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13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA

15
16 STACEY PIERCE-NUNES, *et al.*, on
behalf of herself and all others similarly
17 situated,

18 Plaintiff,

19 v.

20 TOSHIBA AMERICA
INFORMATION SYSTEMS, INC.,

21 Defendant.
22

Case No. 2:14-cv-07242-DMG (KSx)

Hon. Judge Dolly M. Gee

**JOINT STIPULATION
REQUESTING DISMISSAL
PURSUANT TO FED. R. CIV. P.
41(A)(2)**

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JOINT STIPULATION

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2 Plaintiff Aurelio Diaz, on the one hand (“Plaintiff”), and Defendant Toshiba
3 America Information Systems, Inc., Toshiba Corporation, and Toshiba Lifestyle
4 Services Corporation, on the other hand (collectively, “Defendants,” and together
5 with Plaintiff, “the Parties”), hereby submit this Joint Stipulation Requesting
6 Dismissal pursuant to Rule 41(a)(2). This Joint Stipulation is based on the
7 following facts:

8 1. Rule 41(a)(2) provides that “an action may be dismissed at the
9 plaintiff’s request only by court order, on terms that the court considers proper.”

10 2. On June 23, 2016, this Court denied Plaintiff’s motion for class
11 certification, and, in so doing, furthermore indicated that “Diaz has failed to provide
12 any evidence that he *relied* on Defendants’ advertising and product packaging when
13 he decided to purchase an LED TV.” ECF No. 205 at 9.

14 3. The Court’s certification ruling makes it impracticable for the case to
15 proceed forward on an individual basis. In light of the Court’s finding above,
16 Defendants have indicated a desire to move for summary judgment as to Plaintiff
17 Diaz’s individual claim. Meanwhile, Plaintiff desires to appeal the certification
18 ruling, which a dismissal will help effectuate without forcing the Parties to continue
19 litigating Plaintiff’s individual claim, and forcing the Court to adjudicate it.

20 4. In addition, an appeal of the certification decision in this case has
21 bearing on a related case, *Martinez v. Toshiba America Information Systems, Inc.*,
22 No. 16-cv-2551, currently pending before this Court. Concurrent with this Joint
23 Stipulation, the Parties in *Martinez* are also submitting a joint stipulation to stay that
24 action, pending the outcome of any appeal in the *Pierce-Nunes* action. This Joint
25 Stipulation is contingent upon entry of an order approving the stay in *Martinez*.

26 5. Accordingly, the Parties hereby stipulate and request from the Court an
27 order dismissing Plaintiff Diaz’s case with prejudice, with each side to bear its costs
28 and attorneys’ fees.

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DATED: September 7, 2016

RESPECTFULLY SUBMITTED,

By: /s/ Gilbert S. Lee

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Attorneys for Plaintiff and the proposed classes

1 Dated: September 7, 2016

By: /s/ Sean A. Commons

2 Sean A. Commons

3 SIDLEY AUSTIN LLP

Theodore R. Scarborough (*pro hac vice*)

4 Sean A. Commons

Amanda R. Farfel

5
6 Attorneys for Defendants

7
8 **ATTESTATION**

9 Pursuant to L.R. 5-4.3.4, I hereby attest that all other signatories listed, and on
10 whose behalf the filing is submitted, concur in the filing's content and have
11 authorized the filing.
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13
14 /s/ Gilbert S. Lee

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

STACEY PIERCE-NUNES, *et al.*, on
behalf of herself and all others similarly
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Plaintiff,

v.

TOSHIBA AMERICA
INFORMATION SYSTEMS, INC.,

Defendant.

Case No. 2:14-cv-07242-DMG (KSx)

Hon. Judge Dolly M. Gee

**[PROPOSED] ORDER
APPROVING JOINT
STIPULATION REQUESTING
DISMISSAL PURSUANT TO FED.
R. CIV. P. 41(A)(2)**

1 The Court, having considered the Parties' Joint Stipulation Requesting
2 Dismissal Pursuant to Fed. R. Civ. P. 41(a)(2), and for the reasons set forth therein
3 and pursuant to Rule 41(a)(2), **HEREBY ORDERS THAT:**

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5 Plaintiff Aurelio Diaz's case is hereby dismissed with prejudice, with each
6 side to bear its costs and attorneys' fees.

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9 IT IS SO ORDERED.

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11 Dated: _____

Hon. Dolly M. Gee
Judge of the United States District
Court

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