

1 Evan Smith (Bar No. SBN 242352)
2 BRODSKY SMITH
3 9595 Wilshire Blvd., Ste. 900
4 Beverly Hills, CA 90212
5 Tel: (877) 534-2590
6 Fax: (310) 247-0160

7 *Attorneys for Plaintiff*

FILED
San Francisco County Superior Court

MAR 30 2022

CLERK OF THE COURT

[Signature]
Deputy Clerk

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11 ANTHONY FERREIRO,

12 Plaintiff,

13 v.

14 INCIPIO, LLC, BEST BUY CO., INC.,

15 Defendants.

Case No.: CGC-21-594167

(b)(7)
[PROPOSED] STIPULATED
CONSENT JUDGMENT

Judge: ~~Ethan P. Schulman~~ RICHARD B. ULMER
Dept.: 302
Hearing Date: March 30, 2022
Hearing Time: 9:30 AM
Reservation #:

1 **1. INTRODUCTION**

2 **1.1 The Parties.** This Consent Judgment is entered into by and between Anthony
3 Ferreiro acting on behalf of the public interest (hereinafter "Ferreiro") and Best Buy Stores, L.P.
4 erroneously sued as Best Buy Co., Inc. ("Best Buy" or "Defendant") with Ferreiro and Defendant
5 collectively referred to as the "Parties" and each of them as a "Party." Ferreiro alleges that he is an
6 individual residing in California that seeks to promote awareness of exposures to toxic chemicals
7 and improve human health by reducing or eliminating hazardous substances contained in consumer
8 products. Best Buy is alleged to be a person in the course of doing business for purposes of
9 Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

10 **1.2 Allegations and Representations.** Ferreiro alleges that Defendant has exposed
11 individuals to Bisphenol A (BPA) from its sales of polycarbonate cell phone cases manufactured,
12 distributed, offered for sale and/or sold by Incipio in California, including but not limited to Griffin
13 Survivor Samsung Galaxy S20 case, UPC # 191058110961 and Rifle Paper Company iPhone case,
14 UPC # 191058070982 without providing a clear and reasonable exposure warning pursuant to
15 Proposition 65. As of the date the Notices of Violation were filed, BPA was listed under Proposition
16 65 as a chemical known to the State of California to cause reproductive toxicity.

17 **1.3 Notices of Violation/Complaint.** On or about March 8, 2021 (Griffin case) and July
18 31, 2020 (Rifle case), Ferreiro served Best Buy, and various public enforcement agencies with
19 documents entitled "60-Day Notice of Violation" pursuant to Health & Safety Code §25249.7(d)
20 (collectively, the "Notices"), alleging that Defendant violated Proposition 65 for failing to warn
21 consumers and customers that use of the Products expose users in California to BPA. No public
22 enforcer has brought and is diligently prosecuting the claims alleged in the Notices. On July 29,
23 2021, Ferreiro filed a complaint (the "Complaint") in the matter.

24 **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this Court has
25 jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter,
26 filed in the County of San Francisco, and that this Court has jurisdiction to approve, enter, and
27 oversee the enforcement of this Consent Judgment as a full and final binding resolution of all claims
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1 which were or could have been raised in the Complaint based on the facts alleged with respect to
2 the Covered Products, and of all claims which were or could have been raised by any person or
3 entity based in whole or in part, directly or indirectly, on the facts alleged in the 60-Day Notice, in
4 the present action, or arising therefrom or related thereto, with respect to Covered Products,
5 including any Proposition 65 claim arising out of an exposure to Covered Products (collectively,
6 "Proposition 65 claims.")

7 1.5 Defendant denies the material allegations contained in Ferreiro's Notices and
8 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment
9 shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of
10 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission
11 by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being
12 specifically denied by Defendant. However, this section shall not diminish or otherwise affect the
13 obligations, responsibilities, and duties of Defendant under this Consent Judgment.

14 **2. DEFINITIONS**

15 2.1 **Covered Products.** The term "Covered Products" means polycarbonate cell phone
16 cases manufactured, distributed, offered for sale and/or sold by Incipio in California, including but
17 not limited to Griffin Survivor Samsung Galaxy S20 case, UPC # 191058110961 and Rifle Paper
18 Company iPhone case, UPC # 191058070982 that are sold and/or offered for sale in California by
19 Best Buy, that allegedly expose users to BPA.

20 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is
21 entered as a Judgment of the Court.

22 **3. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS**

23 3.1 **Reformulation of Products.** As of the date this Consent Judgment is signed by both
24 Parties, and continuing thereafter, Covered Products that Best Buy directly manufacture, import,
25 distribute, sell, or offer for sale in California shall either: (a) be Reformulated Products pursuant to
26 § 3.2, below; (b) be labeled with a clear and reasonable exposure warning pursuant to §§ 3.3 and
27 3.4, below, or (c) discontinued for sale. For purposes of this Consent Judgment, a "Reformulated
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Product” is a Covered Product that is in compliance with the standard set forth in § 3.2 below. The warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated Product. The warning requirement shall only be required as to Covered Products that are manufactured, distributed, marketed, sold and shipped for sale to consumers by Defendants in the State of California 90 days after the Effective Date. No Proposition 65 warning shall be required as to any Covered Products that are already in the stream of commerce at the end of 90 days after the Effective Date and all such Covered Products are hereby deemed to be exempt from Proposition 65 with respect to BPA.

3.2 Reformulation Standard. “Reformulated Products” shall mean any Products intended for retail sale in California that do not expose consumers to BPA on any accessible component in excess of 3 micrograms per day of dermal exposure to BPA from solid materials.

3.3 Clear and Reasonable Warning. As of the Effective Date, Defendant agrees to manufacture, import, or purchase for sale in California only Covered Products that are accompanied by either of the following warnings:

(a) **Warning.** The “Warning” shall consist of the statement:

⚠ WARNING: This product can expose you to chemicals including Bisphenol A (BPA), which is known to the State of California to cause [cancer and] birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

(b) **Alternative Warning:** Best Buy may, but is not required to, use the alternative short-form warning as set forth in this § 3.3(b) (“**Alternative Warning**”) as follows:

⚠ WARNING: Reproductive Harm - www.P65Warnings.ca.gov.

The bracketed text may, but is not required to be used. Incipio, Best Buy and its downstream retailers shall have no obligation to label Products that entered the stream of commerce prior to the Effective Date or within 90 days after the Effective Date

3.4 A Warning or Alternative Warning provided pursuant to § 3.3 must print the word “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black outline, except that if the sign or label for the Covered Product does not use

1 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
2 than the height of the word "**WARNING:**". The warning shall be affixed to or printed on the
3 Covered Product's packaging or labeling, or on a placard, shelf tag, sign or electronic device or
4 automatic process, providing that the warning is displayed with such conspicuousness, as compared
5 with other words, statements, or designs as to render it likely to be read and understood by an
6 ordinary individual under customary conditions of purchase or use. A warning may be contained
7 in the same section of the packaging, labeling, or instruction booklet that states other safety
8 warnings, if any, concerning the use of the Covered Product and shall be at least the same size as
9 those other safety warnings.

10 If Best Buy sells Covered Products via an internet website to customers located in
11 California, the warning requirements of this section shall be satisfied if the foregoing warning
12 appears either: (a) on the same web page on which a Covered Product is displayed and/or described;
13 (b) on the same page as the price for the Covered Product; or (c) on one or more web pages
14 displayed to a purchaser prior to purchase during the checkout process. Alternatively, a symbol
15 consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent
16 to or immediately following the display, description, price, or checkout listing of the Covered
17 Product, if the warning statement appears elsewhere on the same web page in a manner that clearly
18 associates it with the product(s) to which the warning applies.

19 **3.5 Compliance with Warning Regulations.** Defendant shall be deemed to be in
20 compliance with this Consent Judgment by (1) adhering to §§ 3.3 and 3.4 of this Consent Judgment
21 and/or discontinuing sales of the Covered Products; and (2) complying with warning requirements
22 adopted by the State of California's Office of Environmental Health Hazard Assessment
23 ("OEHHA") after the Effective Date. Although Defendant shall be deemed in compliance on the
24 Effective Date, Defendant shall have a 90- day grace period after the Effective date to complete the
25 reformulation or warning steps provided in Sections 3.3 and 3.4 above.

1 **4. MONETARY TERMS**

2 **4.1 Civil Penalty.** Best Buy shall pay \$1,000.00 as a Civil Penalty pursuant to Health
3 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &
4 Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the
5 Civil Penalty remitted to Ferreiro, as provided by California Health & Safety Code § 25249.12(d).

6 **4.1.1** (10) days after the Effective Date, and upon receipt of W-9s for Brodsky Smith,
7 Ferreiro and OEHHA prior to the Effective Date, Best Buy shall issue one check for \$17,500
8 representing the Civil Penalty payments (\$750.00 to OEHHA and \$250.00 to Ferreiro) and
9 attorneys' fees (\$16,500) to "Brodsky Smith in Trust for Ferreiro". Payment owed to Ferreiro and
10 Brodsky Smith pursuant to this Section and Section 4.2 shall be delivered to the following
11 payment address:

12 Evan J. Smith, Esquire
13 Brodsky Smith
14 Two Bala Plaza, Suite 805
 Bala Cynwyd, PA 19004

15 Plaintiff bears sole responsibility for the delivery of the payments referenced herein.

16 **4.2 Attorneys' Fees.** (10) days after the Effective Date and upon receipt of the W9s
17 referenced above, Best Buy shall issue one check, for \$17,500 as referenced in section 4.1.1, to
18 Brodsky Smith ("Brodsky Smith"). \$16,500 of which shall represent complete reimbursement for
19 Ferreiro's attorneys' fees and costs incurred as a result of investigating, bringing this matter to Best
20 Buy's attention, litigating and negotiating and obtaining judicial approval of a settlement in the
21 public interest, pursuant to Code of Civil Procedure § 1021.5.

22 **5. RELEASE OF ALL CLAIMS**

23 **5.1** This Consent Judgment is a full, final, and binding resolution between Ferreiro
24 acting on his own behalf, and on behalf of the public interest, and Best Buy, Incipio, LLC, and their
25 parents, shareholders, members, directors, officers, managers, employees, representatives, agents,
26 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
27 predecessors, successors and assigns ("Releasees"), and all entities from whom they obtain and to
28 whom they directly or indirectly distribute or sell Covered Products, including but not limited to

1 manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees, retailers,
2 franchisees, and cooperative members (collectively the "Downstream Releasees"), and the officers,
3 directors, employees, attorneys, consultants, agents, representatives, predecessors, successors and
4 assigns of any of the above (collectively the "Covered Entities") of any and all claims for violations
5 of Proposition 65 or its implementing regulations, any claims for unfair competition, as defined by
6 Business and Professions Code Sections 17200 et seq., that have been asserted or could have been
7 asserted for failure to provide clear and reasonable warnings under Proposition 65 of exposure to
8 BPA in the Covered Products manufactured, distributed, or sold by Best Buy and Incipio, LLC
9 prior to the Effective Date and 90 days after the expiration of the Effective Date. It is the Parties'
10 intention that this Consent Judgment shall have preclusive effect such that no other actions by
11 private enforcers, whether purporting to act in his, her, or its interests or the public interest shall be
12 permitted to pursue and/or take any action with respect to any violation of Proposition 65 that was
13 alleged in the Complaint, or that could have been brought pursuant to the Notices against Best Buy
14 and/or the Downstream Releasees or Covered Entities of the Covered Products ("Proposition 65
15 Claims"). Compliance with the terms of this Consent Judgment constitutes compliance with
16 Proposition 65 with regard to the Covered Products. Ferreiro further covenants not to sue Released
17 Parties for any alleged violation of Proposition 65 with respect to BPA in Covered Products put
18 into the stream of commerce in California by Defendant prior to the expiration of the 90 days after
19 the Effective Date.

20 5.2 In addition to the foregoing, Ferreiro, on behalf of himself, his past and current
21 agents, representatives, attorneys, and successors and/or assignees, hereby waives all rights to
22 institute or participate in, directly or indirectly, any form of legal action and releases Incipio, LLC,
23 Best Buy, Covered Entities and Downstream Releasees from any and all manner of actions, causes
24 of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises,
25 liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of any nature whatsoever,
26 known or unknown, in law or equity, fixed or contingent, now or in the future, with respect to any
27 alleged violations of Proposition 65 related to or arising from Covered Products manufactured,
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1 distributed, or sold by Best Buy, Covered Entities and Downstream Releasees. With respect to the
2 foregoing waivers and releases in this paragraph, Ferreiro hereby specifically waives any and all
3 rights and benefits which he now has, or in the future may have, conferred by virtue of the
4 provisions of § 1542 of the California Civil Code, which provides as follows:

5 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
6 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
7 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
8 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
9 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
10 DEBTOR OR RELEASED PARTY.

11 5.3 Best Buy waive any and all claims against Ferreiro, his attorneys and other
12 representatives, for any and all actions taken or statements made (or those that could have been
13 taken or made) by Ferreiro and his attorneys and other representatives, whether in the course of
14 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
15 and/or with respect to Covered Products.

16 6. INTEGRATION

17 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
18 any and all prior negotiations and understandings related hereto shall be deemed to have been
19 merged within it. No representations or terms of agreement other than those contained herein exist
20 or have been made by any Party with respect to the other Party or the subject matter hereof.

21 7. GOVERNING LAW

22 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
23 California and apply within the State of California. In the event that Proposition 65 is repealed or
24 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
25 Defendant shall have no further obligations pursuant to this Consent Judgment.

26 8. NOTICES

27 8.1 Unless specified herein, all correspondence and notices required to be provided
28 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
by the other party at the following addresses:

1 For Defendant:

2 Anne Marie Ellis, Esquire
3 Buchalter, A Professional Corporation
4 18400 Von Karman Avenue, Suite 800
5 Irvine, CA 92612

6 And

7 For Ferreiro:

8 Evan J. Smith, Esquire
9 Brodsky Smith
10 Two Bala Plaza, Suite 805
11 Bala Cynwyd, PA 19004

12 Any party, from time to time, may specify in writing to the other party a change of address to
13 which all notices and other communications shall be sent.

14 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

15 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
16 which shall be deemed an original, and all of which, when taken together, shall constitute one and
17 the same document.

18 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**
19 **APPROVAL**

20 10.1 Ferreiro agrees to comply with the requirements set forth in California Health &
21 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment
22 at his sole cost and expense. Defendant agrees it shall support approval of such Motion.

23 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
24 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
25 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 45
26 days, the case shall proceed on its normal course.

27 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
28 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
its normal course on the trial court's calendar.

1 10.4 If this Consent Judgment is not entered by the Court and the parties cannot agree to
2 the terms after a meet and confer, it shall be of no force or effect, and shall not be introduced into
3 evidence or otherwise used in any proceeding for any purpose.

4 **11. MODIFICATION**

5 11.1 The terms of this Consent Judgment may be modified only by further stipulation of
6 the Parties and the approval of the Court or upon the granting of a motion brought to the Court by
7 either Party.

8 **12. RETENTION OF JURISDICTION**

9 12.1 This Court shall retain jurisdiction of this matter to implement or modify the
10 Consent Judgment.

11 **13. AUTHORIZATION**

12 13.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
13 respective Parties and have read, understood and agree to all of the terms and conditions of this
14 document and certify that he or she is fully authorized by the Party he or she represents to execute
15 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
16 explicitly provided herein each Party is to bear its own fees and costs.

17 **15. ENTIRE AGREEMENT**

18 15.1 This Consent Judgment contains the sole and entire agreement and understanding
19 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
20 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and
21 therein.

22 15.2 There are no warranties, representations, or other agreements between the Parties
23 except as expressly set forth herein. No representations, oral or otherwise, express or implied, other
24 than those specifically referred to in this Consent Judgment have been made by any Party hereto.

25 15.3 No other agreements not specifically contained or referenced herein, oral or
26 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
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1 contained or referenced herein, oral or otherwise, shall be deemed to exist to bind any of the Parties
2 hereto only to the extent that they are expressly incorporated herein.

3 15.4 No supplementation, modification, waiver or termination of this Consent Judgment
4 shall be binding unless executed in writing by the Party to be bound thereby and approved and
5 ordered by the Court.

6 15.5 No waiver of any of the provisions of this Consent Judgment shall be deemed or
7 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such
8 waiver constitute a continuing waiver.

9 **16. SEVERABILITY**

10 16.1 If subsequent to Court approval of this Consent Judgment, any part or provision is
11 declared by a Court to be invalid, void or unenforceable, the remaining portions or provisions
12 shall continue in full force and effect.

13 **AGREED TO:**

AGREED TO:

14 Date: 1/28/22

Date: 1/26/2022 | 9:09 CST

15 By: Anthony Ferreiro

By: [Signature]

16 ANTHONY FERREIRO

17 BEST BUY STORES, L.P.

18 **AGREED TO:**

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20
21 **IT IS SO ORDERED, ADJUDGED AND DECREED** that pursuant to Health and Safety
22 Code Section 25249.7(f)(4) and Code of Civil Procedure Section 664.6, judgment is hereby
23 entered:

24 Dated: 3/30/22

25 [Signature]
Judge of Superior Court

26 RICHARD B. ULMER