

SCOTT COLE & ASSOCIATES, APC  
ATTORNEYS AT LAW  
THE WACHOVIA TOWER  
1970 BROADWAY, NINTH FLOOR  
OAKLAND, CA 94612  
TEL: (510) 891-9800

1 Matthew R. Bainer, Esq. (S.B. #220972)  
Molly A. DeSario, Esq. (S.B. #230763)  
2 **SCOTT COLE & ASSOCIATES, APC**  
1970 Broadway, Ninth Floor  
3 Oakland, California 94612  
Telephone: (510) 891-9800  
4 Facsimile: (510) 891-7030  
mbainer@scalaw.com  
5 mdesario@scalaw.com  
Web: [www.scalaw.com](http://www.scalaw.com)

6 Attorneys for Representative Plaintiff  
7 and the Plaintiff Class

8 Gayle M. Athanacio (S.B. #130068)  
Virginia K. Young (S.B. #174384)  
9 Sharon Rossi (S.B. # 232725)  
**SNR DENTON US LLP**  
10 525 Market Street, 26th Floor  
San Francisco, California 94105  
11 Telephone: (415) 882-5000  
Facsimile: (415) 882-0300  
12 gayle.athanacio@snrdenton.com  
virginia.young@snrdenton.com  
13 sharon.rossi@snrdenton.com

14 Attorneys for Defendant  
15 **KMART CORPORATION**

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

18  
19 MICHAEL GILHULY, individually, ) **Case No. 4:10-cv-0360-PJH**  
and on behalf of all others similarly )  
20 situated, ) **CLASS ACTION**  
)  
21 Plaintiffs, ) **STIPULATION AND [PROPOSED] ORDER**  
) **CONTINUING CLASS CERTIFICATION**  
22 vs. ) **BRIEFING SCHEDULE AS MODIFIED**  
)  
23 KMART CORPORATION, and DOES )  
1 through 100, inclusive, ) **Date: Not Applicable**  
) **Time: Not Applicable**  
24 Defendants ) **Dept.: Courtroom 3, 3rd Floor**  
25 ) **Judge: Hon. Phyllis J. Hamilton**

26  
27 Plaintiff Michael Gilhuly (“Plaintiff”) and Defendant Kmart Corporation (“Defendant”), by  
28 and through their respective counsel of record named herein, hereby stipulate as follows:

1         **WHEREAS**, prior to the May 6, 2010 Initial Case Management Conference, the parties  
2 agreed to attend private mediation;

3         **WHEREAS**, this Court set the following deadlines regarding class certification at the May 6,  
4 2010 Initial Case Management Conference: discovery regarding class certification, May 6, 2011;  
5 Motion for Class Certification, August 1, 2011; Opposition to the Motion for Class Certification,  
6 September 14, 2011; Reply to Motion for Class Certification, October 5, 2011; and, the hearing on  
7 the Motion for Class Certification, October 26, 2011 at 9:00 a.m. (*see Dckt No. 20*);

8         **WHEREAS**, the parties intended to complete the mediation session by October 4, 2010 (*see*  
9 *Dckt. No. 25*);

10        **WHEREAS**, the parties informally agreed to postpone resolution of outstanding discovery  
11 disputes until after the mediation session;

12        **WHEREAS**, unforeseen circumstances delayed the mediation session until January 7, 2011;

13        **WHEREAS**, the parties failed to resolve this matter at the January 7, 2011 mediation session  
14 or during approximately two months of subsequent negotiations;

15        **WHEREAS**, there have been no prior modifications to the class certification briefing  
16 schedule or the class certification discovery cutoff date; and

17        **WHEREAS**, the parties have not yet completed class certification related discovery;

18        **THEREFORE**, the parties, through their undersigned respective counsel, stipulate and  
19 request that the Court hereby continue the class certification briefing schedule as follows:

- 20        • Motion for Class Certification due:    January 11, 2012;
- 21        • Opposition to Motion for Class Certification due:                            February 24, 2012;
- 22        • Reply to Opposition to Motion for Class Certification due:                   March 16, 2012; and
- 23        • Class Certification Discovery Cutoff Date:                                     March 15, 2012.
- 24        • Hearing on Motion for Class Certification:                                     *To be set by the Court*

25  
26 **IT IS SO STIPULATED.**

27  
28

SCOTT COLE & ASSOCIATES, APC  
ATTORNEYS AT LAW  
THE WACHOVIA TOWER  
1970 BROADWAY, NINTH FLOOR  
OAKLAND, CA 94612  
TEL: (510) 891-9800

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

Dated: May 6, 2011

**SCOTT COLE & ASSOCIATES, APC**

By: /s/ Molly A. DeSario  
Molly A. DeSario, Esq.  
Attorneys for Representative Plaintiff  
and the Plaintiff Class

Dated: May 6, 2011

**SNR DENTON US LLP**

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

SCOTT COLE & ASSOCIATES, APC  
ATTORNEYS AT LAW  
THE WACHOVIA TOWER  
1970 BROADWAY, NINTH FLOOR  
OAKLAND, CA 94612  
TEL: (510) 891-9800

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

**[PROPOSED] ORDER**

**IT IS HEREBY ORDERED** that:

The Class Certification briefing schedule is hereby continued as follows:

- Motion for Class Certification due: January 11, 2012;  
22
- Opposition to Motion for Class Certification due: February ~~24~~, 2012;  
14
- Reply to Opposition to Motion for Class Certification due: March ~~16~~, 2012;
- Class Certification Discovery Cutoff Date: March 15, 2012; and,
- Hearing on Motion for Class Certification: April 11, 2012

For good cause shown, **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

Dated: May 10, 2011

