

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

LINDA CALLOWAY, DALE DEAN,
ROSE FARELLA, JAYME HESTER,
ANGELITA PIERRE-NOEL, DWAYNE
STOWE, MARY KATE RICE,
BEATRICE FRIEDMAN, KRISTEN
MARTIN, SHANNA POHLMANN, ERIC
FISHON, JOSEPH LUCHETTI, and
KATHLEEN FITZGERALD on behalf of
themselves and all others similarly
situated,

Plaintiffs,

vs.

BOSE CORPORATION,

Defendant.

Case No.: 1:18-CV-12207-DPW

**SECOND AMENDED CLASS ACTION
COMPLAINT**

Judge Douglas P. Woodlock

The allegations made in this Second Amended Class Action Complaint are based upon information and belief except those allegations that pertain to Plaintiffs, which are based on personal knowledge. Each allegation either has evidentiary support or, alternatively, pursuant to Rule 11(b)(3) of the *Federal Rules of Civil Procedure*, is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

NATURE OF THIS ACTION

1. Plaintiffs Linda Calloway, Dale Dean, Rose Farella, Jayme Hester, Angelita Pierre-Noel, Dwayne Stowe, Mary Kate Rice, Beatrice Friedman, Kristen Martin, Shanna Pohlmann, Eric Fishon, Joseph Luchetti, and Kathleen Fitzgerald (collectively, “Plaintiffs”) bring this proposed class action challenging the actions of Defendant Bose Corporation (“Bose” or “Defendant”) in the marketing and sale of Bose SoundSport, SoundSport Free, and

SoundSport Pulse wireless headphones (the “Headphones”). Plaintiffs seek damages and equitable relief on behalf of themselves and all others similarly situated.

2. Bose markets the Headphones as “sports headphones,” and represents on its website, marketing materials, and product packaging that the Headphones are sweat-, weather-, and water-resistant. Bose uses images of sweat-drenched athletes wearing the Headphones while exercising in its promotional materials. Indeed, Bose’s website features the following tagline: “Sweating it out in the gym or running through the rain, these are sport earphones built to keep you going every step of the way.”

3. Bose further represents on its website, marketing materials, and product packaging that the Headphones are rechargeable and offer five or six hours of wireless listening on a single charge.¹

4. In reality, the Headphones are not sweat-, weather-, or water-resistant and do not function as advertised when exposed to sweat, moisture, or water. And the Headphones’ batteries do not last five or six hours on a single charge. This is because the Headphones contain a defect that causes the battery life to degrade and diminish and eventually stop retaining a charge after normal usage, a process that accelerates when the Headphones are exposed to sweat or moisture. As a result, the Headphones regularly fail to hold a reasonable charge.

5. Bose has long known or should have known of the Headphones’ battery problems from multiple sources. These sources include pre-release design, manufacturing, and testing data; warranty claims data; consumer complaints made directly to Bose and/or posted on public online

¹ Bose’s website describes the SoundSport wireless headphones as providing “6 hours battery life,” the SoundSport Free wireless headphones as providing “5 hours battery life,” and the SoundSport Pulse wireless headphones as providing, both “6 hours battery life” and “five hours of wireless power.”

forums; product reviews posted on Bose's and retailers' websites; aggregate data and complaints from authorized dealers; and other sources. Yet, Bose failed to disclose and actively concealed the Headphones' battery defect from the public, and continued to manufacture, distribute, and sell the Headphones. Furthermore, Bose continued to market and sell the Headphones after knowing of the Headphones' battery problems.

6. Plaintiffs are among the tens of thousands of consumers nationwide whose expensive Headphones (generally sold for \$150 to \$250) experience rapidly diminishing battery life and eventual failure to retain a charge. Plaintiffs further allege that the Headphones fail to retain a charge in part due to the Headphones' failure to resist sweat, weather, and water.

7. Despite receiving countless complaints from consumers, Defendant refuses to acknowledge or attempt to fix the defects. Instead, when consumers return the defective Headphones under Bose's warranty, Bose sends replacement Headphones that contain the exact same defects, leaving consumers caught in a cycle of use, malfunction, and replacement. Once the standard one-year warranty period expires, consumers are often left with only a broken pair of Headphones.

8. Reasonable consumers like Plaintiffs expect that high-end rechargeable Bluetooth headphones that cost between \$150 and \$250 will continue to function after minimal use, and they would not have purchased the Headphones or would have paid less had they known that Defendant's battery life, rechargeability, and sweat-, weather-, and water-resistant representations were false, and that the Headphones contain one or more defects that cause their batteries to rapidly fail.

9. As a result of Bose's actions and omissions, Plaintiffs and the proposed class have suffered damages. Wireless rechargeable headphones that are unable to retain a charge are

essentially worthless. Had Plaintiffs and the members of the class known that Defendant's representations were false and that the Headphones contained the defect(s), they would not have bought them or would otherwise have paid less for them. At a minimum, the defective Headphones are certainly worth substantially less than what Plaintiffs and members of the class paid to purchase them.

PARTIES

10. Plaintiff Linda Calloway is a California citizen residing in Apple Valley, California. Ms. Calloway purchased SoundSport wireless headphones from Best Buy in 2017.

11. Plaintiff Dale Dean is a New York citizen residing in Cheektowaga, New York. Mr. Dean purchased Bose SoundSport Pulse wireless headphones from Verizon in the spring of 2017.

12. Plaintiff Rose Farella is a Florida citizen residing in Tampa, Florida. Ms. Farella purchased Bose SoundSport wireless headphones from Best Buy in August 2016.

13. Plaintiff Jayme Hester is a Nebraska citizen residing in Omaha, Nebraska. Mr. Hester purchased Bose SoundSport wireless headphones from Best Buy in June 2017.

14. Plaintiff Angelita Pierre-Noel is a New York citizen residing in Brooklyn, New York. Ms. Pierre-Noel purchased Bose SoundSport wireless headphones from an Amazon store in or about August 2017.

15. Plaintiff Dwayne Stowe is a Georgia citizen residing in Locust Grove, Georgia. Mr. Stowe purchased Bose SoundSport wireless headphones from Amazon.com in or about January 2018.

16. Plaintiff Mary Kate Rice is a Texas citizen residing in Canyon Lake, Texas. Ms. Rice purchase Bose SoundSport wireless headphones from Best Buy on or around December 2017.

17. Plaintiff Beatrice Friedman is a New Jersey citizen residing in Bergenfield, New Jersey. Ms. Friedman purchased Bose SoundSport wireless headphones from Best Buy on or around December 2017.

18. Plaintiff Kristen Martin is a Pennsylvania citizen residing in Reading Pennsylvania. Ms. Martin purchased the SoundSport Free wireless headphones from Best Buy on August 4, 2018.

19. Plaintiff Shanna Pohlmann is a Florida citizen residing in Tallahassee, Florida. Ms. Pohlmann purchased the SoundSport Free wireless headphones from an airport vendor in the Dallas/Fort Worth International Airport in or around July 2018.

20. Plaintiff Eric Fishon is a New York citizen residing in Hauppauge, New York. Mr. Fishon purchased the SoundSport Free wireless headphones from BestBuy.com on October 10, 2017.

21. Plaintiff Joseph Luchetti is a Connecticut citizen residing in Bethlehem, Connecticut. Mr. Luchetti purchased his SoundSport wireless headphones from a Bose retail store in or around June of 2017.

22. Plaintiff Kathleen Fitzgerald is a citizen of Massachusetts residing in Methuen, Massachusetts. Ms. Fitzgerald purchased the SoundSport wireless headphones from Best Buy on February 18, 2017.

23. Defendant Bose Corporation is a Delaware corporation with its headquarters and principal place of business in Framingham, Massachusetts. Bose is a privately held corporation

that designs, develops, and sells audio equipment, including home audio systems and speakers, headphones, professional audio products, and automotive sound systems.

JURISDICTION AND VENUE

24. This Court has subject matter jurisdiction over this action under 28 U.S.C. §1332(d)(2), as amended by the Class Action Fairness Act of 2005, because the amount in controversy exceeds \$5,000,000, exclusive of interests and costs, and because this is a class action in which the members of the class and Defendant are citizens of different states.

25. Venue is proper in this judicial district under 28 U.S.C. §1391 because Defendant is a resident of Framingham, Massachusetts, which is located in this district.

FACTUAL ALLEGATIONS

Bose's Representations Regarding Battery Life and Sweat Resistance

26. Bose represents on its website, product packaging, and marketing materials that the Headphones are rechargeable, provide five or six hours of listening time on a single charge, and are sweat-, weather-, and water-resistant.

27. For instance, Bose's "sport headphones" webpage describes SoundSport wireless headphones as "Water resistant, 6 hours battery life." Under product details, Bose touts in large bold print the headphones' "Sweat- and weather resistant design." Under "SPECS," Bose states "Charge time: 2 hours" and "Battery life: 6 hours per full charge." The product packaging for SoundSport wireless headphones similarly describe the headphones as "Sweat and weather resistant" with "Up to 6 hours per charge."²

² Research has shown that "up to" representations are misleading to consumers, who reasonably interpret "up to" six hours to mean that they would get six hours of battery life. Bose's headphones, which fail to hold a charge for that long, and then not at all, do not provide the

28. Bose's "sport headphones" webpage similarly describes SoundSport Pulse wireless headphones as "Water resistant, ... 6 hours battery life." However, the product details page contradicts that claim, stating that "you'll get up to five hours of wireless power" from a charge. Bose nevertheless assures consumers that the SoundSport Pulse wireless headphones are "Built to keep up" and "resist[] sweat and moisture even during your most intense workouts."

29. Under SoundSport Free wireless headphones, Bose's "sport headphones" webpage states, "water resistant, 5 hours of battery life." The product details page states: "Off a single charge, the earbuds play for up to five hours – long enough to power you through almost any workout." The "SPECS" similarly provide, "Charging time: 2 hours. Battery life: 5 hours per full charge."

30. Despite Bose's representations – which are repeated across its website, product packaging, marketing materials, and elsewhere – none of the Headphones have a battery that can be consistently used for anything close to five to six hours without further charging. Moreover, as a result of the defect(s), the Headphones often take much longer than two hours to fully charge (if the Headphones accept a charge at all).

31. Bose's website and marketing materials show athletes lifting weights, rock climbing, playing soccer, running, and snowboarding while wearing the Headphones. Bose's website states in large bold lettering: "Sweat. Without sweating it. Water and headphones typically don't play nice together. But we found a way to make it work." Bose brags that the Headphones "aren't afraid of sweat or rain – and now a little weather can't be an excuse to skip a workout."

expected hours of battery life. As a result, Bose's representations are false and misleading to consumers.

32. Bose ensures that all of the retailers selling the Headphones (including, but not limited to, on-line retailers like Amazon.com and BestBuy.com and retail store locations like Best Buy) uniformly promote the same rechargeable, battery life, and sweat and water resistant claims, representations, and messages at the consumers' point of purchase. Each of the Plaintiffs observed and relied upon these same claims and representations when purchasing their Headphones.

33. The representations cited above are false and misleading because the Headphones are not sweat-, weather, or water-resistant, and the Headphones fail to hold a charge for the advertised time.

The Headphones Do Not Function As Represented

34. The false nature of Bose's representations is evident from the virtually unending stream of consumer complaints posted online. Indeed, negative reviews posted in the last few months on Bose's website alone reflect the sheer scope of the problem:³

- a. "Really unhappy with it, most likely will return it. Weak battery...." (SoundSport Free Headphones, February 2019).
- b. "Not well tested and lot of tech issues. I was not able to enjoy the tech earphones, they have charging issues ... the ear phones will die soon or malfunction soon. [I] can see that coming. Not worth a buy." (SoundSport Free Headphones, January 2019).
- c. "Stopped working 5hr just one hour no longer works. I bought a year ago and they stopped working 5hr as expected." (SoundSport Free Headphones, January 2019).
- d. "Battery always dead when I need them. I bought these for when I travel, however the two times I went to use them the battery was completely dead after fully charging them previously. I charged the headphones when I first bought them around veterans day. I went to use them a few weeks later and the battery

³These complaints can be found on the relevant product pages of www.bose.com (last visited February 14, 2019). All typographical errors contained in the following consumer complaints are in the original. As of February 14, 2019, there are 512 one star reviews and 398 two star reviews (910 total) posted for the three products at issue in this case.

was dead. After realizing the battery was dead, I charged them again. Now today a few weeks later the battery is completely dead again. Absolutely unbelievable.” (SoundSport Headphones, December 2018).

- e. “Good sound, terrible battery. Bought these just under a year ago and now I really can't stand them as they're a liability. Battery charges overnight, but gets to 90% max before dying after an hour. Don't get these.” (SoundSport Headphones, December 2018).
- f. “Poor battery life.... [I]t has been a few months and they won't hold a charge. I charge them overnight in order to reach 100%. By the end of the day, with minimal listening (less than an hour), they are 30/20%. Yes. I have the auto shut-off enabled. If I had them for a long period of time or spent hours listening, I appreciate to battery life. This is ridiculous.” (SoundSport Headphones, November 2018).
- g. “Great up to 3 months.... However, after those first three months, my battery would only charge to 90%, and I could get maybe 4 or 5 hours with them. Now, almost a full year later, I can't get them to charge to more than 30% even after leaving them to charge for over 5 hours. Half of the time, when the battery is less than 50% and I put them on the charger, the light turns from flashing orange to solid green within minutes, and I'd have to take them off and put them back on to charge again so I can get a 'full' charge (up to 30% now).” (SoundSport Headphones, November 2018).
- h. “Terrible battery.... I've had my headphones for a little less than six months and with some light workouts.... [T]he battery never charges correctly and often dies within ten minutes of a full charge....” (SoundSport Headphones, November 2018).
- i. “Terrible Battery. Happy to hear I'm not the only one facing these insane battery issues. After less than a few months having the headphones the battery started to act up. They would say 100% and I'd listen to music for 30 minutes and then it would say battery low please charge now. I would charge for hours to make sure they were fully charged and it would state they were only at 80%. Sometimes I'd be at 100% and after 10 minutes of use it would say the battery was low, I'd then charge for 10 minutes and it would say 100%. They have driven me crazy! At this price point the battery should not be faulty after limited use. The sound quality is good but plan on using them for less than a year because the battery will fail.” (SoundSport Headphones, November 2018).
- j. “Decide[d] to stop working and charging. I spent more time figuring out why they will keep turning off all the time and not being able to charge than actually using them.” (SoundSport Headphones, November 2018).
- k. “Overall Fail. The headphones dont hold 5 hours like it says on the box. I have only gotten 4 hours. The case claims to hold 10 hours of charge BUT when the

headphones are in the case and fully charged it STILL drains the battery of the case. I have fully charged the case and headphones and 2 days later it's dead in the case and headphones.” (SoundSport Free Headphones, November 2018).

- l. “Only a couple of weeks after opening them, I noticed the incredibly poor battery life. In the span of an hour they would drop from 100% to 10%, last on 10% for about 30 minutes, and then say that they needed to be charged. I would charge them for several hours (to make sure they were fully charged) but they would only hit 90% as a maximum. They would again die within 2 hours. I stopped using them during the summer for this reason and have recently tried again. This time, I charge them for 30 minutes to an hour max and they will say fully charged but reach 10% in the next 20 minutes.” (SoundSport Headphones, October 2018)
- m. “I’ve only had these a year and the non replaceable battery only give you about 20 minutes for a fully charged battery.” (SoundSport Headphones, October 2018).
- n. “Charging the headphones is also a nightmare. I will pick them up for use when they have been on the charger for 4+ hours and the headphones say battery 80%. Put them back on the charger immediately pick them back up and the headphones say 100%. I have never owned a worse pair of headphones before in my life. NOT WORTH THE PRICE AT ALL!” (SoundSport Free Headphones, October 2018).
- o. “I bought these some months ago, will not hold a charged. Leave it charging overnight and morning walk its at 40%...don't waste you money. DISAPPOINTED.” (SoundSport Headphones, September 2018).
- p. “I was so excited to use thes[e] for th[e] gym they don’t even charge.” (SoundSport Headphones, September 2018).
- q. “Really Horrible Product. Bought this product in Nov 2017, about 6-8 months in, the earphone wouldn’t charge.... Overall, do NOT buy, save yourself time.” (SoundSport Headphones, September 2018).
- r. “Won’t hold charge. Great at first, then failed to hold charge. Just out of Warranty. Disappointing considering the cost.” (SoundSport Headphones, September 2018).
- s. “Stop[p]ed working after one week. What a disappointment.” (SoundSport Free Headphones, September 2018).
- t. “I liked it very much but now is not working. It used to advi[s]e me some times that battery was low before turning off and yesterday just stopped playing the music when it had around 20%. I charged it and is not working any more, no sound, no light, nothing. Since I started to use them battery never charged 100%. Is this a programmed obsolescence? I see similar comments. The life of my headphones lasted 1 year. I'm frustrated because they are not cheap and I thought Bose was the best.” (SoundSport Headphones, August 2018)

- u. “Battery does not last!!!! Battery won’t last longer than one hour after charging. Had less than a month.” (SoundSport Headphones, August 2018).
- v. “Don’t last. I fell in absolute love with these earbuds when my husband purchased them for my birthday in February. Too bad they only lasted 6 months, and now the left one completely refuses to work.” (SoundSport Free Headphones, August 2018).
- w. “Terrible battery. I got th[e]s[e] wireless headphones on March 12, 2018 (4 months ago) and the battery isn’t charging well any more. Before it use to last around 2-3 days with long runs. Now it can barely stay on for 2 hra, the sound is great but for a product like this I was expecting more quality and to last long. Even when is not in use the battery drains out.” (SoundSport Headphones, July 2018).
- x. “Wasted money. Bought almost 2 months ago. I was really excited to get a pair of truly wireless headphones. The cord between my powerbeats continually got caught on something during my workouts. These headphones don't even last an hour. Multiple times have my workouts been ruined due to poor battery life....” (SoundSport Free Headphones, July 2018).
- y. “This is the worst product ever... Please do not buy..... Bose is a sound company not ... a engineering company they don't know how to make a battery that works ... I charge it it's 50 percent but turns off in an hour...this is terrible.... Please don't buy.” (SoundSport Free Headphones, July 2018).
- z. “Very bad battery. I got soundsports wireless in March 2018. So, I had them for few months only. Battery life is almost non existent. I loose 10% of battery about every 20 minutes. Seriously Bose?? How many of these in a batch have the same problem?” (SoundSport Headphones, June 2018).
- aa. “Very Disappointed. I received these as a gift back in November 2017 and they were working perfectly fine until yesterday. These lasted 6 months before they completely went dead. I tried turning them on and they were dead no light, nothing. I tried charging them and nothing occurred. The headphones don't turn on. I don't know what could have happened. I charged them like I usually did then simply put them in my gym bag. Nothing happened out of the ordinary they just stopped working.” (SoundSport Headphones, May 2018).
- bb. “Terrible Battery Life - now won’t charge.... After just a short time of use, and not even working out or sweating in them, the battery would never charge more than 80% and I would get a 20% warning after just one 20 minute call. Now a full, overnight charge (which only gets me to 80%) doesn't last 10 minutes on a either a call or music. Frustrating! These things aren't cheap and I expected more from a brand like BOSE.” (SoundSport Headphones, May 2018).
- cc. “Not really happy with them. I have several issues with this product. bought almost two month ago and everything was going fine but as of lately the battery

will not charge over 80% and in a matter of minute it will drop either 10-15%. I really wanna like these headphones but the battery life has killed it for me.” (SoundSport Headphones, May 2018).

- dd. “All of a sudden stopped working. I bought this early this year and was working till morning all of a sudden it stopped working neither getting charged.” (SoundSport Headphones, April 2018).
- ee. “Dies In Less Than 9 Months. Purchased this in the US, now I'm deployed. It just died.” (SoundSport Headphones, April 2018).
- ff. “[W]orst product. 33 days old and does not function. Worked one time. What was the worst, both Bose and Authorized retailer said out of luck.” (SoundSport Headphones, April 2018).
- gg. “Garbage battery. Haven’t had them for even a year, do not use daily, and still the battery barely holds a charge. Charge for about 1 hr or 2 to get about 40 min of battery life. Not worth the price, spend your money elsewhere.” (SoundSport Headphones, April 2018).
- hh. “Battery sucks. Had these for 2 months will not stayed charged over 2 hours. This is my second pair in a year.” (SoundSport Headphones, April 2018).
- ii. “[W]hen I connect it to the charger, some times shows fully charged but when I try to turn it on, no thing no blinking light nothing ... Sometimes even when I connect it to the charger it doesn't charge. it tried different cables and chargers and still have same problem.” (SoundSport Pulse Headphones, March 2018).
- jj. “Stopped working at 6 months. I bought 2 pairs of these. They have only been used for about 2 hours a day every day. Despite following the manufacturers instruction and using the included charging cord, one pair of earbuds will not turn on. Seems I should’ve done more research as this appears to be a common problem.” (SoundSport Headphones, March 2018).
- kk. “Awful, don’t waste your money ladies. Where to begin: first, the headphone will not charge to 100%, even after a reboot. Next, the battery is dead in 3 hours or less.” (SoundSport Headphones, March 2018).
- ll. “Terrible Battery. I bought these a little over a month ago and the battery is already giving me problems. Whenever I charge them I always get a registered reading of a full charge but when I put them on the voice says somewhere between 70%-90% (almost never 100%). I will then proceed to use them for no more than 20-30 minutes and they will then be at 20%.” (SoundSport Headphones, February 2018).
- mm. “[S]topped working after 6 months.” (SoundSport Headphones, February 2018)

- mn. “[J]ust 3 months!!!! After 3 months just stop charging, everytime I try to charge them the LED is green and they don’t charge.” (SoundSport Pulse Headphones, January 2018).

35. Notably, many of the complaints posted report *multiple* Headphone battery product failures:⁴

- a. “Power loss[.] I bought these headphones think[ing] Bose provided quality products, *I’ve had to return/exchange these several times (3 times)* Within 6 months the headphones would not hold a charge and would power off within 7-15 minutes of playing.” (SoundSport Headphones, January 2019).
- b. “Poor Quality. Stay far away from these headphones. As of today, I have gone through *three pairs* of the SoundSport Pulse. The first two pairs stopped charging altogether, the most recent pair first started with a buzzing sound on the left bud, then after I plugged them in for a charge they simply quite working.” (SoundSport Pulse Headphones, November 2018).
- c. “Faulty Battery in both headsets received. Receive this headset for fathers day on 2017 as a gift. After a few months, the battery started to show green light (full charge) after a few hours of charging, but when turned on, only 80% of charge remains. Just before the year, the headset only charged to 10%, even after showing the green light and telling me that they were 100%. Went to Bose for replacement through the warranty. After receiving a *new pair*, and only after 6 months of normal usage (3-4 hrs daily on my commute to work and back) they only charge to 10%, again.” (SoundSport Headphones, November 2018).
- d. “I bought in June 2018 (blue color) and I’m already on my *third pair*. The headphones keep dying mysteriously after a month's use. One day they are working and the next day they die. You charge them overnight and they still don't come back to life. I am very disappointed to have to constantly go to the Bose store and have to switch them out for new ones.” (SoundSport Headphones, October 2018).
- e. “Returning my *3rd pair* under warranty....[T]he second pair was ok for about 3 months until it no longer would hold a charge like it should. Charge it up, check what the lady says, and she says 100%. Power it down, put it aside for a half hour, power it up, 80%!” (SoundSport Headphones, September 2018).

⁴ These complaints can be found on the relevant product pages of www.bose.com (last visited February 14, 2019). All typographical errors contained in the following consumer complaints are in the original, and all emphasis is added.

- f. “The best battery life I can get is around 45-50 mins. The left earpiece doesn't charge sometimes so you show up to the gym....awesome. This is my **second pair** (first pair did the same thing) and it will be my last.” (SoundSport Free Headphones, September 2018).
- g. “Do no[t] buy these! I have had nothing but issues with these and am on my **third pair** due too the first 2 completely stopping working.” (SoundSport Headphones, August 2018).
- h. “Terrible durability. I bought these 1.5 years ago and I am on my **4th/5th pair**. I am just finishing up a run that lasted less than one hour and they already died. I've had this Pair for less than a month.” (SoundSport Pulse Headphones, August 2018).
- i. “I bought these a year ago and at first they sounded great and had a long battery life... Then the battery life started to fade, and after a few months one of the headphones stopped working. No big deal it's electronics I sent them back for warranty and they gave me a **new pair**. Today I went to put them on and they wouldn't turn on after having charged them the day before, oh well I must have forgot to turn them off right, wrong I charged them all morning and they still won't turn on. I give this product a six month shelf life. And in my opinion for a 149.99 plus tax I'd say that's too short.” (SoundSport Headphones, August 2018).
- j. “They stop working 3 weeks after I bought them **twice**. I bought **two** (as i thought the first time was just my bad luck) and the stopped working.” (SoundSport Headphones, July 2018).
- k. “Returned Twice for Malfunction....Now I have to return them again because it will not hold a charge. 1st pair I had for 6 months, **2nd pair** I've had for 4 months. Really annoying.” (SoundSport Headphones, April 2018).
- l. “Bad battery. Good sound. I'm on my **3rd pair** since buying them in September 2017. 1st pair didn't hold a charge. 2nd pair lasted 4 months before the battery stopped holding a charge. Waiting for my 3rd pair to arrive. Replacements have to be shipped.” (SoundSport Headphones, March 2018).
- m. “**Second pair**, again about 4 1/2 months old, will not charge to 100%, nor will they hold a charge for longer than a day.” (SoundSport Headphones, 2017).

36. Many of the complaints specifically link the Headphones' battery failures to exercise and exposure to sweat or moisture, and some even directly challenge Bose's claim that the Headphones are sweat-, weather-, and water-resistant:⁵

- a. ***"No[t] sweat proof.*** I bought this product thinking about the quality of Bose, unfortunately this assumption was not true. ***After a 2 months of running out with the device, it stop charging.*** I went to the place where I bought the device and I was told that the guarantee was now responsibility of Bose. After a month of emails with customer service they sent me a new device to replace the one with the quality issue. I was happy until after the same period of running it had the same failure." (SoundSport Headphones, May 2018).
- b. ***"NOT sweat-proof !!! In my experience, this product is not sweat-proof.*** I already went through three of the soundsport wireless earphones in less than 2 years, with every one of them failing to charge after a few months of use. Customer service can't do anything more than replace the unit with a new one. I'll get my forth earphone next week, which I'll sell to get a real sweat-proof product from a brand I can depend on." (SoundSport Headphones, June 2018).
- c. ***"Terrible for people who sweat. They will break.*** I had to send this product back 5 times because they kept breaking. They would just stop powering up or would stop turning on. The longest duration that I had them was 3 months. Bose kept sending me new products for my return but every single one stopped working. ***I would highly recommend AGAINST buying this product until Bose figures out how to make a workout headphones that is actually sweat resistant.***" (SoundSport Headphones, 2017).
- d. "Save your money if you sweat even a little. ... [S]tupid me kept believing the sales people in the store and on the 800 line stating all sweat problems have been corrected, and I'm the only one they know with this issue. Well, I've just returned my 5th and final pair and final Bose product... ***Save yourself the trouble pick a better brand, at least until Bose truly fixes the sweat/ moisture issues.*** They do sound great, fit good (at least for me), and are easy to operate - when they take a charge [a]nd work. good luck." (SoundSport Headphones, 2017).
- e. "Great sound not sweat resistant. My 1st pair I bought June 24 exactly one month later I had to return them to Best Buy because the quit working. ***I wear them while I run mostly ran thru a little rain twice. Got a new replacement. Now 3 weeks later during a quick 2 mile run they stopped working again.*** My cheap \$8

⁵ These complaints can be found at on the relevant product pages of www.bose.com (last visited February 14, 2019). All typographical errors contained in the following consumer complaints are in the original, and all emphasis is added.

skull candies I bought at Rosa lasted 8 mths with all my sweat and these claim to be sweat resistant which is only reason I bought them.” (SoundSport Headphones, August 2018).

- f. “I used these every day for 58 days. ***I run and bike with them. I sweat a fair amount. They stopped working*** on day 59 - right bud would not charge, turn on, or function at all.” (SoundSport Free Headphones, July 2018).
- g. “***Stopped working after a sweaty run.*** I thought these would hold up better. I run a lot and the sweat has caused them to stop working or only work sporadically. Very disappointed.” (SoundSport Headphones, August 2018)
- h. “Poor durability. As a military man I rely heavily on my headphones and depend on having music to escape to, especially during my workouts. ... ***It took one month of daily heavy sweat for them to suddenly stop workout while we were out at sea.*** Needless to say I was very displeased and let down by a name I really thought I could trust for quality.” (SoundSport Headphones, 2017).
- i. “Poor Quality. I have had two pairs of these headphones stop working on me within the past four months. ***Both times the headphones stopped operating mid-workout.*** Not quite sure what more Bose can do with these headphones other than stop producing them. These headphones most certainly are defected.” (SoundSport Headphones, 2017).
- j. “Good advertisement but this does not work. ... ***I was running in the gym and suddenly they stopped to work. I would say they are not resistant to excessive sweat.***” (SoundSport Headphones, 2017).
- k. “Very poor quality. I purchased my first pair of SoundSport wireless head phones 11/16 and they lasted until 6/18 ***after going for a run in light rain they stopped working.*** I purchased another pair June 2018 and they stopped working just after 3 months!! The second set of headphones will not charge and do not turn on/off.” (SoundSport Headphones, October 2018).
- l. “Stopped working in 9 months. I bought my nose sound sports last year for a Christmas present for my self. 9 months ***later I got caught in the rain while biking(with a helmet) and they have been sitting on my counter in a basket since.*** They will charge but they won’t turn on or anything else. So I go without.” (SoundSport Headphones, 2017).
- m. “I’m on my 4th pair over a year (wife on 2nd) , and the same issue of usage and durability during workouts; after sometime the headphones just stop working, my recent pair bought just a month ago. ***They are advertised as sweat proof , but after researching online, apparently these suffer from known issue of leaking sweat into device, making them malfunction.***” (SoundSport Headphones, July 2018).

- n. “I’m already on the second replace, my first one worked for 4 weeks, the second one for 2 weeks (Died yesterday). Is the same issue that some users already mentioned here, The audio is excellent, really comfortable BUT ***there is an issue with the sweat resistance. My headphone simply dies in the middle of a workout and it's gone.***” (SoundSport Headphones, July 2018).
- o. “I have had to get these replaced five times. When these headphones work they are great. But I have had to get them replaced every 6-8 weeks since I bought them. I am now on my 5th pair and I have never been so disappointed and frustrated. ***They say they are for sport but the minute you start to sweat they short circuit.*** I DO NOT RECOMMEND these headphones.” (SoundSport Headphones, May 2018).
- p. “Incapable of holding a charge. IN the first month everything was good. I run cross country and bike so it was good for those things. ***Then one day I was running and they died out of nowhere and ever since then they can’t hold a charge.***” (SoundSport Headphones, March 2018).
- q. “Only last 4 times after they didn’t turn on again. I bought the headphones 4 weeks ago (sep 18th) , sound great, use it 4 times, regular running activities, (no rain, nor humidity conditions) and ***a week ago I was running , full battery and they shut down*** without any message (like low batt) , i got home and connect to charge battery the headphones remain blinking in red , no charge, no turn on.” (SoundSport Headphones, 2017).
- r. “***Not made for working out. I have went through 2 pairs in the past 60 days that had to be replaced.*** My guess is that sweat is getting into the microphone which causes the headphones to fry. When the headphones die, I get static through the earphones and then I need to take the headphones to the bose store for a replacement. If these are touted as workout headphones they should be sweat proof.” (SoundSport Headphones, 2017).
- s. “[D]on’t run under the rain! I purchased the Pulse a few months ago...besides frequent heartbeat measurement errors (sweat AND running), the ***Pulse stopped working during my first run under the rain.***” (SoundSport Pulse Headphones, 2017).

37. The Headphones’ battery problems are not new. Bose has been receiving similar reports from consumer for years:

- a. “NOT water resistant to sweat. Purchased two pair for use at the gym. Circuit training, running, lifting etc. Both my son's and my pair ended up not working after only two weeks at the gym. I think they are fine if you are not going to use

them to workout or you are one of those people that go to the gym or ran and don't sweat. Returned them both. Technology is not ready yet." (SoundSport Headphones, 2016)

- b. "Worse than beats and that's hard to do...I got these for fathers day and used about 3 times in the gym. These aside from having either low volume output or lack noise cancellation, aren't sweat resistant. Mine broke in 3 days! Look at Apple review for beats, they have horrible reviews I went through 3 pairs in 3 months. If one pair of these lasted me 3 days I don't want to even think about how many I would go through in 3 months...." (SoundSport Headphones, 2016).
- c. "Worked Great for 1 week, then died during workout. I left for my run yesterday with 70% charge left. At 28 minutes into the run, the earbuds just turned off and died. I came home to charge them, thinking that they just were out of batteries. The amber light has been blinking for 10 hours and they will still not turn on. I have had very bad luck with Bose." (SoundSport Headphones, 2016)
- d. "Significant Issue. I have gone through 6 pairs and finally gave up. About 30-40 minutes into my morning run, static started in the left earbud (which remained even when turned off). On 2 pairs the battery died and wouldn't recharge. I suspect that sweat was somehow the problem. They were great while they were working. (SoundSport Headphones, 2016)
- e. "Quality Nowhere near Bose standard. I bought these four days ago. 60 minutes into my first workout they shutdown and would not turn back on. I thought battery needed to be charged. I charged overnight-verified the battery was at 100%. During my second workout unit just kept randomly turning off. I had to turn back on three time. Then the left ear bud started making some static noise and completely stopped working. (SoundSport Headphones, 2016).
- f. "Stopped working after a couple days. I LOVED these headphones... before the stopped working... after a couple days. I went running 2 days after buying them and halfway in, I heard some static and then "Battery at 40%". The headphones then shut off. I've tried charging them and the indicator light flashes for a bit like it's charging, then turns red for a bit, then the light turns off completely. It won't charge and won't turn on. Seems like a lot of people have had this issue..." (SoundSport Headphones, 2016).
- g. "When I had it for a couple months it didn't work again . I charge it and doesn't turn back on but the light is on when I charge it to the wired. I was upset with it . I check YouTube and people notice the same situation doesn't turn on when unplug from charger but lights come on when u plug it in." (SoundSport Headphones, 2017).
- h. "Do not buy, my soundsports died after 3 months." (SoundSport Headphones, 2017).
- i. "[G]reat for 3 months and then dead." (SoundSport Headphones, 2017).

- j. “They only worked for a few months! I thought these headphones were great-until they quit working. They have not been damaged in any way. They simply won’t turn on sometimes and sometimes shut off on their own, making them completely useless.” (SoundSport Headphones, 2017).
- k. “Was expecting a way better product from Bose. I bought a pair about 2 months ago. After a full charge the battery dies within 2 hours, and is getting worse.” (SoundSport Headphones, 2017).
- l. “Issues used twice. I like the headphones good sound and comfortable, but after two uses they refuse to charge or turn on. I tried a reset but no luck. I guess back to the store for a new pair but a little worried that this is a bigger problem than just a one off bad pair I received.” (SoundSport Headphones, 2017).
- m. “These will break - don't buy!..... My headphones stopped turning on after two weeks. They would light up green that they were fully charged but not turn on. Don't be fooled! This has happened to many, many other people. My suggestoin - go with another brand! If you want a second opinion google this problem, you will find many unsatisfied customers.” (SoundSport Headphones, 2017).
- n. “Terrible battery life. I bought this a month ago and it doesn’t charge. Everything on this pair of headphones is good. But the battery it's a big fail and even worst if ur talking about a bose product. Totally disappointed.” (SoundSport Headphones, 2017).
- o. “Battery problems / Stopped Working. ... I’ve been so happyy with my previous purchases that I decided to get a pair of Soundsport Wireless Headphones for exercise. Unfortunately, these wireless headphones were a big disappointment. The charging problems started a month after I bought them. Even though I would leave the headphones charging for hours, they wouldn't charge to the maximum 100%. I tried charging them using two different laptops and directly with a charger, but neither fixed the problem. Then, two months after purchase, the Soundsport Wireless Headphones stopped working completely.” (SoundSport Headphones, 2017).
- p. “Battery horrid. Purchased a pair and the battery lasted 10 min on 100% battery per the headphones. Reset per instructions and charged overnight and the headphones again lasted 10 minutes.”SoundSport Headphones, 2017).
- q. “I bought this headphones last may, I used for some months till one day they stop working. I wrote an email to the company and they never answer me.” (SoundSport Headphones, 2017).
- r. “I have been through 4 pairs in the last 6 months and am just having the 5th pair sent. This is with daily workouts but good care of this product. Really some major concerns about the quality soundsport wireless. I have tried to obtain a refund given so many issues with this specific product, but they refuse to refund despite multiple product replacements (and at this point, I assume many more to come).

Beware of this specific product (I feel there must be better workout headphones out there).” (SoundSport Headphones, 2017).

- s. “Stopped working after 3weeks...After two weeks the battery would only charge to 60%! I will have to send back to Bose and hope they can fix them!” (SoundSport Free Headphones, 2017).

38. In fact, Bose responded to several of these negative reviews in 2016 as follows:

For the majority of customers, the SoundSport wireless is delivering on its promise – it’s a headphone that’s stable and comfortable, sweat and weather resistant, with amazing sound. But, like you, a small percentage of owners have experienced a problem, and that’s not okay. We’ve taken every headphone returned to us and analyzed them in our labs to get to the bottom of the issue. We discovered SoundSport wireless doesn't perform like it should under specific conditions related to heavy sweat and moisture. And we now have a solution to make it work just as well in these situations, too. Going forward, every SoundSport wireless will include this update, and they’ll be ready by the end of August if you’re interested in trying them again. Our support team can answer any questions you may about the product. They can be reached at 1-800-379-2073 Monday through Friday, 9:00AM to 8:00PM (EST).

39. However, Bose’s supposed fix did not solve the problem; customers continued to encounter battery issues with the Headphones, especially after exposing them to sweat.

40. One consumer reports in a complaint on Bose’s website that when he contacted Bose in 2018, Bose acknowledged the battery problem with the Headphones:

- a. “I purchased the first pair of these from Amazon. When I received these headphones, I powered them up and the unit said "Battery 30%". I plugged them into a charger and the charge light blinked once then went green. I then unplugged them, turned the power on and the unit said Battery 100%. I turned the unit off and in about 5 minutes restarted it. The unit then said Battery 30%. Every time I plug them into a charge the light immediately goes green, and unit will not charge. ***I contacted Bose and they said they have had this problem with these headphones.*** They advised to return them to Bose and wait up to two weeks for a replacement pair..” (SoundSport Headphones, April 2018).

41. Bose has long known about the Headphones’ propensity for battery failure – especially after being exposed to sweat or water – but nevertheless continued to sell the Headphones.

42. Upon information and belief, when Bose first decided to design, manufacture, and sell wireless sports headphones, it necessarily would have gained comprehensive and exclusive knowledge about how wireless headphones can malfunction when exposed to moisture and exercise and other normal conditions to which sport headphones are exposed. Such knowledge would necessarily include: the basic engineering principles behind the construction and function of the parts; the forces and stresses the parts face during exercise; the cumulative wear on parts caused by use, age, and environmental factors; and how using different construction materials (e.g., thin plastic, thick plastic, metal, rechargeable batteries) affects the strength and durability of the parts and operation of the headphones. This design, engineering, and testing data is unavailable to Plaintiffs without discovery, but upon information and belief, analysis of this data would have revealed that the flimsy plastics used to protect the Headphones' batteries from moisture were insufficient for their intended use and would cause the Headphones to fail prematurely as would the inadequate acquisition, installation, construction and manufacture of the rechargeable batteries.

43. Moreover, the scope of the Headphones' battery problems was apparent to Bose shortly after the Headphones first went on sale to the public based on the large number of complaints it received, and the consistency of their descriptions of the Headphones' failures. Notably, some Headphones' batteries are known to have failed immediately upon their first use.

44. Bose knew or should have known of the Headphones' propensity for battery failure based on the numerous complaints it received directly from customers through its website.

45. Only Bose has access to the full universe of complaints it received regarding the Headphones. However, upon information and belief, numerous Headphones owners who experienced battery failures also complained to Bose via telephone and mail.

46. In addition to the complaints lodged directly with Bose, many Headphones owners complained to retailers and posted complaints on retailers' websites. For instance, customer reviews on Amazon.com paint a strikingly similar picture:

- a. "THIS IS THE AMENDED REVIEW. Less than a month after I began using the BOSE SoundSport Earbuds, the battery life has gone from 2 hours to no hours. After having the headphones plugged into my computer overnight, when I pressed the power button, nothing happened. The unit no longer holds a charge. I guess I'll have to stick with wires when listening at the gym.

And now the original review. I purchased these Bose SoundSports to replace a different brand of blu-tooth earbuds that quit working a week after I purchased them. While the Bose headphones are a comfortable fit and do sound good while I am listening to either music or an audiobook when using the rowing machine or stationary bike at the gym, I am less impressed with the battery life. I have never had more than about 2 hours of battery life since the purchase. I won't go into the schematic of my workouts, but each last approximately an hour. At the end of the 2nd workout, the headphones register that the battery is near depletion. So much for the 6 hours of battery life Bose advertises." Amazon.com (SoundSport Headphones, December 13, 2017).⁶

- b. "The headphones fit well into my ear and stay in through hard running, but since I first received them, and over the entire 6 months of use, they have been really hard to charge. I use the included charger, and about 4 days out of 7, the battery dies within 10-30 minutes of my turning them on, even when I've charged overnight. I'm not sure if I got a lemon or not, but I am going to try to return these. The longest charge I've ever gotten is about 60 minutes. I would not recommend these." Amazon.com (SoundSport Headphones, August 19, 2017).

47. Moreover, Bose tracks warranty claims in its normal course of business. As reflected by the many complaints above, Bose would have also been made aware of the Headphones' battery problems by the large number of warranty claims it received. Only Bose

⁶ <https://www.amazon.com/hz/reviews-render/lighthouse/B01HETFPUE> (last accessed February 14, 2019).

has access to the full universe of the warranty claims it received regarding the Headphones. However, upon information and belief, Bose continuously received broken Headphones from consumers, often several times from the same individual consumers:

- a. 2 replacements gone wrong! First one I bought was stopped powering on even though it had a full charge and the replacement I received worked fine for 3 days and then it started showing up with battery issues again. Third replacement is on its way, let's see how well that goes." Complaint on Bose Website (SoundSport Headphones, 2017).
- b. "Battery Charge and Life Issues. The sound is great, but the batter life is terrible. I've had my headphones replaced twice. Within a week they no longer charge to 100% and they quickly loses their charge without use. Customer service has been great in replacing them, but at this point it's clearly a product quality issue and replacing won't help the situation." Complaint of Bose Website (SoundSport Headphones, 2017).
- c. "2nd pair battery problem. On my 2nd pair now in a little over a year. (If you dont count the paid I bought my sister as a gift that are also broken) Slowly over time the headphones will not hold a charge. And as soon as you plug them in to be charged they immediately say they're charged but are not. Very disappointing. I find them comfortable and sound is great but trash battery and the wait time to have them sent in and replaced is a life time." Complaint on Bose Website (SoundSport Headphones, 2017).

48. Based on this constant stream of returned Headphones, Bose knew or reasonably should have known of the defect(s) shortly after it began selling the Headphones

The Named Plaintiffs' Experiences

A. Jayme Hester

49. Plaintiff Jayme Hester ("Plaintiff Hester") bought Bose SoundSport wireless headphones in June 2017 from Best Buy. Plaintiff Hester reviewed the product packaging prior to purchase and purchased the Bose SoundSport wireless headphones because Bose represented that these Headphones (1) are wireless (Bluetooth); (2) are rechargeable; (3) operate for a substantial number of hours between charges; and (4) are high quality so as to withstand

moisture – even during exercise and weather. Plaintiff Hester relied upon these representations when he purchased the Headphones.

50. Plaintiff Hester is an avid runner and purchased the Headphones to use on his runs.

51. Plaintiff Hester sweats during his runs and sweated while wearing his Headphones during his runs. As a result, Plaintiff's Headphones were exposed to sweat and moisture when he used them while running.

52. On approximately October 10, 2017, Plaintiff Hester removed the Headphones from the charger (where they had been left to charge overnight) and discovered that the Headphones would not turn on. When Plaintiff Hester plugged them back into the charger, he noticed the charge light did not illuminate.

53. Plaintiff Hester emailed Bose about this issue the same day. In response, Bose suggested that Mr. Hester perform routine troubleshooting, which included resetting the Headphones and updating the headphones' software. Plaintiff Hester followed Bose's instructions, but the Headphones still failed to operate.

54. Bose subsequently provided Plaintiff Hester a shipping label to return the Headphones for an exchange. Plaintiff Hester was informed that it may take 10 business days to receive replacement Headphones.

55. When Plaintiff Hester received the replacement Headphones, he used them without incident for a couple of months; but on December 19, 2017, the replacement Headphones also experienced battery troubles. More specifically, when Plaintiff Hester attempted to charge the Headphones, the indicator light prematurely turned green to indicate that the Headphones were fully charged even though they were not. From then on, it was impossible

to fully charge the Headphones' battery. Moreover, what limited charge the Headphones could maintain would drain abnormally quickly. For instance, after leaving the Headphones on the charger for many hours, Plaintiff Hester turned the headphones on and the Headphones indicated that they were 80% charged. Plaintiff Hester turned the headphones off and then immediately turned them back on and the Headphones indicated they were only 50% charged.

56. When Plaintiff Hester contacted Bose regarding these battery problems, Bose (again) suggested that he reset the Headphones and update their software. He followed this advice from Bose though it did not improve the Headphones' performance. Bose (again) provided Plaintiff Hester a shipping label to return the replacement headphones for an exchange.

57. Plaintiff Hester's second set of replacement Headphones arrived approximately 10 days later. Those Headphones – his *third* set of Bose SoundSport wireless Headphones – operated more or less normally until June 2018 (about six months), when the Headphones began randomly powering off during operation. Sometimes the headphones would power back on by themselves immediately, but other times Plaintiff Hester could not get the Headphones to power back on for many hours.

58. Plaintiff Hester again contacted Bose, who instructed him (again) to reset the Headphones and update their software, which again did not resolve the issue. So, Plaintiff Hester had to send Bose his second set of replacement Headphones for yet another exchange.

59. Had he known that the Headphones were not moisture resistant and did not have a reliable rechargeable battery that would last six hours, Plaintiff Hester would not have purchased them or would have paid significantly less for them.

B. Linda Calloway

60. Plaintiff Linda Calloway (“Plaintiff Calloway”) purchased a pair of Bose SoundSport wireless headphones in 2017 from Best Buy.

61. Plaintiff Calloway reviewed the product packaging prior to purchase and purchased the Bose SoundSport wireless headphones because Bose represented that these Headphones (1) are wireless (Bluetooth); (2) are rechargeable; (3) operate for a substantial number of hours between charges; and (4) are high quality so as to withstand moisture – even during exercise and weather. Plaintiff Calloway relied upon these representations when she purchased the Headphones.

62. Plaintiff Calloway did not open the Headphones for approximately four months after purchasing them. Shortly after using the Headphones, Plaintiff Calloway noticed that the Headphones’ battery depleted much faster than represented by Bose. The Headphones required charging after even minimal use. Thereafter, the amount of listening time Plaintiff Calloway received per charge continued to diminish.

63. Plaintiff Calloway then allowed her daughter, who exercises regularly, to use the Headphones during her “bootcamp” exercise sessions, subjecting the headphones to sweat and moisture. Plaintiff Calloway’s daughter sweats while exercising. Sweat came in contact with her Headphones when she exercised with them. The Headphones battery began to deplete faster and would only hold a charge for less than one hour during these “bootcamp” sessions.

64. Had Plaintiff Calloway known that the Headphones were not sweat- or water-resistant, she would not have purchased them or would have paid significantly less for them.

65. Had Plaintiff Calloway known that the Headphones did not have a battery that would last six hours, she would not have purchased them or would have paid significantly less for them.

C. Dale Dean

66. Plaintiff Dale Dean (“Plaintiff Dean”) purchased a pair of SoundSport Pulse wireless Headphones in the spring of 2017 from a Verizon retail store.

67. Plaintiff Dean reviewed the product packaging prior to purchase and purchased the Bose SoundSport Pulse Headphones because Bose represented that these Headphones (1) are wireless (Bluetooth); (2) are rechargeable; (3) operate for a substantial number of hours between charges; and (4) are high quality so as to withstand moisture – even during exercise and weather. Plaintiff Dean relied upon these representations when he purchased the Headphones.

68. Prior to purchasing the Headphones, Plaintiff Dean researched the SoundSport wireless headphones on Verizon (<https://www.verizonwireless.com>) and Amazon (www.amazon.com). Plaintiff Dean also saw Bose’s product description on both the Verizon website and the Headphone packaging indicating that the Headphones were sweat and water resistant and had six hours of battery life on a single charge. These representations by Bose were very important to Mr. Dean and influenced his decision to purchase the Headphones. Plaintiff Dean relied on those representations.

69. Plaintiff Dean purchased his Headphones for, and subsequently uses the Headphones for exercise, including running on the treadmill and using the elliptical machine. During these exercise sessions, Plaintiff Dean would subject the Headphones to sweat. He also purchased the headphones to use while mowing his lawn.

70. Plaintiff Dean used the Headphones four to five times a week after purchase.

71. After just one to two weeks after purchase, Plaintiff Dean noticed that the Headphones' battery depleted much faster than represented by Bose. The Headphones would require charging after even minimal use.

72. Plaintiff Dean also noticed that the Headphones would take much longer to charge than represented by Bose.

73. Shortly after these issues arose, Plaintiff Dean contacted Bose by phone. He spoke to a Bose customer service representative and explained to the customer service representative that his Headphones were not operating properly and requested to speak to a manager or supervisor. The customer service representative took down his contact information and told Plaintiff Dean that a manager or supervisor would contact him soon; however, no one from Bose has contacted him.

74. Had Plaintiff Dean known that the Headphones were not moisture-resistant and did not have a reliable, rechargeable battery that would last six hours per charge, he would not have purchased them or would have paid significantly less for them.

D. Rose Farella

75. Plaintiff Rose Farella ("Plaintiff Farella") purchased a pair of Bose SoundSport wireless Headphones from Best Buy in August 2016.

76. Plaintiff Farella reviewed the product packaging prior to purchase and purchased the Bose SoundSport wireless Headphones because Bose represented that these Headphones (1) are wireless (Bluetooth); (2) are rechargeable; (3) operate for a substantial number of hours between charges; and (4) are high quality so as to withstand moisture – even during exercise and weather. Ms. Farella relied upon these representations when she purchased the Headphones.

77. Prior to purchasing the Headphones from Best Buy, Plaintiff Farella researched the SoundSport wireless Headphones at multiple websites online including Amazon (www.amazon.com). During this time, Plaintiff Farella reviewed and considered Bose's representations that the Headphones were sweat and water resistant and had six hours of battery life on a single charge as important characteristics that influenced her decision to purchase the Headphones. Plaintiff Farella relied on these representations made by Bose when she purchased her Headphones.

78. Plaintiff Farella purchased the Headphones for, and subsequently used the Headphones, while exercising, including walking three to five miles a day in very humid weather, subjecting the Headphones to sweat. When she purchased the Headphones, she believed the Headphones could hold a charge and withstand use during exercise after seeing Bose's representation that the headphones were sweat and water resistant, rechargeable, and the Headphones would operate for six hours on a single charge.

79. Soon after purchasing the Headphones, Plaintiff Farella noticed that she was not receiving anything close to six hours of listening time per charge as represented by Bose on the product packaging and the websites she reviewed.

80. The amount of listening time Plaintiff Farella received per charge continued to diminish until June 2018, when her headphones failed to hold any charge at all, rendering them completely inoperable.

81. When Plaintiff Farella contacted Bose about the defect Bose told her that her Headphone warranty had expired and there was nothing Bose would do to help her.

82. Had Plaintiff Farella known that the Headphones were not moisture-resistant and did not have a reliable, rechargeable battery that would last six hours per charge, she would not have purchased them or would have paid significantly less for them.

E. Angelita Pierre-Noel

83. Plaintiff Angelita Pierre-Noel (“Plaintiff Pierre-Noel”) purchased Bose SoundSport wireless Headphones in or about September 2017 from a brick and mortar Amazon store for approximately \$160 to \$170.

84. Ms. Pierre-Noel reviewed the product packaging prior to purchase and purchased the Bose SoundSport wireless Headphones because Bose represented that these Headphones (1) are wireless (Bluetooth); (2) are rechargeable; (3) operate for a substantial number of hours between charges; and (4) are high quality so as to withstand moisture – even during exercise and weather. Plaintiff Pierre-Noel relied upon these representations when making her Headphone purchase.

85. While at the Amazon store, and prior to purchasing the Headphones, Plaintiff Pierre-Noel compared competing brands of headphones by reading and reviewing the product description on their respective boxes. Plaintiff Pierre-Noel read Bose’s representation on the Headphone packaging that the Headphones were sweat and water resistant and had six hours of battery life on a single charge. Plaintiff Pierre-Noel also saw Bose advertisements for the Headphones on a train stating that the Headphones could be used while exercising. Plaintiff Pierre-Noel relied on those representations when she purchased the Headphones.

86. Plaintiff Pierre-Noel purchased her Headphones for, and subsequently used the Headphones while strength training, cardiovascular exercise, and exercising on the treadmill.

87. Plaintiff Pierre-Noel sweats during her strength training, cardiovascular exercise, and while exercising on the treadmill and sweated while using the Headphones. As a result, Plaintiff Pierre-Noel's Headphones were exposed to sweat and moisture.

88. Plaintiff Pierre-Noel used the Headphones every day for around three to four hours each day.

89. About six months after her purchase, in approximately late March/early April 2018, Plaintiff Pierre-Noel noticed that the Headphones no longer held a sufficient charge to last through her two-and-a-half-hour commute to and from work. Thereafter, the amount of listening time that her Headphones functioned per charge continued to diminish.

90. Plaintiff Pierre-Noel no longer uses her Headphones away from home because they require constant recharging to operate and will not hold a charge for more than 30 minutes.

91. Had she known that the Headphones were not moisture-resistant and did not have a reliable, rechargeable battery that would last six hours per charge, Plaintiff Pierre-Noel would not have purchased them or would have paid significantly less for them

F. Dwayne Stowe

92. Plaintiff Dwayne Stowe ("Plaintiff Stowe") purchased Bose SoundSport wireless headphones from Amazon (www.amazon.com) in or around December 2017. He bought them to use while strength training and exercising on the treadmill.

93. Plaintiff Stowe reviewed the product claims on the website prior to purchase and purchased the Bose SoundSport wireless Headphones because Bose represented that these Headphones (1) are wireless (Bluetooth); (2) are rechargeable; (3) operate for a substantial number of hours between charges; and (4) are high quality so as to withstand moisture – even

during exercise and weather. Plaintiff Stowe relied upon these representations when he purchased the Headphones.

94. Prior to purchasing the Headphones from Amazon, Plaintiff Stowe compared SoundSport wireless Headphones to a competitor's headphones (Beats) at multiple online websites including Amazon (www.amazon.com). Plaintiff Stowe also looked at a Headphone display and the Headphone box packaging at a retail Best Buy store. Plaintiff Stowe relied on Bose's representations that the Headphones areas sweat and water resistant, had a good battery that would last hours on a single charge, and could be used wirelessly (Bluetooth).

95. Plaintiff Stowe purchased the Headphones for, and subsequently used the Headphones while strength training and exercising on the treadmill.

96. Plaintiff Stowe sweats while strength training and exercising on the treadmill and sweated using the Headphones. As a result, Plaintiff Stowe's Headphones were exposed to sweat and moisture when he used strength trained and exercised on the treadmill while using his Headphones.

97. Approximately three months after the purchase, Plaintiff Stowe's Headphones began experiencing battery failure. More specifically, the amount of charge the Headphones would hold began to fall precipitously. Mr. Stowe currently receives less than an hour of listening time from a full charge.

98. Had Plaintiff Stowe known that the Headphones were not were not moisture resistant or did not have a reliable, rechargeable battery that would last six hours per charge as advertised, Plaintiff Stowe would not have purchased the Headphones or would have paid significantly less for them.

G. Mary Kate Rice

99. Plaintiff Mary Kate Rice (“Plaintiff Rice”) purchased Bose SoundSport wireless Headphones in or about December 2017 from Best Buy for approximately \$180.

100. Plaintiff Rice reviewed the product packaging prior to purchase and purchased the Bose SoundSport wireless Headphones because Bose represented that these Headphones (1) are wireless (Bluetooth); (2) are rechargeable; (3) operate for a substantial number of hours between charges; and (4) are high quality so as to withstand sweat and moisture – even during exercise and weather. Plaintiff Rice relied upon these representations when she purchased the Headphones.

101. Prior to purchasing the Headphones from Best Buy, Plaintiff Rice saw Bose television commercials representing that that the Headphones were good for runners because they were sweat and water resistant. While at Best Buy, Plaintiff Rice read on the Headphone packaging that the headphones were sweat and water resistant and could be used wirelessly (Bluetooth) and were rechargeable. Plaintiff Rice relied on those representations when purchasing the Headphones.

102. Plaintiff Rice purchased the Headphones to listen to music while exercising, including running and heavy cardio workouts. When she purchased the Headphones, she believed the Headphones could withstand use during exercise after seeing Bose’s representation that the Headphones were sweat and water resistant.

103. Plaintiff Rice used her Headphones as directed, including when she exercised.

104. Plaintiff Rice sweats during her exercise and cardio sessions and sweated while using the Headphones. As a result, Plaintiff Rice’s Headphones were exposed to sweat and moisture when she used them to exercise.

105. Plaintiff Rice used the Headphones three to four times a week for approximately two hours at a time primarily for exercise.

106. The battery life of Plaintiff Rice's Headphones decreased substantially over time and would lose their charge after less than one- and one-half hours of use.

107. Plaintiff Rice was able to use her Headphones for approximately three months until the Headphones stopped holding a charge sufficient to use while exercising.

108. Had Plaintiff Rice known that the Headphones were not moisture-resistant and did not have a reliable, rechargeable battery that would last six hours per charge, Plaintiff Rice would not have purchased the Headphones or would have paid significantly less for them.

H. Beatrice Friedman

109. Plaintiff Beatrice Friedman ("Plaintiff Friedman) purchased Bose SoundSport wireless Headphones in or about December 2017 from Best Buy for \$149.99 (\$159.98 including tax).

110. Plaintiff Friedman reviewed the product packaging prior to purchase and purchased the Bose SoundSport wireless Headphones because Bose represented that these Headphones (1) are wireless (Bluetooth); (2) are rechargeable; (3) operate for a substantial number of hours between charges; and (4) are high quality so as to withstand sweat and moisture – even during exercise and weather. Plaintiff Friedman relied upon these representations when she purchased the Headphones.

111. Prior to purchasing the Headphones from Best Buy, Plaintiff Friedman saw Bose advertisements on CNET.com representing that the Headphones were sweat and water resistant and had five to six hours of battery life on a single charge. While at Best Buy, Plaintiff Friedman read on the packaging that the Headphones were sweat and water resistant and had six

hours of battery life on a single charge. Plaintiff Friedman relied on these representations when purchasing the Headphones.

112. Plaintiff Friedman purchased the Headphones to listen to music while exercising. When she purchased the Headphones, she believed the Headphones could withstand use during exercise after seeing Bose's representation that the Headphones were sweat and water resistant and that the Headphones would operate for six hours on a single charge.

113. Plaintiff Friedman used her Headphones as directed, including when she exercised and walked outdoors. Plaintiff Friedman exercised and walked in damp conditions. Plaintiff Friedman sweats during her exercise and walking sessions and sweated while using the Headphones. As a result, Plaintiff Friedman's Headphones were exposed to sweat and moisture when she used them to exercise and walk.

114. Plaintiff Friedman was able to use her Headphones for approximately two months until the Headphones stopped holding a charge sufficient to use while exercising.

115. Had Plaintiff Friedman known that the Headphones were not moisture-resistant and did not have a reliable, rechargeable battery that would last six hours per charge, Plaintiff Friedman would not have purchased the Headphones or would have paid significantly less for them.

I. Kristen Martin

116. Plaintiff Kristen Martin ("Plaintiff Martin") purchased the SoundSport Free wireless Headphones from Best Buy on August 4, 2018 for \$199.00 + tax.

117. Plaintiff Martin reviewed the product packaging prior to purchase and purchased the Bose SoundSport Free wireless Headphones because Bose represented that these Headphones (1) are wireless (Bluetooth); (2) are rechargeable; (3) operate for a substantial number of hours

between charges; and (4) are high quality so as to withstand sweat and moisture – even during exercise and weather. Plaintiff Martin relied upon these representations when she purchased the Headphones.

118. Prior to purchasing the Headphones from Best Buy, Plaintiff Martin researched the SoundSport Free wireless Headphones online on the Bose website (www.bose.com) and the Best Buy website (www.BestBuy.com). While viewing those websites Plaintiff saw that the SoundSport Free wireless Headphones were advertised as being sweat and water resistant and having five hours of battery life on a single charge. While at the Best Buy retail store, Plaintiff Martin read on the packaging that the Headphones were sweat and water resistant and had five hours of battery life on a single charge. Plaintiff Martin relied on those representations when purchasing the Headphones.

119. Plaintiff Martin purchased the Headphones to listen to music while exercising, including walking, jogging outdoors, and working out at the gym. She purchased the Headphones based upon Defendant's representations that she saw declaring that Headphones could withstand use during exercise because they were sweat and water resistant and the Headphones would operate for a five to six hours on a single charge.

120. Plaintiff Martin sweats during her exercise and sweated while using the Headphones. Plaintiff Martin also used the Headphones occasionally while jogging in a light drizzle. As a result, Plaintiff Martin's Headphones were exposed to sweat and moisture when she used them to exercise.

121. Plaintiff Martin used the Headphones one or two times a week for exercise.

122. Plaintiff Martin noticed that battery life in her Headphones began to decrease noticeably after one month of use.

123. The battery life of Plaintiff Martin's Headphones continued to decrease substantially over time, and after six months of use the Headphones would lose their charge after less than 2 hours of use which was not sufficient to use while exercising.

124. The reason Plaintiff Martin's Headphones failed to retain a charge was due to the Headphones inability to resist sweat and moisture.

125. Had Plaintiff Martin known that the Headphones were not moisture-resistant and did not have a reliable, rechargeable battery that would last five hours per charge, Plaintiff Martin would not have purchased the Headphones or would have paid significantly less for them.

J. Shanna Pohlmann

126. Plaintiff Shanna Pohlmann ("Plaintiff Pohlmann") purchased the SoundSport Free wireless headphones from an airport vendor in the Dallas/Fort Worth International Airport in or about July 2018 for approximately \$200.

127. Plaintiff Pohlmann reviewed the product packaging prior to purchase and purchased the Bose SoundSport Free wireless Headphones because Bose represented that these Headphones (1) are wireless (Bluetooth); (2) are rechargeable; (3) operate for a substantial number of hours between charges; and (4) are high quality so as to withstand sweat and moisture – even during exercise and weather. Plaintiff Pohlmann relied upon these representations when she purchased the Headphones.

128. Prior to purchasing the Headphones, Plaintiff Pohlmann read on the packaging that the Headphones were sweat and water resistant and had five hours of battery life on a single charge. Plaintiff Pohlmann relied on those representations when purchasing the Headphones.

129. Plaintiff Pohlmann purchased the Headphones to use while exercising, including walking outside and working out at the gym. When she purchased the Headphones, she believed

the Headphones could withstand use during exercise after seeing Bose's representations that the Headphones were sweat and water resistant and the Headphones would operate for five hours on a single charge.

130. Plaintiff Pohlmann sweats during her exercise and sweated while using the Headphones. As a result, Plaintiff Rice's Headphones were exposed to sweat and moisture when she used them to exercise.

131. Plaintiff Pohlmann used the Headphones three to four times a week for exercise.

132. Plaintiff Pohlmann noticed that battery life in her Headphones began to decrease noticeably after one month of use.

133. The battery life of Plaintiff Pohlmann's Headphones continued to decrease substantially over time and after six months of use the Headphones would lose their charge after less than two hours of use.

134. Plaintiff Pohlmann contacted Bose customer service about the defect and Bose refused to offer a refund and did not offer to repair or replace the Headphones.

135. The reason Plaintiff Pohlmann's Headphones failed to retain a charge was due to the Headphones inability to resist sweat and moisture.

136. Had Plaintiff Pohlmann known that the Headphones were not sweat and moisture-resistant and did not have a reliable, rechargeable battery that would last five hours per charge, Plaintiff Pohlmann would not have purchased the Headphones or would have paid significantly less for them.

K. Eric Fishon

137. Plaintiff Eric Fishon ("Plaintiff Fishon") purchased the SoundSport Free wireless Headphones from BestBuy.com on October 10, 2017 for \$224.99.

138. Plaintiff Fishon reviewed the product claims on the website prior to purchase and purchased the Bose SoundSport Free wireless Headphones because Bose represented that these Headphones (1) are wireless (Bluetooth); (2) are rechargeable; (3) operate for a substantial number of hours between charges; and (4) are high quality so as to withstand sweat and moisture – even during exercise and weather. Plaintiff Fishon relied upon these representations when he purchased the Headphones.

139. Prior to purchasing the Headphones from BestBuy.com, Plaintiff Fishon researched the Headphones in Consumer Reports magazine and other running magazines. Plaintiff Fishon also researched the headphone on the Best Buy website (www.bestbuy.com) and reviewed the store display at Best Buy's retail store. While viewing both the websites and the displays at the retail Best Buy store, Plaintiff recalls seeing that the SoundSport Free wireless Headphones were advertised as being sweat and water resistant and having five hours of battery life on a single charge. Plaintiff Fishon relied on those representations when purchasing the Headphones.

140. Plaintiff Fishon is an avid long distance runner and purchased the Headphones to listen to music and/or coaching audio during his runs. When Plaintiff Fishon purchased the Headphones, he believed the Headphones could withstand use outdoors and in the rain after seeing Bose's representation that the Headphones were sweat and water resistant and the Headphones would operate for five hours on a single charge.

141. Plaintiff Fishon sweats during his runs and sweated while using the Headphones. Plaintiff Fishon also used the Headphones outside while it rained. As a result, Plaintiff Rice's Headphones were exposed to sweat and moisture when he used them while exercising.

142. Plaintiff Fishon's first pair of SoundSport Free wireless Headphones was delivered to him on October 23, 2017. Immediately after using them, Plaintiff Fishon contacted Bose to inform Bose that his SoundSport Free wireless Headphones were not sweat or water resistant. Bose acknowledged to Plaintiff Fishon that the "initial production" of SoundSport Free wireless Headphones had this issue and issued Plaintiff Fishon a replacement pair of SoundSport Free wireless Headphones.

143. Plaintiff Fishon used the replacement headphones three to four times a week while running and/or exercising.

144. The battery life of Plaintiff Fishon's replacement Headphones never held the advertised five hour charge.

145. The battery life of Plaintiff Fishon's replacement Headphones continued to decrease substantially over time and now lose their charge after less than 2 hours of intended use. The loss of charge was more noticeable when the replacement headphones were exposed to moisture and sweat.

146. The reason Plaintiff Fishon's Headphones failed to retain a charge was due to the Headphones inability to resist sweat and water.

147. Had Plaintiff Fishon known that the Headphones were not moisture-resistant and did not have a reliable, rechargeable battery that would last five hours per charge, Plaintiff Fishon would not have purchased the Headphones or would have paid significantly less for them.

L. Joseph Luchetti

148. Plaintiff Joseph Luchetti ("Plaintiff Luchetti") purchased the Bose SoundSport wireless Headphones from the Bose Retail Store in or around June 2017 for \$149.99.

149. Plaintiff Luchetti reviewed the product packaging prior to purchase and purchased the Headphones because Bose represented that these Headphones (1) are wireless (Bluetooth); (2) are rechargeable; and (3) operate for a substantial number of hours between charges. Plaintiff Luchetti relied upon these representations when he purchased the Headphones.

150. Plaintiff Luchetti often receives marketing emails, direct mail, and Facebook advertisements from Bose, and visits its website regularly. Prior to purchasing the Headphones, Plaintiff Luchetti received and reviewed a direct email from Bose regarding the SoundSport Free Headphones. In that email, Bose represented that the Headphones were wireless (Bluetooth), had a six hour battery life on a single charge and would withstand sweat and moisture during exercise. Plaintiff Luchetti relied on those representations when purchasing the Headphones.

151. Plaintiff Luchetti purchased the Headphones to use while traveling, which typically involves long flights on airplanes. Due to the long flights, Bose's representation that the Headphones had a six-hour battery life was very important to him.

152. Plaintiff Luchetti also used the Headphones while mowing his two-acre yard once a week in the hot summer months, subjecting his Headphones to sweat and moisture. Relying upon Defendant's representations discussed above, when Plaintiff Luchetti purchased the Headphones, he believed the Headphones would operate for six hours on a single charge and would resist sweat and moisture when he mowed his yard.

153. The battery life of Plaintiff Luchetti's Headphones decreased substantially over time. After six months of ownership, Plaintiff Luchetti's Headphones lost their charge after less than two to three hours of intended use. The Headphones currently shut down after only approximately 30 minutes of use.

154. Plaintiff Luchetti called Bose just prior to the one-year anniversary of purchasing his Headphones to report the problems with the battery life. Multiple Bose customer service representatives informed Plaintiff Luchetti that since his Headphones was almost one year old the “product was not serviceable” and that it had been used “beyond its serviceable life.”

155. Bose refused to honor the one-year warranty on Plaintiff Luchetti’s Headphones.

156. Had Plaintiff Luchetti known that the Headphones did not have a reliable, rechargeable battery that would last six hours per charge, Plaintiff Luchetti would not have purchased the Headphones or would have paid significantly less for them.

M. Kathleen Fitzgerald

157. Plaintiff Kathleen Fitzgerald (“Plaintiff Fitzgerald”) purchased the SoundSport wireless Headphones from Best Buy on February 18, 2017 for \$149.99.

158. Plaintiff Fitzgerald reviewed the product packaging prior to purchase and purchased the Bose SoundSport wireless Headphones because Bose represented that these Headphones (1) are wireless (Bluetooth); (2) are rechargeable; (3) operate for a substantial number of hours between charges; and (4) are high quality so as to withstand sweat and moisture – even during exercise and weather. Plaintiff Fitzgerald relied upon these representations when she purchased the Headphones.

159. Prior to purchasing the Headphones from Best Buy, Plaintiff Fitzgerald researched the Headphones online at on the Bose website (www.bose.com). While viewing the Bose website Plaintiff Fitzgerald recalls that Bose advertised that the Headphones were sweat and water resistant and had six hours of battery life on a single charge. Plaintiff Fitzgerald found those representations to be critical in her purchase decision and thus relied on those representations.

160. Plaintiff purchased the Headphones to use during her exercise sessions. Based on Bose's representations discussed above, Plaintiff Fitzgerald understood the Headphones would retain a six hour charge and would withstand being subjected to sweat and moisture during exercise.

161. Plaintiff Fitzgerald sweats while exercising and sweated while using the Headphones. As a result, the Headphones were exposed to sweat and moisture when she used them while exercising.

162. Plaintiff Fitzgerald used the Headphones during exercise approximately six times a week, for three to four months, until she noticed that the Headphones would no longer charge completely, despite charging overnight.

163. Plaintiff Fitzgerald contacted Bose to inform Bose that the Headphones were not charging properly. Bose first requested Plaintiff Fitzgerald to update the software for the Headphones. Plaintiff Fitzgerald updated the software, but the charging problem remained. Bose then sent her a new pair of SoundSport wireless Headphones, and instructed Kathleen to put the defective pair in the same box and send them back to Bose.

164. Plaintiff Fitzgerald again used her replacement Headphones during exercise, exposing them to sweat and moisture, for another three to four months until she noticed that the Headphones would no longer charge completely after overnight charging.

165. Plaintiff Fitzgerald called Bose again to inform them that her replacement Headphones were not charging properly, and Bose refused to send her another replacement and instead required that she mail the replacement headphones, at her expense, back to Bose for investigation.

166. On October 15, 2018, dissatisfied with this Bose's proposal and not wanting to spend more of her own money to ship another pair of defective replacement Headphones, Kathleen went directly to a Bose retail shop to drop off the defective Headphones for shipment back to Bose.

167. During this visit the manager of the Bose store acknowledged that the SoundSport Headphones did have a problem due to a "software issue" but that Bose had fixed the issue.

168. The manager agreed to replace the Headphones with another replacement pair.

169. Had Plaintiff Fitzgerald known that the Headphones were not moisture-resistant and did not have a reliable, rechargeable battery that would last six hours per charge, Plaintiff Fitzgerald would not have purchased the Headphones or would have paid significantly less for them.

CHOICE OF LAW ALLEGATIONS

170. Because this Complaint is brought in Massachusetts, Massachusetts' choice of law regime governs the state law allegations in this Complaint. Under Massachusetts' choice of law rules, Massachusetts law applies to the claims of all class members, regardless of their state of residence or state of purchase.

171. Because Bose is headquartered — and made all decisions relevant to these claims — in Massachusetts, Massachusetts has a substantial connection to, and materially greater interest in, the rights, interests, and policies involved in this action than any other state. Application of Massachusetts law to Bose and the claims of all class members would not be arbitrary or unfair.

172. Plaintiffs plead claims on behalf of a nationwide class because the laws for each state do not vary materially for these claims.

173. Alternatively, Plaintiffs plead state law subclass claims as indicated below.

CLASS ACTION ALLEGATIONS

174. Plaintiffs bring this action on behalf of themselves and a class (“Nationwide Class” or “Class”) defined as follows:

All persons residing in the United States who, during the maximum period of time permitted by law, purchased Bose SoundSport, SoundSport Free, or SoundSport Pulse wireless headphones primarily for personal, family or household purposes, and not for resale.⁷

175. Alternatively, Plaintiffs Farella and Pohlmann bring this action on behalf of themselves and the members of the following subclass (“Florida Subclass”):

All persons residing in the State of Florida who, during the maximum period of time permitted by law, purchased Bose SoundSport, SoundSport Free, or SoundSport Pulse wireless headphones primarily for personal, family or household purposes, and not for resale.⁸

176. Alternatively, Plaintiff Friedman brings this action on behalf of herself and the members of the following subclass (“New Jersey Subclass”):

All persons residing in the State of New Jersey who, during the maximum period of time permitted by law, purchased Bose SoundSport, SoundSport Free, or SoundSport Pulse wireless headphones primarily for personal, family or household purposes, and not for resale.⁹

177. Alternatively, Plaintiff Hester brings this action on behalf of himself and the members of the following subclass (“Nebraska Subclass”):

All persons residing in the State of Nebraska who, during the maximum period of time permitted by law, purchased Bose SoundSport, SoundSport Free, or SoundSport Pulse wireless headphones primarily for personal, family or household purposes, and not for resale.¹⁰

⁷ Plaintiffs reserve the right to amend this definition as necessary.

⁸ Plaintiffs Farella and Pohlmann reserve the right to amend this definition as necessary.

⁹ Plaintiff Friedman reserves the right to amend this definition as necessary.

¹⁰ Plaintiff Hester reserves the right to amend this definition as necessary.

178. Alternatively, Plaintiff Stowe brings this action on behalf of himself and the members of the following subclass (“Georgia Subclass”):

All persons residing in the State of Georgia who, during the maximum period of time permitted by law, purchased Bose SoundSport, SoundSport Free, or SoundSport Pulse wireless headphones primarily for personal, family or household purposes, and not for resale.¹¹

179. Alternatively, Plaintiffs Dean, Fishon, and Pierre-Noel bring this action on behalf of themselves and the members of the following subclass (“New York Subclass”):

All persons residing in the State of New York who, during the maximum period of time permitted by law, purchased Bose SoundSport, SoundSport Free, or SoundSport Pulse wireless headphones primarily for personal, family or household purposes, and not for resale.¹²

180. Alternatively, Plaintiff Calloway brings this action on behalf of herself and the members of the following subclass (“California Subclass”):

All persons residing in the State of California who, during the maximum period of time permitted by law, purchased Bose SoundSport, SoundSport Free, or SoundSport Pulse wireless headphones primarily for personal, family or household purposes, and not for resale.¹³

181. Alternatively, Plaintiff Rice brings this action on behalf of herself and the members of the following subclass (“Texas Subclass”):

All persons residing in the State of Texas who, during the maximum period of time permitted by law, purchased Bose SoundSport, SoundSport Free, or SoundSport Pulse wireless headphones primarily for personal, family or household purposes, and not for resale.¹⁴

182. Alternatively, Plaintiff Martin bring this action on behalf of herself and the members of the following subclass (“Pennsylvania Subclass”):

¹¹ Plaintiff Stowe reserves the right to amend this definition as necessary.

¹² Plaintiffs Dean, Fishon, and Pierre-Noel reserve the right to amend this definition as necessary.

¹³ Plaintiff Calloway reserves the right to amend this definition as necessary.

¹⁴ Plaintiff Rice reserves the right to amend this definition as necessary.

All persons residing in the State of Pennsylvania who, during the maximum period of time permitted by law, purchased Bose SoundSport, SoundSport Free, or SoundSport Pulse wireless headphones primarily for personal, family or household purposes, and not for resale.¹⁵

183. Alternatively, Plaintiff Luchetti bring this action on behalf of himself and the members of the following subclass (“Connecticut Subclass”):

All persons residing in the State of Connecticut who, during the maximum period of time permitted by law, purchased Bose SoundSport, SoundSport Free, or SoundSport Pulse wireless headphones primarily for personal, family or household purposes, and not for resale.¹⁶

184. Alternatively, Plaintiff Fitzgerald bring this action on behalf of herself and the members of the following subclass (“Massachusetts Subclass”):

All persons residing in the State of Massachusetts who, during the maximum period of time permitted by law, purchased Bose SoundSport, SoundSport Free, or SoundSport Pulse wireless headphones primarily for personal, family or household purposes, and not for resale.¹⁷

185. Specifically excluded from these definitions are (1) persons who purchased Bose SoundSport, SoundSport Free, or SoundSport Pulse wireless headphones directly from Bose through its website (www.bose.com); (2) Defendant, any entity in which Defendant has a controlling interest, and its legal representatives, officers, directors, employees, assigns and successors; (3) the Judge to whom this case is assigned and any member of the Judge’s staff or immediate family; and (4) Class Counsel.

186. As used herein, “Class Members” shall mean and refer to the members of the Nationwide Class and all subclasses, including Plaintiffs.

¹⁵ Plaintiff Martin reserves the right to amend this definition as necessary.

¹⁶ Plaintiff Luchetti reserves the right to amend this definition as necessary.

¹⁷ Plaintiff Fitzgerald reserves the right to amend this definition as necessary.

187. Plaintiffs seek only damages and equitable relief on behalf of themselves and the Class Members. Plaintiffs disclaim any intent or right to seek any recovery in this action for personal injuries, wrongful death, or emotional distress suffered by Plaintiffs and/or the Class Members.

188. Members of the Class and Subclasses are so numerous that joinder is impracticable. While the exact number of Class Members is unknown to Plaintiffs, it is believed that the Class comprises at least tens of thousands of members geographically disbursed throughout the United States. Therefore, the Class Members are so numerous that individual joinder of all Class Members is impracticable under Fed. R. Civ. P. 23(a)(1).

189. Common questions of law and fact exist as to all Class Members, as required by Fed. R. Civ. P. 23(a)(2), and predominate over any individual questions, as required by Fed. R. Civ. P. 23(b)(3). These common legal and factual questions include:

- a) Whether the Headphones are defective;
- b) Whether Bose's claim that the Headphones are moisture-resistant is deceptive;
- c) Whether Bose's battery life claims regarding the Headphones are deceptive;
- d) Whether Bose's claim that the Headphones are rechargeable is deceptive;
- e) Whether Bose's claim that the Headphones are durable enough to withstand "working out" is deceptive;
- f) Whether Bose breached express warranties relating to the Headphones including but not limited to whether (1) the Headphones have five or six hours of use on a single charge; and (2) the Headphones are moisture-resistant;
- g) Whether Bose breached the implied warranty of merchantability relating to the Headphones;

- h) Whether Bose breached the implied warranty of fitness for particular purpose relating to the Headphones;
- i) Whether Bose should be ordered to disgorge all or part of the ill-gotten profits it received from the sale of the defective Headphones;
- j) Whether Plaintiffs and the Class are entitled to damages, including compensatory, exemplary, punitive and statutory damages, and the amount of such damages;
- k) Whether Bose should be enjoined from continuing to sell defective Headphones that do not live up to Bose's advertising and marketing claims;
- l) Whether Bose engaged in unfair, unconscionable, or deceptive trade practices by selling and/or marketing defective Headphones; and
- m) Whether Bose's conduct violates Mass. Gen. Laws c. 93A.

190. Plaintiffs' claims are typical of the claims of the Class Members whom they seek to represent under Fed. R. Civ. P. 23(a)(3) because Plaintiffs and each Class Member have been similarly affected by Bose's actionable conduct. Plaintiffs and all members of the Class purchased defective Headphones that render the Headphones either worthless or worth substantially less than the price paid to purchase the Headphones. In addition, Bose's conduct and omissions that gave rise to the claims of Plaintiffs and Class Members (i.e. delivering defective Headphones, making false claims with respect to the Headphones, failing to disclose the known defects, and breaching warranties respecting the Headphones) is the same for all Class Members.

191. Plaintiffs will fairly and adequately represent and protect the interests of the Class Members as required by Fed. R. Civ. P. 23(a)(4). Plaintiffs are adequate representatives because

their interests do not conflict with the interests of the Class Members. Further, Plaintiffs have retained counsel competent and experienced in complex class action litigation, including product defect class action litigation, and Plaintiffs intend to prosecute this action vigorously. Therefore, the interests of the Class Members will be fairly and adequately protected.

192. A class action is appropriate under Fed. R. Civ. P. 23(b)(3) because a class action is superior to any other available means for fairly and efficiently adjudicating the controversy. In this regard, the Class Members' interests in individually controlling the prosecution of separate actions is low given the magnitude, burden, and expense of individual prosecutions against a large corporation such as Defendant. Further, neither Plaintiffs nor their counsel are aware of any other on-going class litigation concerning this controversy. It is desirable to concentrate this litigation in this forum to avoid burdening the courts with individual lawsuits. Individualized litigation presents a potential for inconsistent or contradictory judgments, and also increases the delay and expense to all parties and the court system presented by the legal and factual issues of this case. By contrast, the class action procedure here will have no management difficulties.

193. Bose has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

FIRST CLAIM FOR RELIEF

Breach of Express Warranty – Magnuson Moss Warranty Act

(On Behalf of the Nationwide Class)

194. Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully written herein.

195. The Headphones are consumer products as defined in 15 U.S.C. § 2301(1).

196. Plaintiffs and Class Members are consumers as defined in 15 U.S.C. § 2301(3).

197. Bose is a supplier and warrantor as defined in 15 U.S.C. §§ 2301(4) and (5).

198. Bose provided Plaintiffs and Class Members “written warranties” within the meaning of 15 U.S.C. § 2301(6).

199. 15 U.S.C. § 2310(d)(1)(A) and/or § 2310(d)(3)(C) is satisfied because Plaintiffs properly invoke jurisdiction under the Class Action Fairness Act (“CAFA”).

200. Bose breached two separate express warranties made to Plaintiffs.

Moisture-, Sweat-, & Water-Resistant:

201. Bose promised, affirmed, and expressly warranted that the Headphones are moisture-, sweat-, and water-resistant. In other words, Bose expressly warranted to Plaintiffs and Class Members that the Headphones would continue to function after being exposed to moisture – whether it be from exercise, weather, or another source.

202. Bose’s moisture-, sweat-, and water-resistant warranties became part of the basis of the bargain for Plaintiffs and other Class Members because they relied on such statements in deciding to purchase the Headphones, and because such statements are among the facts a reasonable consumer would consider material in the purchase of high-end sport headphones.

203. Bose breached its moisture-, sweat- and water-resistant warranties by delivering Headphones that do not withstand exposure to even minimal amounts of sweat or moisture.

204. At the time the Headphones were sold, Bose knew of the defects they possessed and offered express warranties with no intention of honoring them with respect to the known defects.

205. Despite repeated demands by Plaintiffs and Class Members that Bose repair or replace the defective Headphones, Bose has refused to provide a permanent fix and simply

provides equally defective replacement Headphones if the Headphones are still within the one-year express warranty period. Bose's refusal to provide an adequate repair or replacement violates 15 U.S.C. § 2304.

206. Although notice is not required, where, as here, consumers purchase a product from a retailer rather than a manufacturer, when Plaintiffs contacted Bose concerning the problems with their Headphones, Bose was afforded a reasonable opportunity to cure its breach of its express warranty that Headphones would be sweat- and water-resistant, but Bose failed to do so.

207. As a direct and proximate result of Bose's breach of its express written warranties regarding the moisture-, sweat-, and water-resistant representations, Plaintiffs and Class Members have been damaged in an amount to be proven at trial.

Battery Life:

208. Bose expressly warranted that the Headphones provide either five or six hours of wireless listening on a single charge.

209. Such statements became the basis of the bargain for Plaintiffs and other Class Members because they relied on such statements in deciding to purchase the Headphones, and because such statements are among the facts a reasonable consumer would consider material in the purchase of high-end rechargeable headphones.

210. Bose breached its battery life warranties by delivering Headphones that do not deliver as promised and fail to retain a charge for the represented hours.

211. At the time the Headphones were sold, Bose knew of the defects they possessed and offered express warranties with no intention of honoring them with respect to the known defects.

212. Despite repeated demands by Plaintiffs and Class Members that Bose repair or replace the defective Headphones, Bose has refused to provide a permanent fix and simply provides equally defective replacement Headphones if the Headphones are still within the one year express warranty period. Bose's refusal to provide an adequate repair or replacement violates 15 U.S.C. § 2304.

213. Although notice is not required, where, as here, consumers purchase a product from a retailer rather than a manufacturer, when Plaintiffs contacted Bose concerning the problems with their headphones, Bose was afforded a reasonable opportunity to cure its breach of the express warranty, but failed to do so.

214. As a direct and proximate result of Bose's breach of its express written warranties regarding battery life, Plaintiffs and Class Members have been damaged in an amount to be proven at trial.

SECOND CLAIM FOR RELIEF

Breach of Implied Warranty - Magnuson-Moss Warranty Act

(On Behalf of the Nationwide Class)

215. Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully written herein.

216. Plaintiffs bring this claim on behalf of the Nationwide Class.

217. The Headphones are "consumer products" within the meaning of 15 U.S.C. § 2301.

218. Plaintiffs and members of the Class are "consumers" within the meaning of 15 U.S.C. § 2301 because they are persons entitled under applicable state law to enforce against the warrantor the obligations of its express and implied warranties.

219. Bose is a “supplier” of consumer products to consumers and a “warrantor” within the meaning of 15 U.S.C. § 2301.

220. 15 U.S.C. § 2310(d)(1)(A) and/or § 2310(d)(3)(C) is satisfied because Plaintiffs properly invoke jurisdiction under the Class Action Fairness Act (“CAFA”).

221. Section 2310(d)(1) of Chapter 15 of the United States Code provides a cause of action for any consumer who is damaged by the failure of a warrantor to comply with a written or implied warranty.

222. Bose made written and implied warranties regarding the Headphones to Plaintiffs and Class Members within the meaning of 15 U.S.C. § 2301. Bose provided Plaintiffs and other Class Members an implied warranty of merchantability within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(7).

223. Bose breached the implied warranty of merchantability because the Headphones were not fit for the ordinary purpose for which such goods are used. Specifically, the Headphones contained one or more defects that caused them to fail to be moisture-resistant and fail to retain a charge as advertised, rendering the Headphones unusable for their ordinary purpose.

224. Pursuant to 15 U.S.C. § 2310(e), Plaintiffs are entitled to bring this class action and are not required to give Bose notice and an opportunity to cure until such time as the Court determines the representative capacity of Plaintiffs pursuant to Rule 23 of the Federal Rules of Civil Procedure.

225. Plaintiffs, individually and on behalf of the other Class Members, seek all damages permitted by law, including diminution in value of their Headphones, in an amount to be proven at trial.

226. In addition, pursuant to 15 U.S.C. § 2310(d)(2), Plaintiffs and the other Class Members are entitled to recover a sum equal to the aggregate amount of costs and expenses (including attorneys' fees based on actual time expended) determined by the Court to have reasonably been incurred by Plaintiffs and the other Class Members in connection with the commencement and prosecution of this action.

227. Further, Plaintiffs and the Class are also entitled to equitable relief under 15 U.S.C. § 2310(d)(1) and damages as a result of Bose's violation of its written and/or implied warranties.

THIRD CLAIM FOR RELIEF

Breach of Express Warranty

(On Behalf of the Nationwide Class)

228. Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully written herein.

229. Plaintiffs allege that Bose breached two separate express warranties.

Moisture-, Sweat- and Water-Resistant:

230. Bose promised, affirmed, and expressly warranted that Headphones are moisture-, sweat-, and water-resistant. In other words, Bose expressly warranted to Plaintiffs and Class Members that the Headphones would continue to function after being exposed to moisture from exercise, weather, or another source.

231. Bose's moisture-, sweat-, and water-resistant warranties became part of the basis of the bargain for Plaintiffs and other Class Members because they relied on such statements in deciding to purchase the Headphones, and because such statements are among the facts a

reasonable consumer would consider material in the purchase of high-end wireless and rechargeable headphones.

232. Bose breached its moisture-, sweat- and water-resistant warranties by delivering Headphones that do not withstand minimal amounts of moisture.

233. At the time the Headphones were sold, Bose knew of the defects they possessed and offered express warranties with no intention of honoring them with respect to the known defects.

234. Although notice is not required, where, as here, consumers purchased a product from a retailer rather than a manufacturer, when Plaintiffs contacted Bose concerning the problems with their headphones, Bose was afforded a reasonable opportunity to cure its breach of its express warranty that Headphones would be moisture-, sweat-, and water-resistant, but failed to do so.

235. As a direct and proximate result of Bose's breach of its express written warranties regarding moisture-, sweat-, and water-resistant representations, Plaintiffs and Class Members have been damaged in an amount to be proven at trial.

Battery Life:

236. Bose expressly warranted that the Headphones provide five to six hours of wireless listening on a single charge.

237. Such statements became the basis of the bargain for Plaintiffs and other Class Members because they relied on such statements in deciding to purchase the Headphones, and because such statements are among the facts a reasonable consumer would consider material in the purchase of high-end wireless and rechargeable headphones.

238. Bose breached its battery life express warranties by delivering Headphones that do not deliver as promised and fail to retain their charge for five to six hours.

239. At the time the Headphones were sold, Bose knew of the defects they possessed and offered express warranties with no intention of honoring them with respect to the known defects.

240. Although notice is not required, where, as here, consumers purchase a product from a retailer rather than a manufacturer, when Plaintiffs contacted Bose concerning the problems with their headphones, Bose was afforded a reasonable opportunity to cure its breach of the express warranty, but failed to do so.

241. As a direct and proximate result of Bose's breach of its express written warranties regarding battery life, Plaintiffs and Class Members have been damaged in an amount to be proven at trial.

FOURTH CLAIM FOR RELIEF

Implied Warranty of Merchantability – Mass. Gen. Laws ch. 106, § 2-314

(On Behalf of Nationwide Class or, alternatively, Massachusetts Subclass)

242. Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully written herein.

243. Bose is a “merchant” of headphones because Bose is a retail seller of electronic products and accessories and routinely sells a wide variety of headphones.

244. Bose is also the manufacturer of the Headphones.

245. Plaintiffs and Class Members are “buyers” of the Headphones because they purchased their headphones for personal use.

246. Bose impliedly warranted to Plaintiffs and Class Members that its Headphones were “merchantable” within the common meaning of “merchantability” expressed in Mass. Gen. Laws ch. 106, § 2-314.

247. Mass. Gen. Laws ch. 106, § 2-314 requires that merchantable goods:

- (1) pass without objection in the trade under the contract description;
- (2) in the case of fungible goods, are of fair average quality within the description;
- (3) are fit for the ordinary purposes for which such goods are used;
- (4) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved;
- (5) are adequately contained, packaged, and labeled as the agreement may require; and
- (6) conform to the promises or affirmations of fact made on the container or label if any.

248. The Headphones would not pass without objection in the trade because they do not perform as warranted – they fail to maintain a charge after minimal use and are not moisture-, sweat-, or water-resistant.

249. Similarly, the Headphones’ failure to maintain a charge after minimal use renders them unfit for ordinary purposes for which such goods are used.

250. The Headphones are not adequately contained, packaged, and labeled for two independent reasons.

251. First, the Headphones are not adequately contained, packaged, and labeled because the labeling represents that they are sweat- and water-resistant when they are not.

252. Second, the Headphones are not adequately contained, packaged, and labeled because the labeling represents that they have a battery which can last for five or six hours following a single charge when the Headphones are in use, which are qualities they do not have.

253. For the same reason, the Headphones do not conform to the promises or affirmations of fact made on the container or label.

254. Bose thus breached the implied warranty of merchantability.

255. Notice of breach is not required because Plaintiffs and the other Class Members did not purchase their Headphones directly from Bose. Even if notice were required, upon information and belief, Defendant has received thousands of customer complaints and communications about the defects, including from many of the Plaintiffs.

256. As a direct and proximate result of Bose's breach of the implied warranty of merchantability, Plaintiffs and the other Class Members did not receive the benefit of their bargain and received goods with a defect that substantially impairs their value to Plaintiffs and Class Members. Plaintiffs and Class Members were damaged as a result of the defects in the Headphones, the product's malfunctioning, and the nonuse of their Headphones.

FIFTH CLAIM FOR RELIEF

Breach of Implied Warranty of Fitness for a Particular Purpose -

Mass. Gen. Laws ch. 106, § 2-314

(On Behalf of the Nationwide Class or, alternatively, Massachusetts Subclass)

257. Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully written herein.

258. Bose is a "merchant" of headphones because Bose is a retail seller of electronic products and accessories and routinely sells a wide variety of headphones.

259. Bose is also the manufacturer of the Headphones.

260. Plaintiffs and Class Members are "buyers" of the Headphones because they purchased their headphones for personal use.

261. Bose advertised the Headphones as suitable for wearing while exercising.

262. Bose advertised the Headphones with depictions of athletes using the Headphones while exercising. The marketing materials show the athletes engaging in weight training, aerobic activity, and running while wearing the Headphones. The marketing materials also show the athletes sweating while wearing the Headphones.

263. Bose knew that buyers would purchase the Headphones for the particular purpose of wearing them while engaging in exercise that would expose them to harsher environments and stressors, including exposure to heightened temperatures, rain, humidity, sweat, and physical shocks.

264. The ordinary consumer does not have the electrical engineering or technological background to know whether headphones can endure the volatility, heat, humidity, and sweat commonly involved in a moderate to high intensity exercise session.

265. When purchasing the Headphones – headphones that are more expensive than competing headphones that are not moisture-, sweat-, and water-resistant – Plaintiffs and Class Members relied on Bose's representations that the Headphones could withstand the stresses of exercise.

266. The Headphones routinely fail to properly function after use during exercise.

267. Plaintiffs' and the Class Members' Headphones failed to properly function after they were exposed to moisture.

268. Consequently, Bose breached the implied warranty of fitness for a particular purpose, specifically that the Headphones would endure through the particular purpose of being used while exercising and would be able to withstand the stressors and environments associated with exercise.

269. Notice of breach is not required because Plaintiffs and the other Class Members did not purchase their Headphones directly from Bose. Even if notice were required, upon information and belief, Defendant has received thousands of customer complaints and communications about the defects, including from many of the Plaintiffs.

270. As a direct and proximate result of Bose's breach of the implied warranty of fitness for a particular purpose, Plaintiffs and the other Class Members did not receive the benefit of their bargain and received goods with one or more defects that substantially impair their value to Plaintiffs and Class Members. Plaintiffs and Class Members were damaged as a result of the defects in the Headphones, the Headphones malfunctioning, the inability to use their Headphones while exercising, and the nonuse of their Headphones.

SIXTH CLAIM FOR RELIEF

Common Law Fraud

(On Behalf of the Nationwide Class or, alternatively, Massachusetts Subclass)

271. Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully written herein.

272. Bose engaged in fraudulent and deceptive conduct. As described above, Bose's conduct defrauded Plaintiffs and Class Members, by intentionally leading them to believe, through affirmative misrepresentations, omissions, suppressions, and concealments of material fact, that the Headphones possessed important characteristics that they in fact do not possess—namely that they are moisture-, sweat-, and water-resistant and provide five or six hours of listening on a single charge — and inducing their purchases.

273. Bose's intentional and material misrepresentations included, among other things, its advertising, marketing materials and messages, and other standardized statements claiming the Headphones are designed for use during workouts and built to withstand sweat and water.

274. The foregoing misrepresentations were uniform across all Class Members.

275. The same extensive and widespread advertising campaign was promoted nationwide, and all of the promotional materials contained the same material representations regarding the Headphones' ability to be used during exercise, that the Headphones provide five or six hours of listening on a single charge, and that the Headphones are moisture-, sweat-, and water-resistant.

276. These representations were false, as detailed herein. Bose knew the representations were false when it made them, and Bose omitted information about the defects from the Class Members, and thereby intended to defraud purchasers by these omissions and misrepresentations.

277. Bose's fraud and concealment were also uniform across all Class Members; Bose concealed from everyone the true nature of the failure to hold a charge and battery defects present in the Headphones as well as the fact that the Headphones were not sweat or water resistant.

278. Bose's misrepresentations and omissions were material in that they would affect a reasonable consumer's decision to purchase Headphones. A reasonable consumer would not purchase high-end rechargeable headphones that fail to retain a charge after only minimal use.

279. Bose's intentionally deceptive conduct induced Plaintiffs and Class Members to purchase Headphones and resulted in harm and damage to them.

280. Plaintiffs believed and relied upon Bose's misrepresentations and concealment of the true facts. Class Members are presumed to have believed and relied upon Bose's misrepresentations and concealment of the true facts because those facts are material to a reasonable consumer's decision to purchase Headphones.

281. As a result of Bose's inducements, Plaintiffs and Class Members sustained actual damages including but not limited to receiving a product that fails to perform as promised and not receiving the benefit of the bargain related to their purchase of the Headphones. If Plaintiffs and Class Members had known about the defect, they would not have purchased the Headphones or would have paid significantly less for them. Bose is therefore liable to Plaintiffs and Class Members in an amount to be proven at trial.

282. Bose's conduct was systematic, repetitious, knowing, intentional, and malicious, and demonstrated a lack of care and reckless disregard for Plaintiffs' and Class Members' rights and interests. Bose's conduct thus warrants an assessment of punitive damages consistent with the actual harm it has caused, the reprehensibility of its conduct, and the need to punish and deter such conduct.

SEVENTH CLAIM FOR RELIEF

Violation of Massachusetts General Laws Chapter 93A

(Massachusetts Consumer Protection Act)

(On Behalf of the Nationwide Class or, alternatively, Massachusetts Subclass)

283. Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully written herein.

284. Bose's business acts and practices alleged throughout this Complaint constitute unfair, unconscionable, and/or deceptive methods, acts, or practices under the Massachusetts

Consumer Protection Law, Mass. Gen. Laws Ch. 93A (“93A”). Bose’s unfair, unconscionable, and/or deceptive methods, acts, and/or practices include, but are not limited to, the following: (1) representing that the Headphones withstand moisture, sweat, and water, when in fact they do not; (2) representing that Headphones had five or six hours of battery life following a single charge, when in fact they did not; and (3) sending consumers Headphones that contained the same defect in response to requests for replacement Headphones under Bose’s warranty. Moreover, as explained above the Plaintiffs and the putative Class suffered a financial injury as a result of these unfair and deceptive acts. The acts complained of were performed knowingly and willfully by Defendant, in the face of an onslaught of consumer complaints over several years as detailed above.

285. The practices of Bose, described above, constitute unfair or deceptive acts or practices, which violate 93A for, inter alia, one or more of the following reasons:

- a. Bose represented that goods or services have sponsorship, approval, characteristics, uses, and benefits that they do not have;
- b. Bose provided, disseminated, marketed, and otherwise distributed uniform false and misleading advertisements, technical data and other information to consumers regarding the performance, reliability, quality and nature of the Headphones;
- c. Bose represented that goods or services were of a particular standard, quality, or grade, when they were of another;
- d. Bose engaged in unconscionable commercial practices in failing to reveal material facts and information about the Headphones, which did, or tended to, mislead Plaintiffs and the Class Members about facts that could not reasonably be known by the consumer;

- e. Bose failed to reveal facts that were material to the transactions in light of representations of fact made in a positive manner;
- f. Bose caused Plaintiffs and the Class Members to suffer a probability of confusion and a misunderstanding of legal rights, obligations and/or remedies by and through its conduct;
- g. Bose failed to reveal material facts to Plaintiffs and the Class Members with the intent that Plaintiffs and the Class members rely upon the omission;
- h. Bose made material misrepresentations and misstatements of fact to Plaintiffs and the Class Members that resulted in Plaintiffs and the Class Members reasonably believing the represented or suggested state of affairs to be other than what they actually were because the misstatements had a tendency to deceive; and,
- i. Bose intended that Plaintiffs and the other Class Members rely on its misrepresentations and omissions, so that Plaintiffs and other Class Members would purchase the Headphones.

286. Under all of these circumstances, Bose's conduct in employing these unfair and deceptive trade practices was malicious, knowing, willful, wanton, and outrageous such as to shock the conscience of the community and warrant the imposition of punitive treble damages.

287. Bose's actions impact the public interest because Plaintiffs and Class Members were injured in exactly the same way as thousands of others purchasing Headphones as a result of and pursuant to Bose's generalized course of deception described above.

288. Had Plaintiffs and other Class Members known of the defective nature of the Headphones, they would not have purchased the Headphones or would have paid less for their them, thereby suffering financial injury.

289. In satisfaction of Mass. Gen. Laws Ch. 93A, §9(3), Plaintiffs made a written demand on Bose more than thirty days prior to this filing. *See* Exhibit A. The letter asserted that the rights of consumers as claimants had been violated, described the unfair and deceptive acts committed by Bose, and specified the injuries suffered by Plaintiffs and the Class Members as well as the relief sought. Bose's response did not remedy the violations set forth in the letter and, as such, Plaintiffs and Class Members are entitled to all remedies available at law, including but not limited to treble damages, attorneys' fees and costs.

290. The foregoing acts, omissions, and practices proximately caused Plaintiffs and Class Members to suffer actual damages in the form of, inter alia, the purchase price of their Headphones or the overpayment or diminution in value of their Headphones.

EIGHTH CLAIM FOR RELIEF

Breach of Express Warranty -- Fla. Stat. Ann. § 672.313

(Brought in the Alternative, on Behalf of Florida Subclass)

291. Plaintiffs Farella and Pohlmann ("Florida Plaintiffs") re-allege and incorporate each and every allegation set forth above as if fully written herein.

292. Florida Plaintiffs allege that Bose breached two separate express warranties.

Moisture-, Sweat-, & Water-Resistant:

293. Bose promised, affirmed, and expressly warranted that the Headphones are moisture-, sweat-, and water-resistant. In other words, Bose expressly warranted to Florida Plaintiffs and Florida Subclass Members that the Headphones would continue to function after being exposed to moisture during exercise.

294. Bose's sweat, moisture, and water-resistant warranties became part of the basis of the bargain for Florida Plaintiffs and other Florida Subclass Members because they relied on

such statements in deciding to purchase the Headphones, and because such statements are among the facts a reasonable consumer would consider material in the purchase of high-end sport headphones.

295. Bose breached its moisture-, sweat-, and water-resistant warranties by delivering Headphones that do not withstand minimal amounts of moisture.

296. At the time the Headphones were sold, Bose knew of the defects they possessed and offered an express warranty with no intention of honoring said warranties with respect to the known defects.

297. Although notice is not required where, as here, consumers purchase a product from a retailer rather than a manufacturer, when contacted by Headphone purchasers who complained about the problems with their Headphones, Bose was afforded a reasonable opportunity to cure its breach of its express warranty that the Headphones would be sweat- and water-resistant, but failed to do so.

298. As a direct and proximate result of Bose's breach of its express written warranties regarding the moisture-, sweat-, and water-resistant representations, Florida Plaintiffs and Florida Subclass Members have been damaged in an amount to be proven at trial.

Battery Life:

299. Bose expressly warranted that the Headphones provide five or six hours of wireless listening on a single charge.

300. Such statements became the basis of the bargain for Florida Plaintiffs and other Florida Subclass Members because they relied on such statements in deciding to purchase the Headphones, and because such statements are among the facts a reasonable consumer would consider material in the purchase of high-end sport headphones.

301. Bose breached its battery life express warranties by delivering Headphones that do not deliver as promised and fail to retain their charge for five or six hours.

302. At the time the Headphones were sold, Bose knew of the defects they possessed and offered express warranties with no intention of honoring them with respect to the known defects.

303. Although notice is not required where, as here, consumers purchase a product from a retailer rather than a manufacturer, when contacted by Headphone purchasers who complained about the problems with their Headphones, Bose was afforded a reasonable opportunity to cure its breach of the express warranty, but failed to do so.

304. As a direct and proximate result of Bose's breach of its express written warranties regarding battery life, Florida Plaintiffs and Florida Subclass Members have been damaged in an amount to be proven at trial.

NINTH CLAIM FOR RELIEF

Implied Warranty of Merchantability -- Fla. Stat. § 672.314

(Brought in the Alternative, on Behalf of Florida Subclass)

305. Florida Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully written herein.

306. Bose is a "merchant" of headphones because Bose is a retail seller of electronic products and accessories and routinely sells a wide variety of headphones.

307. Bose is also the manufacturer of the Headphones.

308. Florida Plaintiffs and Florida Subclass Members are "buyers" of the Headphones because they purchased their headphones for personal use.

309. Bose impliedly warranted to Florida Plaintiffs and Florida Subclass Members that its Headphones were “merchantable” within the common meaning of “merchantability” expressed in Fla. Stat. §672.314.

310. Fla. Stat. §672.314 requires that merchantable goods:

- (1) pass without objection in the trade under the contract description;
 - (2) in the case of fungible goods, are of fair average quality within the description;
 - (3) are fit for the ordinary purposes for which such goods are used;
 - (4) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved;
 - (5) are adequately contained, packaged, and labeled as the agreement may require;
- and
- (6) conform to the promises or affirmations of fact made on the container or label if any.

311. The Headphones would not pass without objection in the trade because they do not perform as warranted – they fail to maintain a charge after minimal use and are not moisture-, sweat-, or water-resistant.

312. Similarly, the Headphones’ failure to maintain a charge after minimal use renders them unfit for ordinary purposes for which such goods are used.

313. The Headphones are not adequately contained, packaged, and labeled for two independent reasons.

314. First, the Headphones are not adequately contained, packaged, and labeled because the labeling represents that they are moisture-, sweat-, and water-resistant when they are not.

315. Second, the Headphones are not adequately contained, packaged, and labeled because the labeling represents that they have a battery which can last for five or six hours on a single charge when the Headphones are in use, which are qualities they do not have.

316. For the same reason, the Headphones do not conform to the promises or affirmations of fact made on the container or label.

317. Bose thus breached the implied warranty of merchantability.

318. Notice of breach is not required because Florida Plaintiffs and the other Florida Subclass Members did not purchase their Headphones directly from Bose. Even if notice were required, upon information and belief, Defendant has received thousands of customer complaints and communications about the defects, including from many of the Plaintiffs.

319. As a direct and proximate result of Bose's breach of the implied warranty of merchantability, Florida Plaintiffs and the other Florida Subclass Members did not receive the benefit of their bargain and received goods with defects that substantially impair their value to Florida Plaintiffs and Florida Subclass Members. Florida Plaintiffs and Florida Subclass Members were damaged as a result of the defects in the Headphones, the product's malfunctioning, and the nonuse of their Headphones.

TENTH CLAIM FOR RELIEF

Implied Warranty of Fitness for a Particular Purpose – Fla. Stat. § 672.315

(Brought in the Alternative, on Behalf of Florida Subclass)

320. Florida Plaintiffs re-allege and incorporates each and every allegation set forth above as if fully written herein.

321. Bose is a "merchant" of headphones because Bose is a retail seller of electronic products and accessories and routinely sells a wide variety of headphones.

322. Bose is also the manufacturer of the Headphones.

323. Florida Plaintiffs and Florida Subclass Members are "buyers" of the Headphones because they purchased their headphones for personal use.

324. Bose advertised the Headphones as suitable for wearing while exercising.

325. Bose advertised the Headphones with depictions of athletes using the Headphones while exercising. The marketing materials show the athletes engaging in weight training, aerobic activity, running, and gymnastics while wearing the Headphones. The marketing materials also show the athletes sweating profusely while wearing the Headphones.

326. Bose knew that buyers would purchase the Headphones for the particular purpose of wearing them while engaging in exercise that would expose them to harsher environments and stressors, including exposure to heightened temperatures, rain, humidity, sweat, and physical shocks.

327. The ordinary consumer does not have the electrical engineering or technological background to know whether headphones can endure the volatility, heat, humidity, and sweat commonly involved in a moderate to high intensity exercise session.

328. When purchasing the Headphones – headphones that are more expensive than competing headphones that are not moisture-, sweat-, and water-resistant – Florida Plaintiffs and Florida Subclass Members relied on Bose's representations that the Headphones could withstand the stresses of exercise.

329. The Headphones routinely fail to properly function after use during exercise.

330. Florida Plaintiffs' and the Florida Subclass Members' Headphones failed to properly function after the Headphones were exposed to moisture.

331. Consequentially, Bose breached the implied warranty of fitness for a particular purpose, specifically that the Headphones would endure through the particular purpose of being used while exercising and would be able to withstand the stressors and environments associated with exercise. The Headphones did not withstand exposure to moisture.

332. Notice of breach is not required because Florida Plaintiffs and the other Florida Subclass Members did not purchase their Headphones directly from Bose. Even if notice were required, upon information and belief, Defendant has received thousands of customer complaints and communications about the defects, including from many of the Plaintiffs.

333. As a direct and proximate result of Bose's breach of the implied warranty of fitness for a particular purpose, Florida Plaintiffs and the other Florida Subclass Members did not receive the benefit of their bargain and received goods with one or more defects that substantially impair their value to Florida Plaintiffs and Florida Subclass Members. Florida Plaintiffs and Florida Subclass Members were damaged as a result of the defects in the Headphones, the Headphones malfunctioning, the inability to use their Headphones while exercising, and the nonuse of their Headphones.

ELEVENTH CLAIM FOR RELIEF

Violation of Florida Consumer Protection Law

(Brought in the Alternative, on Behalf of Florida Subclass)

334. Florida Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully written herein.

335. Fla. Stat. § 501.204(1) provides, "Unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

336. Bose engaged in unfair and deceptive acts in violation of Fla. Stat. § 501.204 when it represented that the Headphones withstand moisture, sweat, and water, when in fact they do not; Bose's misrepresentations about the Headphones being moisture-, sweat-, and water-resistant constitute an independent basis for a violation of Fla. Stat. § 501.204.

337. Bose engaged in unfair and deceptive acts in violation of Fla. Stat. § 501.204 when Bose represented that Headphones had five or six hours of battery life following a single charge, when in fact they did not; Bose's misrepresentation about battery life constitutes an independent basis for a violation of Fla. Stat. § 501.204.

338. Bose engaged in unfair and deceptive acts in violation of Fla. Stat. § 501.204 when in response to requests for replacement Headphones under Bose's warranty, Bose sent consumers Headphones that contained the same defects.

339. Florida Plaintiffs and Florida Subclass Members relied on Bose's misrepresentations when purchasing their Headphones. Had they known that those representations were false, Florida Plaintiffs and Florida Subclass Members would not have purchased the Headphones or would have paid less for them.

340. Florida Plaintiffs and the Florida Subclass Members seek all damages permitted by law in an amount to be determined at trial, including attorneys' fee and expenses.

TWELFTH CLAIM FOR RELIEF

Common Law Fraud

(Brought in the Alternative, on Behalf of Florida Subclass)

341. Florida Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully written herein.

342. Bose engaged in fraudulent and deceptive conduct. As described above, Bose's conduct defrauded Florida Plaintiffs and members of the Florida Subclass, by intentionally leading them to believe, through affirmative misrepresentations, omissions, suppressions, and concealments of material fact, that the Headphones possessed important characteristics that they

in fact do not possess—namely that they are moisture-, sweat-, and water-resistant and provide five or six hours of listening on a single charge —and inducing their purchases.

343. Bose’s intentional and material misrepresentations included, among other things, its advertising, marketing materials and messages, and other standardized statements claiming the Headphones are designed for use during workouts, and built to withstand moisture, sweat, and water.

344. The foregoing misrepresentations were uniform across all Class Members.

345. The same extensive and widespread advertising campaign was promoted throughout Florida, and all of the promotional materials contained the same material representations regarding the Headphones’ ability to be used during exercise, that the Headphones provide five or six hours of listening on a single charge, and that the Headphones are moisture-, sweat-, and water-resistant.

346. These representations were false, as detailed herein. Bose knew the representations were false when it made them and thereby intended to defraud purchasers.

347. Bose did the following with the intent to deceive Florida Plaintiffs and Florida Subclass Members and to induce them to enter into their contracts and purchase the Headphones:

- a. Suggested that the Headphones can withstand moisture, sweat, and water and heavy exercise, even though it knew this to be false;
- b. Positively asserted that the Headphones are moisture-, sweat-, and water-resistant;
- c. Asserted that Headphones were engineered for sport;
- d. Asserted that the Headphones had a rechargeable battery with an five or six hour battery life per charge; and
- e. Suppressed and omitted the true nature of the Headphones’ defects from Florida Plaintiffs and Subclass Members.

348. Bose willfully deceived Florida Plaintiffs and Florida Subclass Members with intent to induce them to alter their positions to their detriment by purchasing defective Headphones.

349. Bose's fraud and concealment were also uniform across all Class Members; Bose concealed from everyone the true nature of the failure to hold a charge and battery defects present in the Headphones.

350. Bose's misrepresentations and omissions were material in that they would affect a reasonable consumer's decision to purchase Headphones. A reasonable consumer would not purchase high-end rechargeable headphones that stop being able to retain a charge after only minimal use.

351. Bose's intentionally deceptive conduct induced Florida Plaintiffs and Florida Subclass Members to purchase Headphones and resulted in harm and damage to them.

352. Florida Plaintiffs believed and relied upon Bose's misrepresentations and concealment of the true facts. Florida Subclass Members are presumed to have believed and relied upon Bose's misrepresentations and concealment of the true facts because those facts are material to a reasonable consumer's decision to purchase Headphones.

353. As a result of Bose's inducements, Florida Plaintiffs and Florida Subclass Members sustained actual damages including but not limited to receiving a product that fails to perform as promised and not receiving the benefit of the bargain related to their purchase of the Headphones. If Florida Plaintiffs and Florida Subclass Members had known about the defect, they would not have purchased the Headphones or would have paid significantly less for them. Bose is therefore liable to Florida Plaintiffs and Florida Subclass Members in an amount to be proven at trial.

354. Bose's conduct was systematic, repetitious, knowing, intentional, and malicious, and demonstrated a lack of care and reckless disregard for Florida Plaintiffs' and Florida Subclass Members' rights and interests. Bose's conduct thus warrants an assessment of punitive

damages, consistent with the actual harm it has caused, the reprehensibility of its conduct, and the need to punish and deter such conduct.

THIRTEENTH CLAIM FOR RELIEF

Breach of Express Warranty -- Neb. Rev. Stat. UCC § 2-313

(Brought In the Alternative, on Behalf of Nebraska Subclass)

355. Plaintiff Hester (“Nebraska Plaintiff”) re-alleges and incorporates each and every allegation set forth above as if fully written herein.

356. Nebraska Plaintiff alleges that Bose breached two separate express warranties.

Moisture-, Sweat-, and Water-Resistant:

357. Bose promised, affirmed, and expressly warranted that the Headphones are moisture-, sweat- and water-resistant. In other words, Bose expressly warranted to Nebraska Plaintiff and Nebraska Subclass Members that the Headphones would continue to function after being exposed to moisture during exercise.

358. Bose’s moisture-, sweat-, and water-resistant warranties became part of the basis of the bargain for Nebraska Plaintiff and other Nebraska Subclass Members because they relied on such statements in deciding to purchase the Headphones, and because such statements are among the facts a reasonable consumer would consider material in the purchase of high-end sport headphones.

359. Bose breached its moisture-, sweat-, and water-resistant warranties by delivering Headphones that do not withstand minimal amounts of moisture.

360. At the time the Headphones were sold, Bose knew of the defects they possessed and offered express warranties with no intention of honoring them with respect to the known defects.

361. Although notice is not required where, as here, consumers purchase a product from a retailer rather than a manufacturer, when contacted by Headphone purchasers who complained about the problems with their Headphones, Bose was afforded a reasonable opportunity to cure its breach of its express warranty that the Headphones would be sweat- and water-resistant, but failed to do so.

362. As a direct and proximate result of Bose's breach of its express written warranties, Nebraska Plaintiff and Nebraska Subclass Members have been damaged in an amount to be proven at trial.

Battery Life:

363. Bose expressly warranted that the Headphones provide five or six hours of wireless listening on a single charge.

364. Such statements became the basis of the bargain for Nebraska Plaintiff and other Nebraska Subclass Members because they relied on such statements in deciding to purchase the Headphones, and because such statements are among the facts a reasonable consumer would consider material in the purchase of high-end sport headphones.

365. Bose breached its battery life express warranties by delivering Headphones that do not deliver as promised and fail to retain their charge for five or six hours.

366. At the time the Headphones were sold, Bose knew of the defects they possessed and offered express warranties with no intention of honoring them with respect to the known defects.

367. Although notice is not required where, as here, consumers purchase a product from a retailer rather than a manufacturer, when contacted by Headphone purchasers who

complained about the problems with their Headphones, Bose was afforded a reasonable opportunity to cure its breach of the express warranty, but failed to do so.

368. As a direct and proximate result of Bose's breach of its express written warranties regarding battery life, Nebraska Plaintiff and Nebraska Subclass Members have been damaged in an amount to be proven at trial.

FOURTEENTH CLAIM FOR RELIEF

Implied Warranty of Merchantability -- Neb. Rev. Stat. U.C.C. § 2-314

(Brought in the Alternative, on Behalf of Nebraska Subclass)

369. Nebraska Plaintiff re-alleges and incorporates each and every allegation set forth above as if fully written herein.

370. Bose is a "merchant" of headphones because Bose is a retail seller of electronic products and accessories and routinely sells a wide variety of headphones.

371. Bose is also the manufacturer of the Headphones.

372. Nebraska Plaintiff and Nebraska Subclass Members are "buyers" of the Headphones because they purchased their headphones for personal use.

373. Bose impliedly warranted to Nebraska Plaintiff and Nebraska Subclass Members that its Headphones were "merchantable" within the common meaning of "merchantability" expressed in Neb. Rev. Stat. U.C.C. § 2-314.

374. Neb. Rev. Stat. U.C.C. § 2-314 requires that merchantable goods:

- (1) pass without objection in the trade under the contract description;
- (2) in the case of fungible goods, are of fair average quality within the description;
- (3) are fit for the ordinary purposes for which such goods are used;
- (4) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved;
- (5) are adequately contained, packaged, and labeled as the agreement may require; and

- (6) conform to the promises or affirmations of fact made on the container or label if any.

375. The Headphones would not pass without objection in the trade because they do not perform as warranted – they fail to maintain a charge after minimal use and are not moisture-, sweat-, or water-resistant.

376. Similarly, the Headphones' failure to maintain a charge after minimal use renders them unfit for ordinary purposes for which such goods are used.

377. The Headphones are not adequately contained, packaged, and labeled for two independent reasons.

378. First, the Headphones are not adequately contained, packaged, and labeled because the labeling represents that they are moisture-, sweat-, and water-resistant when they are not.

379. Second, the Headphones are not adequately contained, packaged, and labeled because the labeling represents that they have a battery which can last for five or six hours following a single charge when the Headphones are in use, which are qualities they do not have.

380. For the same reason, the Headphones do not conform to the promises or affirmations of fact made on the container or label.

381. Bose thus breached the implied warranty of merchantability.

382. Notice of breach is not required because Nebraska Plaintiff and the other Nebraska Subclass Members did not purchase their Headphones directly from Bose. Even if notice were required, upon information and belief, Defendant has received thousands of customer complaints and communications about the defects, including from many of the Plaintiffs.

383. As a direct and proximate result of Bose's breach of the implied warranty of merchantability, Nebraska Plaintiff and the other Nebraska Subclass Members did not receive the benefit of their bargain and received goods with a defect that substantially impairs their value to Nebraska Plaintiff and Nebraska Subclass Members. Nebraska Plaintiff and Nebraska Subclass Members were damaged as a result of the defects in the Headphones, the product's malfunctioning, and the nonuse of their Headphones.

FIFTEENTH CLAIM FOR RELIEF

Implied Warranty of Fitness for a Particular Purpose – Neb. Rev. Stat. U.C.C. § 2-315

(Brought in the Alternative, on Behalf of Nebraska Subclass)

384. Nebraska Plaintiff re-alleges and incorporates each and every allegation set forth above as if fully written herein.

385. Bose is a "merchant" of headphones because Bose is a retail seller of electronic products and accessories and routinely sells a wide variety of headphones.

386. Bose is also the manufacturer of the Headphones.

387. Nebraska Plaintiff and Nebraska Subclass Members are "buyers" of the Headphones because they purchased their headphones for personal use.

388. Bose advertised the Headphones as suitable for wearing while exercising.

389. Bose advertised the Headphones with depictions of athletes using the Headphones while exercising. The marketing materials show the athletes engaging in weight training, aerobic activity, and running while wearing the Headphones. The marketing materials also show the athletes sweating while wearing the Headphones.

390. Bose knew that buyers would purchase the Headphones for the particular purpose of wearing them while engaging in exercise that would expose them to harsher environments and

stressors, including exposure to heightened temperatures, rain, humidity, sweat, and physical shocks.

391. The ordinary consumer does not have the electrical engineering or technological background to know whether headphones can endure the volatility, heat, humidity, and sweat commonly involved in a moderate to high intensity exercise session.

392. When purchasing the Headphones – headphones that are more expensive than competing headphones that are not moisture-, sweat-, and water-resistant – Nebraska Plaintiff and Nebraska Subclass Members relied on Bose’s representations that the Headphones could withstand the stresses of exercise.

393. The Headphones routinely fail to properly function after use during exercise.

394. Nebraska Plaintiff’s and the Nebraska Subclass Members’ Headphones failed to properly function after they were exposed to moisture.

395. Consequentially, Bose breached the implied warranty of fitness for a particular purpose, specifically that the Headphones would endure through the particular purpose of being used while exercising and would be able to withstand the stressors and environments associated with exercise.

396. Notice of breach is not required because Nebraska Plaintiff and the other Nebraska Subclass Members did not purchase their Headphones directly from Bose. Even if notice were required, upon information and belief, Defendant has received thousands of customer complaints and communications about the defects, including from many of the Plaintiffs.

397. As a direct and proximate result of Bose’s breach of the implied warranty of fitness for a particular purpose, Nebraska Plaintiff and the other Nebraska Subclass Members did

not receive the benefit of their bargain and received goods with one or more defects that substantially impair their value to Nebraska Plaintiff and Nebraska Subclass Members. Nebraska Plaintiff and Nebraska Subclass Members were damaged as a result of the defects in the Headphones, the Headphones malfunctioning, the inability to use their Headphones while exercising, and the nonuse of their Headphones.

SIXTEENTH CLAIM FOR RELIEF

Violation of Nebraska Consumer Protection Act --

Neb. Rev. Stat. §59-1601, et seq.

(Brought in the Alternative, on Behalf of Nebraska Subclass)

398. Nebraska Plaintiff re-alleges and incorporates each and every allegation set forth above as if fully written herein.

399. The Nebraska Consumer Protection Act (“NCPA”) prohibits “unfair or deceptive acts or practices in the conduct of any trade or commerce.”

400. Bose engaged in unfair and deceptive acts in violation of the NCPA when it represented that the Headphones withstand moisture, sweat, and water, when in fact they do not; Bose’s misrepresentations about the Headphones being moisture-, sweat-, and water-resistant constitute an independent basis for a violation of the NCPA.

401. Bose engaged in unfair and deceptive acts in violation of the NCPA when Bose represented that Headphones had five or six hours of battery life following a single charge, when in fact they did not; Bose’s misrepresentation about battery life constitutes an independent basis for a violation of the NCPA.

402. Bose engaged in unfair and deceptive acts in violation of the NCPA when in response to requests for replacement Headphones under Bose's warranty, Bose sent consumers Headphones that contained the same defects.

403. Nebraska Plaintiff and Nebraska Subclass Members relied on Bose's misrepresentations when purchasing their Headphones. Had they known that those representations were false, Nebraska Plaintiff and Nebraska Subclass Members would not have purchased the Headphones or would have paid less for them.

404. Nebraska Plaintiff and the Nebraska Subclass Members seek all damages permitted by law in an amount to be determined at trial, including attorneys' fee and expenses.

SEVENTEENTH CLAIM FOR RELIEF

Common Law Fraud

(Brought in the Alternative, on Behalf of Nebraska Subclass)

405. Nebraska Plaintiff re-alleges and incorporates each and every allegation set forth above as if fully written herein.

406. Bose engaged in fraudulent and deceptive conduct. As described above, Bose's conduct defrauded Nebraska Plaintiff and members of the Nebraska Subclass, by intentionally leading them to believe, through affirmative misrepresentations, omissions, suppressions, and concealments of material fact, that the Headphones possessed important characteristics that they in fact do not possess—namely that they are moisture-, sweat-, and water-resistant and provide five or six hours of listening on a single charge —and inducing their purchases.

407. Bose's intentional and material misrepresentations included, among other things, its advertising, marketing materials and messages, and other standardized statements claiming

the Headphones are designed for use during workouts, and built to withstand moisture, sweat, and water.

408. The foregoing misrepresentations were uniform across all Class Members.

409. The same extensive and widespread advertising campaign was promoted throughout Nebraska, and all of the promotional materials contained the same material representations regarding the Headphones' ability to be used during exercise, that the Headphones provide five or six hours of listening on a single charge, and that the Headphones are moisture-, sweat-, and water-resistant.

410. These representations were false, as detailed herein. Bose knew the representations were false when it made them and thereby intended to defraud purchasers.

411. Bose willfully deceived Nebraska Plaintiff and Nebraska Subclass Members with intent to induce them to alter their positions to their detriment by purchasing defective Headphones.

412. Bose's fraud and concealment were also uniform across all Class Members; Bose concealed from everyone the true nature of the failure to hold a charge and battery defects present in the Headphones.

413. Bose's misrepresentations and omissions were material in that they would affect a reasonable consumer's decision to purchase Headphones. A reasonable consumer would not purchase high-end rechargeable headphones that stop being able to retain a charge after only minimal use.

414. Bose's intentionally deceptive conduct induced Nebraska Plaintiff and Nebraska Subclass Members to purchase Headphones and resulted in harm and damage to them.

415. Nebraska Plaintiff believed and relied upon Bose's misrepresentations and concealment of the true facts. Nebraska Subclass Members are presumed to have believed and relied upon Bose's misrepresentations and concealment of the true facts because those facts are material to a reasonable consumer's decision to purchase Headphones.

416. As a result of Bose's inducements, Nebraska Plaintiff and Nebraska Subclass Members sustained actual damages including but not limited to receiving a product that fails to perform as promised and not receiving the benefit of the bargain related to their purchase of the Headphones. If Nebraska Plaintiff and Nebraska Subclass Members had known about the defect, they would not have purchased the Headphones or would have paid significantly less for them. Bose is therefore liable to Nebraska Plaintiff and Nebraska Subclass Members in an amount to be proven at trial.

417. Bose's conduct was systematic, repetitious, knowing, intentional, and malicious, and demonstrated a lack of care and reckless disregard for Nebraska Plaintiff's and Nebraska Subclass Members' rights and interests. Bose's conduct thus warrants an assessment of punitive damages, consistent with the actual harm it has caused, the reprehensibility of its conduct, and the need to punish and deter such conduct.

EIGHTEENTH CLAIM FOR RELIEF

Breach of Express Warranty - Ga. Code Ann., § 11-2-313

(Brought in the Alternative, on Behalf of Georgia Subclass)

418. Plaintiff Stowe ("Georgia Plaintiff") re-alleges and incorporates each and every allegation set forth above as if fully written herein.

419. Georgia Plaintiff alleges that Bose breached two separate express warranties.

Moisture-, Sweat-, & Water-Resistant:

420. Bose promised, affirmed, and expressly warranted that the Headphones are moisture-, sweat-, and water-resistant. In other words, Bose expressly warranted to Georgia Plaintiff and Georgia Subclass Members that the Headphones would continue to function after being exposed to moisture during exercise.

421. Bose's moisture-, sweat-, and water-resistant warranties became part of the basis of the bargain for Georgia Plaintiff and other Georgia Subclass Members because they relied on such statements in deciding to purchase the Headphones, and because such statements are among the facts a reasonable consumer would consider material in the purchase of high-end sport headphones.

422. Bose breached its moisture-, sweat-, and water-resistant warranties by delivering Headphones that do not withstand minimal amounts of moisture.

423. At the time the Headphones were sold, Bose knew of the defects they possessed and offered express warranties with no intention of honoring them with respect to the known defects.

424. Although notice is not required where, as here, consumers purchase a product from a retailer rather than a manufacturer, when contacted by Headphone purchasers who complained about the problems with their Headphones, Bose was afforded a reasonable opportunity to cure its breach of its express warranty that the Headphones would be sweat- and water-resistant, but failed to do so.

425. As a direct and proximate result of Bose's breach of its express written warranties regarding the moisture-, sweat-, and water-resistant representations, Georgia Plaintiff and Georgia Subclass Members have been damaged in an amount to be proven at trial.

Battery Life:

426. Bose expressly warranted that the Headphones provide five or six hours of wireless listening on a single charge.

427. Such statements became the basis of the bargain for Georgia Plaintiff and other Georgia Subclass Members because they relied on such statements in deciding to purchase the Headphones, and because such statements are among the facts a reasonable consumer would consider material in the purchase of high-end sport headphones.

428. Bose breached its battery life express warranties by delivering Headphones that do not deliver as promised and fail to retain their charge for five or six hours.

429. At the time the Headphones were sold, Bose knew of the defects they possessed and offered express warranties with no intention of honoring them with respect to the known defects.

430. Although notice is not required where, as here, consumers purchase a product from a retailer rather than a manufacturer, when contacted by Headphone purchasers who complained about the problems with their Headphones, Bose was afforded a reasonable opportunity to cure its breach of the express warranty, but failed to do so.

431. As a direct and proximate result of Bose's breach of its express written warranties regarding battery life, Georgia Plaintiff and Georgia Subclass Members have been damaged in an amount to be proven at trial.

NINETEENTH CLAIM FOR RELIEF

Implied Warranty of Merchantability -- Ga. Code Ann., § 11-2-314

(Brought in the Alternative, on Behalf of Georgia Subclass)

432. Georgia Plaintiff re-alleges and incorporates each and every allegation set forth above as if fully written herein.

433. Bose is a “merchant” of headphones because Bose is a retail seller of electronic products and accessories and routinely sells a wide variety of headphones.

434. Bose is also the manufacturer of the Headphones.

435. Georgia Plaintiff and Georgia Subclass Members are “buyers” of the Headphones because they purchased their headphones for personal use.

436. Bose impliedly warranted to Georgia Plaintiff and Georgia Subclass Members that its Headphones were “merchantable” within the common meaning of “merchantability” expressed in Ga. Code Ann., § 11-2-314.

437. Ga. Code Ann., § 11-2-313 requires that merchantable goods:

- (1) pass without objection in the trade under the contract description;
- (2) in the case of fungible goods, are of fair average quality within the description;
- (3) are fit for the ordinary purposes for which such goods are used;
- (4) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved;
- (5) are adequately contained, packaged, and labeled as the agreement may require; and
- (6) conform to the promises or affirmations of fact made on the container or label if any.

438. The Headphones would not pass without objection in the trade because they do not perform as warranted – they fail to maintain a charge after minimal use and are not moisture-, sweat-, or water-resistant.

439. Similarly, the Headphones’ failure to maintain a charge after minimal use renders them unfit for ordinary purposes for which such goods are used.

440. The Headphones are not adequately contained, packaged, and labeled for two independent reasons.

441. First, the Headphones are not adequately contained, packaged, and labeled because the labeling represents that they are moisture-, sweat-, and water-resistant when they are not.

442. Second, the Headphones are not adequately contained, packaged, and labeled because the labeling represents that they have a battery which can last for five or six hours following a single charge when the Headphones are in use, which are qualities they do not have.

443. For the same reason, the Headphones do not conform to the promises or affirmations of fact made on the container or label.

444. Bose thus breached the implied warranty of merchantability.

445. Notice of breach is not required because Georgia Plaintiff and the other Georgia Subclass Members did not purchase their Headphones directly from Bose. Even if notice were required, upon information and belief, Defendant has received thousands of customer complaints and communications about the defects, including from many of the Plaintiffs.

446. As a direct and proximate result of Bose's breach of the implied warranty of merchantability, Georgia Plaintiff and the other Georgia Subclass Members did not receive the benefit of their bargain and received goods with a defect that substantially impairs their value to Georgia Plaintiff and Georgia Subclass Members. Georgia Plaintiff and Georgia Subclass Members were damaged as a result of the defects in the Headphones, the product's malfunctioning, and the nonuse of their Headphones.

TWENTIETH CLAIM FOR RELIEF

Implied Warranty of Fitness for a Particular Purpose –

Ga. Code Ann., § 11-2-315

(Brought in the Alternative, on Behalf of Georgia Subclass)

447. Georgia Plaintiff re-alleges and incorporates each and every allegation set forth above as if fully written herein.

448. Bose is a “merchant” of headphones because Bose is a retail seller of electronic products and accessories and routinely sell a wide variety of headphones.

449. Bose is also the manufacturer of the Headphones.

450. Georgia Plaintiff and Georgia Subclass Members are “buyers” of the Headphones because they purchased their headphones for personal use.

451. Bose advertised the Headphones as suitable for wearing while exercising.

452. Bose advertised the Headphones with depictions of athletes using the Headphones while exercising. The marketing materials show the athletes engaging in weight training, aerobic activity, and running while wearing the Headphones. The marketing materials also show the athletes sweating while wearing the Headphones.

453. Bose knew that buyers would purchase the Headphones for the particular purpose of wearing them while engaging in exercise that would expose them to harsher environments and stressors, including exposure to heightened temperatures, rain, humidity, sweat, and physical shocks.

454. The ordinary consumer does not have the electrical engineering or technological background to know whether headphones can endure the volatility, heat, humidity, and sweat commonly involved in a moderate to high intensity exercise session.

455. When purchasing the Headphones – headphones that are more expensive than competing headphones that are not moisture-, sweat-, and water-resistant – Georgia Plaintiff and Georgia Subclass Members relied on Bose’s representations that the Headphones could withstand the stresses of exercise.

456. The Headphones routinely fail to properly function after use during exercise.

457. Georgia Plaintiff's and the Georgia Subclass Members' Headphones failed to properly function after they were exposed to moisture.

458. Consequentially, Bose breached the implied warranty of fitness for a particular purpose, specifically that the Headphones would endure through the particular purpose of being used while exercising and would be able to withstand the stressors and environments associated with exercise. The Headphones did not withstand exposure to moisture.

459. Notice of breach is not required because Georgia Plaintiff and the other Georgia Subclass Members did not purchase their Headphones directly from Bose. Even if notice were required, upon information and belief, Defendant has received thousands of customer complaints and communications about the defects, including from many of the Plaintiffs.

460. As a direct and proximate result of Bose's breach of the implied warranty of fitness for a particular purpose, Georgia Plaintiff and the other Georgia Subclass Members did not receive the benefit of their bargain and received goods with one or more defects that substantially impair their value to Georgia Plaintiff and Georgia Subclass Members. Georgia Plaintiff and Georgia Subclass Members were damaged as a result of the defects in the Headphones, the Headphones malfunctioning, the inability to use their Headphones while exercising, and the nonuse of their Headphones.

TWENTY-FIRST CLAIM FOR RELIEF

Violation of Georgia Fair Business Practices Act --

Ga. Code Ann. § 10-1-390, et seq.

(Brought in the Alternative, on Behalf of Georgia Subclass)

461. Georgia Plaintiff re-alleges and incorporates each and every allegation set forth above as if fully written herein.

462. Georgia Plaintiff and the Georgia Subclass Members purchased the Headphones primarily for personal, family or household purposes.

463. Bose engaged in unfair or deceptive acts in violation of Ga. Code Ann. § 10-1-393, when it represented that the Headphones withstand moisture, sweat, and water, when in fact they do not; Bose's misrepresentations about the Headphones being moisture-, sweat-, and water-resistant constitute an independent basis for a violation of Ga. Code Ann. § 10-1-393.

464. Bose engaged in unfair or deceptive acts in violation of Ga. Code Ann. § 10-1-393, when it represented that Headphones had five or six hours of battery life following a single charge, when in fact they did not; Bose's misrepresentation about battery life constitutes an independent basis for a violation of Ga. Code Ann. § 10-1-393.

465. Bose also engaged in unfair and deceptive acts in violation of Ga. Code Ann. § 10-1-393 when in response to requests for replacement Headphones under Bose's warranty, Bose sent consumers Headphones that contained the same defects.

466. Georgia Plaintiff and the Georgia Subclass Members relied on Bose's misrepresentations when purchasing their Headphones. Had they known that those representations were false, Georgia Plaintiff and the Georgia Subclass Members would not have purchased the Headphones or would have paid less for them.

467. Georgia Plaintiff and the Georgia Subclass Members seek all damages permitted by law in an amount to be determined at trial, including attorneys' fee and expenses.

TWENTY-SECOND CLAIM FOR RELIEF

Common Law Fraud

(Brought in the Alternative, on Behalf of Georgia Subclass)

468. Georgia Plaintiff re-alleges and incorporates each and every allegation set forth above as if fully written herein.

469. Bose engaged in fraudulent and deceptive conduct. As described above, Bose's conduct defrauded Georgia Plaintiff and Georgia Subclass members, by intentionally leading them to believe, through affirmative misrepresentations, omissions, suppressions, and concealments of material fact, that the Headphones possessed important characteristics that they in fact do not possess—namely that they are moisture-, sweat-, and water-resistant and provide five or six hours of listening on a single charge —and inducing their purchases.

470. Bose's intentional and material misrepresentations included, among other things, its advertising, marketing materials and messages, and other standardized statements claiming the Headphones are designed for use during workouts, and built to withstand moisture, sweat, and water.

471. The foregoing misrepresentations were uniform across all Subclass Members.

472. The same extensive and widespread advertising campaign was promoted throughout Georgia, and all of the promotional materials contained the same material representations regarding the Headphones' ability to be used during exercise, that the Headphones provide five or six hours of listening on a single charge, and that the Headphones are moisture-, sweat-, and water-resistant.

473. These representations were false, as detailed herein. Bose knew the representations were false when it made them and thereby intended to defraud purchasers.

474. Bose did the following with the intent to deceive Georgia Plaintiff and Georgia Subclass Members and to induce them to make their purchases:

- (a) Suggested that the Headphones can withstand moisture, sweat, and water and heavy exercise, even though it knew this to be false;
- (b) Positively asserted that the Headphones are moisture-, sweat-, and water-resistant;
- (c) Asserted that Headphones were engineered for sport;
- (d) Asserted that the Headphones had a rechargeable battery with an five or six hour battery life per charge; and
- (e) Suppressed and omitted the true nature of the Headphones' defects from Georgia Plaintiff and Subclass Members.

475. Bose willfully deceived Georgia Plaintiff and Georgia Subclass Members with intent to induce them to alter their positions to their detriment by purchasing defective Headphones.

476. Bose's fraud and concealment were also uniform across all Class Members; Bose concealed from everyone the true nature of the failure to hold a charge and battery defects present in the Headphones.

477. Bose's misrepresentations and omissions were material in that they would affect a reasonable consumer's decision to purchase Headphones. A reasonable consumer would not purchase high-end rechargeable headphones that stop being able to retain a charge after only minimal use.

478. Bose's intentionally deceptive conduct induced Georgia Plaintiff and Georgia Class Members to purchase Headphones and resulted in harm and damage to them.

479. Georgia Plaintiff believed and relied upon Bose's misrepresentations and concealment of the true facts. Georgia Subclass Members are presumed to have believed and relied upon Bose's misrepresentations and concealment of the true facts because those facts are material to a reasonable consumer's decision to purchase Headphones.

480. As a result of Bose's inducements, Georgia Plaintiff and Georgia Subclass Members sustained actual damages including but not limited to receiving a product that fails to perform as promised and not receiving the benefit of the bargain related to their purchase of the

Headphones. If Georgia Plaintiff and Georgia Subclass Members had known about the defect, they would not have purchased the Headphones or would have paid significantly less for them. Bose is therefore liable to Georgia Plaintiff and Georgia Subclass Members in an amount to be proven at trial.

481. Bose's conduct was systematic, repetitious, knowing, intentional, and malicious, and demonstrated a lack of care and reckless disregard for Georgia Plaintiff's and Georgia Subclass Members' rights and interests. Bose's conduct thus warrants an assessment of punitive damages, consistent with the actual harm it has caused, the reprehensibility of its conduct, and the need to punish and deter such conduct.

TWENTY-THIRD CLAIM FOR RELIEF

Breach of Express Warranty - NY UCC § 2-313

(Brought In the Alternative, on Behalf of New York Subclass)

482. Plaintiffs Dean, Fishon, and Pierre-Noel ("New York Plaintiffs") re-allege and incorporate each and every allegation set forth above as if fully written herein.

483. New York Plaintiffs allege that Bose breached two separate express warranties.

Moisture-, Sweat-, & Water-Resistant:

484. Bose promised, affirmed, and expressly warranted that the Headphones are moisture-, sweat-, and water-resistant. In other words, Bose expressly warranted to New York Plaintiffs and New York Subclass Members that the Headphones would continue to function after being exposed to moisture during exercise.

485. Bose's moisture-, sweat-, and water-resistant warranties became part of the basis of the bargain for New York Plaintiffs and other New York Subclass Members because they relied on such statements in deciding to purchase the Headphones, and because such statements

are among the facts a reasonable consumer would consider material in the purchase of high-end sport headphones.

486. Bose breached its moisture-, sweat-, and water-resistant warranties by delivering Headphones that do not withstand minimal amounts of moisture.

487. At the time the Headphones were sold, Bose knew of the defects they possessed and offered express warranties with no intention of honoring them with respect to the known defects.

488. Although notice is not required where, as here, consumers purchase a product from a retailer rather than a manufacturer, when contacted by Headphone purchasers who complained about the problems with their Headphones, Bose was afforded a reasonable opportunity to cure its breach of its express warranty that the Headphones would be sweat- and water-resistant, but failed to do so.

489. As a direct and proximate result of Bose's breach of its express written warranty regarding the sweat- and water-resistant representations, New York Plaintiffs and New York Subclass Members have been damaged in an amount to be proven at trial.

Battery Life:

490. Bose expressly warranted that the Headphones provide five or six hours of wireless listening on a single charge.

491. Such statements became the basis of the bargain for New York Plaintiffs and other New York Subclass Members because they relied on such statements in deciding to purchase the Headphones, and because such statements are among the facts a reasonable consumer would consider material in the purchase of high-end sport headphones.

492. Bose breached its battery life express warranties by delivering Headphones that do not deliver as promised and fail to retain their charge for five or six hours.

493. At the time the Headphones were sold, Bose knew of the defects they possessed and offered express warranties with no intention of honoring them with respect to the known defects.

494. Although notice is not required where, as here, consumers purchase a product from a retailer rather than a manufacturer, when contacted by Headphone purchasers who complained about the problems with their Headphones, Bose was afforded a reasonable opportunity to cure its breach of the express warranty, but failed to do so.

495. As a direct and proximate result of Bose's breach of its express written warranties regarding battery life, New York Plaintiffs and New York Subclass Members have been damaged in an amount to be proven at trial.

TWENTY-FOURTH CLAIM FOR RELIEF

Implied Warranty of Merchantability -- NY UCC § 2-314

(Brought in the Alternative, on Behalf of New York Subclass)

496. New York Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully written herein.

497. Bose is a "merchant" of headphones because Bose is a retail seller of electronic products and accessories and routinely sells a wide variety of headphones.

498. Bose is also the manufacturer of the Headphones.

499. New York Plaintiffs and New York Subclass Members are "buyers" of the Headphones because they purchased their headphones for personal use.

500. Bose impliedly warranted to New York Plaintiffs and New York Subclass Members that its Headphones were “merchantable” within the common meaning of “merchantability” expressed in NY UCC § 2-314.

501. NY UCC § 2-314 requires that merchantable goods:

- (1) pass without objection in the trade under the contract description;
- (2) in the case of fungible goods, are of fair average quality within the description;
- (3) are fit for the ordinary purposes for which such goods are used;
- (4) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved;
- (5) are adequately contained, packaged, and labeled as the agreement may require; and
- (6) conform to the promises or affirmations of fact made on the container or label if any.

502. The Headphones would not pass without objection in the trade because they do not perform as warranted – they fail to maintain a charge after minimal use and are not moisture-, sweat-, or water-resistant.

503. Similarly, the Headphones’ failure to maintain a charge after minimal use renders them unfit for ordinary purposes for which such goods are used.

504. The Headphones are not adequately contained, packaged, and labeled for two independent reasons.

505. First, the Headphones are not adequately contained, packaged, and labeled because the labeling represents that they are moisture-, sweat-, and water-resistant when they are not.

506. Second, the Headphones are not adequately contained, packaged, and labeled because the labeling represents that they have a battery which can last for five or six hours following a single charge when the Headphones are in use, which are qualities they do not have.

507. For the same reason, the Headphones do not conform to the promises or affirmations of fact made on the container or label.

508. Bose thus breached the implied warranty of merchantability.

509. Notice of breach is not required because New York Plaintiffs and the other New York Subclass Members did not purchase their Headphones directly from Bose. Even if notice were required, upon information and belief, Defendant has received thousands of customer complaints and communications about the defects, including from many of the Plaintiffs.

510. As a direct and proximate result of Bose's breach of the implied warranty of merchantability, New York Plaintiffs and the other New York Subclass Members did not receive the benefit of their bargain and received goods with a defect that substantially impairs their value to New York Plaintiffs and New York Subclass Members. New York Plaintiffs and New York Subclass Members were damaged as a result of the defects in the Headphones, the product's malfunctioning, and the nonuse of their Headphones.

TWENTY-FIFTH CLAIM FOR RELIEF

Implied Warranty of Fitness for a Particular Purpose –

NY UCC § 2-315

(Brought in the Alternative, on Behalf of New York Subclass)

511. New York Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully written herein.

512. Bose is a “merchant” of headphones because Bose is a retail seller of electronic products and accessories and routinely sells a wide variety of headphones.

513. Bose is also the manufacturer of the Headphones.

514. New York Plaintiffs and New York Subclass Members are “buyers” of the Headphones because they purchased their headphones for personal use.

515. Bose advertised the Headphones as suitable for wearing while exercising.

516. Bose advertised the Headphones with depictions of athletes using the Headphones while exercising. The marketing materials show the athletes engaging in weight training, aerobic activity, and running while wearing the Headphones. The marketing materials also show the athletes sweating while wearing the Headphones.

517. Bose knew that buyers would purchase the Headphones for the particular purpose of wearing them while engaging in exercise that would expose them to harsher environments and stressors, including exposure to heightened temperatures, rain, humidity, sweat, and physical shocks.

518. The ordinary consumer does not have the electrical engineering or technological background to know whether headphones can endure the volatility, heat, humidity, and sweat commonly involved in a moderate to high intensity exercise session.

519. When purchasing the Headphones – headphones that are more expensive than competing headphones that are not moisture-, sweat-, and water-resistant – New York Plaintiffs and New York Subclass Members relied on Bose’s representations that the Headphones could withstand the stresses of exercise.

520. The Headphones routinely fail to properly function after use during exercise.

521. New York Plaintiffs’ and the New York Subclass Members’ Headphones failed to properly function after they were exposed to moisture.

522. Consequentially, Bose breached the implied warranty of fitness for a particular purpose, specifically that the Headphones would endure through the particular purpose of being

used while exercising and would be able to withstand the stressors and environments associated with exercise. The Headphones did not withstand exposure to moisture.

523. Notice of breach is not required because New York Plaintiffs and the other New York Subclass Members did not purchase their Headphones directly from Bose. Even if notice were required, upon information and belief, Defendant has received thousands of customer complaints and communications about the defects, including from many of the Plaintiffs.

524. As a direct and proximate result of Bose's breach of the implied warranty of fitness for a particular purpose, New York Plaintiffs and the other New York Subclass Members did not receive the benefit of their bargain and received goods with one or more defects that substantially impair their value to New York Plaintiffs and New York Subclass Members. New York Plaintiffs and New York Subclass Members were damaged as a result of the defects in the Headphones, the Headphones malfunctioning, the inability to use their Headphones while exercising, and the nonuse of their Headphones.

TWENTY-SIXTH CLAIM FOR RELIEF

Violation of New York General Business Law § 349

(N.Y. Gen. Bus. Law § 349)

(Brought in the Alternative, on Behalf of New York Subclass)

525. New York Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully written herein.

526. New York Plaintiffs and the New York Subclass Members purchased the Headphones primarily for personal, family, or household purposes.

527. Bose engaged in deceptive acts and practices in violation of N.Y. Gen. Bus. Law § 349, *et seq.* when it represented that the Headphones withstand moisture, sweat, and water, when in fact they do not; Bose's misrepresentations about the Headphones being moisture-, sweat-, and water-resistant constitute an independent basis for a violation of N.Y. Gen. Bus. Law § 349, *et seq.*

528. Bose engaged in deceptive acts and practices in violation of N.Y. Gen. Bus. Law § 349, *et seq.* when it represented that Headphones had five or six hours of battery life following a single charge, when in fact they did not; Bose's misrepresentation about battery life constitutes an independent basis for a violation of N.Y. Gen. Bus. Law § 349, *et seq.*

529. Bose also engaged in unfair and deceptive acts in violation of N.Y. Gen. Bus. Law § 349, *et seq.* when in response to requests for replacement Headphones under Bose's warranty, Bose sent consumers Headphones that contained the same defects.

530. New York Plaintiffs and the New York Subclass Members relied on Bose's misrepresentations when purchasing their Headphones. Had they known that those representations were false, New York Plaintiffs and the New York Subclass Members would not have purchased the Headphones or would have paid less for them.

531. New York Plaintiffs and the New York Subclass Members seek all damages permitted by law in an amount to be determined at trial, including attorneys' fee and expenses.

TWENTY-SEVENTH CLAIM FOR RELIEF

Violation of New York General Business Law § 350

(N.Y. Gen. Bus. Law § 350)

532. New York Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully written herein.

533. New York's General Business Law § 350 makes unlawful "[f]alse advertising in the conduct of any business, trade or commerce[.]" False advertising includes "advertising, including labeling, of a commodity ... if such advertising is misleading in a material respect," taking into account "the extent to which the advertising fails to reveal facts material in the light of ... representations [made] with respect to the commodity." N.Y. Gen. Bus. Law § 350-a.

534. Defendant caused to be made or disseminated throughout New York, through advertising, marketing, and other publications, statements that were untrue or misleading, and which were known, or which by the exercise of reasonable care should have been known to Defendant, to be untrue and misleading to consumers, including New York Plaintiffs and the other Subclass members.

535. Defendant violated N.Y. Gen. Bus. Law § 350 because of the misrepresentations and omissions alleged herein, including, but not limited to, Defendant's marketing of the Headphones as moisture-, sweat-, and water-resistant, and as offering five or six hours of playback on a single charge.

536. In purchasing the Headphones, New York Plaintiffs and the other Subclass members were deceived by Defendant's misrepresentations and omissions.

537. New York Plaintiffs and Subclass members reasonably relied upon Defendant's false misrepresentations. They had no way of knowing that Defendant's representations were false and gravely misleading. New York Plaintiffs and Subclass members did not, and could not, unravel Defendant's deception on their own.

538. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

539. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

540. Defendant intentionally and knowingly misrepresented material facts regarding the Headphones with intent to mislead New York Plaintiffs and the Subclass.

541. Defendant knew or should have known that its conduct violated General Business Law § 350.

542. Defendant's conduct proximately caused injuries to New York Plaintiffs and the other Subclass members.

543. New York Plaintiffs and the other Subclass members were injured and suffered ascertainable loss, injury in fact, and/or actual damage as a proximate result of Defendant's conduct in that New York Plaintiffs and the other Subclass members overpaid for their Headphones and did not receive the benefit of their bargain, and their Headphones suffered a diminution in value. These injuries are the direct and natural consequence of Defendant's misrepresentations and omissions.

544. Defendant's violations present a continuing risk to New York Plaintiffs as well as to the general public. Defendant's unlawful acts and practices complained of herein affect the public interest.

545. New York Plaintiffs and the other Subclass members are entitled to recover their actual damages or \$500, whichever is greater. Because Defendant acted willfully or knowingly, New York Plaintiff and the other Subclass members are entitled to recover three times actual damages, up to \$10,000.

TWENTY-EIGHTH CLAIM FOR RELIEF

Common Law Fraud

(Brought in the Alternative, on Behalf of New York Subclass)

546. New York Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully written herein.

547. Bose engaged in fraudulent and deceptive conduct. As described above, Bose's conduct defrauded New York Plaintiffs and New York Subclass members by intentionally leading them to believe, through affirmative misrepresentations, omissions, suppressions, and concealments of material fact, that the Headphones possessed important characteristics that they in fact do not possess—namely that they are moisture-, sweat-, and water-resistant and provide five or six hours of listening on a single charge —and inducing their purchases.

548. Bose's intentional and material misrepresentations included, among other things, its advertising, marketing materials and messages, and other standardized statements claiming the Headphones are designed for use during workouts, and built to withstand moisture, sweat, and water.

549. The foregoing misrepresentations were uniform across all Subclass Members.

550. The same extensive and widespread advertising campaign was promoted throughout New York, and all of the promotional materials contained the same material representations regarding the Headphones' ability to be used during exercise, that the Headphones provide five or six hours of listening on a single charge, and that the Headphones are moisture-, sweat-, and water-resistant.

551. These representations were false, as detailed herein. Bose knew the representations were false when it made them and thereby intended to defraud purchasers.

552. Bose did the following with the intent to deceive New York Plaintiffs and New York Subclass Members and to induce them to enter into their contracts:

- a. Suggested that the Headphones can withstand moisture, sweat, and water and heavy exercise, even though it knew this to be false;
- b. Positively asserted that the Headphones are moisture-, sweat-, and water-resistant;
- c. Asserted that Headphones were engineered for sport;
- d. Asserted that the Headphones had a rechargeable battery with an five or six hour battery life per charge; and
- e. Suppressed the true nature of the Headphones' defects from New York Plaintiffs and Subclass Members.

553. Bose willfully deceived New York Plaintiffs and New York Subclass Members with intent to induce them to alter their positions to their detriment by purchasing defective Headphones.

554. Bose's fraud and concealment were also uniform across all Subclass Members; Bose concealed from everyone the true nature of the failure to hold a charge and battery defects present in the Headphones.

555. Bose's misrepresentations and omissions were material in that they would affect a reasonable consumer's decision to purchase Headphones. A reasonable consumer would not purchase high-end rechargeable headphones that stop being able to retain a charge after only minimal use.

556. Bose's intentionally deceptive conduct induced New York Plaintiffs and New York Class Members to purchase Headphones and resulted in harm and damage to them.

557. New York Plaintiffs believed and relied upon Bose's misrepresentations and concealment of the true facts. New York Subclass Members are presumed to have believed and relied upon Bose's misrepresentations and concealment of the true facts because those facts are material to a reasonable consumer's decision to purchase Headphones.

558. As a result of Bose's inducements, New York Plaintiffs and New York Subclass Members sustained actual damages including but not limited to receiving a product that fails to perform as promised and not receiving the benefit of the bargain related to their purchase of the Headphones. If New York Plaintiffs and New York Subclass Members had known about the defect, they would not have purchased the Headphones or would have paid significantly less for them. Bose is therefore liable to New York Plaintiffs and New York Subclass Members in an amount to be proven at trial.

559. Bose's conduct was systematic, repetitious, knowing, intentional, and malicious, and demonstrated a lack of care and reckless disregard for New York Plaintiffs' and New York Subclass Members' rights and interests. Bose's conduct thus warrants an assessment of punitive damages, consistent with the actual harm it has caused, the reprehensibility of its conduct, and the need to punish and deter such conduct.

TWENTY-NINTH CLAIM FOR RELIEF

Breach of Express Warranty

(Brought in the Alternative, on Behalf of California Subclass)

560. Plaintiff Calloway ("California Plaintiff") re-alleges and incorporates each and every allegation set forth above as if fully written herein.

561. California Plaintiff alleges that Bose breached two separate express warranties.

Moisture-, Sweat-, & Water-Resistant:

562. Bose promised, affirmed, and expressly warranted that Headphones are moisture-, sweat-, and water-resistant. In other words, Bose expressly warranted to California Plaintiff and California Subclass Members that the Headphones would continue to function after being exposed to moisture during exercise.

563. Bose's moisture-, sweat- and water-resistant warranties became part of the basis of the bargain for California Plaintiff and other California Subclass Members because they relied on such statements in deciding to purchase the Headphones, and because such statements are among the facts a reasonable consumer would consider material in the purchase of high-end sport headphones.

564. Bose breached its moisture-, sweat-, and water-resistant warranties by delivering Headphones that do not withstand minimal amounts of moisture.

565. At the time the Headphones were sold, Bose knew of the defects they possessed and offered express warranties with no intention of honoring them with respect to the known defects.

566. Although notice is not required, where, as here, consumers purchased a product from a retailer rather than a manufacturer, when Plaintiffs contacted Bose concerning the problems with their headphones, Bose was afforded a reasonable opportunity to cure its breach of its express warranty that Headphones would be sweat- and water-resistant, but failed to do so.

567. As a direct and proximate result of Bose's breach of its express written warranties regarding the moisture-, sweat-, and water-resistant representations, California Plaintiff and Class Members have been damaged in an amount to be proven at trial.

Battery Life:

568. Bose expressly warranted that the Headphones provide five or six hours of wireless listening on a single charge.

569. Such statements became the basis of the bargain for California Plaintiff and other California Subclass Members because they relied on such statements in deciding to purchase the

Headphones, and because such statements are among the facts a reasonable consumer would consider material in the purchase of high-end sport headphones.

570. Bose breached its battery life express warranties by delivering Headphones that do not deliver as promised and fail to retain their charge for five or six hours.

571. At the time the Headphones were sold, Bose knew of the defects they possessed and offered express warranties with no intention of honoring them with respect to the known defects.

572. Although notice is not required, where, as here, consumers purchase a product from a retailer rather than a manufacturer, when Plaintiff contacted Bose concerning the problems with their headphones, Bose was afforded a reasonable opportunity to cure its breach of the express warranty, but failed to do so.

573. As a direct and proximate result of Bose's breach of its express written warranties regarding battery life, California Plaintiff and California Subclass Members have been damaged in an amount to be proven at trial.

THIRTIETH CLAIM FOR RELIEF

Implied Warranty of Merchantability – California Song-Beverly Act

(Brought in the Alternative, on Behalf of California Subclass)

574. California Plaintiff re-alleges and incorporates each and every allegation set forth above as if fully written herein.

575. The Headphones are a “consumer good” within the meaning of Cal. Civ. Code § 1791(a).

576. Plaintiff and members of the California Subclass are “buyers” within the meaning of Cal. Civ. Code § 1791(b).

577. Bose is a “manufacturer” of the Headphones within the meaning Cal. Civ. Code § 1791(j).

578. Bose contracted with retailers so that the retailers could sell Headphones to consumers. Bose intended that consumers would be the end users of Headphones and that consumers would be the beneficiaries of its contracts with retailers to sell Headphones to consumers.

579. Bose impliedly warranted to California Plaintiff and California Subclass Members that its Headphones were “merchantable” within the meaning of Cal. Civ. Code §§ 1791.1(a) and 1792; however, as described throughout this Complaint, the Headphones do not have the quality that a buyer would reasonably expect, and were therefore not merchantable.

580. Cal. Civ. Code § 1791.1(a) states:

“Implied warranty of merchantability” or “implied warranty that goods are merchantable” means that the consumer goods meet each of the following:

- (1) Pass without objection in the trade under the contract description;
- (2) Are fit for the ordinary purposes for which such goods are used;
- (3) Are adequately contained, packaged, and labeled; and
- (4) Conform to the promises or affirmations of fact made on the container or label.

581. The Headphones would not pass without objection in the trade because they do not perform as warranted because they fail to maintain a charge after minimal use and are not moisture-, sweat-, or water-resistant.

582. Similarly, the Headphones’ failure to maintain a charge after minimal use renders them unfit for ordinary purposes for which such goods are used.

583. The Headphones are not adequately contained, packaged, and labeled for two independent reasons.

584. The Headphones are not adequately contained, packaged, and labeled because the labeling represents that they are moisture-, sweat-, and water-resistant, which they are not.

585. Moreover, the Headphones are not adequately contained, packaged, and labeled because the labeling represents that they have a battery that can last five or six hours following a single charge, when the battery does not last nearly that long.

586. For the same reason, the Headphones do not conform to the promises or affirmations of fact made on the container or label.

587. Bose thus breached the implied warranty of merchantability.

588. Notice of breach is not required because California Plaintiff and the other California Subclass Members did not purchase their Headphones directly from Bose. Even if notice were required, upon information and belief, Defendant has received thousands of customer complaints and communications about the defects, including from many of the Plaintiffs.

589. As a direct and proximate result of Bose's breach of the implied warranty of merchantability, California Plaintiff and the other California Subclass Members did not receive the benefit of their bargain and received goods with a defect and/or that were the product of poor quality materials and workmanship that substantially impairs their value to California Plaintiff and California Subclass Members.

590. California Plaintiff and California Subclass Members were damaged as a result of the defects present in the Headphones, the product's malfunctioning, and their inability to use their Headphones.

591. Pursuant to Cal. Civ. Code §§ 1791.1(d) & 1794, California Plaintiff and Subclass Members are entitled to damages and other legal and equitable relief including, at their election, the purchase price of their Headphones or the overpayment or diminution in value of their Headphones.

592. Pursuant to Cal. Civ. Code § 1794, California Plaintiff and the other Subclass Members are entitled to costs and attorneys' fees.

THIRTY-FIRST CLAIM FOR RELIEF

Breach of Implied Warranty of Fitness for a Particular Purpose

(Brought in the Alternative, on Behalf of California Subclass)

593. California Plaintiff re-alleges and incorporates each and every allegation set forth above as if fully written herein.

594. Defendant marketed, distributed, and/or sold the Headphones with implied warranties that it was fit for its particular purpose of use during exercise.

595. Because Defendant extensively marketed Headphones as a product for use during exercise, Defendant knew at the time it sold Headphones to California Plaintiff and the Subclass Members that the California Plaintiff and the Subclass Members intended to use Headphones for that particular purpose.

596. California Plaintiff and the Subclass Members relied on Defendant's skill and judgment to furnish goods suitable for use during exercise, and for resistance to moisture, sweat, and water. California Plaintiff and the Subclass Members purchased the Headphones in reliance upon Defendant's implied warranties.

597. At the time that the Headphones were sold, Defendant knew or had reason to know that California Plaintiff and the California Subclass Members were relying on Defendant's

skill and judgment to select or furnish a product capable of operating after exposure to moisture, sweat, and water.

598. As a direct and proximate cause of Defendant's breach of this implied warranty, California Plaintiff and Subclass Members have been injured and harmed because: (a) they would not have purchased the products on the same terms if the true facts were known concerning the Headphones; (b) they paid a price premium for the products due to Defendant's implied warranties; and (c) they did not receive a product that was fit for its particular purpose of use during exercise and/or after exposure to sweat and moisture.

THIRTY-SECOND CLAIM FOR RELIEF

Violation of California's Consumers Legal Remedies Act ("CLRA")

(Brought in the Alternative, on Behalf of California Subclass)

599. California Plaintiff re-alleges and incorporates each and every allegation set forth above as if fully written herein.

600. Bose is a "person" as defined by the CLRA. Cal. Civ. Code § 1761(c).

601. California Plaintiff and California Subclass Members are "consumers" within the meaning of the CLRA, as defined by Cal. Civ. Code § 1761(d), who purchased one or more pairs of Headphones.

602. The CLRA prohibits "unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer[.]" Cal. Civ. Code § 1770(a).

603. Bose has engaged in unfair or deceptive trade practices that violated Cal. Civ. Code § 1770(a), as described above and below, by, among other things, failing to disclose the defective nature of the Headphones, representing that the Headphones had characteristics and

benefits that they do not have (e.g., durability, battery life, moisture-resistant, sweat-resistant, water-resistant, the ability to use during workouts), representing that the Headphones were of a particular standard, quality, or grade when they were of another, and advertising Headphones with the intent not to sell them as advertised. See Cal. Civ. Code §§ 1770(a)(5), (a)(7), (a)(9).

604. The information Bose concealed and/or failed to disclose to California Plaintiff and California Subclass Members is material because reasonable consumers would consider the Headphones' battery defect that causes them to fail to hold a reasonable charge and become inoperable during their useful life to be important information when deciding whether to purchase wireless sport headphones.

605. California Plaintiff and California Subclass members would have behaved differently by not buying the Headphones and/or paying less for the Headphones, had they been aware that the Headphones were defective.

606. Defendant was obliged to disclose the material facts because: a) Defendant had exclusive knowledge of the material facts not known to California Plaintiff and California Subclass Members, since only Defendant had access to the aggregate data from its retailers, its own research and tests, and complaints from its customers through its warranty and customer service database(s); and b) Defendant actively concealed and suppressed the material facts from California Plaintiff and California Subclass Members by not warning of the battery defect at the time of purchase; and (c) Defendant made partial representations about the Headphones' battery life and moisture-, sweat-, and water-resistant qualities through a long-term advertising campaign while withholding the material fact that the Headphones have defects that render them inoperable.

607. California Plaintiff and California Subclass Members justifiably acted or relied to their detriment upon the concealment and/or non-disclosure of material facts as evidenced by their purchases of the defective Headphones. Had Defendant disclosed the material fact that the Headphones had a defect that causes them to lose the ability to hold a reasonable charge, California Plaintiffs and California Subclass Members would have behaved differently by not buying the Headphones and/or paying less for the Headphones.

608. Defendant's omissions of material facts directly and proximately caused California Plaintiffs' and Subclass Member's injuries in that California Plaintiffs and Subclass Members would not have overpaid for the Headphones. As such, California Plaintiff and Subclass Members did not receive the benefit of the bargain and were injured.

609. Bose's misrepresentations about battery life constitute an independent basis for a violation of the CLRA.

610. Bose's misrepresentations about the Headphones being moisture-, sweat-, and water-resistant constitute an independent basis for a violation of the CLRA.

611. Bose knew, should have known, or was reckless in not knowing that its products did not have the qualities, characteristics, and functions it represented, warranted, and advertised them to have.

612. California Plaintiff and Subclass Members are reasonable consumers who expected that their Headphones would work as represented.

613. As a result of Bose's conduct and unfair or deceptive acts or practices, California Plaintiffs and Subclass Members suffered actual damages in that the Headphones do not function as represented and are not worth the amount paid, and Bose has deprived California Plaintiffs and Subclass Members the benefit of the bargain.

614. California Plaintiff and Subclass Members seek an order enjoining Defendant's unfair or deceptive acts or practices, and awarding damages, equitable relief, and attorneys' fees and costs under Cal. Civ. Code § 1780(e).¹⁸

THIRTY-THIRD CLAIM FOR RELIEF

Violation of California's Unfair Competition Law ("UCL")

(Brought in the Alternative, on Behalf of California Subclass)

615. California Plaintiff re-alleges and incorporates each and every allegation set forth above as if fully written herein.

616. California Business & Professions Code § 17200 prohibits acts of "unfair competition," including any "unlawful, unfair or fraudulent business act or practice" and "unfair, deceptive, untrue or misleading advertising." Bose's conduct related to the sale of its defective Headphones violated each of this statute's three prongs.

617. Bose committed an unlawful business act or practice in violation of Cal. Bus. & Prof. Code § 17200, *et seq.*, by their violations of the Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*, as set forth above, by the acts and practices set forth in this Complaint.

618. Bose committed unfair business acts and practices in violation of Cal. Bus. & Prof. Code § 17200, *et seq.*, when it sold Headphones that contained one or more defects causing them to fail to maintain a charge after minimal use; when it represented that the Headphones withstand moisture, sweat, and water, when in fact they do not; when it represented that the Headphones have batteries that last five or six hours, when in fact they do not; and, when in

¹⁸ On October 19, 2018, Plaintiffs mailed a letter to Bose that complied with Section 1782(d) of the CLRA. This letter, attached as Exhibit A, was prepared by Plaintiffs' counsel on behalf of Plaintiffs as well as similarly situated purchasers nationwide. The letter gave Defendant notice of the allegations in this Complaint. On December 10, 2018 Defendant provided a response to Plaintiffs' letter.

response to requests for replacement Headphones under Bose's warranty, Bose sent consumers Headphones that contained the same defects.

619. Bose committed fraudulent business acts and practices in violation of Cal. Bus. & Prof. Code § 17200, et seq., when it affirmatively and knowingly misrepresented that the Headphones were durable and would withstand moisture, sweat, and water, when in fact they do not; when it represented that the Headphones have batteries that last five or six hours, when in fact they do not; and, when in response to requests for replacement Headphones under Bose's warranty, Bose sent consumers Headphones that contained the same defects. Bose's representations and concealment of the defects are likely to mislead the public with regard to the true defective nature of the Headphones.

620. Bose's misrepresentations about battery life constitute an independent basis for a violation of the fraudulent prong of the UCL.

621. Bose's misrepresentation about the Headphones being moisture-, sweat-, and water-resistant constitutes an independent basis for a violation of the fraudulent prong of the UCL.

622. Bose knew, or reasonably should have known, that its Headphones were defective, because they continuously received broken headphones from consumers, often several times from the same individual consumer. Despite the constant stream of returned Headphones, Bose continued to sell Headphones to the public. Bose knew, or reasonably should have known, of the defect(s) because, in the normal course of business, Bose tracks headphones returned under its warranty and the complaints related to those problems and, therefore, must have noticed that there was an unusually high incidence of warranty claims.

623. As a direct and proximate result of Bose's unfair and deceptive practices, California Plaintiff and Subclass Members suffered and will continue to suffer actual damages.

624. As a result of its unfair and deceptive conduct, Bose should be required to disgorge its unjust profits and make restitution to California Plaintiff and Subclass Members pursuant to Cal. Bus. & Prof. Code §§ 17203 and 17204.

625. Legal remedy alone will be insufficient to fully redress California Plaintiff's injuries and stop Bose from continuing in its unfair and deceptive conduct. Therefore, California Plaintiffs and the Subclass seek equitable relief, including an order enjoining Bose's unfair or deceptive acts or practices, and an award of attorneys' fees and costs under Cal. Code of Civ. Proc. § 1021.5.

THIRTY-FOURTH CLAIM FOR RELIEF

Common Law Fraud

(Brought in the Alternative, on Behalf of California Subclass)

626. California Plaintiff re-alleges and incorporates each and every allegation set forth above as if fully written herein.

627. Bose engaged in fraudulent and deceptive conduct. As described above, Bose's conduct defrauded California Plaintiff and California Subclass members, by intentionally leading them to believe, through affirmative misrepresentations, omissions, suppressions, and concealments of material fact, that the Headphones possessed important characteristics that they in fact do not possess—namely that they are moisture-, sweat-, and water-resistant and provide five or six hours of listening on a single charge —and inducing their purchases.

628. Bose's intentional and material misrepresentations included, among other things, its advertising, marketing materials and messages, and other standardized statements claiming

the Headphones are designed for use during workouts, and built to withstand moisture, sweat, and water.

629. The foregoing misrepresentations were uniform across all Class Members.

630. The same extensive and widespread advertising campaign was promoted throughout California, and all of the promotional materials contained the same material representations regarding the Headphones' ability to be used during exercise, that the Headphones provide five or six hours of listening on a single charge, and that the Headphones are moisture-, sweat-, and water-resistant.

631. These representations were false, as detailed herein. Bose knew the representations were false when it made them and thereby intended to defraud purchasers.

632. Bose's actions constitute "actual fraud" within the meaning of Cal. Civ. Code § 1572 because Bose did the following with the intent to deceive California Plaintiff and Subclass Members and to induce them to enter into their contracts:

- a. Suggested that the Headphones can withstand moisture, sweat, and water and heavy exercise, even though it knew this to be false;
- b. Positively asserted that the Headphones are moisture-, sweat-, and water-resistant;
- c. Asserted that Headphones were engineered for sport;
- d. Asserted that the Headphones had a rechargeable battery with a five or six hour battery life per charge; and
- e. Suppressed the true nature of the Headphones' defects from California Plaintiffs and Subclass Members.

633. Bose's actions, listed above, also constituted "deceit" as defined by Cal. Civ. Code § 1710 because Bose willfully deceived California Plaintiff and Subclass Members with intent to induce them to alter their positions to their detriment by purchasing defective Headphones.

634. Bose's fraud and concealment were also uniform across all California Subclass Members; Bose concealed from everyone the true nature of the failure to hold a charge and battery defects present in the Headphones.

635. Bose's misrepresentations and omissions were material in that they would affect a reasonable consumer's decision to purchase Headphones. A reasonable consumer would not purchase high-end rechargeable headphones that stop being able to retain a charge after only minimal use.

636. Bose's intentionally deceptive conduct induced California Plaintiff and California Subclass Members to purchase Headphones and resulted in harm and damage to them.

637. California Plaintiff believed and relied upon Bose's misrepresentations and concealment of the true facts. California Subclass Members are presumed to have believed and relied upon Bose's misrepresentations and concealment of the true facts because those facts are material to a reasonable consumer's decision to purchase Headphones.

638. As a result of Bose's inducements, California Plaintiff and California Subclass Members sustained actual damages including but not limited to receiving a product that fails to perform as promised and not receiving the benefit of the bargain related to their purchase of the Headphones. If California Plaintiff and Subclass Members had known about the defect, they would not have purchased the Headphones or would have paid significantly less for them. Bose is therefore liable to California Plaintiff and Subclass Members in an amount to be proven at trial.

639. Bose's conduct was systematic, repetitious, knowing, intentional, and malicious, and demonstrated a lack of care and reckless disregard for California Plaintiff and California Subclass Members' rights and interests. Bose's conduct thus warrants an assessment of punitive

damages under Cal. Civ. Code § 3294, consistent with the actual harm it has caused, the reprehensibility of its conduct, and the need to punish and deter such conduct.

THIRTY-FIFTH CLAIM FOR RELIEF

Violations of Texas Deceptive Trade Practices Act

(Texas Business and Commercial Code § 17.41 et seq.)

(Brought in the Alternative, on Behalf of Texas Subclass)

640. Plaintiff and Rice (“Texas Plaintiff”) re-alleges and incorporate each and every allegation set forth above as if fully written herein.

641. Bose’s business acts and practices alleged herein constitute unfair, unconscionable and/or deceptive methods, acts or practices under the Texas Deceptive Trade Practices Act, Tex. Bus. & Com. Code § 17.41 et seq. (“TDTPA”).

At all relevant times, Texas Plaintiff and all members of the Texas Sub-Class were “consumers” within the meaning of the TDTPA.

642. Bose’s conduct, as set forth herein, occurred in the conduct of “trade or commerce” within the meaning of the TDTPA.

643. The practices of Bose, described above, violate the TDTPA for, inter alia, one or more of the following reasons:

- a. Bose represented that goods or services have sponsored, approval, characteristics, uses, and benefits that they do not have;
- b. Bose provided, disseminated, marketed, and otherwise distributed uniform false and misleading advertisements, technical data and other information to consumers regarding the performance, reliability, quality and nature of the Headphones;

- c. Bose represented that goods or services were of a particular standard, quality, or grade, when they were of another;
- d. Bose engaged in unconscionable commercial practices in failing to reveal material facts and information about the Headphones, which did, or tended to, mislead Texas Plaintiffs and the Texas Sub-Class about facts that could not reasonably be known by the consumer;
- e. Bose failed to reveal facts that were material to the transactions in light of representations of fact made in a positive manner;
- f. Bose caused Texas Plaintiff and the Texas Sub-Class to suffer a probability of confusion and a misunderstanding of legal rights, obligations and/or remedies by and through its conduct;
- g. Bose failed to reveal material facts to Texas Plaintiff and the Texas Sub-Class with the intent that Plaintiffs and the Texas Sub-Class members rely upon the omission;
- h. Bose made material representations and statements of fact to Texas Plaintiff and the Texas Sub-Class that resulted in Plaintiffs and the Texas Sub-Class reasonably believing the represented or suggested state of affairs to be other than what they actually were; and
- i. Bose intended that Texas Plaintiff and the other members of the Texas Sub-Class rely on their misrepresentations and omissions, so that Texas Plaintiffs and other Texas Sub-Class members would purchase the Headphones.

644. Under all of the circumstances, Bose's conduct in employing these unfair and deceptive trade practices was malicious, willful, wanton and outrageous such as to shock the conscience of the community and warrant the imposition of punitive damages.

645. Bose also breached express and implied warranties to Texas Plaintiff and the Sub-Class, as set forth herein, and is therefore liable to Texas Plaintiff and the Texas Sub-Class for damages under the TDTPA. Bose's actions also constitute an unconscionable action or course of conduct under the TDTPA.

646. Bose actions impact the public interest because Texas Plaintiff and members of the Texas Sub-Class were injured in exactly the same way as thousands of others purchasing the Headphones as a result of and pursuant to Bose's generalized course of deception as described throughout the Complaint.

647. Had Texas Plaintiff and other members of the Texas Sub-Class known of the defective nature of the Headphones, they would not have purchased the Headphones or would have paid significantly less for them.

648. The foregoing acts, omissions and practices proximately caused Texas Plaintiff and other members of the Texas Sub-Class to suffer actual damages in the form of, inter alia, monies spent to replace and or diminution in value of the Headphones, and they are entitled to recover such damages, together with appropriate damages, attorneys' fees and costs of suit.

THIRTY-SIXTH CLAIM FOR RELIEF

Breach of Express Warranty

(Texas Business and Commercial Code § 2.313)

(Brought in the Alternative, on Behalf of Texas Subclass)

649. Texas Plaintiff re-alleges and incorporate each and every allegation set forth above as if fully written herein.

650. Bose is a “seller” within the meaning of Texas Bus. Comm. Code § 2.103.

651. The Headphones are “goods” within the meaning of Texas Bus. Comm. Code § 2.105.

652. Texas Plaintiff and other Texas Subclass Members are “buyers” within the meaning of Texas Bus. Comm. Code § 2.103.

653. As described throughout this Complaint, Bose has received sufficient and timely notice of the breaches of express warranty alleged herein. Despite this notice and Bose’s knowledge, Bose refuses to honor its express warranties, even though it knows of the inherent defect in the Headphones.

654. Bose expressly warranted pursuant to Texas Bus. Comm. Code § 2.313, via its user manuals, advertisements, internet and television commercials, websites, pamphlets, brochures, circulars, samples, and models, that the Headphones are fit for the ordinary purpose in which such goods are used. Bose breached its express warranty because the Headphones contained a defect that made them inoperable and made them unfit for the ordinary purpose in which such goods are used. Specifically, the Headphones contained defects that caused the Headphones to stop holding a charge and eventually fail to turn on.

655. Texas Plaintiff alleges that Bose breached two separate express warranties.

Moisture-, Sweat-, & Water-Resistant:

656. Bose promised, affirmed, and expressly warranted that the Headphones are moisture-, sweat-, and water-resistant. In other words, Bose expressly warranted to Texas

Plaintiff and Texas Subclass Members that the Headphones would continue to function after being exposed to moisture.

657. Bose's moisture-, sweat- and water-resistant warranties became part of the basis of the bargain for Texas Plaintiff and other Texas Subclass Members because they relied on such statements in deciding to purchase the Headphones, and because such statements are among the facts a reasonable consumer would consider material in the purchase of high-end sport headphones.

658. Bose breached its moisture-, sweat-, and water-resistant warranties by delivering Headphones that do not withstand minimal amounts of moisture.

659. At the time the Headphones were sold, Bose knew of the defects they possessed and offered an express warranty with no intention of honoring said warranties with respect to the known defects.

660. Although notice is not required where, as here, consumers purchase a product from a retailer rather than a manufacturer, when contacted by Headphone purchasers who complained about the problems with their Headphones, Bose was afforded a reasonable opportunity to cure its breach of its express warranty that the Headphones would be sweat- and water-resistant, but failed to do so.

661. As a direct and proximate result of Bose's breach of its express written warranties regarding the moisture-, sweat-, and water-resistant representations, Texas Plaintiff and Texas Subclass Members have been damaged in an amount to be proven at trial.

Battery Life:

662. Bose expressly warranted that the Headphones provide five or six hours of wireless listening on a single charge.

663. Such statements became the basis of the bargain for Texas Plaintiff and other Texas Subclass Members because they relied on such statements in deciding to purchase the Headphones, and because such statements are among the facts a reasonable consumer would consider material in the purchase of high-end sport headphones.

664. Bose breached its battery life express warranties by delivering Headphones that do not deliver as promised and fail to retain their charge for five or six hours.

665. At the time the Headphones were sold, Bose knew of the defects they possessed and offered express warranties with no intention of honoring them with respect to the known defects.

666. Although notice is not required where, as here, consumers purchase a product from a retailer rather than a manufacturer, when contacted by Headphone purchasers who complained about the problems with their Headphones, Bose was afforded a reasonable opportunity to cure its breach of the express warranty, but failed to do so.

667. As a direct and proximate result of Bose's breach of its express written warranties regarding battery life, Texas Plaintiff and Texas Subclass Members have been damaged in an amount to be proven at trial.

THIRTY SEVENTH CLAIM FOR RELIEF

Breach of Implied Warranty of Merchantability

(Texas Business and Commercial Code § 2.314)

(Brought in the Alternative, on Behalf of the Texas Subclass)

668. Texas Plaintiff re-alleges and incorporate each and every allegation set forth above as if fully written herein.

669. Bose is a "merchant" within the meaning of Texas Bus. Comm. Code § 2.103.

670. The Headphones are “goods” within the meaning of Texas Bus. Comm. Code § 2.105.

671. Texas Plaintiff and other Texas Subclass Members are “buyers” within the meaning of Texas Bus. Comm. Code § 2.103.

672. Under Texas Bus. Comm. Code § 2.314,

A. warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind...Goods to be merchantable must be at least such as [:]

1. pass without objection in the trade under the contract description; and
2. in the case of fungible goods, are of fair average quality within the description; and
3. are fit for the ordinary purposes for which such goods are used; and
4. run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and
5. are adequately contained, packaged, and labeled as the agreement may require; and
6. conform to the promises or affirmations of fact made on the container or label if any.

673. The Headphones would not pass without objection in the trade under the contract description because they do not perform as warranted – they fail to maintain a charge after minimum use.

674. Similarly, the Headphones’ failure to maintain a charge after minimal use renders them unfit for ordinary purposes for which such goods are used.

675. The Headphones are not adequately contained, packaged, and labeled because the Headphone box states that the Headphones have a five or six hour battery, which is a quality the Headphones do not have.

676. The Headphones are not adequately contained, packaged, and labeled for two independent reasons:

677. First, the Headphones are not adequately contained, packaged, and labeled because the labeling represents that they are sweat- and water-resistant when they are not.

678. Second, the Headphones are not adequately contained, packaged, and labeled because the labeling represents that they have a battery which can last for five or six hours following a single charge when the Headphones are in use, which are qualities they do not have.

679. Bose thus breached the implied warranty of merchantability.

680. Upon information and belief, Defendant has received thousands of customer complaints and communications about the defects, including from many of the Plaintiffs who complained about the problems with their Headphones, Bose was afforded a reasonable opportunity to cure its breach of the implied warranty of merchantability, but failed to do so.

681. Bose's implied warranty that the Headphones were merchantable was part of the basis of the bargain between Bose and Texas Plaintiff and the Texas Subclass Members.

682. Bose breached the implied warranty of merchantability because the Headphones contained defects which rendered them inoperable and unfit for the ordinary purpose in which such goods are used. Specifically, the Headphones contain a defect that makes them unable to hold a charge which makes the Headphones unable to power on.

THIRTY-EIGHTH CLAIM FOR RELIEF

Violations of New Jersey Consumer Fraud Act

(N.J.S.A § 56:8-1 et seq.)

(Brought in the Alternative, on Behalf of the New Jersey Subclass)

683. Plaintiff Friedman (“New Jersey Plaintiff”) and the New Jersey Subclass re-allege and incorporate each and every allegation set forth above as if fully written herein.

684. New Jersey Plaintiff, the New Jersey Subclass, and Bose are “persons” within the meaning of the New Jersey Consumer Fraud Act (“CFA”).

685. At all relevant times material hereto, Bose conducted trade and commerce in New Jersey and elsewhere within the meaning of the CFA.

686. The CFA makes unlawful “[t]he act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression or omission of any material fact with the intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby...” N.J.STAT.ANN. § 56:8-2.

687. The CFA is, by its terms, a cumulative remedy, such that remedies under its provisions can be awarded in addition to those provided under separate statutory schemes.

688. Bose’s practices violated the CFA by concealing from New Jersey Plaintiff and the New Jersey Sub-Class that the Headphones were defective would not continue to function after being exposed to moisture during exercise, and as such were not of merchantable quality. Bose also concealed and misrepresented that the Headphones failed to maintain a charge after minimum use.

689. Bose engaged in unconscionable commercial practices in failing to disclose material information discussed above about the Headphones.

690. Bose consciously omitted to disclose material facts from New Jersey Plaintiff and the New Jersey Sub-Class with respect to the defective Headphones.

691. Bose intended that New Jersey Plaintiffs and the New Jersey Sub-Class rely on its acts of concealment and omissions and misrepresentations, so that New Jersey Plaintiff and the New Jersey Sub-Class would purchase the Headphones.

692. Had Bose disclosed all material information regarding the Headphones to New Jersey Plaintiff and the New Jersey Sub-Class, they would not have purchased the Headphones or would have paid less for their them.

693. The foregoing acts, omissions and practices proximately caused New Jersey Plaintiff and the New Jersey Sub-Class to suffer an ascertainable loss in the form of, inter alia, added expense to replace the defective Headphones and/or diminution of value, and they are entitled to recover such damages together with appropriate penalties, including treble damages, attorneys' fees and costs of suit.

THIRTY-NINTH CLAIM FOR RELIEF

Breach of Express Warranty

(N.J. Stat. Ann. § 12A:2-313)

(Brought in the Alternative, on Behalf of the New Jersey Subclass)

694. New Jersey Plaintiff and the New Jersey Subclass re-allege and incorporate each and every allegation set forth above as if fully written herein.

695. New Jersey Plaintiff alleges that Bose breached two separate express warranties.

Moisture-, Sweat-, & Water-Resistant:

696. Bose promised, affirmed, and expressly warranted that Headphones are moisture-, sweat-, and water-resistant. In other words, Bose expressly warranted to New Jersey Plaintiff and New Jersey Subclass Members that the Headphones would continue to function after being exposed to moisture during exercise.

697. Bose's moisture-, sweat- and water-resistant warranties became part of the basis of the bargain for New Jersey Plaintiff and other New Jersey Subclass Members because they relied on such statements in deciding to purchase the Headphones, and because such statements are among the facts a reasonable consumer would consider material in the purchase of high-end sport headphones.

698. Bose breached its moisture-, sweat-, and water-resistant warranties by delivering Headphones that do not withstand minimal amounts of moisture.

699. At the time the Headphones were sold, Bose knew of the defects they possessed and offered express warranties with no intention of honoring them with respect to the known defects.

700. Although notice is not required, where, as here, consumers purchased a product from a retailer rather than a manufacturer, when Plaintiffs contacted Bose concerning the problems with their headphones, Bose was afforded a reasonable opportunity to cure its breach of its express warranty that Headphones would be sweat- and water-resistant, but failed to do so.

701. As a direct and proximate result of Bose's breach of its express written warranties regarding the moisture-, sweat-, and water-resistant representations, New Jersey Plaintiff and New Jersey Subclass Members have been damaged in an amount to be proven at trial.

Battery Life:

702. Bose expressly warranted that the Headphones provide five or six hours of wireless listening on a single charge.

703. Such statements became the basis of the bargain for New Jersey Plaintiff and other New Jersey Subclass Members because they relied on such statements in deciding to purchase the Headphones, and because such statements are among the facts a reasonable consumer would consider material in the purchase of high-end sport headphones.

704. Bose breached its battery life express warranties by delivering Headphones that do not deliver as promised and fail to retain their charge for five or six hours.

705. At the time the Headphones were sold, Bose knew of the defects they possessed and offered express warranties with no intention of honoring them with respect to the known defects.

706. Although notice is not required, where, as here, consumers purchase a product from a retailer rather than a manufacturer, when Plaintiffs contacted Bose concerning the problems with their headphones, Bose was afforded a reasonable opportunity to cure its breach of the express warranty, but failed to do so.

707. As a direct and proximate result of Bose's breach of its express written warranties regarding battery life, New Jersey Plaintiff and New Jersey Subclass Members have been damaged in an amount to be proven at trial.

FORTIETH CLAIM FOR RELIEF

Breach of Implied Warranty of Merchantability

(N.J. Stat. Ann § 12A:2-314)

(Brought in the Alternative, on Behalf of the New Jersey Subclass)

708. New Jersey Plaintiff and the New Jersey Sub-Class re-allege and incorporate each and every allegation set forth above as if fully written herein.

709. Bose is a “merchant” of headphones because Bose is a retail seller of electronic products and accessories and routinely sells a wide variety of headphones.

710. Bose is also the manufacturer of the Headphones.

711. New Jersey Plaintiff and Subclass Members are “buyers” of the Headphones because they purchased their headphones for personal use.

712. Bose impliedly warranted to Plaintiffs and Class Members that its Headphones were “merchantable” within the common meaning of “merchantability” pursuant to N.J. Stat. Ann. § 12A:2-314.

713. The Headphones were defective at the time they left the possession of Bose. Those defects include that they do not perform as warranted – they fail to maintain a charge after minimal use and are not moisture-, sweat-, or water-resistant. Thus, the Headphones, when sold and at all time thereafter, were not in merchantable condition or quality and are not fit for their ordinary intended purpose.

714. By virtue of the conduct described herein and throughout this Complaint, Bose breached the implied warranty of merchantability.

715. Bose thus breached the implied warranty of merchantability.

716. New Jersey Plaintiffs and the New Jersey Subclass members have been damaged as a direct and proximate result of Bose’s breach of the implied warranty.

717. New Jersey Plaintiffs have performed each and every duty required of them under the terms of the warranties, except as may have been excused or prevented by the conduct of Bose or by operation of law in light of Bose’s unconscionable conduct.

718. Bose received timely notice regarding the problems at issue in this litigation (indeed Bose knew of the defects prior to offering the Headphones for sale) and, notwithstanding such notice, Bose has failed and refused to offer an effective remedy.

719. Notice of breach is not required because Plaintiffs and the other Class Members did not purchase their Headphones directly from Bose. Even if notice were required, upon information and belief, Defendant has received thousands of customer complaints and communications about the defects, including from many of the Plaintiffs.

720. As a direct and proximate result of Bose's breach of the implied warranty of merchantability, Plaintiffs and the other Class Members did not receive the benefit of their bargain and received goods with a defect that substantially impairs their value to Plaintiffs and Class Members. Plaintiffs and Class Members were damaged as a result of the defects in the Headphones, the product's malfunctioning, and the nonuse of their Headphones.

FORTY-FIRST CLAIM FOR RELIEF

Breach of Implied Covenant of Good Faith and Fair Dealing

(Brought in the Alternative, on Behalf of the New Jersey Subclass)

721. New Jersey Plaintiff and the New Jersey Subclass re-allege and incorporate each and every allegation set forth above as if fully written herein.

722. New Jersey Plaintiff and the New Jersey Subclass entered into agreements to purchase Headphones with Bose, or otherwise were in contractual privity with Bose as a result of the express warranties described herein.

723. The contracts and warranties were subject to the implied covenant that Bose would conduct business with New Jersey Plaintiffs and the New Jersey Subclass in good faith and would deal fairly with them.

724. Bose breached those implied covenants by selling New Jersey Plaintiffs and the New Jersey Subclass Headphones that were defective because the Headphones failed maintain a charge after minimal use and are not moisture-, sweat-, or water-resistant, when it knew, or should have known, that the contracts and/or warranties were unconscionable and by abusing its discretion in the performance of the contract or by intentionally subjecting New Jersey Plaintiffs and the New Jersey Sub-Class to a risk [the defects] beyond that which they would have contemplated at the time of purchase.

725. Bose also breached the implied covenants by not placing terms in the contracts and/or warranties that conspicuously stated to New Jersey Plaintiffs and the New Jersey Sub-Class that the Headphones were defective and fail to maintain a charge after minimal use and are not moisture-, sweat-, or water-resistant.

726. As a direct and proximate result of Bose's breach of its implied covenants, New Jersey Plaintiffs and the New Jersey Subclass have been damaged in an amount to be determined at trial.

FORTY-SECOND CLAIM FOR RELIEF

Breach of Express Warranty

(Under 13 Pa Stat. and Cons. Stat. Ann § 2313)

(Brought in the Alternative, on Behalf of the Pennsylvania Subclass)

727. Plaintiff Kristen Martin ("Pennsylvania Plaintiff") and the Pennsylvania Subclass re-allege and incorporate each and every allegation set forth above as if fully written herein.

728. Pennsylvania Plaintiff and the Pennsylvania Subclass allege that Bose breached two separate express warranties.

Moisture-, Sweat-, & Water-Resistant:

729. Bose promised, affirmed, and expressly warranted that the Headphones are moisture-, sweat-, and water-resistant. In other words, Bose expressly warranted to Pennsylvania Plaintiff and Pennsylvania Subclass Members that the Headphones would continue to function after being exposed to moisture during exercise.

730. Bose's moisture-, sweat- and water-resistant warranties became part of the basis of the bargain for Pennsylvania Plaintiff and other Pennsylvania Subclass Members because they relied on such statements in deciding to purchase the Headphones, and because such statements are among the facts a reasonable consumer would consider material in the purchase of high-end sport headphones.

731. Bose breached its moisture-, sweat-, and water-resistant warranties by delivering Headphones that do not withstand minimal amounts of moisture.

732. At the time the Headphones were sold, Bose knew of the defects they possessed and offered an express warranty with no intention of honoring said warranties with respect to the known defects.

733. Although notice is not required where, as here, consumers purchase a product from a retailer rather than a manufacturer, when contacted by Headphone purchasers who complained about the problems with their Headphones, Bose was afforded a reasonable opportunity to cure its breach of its express warranty that the Headphones would be sweat- and water-resistant, but failed to do so.

734. As a direct and proximate result of Bose's breach of its express written warranties regarding the moisture-, sweat-, and water-resistant representations, Pennsylvania Plaintiff and Pennsylvania Subclass Members have been damaged in an amount to be proven at trial.

Battery Life:

735. Bose expressly warranted that the Headphones provide five or six hours of wireless listening on a single charge.

736. Such statements became the basis of the bargain for Pennsylvania Plaintiff and other Pennsylvania Subclass Members because they relied on such statements in deciding to purchase the Headphones, and because such statements are among the facts a reasonable consumer would consider material in the purchase of high-end sport headphones.

737. Bose breached its battery life express warranties by delivering Headphones that do not deliver as promised and fail to retain their charge for five or six hours.

738. At the time the Headphones were sold, Bose knew of the defects they possessed and offered express warranties with no intention of honoring them with respect to the known defects.

739. Although notice is not required where, as here, consumers purchase a product from a retailer rather than a manufacturer, when contacted by Headphone purchasers who complained about the problems with their Headphones, Bose was afforded a reasonable opportunity to cure its breach of the express warranty, but failed to do so.

740. As a direct and proximate result of Bose's breach of its express written warranties regarding battery life, Pennsylvania Plaintiff and Pennsylvania Subclass Members have been damaged in an amount to be proven at trial.

FORTY-THIRD CLAIM FOR RELIEF

Implied Warranty of Merchantability

(Under 13 Pa. Con. Stat. Ann. § 2314)

(Brought in the Alternative, on Behalf of the Pennsylvania Subclass)

741. Pennsylvania Plaintiff and the Pennsylvania Subclass re-allege and incorporate each and every allegation set forth above as if fully written herein.

742. Bose is a “merchant” of headphones because Bose is a retail seller of electronic products and accessories and routinely sells a wide variety of headphones.

743. Bose is also the manufacturer of the Headphones.

744. Pennsylvania Plaintiff and Pennsylvania Subclass Members are “buyers” of the Headphones because they purchased their headphones for personal use.

745. Bose impliedly warranted to Pennsylvania Plaintiff and Pennsylvania Subclass Members that its Headphones were “merchantable” within the common meaning of “merchantability” expressed in 13 Pa. Con. Stat. Ann § 2314.

746. 13 Pa. Con. Stat. Ann § 2314 requires that merchantable goods:

- (1) pass without objection in the trade under the contract description;
- (2) in the case of fungible goods, are of fair average quality within the description;
- (3) are fit for the ordinary purposes for which such goods are used;
- (4) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved;
- (5) are adequately contained, packaged, and labeled as the agreement may require; and
- (6) conform to the promises or affirmations of fact made on the container or label if any.

747. The Headphones would not pass without objection in the trade because they do not perform as warranted – they fail to maintain a charge after minimal use and are not moisture-, sweat-, or water-resistant.

748. Similarly, the Headphones’ failure to maintain a charge after minimal use renders them unfit for ordinary purposes for which such goods are used.

749. The Headphones are not adequately contained, packaged, and labeled for two independent reasons.

750. First, the Headphones are not adequately contained, packaged, and labeled because the labeling represents that they are moisture-, sweat-, and water-resistant when they are not.

751. Second, the Headphones are not adequately contained, packaged, and labeled because the labeling represents that they have a battery which can last for five or six hours on a single charge when the Headphones are in use, which are qualities they do not have.

752. For the same reason, the Headphones do not conform to the promises or affirmations of fact made on the container or label.

753. Bose thus breached the implied warranty of merchantability.

754. Notice of breach is not required because Pennsylvania Plaintiff and the other Pennsylvania Subclass Members did not purchase their Headphones directly from Bose. Even if notice were required, upon information and belief, Defendant has received thousands of customer complaints and communications about the defects, including from many of the Plaintiffs.

755. As a direct and proximate result of Bose's breach of the implied warranty of merchantability, Pennsylvania Plaintiff and the other Pennsylvania Subclass Members did not receive the benefit of their bargain and received goods with defects that substantially impair their value to Pennsylvania Plaintiff and Pennsylvania Subclass Members. Pennsylvania Plaintiff and Pennsylvania Subclass Members were damaged as a result of the defects in the Headphones, the product's malfunctioning, and the nonuse of their Headphones.

FORTY-FOURTH CLAIM FOR RELIEF

Implied Warranty of Fitness for a Particular Purpose

(Under 13 Pa. Stat. and Cons. Stat. Ann. § 2315)

(Brought in the Alternative, on Behalf of the Pennsylvania Subclass)

756. Pennsylvania Plaintiff and the Pennsylvania Subclass re-allege and incorporate each and every allegation set forth above as if fully written herein.

757. Bose is a “merchant” of headphones because Bose is a retail seller of electronic products and accessories and routinely sells a wide variety of headphones.

758. Bose is also the manufacturer of the Headphones.

759. Pennsylvania Plaintiff and Pennsylvania Subclass Members are “buyers” of the Headphones because they purchased their headphones for personal use.

760. Bose advertised the Headphones as suitable for wearing while exercising.

761. Bose advertised the Headphones with depictions of athletes using the Headphones while exercising. The marketing materials show the athletes engaging in weight training, aerobic activity, running, and gymnastics while wearing the Headphones. The marketing materials also show the athletes sweating profusely while wearing the Headphones.

762. Bose knew that buyers would purchase the Headphones for the particular purpose of wearing them while engaging in exercise that would expose them to harsher environments and stressors, including exposure to heightened temperatures, rain, humidity, sweat, and physical shocks.

763. The ordinary consumer does not have the electrical engineering or technological background to know whether headphones can endure the volatility, heat, humidity, and sweat commonly involved in a moderate to high intensity exercise session.

764. When purchasing the Headphones – headphones that are more expensive than competing headphones that are not moisture-,sweat-, and water-resistant – Pennsylvania Plaintiff

and Pennsylvania Subclass Members relied on Bose's representations that the Headphones could withstand the stresses of exercise.

765. The Headphones routinely fail to properly function after use during exercise.

766. Pennsylvania Plaintiff's and the Pennsylvania Subclass Members' Headphones failed to properly function after they were exposed to moisture.

767. Consequentially, Bose breached the implied warranty of fitness for a particular purpose, specifically that the Headphones would endure through the particular purpose of being used while exercising and would be able to withstand the stressors and environments associated with exercise. The Headphones did not withstand exposure to moisture.

768. Notice of breach is not required because Pennsylvania Plaintiff and the other Pennsylvania Subclass Members did not purchase their Headphones directly from Bose. Even if notice were required, upon information and belief, Defendant has received thousands of customer complaints and communications about the defects, including from many of the Plaintiffs.

769. As a direct and proximate result of Bose's breach of the implied warranty of fitness for a particular purpose, Pennsylvania Plaintiff and the other Pennsylvania Subclass Members did not receive the benefit of their bargain and received goods with one or more defects that substantially impair their value to Pennsylvania Plaintiff and Pennsylvania Subclass Members. Pennsylvania Plaintiff and Pennsylvania Subclass Members were damaged as a result of the defects in the Headphones, the Headphones malfunctioning, the inability to use their Headphones while exercising, and the nonuse of their Headphones.

FORTY-FIFTH CLAIM FOR RELIEF

Violation of Pennsylvania Consumer Protection Laws

(Brought in the Alternative, on Behalf of the Pennsylvania Subclass)

770. Pennsylvania Plaintiff and the Pennsylvania Subclass re-allege and incorporate each and every allegation set forth above as if fully written herein.

771. 73 Pa. Stat. Ann. § 201-3 declares “unfair methods of competition” and “unfair or deceptive acts or practices” unlawful. “Unfair methods of competition” and “unfair or deceptive acts or practices” are defined by 73 Pa. Stat. Ann. §202-2(4) as “Representing that goods... have... characteristics... uses, [or] benefits...that they do not have.”

772. Bose engaged in unlawful “unfair or deceptive acts or practices” and violated 73 Pa. Stat. Ann § 201-3 when it represented that the Headphones were water resistant and sweat proof, when in fact they are not; Bose’s misrepresentations about sweat and water constitute an independent basis for a violation of 73 Pa. Stat. Ann § 201-3.

773. 73 Pa. Stat. Ann § 201-9.2(a) states:

Any person who purchases or leases goods or services primarily for personal, family or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by any person of a method, act or practice declared unlawful by section 31 of this act, may bring a private action to recover actual damages or one hundred dollars (\$100), whichever is greater. The court may, in its discretion, award up to three times the actual damages sustained, but not less than one hundred dollars (\$100), and may provide such additional relief as it deems necessary or proper. The court may award to the plaintiff, in addition to other relief provided in this section, costs and reasonable attorney fees.

774. Pennsylvania Plaintiff and members of the Pennsylvania Subclass purchased the Headphones for their personal use.

775. Pennsylvania Plaintiff and members of the Pennsylvania Subclass suffered an ascertainable loss of money where they purchased Headphones under the misconception that the Headphones were sweat and water resistant, and had a battery that could last for five or six hours without recharging, when in fact they had none of those characteristics.

776. Pennsylvania Plaintiff and members of the Pennsylvania Subclass relied on Bose's misrepresentations regarding the Headphones characteristics when deciding to purchase the headphones. Had they known that the Headphones did not possess the characteristics Bose represented it had, they would have paid significantly less for the Headphones, or not purchased them at all.

777. As a result, Bose violated 73 Pa. Stat. Ann. § 201-3 and Plaintiffs are entitled to all damages to be determined by law.

FORTY SIXTH CLAIM FOR RELIEF

Violation of Connecticut Unlawful Trade Practices Act

(Conn.Gen.Stat § 42-110A, et seq.)

(Brought in the Alternative, on Behalf of the Connecticut Subclass)

778. Plaintiff Luchetti ("Connecticut Plaintiff") and the Connecticut Subclass re-allege and incorporate each and every allegation set forth above as if fully written herein.

779. The Connecticut Unfair Trade Practices Act ("CUTPA") provides: "No person shall engage in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." CONN. GEN. STAT. § 42- 110b(a).

780. Bose is a person within the meaning of CUTPA. CONN. GEN. STAT. § 42-110a(3).

781. In the course of Bose's business, it willfully failed to disclose and actively concealed that the Headphones were not sweat and water resistant, and that the Headphones' battery that could not retain a charge for five or six hours. This was a deceptive act in that Bose represented that the Headphones have characteristics, uses benefits, and qualities which they do not have; Bose represented that the Headphones are of a particular standard and quality when they are not; and Bose advertised the Headphones with the intent not to sell them as advertised. Bose knew or should have known that its conduct violated the CUTPA.

782. Bose engaged in a deceptive trade practice when it failed to disclose material information concerning the Headphones which was known to Bose at the time of the sale. Bose deliberately withheld the information that the Headphones failed maintain a charge after minimal use and are not moisture-, sweat-, or water-resistant in order to ensure that consumers would purchase its Headphones and to induce the consumer to enter into a transaction.

783. Bose's conduct was unfair because it causes substantial injury to consumers.

784. Had the Connecticut Plaintiff and the Connecticut Subclass known that the Headphones failed maintain a charge after minimal use and are not moisture-, sweat-, or water-resistant they would not have purchased the Headphones or would have paid less for them, thereby suffering financial injury.

785. Connecticut Plaintiff and the Connecticut Subclass suffered ascertainable loss caused by Bose's deceptive and unfair practices. Connecticut Plaintiff and the Connecticut Subclass overpaid for their Headphones and did not receive the benefit of their bargain.

FORTY-SEVENTH CLAIM FOR RELIEF
Unjust Enrichment
(Under Connecticut Law)
(Brought in the Alternative, on Behalf of the Connecticut Subclass)

786. Connecticut Plaintiff and the Connecticut Subclass re-allege and incorporate each and every allegation set forth above as if fully written herein.

787. Bose had knowledge that the Headphones failed maintain a charge after minimal use and are not moisture-, sweat-, or water-resistant, which it failed to disclose to Connecticut Plaintiff and the Connecticut Subclass

788. As a result of its wrongful and fraudulent acts and omissions, as set forth above, pertaining to the defects in its Headphones, Bose charged a higher price for the Headphones than the true value of the Headphones. Bose accordingly received a benefit from Connecticut Plaintiff and the Connecticut Subclass to their detriment.

FORTY-EIGHTH CLAIM FOR RELIEF

Breach of Contract

(Under Connecticut Law)

(Brought in the Alternative, on Behalf of the Connecticut Subclass)

789. Connecticut Plaintiff and the Connecticut Subclass re-allege and incorporate each and every allegation set forth above as if fully written herein.

790. Bose formed an agreement and entered into a contract with Connecticut Plaintiff and the Connecticut Subclass, which included offer, acceptance, and consideration (the “Contract”).

791. Pursuant to that Contract, Connecticut Plaintiff and the Connecticut Subclass paid money in exchange for Bose providing Headphones that were not defective.

792. Connecticut Plaintiff and the Connecticut Subclass performed their obligations under the Contract by paying the amounts due upon sale.

793. Bose breached the Contract when it sold Connecticut Plaintiff and the Connecticut Subclass defective Headphones that failed maintain a charge after minimal use and are not moisture-, sweat-, or water-resistant.

794. As a direct and proximate result of Bose's breach of contract, Connecticut Plaintiff and the Connecticut Subclass have suffered damages in an amount to be proved at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, respectfully request that this Court:

- A. Certify the Class pursuant to Rule 23;
- B. Award damages, including compensatory, exemplary, and statutory damages, to Plaintiffs and the Class in an amount to be determined at trial;
- C. Grant restitution to Plaintiffs and the Class and require Bose to disgorge its ill-gotten gains;
- D. Permanently enjoin Bose from engaging in the wrongful and unlawful conduct alleged herein;
- E. Award punitive damages, including but not limited to treble damages pursuant to 93A, to the extent permitted by law, in an amount to be determined at trial;
- F. Award Plaintiffs and the Class their expenses and costs of suit, including reasonable attorneys' fees to the extent provided by law;
- G. Award Plaintiffs and the Class pre-judgment and post-judgment interest at the highest legal rate to the extent provided by law; and
- H. Award all such further relief as the Court deems appropriate.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury of all issues so triable.

Dated: March 4, 2019

\s Jeffrey S. Goldenberg

Jeffrey S. Goldenberg (*pro hac vice*)

Todd Naylor (*pro hac vice*)

Goldenberg Schneider, L.P.A.

One West 4th Street, 18th Floor

Cincinnati, OH 45249

Telephone: (513) 345-8291

Fax: (513) 345-8294

jgoldenberg@gs-legal.com

tnaylor@gs-legal.com

Sean K. Collins (BBO# 687158)

Law Offices of Sean K. Collins

184 High Street, Suite 503

Boston, MA 02110

Telephone: (617) 320-8485

Fax: (617) 227-2843

Sean@Neinsurancelaw.com

Justin C. Walker (*pro hac vice*)

Finney Law Firm, LLC

4270 Ivy Pointe Boulevard, Suite 225

Cincinnati, OH 45245

Telephone: (513) 943-6660

Fax: (513) 943-6669

justin@finneylawfirm.com

W.B. Markovits (*pro hac vice*)

Paul M. DeMarco (*pro hac vice*)

Terence R. Coates (*pro hac vice*)

Markovits, Stock & DeMarco LLC

3825 Edwards Road, Suite 650

Cincinnati, OH 45209

Telephone: (513) 665-0200

Fax: (513) 665-0219

bmarkovits@msdlegal.com

pdemarco@msdlegal.com

tcoates@msdlegal.com

Attorneys for Plaintiffs