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14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA
 16 SAN FRANCISCO/OAKLAND DIVISION
 17

18 PATRICK RODRIGUEZ, as an individual
 and on behalf of all others similarly
 19 situated,

20 Plaintiff

21 vs.

22 SEARS ROEBUCK AND
 CO., a corporation; and DOES 1 through
 23 100, inclusive,

24 Defendants

Case No. 3:10-cv-01268-SC

**STIPULATION AND [PROPOSED]
 ORDER WITHDRAWING MOTION TO
 DISMISS, LIFTING STAY AND
 DISMISSING ACTION WITH
 PREJUDICE**

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1 **STIPULATION**

2 WHEREAS, Patrick Rodriguez (“Rodriguez”) worked as an Assistant Store Manager for
3 Sears, Roebuck & Co. (“Sears”) in Oakland, California, from 2008 until January 11, 2010.

4 WHEREAS, on January 25, 2010, Rodriguez and his wife filed for Chapter 7 bankruptcy
5 (“Bankruptcy Case”) in the United States Bankruptcy Court in the Northern District of California
6 (“Bankruptcy Court”).

7 WHEREAS, on January 26, 2010, the Bankruptcy Court appointed a Bankruptcy Trustee
8 and set a meeting of creditors for February 24, 2010, in Oakland, California.

9 WHEREAS, on February 11, 2010, Rodriguez filed the instant wage-and-hour class action
10 against Sears and Sears Holdings Corp. in the Superior Court of California, County of Alameda,
11 arising from his former employment (“the Action”). In his complaint, Rodriguez alleged: (1)
12 failure to pay overtime wages, (2) failure to allow and pay for meal and rest periods, (3) failure to
13 pay compensation upon discharge, (4) failure to provide proper wage statements, and (5) violation
14 of California Business and Professions Code §§ 17200-17208.

15 WHEREAS, on February 24, 2010, Rodriguez attended the required meeting of creditors.
16 *See* 11 U.S.C. § 341 (a).

17 WHEREAS, on March 25, 2010, Sears and Sears Holdings Corp. removed this Action to
18 this Court in the Northern District of California.

19 WHEREAS, on April 27, 2010, the Bankruptcy Court granted an Order Discharging
20 Debtor and Final Decree. The Bankruptcy Court closed Rodriguez’s Bankruptcy Case on May 7,
21 2010.

22 WHEREAS, Rodriguez did not disclose any potential claims against Sears and/or Sears
23 Holdings Corp. and did not disclose this Action to the Bankruptcy Court prior to closing his
24 Bankruptcy Case on May 7, 2010.

25 WHEREAS, on May 25, 2010, Rodriguez, on the one hand, and Sears and Sears Holdings
26 Corp. stipulated for Rodriguez to file a First Amended Complaint.

27 WHEREAS, on June 28, 2010, Sears and Sears Holdings Corp. filed a Motion to Dismiss
28 and Strike the First Amended Complaint.

1 WHEREAS, on July 16, 2010, Rodriguez and Sears stipulated for Rodriguez to dismiss
2 Sears Holdings Corp. as a defendant and file a Second Amended Complaint.

3 WHEREAS on September 3, 2010, Sears filed a motion for summary judgment on the
4 grounds that Rodriguez had no standing to pursue his claims alleged in the Second Amended
5 Complaint, and that he was judicially estopped from asserting his claims as the result of his failure
6 to disclose them in his Bankruptcy Case.

7 WHEREAS, on September 16, 2010, Rodriguez moved to reopen his Bankruptcy Case to
8 amend his petition to list this Action.

9 WHEREAS, on October 5, 2010, this Court stayed this Action pending resolution of
10 Rodriguez's efforts in Bankruptcy Court.

11 WHEREAS, on November 8, 2010, the Bankruptcy Court granted Rodriguez's motion to
12 reopen his Bankruptcy Case and on November 19, 2010, the Bankruptcy Court appointed a
13 Trustee.

14 WHEREAS, on April 13, 2011, the Trustee moved for approval of sale and compromise to
15 sell any and all claims against Sears, which Rodriguez had or could have against Sears as of the
16 commencement of the Bankruptcy Case, including this Action ("Claims Against Sears").

17 WHEREAS, on April 13, 2011, the Trustee provided notice of the proposed sale and
18 compromise such that any party in interest who wished to object must have filed and served a
19 written objection no later than 21 days from the date of the notice.

20 WHEREAS, on May 6, 2011, the Trustee declared that no objection was filed.

21 WHEREAS, on May 10, 2011, the Bankruptcy Court granted the Trustee's motion, and
22 approved the sale and compromise to sell Rodriguez's Claims Against Sears to Sears for the
23 purchase price of \$27,000. *See* Exhibit A attached.

24 WHEREAS, on June 1, 2011, the Trustee acknowledged that he received \$27,000 of cash
25 consideration, and transferred, assigned and conveyed to Sears the Claims Against Sears. *See*
26 Exhibit B attached.

27 WHEREAS, Rodriguez's potential claims against Sears in this Action now belong to Sears.

28 WHEREAS, on July 7, 2011, Sears filed a Request to Lift Stay, Motion to Dismiss or in the

1 Alternative Amended Motion for Summary Judgment, and Motion for Attorney's Fees and Costs
2 ("Motion to Lift Stay and Dismiss").

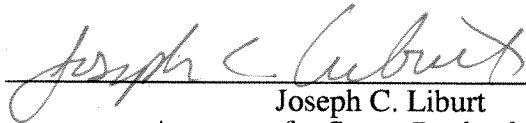
3 WHEREAS, the parties have further met and conferred and agreed that this Action must be
4 dismissed.

5 NOW, THEREFORE, IT IS HEREBY STIPULATED as follows:

- 6 1. Sears withdraws its Motion to Lift Stay and Dismiss;
- 7 2. The proceedings in the Bankruptcy Court having now terminated, this Court's stay
8 which was for the purpose of allowing the Bankruptcy Court proceedings to play out, should be
9 lifted.
- 10 3. This Action be dismissed in entirety pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii),
11 with prejudice as to Rodriguez's individual claims, Rodriguez and Sears to bear their own fees and
12 costs, respectively.

13 Dated: July 31, 2011

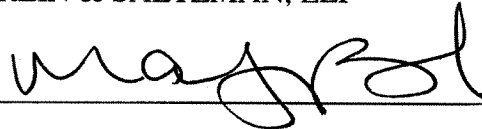
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21 Dated: July 31, 2011

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ORDER

THE COURT, having received and considered Rodriguez's and Sears' stipulation to lift the Court's stay entered on October 5, 2010, and dismiss the Action in entirety, with prejudice as to Rodriguez's individual claims, and finding good cause appearing therefore,

IT IS HEREBY ORDERED that the Action is dismissed, and Rodriguez's individual claims are dismissed with prejudice. Rodriguez and Sears are to bear their own fees and costs, respectively.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: 8/2/11

