

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
NEWARK DIVISION**

WILLIAM EBERHART, individually and
on behalf of others similarly situated,

Plaintiff,

vs.

LG ELECTRONICS USA, INC.,

Defendant.

Case No. _____

CLASS ACTION

JURY TRIAL DEMANDED

PLAINTIFF'S CLASS ACTION COMPLAINT

Plaintiff William Eberhart (“Plaintiff” or “Eberhart”) hereby files this class action complaint on behalf of himself and all others similarly situated, by and through the undersigned attorneys, against Defendant LG Electronics USA, Inc. (“LG” or “Defendant”), and alleges as follows upon personal knowledge as to himself and his own acts and experiences and, as to all other matters, upon information and belief based upon, *inter alia*, the investigation conducted by his attorneys.

NATURE OF THE CASE

1. This is a class action on behalf of consumers who purchased televisions¹ (hereinafter “Televisions”) which have been marketed by Defendant using invented or misleading technical terms and ratings systems deliberately designed to mislead consumers about the quality of the items they purchased.

2. What consumers perceive as motion on a television screen is actually the display of a numerous still images in rapid succession. The number of times unique images are updated or “refreshed” on the television screen during each second is referred to as the “refresh rate.” In other words, a television with a refresh rate of 60 Hertz (or Hz²) would be capable of displaying 60 unique images per second on the screen. These unique still images are then perceived as motion to the viewer. Significantly, because electricity in the United States runs at 60 Hz (and since video is currently not recorded at more than 60 images per second), modern High Definition Televisions can naturally only display a maximum of 60 unique images per second.

3. LG has tried to artificially boost the purported Hz capability on certain of its LCD televisions through the use of creative – and materially

¹ As used herein, the term “Televisions” refers to any LG Television marketed with either TruMotion or Motion Clarity Index (“MCI”). Plaintiff reserves the right to amend this list as further facts are revealed during discovery.

² Refresh rate is expressed in Hertz, which is defined by the International System of Units as cycles per second.

misleading – marketing nomenclature. Until 2014,³ LG marketed its LCD televisions with “TruMotion” technology. According to LG, TruMotion “increases the standard 60Hz refresh rate—how often the image is rendered on the TV screen—which drastically reduces blur and yields crisper details LG TruMotion 120Hz, 240Hz or 480Hz is available on select-model LCD TVs.”⁴

4. In 2014, LG began measuring its LCD television refresh rates based on a “Motion Clarity Index,” or “MCI.” According to LG, “Our Motion Clarity Index (MCI) rates how well LG LCD televisions display fast motion. This figure represents not only the benefits of our enhanced frame rates but also our detailed backlight scanning, advanced local dimming, and powerful video processing engine. A higher MCI is better, and this television has earned an impressive rating of 480.”⁵

5. While, as discussed below, LG’s TruMotion and MCI features operate slightly differently, the net result is the same: they both deceive consumers into believing that their Televisions can somehow increase the true refresh rate to levels above the standard 60 Hz, notwithstanding the limitations on electricity input and

³ See <http://www.rtings.com/info/fake-refresh-rates-samsung-clear-motion-rate-vs-sony-motionflow-vs-lg-trumotion> (last visited Feb. 9, 2015).

⁴ http://www.lg.com/us/tv-audio-video/discoverlgtvs/picture_quality/index.jsp (last visited Feb. 9, 2015).

⁵ <http://www.lg.com/us/tvs/lg-65LB5200-led-tv> (last visited Feb. 9, 2015).

video that prevent this from being possible absent use of a special technology discussed in greater detail below.

6. LG has deliberately given consumers the impression that these labels provide a comparable measure of refresh rate to Hz, when in fact it bears little relationship. For example, a Television with an MCI “rating” of 480 could have a refresh rate of as little as 60 Hz. Instead of employing the standard measure of refresh rate—Hertz—LG has fabricated a replacement unit purporting to measure refresh rates with the aim of misleading consumers. LG effectuated this deception by, *inter alia*, failing to include or reference the true refresh rate of its televisions in Hertz within its marketing material and packaging; and, by design, setting the standard measure of MCIs at increments which mirror standard Hertz measurements for televisions (*e.g.*, 240, 480).

7. These advertised refresh rates of modern televisions are an important differentiator among competing manufacturers and are, likewise, a key component of television pricing, just as with screen resolution (the number of pixels on the screen) and the size of the screen.

8. This advertising technique has been very successful in misleading consumers. LG is among the top LCD televisions manufacturers in the United States with sales totaling tens or hundreds of millions of dollars per year. Between

2009 and 2012, LG held between 6% and 12% of the market share for LCD televisions in the United States.

9. Plaintiff, individually and on behalf of the Class defined below, seeks to obtain relief from Defendant, including, *inter alia*, damages and declaratory relief.

10. Specifically, this class action is brought to remedy violations of law in connection with Defendant's fraudulent and deceptive marketing and pricing scheme relating to the Televisions. LG represented, through advertising to potential customers, that the Televisions have double, or more, of the true refresh rates when measured in Hz, and that by purchasing the Televisions with such higher refresh rates, they will be able to see more images per second than they actually do.

11. Defendant's marketing techniques are false and misleading in that the true refresh rates displayed on the Televisions are actually half (or less) of the amount of what consumers are led to believe through marketing and advertising.

12. That is, LG has marketed its Televisions in such a way that consumers are led to believe the Televisions possess refresh rates of 120Hz and higher, when in fact, all LG Television screens truly refresh at rates lower than advertised.

13. Defendant also inflates its LCD prices to reflect the higher quality refresh rate misrepresentations. As a consequence of this scheme, consumers

across the nation are paying more than they would otherwise pay if the true facts were disclosed by Defendant, and consumers are receiving a lower quality product than is represented in Defendant's advertising.

JURISDICTION AND VENUE

14. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. § 1332 of the Class Action Fairness Act of 2005 because: (i) there are 100 or more class members; (ii) there is an aggregate amount in controversy exceeding \$5,000,000, exclusive of interest and costs; and (iii) there is minimal diversity because at least one member of the Class and Defendant are citizens of different states. This Court also has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

15. Venue is proper in this judicial district and division pursuant to 28 U.S.C. § 1391 because Defendant is headquartered in this district and division, is subject to personal jurisdiction in this district and division, and therefore is deemed to be a citizen of this district and division. Additionally, Defendant has advertised in this district and division and received substantial revenues and profits from its sales of Televisions in this district and division; therefore, a substantial part of the events and/or omissions giving rise to the claims occurred within this district and division. Throughout the class period, Defendant has directed its national false advertising campaign from this district and division such

that Defendant's improper conduct emanates from this district and division.

16. This Court has personal jurisdiction over Defendant because it conducts substantial business in this judicial district and division, and intentionally and purposefully directed Televisions into the stream of commerce within the districts of New Jersey and throughout the United States from its corporate headquarters in this district and division.

PARTIES

The Plaintiff

17. Plaintiff William Eberhart is a resident of Toms River, New Jersey.

18. On or about late November 2014, Plaintiff bought a 60 inch LG 60LB5200 television at a local Walmart near his home.

19. Prior to purchasing his Television, Mr. Eberhart reviewed advertisements and technical specifications created and disseminated by Defendant which, among other things, represented that his Television had a MCI of 480. Upon information and belief, Defendant also provided varying and inconsistent representations of the Hertz for Mr. Eberhart's Television to retailers, without disclosing the true refresh rate in its consumer-oriented marketing materials.

20. In truth, Plaintiff's Television has a true refresh rate of just 60Hz. Plaintiff relied upon and was misled by Defendant's false advertising.

21. Plaintiff Eberhart has suffered an ascertainable loss as a result of Defendant's conduct described herein in that he paid more than he otherwise would have paid for his Television (if he had chosen to purchase his Television at all), due to Defendant's misrepresentations.

The Defendant

22. Defendant LG Electronics USA, Inc. is a corporation duly organized and existing under the laws of the State of New Jersey with its headquarters and principal place of business located at 1000 Sylvan Avenue, Englewood Cliffs, New Jersey 07632. LG markets, advertises, and sells the Televisions throughout the United States.

TOLLING OF STATUTES OF LIMITATION

23. Any applicable statute(s) of limitations has been tolled by Defendant's knowing and active concealment and denial of the facts alleged herein. Plaintiff and members of the Class could not have reasonably discovered the true nature of the Televisions until shortly before this class action litigation was commenced.

24. Defendant was and remains under a continuing duty to disclose to Plaintiff and members of the Class the true character, quality, and nature of the Televisions. As a result of the active concealment by Defendant, any and all applicable statutes of limitations otherwise applicable to the allegations herein have been tolled.

FACTUAL ALLEGATIONS

A. Television Technology Background

25. As explained above, the videos we watch on television are merely a series of still photographs displayed in such rapid succession that we perceive movement. Refresh rate refers to the number of unique images we see, as expressed in Hertz, *i.e.*, cycles per second. At this time, video is not recorded at a rate higher than 60 images per second (60Hz), and movies are typically filmed at a rate of 24 images per second. Electricity in the United States also runs at 60Hz, which contributed to the adoption of the standard 60Hz refresh rate for video.⁶

26. If too few images are displayed per second, viewers can see blurring on the screen. This blur, referred to as “motion blur,” is the apparent streaking of rapidly moving objects. Motion blur can be evident in a variety of programming, but especially in fast moving sports such as basketball or football.

27. The Televisions at issue here are all LCD televisions. The term LCD refers to Liquid Crystal Display. In basic terms, this technology filters a white light to create black and colored images. Historically, response time, or the amount of time it takes for the LCD to change color, has hindered the ability to fight motion blur. But as LCD technology has developed and evolved, LCD technology surrounding response time has improved. Initial LCD televisions had a

⁶ Geoffrey Morrision, *What is a Refresh Rate*, CNET (October 8, 2012), <http://www.cnet.com/news/what-is-refresh-rate/>.

refresh rate of 60Hz (or 60 unique images per second). But a few years ago, LCDs hit the market claiming to offer higher refresh rates.

28. During the past several years, LG has advertised an actual refresh rate in its Televisions at 120Hz and greater. In reality, LG uses an inferior technology called backlight scanning, as discussed more thoroughly below, to allow Televisions refreshing at 60Hz to operate under the guise of refreshing at 120Hz and higher.

29. This is achieved with a scanning backlight which flickers and essentially splits the display of one image during a refresh into (for 120Hz Televisions) two displays of the same exact image. This technological trickery allows a display of one single unique image to be split such that the same exact image is displayed twice during a refresh. The Television itself never actually refreshes (*i.e.*, updates its buffer) at 120Hz (*i.e.*, 120 times per second).

30. LG nevertheless takes the double display results obtained from utilizing this backlight flickering technology and markets and advertises this as a “120Hz” refresh rate, or more.

31. Unbeknownst to consumers, when consumers buy an LG Television with a 120Hz refresh rate, what they actually receive is an exorbitantly priced Television with an actual refresh rate of 60Hz and a built-in, cheap industry trick.

B. Motion Interpolation

32. These purported increased refresh rates (120Hz and higher) were first introduced by manufacturers as a means of reducing the motion blur problem traditionally suffered by LCDs. The technology used to increase refresh rates doubles as it increases, such that from 60Hz, it jumps to 120Hz; from 120Hz it jumps to 240Hz; from 240Hz to 480Hz, and so on. Consumers have come to associate these particular numbers with standardized measurement of refresh rates in Hertz.

33. The logical question arises when one is aware that the fastest rate of recording of images for television occurs at 60 unique images per second: how can a television produce *more* than the original number of unique images per second found in the original? The answer is a technology called Motion Interpolation.

34. Motion Interpolation refers to a process by which a television receives successive images and creates its own *unique* image (or images) to insert between the original images:

ORIGINAL IMAGE SEQUENCE



MOTION INTERPOLATED SEQUENCE



35. The foregoing illustration demonstrates the manner in which technology permits the creation of *unique* images. If the original image sequence above was at 60Hz, the motion interpolated sequence would be at 120Hz. In other words, the processor of the television is creating a new *unique* image for every image originally broadcast.

36. Rather than paying to integrate motion interpolation technology and provide accurate representations of the actual refresh rates of its Televisions, LG uses an inferior, less expensive, backend technology to flash *non-unique* images, or simply misstates the refresh rate altogether.

C. The Methodology Employed by LG

37. Using Plaintiff's LG 60LB5200 as an example, Defendant states that the 480 MCI for the Television "represents not only the benefits of our enhanced frame rates but also our detailed backlight scanning, advanced local dimming, and powerful video processing engine. A higher MCI is better, and this television has earned an impressive rating of 480."⁷

38. This representation is false and misleading in its use of the terms "MCI," "frame rate," and "backlight scanning."

39. Defendant's invention of the MCI "rating" system is meant to confuse consumers into believing they are purchasing a Television with a refresh rate of

⁷ <http://www.lg.com/us/tvs/lg-60LB5200-led-tv> (last visited Feb. 9, 2015).

480 Hz, or at a comparable quality level. Defendant deliberately uses the number 480 to mislead consumers, literally banking on the confusion they are cultivating through their creation, from whole cloth, of this “rating” system.

40. The term “frame rate” generally means, and is understood to mean, unique images per second. Under the true definition of the term, Defendant’s representation is false.

41. One inferior technology LG utilizes to overstate the actual refresh rates of the televisions is “scanning backlight.” Scanning backlight is a simple technology that displays the *same* image, two or more times, in rapid succession with an unperceivable instant of black between the identical images. “Scanning backlight” is an inferior substitute for motion interpolation, which creates unique images.

42. Scanning backlight is one technological way of attempting to artificially manipulate refresh rates. LG employs this technique as part of its claim regarding MCI for Plaintiff’s Television. The reality is, as LG well knows, a television (falsely) marketed as possessing a higher refresh rate is worth more in the marketplace than one that is honestly advertised as 60Hz. LG has deliberately taken a dishonest route to increase sales and pad the technical specifications of its Televisions. LG well knows this, having previously stated when referring to scanning backlight, “frames are simply repeated to fill in the time before the next

frame. This results in a visual ‘jumpiness’ in the picture known as judder. Motion interpolation corrects this judder by independently generating intermediate frames to produce a more fluid picture.”

43. In effect, LG has created, or misused, technical terms like “scanning backlight” and “frame rate” to mislead consumers into believing they were purchasing top-of-the-line televisions with high refresh rates of unique images. In fact, LG has manufactured jargon, such as MCI, to conceal the true nature of their Televisions: inferior products which flash the same images repeatedly at relatively slow rates. LG has done this, *inter alia*, through the invention of terms and measurements systems which are designed to be misleading and to seem to the average consumer like the standard measurements used in the industry, to wit, Hertz.

44. While many average consumers may not have the technical aptitude to look beyond a basic comparison of a television’s advertised statistics, the same cannot be said of technology writers, who have begun to bring to light the dishonest tactics challenged here. For example, the respected technology review resource CNET has published articles detailing this fabrication, such as “Fake refresh rates: Is your TV really 120Hz? In an effort to keep prices down and sales up, TV companies are pushing TVs with ‘fake’ refresh rates. Know your terms and tech to make sure you’re really getting what you think you’re paying for.” In

an article entitled “Beware Of Phony LCD HDTV Refresh Rates,” the well-known technology website HDGuru described the issue as follows: “Buyers beware: top TV makers are quietly substituting industry standardized refresh rate specification with their own artificial rate numbers, deceiving prospective buyers into purchasing an HDTV over a possibly better performing (but more honestly labeled) competing model.”

45. In short, by engaging in the aforementioned misleading and dishonest conduct, Defendant is precluding consumers from making an apples-to-apples comparison when comparing LG’s Televisions to competing brands. LG engages in this confusing and manipulative marketing scheme to trick consumers into purchasing LCD televisions with the belief that they are receiving higher refresh rates than they actually are.

46. Average consumers, relying on LG’s advertisements, can and did reasonably believe they were purchasing products with the actual and true refresh rates that were advertised for the Televisions, when they were, in fact, being willfully and deliberately misled by Defendant.

CLASS ACTION ALLEGATIONS

47. Plaintiff brings this action on his own behalf, and on behalf of the following National Class pursuant to FED. R. CIV. P. 23(a), 23(b)(2), and/or 23(b)(3). Specifically, the National Class consists of the following:

National Class:

All persons or entities in the United States who purchased one or more Televisions from March 1, 2011 until the present.

Pursuant to FED. R. CIV. P. 23(c)(5), Plaintiff seeks to represent the following state class only in the event that the Court declines to certify the National Class:

New Jersey Class:

All persons or entities in New Jersey who purchased one or more Televisions from March 1, 2011 until the present.

48. Together, the National and New Jersey Classes shall be collectively referred to herein as the “Class.” Excluded from the Class are: Defendant, its affiliates, employees, officers and directors, persons or entities that purchased the Televisions for purposes of resale, and the Judge(s) assigned to this case. Plaintiff reserves the right to modify, change, or expand the Class definition after conducting discovery.

49. Numerosity: The Class is so numerous that joinder of all members is impracticable. While the exact number and identities of individual members of the Class are unknown at this time, such information being in the possession of Defendant and obtainable by Plaintiff only through the discovery process, Plaintiff believes that the Class consists of hundreds of thousands, if not millions, of persons and entities that were deceived by Defendant’s conduct.

50. Existence and Predominance of Common Questions of Fact and Law:

Common questions of law and fact exist as to all members of the Class. These questions predominate over the questions affecting individual Class members.

These common legal and factual questions include, but are not limited to:

- a. whether Defendant misrepresented the refresh rates in the Televisions;
- b. whether Defendant's conduct violated the New Jersey Consumer Fraud Act;
- c. whether Plaintiff and Class members are entitled to monetary damages and/or other remedies and, if so, the nature of any such relief; and
- d. whether the Court may apply the law of the State of New Jersey to the entire Class because Defendant's conduct emanated from New Jersey.

51. Typicality: All of Plaintiff's claims are typical of the claims of the Class since each Television was advertised with the same type of false and/or misleading statements, regardless of model or production year. Plaintiff and all members of the Class sustained monetary and economic injuries including, but not limited to, ascertainable losses arising out of Defendant's wrongful conduct.

Plaintiff is advancing the same claims and legal theories on behalf of himself and all absent Class members.

52. Adequacy: Plaintiff is an adequate representative because his interests do not materially or irreconcilably conflict with the interests of the Class

that he seeks to represent, he has retained counsel competent and highly experienced in complex class action litigation, and he intends to prosecute this action vigorously. The interests of the Class will be fairly and adequately protected by Plaintiff and his counsel.

53. Superiority: A class action is superior to all other available means of fair and efficient adjudication of the claims of Plaintiff and members of the Class. The injury suffered by each individual Class member is relatively small in comparison to the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendant's conduct. It would be virtually impossible for members of the Class individually to effectively redress the wrongs done to them. Even if the members of the Class could afford such individual litigation, the court system could not. Individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties and to the court system presented by the complex legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court. Members of the Class can be readily identified and notified based on, *inter alia*, Defendant's records, databases, and product registrations.

54. Defendant has acted, and refused to act, on grounds generally

applicable to the Class, thereby making appropriate final injunctive and equitable relief with respect to the Class as a whole.

55. New Jersey's substantive laws may be constitutionally applied to the claims of Plaintiff and the National Class under the Due Process Clause, 14th Amend., § 1, and the Full Faith and Credit Clause, art. IV., § 1, of the U.S. Constitution. New Jersey has significant contact, or significant aggregation of contacts, to the claims asserted by Plaintiff and all Class members, thereby creating state interests that ensure that the choice of New Jersey state law is not arbitrary or unfair. Specifically, Defendant's headquarters and principal place of business are located in New Jersey, and upon information and belief, the conduct that gave rise to Plaintiff's claims emanated from New Jersey.

VIOLATIONS ALLEGED

COUNT I

VIOLATION OF THE NEW JERSEY CONSUMER FRAUD ACT (On Behalf of the National Class or, Alternatively, the New Jersey Class)

56. Plaintiff and the Class incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

57. The New Jersey Consumer Fraud Act ("NJCFRA") protects consumers against "any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment,

suppression or omission, in connection with the sale or advertisement of any merchandise” N.J. STAT. ANN. § 56:8-2.

58. Plaintiff and members of the Class are consumers who purchased Televisions for personal, family, or household use.

59. Defendant also engaged in unlawful conduct in violation of the NJCFA by making knowing and intentional omissions. Defendant knowingly failed to disclose that the MCI is not an accurate depiction of refresh rate. Yet MCI was the only figure readily available in Defendant’s advertising materials. This is akin to refusing to provide the screen size of the television and inventing an arbitrary system for determining screen size that appears to be in the conventional measuring method—inches.

60. Defendant did not fully and truthfully disclose to its customers the true nature of the refresh rates for the Televisions. As a result, Plaintiff and the other Class members were fraudulently induced to purchase the Televisions.

61. Defendant intended that Plaintiff and all Class members rely on the acts of concealment and omissions, so that they would purchase the Televisions.

62. Defendant’s conduct caused Plaintiff and Class members to suffer an ascertainable loss. In addition to direct monetary losses, Plaintiff and Class members have suffered an ascertainable loss by receiving less than what was promised.

63. A causal relationship exists between Defendant's unlawful conduct and the ascertainable losses suffered by Plaintiff and the Class. Had the true information concerning the refresh rates of the Televisions been disclosed, consumers would not have purchased them or would have paid less for the Televisions had they decided to purchase them.

COUNT II
BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING
(On Behalf of the National Class or, Alternatively, the New Jersey Class)

64. Plaintiff and the Class incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

65. Defendant has a duty of good faith and fair dealing with respect to its dealings with consumers, including Plaintiff and the Class members.

66. There is an implied duty of good faith and fair dealing in every contract, and Defendant had an implied duty to ensure that its marketing materials and other representations regarding the quality of its refresh rates were not false and misleading.

67. Defendant knows that the refresh rate is a primary motivating factor in consumers' purchasing decisions.

68. Defendant breached the covenant of good faith and fair dealing by engaging in deceptive and misleading representations of the quality of its refresh

rates, and inflating the prices of the Televisions due to the higher claimed refresh rates.

69. Defendant acted recklessly, maliciously, in bad faith, and without good cause, thereby preventing Plaintiff and the Class from receiving their reasonably expected benefits of their purchases.

70. Plaintiff and Class members relied to their detriment upon misleading assertions and conduct of Defendant and such reliance may be presumed based on the Defendant's unlawful conduct.

71. As a direct and proximate result of Defendant's deceptive, fraudulent, and unfair practices, Plaintiff and Class members have suffered injury in fact and/or actual damages in an amount to be determined at trial.

72. Plaintiff, on behalf of himself and all others similarly situated, demands judgment against Defendant for damages and declaratory relief.

COUNT III
COMMON LAW FRAUD
(On Behalf of the National Class or, Alternatively, the New Jersey Class)

73. Plaintiff and the Class incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

74. Defendant made material misstatements of fact to Plaintiff and Class members regarding the refresh rates of the Televisions. As a result, Plaintiff and

the Class were fraudulently induced to purchase the Televisions with false and inflated refresh rates.

75. These misstatements by Defendant were made with knowledge of their falsity, and with the intent that Plaintiff and members of the Class would rely upon them.

76. As described herein, Defendant fraudulently created artificial reflections of refresh rates for the Televisions that effectively prevented purchasers from making appropriate comparisons.

77. To further its scheme, Defendant fraudulently inflated the prices of the Televisions to reflect its misrepresentations of the refresh rates in the Televisions.

78. At the time Defendant made these misrepresentations and concealments, and at the time Plaintiff and Class members purchased the Televisions, Plaintiff and the Class were unaware of the falsity of these misrepresentations, and reasonably believed them to be true.

79. In making these representations, Defendant knew they were false and/or misleading, and intended that the Plaintiff and Class members would rely upon such misrepresentations.

80. Plaintiff and Class members did in fact rely upon Defendant's misrepresentations concerning the refresh rate of the Televisions, as any reasonable consumer would.

81. As a direct and proximate result of Defendant's deceptive, fraudulent, and unfair practices, Plaintiff and Class members have suffered injury in fact and/or actual damages in an amount to be determined at trial.

82. Plaintiff, on behalf of himself and all others similarly situated, demands judgment against Defendant for damages and declaratory relief.

COUNT IV
NEGLIGENT MISREPRESENTATION
(On Behalf of the National Class or, Alternatively, the New Jersey Class)

83. Plaintiff and the Class incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

84. Under the circumstances alleged, Defendant owed a duty to Plaintiff and Class to provide them with accurate information regarding the true refresh rates of the Televisions.

85. Defendant represented to Plaintiff and Class members that by purchasing the Televisions, they would be enjoying higher refresh rates than they actually received.

86. Defendant's representations, as described herein, were false, negligent and material.

87. Defendant negligently made these misrepresentations with the understanding that Plaintiff and Class members would rely upon them.

88. Plaintiff and Class members did in fact reasonably rely upon these misrepresentations and concealments made by Defendant.

89. As a direct and proximate result of Defendant's negligent actions, Plaintiff and Class members have suffered injury in fact and/or actual damages in an amount to be determined at trial.

90. Plaintiff, on behalf of himself and all others similarly situated, demands judgment against Defendant for damages and declaratory relief.

COUNT V
BREACH OF EXPRESS WARRANTY
(On Behalf of the National Class or, Alternatively, the New Jersey Class)

91. Plaintiff and the Class incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

92. LG expressly warranted that its Televisions had certain, specific refresh rates.

93. LG breached these express warranties by selling Televisions that did not have these specified refresh rates, thereby injuring Plaintiff and similarly situated Class members.

COUNT VI
UNJUST ENRICHMENT

(On Behalf of the National Class or, Alternatively, the New Jersey Class)

94. Plaintiff and the Class incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

95. Plaintiff and the Class conferred a tangible economic benefit on LG by purchasing the Televisions. Plaintiff and the Class would not have purchased the Televisions had they known the true nature of the Televisions' refresh rates, or they would have paid substantially less for them.

96. Because of its wrongful acts and omissions, LG was able to charge a higher price for its Televisions than their true value and obtained monies which rightfully belong to Plaintiff and the Class.

97. Defendant enjoyed the benefit of increased financial gains, to the detriment of Plaintiff and other Class members. It would be inequitable and unjust for LG to retain these wrongfully obtained funds.

98. Therefore, in the alternative to the warranty and contract claims stated above, Plaintiff seeks an order requiring LG to make restitution and disgorgement to him and other members of the Class.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and members of the Class, respectfully requests that this Court:

- A. Determine that the claims alleged herein may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, and issue an order certifying one or more Classes as defined above;
- B. Appoint Plaintiff as the representative of the Class and his counsel as Class counsel;
- C. Award all actual, general, special, incidental, statutory, and consequential damages to which Plaintiff and Class members are entitled;
- D. Award pre-judgment and post-judgment interest on such monetary relief;
- E. Grant appropriate injunctive and/or declaratory relief;
- F. Award reasonable attorneys' fees and costs; and
- G. Grant such further relief that this Court deems appropriate.

JURY DEMAND

Plaintiff, on behalf of himself and the members of the Class, demands a trial by jury on all issues so triable.

Dated: March 9, 2015 Respectfully submitted,

By: *//s// Matthew D. Schelkopf*
Matthew D. Schelkopf (SBN: 03036-2002)
Benjamin F. Johns (SBN: 03818-2005)
Andrew W. Ferich (SBN: 01505-2012)
CHIMICLES & TIKELLIS LLP
One Haverford Centre
361 West Lancaster Avenue
Haverford, PA 19041
Telephone: (610) 642-8500
Facsimile: (610) 649-3633
E-mail: MDS@chimicles.com
AWF@chimicles.com

William H. Anderson (to apply *pro hac vice*)
CUNEO GILBERT & LADUCA, LLP
507 C Street, NE
Washington, DC 20002
Telephone: (202) 789-3960
Facsimile: (202) 789-1813
E-mail: wanderson@cuneolaw.com

Charles J. LaDuca (to apply *pro hac vice*)
CUNEO GILBERT & LADUCA, LLP
8120 Woodmont Avenue, Suite 810
Bethesda, MD 20814
Telephone: (202) 789-3960
Facsimile: (202) 789-1813
Email: charlesl@cuneolaw.com

Benjamin Elga (SBN: 138972014)
CUNEO GILBERT & LADUCA, LLP
16 Court Street, Suite 1012
Brooklyn, NY 11241
Telephone: (202) 789-3960
Facsimile: (202) 789-1813
Email: belga@cuneolaw.com

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
 WILLIAM EBERHART, individually and on behalf of others similarly situated,

DEFENDANTS
 LG ELECTRONICS USA, INC.

(b) County of Residence of First Listed Plaintiff Ocean County, N.J.
 (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Bergen County, N.J.
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, Email and Telephone Number)
 Matthew D. Schelkopf, Chimicles & Tikellis LLP
 361 West Lancaster Avenue, Haverford, PA 19041
 mds@chimicles.com (610) 642-8500

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 895 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 28 U.S.C. Section 1332

Brief description of cause:
 Consumer fraud case relating to false and mis-stated television performance specifications

VII. REQUESTED IN COMPLAINT:

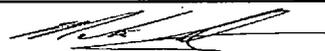
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE
 03/11/2015

SIGNATURE



FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____