

1 JOSEPH C. LIBURT (STATE BAR NO. 15507)
 jliburt@orrick.com
 2 ORRICK, HERRINGTON & SUTCLIFFE LLP
 1000 Marsh Road
 3 Menlo Park, CA 94025-1015
 Telephone: +1 650 614 7400
 4 Facsimile: +1 650 614 7401

5 KATIE E. BRISCOE (STATE BAR NO. 287629)
 kbriscoe@orrick.com
 6 ORRICK, HERRINGTON & SUTCLIFFE LLP
 400 Capitol Mall
 7 Suite 3000
 Sacramento, CA 95814-4497
 8 Telephone: +1 916 447 9200
 Facsimile: +1 916 329 4900

9 Attorneys for Defendant
 10 SEARS, ROEBUCK AND CO.

11 *[Plaintiff's Counsel Listed on Following Page]*

12 UNITED STATES DISTRICT COURT
 13 EASTERN DISTRICT OF CALIFORNIA
 14 SACRAMENTO DIVISION

16 JONATHAN HARVEY, an individual, on
 17 behalf of himself, and on behalf of all persons
 18 similarly situated,

19 Plaintiff,

20 v.

21 SEARS, ROEBUCK AND CO., a Corporation;
 and DOES 1 through 50, inclusive,

22 Defendant.

Case No. 2:17-cv-00614-MCE-CKD

**STIPULATION AND ORDER TO
 SUBMIT ACTION TO INDIVIDUAL
 ARBITRATION AND STAY ACTION**

Trial Date: n/a

Date Action Filed: February 6, 2017

1 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
Norman B. Blumenthal (State Bar #068687)
2 Kyle R. Nordrehaug (State Bar #205975)
Aparajit Bhowmik (State Bar #248066)
3 Victoria B. Rivapalacio (State Bar #275115)
Jeffrey S. Herman (State Bar #280058)
4 2255 Calle Clara
La Jolla, CA 92037
5 Telephone: (858)551-1233
Facsimile: (858)551-1232
6 Website: www.bamlawca.com

7 Attorneys for Plaintiff JONATHAN HARVEY, an
individual, on behalf of himself, and on behalf of all
8 persons similarly situated

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 STIPULATION

2 Plaintiff Jonathan Harvey (“Plaintiff”) and Defendant Sears, Roebuck and Co. (“Sears”)
3 (collectively, “the Parties”) by and through their attorneys of record hereby stipulate as follows:

4 WHEREAS, on September 29, 2014, Plaintiff accepted Sears’ Arbitration Agreement and
5 did not timely opt out.

6 WHEREAS, on February 6, 2017, Plaintiff Jonathan Harvey, individually and purportedly
7 on behalf of all others similarly situated, filed a Complaint against Sears in the Superior Court of
8 California for the County of Sacramento, entitled “*Jonathan Harvey, individually and on behalf*
9 *of all other aggrieved employees and others similarly situated, v. Sears, Roebuck and Co., a*
10 *Corporation; and DOES 1 through 50, inclusive*”, Case No. 34-2017-00207556 (the “Action”).
11 The Complaint asserts causes of action on a class-wide basis for: (1) unfair competition in
12 violation of California Business and Professions Code sections 17200, *et seq.*; (2) failure to pay
13 overtime compensation in violation of California Labor Code sections 510, 1194, and 1198 *et*
14 *seq.*; and (3) failure to provide wages when due in violation of California Labor Code
15 sections 201, 202, and 203.

16 WHEREAS, on March 23, 2017, Sears timely removed the Action to this Court.

17 WHEREAS, on April 3, 2017, Sears filed a Notice of Motion and Motion to Compel
18 Arbitration and Dismiss or Stay Action (“Motion”), requesting that the court compel individual
19 arbitration of the entire action.

20 WHEREAS, Plaintiff filed his opposition to the Motion on May 4, 2017, and Sears filed
21 its reply brief in support of the Motion on May 11, 2017.

22 WHEREAS, on August 23, 2017, the Court issued a minute order staying the Action
23 pending the Supreme Court’s ruling in *NLRB v. Murphy Oil USA, Inc.*, No. 16-307 (consolidated
24 with *Epic Systems Corp. v. Lewis*, No. 16-285 and *Ernst & Young v. Morris*, No. 16-300)
25 (“*Murphy Oil*”), and permitting Sears to renew its Motion once the stay had been lifted.

26 WHEREAS, on May 21, 2018, the U.S. Supreme Court issued its ruling in *Murphy Oil*,
27 affirming the validity and enforceability of class action waivers in employment arbitration
28 agreements. *See Epic Systems Corp. v. Lewis*, --- S.Ct. ---, 2018 WL 2292444 (2018).

1 WHEREAS, Plaintiff has now stipulated to submit his Complaint and all of his causes of
2 action in the Complaint to binding individual arbitration before the Judicial Arbitration and
3 Mediation Services (“JAMS”);

4 ACCORDINGLY, IT IS HEREBY STIPULATED AND AGREED, by and between
5 Plaintiff and Sears by and through their respective undersigned counsel, that:

6 1. Plaintiff will submit the Action to binding individual arbitration before a mutually
7 agreed upon arbitrator at JAMS, in accordance with the parties’ Arbitration Agreement.

8 2. Plaintiff’s individual claims shall be stayed pending the outcome of arbitration, so
9 that either party may confirm an individual arbitration award in accordance with applicable laws.

10 **IT IS SO STIPULATED.**

11 Dated: June 12, 2018

Orrick, Herrington & Sutcliffe LLP

12
13 By: /s/ Katie E. Briscoe

14 JOSEPH C. LIBURT
15 KATIE E. BRISCOE
16 Attorneys for Defendant
17 SEARS, ROEBUCK AND CO.

18 Dated: June 12, 2018

Blumenthal Nordrehaug Bhowmik De Blouw LLP

19 By: /s/ Jeffrey S. Herman, as authorized 6/12/18

20 NORMAN B. BLUMENTHAL
21 KYLE R. NORDREHAUG
22 APARAJIT BHOWMIK
23 VICTORIA B. RIVAPALACIO
24 JEFFREY S. HERMAN
25 Attorneys for Plaintiff
26 JONATHAN HARVEY
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


ORDER

The parties having stipulated to individual arbitration of the Action, it is **ORDERED** that the Action be arbitrated on an individual basis, and further **ORDERED** that Plaintiff's individual claims in this Action be and hereby are STAYED pending the outcome of arbitration.

The parties are ordered to file a Joint Status Report every sixty (60) days, beginning with the date of electronic filing of this Order, addressing the status of arbitration proceedings.

IT IS SO ORDERED.

Dated: June 13, 2018


MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE