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1			18 SEP 27 AM 9:37	
1 2			The Honorable Mary E. Roberts Trial Date: SUPERIOR COURT CLERK E-FILED	
3			E-FILED CASE NUMBER: 18-2-17249-7 SEA	
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8	SUPERIOR COURT OF WASHI	NGTON FOR	KING COUNTY	
9	ANGELA KELLY; and JANYCE L. MACKENZIE,	NO. 18-2-	17249-7 SEA	
10	Plaintiffs,		NT SEARS, ROEBUCK, & CO. SWER TO FIRST AMENDED	
11	v.			
12	COOPER TIRE & RUBBER COMPANY, a Delaware corporation; TBC CORPORATION, a			
13	Delaware corporation; MEINEKE CAR CARE CENTERS, LLC, a North Carolina corporation;			
14	MCCC 4333, INC. d/b/a MEINEKE CAR CARE CENTER #4333, a Washington			
15	corporation; and SEARS, ROEBUCK AND			
16	CO., d/b/a SEARS AUTO CENTER and/or SEARS, ROEBUCK AND CO. #2049, a New			
17	York corporation,			
18	Defendants.			
19 20	COMES NOW, defendant Sears, Roebu	ck, & Co. #20	049, and answers Plaintiffs' First	
20	Amended Complaint as follows:			
	I. <u>PARTIES</u>			
22	1. Defendant is without sufficient knowledge or information to admit or deny the			
23 24	allegations contained in paragraph 1 of the Complaint, and therefore denies the same.			
24 25	2. Defendant is without sufficient k	nowledge or i	nformation to admit or deny the	
23	allegations contained in paragraph 2 of the Comp	laint, and there	efore denies the same.	
	DEFENDANT SEARS, ROEBUCK, & CO. #2049 ANSW FIRST AMENDED COMPLAINT - 1	'ER TO	Williams, Kastner & Gibbs PLLC 601 Union Street, Suite 4100 Seattle, Washington 98101-2380 (206) 628-6600	
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3. Defendant is without sufficient knowledge or information to admit or deny the 1 2 allegations contained in paragraph 3 of the Complaint, and therefore denies the same. 3 4. Defendant is without sufficient knowledge or information to admit or deny the 4 allegations contained in paragraph 4 of the Complaint, and therefore denies the same. 5 5. Defendant is without sufficient knowledge or information to admit or deny the 6 allegations contained in paragraph 5 of the Complaint, and therefore denies the same. 7 6. Defendant is without sufficient knowledge or information to admit or deny the 8 allegations contained in paragraph 6 of the Complaint, and therefore denies the same. 9 7. Defendant admits the allegations contained in paragraph 7 of the Complaint. 10 II. JURISDICTION AND VENUE 11 8. Answering Paragraph 8, Defendant admits this Court has subject matter 12 jurisdiction under RCW 2.08.0101 pertaining to this litigation only. 13 9. Answering Paragraph 9, Defendant admits this Court has jurisdiction under RCW 14 4.28.185 pertaining to this litigation only. To the extent there are any remaining allegations 15 against Defendant, it denies the remainder of the allegations. 16 10. Answering Paragraph 10, Defendant admits that venue is proper under RCW 17 4.12.025(1) pertaining to this litigation only. Defendant further admits that it is registered to do 18 business in Washington State. Defendant is without sufficient knowledge or information to 19 admit or deny the allegations with respect to Defendants TBC, Meineke, MCC and Cooper Tire 20 & Rubber Company, and therefore denies the same. 21 11. Answering Paragraph 11, Defendant admits that the Court has personal 22 jurisdiction over it pertaining to this litigation only. Defendant further admits that it is registered 23 to do business in Washington State. Defendant is without sufficient knowledge or information to 24 admit or deny the allegations with respect to Defendants TBC, Meineke, MCC and Cooper Tire 25 & Rubber Company, and therefore denies the same.

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12. Answering Paragraph 12, including its subparts, Defendant admits that the Court has personal jurisdiction over it pertaining to this litigation only. Defendant further admits that it is registered to do business in Washington State. Defendant is without sufficient knowledge or information to admit or deny the allegations with respect to Defendants TBC, Meineke, MCC and Cooper Tire & Rubber Company, and therefore denies the same. Defendant denies any allegations contained in Paragraph 12, including its subparts, not expressly admitted herein.

III. THE PRODUCT

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

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

IV. FACTS

15. In response to Paragraph 15, Defendant admits that on or about January 22, 2016, the Subject Vehicle was taken to the Sears location located at 1302 SE Everett Mall Way, Everett, Washington 98208. Defendant further admits that it changed the battery of the Subject Vehicle and performed an undercar courtesy check. Defendant denies any and all other allegations raised in Paragraph 15 that are not expressly admitted herein.

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

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

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

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

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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 c	ontained 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 c	ontained 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. <u>SECOND CAUSE OF ACTION</u>	
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.		
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32. Defendant is without sufficient knowledge or information to admit or deny the allegations contained in paragraph 32 of the Complaint, and therefore denies the same.

33. Defendant is without sufficient knowledge or information to admit or deny the 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.

35. The allegations contained in Paragraph 35 of the Complaint constitute legal conclusions, which do not require responses. To the extent responses are required, Defendant denies any allegations in Paragraph 35 that relate to Sears. To the extent the allegations relate to 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.

38. Defendant denies the allegations contained in paragraph 38 of the Complaint,
including its subparts, to the extent the allegations relate to Defendant Sears. To the extent the
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 the19 allegations contained in paragraph 39 of the Complaint, and therefore denies the same.

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

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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.

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42. Defendant denies the allegations contained in paragraph 42 of the Complaint to 1 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; Williams, Kastner & Gibbs PLLC

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

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

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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.

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

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X. DEFENDANT'S PRAYER FOR RELIEF

WHEREFORE, Defendant requests the following relief:

That Plaintiffs' Complaint be dismissed with prejudice and without costs against
 Defendant;

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

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

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1	DATED this 27 th day of September, 2018.	
2	<u>/s/Ryan W. Vollans</u> David A. Shaw, WSBA #08788	
3	Ryan W. Vollans, WSBA #45302 Attorneys for Defendant Sears, Roebuck, & Co.	
4	#2049 WILLIAMS, KASTNER & GIBBS PLLC	
5	601 Union Street, Suite 4100 Seattle, WA 98101-2380	
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1	CERTIFICATE OF SERVICE	
2	The undersigned certifies under penalty of perj	ury 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:	VIA
6	James S. Rogers, WSBA #5335	☑ E-Service
7	Heather Cover, WSBA #52146 LAW OFFICES OF JAMES S. ROGERS	
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11	<u>leehwa@jsrogerslaw.com</u> sylvia@jsrogerslaw.com	
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13	Attorney for Plaintiff	VIA
14	Steven B. Hay, WSBA # 15781 LAW OFFICES OF STEVEN B. HAY & ASSOCIATES	☑ E-Service
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19	Lawrence M. Kahn, WSBA # 29639	☑ E-Service
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I

1	SIGNED at Seattle, Washington this 27 th day of September, 2018.	
2	s/Catherine Berry	
3	Catherine Berry, Legal Assistant WILLIAMS, KASTNER & GIBBS PLLC 601 Union Street, Suite 4100	
4	Seattle, WA 98101-2380 Email: <u>cberry@williamskastner.com</u>	
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