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16 **UNITED STATES DISTRICT COURT**
17 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**
18

19 EIJI KURIHARA, individually, and on
behalf of all others similarly situated,

20 Plaintiffs,

21 vs.

22 BEST BUY CO., INC,

23 Defendant.

) **Case No. C 06-01884 MHP (EMC)**

) **CLASS ACTION**

) **STIPULATION AND [~~PROPOSED~~] ORDER**
) **MODIFYING THE COURT'S ORDER OF**
) **FINAL APPROVAL OF CLASS ACTION**
) **SETTLEMENT**

) Settlement Approval Date: May 11, 2010

) Place: Courtroom C, 15th Floor
) 450 Golden Gate Avenue
) San Francisco, CA 94102

) [Civil Local Rule 7-12]

) *Assigned to the Honorable Marilyn H. Patel*

1 Defendant Best Buy Co., Inc., for itself and for Best Buy Stores, L.P. (together "Best Buy"),
2 and Plaintiff and Class Representative Eiji Kurihara ("Kurihara"), each by and through its/his
3 counsel of record, stipulate as follows and request that the Court modify its Final Approval of the
4 Class Action Settlement reached between Best Buy and Kurihara to enable the Settlement
5 Administrator to stop payment on uncashed settlement checks, close the settlement fund and forward
6 the remaining settlement shares to the State of California as unclaimed property.

7 **IT IS HEREBY STIPULATED AND AGREED:**

8 1. On April 1, 2010, the Court issued its ORDER ADOPTING REPORT AND
9 RECOMMENDATION AND FINAL APPROVAL OF SETTLEMENT (Document 119), adopting
10 (with minor exceptions affecting attorney fees not relevant to this stipulation) Magistrate Judge
11 Chen's finding that the July 2008 KURIHARA / BEST BUY WAGE AND HOUR SETTLEMENT
12 AGREEMENT AND RELEASE OF CLAIMS (October 27, 2008, Document No. 61-2) was fair,
13 adequate and reasonable. On May 11, 2010, the Court entered JUDGMENT OF FINAL
14 APPROVAL OF CLASS ACTION SETTLEMENT (Document No. 126).

15 2. The approved Settlement Agreement at Paragraph XVII retains the Court's jurisdiction
16 "for the purpose of addressing any issues which may arise with respect to settlement
17 administration...." The parties request the Court to exercise this authority as provided below.

18 3. The Settlement Agreement at Paragraph IX.D.3.e.i. regarding settlement payments
19 provides that undeliverable settlement checks will be sent to the California State Controller's Office
20 as unclaimed property. However, the Settlement Agreement does not make the same provision for
21 settlement checks that were issued but which remain uncashed more than 180 days after issue. The
22 paragraph states that the issued settlement checks "shall not have an expiration date." This provision
23 impedes the Claims Administrator's close out of the settlement administration account and may
24 result in Class members loss if a bank declines to accept the stale check.

25 4. The letter sent by the Claims Administrator to the Class members with their
26 settlement check indicated that the bank account on which the checks were drawn may be shut down
27 on or about December 27, 2010 (180 days after settlement checks were issued). The letter advised
28

1 Class members that "If you try to cash or deposit this check after this date, the account may be
2 closed and your settlement award may be sent to the appropriate State Office for unclaimed funds."

3 5. The Claims Administrator issued the settlement checks to Class members in
4 accordance with the Settlement Agreement. The Claims Administrator informs counsel for Best Buy
5 and Kurihara that as of November 26, 1,703 of the settlement checks issued remain uncashed.

6 6. The parties have conferred and agree that the Court's ORDER OF FINAL
7 APPROVAL OF CLASS ACTION SETTLEMENT should be modified to conform to the notice
8 sent to the Class members with their settlement check. The parties further agree that the Class
9 members will not be injured thereby. This will permit the settlement administrator to stop payment
10 on those settlement checks issued but not cashed, forward the value of those checks as unclaimed
11 property to the California State Controller's Office, close the settlement bank account, and complete
12 tax filings within the 2010 tax year.

13 7. For the reasons set forth, Best Buy and Kurihara request that the Court Amend its
14 ORDER ADOPTING REPORT AND RECOMMENDATION AND FINAL APPROVAL OF
15 SETTLEMENT in the following respects:

16 a. The Claims Administrator may stop payment on or after December 27, 2010
17 on all uncashed settlement checks issued to Class members;

18 b. The Claims Administrator shall forward to the California State Controller's
19 Office the value of the uncashed settlement checks as unclaimed property of the payees with
20 appropriate documentation; and

21 c. The Claims Administrator may close the bank account for this settlement,
22 make the appropriate tax reports and filings, and wind up the administration of this settlement.

23 **IT IS SO STIPULATED.**

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Dated: December 15, 2010

SCOTT COLE & ASSOCIATES, APC

By: /s/ Kevin R. Allen
Kevin R. Allen
Attorneys for the Representative Plaintiff
and the Plaintiff Class

Dated: December 15, 2010

LAW OFFICE OF THOMAS A. MILLER, PC

By: /s/ Thomas A. Miller
Thomas A. Miller
Attorneys for Defendant Best Buy Co., Inc.

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~~[PROPOSED]~~ ORDER ON STIPULATION

Based upon the stipulation of the parties, and in the interests of justice, the Court approves the request of Plaintiff and Class Representative Eiji Kurihara and Defendant Best Buy to modify the Court's ORDER ADOPTING REPORT AND RECOMMENDATION AND FINAL APPROVAL OF SETTLEMENT in the following respects:

- a. The Claims Administrator may stop payment on or after December 27, 2010 on all uncashed settlement checks issued to Class members;
- b. The Claims Administrator shall forward to the California State Controller's Office the value of the uncashed settlement checks as unclaimed property of the payees with appropriate documentation; and
- c. The Claims Administrator may close the bank account for this settlement, make the appropriate tax reports and filings, and wind up the administration of this settlement.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Date: January 5, 2011

The Honorable _____
United States District Court

