UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

ROBERT F. BOOTH TRUST, derivatively on behalf of nominal defendant SEARS HOLDINGS CORPORATION,	)	No. 1:09-cv-05314
Plaintiff,	)	Hon. Ronald A. Guzman
v.	)	
WILLIAM C. CROWLEY, EDWARD S. LAMPERT, STEVEN T. MNUCHIN, RICHARD C. PERRY, ANN N. REESE, KEVIN B. ROLLINS, EMILY SCOTT, and THOMAS J. TISCH,	)	
Defendants,	)	
and	)	
SEARS HOLDINGS CORPORATION,	)	
Nominal Defendant.	)	

THE INDIVIDUAL DEFENDANTS' ANSWER TO THE AMENDED CONSOLIDATED VERIFIED DERIVATIVE COMPLAINT

Defendants William C. Crowley, Edward S. Lampert, Steven T. Mnuchin, Richard C. Perry, Ann N. Reese, Kevin B. Rollins, Emily Scott, and Thomas J. Tisch (the "Individual Defendants") answer Plaintiffs' Amended Consolidated Verified Derivative Complaint (the "Complaint") as follows:

NATURE OF ACTION

1. Plaintiffs bring this action to enjoin defendants' continued violation of the prohibition of "interlocking directorships." Section 8 of the Clayton Act ("Section 8"), 15 U.S.C. § 19, prohibits a person from serving as a director or officer of two or more corporations if: (a) the combined capital, surplus and undivided profits of each of the corporations exceeds $26,161,000;[1] (b) each corporation is engaged in commerce; and (c) the corporations are competitors with certain threshold competitive annual sales. Although the statute contains some exemptions, none apply here.[2]

ANSWER: The Individual Defendants deny the allegations of paragraph 1 of the Complaint, except admit that Plaintiffs allege claims against them under Section 8 of the Clayton Act, 15 U.S.C. § 19, and respectfully refer the Court to that statute for its terms.

2. Two of the directors of Sears – Ann N. Reese ("Reese") and William C. Crowley ("Crowley") – are "interlocking" directors within the meaning of Section 8. Reese is Chair of the Audit Committee of the Sears board and also sits on the board of Jones Apparel Group, Inc. ("Jones Apparel"), a competitor of Sears in the area of women's clothing and accessories, men's clothing, and women's and children's shoes. Crowley is a member of the Finance Committee of the Sears board and also sits on the boards of AutoZone, Inc. ("AutoZone"), a competitor of Sears in the area of automotive replacement parts and accessories, and AutoNation, Inc. ("AutoNation"), a competitor of Sears in the area of auto service and repair.

[1] This statutory threshold is adjusted every year as determined by the Department of Commerce and published by the Federal Trade Commission (the "FTC"). 15 U.S.C. § 19(a)(5). On January 13, 2009, the FTC announced the operative threshold amount.

[2] Exempted from Section 8's prohibitions are interlocks for which: (1) the competitive sales of either corporation are less than $1 million (or as of January 13, 2009: $2,616,000); (2) the competitive sales of either corporation are less than 2 percent of that corporation's total sales; or, (3) the competitive sales of each corporation are less than 4 percent of that corporation's total sales. 15 U.S.C. § 19(2)(A)-(C). The term "competitive sales" is defined as "the gross revenues for all products and services sold by one corporation in competition with the other, determined on the basis of annual gross revenues for such products and services in that corporation's last completed fiscal year" and the term "total sales" means "the gross revenues for all products and services sold by one corporation over that corporation's last completed fiscal year." 15 U.S.C. § 19(2).

ANSWER: The Individual Defendants deny the allegations of paragraph 2 of the Complaint, except admit that Reese and Crowley are Sears directors, that Reese is the Chair of the Audit Committee, that Crowley is a member of the Finance Committee, that Reese sits on the board of Jones Apparel Group, Inc., and that Crowley sits on the boards of AutoZone, Inc. and AutoNation, Inc.

3. As alleged more fully below, the interlocking directorates of Reese and Crowley violate Section 8. Nevertheless, in March 2009, the Sears Board nominated Reese and Crowley for re-election to the Board and recommended that Sears' shareholders vote to re-elect these directors.

ANSWER: The Individual Defendants deny the allegations of paragraph 3 of the Complaint, except admit that in March 2009 the Sears Board nominated Reese and Crowley for re-election to the Board and recommended that Sears' shareholders vote to re-elect these directors.

4. A prior demand on the Board of Sears is excused. Defendant Edward S. Lampert ("Lampert") owns 54% of Sears, and according to Sears, thereby controls the election of directors to the Sears Board. Lampert, by his control, is thus directly or indirectly responsible for the *ultra vires* acts complained of herein, namely the violations of Section 8. Lampert also designated Crowley to sit on the boards of AutoZone and AutoNation, by virtue of Lampert's substantial stock ownership in both of those companies, as discussed below. Lampert is thus an interested director, as are Reese and Crowley. In addition, a majority of the seven members of the current Sears Board nominated Reese and Crowley to the Sears Board in or about March 2009 and recommended that Sears shareholders vote for them, in violation of Section 8. Because a majority of the current Board committed these *ultra vires* acts, a pre-suit demand on the current Board would be futile and is excused.

ANSWER: The Individual Defendants deny the allegations of paragraph 4 of the Complaint, except admit that a majority of the current Sears Board nominated Reese and Crowley to the Sears Board in or about March 2009 and recommended that Sears shareholders vote for them.

5. Plaintiffs Robert F. Booth Trust and Ronald Gross are shareholders of Sears and have been since January 2008.

ANSWER: The Individual Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5 of the Complaint.

6. Nominal Defendant Sears is a Delaware corporation with principal executive offices located at 3333 Beverly Road, Hoffman Estates, Illinois. In 2005, Kmart Holding Corporation ("Kmart") and Sears, Roebuck and Co. ("Sears, Roebuck") agreed to merge, forming a new company, Sears, the nominal defendant here. As part of this merger, Kmart contributed seven directors to the new board and Sears, Roebuck contributed three directors. (Form S-4, filed 2/15/05 at 75). When the merger was consummated on March 24, 2005 (2009 DEF14A at 7), the original 10 directors were: Lampert, Alan J. Lacy ("Lacy"), Aylwin B. Lewis ("Lewis"), Donald J. Carty ("Carty"), Crowley, Julian C. Day, Michael A. Miles, Steven T. Mnuchin ("Mnuchin"), Reese and Thomas J. Tisch ("Tisch"). In 2008, the Sears Board had declined to eight members: Crowley, Lampert, Mnuchin, Perry, Reese, Kevin B. Rollins ("Rollins"), Scott and Tisch. In 2009, the Sears Board was reduced in size to its current membership of seven directors: Crowley, Lampert, Mnuchin, Reese, Rollins, Scott and Tisch.

ANSWER: The Individual Defendants admit the allegations of paragraph 6 of the Complaint, except deny that Kmart or Sears, Roebuck contributed directors to the Sears Board and deny that the Sears Board currently consists of seven directors.

7. Defendant Crowley has been a director of Sears from March 24, 2005 to the present. Crowley is a member of the Finance Committee. (DEF14A filed 3/17/09 at 8). Crowley became a member of the board of AutoZone on August 18, 2008. (AutoZone Form 8-K, filed 8/18/08). Crowley is also President and Chief Operating Officer of Lampert's company, ESL Investments, Inc. ("ESL"), discussed below. Crowley has also been a member of the board of AutoNation since January 2002. (AutoNation Form 10-K, filed 3/23/09, at 6). Crowley is on AutoNation's Compensation Committee and Corporate Governance and Nominating Committee. *Id.* at 9.

ANSWER: The Individual Defendants admit the allegations of paragraph 7 of the Complaint, except deny Plaintiffs' characterization of ESL Investments, Inc. and deny that AutoNation filed a Form 10-K on March 23, 2009, and aver that Lampert is the sole shareholder of ESL Investments, Inc.

8. Defendant Lampert has been a director of Sears from March 24, 2005 to the present. Lampert is the Chairman of the Board of Sears and of the Finance Committee. (DEF14A filed 3/17/09 at 8). Lampert is also Chairman and Chief Executive Officer of ESL, a Connecticut-based private hedge fund. (DEF14A, filed 3/26/08, at 11). ESL beneficially owned 49.6% of Sears' outstanding common stock as of February 2, 2008, *id*. at 12, and 54.1% of Sears' common stock as of January 31, 2009. (2009 DEF14A at 14). In addition, as of March 31, 2009, Lampert (through his ownership of ESL) became a 43.67% owner of AutoZone. Lampert, through ESL, is also a 45% owner of AutoNation. (AutoNation Schedule 14A, filed 3/23/09, at 17). According to Sears, due to Lampert's 54% current ownership of Sears, Lampert has "substantial influence over many, if not all, actions to be taken or approved by [Sears'] shareholders, including the election of directors and any transactions involving a change of control." (2008 Form 10-K, filed 3/17/09, at 10).

ANSWER: The Individual Defendants deny the allegations of paragraph 8 of the Complaint, except admit the allegations in the first two sentences of this paragraph; admit that Lampert is the Chairman and Chief Executive Officer of ESL Investments, Inc., a Connecticut-based private investment fund; admit that ESL Investments, Inc. beneficially owned 49.6% of Sears' outstanding common stock as of February 2, 2008 and 54.1% of Sears' outstanding common stock as of January 31, 2009; admit that ESL Investments, Inc. beneficially owns 45% of the common stock of AutoNation; and admit that Sears' 2008 Form 10-K contains in substance the language quoted in paragraph 8 of the Complaint.

9. Defendant Mnuchin has been a director of Sears from March 24, 2005 to the present. Mnuchin is a member of the Audit Committee and is the Chair of the Nominating and Corporate Governance Committee. (DEF14A, filed 3/17/09, at 8).

ANSWER: The Individual Defendants admit the allegations of paragraph 9 of the Complaint.

10. Defendant Perry served as a director of Sears from 2006 through May 4, 2009. Perry was a member of the Finance Committee and the Nominating and Corporate Governance Committee. (DEF14A, filed 3/17/09 at 8).

ANSWER: The Individual Defendants admit the allegations of paragraph 10 of the Complaint, except deny that Perry served as a director from 2006.

11. Defendant Rollins has been a director of Sears from February 20, 2008 to the present. Rollins is a member of the Audit Committee. (DEF14A, filed 3/17/09, at 8).

ANSWER: The Individual Defendants admit the allegations of paragraph 11 of the Complaint.

12. Defendant Scott has been a director of Sears from May 4, 2007 to the present. Scott is a member of the Compensation Committee. (DEF14A, filed 3/17/09, at 8).

ANSWER: The Individual Defendants admit the allegations of paragraph 12 of the Complaint.

13. Defendant Tisch has been a director of Sears from March 24, 2005 to the present. Tisch is a member of the Audit Committee and Chair of the Compensation Committee.

ANSWER: The Individual Defendants admit the allegations of paragraph 13 of the Complaint.

14. Defendant Reese has been a director of Sears from March 24, 2005 to the present. Reese is Chair of the Audit Committee and a member of the Compensation Committee. She has been a director of Jones Apparel since 2003. (Jones Apparel Schedule 14A, filed 4/12/09, at 5).

ANSWER: The Individual Defendants admit the allegations of paragraph 14 of the Complaint.

15. The term "Individual Defendants" is sometimes used in this Complaint to refer to defendants Crowley, Lampert, Mnuchin, Perry, Reese, Rollins, Scott, and Tisch.

ANSWER: The Individual Defendants admit that Plaintiffs refer to Crowley, Lampert, Mnuchin, Perry, Reese, Scott, and Tisch as the "Individual Defendants."

16. Plaintiffs bring this action to enjoin Reese from serving simultaneously as a board member of Jones Apparel, and to enjoin Crowley from serving simultaneously as a board member of Sears and AutoZone and AutoNation.

ANSWER: The Individual Defendants admit that Plaintiffs seek injunctive relief in this suit but deny that there is any merit to Plaintiffs' claims or that they are entitled to the injunctive relief they seek.

JURISDICTION AND VENUE

17. This Court has jurisdiction of this action under Section 16 of the Clayton Act, 15 U.S.C. § 26, for violations of Section 8 of the Clayton Act, 15 U.S.C. § 19. The Court has supplemental jurisdiction over Plaintiff's state-law claim alleged in Count Three.

ANSWER: Paragraph 17 of the Complaint states legal conclusions, to which no answer is required. If an answer were required, the Individual Defendants would deny the allegations of paragraph 17 of the Complaint, except admit that Section 16 of the Clayton Act, 15 U.S.C. § 26 provides for jurisdiction over cases alleging violations of Section 8 of the Clayton Act, 15 U.S.C. § 19, and that this Court has the discretion to exercise supplemental jurisdiction over purported state-law claims that are part of the same case or controversy.

18. Original jurisdiction is conferred upon this Court pursuant to 28 U.S.C. §§ 1331, 1337. The Court also has supplemental jurisdiction over Plaintiff's state-law claim pursuant to 28 U.S.C. § 1367.

ANSWER: Paragraph 18 of the Complaint states legal conclusions, to which no answer is required. If an answer were required, the Individual Defendants would admit that this Court has original jurisdiction for alleged violations of Section 8 of the Clayton Act and supplemental jurisdiction over purported state-law claims that are part of the same case or controversy.

19. Venue is laid in this District pursuant to 15 U.S.C. § 22 and 28 U.S.C. § 1391. Nominal Defendant Sears maintains its corporate headquarters in this District at 3333 Beverly Road, Hoffman Estates, Illinois 60179.

ANSWER: Paragraph 19 of the Complaint states legal conclusions, to which no answer is required. If an answer were required, the Individual Defendants would admit the allegations of paragraph 19 of the Complaint.

SUBSTANTIVE ALLEGATIONS

20. Sears is a Delaware corporation with principal executive offices in Illinois. Defendants Reese and Crowley are "interlocking" directors within the meaning of Section 8, and in March 2009 were nominated and recommended by the Sears Board for re-election.

ANSWER: The Individual Defendants deny the allegations of paragraph 20 of the Complaint, except admit the allegations in the first sentence of this paragraph and admit that in March 2009 Reese and Crowley were nominated and recommended by the Sears Board for re-election.

21. On August 20, 2009, Sears announced that it had lost $94 million, or 79 cents per share, in the second quarter of 2009. According to a *Barron's* article ("Washed Out," August 24, 2009), the news "hit Wall Street like a massive bunker-blasting bomb." Sears shares dropped nearly 14% that day. According to the August 24 *Barron's* article, "Lampert seems to be starving his company, driving away customers with uncompetitive pricing." Although Lampert responded to *Barron's* in a letter of his own to the editor (*Barron's*, September 17, 2009), Lampert acknowledged that "performance of the company is not where [he] would like it to be." Lampert did not, however, respond to the charge that Sears was driving away customers with "uncompetitive pricing."

ANSWER: The Individual Defendants deny the allegations of paragraph 21 of the Complaint, except admit the first sentence of this paragraph, admit that *Barron's* published an article on August 24, 2009 containing in part the language quoted in this paragraph, and admit that a letter from Lampert containing in part the language attributed to him was published in *Barron's* on September 7, 2009, respectfully refer the Court to Lampert's letter to *Barron's* referred to in this paragraph for its full contents, and aver that Lampert's letter begins by stating: "The *Barron's* Aug. 24 article that discusses Sears and ESL Partners was misleading, inaccurate, and poorly researched. Without responding to each inaccuracy, I want to correct some of the more important misstatements and address the overall negative bias in the presentation of facts."

Sears and Jones Apparel

22. Sears and the publicly-traded Jones Apparel each have a combined capital, surplus and undivided profit exceeding $26,161,000. Both are engaged in commerce. The two companies compete with one another in selling women's apparel, footwear and accessories; men's clothing; and women's and children's shoes.

ANSWER: The Individual Defendants admit the first sentence of paragraph 22 of the Complaint. The last two sentences of this paragraph call for legal conclusions to which no answer is required; were an answer required, the Individual Defendants would deny these allegations, except admit that Sears and Jones Apparel are engaged in commerce.

23. Sears is a broadline retailer with 2,297 full-line and 1,233 specialty retail stores in the United States. (*See* Sears 2008 Form 10-K, filed 3/17/09). Sears reported total revenues for its fiscal year 2008 of $46.8 billion. (2008 Form 10-K, filed 3/17/09, at 22-23). (Sears' fiscal year 2008 began on February 1, 2008 and ended on January 31, 2009. 2008 Form 10-K, filed 3/17/09, cover page). Since the merger with Kmart, Sears conducts operations in three business segments: Kmart, Sears Domestic and Sears Canada. Apparel, footwear and accessories are among the product lines offered by the Sears Domestic, Kmart and Sears Canada business segments. (Form 10-Q, filed 5/2/09, at 18-19). For fiscal 2008, Sears broke down its segment sales as follows: Kmart ($16.219 billion); Sears Domestic ($25.315 billion); Sears Canada ($5.236 billion). (2008 Form 10-K at 88).

ANSWER: The Individual Defendants admit the allegations of paragraph 23 of the Complaint were true as of the effective dates of the cited filings, except state that Sears' fiscal

year 2008 began on February 3, 2008 and that Sears filed a Form 10-Q on May 28, 2009 and not May 2, 2009.

24. As of January 31, 2009, Sears had 1,368 Kmart stores across 49 states, Guam, Puerto Rico and the U.S. Virgin Islands. Most Kmart stores are one-floor, free-standing units that carry a wide assortment of general merchandise.

ANSWER: The Individual Defendants admit the allegations of paragraph 24 of the Complaint.

25. The Sears Domestic segment operates 929 broadline stores of which 856 are full-line stores located across all 50 states and Puerto Rico, primarily mall-based locations averaging 133,000 square feet. Full-line stores offer a wide array of products across many merchandise categories, including "apparel, footwear and accessories for the whole family." (2008 Form 10-K, filed 3/17/09, at 2). This segment's product offerings in women's apparel and accessories (handbags, small leather goods, costume jewelry) include Apostrophe, Canyon River Blues, Carhartt, Classic Elements, Covington, Dockers, Lands' End, Levi's, Southpole, and others. (www.sears.com; 2008 Form 10-K, filed 3/17/09, at 2). Its product offerings also include men's clothing such as jeans, sweaters, sportswear, casual and dress shirts, casual and dress pants, and suits and sport coats, among other things. (www.sears.com (clothing (men's))). Among the brands of men's clothing Sears sells are the following: Arrow, Canyon River Blues, Carhartt, Covington, Dockers, Lee, Levi's, Pierre Cardin, and Structure. The Sears Domestic segment also sells jewelry and watches. (www.sears.com (jewelry & watches)). The segment sells a variety of necklaces, bracelets, earrings, and pendants. Sears sells both costume and fine jewelry (semi-precious, sterling silver, and gold), both at a variety of price points. Sears also sells a selection of men's watches. (*Id.*)

ANSWER: The Individual Defendants admit the allegations of the first two sentences paragraph 25 of the Complaint were true as of the effective date of the cited filing. The Individual Defendants deny the remaining allegations as incomplete and instead aver that Sears Domestic's product offerings include numerous products and brands with varying characteristics and prices.

26. Sears operates 73 Sears Essentials/Grand Stores located in 26 states. (2008 Form 10-K, filed 3/17/09, at 2). These stores sell all products sold in the "typical mall-based store." *Id.*

ANSWER: The Individual Defendants deny the allegations of paragraph 26 of the Complaint, except admit that as of the effective date of the cited filing, Sears operated 73 Sears Essentials/Grand stores located in 26 states.

27. Sears operates Lands' End, Inc., a leading direct merchant of casual clothing, accessories and footwear for men, women and children. (2008 Form 10-K, filed 3/17/09, at 3). These products are offered through multiple selling channels including Landsend.com, a leading apparel website, as well as catalog mailings, and international businesses. (*Id.*). Lands' End has 14 retail stores, averaging 8,600 square feet, which offer Lands' End merchandise primarily from catalog and internet channel overstocks. In addition, Lands' End has 222 "store within a store" departments inside Sears Domestic broadline locations. (2008 Form 10-K, filed 3/17/09, at 3).

ANSWER: The Individual Defendants admit the allegations of paragraph 27 of the Complaint were true as of the effective date of the cited filing.

28. Sears also sells an assortment of women's apparel and accessory merchandise, and men's clothing, through its website, *www.sears.com*. Customers can buy through the Internet and have merchandise shipped to their home or can pick the goods up in one of Sears' full-line specialty stores. (*Id.*)

ANSWER: The Individual Defendants admit the allegations of paragraph 28 of the Complaint.

29. Sears conducts retail operations in Canada similar to those conducted by Sears Domestic, with greater emphasis on apparel and other softlines than in the U.S. stores. (2008 Form 10-K, filed 3/17/09, at 4). As of January 31, 2009, Sears Canada operated 122 full-line stores, 266 specialty stores (including one Lands' End store), 30 floor covering stores, 1,858 catalog pick-up locations and 106 travel offices. (*Id.*) Sears Canada also conducts business over its internet website: *sears.ca*.

ANSWER: The Individual Defendants admit the allegations of paragraph 29 of the Complaint were true as of the effective date of the cited filing.

30. Jones Apparel is a leading designer, marketer and wholesaler of branded apparel, footwear and accessories. (*See* Jones Apparel 2008 Form 10-K Annual Report, filed 2/17/08). Jones Apparel designs, contracts for the manufacture of and markets a broad range of women's collection sportswear, suits and dresses, casual sportswear and jeanswear for women and children, and women's footwear and accessories. *Id.* at 32. Jones Apparel sells women's clothing at a variety of retail price points, depending on quality and style. *Id.* at 5-7 (Table summarizing products and price points). Jones Apparel also sells brand name and private label footwear for women and children. (*Id.* at 6). Jones Apparel also sells costume, semi-previous, sterling silver, and marcasite jewelry. (*Id.*) In 2008, Jones Apparel announced that Wal-Mart would be the exclusive retailer of its l.e.i. brand for juniors, junior plus and girls. (*Id.* at 34.) Jones Apparel sells its products through a broad array of distribution channels, including better specialty and department stores and mass merchandisers, primarily in the United States and Canada. *Id.* Jones Apparel also operates a network of retail and factory outlet stores and several e-commerce websites. *Id.* Jones Apparel reported total revenues for fiscal 2008 of $3.6 billion. *Id.* at 30.

ANSWER: The Individual Defendants admit that Jones Apparel's 2008 Form 10-K contains statements in substance similar to certain of those cited in paragraph 30 of the Complaint, and respectfully refer the Court to that Form 10-K for its contents.

31. Jones Apparel also sells men's accessories and jewelry, neckwear, sportswear, dress and casual shirts, dress slacks, sweaters, suits and jackets, denim, and footwear.

ANSWER: The Individual Defendants admit that Jones Apparel's 2009 Form 10-K contains reference to, among other things, men's accessories and jewelry, neckwear, sportswear, dress shirts, dress slacks, sweaters, formal wear, denim, and footwear, and respectfully refer the Court to that Form 10-K for its contents.

32. Jones Apparel's nationally recognized brands include Jones New York, Nine West, Anne Klein, Gloria Vanderbilt, Kasper, Bandolino, Easy Spirit, Evan Picone, l.e.i., Energie, Enzo Angiolini, Joan & David, Mootsies Tootsies, Sam & Libby, Napier, Judith Jack, Albert Nipon and le Suit. *Id.*

ANSWER: The Individual Defendants admit that Jones Apparel's 2008 Form 10-K contains statements in substance similar to certain of those cited in paragraph 32 of the Complaint, and respectfully refer the Court to that Form 10-K for its contents.

33. As of December 31, 2008, Jones Apparel operated 373 specialty retail stores nationwide, *Id.* at 7. These stores sell either footwear and accessories, or apparel (or a combination of these products), primarily under their respective brand names. *Id.* The Nine West, Easy Spirit, Bandolino and AK Klein retail stores offer selections of exclusive products not marketed to Jones Apparel's wholesale customers. *Id.* Specialty retail stores operated by Jones Apparel also sell products licensed by Jones Apparel, including belts, outerwear, watches and sunglasses. *Id.*

ANSWER: The Individual Defendants admit that Jones Apparel's 2008 Form 10-K contains statements in substance similar to certain of those cited in paragraph 33 of the Complaint, and respectfully refer the Court to that Form 10-K for its contents.

34. As of December 31, 2008, Jones Apparel also operated 644 outlet stores nationwide. *Id.* Outlet shoe and apparel stores focus on breadth of product line, as well as value pricing, and offer a distribution channel for Jones Apparel residual inventories.

ANSWER: The Individual Defendants admit that Jones Apparel's 2008 Form 10-K contains statements in substance similar to certain of those cited in paragraph 34 of the Complaint, and respectfully refer the Court to that Form 10-K for its contents.

35. Jones Apparel also operates the following websites which offer Jones Apparel products for sale direct to consumers: *www.ninewest.com*, *www.easyspirit.com*, *www.bandolino.com*, and *www.jny.com*. *Id.* at 8. Through these websites, Jones Apparel markets either footwear and accessories, or apparel, or a combination of these products, primarily under their respective brand names. The selection of products Jones Apparel sells on its websites is consistent with the product offerings in Jones Apparel's corresponding retail stores. *Id.*

ANSWER: The Individual Defendants admit that Jones Apparel's 2008 Form 10-K contains statements in substance similar to certain of those cited in paragraph 35 of the Complaint, and respectfully refer the Court to that Form 10-K for its contents.

36. Defendant Reese became a member of the Sears Board on March 24, 2005. Reese has been a member of the Jones Apparel Board since 2003.

ANSWER: The Individual Defendants admit the allegations of paragraph 36 of the Complaint.

37. Jones Apparel states that "[t]he apparel, footwear and accessories industries are highly competitive." (Jones Apparel 2008 Form 10-K, filed 2/17/09, at 23). Jones Apparel warns its investors that:

> There is intense competition in the sectors of the apparel, footwear and accessories industries in which we participate. We compete with many other manufacturers and retailers, some of which are larger and have greater resources than we do. Any increased competition could result in reduced sales or prices, or both, which could have a material adverse effect on us. [*Id.*]

ANSWER: The Individual Defendants admit that the language quoted in paragraph 37 of the Complaint appears in Jones Apparel's 2008 Form 10-K, filed 2/17/09.

Sears, AutoZone and AutoNation

38. Sears sells a variety of auto parts and accessories through its Kmart, Sears Domestic and Sears Canada business segments. Sears sells a full line of auto parts and accessories, as set forth on its website, including, but not limited to, the following: tires, custom wheels, batteries and chargers, car top and hitch carriers, exterior and interior accessories, under car and hood items (*e.g.*, air intakes and fuel systems; exhaust and emissions; suspension and

chassis; engine cooling systems; transmission and drive train; filters; windshield wipers and washers; engine parts; spark plugs), car care and garage items, outdoor car shelters, bed and tailgate and tonneau and ramp items for trucks; truck boxes, electrical systems, hitches and towing and trailers, suspension, automotive electronics, mechanics' tools, air intake and fuel systems, motorcycle and all terrain vehicle items, RV's and camping items, and car art. (See *www.sears.com* automotive and tire department).

ANSWER: The Individuals Defendants deny the allegations set forth in paragraph 38, except admit that Sears sells a variety of auto parts and accessories through its Kmart, Sears Domestic and Sears Canada business segments, including those listed, and aver that the vast majority of such parts and accessories are sold in connection with automotive service.

39. Sears sells a variety of auto parts brands, such as DieHard, Michelin, Goodyear, Bridgestone, BF Goodrich, Dunlop, Bestop, Curt, Truxedo, K and N and Rausch Performance. (*Id.*)

ANSWER: The Individual Defendants admit the allegations of paragraph 39 of the Complaint, except state that the proper spelling of the last brand listed is "Roush Performance," and aver that the vast majority of such parts and accessories are sold in connection with automotive service.

40. Sears also services and repairs autos at its Sears Auto Centers. As part of its Sears Domestic business segment, Sears operates 782 Sears Auto Centers in association with full-line stores. (2008 Form 10-K, filed 3/17/09, at 3). In addition, 27 Sears Auto Centers are operated out of Sears Essentials/Grand Stores. (*Id.*) There are 30 free standing Sears Auto Centers that operate independently of full-line stores. (*Id.*)

ANSWER: The Individual Defendants admit the allegations of paragraph 40 of the Complaint were true as of the effective date of the cited filing.

41. Sears states that "[t]he retail industry is highly competitive, with few barriers to entry." (2008 Form 10-K, filed 3/17/09, at 7). According to Sears, it "compete[s] with a wide variety of retailers, including other department stores, discounters, home improvement stores, consumer electronics dealers, auto service providers, specialty retailers, wholesale clubs, as well as many other retailers operating on a national, regional or local level along with Internet and catalog businesses, which handle similar lines of merchandise." (*Id.*)

ANSWER: The Individual Defendants admit that the language quoted in paragraph 41 of the Complaint appears in Sears' 2008 Form 10-K.

42. AutoZone is a public company that has a combined capital, surplus and undivided profit exceeding $26,161,000. AutoZone operates as a specialty retailer and distributor of automotive replacement parts and accessories. AutoZone also offers a commercial sales program that provides commercial credit, and delivery of parts and other products to local, regional, and national repair garages, dealers, and service stations. In addition, it sells the ALLDATA brand automotive diagnostic and repair information, auto and light truck parts, and accessories on the Web at *autozone.com*. As of August 30, 2008, AutoZone operated 4,092 stores in the United States and Puerto Rico and 148 stores in Mexico.

ANSWER: The Individual Defendants admit that AutoZone's Form 10-K filed on October 27, 2008 contains statements in substance similar to certain of those cited in paragraph 42 of the Complaint, and respectfully refer the Court to that Form 10-K for the contents thereof.

43. AutoZone was founded in 1979 and is based in Memphis, Tennessee. For the year ended August 30, 2008, AutoZone reported net sales of $6.523 billion compared with $6.170 billion for the year ended August 25, 2007, a 5.7% increase from fiscal 2007. (AutoZone 2008 Form 10-K, filed 10/27/08, at 17). AutoZone reported net income for fiscal 2008 of $641.6 million. (*Id.*)

ANSWER: The Individual Defendants admit that AutoZone's 2008 Form 10-K contains statements in substance similar to certain of those cited in paragraph 43 of the Complaint, and respectfully refer the Court to that Form 10-K for its contents.

44. AutoZone sells a variety of auto parts and accessories, which are listed on its website, *www.autozone.com*. Among these items are the following: brakes and traction control, engine management, exhaust, exterior items, interior items, performance, power train, routine maintenance items, suspension and steering, tools, trim accessories, and truck accessories. According to AutoZone, "[t]he sale of automotive parts, accessories and maintenance items is highly competitive. . . ." (2008 Form 10-K, filed 10/27/08, at 11). AutoZone states that: "Competitors include national, regional and local auto parts chains, independently owned parts stores, jobbers, repair shops, car washes and auto dealers, in addition to discount and mass merchandise stores, department stores, hardware stores, supermarkets, drugstores, convenience stores and home stores that sell aftermarket vehicle parts and supplies, chemicals, accessories, tools and maintenance parts." (*Id.*)

ANSWER: The Individual Defendants admit that the items listed in paragraph 44 of the Complaint are listed on AutoZone's website and that the quoted language appears in AutoZone's 2008 Form 10-K, and respectfully refer the Court to the Form 10-K and to the website for the contents thereof.

45. Sears and AutoZone both are engaged in commerce. The two companies compete with one another in selling auto replacement parts, supplies, and accessories.

ANSWER: Paragraph 45 of the Complaint states legal conclusions, to which no answer is required. If an answer were required, the Individual Defendants would deny the allegations of paragraph 45 of the Complaint, except admit that Sears and AutoZone are engaged in commerce.

46. Defendant Crowley became a member of the AutoZone board on August 18, 2008. AutoZone issued a press release announcing that Crowley had been added to the AutoZone board at the direction of ESL, AutoZone's largest shareholder. (AutoZone 8/18/08 press release). The August 18, 2008 AutoZone press release noted that Crowley has been a Sears director since March 2005, and has been President and Chief Operating Officer of ESL. Crowley also serves as a director of AutoNation, a public company 45% owned by ESL. (AutoNation, Schedule 14A, filed 3/23/09, at 29).

ANSWER: The Individual Defendants deny the allegations of paragraph 46 of the Complaint, except admit that Crowley became a member of the AutoZone board on August 18, 2008 and that AutoZone issued a press release, respectfully refer the Court to that press release for its contents, and admit that Crowley serves as a director of AutoNation and that ESL Investments, Inc. beneficially owns 45% of the common stock of AutoNation.

47. According to AutoNation's most recent annual report on SEC Form 10-K, AutoNation sells new and used cars, and its "stores also provide a wide range of vehicle maintenance, repair, paint, and collision repair services, including warranty work that can be performed only at franchised dealerships and customer-pay service work." (AutoNation 2008 Form 10-K, filed 2/17/09 at 5). AutoNation disclosed that it has 232 stores as of December 31, 2008. *Id.* at 1. According to AutoNation, its "parts and service and finance and insurance operations, while comprising approximately 21% of total revenue, contribute approximately 65% of our gross margin." *Id.* at 23. Crowley has been a member of the board of directors of AutoNation since January 2002. (AutoNation Form 10-K, filed 3/23/09, at 6). Crowley is on AutoNation's Compensation Committee and Corporate Governance and Nominating Committee. *Id.* at 9.

ANSWER: The Individual Defendants admit that AutoNation's 2008 Form 10-K contains statements in substance similar to certain of those cited in paragraph 47 of the Complaint, and respectfully refer the Court to that Form 10-K for its contents.

48. AutoNation sells auto service and parts to its customers. According to its website, a customer can search for auto parts and order them from AutoNation. (*See* www.autonation.com, service & parts toolbar)). AutoNation's website directs customers to 291 "Parts Centers." These parts centers are participating car dealerships located throughout Florida, California, Texas,

Washington, Nevada, Tennessee, Maryland, Georgia, Colorado, Ohio, Illinois, Virginia, Arizona, and Alabama. The customer selects a car dealer, completes a "Parts Order Form" online, and submits the order to the participating car dealer.

ANSWER: The Individual Defendants admit that AutoNation's website contains statements in substance similar to certain of those cited in paragraph 48 of the Complaint, and respectfully refer the Court to the website for the contents thereof.

49. AutoNation also offers a "network" of "service and collision repair locations to make vehicle maintenance & repair simple and convenient." (*www.autonation.com*). According to its website, AutoNation's auto dealer network offers: "State-of-the-art facilities, diagnostic & repair equipment; factory trained and certified technicians; knowledgeable & friendly service personnel; competitively priced maintenance and repairs." (*Id.*) AutoNation tells customers: "To schedule a service appointment, simply click on the request link below to locate a dealer near you." (*Id.*) Customers can then choose a participating car dealer online to service their car in the following states: Washington, Florida, California, Texas, Arizona, Nevada, Tennessee, Maryland, Ohio, Virginia, Illinois, Alabama, Georgia, and Minnesota. (*www.autonation.com*).

ANSWER: The Individual Defendants admit that AutoNation's website contains statements in substance similar to certain of those cited in paragraph 49 of the Complaint, and respectfully refer the Court to the website for the contents thereof.

50. Sears has stores in all these states, including but not limited to full-line mall stores in the numbers indicated in parentheses, as follows: California (80); Alabama (13); Florida (55); Colorado (13); Georgia (22); Minnesota (12); Nevada (4); Maryland (19); Tennessee (24); Virginia (23); Texas (60); Washington (23). (2008 Form 10-K, filed 3/17/09, at 11-12). Sears' 2008 Form 10-K also details the number of Sears' other types of stores in these states, such as Discount Stores, Super Centers, Sears Essentials/Grand Stores and Specialty Stores. *Id.*

ANSWER: The Individual Defendants admit that Sears had full-line mall stores in the numbers indicated in paragraph 50 of the Complaint for each state listed as of the effective date of the cited filing and admit that Sears' 2008 Form 10-K lists the number of Sears' Discount Stores, Super Centers, Sears Essentials/Grand Stores, and Specialty Stores.

51. Sears and AutoNation both are engaged in commerce. The two companies compete with one another in providing vehicle maintenance, auto parts, and vehicle repair.

ANSWER: Paragraph 51 of the Complaint states legal conclusions, to which no answer is required. If an answer were required, the Individual Defendants would deny the

allegations of paragraph 51 of the Complaint, except admit that Sears and AutoNation are engaged in commerce.

52. AutoNation has a combined capital surplus and undivided profit exceeding $26,161,000. AutoNation reported revenue for 2008 of $14.131 billion. (AutoNation 2008 Form 10-K, filed 3/17/09, at 22). AutoNation states that they "operate in a highly competitive industry." (*Id.* at 9). In addition to competition from other auto retailers and dealers, AutoNation states that it is "also subject to competition from independent automobile service shops and service center chains." (*Id.*)

ANSWER: The Individual Defendants admit that AutoNation's 2008 Form 10-K contains statements in substance similar to certain of those cited in paragraph 52 of the Complaint, and respectfully refer the Court to that Form 10-K for its contents.

53. According to Sears' proxy disclosures, the Board's Nominating and Corporate Governance Committee evaluates a candidate's qualifications to sit as a Board member and reviews all proposed nominees for the Board of Directors, including those proposed by stockholders, in accord with Sears' charter and Corporate Governance Guidelines. (2008 DEF14A at 9; 2009 DEF14A at 10-11). According to Sears, the Nominating and Corporate Governance Committee reviews a candidate's "qualifications and independence," and considers "diversity, age, skills and experience in the context of the needs of the Board." (2008 DEF14A at 9; 2009 DEF14A at 11).

ANSWER: The Individual Defendants admit the allegations of paragraph 53 of the Complaint.

54. Although the Nominating and Corporate Governance Committee "has the ability to retain a third party to assist in the nomination process, the Company has not paid a fee to any third party to identify or assist in identifying or evaluating potential nominees." (2008 DEF14A at 9; 2009 DEF14A at 10).

ANSWER: The Individual Defendants admit the allegations of paragraph 54 of the Complaint.

55. The Nominating and Corporate Governance Committee recommends nominees for directors to the full Board. (2009 DEF14A at 10). Directors are nominated by the Sears Board of Directors, or by stockholders, provided the stockholders follow the nomination procedures in the Company's bylaws. (2008 DEF14A at 8-9; 2009 DEF14A at 10). The Board then recommends whether it believes shareholders should vote for the nominated slate of directors. (*See* 2009 DEF14A, Proxy Card).

ANSWER: The Individual Defendants admit the allegations of paragraph 55 of the Complaint.

56. In 2008, Sears' Board of Directors consisted of the following eight members: Lampert, Crowley, Mnuchin, Perry, Rollins, Reese, Scott, and Tisch. (2008 DEF14A at 7).

ANSWER: The Individual Defendants admit the allegations of paragraph 56 of the Complaint.

57. On or about March 17, 2009, Sears disseminated a proxy statement on Form DEF14A to its shareholders seeking their vote on the election of directors, among other things. The shareholder vote was to take place at the annual meeting of shareholders to be held on May 4, 2009. (2009 DEF14A, letter from W. Bruce Johnson to shareholders).

ANSWER: The Individual Defendants admit the allegations of paragraph 57 of the Complaint.

58. Sears stated in the 2009 proxy that the Nominating and Corporate Governance Committee reviewed the qualifications and independence of these seven nominees, and approved them to the full Board of Directors. The full Board of Directors, in turn, approved the nomination of the seven directors for re-election to the Board in 2009. On March 12, 2009, defendant Perry advised the Sears Board that he would not stand for re-election to the full Board at the annual meeting on May 4, 2009 so that he could devote more time to his company, Perry Capital. (2009 DEF14A at 7). Perry, however, "indicated his intention to serve until the Annual Meeting." *Id.* In light of Perry's intention not to seek re-election, the Sears Board decided to "evaluate reducing the size of the Board from eight members to seven." *Id.*

ANSWER: The Individual Defendants admit the allegations of paragraph 58 of the Complaint.

59. According to the 2009 DEF14A sent to shareholders, the then-current Board of Sears recommended that Sears shareholders vote in favor of the following seven nominees for director: Crowley, Lampert, Mnuchin, Reese, Rollins, Scott, and Tisch. (2009 DEF14A at 7-8 & Proxy Card).

ANSWER: The Individual Defendants admit the allegations of paragraph 59 of the Complaint.

60. The seven nominees for re-election in 2009 to the Sears Board (Crowley, Lampert, Mnuchin, Reese, Rollins, Scott, and Tisch) were re-elected at the annual shareholder's meeting on May 4, 2009.

ANSWER: The Individual Defendants admit the allegations of paragraph 60 of the Complaint.

61. Reese remains a director of Jones Apparel.

ANSWER: The Individual Defendants admit the allegations of paragraph 61 of the Complaint.

62. Crowley remains a director of AutoZone and AutoNation.

ANSWER: The Individual Defendants admit the allegations of paragraph 62 of the Complaint.

DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS

63. Plaintiffs bring this action derivatively in the right and for the benefit of the Company to redress defendants' breaches of fiduciary duties.

ANSWER: The Individual Defendants deny the allegations of paragraph 65 of the Complaint, except admit that plaintiffs purport to bring this suit derivatively.

64. Plaintiffs own Sears common stock and have owned such stock since January 2008.

ANSWER: The Individual Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 64 of the Complaint.

65. Plaintiffs will adequately and fairly represent the interests of the Company and its shareholders in enforcing and prosecuting its rights.

ANSWER: The Individual Defendants deny the allegations of paragraph 65 of the Complaint.

66. The Sears Board currently consists of seven directors: defendants Crowley, Lampert, Mnuchin, Reese, Rollins, Scott and Tisch. Defendants Reese and Crowley are interested directors. Defendant Lampert is an interested director also. Moreover, with respect to Lampert, Crowley is his designee on the boards of AutoZone and AutoNation, given Lampert's large share-ownership of those companies through ESL. According to Sears, Lampert controls the power to elect directors to the Sears Board, by virtue of his 54% ownership of Sears. (2008 Form 10-K, filed 3/17/09, at 10). Accordingly, pre-suit demand on the current Sears Board would be futile and is excused.

ANSWER: The Individual Defendants deny the allegations of paragraph 66 of the Complaint, except admit that Crowley, Lampert, Mnuchin, Reese, Rollins, Scott, and Tisch currently sit on the Sears Board.

67. Moreover, demand is also excused because a majority (seven out of eight) of the directors who committed the *ultra vires* acts complained of – nominating Reese and Crowley for Board re-election and recommending to shareholders that they vote for these directors' re-election in 2009 – are still members of the Sears Board of Directors. These seven directors are: Crowley, Lampert, Mnuchin, Reese, Rollins, Scott and Tisch. As a result, a majority of the current Sears Board is not independent with respect to evaluating the Board's violation of Section 8. A pre-suit demand on the current Board is therefore excused.

ANSWER: The Individual Defendants deny the allegations of paragraph 67 of the Complaint, except admit that seven of the directors who nominated Reese and Crowley for re-election and recommended to the shareholders that they vote for Reese's and Crowley's re-election are members of the Sears Board, and that those seven directors are Crowley, Lampert, Mnuchin, Reese, Rollins, Scott, and Tisch.

COUNT ONE: VIOLATION OF SECTION 8 OF THE CLAYTON ACT (REESE)

68. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth herein.

ANSWER: The Individual Defendants repeat their answers to the foregoing allegations as if fully set forth herein.

69. Section 8 of the Clayton Act, 15 U.S.C. § 19, prohibits a person from serving, at the same time, as a director or officer of two or more corporations, other than banks, banking associations, and trust companies if: (1) the combined capital, surplus and undivided profits of each of the corporations exceeds $10,000,000 (or as of January 13, 2009, $26,161,000); (2) each corporation is engaged in commerce; and, (3) the corporations are competitors. Sears and Jones Apparel meet these statutory requirements and none of the exemptions from Section 8 apply here.

ANSWER: Paragraph 69 of the Complaint purports to be a characterization of the law, to which no answer is required. If an answer were required, the Individual Defendants would respectfully refer the Court to Section 8 of the Clayton Act for its terms.

70. Reese currently serves as a director of both Sears and Jones Apparel and is in violation of Section 8 because:

a) Sears and Jones Apparel have each a combined capital, surplus and undivided profit exceeding $26,161,000.

b) Sears and Jones Apparel corporations are each engaged in commerce.

c) Sears and Jones Apparel are competitors, such that the elimination of competition by agreement between them would constitute a violation of any of the antitrust laws.

ANSWER: Paragraph 70 of the Complaint states a legal conclusion to which no answer is required. If an answer were required, the Individual Defendants would deny the allegations of paragraph 70 of the Complaint.

71. Pursuant to 15 U.S.C. § 26, Reese should be enjoined from continuing to serve on the boards of both companies, namely Sears and Jones Apparel.

ANSWER: Paragraph 71 of the Complaint states a legal conclusion to which no answer is required. If an answer were required, the Individual Defendants would deny the allegations of paragraph 71 of the Complaint.

72. The Court should also enjoin the Sears Board (as presently constituted and as it may be constituted in the future) from committing future violations of Section 8.

ANSWER: Paragraph 72 of the Complaint states a legal conclusion to which no answer is required. If an answer were required, the Individual Defendants would deny the allegations of paragraph 72 of the Complaint.

COUNT TWO: VIOLATION OF SECTION 8 OF THE CLAYTON ACT (CROWLEY)

73. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth herein.

ANSWER: The Individual Defendants repeat their answers to the foregoing allegations as if fully set forth herein.

74. Section 8 of the Clayton Act, 15 U.S.C. § 19, prohibits a person from serving, at the same time, as a director or officer of two or more corporations, other than banks, banking associations, and trust companies if: (1) the combined capital, surplus and undivided profits of each of the corporations exceeds $10,000,000 (or as of January 13, 2009, $26,161,000); (2) each corporation is engaged in commerce; and, (3) the corporations are competitors. Sears and Jones Apparel meet these statutory requirements and none of the exemptions from Section 8 apply here.

ANSWER: Paragraph 74 of the Complaint purports to be a characterization of the law, to which no answer is required. If an answer were required, the Individual Defendants would respectfully refer the Court to Section 8 of the Clayton Act for its terms.

75. Crowley currently serves as a director of Sears and AutoZone and AutoNation and is in violation of Section 8 because:

a) Sears, AutoZone and AutoNation have each a combined capital, surplus and undivided profit exceeding $26,161,000.

b) Sears, AutoZone and AutoNation are each engaged in commerce.

c) Sears and AutoZone are competitors, and Sears and AutoNation are competitors, such that the elimination of competition by agreement between Sears and AutoZone or Sears and AutoNation would constitute a violation of any of the antitrust laws.

ANSWER: Paragraph 75 of the Complaint states a legal conclusion to which no answer is required. If an answer were required, the Individual Defendants would deny the allegations of paragraph 75 of the Complaint.

76. Pursuant to 15 U.S.C. § 26, Crowley should be enjoined from continuing to serve on the board of Sears while he is still a member of the boards of AutoZone and AutoNation.

ANSWER: Paragraph 76 of the Complaint states a legal conclusion to which no answer is required. If an answer were required, the Individual Defendants would deny the allegations of paragraph 76 of the Complaint.

77. The Court should also enjoin the Board of Sears (as presently constituted or as it may be constituted in the future) from committing future violations of Section 8.

ANSWER: Paragraph 77 of the Complaint states a legal conclusion to which no answer is required. If an answer were required, the Individual Defendants would deny the allegations of paragraph 77 of the Complaint.

COUNT THREE: BREACH OF FIDUCIARY DUTY

78. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth herein.

ANSWER: The Individual Defendants repeat their answers to the foregoing allegations as if fully set forth herein.

79. As alleged herein, each of the Individual Defendants had a fiduciary duty to, among other things, exercise good faith to ensure that Sears was operated in a diligent, honest and prudent manner and complied with all applicable federal laws.

ANSWER: Paragraph 79 of the Complaint purports to be a characterization of the law to which no answer is required. If an answer were required, the Individual Defendants would respectfully refer the Court to the applicable law for purposes of determining the scope and content of any fiduciary duties.

80. The Individual Defendants knowingly or recklessly violated Section 8 when they nominated Reese and Crowley for re-election to the Sears Board and recommended that shareholders vote in favor of their re-election. In doing so, the Individual Defendants breached their fiduciary duties under Delaware law owed to Sears and its shareholders, namely, the duties of due care, good faith, candor, and loyalty.

ANSWER: The Individual Defendants deny the allegations of paragraph 80 of the Complaint.

81. Furthermore, despite their actual knowledge of the Company's improper business practices, the Individual Defendants have made no effort to correct the problems; thus, they abdicated their fiduciary duty of good faith.

ANSWER: The Individual Defendants deny the allegations of paragraph 81 of the Complaint.

82. As a direct and proximate result of the Individual Defendants' breaches of fiduciary duties, they have violated and caused the Company to violate, Section 8. The Sears Board should be enjoined from violating Section 8. The Court should issue an injunction requiring the Sears Board to remove Reese and Crowley from the Sears Board, or to otherwise cure the present violation of Section 8. The Court should also issue an injunction barring the Sears Board (as presently constituted and as it may be constituted in the future) from all future violations of Section 8.

ANSWER: The Individual Defendants deny the allegations of paragraph 82 of the Complaint.

ADDITIONAL DEFENSES

First Additional Defense

Plaintiffs lack standing to bring this suit derivatively due to a failure to make a pre-suit demand on the Sears Board or to plead particularized facts showing that demand is excused, as is required under Delaware law.

Second Additional Defense

As to all claims, plaintiffs have failed to state a claim for which relief can be granted.

Third Additional Defense

Plaintiffs lack standing to bring suit against the Individual Defendants for purported violations of the antitrust laws.

Fourth Additional Defense

Sears and Jones Apparel are not competitors within the scope of Section 8 of the Clayton Act, and/or the statutory de minimis exception(s) apply.

Fifth Additional Defense

Sears and AutoZone are not competitors within the scope of Section 8 of the Clayton Act, and/or the statutory de minimis exception(s) apply.

Sixth Additional Defense

Sears and AutoNation are not competitors within the scope of Section 8 of the Clayton Act, and/or the statutory de minimis exception(s) apply.

Seventh Additional Defense

The Individual Defendants' actions are protected by the business judgment rule.

Eighth Additional Defense

The Plaintiffs have not been damaged by the conduct complained hereof.

Ninth Additional Defense

Sears has not been damaged by the conduct complained hereof.

Tenth Additional Defense

At all relevant times, the Individual Defendants acted in good faith and on an informed basis.

Eleventh Additional Defense

Plaintiffs' claims are barred in whole or in part by the doctrines of waiver, estoppel, laches, ratification, unclean hands and/or other equitable doctrines.

Twelfth Additional Defense

No liability may be imposed upon any of the Individual Defendants pursuant to the provisions contained in the Sears Certificate of Incorporation adopted pursuant to Delaware General Corporation Law § 102(b)(7).

Additional Defenses Reserved

The Individual Defendants hereby give notice that they may rely on other defenses if and when such defenses become known during the course of litigation, and hereby reserve the right to amend their answer to assert any other defenses as become known or available.

PRAYER FOR RELIEF

WHEREFORE, the Individual Defendants pray for relief and judgment, as follows:

A. Determining that Plaintiffs lack standing to bring this suit derivatively for failure to make a pre-suit demand on the Sears Board or to plead particularized facts showing that demand is excused, as is required by Delaware law;

B. Entering judgment against Plaintiffs and in favor of the Individual Defendants with respect to all Counts in the Complaint;

C. Awarding the Individual Defendants their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

D. Such other and further relief as the Court may deem just and proper.

Dated: March 16, 2010

Respectfully submitted,

/s/ Christopher Q. King

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