 of Plaintiffs' Complaint, Defendants state that the Transition Pay Plan sets out certain criteria which must be met in order for a participant to qualify for benefits, and insofar as a named Plaintiff attempted to qualify for such benefits, his/her claim was given an individualized

assessment and review. Defendants further state that once they began reporting to Sears Home Improvement Products, Inc., HVAC Outside Sales Associates were not reimbursed for business expenses including, mobile telephone use, postage or mileage, nor did they receive an additional hourly rate for hours designated as vacation, personal days or holidays. However, they continued to receive any earned commissions while on vacation which had not been the case prior to their transfer. All remaining or other allegations in this paragraph are denied.

13. In response to the allegations in Paragraph 13 of Plaintiffs' Complaint, Defendants state approximately 88 HVAC Outside Sales Associates requested benefits under the Transition Pay Plan and pursued their claim using the Plan's claim and appeal process. All remaining or other allegations in this paragraph are denied.

14. In response to the allegations in Paragraph 14 of Plaintiffs' Complaint, Defendants state they understand that Plaintiffs have brought this matter under ERISA and purportedly as a class action. However, Defendants deny that this matter may be brought as a class action and further deny that any of the Defendants are liable to Plaintiffs or to any of the purported class members under ERISA or for any other reason. All remaining or other allegations in this paragraph are likewise denied.

II. JURISDICTION AND VENUE

15. In response to the allegations in Paragraph 15 of Plaintiffs' Complaint, Defendants state that they acknowledge that this civil action is properly in federal court because it involves a federal question under ERISA. All remaining or other allegations in this paragraph are denied.

16. In response to the allegations in Paragraph 16 of Plaintiffs' Complaint, Defendants state they are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore are unable to either admit or deny them, and leave Plaintiffs to their proofs.

III. THE PARTIES

General Allegations Regarding the Plaintiffs

17. In response to the allegations in Paragraph 17 of Plaintiffs' Complaint, Defendants state that each of the named Plaintiffs was employed by Defendant Sears, Roebuck and Co. as of January 1, 2004 and were performing the duties of HVAC Outside Sales Associate. All remaining allegations in this paragraph are denied.

18. The allegations in Paragraph 18 are not susceptible to a reasoned response because they lack the requisite specificity; in particular, Plaintiffs have failed to identify the "pertinent times" in question. To the extent that a response may be appropriate, Defendants state that they are without information and knowledge sufficient to form a belief as to the truth of the allegations in this paragraph and therefore are unable to either admit nor deny them, and leave Plaintiffs to their proofs.

19. In response to the allegations in Paragraph 19 of Plaintiffs' Complaint, Defendants state that each of the named Plaintiffs requested benefits under the Transition Pay Plan and thereafter pursued their administrative remedies under the Plan's claim and appeal process. Each of these Plaintiffs' claims for benefits under the Plan were denied. All remaining allegations in this paragraph are denied

20. In response to the allegations in Paragraph 20 of Plaintiffs' Complaint, Defendants state that, based on information and belief, Plaintiff Caudill was last known to reside in Indiana; that Plaintiff was hired by Sears, Roebuck and Co. in 1967; that he subsequently became an HVAC Outside Sales Associate; and that he was advised in 2004 that he would be transferred to Sears Home Improvement Products, Inc. As to all remaining or other allegations in this paragraph, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore are unable to either admit or deny them and leave Plaintiffs to their proofs.

21. In response to the allegations in Paragraph 21 of Plaintiffs' Complaint, Defendants state Plaintiff Caudill requested benefits pursuant to the Transition Pay Plan and that the basis for his claim may be found in the administrative record which speaks for itself. All remaining or other allegations in this paragraph are denied.

22. In response to the allegations in Paragraph 22 of Plaintiffs' Complaint, Defendants state that Plaintiff Caudill's request for benefits under the Transition Pay Plan was denied because he failed to establish that he qualified for those benefits under the terms of the Plan.

23. In response to the allegations in Paragraph 23 of Plaintiffs' Complaint, Defendants state that, based on information and belief, Plaintiff Derosa was last known to reside in the State of New York; that Plaintiff was hired by Sears, Roebuck and Co. in 1971; that he subsequently became an HVAC Outside Sales Associate; and that in 2004 he was advised that he would be transferred to Sears Home Improvement Products, Inc. As to all remaining or other allegations in this paragraph, Defendants are without

knowledge and information sufficient to form a belief as to the truth of the matters asserted and therefore are unable to either admit or deny them and leave Plaintiffs to their proofs.

24. In response to the allegations in Paragraph 24 of Plaintiffs' Complaint, Defendants state that Plaintiff Derosa requested benefits pursuant to the Transition Pay Plan and that the basis for his claim may be found in the administrative record which speaks for itself. All remaining or other allegations in this paragraph are denied.

25. In response to the allegations in Paragraph 25 of Plaintiffs' Complaint, Defendants state Plaintiff Derosa's request for benefits under the Transition Pay Plan was denied because he failed to establish that he qualified for those benefits under the terms of the Plan. All remaining or other allegations in this paragraph are denied.

26. In response to the allegations in Paragraph 26 of Plaintiffs' Complaint, Defendants state that, based on information and belief, Plaintiff Ford was last known to reside in the State of Michigan; that he was hired by Sears, Roebuck and Co. in 1986; that he subsequently became an HVAC Outside Sales Associate; and that in 2004 he was notified that he would be transferred to Sears Home Improvement Products, Inc. As to all remaining or other allegations in this paragraph, Defendants are without knowledge and information sufficient to form a belief as to the truth of the allegations and therefore Defendants are unable to either admit or deny them and leave Plaintiffs to their proofs.

27. In response to the allegations in Paragraph 27 of Plaintiffs' Complaint, Defendants state that Plaintiff Ford requested benefits pursuant to the Transition Pay Plan

and that the basis for his claim may be found in the administrative record which speaks for itself. All remaining or other allegations in this paragraph are denied.

28. In response to the allegations in Paragraph 28 of Plaintiffs' Complaint, Defendants state that Plaintiff Ford's request for benefits under the Transition Pay Plan was denied because he failed to establish that he qualified for those benefits under the terms of the Plan. All remaining or other allegations in this paragraph are denied.

29. In response to the allegations in Paragraph 29 of Plaintiffs' Complaint, Defendants state that based on information and belief, Plaintiff Hilton was last known to reside in New Jersey; that Plaintiff was hired by Sears, Roebuck and Co. in 1970; that he subsequently became an HVAC Outside Sales Associate; and that in 2004, he was notified that he would be transferred to Sears Home Improvement Products, Inc. As to all remaining or other allegations in this paragraph, Defendants are without knowledge and information sufficient to form a belief as to the truth of the allegations and therefore are unable to either admit or deny them and leave Plaintiffs to their proofs.

30. In response to the allegations in Paragraph 30 of Plaintiffs' Complaint, Defendants state Plaintiff Hilton requested benefits pursuant to the Transition Pay Plan and that the basis for his claim may be found in the administrative record which speaks for itself. All remaining or other allegations in this paragraph are denied.

31. In response to the allegations in Paragraph 31 of Plaintiffs' Complaint, Defendants state Plaintiff Hilton's request for benefits under the Transition Pay Plan was denied because he failed to establish that he qualified for those benefits under the terms of the Plan. All remaining or other allegations in this paragraph are denied.

32. In response to the allegations in Paragraph 32 of Plaintiffs' Complaint, Defendants state, based on information and belief, Plaintiff McKillop was last known to reside in the State of Michigan; that he was hired by Sears, Roebuck and Co. in 1964; that he subsequently became an HVAC Outside Sales Associate; and that in 2004, he was notified that he would be transferred to Sears Home Improvement Products, Inc. As to all remaining or other allegations in this paragraph, Defendants are without knowledge and information sufficient to form a belief as to the truth of the allegations and therefore are unable to either admit or deny them and leave Plaintiffs to their proofs.

33. In response to the allegations in Paragraph 33 of Plaintiffs' Complaint, Defendants state that Plaintiff McKillop requested benefits pursuant to the Transition Pay Plan and that the basis for his claim may be found in the administrative record which speaks for itself. All remaining or other allegations in this paragraph are denied.

34. In response to the allegations in Paragraph 34 of Plaintiffs' Complaint, Defendants state that Plaintiff McKillop's request for benefits under the Transition Pay Plan was denied because he failed to establish that he qualified for those benefits under the terms of the Plan. All remaining or other allegations in this paragraph are denied.

35. In response to the allegations in Paragraph 35 of Plaintiffs' Complaint, Defendants state that Plaintiff Murphy was last known to reside in the State of Maryland; that he was hired by Sears, Roebuck and Co. in 1976; that he subsequently became HVAC Outside Sales Associate; and that in 2004, he was notified that he would be transferred to Sears Home Improvement Products, Inc. As to all remaining and other allegations in this paragraph, Defendants are without knowledge or information sufficient

to form a belief as to the truth of the allegations and therefore are unable to either admit or deny them and leave Plaintiffs to their proofs.

36. In response to the allegations in Paragraph 36 of Plaintiffs' Complaint, Defendants state Plaintiff Murphy requested benefits pursuant to the Transition Pay Plan and that the basis for his claim may be found in the administrative record which speaks for itself. All remaining or other allegations in this paragraph are denied.

37. In response to the allegations in Paragraph 37 of Plaintiffs' Complaint, Defendants state Plaintiff Murphy's request for benefits under the Transition Pay Plan was denied because he failed to establish that he qualified for those benefits under the terms of the Plan. All remaining or other allegations in this paragraph are denied.

38. In response to the allegations in Paragraph 38 of Plaintiffs' Complaint, Defendants state, based on information and belief, Plaintiff Novak was last known to reside in the State of Michigan; that she was hired by Sears Roebuck and Co. in 1980; that she subsequently became a HVAC Outside Sales Associate; and that in 2004, Plaintiff was notified that she would be transferred in 2005 to Sears Home Improvement Products, Inc. As to all remaining or other allegations in this paragraph, Defendants are without knowledge and information sufficient to form a belief as to the truth of the allegations and therefore are unable to either admit or deny them and leave Plaintiffs to their proofs.

39. In response to the allegations in Paragraph 39 of Plaintiffs' Complaint, Defendants state Plaintiff Novak requested benefits pursuant to the Transition Pay Plan

and that the basis for her claim may be found in the administrative record which speaks for itself. All remaining or other allegations in this paragraph are denied.

40. In response to the allegations in Paragraph 40 of Plaintiffs' Complaint, Defendants state Plaintiff Novak's request for benefits under the Transition Pay Plan was denied because she failed to establish that she qualified for those benefits under the terms of the Plan. All remaining or other allegations in this paragraph are denied.

41. In response to the allegations in Paragraph 41 of Plaintiffs' Complaint, Defendants state, based on information and belief, that Plaintiff Till was last known to reside in the State of Michigan; that he was hired by Sears Roebuck and Co. in 1965; that he subsequently became an HVAC Outside Sales Associate; and that in 2004, he was notified that he would be transferred to Sears Home Improvement Products, Inc. As to all remaining or other allegations in this paragraph, Defendants are without knowledge and information sufficient to form a belief as to the truth of the allegations and therefore are unable to either admit or deny them and leave Plaintiffs to their proofs.

42. In response to the allegations in Paragraph 42 of Plaintiffs' Complaint, Defendants state Plaintiff Till requested benefits pursuant to the Transition Pay Plan and that the basis for his claim may be found in the administrative record which speaks for itself. All remaining or other allegations in this paragraph are denied.

43. In response to the allegations in Paragraph 43 of Plaintiffs' Complaint, Defendants state Plaintiff Till's request for benefits under the Transition Pay Plan was denied because he failed to establish that he qualified for those benefits under the terms of the Plan. All remaining or other allegations in this paragraph are denied.

Allegations Regarding the Defendants

44. In response to the allegations in Paragraph 44 of Plaintiffs' Complaint, Defendants state the Transition Pay Plan constitutes an employee welfare benefit plan under ERISA, 29 U.S.C. § 1002(1). All remaining or other allegations in this paragraph are denied.

45. In response to the allegations in Paragraph 45 of Plaintiffs' Complaint, Defendants state that the Transition Pay Plan is funded out of the general assets of Sears, Roebuck and Co. All remaining or other allegations in this paragraph are denied.

46. In response to the allegations in Paragraph 46 of Plaintiffs' Complaint, Defendants state that Sears, Roebuck and Co. is incorporated in the State of New York and conducts business in each of the 50 states.

47. In response to the allegations in Paragraph 47 of Plaintiffs' Complaint, Defendants state that Sears Home Improvement Products, Inc. is incorporated in the State of Pennsylvania. All remaining or other allegations in this paragraph are denied.

48. In response to the allegations in Paragraph 48 of Plaintiffs' Complaint, Defendants state Sears Holdings Corporation is incorporated in the State of Delaware, is publicly traded and conducts business in all 50 states.

49. In response to the allegations in Paragraph 49 of Plaintiffs' Complaint, Defendants state that Sears, Roebuck and Co. is the Plan Administrator of the Sears Transition Pay Plan as identified in the Summary Plan Description, consistent with 29 U.S.C. §1002(16)(A)(i), and it is also the plan sponsor as provided under 29 U.S.C. §1002(16)(b)(i). Defendants further state that Sears, Roebuck and Co. employed each of

the named Plaintiffs in 2004. All remaining or other allegations in this paragraph are denied.

50. Defendants deny the allegations in Paragraph 50 of Plaintiffs' Complaint.

51. In response to the allegations in Paragraph 51 of Plaintiffs' Complaint, Defendants state that Sears, Roebuck and Co. is the wholly owned subsidiary of Sears Holdings Corporation. All remaining or other allegations in this paragraph are denied.

52. Defendants deny the allegations in Paragraph 52 of Plaintiffs' Complaint.

IV. FACTUAL ALLEGATIONS

53. Defendants deny the allegations in Paragraph 53 of Plaintiffs' Complaint.

54. In response to the allegations in Paragraph 54 of Plaintiffs' Complaint, Defendants state that the named Plaintiffs, while performing the duties of HVAC Outside Sales Associates, worked in the field selling certain heating, ventilation and air conditioning products as well as the installation services related to those products. All remaining or other allegations in this paragraph are denied.

55. In response to the allegations in Paragraph 55 of Plaintiffs' Complaint, Defendants state that it was expected that, in 2004, HVAC Outside Sales Associates would work at least 40 hours per week. All remaining or other allegations in this paragraph are denied.

56. In response to the allegations in Paragraph 56 of Plaintiffs' Complaint, Defendants state that HVAC Outside Sales Associates, in 2004, were paid on either a base wage plus commission basis or draw against commission basis and that the commission for each was calculated based on a percentage of the monetary value of the

sales that Sales Associate sold. All remaining or other allegations in this paragraph are denied.

57. In response to the allegations in Paragraph 57 of Plaintiffs' Complaint, Defendants state that the named Plaintiffs, while performing the duties of an HVAC Outside Sales Associate and reporting directly to Sears, Roebuck and Co., also received, in addition to their earned commissions, an hourly rate for certain hours designated as vacation, personal days and holidays; the hourly rate was calculated on a quarterly basis using the earnings for the prior four quarters. All remaining or other allegations in this paragraph are denied.

58. In response to the allegations in Paragraph 58 of Plaintiffs' Complaint, Defendants state that from time to time, in 2004, HVAC Outside Sales Associates might also be eligible for sales promotions depending on management discretion. All remaining or other allegations in this paragraph are denied.

59. In response to the allegations in Paragraph 59 of Plaintiffs' Complaint, Defendants state that as an employee of Sears, Roebuck and Co., HVAC Outside Sales Associates, in 2004, were eligible for the following benefits: medical, dental, short-term disability, long-term disability, life insurance, and stock options. All remaining or other allegations in this paragraph are denied.

60. In response to the allegations in Paragraph 60 of Plaintiffs' Complaint, Defendants state that HVAC Outside Sales Associates, in 2004, were reimbursed for certain business-related expenses, such as, mileage, postage, copying and mobile telephone calls. All remaining or other allegations in this paragraph are denied.

61. In response to the allegations in Paragraph 61 of Plaintiffs' Complaint, Defendants state that each HVAC Outside Sales Associate, in 2004, was assigned a territory that was generally shared with others. All remaining or other allegations in this paragraph are denied.

62. In response to the allegations in Paragraph 62 of Plaintiffs' Complaint, Defendants state that HVAC Outside Sales Associates, like the Sales Associates at Sears Home Improvement Products, Inc., were encouraged to generate sales leads for themselves and, to the extent that such sales leads resulted in increased sales, the individual would generally receive greater overall income from his/her commissions. All remaining or other allegations in this paragraph are denied.

63. In response to the allegations in Paragraph 63 of Plaintiffs' Complaint, Defendants state that sales leads were generally distributed in accordance with business objectives. All remaining or other allegations in this paragraph are denied.

64. In response to the allegations in Paragraph 64 of Plaintiffs' Complaint, Defendants state that HVAC Outside Sales Associates generally received sales calls, scheduled appointments with potential customers, wrote estimates, made arrangements for contractors to do work, and checked on credit approvals. Many of these activities, however, kept the HVAC Outside Sales Associates from making additional sales and thus increasing their income. All remaining or other allegations in this paragraph are denied.

65. The allegations in Paragraph 65 are not susceptible to a reasoned response because they lack the requisite specificity; in particular, Plaintiffs have failed to identify the time period in question or explain the term "counselor" sales associate. To the extent

that a response may be appropriate, Defendants state that they are without information and knowledge sufficient to form a belief as to the truth of the allegations in this paragraph and therefore are unable to either admit or deny them, and leave Plaintiffs to their proofs.

66. In response to the allegations in Paragraph 66 of Plaintiffs' Complaint, Defendants state that they are without information and knowledge sufficient to form a belief as to the truth of the allegations in this paragraph and therefore are unable to either admit or deny them, and leave Plaintiffs to their proofs.

67. In response to the allegations in Paragraph 67 of Plaintiffs' Complaint, Defendants state that Sears, Roebuck and Co. acquired American Home Improvement Company and Spraytech; that these two companies, among others, were eventually combined to form Sears Home Improvement Products, Inc. which was a wholly owned subsidiary of Sears, Roebuck and Co. All remaining or other allegations in this paragraph are denied.

68. Defendants deny the allegations in Paragraph 68 of Plaintiffs' Complaint.

69. Defendants deny the allegations in Paragraph 69 of Plaintiffs' Complaint.

70. Defendants deny the allegations in Paragraph 70 of Plaintiffs' Complaint.

71. Defendants deny the allegations in Paragraph 71 of Plaintiffs' Complaint.

72. Defendants deny the allegations in Paragraph 72 of Plaintiffs' Complaint.

73. Defendants deny the allegations in Paragraph 73 of Plaintiffs' Complaint.

74. In response to the allegations in Paragraph 74 of Plaintiffs' Complaint, Defendants state that they are without information and knowledge sufficient to form a

belief as to the truth of the allegations in this paragraph and therefore are unable to either admit or deny them, and leave Plaintiffs to their proofs.

75. In response to the allegations in Paragraph 75 of Plaintiffs' Complaint, Defendants state that Sales Associates at Sears Home Improvement Products, Inc. are paid on a commission only basis and that the commission on those products that HVAC Outside Sales Associates had sold prior to the transfer was increased after the HVAC Outside Sales Associates transferred to Sears Home Improvement Products, Inc. All remaining or other allegations in this paragraph are denied.

76. In response to the allegations in Paragraph 76 of Plaintiffs' Complaint, Defendants state that HVAC Outside Sales Associates, after being transferred to Sears Home Improvement Products, Inc., have the opportunity to sell – in addition to heating, ventilation and air conditioning products and services – other items the prices for which are higher than those products they had sold prior to their transfer. Thus, there was the potential for a corresponding increase in their commission income. All remaining or other allegations in this paragraph are denied.

77. In response to the allegations in Paragraph 77 of Plaintiffs' Complaint, Defendants state that a Sales Associate in Sears Home Improvement Products, Inc. does not receive an hourly rate for hours designated as vacation, personal days, or holidays; instead, each continues to receive, while on vacation for example, the commission which they have earned. After the HVAC Outside Sales Associate was transferred, the vacation he/she had accrued before the transfer was paid to him/her in a lump sum. All remaining or other allegations in this paragraph are denied.

78. In response to the allegations in Paragraph 78 of Plaintiffs' Complaint, Defendants state that Sears Home Improvement Products, Inc., schedules the appointments with the customer on behalf of the Sales Associates, and, once the sale is complete, ensures that the customer obtains the product and/or service purchased. Defendants further state that Sears Home Improvement Products, Inc. provides office supplies to its Sales Associates; and that it does not reimburse Sales Associates for mileage, postage or telephone. Sales Associates, however, can arrange for the Company's office to mail items for them without charge. All remaining or other allegations in this paragraph are denied.

79. The allegations in Paragraph 79 are not susceptible to a reasoned response because they lack the requisite specificity; in particular, Plaintiffs have failed to identify the individuals to which they are referring. To the extent that a response may be appropriate, Defendants state that they are without information and knowledge sufficient to form a belief as to the truth of the allegations in this paragraph and therefore are unable to either admit or deny them, and leave Plaintiffs to their proofs.

80. Defendants deny the allegations in Paragraph 80 of Plaintiffs' Complaint.

81. Defendants deny the allegations in Paragraph 81 of Plaintiffs' Complaint.

82. Defendants deny the allegations in Paragraph 82 of Plaintiffs' Complaint.

83. The allegations in Paragraph 83 of Plaintiff's Complaint are not susceptible to a reasoned response because they lack the requisite specificity; in particular, Plaintiffs have failed to explain such vague terms as "many," "long tenure," or "were forced". To

the extent that a response may be appropriate, Defendants deny the allegations in this paragraph.

84. The allegations in Paragraph 84 of Plaintiffs' Complaint are not susceptible to a reasoned response because they lack the requisite specificity, in particular, Plaintiffs have failed to explain such vague terms as "many". To the extent that a response may be appropriate, Defendants state that Plaintiffs and other HVAC Outside Sales Associates did inquire regarding the Transition Pay Plan and eventually submitted claims for benefits under the Plan. All remaining or other allegations in this paragraph are denied.

85. In response to the allegations in Paragraph 85 of Plaintiffs' Complaint, Defendants state that the Transition Pay Plan as amended October 15, 2004 speaks for itself. All remaining or other allegations in this paragraph are denied.

86. In response to the allegations in Paragraph 86 of Plaintiffs' Complaint, Defendants state that the Transition Pay Plan as amended October 15, 2004 speaks for itself. All remaining or other allegations in this paragraph are denied.

87. In response to the allegations in Paragraph 87 of Plaintiffs' Complaint, Defendants state that the Transition Pay Plan as amended October 15, 2004, speaks for itself. All remaining or other allegations in this paragraph are denied.

88. Defendants deny the allegations in Paragraph 88 of Plaintiffs' Complaint.

89. Defendants deny the allegations in Paragraph 89 of Plaintiffs' Complaint.

90. The allegations in Paragraph 90 are not susceptible to a reasoned response because they lack the requisite specificity; in particular, Plaintiffs have failed to identify who the "TPP beneficiaries and participants" are or what is meant by "an event that

invoked the TPP.” To the extent that a response may be appropriate, Defendants state that HVAC Associates, prior to each being transferred to Sears Home Improvement Products, Inc., were advised that the Transition Pay Plan had been amended to apply to the transfer of HVAC Outside Sales Associates to Sears Home Improvement Products, Inc. and were further advised that certain conditions had to be met in order to qualify for benefits under the Plan. Insofar as a further response is necessary, Defendants state that they are without information and knowledge sufficient to form a belief as to the truth of the allegations in this paragraph and therefore are unable to either admit or deny them, and leave Plaintiffs to their proofs.

91. Defendants deny the allegations in Paragraph 91 of Plaintiffs’ Complaint.

92. Defendants deny the allegations in Paragraph 92 of Plaintiffs’ Complaint.

93. Defendants deny the allegations in Paragraph 93 of Plaintiffs’ Complaint.

94. Defendants deny the allegations in Paragraph 94 of Plaintiffs’ Complaint.

95. Defendants deny the allegations in Paragraph 95 of Plaintiffs’ Complaint.

96. Defendants deny the allegations in Paragraph 96 of Plaintiffs’ Complaint.

97. In response to the allegations in Paragraph 97 of Plaintiffs’ Complaint, Defendants state that each denial of benefits under the Transition Pay Plan by the Plan Administrator speaks for itself; that each denial was based on an individualized assessment of the individual’s claim; that each denial was based on the applicable criteria which had to be met in order to qualify for benefits under the Plan; and that, with regard to each denial, the Plan Administrator reasonably concluded that the HVAC Outside

Sales Associate seeking benefits had failed to meet the appropriate criteria. All remaining or other allegations in this paragraph are denied.

98. In response to the allegations in Paragraph 98 of Plaintiffs' Complaint, Defendants state that each denial of benefits under the Transition Pay Plan by the Plan Administrator speaks for itself; that each denial was based on an individualized assessment of the individual's claim; that each denial was based on the applicable criteria which had to be met in order to qualify for benefits under the Plan; and that, with regard to each denial, the Plan Administrator reasonably concluded that the HVAC Outside Sales Associate seeking benefits had failed to meet the appropriate criteria. All remaining or other allegations in this paragraph are denied.

99. In response to the allegations in Paragraph 99 of Plaintiffs' Complaint, Defendants state that each denial of benefits under the Transition Pay Plan by the Plan Administrator speaks for itself; that each denial was based on an individualized assessment of the individual's claim; that each denial was based on the applicable criteria which had to be met in order to qualify for benefits under the Plan; and that, in regard to each denial, the Plan Administrator reasonably concluded that the HVAC Outside Sales Associate seeking benefits had failed to meet the appropriate criteria. All remaining or other allegations in this paragraph are denied.

100. Defendants deny the allegations in Paragraph 100 of Plaintiffs' Complaint.

101. In response to the allegations in Paragraph 101 of Plaintiffs' Complaint, Defendants state that once the HVAC Outside Sales Associates transferred to Sears Home Improvement Products, Inc., the commission rate on products that the HVAC

Outside Sales Associates had previously sold prior to the transfer was increased. This fact could be considered by the Plan Administrator in making its determination. In further response to the allegations in this paragraph, Defendants state that each denial of benefits under the Transition Pay Plan by the Plan Administrator speaks for itself; that each denial was based on an individualized assessment of the individual's claim; that each denial was based on the applicable criteria which had to be met in order to qualify for benefits under the Plan; and that in regard to each denial, the Plan Administrator reasonably concluded that the HVAC Outside Sales Associate seeking benefits had failed to meet the appropriate criteria. All remaining or other allegations in this paragraph are denied.

102. Defendants deny the allegations in Paragraph 102 of Plaintiffs' Complaint.

103. In response to the allegations in Paragraph 103 of Plaintiffs' Complaint, Defendants state that each denial of benefits under the Transition Pay Plan by the Plan Administrator speaks for itself; that each denial was based on an individualized assessment of the individual's claim; that each denial was based on the applicable criteria which had to be met in order to qualify for benefits under the Plan; and that in regard to each denial, the Plan Administrator reasonably concluded that the HVAC Outside Sales Associate seeking benefits had failed to meet the appropriate criteria. All remaining or other allegations in this paragraph are denied.

104. Defendants deny the allegations in Paragraph 104 of Plaintiffs' Complaint.

105. Defendants deny the allegations in Paragraph 105 of Plaintiffs' Complaint.

106. Defendants deny the allegations in Paragraph 106 of Plaintiffs' Complaint.

107. In response to the allegations in Paragraph 107 of Plaintiffs' Complaint, Defendants state that each denial of benefits under the Transition Pay Plan by the Plan Administrator speaks for itself; that each denial was based on an individualized assessment of the individual's claim; that each denial was based on the applicable criteria which had to be met in order to qualify for benefits under the Plan; and that in regard to each denial, the Plan Administrator reasonably concluded that the HVAC Outside Sales Associate seeking benefits had failed to meet the appropriate criteria. All remaining or other allegations in this paragraph are denied.

108. Defendants deny the allegations in Paragraph 108 of Plaintiffs' Complaint.

109. Defendants deny the allegations in Paragraph 109 of Plaintiffs' Complaint.

V. CLASS ALLEGATIONS

110. Defendants deny the allegations in Paragraph 110 of Plaintiffs' Complaint.

111. Defendants deny the allegations in Paragraph 111 of Plaintiffs' Complaint.

112. Defendants deny the allegations in Paragraph 112 of Plaintiffs' Complaint.

113. Defendants deny the allegations in Paragraph 113 of Plaintiffs' Complaint.

114. Defendants deny the allegations in Paragraph 114 of Plaintiffs' Complaint.

115. Defendants deny the allegations in Paragraph 115 of Plaintiffs' Complaint.

116. Defendants deny the allegations in Paragraph 116 of Plaintiffs' Complaint.

117. Defendants deny the allegations in Paragraph 117 of Plaintiffs' Complaint.

118. Defendants deny the allegations in Paragraph 118 of Plaintiffs' Complaint.

VI. ERISA VIOLATION

Count I – Wrongful Denial of Benefits

119. In response to the allegations in Paragraph 119 of Plaintiffs' Complaint, Defendants state that ERISA §502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), allows for a recovery of benefits only where a claimant has established that he/she qualified for benefits under the terms of the Plan as reasonably interpreted by the Plan Administrator.

120. Defendants deny the allegations in Paragraph 120 of Plaintiffs' Complaint.

121. Defendants deny the allegations in Paragraph 121 of Plaintiffs' Complaint.

122. Defendants deny the allegations in Paragraph 122 of Plaintiffs' Complaint.

123. In response to the allegations in Paragraph 123 of Plaintiffs' Complaint, Defendants state that the Transition Pay Plan is funded out of the general assets of Sears, Roebuck and Co. All remaining or other allegations in this paragraph are denied.

124. Defendants deny the allegations in Paragraph 124 of Plaintiffs' Complaint.

125. Defendants deny the allegations in Paragraph 125 of Plaintiffs' Complaint.

126. Defendants deny the allegations in Paragraph 126 of Plaintiffs' Complaint.

VII. PRAYER FOR RELIEF

Plaintiffs are not entitled to any of the relief sought in this lawsuit both as matter of law and fact.

OBJECTION TO JURY DEMAND

Defendants object to Plaintiffs' demand for a trial by jury because ERISA does not provide for one.

ALL ALLEGATIONS NOT EXPRESSLY ADMITTED ARE HEREBY DENIED.

WHEREFORE, Defendants deny that they are liable to Plaintiffs and request that the Court dismiss the Complaint in its entirety, with prejudice, and award Defendants their costs and attorneys' fees incurred in defense of this matter.

NOTICE OF AFFIRMATIVE AND/OR ADDITIONAL DEFENSES

In further response to the Complaint, Defendants state that they will rely upon the following affirmative and additional defenses if applicable and if supported by appropriate facts:

FIRST AFFIRMATIVE DEFENSE

Plaintiffs have failed to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Defendants object to Plaintiffs' failure to join all claims against Defendants.

THIRD AFFIRMATIVE DEFENSE

Defendants insofar as they were acting in a fiduciary capacity with regard to Plaintiff's claims did not act arbitrarily or capriciously, but acted with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in the like capacity and familiar with such matters would use in the conduct of an enterprise of a like character with like aims, and in accordance with applicable Plan documents and said acts are entitled to a deferential standard of review.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the equitable doctrine of unclean hands, by laches, by the applicable statutes or other periods of limitation whether as a matter of law and/or agreement of the parties, the Transition Pay Plan or otherwise.

FIFTH AFFIRMATIVE DEFENSE

Some or all of the Plaintiffs lack the requisite standing to maintain or participate in this suit.

SIXTH AFFIRMATIVE DEFENSE

Assuming, in the alternative, that one or more of the Defendants was not acting in a fiduciary capacity, then the conduct complained of constituted "settlor" functions pertaining to, among other things, plan design and/or were merely ministerial duties and, in any case, not fiduciary functions; therefore, in that event, those Defendants cannot be sued as a fiduciary under ERISA under the circumstances alleged.

SEVENTH AFFIRMATIVE DEFENSE

To the extent that any of Plaintiffs' claims are based on statutory theories of relief or assert other causes of action besides those arising under the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001 et seq., including any arising under State law, such claims are preempted by the applicable sections of ERISA.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, because if any loss was suffered by Plaintiffs, which is expressly denied, that loss did not result from any purported breach of the alleged fiduciary duties by any Defendant.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs' claims for benefits are barred, in whole or in part, because the requisite conditions precedent and/or subsequent to each of their alleged entitlement to such benefits did not occur.

TENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, due to their own acts or omissions which are a proximate cause of and/or contributed to the loss and/or injuries alleged in this litigation.

ELEVENTH AFFIRMATIVE DEFENSE

ERISA does not provide for punitive damages, compensatory, mental or emotional damages to Plaintiffs and/or for attorneys' fees under the circumstances pled.

TWELFTH AFFIRMATIVE DEFENSE

The proximate cause of Plaintiffs' injuries, if any, is the conduct of others and not that of any or all of Defendants.

THIRTEENTH AFFIRMATIVE DEFENSE

If any wrongdoing has been committed, which Defendants deny, some or all of Plaintiffs' alleged damages are based on conjecture or undue speculation and, in any case, cannot be greater than provided under the terms of the Transition Pay Plan.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiffs are not entitled to either discovery or a trial under *Wilkins v. Baptist Healthcare Systems*, 150 F3d 609 (6th Cir 1998), with regard to their claims under the circumstances pled.

FIFTEENTH AFFIRMATIVE DEFENSE

Some or all of Defendants are not proper parties.

SIXTEENTH AFFIRMATIVE DEFENSE

This Court lacks jurisdiction over the subject matter of some or all Counts in Plaintiffs' Complaint.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims, in whole or in part, are barred by the doctrine of estoppel.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part by the doctrines of discharge, payment, release, and/or accord and satisfaction.

NINETEENTH AFFIRMATIVE DEFENSE

The Court lacks subject matter jurisdiction over some of Plaintiffs' claims because they have failed to exhaust their ERISA plan remedies which is a prerequisite to maintenance of this lawsuit.

TWENTIETH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the applicable Statute(s) of Frauds and/or the parole evidence rule.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Plaintiffs have not satisfied the statutory prerequisites to the maintenance of a suit under ERISA including, but not limited to, ERISA § 502(h).

TWENTY-SECOND AFFIRMATIVE DEFENSE

Some or all of the individually named Plaintiffs lack the requisite standing to represent the class they purport to represent, and none of the plaintiffs can otherwise meet the requirements of Rule 23 of the Federal Rules of Civil Procedure.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, for the reason that Plaintiffs' reliance, if any, upon the statements of one or more of the Defendants, if any, was unjustified and insubstantial and/or the persons who allegedly made such statements were without authority to make them or bind any or all of Defendants.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Venue is either improper as to the Eastern District of Michigan or, alternatively, this case should be transferred for reasons of convenience or in the interests of justice to another venue.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims on behalf of the alleged class of persons that Plaintiffs purport to represent, the existence of which is expressly denied, are barred by Plaintiffs' failure to meet all four of the mandatory requirements of Fed.R.Civ.P. 23(a), or any of the requirements of Fed.R.Civ.P. 23(b).

TWENTY-SIXTH AFFIRMATIVE DEFENSE

At all times relevant to this lawsuit, Defendants acted within the scope of their discretion as plan sponsors and/or plan administrators.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs may not recover as to some or all of their alleged injuries because they were not reasonably foreseeable.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

Defendants reserve the right to amend their Answer and to add additional or other affirmative or special defenses or to delete or withdraw affirmative or special defenses as may become necessary.

WHEREFORE, Defendants deny they are liable to Plaintiffs and request that the Court dismiss Plaintiffs' Complaint in its entirety, with prejudice, and award Defendants their costs and attorneys' fees incurred in the defense of this matter.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE,
P.L.C.

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Dated: August 28, 2006

CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2006, I electronically filed the foregoing paper with the Clerk of the court using the ECF system which will send notification of such filing to the following:

alaimo@millercanfield.com; warren@millercanfield.com

dbraut@dibandfagan.com; r.giroux@fiegerlaw.com

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