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13 **UNITED STATES DISTRICT COURT**
 14 **NORTHERN DISTRICT OF CALIFORNIA**

15 MARTIN MURRAY, individually, on
 16 behalf of the General Public and on
 behalf of all others similarly situated,

17 Plaintiff(s),

18 v.

19 SEARS, ROEBUCK AND CO., a
 20 corporation; ELECTROLUX HOME
 PRODUCTS, INC., a corporation;
 21 DOES 1-100,

22 Defendants.

Case No. 4:09-cv-05744-CW

Class Action

DEFENDANTS' RESPONSE TO PLAINTIFF'S
 NOTICE AND REQUEST FOR RULING ON
 PENDING DISCOVERY MATTERS

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2 Defendants Sears, Roebuck and Co. and Electrolux Home Products, Inc. (collectively,
3 “Defendants”) hereby state as follows in response to Plaintiff’s Notice and Request for Ruling on
4 Pending Discovery Matters (Dkt. 121):

5 1. In the middle of the Labor Day holiday weekend, on Sunday September 5, 2010,
6 counsel for Plaintiff Martin Murray (“Plaintiff”) sent to Defendants a draft “Joint Notice and Request
7 for Ruling on Pending Discovery Matters” and requested that Defendants consent to filing the notice
8 no later than 2:00 p.m. PDT on September 8, 2010. Plaintiff’s proposed notice informed Magistrate
9 Judge James that the stay previously imposed in this case had been lifted and requested that she rule on
10 certain pending discovery motions (Dkt. 82-85).

11 2. Defendants replied to Plaintiff’s request on September 8, 2010, and informed Plaintiff
12 that while Defendants had no objection to notifying Magistrate Judge James that the stay had been
13 lifted and would work with Plaintiff to finalize a joint notice agreeable to all parties, Defendants also
14 believed that it would make logical sense to request that Magistrate Judge James continue to hold the
15 previously filed discovery motions in abeyance until after the initial Case Management Conference
16 (“CMC”) with Judge Wilken on September 14, 2010.

17 3. Defendants’ primary objections to Plaintiff’s discovery requests were both the stay and
18 the scope of discovery. Specifically, and consistent with authority in this and other circuits,
19 Defendants have proposed bifurcating discovery so that class discovery is addressed before merits
20 discovery. See, e.g., Armstrong v. Davis, 275 F.3d 849, 872 n.28 (9th Cir. 2001) (the district court
21 “may limit [] discovery to class certification issues”). Plaintiff, however, does not agree that
22 discovery should be bifurcated, and therefore, Defendants’ objection to the scope of discovery remains
23 an issue. Defendants expect to address the issue of bifurcation at the CMC before Judge Wilken next
24 Tuesday. Judge Wilken’s decision regarding bifurcation will, in turn, affect the parties’ discovery
25 disputes and almost certainly necessitate that the parties meet and confer again to discuss
26 any remaining areas of disagreement.

27 4. Accordingly, Defendants suggested to Plaintiff that it would be in the interest of
28 efficiency and economy to allow Judge Wilken to make a decision regarding bifurcation and further to

1 allow the parties to meet and confer in light of Judge Wilken's decision prior to requesting that
2 Magistrate Judge James rule on the pending discovery motions filed by Plaintiff.

3 5. Plaintiff, rather than working cooperatively with Defendants or taking the course that
4 will most efficiently use the parties' and the Court's resources, decided to unilaterally file his Notice
5 and Request for Ruling on Pending Discovery Matters and request that Magistrate Judge James
6 immediately rule upon the pending discovery motions.

7 6. Defendants, however, continue to believe that it makes logical sense and will be far
8 more efficient if the previously filed discovery motions are held in abeyance until after the CMC with
9 Judge Wilken next Tuesday and pending further meet and confer efforts between the parties.

10 WHEREFORE, Defendants respectfully request that the pending discovery motions (Dkt. 82-
11 85) be held in abeyance until after the CMC before Judge Wilken on Tuesday, September 14, 2010 and
12 after further meet and confer efforts between the parties following Judge Wilken's guidance on the
13 question of bifurcation of discovery.

14
15 Respectfully submitted,

16 Dated: September 9, 2010

/s/Philip M. Oliss

Attorney for Defendant
SEARS, ROEBUCK AND CO.

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Respectfully submitted,

Dated: September 9, 2010

/s/ Kathleen P. Lally
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