



Court File No. **VLC-S-S-255001**

NO.
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:



PLAINTIFF

AND:

APPLE INC. and
APPLE CANADA INC.

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c.50

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff(s) for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

TIME FOR RESPONSE TO CIVIL CLAIM

A response to civil claim must be filed and served on the plaintiff(s),

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF(S)

Part 1: STATEMENT OF FACTS

A. Nature of Action

1. The within proposed consumer product multi-jurisdictional class proceeding involves AirPods Max over-the-ear wireless headphones (“**AirPods Max**”) designed, manufactured, tested, assembled, advertised, marketed, distributed, sold and/or warranted by the Defendants, Apple Inc. and Apple Canada Inc., in Canada, including the Province of British Columbia. In particular, the AirPods Max suffer from a latent defect in design, materials and/or workmanship whereby condensation accumulates in the ear cups of the headphones after minimal use that seeps into the drivers of the headphones through the speaker holes causing functionality, performance, connectivity, audio sound control and battery life problems significantly affecting the usability of the headphones and the overall user experience and resulting in damage and/or degradation of the headphones (the “**Condensation Defect**”).

B. Defined Terms

2. The following definitions apply for the purposes of this Notice of Civil Claim:

- (a) “**Active Noise Cancellation (“ANC”)**” is a feature of the AirPods Max that uses an external microphone to pipe-in anti-noise so as eliminate or block outside noise or sounds;
- (b) “**Adaptive EQ**” is a feature of the AirPods Max that continually adjusts and tailors the audio to the unique shape of a user’s ears. It measures the sound signal, changing the low and mid frequencies in real time;
- (c) “**AirPods**” are wireless headphone pods inserted in the ear designed, manufactured, tested, assembled, advertised, marketed, distributed, sold and warranted by Apple;
- (d) “**AirPods Max**” means over-the-ear wireless headphones designed, manufactured tested, assembled, advertised, market, distributed, sold and warranted by the Defendants, Apple Inc. and Apple Canada Inc., which are made out of aluminum and stainless steel, and equipped with a H1 processor chip;
- (e) “**Apple**” collectively means the Defendants, Apple Inc. and Apple Canada Inc.;
- (f) “**Class**” or “**Class Members**” means all residents of Canada who purchased and/or owned one or more AirPods Max between December 8, 2020 to the date of certification of the within action, and their estates, administrators, or other legal representatives, heirs and/or beneficiaries;
- (g) “**Digital Crown**” is a physical dial located on the right ear cup of the AirPods Max, which enables user interaction by: (i) allowing the adjustment of volume through rotational movement; and (ii) permitting various control functions—such as play/pause, track skipping, call management, and activation of Siri, Apple Inc.’s speech interpretation and recognition interface—through inward pressing;

- (h) “**Smart Case**” is a storage case for the AirPods Max that places the headphones into a low-power sleep state to conserve the battery;
- (i) “**Spatial Audio**” is a feature of the AirPods Max that tracks movement of the user’s head and mimics movie theater immersive surround sound listening experience; and
- (j) “**Transparency Mode**” means a feature of the AirPods Max that allows users to listen to outside ambient sounds while also listening to audio.

C. Introduction

3. Apple is one of the most recognizable technology companies in the world. It has built a loyal customer base by marketing itself as a revolutionary personal technology company that “leads the world in innovation with iPhone, iPad, Mac, Apple Watch, and Apple TV. Apple’s five software operating platforms — iOS, iPadOS, macOS, watchOS, and tvOS — provide seamless experiences across all Apple devices and empower users with breakthrough services including the App Store, Apple Music, Apple Pay, and iCloud.” Apple users pay premium prices because they expect premium products that seamlessly work together.
4. As part of its suite of premium, high-performance products and services, Apple touts that the AirPods Max “join the existing AirPods family in delivering unparalleled wireless audio, whether a customer is listening to music, making phone calls, enjoying TV shows and movies, playing games, or interacting with Siri.” Specifically, Apple boasts that the AirPods Max are “innovative wireless headphones that bring the magic of AirPods to an over-ear design with high-fidelity sound” to deliver a “breakthrough listening experience[.]”
5. However, the AirPods Max suffer from a latent defect in design, materials and/or workmanship whereby condensation accumulates in the ear cups of the headphones after minimal use, which liquid or moisture seeps into the drivers of the headphones through the speaker holes causing functionality, performance, connectivity, audio sound control

and battery life problems significantly affecting the usability of the AirPods Max and the overall user experience and resulting in damage and/or degradation of the headphones. In particular, the Condensation Defect causes Class Members to experience performance problems such as, *inter alia*, degraded or no audio sound in one or both of the ear cups, failure to detect the user's ears, failure of the ANC function, static while in Transparency Mode, an unresponsive Digital Crown, failure to go into sleep mode when placed in the Smart Case and/or battery charging issues.

6. As Apple began developing the AirPods Max for retail sales as early as 2018, Apple knew, or ought to have known, of the Condensation Defect long before Class Members began purchasing them in or around December 2020. Yet Apple sold, and continues to sell, the AirPods Max without disclosing or warning Class Members and consumers about the Condensation Defect and its associated functionality, performance, connectivity, audio sound control and battery charging problems.
7. Despite an avalanche of complaints by Class Members, Apple has not publicly acknowledged the Condensation Defect. Instead, when AirPods Max owners request—within the one-year warranty period—that Apple remedy, fix and/or address the Condensation Defect and resultant damage at no expense, Apple fails and/or refuses to do so.
8. The Condensation Defect existed in each AirPods Max at the point of sale.
9. Reasonable consumers expect that high-end, premium-priced wireless headphones will not repeatedly become wet with condensation, which will ultimately damage and/or degrade the AirPods Max, after minimal use and/or as the result of normal and intended ordinary use. Reasonable consumers, including the Plaintiff and Class Members, would not have purchased the AirPods Max had they known of the Condensation Defect, which Apple concealed and failed to disclose.
10. As a result of Apple's unfair, deceptive, and/or unlawful business practices, purchasers of the AirPods Max, including the Plaintiff and Class Members, have suffered an ascertainable loss of money, property and/or value. The Plaintiff and Class Members

were also deprived of the benefit of their bargain in that they bought defective AirPods Max that are not worth the price that they paid.

D. The Parties

i. The Representative Plaintiff

11. The Plaintiff, [REDACTED] has an address for service c/o 210-4603 Kingsway, Burnaby, British Columbia, V5H 4M4, Canada.
12. In or about February 2023, the Plaintiff purchased AirPods Max from an Apple Store for \$779 CAD plus applicable taxes. The Plaintiff relied on Apple's pervasive marketing campaign and believed that his AirPods Max would contain the qualities, capabilities and features that Apple repeatedly touted as part of its advertising.
13. In deciding to make the purchase, the Plaintiff viewed and relied on Apple's advertising and marketing, including Apple's representations, leading the Plaintiff to believe that the AirPods Max were premium, high quality, luxury headphones that provided superior and continuous audio sound control. The Plaintiff relied on this when deciding to purchase the AirPods Max.
14. At the time of purchase, the Plaintiff did not know Apple's representations were false i.e., that the AirPods Max suffered from the Condensation Defect causing functionality, performance, connectivity and sound control and battery life problems significantly affecting the usability of the headphones and the overall user experience and resulting in damage and/or degradation of the headphones.
15. The Plaintiff did not notice any disclaimer, qualifier, or other explanatory statement or information on the AirPods Max in the advertising and marketing, which contradicted Apple's representations or otherwise suggested that the AirPods Max would not have the advertised capabilities.
16. As a result of the Condensation Defect, the Plaintiff experienced some or all of the

following problems with respect to his AirPods Max after minimal use: (1) degraded or no audio sound in one or both of the ear cups; (2) failure of the ear detection feature; (3) failure of the ANC function; (4) static while in Transparency Mode; (4) an unresponsive Digital Crown; (5) failure to go into sleep mode when placed in the Smart Case; (6) overheating; and (7) battery charging issues.

17. The Plaintiff would not have purchased the AirPods Max, or would not have paid as much for them, had Apple not made the false and misleading representations and had disclosed the Condensation Defect.

ii. The Defendants

18. The Defendant, Apple Inc., is a company duly incorporated pursuant to the laws of the State of California, one of the United States of America, and has a registered agent, CT Corporation System, at 330 N. Brand Blvd., Glendale, California, 90017, United States of America.
19. The Defendant, Apple Inc., is an American multinational technology company that designs, develops, manufacturers, markets, supplies, distributes and/or sells consumer electronics, computer software and online services, including products such as its AirPods Max worldwide, including Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
20. The Defendant, Apple Canada Inc., is a company duly incorporated pursuant to the laws of Province of Ontario, registered within the Province of British Columbia under number A0024040, and has an attorney, Blakes Vancouver Services Inc., at 1133 Melville Street, Suite 3500, Vancouver, British Columbia, V6E 4E5, Canada.
21. At all material times to the cause of action herein, the Defendant, Apple Canada Inc., was and is a wholly owned subsidiary, affiliate and/or operating unit of the Defendant, Apple Inc., and was, and is, inextricably involved in the design, development, manufacture, assembly, testing, marketing, supply, distribution and/or sale of the AirPods Max in Canada, including the Province of British Columbia, either directly or indirectly through

the control of its predecessors, affiliates and/or subsidiaries.

22. The business of each of the Defendants, Apple Inc. and Apple Canada Inc., (hereinafter collectively referred to as “**Apple**” or the “**Defendant, Apple**”) is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the design, development, manufacture, assembly, testing, marketing, supply, distribution and/or sale of the AirPods Max in Canada, including the Province of British Columbia, and for the purpose of the conduct herein described.

E. The Class and the Class Period

23. This action is brought on behalf of members of a class consisting of the Plaintiff and all individuals resident in Canada who purchased, own and/or owned Apple AirPods Max headphones between December 8, 2020 and the date of certification of the action (“**Class Period**”) and their estates, administrators or other legal representatives, heirs or beneficiaries (“**Class or Class Members**”), excluding employees, officers, directors, agents of the Defendants and their family members, class counsel, presiding judges and any other person who has commenced an individual proceeding against or delivered a release to the Defendants concerning the subject of this proceeding, or such other class definition or class period as the Court may ultimately decide on the application for certification.

F. Factual Allegations

i. Overview and development of the AirPods Max

24. The high-end earphones and headphones market—particularly in the wireless technology segment—has been and is continuing to expand in recent years. The global earphone and headphone market is slated to exceed a valuation of \$150 billion USD by the end of 2026.
25. AirPods Max is Apple’s first proprietary headphone product to feature wireless capabilities in an over-the-ear—as opposed to AirPods that are inserted in the ear—design. Apple introduced the AirPods Max for pre-order on December 8, 2020, with

availability beginning on December 15, 2020.

26. Apple markets, distributes and sells the AirPods Max throughout North America. It sells the AirPods Max through its own retail stores and third-party retail stores such as Best Buy and Amazon, both in brick-and-mortar stores and online. Apple sells the AirPods Max in Canada for \$779 CAD; the most expensive headphones sold on its website and/or retail stores. Apple began developing the AirPods Max and originally planned to release it to the public as early as 2018. However, numerous delays caused production and release to be postponed until December 2020.
27. Prior to Apple's release of AirPods Max in December 2020, the only wireless, over-the-ear headphone sold by Apple were "Beats" headphones, from Beats Electronics, LLC, an American consumer audio products manufacturer known as "Beats by Dr. Dre", which company Apple acquired in May 2014.
28. Apple built an aggressive marketing campaign to push consumers to purchase the AirPods Max, which are prominently featured on Apple's website.
29. Shortly before the AirPods Max release, Apple began offering "rare" discounts on Beats products, and in October 2020, Apple stopped offering them for sale, pulling the webpages for Beats headphones and the products themselves from Apple's website and retail stores.
30. In 2016, Apple removed the headphone jack from its lineup of iPhone smartphone devices starting with the iPhone 7 model series, leaving only its proprietary "Lightning" charging port to connect any wired accessories. As a result thereof, consumers were forced to either buy wireless headphones such as the AirPods Max or purchase a lightning to 3.5mm headphone jack adapter from Apple to be able to use any wired headphone with its iPhones. Apple knew, or ought to have known, that by forcing consumers to buy wireless headphones, consumers would opt to buy Apple's AirPods Max as it offers a more seamless experience and integration with all Apple devices, including the iPhone, and form part of the interconnected network of Apple devices, colloquially referred to as the "Apple ecosystem".

ii. Apple's knowledge of the Condensation Defect and the representations made by Apple regarding the AirPods Max

31. At or around the time of the release of the AirPods Max, Apple's website landing page for the AirPods Max greeted the consumer with, "Introducing AirPods Max — a perfect balance of exhilarating high-fidelity audio and the effortless magic of AirPods. The ultimate personal listening experience is here."
32. Apple has touted the AirPods Max's premium technological features as to ANC, Adaptive EQ, Spatial Audio and Transparency Mode. For instance, Apple states the following:

"Spatial audio with dynamic head tracking gives you a theater-like experience for movies and shows, with sound that surrounds you. Using built-in gyroscopes and accelerometers, AirPods Max and your iPhone or iPad track the subtle motion of your head, anchoring sounds to your device."
33. Apple also promises "20 hours of listening, movie watching, or talk time — with Active Noise Cancellation and spatial audio enabled. Simply charge via Lightning connector. A quick 5-minute charge delivers 1.5 hours of listening."
34. Notably, on its website with care instructions for AirPods Max, Apple notes that "AirPods Max, and Smart Case aren't waterproof or water resistant, so be careful not to get moisture in any openings[,]” repeating the exhortation to “[a]void getting moisture in any openings[,]” and “[m]ake sure not to get any liquid in the openings” multiple times.
35. However, consumers have complained in online forums and Apple's own community boards that condensation forms in the ear cups of their AirPods Max, causing liquid or moisture to seep into the drivers of the AirPods Max.
36. Class Members have complained on consumer online forums that they have experienced performance or connectivity issues following condensation gathering in the ear cups of the AirPods Max such as, *inter alia*, failure of the ANC to work, the ANC button randomly turning off and on, ear detection issues, no auditory sounds, static while in

Transparency Mode, an unresponsive Digital Crown, failure to go into sleep mode when placed in the Smart Case, unable to connect to device and battery charging problems,.

37. In a January 2, 2021 article entitled “AirPods Max Users Report Worrying ‘Condensation’ Problems,” published by Forbes Media, a leading business and media publishing company, the author noted the following as to the Condensation Defect in the AirPods Max:

“Not only did Apple (controversially) decide not to make the AirPods Max water resistant, it appears the company’s decision to make the earcups out of aluminum is the cause of the problem. Aluminum stands out, but it is a poor insulator which -as users have pointed out-likely creates the condensation problem due to heat buildup from wearing the (also heavy) AirPods Max over time. If this owner theory is correct, there’s no easy way to fix it. Which may also explain why almost all rivals use plastic.”

38. The Forbes Media article also reported that Apple refuses to acknowledge the Condensation Defect and instead requires the customer to pay out-of-pocket for repairs due to the Condensation Defect, quoting a customer who stated:

“I chatted with Apple about the coverage and they also said it’s a \$29 repair on top of the \$59 purchase of the AppleCare. That’s \$680 with tax where I’m at, for headphones and coverage. She told me to just make sure to wipe them down after every use. And I’m just like - I can get the moisture out of the inside part of the muffs area, but not in the drivers area AT ALL. And that’s what worries me. Might just return them and wait for [the] second gen.”

39. In other words, Apple blames the customer for allowing the AirPods Max to retain moisture, when in fact Apple’s own design, materials and/or workmanship defect causes the damaging moisture through unavoidable condensation buildup. Further, Apple requires customers to pay to repair the AirPods Max that they have only owned for a short period of time.
40. The experiences of Class Members and consumers demonstrate that the Condensation Defect causes the AirPods Max to fail to perform as advertised and/or generate condensation that, according to Apple’s own care instructions—keeping the product

openings free of moisture or liquid, is contrary to the use for which they were intended.

41. For example, Class Members are unable to use their AirPods Max to enjoy “exhilarating high-fidelity audio and the effortless magic of AirPods” or the supposed “[s]patial audio with dynamic head tracking [giving them] a theater-like experience for movies and shows, with sound that surrounds [them.]” Rather than being able to have their “AirPods Max and iPhone or iPad track the subtle motion of [their] head[s],” the AirPods Max of Class Members switch between connecting with their Apple laptops and their iPhones and exhibit pauses in connectivity or sound quality with minor/slight head movements due to the Condensation Defect. Class Members also report that their AirPods Max fail to connect to their wireless networks unless they reset the headphones with increasing frequency as the condensation worsens.
42. Apple also promises “20 hours of listening, movie watching, or talk time — with Active Noise Cancellation and spatial audio enabled. Simply charge via Lightning connector. A quick 5-minute charge delivers 1.5 hours of listening.”
43. The AirPods Max headphones do not conform to the contract description or the standard for a high-end, luxury product priced hundreds of dollars higher than other wireless over-the-head headphones. Comparable headphones from Bose and Sony cost about \$600, which is at least \$179 less than the AirPods Max retail price of \$779. All other wireless over-the-head headphones sold by Apple range from \$199.95 to \$399.95.
44. Apple knew, or ought to have known, from its own internal records, and from the complaints on its website and third-party forums, and through customer complaints directly to Apple’s representatives, of the Condensation Defect.
45. Further, Apple through its own records of customers’ complaints, Apple Store repair records, warranty and post-warranty claims, and complaints online, on its own community boards, in news articles, and on third-party websites, was well-aware of the Condensation Defect but failed to disclose or notify consumers of the nature and extent of the functionality, performance, connectivity, audio sound control and/or battery charging problems with the AirPods Max or provide any adequate remedy and/or fix. In addition

to the above sources, Apple was aware of the Condensation Defect through its own pre-release research, development, and testing.

46. For example, Apple's AirPods Max product page touts the battery life of 20 hours of listening—or 1.5 hours of listening after a “quick 5-minute charge”—based on “Testing conducted by Apple in November 2020 using preproduction AirPods Max and software paired with iPhone 12 Pro Max units and prerelease software.”
47. Additionally, on Apple's webpage offering “information about getting a good fit and potential skin sensitivities” regarding its earphone and headphone products including the AirPods Max, it states, “A great deal of care and research goes into choosing materials for all our devices. As part of our testing and evaluation process, both Apple and independent laboratories test the materials used in our products. Only materials that pass our rigorous review process are acceptable for use in Apple products.”
48. Apple performed extensive research and testing beyond battery life and materials sensitivity in connection with its AirPods Max as early as 2018, the year that media reports projected Apple's initial release of the AirPods Max.
49. In many instances, Class Members and consumers have incurred, and will continue to incur, expenses for the diagnosis of the Condensation Defect and repair and/or replacement of their AirPods Max, despite such defects having been contained in the product when manufactured by Apple.
50. Class members and consumers were without access to the information concealed by Apple as averred to herein, and therefore reasonably relied on Apple's representations and warranties regarding the quality, durability, and other material characteristics of the AirPods Max. Had Class Members and consumers known of the Condensation Defect, they would not have purchased the AirPods Max and would certainly not have paid \$779 for the product. Class Members did not receive the benefit of their bargain when they purchased their AirPods Max and accordingly suffered loss, expense and/or damage at the point of sale.

Part 2: RELIEF SOUGHT

1. The Plaintiff, on his own behalf and on behalf of all Class Members, claims against the Defendant, Apple, as follows:
 - (a) an order certifying this action as a class proceeding and appointing the Plaintiff as the named representative for the Class Members;
 - (b) a declaration that the Defendant, Apple, breached express warranties as to the AirPods Max and is consequently liable to the Plaintiff and Class Members for damages;
 - (c) a declaration that the Defendant, Apple, breached implied warranties or conditions of merchantability as to the AirPods Max and is consequently liable to the Plaintiff and Class Members for damages pursuant to sections 18(a),(b) and 56 of the *Sale of Goods Act*, R.S.B.C. 1996 (“*SGA*”), 410; sections 16(2), (4) and 52 of the *Sale of Goods Act*, R.S.A. 2000, c. S-2; sections 16(1), (2) and 52 of the *Sale of Goods Act*, R.S.S. 1978, c. S-1; sections 16(a), (b) and 54 of *The Sale of Goods Act*, C.C.S.M. 2000, c. S10; sections 15(1), (2) and 51 of the *Sale of Goods Act*, R.S.O. 1990, c. S.1; sections 16(a),(c) and 54 of the *Sale of Goods Act*, R.S.N.L. 1990, c. S-6 ; sections 17(a), (b) and 54 of the *Sale of Goods Act*, R.S.N.S. 1989, c. 408; sections 20(a), (b) and 67 of the *Sale of Goods Act*, R.S.N.B. 2016, c. 110; sections 16(a), (b) and 53 of the *Sale of Goods Act*, R.S.P.E.I. 1988, c. S-1; sections 15(a), (b) and 50 of the *Sale of Goods Act*, R.S.Y. 2002, c. 198; sections 18(a),(b) and 60 of the *Sale of Goods Act*, R.S.N.W.T. 1988, c. S-2; and sections 18(a),(b) and 60 of *the Sale of Goods Act*, R.S.N.W.T. (Nu) 1988, c. S-2; and articles 1458, 1725 and 1730 of the *Civil Code of Québec*, CQLR, c. CCQ-1991;
 - (d) a declaration that the Defendant, Apple, engaged in unfair practices contrary to sections 4 and 5 of the *Business Practices and Consumer Protection Act*, S.B.C. 2004 (“*BPCPA*”); Sections 5 and 6 of the *Consumer Protection Act*, RSA 2000, c. C-26.3; Sections 6 and 7 of *The Consumer Protection and Business Practices Act*,

SS, 2013, c C-30.2; Sections 2 and 3 of *The Business Practices Act*, C.C.S.M. c B120; Sections 14(1) and (2) of the *Consumer Protection Act*, 2002, S.O. 2002, c 30, Sch A, and Section 10 of the *Consumer Protection Act*, S.N.B. 2024, c 1; articles 215, 219, and 228 of the *Consumer Protection Act*, C.Q.L.R. c. P-40.1, and is consequently liable to Class Members for damages;

- (e) a declaration that it breached articles 37, 38, 40, 41, 53, 54 of the *Consumer Protection Act*, C.Q.L.R. c P-40.1;
- (f) a declaration that it breached the duty to act in good faith and with honesty in representations and in the performance of obligations, pursuant to articles 6, 7, and 1375 of the *Civil Code of Québec*, C.Q.L.R., c C.C.Q.-1991;
- (g) a declaration that it is not in the interests of justice to require that notice be given, where applicable, under the *BPCPA*; *Consumer Protection Act*, R.S.A. 2000, c. C-26.3; *Consumer Protection and Business Practices Act*, S.S., 2013, c C-30.2; *The Business Practices Act*, C.C.S.M. c. B120; *Consumer Protection Act*, 2002, SO 2002, c 30, Sch A, *Consumer Protection Act*, C.Q.L.R. c P-40.1, *Consumer Protection Act*, S.N.B. 2024 c 1, *Business Practices Act*, R.S.P.E.I. 1988, c B-7, *Consumer Protection and Business Practices Act*, S.N.L. 2009, c C-31.1, and waiving any such applicable notice provisions;
- (h) an Order for the statutory remedies available under the *BPCPA*; *Consumer Protection Act*, RSA 2000, c. C-26.3; *Consumer Protection and Business Practices Act*, S.S., 2013, c C-30.2; *The Business Practices Act*, C.C.S.M. c. B120; *Consumer Protection Act*, 2002, S.O. 2002, c 30, Sch A, article 272 of the *Consumer Protection Act*, C.Q.L.R. c P-40.1, *Consumer Protection Act*, S.N.B. 2024 c 1, *Business Practices Act*, R.S.P.E.I. 1988, c B-7, and *Consumer Protection and Business Practices Act*, S.N.L. 2009, c C-31.1, including damages, cancellation and/or rescission of the purchase of the AirPods Max;
- (i) an Order directing the Defendant, Apple, to advertise any adverse findings against it pursuant to section 172(3)(c) of the *BPCPA*; Section 19 of the *Consumer*

Protection Act, RSA 2000, c. C-26.3; Section 93(1)(f) of the *Consumer Protection and Business Practices Act*, S.S., 2013, c C-30.2; Section 23(2)(f) of *The Business Practices Act*, C.C.S.M. c B120; *Consumer Protection Act*, C.Q.L.R. c P-40.1; *Consumer Protection Act*, S.N.B. 2024 c 1, *Business Practices Act*, R.S.P.E.I. 1988, c B-7, and *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1;

- (j) an Order enjoining the Defendant, Apple, from continuing its unlawful and unfair business practices as alleged herein;
- (k) an injunction against the Defendant, Apple, its affiliates, successors, transferees, assignees and other officers, directors, partners, agents and employees thereof and all other persons acting or claiming to act on its behalf or in concert with them, from in any manner continuing the unfair and deceptive business practices alleged herein,
- (l) injunctive or declaratory relief requiring the Defendant, Apple, to buy back all AirPods Max and to fully reimburse and make whole all Class Members for all costs and economic losses associated therewith;
- (m) a declaration that the Defendant, Apple:
 - (i) breached sections 36 and/or 52 of the *Competition Act*, R.S.C 1985, c. C-34 (“***Competition Act***”) and is consequently liable to the Plaintiff and Class Members for damages;
 - (ii) breached its contracts with the Plaintiff and Class Members and is consequently liable for damages;
 - (iii) fraudulently misrepresented the capabilities of the AirPods Max when marketing and selling them; and
 - (iv) was unjustly enriched at the expense of the Plaintiff and Class Members.

- (n) an Order pursuant to section 29 of the *Class Proceeding Act*, R.S.B.C. 1996, c.50 (“*CPA*”) directing an aggregate assessment of damages;
- (o) an Order pursuant to section 30 of the *CPA* admitting into evidence statistical information including, but not limited to, AirPods Max sales and revenue information during the Class Period;
- (p) costs of notice and administering the plan of distribution of the recovery in this action plus applicable taxes pursuant to section 24 of the *CPA*;
- (q) damages, including actual, compensatory, incidental, statutory and consequential damages;
- (r) special damages;
- (s) punitive damages;
- (t) costs of investigation pursuant to section 36 of the *Competition Act*;
- (u) pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79; and
- (v) such further and other relief as to this Honourable Court may seem just.

Part 3: LEGAL BASIS

A. Jurisdiction

1. There is a real and substantial connection between British Columbia and the facts alleged in this proposed proceeding. The Plaintiff and Class Members plead and rely upon the *Court Jurisdiction and Proceedings Transfer Act*, R.S.B.C. 2003, c.28 (the “*CJPTA*”) in respect of the Defendants. Without limiting the foregoing, a real and substantial connection between British Columbia and the facts alleged in this proceeding exists pursuant to sections 10 (e)(I), (e)(iii)(A)(B), (f), (g), (h) and (I) of the *CJPTA* because this proceeding:

- (e)(I) concerns contractual obligations to a substantial extent, were to be performed in British Columbia;
- (e)(iii)(A)(B) the contract is for the purchase of property, services or both, for use other than in the course of the purchaser's trade or profession, and resulted from a solicitation of business in British Columbia by or on behalf of the seller;
- (f) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia;
- (g) concerns a tort committed in British Columbia;
- (h) concerns a business carried on in British Columbia; and
- (i) is a claim for an injunction ordering a party to do or refrain from doing anything in British Columbia.

B. Causes of Action

i. Breach of Express Warranty

1. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
2. The Defendant, Apple, was at all relevant times herein the merchant, designer, manufacturer, distributor, warrantor, and/or seller of the AirPods Max.
3. The AirPods Max are and were at all relevant times herein consumer goods.
4. The Defendant's, Apple's, one-year warranty states:

"Your Apple-branded or Beats-branded hardware product ("Product") is warranted against defects in materials and workmanship for a period of ONE (1) YEAR from the date of original retail purchase ("Warranty Period") when used in accordance with Apple's user manuals (refer to www.apple.com/support/country). Under this warranty, you will be able to direct your claims to Apple even in situations where you purchased the Apple Product from a third party. If a defect arises during the Warranty Period, Apple, at its option will (1) repair the Product at no charge using new parts or parts that are equivalent to new in performance and reliability, (2) exchange the Product with a product with equivalent

functionality formed from new and/or previously used parts that are equivalent to new in performance and reliability or with your consent, a product that is at least functionally equivalent to the product it replaces, or (3) refund the original purchase price. This warranty excludes normal depletion of consumable parts such as batteries unless failure has occurred due to a defect in materials or workmanship and, damage resulting from abuse, accident, modifications, unauthorized repairs or other causes that are not defects in materials and workmanship.”

5. The Defendant, Apple, provided all purchasers of the AirPods Max with an express warranty described above, which became a material part of the bargain.
6. The AirPods Max are covered by the express warranty.
7. The Defendant, Apple, breached its express warranties by selling AirPods Max that were defective as a result of the Condensation Defect, requiring repair or replacement within the warranty period, and refusing to honor the express warranty by failing to repair or replace, free of charge, the AirPods Max and its component parts. The Defendant, Apple, has failed to “repair” the defects as alleged herein, and in fact, the product cannot be repaired because it suffers from a design and/or manufacturing defect.
8. The Plaintiff and Class Members were not required to notify Defendant, Apple, of the breach or were not required to do so because affording the Defendant, Apple, a reasonable opportunity to cure its breach of written warranty would have been futile. The Defendant, Apple, was also on notice of the Condensation Defect from complaints and service requests it received from Class Members, from repairs and/or replacements of the AirPods Max, and from other internal sources.
9. As a direct and proximate cause of Defendant's, Apple's, breach of express warranty, the Plaintiff and the Class Members have suffered, and continue to suffer loss or expense, including economic damages at the point of sale. Further, Class Members have incurred or will incur economic damages at the point of repair in the form of the cost of repair.

ii. Breach of the Implied Warranty or Condition of Merchantability pursuant to SGA and Parallel Provincial Sale of Goods Legislation

10. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
11. The Defendant, Apple, is a “seller” with respect the AirPods Max within the meaning of the *SGA*, *Sale of Goods Act*, R.S.A. 2000, c. S-2; *Sale of Goods Act*, R.S.S. 1978, c. S-1; *The Sale of Goods Act*, C.C.S.M. 2000, c. S10; *Sale of Goods Act*, R.S.O. 1990, c. S.1; *Sale of Goods Act*, R.S.N.L. 1990, c. S-6 ; *Sale of Goods Act*, R.S.N.S. 1989, c. 408; *Sale of Goods Act*, R.S.N.B. 2016, c. 110; *Sale of Goods Act*, R.S.P.E.I. 1988, c. S-1; *Sale of Goods Act*, R.S.Y. 2002, c. 198; *Sale of Goods Act*, R.S.N.W.T. 1988, c. S-2; and *Sale of Goods Act*, R.S.N.W.T. (Nu) 1988, c. S-2, and *Consumer Protection Act*, CQLR c. P-40.1, pursuant to its agency relationship with its authorized dealers, distributors, resellers, retailers and/or intermediaries.
12. The Defendant, Apple, impliedly warranted to the Plaintiff and Class members that the AirPods Max were “merchantable” within the meaning of the *SGA* and parallel provincial Sale of Goods legislation. However, the AirPods Max do not have the quality that a buyer would reasonably expect, and were therefore not merchantable.
13. The Defendant, Apple, knew, or had reason to know, of the specific use for which the AirPods Max were purchased.
14. The Defendant, Apple, impliedly warranted that the AirPods Max were of merchantable quality, would pass without objection in the trade, and are fit for their intended use.
15. Contrary to the applicable implied warranties, the AirPods Max at the point of sale and thereafter would not pass without objection in the trade as they do not perform as warranted and because the Condensation Defect causes them to generate condensation in the ear cups after minimal use under normal conditions, which is contrary to the Defendant’s, Apple’s, explicit care and use instructions to keep moisture away from, and out of, the AirPods Max openings. Contrary to the applicable implied warranties, the

AirPods Max at the point of sale and thereafter were not fit for their ordinary and intended purpose of performing as warranted and being designed and/or manufactured so that damage inducing condensation is prevented from forming in the ear cups, in accordance with the Defendant's, Apple's, explicit care and use instructions. Instead, the AirPods Max are defective as a result of the Condensation Defect.

16. The alleged Condensation Defect is inherent and was present in each AirPods Max at the point of sale.
17. At the time of sale of each AirPods Max the Defendant, Apple, knew, ought to have known, or was reckless in not knowing of its misrepresentations and omissions concerning the Condensation Defect in the AirPods Max and their inability to perform as warranted, but nonetheless failed to disclose, remedy and/or fix the Condensation Defect.
18. The Defendant's, Apple's, attempt to disclaim or limit the implied warranty of merchantability *vis-à-vis* the Plaintiff, Class Members and/or consumers is unconscionable and unenforceable. Specifically, the Defendant's, Apple's, warranty limitation is unenforceable because it knowingly sold a defective product without informing the Plaintiff, Class Members and/or consumers about the Condensation Defect in the AirPods Max. The time limits contained in the Defendant's, Apple's, warranty periods were also unconscionable and inadequate to protect the Plaintiff and Class Members. Among other things, the Plaintiff and Class Members had no meaningful choice in determining these time limitations, the terms of which unreasonably favored the Defendant, Apple. A gross disparity in bargaining power existed between the Defendant, Apple, and the Plaintiff and Class Members, and the Defendant, Apple, knew that the AirPods Max suffered from the Condensation Defect which caused functionality, performance, connectivity, audio sound control and battery charging problems.
19. The Plaintiff and Class Members have complied with all obligations under the warranty or otherwise have been excused from performance of said obligations as a result of the Defendant's, Apple's, conduct alleged herein. Affording the Defendant, Apple, a reasonable opportunity to cure its breach of written warranties, therefore, would be

unnecessary and futile as there is no adequate fix or remedy for the Condensation Defect.

20. As a direct and proximate result of the Defendant's, Apple's, breach of implied warranties or conditions of merchantability, the Plaintiff and Class Members have suffered loss and/or damage as a result of the Condensation Defect in the AirPods Max pursuant to sections 56 of the *SGA*, section 52 of the *Sale of Goods Act*, R.S.A. 2000, c. S-2; section 52 of the *Sale of Goods Act*, R.S.S. 1978, c. S-1; section 54 of *The Sale of Goods Act*, C.C.S.M. 2000, c. S10; section 51 of the *Sale of Goods Act*, R.S.O. 1990, c. S.1; section 54 of the *Sale of Goods Act*, R.S.N.L. 1990, c. S-6 ; section 54 of the *Sale of Goods Act*, R.S.N.S. 1989, c. 408; section 67 of the *Sale of Goods Act*, R.S.N.B. 2016, c. 110; section 53 of the *Sale of Goods Act*, R.S.P.E.I. 1988, c. S-1; section 60 of the *Sale of Goods Act*, R.S.Y. 2002, c. 198; section 60 of the *Sale of Goods Act*, R.S.N.W.T. 1988, c. S-2; ~~and~~ section 60 of the *Sale of Goods Act*, R.S.N.W.T. (Nu) 1988, c. S-2; and *Consumer Protection Act*, C.Q.L.R. c. P-40.1.

iii. Violation of *BPCPA* and Parallel Provincial Consumer Protection Legislation

21. The Plaintiff and Class Members in British Columbia hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
22. The Defendant, Apple, is in British Columbia for the purpose of the *BPCPA*, and in provinces with parallel consumer protection legislation, as described in **Schedule "A"**.
23. The Plaintiff and Class Members who purchased the AirPods Max primarily for personal, family or household purposes, and not for resale or for the purpose of carrying on business, were "consumers" as defined in the *BPCPA*, and in provinces with parallel consumer protection legislation, as described in **Schedule "A"**.
24. The Defendant, Apple, is a "supplier" as defined in the *BPCPA*, and in provinces with parallel consumer protection legislation, as described in **Schedule "A"**.
25. The Defendant's, Apple's, sale of the AirPods Max to the Plaintiff and Class Members pursuant to Apple's Terms and Conditions of Sale constituted a "consumer agreement" or

“consumer transaction” at the point of sale between the Defendant, Apple, and each Class Member for purposes of the *BPCPA*, and in provinces with parallel consumer protection legislation, as described in **Schedule “A”**. Further, by providing software updates to the AirPods Max there was privity of contract between the Defendant, Apple, and its AirPods Max consumers.

26. The Defendant, Apple, in its pervasive advertising and marketing of the AirPods Max, made misleading statements regarding the quality and characteristics of the AirPods Max, in particular, regarding the functionality, performance, connectivity, audio sound and battery life of the AirPods Max in violation of section 4 of the *BPCPA*, and parallel provincial consumer protection legislation, as described in **Schedule “A”**. Instead, the AirPods Max as a result of the Condensation Defect lacked the advertised functionality, performance, connectivity, audio sound quality and battery life as represented in the Defendant, Apple’s, marketing materials. The Defendant, Apple, falsely represented and marketed the AirPods Max as premium, high quality, luxury headphones which provided superior, continuous audio sound quality and that would not repeatedly become wet with condensation, which characteristics the AirPods Max did not possess.
27. The Defendant, Apple, violated sections 4 and/or 5 of the *BPCPA*, and parallel provincial consumer protection legislation, as described in **Schedule “A”**, by selling the AirPods Max to the Plaintiff and Class Members through the misleading, deceptive, and/or fraudulent representations by:
 - (a) representing that the AirPods Max have characteristics, uses or benefits which they do not have;
 - (b) representing that the AirPods Max are of a particular standard, quality, or grade when they are of another; and
 - (c) advertising the AirPods Max with the intent not to sell as advertised.
28. The Defendant, Apple’s, uniform and material representations regarding the AirPods Max were likely to deceive, and the Defendant, Apple, knew, or ought to have known,

that its representations were misleading.

29. The Defendant's, Apple's, scheme and concealment of the true characteristics of the AirPods Max and its Condensation Defect were material to Plaintiff and Class Members, as the Defendant, Apple, intended.
30. Had the Plaintiff and Class Members known the truth, they would not have purchased the AirPods Max, or, if the AirPods Max's true nature had been disclosed and mitigated, the Plaintiff and Class Members would have paid significantly less for the AirPods Max.
31. The Plaintiff and Class Members had no way of discerning or otherwise learning that the Defendant's, Apple's, representations were false and misleading and that Defendant, Apple, had concealed or failed to disclose facts relevant to the Condensation Defect in its AirPods Max, until the Plaintiffs and Class Members' AirPods Max began manifesting the Condensation Defect. The Plaintiff and Class Members did not, and could not, unravel the Defendant's, Apple's, deception on their own.
32. The Defendant, Apple, engaged in unfair and deceptive conduct. As averred to herein, the Defendant's, Apple's, conduct defrauded the Plaintiff and Class Members by intentionally leading them to believe, through omissions, suppressions, and concealments of material facts, that the AirPods Max possessed important characteristics that they in fact do not possess as a result of the Condensation Defect-namely that they are premium quality, high performance wireless headphones will not repeatedly become wet with condensation, which will ultimately damage or degrade the headphones, after minimal use and/or as the result of normal and intended ordinary use-and inducing their purchases.
33. The Defendant, Apple, had an ongoing duty to Class Members to refrain from unfair and deceptive practices in the course of its business. Specifically, the Defendant, Apple, owed the Plaintiff and Class Members a duty to disclose all material facts concerning the Condensation Defect because the Defendant, Apple, possessed superior and exclusive knowledge, intentionally concealed such knowledge from the Plaintiff and Class Members, and/or made misrepresentations that were rendered misleading because they were contradicted by withheld facts.

34. The facts concealed or not disclosed by the Defendant, Apple, to the Plaintiff and Class Members are material in that a reasonable person would have considered them to be important in deciding whether to pay \$779 to purchase the AirPods Max. Whether high-end, premium-priced, luxury headphones are able to be used for more than one or two hours of continuous use without having condensation gather and ultimately degrade the promised superior audio quality, connectivity, and battery life is material to purchasers of premium wireless headphones priced hundreds of dollars more than comparable competitors' headphones. Had the Plaintiff and Class Members known about the defective nature of the AirPods Max they would not have purchased them.
35. The Defendant, Apple, failed to disclose and/or intentionally suppressed and concealed material facts about the performance and quality of the AirPods Max as a result of the Condensation Defect. As alleged herein, the Defendant, Apple, knew about the defective nature of the AirPods Max and was aware of numerous consumer complaints, but never disclosed the Condensation Defect to the Plaintiff and Class Members.
36. As the Condensation Defect in the AirPods Max is latent and unobservable until it arises, the Plaintiff and Class Members had no reasonable means of knowing that Defendant's, Apple's, representations concerning the AirPods Max were incomplete, false and/or misleading, or that it had failed to disclose that the AirPods Max are defective. The Plaintiff and Class Members did not and reasonably could not have discovered the Defendant's, Apple's, deceit before they purchased their AirPods Max.
37. The Defendant, Apple, had a duty to disclose the Condensation Defect because the defect is material and the Defendant, Apple, possessed exclusive knowledge of it. The Defendant, Apple, acquired knowledge of the Condensation Defect from numerous consumer complaints and warranty claims, and its non-public internal data, analyses, and communications, among other sources.
38. The Defendant, Apple, also had a duty to disclose the Condensation Defect because Defendant made partial representations regarding the purported high quality of the AirPods Max, yet failed to disclose facts that would have materially qualified these

partial representations. The Defendant, Apple, made these partial and misleading representations through marketing materials, advertising, product brochures, and labeling, statements made through its agents and on its website, and in other sources that the Plaintiff and Class Members encountered before purchasing their AirPods Max. In light of the Defendant's, Apple's, voluntarily providing such partial information to the Plaintiff and Class Members, the Defendant, Apple, had a duty to disclose the entire truth about the AirPods Max and, in particular, its defective nature and the Condensation Defect specifically.

39. Before and immediately after purchase, the Plaintiff relied on the Defendant's, Apple's, reputation, along with the Defendant's, Apple's, failure to disclose the faulty and defective nature of the AirPods Max on websites and in product manuals and brochures that accompanied the AirPods Max.
40. These informational sources that Class Members saw or heard, including statements on websites, product manuals, brochures, or promotional materials, did not disclose the Condensation Defect or that the AirPods Max are defective.
41. The Defendant, Apple, concealed the Condensation Defect to sell more AirPods Max at higher prices, to protect its brand, and to avoid the costs of honoring warranty claims and making effective repairs, replacements, and/or refunds for its customers.
42. The Defendant, Apple, continued to conceal the defective nature of the AirPods Max even after Class Members began to report the problems. The Defendant, Apple, continues to cover up and conceal the true nature of the problem today.
43. Additionally, the Defendant, Apple, continues to market and sell the AirPods Max with the Condensation Defect. It has not taken the appropriate action to remedy or fix the Condensation Defect or to make clear the falsity or misleading nature of its representations with respect to the AirPods Max.
44. Had the Defendant, Apple, disclosed its knowledge of the Condensation Defect before the Plaintiff and Class Members purchased their AirPods Max, they would have seen

such disclosures and been aware of them. The Defendant's, Apple's, omissions were material to the Plaintiff and Class Members, as they would not have purchased the AirPods Max had they known it contained the Condensation Defect and would not have paid \$779 CAD for the product.

45. At the time that the Defendant, Apple, misled the Plaintiff and Class Members, failing to disclose and conceal these material facts, and at the time that the Plaintiff and Class Members purchased the AirPods Max, the Plaintiff and Class Members were unaware of the Condensation Defect.
46. The Plaintiff and Class Members did in fact rely upon the Defendant's, Apple's, advertising scheme, materials, and website touting the AirPods Max and lacking any disclosure regarding the defective nature of the AirPods Max and such reliance was reasonable.
47. The Defendant's, Apple's, violations present a continuing risk to Class Members and the general public.
48. The Defendant's, Apple's, actions complained of herein affect the public interest.
49. The Plaintiff and Class Members suffered harm as a result of the Defendant's, Apple's, violations of the *BPCPA*, and parallel provincial consumer protection legislation, as described in **Schedule "A"**, as they relied on the Defendant's Apple's, representations in deciding to purchase the AirPods Max. The representations were a material factor. The representations were material because a reasonable consumer would consider it important in deciding whether to purchase the AirPods Max.
50. As a direct and proximate result of the Defendant's, Apple's, unfair, unlawful and/or deceptive business practices, in violation of the *BPCPA*, and parallel provincial consumer protection legislation, as described in **Schedule "A"**, the Plaintiff and Class Members were harmed in the amount of the purchase price they paid for the AirPods Max. As such, the Plaintiff and Class Members, seek a monetary award for violation of the *BPCPA*, and parallel provincial consumer protection legislation, as described in Schedule "A", in the

form of restitution, and/or disgorgement of ill-gotten gains to compensate the Plaintiff and Class Members for said monies.

51. As a result of the Defendant's, Apple's, conduct as alleged herein, Class Members in British Columbia are entitled to a declaration under section 172(1)(a) of the *BPCPA* that an act or practice engaged in by Apple, in respect to the purchase of the AirPods Max contravenes the *BPCPA*, an injunction under section 172(1)(b) of the *BPCPA* to restrain such conduct and/or damages under section 171 of the *BPCPA*, and to such remedies under parallel provincial consumer protection legislation, as described in **Schedule "A"**.
52. Class Members in British Columbia are entitled, to the extent necessary, a waiver of any notice requirements under section 173(1) the *BPCPA*, and parallel provincial consumer protection legislation, as described in **Schedule "A"**, as a result of the Defendant's, Apple's, misrepresentations that the AirPods Max were premium, high quality, luxury headphones that provided superior and continuous audio sound quality, which characteristics that the AirPods Max did not possess as a result of the Condensation Defect.

iv. Breach of *Competition Act*

53. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
54. By making representations to the public that the AirPods Max possessed certain qualities, capabilities and features as to functionality, performance, connectivity, audio sound control and/or battery life, which they did not have as a result of the Condensation Defect, the Defendant, Apple, breached sections 36 and/or 52 of the *Competition Act*, in that its representations:
 - (a) were made to the public in the form of internet, online, social media and television, advertising, press releases, media statements and/or product demonstration that the AirPods Max possessed certain qualities, capabilities and features as to functionality, performance, connectivity, audio sound control and/or

battery life, which they did not have as a result of the Condensation Defect; and

(b) were made to promote the supply or use of a product or for the purpose of promoting its business interests; and

(c) were false and misleading in a material respect.

55. At all relevant times, the Defendant, Apple, was the seller and/or supplier of the AirPods Max. As such, there existed contractual privity and/or vertical privity of contract between the Plaintiff and Class Members and the Defendant, Apple, as to the AirPods Max as its resellers, authorized vendors and/or distributors at all material times were acting as the agents of the Defendant, Apple.

56. The Defendant, Apple, engaged in unfair competition and unfair or unlawful business practices through online and television advertising, press releases, media statements, product demonstration and omissions described herein and by knowingly and intentionally concealing that the AirPods Max did not possess certain qualities, capabilities and features as to functionality, performance, connectivity, audio sound control and/or battery life as a result of the Condensation Defect, which it ought to have disclosed to Class Members because it was in a superior position to know the true facts relating to the qualities, capabilities and features of the AirPods Max, which Class Members could not reasonably be expected to learn or discover the true facts relating to the AirPods Max.

57. The Defendant's, Apple's, unfair or unlawful acts and practices have deceived the Plaintiff and Class Members. In failing to disclose and suppressing other material facts from the Plaintiff and Class Members that the AirPods Max did not possess certain qualities, capabilities and features as to functionality, performance, connectivity, audio sound control and/or battery life as a result of the Condensation Defect, the Defendant, Apple, breached its duty to disclose these facts, violated the *Competition Act* and caused damage to the Plaintiff and Class Members. The Defendant's, Apple's, omissions and/or concealment pertained to information that was material to the Plaintiff and Class Members, as it would have been to all reasonable consumers.

58. Further, the Plaintiff and Class Members relied upon the Defendant's, Apple's representations as to the AirPods Max qualities, capabilities and features as to functionality, performance, connectivity, audio sound control and/or battery life, to their detriment in purchasing the AirPods Max so as to cause loss and/or damage to the Plaintiff and Class Members.
59. The Plaintiff and Class Members have, therefore, suffered damages and are entitled to recover damages pursuant to section 36(1) and/or 52 of the *Competition Act*.

v. Breach of Contract

60. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
61. The Plaintiff and Class Members had contracts with the Defendant, Apple, as part of their purchase agreement pursuant to the Defendant's, Apple's, Terms and Conditions of Sale. The Plaintiff and Class Members purchased the AirPods Max in exchange for consideration with terms implied from the context of the transaction. The terms of the contract included, *inter alia*, that the AirPods Max possessed certain qualities, capabilities and features as to functionality, performance, connectivity, audio sound control and/or battery life.
62. The Defendant, Apple, expressly warranted that the AirPods Max would perform as marketed and advertised. The Defendant's, Apple's, claims regarding the AirPods Max constituted an affirmation of fact, promise, and/or description of the goods that became part of the basis of the bargain and created an express warranty that the goods would conform to the stated promise. The Plaintiff and the Class Members placed importance on the Defendant's, Apple's, claims.
63. All conditions precedent to the Defendant's, Apple's, liability under this contract have been performed by the Plaintiff and the Class Members.
64. The Defendant, Apple, breached the terms of the contract, including the express

warranties, with the Plaintiff and the Class Members by not providing AirPods Max that conform to its advertising and marketing claims that the AirPods Max would possess certain qualities, capabilities and features as to functionality, performance, connectivity, audio sound control and/or battery life.

65. It was foreseeable that the Plaintiff and Class Members would sustain damages as a result of the Defendant's, Apple's, breach of contract
66. As a result of the Defendant's, Apple's, breach of contract, the Plaintiff and Class Members have suffered damages.

vi. Fraud

67. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
68. The Defendant, Apple, intentionally, deliberately and/or affirmatively made misrepresentations that the AirPods Max possessed certain qualities, capabilities and features as to functionality, performance, connectivity, audio sound control and/or battery life, when marketing and selling them, which were false.
69. The Defendant, Apple, also knew that its representations regarding the AirPods Max were material, and that the Plaintiff, Class Members and a reasonable consumer would rely upon the Defendant's, Apple's, representations in making purchasing decisions as to the AirPods Max and their qualities, capabilities and features.
70. The Defendant, Apple, knowingly misled the Plaintiff, Class Members and consumers by marketing the AirPods Max to possess certain qualities, capabilities and features as to functionality, performance, connectivity, audio sound control and/or battery life, which they did not possess as a result of the Condensation Defect. The Defendant, Apple, continued to promote these qualities, capabilities and features despite its knowledge and concealment of the Condensation Defect.
71. The Plaintiff and Class Members did not know - nor could they have known through

reasonable diligence - about the true nature of the AirPods Max and the Condensation Defect.

72. The Plaintiff and Class Members would have been reasonable in relying on the Defendant's, Apple's, representations in making their purchasing decisions as to the AirPods Max and their qualities, capabilities and features as to functionality, performance, connectivity, audio sound control and/or battery life.
73. The Plaintiff and Class Members had a right to rely upon the Defendant's, Apple's, representations as it maintained monopolistic control over knowledge of the true quality of the AirPods Max.
74. The Defendant, Apple, had a duty to ensure the accuracy of release statements and/or representations it published with respect to whether the AirPods Max it marketed and sold possessed certain qualities, capabilities and features as to functionality, performance, connectivity, audio sound control and/or battery life, which it claimed despite its knowledge of the Condensation Defect in the AirPods Max. The Defendant, Apple, did not fulfill this duty to the detriment of Plaintiff and Class Members.
75. Apple actively misrepresented material facts, in whole or in part, to protect its profits and to maintain its claimed reputation as a being a leader in personal technology and innovation, which perception would enhance the brand's image and garner the Defendant, Apple, more money. But it did so at the expense of the Plaintiff and Class Members.
76. The Plaintiff and Class Members were unaware of these material misrepresentations, and they would not have acted as they did if they had known the truth. The Defendant, Apple, was in exclusive control of the material facts, and such facts were not known to the Plaintiff, Class Members or consumers.
77. As a result of the Defendant's, Apple's, representations, the Plaintiff and Class Members sustained damages as a result of their reliance on such representations, thus causing the Plaintiff and Class Members to sustain actual losses and damages. As such, the Plaintiff,

Class Members and consumers paid an unlawful price premium for the Defendant's Apple's, AirPods Max that as a result of the Condensation Defect did not possess certain qualities, capabilities and features as to functionality, performance, connectivity, audio sound control and/or battery life as claimed and marketed. They are entitled to recover full refunds for the AirPods Max they purchased due to the Defendant's, Apple's, misrepresentations.

78. Further, the Defendant's, Apple's, acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of the Plaintiff's and Class Members' rights, and as part of efforts to enrich itself at the expense of consumers. The Defendant's, Apple's, acts also were done in order to gain commercial advantage over its competitors, and to drive consumers away from consideration of competitor over-the-era headphones as alleged herein. The Defendant's, Apple's, conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future.

vii. Unjust Enrichment

79. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
80. Through its misrepresentations and unfair and deceptive business practices, as alleged herein, the Defendant, Apple, was unjustly enriched at the expense of the Plaintiff and Class Members in the form of increased revenues from the sale of the AirPods Max. As a result, Class Members have suffered a corresponding deprivation by paying an unlawful price premium for the Defendant's, Apple's, AirPods Max that as a result of the Condensation Defect did not possess certain qualities, capabilities and features as to functionality, performance, connectivity, audio sound control and/or battery life as claimed and marketed.
81. By its wrongful acts, misrepresentations and/or omissions, as alleged herein, the Defendant, Apple, was unjustly enriched at the expense of the Class Members as follows:
- (a) the Defendant, Apple, was enriched in the form of increased profits, benefits and

other compensation related to the sale of the AirPods Max that as a result of the Condensation Defect did not possess certain qualities, capabilities and features as to functionality, performance, connectivity, audio sound control and/or battery life, as claimed when they were marketed and sold; and

- (b) as a result of the Defendant's, Apple's, misrepresentations Class Members paid an unlawful price premium for the AirPods Max, which did not possess certain qualities, capabilities and features as to functionality, performance, connectivity, audio sound control and/or battery life as result of the Condensation Defect.

82. There is no juristic reason for the Defendant's, Apple's, enrichment and the Plaintiff and Class Members' corresponding deprivation in light of its unfair and deceptive advertising practices and/or its false, misleading and/or deceptive representations to the public and in light of its breaches of the *BPCPA*, parallel provincial consumer protection legislation and the *Competition Act*.

83. Accordingly, the Plaintiff seeks restitution on behalf of himself and Class Members of all profits derived by the Defendant, Apple, from the sale of the AirPods Max based upon its unfair and/or deceptive business practices and misrepresentations.

viii. Damages

84. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.

84. It was reasonably foreseeable that the Plaintiff and Class Members would suffer damages as a result of the Defendant's, Apple's, breach of the *BPCPA*, parallel provincial consumer protection legislation, breach of contract, breach of the *Competition Act*, fraud, and unjust enrichment, as alleged herein. Such damages include, but are not limited to, the following:

- (a) paying an unlawful price premium for the AirPods Max that as a result of the Condensation Defect did not possess certain qualities, capabilities and features as

to functionality, performance, connectivity, audio sound control and/or battery life, as claimed when they were marketed and sold; and

- (b) expenses incurred in purchasing a product that did not perform to the standard that was advertised and warranted.

ix. Punitive Damages

- 85. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
- 86. The Plaintiff and Class Members rely on the facts and allegations herein and state that, in every meaningful sense, the Defendant, Apple, has acted in a deliberate, unlawful, arrogant, outrageous, secretive, high-handed, callous, wanton and reckless manner for the purposes of protecting its profits. Its false claims as to the qualities, capabilities and features of the AirPods Max made through unfair and/or deceptive business practices and misrepresentations without regard to the interests and rights of the Plaintiff and Class Members so as to warrant a claim for punitive damages.

Plaintiff's(s') address for service:

Dusevic & Garcha
Barristers & Solicitors
#210 - 4603 Kingsway
Burnaby, BC V5H 4M4
Canada

Fax number address for service (if any):

604-436-3302

E-mail address for service (if any):

ksgarcha@dusevicgarchalaw.ca

Place of trial:

Vancouver, British Columbia, Canada

The address of the registry is:

800 Smithe Street
Vancouver, BC V6Z 2E1
Canada

Dated: July 4, 2025

A handwritten signature in black ink, appearing to read 'K. Garcha', written over a horizontal line.

Signature of K.S. Garcha
lawyer for plaintiff(s)

Schedule “A”

Consumer Protection Legislation Across Canada

Province or Territory	Legislation
Alberta	<p><i>Consumer Protection Act</i>, RSA 2000, c. C-26.3</p> <p>“Goods”- Section 1(1)(e)(i); “Consumers”- Section 1(1)(b)(i); “Consumer Transaction” - Section 1(1)(c)(i); “Supplier” - Section 1(1)(i),(ii) and/or (iii); “Unfair Practices” - Sections 5 and 6; Statutory Remedies - Sections 13(1), (2) and 142.1; and Waiver of Notice - Section 7.1(1)</p>
Manitoba	<p><i>Consumer Protection Act</i>, CCSM c. C200</p> <p>“Goods” - Section 1; “Consumer” - Section 1; “Consumer Transaction” - Section 1; “Supplier” - Section 1; “Unfair Business Practices” - Sections 2(1) and (3); and Statutory Remedies - 23(2)(a) and (b)</p>
New Brunswick	<p><i>Consumer Product Warranty and Liability Act</i>, SNB 1978, c. C-18.1</p> <p>“Consumer Product” - Section 1(1); “Buyer” - Section 1(1); “Contract for the sale or supply of a consumer product” - Section 1(1); and “Seller” - Section 1(1);</p> <p><i>Consumer Protection Act</i>, SNB 2024, c1</p> <p>“Consumer” – Section 1; “Consumer Agreement” – Section 1; “Consumer Transaction” – Section 1; and “Unfair Practices” – Part 2, Section 10</p>
Newfoundland and Labrador	<p><i>Consumer Protection and Business Practices Act</i>, SNL 2009, c C-31.1</p>

Province or Territory	Legislation
	<p>“Consumer” – Section 1; “Consumer Agreement” – Section 1; “Consumer Transaction” – Section 1; “Goods” – Section 1; “Supplier” – Section 1; and “Unfair Practices” – Part III, Section 1</p>
Ontario	<p><i>Consumer Protection Act, 2002, SO 2002, c. 30, Sch. A</i></p> <p>“Goods” - Section 1; “Consumer” - Section 1; “Supplier” - Section 1; “Unfair Practices”- Sections 14(1) and (2); Statutory Remedies - Sections 18(1) and (2); and Waiver of Notice - Sections 18(3) and (15)</p>
Prince Edward Island	<p><i>Business Practices Act, RSPEI 1988, c B-7</i></p> <p>“Consumer” – Section 1; “Consumer Representation” – Section 1; “Goods” – Section 1; and “Unfair Practices” – Section 2 and 3</p>
Québec	<p><i>Consumer Protection Act, CQLR c. P-40.1</i></p> <p>“Goods” - Article 1(d); “Consumer” - Article 1(e); “Manufacturer” - Article 1(g); and “Merchant” - Article 1</p>
Saskatchewan	<p><i>The Consumer Protection and Business Practices Act, SS 2014, c. C-30.2</i></p> <p>“Goods” - Section 2(e); “Consumer” - Section 2(b); “Supplier” - Section 2(i); “Unfair Practices” - Sections 6 and 7; and Statutory Remedies - Section 93</p>

ENDORSEMENT ON ORIGINATING PLEADING OR PETITION
FOR SERVICE OUTSIDE BRITISH COLUMBIA

There is a real and substantial connection between British Columbia and the facts alleged in this proceeding. The Plaintiff and the Class Members plead and rely upon the *Court Jurisdiction and Proceedings Transfer Act* R.S.B.C. 2003 c.28 (the “*CJPTA*”) in respect of these Defendants. Without limiting the foregoing, a real and substantial connection between British Columbia and the facts alleged in this proceeding exists pursuant to sections 10(e)(I), (e)(iii)(A)(B), (f), (g), (h) and (I) of the *CJPTA* because this proceeding:

- (e)(I) concerns contractual obligations to a substantial extent, were to be performed in British Columbia;
- (e) (iii)(A)(B) the contract is for the purchase of property, services or both, for use other than in the course of the purchaser’s trade or profession, and resulted from a solicitation of business in British Columbia by or on behalf of the seller;
- (f) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia;
- (g) concerns a tort committed in British Columbia;
- (h) concerns a business carried on in British Columbia; and
- (I) is a claim for an injunction ordering a party to do or refrain from doing anything in British Columbia.

Appendix

[The following information is provided for data collection purposes only and is of no legal effect.]

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

The within proposed consumer product multi-jurisdictional class proceeding involves AirPods Max over-the-ear wireless headphones (“**AirPods Max**”) designed, manufactured, tested, assembled, advertised, marketed, distributed, sold and/or warranted by the Defendants, Apple Inc. and Apple Canada Inc., in Canada, including the Province of British Columbia. In particular, the AirPods Max suffer from a latent defect in design, materials and/or workmanship whereby condensation accumulates in the ear cups of the headphones after minimal use that seeps into the drivers of the headphones through the speaker holes causing functionality, performance, connectivity, audio sound control and battery life problems significantly affecting the usability of the headphones and resulting in damage and/or degradation of the headphones.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- ☐ motor vehicle accident
- ☐ medical malpractice
- ☐ another cause

A dispute concerning:

- ☐ contaminated sites
- ☐ construction defects
- ☐ real property (real estate)
- ☐ personal property
- ☐ the provision of goods or services or other general commercial matters
- ☐ investment losses
- ☐ the lending of money
- ☐ an employment relationship
- ☐ a will or other issues concerning the probate of an estate
- ☒ a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- ☒ a class action
- ☐ maritime law
- ☐ aboriginal law

- ☐ constitutional law
- ☐ conflict of laws
- ☐ none of the above
- ☐ do not know

Part 4:

1. *Class Proceedings Act*, R.S.B.C. 1996, c.50

2. *Court Jurisdiction and Proceedings Transfer Act* R.S.B.C. 2003 c.28

3. *SGA, Sale of Goods Act*, RSA 2000, c. S-2; *Sale of Goods Act*, RSS 1978, c. S-1; *The Sale of Goods Act*, CCSM 2000, c. S10; *Sale of Goods Act*, RSO 1990, c. S.1; *Sale of Goods Act*, RSNL 1990, c. S-6 ; *Sale of Goods Act*, RSNS 1989, c. 408; *Sale of Goods Act*, RSNB 2016, c. 110; *Sale of Goods Act*, RSPEI 1988, c. S-1; *Sale of Goods Act*, RSY 2002, c. 198; *Sale of Goods Act*, RSNWT 1988, c. S-2; and *Sale of Goods Act*, RSNWT (Nu) 1988, c. S-2; *Consumer Protection Act*, CQLR c. P-40.1,

4. *Business Practices and Consumer Protection Act*, S.B.C. 2004; *Consumer Protection Act*, RSA 2000, c. C-26.3; *Consumer Protection and Business Practices Act*, SS, 2013, c C-30.2; 11 *The Business Practices Act*, CCSM c. B120; *Consumer Protection Act*, 2002, SO 2002, c 30, Sch A, *Consumer Protection Act*, CQLR c P-40.1, *Consumer Protection Act*, SNB 2024 c 1, *Business Practices Act*, RSPEI 1988, c B-7, *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1

5. *Competition Act*, R.S.C. 1985, c.C-34;

6. *Court Order Interest Act*, R.S.B.C., c. 79