

1 Mark Boling, State Bar No. 101589  
 2 maboling@earthlink.net  
 3 21986 Cayuga Lane  
 4 Lake Forest, CA 92630  
 (949) 588-9222  
 (949) 588-7078 [fax]

5 Clinton A. Krislov / Eve-Lynn Rapp  
 6 (Admitted Pro Hac Vice)  
 7 clint@krislovlaw.com / eve@krislovlaw.com  
 8 KRISLOV & ASSOCIATES, LTD.  
 9 20 N. Wacker, Ste. 1350  
 10 Civic Opera House  
 Chicago, Illinois 60606  
 (312) 606-0500  
 (312) 606-0207 [fax]

11 Attorneys for Plaintiff

12 OTHER PARTIES' COUNSEL  
13 SHOWN ON SIGNATURE PAGE

14  
 15 **UNITED STATES DISTRICT COURT**  
 16 **NORTHERN DISTRICT OF CALIFORNIA**  
 17 **OAKLAND DIVISION**

18 MARTIN MURRAY, et al.  
 19 Plaintiff(s),  
 20 v.  
 21 SEARS, ROEBUCK AND CO., et al.  
 22 Defendants.

Case No. C-09-5744-CW  
 Class Action

STIPULATED REQUEST FOR ORDER  
 SETTING CASE MANAGEMENT  
 CONFERENCE AND ORDER

Civil Local Rule 16-10(c), (d)

25 //

1           WHEREAS, on December 7, 2009, this action was removed from California state court to  
2 this Court.

3           WHEREAS, on May 11, 2010, this Court issued a Minute Order granting Defendants'  
4 Motion to Stay Proceedings as to discovery [Dkt. 87].

5           WHEREAS, on July 21, 2010, this Court granted Defendants' Motion to Strike Class Action  
6 Allegations and granted Plaintiff leave to amend his complaint [Dkt. 104].

7           WHEREAS, on July 28, 2010, Plaintiff filed a First Amended Complaint [Dkt. 106].

8           WHEREAS, on September 3, 2010, this Court denied Defendants' Motion to Strike Class  
9 Allegations from Plaintiff's First Amended Complaint, and lifted the stay on discovery allowing  
10 Plaintiff to commence discovery on his class claims [Dkt 120].

11           WHEREAS, on September 14, 2010, a Case Management Conference was held and  
12 thereafter an Order was issued scheduling, *inter alia*, the completion of class discovery by April 29,  
13 2011 and briefing/hearing schedule for Plaintiff's anticipated Motion for Class Certification with the  
14 next Case Management Conference scheduled for July 28, 2011 at 2:00 p.m. in Courtroom 2 of the  
15 above-entitled Court [Dkt. 126]. At the CMC hearing, the Court further scheduled the designation of  
16 experts for class certification by February 18, 2011.

17           WHEREAS, on November 2, 2010, the United States Court of Appeals for the Seventh  
18 Circuit reversed the ruling of the United States District Court for the Northern District of Illinois in  
19 *Thorogood v. Sears Roebuck & Co.* regarding a motion for a permanent injunction and remanded the  
20 case to the district court with instructions to issue an injunction. *Thorogood v. Sears, Roebuck &*  
21 *Co.*, Case No. 10-2407 (7th Cir. Nov. 2, 2010) (*Thorogood III*). A true and correct copy of the  
22 appellate decision was filed by Sears in this case on November 3, 2010 [Dkt 129-1]. (Judicial Notice  
23 is also requested under FRE 201 as a judicial record.) In so doing, the Seventh Circuit effectively  
24 reversed this District Court's denial of Defendants' Motion to Strike Class Allegations in the First  
25 Amended Complaint in the *Murray* case.

26           WHEREAS, on November 16, 2010, Plaintiff Thorogood filed a Petition for Rehearing (no  
27 initial hearing was held), with suggestion for rehearing *en banc* in *Thorogood III*.

1 WHEREAS, on December 2, 2010, the United States Court of Appeals for the Seventh  
2 Circuit denied Plaintiff Thorogood's Petition for Rehearing in *Thorogood III*. A true and correct  
3 copy of the appellate order was filed by Sears in this case on December 3, 2010 [Dkt 131-1].  
4 (Judicial Notice is also requested under FRE 201 as a judicial record.)

5 WHEREAS, pursuant to Civil Local Rule 16-10(c), Plaintiff hereby requests the Court to  
6 schedule a further Case Management Conference for January 25, 2011, with a Joint Case  
7 Management Conference Statement to be submitted by January 18, 2011 pursuant to Civil Local  
8 Rule 16-10(d). The purpose of such conference would be to discuss and seek the Court's guidance  
9 with respect to the status of this case in light of the ruling in *Thorogood III* and the injunction to be  
10 issued by the United States District Court for the Northern District of Illinois. Defendants do not  
11 object to that request.

12 **STIPULATION**

13 NOW, THEREFORE, the parties hereby stipulate, by and through their undersigned attorneys  
14 of record, to an Order of the Court that:

- 15 1. The next Case Management Conference in this action shall be held on January 25,  
16 2011 at 2:00 p.m. in Courtroom 2 of the above-entitled Court;
- 17 2. The parties shall file a Joint Case Management Statement no fewer than 7 days before  
18 the Case Management Conference.

19 Dated: December 20, 2010

/s/ Mark Boling  
Mark Boling  
Attorneys for Plaintiff  
MARTIN MURRAY

22 LAW OFFICE OF MARK BOLING  
23 Mark Boling, State Bar No. 101589  
maboling@earthlink.net  
24 21986 Cayuga Lane  
Lake Forest, California 92630  
25 Telephone: (949) 588-9222  
26 Facsimile: (949) 588-7078

KRISLOV & ASSOCIATES, LTD.  
Clinton A. Krislov / Eve-Lynn Rapp  
(Pro Hac Vice)  
clint@krislovlaw.com / eve@krislovlaw.com  
20 North Wacker Drive, Suite 1350  
Chicago, Illinois 60606  
Telephone: (312) 606-0500  
Facsimile: (312) 606-0207

1 Dated: December 20, 2010

/s/ Philip M. Oliss  
Philip M. Oliss  
Attorneys for Defendant  
SEARS, ROEBUCK AND CO.

2  
3 SQUIRE, SANDERS & DEMPSEY L.L.P.  
4 Mark C. Dosker (CA Bar # 114789) /  
5 Julie E. Schwartz (CA Bar #260624)  
6 mdosker@ssd.com / jeschwartz@ssd.com  
7 275 Battery Street, Suite 2600  
8 San Francisco, California 94111  
9 Telephone: (415) 954-0200  
10 Facsimile: (415) 393-9887

SQUIRE, SANDERS & DEMPSEY L.L.P.  
Philip M. Oliss (OH Bar #0066528)  
poliss@ssd.com  
4900 Key Tower  
127 Public Square  
Cleveland, OH 44114  
Telephone: (216) 479-8500  
Facsimile: (216) 479-8780

11 Dated: December 20, 2010

/s/ Mark S. Mester  
Mark S. Mester  
Attorneys for Defendant  
ELECTROLUX HOME PRODUCTS, INC.

12 LATHAM & WATKINS LLP  
13 Darius Ogloza / Heather Thompson  
14 darius.ogloza@lw.com /  
15 heather.thompson@lw.com  
16 505 Montgomery Street, Suite 2000  
17 San Francisco, California 94111-6538  
18 Telephone: (415) 391-0600  
19 Facsimile: (415) 395-8095

LATHAM & WATKINS LLP  
Mark S. Mester / Livia M. Kiser (*Pro Hac Vice*)  
mark.mester@lw.com / livia.kiser@lw.com  
233 South Wacker Drive, Suite 5800  
Chicago, Illinois 60606  
Telephone: (312) 876-7700  
Facsimile: (312) 993-9767

20 **ORDER**

21 PURSUANT TO STIPULATION, IT IS SO ORDERED.

22 Dated: 12/20/2010

  
United States District Judge