

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 **Gabriel Espinosa and BBY Solutions, Inc.**

This Settlement Agreement is entered into by and between Gabriel Espinosa ("Espinosa"), Best Buy Co., Inc., Best Buy Enterprise Services, Inc., and BBY Solutions, Inc. (collectively, "BBY"). Collectively, Espinosa and BBY are referred to as the "Parties." Espinosa is an individual that resides in the State of California, and seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products.

BBY is considered a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code section 25249.6, *et seq.* ("Proposition 65").

#### 1.2 **General Allegations**

Espinosa alleges that BBY has imported, distributed and/or sold in the State of California Coaxial Cables bearing UPC No. 600603151873 (the "Product") without requisite Proposition 65 warning that the Product contains the chemical DINP. On December 20, 2013, the State of California listed DINP as a chemical known to the State of California to cause cancer.

#### 1.3 **Notice of Violation(s)**

On October 16, 2015, Espinosa served BBY, Best Buy Co., Inc., Best Buy Enterprise Services, Inc., Best Buy Purchasing, LLC (collectively, "Best Buy") and various public enforcement agencies with a document entitled "Notice of Violation of California Health & Safety Code § 25249.5, *et seq.*" (the "Notice"). The Notice provided BBY and such others, including public enforcers, with notice that alleged that BBY was in violation of California Health & Safety Code § 25249.5, for failing to warn consumers and customers that the Products exposed users in California to DINP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

### **2.3 Clear and Reasonable Warnings**

Commencing on the Effective Date, BBY shall, for all Product it sells or distributes or which are intended for sale in California that is not a Reformulated Product, or which BBY has reason to believe will be shipped or sold in California, provide, or ensure that the retailer to whom it distributes such Product for resale in California provides, a clear and reasonable warning in one of the forms set forth in subsections 2.3(a), (b), or (c) below. The warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before or at the time of the purchase transaction. Each warning shall be provided in a manner such that the consumer or user is reasonably likely to understand to which specific Products the warning applies, so as to minimize the risk of consumer confusion.

In the event that the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, BBY shall be entitled to use, at its discretion, such other warning text and/or method of transmission without being deemed in breach of this Agreement.

#### **(a) Retail Store Sales**

**(i) Products Labeling.** BBY shall affix a warning to the packaging, labeling or directly on each Product in California that states:

**[PROPOSITION 65] WARNING:**

This product contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

The bracketed text may, but is not required to, be used.

following warnings shall be provided, with the latter being a hyperlink to an internet page with the text set forth below:

**[PROPOSITION 65] WARNING:**

This product contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

or

California Proposition 65

The latter form of warning shall be a hyperlink to an Internet page which reads:

WARNING: This item contains a chemical known to the state of California to cause cancer, birth defects or other reproductive harm. Please call 1-888-237-8289 and reference California Proposition 65 to address any questions or concerns.

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

In settlement of all the claims referred to in this Settlement Agreement, BBY shall pay a total of \$2,000 in civil penalties in accordance with this Section. Each penalty payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Espinosa. Each penalty payment shall be delivered to the addresses listed in Section 3.2 below. BBY shall be liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing that are not received within ten business days of the Effective Date.

**3.1 Civil Penalty**

On or before the Effective Date, BBY shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" in the amount of \$1,500; and (b) "Brodsky & Smith, LLC in Trust for Espinosa" in the amount of \$500. The penalty payments shall be delivered to the addresses listed in Section 3.2 below.

**3.2 Payment Procedures**

(i) "Gabriel Espinosa" whose address and tax identification number shall be provided via an IRS Form W-9 after this Settlement Agreement is fully executed by the Parties;

(ii) "Brodsky & Smith, LLC" (EIN: 23-2971061) at the address provided in Section 3.2(a)(i) and listed on IRS Form W-9 submitted to BBY at execution of this Settlement Agreement; and

(iii) "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA 95814.

#### **4. REIMBURSEMENT OF FEES AND COSTS**

The parties acknowledge that Espinosa and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. Espinosa then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The Parties reached an accord on the compensation due to Espinosa and his counsel under general contract principles and the private attorney general doctrine and principles codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement. Under these legal principles, BBY shall reimburse Espinosa's counsel for reasonable fees and costs incurred as a result of investigating and bringing this matter to BBY attention, and negotiating a settlement in the public interest. On or before the Effective Date, BBY shall issue a check payable to "Brodsky & Smith, LLC" in the amount of \$25,000 for delivery to the following address:

Evan Smith, Esquire  
Brodsky & Smith, LLC  
Two Bala Plaza, Ste. 510  
Bala Cynwyd, PA 19004

#### **5. RELEASE OF ALL CLAIMS**

representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter or with respect to the Products.

### **5.3 California Civil Code Section 1542**

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered. Espinosa, on behalf of himself only, on one hand, and BBY, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in Sections 5.1 and 5.2 above may include unknown claims, and nevertheless waive California Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542 reads 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 THE DEBTOR.

Espinosa and BBY each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542.

### **6. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement (other than the provisions relating to the release of claims in Section 5) are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

### **7. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the law 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 as to the

9. **COUNTERPARTS: SIGNATURES**

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

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

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

11. **MODIFICATION**

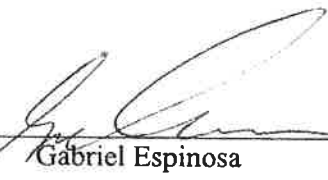
This Settlement Agreement may be modified only by a written agreement of the Parties.

12. **AUTHORIZATION**

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

**AGREED TO:**

Date: 8/26/16

By:   
Gabriel Espinosa

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Gail Gibbs  
Best Buy Co., Inc.

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Gail Gibbs  
Best Buy Enterprise Services, Inc.

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Jodie Hagstrom  
BBY Solutions, Inc.

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**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Gabriel Espinosa

Date: September 8, 2016

By: \_\_\_\_\_

Gail Gibbs  
Best Buy Co., Inc.

Date: September 8, 2016

By: \_\_\_\_\_

Gail Gibbs  
Best Buy Enterprise Services, Inc.

Date: September 8, 2016

By: \_\_\_\_\_

Todd G. Hartman  
BBY Solutions, Inc.