

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

TAWANNA AND ANTHONY WARE
on behalf of themselves
and all other similarly situated,

Plaintiffs,

Case No.: 1:18-cv-886

vs.

SAMSUNG ELECTRONICS AMERICA, INC.,
SAMSUNG ELECTRONICS CO., LTD.,
BEST BUY STORES, L.P. (d/b/a BEST BUY, GEEK SQUAD and
MAGNOLIA HOME THEATER)

Defendants.

FIRST AMENDED CLASS ACTION COMPLAINT

Plaintiffs, TAWANNA AND ANTHONY WARE (collectively referred to herein as “Plaintiffs” or “the Wares”) on behalf of themselves and all others similarly situated, make the following allegations and claims for a complaint against Samsung Electronics America, Inc. (“SEA”), and Samsung Electronics Co., Ltd. (“SEC”) (together referred to as "Samsung"), and Best Buy Stores, L.P. (d/b/a Best Buy, Geek Squad and Magnolia Home Theater) (“Best Buy”). The following allegations are made upon information and belief, except as to allegations specifically pertaining to Plaintiffs, which are made upon knowledge or as otherwise stated upon information and belief.

INTRODUCTION

1. This case is brought by the Plaintiffs on behalf of themselves and all others similarly situated in the state of Illinois, who have purchased Samsung plasma television sets manufactured starting in January 2009 through November 2014¹ (generally referred to as “televisions” or “Samsung plasma televisions”). These televisions range in price from \$600.00 to \$5,000.00.
2. Through a common and uniform course of conduct, SEA and SEC provided incomplete product lifecycle management for Samsung plasma televisions, which they manufactured, supplied, promoted, and sold (and/or caused to be sold) to consumers in the state of Illinois.
3. These Samsung plasma televisions had a propensity to require repairs within a few years outside of the manufacturer’s one-year warranty, for which SEA and SEC should have collected data and made calculations as a part of the product life cycle management process and/or in the routine operation of their businesses.
4. Despite that, through a common and uniform course of conduct, failed to maintain an adequate supply of parts to repair/service the Samsung plasma televisions sold.

¹ Upon information and belief Samsung discontinued manufacturing plasma televisions around November 30, 2014.

5. The purpose of this action is to hold accountable and obtain maximum legal and equitable relief from Samsung for producing and placing into the stream of commerce plasma televisions while not adequately preparing to maintain an adequate inventory/supply of replacement parts to service those televisions with proper product life cycle management.
6. Finally, this action is brought to hold Best Buy accountable and to obtain compensatory and equitable relief from Best Buy for marketing and selling their Geek Squad Protection Plan (“GSPP(s)”) as a warranty that violates federally mandated law covering full warranties.
7. As a result of these acts and practices, Best Buy violated the Magnuson-Moss Warranty Act and SEA and SEC violated state consumer protection laws and/or were unjustly enriched.

JURISDICTION AND VENUE

8. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1332(a) and 28 U.S.C. §1331.
9. The claims made on behalf of Plaintiffs and the National and State Classes are in excess of \$75,000, exclusive of interests and costs.
10. This Court has personal jurisdiction over Samsung and Best Buy pursuant to IL 5/2-209 (1) and (2). Specific to the Wares’ claims, Samsung and Best Buy transacted business within the State of Illinois and Samsung and Best

Buy committed one or more tortious acts within the State of Illinois.

Samsung and Best Buy engage in substantial and not isolated activity in the state of Illinois as they are registered to do business within the state, maintain retail locations within the state, operate websites which substantially retail to Illinois consumers, market and advertise products to consumers within the state and/or conduct business by or through substantially controlled subsidiaries, partners, contractors or agents within the state of Illinois.

11. Venue is proper in this district pursuant to 28 U.S.C. §1391(b)(2) and/or (3). Samsung and Best Buy do business in Chicago, Illinois; substantial events giving rise to this action occurred in Chicago, Illinois as Plaintiffs purchased their Samsung Plasma Television and GSSP in Chicago, Illinois; and otherwise, as stated above, the Court has personal jurisdiction over Samsung and Best Buy.

PARTIES

12. Plaintiffs Tawanna and Anthony Ware currently reside in North Carolina but purchased their 64-inch Samsung plasma 3-D television from a Magnolia Home Theater located in a Best Buy store in Chicago, Illinois on or around June 8, 2013. The Wares purchased their Samsung plasma television for home use, model number PN64F8500AFXZA. Samsung designed,

manufactured, marketed, distributed and/or caused to be sold the Wares' television. The Wares also purchased the five (5) year Best Buy warranty (Geek Squad Protection Plan), a copy of which is attached as Exhibit "A", paying approximately \$519.00, for warranty service to their Samsung plasma television on or around June 8, 2014. The Wares' Samsung plasma television failed in May 2017, and the parts were no longer available to fix it.

13. Defendant Samsung Electronics America, Inc. (hereinafter referred to as "SEA") is a New York corporation, with its principal place of business in Ridgefield Park, New Jersey. SEA is a wholly owned subsidiary of Samsung Electronics Co., Ltd. Defendant SEA designs, manufactures, and/or distributes consumer electronics products, and sells Samsung brand consumer products direct to the public through its international retail website Samsung.com, including the televisions forming the subject matter of this action, which it caused to be placed into the stream of commerce in the State of Illinois as well as throughout the United States. SEA also owns and/or operates retail locations in the state of Illinois. Upon information and belief, sometime in early 2013 SEA operated "experience" shops inside of Best Buy stores located throughout the United States including the state of Illinois. SEA is registered to do business in the state of Illinois.

14. Defendant Samsung Electronics Co., Ltd. (hereinafter referred to as “SEC”) is a Korean corporation with its headquarters in Seoul, South Korea. SEC designs, manufactures, and/or distributes consumer electronics products, and sells Samsung brand consumer products direct to the public through its international retail website Samsung.com, including the televisions forming the subject matter of this action, which it caused to be placed into the stream of commerce in the State of Illinois as well as throughout the United States. SEC either directly or indirectly owns and/or operates retail locations in the State of Illinois. Upon information and belief, sometime in early 2013 SEC by or through its subsidiaries and/or agents operated “experience” shops inside of Best Buy stores located throughout the United States including the State of Illinois.
15. Defendant Best Buy Stores, L.P., (d/b/a Best Buy, Geek Squad and Magnolia Home Theater) (hereinafter referred to as “BBS”) is a Virginia Limited Partnership, with its principal place of business located at 7601 Penn Avenue South, Richfield, MN 55423. As of filing its 2017 Annual Report, BBS operated approximately 1,026 Best Buy stores including stores in all states, districts and territories of the United States under various brand names including Geek Squad and Magnolia Home Theater. According to its 2017 Annual Report, 10K filing, Best Buy had 49 stores in the state of

Illinois and 11 “Best Buy Mobile Stand-Alone Stores” in Illinois. BBS also owns, operates and/or causes to operate an online retail website, bestbuy.com, which retails to consumers throughout the United States, including to consumers within the State of Illinois. Upon information and belief, sometime in early 2013, Samsung operated “experience” shops inside of Best Buy stores, including Best Buy stores located in Illinois. BBS is registered to do business in the State of Illinois under the fictitious name “Best Buy.”

16. At all times material hereto, SEA acted with apparent or actual agency on behalf of SEC. Together SEA and SEC were perpetuating the acts described within this First Amended Class Action Complaint without any discernible difference among any entity which operated using the “Samsung” brand name and trademark(s). See Exhibits C and D.²

FACTUAL ALLEGATIONS

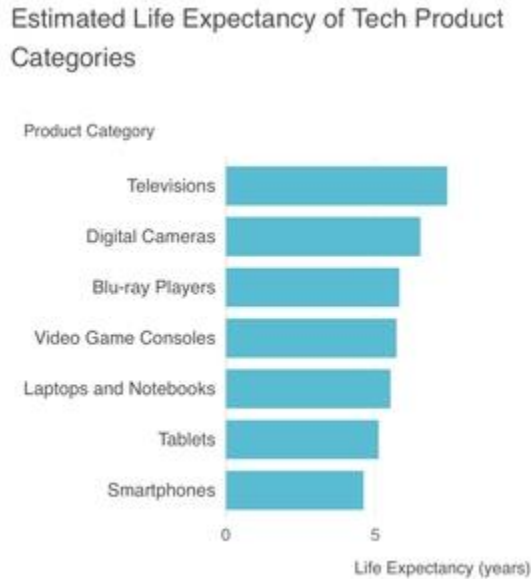
INADEQUATE LIFE CYCLE MANAGEMENT OF SAMSUNG PLASMA TELEVISIONS

17. SEA and SEC are in the business of manufacturing, marketing, distributing, selling and/or causing to be sold, plasma televisions to consumers throughout the United States and in the State of Illinois.

² These exhibits are additional to those in the original Complaint. Plaintiff has not changed the alpha-designation of those originally filed (Exhibits A and B) and now continues in sequence from the original exhibits.

18. Upon information and belief, Samsung is one of the largest internet retailers of televisions direct to consumers in the United States through its website Samsung.com and a large portion of the televisions at issue were sold directly to members of the State Class by Samsung.
19. Upon information and belief, on or soon after November 30, 2014, SEC stopped manufacturing plasma televisions all together.
20. Upon information and belief sometime after November 30, 2014, Samsung failed to maintain adequate inventory of parts to repair/replace the components of Samsung plasma televisions sold.
21. In May 2017, approximately three years after its purchase, Best Buy informed Plaintiffs that the parts were no longer available to fix their Samsung plasma television.
22. Product lifecycle management is a routine operation of the manufacturing process and includes a servicing phase for the product manufactured, which includes planning the availability of repair/replacement parts.
23. There are statistical mechanisms available to plan and prepare for the service needs of a product into the future so as to maintain an adequate quantity of repair/replacement parts for the product.
24. A Consumer Electronics survey in 2014 reported that consumers expect to have their televisions for 7.4 years.

(<https://www.cta.tech/News/Blog/Articles/2014/September/The-Life-Expectancy-of-Electronics.aspx>, last accessed November 8, 2018).



Life expectancy of various types of electronic products.
Credit: CEA, CE Product Life Cycle Study (August 2014)

25. Without adequate inventory of repair/replacement parts necessary to service the Samsung plasma televisions, Samsung violated state consumer protection laws and/or was unjustly enriched.

26. In many cases, consumers were unable to repair their Samsung plasma televisions due to SEA and SEC's failure to make available functional parts for a reasonable amount of time after the purchase of an expensive consumer electronic. Consumers were left without the option to purchase a new plasma

television as other manufacturers had also exited the plasma television market and were unable to repair their televisions.

27. SEA and SEC knew or should have known of the propensity of Samsung plasma televisions to develop critical issues due to:
 - a. Life cycle management process and planning;
 - b. Their role in designing, testing, manufacturing and servicing the televisions;
 - c. Consumer complaints, inquiries, warranty claims; and/or
 - d. Communications with Samsung repair centers, authorized to repair Samsung plasma televisions.
28. Product life cycle management contemplates a product through obsolescence and includes the planning of service and making available parts for repair.
29. SEA and SEC failed to adequately provide the product life cycle management for the Samsung plasma televisions, as they failed to fully provide for the service phase of the planning, which would require SEA and SEC to make available functional parts to consumers for a reasonable period of time.

30. Failure of the Samsung plasma televisions is a material fact related to the reliability and normal operation of the televisions known by SEA and SEC through their normal course of operations.
31. The unavailability of functional parts to repair/service consumers' televisions is a material fact related to the reliability and normal operation of the televisions known by SEA and SEC through their normal course of operations.
32. Had Plaintiffs and members of the State Class known about the propensity of the Samsung Plasma Televisions to fail, without the option to repair (because SEA and SEC did not intend to have functional parts available); they would not have purchased the subject televisions or would have paid substantially less for the televisions.
33. Plaintiffs and members of the State Class could not have known or reasonably discovered that the parts necessary to repair their Samsung televisions would no longer be available until after they attempted to repair a television.
34. Plaintiffs and State Class members are all purchasers of Samsung plasma televisions and have been damaged.
35. Plaintiffs have experienced the failure of the Samsung plasma television without parts available to repair their television.

36. As the Samsung plasma televisions are worth less than televisions without failure, or are unrepairable, Plaintiffs' Samsung plasma televisions have diminished in value.
37. Plaintiffs and State Class members are damaged in any one or more of the following ways:
 - a. The amount for the entire price paid for the televisions or part of the price paid for the televisions;
 - b. The amount of the price of diagnostic, repair and service fees;
 - c. Loss of the use of their property; and/or
 - d. The cost of replacement for a similar or comparable television.
38. SEA and SEC sold and/or caused to be sold televisions with the knowledge and intent that the consumers use the televisions for their benefit.
39. SEA and SEC sold and/or caused to be sold, televisions to Plaintiffs and the members of the State Class in the course of their business.
40. SEA and SEC violated reasonable expectations of consumers when the likelihood and frequency of television failures exceeded the inventory and availability of functional parts necessary to repair/service the Samsung plasma televisions.
41. By engaging in the conduct described above, SEA and SEC committed acts to the detriment of consumers.

42. As a direct result of SEA and SEC's actions, Plaintiffs and the consumers who comprise the State Class who have purchased the televisions, have suffered injury in fact, have been damaged and have suffered a loss of money or property for having paid hundreds (if not thousands) of dollars for a product that does not, cannot, and will not, work as reasonably expected and that is now worth substantially less than what consumers paid and less than what a properly functioning television would be worth. All the while, consumers are left without the option to repair.

THE GEEK SQUAD PROTECTION PLANS

43. Best Buy sells GSPPs to consumers for coverage of consumer products.
44. Best Buy self-brands the GSPP.
45. Best Buy services the GSPP through its Geek Squad and/or other authorized services.
46. The GSPPs direct consumers to contact Best Buy through www.geekssquad.com and 1-800-GEEKSQUAD for service under the GSPP.
47. Upon information and belief, it is Best Buy's practice to represent to consumers that its GSPPs are warranties.
48. The GSPPs, including Plaintiffs', sound in warranty by including:
- a. Warranting against defects;
 - b. Providing seamless coverage from the manufacturer's warranty;

- c. Protecting against “lemons”; and
 - d. Claiming ownership of replaced defective parts.
49. Best Buy’s service documents represent their GSPPs are warranties.
 50. Best Buy does not clearly and conspicuously state that the GSPP warranty is “limited.”
 51. Best Buy does not honor its GSPPs as full warranties.
 52. Best Buy’s GSPPs are full warranties under Federal law and should comply with the Federal Minimum Standards.
 53. In violation of Federal law, Best Buy through its GSPP, contends that it may elect what remedy a consumer receives in the event a covered product is defective or cannot be repaired.
 54. Because of Best Buy’s unlawful acts, consumers have no way to adequately assess and/or enforce their rights under the GSPPs and federal law.
 55. Plaintiffs purchased a five-year GSPP from Best Buy to cover their Samsung plasma television purchased at the same time.
 56. Best Buy employee(s) represented to Plaintiff that the GSPP was a warranty on the Samsung plasma television.
 57. While Plaintiffs’ Samsung television was covered under Plaintiffs’ five-year GSPP, it failed multiple times.

58. Plaintiffs' service document(s) contain representations that the GSPP is a warranty. (Exhibit B).
59. Best Buy through its GSPP, contends that it may elect what remedy a Plaintiff receives in the event their Samsung plasma television is defective or cannot be repaired.
60. Best Buy, acting under the GSPP, will not comply with the Federal Minimum Standards for full warranties when Best Buy elects to replace Plaintiffs' Samsung television or give Plaintiffs a voucher for less than the full purchase price paid.
61. Through actual or apparent agency, Best Buy acts as a warrantor of its GSPPs.
62. As a result of Best Buy's unlawful conduct, Plaintiffs and the National Class suffer injury with a failed television and inadequate means to fully assess and/or enforce their rights under the GSPP and the Federal Minimum Standards for warranties.

THE WARES

63. The Wares purchased a Samsung 3-D Plasma television, Model PN64F8500AFXZA, for approximately \$3,119.00 on or around June 8, 2013 at a Best Buy store in Chicago, IL. The total accessory package that Plaintiffs purchased that day, including the warranty totaled \$5,128.44.

64. Plaintiffs' Samsung plasma television has exhibited the Defect described in this complaint.
65. Plaintiffs the Wares also purchased a Geek Squad Protection Plan from Best Buy at the time they purchased their Samsung plasma television for coverage of the same.
66. At the time Plaintiffs purchased the Geek Squad Protection Plan from Best Buy they spoke to the manager at Best Buy/ Magnolia Home Theater. The manager sold the Wares the five-year warranty stating that it was the best choice because televisions don't usually have any issues within the first few years. The manager also represented that the Best Buy warranty would guarantee that if there were issues, Best Buy would replace the TV without any problem or the Wares could get their money back. Best Buy through its Manager represented to the Wares that they were purchasing a five-year warranty.
67. The Wares experienced multiple failures in their Samsung plasma television starting within only a few months after purchasing the Samsung plasma television.
68. At all times the Wares used a Samsung authorized repair facility and/or the Geek Squad to service/attempt to repair their Samsung plasma television.

69. The Wares' Samsung plasma television exhibited common signs of failure and required common replacement of parts including the X and Y boards.
70. In May 2017, the Wares attempted to have their Samsung plasma television fixed through their GSPP and Best Buy told them it could not be fixed because the parts were no longer available. (Exhibit B).
71. The Wares contacted Best Buy several times regarding their television for repair under warranty, where in or around May 2017, the television was unable to be repaired because the replacement part needed was no longer available.

CLASS ACTION ALLEGATIONS

72. Plaintiffs bring this action on their own behalf and pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3) and 23(b)(2) as a class action on behalf of a National Class (“National Class”) and an Illinois Class (“Illinois Class” or “State Class”) of persons defined as:

NATIONAL CLASS:

Within the applicable statute of limitations, all persons who purchased a warranty (Geek Squad Protection Plan) from Best Buy. (the “National Class”).

ILLINOIS CLASS:

Within the applicable statute of limitations, all persons in the State of Illinois who purchased a Samsung plasma television manufactured between January 1, 2009 and November 30, 2014 (the “Illinois Class”).

Plaintiffs maintain the right to modify or amend the definition of the proposed National Class and State Class before a court determines whether certification is appropriate.

73. Excluded from the National Class is Best Buy and others as follows:
- a. Any entity in which Best Buy has a controlling interest, or which has a controlling interest in Best Buy;
 - b. Best Buy’s officers, directors, agents, servants, employees, and legal representatives, and the members of the immediate family of any such person;
 - c. Best Buy’s assigns and successors;
 - d. The judge to whom this case is assigned and any member of the judge’s immediate family;
 - e. All persons who properly execute and timely file a Request for Exclusion;

- f. All persons who have properly released their claims against Best Buy;
and
 - g. All persons who have obtained a judgment against Best Buy on the
claims here presented on or before the date of the filing of this action.
74. Excluded from the Illinois Class are Samsung and others as follows:
- a. Any entity in which Samsung has a controlling interest, or which has
a controlling interest in Samsung;
 - b. Samsung's officers, directors, agents, servants, employees, and legal
representatives, and the members of the immediate family of any such
person;
 - c. Samsung's assigns and successors;
 - d. The judge to whom this case is assigned and any member of the
judge's immediate family;
 - e. All persons who properly execute and timely file a Request for
Exclusion;
 - f. All persons who have properly released their claims against Samsung;
and
 - g. All persons who have obtained a judgment against Samsung on the
claims here presented on or before the date of the filing of this action.

RULE 23(a)

Numerosity

75. Upon information and belief, the State Class is composed of no fewer than hundreds of persons statewide in Illinois; and is sufficiently numerous for class treatment.
76. The joinder of the State Class members individually in one action would be impracticable, and the disposition of their claims in a class action will provide substantial benefits to the parties and the Court.
77. Upon information and belief, the National Class is composed of no fewer than thousands of persons nationwide; and is sufficiently numerous for class treatment.
78. The joinder of the National Class members individually in one action would be impracticable, and the disposition of their claims in a class action will provide substantial benefits to the parties and the Court.

Commonality

79. This dispute raises questions of law and fact that are common to the State and National Class members. Those common questions predominate over questions that arise on an individual basis for members.
80. The common questions of law and fact for the National Class include, without limitation:

- a. Whether members of the National Class purchased a warranty (Geek Squad Protection Plan) from Best Buy;
 - b. Whether the warranty covered manufacturer defects;
 - c. Whether Best Buy by and through its agents and employees represents that they are selling a warranty;
 - d. Whether Best Buy is a “warrantor” under the Magnuson-Moss Warranty Act;
 - e. Whether the warranty violated the Magnuson-Moss Warranty Act 15 USC §2301 *et seq.*;
 - f. Whether the warranty complies with the requirements of 15 USC §2301 *et seq.*; and
 - g. Whether Best Buy has violated 15 USC §2304.
81. The common questions of law and fact for the Illinois Class include, without limitation:
- a. Whether Samsung violated Illinois Consumer Fraud and Deceptive Business Practices Act;
 - b. Whether Samsung’s practices regarding product lifecycle management for Samsung plasma televisions were adequate;

- c. Whether Samsung's practices regarding product lifecycle management for Samsung plasma televisions was unfair to consumers;
- d. Whether Samsung failed to maintain adequate inventory/ supply of component parts necessary to repair Samsung televisions for a reasonable period of time after they were manufactured;
- e. Whether the members of the Illinois Class have been injured by Samsung's conduct; and
- f. Whether the members of the Illinois Class are entitled to injunctive or declaratory relief to repair and/or replacement of the televisions.

Typicality

- 82. Plaintiffs' claims are typical of the claims of the National Class and State Class. Plaintiffs have no interests adverse to the interests of other members.
- 83. The claims of Plaintiffs and the State and National Classes have a common origin and share a common basis. The State Class claims originate from the same unfair practices of Samsung, and they act in the same way toward Plaintiffs and the State Class members. The National Class claims originate from substantive violations of Federal warranty law. The National Class' claims originate from the same alleged violations of the Magnusson Moss

Warranty Act by Best Buy as applied uniformly to all National Class members based on Best Buy's interpretation of their warranties.

Adequate Representation

84. Plaintiffs are willing and prepared to serve the Court and their respective proposed National Class and State Class in a representative capacity with all of the obligations and duties material to serving as class representatives. Plaintiffs will fairly and adequately protect the interest of the Classes, and have no interests adverse to or which directly and irrevocably conflict with, the interests of other members of the classes.
85. The self-interests of the named class representatives are co-extensive with, and not antagonistic to, those of the respective absent members. The proposed representatives will undertake to protect the interests of the respective absent members.
86. Plaintiffs have engaged the services of counsel indicated below. Said counsel is experienced in complex and class action litigation, will adequately prosecute this action, and will assert, protect and otherwise represent the named class representatives and absent National Class and State Class members.

RULE 23(b)(2)

87. This action satisfies the requirements of Fed. R. Civ. P. 23(b)(2) because Samsung and Best Buy have acted and refused to act on grounds generally applicable to the respective National and State Classes, thereby making appropriate final injunctive and/or corresponding declaratory relief with respect to the Classes as a whole. Samsung, through inadequate supply of repair/replacement parts for their plasma televisions deny consumers the reasonable option to repair their plasma televisions for a reasonable amount of time after their purchase. Best Buy, through its unlawful interpretation and application of its GSPPs have denied consumers federally protected rights as to full warranties.

RULE 23(b)(3)

88. The questions of law and fact common to members of the class predominate over any questions affecting only individual members.
89. A class action is superior to other available methods for the fair and efficient adjudication of the controversies in that:
- a. Individual claims by the class members are impractical as the costs of pursuit far exceed what any one plaintiff or member has at stake.
 - b. No known class actions have been filed, nor is there known of any individual litigation over the controversies set forth in this Fourth

Amended Complaint, and upon information and belief individual members of the class have no interest in prosecuting and controlling separate actions.

c. The proposed class action is manageable.

90. Plaintiffs are not aware of any obstacles likely to be encountered in the management of this action that would preclude its maintenance as a class action. Rule 23 provides the Court with authority and flexibility to maximize the efficiencies and benefits of the class mechanism and reduce management challenges. The Court may, on motion of Plaintiffs or on its own determination, certify a nationwide class and/or a statewide class for claims sharing common legal questions; utilize the provisions of Rule 23(c)(4) to certify any particular claims, issues, or common questions of fact or law for class-wide adjudication; and certify and adjudicate bellwether class claims; and utilize Rule 23(c)(5) to divide any Class into subclasses.

COUNT ONE
VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT
(15 U.S.C. Sections 2301, *et seq.*)
(AS TO BBS DEFENDANT)

91. Plaintiffs and the National Class reallege and incorporate paragraphs 1-89 as if set forth fully in this Count.
92. The Samsung televisions are “consumer products” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

93. GSPPs cover “consumer products” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).
94. Plaintiffs and the National Class are “consumers” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3). They are consumers because they are persons entitled under applicable state law to enforce against the warrantor the obligations of its express and implied warranties.
95. BBS qualifies under the definitions of “suppliers” and “warrantors” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)-(5) by providing consumers with warranties known as Geek Squad Protection Plans. Through actual or apparent agency, BBS is a warrantor as it performs services to consumers under the GSPP, is the primary contact for service under the GSPP and brands/markets the GSPP as a Best Buy product.
96. Best Buy Geek Squad Protection Plans are written warranties within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(6).
97. Consistent with the MMWA definition of warranties, the Geek Squad Protection Plans warrant the nature of the material or workmanship of consumer products, stating: “This Plan covers parts and labor costs to repair your product in the event your product fails to properly operate due to: 1) defect in materials or workmanship...” (Exhibit A)
98. The Geek Squad Protection Plans as warranties within the definition of the

MMWA as they provide seamless and almost identical coverage as the manufacturer warranty, stating: "After the manufacturer's warranty expires, this Plan continues to provide the benefits provided by the manufacturer's warranty (excluding manufacturer's loaner programs), as well as certain additional benefits as listed within these terms and conditions." (Exhibit A)

99. Agents and/or employees of BBS represent to consumers that the Geek Squad Protection Plans are warranties.
100. Service related documents represent the GSPPs as warranties. (Exhibit B).
101. 15 U.S.C. §2310(d)(1) provides a cause of action for any consumer who is damaged by the failure of a warrantor to comply with the Magnuson-Moss Warranty act or a written or implied warranty.
102. BBS failed to comply with 15 U.S.C. §2303 (a) when they failed to clearly and conspicuously designate whether the GSPP warranty was "full" or "limited." As a result of BBS's noncompliance, consumers like Plaintiffs and the National Class are misled and deceived about the nature and extent of Best Buy warranties.
103. Where BBS has not clearly and conspicuously termed their GSPP warranty as "limited" it shall otherwise comply with the Federal Minimum Standards for full warranties.
104. The Federal Minimum Standards for full warranties provide that "if the

product (or a component part thereof) contains a defect or malfunction after a reasonable number of attempts by the warrantor to remedy defects or malfunctions in such product, such warrantor must permit the consumer to elect either a refund for, or replacement without charge of.” 15 U.S.C. §2304 (a)(4).

105. The Wares, in BBS’s application of their GSPPs, have been denied the remedy provided under the Federal Minimum Standards for full warranties.
106. BBS failed to comply with 15 U.S.C. §2304 (a) (4) in its GSPPs when they disallow consumers the election of their remedy allowed by 15 U.S.C. §2304 (a) (4) in the event a product covered by a GSPP is defective or cannot be repaired after a reasonable number of attempts.
107. The limitations on the warranties are procedurally unconscionable. BBS did not expressly state whether the Geek Squad Protection Plans were “limited” or “full” warranties. There was unequal bargaining power between Best Buy and National Class members, as, at the time of purchase, Plaintiffs and the other National Class members had no other options for purchasing warranty coverage other than directly from BBS.
108. Plaintiffs and each of the other National Class members have had sufficient direct dealings with BBS and/or their agents.
109. Pursuant to 15 U.S.C. § 2310(e), Plaintiffs are entitled to bring this class

action and are not required to give BBS notice and an opportunity to cure until such time as the Court determines the representative capacity of Plaintiffs pursuant to Rule 23 of the Federal Rules of Civil Procedure.

110. The amount in controversy of Plaintiffs' individual claims meets or exceeds the sum of \$25. The amount in controversy of this action exceeds the sum of \$50,000, exclusive of interest and costs, computed on the basis of all claims to be determined in this lawsuit.
111. Plaintiffs, individually and on behalf of the other National Class members, seek all damages permitted by law, including the value of their consumer products, in an amount to be proven at trial. In addition, pursuant to 15 U.S.C. §2310(d)(2), Plaintiffs and the other National Class members are entitled to recover a sum equal to the aggregate amount of costs and expenses (including attorneys' fees) determined by the Court to have reasonably been incurred by Plaintiffs and the other National Class members in connection with the commencement and prosecution of this action.
112. Further, Plaintiffs and the National Class are also entitled to equitable relief under 15 U.S.C. §2310(d)(1). Based on the BBS failure to comply with the requirements of the Magnuson-Moss Warranty Act and written warranties, Plaintiffs seek a declaration that BBS have not adequately implemented their warranty commitments and requirements, and injunctive relief in the form of

judicial supervision over the correction of warranty language is necessary.

113. The right of National Class members to recover these expenses as an equitable matter to put them in the place they would have been but for the BBS conduct presents common questions of law. Equity and fairness requires the establishment by Court decree and administration under Court supervision of a program funded by Best Buy, using transparent, consistent, and reasonable protocols, under which such claims can be made and paid.

WHEREFORE, Plaintiffs individually and as class representative for the National Class demand judgment against BBS for:

- a. compensatory damages, including but not limited to the purchase price of the warranty or the purchase price of the consumer product covered by the GSPP;
- b. a declaration that BBS's GSPPs are warranties under federal law;
- c. injunctive relief, including but not limited to ordering BBS to engage in corrective action to comply with Federal law mandating that warranties be clearly and conspicuously labeled and that such requirements be incorporated by BBS in its GSPPs;
- d. injunctive relief, including but not limited to ordering BBS to engage in corrective action to comply with Federal law such that the BBS warranties allow consumers to elect their remedy pursuant to 15

U.S.C. 2304 (a) (4);

- e. reasonable attorney's fees, costs and expenses; and
- f. such other relief as may be just, necessary or appropriate.

COUNT TWO

**Violation of Illinois Consumer Fraud and Deceptive Business Practices Act
(815 ILCS 505/1, et seq.)
(for Equitable and Compensatory Relief)(As to SEA)**

- 114. Plaintiffs and the Illinois Class reallege and incorporate paragraphs 1-90 as if set forth fully in this Count.
- 115. Plaintiffs are "person(s)" as that term is defined in 815 ILCS 505/1(c).
- 116. Plaintiffs and the Illinois Class are "consumers" as that term is defined in 815 ILCS 505/1(e).
- 117. The Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA") prohibits "unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact... in the conduct of trade or commerce... whether any person has in fact been misled, deceived or damaged thereby." 815 ILCS 505/2.

118. SEA participated in unfair acts or practices that violated the ICFA. SEA engaged in unfair acts or practices prohibited by the ICFA through any one or more of the following:
- a. Selling, or causing to be sold, Samsung televisions without adequate product life cycle management procedures in place, resulting in the failure of the service phase; and
 - b. Selling, or causing to be sold, Samsung televisions without maintaining adequate parts to service and/or repair those televisions for a reasonable time.
119. In the course of their business involving trade or commerce, SEA unfairly disregarded industry standards for product lifecycle management to the detriment of consumers.
120. As alleged above, SEA knew or should have known that Samsung plasma televisions have a certain failure rate and will require parts for service for a reasonable time outside of the manufacturer's warranty. With that information SEA knew or should have known approximately how many repair/replacement parts were needed to service the Samsung plasma televisions for a reasonable time after their sale to consumers. The consumer could not have reasonably known this information.

121. SEA's unfair acts or practices: a) violated public policy, b) were so oppressive that the consumer had little choice but to submit and/or c) caused consumers substantial harm.
122. Failing to make available parts for service of Samsung plasma televisions violates public policy because SEA should abide by manufacturing industry standards. Manufacturing industry standards include product life cycle management, including planning for the service phase in order to support consumers who have spent hundreds (sometimes thousands) of dollars on an electronic. Laws in California have taken this into account, requiring manufacturers make available functional parts for seven years after the date of manufacture of a consumer electronic with a wholesale price over \$100. *See e.g.* Cal. Civ. Code 1793.03(b). For the same reason SEA's conduct would violate California law, it is violative of public policy.
123. Failing to make available parts for service of Samsung plasma televisions is oppressive to consumers, who had little choice to submit. After consumers had purchased their Samsung plasma televisions SEA did not provide adequate parts for service, even within a few years after the purchase. Consumers are deprived the opportunity to repair their televisions and their televisions rendered obsolete. Consumers had no

choice but to purchase a replacement television (not plasma, as the technology was no longer available).

124. Without the option to repair their Samsung plasma televisions only a few years after purchase, consumers suffer substantial harm. Consumers have spent hundreds (or in the case of the Wares, thousands) of dollars and are now left with televisions that either don't work at all and cannot be repaired, or which are not in the condition for which they bargained. Had Plaintiffs and the Illinois Class known that their televisions were prone to fail without the option to repair due to SEA's failure to make functional parts available; they would either not have purchased the Samsung plasma televisions or would have paid less for them than they did.
125. Plaintiffs and all members of the Illinois Class are damaged and suffered ascertainable loss caused by SEA's unfair practices or acts. The Illinois Class overpaid for their televisions and did not receive the benefit of their bargain.
126. Plaintiffs and the Illinois Class Members risk irreparable injury as a result of SEA's acts in violation of the ICFA, and these violations present a continuing risk to Plaintiffs and the Illinois Class as well as to the general public. SEA's unfair acts and practices complained of herein affect the public interest.

127. As a direct and proximate result of the SEA's violations of the ICFA, the Illinois Class has suffered injury-in-fact and/or actual damage.

WHEREFORE, Plaintiffs individually and as class representatives on behalf of the Illinois Class demand judgment against the SEA for:

- c. compensatory damages, including but not limited to the purchase price of the Samsung televisions, cost of repair/diagnosis and/or replacement of the Samsung plasma televisions pursuant to 815 ILCS 505/10a(a);
- d. injunctive relief, including but not limited to ordering SEA to engage in corrective action to repair the defective Samsung televisions and/or make plasma television repair parts available to consumers;
- e. reasonable attorney's fees, costs and expenses; and
- f. such other relief as may be just, necessary or appropriate.

COUNT THREE
UNJUST ENRICHMENT (As to SEA)

128. Plaintiffs and the Illinois Class reallege and incorporate paragraphs 1-90 as if set forth fully in this Count.
129. In the alternative to compensatory damages requested above, if for any reason the claims under this action lack an adequate remedy at law, Plaintiffs and the Illinois Class request equitable relief from SEA's acts and omissions stemming from the legal theory of unjust enrichment.

130. Plaintiffs and the Illinois Class conferred a benefit upon SEA when they paid for the Samsung plasma televisions, which were inadequately supported with a product lifecycle management process that failed to provide repair/service parts for a reasonable time after the pricey televisions were purchased.
131. SEA appreciated the benefit conferred by receiving payment for any Samsung plasma television that was designed, manufactured, marketed, and retailed to consumers.
132. SEA has accepted and retained the benefit conferred without providing a product that is not adequately supported with a product lifecycle management process that fails to consider repair/service even a few years after purchase. The product purchased by Plaintiffs and the Illinois Class for valuable consideration had a propensity to fail and SEA has failed to make available parts for consumers to repair their Samsung plasma televisions.

Plaintiffs and the Illinois Class are otherwise left without the use of their televisions for which they bargained.

WHEREFORE, Plaintiffs individually and on behalf of the Illinois Class demand relief against SEA as follows:

- a. compensatory damages, including but not limited to the part or all of

the purchase price of the Samsung televisions, cost of repair/diagnosis and/or replacement of the Samsung plasma televisions; and

b. such other relief as may be just, necessary or appropriate.

COUNT FOUR

**Violation of Illinois Consumer Fraud and Deceptive Business Practices Act
(815 ILCS 505/1, et seq.)
(for Equitable and Compensatory Relief)(As to SEC)**

133. Plaintiffs and the Illinois Class reallege and incorporate paragraphs 1-90 as if set forth fully in this Count.
134. Plaintiffs are “person(s)” as that term is defined in 815 ILCS 505/1(c).
135. Plaintiffs and the Illinois Class are “consumers” as that term is defined in 815 ILCS 505/1(e).
136. The Illinois Consumer Fraud and Deceptive Business Practices Act (“ICFA”) prohibits “unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact... in the conduct of trade or commerce... whether any person has in fact been misled, deceived or damaged thereby.” 815 ILCS 505/2.

137. SEC participated in unfair acts or practices that violated the ICFA. SEC engaged in unfair acts or practices prohibited by the ICFA through any one or more of the following:
- g. Selling, or causing to be sold, Samsung televisions without adequate product life cycle management procedures in place, resulting in the failure of the service phase; and
 - h. Selling, or causing to be sold, Samsung televisions without maintaining adequate parts to service and/or repair those televisions for a reasonable time.
138. In the course of their business involving trade or commerce, SEC unfairly disregarded industry standards for product lifecycle management to the detriment of consumers.
139. As alleged above, SEC knew or should have known that Samsung plasma televisions have a certain failure rate and will require parts for service for a reasonable time outside of the manufacturer's warranty. With that information SEC knew or should have known approximately how many repair/replacement parts were needed to service the Samsung plasma televisions for a reasonable time after their sale to consumers. The consumer could not have reasonably known this information.

140. SEC's unfair acts or practices: a) violated public policy, b) were so oppressive that the consumer had little choice but to submit and/or c) caused consumers substantial harm.
141. Failing to make available parts for service of Samsung plasma televisions violates public policy because SEC should abide by manufacturing industry standards. Manufacturing industry standards include product life cycle management, including planning for the service phase in order to support consumers who have spent hundreds (sometimes thousands) of dollars on an electronic. Laws in California have taken this into account, requiring manufacturers make available functional parts for seven years after the date of manufacture of a consumer electronic with a wholesale price over \$100. *See e.g.* Cal. Civ. Code 1793.03(b). For the same reason SEC's conduct would violate California law, it is violative of public policy.
142. Failing to make available parts for service of Samsung plasma televisions is oppressive to consumers, who had little choice to submit. After consumers had purchased their Samsung plasma televisions SEC did not provide adequate parts for service, even within a few years after the purchase. Consumers are deprived the opportunity to repair their televisions and their televisions rendered obsolete. Consumers had no

choice but to purchase a replacement television (not plasma, as the technology was no longer available).

143. Without the option to repair their Samsung plasma televisions only a few years after purchase, consumers suffer substantial harm. Consumers have spent hundreds (or in the case of the Wares, thousands) of dollars and are now left with televisions that either don't work at all and cannot be repaired, or which are not in the condition for which they bargained.
144. Had Plaintiffs and the Illinois Class known that their televisions were prone to fail without the option to repair due to SEC's failure to make functional parts available; they would either not have purchased the Samsung plasma televisions or would have paid less for them than they did.
145. Plaintiffs and all members of the Illinois Class are damaged and suffered ascertainable loss caused by SEC's unfair practices or acts. The Illinois Class overpaid for their televisions and did not receive the benefit of their bargain.
146. Plaintiffs and the Illinois Class Members risk irreparable injury as a result of SEC's acts in violation of the ICFA, and these violations present a continuing risk to Plaintiffs and the Illinois Class as well as to the general public. SEC's unfair acts and practices complained of herein affect the public interest.

147. As a direct and proximate result of the SEC's violations of the ICFA, the Illinois Class has suffered injury-in-fact and/or actual damage.

WHEREFORE, Plaintiffs individually and as class representatives on behalf of the Illinois Class demand judgment against the SEC for:

- i. compensatory damages, including but not limited to the purchase price of the Samsung televisions, cost of repair/diagnosis and/or replacement of the Samsung plasma televisions pursuant to 815 ILCS 505/10a(a);
- j. injunctive relief, including but not limited to ordering SEA to engage in corrective action to repair the defective Samsung televisions and/or make plasma television repair parts available to consumers;
- k. reasonable attorney's fees, costs and expenses; and
- l. such other relief as may be just, necessary or appropriate.

COUNT FIVE
UNJUST ENRICHMENT (As to SEC)

148. Plaintiffs and the Illinois Class reallege and incorporate paragraphs 1-90 as if set forth fully in this Count.

149. In the alternative to compensatory damages requested above, if for any reason the claims under this action lack an adequate remedy at law, Plaintiffs and the Illinois Class request equitable relief from SEC's acts and omissions stemming from the legal theory of unjust enrichment.

150. Plaintiffs and the Illinois Class conferred a benefit upon SEC when they paid for the Samsung plasma televisions, which were inadequately supported with a product lifecycle management process that failed to provide repair/service parts for a reasonable time after the pricey televisions were purchased.
151. SEC appreciated the benefit conferred by receiving payment for any Samsung plasma television that was designed, manufactured, marketed, and retailed to consumers.
152. SEC has accepted and retained the benefit conferred without providing a product that is not adequately supported with a product lifecycle management process that fails to consider repair/service even a few years after purchase. The product purchased by Plaintiffs and the Illinois Class for valuable consideration had a propensity to fail and SEC has failed to make available parts for consumers to repair their Samsung plasma televisions.

Plaintiffs and the Illinois Class are otherwise left without the use of their televisions for which they bargained.

WHEREFORE, Plaintiffs individually and on behalf of the Illinois Class demand relief against SEC as follows:

- a. compensatory damages, including but not limited to the part or all of

- the purchase price of the Samsung televisions, cost of repair/diagnosis and/or replacement of the Samsung plasma televisions; and
- b. such other relief as may be just, necessary or appropriate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests that this Court enter judgment as follows:

- A. Certifying this action for class treatment, approving:
1. Plaintiffs on behalf of the National Class and the Illinois Class; and
 2. Undersigned counsel as Class Counsel for the National Class and the Illinois Class.
- B. Awarding damages to:
1. Plaintiffs and the National Class for Best Buy's violations of the MMWA; and
 2. Plaintiffs and the Illinois Class for Samsung's violations of the Illinois Consumer Protection Act (alternatively unjust enrichment).
- C. Awarding pre- and post-judgment interest;
- D. Awarding injunctive relief as follows:

1. Plaintiffs and the National Class for Best Buy's violations of the MMWA; and
 2. Plaintiffs and the Illinois Class for Samsung's violations of the Illinois Consumer Protection Act.
- E. Awarding attorney fees, expenses, and costs; and
- F. Providing such other and further relief as this Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Trial by jury demanded on all issues so triable.

Respectfully submitted this 16th day of November 2018.

/s/ Paul S. Rothstein
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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY certify that on November 16, 2018, I electronically filed the foregoing First Amended Complaint with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record in this action.

/s/ Paul S. Rothstein
Paul S. Rothstein