

NATURE OF THE CASE

2. This is a class action lawsuit brought by Plaintiff on behalf of himself and all others similarly situated who purchased Defective Blu-ray Disc Players manufactured by Defendant. Samsung Electronics America began shipping consumer Blu-ray disc players to retailers in June of 2006. It was among the first DVD manufacturers to do so. As of December 2007, sales of Defendant's Blu-ray disc players accounted for 32% of set-top player sales.

3. During or around last Summer, Plaintiff purchased a Defective Blu-ray Disc Player. Due to defective design and/or manufacture, Plaintiff's Blu-ray disc player will not play numerous Blu-ray disc titles.

4. Plaintiff has been unable to view numerous Blu-ray disc titles on his player due to this defect. Defendant has not repaired or updated the Defective Blu-ray Disc Players owned by Plaintiff and Class members.

5. Upon information and belief, Defendant was fully aware of the defective nature of the player at the time of manufacture and sale of the Defective Blu-ray Disc Players. Samsung Electronics America continues to be aware of the defect, yet has failed to provide a remedy consistent with the products' intended and represented uses.

6. Defendant's actions in selling the Defective Blu-ray Disc Players without disclosing this material defect, and failing to issue firmware updates or otherwise promptly take corrective action to repair and/or replace the Defective Blu-ray Disc Players with this known defect were negligent, reckless and in breach its

statutory and common law duties, and express and implied warranties to its customers.

7. Those actions were a proximate cause of injury to the Plaintiff and the Class members.

8. Plaintiff, on behalf of himself and the Class, seeks damages, injunctive relief, attorneys' fees, and costs against Defendant.

JURISDICTION AND VENUE

9. Jurisdiction is conferred upon this Court pursuant to 28 U.S.C. § 1332(d)(2) because: (i) there are 100 or more class members, (ii) there is an aggregate amount in controversy exceeding \$5,000,000, exclusive of interest and costs, and (iii) there is minimal diversity because at least one plaintiff and one defendant are citizens of different states. This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

10. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a)(2) because a substantial part of the events or omissions giving rise to the claims asserted herein occurred in this Judicial District. Defendant, a New York corporation that maintains its headquarters in the geographic region covered by this Court, transacted business in this Judicial District, and much of the conduct complained of herein occurred in this district, as well as elsewhere in New Jersey.

THE PARTIES

The Plaintiff

11. Plaintiff purchased a Samsung Electronics America Blu-ray disc Player (Model 1200) in or around the Summer of 2007. Plaintiff incurred significant monetary and non-monetary damages as a result of the Defendant's conduct complained of herein.

The Defendant

12. Defendant Samsung Electronics America, Inc. is a New York corporation that maintains its headquarters at 105 Challenger Road in Ridgefield Park, NJ 07660. Samsung Electronics America, Inc. has done business throughout the United States and in the State of New Jersey at all times relevant to this lawsuit. Samsung Electronics America, Inc. is the North American subsidiary of the Samsung Group, a South Korean corporation.

John Doe Co-Conspirators

13. Various others, presently unknown to Plaintiff, participated as co-conspirators with the Defendant in the violations of law alleged in this Complaint, and have engaged in conduct and made statements in furtherance thereof.

14. The acts charged in this Complaint have been done by Defendant and its co-conspirators, or were authorized, ordered or done by its officers, agents, employees or representatives while actively engaged in the management of Defendant's business or affairs.

15. At all times herein mentioned, Defendant and its co-conspirators were the principals, agents, employees, servants, joint venturers, partners, and representatives of each other. In performing the acts complained of herein, Defendant and its co-conspirators were each acting within the scope and course of their authority as such agents, principals, employees, servants, partners, joint venturers, and representatives, and were acting with the permission and consent of the each other.

FACTUAL ALLEGATIONS

Defendant Samsung Electronics America and its Defective Blu-ray Disc Players

16. Defendant Samsung Electronics America holds itself out to the public as a manufacturer of cutting-edge consumer electronics, including Blu-ray disc players. DVD players that play disks in Blu-ray format, which refers to the high-density storage of digital information, are high-end appliances that, when working properly, are supposed to provide more than five times the storage capacity of traditional DVDs.

17. Defendant has manufactured or produced, and distributed Blu-ray disc players for several leading retailers in the United States, including Circuit City, Best Buy and other large retail chains.

18. Defendant manufacturers thousands of Blu-ray Disc Players each year, a substantial portion of which are sold or offered for sale in New Jersey. Upon information and belief, Defendant has sold, either directly or indirectly, thousands

of units of Defective Blu-ray Disc Players nationwide and in the State of New Jersey.

19. Defendant is a board member of the Blu-ray Disc Association, an industry consortium that develops and licenses Blu-ray Disc technology and is responsible for establishing format standards and promoting business opportunities for Blu-ray Disc. The Company advertises this membership on its consumer website.

20. In addition, Defendant makes numerous express warranties about the quality and compatibility of its Blu-ray disc players. For example, the Defendant claims that “[a]dvanced Blu-ray playback technology gives you crisp, clear images, while added picture quality adjustment lets you set sharpness and noise reduction to your liking” and “Samsung’s Blu-ray Disc Player offers state of the art viewing with CD and DVD playback compatibility... [e]ven as you take advantage of the latest video and audio advances, you can still enjoy all your existing media content.”

21. In conjunction with each sale, the Defendant marketed, advertised and warranted that the Defective Blu-ray Disc Players were fit for the ordinary purpose for which such goods were used — viewing films and other content offered in Blu-ray format.

22. Defendant Samsung Electronics America manufactured, marketed, advertised, warranted and sold, either directly or through their authorized distribution channels, the Defective Blu-ray Disc Players.

23. Defendant manufactured and distributed the Defective Blu-ray Disc Players intending that consumers would purchase the players, regardless of place of purchase, or the location where customers actually use them. The Defective Blu-ray Disc Players were placed into the stream of commerce and distributed and, ultimately, offered for sale and sold to Plaintiff, as well as purchasers in New Jersey and the United States.

24. Defendant intended for customers to believe its statements and representations about its Blu-ray disc players, and to trust that its players are of first-rate quality, or, at the very least, would play Blu-ray discs.

Defendant's Blu-ray Disc Players Failed to Play Numerous Blu-ray Disc Titles

25. In or around the Summer of 2007, Plaintiff Bob McGovern purchased the Samsung BD-01200 Blu-ray disc player. Plaintiff soon noticed that a number of Blu-ray disc titles that he purchased for viewing using his Samsung player were incompatible, *i.e.* could not be read, by the player.

Defendant Does not Intend to Remedy Defective Blu-ray Players

26. There have been numerous complaints about the inoperability of new Blu-ray disc titles without Samsung firmware upgrades that match the new releases.

27. Consumers have verified with the Company that does not intend to provide future firmware updates or otherwise repair the Defective Blu-ray Disc Players owned by Plaintiff and the Class, rendering their players obsolete after

having only been on the market a short time. The Plaintiff and the Class have thereby been damaged.

CLASS ACTION ALLEGATIONS

28. Plaintiff bring this suit as a class action on behalf of himself and on behalf of all others similarly situated (the “Class”) pursuant to Fed. R. Civ. P. 23(a), 23(b)(2), and/or 23(b)(3). Subject to additional information obtained through further investigation and/or discovery, the foregoing definition of the Class may be expanded or narrowed by amendment or amended complaint. Plaintiff seeks to represent the following Class:

all persons in the United States who purchased any of the Defendant’s Defective Blu-ray Disc Players.

29. This action has been brought and may be properly maintained as a class action for the following reasons:

a. Numerosity: Members of the Class are so numerous that their individual joinder is impracticable. Plaintiff is informed and believes, and on that basis alleges, that the proposed Class contains thousands and perhaps tens of thousands of members. Defendant has manufactured and distributed thousands of Defective Blu-ray Disc Players throughout the United States. The Class is therefore sufficiently numerous to make joinder impracticable, if not impossible. The precise number of Class members is unknown to Plaintiff.

b. Existence and Predominance of Commons Questions of Fact and Law: Common questions of law and fact exist as to all members of the Class. These questions predominate over the questions affecting individual Class

members. These common legal and factual questions include, but are not limited to, the following:

- i. Whether Defendant violated the New Jersey Consumer Fraud Act by selling Defective Blu-ray Disc Players;
- ii. Whether Defendant violated the New Jersey Consumer Fraud Act in failing to warn its customers in a timely and effective manner of the compatibility issued regarding its Defective Blu-ray Disc Players;
- iii. Whether Defendant violated the New Jersey Consumer Fraud Act in failing to take appropriate remedial measures to fix the Defective Blu-ray Disc Players;
- iv. Whether Defendant breached express and/or implied warranties relating to the sale of its Defective Blu-ray Disc Players;
- v. Whether Defendant breached any express or implied warranties when they manufactured and sold the Defective Blu-ray Disc Players;
- vi. the appropriate nature of class-wide equitable relief; and
- vii. the appropriate measurement of restitution and/or measure of damages to award to Plaintiff and members of the Class.

These and other questions of law or fact which are common to the members of the Class predominate over any questions affecting only individual members of the Class.

c. Typicality: Plaintiff's claims are typical of the claims of the Class since Plaintiff purchased a Defective Blu-ray Disc Player as did each member of the Class. Furthermore, Plaintiff and all members of the Class sustained monetary and economic injuries arising out of Defendant's wrongful conduct. Plaintiff is advancing the same claims and legal theories on behalf of himself and all absent class members.

d. Adequacy: Plaintiff is an adequate representative of the Class because his interests do not conflict with the interests of the Class that he seeks to represent; he has retained counsel competent and highly experienced in complex class action litigation; and they intend to prosecute this action vigorously. The interests of the Class will be fairly and adequately protected by Plaintiff and his counsel.

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

f. Defendant has acted, and refused to act, on grounds generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the Class as a whole; and

g. In the absence of a class action, Defendant would be unjustly enriched because it would be able to retain the benefits and fruits of its wrongful conduct.

VIOLATIONS ALLEGED

COUNT I **CONSUMER FRAUD**

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

31. Plaintiff and members of the Class are consumers who purchased one or more Defective Blu-ray Disc Players, and were injured thereby.

32. New Jersey and other states throughout the nation have enacted laws to protect consumers against unfair, deceptive or fraudulent business practices, unfair competition and false advertising.¹ New Jersey and other states throughout the nation provide consumers with a private right of action under these statutes.

33. In violation of these statutes, Defendant has affirmatively misrepresented and knowingly concealed, suppressed and failed to disclose material facts with the intent that others rely upon such concealment and deception in connection with its sale of the Defective Blu-ray Disc Players.

¹ The New Jersey Consumer Fraud Act is codified at N.J.S.A. §§56.8-1, *et seq.*

34. The conduct of Defendant, as set forth above, constitutes unfair, fraudulent and/or deceptive trade practices prohibited under the New Jersey Consumer Fraud Act and the consumer fraud acts of various other states.

35. As a result of Defendant's unfair, fraudulent and/or deceptive trade practices, Plaintiff and members of the Class have suffered an ascertainable loss of monies and/or property and/or value.

COUNT II
BREACH OF EXPRESS WARRANTY

36. Plaintiff and the Class repeat and incorporate herein by reference each and every paragraph of this complaint as though set forth in full in this cause of action.

37. Defendant expressly warranted that the Defective Blu-ray Disc Players, *inter alia*, would play Blu-ray format titles.

38. The Defective Blu-ray Disc Players do not conform to these express representations because they do not play numerous Blu-ray disc titles.

39. As a direct and proximate result of the breach of said warranties, Plaintiff and Class members have been injured and are therefore entitled to damages.

COUNT III
BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY

40. Plaintiff and the Class repeat and incorporate herein by reference each and every paragraph of this complaint as though set forth in full in this cause of action.

41. Defendant impliedly warranted that the Defective Blu-ray Disc Players were merchantable.

42. Defendant breached the implied warranty of merchantability, as the Defective Blu-ray Disc Players are not merchantable.

43. As a direct and proximate result of the breach of said warranties, Plaintiff and Class members were injured and are therefore entitled to damages.

COUNT IV
UNJUST ENRICHMENT

44. This claim is being plead in the alternative to Counts I through III.

45. Plaintiff and Class members purchased the Defective Blu-ray Disc Players manufactured and distributed by the Defendant based on the understanding that they would actually play Blu-ray disc titles. By purchasing Defendant's products, Plaintiff and Class members conferred a tangible economic benefit upon Defendant.

46. Defendant was and continues to be unjustly enriched at the expense of Plaintiff and Class members.

47. Defendant's retention of the benefit conferred upon it by Plaintiff and members of the Class would be unjust.

PRAYER FOR RELIEF

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

- A. determine that the claims alleged herein may be maintained as a class action under Rule 23(a), (b)(2), and/or (b)(3) of the Federal Rules of Civil Procedure, and issue order certifying the Class as defined above;

- B. award all actual, general, special, incidental, statutory, and consequential damages to which Plaintiff and Class members are entitled;
- C. award pre-judgment and post-judgment interest on such monetary relief;
- D. grant appropriate injunctive and/or declaratory relief, including, without limitation, an order that requires Defendant to repair and replace its Defective Blu-ray Disc Players;
- E. award reasonable attorney's fees and costs; and
- F. grant such further and other relief that this Court deems appropriate.

DATED: February 5, 2008

Respectfully submitted,

By: CHIMICLES & TIKELLIS LLP

//s// Joseph G. Sauder

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