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Attorneys for Defendant
KMART CORPORATION

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

MICHAEL GILHULY, individually,
and on behalf of all others similarly
situated,

Plaintiffs,

vs.

KMART CORPORATION, and DOES
1 through 100, inclusive,

Defendants

Case No. 4:10-cv-0360-PJH

CLASS ACTION

**STIPULATION AND [PROPOSED] ORDER
VACATING REFERRAL TO COURT
CONNECTED MEDIATION AND
ASSIGNMENT TO PRIVATE MEDIATION**

Date: May 6, 2010

Time: 2:00 p.m.

Dept.: Courtroom 3, 3rd Floor

Judge: Hon. Phyllis J. Hamilton

1 **WHEREAS** this Stipulation is entered into between Representative Plaintiff Michael Gilhuly
2 (“Plaintiff”) and Defendant KMART Corporation (“Defendant”), by and through their respective
3 counsel of record;

4 **WHEREAS** on May 6, 2010 the Court held an Initial Case Management Conference in this
5 case and informed the parties that the case has been assigned to the Court ADR Program for
6 mediation;

7 **WHEREAS** the parties had previously reached an agreement to seek private mediation;

8 **WHEREAS** the parties respectfully request that the Court enter an order in accordance with
9 this Stipulation to vacate the Court's referral to the Court ADR program and to allow the parties to
10 proceed with private mediation.

11 Accordingly, **IT IS HEREBY STIPULATED AND AGREED** by the parties through their
12 respective counsel of record to VACATE the Court's referral of this case to the Court ADR program
13 and to allow the parties to proceed with a private mediation.

14
15 Dated: May 28, 2010

SCOTT COLE & ASSOCIATES, APC

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18 By: /s/ Matthew R. Bainer
19 Matthew R. Bainer, Esq.
Attorneys for the Representative Plaintiff
and the Plaintiff Class

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21 Dated: May 28, 2010

SONNENSCHN NATH & ROSENTHAL LLP

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24 By: /s/ Gayle M. Athanacio
25 Gayle M. Athanacio, Esq.
Attorneys for Defendant
KMART CORPORATION

[PROPOSED] ORDER

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

Dated: June 7, 2010

By:

HON. PHYLLIS J. HAMILTON
Judge

