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*Attorneys for Plaintiff, AARON RAMOS*

11 UNITED STATES DISTRICT COURT  
 12 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

13 AARON RAMOS, individually, and  
 14 on behalf of all others similarly  
 15 situated,

16 Plaintiff,

17 vs.

18 FRY'S ELECTRONICS, INC., and  
 19 DOES 1-10 Inclusive,

20 Defendant.

Case No. '17CV2320 MMABLM

**CLASS ACTION COMPLAINT**

- (1) Violation of False Advertising Law (Cal. Business & Professions Code §§ 17500 *et seq.*);
- (2) Violation of Unfair Competition Law (Cal. Business & Professions Code §§ 17200 *et seq.*);
- (3) Breach of Warranty in Violation of Song-Beverly Consumer Warranty Act (Cal. Civil Code §§ 1790 *et seq.*);
- (4) Breach of Implied Warranty in Violation of Song-Beverly Consumer Warranty Act (Cal. Civil Code §§ 1790 *et seq.*);
- (5) Breach of Warranty in Violation of Magnuson-Moss Warranty Act (15 U.S.C. §§ 2310 *et seq.*); and
- (6) Breach of Implied Warranty in Violation of Magnuson-Moss Warranty Act (15 U.S.C. §§ 2310 *et seq.*).

**Jury Trial Demanded**

1 Plaintiff AARON RAMOS (“Plaintiff”), individually and on behalf of all  
2 others similarly situated, alleges as follows:

3 **NATURE OF THE ACTION**

4 1. Plaintiff brings this class action Complaint against Defendant FRY’S  
5 ELECTRONICS, INC. (hereinafter “Defendant”) to stop Defendant’s practice of  
6 falsely advertising and selling warranties for their graphics cards that they have no  
7 intention of honoring and to obtain redress for a class of consumers (“Class  
8 Members”) who were misled, within the applicable statute of limitations period,  
9 by Defendant.

10 2. Defendant advertised to consumers that a warranty would accompany  
11 the purchase of its graphics cards (“the Class Products”), whereby the consumer  
12 product would be replaced if it was defective.

13 3. Warranties are of particular value to consumers because they provide  
14 a guarantee of the value of a good after it is purchased. This is particularly true  
15 for graphics cards which are critical to the proper functioning of consumers’  
16 computers.

17 4. Plaintiff and other consumers similarly situated were exposed to these  
18 advertisements through print and digital media.

19 5. Defendant misrepresented and falsely advertised and represented to  
20 Plaintiff and others similarly situated by failing to disclose in either its  
21 advertisements or the contract itself that Defendant would not honor the warranty.

22 6. Defendant’s misrepresentations to Plaintiff and others similarly  
23 situated induced them to purchase Defendant’s Class Products.

24 7. Defendant took advantage of Plaintiff and similarly situated  
25 consumers unfairly and unlawfully.

26 **JURISDICTION AND VENUE**

27 8. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,  
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1 a California resident, seeks relief on behalf of a Class, which will result in at least  
2 one class member belonging to a different state than that of Defendant, a California  
3 Corporation. Plaintiff also seeks damages for each violation alleged herein which,  
4 when aggregated among each member of the class, exceed the \$5,000,000.00  
5 threshold for requisite amount in controversy. Therefore, both minimal diversity  
6 of citizenship and the amount in controversy requirements are satisfied for  
7 jurisdiction under the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2).

8 9. Alternatively, jurisdiction is proper because this action is brought  
9 under Federal Statutes, and all California State Law claims are ancillary thereto.

10 10. Venue is proper in the United States District Court for the Southern  
11 District of California pursuant to 28 U.S.C. § 1391(b)(2) because a significant  
12 portion of the events giving rise to this action took place here, Plaintiff lives here,  
13 and Defendant does business here.

14 **THE PARTIES**

15 11. Plaintiff AARON RAMOS is a citizen and resident of the State of  
16 California, County of San Diego.

17 12. Defendant FRY’S ELECTRONICS, INC. is a corporation that does  
18 business in California, including San Diego County, that is incorporated in  
19 California and headquartered in San Jose, California.

20 13. Plaintiff alleges, on information and belief, that Defendant’s  
21 marketing campaign, as pertains to this matter, was created by Defendant and was  
22 disseminated throughout California.

23 14. Plaintiff is informed and believes, and thereon alleges, that at all time  
24 relevant, Defendant’s sales of products and services are governed by the  
25 controlling law in the state in which they do business and from which the sales of  
26 products and services, and the allegedly unlawful acts occurred, which is  
27 California.

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1           21. After using the Graphics Card for a few years, it began to  
2 malfunction.

3           22. Plaintiff requested, pursuant to the warranty, that Defendant honor  
4 the warranty and replace the Graphics Card or give him a refund in the purchase  
5 price amount.

6           23. Defendant refused to replace or refund the Graphics Card, thereby  
7 refusing to honor its warranty, because Plaintiff had not registered the card with  
8 the manufacturer.

9           24. The manufacturer, PNY Technologies, Inc. (hereinafter,  
10 “Manufacturer”), apparently required all of their Graphics Cards to be registered  
11 with them in order for the owner to be eligible

12           25. Defendant does not inform consumers, including Plaintiff, that  
13 Manufacturer requires Graphics Card owners to register them in order to be  
14 eligible for Manufacturer’s warranty. Furthermore, in order for consumers to  
15 register their Graphics Cards, they need the registration paper work which is only  
16 available from Defendant when consumers purchase their Graphics Cards brand  
17 new. In short, Plaintiff could not have purchased the Graphics Card used from  
18 Defendant and been eligible for Manufacturer’s warranty.

19           26. Defendant’s knowledge of the fact that Plaintiff and similarly situated  
20 consumers could not reap the benefits of the warranty is demonstrated by the fact  
21 that when Plaintiff attempted to return the Graphics Card, Defendant refused to  
22 honor Manufacturer’s warranty.

23           27. Defendant omitted from its advertisements and contracts that  
24 consumers who purchase open-box Graphics Cards will not be eligible for  
25 Manufacturer’s warranty.

26           28. Plaintiff had no reasonable way of knowing that he must purchase the  
27 Graphics Card initially rather than used in order to register for Manufacturer’s  
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1 warranty, i.e., Plaintiff had no reasonable opportunity to find out that Defendant  
2 would not honor the warranty.

3 29. Defendant was aware that Plaintiff could not have reasonably known  
4 that it would not honor the warranty.

5 30. Had Plaintiff known that Defendant would not honor the warranty,  
6 Plaintiff would not have purchased the Graphics Card from Defendant, rather,  
7 Plaintiff would have considered purchasing a new one or purchasing one from a  
8 different retailer.

9 31. Plaintiff was significantly upset by Defendant's refusal to honor its  
10 warranty as advertised.

11 32. Such sales tactics employed on Defendant rely on falsities and have  
12 a tendency to mislead and deceive a reasonable consumer.

13 33. Plaintiff is informed, believes, and thereupon alleges that such  
14 representations were part of a common scheme to mislead consumers and  
15 incentivize them to purchase products from Defendant.

16 34. Plaintiff reasonably believed and relied upon Defendant's  
17 representations in its advertisement.

18 35. Plaintiff materially changed his position in reliance on Defendant's  
19 representations and was harmed thereby.

20 36. Plaintiff would not have purchased the Graphics Card or any similarly  
21 advertised product had Defendant disclosed that it would not honor its warranties.

22 37. Had Defendant properly marketed, advertised, and represented that it  
23 would not honor warranties stated in its advertisements, Plaintiff would not have  
24 purchased the Graphics Card or any similarly advertised product.

25 38. Defendant benefited from falsely advertising and representing the  
26 costs of its products. Defendant benefited on the loss to Plaintiff and provided  
27 nothing of benefit to Plaintiff in exchange.

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**CLASS ACTION ALLEGATIONS**

39. Plaintiff brings this action, on behalf of himself and all others similarly situated, and thus, seeks class certification under Federal Rule of Civil Procedure 23.

40. The class Plaintiff seeks to represent (the “Class”) is defined as follows:

All consumers, who, between the applicable statute of limitations and the present, purchased Defendant’s Class Products, namely used items on which Defendant makes statements that it will honor any manufacturer warranty.

41. As used herein, the term “Class Members” shall mean and refer to the members of the Class described above.

42. Excluded from the Class are Defendant, its affiliates, employees, agents, and attorneys, and the Court.

43. Plaintiff reserves the right to amend the Class, and to add additional subclasses, if discovery and further investigation reveals such action is warranted.

44. Upon information and belief, the proposed class is composed of thousands of persons. The members of the class are so numerous that joinder of all members would be unfeasible and impractical.

45. No violations alleged in this complaint are contingent on any individualized interaction of any kind between class members and Defendant.

46. Rather, all claims in this matter arise from the identical, false, affirmative written statements that Defendant would provide warranties to the Class Members, when in fact, such representations were false.

47. There are common questions of law and fact as to the Class Members that predominate over questions affecting only individual members, including but not limited to:

- (a) Whether Defendant engaged in unlawful, unfair, or deceptive

1 business practices in advertising warranties with its products to  
2 Plaintiff and other Class Members with no intention of  
3 honoring them;

4 (b) Whether Defendant made misrepresentations with respect to its  
5 warranties for its products;

6 (c) Whether Defendant profited from this advertisement;

7 (d) Whether Defendant violated California Bus. & Prof. Code §  
8 17200, *et seq.* California Bus. & Prof. Code § 17500, *et seq.*,  
9 California Civ. Code § 1750, *et seq.*. California Civ. Code §  
10 1790, *et seq.*, and 15 U.S.C. § 2310, *et seq.*;

11 (e) Whether Plaintiff and Class Members are entitled to equitable  
12 and/or injunctive relief;

13 (f) Whether Defendant's unlawful, unfair, and/or deceptive  
14 practices harmed Plaintiff and Class Members; and

15 (g) The method of calculation and extent of damages for Plaintiff  
16 and Class Members.

17 48. Plaintiff is a member of the class he seeks to represent

18 49. The claims of Plaintiff are not only typical of all class members, they  
19 are identical.

20 50. All claims of Plaintiff and the class are based on the exact same legal  
21 theories.

22 51. Plaintiff has no interest antagonistic to, or in conflict with, the class.

23 52. Plaintiff is qualified to, and will, fairly and adequately protect the  
24 interests of each Class Member, because Plaintiff was induced by Defendant's  
25 advertisement during the Class Period. Defendant's unlawful, unfair and/or  
26 fraudulent actions concerns the same business practices described herein  
27 irrespective of where they occurred or were experienced. Plaintiff's claims are  
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1 typical of all Class Members as demonstrated herein.

2 53. Plaintiff will thoroughly and adequately protect the interests of the  
3 class, having retained qualified and competent legal counsel to represent himself  
4 and the class.

5 54. Common questions will predominate, and there will be no unusual  
6 manageability issues.

7 **FIRST CAUSE OF ACTION**

8 **Violation of the California False Advertising Act**

9 **(Cal. Bus. & Prof. Code §§ 17500 *et seq.*)**

10 55. Plaintiff incorporates by reference each allegation set forth above.

11 56. Pursuant to California Business and Professions Code section 17500,  
12 *et seq.*, it is unlawful to engage in advertising “which is untrue or misleading, and  
13 which is known, or which by the exercise of reasonable care should be known, to  
14 be untrue or misleading...or...to so make or disseminate or cause to be so made or  
15 disseminated any such statement as part of a plan or scheme with the intent not to  
16 sell that personal property or those services, professional or otherwise, so  
17 advertised at the price stated therein, or as so advertised.”

18 57. California Business and Professions Code section 17500, *et seq.*’s  
19 prohibition against false advertising extends to the use of false or misleading  
20 written statements.

21 58. Defendant misled consumers by making misrepresentations and  
22 untrue statements about its warranties, namely, Defendant made consumers  
23 believe that Defendant would honor the warranties for the Class Products listed in  
24 its advertisement even though this was not the case.

25 59. Defendant knew that its representations and omissions were untrue  
26 and misleading, and deliberately made the aforementioned representations and  
27 omissions in order to deceive reasonable consumers like Plaintiff and other Class  
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1 Members.

2 60. As a direct and proximate result of Defendant’s misleading and false  
3 advertising, Plaintiff and the other Class Members have suffered injury in fact.  
4 Plaintiff reasonably relied upon Defendant’s representations regarding the  
5 warranties for Defendant’s products. In reasonable reliance on Defendant’s false  
6 advertisements, Plaintiff and other Class Members purchased Class Products from  
7 Defendant believing that in case they would be covered by warranties providing  
8 for their replacement or repair, and that Defendant would honor the warranties.  
9 However, Defendant did not inform Class Members that consumers of used goods  
10 are not actually eligible for the warranties that Defendant promises to honor, and  
11 that Defendant will therefore refuse to honor said warranties.

12 61. Plaintiff alleges that these false and misleading written  
13 representations made by Defendant constitute a “scheme with the intent not to sell  
14 that personal property or those services, professional or otherwise, so advertised  
15 at the price stated therein, or as so advertised.”

16 62. Defendant advertised to Plaintiff and other putative class members,  
17 through written representations and omissions made by Defendant and its  
18 employees.

19 63. Defendant knew that they would not provide Plaintiff and Class  
20 Members with the warranties as they are advertised.

21 64. Thus, Defendant knowingly lied to Plaintiff and other putative class  
22 members in order to induce them to purchase the Class Products from Defendant.

23 65. The misleading and false advertising described herein presents a  
24 continuing threat to Plaintiff and the Class Members in that Defendant persist and  
25 continue to engage in these practices, and will not cease doing so unless and until  
26 forced to do so by this Court. Defendant’s conduct will continue to cause  
27 irreparable injury to consumers unless enjoined or restrained. Plaintiff is entitled  
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1 to preliminary and permanent injunctive relief ordering Defendant to cease their  
2 false advertising, as well as disgorgement and restitution to Plaintiff and all Class  
3 Members of Defendant’s revenues associated with their false advertising, or such  
4 portion of those revenues as the Court may find equitable.

5 **SECOND CAUSE OF ACTION**

6 **Violation of Unfair Competition Law**

7 **(Cal. Bus. & Prof. Code §§ 17200 *et seq.*)**

8 66. Plaintiff incorporates by reference each allegation set forth above.

9 67. Actions for relief under the unfair competition law may be based on  
10 any business act or practice that is within the broad definition of the UCL. Such  
11 violations of the UCL occur as a result of unlawful, unfair or fraudulent business  
12 acts and practices. A plaintiff is required to provide evidence of a causal  
13 connection between a defendant's business practices and the alleged harm--that is,  
14 evidence that the defendant's conduct caused or was likely to cause substantial  
15 injury. It is insufficient for a plaintiff to show merely that the defendant's conduct  
16 created a risk of harm. Furthermore, the "act or practice" aspect of the statutory  
17 definition of unfair competition covers any single act of misconduct, as well as  
18 ongoing misconduct.

19 **UNFAIR**

20 68. California Business & Professions Code § 17200 prohibits any  
21 “unfair ... business act or practice.” Defendant’s acts, omissions,  
22 misrepresentations, and practices as alleged herein also constitute “unfair”  
23 business acts and practices within the meaning of the UCL in that its conduct is  
24 substantially injurious to consumers, offends public policy, and is immoral,  
25 unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs  
26 any alleged benefits attributable to such conduct. There were reasonably available  
27 alternatives to further Defendant’s legitimate business interests, other than the  
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1 conduct described herein. Plaintiff reserves the right to allege further conduct  
2 which constitutes other unfair business acts or practices. Such conduct is ongoing  
3 and continues to this date.

4 69. In order to satisfy the “unfair” prong of the UCL, a consumer must  
5 show that the injury: (1) is substantial; (2) is not outweighed by any countervailing  
6 benefits to consumers or competition; and, (3) is not one that consumers  
7 themselves could reasonably have avoided.

8 70. Here, Defendant’s conduct has caused and continues to cause  
9 substantial injury to Plaintiff and members of the Class. Plaintiff and members of  
10 the Class have suffered injury in fact due to Defendant’s decision to mislead  
11 consumers. Thus, Defendant’s conduct has caused substantial injury to Plaintiff  
12 and the members of the Class.

13 71. Moreover, Defendant’s conduct as alleged herein solely benefits  
14 Defendant while providing no benefit of any kind to any consumer. Such  
15 deception utilized by Defendant convinced Plaintiff and members of the Class that  
16 Defendant would provide them with a warranty and that Defendant would honor  
17 that warranty upon purchasing Defendant’s Class Products. In fact, Defendant  
18 knew that they had no intention of providing the advertised warranties and thus  
19 unfairly profited. Thus, the injury suffered by Plaintiff and the members of the  
20 Class are not outweighed by any countervailing benefits to consumers.

21 72. Finally, the injury suffered by Plaintiff and members of the Class is  
22 not an injury that these consumers could reasonably have avoided. After  
23 Defendant falsely represented the warranties, consumers changed their position by  
24 purchasing the warranted Class Products, thus causing them to suffer injury in  
25 fact. Defendant failed to take reasonable steps to inform Plaintiff and class  
26 members that the advertisement was false. As such, Defendant took advantage of  
27 Defendant’s position of perceived power in order to deceive Plaintiff and the  
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1 Class. Therefore, the injury suffered by Plaintiff and members of the Class is not  
2 an injury which these consumers could reasonably have avoided.

3 73. Thus, Defendant’s conduct has violated the “unfair” prong of  
4 California Business & Professions Code § 17200.

5 **FRAUDULENT**

6 74. California Business & Professions Code § 17200 prohibits any  
7 “fraudulent ... business act or practice.” In order to prevail under the “fraudulent”  
8 prong of the UCL, a consumer must allege that the fraudulent business practice  
9 was likely to deceive members of the public.

10 75. The test for “fraud” as contemplated by California Business and  
11 Professions Code § 17200 is whether the public is likely to be deceived. Unlike  
12 common law fraud, a § 17200 violation can be established even if no one was  
13 actually deceived, relied upon the fraudulent practice, or sustained any damage.

14 76. Here, not only were Plaintiff and the Class members likely to be  
15 deceived, but these consumers were actually deceived by Defendant. Such  
16 deception is evidenced by the fact that Defendant did not provide Plaintiff with  
17 the warranty as advertised by Defendant. Plaintiff’s reliance upon Defendant’s  
18 deceptive statements is reasonable due to the unequal bargaining powers of  
19 Defendant against Plaintiff. For the same reason, it is likely that Defendant’s  
20 fraudulent business practice would deceive other members of the public.

21 77. As explained above, Defendant deceived Plaintiff and other Class  
22 Members by representing the availability of the warranty Defendant sold.

23 78. Thus, Defendant’s conduct has violated the “fraudulent” prong of  
24 California Business & Professions Code § 17200.

25 **UNLAWFUL**

26 79. California Business and Professions Code Section 17200, et seq.  
27 prohibits “any unlawful...business act or practice.”  
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1 above-mentioned defects that substantially affect the use, value, and safety of the  
2 Graphics Card.

3 86. Defendant, through Seller and/or other authorized dealerships, have  
4 been unable to repair said defects in a reasonable number of attempts.

5 87. Pursuant to Cal Civ. Code. §1793.2, Plaintiff is entitled to a refund  
6 of the full purchase price of the Graphics Card, including all collateral charges and  
7 finance charges, and/or a replacement Graphics Card, plus all attorney fees and  
8 costs.

9 88. Defendant has willfully violated the provisions of this act by knowing  
10 of its obligations to refund or replace Plaintiff's Graphics Card, but failing to fulfill  
11 them.

12 **FOURTH CAUSE OF ACTION**

13 **Breach of Implied Warranty In Violation of the Song-Beverly Consumer**  
14 **Warranty Act**

15 **(Cal. Civ. Code § 1790, *Et Seq.*)**

16 89. Plaintiff incorporates by reference each allegation set forth above.

17 90. The Graphics Card purchased by Plaintiff was subject to an implied  
18 warranty of merchantability as defined in Cal. Civ. Code §1790 running from the  
19 Defendant to the intended consumer, Plaintiff herein.

20 91. Defendant is a supplier of consumer goods as a person engaged in the  
21 business of making a consumer product directly available to Plaintiff.

22 92. Defendant is prohibited from disclaiming or modifying any implied  
23 warranty under Cal. Civ. Code §1790.

24 93. Pursuant to Cal. Civ. Code §1790, Plaintiff's Graphics Card was  
25 impliedly warranted to be fit for the ordinary use for which the Graphics Card was  
26 intended.

27 94. The Graphics Card was warranted to pass without objection in the  
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1 trade under the contract description, and was required to conform to the  
2 descriptions of the Graphics Card contained in the contracts and labels.

3 95. The above described defects in the Graphics Card caused it to fail to  
4 possess even the most basic degree of fitness for ordinary use.

5 96. As a result of the breaches of implied warranty by Defendant, Plaintiff  
6 have suffered and continue to suffer various damages.

7 **FIFTH CAUSE OF ACTION**

8 **Breach of Warranty In Violation of the Magnuson-Moss Warranty Act**  
9 **(15 U.S.C. § 2310, *Et Seq.*)**

10 97. Plaintiff incorporates by reference each allegation set forth above.

11 98. Plaintiff is a purchaser of a consumer product who received the  
12 Graphics Card during the duration of a written warranty period applicable to the  
13 Graphics Card and who is entitled by the terms of the written warranty to enforce  
14 against Defendant the obligations of said warranty.

15 99. Defendant is a person engaged in the business of making a consumer  
16 product directly available to Plaintiff.

17 100. Defendant, i.e., seller, is an authorized dealership/agent of  
18 Manufacturer designed to perform repairs on Graphics Cards under Defendant's  
19 warranties.

20 101. The Magnuson-Moss Warranty Act, Chapter 15 U.S.C.A., Section,  
21 2301 et. Seq. ("Warranty Act") is applicable to Plaintiff's Complaint in that the  
22 Graphics Card was manufactured, sold and purchased after July 4, 1975, and costs  
23 in excess of ten dollars (\$10.00).

24 102. Plaintiff's purchase of the Graphics Card was accompanied by written  
25 factory warranties for any non-conformities or defects in materials or  
26 workmanship, comprising an undertaking in writing in connection with the  
27 purchase of the Graphics Card to repair the Graphics Card or take other remedial  
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1 action free of charge to Plaintiff with respect to the Graphics Card in the event that  
2 the Graphics Card failed to meet the specifications set forth in said undertaking.

3 103. Said warranties were the basis of the bargain of the contract between  
4 the Plaintiff and Defendant for the sale of the Graphics Card to Plaintiff.

5 104. Said purchase of Plaintiff's Graphics Card was induced by, and  
6 Plaintiff relied upon, these written warranties.

7 105. Plaintiff has met all of Plaintiff's obligations and preconditions as  
8 provided in the written warranties.

9 106. As a direct and proximate result of Defendant's failure to comply with  
10 its express written warranties, Plaintiff has suffered damages and, in accordance  
11 with 15 U.S.C. § 2310(d), Plaintiff is entitled to bring suit for such damages and  
12 other equitable relief.

13 **SIXTHTH CAUSE OF ACTION**

14 **Breach of Implied Warranty In Violation of the Magnuson-Moss Warranty**  
15 **Act**

16 **(15 U.S.C. § 2310, *Et Seq.*)**

17 107. Plaintiff incorporates by reference each allegation set forth above.

18 108. The Graphics Card purchased by Plaintiff was subject to an implied  
19 warranty of merchantability as defined in 15 U.S.C. § 2301(7) running from the  
20 Manufacturer to the intended consumer, Plaintiff herein.

21 109. Defendant is a supplier of consumer goods as a person engaged in the  
22 business of making a consumer product directly available to Plaintiff.

23 110. Defendant is prohibited from disclaiming or modifying any implied  
24 warranty when making a written warranty to the consumer or when Defendant has  
25 entered into a contract in writing within ninety (90) days of purchase to perform  
26 services relating to the maintenance or repair of a Graphics Card.

27 111. Pursuant to 15 U.S.C. § 2308, Plaintiff's Graphics Card was impliedly  
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1 warranted to be substantially free of defects and non-conformities in both material  
2 and workmanship, and thereby fit for the ordinary purpose for which the Graphics  
3 Card was intended.

4 112. The Graphics Card was warranted to pass without objection in the  
5 trade under the contract description, and was required to conform to the  
6 descriptions of the Graphics Card contained in the contracts and labels.

7 113. The above described defects in the Graphics Card render the Graphics  
8 Card unfit for the ordinary and essential purpose for which the Graphics Card was  
9 intended.

10 114. As a result of the breaches of implied warranty by Defendant, Plaintiff  
11 has suffered and continues to suffer various damages.

12 **MISCELLANEOUS**

13 115. Plaintiff and Class Members allege that they have fully complied with  
14 all contractual and other legal obligations and fully complied with all conditions  
15 precedent to bringing this action or all such obligations or conditions are excused.

16 **PRAYER FOR RELIEF**

17 116. Plaintiff, on behalf of himself and the Class, requests the following  
18 relief:

- 19 (a) An order certifying the Class and appointing Plaintiff as  
20 Representative of the Class;
- 21 (b) An order certifying the undersigned counsel as Class Counsel;
- 22 (c) An order requiring Defendant, at its own cost, to notify all  
23 Class Members of the unlawful and deceptive conduct herein;
- 24 (d) An order requiring Defendant to engage in corrective  
25 advertising regarding the conduct discussed above;
- 26 (e) Actual damages suffered by Plaintiff and Class Members as  
27 applicable from being induced to call Defendant under false  
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- pretenses;
- (f) Punitive damages, as allowable, in an amount determined by the Court or jury;
- (g) Any and all statutory enhanced damages;
- (h) All reasonable and necessary attorneys’ fees and costs provided by statute, common law or the Court’s inherent power;
- (i) Pre- and post-judgment interest; and
- (j) All other relief, general or special, legal and equitable, to which Plaintiff and Class Members may be justly entitled as deemed by the Court.

**REQUEST FOR JURY TRIAL**

117. Plaintiff requests a trial by jury as to all claims so triable.

Dated: November 15, 2017      Respectfully submitted,

LAW OFFICES OF TODD M. FRIEDMAN , PC

By: /s/ Todd M. Friedman, Esq.  
TODD M. FRIEDMAN, ESQ.  
Attorney for Plaintiff AARON RAMOS

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 THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

AARON RAMOS, individually, and on behalf of all others similarly situated,

(b) County of Residence of First Listed Plaintiff San Diego (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number) Law Offices of Todd M. Friedman, P.C., 21550 Oxnard St., Suite 780

DEFENDANTS

FRY'S ELECTRONICS, INC., and DOES 1-10 Inclusive,

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known) '17CV2320 MMABLM

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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Another State, Foreign Nation, etc.)

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

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER 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, 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 U.S.C. § 2310, Et Seq

Brief description of cause: Violation of Magnuson-Moss Warranty Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23, DEMAND \$ 5,000,001.00, CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

11/15/2017 s/Todd M. Friedman

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553  
Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.