

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

MARK MANCINELLI and
PHYLLIS JURIED, Individually
and on Behalf of All Others
Similarly Situated,

Plaintiffs,

vs.

PHILIPS ELECTRONICS
NORTH AMERICA,

Defendant.

Civil No.

COMPLAINT FOR BREACH OF
WARRANTY, CONSUMER FRAUD,
AND UNJUST ENRICHMENT

CLASS ACTION

JURY TRIAL DEMANDED

Plaintiffs Mark Mancinelli and Phyllis Juried (“Plaintiffs”), individually and on behalf of all others similarly situated, by their undersigned counsel, allege the following upon personal knowledge as to their own acts and upon information and belief as to all other matters.

NATURE OF THE ACTION

1. Plaintiffs bring this action against defendant Philips Electronics North America (“Philips” or “Defendant”) on behalf of themselves and on behalf of all others similarly situated who purchased plasma flat screen televisions manufactured by Phillips and sold under the Phillips or Magnavox brand names (“Philips/Magnavox Plasma TV”) during the period January 1, 2006 through the date upon which Defendant ceases its wrongful conduct (the “Class Period”).

2. At all relevant times, Philips manufactured and sold defective Philips/Magnavox Plasma TVs. The Philips/Magnavox Plasma TVs are defectively designed because their electronic components overheat as electricity flows through the plasma TV during normal operation.

3. The defective design renders the Philips/Magnavox Plasma TV inoperable. Because of the design defect, the Philips/Magnavox Plasma TVs cease to function.

4. Defendant knew or should have known about the defectively designed Plasma TVs. Thousands of consumer complaints have been made to Philips/Magnavox, and thousands of consumers have complained publicly on

informational consumer electronic websites. Despite Defendant's knowledge and notwithstanding the easily accessible consumer complaints, Defendant has done nothing to educate Plaintiffs or the Class about the existence of, or provide a remedy for, the design defect at the time of sale or after purchase.

5. Defendant has failed to recall the Philips/Magnavox Plasma TVs, amend applicable warranties, or reimburse customers for the cost of repairing or replacing their Philips/Magnavox Plasma TVs. Defendant's failure to recall, amend, or reimburse has improperly passed the expense of repairing or replacing the Philips/Magnavox Plasma TVs along to Plaintiffs and other Class members who purchased defective Philips/Magnavox Plasma TVs.

6. Had Plaintiffs and other Class members known of the design defect, they would not have purchased a Philips/Magnavox Plasma TV.

7. The alleged facts demonstrate Defendant has violated the laws governing breach of the implied warranty of merchantability and unjust enrichment.

8. Philips harmed Plaintiffs and Class members throughout the country by manufacturing and selling defective Philips/Magnavox Plasma TVs. Defendant has earned substantial profits from its unlawful conduct.

JURISDICTION AND VENUE

9. The Court has jurisdiction over all causes of action asserted herein pursuant to 28 U.S.C. § 1332(d) because Plaintiffs' and Class members' aggregate claims exceed the sum or value of \$5,000,000, and because there is diversity of citizenship between at least one member of the proposed Class and Defendant.

10. Venue is proper in this District under 28 U.S.C. § 1391(a)(1) & (2). Philips conducts substantial business in this District through the design, promotion, sale, marketing and distribution of its Philips/Magnavox Plasma TVs in this District.

THE PARTIES

11. Plaintiff Mark Mancinelli is a New Jersey citizen. During the Class Period, Plaintiff purchased a Philips/Magnavox plasma TV, which subsequently malfunctioned due to the defects complained of herein.

12. Plaintiff Phyllis Juried is a Florida citizen. During the Class Period, Plaintiff purchased a Philips/Magnavox plasma TV, which subsequently malfunctioned due to the defects complained of herein.

13. Defendant Philips is a wholly-owned subsidiary of Koninklijke Philips Electronics, N.V., a Netherlands corporation. Philips's United States headquarters are located at 3000 Minuteman Road M/S 109, Andover, Massachusetts, 01810. Philips designs, manufactures, distributes, markets and sells household appliances and electronic devices, including the Philips/Magnavox

Plasma TV, both under the Philips brand name as well as various other brand names, including Magnavox.

FACTUAL ALLEGATIONS

14. The Philips/Magnavox Plasma TVs are sold nationwide at national chain retailers (*e.g.* Sears, Best Buy), retail stores, wholesale membership clubs (*e.g.* Sam's Club, Costco), and internet-based appliance vendors. Average retail price for the Philips/Magnavox Plasma TVs ranges between \$1,750-\$5,500, depending on the model.

Philips/Magnavox Plasma TVs

15. Philips manufactures and sells plasma flat screen televisions under the Philips and Magnavox brand names. Plasma televisions contain internal electronic components that are mounted on circuit boards. The internal components serve dedicated functions which enable the plasma television to power on and off, tune to a particular channel, properly display visual images, and replay audio.

16. Plasma televisions differ from "traditional" cathode ray tube televisions, or even LCD televisions, in one key aspect. Because plasma televisions use different display technology to render images, plasma televisions require much more electricity to function, as much as three times the electricity of "standard" televisions. Plasma televisions operate at significantly higher temperatures. Thus plasma televisions subject their internal circuit boards and electronic components to higher operating temperatures.

17. Certain of the Philips/Magnavox Plasma TVs circuit boards, including the power supply board (“PSB”) and the small signal board (“SSB”), are comprised of electronic devices called “capacitors.” Defendant’s defectively designed plasma televisions cause the capacitors to become overheated as electricity flows through them during normal television operation. The capacitors, and thus the circuit boards, fail because of the overheating, causing the Philips/Magnavox Plasma TVs to become inoperable.

Philips/Magnavox Power Supply Board

18. The PSB controls power regulation and distribution to the Philips/Magnavox Plasma TV.

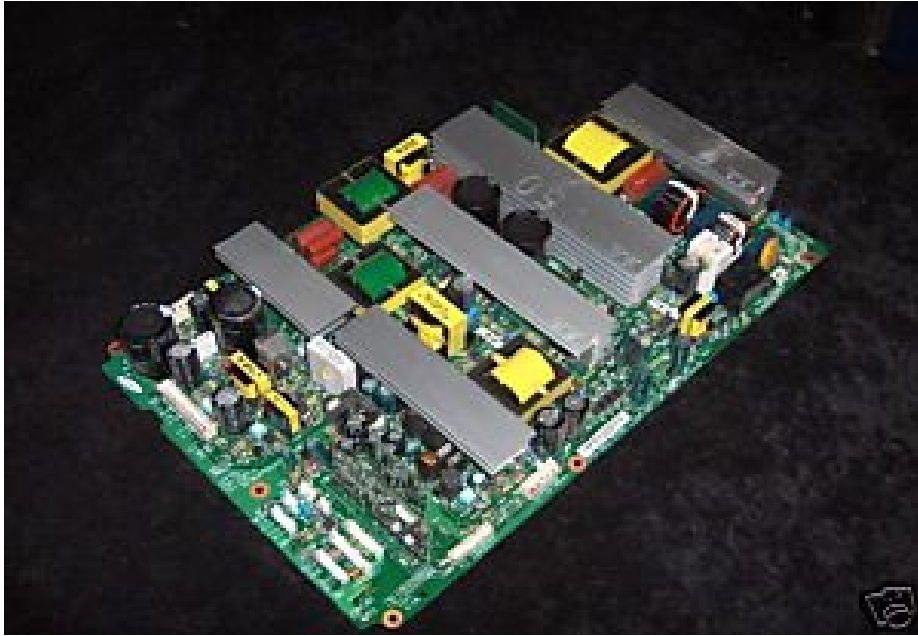
19. This is the PSB for the Philips Plasma TV 42FD9954/17 42FD9934 or Philips Plasma TV 32FD9954 32FD9954/17:

Image No. 1



20. This picture is the PSB for the 50” Philips Plasma TV:

Image No. 2

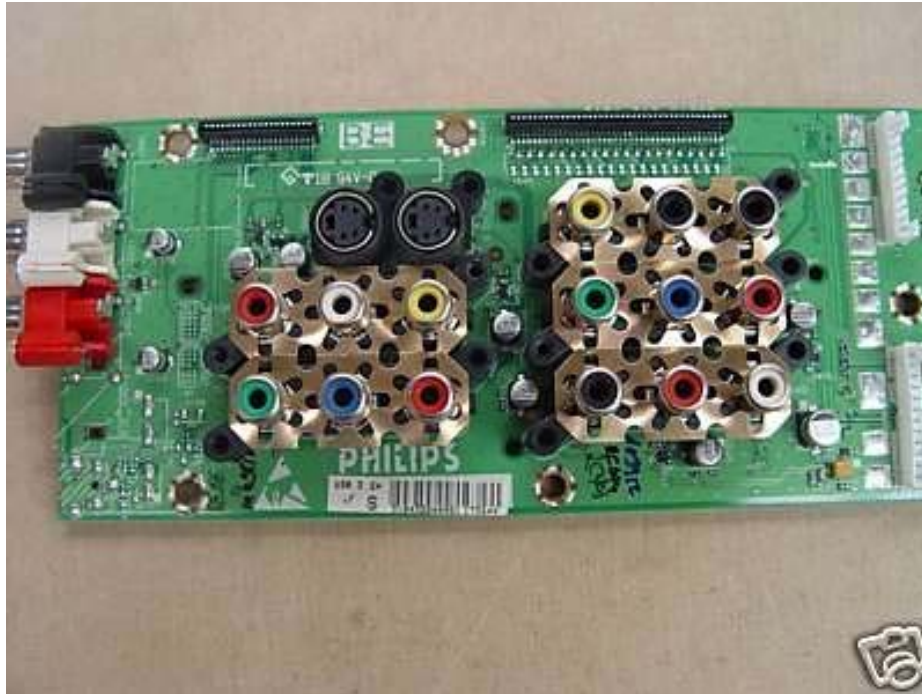


Philips/Magnavox Small Signal Board

21. The SSB is another electronic circuit board found in the defective Philips/Magnavox Plasma TVs. The SSB is where the microprocessor and the “EEPROM” are located. The “EEPROM,” which stands for Electrically Erasable Programmable Read-Only Memory, is a type of non-volatile memory used in computers and other electronic devices to store small amounts of data that must be saved when power is cut off, such as calibration tables or device configuration. Should the SSB fail or become compromised, the Philips/Magnavox Plasma fails.

22. This is the SSB for the 63" Philips Plasma TV:

Image No. 3



23. Average cost to replace the PSB or SSB control panel is approximately \$500- \$800.

The Philips/Magnavox Plasma TVs Are Defectively Designed

24. The Philips/Magnavox Plasma TVs are defectively designed because normal operation and usage exposes the capacitors that comprise the internal circuit boards, including the PSB and SSB, to excessive heat. The excessive heat causes the electronic components to fail and shut down. The Philips/Magnavox Plasma TV then fails.

25. The circuit board capacitors are integral parts of the electronic circuit boards within the Philips/Magnavox Plasma TVs. The boards are designed to operate within a defined temperature range and for a certain period of time before ceasing to operate. When the circuit board capacitors overheat, the Philips/Magnavox Plasma TVs automatically shut down and then restart, allowing the capacitors to cool.

26. When the capacitors overheat and shut down the Philips/Magnavox Plasma TV, owners are prompted by a number of blinking red lights, indicating a problem exists. In hundreds of complaints, consumers commonly refer to this indicator as the “red blinking light problem.” As a temporary fix, Philips/Magnavox Plasma TV owners and Class members have been able to restart their Plasma TV by unplugging the unit, waiting 20 to 30 seconds, and then plugging it back into the socket. Even this “fix” eventually fails: the capacitors “burn out” and the Philips/Magnavox Plasma TVs completely fail to operate, and instead emit blinking red lights.

27. Philips/Magnavox Plasma TV purchasers have incurred, and continue to incur, substantial expense for replacement parts and labor to repair their defectively designed Philips/Magnavox Plasma TVs when their TVs fail to operate after expiration of the one-year warranty. When electronic components contained on the circuit boards in the Philips/Magnavox Plasma TVs fail after the first year of purchase, Philips refers consumers to independent repair facilities. Upon

information and belief, during the Class Period, it cost approximately \$110 to \$150 for a service technician to perform a diagnostic on a Philips/Magnavox Plasma TV, and an additional \$70 to 90 for every hour of service repair performed.

Consumer Complaints Concerning Philips’s Defective Plasma TVs

28. Because the Philips/Magnavox Plasma TVs are defectively designed, purchasers of the plasma televisions have experienced and reported numerous failures, as evidenced by hundreds of complaints lodged with consumer electronic informational websites.

29. Class members complain their Philips/Magnavox Plasma TVs have failed to operate during normal usage. Purchasers refer to unexpected automatic shutting off and subsequent failure to operate and the red blinking lights as the “Red Blinking Light” problem. Relevant excerpts from a sampling of these complaints are set forth herein:

Source	Comments
ConsumerAffairs.com July 31, 2009	Purchased a Philips 42” Plasma about 2 years ago & all of a sudden it goes black & now the dreaded blinking red light which I’ve been reading about has come on. Really can’t believe Philips has been putting out such an defective product. I imagined the it would not last forever, but I thought that it would at least last 5-6 years. In this economy we really can’t be spending that much money for something that will only last us a few short years. There must be something we can do.
RecycledPaper.us July 15, 2009	I had this issue as well with my Phillips 42” Plasma. The first time it happened was at 14 months old, 2 months out of warranty. I had 7 red blinking lights. . . . Took the power board in to work to a co-worker who used to work electronics. He

Source	Comments
	<p>soldered in another capacitor he scavenged off of a computer power source and it worked great. Fast forward another 8 months and it's out again.</p> <p>6 red blinking lights. Again I removed the power board and the other capacitor next to the one he replaced last time was done for. He replaced this one but no luck, she won't boot up. Looks like the board will have to go in for some more in depth diagnosis.</p> <p>In the mean time I'm ordering a new LCD and if I ever get this Phillips working again it will either go on Ebay, Craigslist or be reserved to the basement where it's cooler. I believe part of the power board issues arise from inadequate cooling. Especially in my case where it was corner mounted with all the AV equipment directly underneath throwing up heat.</p>
<p>AVForums.com September 25, 2006</p>	<p>My 18 month old Philips plasma has decided to stop working. I have a 37FD994/01S that has a separate tuner box. When you turn on the display the LED goes green for a few seconds then switches to a continuously rapid flashing red with no picture. . . .</p> <p>I contacted Philips who could not help without sending the unit away to be inspected (at my own cost). I then contacted the retailer, Discount Electronics UK, who couldn't have been more unhelpful.</p> <p>Does anyone have any ideas as to what could have happened or any links to some technical advice on Philips plasma (I have already checked Philips.com).</p>
<p>HDTVSolutions.com July 10, 2009</p>	<p>My Experience: the infamous and dreaded flashing red light has appeared on my computer. Philips Support personnel only seem interested in giving you something to do so they can hang up on you to meet their call center resolution time quota.</p> <p>The system is junk. Why oh why did I not listen to other people who wrote, "Never buy a Philips!"</p>
<p>Consumeraffairs.com October, 2006</p>	<p>On 2-4-06 we purchased a Philips 51 inch tv. Approx. 3-27-06 we began having problems. TV would turn itself off when we were changing channels. Called Philips and they referred us to Melody TV in Oakley. They called after looking at it and said it needed a small signal board. Ordered 4-7-06 but part was backordered and didn't know when they would get it. Tried to get refund at Circuit City where we purchased it, and they said no refunds after 30 days. Called Philips saying I wanted refund & they referred me to complaint dept. Someone would call me</p>

Source	Comments
	<p>in 5-10 business days. I called Philips back 5-10-06 requesting refund but they had already approved a replacement tv.</p> <p>Spoke with Tracy who said refund wasn't an option and would ship new tv to Melody's 15-20 business days. Mid June received new tv. Approx. 2 months later same thing happened again. Called Philips requesting refund. . . .</p> <p>I am now convinced there is no way to get a refund on a piece of junk we paid \$1300.00 for. I know I will never purchase another Philips product again.</p>
<p>Fixya.com September 7, 2007</p>	<p>Shutdown; red LED blinks 4x Turn on the unit and the relay clicks with a solid green light then the relay clicks again and the red LED blinks in intervals of 4x. The screen never lights up. Is there an error code that coincides with the 4x blinking? I am a bench tech in need of some guidance/help/assistance. * * *</p> <p>Best Solution The Error 4 is referring to a I2C4 communication error between SSB (small signal board), and the Logic board (located underneath the SSB (under the bracket). Very high probability the SSB is bad. Current replacement SSB 12 nc is 31392680952</p>
<p>Techlore.com February 24, 2008</p>	<p>I have the Philips 42PF5321D-37, I recently upgraded the firmware because I was having a problem with the red light blinking 4 times. That problem seems to be fixed but now when I turn the tv on the green light comes on for about 15-20 seconds but then goes out, there is no sound or picture. I have unplugged it several times, let it sit overnight and still it won't work. When I initially plug in the power cord it clicks, turns green and goes off, that is normal but then when I hit the power button (on the remote and on the side) it wont click like it normally does when it's powering on just the green light pops on without the click.</p>
<p>Consumeraffairs.com July 24, 2009</p>	<p>We purchased a 50" Philips Plasma with Ambilight about 2 years ago. For the past 6 months the tv would shut off for about 20-30 seconds randomly. We thought it was the cable connection and had comcast here every other week trying to fix the problem. About 1 month ago upon turning on the tv and seeing the green light, it would then turn to red and flash about 5-7 times. Stop for about 5 seconds and then flash again. We would unplug the tv and re plug it back in.</p> <p>As of today the tv WILL NOT go back on. So I decided to look on line and noticed that we are not the only consumers out there with the same problem. When this first started happening we called Philips they advised us to upgrade the tv's software. So</p>

Source	Comments
	<p>we went through all of these instructions and we were able to download the software to the tv. This upgrade did absolutely nothing. We called the service department back in which they advised we would have to contact a tv repair shop in our area to have them come and fix it. I will never buy from Philips again.</p>
<p>Techlore.com October 5, 2008</p>	<p>Finally I seem to have found some people who are familiar with the frustrations and problems I am having with my Philips 42pf5321d/37. Since falling out of warranty my television has cut off at will for no apparent reason. Today it cut off and will not come back on. It is now displaying the error code of 5 slow red lights followed by 3 fast red lights.</p>
<p>CNET Forums July 3 2008</p>	<p>I can't believe they continue to be in business!</p> <p>I have just experienced the same blinking red light problem and contacted Phillips for assistance. Like everyone else, they referred me to a repair shop. Assuming having TV repaired would be outrageously expensive, I went online to search for others with the same problem hoping to find a simple solution. I never thought our 18month old TV could have a significant problem. Imagine my surprise when I realized the countless #'s of websites and customers having the exact same issue! I am furious! I am contacting the BBB today and if anyone comes up with a better solution, PLEASE let me know.</p>
<p>Fixya.com May 11, 2009</p>	<p>I have a Philips 42PF7321D/37 model 42" plasma TV that just shut off on me a week ago. When it shut off, the green LED power indication light turned red and blinks 4 times. I saw on a post here a list of fault codes, mine corresponds to theD3V3, although, I do not know what that is. Nor do I know where to source parts ... I'd prefer to get the parts and make the repairs myself. I work at a research center and I'm pretty handy with electronics, but without any info I'm stuck. I'd rather not pay the local repair shop that Philips referred me to the ~ \$400 - \$500 that they guessed it would cost... On a two year old plasma.</p>
<p>Fixya.com June 1, 2009</p>	<p>I have a 42 inch Philips plasma w ambilight and the tv won't turn on. it has 7 blinks of a red light when I attempt this. This happened a few weeks ago and we tried pulling cords out of the back etc.. and unplugged it. It ended up working all of a sudden for a few day and now it won't work again... any help would be greatly appreciated. Scott Blinking lights. What the heck does it mean?</p>
<p>Fixya.com June 2, 2009</p>	<p>I had the Same issue. on a 50PF9431D/37 set. Many Plasma Set's use a LJ44-00118A PS-505-PH Power supply from Samsung. Know to have this common problem. If you can, or have a friend that can Solder components? Unplug your set remove the back panel & locate your power supply. It will be</p>

Source	Comments
	<p>the PCB in the center of the set just above the Video/Audio connections. http://www.shopjimmy.com/power-supply-unit-lj44-00118a-from-philips-50mf231d-40.htm. Link to a photo of the PCB. Make a note of the location of all cable connections then unplug them all. Un-install PCB, Check a Fuse first. I believe there are 5 or 6 of them on the PCB. Then replace the two 3300uf 10v 105C Radial capacitors at C8060 & C8059. The location of the caps are in the Lower bottom edge of the PCB. A local shop may Carry them if not, digi-key has them.</p>
<p>Techlore.com June 10, 2009</p>	<p>The only solution is an authorized Phillips repair shop. BOHICA! I have a 52" Philips plasma ambilight. I have had nothing but trouble with it, to include the no picture blinking red light problem. I had to upgrade the firmware to get it working the first time and it went out again. Now it is in the shop for this X-board. (parts and labor \$350 plus \$75 to diagnose) From reading all the problems, it seems that this x-board is a manufacturing issue. Mine seemed to go out as soon as the warranty was done too.</p>

(edited for readability).

Defendant Has Knowledge of the Design Defect Since 2006 but Fails to Accept Full Financial Responsibility; Plaintiffs' Contact With Philips

30. Since 2006 Philips has known its Philips/Magnavox Plasma TVs are defectively designed, but has failed to recall the televisions and has done nothing to adequately repair the design defects alleged herein. Plaintiffs and Class members each have spent thousands of dollars on plasma televisions that no longer function.

31. Plaintiff Mancinelli's Philips Plasma TV failed in July 2009. After the plasma TV failed, Mr. Mancinelli twice telephoned Philips to seek redress, to no avail. In fact, Philips told Mr. Mancinelli to not waste money fixing the defective Philips plasma television, and instead replace the plasma TV.

32. Plaintiff Mancinelli first telephoned Philips on July 25, 2009 at approximately 8:00 p.m. EST., and was given Philips reference number 83XY0. During this first call, the Philips representative informed Plaintiff Mancinelli the six red blinking lights meant his plasma television needed a software update. Plaintiff Mancinelli performed the software update as instructed by Philips. After following Philips's instructions, Mr. Mancinelli's plasma TV continue to malfunction, responding with six blinking red lights.

33. Plaintiff Mancinelli and his partner called Philips a second time on July 25, after the software update recommended by Philips failed to fix his plasma TV. During this second call, the Philips representative informed him six blinking red lights confirmed there was a hardware – not a software – problem with the plasma TV. The Philips service representative informed Plaintiff Mancinelli four blinking red lights indicated a software issue.

34. During this second call, Plaintiff Mancinelli and his partner asked why they were directed by Philips to do a software update if the six blinking red lights indicate a hardware issue. The Philips representative responded Philips simply does not want to give consumers the “bad news” their plasma TV contains defective hardware. The Philips representative said Philips's practice is to first direct consumers to undertake a software update. Only if a consumer calls Philips a second time is the inquiry “elevated” to a hardware issue, at which time the

consumer is referred to a repair technician or authorized service center for what will be an expensive fix.

35. Although Plaintiff Mancinelli and his partner were referred to a repair technician, the Philips representative told Plaintiff the repair was expensive. Candidly, the Philips representative told Mr. Mancinelli he should save his money and instead purchase a new television because the Philips line of plasma televisions were experiencing hardware failures.

36. Plaintiff Mancinelli called the repair technician, who informed Plaintiff it would cost anywhere from \$500 to \$800 to repair his plasma television because the defective Philips boards would need to be replaced.

37. Plaintiff Phyllis Juried fared no better in seeking redress from Philips. At one point a Philips supervisor recommended Ms. Juried participate in a class action lawsuit to obtain reimbursement from Philips.

38. In July 2009 Plaintiff Juried placed several calls to Philips's customer service representatives at (888) 744-5477. During her first calls, Ms. Juried was given Philips reference number 83FYX.

39. At first Philips advised Ms. Juried to unplug her plasma television, then plug it back in. Although the Philips plasma television worked for around two weeks by unplugging the unit, eventually the plasma television totally failed, displaying only blinking red lights.

40. Plaintiff Juried followed up with additional phone calls to Philips, seeking a satisfactory response. During a second phone call, a Philips representative told Ms. Juried her Philips plasma TV had a hardware issue. Plaintiff Juried was referred to an authorized repair technician. After Ms. Juried sent her television to the authorized repair technician, she was initially told it would cost at least \$779 (parts, labor and shipping) to replace the television's power supply board.

41. Dissatisfied with the high repair cost and with Philip's response, Plaintiff Juried called Philips one or two more times. By this time Plaintiff Juried had been given a second Philips reference number, 857XL. During one of her last calls with Philips, Ms. Juried asked to speak with a Philips supervisor. The Philips supervisor failed to do anything at all for Ms. Juried, and did nothing to further investigate or inquire about Philips's defective product.

42. Near the end of the call Ms. Juried informed the Philips supervisor many consumers were experiencing near-identical problems with Philips's defective plasma TVs, and irate consumers were considering taking legal action against Philips. The Philips supervisor responded by telling Ms. Juried to go ahead and participate in a class action lawsuit against Philips. Realizing Philips would continue to give her a frustrating, time-wasting runaround, Plaintiff Juried ended the call.

43. Notably, at no time did Philips inform Plaintiffs it would investigate their complaints, fix the problems, or appropriately respond to their inquiries. Instead the Philips representatives confirmed Philips knows its plasma TVs are defective. This is why Philips representatives told Plaintiffs to either (i) dispose of the defective Philips plasma TV and buy another television, or (ii) seek legal redress against Philips.

44. Philips certainly did not need Plaintiffs' direct complaints to learn about its defective televisions. Defendant discovered the defects via designing and testing its Philips/Magnavox Plasma TVs, during which Phillips knew plasma televisions have markedly higher operating temperatures. Philips knew internal circuit boards and their individual electronic components, including the capacitors comprising the PSB and SSB, are subjected to higher temperatures. Philips knew under normal usage a plasma television's electronic components and circuit boards would fail after a certain period of time.

45. Philips has had actual knowledge of the design defect and its effect on consumers since 2006 due to numerous, repeated, and detailed complaints Philips received from irate customers. Thousands of consumers have provided detailed complaints on informational websites devoted to consumer electronics, such as the AVSForum.com, an online resource dedicated to home theater electronics with an active and informed userbase, and many other consumer-oriented websites that rate and discuss consumer electronics.

46. Aware of the problems plaguing the Philips/Magnavox Plasma TVs, on December 15, 2006 Philips released a firmware update for the 50PF9630A/37 model of plasma television. The update was entitled “Firmware Upgrade - Software, Version: 1.5.0.0” and was available for download via the Philips consumer products website.

47. According to Philips’s consumer website, the firmware update, BX23U-1.4.0.0_03081, was designed to solve the “issue related to intermittent video loss.” BX23U-1.0.8.0 00841 was designed to solve problem characterized by “intermittent black flashes seen with specific distribution amplifiers.” Firmware Upgrade Version 1.5.0.0 also included many other software files designed to fix various other issues and improve certain performance characteristics of the television model

48. On May 31, 2007, Philips released another firmware update for the 42PF9630A/37 model of plasma television. The update was entitled “Firmware Upgrade - Software, Version: 1.6.0.0” and was available for download via Philips’s consumer products website. Firmware Upgrade Version 1.6.0.0 included many of the previously released firmware updates, including BX23U-1.4.0.0_03081 and BX23U-1.0.8.0 00841. According to the Philips consumer website, BX23U-1.4.0.0_03081 was designed to solve the “issue related to intermittent video loss.” BX23U-1.0.8.0 00841 was designed to solve problem characterized by “intermittent black flashes seen with specific distribution

amplifiers.” Firmware Upgrade Version 1.6.0.0 included many other software files designed to fix various other issues and improve certain performance characteristics of the television model.

49. Consumers who have downloaded these “Firmware updates” have complained that they either did not solve the problem of their Philips/Magnavox Plasma TVs turning off, or simply alleviated the problem for a few days, when eventually their Philips/Magnavox Plasma TVs, would completely fail. Consumers even complain that the firmware updates actually caused additional problems with their Philips/Magnavox Plasma TVs.

Despite the Philips/Magnavox Plasma TV Failures, Philips Refuses to Inform Purchasers about the Design Defect

50. Despite numerous complaints Philips received from its customers about the defective Philips/Magnavox Plasma TVs, Philips continued its unlawful course, concealed the design defect’s existence from the consuming public, and to date has never undertaken appropriate remedial efforts to fix consumers’ broken plasma televisions.

51. Four consecutive years of customer complaints notwithstanding, at the point of sale or thereafter Philips never informed purchasers about the design defect’s existence. Philips never issued a recall of the Philips/Magnavox Plasma TVs, nor did Philips offer to replace the defective Philips/Magnavox Plasma TVs with either redesigned working components or a replacement television. Philips

has wrongfully passed the burden and expense in repairing or replacing the Philips/Magnavox Plasma TVs to Plaintiffs and to Class members.

52. Defendant warrants Philips/Magnavox Plasma TVs against defect in material or workmanship for one year from the date of purchase. The one-year express warranty covers all labor charges and will supply new or rebuilt replacement parts in exchange for defective parts. In the numerous cases where the circuit boards or components, including the PSB or SSB, fail after the first year of purchase, Philips imposed and continues to burden consumers with hundreds of dollars in service fees and labor costs. Defendant imposes its loathsome service fees and labor costs when consumers seek to replace the defective electronic circuit boards and electronic components, including the PSB and SSB, within the Philips/Magnavox Plasma TVs.

53. Philips's wrongful acts caused Plaintiffs and Class members the loss of use of their Philips/Magnavox Plasma TVs, and caused damages from the loss in value of the defective product.

54. Despite Philips's awareness of these defects, Philips nonetheless has refused to take action to protect Class members from the defects.

55. Defendant never revealed the existence of the defect in its marketing materials, or on its website, where Philips extols the virtues and characteristics of the Philips/Magnavox Plasma TVs to generate sales from unsuspecting consumers.

56. The defect described herein was a material fact related to the reliability and normal operation of the Philips/Magnavox Plasma TVs, known only to Defendant.

57. Had Plaintiffs and Class members known about the defect, they would not have purchased their Philips/Magnavox Plasma TVs.

58. Defendant, at all relevant times, knew Plaintiffs and Class members did not know, or could not have reasonably discovered, the defect inherent in the Philips/Magnavox Plasma TVs prior to purchasing their defectively designed Philips/Magnavox Plasma TVs.

CLASS ACTION ALLEGATIONS

59. Plaintiffs bring this action individually and as a class action under Federal Rule of Civil Procedure 23 on behalf of all others who purchased at retail a Philips/Magnavox Plasma TV. Excluded from the Class are the Court and Defendant, their officers and directors, families and legal representatives, heirs, successors, or assigns and any entity in which Defendant have or had a controlling interest. Any personal injury or consequential damage claim is expressly excluded from this class action.

60. Plaintiffs reserve the right to amend or modify the Class definition in connection with their motion for class certification and/or the result of discovery.

61. This class action is properly brought as a class action for the following reasons. The Class is so numerous that joinder of the individual members of the

proposed Class is impracticable. The Class includes tens of thousands of persons geographically dispersed throughout the United States. The precise number and identities of Class members are unknown to Plaintiffs, but can be ascertained through discovery, namely using Defendant's retained records of sales and other information kept by Defendant, as well as the complaints received by Philips.

62. Plaintiffs do not anticipate any insurmountable difficulties in the management of this action as a class action. The Class is ascertainable and there is a well-defined community of interest in the questions of law and/or fact alleged since the rights of each Class member were violated in similar fashion based upon Defendant's misconduct.

63. Questions of law or fact common to the Class exist as to Plaintiffs and all Class members, and these common questions predominate over any questions affecting only individual members of the Class. Among the common questions of law and fact are the following:

- a. whether the Philips/Magnavox Plasma TVs are defectively designed;
- b. whether Philips knew, or was reckless in not knowing, the Philips/Magnavox Plasma TVs were defectively designed at the times Defendant sold the Philips/Magnavox Plasma TVs to Class members;
- c. whether Defendant made any express or implied warranties in its marketing and sale of the defective plasma televisions;
- d. whether Defendant was unjustly enriched through the acts and practices at issue herein;

- e. the appropriate nature of class-wide equitable relief;
- f. the appropriate measure of restitution or damages to award to Plaintiffs and Class Members.

64. Defendant engaged in a common course of conduct giving rise to the legal rights sought to be enforced by Plaintiffs and by Class members.

65. The injuries sustained by Plaintiffs and by Class members flow, in each instance, from a common nucleus of operative facts in terms of being related to Defendant's misconduct as detailed herein. Defendant deceived the public and its customers by selling defective plasma televisions and failing to disclose the material facts detailed herein.

66. Plaintiffs' claims are typical of Class members' claims. The defenses, if any, that will be asserted against Plaintiffs' claims are likely to be typical of the defenses that will be asserted, if any, against the Class members' claims.

67. Plaintiffs will fairly and adequately protect Class members' interests. Plaintiffs have no interests adverse to Class members' interests and have retained counsel with significant experience in the prosecution of class actions and complex litigation, including consumer litigation, and who will vigorously prosecute this action.

68. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, and individual joinder of all members of the Class is impracticable, if not impossible because a large number of Class

members are located throughout the United States and have no particularized need to individually prosecute such claims. What's more, the cost to the court system of such individualized litigation would be substantial. Individualized litigation would likewise present the potential for inconsistent or contradictory judgments and would result in significant delay and expense to all parties and multiple courts hearing virtually identical lawsuits. By contrast, the conduct of this action as a class action presents fewer management difficulties, conserves the resources of the parties and the court, protects the rights of each Class member and maximizes recovery to them.

69. Defendant has acted on grounds generally applicable to the entire Class, thereby making final injunctive relief or corresponding declaratory relief appropriate with respect to the Class as a whole.

70. Notice of pendency of any resolution of this action can be provided to the Class members by individual mailed notice or best notice practicable under the circumstances.

COUNT I

Breach Of Implied Warranty Of Merchantability

(By Plaintiffs Individually And On Behalf Of All Class Members, In The Following States: Alaska, Arkansas, Colorado, Delaware, Hawaii, Iowa, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Jersey, North Dakota, Oklahoma, Pennsylvania, South Carolina, South Dakota, Texas, Virginia, West Virginia and Wyoming)

71. Plaintiffs hereby incorporate by reference all prior allegations as if fully set forth herein.

72. At all times, the following statutes were in effect governing the implied warranties of merchantability in the various states listed in this Count: Alaska Stat. § 45.02.314; Ark. Code Ann. § 4-2-314; CRS § 4-2-314; 6 Del. C. § 2-314; Haw. Rev. Stat. § 490:2-314; Iowa Code § 554.2314; 11 M.R.S.A. § 2-314; Md. Code Ann. Art. 95B § 2-314; Mass. Gen. Laws. Ch. 106 § 2-314; Mich. CLS § 440.2314; Minn. Stat. § 336.2-314; Miss. Code Ann. § 75-2-314; MCA 30-2-314; Neb. UCC 2-314; NRS 104.2314; RSA 382-A:2-314; N.J.S.A. 12A:2-314; NDCC 2-314; O.S. 1991 § 2-314; Pa. Cons. Stat. § 2-314; S.C. Code Ann. § 36-2-314; SDCL 57A- 2-314; Tex. Bus. & Com. Code Ann. § 2-314; VA. Code § 8.2-314; W. VA. Code § 46-2-314; and Wyo. Stat. 34.1-2-314.

73. As a seller and manufacturer of Philips/Magnavox Plasma TVs, Defendant is a “merchant,” within the meaning of the various states’ commercial codes governing the implied warranty of merchantability.

74. The Philips/Magnavox Plasma TVs are “goods,” as defined in the various states’ commercial codes governing the implied warranty of merchantability.

75. Defendant impliedly warranted to Plaintiffs and to Class Members the Philips/Magnavox Plasma TVs were of merchantable quality, would pass without objection in the trade and were fit for the ordinary purposes for which the Philips/Magnavox Plasma TVs are used.

76. Plaintiffs and Class members relied on Defendant’s skill and judgment in the selection, purchase and use of the Philips/Magnavox Plasma TVs.

77. The Philips/Magnavox Plasma TVs are defective because they fail during normal operation when their electronic components overheat. As such, the Philips/Magnavox Plasma TVs were not of merchantable quality at the time they were sold and were unable to function in their ordinary capacities, as impliedly warranted by Defendant.

78. Defendant was put on notice of the defect by the numerous complaints that Defendant received concerning the defect and by the filing of this lawsuit.

79. As a proximate result of Defendant’s breach of implied warranties, Plaintiffs and Class members have sustained damages and other losses in an amount to be determined at trial. Plaintiffs and Class members are entitled to recover damages, diminution in value, costs, attorneys’ fees, rescission, and other relief as is deemed appropriate.

COUNT II

Violations Of The Implied Warranty Of Merchantability Pursuant To N.J. Stat. § 12A: 2-314

(By Plaintiffs, Individually And On Behalf Of All Class Members Who Purchased A Philips/Magnavox Plasma TV In The State Of New Jersey)

80. Plaintiffs hereby incorporate by reference all prior allegations as if fully set forth herein.

81. The Philips/Magnavox Plasma TVs are “goods” within the meaning of that term under the New Jersey Code governing the Implied Warranty of Merchantability.

82. Defendant is a “merchant” within the meaning of that term under the New Jersey Code governing the Implied Warranty of Merchantability because Defendant is a seller and manufacturer of Philips/Magnavox Plasma TVs.

83. The Implied Warranty of Merchantability, codified under N.J. Stat. § 12A: 2-314, requires, among other things, that the Philips/Magnavox Plasma TVs pass without objection in the trade and are fit for the ordinary purposes for which the Philips/Magnavox Plasma TVs are used.

84. The Philips/Magnavox Plasma TVs are defective because they fail during normal operation when their electronic components overheat.

85. Plaintiffs and Class members experienced a manifestation of the defect in their Philips/Magnavox Plasma TVs. The design defect, which

manifested itself in Plaintiffs' and Class Members' Philips/Magnavox Plasma TVs, caused Plaintiffs and Class Members to suffer an ascertainable loss.

86. As a result of the design defect described herein, the Philips/Magnavox Plasma TVs were not merchantable at the time of sale and were not fit for the ordinary purposes for which the Philips/Magnavox Plasma TVs are used.

87. Any purported disclaimer of the Implied Warranty of Merchantability on Defendant's part is unenforceable because Defendant knew of the existence of the design defect at the time Plaintiffs purchased their Philips/Magnavox Plasma TV.

88. Defendant was put on notice of the defect because Philips had actual knowledge of the existence of this defect as a result of, *inter alia*, numerous complaints Philips received from its customers concerning this design defect.

89. The defects in the Philips/Magnavox Plasma TVs rendered them non-merchantable because they could not be used for the ordinary purposes, and thereby proximately caused the economic damages suffered by Plaintiffs and by Class members. The amount of damages will be ascertained at trial.

COUNT III

Violations Of The New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8-1 *et seq.*

(By Plaintiffs, Individually And On Behalf Of All Class Members Who Purchased A Philips/Magnavox Plasma TV In The State Of New Jersey)

90. Plaintiffs hereby incorporate by reference all prior allegations as if fully set forth herein.

91. At all relevant times, New Jersey's Consumer Fraud Act codified under N.J. Stat. Ann. §§ 56:8-1 *et seq.*, was in effect. The Act prohibits any "[f]raud, etc., in connection with sale or advertisement of merchandise or real estate as unlawful practice."

92. Further, the Act prohibits any "knowing, concealment, suppression, or omission of any material fact with the intent that others rely upon such concealment, suppression or omission in connection with the sale . . . of any merchandise . . ." N.J. Stat. Ann. § 56:8-2.

93. Defendant manufactured and sold Philips/Magnavox Plasma TVs, which are defective because they fail during normal operation when their electronic components overheat.

94. Defendant was put on notice of the defect by the numerous complaints that Defendant received concerning the defect and by the filing of this lawsuit.

95. Plaintiffs and Class members were unaware of the defective Philips/Magnavox Plasma TVs at the time of sale.

96. Despite Defendant's knowledge or prior notice of the defect, Philips omitted this material fact with the intent Plaintiffs and Class Members rely upon this material omission. Instead, Defendant continually placed defective Philips/Magnavox Plasma TVs into the stream of commerce.

97. Had Plaintiffs and Class members known of the defective Philips/Magnavox Plasma TVs, they would not have purchased the defective plasma televisions, because the defect's existence was a material fact to the transaction. Defendant knew or should have known Plaintiffs and Class members were unaware, or could not have reasonably discovered, the defect prior to their purchases.

98. Plaintiffs and Class members experienced a manifestation of the defect in their Philips/Magnavox Plasma TVs. The design defect, which manifested itself in Plaintiffs' and Class Members' Philips/Magnavox Plasma TVs, caused Plaintiffs and Class Members to suffer an ascertainable loss.

99. Defendant's conduct constitutes a violation of New Jersey's Consumer Fraud Act codified under N.J. Stat. Ann. § 56:8-1 *et seq.*, and entitles Plaintiffs and Class members to statutory and actual damages, injunctive relief and attorney fees and costs.

COUNT IV

Unjust Enrichment

(By Plaintiffs, Individually And On Behalf Of All Class Members)

100. Plaintiffs hereby incorporate by reference all prior allegations as if fully set forth herein.

101. This Count is brought against Defendant pursuant to the common law doctrine of unjust enrichment.

102. The circumstances giving rise to Plaintiffs' and Class members' allegations, including the design, development and marketing of the defective Philips/Magnavox Plasma TVs, occurred in the State of Massachusetts. Additionally, Defendant maintains its corporate headquarters in Massachusetts. Accordingly, application of Massachusetts law is appropriate.

103. Defendant manufactured and sold Philips/Magnavox Plasma TVs, which were defective at the time of sale.

104. Defendant was put on notice of the defect by the numerous complaints that Defendant received concerning the defect and by the filing of this lawsuit.

105. Plaintiffs and Class members were unaware of the defective Philips/Magnavox Plasma TVs at the time of sale.

106. Had Plaintiffs and Class members known of the defective Philips/Magnavox Plasma TVs, they would not have purchased the TVs.

107. Without knowledge of the defect, Plaintiffs and Class members conferred upon Defendant benefits, which were non-gratuitous.

108. Defendant accepted or retained the benefits conferred by Plaintiffs and by Class members despite Defendant's knowledge or prior notice of the defect in the Philips/Magnavox Plasma TVs.

109. Retaining the benefits conferred upon Defendant by Plaintiffs and by Class members under these circumstances make Defendant's retention of the benefits unjust and inequitable.

110. Because Defendant's retention of the benefits conferred by Plaintiffs and Class members is unjust and inequitable, Defendant must pay restitution in a manner established by the Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and all Class members pray the Court:

- A. certify this action as a class action under Rule 23;
- B. order Defendant to pay Plaintiffs and Class members an amount of actual, direct, incidental, consequential, statutory and exemplary damages to be determined at trial;
- C. issue an injunction preventing Defendant from manufacturing and selling the defective Philips/Magnavox Plasma TVs;
- D. award pre- and post-judgment interest;
- E. award attorneys' fees and costs of suit; and

F. for such other and further relief the Court deems just and proper

DEMAND FOR JURY TRIAL

Plaintiffs demand trial by jury on all issues so triable.

Dated: August 12, 2009

Respectfully submitted,

/s/ Ian J. McLoughlin

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