UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

NAZ, LLC ***Plaintiff,*** **v.** **PHILIPS HEALTHCARE, A DIVISION OF PHILIPS ELECTRONICS NORTH AMERICA CORPORATION** ***Defendant.***	**CIVIL ACTION:** **JUDGE** **SECTION " "** **MAGISTRATE**

COMPLAINT FOR DAMAGES

Naz, LLC ("NAZ" or "Plaintiff") brings this action against Philips Healthcare, a Division of Philips Electronics North America Corporation ("Philips" or "Defendant"). Plaintiff's allegations are based upon personal knowledge and/or information and belief as to the acts of Philips.

I. Introduction

1. NAZ is the owner of a medical facility located at 2905/2909 Kingman Street in Metairie, Louisiana. The medical facility at 2909 Kingman Street was constructed to expand the existing medical center (2905 Kingman) with the addition of a state of the art neuroscience center and ambulatory surgery center (ASC). Critical to this expansion, the neuroscience center was to house an Ingenia 3.0T Omega MRI, manufactured and sold by Philips. Dr. Morteza Shamsnia, as a principal of NAZ, decided that a new, state of the art 3T MRI would provide better services to patients, would produce much higher quality MR images, would allow vast expansion of his research into subjects including but not limited to autism, dementia, Alzheimer's disease, concussions, post-traumatic stress disorder (PTSD) and determining the causes thereof; moreover, with the proper computer hardware and software equipment, it would

expand the number and geographical reach of services, and thus have the additional benefit of dramatically increasing the revenue and profit of NAZ. After extensive research and discussions with various manufacturers of 3T MRIs, including Philips, and relying on the written and verbal representations by Philips, Dr. Shamsnia, on behalf of NAZ, decided to purchase the Philips Ingenia 3.0T Omega MRI neurological complete package. The package he agreed to purchase was crafted to serve NAZ's and Dr. Shamsnia's particular purposes for use of the machine, a fact of which Philips was made aware.

2. Philips marketed its product with promises and representations that the MRI package was the equipment needed to achieve the particular purposes sought by Dr. Shamsnia on behalf of NAZ.

3. In December 2011, relying on these representations, as well as those regarding the high level of skill, expertise and knowledge possessed by Philips, its engineers and installation specialists, Dr. Shamsnia originally signed a "quote" document which set forth the price and components, package and services Philips promised to deliver. In doing so, Dr. Shamsnia, on behalf of NAZ, effectively made a counteroffer to Philips' "quote" or proposal by adding to the terms a *condition* that acceptance was contingent upon Philips providing financing for purchase of the MRI at 3.9%. Dr. Shamsnia made it well known to Philips that this particular financing arrangement was a cause central to his agreement to purchase the MRI package. The effective dates of this quote document were December 11 to December 30, 2011.

4. This quote document was never fully executed nor was there a "meeting of the minds" between the parties, as there remained issues and disputes regarding the terms of the sale; and thus, negotiations regarding the conditions and terms of the sale continued. Moreover and/or in the alternative, Philips tacitly or explicitly, and intentionally, misrepresented to Dr. Shamsnia

that it had the authority to offer financing terms that would meet his counteroffer. Only much later, on or about August 2016, when NAZ was placed in default by Philips Medical Capital ("PMC"), the financing arm of Philips, did Philips and/or PMC first make known to Dr. Shamsnia that Philips and PMC were wholly separate entities and that PMC had sole control over any financing arrangement pertaining to the sale. Prior to the default notice, Dr. Shamsnia was intentionally misled and/or deceived into believing Philips controlled the financing terms and/or its financing subsidiary, PMC, through coordinated actions of and/or joint communications with these allegedly separate entities during their efforts to coax a sale.

5. In May 2012, a financial sales representative of Philips sent another "quote" document to Dr. Shamsnia. This quote document had the effective dates of May 14, 2012 to June 28, 2012. While Dr. Shamsnia reiterated his approval of certain price and/or financing terms at that time, at Philips specific request, there was never any agreement reached on any other terms and conditions. In fact, the entire May 2012 quote was never even sent to Dr. Shamsnia by Philips. He again attached additional conditions of the sale in counter to this second quote or proposal. He noted and signed only that note that any agreement on the sale of the Ingenia 3.0T was conditioned upon Philips' confirming its authority to lock in the financing terms previously requested by Dr. Shamsnia and made subject of a financing arrangement with PMC, a subsidiary over which Dr. Shamsnia was led to believe Philips exercised control.

6. This May 2012 quote document, and the various terms and conditions, including the "Philips Standard Terms and Conditions of Sale" were never sent nor explained to Dr. Shamsnia, and he never agreed to bind NAZ or himself to these terms and conditions; and thus, there was no "meeting of the minds" regarding these terms and conditions. An authorized representative of Philips did not sign or execute any portion of this document. Thus, the

document with the effective date of June 28, 2012 was never finalized and never became effective or binding on NAZ.

7. Numerous communications and debates between the parties as to the terms and conditions of the sale, the financing for the sale, the services to be provided by Philips, instructions by Philips, and recommendations by Philips continued.

8. Because of the substantial delays caused by the back and forth communications and negotiations, however, Philips and NAZ agreed that Philips would deliver the Ingenia MRI package, and Dr. Shamsnia, on behalf of NAZ, agreed to follow the instructions and recommendations regarding installation and services that would be provided by Philips' experts, engineers and installation specialists.

9. Before the MRI package could be installed, the facility and room that was to house the MRI package had to be constructed and modeled according to Philips' experts' plans and specifications. Originally, the second floor of this facility, located at 2909 Kingman Street, Metairie, Louisiana, was intended to be the location where the MRI package was to be installed by Philips. After Philips' engineers visited the facility, they notified Dr. Shamsnia that due to movement of vehicles below in the medical facility's parking lot, the MRI package would have to be located on the third floor. Philips claimed at that time that it was vehicular movement that required the MRI package to be located on the third floor.

10. Despite having already expended significant costs to construct and model the second floor of the facility, based on previous representations by Philips' experts, significant additional costs were incurred by Plaintiff to reconstruct and model the third floor of the facility to house the MRI package.

11. After even further, detailed communications and meetings regarding the site plan, installation requirements and directions from Philips' experts, all of which were relied upon by Plaintiff, Philips' engineers and installation specialists installed the MRI package and its components on the third floor of the facility.

12. During weekly meetings attended by Philips' engineers and Dr. Shamsnia and his construction teams, the issue of vibration and sound isolation, as well as other issues, were discussed in detail. The main concern raised by the NAZ team was vibration and upon what type of support system the MRI unit would be founded. Philips' experts declared to NAZ that the redesigned, special pads for 3T MRI units would eliminate any of NAZ's concerns. To further eliminate NAZ's concerns and on NAZ's insistence to do so, Philips provided photographs of the special pads to NAZ. At no time during these weekly meetings did Philips mention and/or inform NAZ and/or Dr. Shamsnia of the existence of anti-seismic brackets. On many occasions, Philips' engineers reassured NAZ that the weight of the unit and these special, modified pads for the 3T MRI were adequate and safe to operate the MRI package and prevent its movement during the operation. Moreover, the Philips' engineers represented to NAZ and/or Dr. Shamsnia that these special pads would eliminate the possible spread of vibrations to the surrounding areas in the medical facility.

13. On December 22, 2014, the Philips' team released the MRI package to NAZ and indicated that it was safe for first patient use. Philips began to request monthly payments on the MRI Package since it was released for clinical use. At that time, due to mistaken belief that the MRI system was ready for use, Dr. Shamsnia, on behalf of NAZ, began making payments to Philips' financing arm, PMC.

14. In preparation of this release, NAZ had hired a board certified MRI technician. The technician was sent to Philips' headquarters in Cleveland, Ohio, to receive training on the 3T Philips MRI before January 5, 2015.

15. The MRI use on patients and volunteers commenced on January 5, 2015 and continued until January 9, 2015. Upon return of the technician on January 12, 2015, the technician noted improper signals during calibration as well as gaps and separations of the covers on the MRI unit. She immediately notified Philips' engineers of her discovery. On the afternoon of January 12, 2015, a Philips' engineer made a site visit and noticed these changes. When he opened the bottom cover of the MRI unit, it revealed a significant, clear shift and sliding of the vibration pads from their originally installed location. At this time, the MRI unit was inoperable and service was required on the unit to render it safe for operation. Thus, Plaintiff's employee placed a call to Randy McClain, the Philips' service engineer for the region. Mr. McClain recommended that Plaintiff place an "official service call" to Philips.

16. Philips agreed to provide this service to Plaintiff, and Plaintiff relied upon the expertise and skill of Philips to properly service and determine the cause of the MRI equipment problems. As such, Plaintiff tendered the MRI equipment back to Philips' engineering team for modifications and/or repairs in order to allow Philips the opportunity to correct the faulty condition of the product it sold to Plaintiff.

17. On January 13, 2015, several of Philips' senior engineers arrived at the site and discovered that the MRI had moved a number of inches from where Philips' engineers had originally installed it. At this time, Philips' engineers made a call to the New Orleans airport to inquire about the possibility of an "earthquake" as a reason for the MRI unit's movement. After inspecting the condition of the MRI, these engineers proclaimed that the MRI equipment might

explode and ordered the facility to be evacuated; they then proceeded to "quench" the MRI. Upon information and belief, this process of "quenching" had never been previously performed or observed by these engineers. This process required the de-energizing of the MRI, discharge of all of the helium gas in the MRI system, and release of the helium through a vent pipe on the roof.

18. At this point, the MRI equipment remained completely inoperable.

19. On the morning of January 15, 2015, one of Plaintiff's employees discovered that water from heavy rainfall the night before had entered through the roof, flooding the floors, walls and ceiling of the MRI room and the floors of surrounding rooms. It was later determined that the actions of the Philips' engineers caused an opening in the roof through which the water came into the facility.

20. As a result of Philips' and/or its engineers' actions, Plaintiff was then forced to incur additional substantial costs in the amount of approximately $850,000 to repair the damage to the facility caused by the actions of Philips' engineers.

21. Despite the high level of expertise that Philips marketed and represented to Plaintiff, Philips' engineers and specialists asserted they could not advise Plaintiff of the cause of the problems encountered during operation of the MRI. After many months of communications regarding the proper solution and repair of the MRI equipment, and because of the apparent inability of Philips' experts to determine how to fix these problems, Plaintiff was thus compelled to seek out his own experts at his own expense to determine what caused these problems. It was eventually determined by Plaintiff's own experts, rather than the experts upon whom Plaintiff had relied as most knowledgeable about Philips' own equipment, specifications, and installation, that the cause of these problems was the movement of the MRI magnet in normal operation. It

was further determined by Plaintiff's experts that the support system for the MRI equipment was woefully inadequate and that this improper support system was what allowed the magnet to move during operation.

22. After being notified of the analysis and determination of Plaintiff's experts, Philips, for the first time, admitted that the support system it had specified and represented as suitable and safe, was, in fact, not suitable or safe. At that point, Philips further admitted that the support system that it had recommended and installed for other consumers should have been recommended and installed for Plaintiff's MRI package at this location.

23. But for Plaintiff's expending the additional time and costs in determining the cause and solution to these problems, Philips would not have disclosed the true cause of these problems or defects in the support system it installed. This failure on the part of Philips caused Plaintiff to incur further costs to obtain and install additional equipment and repair the problems Philips had caused. This remedial work was, by agreement of the parties, entirely subject to the oversight, direction, control and approval of Philips' engineers and done according to specifications for the modifications prepared by them.

24. As a result of this complex and lengthy process, and the continued required inspections, troubleshooting, repairs, reinstallation and testing necessary before the MRI equipment could be activated safely and operated as it was intended to operate for Plaintiff's intended purposes, the MRI equipment was not re-activated until after April 2016.

25. Additional modifications to the door and the room in which the MRI equipment was housed, as well as additional testing, inspection and resolving of a myriad of other issues, had to be completed before the MRI could be fully engaged for clinical use.

26. As a result, it took several more months of modifying specifications, testing and inspection after April 2016 before the MRI equipment could be used for any purpose. To this date, the MRI equipment has never been recertified for clinical use by Philips.

27. Sometime after April 2016, Plaintiff further discovered that the computer software and hardware package component that should have been installed with the MRI equipment had, in fact, not been installed.

28. This computer software and hardware package was a necessary component of the MRI package which Plaintiff purchased. The promised software and hardware package was a cause central to Plaintiff's agreement to purchase the MRI equipment from Philips at the particular price agreed between the parties because it was critical to Plaintiff's ability to expand the number and geographical reach of services Plaintiff could offer. This computer component has not been delivered as of this date; and thus, Philips has failed to deliver the MRI package which Plaintiff had purchased.

29. Further, because of Philips' failure to properly install and configure the MRI equipment and because of further structural alterations to the building necessitated by Philips' actions, an application to the appropriate governmental agency for approval of the ambulatory surgery center cannot be initiated by Plaintiff to this date.

II. Parties

30. Plaintiff, Naz, LLC, is a limited liability company registered in Louisiana with its principal place of business in Metairie, Louisiana.

31. Defendant, Philips Healthcare, a Division of Philips Electronics North America Corporation, is a Delaware corporation that maintains its principal place of business in Andover, Maryland. Philips designs, manufacturers, tests, markets, sells, installs and services medical and diagnostic equipment, including the Ingenia 3.0T Omega throughout the United States. Philips also has offices and employees located in Louisiana and engages in a continuous course of business in Louisiana from which it derives substantial benefit. Louisiana has a significant relationship to the allegations and events alleged herein.

III. Jurisdiction and Venue

32. This Court has original jurisdiction pursuant to 28 USC § 1332(1) because Plaintiff and Defendant are citizens of different states, and the jurisdictional amount pursuant to 28 USC § 1332(b) is met in that the amount in controversy exceeds $75,000.00.

33. This Court has personal jurisdiction over Defendant because it is registered to conduct business in Louisiana, has sufficient minimum contacts in Louisiana, and otherwise intentionally avails itself of the markets within Louisiana through promotion, sales, marketing, distribution, installation, and services of its products, including the product at issue, such that exercise of jurisdiction by this Court is proper and necessary.

34. Venue is proper in this District under 28 USC § 1391 because Defendant conducts substantial business within the jurisdictional reach of this District, and a substantial part of the events giving rise to Plaintiff's claims occurred within the jurisdictional reach of this District.

IV. Factual Allegations

35. The factual allegations set forth in the introduction and in paragraphs 1 through 28 are incorporated and copied herein, *in extenso*.

36. During the relevant period, Defendant marketed and represented to Plaintiff its high level of expertise in manufacturing, research and development, testing, installation, and servicing of MRI equipment, upon which Plaintiff relied in its purchase of the Philips Ingenia 3.0T Omega MRI neurological complete package. Plaintiff and Defendant thus agreed that Defendant would continue its involvement and uphold its promises to fully and properly specify, direct, instruct, install and service the construction, maintenance, and repairs needed to achieve the particular purposes which Plaintiff intended as well as the general intended purpose(s) of a 3.0T MRI machine.

37. Several different agreements for installation, reinstallation and services in connection with the clinical use of the MRI equipment were negotiated and/or entered into between Defendant and Plaintiff. However, the "Philips Standard Terms and Conditions" were never executed by an authorized representative of either Defendant or Plaintiff, and thus, there was never a "meeting of minds."

38. Defendant persistently represented to Plaintiff its expertise in the manufacturing of this MRI equipment and its associated components, and that the equipment would work properly, was designed properly, was installed properly and was without any defects or inadequate skill and workmanship necessary to achieve Plaintiff's intended purposes.

39. One of the necessary components of the MRI package that Defendant represented and installed was the support system, which was essential for the MRI equipment to remain in a stable position and prevent movement of the MRI equipment. The support system was

specifically and specially engineered by Defendant for safe and proper use of the MRI equipment.

40. One of the necessary conditions and qualifications for the sale, installation and servicing of the MRI equipment was that it was installed properly and the specifications and requirements for this complex, extremely heavy and potentially dangerous equipment to remain stationary during normal operation were met.

41. Defendant was obligated to and responsible for properly installing the equipment, including installation of the proper support system to prevent movement.

42. Defendant's obligations included its duty to provide its superior professional and/or expert knowledge, skill and experience which Plaintiff relied upon to its detriment.

43. In December 2014, Defendant's experts represented to Plaintiff that the MRI equipment was properly installed, was fully operational, and could be operated safely and properly for clinical and patient use and for its intended purposes.

44. Defendant breached its duties, obligations and agreements with Plaintiff.

45. The MRI package and associated equipment and components were inadequate and defective; and, in particular, the support system Defendant designed, recommended and installed caused the approximately **4,600 kilogram (10,000+ pound magnet)** to move while the MRI was in operation. Defendant and its experts were aware of the potential defect and the inadequacy of this support system but failed to advise or admit to Plaintiff the problems and/or potential problems associated therewith until after Plaintiff was forced to retain his own experts to determine the cause of the problem.

46. Plaintiff was unaware of these defects and problems and tendered the MRI equipment back to Defendant for the determination of the cause of these problems, the repair of these defects, and the reinstallation of the MRI equipment.

47. Given the continuing repair, modification, reinstallation, and redelivery of the MRI equipment and the many variables involved with this complex equipment, Plaintiff could not reasonably determine whether this MRI package would operate safely and properly for its intended purposed until sometime after April 2016.

48. Given these circumstances, Plaintiff did not determine that the computer software and hardware component of the MRI package had never been delivered or installed until sometime after April 2016; that component was essential for Plaintiff's intended purposes.

49. Plaintiff did not become aware of the misrepresentations made by Defendant until sometime after April 2016.

50. In order for Plaintiff to operate the MRI equipment for clinical use, Philips required Plaintiff to complete advance training which did not occur until after May 2016.

51. Certification for clinic use of the MRI equipment by the American College of Radiology was not obtained until August 2016.

52. Also due to the continuous repair, modification, reinstallation, and redelivery of the MRI equipment and the inability to determine the final configuration and set-up thereof until sometime after April 2016, Plaintiff has been unable to complete construction, installation and the process of obtaining permit(s) for the operation of ambulatory surgery centers in the facility, resulting in loss of use and profits.

V. *Contra Non Valentem*, Tolling and Estoppel of Prescriptive Period

53. In the alternative, and for causes of actions that have a prescriptive period of one year, because the defects alleged herein were hidden, and Defendant either took steps to conceal or purposefully failed to disclose the true character, nature and quality of the MRI package and components, Plaintiff did not discover and could not have discovered the defects in the MRI package and components through reasonable and diligent investigation.

54. Due to Defendant's superior knowledge and misrepresentations and/or concealment, as well as Defendant's continued involvement in and control over the service, testing, inspection and installation, any applicable prescriptive period was tolled until such service, installation, modifications, inspection and testing were completed.

55. Because Plaintiff tendered back the MRI equipment to Defendant for its repair, reinstallation, redelivery, and continued maintenance, inspection and testing, and the reasonable determination of whether any and all defects or problems were corrected, which did not take place until well after April 2016; and further because of the continuing communications with Defendant's sales team, engineers, and specialists to arrive and determine the proper installation, MRI room configuration and specifications to allow the MRI equipment to be acceptable and proper for the use for which it was intended, the MRI equipment was not acceptable and fit for its intended use until well after April 2016.

56. Additionally, Defendant is estopped from raising any defense of prescription due to its own unclean hands as alleged herein.

First Cause of Action- Gross Fault

57. Plaintiff re-alleges and incorporates the preceding paragraphs as if fully set forth herein, *in extenso*.

58. As a manufacturer of highly complex, medical diagnostic equipment, and by marketing itself and representing to Plaintiff that it had superior knowledge, expertise and skill, and because Plaintiff was required to accept and follow the specifications, building plans, and installment of the Ingenia 3.0T Omega MRI recommended by Defendant, Defendant is or should be held to a heightened standard of duty and care from which Defendant grossly deviated in the following respects:

a. Defendant failed to perform the necessary research and testing of its design and installation practices; and/or its research and testing as to the potential problems, defects, and danger(s) that could be caused by the vibrations and oscillation of the MRI equipment, including the support system it installed, was grossly inadequate;

b. Defendant's design and installation created a dangerous event caused by the movement of the MRI magnet, which it asserts could have caused an explosion;

c. Defendant was aware that it had used and/or designed a different support system, but instead recommended and installed a grossly substandard support system;

d. Defendant's analysis and investigation into the cause of the movement of the MRI equipment, given its claimed superior knowledge and experience of the potential danger should this equipment move, was grossly substandard;

e. Defendant's inability to recognize or recommend a proper support system for its MRI, and/or the fact that Defendant instead waited until Plaintiff was forced to hire its own experts to determine the cause and recommend a valid support system constitutes gross negligence and/or fault;

f. Defendant's inability to more quickly determine the proper configuration of the room that would be housing the MRI equipment and its unnecessary delay in doing so further constitutes gross negligence;

g. Defendant improperly led Plaintiff to believe that vehicular movement, rather than the support system, would impede proper functioning of the MRI equipment. Defendant's directive to Plaintiff that the placement of the MRI equipment on the third floor rather than the second floor would prevent movement of the MRI equipment was made pursuant to grossly inadequate evaluation and testing. This gross negligence caused plaintiff to incur additional expense to buildout, construct and modify the third floor, which not only delayed the use of the MRI but was a gross waste of time and expense.

h. In the alternative, even if each of the separate actions alleged above do not individually rise to the level of gross fault, the cumulative nature of these actions constitutes gross fault on the part of Defendant.

Second Cause of Action – Breaches of Contracts and/or Agreements

59. Plaintiff realleges and incorporates the preceding paragraphs as if fully set forth herein, *in extenso*.

A. Louisiana Civil Code Article 2524

60. Because Plaintiff relied on Defendant's professional and/or particular skill and expertise related to the manufacturing, installation, selection of specifications, materials, equipment and components, Defendant breached its obligation to provide a complete system that would fit Plaintiff's intended use for particular purposes of which Defendant was aware.

B. Louisiana Civil Code Article 1997 – Bad Faith Breach Contract

61. Defendant was in bad faith in performing all of the obligations it owed to Plaintiff. Moreover and/or in the alternative, Defendant's material breach(es) of the terms of a contract it may now claim is binding upon Plaintiff, intentional or otherwise, prevent(s) Philips from attempting to enforce its terms.

62. Plaintiff realleges and incorporates the preceding paragraphs as if fully set forth herein, *in extenso*.

C. Louisiana Civil Code Article 2520, *et seq.* – Bad Faith Seller in Redhibition

63. Defendant knew that the MRI package, components and specifications were deficient and declared these items had a quality or qualities Defendant knew they did not have.

i. As a manufacturer, Defendant is presumed to know of any of redhibitory defect, and thus is presumed to be a bad faith seller.

ii. Plaintiff would not have purchased the MRI package nor agreed to allow Defendant to direct and perform the specification and installation and reinstallation and configuration of the MRI package system had Plaintiff been made aware of the redhibitory defect(s) latent therein.

iii. Had Defendant recommended, provided, and installed the modified anti-seismic support system instead of the inadequate support system it supplied and installed, Plaintiff would have been able to operate the MRI for its intended purposes years earlier, and thus suffered further damages and loss profits.

iv. Defendant is in further bad faith for not testing and researching the potential defects and deficiencies in the support system that Defendant recommended and installed and failed to admit these deficiencies much sooner. Defendant failed to admit these

defects but has now recommended the use of the non-defective support system to other Ingenia 3.0T Omega MRI purchasers.

v. Under Louisiana Civil Code Article 2548, due to Defendant's bad faith and its declaration that the MRI package had a quality that Defendant knew it did not have, any exclusion or limitations of warranty that Defendant may assert are ineffective, and Plaintiff is not bound by any such limitations or exclusions. Additionally, Defendant failed to clearly and unambiguously bring any such exclusion or limitations to the attention of Plaintiff and further failed to explain any such exclusion or limitations to Plaintiff.

64. Plaintiff realleges and incorporates the preceding paragraphs as if fully set forth herein, *in extenso*.

D. Louisiana Civil Code Article 2485 – Failure to Make Timely Delivery

65. To this date, Defendant has not delivered or installed the entire MRI package sold to Plaintiff. The MRI package purchased by Plaintiff included the computer software and hardware marketed and represented to be included.

i. The failure of delivery of the computer system has resulted in Plaintiff being unable to market its services to an expanded number of patients, a broader geographic location and additional medical care providers, thus causing damages and lost profits.

ii. Defendant's delivery of the MRI package was delayed by Defendant's failure to provide adequate advice, instruction, specification and installation with the proper components, including the support system which caused a delay of several years until the MRI could be used for its intended purposes, resulting in further damages and lost profit.

66. Plaintiff re-alleges and incorporates the preceding paragraphs as if fully set forth herein.

E. Breach of Installation and Service Agreements

67. Defendant represented to Plaintiff that it had the special, superior and/or professional skill to properly direct and instruct Plaintiff as to the location where the MRI should be placed, the configuration of that room, and the equipment and components that would result in the safe and proper operation of the MRI for the purposes for which Plaintiff intended.

i. Plaintiff and Defendant agreed that Defendant would uphold the obligation to properly install and service the MRI package safely and with the necessary skill and expertise required to perform those obligations. Defendant grossly failed to perform those obligations with the necessary skill and expertise required to do so.

ii. Defendant's failure to perform these obligations to the standards it was required to uphold was a breach of these agreements, which breach resulted in damages and lost profits to Plaintiff.

iii. In January 2015, the parties entered into an additional agreement whereby Defendant would investigate, determine, correct and reinstall the MRI package to repair the defect, including to prevent movement of the MRI magnet. Plaintiff relied on Defendant's skill and expertise to perform these obligations.

iv. In performing these obligations, Defendant's fault and/or gross fault caused water to enter into the building and caused damages and further delay in preparing the MRI for operation in accordance with its intended purposes, resulting in further damages and lost profits to Plaintiff.

v. Defendant further failed to fulfill its obligations as a skilled expert to determine the source of the defect and problems, and complete the necessary reinstallation to allow Plaintiff to operate the MRI for its intended purposes. Defendant breached its obligation to

provide personnel capable of installing the MRI equipment and capable of diagnosing and correcting the defects and problems associated with the MRI equipment. Defendant's failure to fulfill these obligations resulted in Plaintiff's inability to reactivate the MRI until April 2016; and, but for Plaintiff being forced to hire its own experts at its own expense, the MRI package would have been inoperable for a much longer period of time.

68. Plaintiff re-alleges and incorporates the preceding paragraphs as if fully set forth herein, *in extenso*.

Damages

69. As a direct and proximate consequence of the actions, misrepresentations, fault and/or gross fault of Philips set forth above, Plaintiff has suffered damages in the following non-exclusive particulars:

i. The purchase price and expenses occasioned by the sale;

ii. Loss of business with respect to use of the MRI package;

iii. Loss of business with respect to use of Plaintiff's ambulatory surgery center;

iv. Loss of profits with respect to use of the MRI package;

v. Loss of profits with respect to use of Plaintiff's ambulatory surgery center;

vi. Loss of goodwill;

vii. Costs and/or expenses incurred in relation to damages to the facility caused by the quenching of the MRI;

viii. Loss of intellectual gratification and/or physical enjoyment of the MRI and ambulatory surgery center;

ix. Inconvenience;

x. Financing costs and/or interest paid;

xi. Costs incurred to mitigate damages and/or costs associated with repairs to and testing of the MRI and MRI room;

xii. Costs incurred to preserve the MRI and related equipment;

xiii. Depreciation;

xiv. Overhead costs and expenses;

xv. In the event of rescission, return of the purchase price with interest from the time of the sale and all expenses incurred as a result of the sale;

xvi. Attorney's fees and litigation costs;

xvii. Any and all penalties, punitive or exemplary damages, fines, fees, including but not limited to treble damages, afforded under Louisiana law;

xviii. Any and all further damages which may be determined through ongoing discovery or may become apparent after the filing of this Complaint, Plaintiff reserving all rights to supplement and/or amend this Complaint in the event of same.

Prayer for Relief

WHEREFORE, Plaintiff, Naz, LLC, prays that Defendant, Philips Healthcare, a Division of Philips Electronics North America Corporation, be duly cited to appear and answer the instant Complaint and that, after all legal delays and due proceedings have been had, there be judgment herein in favor of Plaintiff and against Defendant ordering Defendant to pay unto Plaintiff a monetary sum reasonable and adequate in the premises, together with costs of court and legal interest thereon from date of demand until paid, and for all other general, equitable and/or punitive or exemplary damages and/or relief as this Court deems just and proper in the premises.

Respectfully submitted:

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