

Law Office of Lainey Feingold

DISABILITY RIGHTS LEGAL ADVOCACY

Best Buy Tactile POS Settlement Agreement

The Best Buy settlement agreement posted here is the result of a collaboration among Best Buy and the American Council of the Blind (ACB), the American Foundation for the Blind (AFB) and the California Council of the Blind (CCB). Best Buy has agreed to install tactile point of sale devices in all its U.S. stores so that blind people do not have to disclose their PIN when using a debit card. Structured Negotiations was used to achieve this settlement agreement, and Lainey Feingold and [Linda Dardarian](#) were the lawyers for the blind organizations. [Read the Best Buy Point of Sale Press Release](#).

[Simplified Summary of this Document](#)

SETTLEMENT AGREEMENT

This Settlement Agreement (hereinafter "Settlement Agreement") and the related document entitled Confidential Addendum to Settlement Agreement (collectively referred to herein as the "Full Agreement") are entered into as of the Effective Date, as defined below in Section 1.4, by and between the following parties: American Council of the Blind ("ACB"), American Foundation for the Blind ("AFB"), and California Council of the Blind ("CCB") (collectively, the "Claimants"), and Best Buy Stores, L.P. ("Best Buy"). Claimants and Best Buy are at times referred to collectively herein as the "Parties."

RECITALS

The Full Agreement is based on the following facts:

- A. ACB is a non-profit organization that provides advocacy services in the United States on behalf of individuals who are blind or have visual impairments. CCB is ACB's California affiliate serving the needs of blind and visually-impaired persons throughout the State of California. ACB is incorporated in Washington, D.C. and has its place of business in Arlington, Virginia. CCB is incorporated and has its place of business in the State of California.
- B. AFB is a national non-profit organization whose mission is to eliminate the inequities faced by the more than ten million blind and visually impaired persons in the United States. AFB's headquarters are in New York, New York, and its Public Policy Center is in Washington, D.C.
- C. Best Buy operates retail stores in California and other states across the United States. Best Buy's retail stores include Best Buy Stores, Best Buy Mobile stores, and Geek Squad Stores (collectively, "Best Buy Stores").
- D.

Best Buy currently equips each of the cash registers in its stores with a POS Device that is designed to assist customers in making credit and debit card purchases.

E.

Claimants have alleged that POS Devices deployed in Best Buy Stores throughout the United States were inaccessible to individuals who are blind or visually impaired in violation of Title III of the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq., the Rehabilitation Act of 1973, 29 U.S.C. §§ 701 et seq., California’s Unruh Act, Cal. Civ. Code §§ 51 et seq., and California’s Blind and Disabled Persons Act, Cal. Civ. Code §§ 54 et seq., and other similar federal, state, local, or administrative laws, statutes, rules, or regulations relating to disability access or disability discrimination by a public accommodation or business (“Access Laws”). Best Buy disputes whether any Access Laws apply to its POS Devices. Best Buy denies that it has engaged in any unlawful or wrongful conduct with respect to the alleged inaccessibility of its POS Devices, and further denies that Claimants or any of their members have been injured or have suffered damages in any amount, or at all.

F.

On or about June 25, 2009, the Parties entered into Structured Negotiations to resolve their disputes regarding Claimants’ claim that Best Buy’s POS Devices are inaccessible in violation of the Access Laws. In addition to negotiating the terms and conditions of this Agreement, Best Buy and Claimants participated in testing of the Hypercom L4150 Point of Sale Device with the L4150 Tactile PIN Pad Attachment by individuals with visual impairments who were members of one or more of the Claimant organizations.

G

The Parties enter into the Full Agreement in order to resolve the Claims and to avoid the burden, expense, and risk of potential litigation. Neither the Full Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed as an admission or concession by Best Buy of any violation or failure to comply with any applicable law. Neither the Full Agreement nor any of its terms and provisions shall be offered or received as evidence for any purpose whatsoever against Best Buy in any action or proceeding, other than a proceeding to enforce the terms of the Full Agreement.

A G R E E M E N T

NOW, THEREFORE, in consideration of the recitals outlined above, and for other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

Definitions. As used in the Full Agreement, the following terms shall be as defined below:

1.1

Americans with Disabilities Act or ADA means Title III of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq., and the Title III implementing regulations, 28 C.F.R., Part 36.

1.2

Claims means the contention by Claimants and their respective boards, staff, members and clients, and other blind and visually-impaired persons, that Claimants are being, have been and continue to be discriminated against due to alleged inaccessibility of certain POS Devices in Best Buy Stores pursuant to applicable Access Laws.

1.3

Counsel means Goldstein, Demchak, Baller, Borgen and Dardarian, The Law Office of Lainey Feingold, and the attorneys practicing law therein.

1.4

Effective Date means January 15, 2010.

1.5

L-4150 Tactile PIN Pad Attachment means the raised button keypad that plugs into, and works in conjunction with, the L-4150 POS Device. The L-4150 Tactile PIN Pad Attachment shall be programmed so that customers may perform the following functions using the L-4150 Tactile PIN PAD Attachment, provided that such functions may be performed by customers using the L-4150 Device without the Attachment: (i) input, clear, cancel and enter PINs; (ii) select and approve cash back amount; (iii) select payment method; and (iv) reject and approve payment transaction.

1.6

Next Generation POS Device means a POS Device other than the POS Devices installed in Best Buy Stores as of the Effective Date that shall, through an integrated or attached tactile device, provide at least the same tactile features and level of functionality for customers with visual impairments as provided by the L4150 Tactile PIN Pad Attachment.

1.7

Personal Identification Number or PIN means a unique numerical code used by individual customers that must be entered into a POS Device before conducting certain transactions on the POS Device.

1.8

Point of Sale Device or POS Device means a device that is staffed by a Best Buy employee and used by a customer at a point of purchase to pay for items with a debit, credit or other electronic funds card. POS Device does not include equipment that may be used by a customer in Best Buy Stores to scan or price products, payment devices at non-staffed locations.

1.9

Staffed Customer Service Counter means the Customer Service Counter for a Best Buy Store, where at least one POS Device is placed to assist customers in making returns and/or paying for products or services. The term Staffed Customer Services Counter does not include Staffed Front End Checkstands.

1.10

Staffed Front End Checkstand means any checkstand at the front of a Best Buy Store where a POS Device is placed and which is staffed by a Best Buy employee to assist customers in paying for products or services. The term Staffed Front End Checkstand does not include Staffed Specialty Counters or Staffed Customer Service Counters.

1.11

Staffed Specialty Counter means the staffed counters other than Front End Checkstands and Customer Service Counters where customers can purchase goods and services within a Best Buy Store.

2. Duration and Geographic Scope of Agreement.

The Full Agreement shall apply to Best Buy Stores in every state in the United States in which Best Buy operates Best Buy Stores. The terms of the Full Agreement shall remain in effect from the Effective Date until March 1, 2011.

3. Provisions Regarding POS Devices.

3.1 Best Buy Stores in California.

As of October 30, 2009, Best Buy has equipped all POS Devices in all Best Buy Stores located in the State of California with a permanently attached L-4150 Tactile PIN Pad Attachment. All POS Devices in all Best Buy Stores in California opened between November 1, 2009 and the expiration date of this Agreement shall be equipped with a permanently attached L-4150 Tactile PIN Pad Attachment or a Next Generation POS Device as of the date the store is opened to the public.

3.2 Best Buy Stores Outside of California.

3.2.1 Commencing March 1, 2010, Best Buy will begin equipping each Best Buy Store outside the State of California with L-4150 Tactile PIN Pad Attachments as follows:

(i) *Staffed Customer Service Counter:* Best Buy shall attach one L-4150 Tactile PIN Pad Attachment to one POS Device at the Customer Service Counter of each Best Buy Store.

(ii) *Staffed Front End Checkstands:* Best Buy shall attach L-4150 Tactile PIN Pad Attachments to Staffed Front End POS Devices in conformance with the following:

Staffed Front End Checkstands

Staffed Front End Checkstands

Total Number of Staffed Front End Checkstands	Minimum Number of L4150 Tactile PIN Pad Attachments
1-4	1
5-8	2
9-15	3
Over 15	3, plus 20% of additional aisles

(iii) *Staffed Specialty Counters:* Best Buy shall attach one L4150 Tactile PIN Pad Attachment to one POS Device located at each Staffed Specialty Counter.

3.2.2 All Best Buy Stores outside of California will be equipped with L-4150 Tactile PIN Pad Attachments as required by Section 3.2.1 no later than September 30, 2010. All new Best Buy Stores outside of California that are opened during the Term of this Agreement will be equipped with the number of Tactile Keypad Attachments set forth in Section 3.2.1 as of the date the Store is open to the public.

3.3 Maintenance.

Best Buy will use its good faith efforts to maintain all L-4150 Tactile PIN Pad Attachments and the POS Devices to which they are attached, in operable, working condition except for isolated or temporary interruptions in service due to maintenance or repairs.

3.4

To the extent practical, Best Buy will make good faith efforts to ensure that L-4150 Tactile PIN Pad Attachments installed pursuant to Section 3.2.1(ii) will be placed, depending upon size, location and configuration of the subject store, and with allowance for experimentation and special events, at the Staffed Checkstands in consistent locations and evenly distributed.

3.5 Rollout Information to Claimants.

On completion of the rollout, Best Buy shall provide to Claimants a statement affirming the completion thereof.

4. Testing of Next Generation POS Device.

In the event Best Buy chooses to install a Next Generation POS Device as part of the Rollout Schedules set forth in Section 3.1 or 3.2, above, Best Buy shall meet and confer with Claimants so that Claimants may test and provide feedback on any Next Generation Device to be installed in Best Buy Stores during the term of this Agreement prior to Best Buy making a final purchasing decision about the Next Generation Device. Claimants shall provide any feedback within fourteen days of their testing and such feedback will be considered in good faith by Best Buy. Best Buy will retain the right to decide the brand and model of the Next Generation POS Device.

5. Training of Best Buy Personnel.

5.1

With input from Claimants, Best Buy has updated its training materials for its California Stores to ensure that those materials cover, inter alia, (i) the installation of the L-4150 Tactile PIN Pad Attachment; (ii) the reason visually impaired Best Buy customers need the Attachments; (iii) the manner in which visually impaired Best Buy customers use the POS Devices and Attachments; (iv) locations of the L-4150 Tactile PIN Pad Attachments in Best Buy Stores; and (v) guidelines for appropriate interactions with visually impaired customers using the L-4150 Tactile PIN Pad Attachments. Best Buy will create similar training materials for Best Buy Stores outside of California and will distribute those materials and use them to train employees in a timely manner to ensure compliance with this Agreement.

5.2

Best Buy will provide Claimants with a copy of the training materials for use outside of California prior to their finalization. Review and distribution of the training material is to be limited to Claimants and their attorneys only for purposes of this dispute. Upon request, all training material shall be returned to Best Buy or confidentially destroyed. Best Buy will consider the feedback provided by Claimants and use good faith efforts to incorporate applicable feedback provided that such feedback is submitted in a timely manner and is consistent with this Agreement. The details of the training program will be in the sole discretion of Best Buy.

6. Joint Press Release.

The Claimants and Best Buy shall jointly issue the press release announcing the terms of this Agreement attached hereto as Exhibit A. [[Read Exhibit A](#)]

7. Right to Seek Modification.

7.1

Best Buy may seek to modify the schedules set forth in Section 3 above, if Best Buy reasonably believes that compliance with the schedules will result in an “undue burden”, as hereinafter defined, and may also, as set forth in Section 14, seek to modify these schedules as a result of Force Majeure.

7.1.1

As used in this Agreement, the term “undue burden” means significant difficulty or expense. In determining whether an action would result in an undue burden, factors to be considered, amongst others, include those set forth in 28 C.F.R. section 36.104, part III-4.3600 of the Technical Assistance Manual, and any other regulations/ interpretive guidance issued by or on behalf of the United States Department of Justice.

7.2

Best Buy may also seek to modify or suspend compliance with the schedules set forth in Section 3 above if Best Buy reasonably concludes in good faith either that:

7.2.1 Unforeseen circumstances render compliance with Section 3 impossible or impracticable; or

7.2.2 Installation or continued use of the L-4150 Tactile PIN Pad Attachment required by this Agreement is prohibited, restricted or made impracticable by federal, state or local law or regulation, or by any modification of or changes to the Payment Card Industry’s PED Security Standards, or other similar standards.

7.3

If Best Buy seeks to modify the schedules as provided in Section 3, above, it will send Claimants a Notice of Proposed Modification, describing the factual basis of the reason for the modification or suspension, and proposing a modified schedule. If within sixty (60) days after their receipt of Best Buy’s Notice of Proposed Modification the Parties have not reached agreement regarding the Notice, the matter will be resolved pursuant to Section

7.4, below.

7.4 Best Buy shall not be in breach of any term of this Agreement if it fails to comply with the schedules set forth in Section 3 after providing to Claimants a Notice of Modification pursuant to Section 6 above.

8. Procedures in the Event of Disputes.

8.1 Notice of Non Compliance.

If a party believes that the other party has not complied with any provision of the Full Agreement, that party shall provide the other party with Notice of Non Compliance containing the following information:

8.1.1 the alleged act of non compliance;

8.1.2 a reference to the specific provision(s) of the Settlement Agreement or Confidential Addendum that are involved;

8.1.3 a statement of the remedial action sought by the initiating party;

8.1.4 a brief statement of the specific facts, circumstances and legal argument supporting the position of the initiating party.

8.2 Response.

Within forty-five (45) days of receipt of a Notice provided pursuant to Section 7.1, the non initiating party shall respond to the initiating party in writing.

8.3 Meet and Confer.

Within two weeks after the response described above, the Parties shall informally meet and confer and attempt to resolve the issues raised in the Notice.

8.4 Submission to Mediation.

8.4.1 If the matters raised in a Notice provided pursuant to Section 7.1 are not resolved within forty-five (45) days of the initial meet and confer required by Section 7.3, either party may submit the unresolved matters to nonbinding mediation before a mediator affiliated with JAMS, or such other mediator as the Parties may jointly designate.

9. Notice or Communication to Parties.

Any notice or communication required or permitted to be given to the parties hereunder shall be given in writing by facsimile or email and United States mail, addressed as follows:

To Claimants:

Linda M. Dardarian
c/o Goldstein, Demchak,
Baller, Borgen & Dardarian
300 Lakeside Drive, Suite 1000
Oakland, CA 94612
Fax No.: (510) 835 1417
[email address omitted]

Lainey Feingold
Law Office of Lainey Feingold
1524 Scenic Avenue
Berkeley, CA 94708
[email address omitted]

To Best Buy:

Best Buy Stores, L.P.
7601 Penn Avenue South
Richfield, MN 55423
Attn: Office of the General Counsel

10. Modification in Writing.

No modification of the Full Agreement shall be effective unless in writing and signed by authorized representatives of all Parties.

11. No Other Representations.

Each party to the Full Agreement warrants that he, she or it is acting upon his, her or its independent judgment and upon the advice of his, her or its own counsel and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other party, other than the warranties and representations expressly made in the Full Agreement.

12. Full Agreement Has Been Read.

The Full Agreement has been carefully read by each of the Parties, or their responsible officers, and its contents are known and understood by each of the Parties. The Full Agreement is signed freely by each party executing it.

13. No Assignment.

No party to the Full Agreement has heretofore assigned, transferred or granted, or purported to assign, transfer or grant, any of the claims, demands, or cause or causes of action disposed of by the Full Agreement.

14. Agreement Binding on Assigns and Successors.

The Full Agreement shall bind any assigns and successors of the Parties.

15. Force Majeure.

The performance of Best Buy under this Settlement Agreement shall be excused during the period and to the extent that such performance is rendered impossible, impracticable or unduly burdensome due to acts of God, strikes or lockouts, or unavailability of operable equipment, materials or software through normal supply sources. If Best Buy seeks to invoke this Section, it shall notify Counsel in writing as soon as reasonably possible, specifying the particular action that could not be performed and the specific reason for the non performance. Counsel and Best Buy will thereafter meet and confer regarding an alternative schedule for completion of the action that could not be performed, or an alternative action. Any dispute regarding the applicability of this Section, or any future action to be taken, that remains after the meet and confer session will be handled as a dispute pursuant to Section 8.4 of this Settlement Agreement.

16. No Admission of Liability.

In entering into the Full Agreement, Best Buy does not admit, and specifically denies, that it has violated or failed to comply with any Access Laws.

17. Authority.

The persons executing the Full Agreement each represent and warrant that he or she has the authority to enter into the Full Agreement, and to resolve the matters set forth in the Full Agreement, on behalf of the Party for whom he or she is executing the Full Agreement, and that no further approval is necessary in order for the Full Agreement to be binding on the Party for whom he or she is executing.

18. Integrated Agreement.

The Full Agreement constitutes the entire agreement relating to the subject matters addressed therein.

19. Rules of Construction.

Each party and its legal counsel have reviewed and participated in the drafting of the Full Agreement; and any rule of construction to the effect that ambiguities are construed against the drafting party shall not apply in the interpretation or construction of the Full Agreement. Section titles used herein are intended for reference purposes only and are not to be construed as part of the Full Agreement. The Recitals are integral to the construction and interpretation of the Full Agreement and are therefore incorporated into the Full Agreement in their entirety.

20. Triplicate Originals/Execution in Counterparts.

All Parties and their respective counsel shall sign three copies of this document and each such copy shall be considered an original. This document may be executed in counterparts.

- **BEST BUY STORES, L.P.**

By: Thomas R. Harris

- **AMERICAN COUNCIL OF THE BLIND**

By: Melanie Brunson, Executive Director

- **AMERICAN FOUNDATION FOR THE BLIND**

By: Paul Shroeder, Vice President, Programs & Policy Group

- **CALIFORNIA COUNCIL OF THE BLIND**

By: Jeff Thom, President

APPROVED AS TO FORM:

- **BEST BUY**

By: Attorneys for Best Buy Stores, L.P.

- **GOLDSTEIN, DEMCHAK, BALLER, BORGAN & DARDARIAN**

By: Linda M. Dardarian, Attorneys for Claimants

- **LAW OFFICE OF LAINEY FEINGOLD**

By: Lainey Feingold, Attorneys for Claimants

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