

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 John Moore and Best Buy Co., Inc.

This Settlement Agreement is entered into by and between John Moore (“Moore”), and Best Buy Co., Inc. (“Best Buy”), with Moore and Best Buy collectively referred to as the “Parties.” Moore is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Best Buy employs ten or more persons and is a person in the course of doing business for purposes of Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.5 *et seq.* (“Proposition 65”).

1.2 General Allegations

Moore alleges that Best Buy has manufactured, distributed and/or sold in the State of California, cases for CDs/DVDs containing the phthalate chemical di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer, birth defects and other reproductive harm.

1.3 Product Description

The products that are covered by this Settlement Agreement are defined as cases for CDs/DVDs containing DEHP including, but not limited to, *Init 32 Disc Wallet, NT-MS376, Init 64 Disc Wallet, NT-MS377, Init 128 Disc Wallet, NT-MS378, and Init 320 Disc Wallet, NT-MS379*, manufactured, imported, distributed, sold and/or offered for sale by Best Buy. All such items shall be referred to herein as the “Products.”

1.4 Notice of Violation

On April 25, 2011, Moore served Best Buy and various public enforcement agencies with a document entitled “60-Day Notice of Violation” that provided the recipients with notice that Best Buy was in violation of California Health & Safety Code § 25249.6 for failing to warn

consumers and customers that its Products exposed users in California to DEHP. No public enforcer has diligently prosecuted the allegations set forth in the April 25, 2011, Notice.

1.5 No Admission

Best Buy denies the material, factual and legal allegations contained in Moore's Notice and maintains that all products that it has sold and distributed in California, including the Products, have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Best Buy of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Best Buy of any fact, finding, conclusion, issue of law or violation of law. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of Best Buy under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean March 9, 2012.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Standards

Reformulated Products are defined as those Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) in each accessible component when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for the purpose of determining DEHP content in a solid substance.

2.2 Reformulation Commitment

As of the Effective Date all Products manufactured, imported, distributed, sold or offered for sale in the State of California by Best Buy shall be Products that qualify as Reformulated Products as defined in Section 2.1 above.

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement, Best Buy shall pay \$6,000 in civil penalties. This civil penalty reflects a credit of \$12,000 due to Best Buy's commitment to reformulate the Products pursuant to Section 2.1 above. Civil penalties are to be apportioned in accordance with California Health & Safety Code §§25249.12(c) & (d), with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Moore. Best Buy shall issue two separate checks for the penalty payment: (a) one check made payable to The Chanler Group in Trust for the State of California's Office of Environmental Health Hazard Assessment ("The Chanler Group in Trust for OEHHA") in the amount of \$4,500, representing 75% of the total penalty and (b) one check to "The Chanler Group in Trust for Moore" in the amount of \$1,500, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486). The second 1099 shall be issued to Moore, whose address and tax identification number shall be furnished, upon request, at least five calendar days before payment is due. The payments shall be delivered on or before March 9, 2012, to the following address:

The Chanler Group
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

4. REIMBURSEMENT OF FEES AND COSTS

The parties have reached an accord on the compensation to be paid to Moore and his counsel, which Moore contends is appropriate under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure (CCP) § 1021.5, for all work performed through the mutual execution of this agreement. Best Buy shall pay the total amount of \$26,000 for fees and costs incurred as a result of investigating, bringing this matter to Best Buy's attention, and negotiating a settlement in the public interest. Best Buy shall issue a

separate 1099 for fees and costs (EIN: 94-3171522), shall make the check payable to “The Chanler Group” and shall deliver payment on or before March 9, 2012, to the following address:

The Chanler Group
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

5. RELEASES

5.1 Moore’s Release of Best Buy

This Settlement Agreement is a full, final and binding resolution between Moore, and Best Buy, of any violation of Proposition 65 that was or could have been asserted by Moore on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, against Best Buy, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys and each entity to whom Best Buy directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (“Releasees”), based on their failure to warn about alleged exposures to the DEHP contained in the Products that were manufactured, distributed, sold and/or offered for sale by Best Buy in California before the Effective Date.

In further consideration of the promises and agreements herein contained, Moore on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all Moore’s rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that Moore may have, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses -- including, but not limited to, investigation fees, expert fees, and attorneys’ fees, but exclusive of fees and costs on appeal -- limited to and arising under Proposition 65 with respect to the DEHP in the Products

manufactured, distributed, sold and/or offered for sale by Best Buy before the Effective Date (collectively “claims”), against Best Buy and Releasees.

Moore acknowledges that he is familiar with Section 1542 of the Civil Code of the State of California. Section 1542 provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH DEBTOR.

Moore, on behalf of himself and his agents, attorneys, representatives, successors and assigns, expressly waives and relinquishes any and all rights and benefits which he may have under, or which may be conferred on him by, the provisions of Civil Code Section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such intention, the release hereby given shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the released matters.

5.2 Best Buy’s Release of Moore

Best Buy on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Moore and his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Moore and his attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

6. POST EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve months of the execution of this Settlement Agreement Best Buy may ask Moore, in writing, to file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment, and to seek the court’s approval of the consent judgment pursuant to

Health and Safety Code section 25249.7, or as may be otherwise allowed by law. If so requested, Moore agrees to reasonably cooperate with Best Buy and to use his best efforts, and that of his counsel, to support the entry of a consent judgment by a superior court in California. Pursuant to Code of Civil Procedure sections 1021 and 1021.5, Best Buy will reimburse Moore and his counsel for their reasonable fees and costs incurred in filing the complaint, converting the Settlement Agreement into a proposed consent judgment and seeking judicial approval of the consent judgment, in an amount not to exceed \$10,000, exclusive of fees and costs that may be incurred on appeal. Best Buy will remit payment to The Chanler Group, at the address set forth in Section 9 below. Such additional fees shall be paid by Best Buy within ten days after its receipt of monthly invoices from Moore for work performed under this paragraph.

7. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

8. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Settlement Agreement are rendered inapplicable or no longer required as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Products, then Best Buy shall provide written notice to Moore of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected. Nothing in this Settlement Agreement shall be interpreted to relieve Best Buy from any obligation to comply with any pertinent state or federal toxics control law.

9. NOTICES

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

For Best Buy:

Gary J. Smith, Esq.
Beveridge & Diamond, PC
456 Montgomery Street, Suite 1800
San Francisco, CA 94104

For Moore:

Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

10. COUNTERPARTS; FACSIMILE SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Moore agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f).

12. MODIFICATION

This Settlement Agreement may be modified only by a written agreement of the parties.

13. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.


AGREED TO:

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Date: FEBRUARY 27, 2012

Date: March 5, 2012

By: 
John Moore

By: 
Name: Patricia Helwig
Title: Vice President - Executive Board
Best Buy Co., Inc.