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The Honorable Mary E. Roberts
KING COUNTY
SUPERIOR COURT CLERK

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CASE NUMBER: 18-2-17249-7 SEA

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

ANGELA KELLY; and JANYCE L.
MACKENZIE,

Plaintiffs,

v.

COOPER TIRE & RUBBER COMPANY, a
Delaware corporation; TBC CORPORATION, a
Delaware corporation; MEINEKE CAR CARE
CENTERS, LLC, a North Carolina corporation;
MCCC 4333, INC. d/b/a MEINEKE CAR
CARE CENTER #4333, a Washington
corporation; and SEARS, ROEBUCK AND
CO., d/b/a SEARS AUTO CENTER and/or
SEARS, ROEBUCK AND CO. #2049, a New
York corporation,

Defendants.

NO. 18-2-17249-7 SEA

DEFENDANT SEARS, ROEBUCK, & CO.
#2049 ANSWER TO FIRST AMENDED
COMPLAINT

COMES NOW, defendant Sears, Roebuck, & Co. #2049, and answers Plaintiffs' First Amended Complaint as follows:

I. PARTIES

1. Defendant is without sufficient knowledge or information to admit or deny the allegations contained in paragraph 1 of the Complaint, and therefore denies the same.

2. Defendant is without sufficient knowledge or information to admit or deny the allegations contained in paragraph 2 of the Complaint, and therefore denies the same.

1 **V. FIRST CAUSE OF ACTION**

2 20. Defendant hereby re-alleges and incorporates by reference all responses to the
3 preceding allegations contained in Plaintiffs' Complaint, as though fully set forth herein.

4 21. Defendant is without sufficient knowledge or information to admit or deny the
5 allegations contained in paragraph 21 of the Complaint, and therefore denies the same.

6 22. Defendant is without sufficient knowledge or information to admit or deny the
7 allegations contained in paragraph 22 of the Complaint, and therefore denies the same.

8 23. Defendant is without sufficient knowledge or information to admit or deny the
9 allegations contained in paragraph 23 of the Complaint, and therefore denies the same.

10 24. Defendant is without sufficient knowledge or information to admit or deny the
11 allegations contained in paragraph 24 of the Complaint, and therefore denies the same.

12 25. Defendant is without sufficient knowledge or information to admit or deny the
13 allegations contained in paragraph 25 of the Complaint, and therefore denies the same.

14 26. Defendant is without sufficient knowledge or information to admit or deny the
15 allegations contained in paragraph 26 of the Complaint, and therefore denies the same.

16 27. Defendant is without sufficient knowledge or information to admit or deny the
17 allegations contained in paragraph 27 of the Complaint, and therefore denies the same.

18 28. Defendant is without sufficient knowledge or information to admit or deny the
19 allegations contained in paragraph 28 of the Complaint, and therefore denies the same.

20 **VI. SECOND CAUSE OF ACTION**

21 29. Defendant hereby re-alleges and incorporates by reference all responses to the
22 preceding allegations contained in Plaintiffs' Complaint, as though fully set forth herein.

23 30. Defendant is without sufficient knowledge or information to admit or deny the
24 allegations contained in paragraph 30 of the Complaint, and therefore denies the same.

25 31. Defendant is without sufficient knowledge or information to admit or deny the
allegations contained in paragraph 31 of the Complaint, and therefore denies the same.

1 32. Defendant is without sufficient knowledge or information to admit or deny the
2 allegations contained in paragraph 32 of the Complaint, and therefore denies the same.

3 33. Defendant is without sufficient knowledge or information to admit or deny the
4 allegations contained in paragraph 33 of the Complaint, and therefore denies the same.

5 34. Defendant is without sufficient knowledge or information to admit or deny the
6 allegations contained in paragraph 34 of the Complaint, and therefore denies the same.

7 35. The allegations contained in Paragraph 35 of the Complaint constitute legal
8 conclusions, which do not require responses. To the extent responses are required, Defendant
9 denies any allegations in Paragraph 35 that relate to Sears. To the extent the allegations relate to
10 other defendants, Defendant denies the same for lack of information.

11 36. Defendant denies the allegations contained in Paragraph 36 of the Complaint to
12 the extent they relate to Defendant Sears.

13 37. Defendant is without sufficient knowledge or information to admit or deny the
14 allegations contained in paragraph 37 of the Complaint, and therefore denies the same.

15 38. Defendant denies the allegations contained in paragraph 38 of the Complaint,
16 including its subparts, to the extent the allegations relate to Defendant Sears. To the extent the
17 allegations relate to other defendants, Defendant denies the same for lack of information.

18 39. Defendant is without sufficient knowledge or information to admit or deny the
19 allegations contained in paragraph 39 of the Complaint, and therefore denies the same.

20 40. Defendant denies the allegations contained in paragraph 40 of the Complaint to
21 the extent they relate to Defendant Sears. To the extent the allegations relate to other defendants,
22 Defendant denies the same for lack of information.

23 **VII. PROXIMATE CAUSE/DAMAGES**

24 41. Defendant denies the allegations contained in paragraph 41 of the Complaint to
25 the extent they relate to Defendant Sears. To the extent the allegations relate to other defendants,
Defendant denies the same for lack of information.

1 42. Defendant denies the allegations contained in paragraph 42 of the Complaint to
2 the extent they relate to Defendant Sears. To the extent the allegations relate to other defendants,
3 Defendant denies the same for lack of information.

4 43. Defendant is without sufficient knowledge or information to admit or deny the
5 allegations contained in paragraph 43 of the Complaint, and therefore denies the same.

6 44. Defendant is without sufficient knowledge or information to admit or deny the
7 allegations contained in paragraph 44 of the Complaint, and therefore denies the same.

8 **VIII. PRAYER FOR RELIEF**

9 Defendant denies each and every claim set forth in Plaintiffs' Prayer for Relief.

10 **IX. AFFIRMATIVE DEFENSES**

11 Discovery and investigation may reveal that any one or more of the following affirmative
12 defenses should be available to Defendant in this matter. Defendant, therefore, asserts said
13 affirmative defenses in order to preserve the right to assert them. Upon completion of discovery,
14 and if the facts warrant, Defendant may withdraw any of these affirmative defenses as
15 appropriate.

16 Further answering and by way of affirmative defenses, Defendant alleges as follows:

- 17 1. Insufficiency of process and/or insufficiency of service of process;
- 18 2. Plaintiffs' Complaint fails to state a claim upon which relief can be granted;
- 19 3. Plaintiffs' claim is barred by the statute of limitations, statute of repose, or is
20 otherwise untimely;
- 21 4. Entities and/or persons other than Defendant may be responsible for damages
22 claimed in this case by Plaintiffs. In that event, fault should be allocated to these other entities
23 and/or persons pursuant to RCW 4.22 et seq., including to Plaintiffs. These potentially at-fault
24 entities and/or persons over whom Defendant has no control include, but are not limited to,
25 Plaintiffs;

1 5. To the extent that Plaintiffs have released, settled, or otherwise compromised
2 their claims, in whole or in part, their claims may be barred by operation of law, or alternatively,
3 subject to reduction by way of set-off;

4 6. Plaintiffs' damages, if any, were proximately caused by one or more
5 unforeseeable, independent, intervening or superseding events beyond the control of Defendant,
6 and unrelated to any conduct of Defendant. Any actions or omissions of Defendant were
7 superseded by the negligence and wrongful conduct of others, including that of Plaintiffs;

8 7. Plaintiffs may have failed to mitigate damages;

9 8. Defendant pleads all available defenses as set forth in the Washington State
10 contribution statute, RCW 4.22.

11
12 FURTHER ANSWERING PLAINTIFFS' COMPLAINT, Defendant does hereby
13 specifically reserve the right to amend its answer by way of adding additional affirmative
14 defenses, counterclaims, or by instituting third party actions, as additional facts are obtained
15 through future investigation and discovery.

16 **X. DEFENDANT'S PRAYER FOR RELIEF**

17 WHEREFORE, Defendant requests the following relief:

18 1. That Plaintiffs' Complaint be dismissed with prejudice and without costs against
19 Defendant;

20 2. That Defendant be awarded attorney's fees and costs according to applicable
21 statutory, contractual, and/or common law doctrines; and

22 3. That Defendant be awarded such other relief as this Court deems just and
23 equitable.

1 DATED this 27th day of September, 2018.

2 /s/Ryan W. Vollans
3 David A. Shaw, WSBA #08788
4 Ryan W. Vollans, WSBA #45302
5 Attorneys for Defendant Sears, Roebuck, & Co.
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1 **CERTIFICATE OF SERVICE**

2 The undersigned certifies under penalty of perjury under the laws of the State of
3 Washington that the foregoing subjoined document was served upon counsel of record in the
4 manner noted below:

5 Attorney for Plaintiff Angela Kelly:

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1 SIGNED at Seattle, Washington this 27th day of September, 2018.

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