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Holloway, et al. v. Best Buy, Co.

Judge Phyllis J. Hamilton

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Holloway, et al. v. Best Buy, Co.

Keywords

4:05-cv-05056-PJH, Best Buy, Holloway, Consent Decree, sex, race, female, African American, Latino, National Origin, promotion, assignments, hiring, compensation, retail, Employment Law, Title VII

EXHIBIT 1

To [Proposed] Preliminary Approval Order

1 James M. Finberg (SBN 114850)
Eve H. Cervantez (SBN 164709)
2 ALTSHULER BERZON LLP
177 Post Street, Suite 300
3 San Francisco, CA 94108
Telephone: (415) 421-7151
4 Facsimile: (415) 362-8064

5 *Additional Attorneys for Plaintiffs
and the Classes on Signature Page*

6 Roman M. Silberfeld (SBN 62783)
7 David Martinez (SBN 193183)
ROBINS, KAPLAN, MILLER &
8 CIRESI L.L.P.
2049 Century Park East, Suite 3400
9 Los Angeles, CA 90067-3211
Telephone: (310) 552-0130
10 Facsimile: (310) 229-5800

11 *Additional Attorneys for Defendants Best
Buy Co., Inc. and Best Buy Stores, L.P. on
12 Signature Page*

13 UNITED STATES DISTRICT COURT
14
15 NORTHERN DISTRICT OF CALIFORNIA

16 JASMEN HOLLOWAY, AMY GARCIA,
17 CHERYL CHAPPEL, ERIC
BLACKSHER, JESSICA TREAS,
18 LAWRENCE SANTIAGO, JR.,
MUEMBO MUANZA, MAURICE
19 CALHOUN, and NICHOLAS DIXON, on
behalf of themselves and all others
similarly situated,

20 Plaintiffs,

21 v.

22 BEST BUY CO., INC. and BEST BUY
23 STORES, L.P.,

24 Defendants.

Case No. C-05-5056 PJH (MEJ)

CONSENT DECREE

25
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27
28

1 **I. GENERAL PROVISIONS**

2 **A. Purpose**

3 Jasmen Holloway, Amy Garcia, Cheryl Chappel, Eric Blacksher, Jessica Treas,
4 Lawrence Santiago, Jr., Muembo Muanza, Maurice Calhoun, and Nicholas Dixon (collectively
5 referred to as “Named Plaintiffs”) and the Settlement Classes defined herein make and enter into
6 this Consent Decree with Best Buy Co., Inc., and Best Buy Stores, L.P. (collectively referred to as
7 “Best Buy”).

8 The Parties have entered into the Consent Decree for the following purposes:

- 9
- 10 • To resolve all disputes covered by this Consent Decree in such a way as to avoid
further expensive and protracted litigation;
 - 11 • To use best efforts to enhance equal employment opportunity for women and
12 minorities working in Best Buy retail stores nationwide;
 - 13 • To use best efforts to hire, assign, promote, transfer, compensate, and retain
14 women and minorities in Best Buy retail stores on a non-discriminatory basis; and
 - 15 • To provide finality to the resolution of all class claims and defenses asserted in the
16 Civil Action and/or covered by this Decree.

17 **B. Statement of Dispute**

18 The Named Plaintiffs are current and former Best Buy retail store employees, and an
19 applicant for employment at Best Buy. The Named Plaintiffs filed timely charges of race and
20 gender discrimination against Best Buy with the Equal Employment Opportunity Commission on
21 behalf of themselves and similarly situated females and minorities.

22 Named Plaintiffs filed their Complaint on December 8, 2005. (Dkt. No. 1.) In their Third
23 Amended Complaint, filed on January 6, 2009, Named Plaintiffs allege that Best Buy maintains a
24 pervasive policy or practice of discrimination based on gender, race, color, and/or national origin
25 in denying employment, desirable job assignments, promotions/transfers, and equal exempt
26 compensation to African Americans; denying desirable job assignments, promotions/transfers,
27 and equal exempt compensation to women; and denying desirable job assignments and
28 promotions/transfers to Latino employees in Best Buy retail stores within the United States. (Dkt.

1 No. 142-2.)

2 Named Plaintiffs have vigorously prosecuted this case, and Best Buy has vigorously
3 contested it. As a result, the Parties are able to reliably assess the relative merits of Plaintiffs'
4 claims and Best Buy's defenses. The following case history describes the extensive discovery
5 that has been conducted in this action:

- 6 • Named Plaintiffs originally asserted claims based upon alleged discrimination in
7 recruiting, testing, hiring, non-exempt compensation, initial job assignments,
8 allocation of hours, promotions/transfers, the movement of workers from
9 Occasional/Seasonal employees to Regular employees, the movement of
10 employees from part-time positions to full-time positions and exempt
11 compensation.
- 12 • In responding to plaintiffs' discovery requests in defense of those claims, Best Buy
13 produced over 12 million pages in documents and produced comprehensive
14 employment data covering the nearly 500,000 individuals. The parties collectively
15 took over 80 depositions of factual witness and corporate designees.
- 16 • The parties collectively submitted expert reports and rebuttal reports from 9 expert
17 witness, including both statistical and social science expert witnesses.
- 18 • The parties collectively took 13 depositions of expert witnesses.

19 The Parties agree that this discovery was more than sufficient to assess the merits of the
20 respective parties' positions and to compromise in a fair and equitable manner. Additionally,
21 each party's expert labor economist(s) and/or statisticians analyzed all available employment data
22 and each party's social science expert(s) reviewed thousands of documents relating to the
23 numerous policies and practices at issue in the case.

24 The Parties and their counsel recognize that, in the absence of an approved settlement,
25 they would face a potentially long litigation course, renewed motions for class certification,
26 motions for summary judgment, and trial and appellate proceedings that would consume time and
27 resources and present each of them with ongoing litigation risks and uncertainties. The Parties
28 wish to avoid these risks and uncertainties, as well as the consumption of time and resources,

1 through settlement pursuant to the terms and conditions of this Decree. After careful review and
2 consideration, the Named Plaintiffs for themselves individually and on behalf of the proposed
3 Settlement Classes and Class Counsel are of the opinion that the settlement set forth in this
4 Decree is fair, reasonable, adequate, and provides prompt relief for the Classes. Class Counsel
5 and the Named Plaintiffs for themselves individually and on behalf of the proposed Settlement
6 Classes believe that the settlement set forth in this Decree is in the best interest of the Classes
7 based on all the facts and circumstances. As reflected by the signatures of counsel at the end of
8 this document, the Parties have consented to entry of this Decree.

9 **C. No Admission of Liability**

10 Best Buy denies all claims as to liability, wrongdoing, damages, penalties, interest, fees,
11 injunctive relief and all other forms of relief, as well as the class allegations asserted in the Civil
12 Action. Best Buy has agreed to resolve the Civil Action via this Consent Decree, but to the extent
13 this Settlement Agreement is deemed void or the Effective Date does not occur, Best Buy does
14 not waive, but rather expressly reserves, all rights to challenge any and all claims and allegations
15 asserted by the Named Plaintiffs in the Civil Action upon all procedural and substantive grounds,
16 including without limitation the ability to challenge class action treatment on any grounds and to
17 assert any and all other potential defenses or privileges. The Named Plaintiffs and Class Counsel
18 agree that Best Buy retains and reserves these rights, and they agree not to take a position to the
19 contrary. Specifically, the Named Plaintiffs and Class Counsel agree that, if the Civil Action
20 were to proceed, they will not argue or present any argument, and hereby waive any argument
21 that, based on the settlement or this Decree or any exhibit and attachment hereto, or any act
22 performed or document executed pursuant to or in furtherance of the settlement or this Decree,
23 Best Buy should be barred from contesting class action certification pursuant to Federal Rule of
24 Civil Procedure 23 on any grounds, or from asserting any and all other potential defenses and
25 privileges.

26 This Decree shall not be deemed an admission by, or ground for estoppel against Best Buy
27 that class action treatment pursuant to Federal Rule of Civil Procedure 23 in the Civil Action is
28 proper or cannot be contested on any grounds. Additionally, neither the Decree nor the

1 settlement, nor any act performed or document executed pursuant to, or in furtherance of, the
2 Decree or the settlement: (a) is or may be deemed to be or may be used as an admission or
3 evidence of the validity of the claims of the Named Plaintiffs or any member of the Settlement
4 Classes, or of any wrongdoing toward or liability to the Named Plaintiffs or any member of the
5 Settlement Classes; or (b) is or may be deemed to be or may be used as an admission or evidence
6 of any fault or omission of the Named Plaintiffs or any member of the Settlement Classes in any
7 civil, criminal or administrative proceeding in any court, administrative agency, or other tribunal.

8 This Decree is a compromise and shall not be construed as an admission of liability at any
9 time or for any purpose, under any circumstances, by the Named Plaintiffs or any member of the
10 Settlement Classes. The Parties and the members of the Settlement Classes further acknowledge
11 and agree that neither this Decree nor the settlement shall be used to suggest an admission of
12 liability in any dispute the Parties and the Named Plaintiffs or any member of the Settlement
13 Classes may have now or in the future with respect to any person or entity. Neither this Decree
14 nor anything in it, nor any part of the negotiations that occurred in connection with the creation of
15 this settlement, shall constitute evidence with respect to any issue or dispute in any lawsuit, legal
16 proceeding, or administrative proceeding, except for legal proceedings concerning the
17 enforcement or interpretation of this Decree.

18 **D. Settlement Classes**

19 Solely for purposes of settlement and judicial approval of this Decree, the Parties stipulate
20 to the certification of the following Settlement Classes pursuant to Federal Rule of Civil
21 Procedure 23(b)(2):

22 African American Class: All African Americans who were employed in Best Buy
23 retail stores within the United States for one or more days beginning on or after
24 December 8, 2005 (the date the Complaint was filed) through the date that the
Consent Decree terminates.

25 Latino Class: All Latinos who were employed in Best Buy retail stores within the
26 United States for one or more days beginning on or after December 8, 2005 (the
date the Complaint was filed) through the date that the Consent Decree terminates.

27 Female Class: All women who were employed in Best Buy retail stores within the
28 United States for one or more days beginning on or after December 8, 2005 (the

1 date the Complaint was filed) through the date that the Consent Decree terminates.

2 None of the Classes shall include Best Buy General Managers (for the time period
3 during which Best Buy employed them as General Manager); persons who occupied Geek
4 Squad or Service positions (for the time period during which they occupied those
5 positions); or employees of Magnolia stand-alone stores (for the time period during which
6 Magnolia employed them).

7 **E. Scope of Consent Decree**

8 The provisions of the Consent Decree shall apply to all retail stores located within the
9 United States and owned by Best Buy Co., Inc., Best Buy Stores, L.P., and all of their former,
10 current, and prospective wholly owned subsidiaries.

11 **F. Definitions**

- 12 1. “Best Buy” refers to Best Buy Co., Inc., and Best Buy Stores, L.P.
- 13 2. “Class Counsel” refers to Altshuler Berzon L.L.P.; Lieff, Cabraser,
14 Heimann & Bernstein, L.L.P.; Lewis, Feinberg, Lee, Renaker & Jackson,
15 P.C.; and Schneider Wallace Cottrell Brayton Konecky, L.L.P.
- 16 3. “Civil Action” shall refer to this matter, captioned *Holloway et al. v. Best*
17 *Buy Co., Inc.*, Case No. C 05-05056, filed in the Northern District of
18 California before the Honorable Phyllis J. Hamilton.
- 19 4. “Class Member” means a member of one or more of the Settlement Classes
20 stipulated to in Section I.D.
- 21 5. “Effective Date” means the date upon which all of the following have
22 occurred: (1) entry by the Court of the Final Approval Order, (2) entry by
23 the Court of the Final Judgment, and (3) the appeal period (i.e., 30 days)
24 has run without an appeal of any Court order, or in the event of an appeal,
25 the Parties have received actual notice that the settlement has received final
26 approval after completion of the appellate process and the final resolution
27 of any appeals.
28

- 1 6. “Final Approval” refers to the date upon which the Court signs the Final
- 2 Approval Order after having found this Consent Decree to be fair,
- 3 adequate, and reasonable.
- 4 7. “Final Approval and Fairness Hearing” refers to a hearing by the Court to
- 5 (a) review this Consent Decree and determine whether the Court should
- 6 grant final approval to the Consent Decree; (b) consider any timely
- 7 objections made pursuant to Section XII and all responses by the Parties;
- 8 (c) give final approval to the Consent Decree under Rule 23(e) of the
- 9 Federal Rules of Civil Procedure; (d) consider the request for attorneys’
- 10 fees and expenses submitted by Class Counsel; and (e) consider the Named
- 11 Plaintiffs’ requests for service payments.
- 12 8. “Final Approval Order” refers to the document attached hereto as Exhibit
- 13 C.
- 14 9. “Final Judgment” refers to the document attached hereto as Exhibit D.
- 15 10. “Parties” refers to Defendants Best Buy Co., Inc. and Best Buy Stores,
- 16 L.P., and the Named Plaintiffs for themselves individually and on behalf of
- 17 the proposed Settlement Classes.
- 18 11. “Named Plaintiffs” refers to Jasmen Holloway, Amy Garcia, Cheryl
- 19 Chappel, Eric Blacksher, Jessica Treas, Lawrence Santiago, Jr., Muembo
- 20 Muanza, Maurice Calhoun, and Nicholas Dixon.
- 21 12. “Notice” refers to the document attached hereto as Exhibit A.
- 22 13. “Preliminary Approval Order” refers to the document attached hereto as
- 23 Exhibit B.
- 24 14. “Released Claims” means the claims released by the Settlement Classes as
- 25 specifically set forth in Section V.
- 26 15. “Settlement Classes” or “Classes” collectively refers to all of the Classes
- 27 stipulated to Section I.D.
- 28 16. “Term of the Decree” refers to the time period set forth in Section II.M.

1 **G. Jurisdiction**

2 The District Court of the Northern District of California has jurisdiction over the Parties
3 and subject matter of this action. The Third Amended Complaint in this action asserts claims
4 that, if proved, would authorize the Court to grant the injunctive relief set forth in this Consent
5 Decree. Venue is proper in this Court. The Court shall retain jurisdiction of this action during
6 the Term of the Decree for the purpose of entering all orders authorized by the Decree, which
7 may be necessary to implement the relief provided in the Decree or to enforce the provisions of
8 the Decree.

9 **II. INJUNCTIVE RELIEF PROVISIONS**

10 **A. General Non-Discrimination Provisions**

11 1. Best Buy will continue to maintain non-discrimination and anti-harassment
12 policies and an internal complaint and anti-retaliation procedure designed to ensure equal
13 employment opportunity consistent with law and the terms of this Decree.

14 2. Best Buy shall not for the duration of the Decree maintain or enact any
15 policy or practice that has the purpose or effect of unlawfully discriminating against any
16 employee on the basis of gender or race, or that is inconsistent with the purposes of this Decree.

17 **B. Communications**

18 1. Best Buy will continue to make available its non-discrimination and anti-
19 harassment policies to all employees upon hire and shall continuously post these policies together
20 with a message in support thereof from its CEO, updated annually, on its intranet. Best Buy
21 employees will acknowledge receipt of these documents on the Company's intranet website, and
22 such acknowledgment will be audited.

23 2. In addition, Best Buy's Executive Vice President, Retail Stores or
24 equivalent shall continuously post on the Company's intranet site a separate statement, updated
25 annually, in support of these policies and their underlying tenets.

26 3. Best Buy's President of U.S. Retail Stores or highest ranking officer in
27 attendance will make a separate live statement in support of these policies and their underlying
28 tenets to all Store General managers, at any annual, national General Manager meetings (e.g.,

1 Road Show) to the extent such meetings occur during the term of the Decree. If during the term
2 of this Decree, in lieu of a national meeting of GMs, Best Buy GMs meet in smaller, regional
3 groups, then the highest ranking officer in attendance at such meetings shall issue such a
4 statement at those meetings.

5 **C. Hiring and Initial Job Assignment**

6 **1.** Best Buy has developed selection procedures and processes, including
7 interview guides (“Selection Procedures”), that have been reviewed, and revised as necessary, by
8 an I/O psychologist to ensure they are valid for the selection of all in-store positions. Plaintiffs’
9 Counsel has received confirmation from Best Buy of the professional qualifications of the I/O
10 psychologist and has been provided copies of the selection procedures (including the interview
11 guides). Best Buy shall have the discretion to modify the Selection Procedures, except that any
12 material modifications shall be done through the analysis and review of an internal or external I/O
13 psychologist and shall be consistent with the purpose of this Decree.

14 **2.** Best Buy will require the use of the Selection Procedures for the selection
15 of in-store positions. Best Buy will conduct regular training for involved staff in the use of the
16 Selection Procedures, the conduct of structured interviews, the selection of qualified candidates
17 using the structured interviews and interview guides, and other elements of the Hiring Process,
18 including the Company’s interest in hiring qualified diverse candidates into all open store
19 positions for which they may be qualified. Best Buy shall regularly audit to ensure compliance
20 with the Selection Procedures.

21 **3.** Best Buy’s Selection Procedures will reiterate Best Buy’s commitment to
22 diversity in race, color, national origin and gender, and encourage the hiring of qualified diverse
23 candidates.

24 **4.** Descriptions of jobs will accompany postings of available positions in Best
25 Buy’s online application system(s). These descriptions shall clearly provide a summary of job
26 duties and required qualifications applicable to the posted position.

27 **5.** Best Buy shall designate a qualified individual to fill a dedicated position
28 within Best Buy whose primary function will be the sourcing, recruitment, and retention of

1 qualified diverse management candidates, including qualified African Americans, Latinos, and
2 women, throughout the organization.

3 **D. Promotions and Transfers**

4 **1. Registration of Interest**

5 **a.** Best Buy shall implement an electronic process for all store-level
6 employees and managers to register interest in any full-time, senior, supervisor and/or exempt
7 position. No managerial approval will be required for employees or managers to register. This
8 registry will provide descriptions of job duties applicable to all store positions.

9 **b.** Registration of interest will be valid for 6 months. All employees
10 will be advised that they must update the Registry as their interests change and must re-register
11 every 6 months. Best Buy shall display reminders about the availability of the Registry of
12 Interest and the need to update registration every six months on the home page of the intranet for
13 at least 7 consecutive days, on a quarterly basis. This communication will be audited by the
14 Corporate Audit Department.

15 **c.** Managers must check the registry of interest when filling any open
16 full-time, senior, supervisor, and/or exempt manager position within the same store. Managers
17 will first consider moving current employees who have registered interest into open full-time non-
18 managerial positions before filling such positions with external candidates or internal candidates
19 who have not expressed interest.

20 **d.** Best Buy shall regularly audit to ensure compliance with the
21 Registry of Interest procedures.

22 **2. Job Analysis**

23 **a.** In consultation with expert internal and external I/O Psychologists,
24 Best Buy has developed minimum eligibility requirements for in-store Supervisor positions that
25 are job related and consistent with business necessity and has implemented those requirements in
26 the selection for in-store Supervisor positions. Plaintiffs' Counsel have considered and approved
27 the professional qualifications of the external I/O psychologists retained for this work.
28

1 **b.** Best Buy has provided Plaintiffs’ counsel with the job analyses,
2 including minimum eligibility requirements, and job-related criteria.

3 **3.** Posting

4 **a.** Best Buy shall post all open senior, supervisor and exempt manager
5 positions through an internal electronic job posting system accessible to all Best Buy store-level
6 employees. The only exceptions to this policy shall be in the case of business necessity which
7 shall include company reorganization (e.g., consolidating stores), employee-initiated inter-store
8 transfers, or other business necessities as determined by a Territory H.R. Director, a Territory
9 Director, a District HR Manager, a District Manager, or higher ranking official. The
10 identification of a preferred candidate or urgency to fill a position quickly will not be deemed a
11 business necessity for the purposes of this Decree. All instances in which a covered position is
12 not posted based on business necessity shall be documented and reported to the Monitor for
13 inclusion in the Monitor’s annual report to the Board. Open positions shall be posted for no less
14 than 5 days before being filled. Applications for exempt manager positions shall be accepted
15 electronically.

16 **b.** Each internal job posting shall contain the open position title,
17 location, description of the job, and valid job-related criteria and requirements. While the job
18 requirements may include time-in-position requirements before posting, no managerial sign off
19 will be required for an employee to submit an internal job posting application.

20 **c.** The Corporate Audit Department will audit stores to ensure that the
21 job posting policy is followed.

22 **4.** Promotion Decisions

23 **a.** Best Buy has developed Selection Procedures for promotions into
24 supervisor or exempt manager positions reviewed, and revised as necessary, by an I/O
25 psychologist to ensure they are valid. Plaintiffs’ Counsel has received confirmation from Best
26 Buy of the professional qualifications of the I/O psychologist and has been provided copies of the
27 Selection Procedures (including interview guides). Best Buy shall have the discretion to modify
28

1 the Selection Procedures, except that any material modification shall be done through the analysis
2 of an internal or external I/O psychologist.

3 **b.** Best Buy will regularly train involved staff in the Selection
4 Procedures used in the Promotion process, including the Company's interest in developing
5 qualified diverse candidates.

6 **c.** The tools used as part of Best Buy's Selection Procedures will
7 reiterate Best Buy's commitment to diversity in race, color, national origin and gender.

8 **d.** Best Buy will audit regularly to ensure that the Selection
9 Procedures are followed.

10 **5. Talent Bench**

11 Best Buy will implement processes designed to increase the available bench of
12 qualified African Americans, Latinos, and women for promotion to management at all of its retail
13 stores. Best Buy will continue to ensure that when they are done, training programs and formal
14 mentoring opportunities will be available to all employees who aspire to management positions
15 regardless of race or gender, with the exception of those specifically targeting the development of
16 minority and/or female employees.

17 **E. Exempt Compensation**

18 **1.** Best Buy will retain an I/O psychologist and/or outside compensation
19 specialist to review the Compensation Guides and grids and provide recommendations regarding
20 the Compensation Guides. Plaintiffs' Counsel will receive confirmation from Best Buy of the
21 professional qualifications of the I/O psychologist or compensation specialist.

22 **2.** Best Buy shall train its managers in how to set exempt compensation using
23 the tools developed by the I/O psychologists and/or outside compensation specialist.

24 **3.** Under the direction of Best Buy's Monitor, Best Buy will regularly, and no
25 less than annually, review the compensation of exempt managers by position, grade, store,
26 District, and tenure, along with the managers' EEO characteristics, to determine whether there
27 has been non-compliance with Best Buy's policies against discrimination.

28

1 **F. General Training Provisions**

2 **1.**Upon hire, all employees will continue to be required to receive training on
3 Best Buy's non-discrimination, anti-harassment, and anti-retaliation policies.

4 **2.**Best Buy shall require that all supervisors and managers receive diversity
5 training annually.

6 **3.**In its training related to customer marketing strategies, Best Buy shall
7 explicitly train managers that these strategies should not be interpreted to influence or guide Best
8 Buy's hiring, recruitment, job assignment, transfer, promotion, or compensation practices.

9 **4.**Best Buy will offer training to all employees in how to use the registration
10 of interest and the internal job posting systems.

11 **5.**Best Buy's corporate audit department will ensure that the training listed in
12 Sections F.1 and 2 occurs annually.

13 **6.**Within 6 months of the Effective Date of the Decree or, where applicable,
14 implementation of the injunctive relief required by this Decree, Best Buy shall train all of its
15 General Managers regarding the following terms of this Decree: hiring and promotion
16 procedures; the use of interview guides; the registry of interest; job posting; the distinction
17 between customer marketing and employee staffing; the complaint procedure; and the company's
18 policies against discrimination and retaliation and its support for a diverse workforce. Such
19 training will also be provided to all new General Managers upon hire or promotion.

20 **G. Complaint Process**

21 **1.**Best Buy shall continue to maintain an Internal Complaint Procedure to
22 provide for the filing, investigation and, if appropriate, remedying of complaints of discrimination
23 or retaliation by employees or applicants for employment on the basis of race, color, national
24 origin or gender, or where a violation of this Decree has occurred or is alleged. Best Buy will
25 maintain its policy of investigating complaints through Human Resources personnel based in the
26 United States. The policy shall provide that persons engaging in such conduct will be subject to
27 appropriate discipline, up to and including discharge. The procedure for filing internal
28

1 complaints shall be continuously maintained on Best Buy's intranet site. Plaintiffs' Counsel has
2 been provided a copy of the Complaint Procedure.

3 **2.** Best Buy will communicate the complaint process and policy against
4 retaliation upon hire. In addition, on at least an annual basis, Best Buy will display information
5 about the complaint process and policy against retaliation on the home page of the intranet for at
6 least 7 consecutive days. Information about the complaint process and policy against retaliation
7 will be continuously available on the intranet.

8 **3.** The Monitor shall have access to EEO complaints during the term of the
9 Decree.

10 **H.** Manager Assessment

11 All supervisors, exempt store managers, and district managers shall be evaluated
12 annually on their ability to manage a diverse workforce, including in decisions involving hiring,
13 promotions, and compensation, and their compliance with the letter and spirit of this Decree. An
14 internal or external I/O psychologist will advise Best Buy on how best to conduct and weigh this
15 evaluation.

16 **I.** Monitor

17 **1.** Best Buy shall designate an officer to ensure implementation of this
18 Decree. Plaintiffs' Counsel will be provided with the Monitor's qualifications and title. The
19 officer shall report at least annually to Best Buy's Board of Directors regarding the
20 implementation of this Decree. The officer shall be authorized and empowered to direct Human
21 Resources and/or individual store managers to take specific actions in furtherance of this Decree.

22 **2.** The officer shall be entitled to, and shall, regularly request, receive, and
23 analyze available quantitative data, separated by race and gender, on the following: the numbers
24 of applicants for jobs at Best Buy, the numbers hired, and the numbers per each job into which
25 they were hired; the numbers of employees hired into full-time vs. part-time jobs, and hired into
26 permanent jobs from occasional/seasonal jobs; the numbers of employees using the registry of
27 interest and those obtaining jobs in which they express an interest; the number applying for
28

1 promotion and those obtaining promotions for which they apply; and the relative compensation of
2 exempt employees.

3 **3.** The Monitor shall file a Certificate of Compliance with the Court six
4 months after the Effective Date of this Decree, 12 months after the effective date of this Decree
5 and annually thereafter over the term of this Decree. The Certificate of Compliance will inform
6 the Court of when Best Buy has implemented each of the terms of the Decree or, if some term has
7 not been fully implemented, Best Buy's progress in implementing that term.

8 If Best Buy makes any modification to the Selection System (including Interview
9 Guides), the Certificate of Compliance shall also report that modifications have taken place,
10 whether Best Buy considers those modifications material, and, if so, certification of analysis and
11 review by I/O psychologist, as set forth in Sections II.C.1 and II.D.4.a of the Decree.

12 The Certificate of Compliance will also confirm that Best Buy has audited all
13 items requiring audit as set forth in Sections II.B.1, II.C.2, II.D.1.b, II.D.1.d, II.D.3.c, II.D.4.d,
14 and II.F.5 of the Decree, and either that the results of the audit were satisfactory or that corrective
15 action is in the process of being, or has been, taken.

16 The Certificate of Compliance will also confirm that the Monitor has undertaken
17 those tasks set forth for the Monitor in this Section II.I of the Decree, the Monitor has
18 investigated Best Buy's compliance with the Decree, and the Monitor is satisfied that Best Buy is
19 complying with the Decree and/or has taken or is in the process of taking corrective action to
20 assure future compliance.

21 **J.** Recordkeeping

22 Best Buy will maintain all records for monitoring of implementation of the Decree
23 for the term of the Decree.

24 **K.** Dispute Resolution

25 The parties may agree to the appointment of a mutually-acceptable special master,
26 paid for by Best Buy, to resolve disputes under the Decree. The Decree shall be entered as an
27 order of the Court and the Court shall retain jurisdiction during the term of the Decree to enforce
28 its provisions.

1 **L.** Implementation Period

2 Best Buy shall use its good faith best efforts to implement the programmatic relief
3 set forth herein as soon as reasonably practicable. In the event it requires more than 12 months
4 fully to implement the relief herein, the term of the Decree shall be extended by the additional
5 time over 12 months that is required for implementation of that specific programmatic relief, with
6 respect to the specific programmatic relief not yet implemented and any related relief.

7 **M.** Term of Decree

8 The term of the Decree shall be 4 years from the Effective Date.

9 **III. NOTICE TO CLASSES**

10 In compliance with Federal Rule of Civil Procedure 23, the Parties agree to the following
11 notice plan: the Notices shall be provided to Class Members in a form approved by the Court.
12 The Parties' proposed Notice is attached hereto as Exhibit A. The Notice provides Class
13 Members with a description of the injunctive terms of the Consent Decree, their right to object to
14 the Consent Decree at the Final Approval and Fairness Hearing, Class Counsel's request for
15 attorneys' fees and costs, and Named Plaintiffs' request for service payments. In addition, the
16 Notice directs Class Members to the class action website that describes the terms of the Consent
17 Decree and contains electronic versions of the Consent Decree, Class Counsels' application for
18 fees and costs, and the motion for service payments for the Named Plaintiffs.

19 In their motion seeking preliminary approval of the Agreement, the Parties will propose a
20 notice plan that includes the following types of notice:

- 21 A. Notice distributed by email to current Best Buy employees with Best Buy email
22 addresses;
- 23 B. Notice conspicuously posted in areas of Best Buy's U.S. retail stores frequented by
24 current employees;
- 25 C. Notice mailed and/or e-mailed to all individuals in the Class Member database
26 maintained by Class Counsel;
- 27 D. Notice on the class action website maintained by Class Counsel, including an
28 electronic copy of the Notice, and electronic copies of the Consent Decree, Class

1 Counsel's application for fees and costs and the Motion of the Named Plaintiffs for
2 Service Payments; and

3 E. Notice on www.BestBuy.com, under the existing heading, "LEGAL."

4 Best Buy shall bear the costs of preparing and distributing the Notice described in
5 categories A, B, and E above. Class Counsel shall bear the costs of preparing and distributing the
6 Notice described in categories C and D above.

7 Counsel for the Parties shall distribute the Notice as described herein not later than two
8 weeks (14 days) after entry of the Court's Preliminary Approval Order.

9 **IV. RELEASE BY NAMED PLAINTIFFS**

10 In consideration for the mutual promises and covenants set forth or referred to in this
11 Consent Decree, by separate settlement agreements to be filed under seal with the Court, the
12 Named Plaintiffs, upon the grant of Final Approval, the exhaustion of all appeals (if any) from the
13 grant of Final Approval, and Best Buy's assumption of all of its obligations under this Decree,
14 will release Best Buy from any and all claims, including but not limited to individual and class
15 claims for race and gender discrimination in violation of the Civil Rights Act of 1866, as
16 amended, 42 U.S.C. § 1981, Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §
17 2000e, *et seq.*, and the Fair Employment and Housing Act, as amended, Cal. Gov. Code § 12940,
18 *et seq.*, that have accrued any time prior to the date of execution of the separate settlement
19 agreements to be filed under seal with the Court.

20 **V. RELEASE BY SETTLEMENT CLASSES**

21 The members of the Settlement Classes who are not Named Plaintiffs release all claims
22 for classwide injunctive and declaratory relief of whatever nature, known or unknown that the
23 Named Plaintiffs and members of the Settlement Classes may have against Best Buy, its
24 subsidiaries and affiliated companies, and in the case of all such entities, their respective past and
25 present owners, representatives, officers, directors, attorneys, agents, employees, insurers,
26 successors and assigns (collectively referred to as the "Released Parties"), arising out of the same
27 transactions, series of connected transactions, occurrences or nucleus of operative facts that form
28 the basis of the claims that were or could have been asserted in the Civil Action including claims

1 arising under the Civil Rights Act of 1866, as amended, 42 U.S.C. § 1981, Title VII of the Civil
2 Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.*, the Fair Employment and Housing
3 Act (“FEHA”), as amended, Cal. Gov. Code § 12940, *et seq.*, the Equal Pay Act, 29 U.S.C. §
4 206, *et seq.*, or under any other federal, state, local or common laws or regulations. This release
5 includes, but is not limited to, claims for classwide injunctive or declaratory relief alleging a
6 class-wide pattern and practice of race, national origin and gender discrimination in, or an
7 unlawful disparate impact associated with, (1) recruitment, (2) pre-employment testing, (3) entry-
8 level hiring, (4) job assignments, (5) promotions/transfers; (6) movement from
9 Occasional/Seasonal to Regular status; (7) movement from part-time to full-time employment; or
10 (8) the allocation of hours of work. This release includes and covers without limitation all
11 actions, decisions, or omissions occurring up to and including the Preliminary Approval date as
12 defined subject to the provisions set forth herein. The members of the Settlement Classes who are
13 not Named Plaintiffs do not release any claims for individual monetary relief, including without
14 limitation back pay, front pay, compensatory damages, punitive damages, or prejudgment
15 interest, nor do they release any claims for individual injunctive or declaratory relief for any past
16 or current violations of Title VII, Section 1981, or FEHA, or for any relief that may be
17 appropriate for any future violation of this Consent Decree or applicable law.

18 **VI. CIVIL CODE § 1542 WAIVER**

19 a. As a further consideration and inducement for this Consent Decree and upon
20 payment as well as the satisfaction or waiver of any conditions subsequent set forth herein, to the
21 extent permitted by law, with respect to the Released Claims, the Parties hereto waive and release
22 any and all rights under Section 1542 of the California Civil Code or any analogous state, local,
23 or federal law, statute, rule, order, or regulation that they have or may have, acknowledge that the
24 effect and impact of such Section has been explained to them by their own counsel, and further
25 acknowledge that they may hereafter discover facts different than or in addition to those which
26 they now know or believe to be true with respect to the claims, demands, debts, liabilities,
27 actions, causes of action, costs and expenses released, and except for those items specifically
28 exempted from this Consent Decree in this paragraph, agree that this Consent Decree shall be and

1 remain effective notwithstanding such different or additional facts. California Civil Code Section
2 1542 reads as follows:

3 "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH
4 THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXISTS IN HIS
5 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
6 KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS
7 SETTLEMENT WITH THE DEBTOR."

8 b. The Parties to this Consent Decree, for themselves and all persons for whose
9 benefit this Decree is made expressly waive the protections of California Civil Code Section 1542
10 with respect to the Released Claims.

11 **VII. DISMISSAL OF THIRD AMENDED COMPLAINT, INCLUDING REQUEST FOR
12 CERTIFICATION OF CLAIMS FOR MONETARY RELIEF, WITH PREJUDICE**

13 Best Buy contends that the monetary relief claims both have no merit and are not suitable
14 for class certification. The Final Approval Order shall dismiss the Third Amended Complaint,
15 including all claims for class certification of back pay, front pay and punitive damages under
16 Federal Rule of Civil Procedure 23(b)(2) and 23(b)(3), with prejudice.

17 **VIII. INDIVIDUAL RELIEF FOR THE NAMED PLAINTIFFS**

18 Recognizing that the Named Plaintiffs are relinquishing and releasing their claims for
19 monetary relief asserted in this action, and in full and complete settlement of all of their monetary
20 claims against Best Buy as described above in Section IV, Best Buy shall pay Named Plaintiffs a
21 total of \$200,000, to be distributed as set forth in the separate settlement agreements to be filed
22 under seal with the Court.

23 Best Buy shall pay the above amounts to the Named Plaintiffs within thirty (30) days of
24 the Effective Date via check sent by certified U.S. mail to the address provided by Class Counsel.
25 Half of each amount shall be allocated as wages, and half as prejudgment interest. Best Buy shall
26 withhold appropriate taxes, pay the employer's share of taxes, and issue a W-2 to each Named
27 Plaintiff for the amount designated as wages, and shall issue a 1099 for the remainder.

28 **IX. NAMED PLAINTIFF SERVICE PAYMENTS**

In recognition of the Named Plaintiffs' role in bringing and prosecuting this action,
including the provision of information to counsel for Plaintiffs, assisting with disclosures to Best

1 Buy, responding to Best Buy's discovery requests, and appearing and testifying at depositions
2 noticed by Best Buy, Class Counsel shall file a motion for an award of service payments of no
3 more than \$10,000 for each Named Plaintiff to be paid by Best Buy, which motion shall be heard
4 at the time of the Final Approval and Fairness Hearing. Class Counsel shall file this motion not
5 later than two weeks (14 days) after entry of the Court's Preliminary Approval Order. Best Buy
6 shall not oppose this motion. The amount of each service payment will be determined by the
7 Court.

8 The validity of this Consent Decree does not depend on the Court's approval of service
9 payments to the Named Plaintiffs. If the Court reduces or denies the motion for service
10 payments, the Court may still grant final approval to the Consent Decree.

11 If approved by the Court, Best Buy shall pay the approved service payment amounts to the
12 Named Plaintiffs within thirty (30) days of the Effective Date via check sent by certified U.S.
13 mail to the address provided by Class Counsel. Best Buy shall issue a 1099 for the full amount.

14 **X. ATTORNEYS' FEES AND COSTS**

15 Best Buy has agreed to pay Class Counsel reasonable attorneys' fees and costs incurred in
16 connection with this matter up to and including the date of Final Approval of this Consent
17 Decree, in an amount to be determined by the Court, not to exceed a total of \$9,999,999,
18 constituting almost \$2 million in costs, and the balance of what is not paid in costs in fees

19 Class Counsel shall file a motion for an award of reasonable attorneys' fees and costs, not
20 to exceed a total of \$ 9,999,999, almost \$2 million in costs and approximately \$8 million in fees,
21 to be heard at the time of the Final Approval and Fairness Hearing. Class Counsel shall file this
22 motion not later than two weeks (14 days) after entry of the Court's Preliminary Approval Order.
23 Best Buy shall not oppose this motion.

24 The validity of this Consent Decree does not depend on the Court's award of reasonable
25 attorneys' fees and costs to Class Counsel. If the Court reduces or denies the motion for
26 attorneys' fees and costs, the Court may still grant final approval to the Consent Decree.

27 Best Buy shall pay any amounts due pursuant to this section and any Order of the Court
28 within thirty (30) days after the Effective Date by wiring the appropriate amount to a bank

1 account designated for such purposes by Class Counsel.

2 **XI. PRELIMINARY APPROVAL**

3 The Parties will submit this Consent Decree to the Court, and request (1) certification of
4 three injunctive relief Classes under Federal Rule of Civil Procedure 23(b)(2) for settlement
5 purposes only, (2) preliminary approval of the terms of the Consent Decree, and (3) approval of
6 the steps to be taken to obtain Final Approval. The Parties will request that the Court enter a
7 Preliminary Approval Order, substantially in form of Exhibit B.

8 Counsel for the Parties shall distribute the Notice described above in Section III not later
9 than two weeks (14 days) after entry of the Court's Preliminary Approval Order. In addition,
10 Class Counsel shall file motions for attorneys' fees and costs and Named Plaintiff service
11 payments not later than two weeks (14 days) after entry of the Court's Preliminary Approval
12 Order.

13 **XII. CLASS MEMBER OBJECTIONS**

14 Any Class Member who wishes to object to this Consent Decree or otherwise to be heard
15 concerning this settlement, shall timely inform Class Counsel, counsel for Best Buy, and the
16 Court in writing of his or her intent to object to this Consent Decree and/or appear at the Final
17 Approval and Fairness Hearing by following the procedures set forth in the Notice. The objection
18 date shall be set at least 35 days after the date on which Notice is distributed, and shall be after
19 the date that Class Counsel files their motions for attorneys' fees and costs and Named Plaintiff
20 service payments.

21 **XIII. FINAL APPROVAL AND FAIRNESS HEARING**

22 On the date set forth in the Notice, the Court shall hold the Final Approval and Fairness
23 Hearing.

24 The Parties shall request that, if the Court approves the Consent Decree at the Final
25 Approval and Fairness hearing, it enter the Final Approval Order in the form proposed as Exhibit
26 C hereto, and the Final Judgment in the form proposed as Exhibit D hereto.

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1 **XIV. APPLICABLE LAW**

2 The Parties agree that this Consent Decree shall be in all respects interpreted, enforced,
3 and governed by and under Federal law and, to the extent that resort must be had to State law, by
4 the law of the State of California.

5 **XV. NO THIRD PARTIES**

6 Enforcement of this Consent Decree shall be prosecuted by Class Counsel or Counsel for
7 Best Buy only, not third parties. Class Counsel shall meet and confer with Counsel for Best Buy
8 prior to commencement of any enforcement proceedings.

9 **XVI. ENTIRE AGREEMENT / AMENDMENT**

10 The Parties agree that this Consent Decree constitutes their entire agreement, and fully
11 supersedes any and all prior or contemporaneous agreements or understandings between the
12 Parties. Prior to Final Approval, this Decree may be amended or modified only by an agreement
13 in writing and signed by counsel for all Parties. Following Final Approval, no modification of
14 this Consent Decree shall be effective unless it is pursuant to Court Order.

15 **XVII. FAILURE TO OBTAIN FINAL APPROVAL**

16 In the event that this Consent Decree does not become final and effective in its current
17 form, for whatever reason, this entire Consent Decree, including its exhibits, shall become null
18 and void and of no force or effect. In that event, neither side shall make any arguments in the
19 Civil Action based on any papers submitted in connection with the settlement process, or any
20 Preliminary Approval Order entered as part of the settlement process.

21 **XVIII. EXECUTION IN COUNTERPARTS**

22 The Parties agree that the Consent Decree may be executed in counterparts, each of which
23 shall be deemed to be an original and all of which together shall constitute one and the same
24 instrument.

25 **XIX. CONFIDENTIALITY**

26 All proprietary and confidential documents or information that have previously been
27 provided to Class Counsel and/or the Named Plaintiffs as of the date this Decree is executed shall
28 be treated as, and thereafter remain, confidential. Those documents and information shall not be

1 disclosed to anyone other than the Court or agreed-upon mediator or special master in connection
2 with any proceeding to enforce any provision of this Decree. If such disclosure is deemed
3 necessary by Class Counsel, Class Counsel shall identify and disclose to Best Buy such
4 documents and information deemed necessary to disclose at least ten (10) business days prior to
5 filing such documents with the Court, mediator, or special master, and, if Best Buy so requests,
6 shall seek permission to file said documents with this Court, mediator, or special master under
7 seal. All the files, records, discovery, investigation, work papers and any other document,
8 whether electronic or written, that describes or contains any assessment of the employment
9 practices of Best Buy or which describes a condition, act or event at any Best Buy store (with the
10 exception of documents that were publicly filed with the Court) shall not be made available to or
11 transferred to any other person and shall be kept and maintained by Class Counsel inviolate.
12 Class Counsel warrant to Best Buy that they shall not produce their files, or any portion thereof
13 (with the exception of documents that were publicly filed with the Court), to any other person
14 unless compelled to do so by a formal legal process in which event Class Counsel shall promptly
15 notify counsel for Best Buy of that event. Nothing in this paragraph shall prevent Class Counsel
16 from using any information obtained in the course of this case in connection with any action
17 necessary to enforce or maintain the Decree, or in connection with any claim of professional
18 negligence brought against Class Counsel.

19 Within sixty (60) days of the expiration of the term of this Decree, all proprietary and
20 confidential documents or information provided to Class Counsel by Best Buy and designated as
21 “Confidential” or a similar designation pursuant to the Confidentiality Agreement executed by the
22 Parties and all copies of such documents or information shall be destroyed, except that Class
23 Counsel may maintain copies of all documents filed with the Court. Certification of such
24 destruction shall be provided to Counsel for Best Buy.

25 Other than necessary disclosures made to the Court, including the public filing of this
26 Consent Decree and the Class Notice attached thereto, the Parties’ settlement negotiations and all
27 related information shall be held strictly confidential by Class Counsel and the Named Plaintiffs,
28 and shall not be disclosed to any third parties (including the media). Notwithstanding the

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forgoing, Class Counsel and the Named Plaintiffs may communicate with members of the Settlement Classes for purposes of implementing, administering and enforcing the Settlement as provided herein, and Class Counsel may respond to inquiries they receive from members of the Settlement Classes.

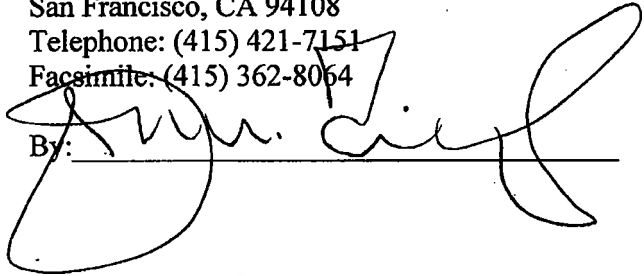
Class Counsel, Named Plaintiffs, and Best Buy agree to issue a mutually agreed upon press release regarding the settlement of the claims related to this matter which will set forth the reasons why settlement is in the best interests of the members of the Settlement Classes and will state that Best Buy's commitment to the terms of the Decree makes it a "best in class" employer of women and minorities and a leader in the areas of diversity and inclusion. If Class Counsel, or any of the Named Plaintiffs is contacted by the media, they shall only respond in a manner that is consistent with the mutually agreed upon press release referenced above. The Parties agree that the mutually agreed upon press release will be issued when the Motion for Preliminary Approval and Consent Decree are filed with the Court.

STIPULATED AND AGREED TO BY:

**COUNSEL FOR PLAINTIFFS
AND THE CLASSES**

Dated: June 16, 2011

James M. Finberg (SBN 114850)
Eve H. Cervantez (SBN 164709)
ALTSHULER BERZON L.L.P.
177 Post Street, Suite 300
San Francisco, CA 94108
Telephone: (415) 421-7151
Facsimile: (415) 362-8064

By: 

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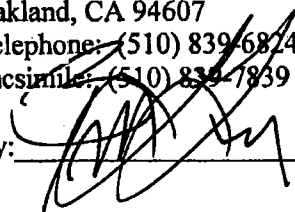
Dated: June 13, 2011

Kelly M. Dermody (SBN 171716)
Daniel M. Hutchinson (SBN 239458)
LIEFF, CABRASER, HEIMANN &
BERNSTEIN, L.L.P.
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
Telephone: (415) 956-1000
Facsimile: (415) 956-1008

By:  _____

Dated: June 14, 2011

Bill Lann Lee (SBN 108452)
Lindsay Nako (SBN 239090)
Angelica K. Jongco (SBN 244374)
LEWIS, FEINBERG, LEE, RENAKER &
JACKSON, P.C.
476 9th Street
Oakland, CA 94607
Telephone: (510) 839-6874
Facsimile: (510) 839-7839

By:  _____

Dated: June ____, 2011

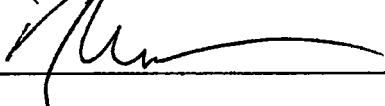
Todd M. Schneider (SBN 158253)
Guy B. Wallace (SBN 176151)
Andrew P. Lee (SBN 245903)
SCHNEIDER WALLACE COTTRELL
BRAYTON KONECKY, L.L.P.
180 Montgomery Street, Suite 2000
San Francisco, CA 94104
Telephone: (415) 421-7100
Facsimile: (415) 421-7105

By: _____

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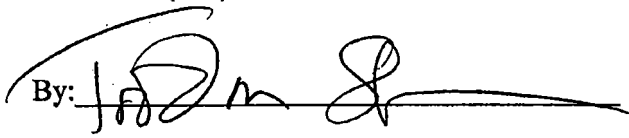
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LEWIS, FEINBERG, LEE, RENAKER &
JACKSON, P.C.
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Facsimile: (510) 839-7839

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180 Montgomery Street, Suite 2000
San Francisco, CA 94104
Telephone: (415) 421-7100
Facsimile: (415) 421-7105

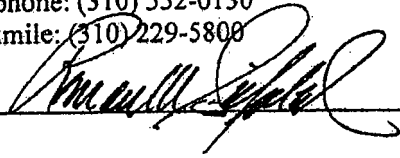
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**COUNSEL FOR BEST BUY CO., INC., AND
BEST BUY STORES, L.P.**

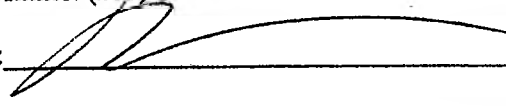
Dated: June 13, 2011

Roman M. Silberfeld (SBN 62783)
Lisa L. Heller (SBN 126086)
David Martinez (SBN 193183)
ROBINS, KAPLAN, MILLER & CIRESI, L.L.P.
2049 Century Park East, Suite 3400
Los Angeles, CA 90067
Telephone: (310) 552-0130
Facsimile: (310) 229-5800

By: 

Dated: June 15, 2011

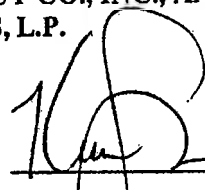
George A. Stohner (SBN 214508)
Paul C. Evans (*Admitted Pro Hac Vice*)
MORGAN, LEWIS & BOCKIUS, L.L.P.
300 South Grand Avenue, 22nd Floor
Los Angeles, CA 90071
Telephone: (213) 612-2500
Facsimile: (213) 612-2501

By: 

Dated: June 14, 2011

**CORPORATE REPRESENTATIVE OF
BEST BUY CO., INC., AND BEST BUY
STORES, L.P.**

[FILL]

By: 

Name: Keith J. Nelsen

Title: Executive Vice President,
General Counsel