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14 **KMART CORPORATION**

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

18
19 MICHAEL GILHULY, individually,) **Case No. 4:10-cv-0360-PJH (DMR)**
and on behalf of all others similarly)
20 situated,) **CLASS ACTION**
)
21 Plaintiff,) **STIPULATION AND [~~PROPOSED~~] ORDER**
) **GRANTING LEAVE TO FILE FIRST**
22 vs.) **AMENDED COMPLAINT**
)
23 KMART CORPORATION., and)
DOES 1 through 100, inclusive,)
)
24 Defendants.)
25 _____)

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

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1 WHEREAS, Plaintiff has filed a Motion For Leave to File First Amended Complaint
2 “(Motion For Leave”) which would add a claim under the Private Attorney General Act, but
3 otherwise is based upon the exact same parties, claims, and time period as contained in Plaintiff’s
4 operative complaint;

5 WHEREAS, Plaintiff has requested that Defendant stipulate to the filing of the proposed
6 First Amended Complaint attached to Plaintiff’s Motion For Leave as Exhibit A;

7 WHEREAS, Defendant has agreed to stipulate to the filing of the First Amended Complaint
8 with the express understanding that by so stipulating, Defendant does not waive any argument, right
9 or defense with regard to the allegations and claims asserted in the First Amended Complaint;

10 **WHEREFORE, IT IS STIPULATED AND AGREED:**

- 11 1. Plaintiff may file and serve his First Amended Complaint, a copy of which is set
12 forth as **Exhibit A**, hereto.
- 13 2. In accordance with Federal Rule of Civil Procedure 15(a)(3), Defendant shall
14 have 14 days from the service of Plaintiff’s First Amended Complaint in which to
15 file its response to Plaintiff’s First Amended Complaint. This Stipulation will not
16 limit in any manner whatsoever Defendant’s ability to raise defenses or file
17 motions regarding the content of the First Amended Complaint.

18 **IT IS SO STIPULATED.**

19
20 Dated: January 19, 2012

SCOTT COLE & ASSOCIATES, APC

21
22 By: /s/ Molly A. DeSario
23 Molly A. DeSario, Esq.
Attorneys for the Plaintiff

24 Dated: January 19, 2012

ROGERS JOSEPH O’DONNELL

25
26 By: /s/ Gayle M. Athanacio
27 Gayle M. Athanacio, Esq.
28 Attorneys for Defendant
Kmart Corporation

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PROPOSED ORDER

**UPON GOOD CAUSE APPEARING, AND PURSUANT TO THE STIPULATION
BETWEEN PARTIES, THE COURT HEREBY ORDERS AS FOLLOWS:**

1. Plaintiff may file and serve his First Amended Complaint, a copy of which is set forth as **Exhibit A**, hereto.
2. Defendant shall have 14 days from service of the First Amended Complaint in which to file its response to Plaintiff's First Amended Complaint. This Order does not limit in any manner whatsoever Defendant's ability to raise defenses or file motions regarding the content of the First Amended Complaint.

IT IS SO ORDERED.

Dated: 1/23/12

Honorable Phyllis J. Hamilton
United States District Court

