

Jonathan Shub (237708)
Scott A. George (*Pro Hac Vice Appl. To Be Filed*)
Seeger Weiss LLP
1515 Market Street, Suite 1380
Philadelphia, PA 19102
Telephone: 215-564-2300
Facsimile: 215-851-8029
Email: jshub@seegerweiss.com
sgeorge@seegerweiss.com

Francis O. Scarpulla (41059)
Judith A. Zahid (215418)
Patrick B. Clayton (240191)
Zelle Hofmann Voelbel & Mason LLP
44 Montgomery Street, Suite 3400
San Francisco, CA 94104
Telephone: 415-693-0700
Facsimile: 415-693-0770
Email: fscarpulla@zelle.com
jzahid@zelle.com
pclayton@zelle.com

Attorneys for Plaintiff and the proposed class

[Additional counsel listed on signature page]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Stacey Pierce-Nunes, on behalf of herself and
all others similarly situated,

Plaintiff,

v.

Toshiba America Information Systems, Inc.,

Defendant.

CASE NO. 3:14-CV-00796 JST

FIRST AMENDED COMPLAINT

Demand for Jury Trial

1 Stacy Pierce-Nunes, Aurelio Diaz and John Moseley (collectively, “Plaintiffs”), by and
 2 through Plaintiffs’ undersigned attorneys, on behalf of themselves as well as the proposed classes
 3 (defined *infra*), demanding trial by jury of all claims properly triable thereby, make the following
 4 allegations and claims against Toshiba America Information Systems, Inc. (“Toshiba” or
 5 “Defendant”).

6 7 JURISDICTION

8 1. This Court has jurisdiction over all causes of action asserted herein pursuant to the
 9 Class Action Fairness Act. 28 U.S.C. § 1332(d).

10 11 PRELIMINARY STATEMENT

12 2. This action is brought by Plaintiffs, on behalf of Plaintiffs and the proposed classes,
 13 to recover damages and restitution in connection with the purchase of Toshiba-brand televisions
 14 that were falsely marketed and advertised by Toshiba as “LED TVs,” “LED HDTVs” or “LED
 15 televisions.” Plaintiffs and the proposed classes also seek an injunction: (a) requiring Toshiba to
 16 engage in a corrective advertising campaign to alert consumers as to the true nature of these
 17 televisions; (b) prohibiting Toshiba from continuing falsely to market and advertise such
 18 televisions as “LED TVs,” “LED HDTVs,” or “LED televisions”; and (c) requiring Toshiba to
 19 recall and re-label all such televisions that have already been distributed for re-sale, , but not yet
 20 sold to retail customers. .

21 3. The televisions at issue are not “LED TVs,” but instead are **LCD** TVs that use light
 22 emitting diodes (LEDs) instead of cold cathode fluorescent lights (CCFLs) to light the liquid
 23 crystal display (LCD) panel that is present in each of the televisions at issue.

24 4. Toshiba’s failure to disclose that its references to LED refer to the light source that
 25 illuminates the LCD panel, **instead of the display technology itself**, and its nondisclosure and
 26 concealment that each of the televisions is otherwise functionally identical to televisions that are
 27 advertised and sold as “LCD TVs,” were at all times knowing, intentional, and intended to mislead
 28 consumers. Toshiba’s false and misleading marketing and advertising were and are designed

1 falsely to suggest that the televisions at issue are not LCD TVs at all, but an entirely different,
2 improved, and technologically advanced class or species of television. This is false; all of these
3 televisions are LCD TVs.

4 5. Toshiba has used and continues to use this deception: (a) to induce customers to
5 purchase Toshiba's so-called LED TVs in the mistaken belief that they are upgrading from their
6 existing CCFL-lit LCD TVs; (b) to charge a premium for such televisions that Plaintiffs and other
7 consumers would not have paid had the televisions been accurately labeled and described; and (c)
8 to capture sales from other brand televisions that were accurately labeled as LED-lit LCD TVs.

9 6. Toshiba has perpetrated a massive consumer fraud upon thousands of unsuspecting
10 purchasers, each of whom paid an unsupported premium for a deceptively labeled "LED TV," and
11 on whose behalf Plaintiffs bring this action to recover such premium and for other appropriate
12 relief.

13
14 **PARTIES**

15 7. Plaintiff Stacey Pierce-Nunes is a citizen of New York, and purchased a Toshiba-
16 brand 50L5200U model "LED TV" for personal use and not for resale.

17 8. Plaintiff Aurelio Diaz is a citizen of Florida, and purchased a Toshiba-brand
18 46L5200U model "LED TV" for personal use and not for resale.

19 9. Plaintiff John Moseley is a citizen of Texas, and purchased a Toshiba-brand
20 58L7300U model "LED TV" for personal use and not for resale.

21 10. When Plaintiffs were considering purchasing these televisions, there were three flat
22 panel television options widely advertised in the market at large – "Plasma TVs," "LCD TVs" and
23 "LED TVs." Plaintiffs considered models that were advertised as "LED TVs" as well as models
24 that were advertised as "LCD TVs." Plaintiffs selected a Toshiba "LED TV" model, even though
25 it was priced higher than comparable model "LCD TVs" offered for sale, because of Toshiba's
26 marketing assertions on the carton containing the television that it was an "LED TV," as opposed
27 to an "LCD TV."

11. Toshiba is a California corporation with its principal place of business located in Irvine, California. Toshiba distributes and markets and directs the marketing of so-called “LED TVs” within this district, the State of California, and throughout the United States. Upon information and belief, Toshiba’s deceptive marketing and advertising practices described herein originated out of its principal place of business in California. For example, Toshiba has admitted under oath, pursuant to a declaration of Scott Ramirez dated May 5, 2014 and filed in connection with a motion to transfer venue, that, since 1989, Toshiba has been headquartered in Irvine, California, and that, “[t]he employees at [Toshiba] with responsibility for the televisions at issue in this litigation predominately work out of [Toshiba’s] headquarters in Irvine, California” and that “[Toshiba’s] documents relating to the issues raised in this Complaint are located in Irvine, California.” Decl. of Scott Ramirez dated 5/5/2014, ¶¶ 3, 6.

STATEMENT OF FACTS

TELEVISION OWNERSHIP AND SALES STATISTICS

12. Televisions are ubiquitous in our society. The Nielsen Company, a world-renowned expert in the field of television viewership, reported in 2012 that 97.1% of all U.S. households owned a television, and 84.4% owned more than one. According to the same report, in 2012, U.S. households were more likely to own a television than a cell phone (87.3%), DVD player (86.7%), or personal computer (80.9%).

13. While the TV household penetration rate in the U.S. has been high for decades – exceeding 90% since 1965 – rapid advances in display technology (including the introduction of so-called flat panel televisions), the dramatic expansion of non-broadcast “cable” and “satellite” channels and providers, price competition, and the Congressional mandate that all full power television broadcasters (like ABC, NBC, and CBS) broadcast exclusively in digital format starting on June 13, 2009, have led many, and perhaps most, U.S. households to purchase at least one television, and often several units, within the past few years alone.

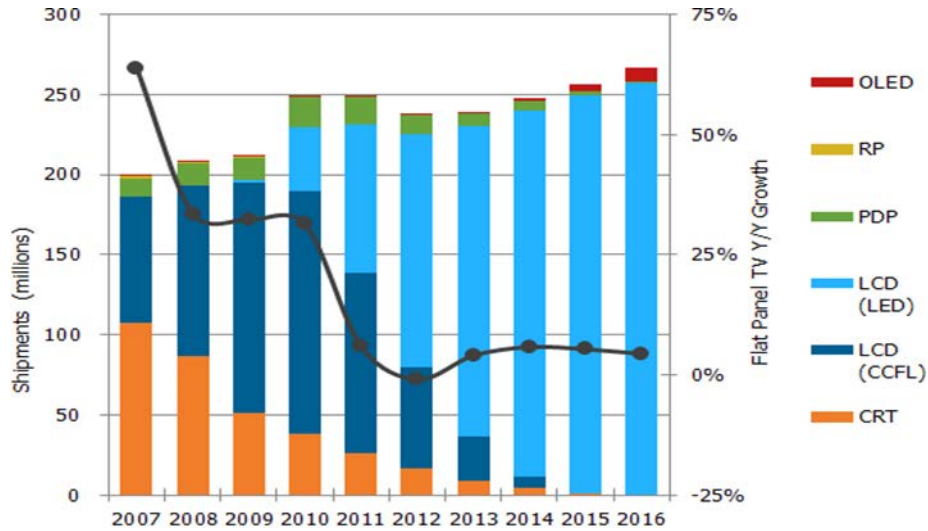
14. Industry statistics bear out this phenomenon. In February 2008, 25.1% of all U.S. households were HD Display Capable – meaning that they were “equipped with an HD television

1 that [was] capable of displaying HD content.” (HD or high definition content refers to the
 2 resolution of the screen image. HDTVs produce a resolution or level of detail that is much greater
 3 than standard definition televisions.) By May 2012, however, the number of U.S. households that
 4 were HD Display Capable had increased to 75.5%. Non-HD televisions cannot be converted into
 5 HD televisions. In order for the penetration rate to have tripled, 50% of all U.S. households (or
 6 approximately 57,000,000 households based on U.S. Bureau of Statistics figures) had to buy at
 7 least one new television unit in that approximately 4-year period.

8 15. Industry statistics show:

- 9 a) In 2009, television manufacturers shipped over 35,300,000 “flat panel”
 10 (Plasma or LCD) television units for sale in the United States.
- 11 b) In 2010, television manufacturers shipped over 38,600,000 “flat panel”
 12 (Plasma or LCD) television units for sale in the United States.
- 13 c) In 2011, television manufacturers shipped almost 40,000,000 “flat panel”
 14 (Plasma or LCD) television units for sale in the United States.
- 15 d) In 2012, television manufacturers shipped over 37,600,000 “flat panel”
 16 (Plasma or LCD) television units for sale in the United States.
 17 Total revenue from 2012 sales exceeded \$28 billion.
- 18 e) While final figures were not yet accessible as of filing, in 2013, television
 19 manufacturers were forecast to ship over 36,600,000 “flat panel” (Plasma or
 20 LCD) television units for sale in the United States. Total revenue from
 21 2013 sales was projected to exceed \$28 billion.

22 16. As the following industry chart makes clear, globally, LCD TVs comprise the
 23 overwhelming majority of flat panel sales, and LED-lit LCD TVs now comprise the
 24 overwhelming majority of “LCD TV” sales:
 25
 26
 27
 28



17. Although LED-lit LCD TVs were introduced to the mass market in or about 2008, this technology has quickly come to dominate U.S. LCD TV unit sales, as the following statistics demonstrate:

- a) In 2009, approximately 3% of all LCD TV units sold in the US (volume, not dollar value), used LED backlighting.
- b) In 2010, approximately 22% of all LCD TV units sold in the US (volume, not dollar value), used LED backlighting.
- c) In 2011, approximately 45% of all LCD TV units sold in the US (volume, not dollar value), used LED backlighting.
- d) In 2012, approximately 51% of all LCD TV units sold in the US (volume, not dollar value), used LED backlighting.
- e) In 2013, approximately 84% of all LCD TV units sold in the US (volume, not dollar value), were projected to use LED backlighting.

TOSHIBA'S MARKET SHARE

18. Toshiba is a world-renown electronics manufacturer and a significant player in the U.S. television market. In the time period 2009 to 2013, and variable by quarter, Toshiba's market share in the U.S. LCD TV segment has fluctuated from about 5% to about 8%.

19. Toshiba's acquisition and maintenance of its share of the U.S. television market for LCD TVs is due, in part, to the false advertising described herein.

TELEVISION DISPLAY TECHNOLOGIES

CRT Televisions and Analog Rear Projection Televisions

20. From virtually its earliest beginnings until the late 1990s, direct view CRT-technology (cathode ray tubes) dominated the United States television market. These were the boxy televisions of old, and were sold to consumers in a variety of screen sizes, up to a maximum of 37" (measured diagonally).

21. In a cathode ray tube television, a filament is placed inside a vacuum glass tube. When the filament (cathode) is activated by electricity, it generates electrons, which fall off the heated filament into the vacuum. A focusing anode attracts the electrons and focuses them into a tight beam or "ray," which is then accelerated. The tight, now high-speed electrons travel through the vacuum in the tube and strike the flat glass screen at the other end of the tube – which is the back of the television's outward facing screen. The back of the screen is coated with phosphor, which glows when struck by the electron beam.

22. A phosphor is any material that, when exposed to radiation (like the electron beam), emits visible light. In a black and white CRT TV, there is one phosphor that glows white when struck. In a color screen, there are three phosphors arranged as dots or stripes, so as to emit red, green, and blue light when struck by the ray.

23. CRT TVs were for decades the only televisions consumers could purchase.

24. Exemplar images of CRT televisions follow:



25. CRT TVs, moreover, have a built in size limitation. The size of the screen is proportional to the size of the vacuum tube. To increase the screen size, one must increase the length of the vacuum tube. As a result, CRT TVs for the consumer market were generally only available in sizes up to 37" diagonal.

26. Consumers who wanted a larger screen image were forced to purchase analog projection televisions. Analog projection televisions of this era also used vacuum tube technology to generate the screen image.

27. Exemplar images of analog projection televisions follow:

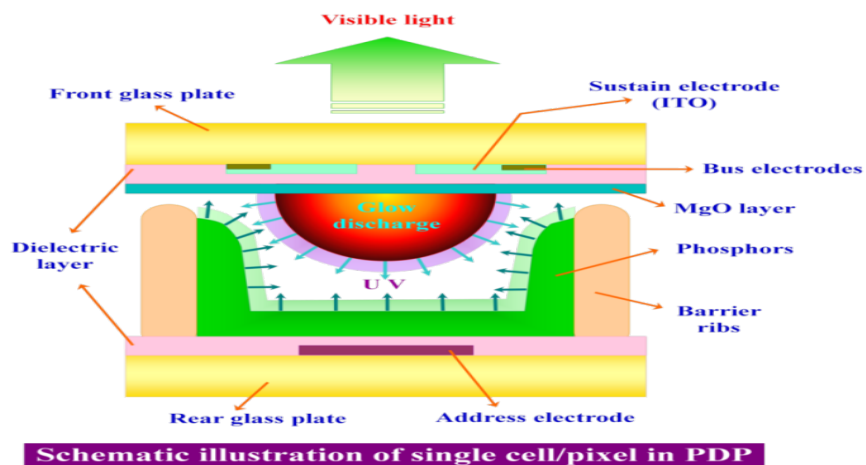


Plasma Televisions

28. In or about the early 2000s, television manufacturers began introducing flat panel, plasma display televisions (“Plasma TVs”) to the mainstream consumer market. The introduction of Plasma TVs, which were thin and light enough to be mounted directly on a wall, revolutionized the television industry.

29. Plasma TVs use plasma displays, which are composed of millions of small cells, or pixels, containing electrically charged ionized gases, to generate the screen image. When the television is turned off, the ions and electrons in the gas or “plasma” are equally balanced, the atom is stable, and the pixel is dark. When electricity is introduced, however, the atoms become unstable and electrons and particles within the plasma begin to collide, releasing photons of ultraviolet energy.

30. Each pixel within the plasma display is made up of three separate subpixel cells with different colored phosphors – one red, one blue, and one green. As discussed above, in the context of CRT TVs, phosphors produce light photons – they glow – when struck by energy. The phosphors in the Plasma TVs are activated by the ultraviolet photons, which can be varied in number by pixel and subpixel. The amount of electricity applied to the subpixel determines the number of ultraviolet photons generated, and thus the color intensity the subpixel generates, which combines with the primary colors generated by the other two subpixels to determine the color displayed on the screen by the pixel. All of the pixels acting together generate the screen image. Exemplar graphical depictions of the image generating process for a plasma display are set forth below:



1 31. The pixels used in plasma displays do not require a separate light source; the image
2 and all of the colors are generated by the interaction between the electrically charged ionized gases
3 and the phosphor in the cells.

4 32. A generic image of a Plasma TV is set forth below:

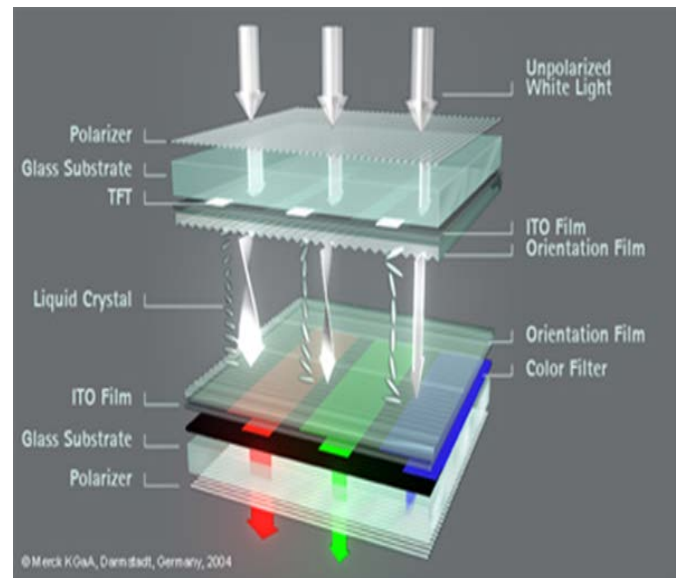
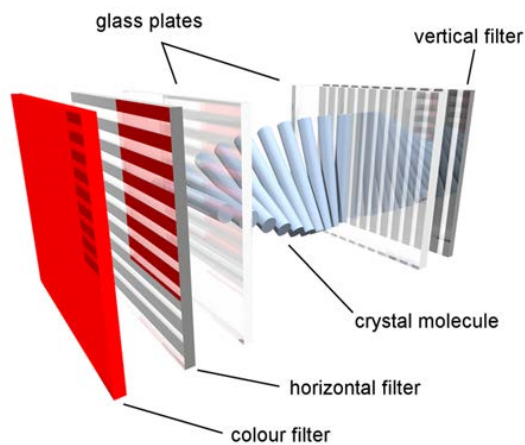


15 LCD Televisions

16 33. In the early to mid-2000s, television manufacturers began introducing flat panel,
17 liquid crystal display televisions (“LCD TVs”) to compete with Plasma TVs (and to a lesser
18 degree other available alternative technologies, e.g., CRT). While flat, reasonably light, and wall-
19 mountable like Plasma TVs, LCD TVs utilize a fundamentally different display technology –
20 liquid crystal displays (“LCD”).

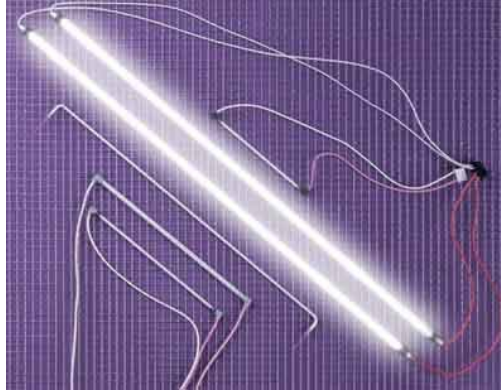
21 34. To form a liquid crystal display or LCD, a very thin layer of a liquid crystalline
22 substance is sandwiched between two substrates, which are sheets of glass or plastic to which a
23 grid of electrodes has been applied. A vertical polarizing film is applied to the LCD’s rear
24 substrate. Patterned red, green and blue color filters and a horizontal polarizing film are applied to
25 the front substrate. The liquid crystals are rod-shaped polymers that are neither solid nor liquid
26 and, when subject to an electric current, will align in a predictable manner. In an LCD TV, the
27 liquid crystal display (or LCD) is then lit by a separate source of light (the “light source”) because,
28 unlike plasma displays, liquid crystals do not emit light themselves.

35. An LCD TV generates screen images by controlling the amount of light from the light source that passes through the LCD and strikes the color filters. In very simple terms, the LCD is comprised of millions of tiny liquid crystal “shutters” that allow or block the passage of light depending on the intensity of the electric current being applied. Each of these liquid crystal “shutters” corresponds to a tiny rectangular red, green, or blue filter or sub-pixel that is mounted to the front substrate (the surface closest to the television’s glass screen). As with plasma displays, three sub-pixels – one red, one green, and one blue – comprise a single pixel, and a “Full HD” or high definition television will contain more than 2 million pixels (1920 pixels horizontally multiplied by 1080 pixels vertically). The amount of light that passes through each liquid crystal “shutter” determines the intensity of the red, green, or blue color that the corresponding subpixel generates. The interaction of the trio of subpixels (for each pixel) determines the color that is displayed on the screen for that pixel. All of the pixels together generate the screen image. Exemplar graphical depictions of the image generating process for a liquid crystal display are set forth below:

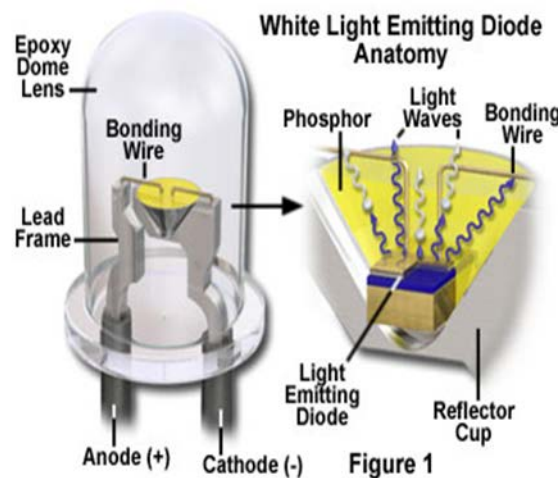


36. LCD technology is light source neutral: *i.e.*, **any** white light source can be used to light and thus generate the screen image, a fact that has been widely known throughout the manufacturing industry since the introduction of this technology.

37. Initially, and for quite a number of years, all manufacturers of LCD TVs primarily used cold cathode fluorescent lights (CCFLs) as the source light. A picture of a generic CCFL light source of the type used in LCD TVs follows:



38. Television manufacturers, however, continued to experiment with and market LCD TVs with other light sources, including LEDs, throughout this period. For example, in 2004, Sony introduced the Sony Qualia 005. The Sony Qualia 005 used an array of light emitting diodes to illuminate the LCD panel. The introduction of a different light source did **not** change the manner in which LCD panels and LCD TVs generate the screen image described above. A picture of a generic LED light source of the type used in LED-lit LCD TVs follows:



39. Soon after their introduction, LED-lit LCD TVs proliferated, with multiple manufacturers using light emitting diodes, instead of CCFLs, to light the liquid crystal display. Some of these devices place the LEDs behind the liquid crystal display (back- or direct-lit), while

others place the LEDs on the edge of the liquid crystal display (edge lit). But all of these televisions—regardless of the light source—employ a liquid crystal display of LCD screen to generate the TV picture.

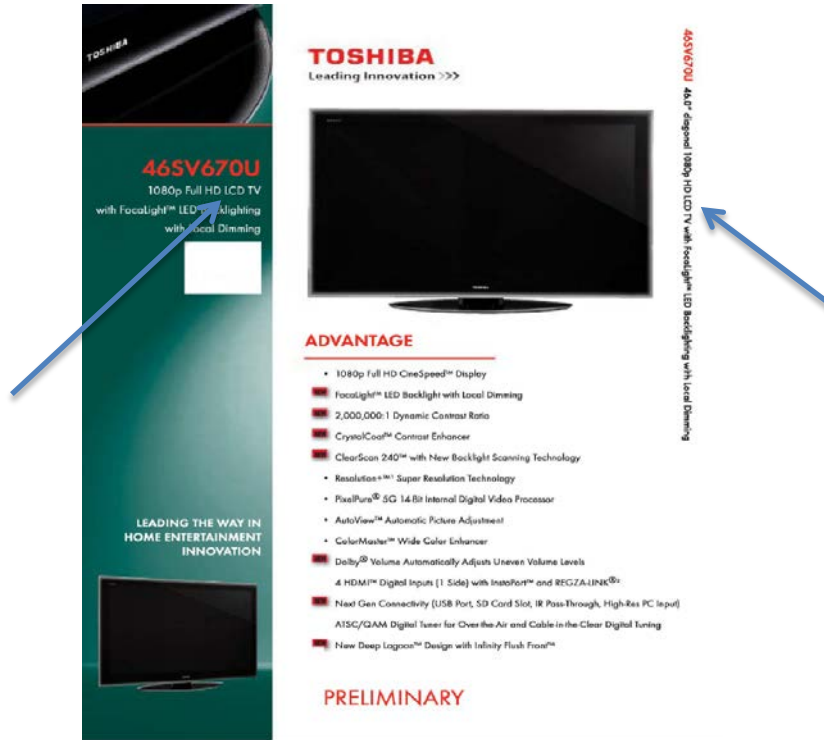
40. Toshiba introduced its first LCD TVs with an LED light source in the Summer of 2009 (i.e., the Regza SV670), and followed with additional models and generations of LED-lit LCD TVs generation series in subsequent years. Initially, LED-lit LCD TVs represented only a small fraction of Toshiba's total LCD TV and other flat panel sales, whereas, at the time of the filing of this complaint, all of the TVs listed on Toshiba's U.S. website are LED-lit LCD TVs.

MARKETING OF LCD TELEVISIONS

41. When liquid crystal display televisions were first introduced into the market, the televisions were universally marketed as "LCD TVs," just as plasma display televisions had been advertised as Plasma TVs. No effort was made to advertise or designate this product line in reference to the CCFL or other light source used to light the LCD panel. For example, the Sony Qualia was not advertised as an LED TV, nor were comparable liquid crystal displays using CCFL backlights advertised as CCFL TVs. This remained true even as LED-lit LCD TVs became cheaper to manufacture and more common in the consumer segment of the market.

42. Toshiba's initial LED-lit LCD TV units were likewise clearly identified as LCD TVs as the following marketing materials and owner's manual for the Regza SV670 model demonstrate:





43. Introduction of LED-lit LCD TVs did not result in the immediate end of CCFL-lit LCD TVs. To the contrary, LED-lit LCD TVs did not sell well. Because LED-lit LCD TVs were priced higher than comparable CCFL-lit LCD TVs, consumers continued to purchase CCFL-lit LCD TVs (or Plasma TVs) notwithstanding the alleged benefits of the LED backlighting which Toshiba and other manufacturers trumpeted.

44. Manufacturers, including Toshiba, continued to manufacture both CCFL and LED-lit LCD TVs, advertising and selling them side by side through the same retail and on-line channels. While the LED lighting feature was often advertised, at least initially, no effort was made to conceal that these televisions utilized liquid crystal displays and were therefore in fact LCD TVs. Most early advertising, like the Toshiba materials quoted above, clearly stated that the televisions were LED-lit LCD TVs or otherwise accurately described and disclosed that the television being advertised utilized LCD display technology. As noted, very few consumers were interested enough to purchase the product, notwithstanding the LED light source.

45. Within months after it began distributing LED-lit LCD TVs, Toshiba made the marketing decision that gives rise to this lawsuit: Toshiba dropped all references to the televisions being LCD TVs and began marketing the LED-lit LCD TVs as a new, advanced, technologically superior species of television, a so called LED TV, which was allegedly different from and better than LCD TVs, even though both species of television use the same liquid crystal displays to generate the same screen image. The marketing materials and manual below reflect this shift to false and misleading marketing and labeling:



http://us.toshiba.com/tv/led/19l4200u

SHOP TOSHIBA DIRECT VIEW CART \$0.00

COMPUTERS TABLETS TELEVISIONS VIDEO & ELECTRONICS SUPPORT

TVs » LED TVs »

Toshiba 19L4200U - 19" class 720p 60Hz LED TV
MSRP: ~~\$229.99~~

Average Customer Rating: ★★★★★
Read Reviews (3) | Write Review

ENERGY GUIDE ENERGY STAR

Overview Specifications Features Image Gallery Videos Customer Reviews

Toshiba 19L4200U 19" class LED TV Overview

Excellent Small-Screen Viewing
Any room. Any time. Anytime you want to step up and enjoy big LCD entertainment, the 19L4200U TV is ready, with excellent small-screen HD quality, plus the performance, reliability and versatility only Toshiba can offer.

Advanced Picture Settings
Wherever and whenever you want to savor high-def movies, gaming and slideshows—in the kitchen, bedroom or dorm room—this TV will exceed your expectations with its sleek, sophisticated Aero™ design, LED backlighting for bright, sharp images and great energy efficiency, too, plus excellent audio.

Many Ways to Connect
And if expansion is in your plans, the 19L4200U comes with a full jack pack of connections to help you do it: HDMI for hooking in an AV receiver or a speaker system; an HD PC port for learning up with a laptop; and much more. So if you think you're bound by a low-cost LCD budget, think twice and take a close look at the 19L4200U HDTV. You'll enjoy great LED entertainment at an LCD price, plus the get-more innovation that sets Toshiba apart.

MSRP: (Retailer/Retailer pricing may vary. Toshiba is not liable for pricing errors.)

More TVs LED TVs Cloud TVs

More LED TVs

MODEL	MSRP
19L4200U	\$229.99
23L1350U	\$189.99
24L4200U	\$229.99
29L1350U	\$199.99
32L1350U	\$249.99
32L4200U	\$249.99
32L2200U	\$249.99
32L2000U	\$259.99
39L20U	
39L1350U	\$249.99
39L2300U	\$249.99
48L2200U	\$699.99
48L5200U	\$699.99
58L2200U	\$699.99
48L5200U	\$799.99
58M2U	
58L1350U	\$599.99
58L2000U	\$649.99
58L5200U	\$999.99
42L6200U	\$1,199.99
47L6200U	\$1,149.99
47L7200U	\$1,399.99
55L6200U	\$1,699.99
58L7200U	\$2,099.99

Friday, August 02, 2013

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http://us.toshiba.com/tv/led/19l4200u

SHOP TOSHIBA DIRECT VIEW CART \$0.00

COMPUTERS TABLETS TELEVISIONS VIDEO & ELECTRONICS SUPPORT

TVs » LED TVs »

Toshiba 19L4200U - 19" class 720p 60Hz LED TV
MSRP: ~~\$229.99~~

Average Customer Rating: ★★★★★
Read Reviews (3) | Write Review

ENERGY GUIDE ENERGY STAR

Overview **Specifications** Features Image Gallery Videos Customer Reviews

Toshiba 19L4200U 19" class LED TV Specifications

Summary

- SCREEN SIZE: 19" (diagonal widescreen)
- SCREEN SIZE CLASS: 19"
- DISPLAY TYPE: LED
- REFRESH RATE: 60Hz
- DESIGN: Aero Cosmo™ Design™

Video

- VIDEO RESOLUTION: 720p
- DYNALIGHT DYNAMIC BACKLIGHT CONTROL: Yes
- GAMING MODE: Yes
- DYNAMIC PICTURE MODE: Yes

Inputs/Outputs

- HDMI: 2 ports
- COLORSTREAM COMPONENT VIDEO (YPbPr): 1
- USB PORT: 1 port
- USB MEDIA: Yes

Features

- 3D CAPABILITY: NO
- REMOTE CONTROL: IR/Smart Remote Control
- ENERGY STAR TV: Yes

Physical Description

- WIDTH: 17.55" (17.55" with stand)
- HEIGHT: 11.42" (12.79" with stand)
- DEPTH: 1.61" (17.00" with stand)
- WIDTH (SHIPPING): 20.11"
- HEIGHT (SHIPPING): 14.50"
- DEPTH (SHIPPING): 5.43"
- WEIGHT: 6.6 lbs (7.7 lbs with stand)
- WEIGHT (SHIPPING): 13.2 lbs

Wall Mount Specifications

- VEHICLE MOUNTING PATTERN: 100mm x 100mm

More LED TVs

MODEL	MSRP
19L4200U	\$229.99
23L1350U	\$189.99
24L4200U	\$229.99
29L1350U	\$199.99
32L1350U	\$249.99
32L4200U	\$249.99
32L2200U	\$249.99
32L2000U	\$259.99
39L20U	
39L1350U	\$249.99
39L2300U	\$249.99
48L2200U	\$699.99
48L5200U	\$699.99
58L2200U	\$699.99
48L5200U	\$799.99
58M2U	
58L1350U	\$599.99
58L2000U	\$649.99
58L5200U	\$999.99
42L6200U	\$1,199.99
47L6200U	\$1,149.99
47L7200U	\$1,399.99
55L6200U	\$1,699.99
58L7200U	\$2,099.99

Friday, August 02, 2013

11:37:47 AM

TOSHIBA

Leading Innovation >>>

Integrated High Definition LED Television User's Guide:

19L4200U 40L5200U
24L4200U 46L5200U
32L4200U 50L5200U

If you need assistance:

Toshiba's Support Web site support.toshiba.com

Call Toshiba Customer Support Center:

Within the United States at (800) 631-3811

Outside the United States at (949) 583-3050

For more information, see "Troubleshooting" on page 122 in this guide.

Owner's Record

The model number and serial number are on the back and side of your TV.

Record these numbers in the spaces below. Refer to these numbers whenever you communicate with your Toshiba dealer about this TV.

Model number: _____

Serial number: _____

Note: To display a High Definition picture, the TV must be receiving a High Definition signal. Inputs are set to auto.

<http://us.toshiba.com/tv/led-47l6200u>

TOSHIBA
Leading Innovation >>>

COMPUTERS TABLETS TELEVISIONS VIDEO & ELECTRONICS SUPPORT

SHOP TOSHIBA DIRECT VIEW CART \$0.00

TVs » LED TVs »

47L6200U 47" Class 1080P 120Hz 3D LED HD TV

List Price: \$1,399.99
Instant Savings: -\$250.00
Total Price: **\$1,149.99**

[BUY NOW](#) [SHOP AT RETAILERS](#)

Average Customer Rating: ★★★★★
Read Reviews (4) | Write Reviews

ENERGY GUIDE Most Efficient 2012

Overview Specifications Features Image Gallery Customer Reviews

Toshiba 47L6200U 47" class 3D LED TV Overview

1080P HD

Premium Full HD TV
If you're looking for premium television at a not-so-premium price, the L6200U big screen Full HDTV is ready for its grand debut, offering the finest in Full HD entertainment, dazzling 3D visuals, sleek, classy looks and the advanced Smart TV suite.

AERO DESIGN™

Elite TV Technology
Why watch from the balcony when you can have riveting, front-row access to movies, games, programming and everything the Web has to offer? Start by savouring stunning 3D images in brilliant 1080p Full HD displays. Or enjoy passive 3D for epic movies and extended gaming. Shadows and highlights will look better with our exclusive DynaLight backlight control. So will fast-action sports with our exclusive ClearScan® 120Hz anti-blooming technology. Encased in our thin Aero™ bezel-less design, this set adds to most any room.

Smart TV Innovations
And our Smart TV suite takes you beyond great television, putting you in touch with movies, social sites and other content on the web or your home network, plus conveniences you'll wonder what you did without. Tap into four HDMI® hook-ups for your home theater, an HD PC port for your laptop, and other key connections, too. You don't have to be rich to enjoy a wealth of high-end entertainment and wide-open web. The L6200U series Full HDTV brings it right to your living room.

More LED TVs

MODEL	MORP
19L4200U	\$229.99
23L1350U	\$149.99
24L4200U	\$229.99
29L1350U	\$199.99
32L1350U	\$249.99
32L4200U	\$349.99
32L2200U	\$349.99
32L2500U	\$269.99
39L22U	
39L1350U	\$349.99
39L2300U	\$369.99
40L2200U	\$599.99
46L5200U	\$699.99
50L2200U	\$699.99
50L5200U	\$799.99
50M2U	
50L1350U	\$699.99
50L2300U	\$649.99
50L5200U	\$699.99
42L6200U	\$1,199.99
47L6200U	\$1,149.99
47L7200U	\$1,699.99
55L6200U	\$1,699.99
55L7200U	\$2,099.99

MSRP. Reseller/retailer pricing may vary. Toshiba is not liable for pricing errors.

Friday, August 02, 2013

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TOSHIBA
Leading Innovation >>>

**Integrated High Definition LED
Television User's Guide:**

42L6200U
47L6200U
55L6200U
47L7200U
55L7200U

If you need assistance:
Toshiba's Support Web site support.toshiba.com
Toshiba Customer Support Center:
Calling within the United States at (800) 631-3811
Calling from outside the United States at (949) 583-3050
For more information, see "Troubleshooting" on page 176 in this guide.

Owner's Record

The model number and serial number are on the back and side of your television.
Record these numbers, whenever you communicate with your Toshiba dealer about this Television.

Model name: _____

Serial number: _____

Register your Toshiba Television at register.toshiba.com

Note: To display a High Definition picture, the TV must be receiving a High Definition signal (such as an over-the-air High Definition TV broadcast, a High Definition digital cable program, or a High Definition digital satellite program). For details, contact your TV antenna installer, cable provider, or satellite provider.

GMA300007012
4/12

46. Toshiba's cartons also now prominently referred to the televisions as "LED TVs"; nowhere on the carton did Toshiba say the televisions were "LCD TVs" that used an LED light source or anything similar. Images of such cartons appear below:





47. The result of this deception was both immediate and dramatic: A product that had previously failed to make any significant inroads into the flat panel television market suddenly became the leader of the industry. Before the false advertising at issue, CCFL-lit LCD TVs had

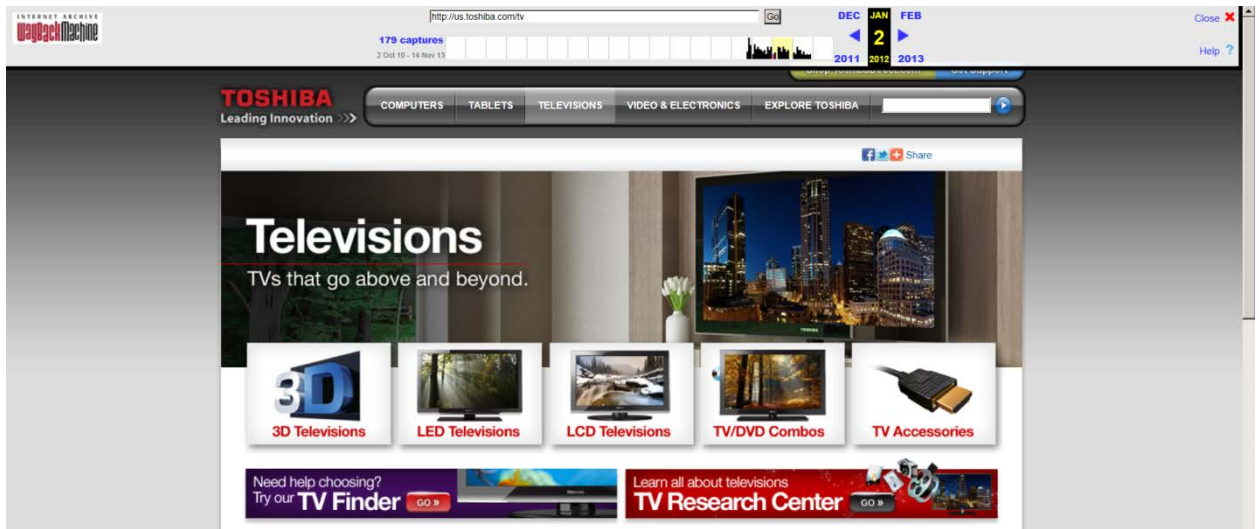
1 dominated LCD TV sales in the U.S. with over 97% of sales. Today, however, as a result of the
2 deceptive advertising, LED-lit LCD TVs now dominate the LCD TV market as well as the overall
3 flat panel television market.

4 48. LED-lit LCD TVs are **not** in fact LED TVs. Although Toshiba has falsely
5 advertised LED-lit LCD TVs as “LED TVs” in a successful effort to increase sales and profits, the
6 fundamental display technology of its flat screen televisions has not changed. All of these
7 televisions use LCD screens to display their pictures. These televisions were LCD TVs before
8 Toshiba’s false advertising and remain LCD TVs today. While a few manufacturers have
9 refrained from falsely advertising their televisions as LED TVs, the majority of manufacturers,
10 including Toshiba, have chosen falsely to advertise their LED-lit LCD TVs as “LED TVs” (or
11 have used similarly deceptive language – *e.g.*, LED HDTV).

12 49. The manufacturers that have refrained from this deception, including Sony, RCA,
13 and Hitachi, have seen their market shares fall, while those manufacturers that have engaged in the
14 deception, including Toshiba, have reaped the benefits of increased sales.

15 50. Toshiba uses multiple marketing channels to create the appearance of a product
16 category and price point that simply does not exist in the consumer market. For example, for
17 years, when visiting Toshiba’s website, customers were directed to choose between LED TVs,
18 LCD TVs, and Plasma TVs.¹ A screenshot of Toshiba’s website as of January 2, 2012 below
19 illustrates this point:

20
21
22
23
24
25
26
27 ¹ Toshiba has discontinued distributing CCFL-lit LCD TVs, although some remain for sale
28 through third party retailers. As a result, Toshiba’s web interface has been updated to eliminate
the LCD category altogether.



The LCD category accurately describe the applicable display technology, while the LED category misleadingly identifies only the light source, thus falsely implying that LED, not LCD, is the display technology. Moreover, when potential purchasers click through to the actual televisions, for the LED TVs there is no reference to their being LCD display televisions. This is deceptive.

51. Toshiba has used circulars, newspaper and magazine advertisements, and point of sale display materials to further its deception.

52. In the absence of Toshiba's deceptive advertising, Plaintiffs and other consumers would instead have purchased a comparable model CCFL LCD TV from Toshiba or another manufacturer at a lower price, or would have paid less for the falsely marketed and advertised "LED TV" models that they purchased from Toshiba.

53. Toshiba is fully aware that the televisions at issue are LED-lit LCD TVs, that they do not contain LED displays, and that they are not LED TVs. Toshiba has falsely advertised the televisions to increase sales and profits. Toshiba would not have been able to charge the premium it has charged for its "LED TVs" if it had accurately advertised the televisions as LCD TVs or LED-lit LCD TVs.

LED-LIT LCD TVS ARE NOT LED TVS

54. LED-lit LCD TVs are not LED TVs, which employ a fundamentally different technology that is still several years away from availability at prices accessible to mainstream purchasers. Actual LED TVs use light emitting diode displays instead of the liquid crystal displays or plasma displays described above. The LED displays in these televisions are self-illuminating; they require **no** independent light source and do **not** contain liquid crystal technology. Actual LED TVs are currently available for sale, but at prices that only the wealthy can afford; the televisions are far out of the reach of mainstream consumers.

55. Toshiba does not appear to market a true LED TV, but other manufacturers do. For example, Samsung's 55" true LED TV, model KN55S9C, retailed for \$8,999. A similarly sized Samsung LED-lit LCD TV sells for as low as \$799 – less than one-tenth the price. A similarly sized Toshiba LED-lit LCD TV sells for as low as \$1049.

56. As shown, while LED-lit LCD TVs are not LED TVs, various manufacturers, including Toshiba, have deliberately and falsely claimed that such televisions are LED TVs in order to generate sales and charge a price premium for such televisions.

57. Commentators have noted the deceptive nature of this marketing and labeling. For example (all emphasis added):

- **“They are not LED TVs.** Calling them such makes as much sense as calling its existing line of LCD televisions Cold Cathode Fluorescent Lamp TVs, or CCFL TVs, after the lighting technology that they use....[The] decision to drop ‘LCD’ was a smart marketing move....But it’s also confusing consumers.”
- **“There is no such thing as an LED TV.** The misleading marketing on this one really annoys me. All ‘LED TVs’ are just LCD TVs that use LEDs as their light source.”
- **“There has been a lot of hype and confusion** surrounding the introduction of ‘LED’ Televisions....LED TVs are still LCD TVs. It is just that these new sets use LED backlights rather than the fluorescent-type backlights

1 used in most other LCD TVs. In other words, LED TVs should actually be
2 labeled LCD/LED or LED/LCD TVs.”

3
4 **LED-lit LCD TVs Are Not Inherently Superior to CCFL-lit LCD TVs**

5 58. There is nothing about LED-lit LCD TVs that renders them inherently superior (or
6 inferior) to CCFL-lit LCD TVs. The image that is generated on the television screen is a function
7 of multiple design elements working together, including the quality and specifications (e.g.,
8 lumens output; transmissivity) of the LCD polarizers and color filters, light bulb, glass screen,
9 circuitry, etc. The result is a plethora of output specifications (e.g., contrast, refresh rate, color
10 space), which can vary by make and model, but which are not dictated by the mere fact that one
11 television is lit by a CCFL array while the other is lit by LEDs. CCFL-lit LCD TVs can perform
12 similarly and better than LED-lit TVs, generating equal or greater luminance, equal or better
13 contrast ratio, and equal or better color space coordinates, among other output specifications.

14
15 **PRICE PREMIUM**

16 59. Toshiba’s deceptive marketing practices have allowed it to charge a premium for
17 the LED-lit LCD TVs that it has misrepresented as LED TVs. While the exact price premium
18 varies by TV size (and other features), and has varied over time, at all times Toshiba’s LED-lit
19 LCD TVs have been priced higher than otherwise comparable CCFL-lit LCD TVs.

20
21 **PLAINTIFFS AND THE PROPOSED CLASSES WERE DECEIVED AND INJURED**

22 60. Plaintiffs and other purchasers of these “LED TVs” were misled into believing that
23 they were purchasing an LED TV, not the LCD TV they actually received, and have suffered
24 damage as a result, in the form of the premium they were deceived into paying. Plaintiffs and the
25 proposed class members had no knowledge that the televisions were in fact LCD TVs, and did not
26 suspect, nor did they have reason to suspect, that the televisions they were purchasing had been
27 falsely and deceptively advertised.

PLAINTIFFS' RELIANCE AND INJURY

61. Plaintiffs relied upon Toshiba's false and deceptive representation that the television they purchased was an LED TV – which was prominently displayed on the television's carton at the time of purchase. Plaintiffs believed that they were purchasing an LED TV, not the LCD TV that they actually received. Plaintiffs would not have purchased or would have paid less for their televisions had the televisions not been falsely and deceptively advertised or had they known the truth.

CLASS ALLEGATIONS

62. This action has been brought, and may be properly maintained, under Federal Rules of Civil Procedure 23(a) (1)-(4) and 23 (b) (2) and (3).

63. Plaintiffs bring this action on behalf of themselves and all other members of a class (the "Nationwide Class") defined as follows:

All persons who purchased, for personal use and not re-sale, within the United States within the four years (or other applicable statute of limitations period) preceding the filing of this Complaint up through any trial of this matter, a Toshiba-brand LED-lit LCD television that is sold in a box that describes the television as an LED TV or LED HDTV or LED television.

Excluded from the Nationwide Class are Toshiba, and any person or entity related to or affiliated with Toshiba, and any business, person, or entity that purchased such televisions for re-sale (*e.g.*, retailers), any judicial officer assigned to the case, the court staff and jurors, along with their immediate families.

64. Alternatively or in addition, Plaintiff Pierce-Nunes brings this action on behalf of herself and all other members of a New York class (the "New York Subclass") defined as follows:

All persons who purchased, for personal use and not re-sale, within the State of New York within the four years (or other applicable statute of limitations period) preceding the filing of this Complaint up through any trial of this matter, a Toshiba-brand LED-lit LCD television sold in a box that describes the television as an LED TV, an LED HDTV or an LED television.

Excluded from the New York Subclass are Toshiba, and any person or entity related to or affiliated with Toshiba, and any business, person, or entity that purchased such televisions for re-sale (*e.g.*,

retailers), any judicial officer assigned to the case, the court staff and jurors, along with their immediate families.

65. Alternatively or in addition, Plaintiff Diaz brings this action on behalf of himself and all other members of a Florida class (the "Florida Subclass") defined as follows:

All persons who purchased, for personal use and not re-sale, within the State of Florida within the four years (or other applicable statute of limitations period) preceding the filing of this Complaint up through any trial of this matter, a Toshiba-brand LED-lit LCD television that is sold in a box that describes the television as an LED TV or LED HDTV or LED television.

Excluded from the Florida Subclass are Toshiba, and any person or entity related to or affiliated with Toshiba, and any business, person, or entity that purchased such televisions for re-sale (*e.g.*, retailers), any judicial officer assigned to the case, the court staff and jurors, along with their immediate families.

66. Alternatively or in addition, Plaintiff Moseley brings this action on behalf of himself and all other members of a Texas class (the "Texas Subclass") defined as follows:

All persons who purchased, for personal use and not re-sale, within the State of Texas within the four years (or other applicable statute of limitations period) preceding the filing of this Complaint up through any trial of this matter, a Texas-brand LED-lit LCD television that is sold in a box that describes the television as an LED TV or LED HDTV or LED television.

Excluded from the Texas Subclass are Toshiba, and any person or entity related to or affiliated with Toshiba, and any business, person, or entity that purchased such televisions for re-sale (*e.g.*, retailers), any judicial officer assigned to the case, the court staff and jurors, along with their immediate families.

67. Each proposed class and subclass is composed of at least thousands of persons and is sufficiently numerous for class treatment. Joinder of class members individually would be impracticable, and the resolution of the class claims in a single action will provide substantial benefits to the parties and the Court.

68. Plaintiffs' claims are typical of the claims of each proposed class or subclass member that Plaintiffs (whether collectively or respectively) seek to represent, and Plaintiffs have no interests that are adverse to the interests of the members of each proposed class or subclass they, or he or she, respectively, seeks to represent.

69. This dispute raises fundamental questions of law and fact that are common to all of the proposed class or subclass members, and that predominate over any individual class or subclass member issues that must be resolved to adjudicate this claim, including, but not limited to:

- (a) Whether Toshiba marketed and advertised LED-lit LCD TVs as LED TVs;
- (b) Whether Toshiba intended to mislead the proposed classes when it marketed and advertised LED-lit LCD TVs as LED TVs; and
- (c) Whether it is false or misleading to describe an LED-lit LCD television as an LED TV.

70. Plaintiffs will fairly and adequately protect the interests of each proposed class and subclass that Plaintiffs (whether collectively or respectively) seek to represent.

71. Plaintiffs have retained experienced, qualified counsel to represent each proposed class and subclass that Plaintiffs (whether collectively or respectively) seek to represent.

72. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder of all of the class members is impracticable. Even if Plaintiffs and the other class or subclass members could afford individual litigation, the courts could not. The amount at stake for each class or subclass member is such that individual litigation would be inefficient and cost prohibitive. Additionally, the adjudication of this controversy through a class action will avoid the possibility of inconsistent and potentially conflicting adjudications of the claims asserted herein. There will be no difficulty in the management of this action as a class action.

73. This action is certifiable in the alternative under the provisions of Fed. R. Civ. P. 23(b)(2) because Defendant has acted or refused to act on grounds generally applicable to the class members, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class members as a whole and necessitating that any such relief be extended to the class members on a mandatory, class-wide basis.

FIRST CAUSE OF ACTION
Violation of California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*,
By Plaintiffs Individually And On Behalf Of The Nationwide Class
Against Defendant Toshiba

74. Plaintiffs incorporate by reference and re-allege each allegation set forth in paragraphs 1-73 hereinabove.

75. Plaintiffs bring this claim on behalf of themselves and the Nationwide Class.

76. The acts and practices engaged in by Toshiba, and described herein, constitute unfair, unlawful, and/or fraudulent business practices in that Toshiba marketed the televisions as LED TVs when they were in fact LCD TVs:

- (a) Toshiba's practices, as described herein, constitute false and deceptive conduct;
- (b) the justification for Toshiba's conduct is outweighed by the gravity of the consequences to Plaintiffs and the Nationwide Class members;
- (c) Toshiba's conduct is immoral, unethical, oppressive, unscrupulous or substantially injurious to Plaintiffs and the Nationwide Class members; and/or
- (d) Toshiba's conduct constitutes fraudulent, untrue or misleading actions in that such conduct has a tendency to deceive a reasonable person, including Plaintiffs and the Nationwide Class members.

77. Toshiba's false and misleading advertising was disseminated to increase sales and to increase the amount of money that Toshiba could charge for each television that was sold.

78. Toshiba knew or should have known that their advertisements were false and misleading.

79. Plaintiffs and the Nationwide Class have suffered harm as a result of these violations because, without limitation, they were misled into believing that they were buying an LED TV, not an LCD TV, and paid a monetary premium for these televisions that they otherwise would not have paid had the televisions been described accurately. Plaintiffs and the Nationwide Class have suffered injury in fact and have lost money or property as a result of Toshiba's unfair competition, as alleged herein.

SECOND CAUSE OF ACTION
Violation of California’s False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.*,
By Plaintiffs Individually And On Behalf Of The Nationwide Class
Against Defendant Toshiba

10 | 82. Plaintiffs bring this claim on behalf of themselves and the Nationwide Class.

14 84. Toshiba was aware at all relevant times that its advertising claims were false and
15 misleading.

22 86. By reason of Toshiba's violation of Cal. Bus. & Prof. Code § 17500, et seq.,
23 Plaintiffs and the Nationwide Class are entitled to recover restitution, injunctive relief, and such
24 other relief as provided by law.

THIRD CAUSE OF ACTION
Violation of the California Consumers Legal Remedies Act,
Cal. Civil Code §§ 1750 *et seq.*, By Plaintiffs Individually And On Behalf Of
The Nationwide Class Against Defendant Toshiba

87. Plaintiffs incorporate by reference and re-allege each allegation set forth in paragraphs 1-73 hereinabove.

88. Plaintiffs bring this claim on behalf of themselves and the Nationwide Class.

89. In connection with the sale of goods to consumers, Toshiba:

- (a) represented and represents “that goods...have characteristics...which they do not have” in violation of Cal. Civ. Code § 1770(a)(5);
- (b) represented and represents “that goods...are of a particular style or model” when they are actually of a different “style or model” in violation of Cal. Civ. Code § 1770(a)(7); and
- (c) advertised and advertises “goods...with intent not to sell them as advertised” in violation of Cal. Civ. Code § 1770(a)(9).

90. Toshiba violated these provisions by representing that televisions were LED TVs when they were in fact LCD TVs. Plaintiffs and the Nationwide Class have suffered harm as a result of these violations because they were misled into believing that they were buying an LED TV, not an LCD TV, and paid a monetary premium for these televisions that they otherwise would not have paid had the televisions been described accurately and represented truthfully.

91. Plaintiffs and the Nationwide Class, by this cause of action, seek injunctive relief only.

92. On or about June 11, 2014, Plaintiffs sent Toshiba a notice advising Toshiba that it has violated, and continues to violate, the Consumer Legal Remedies Act. This Notice complied in all respects with California Civil Code §1782(a). Plaintiffs sent this Notice by Certified U.S. Mail, return receipt requested to Toshiba at Toshiba’s principal place of business. Plaintiffs’ Notice advised Toshiba that it must correct, repair, replace, or otherwise rectify the conduct alleged herein to be in violation of the Consumer Legal Remedies Act, and that if it fails to respond to this demand and to take full remedial action (including by making full restitution)

1 within thirty days of receipt of the Notice, Plaintiffs will amend this Complaint to request
 2 restitution, damages, actual damages, and punitive damages. A true and correct copy of the Notice
 3 is attached hereto as Exhibit A.

4 93. Plaintiffs have concurrently filed the declaration of venue required by Cal. Civil
 5 Code § 1780(d).

6
 7 **FOURTH CAUSE OF ACTION**
 8 **Violation of New York General Business Law § 349, By Plaintiff Pierce-Nunes**
 9 **Individually And On Behalf Of The New York Subclass**
 10 **Against Defendant Toshiba**

11 94. Plaintiff Pierce-Nunes incorporates by reference and re-alleges each allegation set
 12 forth in paragraphs 1-73 hereinabove.

13 95. Plaintiff Pierce-Nunes brings this claim on behalf of herself and the New York
 14 Subclass.

15 96. Plaintiff Pierce-Nunes and the members of the New York Subclass are consumers
 16 under New York General Business Law § 349.

17 97. Toshiba has engaged in deceptive practices related to the sale of its LED-lit LCD
 18 TVs by falsely labeling and marketing them as LED TVs.

19 98. Toshiba's deceptive acts and practices were directed at consumers and were
 20 otherwise consumer oriented.

21 99. Toshiba's false and misleading advertising was disseminated to increase sales and
 22 to increase the amount of money that Toshiba could charge for each television that was sold.

23 100. Toshiba knew or should have known that its advertisements and labeling were false
 24 and misleading.

25 101. Toshiba's unconscionable conduct alleged herein included the omission and
 26 concealment of material facts and misrepresentations concerning its LED-lit LCD TVs.

27 102. Toshiba was in a superior position to know, and actually did know, the true facts
 28 about its LED-lit LCD TVs at the time of the sale.

1 103. Toshiba intended that Plaintiff Pierce-Nunes and members of the New York
2 Subclass rely on the acts of concealment, omissions, and misrepresentations regarding the nature
3 of LED-lit LCD TVs, so that Plaintiff Pierce-Nunes and members of the New York Subclass
4 would purchase said televisions.

5 104. If Toshiba had been truthful about the nature of and disclosed all the material
6 information regarding the LED-lit LCD TVs sold to Plaintiff Pierce-Nunes and members of the
7 New York Subclass, they would not have purchased said televisions, or would have paid less for
8 them.

9 105. Toshiba's deceptive acts and practices were committed in conduct of business,
10 trade, commerce in the state of New York. Toshiba's conduct was not a unique, one-time
11 occurrence without possibility of replication or recurrence and without implication for the broader
12 consuming public. To the contrary, the deceptive conduct set forth herein is part of a regular and
13 recurring practice that impacts all of the New York Subclass members.

14 106. Plaintiff Pierce-Nunes and the New York Subclass have suffered harm as a result of
15 these violations because they were misled into believing that they were buying an LED TV, not an
16 LCD TV, and paid a monetary premium for these televisions that they otherwise would not have
17 paid had the televisions been described accurately. Plaintiff Pierce-Nunes and the New York
18 Subclass have suffered injury in fact and have lost money or property as a result of Toshiba's
19 deception, as alleged herein.

20 107. By reason of Toshiba's violation of New York General Business Law § 349,
21 Plaintiff Pierce-Nunes and each member of the New York Subclass are entitled to recover the
22 greater of their actual damages or \$50 per television purchased, trebled damages, injunctive relief
23 and their costs and attorneys' fees in filing and prosecuting this action, and such other relief as
24 provided by law.

25

26

27

28

FIFTH CAUSE OF ACTION
Violation of New York General Business Law § 350 *et seq.* (False Advertising),
By Plaintiff Pierce-Nunes Individually And On Behalf Of The New York Subclass
Against Defendant Toshiba

108. Plaintiff Pierce-Nunes incorporates by reference and re-alleges each allegation set forth in paragraphs 1-73 hereinabove.

109. Plaintiff Pierce-Nunes brings this claim on behalf of herself and the New York Subclass.

110. Toshiba falsely advertised and labeled its LED-lit LCD TVs as LED TVs when they were in fact LCD TVs. Toshiba did this to increase sales and to increase the amount of money that Toshiba could charge for each television that was sold.

111. Toshiba was aware at all relevant times that its advertising and labels were false and misleading.

112. Toshiba's conduct was not a unique, one-time occurrence without possibility of replication or recurrence and without implication for the broader consuming public. To the contrary, the false advertising and labelling described herein is part of a regular and recurring practice that impacts all of the New York Subclass members.

113. Plaintiff Pierce-Nunes and the New York Subclass have suffered harm as a result of these violations because they were misled into believing that they were buying an LED TV, not an LCD TV, and paid a monetary premium for these televisions that they otherwise would not have paid had the televisions been described accurately. Plaintiff Pierce-Nunes and the New York Subclass have suffered injury in fact and have lost money or property as a result of Toshiba's false advertising and labeling, as alleged herein.

114. Plaintiff Pierce-Nunes and the New York Subclass are informed and believe and on that basis allege that Toshiba acted willfully or knowingly in falsely advertising and labelling its LED-lit LCD TVs.

115. By reason of Toshiba's aforesaid violations of New York General Business Law § 350 *et seq.*, Plaintiff Pierce-Nunes and each member of the New York Subclass are entitled to recover the greater of their actual damages or \$500 per television purchased, trebled damages,

1 injunctive relief and their costs and attorneys' fees in filing and prosecuting this action and such
2 other relief as provided by law.

3
4 **SIXTH CAUSE OF ACTION**
5 **Violation Of Florida Deceptive And Unfair Trade Practices Act,**
6 **F.S.A., 501.201 *et seq.* (the "FDUTPA"), By Plaintiff Diaz Individually**
7 **And On Behalf Of The Florida Subclass Against Defendant Toshiba**

8 116. Plaintiff Diaz incorporates by reference and re-alleges each allegation set forth in
9 paragraphs 1-73 hereinabove.

10 117. Plaintiff Diaz brings this claim on behalf of himself and the Florida Subclass.

11 118. At all relevant times, Plaintiff Diaz and all members of the Florida Subclass were
12 consumers within the meaning of the FDUTPA.

13 119. At all relevant times hereto, Toshiba engaged in trade and/or commerce within the
14 meaning of the FDUTPA.

15 120. As alleged herein, the practices of Toshiba violated the FDUTPA for, *inter alia*,
16 one or more of the following reasons:

- 17 a) Toshiba omitted and concealed material facts from its marketing and
18 advertising from Plaintiff Diaz and all members of the Florida Subclass
19 regarding the display technology of its "LED" TVs;
20 b) Toshiba made false and/or misleading statements of material fact regarding
21 its "LED" TVs, which statements were likely to deceive the public; and
22 c) Toshiba knew, or was reckless in not knowing, that its statements about its
23 "LED" TVs were false and/or misleading.

24 121. By the conduct described herein, Toshiba has engaged in unfair methods of
25 competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the
26 conduct of trade or commerce.

27 122. The representations and omissions by Toshiba were likely to deceive reasonable
28 consumers and a reasonable consumer would have relied on these representations and omissions.

123. Had Toshiba disclosed all material information regarding its “LED” TVs to Plaintiff Diaz and all of the Florida Subclass members, they would not have purchased the televisions.

124. The foregoing acts and practices proximately caused Plaintiff Diaz and other members of the Florida Subclass to suffer actual damages in the form of, among other things, a monetary premium for these televisions that they otherwise would not have paid had the televisions been described accurately, and they are entitled to recover such damages, attorneys’ fees, and costs of suit.

SEVENTH CAUSE OF ACTION
Violation Of Texas Deceptive Trade Practices – Consumer Protection Act, Tex. Bus & Com
Code §17.41 *et seq.* (“TDTPA”), By Plaintiff Moseley Individually
And On Behalf Of The Texas Subclass Against Defendant Toshiba

125. Plaintiff Moseley incorporates by reference and re-alleges each allegation set forth in paragraphs 1-73 hereinabove.

126. Plaintiff Moseley brings this claim on behalf of himself and the Texas Subclass.

127. At all relevant times, Plaintiff and all members of the Texas Subclass were consumers within the meaning of the TDTPA.

128. At all relevant times hereto, Toshiba engaged in trade and/or commerce within the meaning of the TDTPA.

129. As alleged herein, the practices of Toshiba violated the TDTPA for, *inter alia*, one or more of the following reasons:

- a) Toshiba omitted and concealed material facts from its marketing and advertising from Plaintiff Moseley and all members of the Texas Subclass regarding the display technology of its “LED” TVs;
- b) Toshiba made false and/or misleading statements of material fact regarding its “LED” TVs, which statements were likely to deceive the public;
- c) Toshiba knew, or was reckless in not knowing, that its statements about its “LED” TVs were false and/or misleading;

1 d) Toshiba represented that its “LED” TVs had sponsorship, approval,
2 characteristics, uses and benefits that they did not have; and

3 e) Toshiba represented that its “LED” TVs were of a particular standard,
4 quality, or grade, when they were not.

5 130. By the conduct described herein, Toshiba has engaged in unfair methods of
6 competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the
7 conduct of trade or commerce.

8 131. The representations and omissions by Toshiba were likely to deceive reasonable
9 consumers and a reasonable consumer would have relied on these representations and omissions.

10 132. Had Toshiba disclosed all material information regarding tis “LED” TVs to
11 Plaintiff Moseley and all of the Texas Subclass members, they would not have purchased the
12 televisions.

13 133. On or about June 17, 2014, Plaintiff Moseley sent Toshiba a Notice advising
14 Toshiba that it has violated, and continues to violate, the TDTPA. This Notice complied in all
15 respects with the TDTPA. Plaintiffs sent this Notice by Certified U.S. Mail, return receipt
16 requested to Toshiba at Toshiba’s principal place of business. Plaintiffs’ Notice advised Toshiba
17 that it must correct, repair, replace, or otherwise rectify the conduct alleged herein to be in
18 violation of the TDTPA within sixty (60) days of receipt of the Notice. A true and correct copy of
19 the Notice is attached hereto as Exhibit B.

20 134. The foregoing acts and practices proximately caused Plaintiff Moseley and other
21 members of the Texas Subclass to suffer actual damages in the form of, *inter alia*, monies in the
22 form of a premium for these televisions that they otherwise would not have paid had the
23 televisions been described accurately, and they are entitled to recover such damages, attorneys’
24 fees, and costs of suit.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the proposed classes pray for judgment and relief as follows:

a. An order certifying that this lawsuit is properly maintainable as a class action and certifying Plaintiffs as the representatives of the Nationwide Class, or alternatively or in addition, certifying Plaintiff Pierce-Nunes as the representative of the New York Subclass, Plaintiff Diaz as the representative of the Florida Subclass, and Plaintiff Moseley as the representative of the Texas Subclass;

b. An injunction prohibiting Toshiba from advertising LED-lit LCD TVs as LED TVs or LED HDTVs or LED televisions nationwide (or, alternatively, within the States of New York, Florida, and Texas);

c. An order requiring Toshiba to engage in a corrective advertising campaign nationwide (or, alternatively, within the States of New York, Florida, and Texas) that informs the consuming public that so-called LED TVs are in fact LCD TVs with an LED backlight;

d. An order requiring Toshiba to re-label (or recall) all new LED-lit LCD TVs in the possession of distributors or retailers or other resellers for resale nationwide (or, alternatively, within the States of New York, Florida, and Texas) that do not contain a clear and conspicuous disclosure that the television is an LCD TV with an LED backlight.

e. For the First and Second Causes of Action, restitution in an amount to be determined at trial;

f. For all other Causes of Action, compensatory, exemplary and punitive damages according to proof;

g. For attorneys' fees and costs; and

h. For such other and further relief as may be just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of all issues properly triable thereby.

RESPECTFULLY SUBMITTED,

DATED: June 18, 2014

By: /s/ Jonathan Shub

Jonathan Shub (237708)

Scott A. George (*Pro Hac Vice Appl. To Be Filed*)

Seeger Weiss LLP

1515 Market Street, Suite 1380

Philadelphia, PA 19102

Telephone: 215-564-2300

Facsimile: 215-851-8029

Email: jshub@seegerweiss.com

sgeorge@seegerweiss.com

Francis O. Scarpulla (41059)

Judith A. Zahid (215418)

Patrick B. Clayton (240191)

Zelle Hofmann Voelbel & Mason LLP

44 Montgomery Street, Suite 3400

San Francisco, CA 94104

Telephone: 415-693-0700

Facsimile: 415-693-0770

Email: fscarpulla@zelle.com

jzahid@zelle.com

pclayton@zelle.com

Hayward J. Kaiser (66365)

Mitchell Silberberg & Knupp LLP

11377 West Olympic Boulevard

Los Angeles, CA 90064

Telephone: 310-312-2000

Facsimile: 310-312-3100

Email: hjk@msk.com

Daniel R. Shulman (*Pro Hac Vice Appl. To Be Filed*)

Gregory R. Merz (*Pro Hac Vice Appl. To Be Filed*)

Kathryn J. Bergstrom (*Pro Hac Vice Appl. To Be Filed*)

Dean C. Eyler (*Pro Hac Vice Appl. To Be Filed*)

Gray Plant & Mooty

500 IDS Center

80 South Eighth Street

Minneapolis, MN 55402

Telephone: 612-632-3000

Facsimile: 612-632-4444

Email: daniel.shulman@gpmlaw.com

gregory.merz@gpmlaw.com

katie.bergstrom@gpmlaw.com

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dean.eyler@gpmlaw.com

Attorneys for Plaintiffs and the proposed classes

EXHIBIT A



44 MONTGOMERY STREET - SUITE 3400
SAN FRANCISCO, CALIFORNIA 94104
415-693-0700 MAIN 415-693-0770 FAX

JUDITH A. ZAHID
JZahid@zelle.com
(415) 633-1916

June 11, 2014

By Certified Mail (Return Receipt Requested)

Toshiba America Information Systems, Inc.
c/o Theodore R. Scarborough
Sidley Austin LLP
One South Dearborn Street
Chicago, IL 60603

Toshiba America Information Systems, Inc.
Attn: Legal Department
9740 Irvine Boulevard
Irvine, CA 92618-1608

Sean A. Common
Sidley Austin LLP
555 West Fifth Street, Suite 4000
Los Angeles, CA 90013

RE: Notice of Violation of California Consumer Legal Remedies Act and
Demand Pursuant to Cal. Civ. Code §1782

Dear Counsel:

This notice is being sent to Toshiba America Information Systems, Inc. ("Toshiba") pursuant to Cal. Civ. Code §§ 1782(a)(1) and (2), which provide (in relevant part) as follows:

Thirty days or more prior to the commencement of an action for damages pursuant to this title, the consumer shall do the following:

(1) Notify the person alleged to have employed or committed methods, acts, or practices declared unlawful by Section 1770 of the particular alleged violations of Section 1770.

(2) Demand that the person correct, repair, replace, or otherwise rectify the goods or services alleged to be in violation of Section 1770.

Theodore R. Scarborough
Sean A. Common
TAIS Legal Department
June 11, 2014
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The notice shall be in writing and shall be sent by certified or registered mail, return receipt requested, to the place where the transaction occurred or to the person's principal place of business within California.

Toshiba's marketing of "LED TVs" is false and misleading. The televisions at issue are not "LED TVs," but instead are LCD TVs that use light emitting diodes (LEDs) instead of cold cathode fluorescent lights (CCFLs) to light the liquid crystal display (LCD) panel that is present in each of the televisions at issue. Toshiba's failure to disclose that its references to LED refer to the light source that illuminates the LCD panel, instead of the display technology itself, and its nondisclosure and concealment that each of the televisions is otherwise functionally identical to televisions that are advertised and sold as "LCD TVs," were at all times knowing, intentional, and intended to mislead consumers. Toshiba's false and misleading marketing and advertising were and are designed falsely to suggest that the televisions at issue are not LCD TVs at all, but an entirely different, improved, and technologically advanced class or species of television. This is false and misleading, as all of these televisions are LCD TVs.

Without limitation, Toshiba has used and continues to use this deception: (a) to induce customers to purchase Toshiba's so-called LED TVs in the mistaken belief that they are upgrading from their existing CCFL-lit LCD TVs; (b) to charge a premium for such televisions that consumers would not have paid had the televisions been accurately labeled and described; and (c) to capture sales from other brand televisions that were accurately labeled as LED-lit LCD TVs.

Toshiba has perpetrated a massive consumer fraud upon thousands of unsuspecting purchasers in California and throughout the United States, each of whom paid an unsupported premium for a deceptively labeled "LED TV."

* * *

Toshiba's practices constitute violations of Cal. Civ. Code § 1770 in at least the following respects:

(a) Toshiba represents "that goods...have characteristics...which they do not have" in violation of Cal. Civ. Code § 1770(a)(5).

(b) Toshiba represents "that goods...are of a particular style or model" when they are actually of a different "style or model" in violation of Cal. Civ. Code § 1770(a)(7).

(c) Toshiba advertises "goods...with intent not to sell them as advertised" in violation of Cal. Civ. Code § 1770(a)(9).

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As you know, the undersigned firm, along with co-counsel, represents Stacey Pierce-Nunes (purchaser of a Toshiba-brand "LED TV" model number 50L52000) and has initiated a proposed class action lawsuit in the Northern District of California on her behalf asserting similar claims on behalf of a proposed class of New York purchasers under New York law. In addition, we and our co-counsel were recently retained by Aurelio Diaz and John Moseley, each of whom purchased a Toshiba television marketed and sold as a so-called "LED" television (model nos. 46L52000 and 58L7300U, respectively) to pursue similar claims. Pierce-Nunes, Diaz, and Moseley are collectively referred to herein as Plaintiffs.

As you are also aware, in connection with a Motion to Transfer that Toshiba filed in the pending litigation, Toshiba took the position that all personnel relevant to Toshiba's decision to market the televisions at issue as LED TVs were employed at Toshiba's headquarters in Southern California (i.e., that all corporate decision-making relevant to the claims at issue emanated from Southern California). Discovery regarding this assertion is ongoing.

Plaintiffs hereby demand that Toshiba immediately correct, repair, replace, or otherwise rectify the violations of Cal. Civ. Code § 1770 described herein. Plaintiffs make such demand on behalf of themselves and on behalf of all other persons who purchased, for personal use and not re-sale, within the United States (including California) within the applicable statutory limitations period and going forward, a Toshiba-brand LED-lit LCD television that is sold in a box or marketed in a way that describes the television as an LED TV or LED HDTV or LED television.

Plaintiffs intend to amend the existing complaint in the *Nunes-Pierce* action to assert a claim under California law on behalf of all purchasers of the televisions at issue nationwide. Plaintiffs will assert claims under California's False Advertising Law, Unfair Competition Law, and Consumer Legal Remedies Act. Plaintiffs will seek certification of certain state-specific classes in the alternative.

While Plaintiffs are not aware of Toshiba showing any interest in remedying this deception along the lines requested below, to avoid any technical notice issues associated with compliance with the Consumer Legal Remedies Act, for the time-being, the Consumer Legal Remedies Act cause of action in Plaintiffs' amended complaint will only seek injunctive relief (not damages) pending the expiration of 30 days from the issuance of this letter.

To avoid Plaintiffs' further amending their complaint to state a claim for damages under the Consumer Legal Remedies Act at the expiration of the 30 day hold period, Toshiba must comply with the requirements of Cal. Civ. Code §§1782(b) and 1782(c)(1)-(c)(4), including by: (i) ceasing and desisting from making any representations regarding its

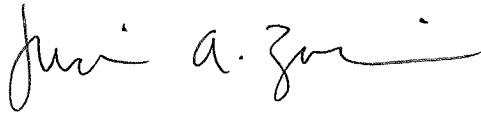
Theodore R. Scarborough
Sean A. Common
TAIS Legal Department
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televisions that are misleading or are not in fact true; (ii) ceasing and desisting from omitting material information regarding the true nature of these televisions; (iii) engaging in a corrective advertising campaign to alert the public to its prior misleading or false statements regarding the true nature of these televisions, and (iv) compensating and making restitution, plus interest, costs, and fees, to all purchasers of these televisions.

If you are willing to waive the 30-day notice period in the interest of party and judicial economy, please let us know.

We look forward to hearing from you. All rights are reserved.

Best regards,

A handwritten signature in black ink, appearing to read "Judith A. Zahid". The signature is fluid and cursive, with the first name "Judith" and last name "Zahid" clearly distinguishable.

Judith A. Zahid

JAZ:mjb

EXHIBIT B



44 MONTGOMERY STREET - SUITE 3400
SAN FRANCISCO, CALIFORNIA 94104
415-693-0700 MAIN 415-693-0770 FAX

JUDITH A. ZAHID
jzahid@zelle.com
(415) 633-1916

June 17, 2014

By Certified Mail (Return Receipt Requested)

Toshiba America Information Systems, Inc.
c/o Theodore R. Scarborough
Sidley Austin LLP
One South Dearborn Street
Chicago, IL 60603

Toshiba America Information Systems, Inc.
Attn: Legal Department
9740 Irvine Boulevard
Irvine, CA 92618-1608

Sean A. Common
Sidley Austin LLP
555 West Fifth Street, Suite 4000
Los Angeles, CA 90013

RE: Notice of Violation of Texas Consumer Legal Remedies Act and Demand
Pursuant to Tex. Bus. & Com. Code Ann. § 17.505(a)

Dear Counsel:

This notice is being sent to each of you and Toshiba America Information Systems, Inc. ("Toshiba") in reference to the claims of Mr. John Moseley, a resident of Texas, pursuant to Tex. Bus. & Com. Code Ann. § 17.505(a), which provides (in relevant part) as follows:

As a prerequisite to filing a suit seeking damages under Subdivision (1) of Subsection (b) of Section 17.50 of this subchapter against any person, a consumer shall give written notice to the person at least 60 days before filing the suit advising the person in reasonable detail of the consumer's specific complaint and the amount of economic damages, damages for mental anguish, and expenses, including attorneys' fees, if any, reasonably incurred by the consumer in asserting the claim against the defendant. During the 60-day period a written request to inspect, in a reasonable manner and at a reasonable time and place, the goods that are the subject of the consumer's action or claim may be presented to the consumer.

Theodore R. Scarborough
Sean A. Common
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Toshiba's marketing of "LED TVs" is false and misleading. The televisions at issue are not "LED TVs," but instead are LCD TVs that use light emitting diodes (LEDs) instead of cold cathode fluorescent lights (CCFLs) to light the liquid crystal display (LCD) panel that is present in each of the televisions at issue. Toshiba's failure to disclose that its references to LED refer to the light source that illuminates the LCD panel, instead of the display technology itself, and its nondisclosure and concealment that each of the televisions is otherwise functionally identical to televisions that are advertised and sold as "LCD TVs," were at all times knowing, intentional, and intended to mislead consumers. Toshiba's false and misleading marketing and advertising were and are designed falsely to suggest that the televisions at issue are not LCD TVs at all, but an entirely different, improved, and technologically advanced class or species of television. This is false and misleading, as all of these televisions are LCD TVs.

Without limitation, Toshiba has used and continues to use this deception: (a) to induce customers to purchase Toshiba's so-called LED TVs in the mistaken belief that they are upgrading from their existing CCFL-lit LCD TVs; (b) to charge a premium for such televisions that consumers would not have paid had the televisions been accurately labeled and described; and (c) to capture sales from other brand televisions that were accurately labeled as LED-lit LCD TVs.

Toshiba has perpetrated a massive consumer fraud upon thousands of unsuspecting purchasers in Texas and throughout the United States, each of whom paid an unsupported premium for a deceptively labeled "LED TV."

Mr. Moseley is a purchaser of a Toshiba "LED TV," model number 58L7300U. The claims outlined herein have already been raised in the action currently pending in the United States District Court of the Northern District of California entitled *Pierce-Nunes v. Toshiba America Information Systems, Inc.*, 3:14-CV-00796 JST. Mr. Moseley will be added, by way of amendment, as a new plaintiff in the *Pierce-Nunes* action.

Without limitation, Toshiba's practices constitute violations of Tex. Bus. & Com. Code Ann. §17.50 in at least the following respects:

- a. Toshiba omitted and concealed material facts from its marketing and advertising from Plaintiff Moseley and all members of the Texas Subclass regarding the display technology of its "LED" TVs;
- b. Toshiba made false and/or misleading statements of material fact regarding its "LED" TVs, which statements were likely to deceive the public;
- c. Toshiba knew, or was reckless in not knowing, that its statements about its "LED" TVs were false and/or misleading;

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Sean A. Common
TAIS Legal Department
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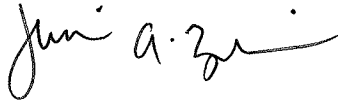
- d. Toshiba represented that its "LED" TVs had sponsorship, approval, characteristics, uses and benefits that they did not have; and
- e. Toshiba represented that its "LED" TVs were of a particular standard, quality, or grade, when they were not.

Mr. Moseley hereby demands that Toshiba immediately correct, repair, replace, or otherwise rectify the violations of Texas law described herein and further states that he has suffered damages in the form of over-payment. Mr. Moseley makes such demand on behalf of himself and on behalf of all other persons who purchased, for personal use and not re-sale, within the United States (including Texas) within the applicable statutory limitations period and going forward, a Toshiba-brand LED-lit LCD television that is sold in a box or marketed in a way that describes the television as an LED TV or LED HDTV or LED television.

Finally, if you are willing to waive the 60-day notice period in the interest of party and judicial economy, please let us know.

We look forward to hearing from you. All rights are reserved.

Best regards,

A handwritten signature in black ink, appearing to read "Judith A. Zahid".

Judith A. Zahid

JAZ:mjs

Jonathan Shub (237708)
Seeger Weiss LLP
1515 Market Street, Suite 1380
Philadelphia, PA 19102
Telephone: 215-564-2300
Facsimile: 215-851-8029
Email: jshub@seegerweiss.com

Attorneys for Plaintiff and the proposed class

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Stacey Pierce-Nunes, on behalf of herself and
all others similarly situated,

Plaintiff,

v.

Toshiba America Information Systems, Inc.,

Defendant.

CASE NO. 3:14-CV-00796 JST

CERTIFICATE OF SERVICE

1 IT IS HEREBY CERTIFIED THAT:

2 I, the undersigned, am a citizen of the United States and am at least eighteen
3 years of age. My business address is 1515 Market Street, Suite 1380, Philadelphia, PA 19102.

4 I am not a party to the above-entitled action. I have caused service of:

5 **Plaintiff Stacey Pierce-Nunes' First Amended Complaint**

6 on all counsel of record by electronically filing the foregoing with the Clerk of the District
7 Court using its ECF System, which electronically notifies them.

8 I declare under penalty of perjury that the foregoing is true and correct.

9 Executed on June 18, 2014.

10
11
12 By: /s/ Jonathan Shub

13 JONATHAN SHUB (SBN 237708)
14 SEEGER WEISS LLP
15 1515 Market Street, Suite 1380
16 Philadelphia, PA 19102
17 Telephone: (215) 564-2300
18 Facsimile: (215) 851-8029

19 Attorney for Plaintiff
20 Stacey Pierce-Nunes, and on Behalf
21 of All Others Similarly Situated
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