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19 *Attorneys for Plaintiff ROBERT VERDIE*

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
21 COUNTY OF STANISLAUS

22 ROBERT VERDIE, individually and on  
23 Behalf of All Others Similarly Situated,

24 Plaintiff,

25 v.

26 MITSUBISHI ELECTRIC VISUAL  
27 SOLUTIONS AMERICA, INC.,  
28 MITSUBISHI DIGITAL ELECTRONICS  
AMERICA, INC., and DOES 1-10,

Defendants.

Case No.: 2004280

CLASS ACTION

AMENDED COMPLAINT  
FOR VIOLATIONS OF:

- (1) Unlawful, Unfair and Fraudulent Business Acts and Practices (Cal. Bus. & Prof. Code §§ 17200, *et seq.*);
- (2) Untrue and Misleading Advertising (Cal. Bus. & Prof. Code §§ 17500, *et seq.*);
- (3) Unlawful Practice in Sale of Consumer Goods in Violation of CA Consumers Legal Remedies Act (Cal. Civ. Code §§ 1750, *et seq.*);
- (4) Violation of the Song Beverly Consumer Warranty Act (Cal. Civ. Code §§ 1790, *et seq.*);
- (5) Violation of Magnuson-Moss Act (15 U.S.C. §§ 2301, *et seq.*);
- (6) Breach of Express Warranty; and
- (7) Breach of Implied Warranty

Demand for Jury Trial

BY FAX

FILED  
DEC 12 2013  
CLERK OF THE SUPERIOR COURT  
COUNTY OF STANISLAUS  
BY \_\_\_\_\_  
VANESSA ZAPATA DEPUTY

1 Robert Verdie (“Plaintiff”), by his attorneys, makes the following allegations and claims  
2 for his complaint against Mitsubishi Electric Visual Solutions America, Inc. (“MEVSA”), and  
3 Mitsubishi Digital Electronics America, Inc. (“MDEA”) (collectively “Mitsubishi” or  
4 “Defendants”). The following allegations are made upon information and belief, except as to  
5 allegations specifically pertaining to Plaintiff, which are made upon personal knowledge.

### 6 **JURISDICTION AND VENUE**

7 1. This Court has jurisdiction over all causes of action asserted herein pursuant to the  
8 California Constitution, art. VI, § 10, because this case is a cause not given by statute to other  
9 trial courts.

10 2. This Court has jurisdiction over the Defendants because they are corporations that  
11 are domiciled within this State, citizens of the State, maintain principal offices in this state, are  
12 authorized to conduct, and in fact do conduct, substantial business in the State of California, is  
13 registered with the California Secretary of State, has sufficient minimum contacts with this state,  
14 and otherwise purposely avails itself of the markets in this state, through the promotion, sale,  
15 marketing and distribution of its products in the state, so as to render the exercise of jurisdiction  
16 by California courts permissible under traditional notions of fair play and substantial justice.

17 3. Venue is proper in this county because the transaction at issue (or substantial  
18 portion thereof) occurred in this county, namely, Plaintiff’s purchase of the television at issue.

### 19 **PRELIMINARY STATEMENT**

20 4. This class action is brought by Plaintiff seeking damages and equitable relief on  
21 his own behalf and on behalf of all other similarly situated citizens of the State of California who  
22 have purchased certain Mitsubishi LaserVue Televisions (the “Televisions”), all of which were  
23 delivered by Mitsubishi with an identical characteristic and inherent defect in a major component  
24 called the “Optical Engine” (the “Defect”). The Defect, which was present upon delivery and  
25 which grows more noticeable over time, renders the Televisions unsuitable for their principal and  
26 intended purpose, in that it causes video and color anomalies to be displayed on the screens of the  
27 Televisions, severely interfering with the program display. Despite Mitsubishi’s awareness of the  
28 fault contained in the Optical Engine, it is unwilling or unable to repair the Defect. Mitsubishi

1 has compounded its improper sale of the defective Televisions by acting in contravention of  
2 applicable federal and state warranty laws and refusing to honor its obligation to repair the Defect  
3 without cost to members of the Class, or even to fulfill its statutory requirement to maintain a  
4 supply of replacement parts. As such, Mitsubishi has perpetuated a massive consumer fraud upon  
5 thousands of unsuspecting consumers within the State of California, each of whom has spent  
6 \$5,000.00-\$7,000.00 for these defective products.

## 7 **PARTIES**

8 5. Plaintiff Robert Verdie is a citizen of California and a resident of Escalon,  
9 California. Mr. Verdie purchased a Mitsubishi LaserVue television, model L65-A90, from  
10 Custom TV and Stereo in Modesto, California for approximately \$5,000.00, which was delivered  
11 to him on December 8, 2009. The Defect described below manifested on Mr. Verdie's LaserVue  
12 Television creating the anomalies noted above so as to result in the loss of the benefit of the  
13 bargain between Mr. Verdie and Mitsubishi. Although Mr. Verdie gave notice of the Defect and  
14 demanded a warranty repair from Mitsubishi has refused to repair the Defect, refused to supply  
15 replacement parts, and refused to honor the warranty. Instead, Mitsubishi told Mr. Verdie that it  
16 no longer maintained replacement parts, and that his Television was in any case unrepairable, and  
17 that it would offer him \$700.00 to purchase his Television. At no time was Mr. Verdie told by  
18 Mitsubishi that his television was experiencing a known defect that was inherent to the  
19 Televisions.

20 6. Defendant Mitsubishi Electric Visual Solutions America, Inc. is a California  
21 corporation with its principal place of business located at 9351 Jeronimo Road, Irvine, California.  
22 MEVSA imports, distributes and/or markets the Televisions containing the Defect, and  
23 purposefully caused them to be placed into the stream of commerce within the State of California.  
24 MEVSA is the successor to defendant Mitsubishi Digital Electronics America, Inc.

25 7. Defendant Mitsubishi Digital Electronics America, Inc. is a California corporation,  
26 which previously had its principal place of business located at 10833 Valley View Street,  
27 Cypress, California, and now lists its address in MEVSA's facility in Irvine. MDEA imported,  
28 distributed, and/or marketed the Televisions containing the Defect, and caused the Televisions to

1 be placed into the stream of commerce within the State of California. The operations of MDEA  
2 have now been subsumed by MEVSA, which carries on its operations.

3 8. Defendants DOES 1-10 are “persons,” the names and addresses of which are  
4 unknown, which participated in the course of conduct that is the subject matter of this action, as  
5 alleged herein. Plaintiff is, as yet, ignorant of the true names, capacities and nature and extent of  
6 participation in the course of conduct alleged herein of the persons sued as DOES 1-10 inclusive,  
7 and therefore sue these defendants by such fictitious names. Plaintiff will amend this complaint to  
8 allege the true names and capacities of the DOE defendants when ascertained.

9 9. Plaintiff is informed and believes, and thereupon alleges, that at all relevant times,  
10 each of the Defendants was the agent, servant, representative, successor, successor in interest and  
11 employee of the other, and in doing the things hereinafter alleged, each was acting within the  
12 course and scope of said agency and employment and with the ratification and authorization of its  
13 respective principal.

#### 14 **STATEMENT OF FACTS**

15 10. High Definition Television (“HDTV”) refers to a method of portraying television  
16 images in high resolution, with a high degree of picture detail and accuracy. As such, HDTV  
17 televisions command prices several times higher than those for common standard definition  
18 television sets. Consumers purchasing HDTV televisions therefore pay a significant premium for  
19 the ability to enjoy the high quality picture such television sets offer.

20 11. Mitsubishi began marketing its LaserVue televisions in 2008 as high end consumer  
21 electronic devices, purportedly offering superior picture quality, and capable of taking full  
22 advantage of the HDTV programming and reproducing video programs with a clear picture and  
23 accurate color reproduction. What Mitsubishi misrepresented, omitted to disclose and concealed  
24 from the general public, however, was the fact that Mitsubishi knew that the Televisions would  
25 exhibit the anomalies on their screens due to the Defect contained in the Optical Engine. These  
26 material misrepresentations and omissions have allowed Mitsubishi to command premium prices  
27 for these Televisions, as much as \$8,000.00 or more, as well as to successfully market the  
28

1 Televisions as suitable for the most discerning videophiles seeking accurate color reproduction at  
2 the highest resolutions and fidelity possible.

3 12. Mitsubishi further marketed these Televisions as robust pieces of equipment,  
4 which would provide many years of service, without need for maintenance or replacement of  
5 wearable parts. Unlike most projection televisions which utilize wearable light bulbs to generate  
6 a light source, Mitsubishi's LaserVue Televisions generate a light source through the use of a  
7 laser backlight. As such, Mitsubishi was able to command prices for the LaserVue televisions  
8 which were often more than twice that for comparable products on the market.

9 13. Unfortunately, rather than displaying the excellent video playback which  
10 consumers paid premium prices, the Televisions instead display spots, streaks, stains, and other  
11 video anomalies which cover the programming on the television screen. These video artifacts  
12 obscure the picture, distort the color, and diminish the detail of the image, rendering the  
13 Televisions entirely unusable for the purposes for which they were intended by consumers  
14 thereby breaching the implied warranty of fitness for a particular purpose. Based upon the  
15 express and implied warranties, false representations, and omissions and/or concealment of  
16 materials facts by Mitsubishi, Plaintiff and the Class members purchased the Televisions  
17 containing the Defect for personal use, and have suffered damages as a result.

18 14. The bright blue and red haze, spots, and streaks, are believed to be caused by a  
19 condition in the Televisions' Optical Engine. The Optical Engine is the video component that  
20 causes the video signal to be projected and displayed as a picture on the viewing screen. The  
21 Optical Engine projects a high output, full spectrum light source, which includes ultra violet and  
22 infra-red radiation. The Optical Engines are unable to mitigate the heat and destructive nature of  
23 the ultra violet and infra-red radiation, which inevitably destroys the sensitive optical and  
24 electronic components in its path.

25 15. Among the components subjected to the unmitigated ultra violet radiation within  
26 the Optical Engine is a device known as a Digital Micromirror-Device ("DMD"). The DMD is an  
27 optical semiconductor, which contains an array of microscopic mirrors. These microscopic  
28 mirrors generate a picture by rotating on or off, and reflect the light engine's light source onto

1 pixels that generate a video program on the screen. The DMD however, is unable to withstand  
2 the intense ultra violet radiation and the heat it generates, and the chip and its mirrors become  
3 deformed and stuck and unable to properly direct light. Instead of the perfect picture consumers  
4 paid for, they instead see white dots, and other video anomalies.

5 16. The Optical Engine contains many other sensitive optical components which are  
6 susceptible to damage by the unmitigated ultra violet and infra-red radiation generated by the  
7 high output, full spectrum light source. These components include lenses and polarizers, which  
8 become damaged or destroyed by the ultraviolet or infra-red radiation. Once damaged, these  
9 devices are unable to properly transmit light, and instead obscure it. As these devices are in the  
10 light path of the Optical Engine, the light they obscure cannot be properly projected onto the  
11 Television's screen, which will instead display video anomalies such as streaks or stains.

12 17. Despite Mitsubishi's institutional knowledge and awareness of the Defect,  
13 Mitsubishi's Customer Service personnel continue to deny to consumers complaining about the  
14 Defect that this characteristic and inherent Defect in the Optical Engine even exists. Once a  
15 consumer's one-year Mitsubishi written warranty has expired, Mitsubishi usually disclaims any  
16 and all liability for the Defect, leaving the consumer to bear the cost of an expensive repair on his  
17 or her own, or purchase a new replacement television.

18 18. Although Mitsubishi denied the existence of the Defect in the Optical Engine of its  
19 LaserVue televisions, it constantly attempted to correct the defect with successive design counter-  
20 measures since their initial release to the market in 2008. In 2013, with each successive model of  
21 LaserVue experiencing the same Optical Engine Defect, and failures in the DMD and other  
22 Optical Engine Components, Mitsubishi finally announced that they were withdrawing the  
23 LaserVue product from the market.

24 19. The extremely high failure rate in LaserVue Televisions has led to a constant  
25 shortage of replacement Optical Engines, and their components. Now that Mitsubishi has exited  
26 the market, and is no longer manufacturing or selling Televisions, they have refused to stock or  
27 supply replacement parts to owners of malfunctioning Mitsubishi LaserVue Televisions, despite a  
28 legal requirement to do so. Instead of supplying replacement parts, Mitsubishi has instead offered

1 consumers paltry sums to purchase their unfixable Televisions for which no parts are available,  
2 and for which they spent far more only a short time ago.

3 20. Plaintiff and the members of the Class had no knowledge of the cause of the  
4 Defect and did not suspect, nor did they have reason to suspect, that the Defect was caused by  
5 Mitsubishi's wrongdoing. Plaintiff and the members of the Class could not have known or  
6 reasonably discovered, nor did they have reason to know of, the Defect created by Mitsubishi.  
7 Further, they could not have known or reasonably discovered that the Televisions they purchased  
8 were defective or that the cause of the harm suffered by Plaintiff and the members of the Class  
9 was directly attributable to the wrongdoing by Mitsubishi alleged herein.

10 21. Plaintiff's and the Class members' lack of knowledge regarding the cause of their  
11 damages was due to Mitsubishi's concealment of material facts regarding the Defect. The acts of  
12 concealment by Mitsubishi included the intentional concealment and refusal to disclose facts  
13 known to Mitsubishi about the Defect in the Televisions, which Plaintiff and the members of the  
14 Class could not reasonably have learned, known of, or otherwise discovered. In fact, Plaintiff and  
15 the members of the Class did not know, nor could they have had reason to know, that  
16 Mitsubishi's overall malfeasance in designing, manufacturing, distributing, marketing and selling  
17 of its Televisions was a cause of their damage.

18 22. Mitsubishi has known about the Defect contained in the Televisions since almost  
19 immediately after their introduction to the market and likely even earlier. Despite this fact,  
20 Mitsubishi has continued to misrepresent to consumers that the Televisions provide excellent  
21 video quality and has omitted to disclose to consumers the existence of the Defect in connection  
22 with the marketing and sale of the Televisions or thereafter. Instead, Mitsubishi continued to  
23 design, manufacture, market, distribute, and sell the defective Televisions as if it were unaware of  
24 the Defect. However, at that time, Mitsubishi knew that their Televisions would not be  
25 effectively tested for the Defect after they left Mitsubishi's control and it knew that their express  
26 representations about the Televisions would be relied upon by end users and Mitsubishi's  
27 distributors and retailers. Plaintiff and the other members of the Class would not have purchased  
28 the Televisions at the prices they paid, or at all, had they known of these material facts.

1           23.     Mitsubishi, as the designers, manufacturers, importers, marketers, distributors and  
2 sellers, warranted, either expressly or by implication, that the Televisions sold to the general  
3 public were not inherently defective and were reasonably suited for their intended purpose.  
4 Mitsubishi breached their warranty by doing so and Mitsubishi made and/or allowed these  
5 misrepresentations to be made with the intent of making Plaintiff and the members of the Class to  
6 purchase the Televisions. If Plaintiffs and the members of the Class had known the true facts,  
7 they would not have purchased the Televisions or paid as much as they did for the Televisions.

8           24.     In addition, Mitsubishi's express warranty did not include a conspicuous statement  
9 about the Defect and unusual early failure of the Television as a result. As such, Mitsubishi's  
10 limits on its express warranty are unenforceable as it knowingly sold a defective product without  
11 conspicuously informing consumers about the Defect, making its express warranty  
12 unconscionable. As a result, plaintiffs and the members of the Class did not receive the goods  
13 expressly warranted by Mitsubishi, namely, fully functioning televisions free from defect.

14           25.     Mitsubishi provided written limited warranties to plaintiffs and other members of  
15 the Class which it breached and failed to honor. The time limitations contained in those limited  
16 warranties were also unconscionable and grossly inadequate to protect Plaintiff and the other  
17 members of the Class. Among other things, Plaintiff and the members of the Class had no  
18 meaningful choice in determining those time limitations; the terms of the limited warranties  
19 unreasonably favored Mitsubishi over consumers; a gross disparity in bargaining power existed as  
20 between Mitsubishi and Plaintiff and the members of the Class; and Mitsubishi knew the  
21 Televisions were defective at the time of sale and would fail well before their expected useful  
22 lives had ended, thereby rendering the time limitations insufficient and inadequate.

23           26.     Despite its knowledge of the Defect, at all relevant times, Mitsubishi continued to  
24 misrepresent to consumers that the Televisions provide excellent video quality and omitted to  
25 disclose to consumers the existence of the Defect or cure the Defect at the design and/or  
26 manufacturing stage.

27           27.     Although the Defect has been recognized internally at Mitsubishi, as of the date of  
28 this Complaint, Mitsubishi has refused to recall the Televisions and continues to deny to



1 consumers the existence of the Defect. Indeed, instead of recalling all of the defective  
2 Televisions it has sold to an unsuspecting public, Mitsubishi has engaged in a “secret recall”  
3 offering to pay a portion – usually quite small - of the expense to repair the Defect in Televisions  
4 of consumers who threaten to file suit or take other legal action against Mitsubishi, or those who  
5 have publicized their experiences on the internet.

6 28. The Televisions were sold to distributors and consumers with the knowledge and  
7 intent that the Televisions be used for the benefit of consumers.

8 29. The Televisions were not altered by Plaintiff, the members of the Class,  
9 Mitsubishi’s distributors or other personnel. The Televisions were defective when they left the  
10 exclusive control of Mitsubishi and Mitsubishi knew the Televisions would be used without  
11 additional tests for defects. The Televisions were defective and unfit for their intended purpose  
12 and Plaintiff and the members of the Class did not receive the goods as warranted.

13 30. By engaging in the above described conduct Mitsubishi committed acts and  
14 omissions with actual malice and accompanied by a wanton and willful disregard of persons,  
15 including Plaintiff and members of the Class, who foreseeably might be harmed by those acts and  
16 omissions.

17 31. As a direct result of Mitsubishi’s actions set forth herein, Plaintiff and the  
18 consumers who comprise the Class who have purchased the Televisions have suffered injury in  
19 fact, have been damaged and have suffered a loss of money or property for having paid thousands  
20 of dollars for a product that does not, cannot, and will not, work as represented and that is now  
21 worth substantially less than what consumers paid and what a non-defective Television would be  
22 worth.

### 23 **CLASS ACTION ALLEGATIONS**

24 32. Plaintiff brings this action on behalf of themselves and all other members of a  
25 class consisting of all purchasers of the Mitsubishi LaserVue Televisions whom are citizens and  
26 residents of the State of California (the “Class”). Excluded from the Class are defendants herein,  
27 and any person, firm, trust, corporation, or other entity related to or affiliated with Defendants,  
28

1 including, without limitation, persons who are officers and directors of Mitsubishi, as well as any  
2 person who is not a citizen and resident of the State of California.

3 33. The Class is composed of no fewer than thousands of persons within the State of  
4 California and is sufficiently numerous for class treatment. The joinder of all Class members  
5 individually in one action would be impracticable and the disposition of their claims in a class  
6 action will provide substantial benefits to the parties and the Court.

7 34. Plaintiff's claims are typical of the claims of the Class and Plaintiff has no  
8 interests adverse to the interests of other members of the Class.

9 35. This dispute raises questions of law and fact that are common to all Class  
10 members. Those common questions predominate over questions that arise on an individual basis  
11 for Class members. The common questions of law and fact include, without limitation:

12 a. Whether Mitsubishi's representations, omissions, and conduct regarding  
13 the Televisions were misleading or false;

14 b. Whether Mitsubishi's representations and conduct were likely to deceive  
15 consumers into believing that the Televisions operated properly;

16 c. Whether Mitsubishi violated California Business & Professions Code  
17 §§ 17200, *et seq.*, §§ 17500, *et seq.*, and California Civil Code §§ 1750, *et seq.*, and §§ 1792,  
18 *et seq.*;

19 d. Whether Mitsubishi honored its obligation to maintain replacement parts  
20 for the Televisions for a period of 7 years as mandated by Cal Civil Code § 179.03(b);

21 e. When Mitsubishi initiated the deceptive marketing campaign;

22 f. Whether Mitsubishi undertook a course of conduct to hide the existence of  
23 the Defect from the members of the Class;

24 g. Whether the Defect constitutes a manufacturing or design defect;

25 h. Whether the Defect constitutes a breach of Mitsubishi's warranties;

26 i. Whether the members of the Class have been injured by Mitsubishi's  
27 conduct;

28

1 j. Whether the members of the Class have sustained damages and are entitled  
2 to restitution as a result of Mitsubishi's wrongdoing and, if so, what is the proper measure and  
3 appropriate formula to be applied in determining such damages and restitution; and

4 k. Whether the members of the Class are entitled to injunctive relief.

5 36. Plaintiff will fairly and adequately protect the interests of the Class and has  
6 retained counsel experienced and competent in the prosecution of class action litigation.

7 37. A class action is superior to other methods for the fair and efficient adjudication of  
8 the claims herein asserted. Plaintiff anticipates that no unusual difficulties are likely to be  
9 encountered in the management of this class action.

10 38. A class action will permit a large number of similarly situated persons to prosecute  
11 their common claims in a single forum simultaneously, efficiently, and without the duplication of  
12 effort and expense that numerous individual actions would engender. Class treatment also will  
13 permit the adjudication of relatively small claims by many Class members who could not  
14 otherwise afford to seek legal redress for the wrongs complained of herein. If a Class or general  
15 public action is not permitted, Class members will continue to suffer losses and Mitsubishi's  
16 misconduct will continue without proper remedy.

17 39. Mitsubishi has acted and refused to act on grounds generally applicable to the  
18 entire Class thereby making appropriate final injunctive relief or corresponding declaratory relief  
19 with respect to the Class as a whole.

20 **FIRST CAUSE OF ACTION**  
21 **Unlawful, Unfair and Fraudulent Business Acts and Practices**  
22 **(Cal. Bus. & Prof. Code §§ 17200, et seq.)**  
23 **(Against All Defendants)**

24 40. Each of the above allegations is incorporated herein.

25 41. Mitsubishi's aforementioned misrepresentations and omissions and/or  
26 concealment of facts and wrongful warranty practices, were largely disseminated and directed  
27 from the principal offices of MEVSA and MDEA in Orange County, California.

28 42. The acts, practices, misrepresentations and omissions by Mitsubishi described  
above, and Mitsubishi's dissemination of deceptive and misleading advertising and marketing

1 materials in connection therewith, constitute unlawful, unfair and fraudulent business acts and  
2 practices and untrue and misleading advertising within the meaning of California Business &  
3 Professions Code §§ 17200, *et seq.*

4 43. Mitsubishi engaged in “unfair” business acts or practices by the promotional  
5 efforts undertaken and disseminated. Mitsubishi knew that its Televisions contained a  
6 characteristic defect, and it determined to benefit economically by distributing these defective  
7 products to consumers. Mitsubishi’s misconduct offends public policy and is immoral,  
8 unscrupulous, unethical and offensive, and causes substantial injury to consumers.

9 44. Mitsubishi’s unlawful, fraudulent or unfair business acts and practices present a  
10 continuing threat to Plaintiff, Class members and the general public in that Mitsubishi has refused  
11 to publicly acknowledge the Defect, correct its wrongdoing, and provide compensation for the  
12 damages it has caused to consumers.

13 45. Pursuant to California Business & Professions Code § 17203, Plaintiff, on behalf  
14 of themselves, the other Class members, and the general public, seek an order of this Court  
15 enjoining Mitsubishi from withholding information regarding the Defect its Televisions possess.  
16 Plaintiff, on the same basis, seeks restitution of any monies wrongfully acquired or retained by  
17 Mitsubishi and disgorgement of Mitsubishi’s ill-gotten gains obtained by means of its unfair  
18 practices.

19 **SECOND CAUSE OF ACTION**  
20 **Untrue and Misleading Advertising**  
21 **(Cal. Bus. & Prof. Code §§ 17500, *et seq.*)**  
22 **(Against All Defendants)**

23 46. Each of the above allegations is incorporated herein.

24 47. California Business & Professions Code § 17500 prohibits various deceptive  
25 practices in connection with the dissemination in any manner of representations for the purpose of  
26 inducing, or which are likely to induce, directly or indirectly, customers to purchase consumer  
27 electronics products such as the Televisions here at issue.

28 48. Mitsubishi’s acts, practices, misrepresentations and omissions alleged herein were  
intended to, and did, induce the consuming public to purchase the Televisions, and violated and

1 continue to violate California Business & Professions Code § 17500, in that Mitsubishi caused  
2 advertisements for its Televisions to be placed before the general public, but Mitsubishi's product  
3 did not conform to the advertisements.

4 49. As a result of the foregoing, Plaintiff, other Class members, and the general public  
5 are entitled to injunctive and equitable relief, restitution, and an order requiring disgorgement of  
6 Mitsubishi's ill gotten gains, as described above.

7 **THIRD CAUSE OF ACTION**  
8 **Unlawful Practice in Sale of Consumer Goods in Violation of**  
9 **CA Consumers Legal Remedies Act**  
10 **(Cal. Civ. Code §§ 1750, et. seq.)**  
11 **(Against All Defendants)**

12 50. Each of the above allegations is incorporated herein.

13 51. The Televisions as described above were bought by Plaintiff, and other consumers  
14 similarly situated, primarily for personal, family or household purposes.

15 52. Prior to Plaintiff's purchases of the above-mentioned Television, defendants  
16 violated California Civil Code § 1770 in the following respects:

17 a. In violation of California Civil Code § 1770(a)(5), Mitsubishi  
18 misrepresented that the Televisions were free from defects, when in fact they contain a significant  
19 defect in the Optical Engine that results in the generation of unwanted video anomalies across the  
20 viewing screen;

21 b. In violation of California Civil Code § 1770(a)(5), Mitsubishi represented  
22 that the Televisions were capable of properly rendering a video program and able to do so with a  
23 high degree of precision, when in fact they are unable to do so due to the unwanted video  
24 anomalies which interfere with the picture;

25 c. In violation of California Civil Code § 1770(a)(5), Mitsubishi represented  
26 in marketing materials and product manuals that the Televisions had characteristics which they  
27 did not have, as the Televisions were incapable of properly rendering video without unwanted  
28 color and other video anomalies running across the viewing screen;

d. In violation of California Civil Code § 1770(a)(7), Mitsubishi represented  
that the Televisions were of a particular standard, namely, that they would properly play HDTV

1 and standard definition programming, when in fact they would not without unwanted video  
2 anomalies running across the viewing screen;

3 e. In violation of California Civil Code § 1770(a)(9), Mitsubishi advertised  
4 the Televisions as providing high quality video playback with the intent not to sell the Televisions  
5 as advertised; and

6 f. In violation of California Civil Code § 1770(a)(5), Mitsubishi represented  
7 that the Televisions were capable of high quality, color accurate, video display, when in fact they  
8 were not.

9 53. Plaintiff is informed and believes, and thereupon alleges, that the above-mentioned  
10 misrepresentations resulted in the sale of the Televisions to Plaintiff and to other consumers  
11 similarly situated.

12 54. The aforementioned violations of the California Civil Code by Defendants were  
13 willful, oppressive and fraudulent. Plaintiffs are therefore entitled to an award of punitive  
14 damages.

15 55. Pursuant to California Civil Code § 1780, Plaintiffs, on behalf of themselves, the  
16 other Class members, and the general public, seek an order of this Court enjoining the Defendants  
17 from continuing the methods, acts and practices set out above regarding their misrepresentations  
18 regarding the Televisions.

19 **FOURTH CAUSE OF ACTION**  
20 **Violation of the Song Beverly Consumer Warranty Act**  
21 **(Cal. Civ. Code §§ 1790, *et seq.*)**  
22 **(Against All Defendants)**

23 56. Each of the above allegations is incorporated herein.

24 57. Under the Song Beverly Consumer Warranty Act, Defendants are required to  
25 make available replacement parts to effect repairs during the warranty period and repair defects  
26 within 30 days for a period of 7 years after a product's sale. Cal. Civ. Code § 1793.2(a)(3) and  
27 (b).

28 58. Defendants violated the Song Beverly Consumer Warranty Act by failing to  
provide the effective repair or replacement of the defective Televisions within 30 days, and by

1 refusing to stock or supply adequate replacement parts for the Televisions, each of which was  
2 purchased less than 7 years ago.

3 59. As provided by the Song Beverly Consumer Warranty Act, Plaintiff, on his own  
4 behalf and on behalf of the Class, seek reimbursement of the cost of the defective Televisions as  
5 well as an award of attorneys' fees.

6 **FIFTH CAUSE OF ACTION**  
7 **Violation of Magnuson-Moss Act**  
8 **(15 U.S.C. §§ 2301, *et seq.*)**  
9 **(Against All Defendants)**

10 60. Each of the above allegations is incorporated herein.

11 61. Plaintiff and the Class are consumers as defined in 15 U.S.C. § 2301(3).

12 62. Defendants are suppliers and warrantors as defined in 15 U.S.C. § 2301(4)(5).

13 63. The Televisions are consumer products as defined in 15 U.S.C. § 2301(6).

14 64. By reason of Mitsubishi's breach of its implied warranties and express written  
15 warranties stating that the Televisions would operate properly, were free from material defects,  
16 and that it would repair or replace any such defects, Defendants have violated the statutory rights  
17 due the plaintiffs and the Class pursuant to the Magnuson-Moss Warranty Act, 15 U.S.C.  
18 §§ 2301, *et seq.*, thereby damaging plaintiffs and the Class.

19 **SIXTH CAUSE OF ACTION**  
20 **Breach of Express Warranty**  
21 **(Against All Defendants)**

22 65. Each of the above allegations is incorporated herein.

23 66. Mitsubishi as the designers, manufacturers, distributors and sellers expressly  
24 warranted that the Televisions being sold to the general public were not inherently defective.

25 67. Mitsubishi's affirmations of fact and/or promises relating to the Televisions  
26 created express warranties that the products purchased by plaintiffs and the Class would operate  
27 properly and without defects, and would therefore portray video without extraneous artifacts  
28 which would impair the viewing of the video program. Mitsubishi breached the express warranty  
in that the Televisions did not conform to the promises or affirmations of fact made by Mitsubishi  
to the Plaintiff and members of the Class.

1 68. Alternatively, Mitsubishi's descriptions of the Televisions became part of the  
2 bases of the bargains between consumers and Mitsubishi, creating express warranties that the  
3 product purchased by Plaintiff and the Class would conform to Mitsubishi's representations.

4 69. Further, Mitsubishi breached its express warranty by allowing misrepresentations  
5 to be made and/or omitting information concerning the true condition of the Televisions with the  
6 intent of making Plaintiff and the members of the Class enter into agreements to purchase the  
7 Televisions. Mitsubishi's express warranty did not include a conspicuous statement about the  
8 Defect and the unusual early failure of the Optical Engine.

9 70. If Plaintiff and the members of the Class had known the true facts they would not  
10 have purchased the Televisions or paid as much as they did for the Televisions.

11 71. Mitsubishi's limits on their express warranty are unenforceable as they knowingly  
12 sold a defective product without conspicuously informing consumers about the Defect, and, as  
13 such, their express warranty was unconscionable. As a result, plaintiffs and the members of the  
14 Class did not receive the goods expressly warranted by Mitsubishi.

15 72. The time limits contained in Mitsubishi extended written limited warranties were  
16 also unconscionable and grossly inadequate to protect the Plaintiff and the members of the Class.  
17 Among other things, Plaintiff and the members of the Class had no meaningful choice in  
18 determining those time limitations; the terms of the limited warranties unreasonably favored  
19 Mitsubishi over members of the Class; a gross disparity in bargaining power existed as between  
20 Mitsubishi and Class members; and Mitsubishi knew or should have known that the Televisions  
21 were defective at the time of sale and would fail well before the end of their expected useful lives,  
22 thereby rendering the time limitations insufficient, inadequate, and unconscionable

23 73. As a result of the foregoing, Plaintiff and the Class have suffered damages.

24 **SEVENTH CAUSE OF ACTION**  
25 **Breach of Implied Warranty**  
26 **(Against All Defendants)**

27 74. Each of the above allegations is incorporated herein.

28 75. Mitsubishi's affirmations of fact and/or promises relating to the Televisions  
created implied warranties that the products purchased by plaintiffs and the Class would operate



1 properly and without defects, and would therefore portray video without extraneous artifacts that  
2 would impair the viewing of the video program.

3 76. Alternatively, Mitsubishi's descriptions of the Televisions became part of the  
4 bases of the bargains between consumers and Mitsubishi, creating implied warranties that the  
5 products purchased by Plaintiff and the Class would conform to Mitsubishi's representations.

6 77. In fact, the products purchased by Plaintiff and the Class did not so conform.

7 78. Mitsubishi also breached the implied warranty of merchantability in that the goods  
8 could not pass without objection in the trade, the goods were not of fair average quality within the  
9 description and/or were unfit for their intended and ordinary purpose in that they were defective.  
10 Mitsubishi cannot disclaim this implied warranty as they knowingly sold a defective product.

11 79. Mitsubishi also breached the implied warranty of fitness for a particular purpose.  
12 Based upon Plaintiff's and the Class's skill and judgment and implied warranties of fitness for a  
13 particular purpose, Plaintiff and Class members unknowingly purchased defective Televisions for  
14 personal use.

15 80. The Televisions were defective when they left the exclusive control of Mitsubishi.  
16 Mitsubishi knew that the Televisions would be used without additional tests for defects. The  
17 Televisions were defective and unfit for their intended purpose and Plaintiff and the members of  
18 the Class did not receive the goods as warranted.

19 81. As a result of the foregoing, Plaintiff and the Class have suffered damages.

### 20 **PRAYER FOR RELIEF**

21 WHEREFORE, plaintiffs respectfully request that this Court enter judgment as follows:

22 A. Declaring that this action is properly maintainable as a class action and certifying  
23 Plaintiff as Class representative;

24 B. Awarding damages to Plaintiff and the other Class members for Mitsubishi's  
25 breach of contract;

26 C. Awarding restitution and disgorgement as a result of Mitsubishi's unfair business  
27 practices and untrue and misleading advertising;

28

1 D. Awarding Plaintiff and the Class injunctive relief as a result of Defendants'  
2 violation of the Consumers Legal Remedies Act and enjoining the Defendants from continuing  
3 their illegal practices set out above;

4 E. Requiring Mitsubishi to inform the public of the Defect possessed by its  
5 Televisions and enjoining Mitsubishi from refusing to perform its warranty obligations;

6 F. Awarding pre- and post- judgment interest;

7 G. Awarding attorney fees, expenses, and costs; and

8 H. Providing such other and further relief as this Court may deem just and proper.

9  
10 DATED: December 12, 2013

Respectfully submitted,

11 KAPLAN FOX & KILSHEIMER, LLP

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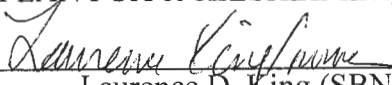
**JURY DEMAND**

Plaintiff, on his own behalf and on behalf of all others similarly situated, hereby demands a trial by jury.

DATED: December 12, 2013

Respectfully submitted,

KAPLAN FOX & KILSHEIMER, LLP

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