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**Attorneys for Plaintiff**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

-----X  
JOSEPH DISANTO on behalf of himself  
and all others similarly situated,

Docket No. \_\_\_\_\_

Plaintiff,

**CLASS ACTION  
COMPLAINT**

- against -

BEST BUY STORES, L.P. and  
BEST BUY CO., INC.,

**JURY TRIAL DEMANDED**

Defendants.  
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Plaintiff, Joseph DiSanto ("Plaintiff"), on behalf of himself and all others similarly situated, by his undersigned counsel, alleges against defendants Best Buy Stores, L.P. and Best Buy Co., Inc. (collectively "Best Buy" or "Defendants"), the following upon personal knowledge as to his own acts, and upon information and belief, based on the investigation conducted by counsel, as to all other allegations:

**SUMMARY OF THE ACTION**

1. Plaintiff brings this class action on behalf of himself and all other persons who were damaged by Best Buy's failure to abide by its expressly stated and advertised "price match guarantee."

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2. Best Buy is the largest specialty retailer of consumer electronics in the United States and Canada. As part of its advertising, promoting and selling of goods and services, which helped it exceed \$30 billion in revenue in 2006, Best Buy promotes a "price match guarantee." Best Buy guarantees that it will match any local competitor's lower price and if a customer has already purchased the product, Best Buy will refund the price difference, plus an additional 10% of that difference. Best Buy advertises, promotes and uses its price match guarantee to draw consumers into its stores and close sales on its merchandise. However, since price match transactions are unprofitable for Best Buy and have a significant negative impact on its margins and revenue, Best Buy has an undisclosed policy of erecting strategic barriers to aggressively discourage and deny customers' proper price match requests ("Anti-Price Matching Policy"). This policy is clearly articulated internally to Best Buy's employees, but is undisclosed to customers who in good faith assume the price match guarantee is legitimately applied.

3. Best Buy omits and fails to disclose this corporate Anti-Price Matching Policy. Best Buy's Anti-Price Matching Policy has been confirmed by former Best Buy employees, is disseminated from corporate headquarters and techniques and barriers for denying proper price match requests are taught at Best Buy's facilities. One of these techniques, which glaringly demonstrates the corporate policy at the highest and most centralized level, is the use of a secret

intra-net site which Best Buy's employees utilized at in-store computer kiosks to deny customers' proper price match requests.

4. This technique is being challenged by a current Connecticut Attorney General lawsuit ("Attorney General Action"). ~~The Attorney General Action states that Best Buy's in-~~ store kiosks show an electronic tab marked "BestBuy.com" which purports to connect consumers to the BestBuy.com website. However, the tab marked "BestBuy.com" would bring consumers to an electronic page configured to look exactly like BestBuy.com, but which displays a separate internal database with the often higher in-store prices. Best Buy's price match policy, guaranteed, among other things, that it would match the lower prices contained on BestBuy.com. When consumers sought to purchase items in Best Buy stores at the lower prices seen on BestBuy.com, employees disputed the lower prices and directed the consumers to the in-store kiosk screen which displayed the often higher in-store prices. Best Buy's conduct prevented consumers from availing themselves of Best Buy's price match guarantee. The creation and design of the in-store kiosk computer screens were done at Best Buy's corporate direction.

5. Further, Best Buy provides corporate financial incentives to deny proper price match requests. This actionable deception through Best Buy's failure to disclose its Anti-Price Matching Policy makes its advertisement and promotion of the price match guarantee deceptive.

6. Plaintiff, in his own right and on behalf of a Class of similarly situated consumers, alleges that Best Buy's deceptive trade practice makes its advertising of the price match guarantee false, violates the applicable consumer fraud statute and results in Best Buy's unjust enrichment. Accordingly, the Complaint raises numerous questions of law or fact that can only

be resolved on a class-wide basis, and that predominate over any individualized issues. The Complaint also seeks injunctive relief to protect the Class as a whole.

7. Best Buy continues to advertise, promote and utilize its “price match guarantee” despite its failure to honor the price match. Plaintiff and the class have been damaged by Best Buy’s deceptive acts, practices and advertisements and refusal to honor its “price match guarantee” that have vastly enriched Best Buy at the expense of consumers.

### **PARTIES**

8. Plaintiff Joseph DiSanto brings this action in an individual capacity and on behalf of all others similarly situated. Plaintiff is an adult individual residing at 551 Ramona Avenue, Staten Island, New York

9. Defendants Best Buy Stores, L.P. and Best Buy Co., Inc. are business entities with headquarters located at 7601 Penn Avenue South, Richfield, Minnesota.

10. Defendants have stores located in Bridgewater, New Jersey and Woodbridge, New Jersey. The acts that give rise to the instant lawsuit occurred in February 2008, July 2008 and February 2009 in the State of New Jersey.

### **JURISDICTION AND VENUE**

11. This Court may assert diversity jurisdiction pursuant to 28 U.S.C. § 1332 because the matter in controversy exceeds \$75,000, exclusive of interest and costs, Plaintiff resides in New York and Defendants are Minnesota business entities.

12. This Court may assert jurisdiction of this matter under the Class Action Fairness Act, in that the acts occurred in New Jersey, Plaintiff resides in the State of New York, Defendants are Minnesota business entities and the amount in controversy exceeds \$5,000,000.

13. The case is properly brought in this district because Defendants are located in the district.

### **FACTUAL BACKGROUND**

#### **A. Background**

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14. Best Buy is the largest specialty retailer of consumer electronics in the United States and Canada, with over 1,800 stores worldwide and 1,400 stores in the United States.

15. As part of its advertising, promoting and selling of goods and services, which helped it exceed \$30 billion in revenue in 2006, Best Buy publishes, advertises and promotes a “price match guarantee.”

16. Best Buy guarantees that it will match any local competitor’s lower price and if a customer has already purchased the product, Best Buy will refund the price difference, plus an additional 10% of that difference.

17. Best Buy utilizes its price match guarantee in its advertising.

18. The price match guarantee is advertised in Best Buy’s Sunday circular, displayed in-store on nine panel signs, was included on an in-store tear pad, on its website and mentioned in television commercials.

19. Best Buy salespeople also utilize the price match guarantee as a closing tool.

20. The price match guarantee was consistent with Best Buy’s early pricing strategy – “Beat everybody, everyday, everywhere on everything.”

21. Best Buy learned that competing on price was not a sustainable strategy.

22. Best Buy’s stated mission as of April 2003 was to “[f]ind ways to get ‘bargain hunting’ customers to shop on our terms or disinvite themselves.”

23. While in the past Best Buy's primary focus was on the "Front Door: how we invite customers to shop with us" it learned that it had to "defend our 'back door' from profits being stolen from us."

24. However, Best Buy settled on an impermissible middle ground: accept the "front door" benefits of using the price match guarantee in its advertising, promotions and as a sales closing tool, while defending the "back door" by "aggressively discouraging and denying customers' proper price match requests."

25. Ex-Best Buy employees have confirmed Best Buy's undisclosed Anti-Price Matching Policy.

26. One ex-Best Buy employee, a supervisor at three Best Buy locations, has declared that:

- Best Buy has an undisclosed Anti-Price Matching Policy;
- The Anti-Price Matching Policy is disseminated from corporate headquarters;
- Barriers and techniques to proper price match requests are taught at Best Buy facilities;
- Best Buy provides financial bonuses based, in part, on denying proper price match requests; and
- Best Buy denies more than 100 proper price match requests per store per week.

27. Another ex-Best Buy employee confirmed Best Buy's undisclosed Anti-Price Matching Policy and the financial incentive, in the form of a weekly bonus, utilized to effectuate this policy.

**B. Price Match Policy**

28. While Best Buy's price match guarantee has gone through minor revisions, its essential terms have remained the same and the terms relevant to Plaintiff's claims are the same.

29. ~~From sometime prior to 2001 until July 17, 2005, Best Buy's price match guarantee was as follows:~~

Price Guarantee We'll beat their lowest price. If within 30 days (14 days for computers, monitors, notebook computers, printers, camcorders, digital cameras and radar detectors) of your purchase from Best Buy, you find a local competitor (excluding Internet offers) offering a lower price on an available product of the same brand and model, we will refund the difference plus another 10% of the difference.

Bring us verification of the lower price, plus your original Best Buy receipt to claim your refund. Does not apply to specials, bonus or free offers and in California, cellular phones and pagers.

30. After July 17, 2005, Best Buy's "price match guarantee" provides that:

Here are two more great reasons for you to shop with confidence at Best Buy.

If you are about to make a purchase and discover a lower price than ours, let us know and we'll match that price. Guaranteed.

31. If a customer has already purchased a product from Best Buy, the "price match guarantee" provided that:

We'll refund the price difference, plus an additional 10% of that difference – up to 30 days after your purchase (14 days on select categories; please refer to the 14 day return period section). In either case, simply bring in proof of the price on the same available brand and model, from a local competitor.

Either way, simply bring in proof of a local retail competitor's price on the same available brand and model, and we'll do the rest.

32. Pursuant to Best Buy's "price match guarantee" a local retail competitor is "[a] retail store located in the same market area as your local Best Buy store."

33. Best Buy has defined a local competitor as "a store that is authorized to sell consumer electronics. It would not be a street vender with a cart. So a legitimate store."

34. The only substantive changes to the price match guarantee is that the post-July 17, 2005 policy does not include mail in rebates or gift cards, but does provide that Best Buy will price match to BestBuy.com.

35. Further, in August of 2006, the price match policy was broadened to include "click and mortar" stores.

36. Best Buy has one national price match guarantee.

**C. Undisclosed Policy**

37. Best Buy advertises, promotes and uses its price match guarantee to draw consumers into its stores and close sales on its merchandise.

38. However, since price match transactions are unprofitable for Best Buy and have a significant negative impact on its margins and revenue, it has an undisclosed policy of aggressively discouraging and denying customers' proper price match requests.

39. Best Buy omits and fails to disclose this Anti-Price Matching Policy.

40. Contrary to its stated and advertised price match guarantee, Best Buy has an undisclosed corporate Anti-Price Matching Policy of "aggressively discouraging and denying customers' proper price match requests."

41. This policy originates at Best Buy's corporate headquarters and is disseminated to regional managers, store managers and assistance managers and necessary store personal.



42. Best Buy teaches its employees techniques for erecting strategic barriers and denying price match requests at its district facility and training store located in New York.

43. Best Buy creates a multi-level procedure to request a price match in which the customers have to escalate their price match request to at least three levels of Best Buy representatives to have their request considered.

44. If a price match request would result in a product being sold at less than five (5%) percent above cost, it was mandated by management that the request be denied.

45. In addition, if a store has exceeded its monetary customer allowance, all price match requests will be denied.

46. Further, Best Buy provided financial incentives in the form of a weekly bonus based, in part, on denying proper price match requests.

47. On October 19, 2006, Phil Britton a member of the Competitive Strategies Group and longstanding employee with Best Buy, in a document entitled "Competition Insider Templates" wrote:

### **Price Matches**

It looms on the wall, on a 9 foot tall sign. Our Price Match policy. There it is, plain as day, in English (Y en espanol para los de usted que puede leerlo.) However, just because it is our policy, do we abide by it? Does it really help the customer?

What is the first thing we do when a customer comes in to our humble box brandishing a competitor's ad asking for a price match? We attempt to build a case against the price match. (Trust me, I've done it too). Let's walk through the "Refused Price Match Greatest Hits:"

Not same model? Not in stock at the competitor? Do we have a free widget with purchase? Is it from a warehouse club (they have membership fees, you know)? Limited Quantities? That

competitor is across town? We've got financing! Is it an internet price? It's below cost! What about my NOP?

48. A document entitled "Bundle Calculator" provides that "When a Customer Requests We Match a Competitors Price"

- The tool will then need to calculate the expected profit (loss) on the sale so the store employees can decide whether or not to match the price.
- After reviewing the profit, the store could decide to accept, or reject, the competitors price.

49. Best Buy has confirmed that an employee needs to obtain authority to price match above a certain threshold, confirming the need for customer escalation to have their price match request considered.

50. Best Buy effectuates this undisclosed Anti-Price Match Policy by providing a financial incentive for denying proper price match requests.

51. A glaring example that Best Buy's Anti-Price Match Policy emanates from a corporate level is the Connecticut Attorney General Action (the "Attorney General action").

52. The Attorney General Action states that Best Buy's in-store kiosks show an electronic tab marked "BestBuy.com" which purports to connect consumers to the BestBuy.com website.

53. However, the tab marked "BestBuy.com" actually bring consumers to an electronic page configured to look exactly like BestBuy.com, but which displays the often higher in store prices.

54. When consumers sought to purchase items in Best Buy stores at the lower prices seen on BestBuy.com, employees disputed the lower prices and directed the consumers to the in-store kiosk screen which displayed the often higher in-store prices.

55. Best Buy's conduct prevented consumers from availing themselves of Best Buy's price match guarantee.

**D. Plaintiff's Denied Price Match Requests**

**i. February 2008 Denied Price Match Request**

56. In or about February 2008, Plaintiff went to the Best Buy store located in Woodbridge, New Jersey.

57. Plaintiff found a local competitor, P.C. Richard, offering a lower price on an available product of the same brand and model, a Toshiba television.

58. Plaintiff brought verification of the lower price to Best Buy and requested the benefit of Best Buy's price match guarantee.

59. Despite Plaintiff's demand, Best Buy refused to honor its stated "price match guarantee".

60. Plaintiff and the class have been injured by Best Buy's failure to honor its "price match guarantee".

**ii. July 2008 Denied Price Match Request**

61. In or about July 2008, Plaintiff went to the Best Buy store located in Woodbridge, New Jersey.

62. Plaintiff found a local competitor, P.C. Richard, offering a lower price on an available product of the same brand and model, a television.

63. Plaintiff brought verification of the lower price to Best Buy and requested the benefit of Best Buy's price match guarantee.

64. Despite Plaintiff's demand, Best Buy refused to honor its stated "price match guarantee".

65. Plaintiff and the class have been injured by Best Buy's failure to honor its "price match guarantee".

**iii. February 2009 Denied Price Match Request**

66. In or about February 2009, Plaintiff went to the Best Buy store located in Bridgewater, New Jersey.

67. Plaintiff found a local competitor, Walmart, offering a lower price on an available product of the same brand and model, DVD movies.

68. Plaintiff brought verification of the lower price, a print out from Walmart, to Best Buy and requested the benefit of Best Buy's price match guarantee.

69. Despite Plaintiff's demand, Best Buy refused to honor its stated "price match guarantee".

70. Plaintiff and the class have been injured by Best Buy's failure to honor its "price match guarantee".

**E. Price Match Complaints**

71. Plaintiff's complaints are not an isolated instance but just one of thousands of complaints regarding Best Buy's failure to honor its price match guarantee.

72. Best Buy is aware of instances where price matches were not being granted, of customer complaints that Best Buy was not honoring the price match guarantee and customer

complaints about encountering “much resistance from BB associates (on several occasions)” when attempting to utilize the price match guarantee.

73. Best Buy is aware of customer complaints that price matches were being denied because they were below cost, which is not a legitimate reason under Best Buy’s stated policy.

74. Further, Best Buy’s “Misleading signage/special promotions and pricing problems including price matching” was a “Top Theme[s] from Written Customer Concerns”.

75. It is Best Buy’s policy that it price matches to warehouse clubs, such as Sam’s Club, B.J’s and Costco.

76. However, Best Buy’s own records establish that then sixty (60%) percent of customer price match requests to warehouse clubs are not honored.

77. Further, Best Buy’s executive customer care (“ECC”) documents thousands of price match related contacts in one state, New York, in less than two years.

78. The ECC contacts only include calls, emails and letters to Best Buy’s call center and do not include in-store customer complaints or BestBuy.com customer complaints regarding price matching.

79. The ECC documents a plethora of customers complaining of being deprived the benefits of Best Buy’s price match requests.

80. Best Buy is aware of customers that did not receive a price match when they felt they were entitled to a price match.

81. In addition, it has been estimated each Best Buy store denies in excess of 100 proper customer price match requests per week.

82. A Better Business Bureau audit found that Best Buy’s execution of its price match

policy was, at best, inconsistent.

83. The Attorney General action and related newspapers accounts set forth hundreds of instances in which customers were denied the benefits of Best Buy's price match guarantee as a result of the secret "BestBuy.com" intra-net screen kiosk created at Best Buy's corporate direction.

**F. Substantive Allegations**

84. Plaintiff and the Class have been damaged as a result of Best Buy's Anti-Price Match Policy.

85. In advertising its "price match" guarantee, Best Buy made false and misleading statements.

86. In advertising its "price match" guarantee, Best Buy made false and misleading representations of fact.

87. Best Buy's acts, practices and advertisements are materially deceptive and misleading.

88. Best Buy's false and misleading acts, practices and advertisements deceived Plaintiff and the class.

89. Best Buy's false and misleading acts, practices and advertisements had a tendency to deceive a substantial segment of its audience, including Plaintiff and the class.

90. Best Buy's deception was material because it is likely to influence the purchasing decision of Plaintiff and the class.

91. Best Buy's advertising of its "price match" guarantee" concerned goods and commercial activities in interstate commerce.

92. Plaintiff and the class have been injured and are likely to continue to be injured as a result of Best Buy's false advertising and deceptive practices.

93. Best Buy is, amongst other things, advertising but failing to honor its "price match" guarantee and, as such, using false information and deceptive practices in the course of selling its goods and services.

94. Best Buy's practices and advertisements are recurring in nature and directed at consumers.

95. Best Buy intended that Plaintiff and the class would rely upon this false information and deceptive practices.

96. Plaintiff and the class are ordinary consumers.

97. Plaintiff and the class have been injured by Best Buy's sale of merchandise.

98. This action will benefit the public.

99. Best Buy has been enriched at Plaintiff and the class's expense by its deceptive acts.

100. Equity and good conscience require that Best Buy make restitution, yet Best Buy has failed to make restitution.

101. Best Buy's failure to honor its "price match guarantee" is in keeping with its deceptive practices, which include a secret intranet site, allegedly used to prevent customers from reaping the benefits of discounts advertised on BestBuy.com.

### **CLASS ACTION ALLEGATIONS**

102. Plaintiff brings this action on his own behalf and on behalf of all other persons similarly situated, pursuant to Federal Rules of Civil Procedure 23(a), (b)(2) and (b)(3), on behalf

of a class, consisting of all persons who were damaged by Best Buy's failure to honor its "price match guarantee". Excluded from the class are the defendants, officers and directors of the company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants' have or had a controlling interest.

103. The Class which Plaintiff seeks to represent is defined as:

All persons who, in the United States, were denied the benefits of Best Buy's price match guarantee. The term "persons" includes individuals as well as profit and not-for-profit corporations, partnerships, limited liability companies, limited liability partnerships, joint ventures, sole proprietorships, associations, firm, trust and other business and governmental entities.

Excluded from this Class are any persons or other entity related to or affiliated with the Defendant; any person, firm, trust, corporation, or other entity who purchased, for resale, from Defendant, or any entity related to or affiliated with Best Buy or any person who has an action for damages for personal injury or death or property damage against Defendant.

#### **NUMEROSITY**

104. The members of the Class are so numerous that joinder of all members is impracticable. The Class is made up of thousands of members. The precise number of Class members can only be ascertained through discovery, which includes Defendants' sales and complaints records. The disposition of their claims through a class action will benefit both the parties and this Court.

#### **COMMON QUESTIONS OF LAW AND FACT**

105. There is a well-defined community of interest in the questions of law and fact involved affecting Plaintiff and members of the Class.



106. The questions of law and fact common to the Class predominate over questions which may affect individual members, and include the following:

- (a) Whether Best Buy has a policy or practice of refusing to honor its “price match guarantee”;
- (b) Whether Best Buy made false or misleading statements, or representations of fact;
- (c) Whether Best Buy’s acts actually deceived or had a tendency to deceive a substantial segment of its audience;
- (d) Whether Best Buy violated New Jersey’s Consumer Fraud Act;
- (h) Whether members of the class are entitled to the entry of final and injunctive relief compelling Defendants to honor its “price match guarantee” and/or cease advertising, promoting and using its “price match guarantee”;
- (i) Whether class members are entitled to actual damages and if so, the appropriate amount thereof;
- (j) Whether Defendants deliberately misrepresented or failed to disclose material facts to Plaintiff and the Class members; and
- (k) Whether Best Buy’s policy constitutes an unconscionable business practice.

#### **TYPICALITY**

107. The claims and defenses of Plaintiff, as the representative plaintiff, are typical of the claims and defenses of the class because Plaintiff and the Class members were all deprived

the benefits of Best Buy's "price match guarantee". Plaintiff, like all class members, purchased or sought to purchase a product, sought to receive the benefits of Best Buy's "price match guarantee" and were deprived the benefits of Best Buy's "price match guarantee".

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**ADEQUACY OF REPRESENTATION**

108. Plaintiff, as the representative plaintiff, will fairly and adequately assert and protect the interests of the Class as:

- (a) Plaintiff has hired attorneys who are experienced in prosecuting class action claims and will adequately represent the interests of the Class; and
- (b) Plaintiff has no conflict of interest that will interfere with the maintenance of this class action.

**PREDOMINANCE**

109. With respect to the Class, questions common to the class predominate over those which only affect individual owners. This case involves Best Buy's failure to honor its "price match guarantee". Liability will primarily be predicated upon the jury's evaluation of Best Buy's advertising, practices and conduct regarding its "price match guarantee".

**SUPERIORITY**

110. A class action provides a fair and efficient method for the adjudication of controversy for the following reasons:

- (a) The common questions of law and fact set forth herein predominate over any questions affecting only individual Class members;
- (b) The Class is so numerous as to make joinder impracticable. The Class, however, is not so numerous as to create manageability problems. There

are no unusual legal or factual issues which would create manageability problems;

- (c) Prosecution of a separate action by individual members of the Class would create a risk of inconsistent and varying adjudications against Defendants when confronted with incompatible standards of conduct;
- (d) The claims of the individual Class members are small in relation to the expenses of litigation, making a class action the only procedure in which Class members can, as a practical matter, recover; and
- (e) A class action would be superior to and more efficient than adjudicating thousands of individual lawsuits.

**FIRST CAUSE OF ACTION**  
**(Consumer Fraud Act – N.J.S.A. 56:8-1 et seq.)**

111. Plaintiff hereby incorporates by reference the allegations contained in all preceding paragraphs of this Complaint as though set forth fully herein.

112. New Jersey has enacted law to protect consumers against unfair, deceptive or fraudulent business practices, unfair competition and false advertising. New Jersey provides consumers with a private right of action under its statute.

113. Best Buy's conduct constitutes unconscionable commercial practices, deception, fraud, false pretense, false promise, misrepresentations, and/or the knowing concealment, suppression, or omission of material facts with the intent that others, including Plaintiff and class members, rely upon such concealment, suppression, or omission in connection with the sale or advertisement of merchandise in violation of the New Jersey Consumer Fraud Act, N.J.S.A.

56:8-1, *et seq.* (the “Consumer Fraud Act”).

114. In addition to its afore-stated misrepresentations, Best Buy intentionally concealed, suppressed and omitted the facts of their Anti-Price Matching Policy with the intent that others, including Plaintiff and class members, rely upon such concealment, suppression, failure to disclose or omission.

115. Best Buy knew and intentionally concealed, suppressed and omitted the fact that its public Price Match Guarantee did not provide the advertised benefits.

116. Best Buy’s acts of commission and omission were material.

117. As a result of Defendants’ unfair, fraudulent and/or deceptive trade practices, Plaintiff and class members have suffered an ascertainable loss of money and property by, amongst other things, not receiving the monetary value of Defendants’ public price match guarantee.

**SECOND CAUSE OF ACTION**  
**(Breach of Covenant of Good Faith and Fair Dealing)**

118. Plaintiff hereby incorporates by reference the allegations contained in all preceding paragraphs of this Complaint as though set forth fully herein.

119. Defendants acted intentionally and in bad faith to frustrate the benefits owed to class members under their publicly advertised price match guarantee, despite a duty to refrain from doing so.

120. Defendants’ failure to deal fairly and in good faith caused damage to Plaintiff and the class.

121. As a result of the foregoing, Plaintiff and the class members are entitled to

damages in an amount to be proven at trial.

**THIRD CAUSE OF ACTION**  
**(Declaratory Relief)**

122. Plaintiff hereby incorporates by reference the allegations contained in all preceding paragraphs of this Complaint as though set forth fully herein.

123. There is a genuine controversy between Defendants, on the one hand, and Plaintiff and the members of the class, on the other, concerning their respective rights and obligations. Specifically, Plaintiff contends that Best Buy's acts and practices relating to its anti-price matching policy are prohibited by statute as well as equitable doctrines, whereas Best Buy contends they are not.

124. Accordingly, Plaintiff seeks declaratory relief concerning the respective rights and obligations of the parties.

**FOURTH CAUSE OF ACTION**  
**(Unjust Enrichment)**

125. Plaintiff hereby incorporates by reference the allegations contained in all preceding paragraphs of this Complaint as though set forth fully herein.

126. Defendants were enriched by its deceptive acts.

127. The enrichment was at the expense of Plaintiff and the class.

128. The circumstances were such that equity and good conscience require Defendants to make restitution.

129. Defendants have failed to make restitution.

130. As a result, Plaintiff and the class have been damaged.

**FIFTH CAUSE OF ACTION**  
**(Injunctive Relief)**

131. Plaintiff hereby incorporates by reference the allegations contained in all preceding paragraphs of this Complaint as though set forth fully herein.

132. Defendants' conduct is improper and deceptive and has caused injury to Plaintiff and the class.

133. The grounds for an injunction are present therein, including the fact that Plaintiff and the class has a likelihood of success on the merits; irreparable harm will be done if the injunction is denied; the balance of the equities is in favor of granting the injunction and Plaintiff and the class have been injured by Defendants' action and will continue to be injured absent the requested injunctive relief.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, prays for a judgment against Defendants as follows:

1. For an order certifying the Class, appointing Plaintiff as representatives of the Class and appointing the law firms representing Plaintiff as counsel for the Class;
2. For compensatory damages sustained by Plaintiff and the class;
3. For compensatory damages and/or restitution or refund of all funds acquired by Defendants from Plaintiff and the class, and the general public as a result of Defendants' unlawful, unfair, fraudulent, deceptive and unconscionable practices described herein;
4. For punitive and all other damages available to the Class;
5. For payment of costs of suit herein incurred;

6. For both pre-and post-judgment interest on any amounts awarded;
  7. For payment of reasonable attorneys' fees and expert fees;
  8. For injunctive relief; and
  9. For such other and further relief as the Court may deem proper.
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**DEMAND FOR JURY TRIAL**

Plaintiff, individually and on behalf of all others similarly situated hereby demands a trial by jury on all claims so triable.

Dated: September 10, 2009  
Chestnut Ridge, New York

**KANTROWITZ, GOLDHAMER  
& GRAIFMAN, P.C.**

By: \_\_\_\_\_

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