Court File No. 17-72314-C

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

L.S. AND M.C.

Plaintiffs

- and -

STANDARD INNOVATION CORPORATION

Defendant

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiffs' lawyer or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: April 13, 2017

Issued by _____
Local Registrar

Address of court office: 161 Elgin Street
2nd Floor
Ottawa, ON K2P 2K1

TO: **STANDARD INNOVATION CORPORATION**
#330-1130 Morrison Drive
Ottawa, Ontario
K2H 9N6

DEFINED TERMS

1. In this Statement of Claim, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:

(a) "**We-Vibe Product(s)**" means a Bluetooth-enabled vibrator from the We-Vibe product line of sex toys including the We-Vibe® Classic, We-Vibe® 4 Plus, We-Vibe® 4 Plus App Only, Rave by We-Vibe™, and Nova by We-Vibe™;

(b) "**We-Connect Application**" and/or "**We-Connect App**" means the **We-Vibe Product** application that enables the app user to control the **We-Vibe Product's** settings;

(c) "**Smart Device(s)**" means a portable electronic device that is able to connect, share, and interact with its user and with other **Smart Devices**. The most commonly used **Smart Devices** are Apple or Android smartphones and tablet computers;

(d) "**Classes**", "**Proposed Classes**", or **"Class Members**" means both the **App Class** and the **Purchaser Class**;

(e) "**App Class**" and/or "**App Class Members**" means all residents in Canada who have downloaded the **We-Connect Application** and used it to control a **We-Vibe Product**;

(f) "**Purchaser Class**" and/or "**Purchaser Class Members**" means all residents in Canada who purchased a **We-Vibe Product**;

(g) "**Personal and/or Private Information**", "**Personal and/or Private User Information**", and/or "**Personal and/or Private Usage Information**" includes, but is not limited to: (i) the date and time of each use of the **We-Vibe Product**, (ii) the vibration intensity level selected by the user(s), (iii) the vibration mode or pattern selected by the user(s), (iv) the email address of the **App Class**, and (v) the We-Vibe Product's temperature and battery life;

(h) "***Courts of Justice Act***" means the Ontario *Courts of Justice Act*, RSO 1990, c. C-43, as amended;

(i) "***Class Proceedings Act***" means the *Class Proceedings Act*, 1992, SO 1992, c. 6, as amended;

(f) "***Consumer Protection Act***" means the *Consumer Protection Act*, 2002, SO 2002, c. 30, Sch A, as amended, including ss. 14, 15, & 17;

(j) "**Consumer Protection Legislation**" means:

(i) The *Business Practices and Consumer Protection Act*, SBC 2004, c.2, as amended, including ss. 4, 5 & 8-10;

(ii) The *Fair Trading Act*, RSA 2000, c. F-2, as amended, including ss. 6, 7 & 13;

(iii) *The Consumer Protection Act*, SS 1996, c. C-30.1, as amended, including ss. 5-8, 14, 16, 48 & 65;

(iv) *The Business Practices Act*, CCSM, c. B120, as amended, including ss. 2 & 23;

(v) The *Consumer Protection Act*, RSQ c. P-40.1, as amended, including ss. 219, 228, 253 & 272;

(vi) The *Consumer Protection and Business Practices Act*, SNL 2009, c. C-31.1, as amended, including ss. 7, 8, 9 & 10, and the *Trade Practices Act*, RSNL 1990, c. T-7, as amended, including ss. 5, 6 & 14;

(vii) The *Consumer Product Warranty and Liability Act*, SNB 1978, c. C-18.1, including ss. 4, 10, 12, 15-18, 23 & 27;

(viii) The *Consumer Protection Act*, RSNS 1989, c. 92, including ss. 26 & 28A;

(ix) The *Business Practices Act*, RSPEI 1988, c. B-7, as amended, including ss. 2-4;

(x) The *Consumers Protection Act*, RSY 2002, c 40, as amended, including ss. 58 & 86;

(xi) The *Consumer Protection Act*, RSNWT 1988, c C-17, as amended, including ss. 70 & 71; and

(xii) The *Consumer Protection Act*, RSNWT (Nu) 1988, c C-17, as amended, including ss. 70 & 71;

(k) "***Competition Act***" means the *Competition Act*, RSC 1985, c. C-34, as amended, including ss. 36 & 52;

(l) "***PIPEDA***" means the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5, as amended, including ss. 5 and following and Schedule 1;

(m)"***Digital Privacy Act***" means the *Digital Privacy Act*, S.C. 2015, c. 32, as amended;

(n) "***Freedom of Information and Protection of Privacy Act***" means the *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F.31, as amended, including ss. 38, 39, 41, 42, and 61;

(o) "**Provincial Privacy Protection Legislation**" means:

(i) The *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165, as amended;

(ii) The *Privacy Act*, RSBC 1996, c 373, as amended;

(iii) The *Personal Information Protection Act*, SA 2003, c P-6.5, as amended;

(iv) The *Freedom of Information and Protection of Privacy Act*, RSA 2000, c F-25, as amended;

(v) *The Privacy Act*, RSS 1978, c P-24, as amended;

(vi) *The Freedom of Information and Protection of Privacy Act*, SS 1990-91, c F-22.01, as amended;

(vii) *The Privacy Act*, CCSM c P125, as amended;

(viii) *The Freedom of Information and Protection of Privacy Act*, CCSM c F175, as amended;

(ix) *An Act respecting the Protection of Personal Information in the Private Sector*, CQLR c P-39.1, as amended;

(x) The *Civil Code of Québec*, CQLR c CCQ-1991, as amended;

(xi) The *Charter of Human Rights and Freedoms*, CQLR c C-12, as amended;

(xii) The *Privacy Act*, RSNL 1990, c P-22, as amended;

(xiii) The *Access to Information and Protection of Privacy Act*, 2015, SNL 2015, c A-1.2, as amended;

(xiv) The *Right to Information and Protection of Privacy Act*, SNB 2009, c R-10.6, as amended;

(xv) The *Freedom of Information and Protection of Privacy Act*, SNS 1993, c 5, as amended;

(xvi) The *Freedom of Information and Protection of Privacy Act*, RSPEI 1988, c F-15.01, as amended;

(xvii) The *Access to Information and Protection of Privacy Act*, RSY 2002, c 1, as amended;

(xviii) The *Access to Information and Protection of Privacy Act*, SNWT 1994, c 20, as amended;

(xix) The *Access to Information and Protection of Privacy Act*, SNWT (Nu) 1994, c 20, as amended;

(p) "***Sale of Goods Act***" means the *Sale of Goods Act*, RSA 2000, c. S-2, as amended, including ss. 16;

(q) "**Defendant**" or **"Standard Innovation"** means Standard Innovation Corporation;

(r) "**Plaintiffs**" or "**Representative Plaintiffs**" means L.S. and M.C.; and

(s) "**Representation(s)**" means the **Defendant's** false, misleading and/or deceptive representation(s) that their **We-Vibe Products** and/or their **We-Connect Application** (i) have performance characteristics, accessories, uses, benefits or qualities which they do not have, (ii) are of a particular standard or quality which they are not, (iii) offer a specific price advantage with regards to the ostensibly "free" **We-Connect App**, and/or their (iv) use of exaggeration, innuendo and/or ambiguity as to material fact, and/or in failing to state the material fact that Class Members' personal and/or private information would be compromised.

THE CLAIM

2. The proposed Representative Plaintiffs, L.S. and M.C., claim the following on their behalves and on behalf of the members of the Classes of persons as defined in paragraph 5 below (the "Classes") as against Standard Innovation Corporation (the "Defendant"):

(a) An order pursuant to the *Class Proceedings Act* certifying this action as a class proceeding and appointing the Plaintiffs as Representative Plaintiffs for the Class Members;

(b) A declaration that the Defendant committed the tort of invasion of privacy (intrusion upon seclusion);

(c) A declaration that the Defendant is in breach of contract;

(d) A declaration that the Defendant breached its duties to Class Members;

(e) A declaration that the Defendant was negligent in failing to disclose its interception, monitoring, collection, recording, utilization, transmission, and/or storage of App Class Members' highly-sensitive personally identifiable information;

(f) A declaration that the Defendant breached its fiduciary duty to Class Members;

(g) A declaration that the Defendant committed the tort of trespass to chattels, conversion, and/or nuisance;

(h) A declaration that the Defendant breached its implied warranties of merchantability and fitness for a particular purpose;

(i) A declaration that the Defendant committed fraudulent concealment;

(j) A declaration that the Defendant committed intentional and/or negligent misrepresentation;

(k) A declaration that the Defendant breached its implied covenant of good faith and fair dealing;

(l) A declaration that the Defendant made representations/omissions that were misleading, deceptive, and unconscionable, amounting to unfair practices in violation of the *Consumer Protection Act* and the parallel provisions of the *Consumer Protection Legislation* as well as the *Competition Act*;

(m) A declaration that the Defendant breached *PIPEDA* in secretly intercepting, collecting, recording, utilizing, transmitting, and/or storing Class Members' highly-sensitive personally identifiable information;

(n) A declaration that the Defendant breached the *Freedom of Information and Protection of Privacy Act* as well as the parallel provisions of the Provincial Privacy Protection Legislation in secretly intercepting, collecting, recording, utilizing, transmitting, and/or storing Class Members' highly-sensitive personally identifiable information;

(o) A declaration that the present Statement of Claim is considered as notice given by the Plaintiffs on their own behalves and on behalf of "persons similarly situated" and is sufficient to give notice to the Defendant on behalf of all Class Members;

(p) In the alternative, a declaration, if necessary, that it is in the interests of justice to waive the notice requirement under Part III and s. 101 of the *Consumer Protection Act* and the parallel provisions of the Consumer Protection Legislation;

(q) General damages in an amount to be determined in the aggregate for the Class Members for, *inter alia*, pain and suffering, loss of enjoyment of life, embarrassment/humiliation, stress/distress, anxiety/anguish, trouble, and inconvenience;

(r) Special damages in an amount that this Honourable Court deems appropriate to compensate Purchaser Class Members for, *inter alia*, purchasing the We-Vibe Product(s) (based *inter alia* on revocation of acceptance and rescission) and to compensate App Class Members for having their highly-sensitive personally identifiable information secretly intercepted, collected, recorded, utilized, transmitted, and/or stored by the Defendant;

(s) Punitive (exemplary) and aggravated damages in the aggregate in an amount to be determined as this Honourable Court deems appropriate;

(t) In the alternative, an order for an accounting of revenues received by the Defendant resulting from the sale of the We-Vibe Products;

(u) A declaration that any funds received by the Defendant through the sale of the We-Vibe Products are held in trust for the benefit of the Plaintiffs and Class Members;

(v) Restitution and/or a refund of all monies paid to or received by the Defendant from the sale of their We-Vibe Products to members of the Purchaser Class on the basis of unjust enrichment;

(w) In addition, or in the alternative, restitution and/or a refund of all monies paid to or received by the Defendant from the sale of their We-Vibe Products to members of the Purchaser Class on the basis of *quantum valebant*;

(x) An interlocutory and permanent order restraining the Defendant from continuing any actions taken in contravention of the law, whether tortious, statutory, and/or equitable;

(y) A mandatory order requiring the Defendant to destroy any and all information currently in its possession regarding Class Members' User Information;

(z) An order directing a reference or such other directions as may be necessary to determine issues not determined at the trial of the common issues;

(aa) An order compelling the creation of a plan of distribution pursuant to ss. 23, 24, 25 and 26 of the *Class Proceedings Act*;

(bb) Pre-judgment and post-judgment interest on the foregoing sums in the amount of 2% per month, compounded monthly, or alternatively, pursuant to ss. 128, 129, and 130 of the *Courts of Justice Act*;

(cc) Costs of notice and administration of the plan of distribution of recovery in this action, plus applicable taxes, pursuant to s. 26 (9) of the *Class Proceedings Act*;

(dd) Costs of this action on a substantial indemnity basis including any and all applicable taxes payable thereon; and

(ee) Such further and other relief as counsel may advise and/or this Honourable Court may deem just and appropriate in the circumstances.

THE PARTIES

The Representative Plaintiffs

3. The Plaintiff, L.S., is an individual residing in the city of Kitchener, in the province of Ontario. On August 14, 2016, L.S. purchased a We-Vibe 4 Plus vibrator online from Adam & Eve (www.adamandeve.com) for $152.15 plus shipping and handling and insurance for a total amount of $164.35. Plaintiff L.S. downloaded the We-Connect Application from the Google Play Store and installed it onto her smartphone on September 1, 2016.

4. The Plaintiff, M.C., is an individual residing in the city of Brossard, in the province of Quebec. On February 21, 2015, M.C. purchased a We-Vibe 4 Plus vibrator from Boutique Érotique Romance in Montreal, Quebec for approximately $199.00 and he downloaded the We-Connect Application from the Apple Store onto his smartphone on the same day.

The Classes

5. The Plaintiffs seek to represent the following two (2) classes of which they are members (the "Proposed Classes"):

> **Purchaser Class:** All residents in Canada who purchased a We-Vibe Product.
>
> **App Class:** All residents in Canada who have downloaded the We-Connect Application and used it to control a We-Vibe Product.

The Defendant

6. The Defendant, Standard Innovation Corporation ("Standard Innovation"), is a Canadian corporation with its principal place of business in Ottawa, Ontario. It is the registrant of the trade-mark (Design) "WE-VIBE" (TMA768763), which was filed on March 13, 2009, the trade-mark (Word) "STANDARD INNOVATION" (TMA807389), which was filed on June 19, 2009, and the trade-mark (Word) "WE-VIBE" (TMA947817) which was filed "August 10, 2015. It is also the owner of the patent to the "ELECTRO-MECHANICAL SEXUAL STIMULATION DEVICE" (CA 2591401), which was issued on December 29, 2009, the owner of the patent to the "ELECTRO-MECHANICAL SEXUAL STIMULATION DEVICE CAPABLE OF USE DURING INTERCOURSE" (CA 2684004), which was issued on October 18, 2011, and is the owner of the patent to the "SEXUAL STIMULATION DEVICE" (CA 2841804), which was published on January 10, 2013, but has not yet been issued, and filed the patent application to the "METHOD AND APPARATUS FOR IDENTIFYING AN ELECTRICAL DEVICE" (CA 2678298), which was filed on September 4, 2009 and which became a "dead application" on September 4, 2013.

7. The Defendant designs, manufactures, markets, promotes, advertises, labels, sells, and/or supports sexual aids including a line of high-end vibrators under the We-Vibe brand name in Canada, including in the province of Ontario. In addition, the Defendant designs, markets, sells, and supports the We-Connect Application – that which users download from the Apple Store or the Google Play Store and install onto their Smart Devices in order to pair them with the We-Vibe Product and to allow them control over the vibrator's settings and features.

THE NATURE OF THE CLAIM

8. These class proceedings concern the Defendant's clandestine collection, recording, utilization, transmission, and/or storage of highly-sensitive and personally-identifiable information about the consumers using the We-Vibe Products and the We-Connect Application.

9. Unbeknownst to its customers, the Defendant designed the We-Connect Application to: (i) intercept, collect, and record highly intimate and sensitive data regarding consumers' personal We-Vibe Product use, including the date and time of each usage, as well as, the chosen vibration settings, and to (ii) transmit and store such usage data – along with the user's personal email address – to its servers.

10. The Defendant failed to disclose and/or actively concealed its invasive information collection, recording, utilization, transmission, and/or storage practices in order to induce purchase and use of the We-Vibe Products and the We-Connect Application.

11. The Defendant knew or should have known that secretly collecting customers' intimate usage data constitutes an invasion of privacy, but it nevertheless failed to disclose its data collection policies to consumers, including the Plaintiffs and Class Members.

12. The Plaintiffs, on behalf of the Class Members, seek an award of damages against the Defendant for its intentional, willful, and/or negligent failure to disclose and/or active concealment of its invasive data collection policies.

A. Overview – The We-Vibe Products and the We-Connect Application

13. In April 2008, the Defendant launched the We-Vibe brand of "sexual wellness products". Over the next five (5) years (i.e. up to April 10, 2013), the We-Vibe product line "quickly became the fastest selling sexual wellness product of its type in history", becoming the "world's No. 1 selling couples vibrator" and achieving sales of "over two million units, [] available in 50 countries on six continents…"

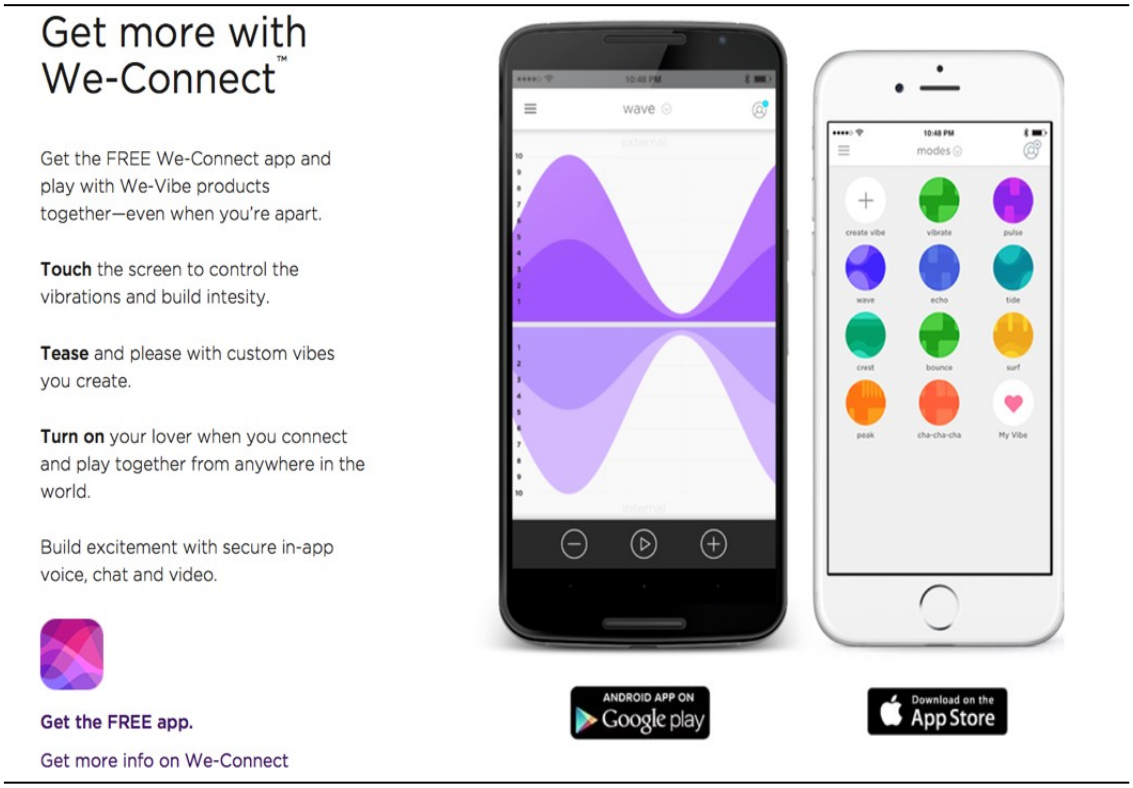
14. In August 2014, the Defendant introduced the We-Vibe 4 Plus, described as "an app-compatible vibrator that allows couple's *[sic]* to keep their flame ignited – together or apart." The We-Vibe 4 Plus was designed to be used with the We-Connect App to "offer smartphone control, custom vibration playlists and the ability to share control from anywhere in the world." In other words, this new feature enabled customers to remotely control their vibrators from a Smart Device.

15. On October 23, 2014, the Defendant announced the introduction of the We-Vibe 4 Plus – App Only Model; this model differed from the We-Vibe 4 Plus in that it did not include a travel/storage case or a physical remote control and it was offered at a lower price point.

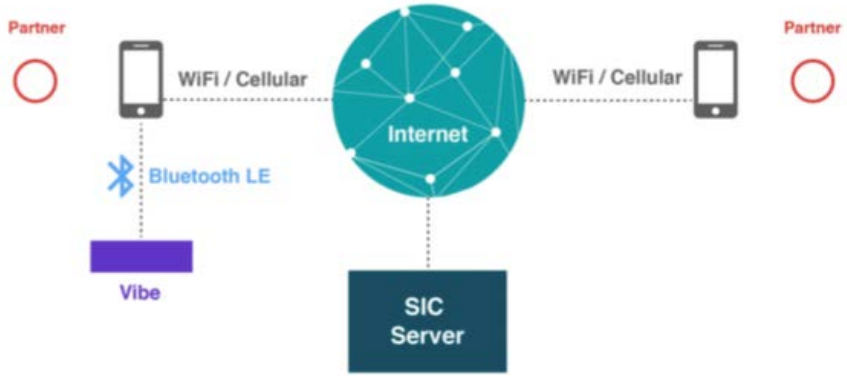
16. In or about September 2015, the Defendant updated the We-Connect App to include an in-app voice, chat, and video, to allow for the App user to "touch, tease and turn her on from anywhere in the world."

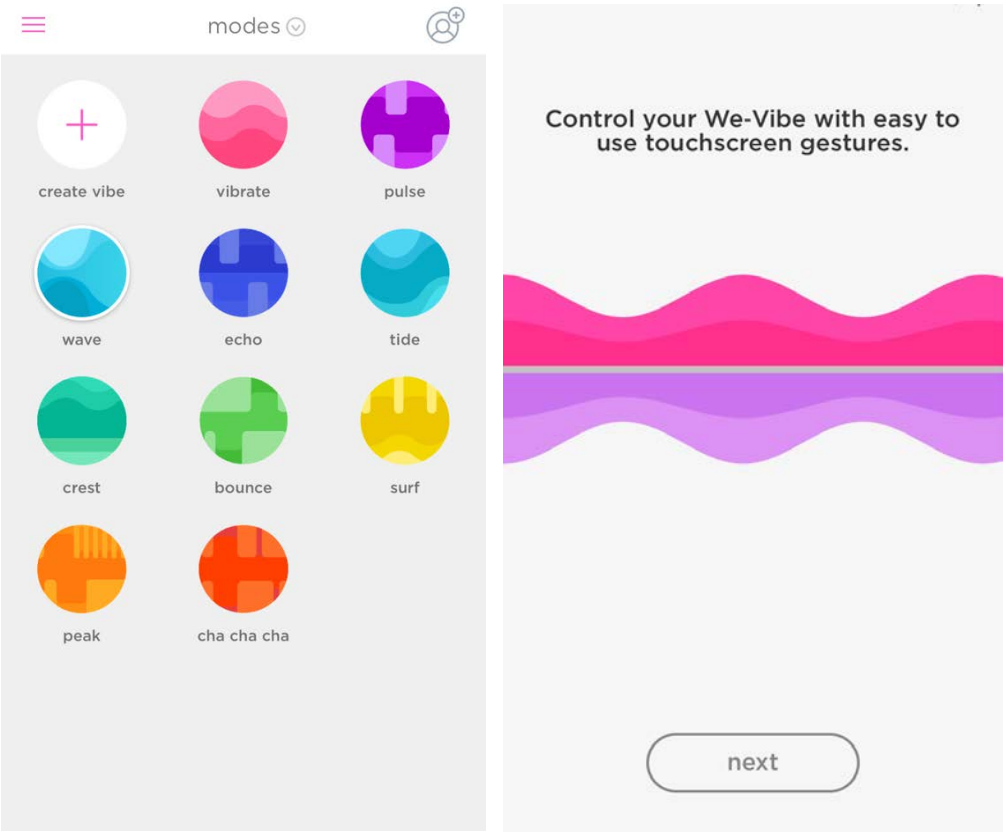
17. In January 2016, the Defendant launched (i) Nova by We-Vibe, self-proclaimed as the "most innovative dual-stimulator" and (ii) Rave by We-Vibe, an asymmetrical G-spot vibrator that "gives you effortless pleasure."

18. To take advantage of the new feature of Bluetooth control of the We-Vibe Product, users must download the Defendant's We-Connect Application from the Apple Store or from the Google Play store and install it onto their Smart Devices. The We-Connect App enables users to "pair" their Smart Device to the We-Vibe Product using a Bluetooth connection, allowing themselves and/or their partner(s) remote control over the vibrator's settings and features.



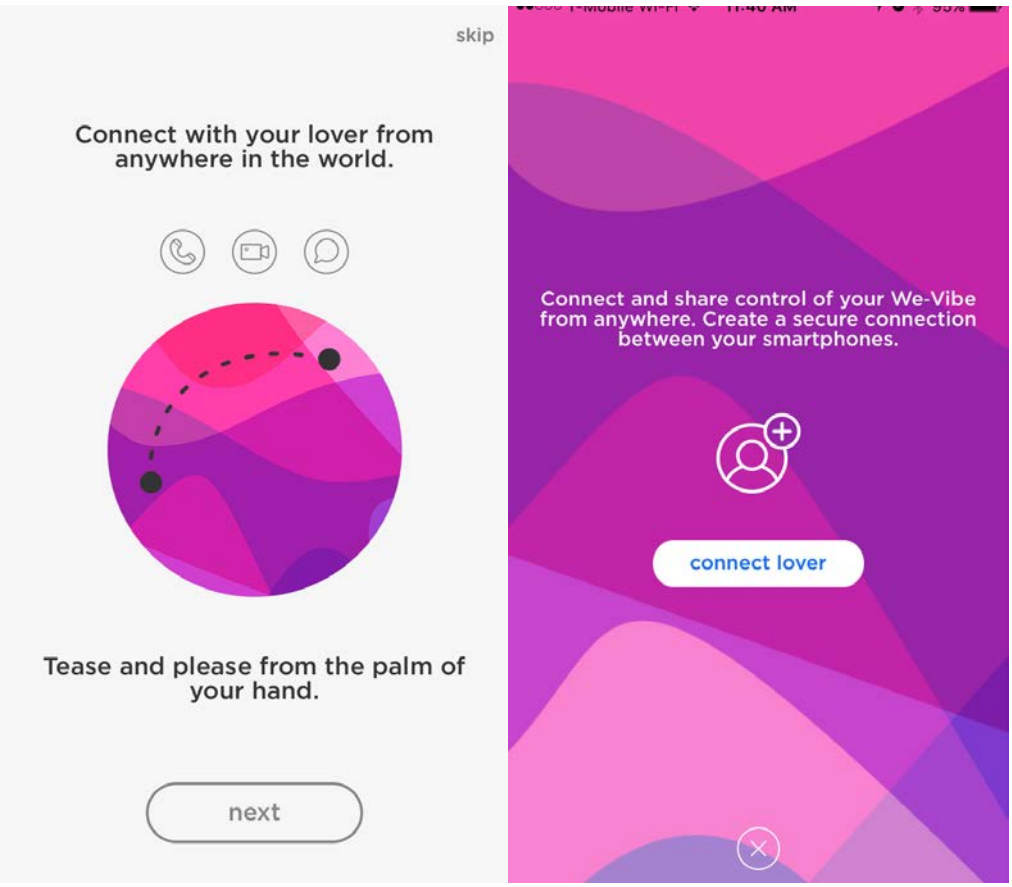
19. Once the Smart Device is paired with the We-Vibe Product through a Bluetooth connection, the We-Connect App enables users to access and control the We-Vibe's full array of features and settings, including the various vibration modes.

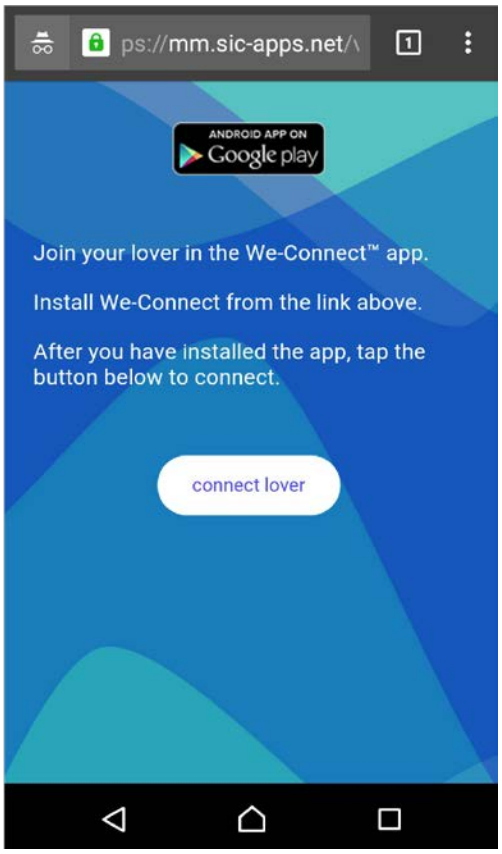




20. The Defendant also programmed the We-Connect App to allow for partners to communicate with each other. With the "connect lover" feature, partners can exchange text messages, engage in video chats, and they can control a paired We-Vibe Product.

21. When users initiate a "connect lover" session, the Defendant programmed the We-Connect App to display the following message relating to the level of security:


skip
Connect with your lover from anywhere in the world.
Tease and please from the palm of your hand.
next
Connect and share control of your We-Vibe from anywhere. Create a secure connection between your smartphones.
connect lover



22. To increase awareness of the We-Connect app and to increase sales, the Defendant advertised its We-Connect app functionality on its website and on the product packaging for the We-Vibe product line. For instance, the packaging for the We-Vibe Rave vibrator states that the vibrator is "APP READY" and states that the app is available for download at "wevibe.com/app" and on the Google Play store and the Apple Store.

23. The Defendant's website at we-vibe/rave likewise boasts of the We-Connect App's functionality, inviting consumers to "Get more with the app" and explaining that the app provides access to additional features and functionality. The Defendant invites the user to "Touch the screen to control the vibrations and build intensity", "Tease and please with

custom vibes you create", and "Turn on your lover when you connect and play together from anywhere in the world".

24. The Defendant made its We-Connect App functionality a key selling point of its We-Vibe product line. The app compatibility also allows the Defendant to charge a higher price for its vibrators, relative to other vibrators that are less-equipped and/or do not allow for Bluetooth pairing.

B. The Defendant's Secret Collection of Consumers' Intimate Usage Data

25. In August 2016, two independent hackers from New Zealand, known digitally as g0ldfish and follower, presented a talk entitled "Breaking the Internet of Vibrating Things" at the Def Con hacker conference held in Las Vegas, Nevada.

26. The two independent hackers examined the We-Vibe Products and the We-Connect App's code through IoT[1] reverse engineering tools and processes designed to uncover the Defendant's data collection practices.

27. They discovered that the way the vibrator speaks with its controlling app isn't really secure at all – making it possible to remotely seize control of the vibrator and activate it at will.

28. They had discovered that when the We-Vibe 4 Plus product was in use, it used its internet connectivity to regularly send information back to the Defendant. It sent the device's temperature every minute and advised the Defendant each time a user changes

[1] IoT means the Internet of Things.

the device's vibration level, thus providing data of when and how often someone is using the We-Vibe Product.

JSON Temperature data

```
{
    "batteryPercentage": "59",
    "deviceTemperature": "58",
    "eventTime": "2016-07-20T17:09:46+1200",
    "index": 0
}
```

(once per minute)

```
POST
https://<domain>/rest/users/profiles/<id>/usersessions/<id>/devicesessions/<id>/sessioninfo
```

JSON mode/intensity data

```
{
    "eventTime": "2016-07-20T17:13:04+1200",
    "index": 0,
    "intensity": 707,
    "vibrationMode": 3
}
{
    "eventTime": "2016-07-20T17:15:19+1200",
    "index": 0,
    "intensity": 703,
    "vibrationMode": 3
}
```

(real time, per event)

```
POST https://<domain>/rest/users/profiles/<id>/usersessions/<id>/modechanged
```

29. They advised that the only way to avoid this unwanted interception, monitoring, collection, recording, utilization, transmission, and/or storage of their Personal and/or Private Information was to use the We-Vibe Product as a "dumb vibe" (as only using one control on it), to only use the remote control, to use the We-Connect App in airplane mode or to block access to wvdata.sic-apps.net via firewall/DNA.

30. In other words, if a Class Member had discovered on their own that the Defendant was engaging in the invasive information collection, recording, utilization, transmission, and/or storage practices, they would either have to stop using the We-Connect App to any useful degree or be a computer engineer or hacker themselves in order to block the Defendant from gaining access to their Personal and/or Private Information.

31. In a statement sent by email in response to the exposure of its covert data collection practices at the conference, the Defendant's president, Frank Ferrari, confirmed that the company collects this information and explained why:

> "The safety and security of our customers is of utmost importance. We ensure that all data transmissions are encrypted in transit and protected on secure servers. We conduct regular security audits and address security issues as they are discovered to comply with current best practices and security standards.
>
> At We-Vibe, we strive to create innovative products that have our customer's preferences in mind. We-Vibe collects data on the use of its products in terms of vibration intensity and mode for market research purposes so that we can better understand what settings and levels of intensity are most enjoyed. Our reason for collecting CPU temperature data is purely for hardware diagnostic purposes. Data is only collected when the app is in use.
>
> While our policy does disclose that we may collect data, we are currently in the process of reviewing our privacy & data collection policy in an effort to provide more transparency for our customers."

32. The statement admits We-Vibe Product's data collection capabilities and how consumers' intimate Personal and/or Private Information is being collected and utilized by the Defendant.

33. In response to the conference, the Defendant also released a statement on its website on August 12, 2016 admitting its data collection practices and sharing that it has engaged external security and privacy experts in order to review them:

> "We do collect certain limited data to help us improve our products and for diagnostic purposes. As a matter of practice, we use this data in an aggregate, non-identifiable form. Processor chip temperature is used to help us determine whether device processors are operating correctly. And vibration intensity data is used for the purposes of helping us better understand how—in the aggregate—our product features are utilized.
>
> We have already taken steps to enhance the data security measures for our product offering. As part of this effort, we have engaged external security and privacy experts to conduct a thorough review of our data practices with a view of further strengthening data protection for our customers. We will also do a better job of communicating about our data practices in order to provide greater transparency."

34. On October 3, 2016, the Defendant released a statement explaining that it updated the We-Connect App and its app privacy notice. This included an option in the We-Connect App settings for customers to not provide their name, email, or phone number or other identifying information, to opt-out of sharing app usage data and a new plain language privacy notice outlining data collection.

35. Even though the Defendant took steps toward improving its security measures, the Defendant nonetheless failed to adequately disclose its invasive data collection policies to the Plaintiffs and Class Members, who would not have purchased a We-Vibe Product and/or downloaded the We-Connect App had they been informed.

36. By design, the defining feature of the We-Vibe Product is the ability to remotely control it through the We-Connect App. The Defendant requires consumers to use We-Connect App to fully access the We-Vibe Product's features and functions. Yet, the

Defendant failed to notify or warn consumers that the We-Connect App intercepts, monitors, collects, and records, in real time, how they use the device and then utilizes, transmits, and/or stores this Personal and/or Private information to its servers.

C. Summative Remarks

37. To collect its customers' Personal and/or Private Information, the Defendant designed and programmed the We-Connect App to continuously, contemporaneously, and secretly intercept and monitor intimate details about its customers' usage of the We-Vibe Product, including the date and time of each such usage, the vibration intensity level(s) selected by the user, the vibration mode(s) or pattern(s) selected by the user, and incredibly, the email address of We-Vibe customers who had registered with the We-Connect App, enabling the Defendant to link the usage information to specific customer accounts.

38. The Defendant intercepted, monitored, collected, recorded, utilized, transmitted, and/or stored the contents of electronic communications that customers send to their We-Vibe Products from their Smart Devices, such as operational instructions regarding the users' desired vibration intensity level and desired vibration "mode" or pattern. In other words, whenever users interact with their We-Vibe Product through the We-Connect App, the Defendant intercepts the content of those interactions sent to the We-Vibe Products.

39. The Defendant designed the We-Connect App to surreptitiously route information from the "connect lover" feature to its servers. By way of example, when partners use the "connect lover" feature and one takes remote control of the We-Vibe Product or sends a communication, the We-Connect App causes all of the information to be routed to its

servers and then collects, at a minimum, certain information about the We-Vibe Product, including its temperature and battery life. That is, despite promising to create "a secure connection between your smartphones," the Defendant actually causes all communications to be routed through its servers.

40. The Defendant never disclosed and therefore, never obtained consent from any of its customers before intercepting, monitoring, collecting, recording, utilizing, transmitting, and/or storing their Personal and/or Private Usage Information. To the contrary, the Defendant concealed its actual data collection policies from its customers knowing (i) that a personal vibrator that intercepts, monitors, collects, records, utilizes, transmits, and/or stores highly sensitive and intimate usage data back to the manufacturer is worth significantly less than a personal vibrator that does not, and (ii) most, if not all, of its customers would not have purchased a We-Vibe Product in the first place had they known that it would allow for the interception, monitoring, collection, recording, utilization, transmission, and/or storage of their Personal and/or Private Usage Information.

41. The Class Members have suffered injury, loss, and damages as a result of the Defendant's failure to fulfill its positive duties, failure to respect its representations, failure to protect and respect Class Members' Personal and or Private Information and by its usage of personal data for its own ends.

42. On or about February 21, 2017, a settlement agreement was entered into between the Defendant and the plaintiffs of a U.S. class action based on the same complaints as alleged herein; this agreement (which is subject to court approval) provides for $5 million

CAN of compensation for U.S. residents only. To date, Canadian consumers have still never been compensated for damages incurred as a result of the Defendant's wrongdoing.

THE REPRESENTATIVE PLAINTIFFS

A. Plaintiff L.S.

43. On August 14, 2016, Plaintiff L.S. purchased a We-Vibe 4 Plus vibrator online from Adam & Eve for $152.15 (www.adamandeve.com) for $152.15 plus shipping and handling and insurance for a total amount of $164.35.

44. The We-Vibe 4 Plus vibrator's product packaging, like the product packaging of all Bluetooth-enabled vibrators in the We-Vibe Product line, promoted its app-compatibility and Bluetooth functionality via the We-Connect Application. As a result of those features, the purchase price for the We-Vibe 4 Plus vibrators, like all Bluetooth-enabled vibrators in the We-Vibe Product line, is substantially higher than other comparable vibrators without such characteristics.

45. On September 1, 2016, Plaintiff L.S. downloaded the We-Connect App from the Google Play Store and installed it onto her smartphone. She then paired it through Bluetooth with her We-Vibe Product. She did so in order to access the We-Vibe Product's full array of features and to control her We-Vibe Product wirelessly from her smartphone.

46. Since Plaintiff L.S. has downloaded the We-Connect App, she has used the application on multiple occasions.

47. Plaintiff L.S. was never informed by the Defendant that it had programmed the We-Connect App to secretly intercept, monitor, collect, record, utilize, transmit, and/or store her Personal and/or Private Usage Information.

48. Likewise, Plaintiff L.S. never provided her consent to the Defendant to intercept, monitor, collect, record, utilize, transmit, and/or store her Personal and/or Private Usage Information.

49. Plaintiff L.S. had a reasonable expectation that her Personal and/or Private Usage Information would remain private and not be intercepted, monitored, collected, recorded, utilized, transmitted, and/or stored.

50. She would have never purchased a We-Vibe Product had she known that it would invade her privacy and that the utilization of its full functionality, necessarily implied the Defendant intercepting, monitoring, collecting, recording, utilizing, transmitting, and/or storing her Personal and/or Private Usage Information.

B. Plaintiff M.C.

51. On February 21, 2015, Plaintiff M.C. purchased a We-Vibe 4 Plus vibrator from Boutique Érotique Romance in Montreal, Quebec for approximately $199.00 and downloaded the We-Connect Application from the Apple Store onto his smartphone the same day.

52. The We-Vibe 4 Plus vibrator's product packaging, like the product packaging of all Bluetooth-enabled vibrators in the We-Vibe Product line, promoted its app-compatibility and Bluetooth functionality via the We-Connect Application. As a result of

those features, the purchase price for the We-Vibe 4 Plus vibrators, like all Bluetooth-enabled vibrators in the We-Vibe Product line, is substantially higher than other comparable vibrators without such characteristics.

53. Since Plaintiff M.C. has downloaded the We-Connect App, he has used the application on multiple occasions with his partner.

54. Plaintiff M.C. was never informed by the Defendant that it had programmed the We-Connect App to secretly intercept, monitor, collect, record, utilize, transmit, and/or store his Personal and/or Private Usage Information.

55. Likewise, Plaintiff M.C. never provided his consent to the Defendant to intercept, monitor, collect, record, utilize, transmit, and/or store his Personal and/or Private Usage Information.

56. Plaintiff M.C. had a reasonable expectation that his Personal and/or Private Usage Information would remain private and not be intercepted, monitored, collected, recorded, utilized, transmitted, and/or stored.

57. He would have never purchased a We-Vibe Product had he known that it would invade his privacy and that the utilization of its full functionality, necessarily implied the Defendant intercepting, monitoring, collecting, recording, utilizing, transmitting, and/or storing his Personal and/or Private Usage Information.

CAUSES OF ACTION

A. Tort of Invasion of Privacy (Intrusion Upon Seclusion)

58. The Defendant intruded upon the seclusion of the Plaintiffs and each member of the App Class by secretly intercepting, monitoring, collecting, recording, utilizing, transmitting, and/or storing their Personal and/or Private Usage Information, which revealed specific details regarding their sexual behaviours.

59. The common-law tort of intrusion upon seclusion can be made out as:

(a) The Defendant's conduct was intentional and/or reckless;

(b) The Defendant invaded, without lawful justification, the Plaintiffs' and Class Members' private affairs; and

(c) A reasonable person would regard the invasion as highly offensive causing distress, humiliation or anguish.

60. By designing and programming the We-Connect App to secretly intercept, monitor, collect, record, utilize, transmit, and/or store its customers' Personal and/or Private Usage Information, the Defendant intentionally and knowingly intruded upon the seclusion of the Plaintiffs' and App Class members' private affairs.

61. Intercepting, monitoring, collecting, recording, utilizing, transmitting, and/or storing consumers' Personal and/or Private Usage Information, without their knowledge or consent, is a deliberate and significant invasion of personal privacy.

62. Intrusions into matters such as one's sexual practices, viewed objectively by the reasonable person standard, is highly offensive as it reveals intimate private details about their sexual behaviour that they reasonably believed to be confidential.

63. The Defendant's intrusion upon Plaintiffs' and the App Class members' sexual privacy caused them mental anguish and suffering in the form of embarrassment, anxiety, and concern regarding the safety of their Personal and/or Private Usage Information.

64. Further, the Defendant's interception, monitoring, collection, recording, utilization, storage, and/or transmission practices exposed App Class Members to significant risks, including the risk that their Personal and/or Private Information would be stolen and sold to third parties for commercial purposes. In fact, at the Def Con Conference in August 2016, this precise risk was exposed to the public – third-party hackers would be completely capable of accessing the Defendant's servers which were storing App Class Members' Personal and/or Private Information.

65. By reason of the foregoing, the Plaintiffs and the App Class seek (1) an injunction that prohibits Defendant from continuing to intercept, monitor, collect, record, utilize, transmit, and/or store Personal and/or Private Usage Information without informed consent and requires the Defendant to destroy any and all such information currently in its possession, (2) actual damages, including the amount paid for the We-Vibe Products, and (3) punitive damages, as well as for costs and reasonable attorneys' fees incurred.

B. Breach of Contract

66. The Plaintiffs plead that there was an express or an implied contractual term between the Purchaser Class Members who purchased their We-Vibe Products directly

from the Defendant as well as the App Class and the Defendant such that the Defendant would protect Class Members' Personal and/or Private Information and not subject them to a covert and intrusive tracking scheme[2].

67. Standard Innovation made the following express promises in their Privacy Policy on its website:

> Privacy
>
> Standard Innovation Corporation intends to build the user's trust and confidence in Internet use by promoting the use of fair information practices…
> …
> Privacy is Paramount to Us
>
> Standard Innovation Corporation understands the need for and is committed to all reasonable protection of our customer's privacy. We will not share information about you with any third party other than the shipper you choose to deliver your product.

68. The Defendant made these false Representations with the intent to induce consumers into purchasing its We-Vibe Products and into installing the We-Connect App onto their Smart Devices when the Defendant knew or which, by the exercise of reasonable care, should have known were untrue and misleading.

69. Despite these express promises to its customers, the Defendant intercepted, monitored, collected, recorded, utilized, transmitted, and/or stored App Class Members' Personal and/or Private information. Further, the Defendant actively sought to keep Class

[2] Purchaser Class Members who purchased their We-Vibe Products from another retailer and not directly from the Defendant maintain their action in tort.

Members in the dark regarding the level of spying and data collection that was built into the We-Connect App.

70. Even in the absence of these express promises, because Class Members transacted business with the Defendant by purchasing the We-Vibe Products and/or by installing the We-Connect App onto their Smart Devices, this created an implied contract with the Defendant such that the Defendant would safeguard Plaintiffs' and App Class Members' Personal and/or Private Information and seek authorization for any and all utilizations thereof.

71. Without such implied contracts, the Plaintiffs and Class Members would surely not have purchased the We-Vibe Products and/or installed the We-Connect App onto their Smart Devices.

72. Contrary to these express or implied terms, the Defendant intentionally, knowingly or recklessly, intercepted, monitored, collected, recorded, utilized, transmitted, and/or stored App Class Members' Personal and/or Private Information without their knowledge, consent or authorization or, alternatively by exceeding any authorization that may have been given.

73. Class Members were misled as to the nature and integrity of the Defendant's products and services and have, in fact, suffered material disadvantage in purchasing the We-Vibe Products and regarding their interests in the privacy and confidentiality of their Personal and/or Private Information. Further, the Defendant's conduct offends public policy in Ontario and in Canada in that consumers were unable to be informed or equipped

to protect their own privacy interests, such that consumers were unable to make informed decisions and others means of safeguarding their privacy.

74. The Plaintiffs and Class Members have suffered significant loss and damages including harm and injury to their privacy interests as well as loss of enjoyment of the We-Vibe Product(s) all of which were damages directly resulting from the interception, monitoring, collection, recording, utilization, transmission, and/or storage of their Personal and/or Private information by the Defendant.

75. By reason of these unauthorized privacy violations, the Defendant is in breach of contract having flouted its express or implied warranty to Class Members by failing to protect their Personal and/or Private Information as expressly and/or impliedly promised.

76. The Defendant's breach of contract has resulted in injury, economic losses and damages to the Plaintiffs and to the Class Members.

77. By virtue of the acts and omissions described above, the Plaintiffs and Class Members are entitled to recover damages from the Defendant.

C. Tort of Civil Negligence

78. The Defendant had a positive legal duty to exercise reasonable care to perform its legal obligations to Class Members independent of its promises and its undertaken duties. The Defendant must adhere to a standard of reasonable care and employ measures to prevent Class Members from being injured as the result of its conduct. This duty exists independently of any contractual provision as it is a basic principle of tort law. The

Defendant was at all times aware of the likelihood of harm that would occur should it fail to act reasonably under the circumstances described above.

79. The Defendant also had a duty as the proprietor of the We-Connect App, to protect its customers from, or at least warn them of, their interception, monitoring, collection, recording, utilization, transmission, and/or storage practices – particularly so since the harm is not otherwise evident to Class Members. Such a duty arises out of the special relationship between the Defendant and Class Members.

80. The Defendant breached its duty of care to Class Members by designing the We-Connect App to enable it to intercept, monitor, collect, record, utilize, transmit, and/or store App Class Members' Personal and/or Private Information without App Class Members' knowledge or consent and by constructing and controlling consumers' user experience such that consumers could not reasonably avoid such privacy-infringing actions.

81. The Defendant had a duty to conform to a particular standard of conduct to protect the Plaintiffs and Class Members from an unreasonable risk of injury. It failed in this duty of care when it failed to ensure that Personal and/or Private information would not be intercepted, monitored collected, recorded, utilized, transmitted, and/or stored.

82. The Defendant undertook a duty to protect Class Members from the harm that it knew would be caused by its interception, monitoring, collection, recording, utilization, transmission, and/or storage practices and had an obligation to use reasonable care to prevent such harm or to adequately warn Class Members of such harm.

83. The Defendant was required to meet a reasonable standard of care because:

(a) The Personal and/or Private Information communicated by the Plaintiffs and the App Class Members was unique to the Plaintiffs and to each App Class Member;

(b) The Personal and/or Private Information pertained to the identity and intimate sexual behaviours of the Plaintiffs and each of the App Class Members;

(c) The Personal and/or Private Information was intercepted, monitored, collected, recorded, utilized, transmitted, and/or stored by the Defendant under circumstances where the Plaintiffs and App Class Members had no choice or knowledge in the communication.

84. The Defendant failed to fulfill its own commitments and further, failed to fulfill even the minimum duty of care to protect the Plaintiffs and App Class Members' Personal and/or Private User Information, privacy rights, and security.

85. The Defendant's failure to fulfill its commitments included its practice of intercepting, monitoring, collecting, recording, utilizing, transmitting, and/or storing App Class Members' Personal and/or Private Information, without providing notice thereof or obtaining informed consent, where Class Members had no reasonable means to become aware of such practices or to manage it; and where such practices placed users at an unreasonable risk of capture and misuse of such highly detailed, Personal and/or Private Information.

86. Despite the fact that that Defendant knew or should have known that the intended usage We-Vibe Products were allowing for surreptitious interception, monitoring, collection, recording, utilization, storage, and/or transmission of App Class Members Personal and/or Private Information, it failed to either inform Class Members or to halt said practices

87. Any reasonable consumer would consider such a practice unexpected, objectionable and shocking to the conscience.

88. Plaintiffs and Class Members were harmed as a result of the Defendant's breaches of its duties.

89. The Defendant knew that its customers (including Plaintiffs and the App Class) were wholly reliant on them to adequately protect their privacy and to not use their Personal and/or Private data for their own ends; particularly so as it represented as much to Class Members.

90. By the acts described herein, the Defendant failed in its duty to act with reasonable care with regards to App Class Members' Personal and/or Private Information and, in so doing, breached its duties to the Plaintiffs and to the Class.

D. Breach of Fiduciary Duty

91. The Defendant was in an *ad hoc* fiduciary relationship with the Plaintiffs and App Class Members by reason of its entrustment with their Personal and/or Private Information and its ability to exercise its discretionary powers unilaterally, affecting the Plaintiffs' and

App Class Members' legal and/or practical interests. In addition, the Defendant either expressly or impliedly undertook to exercise its discretionary powers in App Class Members' best interests.

92. By virtue of this fiduciary relationship and the vulnerability and dependency of the Plaintiffs and App Class Members, the Defendant had a duty of care to use reasonable means to keep the said Personal and/or Private information strictly confidential and secure. The Defendant unlawfully breached this duty in intercepting, monitoring, collecting, recording, utilizing, and/or transmitting their Personal and/or Private Information.

E. Tort of Trespass to Chattels, Conversion, and/or Nuisance

93. In the alternative to the tort of invasion of privacy, the common law prohibits the intentional and/or wrongful interference with or handling of personal property, in the possession of another, including the We-Vibe Products and the We-Connect App. The Defendant's intermeddling with Class Members' use of the We-Vibe Products resulted in the deprivation of the use of the We-Vibe Product and/or its accompanying We-Connect App or in the impairment of the condition, quality or usefulness of the We-Vibe Product and/or its accompanying We-Connect App.

94. In addition, by intercepting, monitoring, collecting, recording, utilizing, transmitting, and/or storing App Class Members' Personal and/or Private Use Information without authorization or consent, the Defendant dispossessed Class Members from the use and/or access to their We-Vibe Products and/or portions of them, including the accompanying We-Connect App.

95. Further, these acts materially impaired the use, value, and quality of Class Members' We-Vibe Products in that in connecting or pairing the We-Vibe Products with the We-Connect App in order to use the product(s) for the purposes to their full potential (and presumably, for the reasons for which they were purchased), they were unknowingly subject to the interception, monitoring, collection, recording, utilization, storage, and/or transmission of their Personal and/or Private Information.

96. The Defendant's acts constituted an intentional interference with the use and enjoyment of the We-Vibe Products and/or the We-Connect App. By the acts described above, the Defendant repeatedly and persistently engaged in trespass to personal property in violation of the common law.

97. Without Class Members' consent or alternatively, in excess of any consent given, the Defendant knowingly and intentionally intercepted, monitored, collected, recorded, utilized, transmitted, and/or stored App Class Members' Personal and/or Private Information by intermeddling with Class Members' We-Vibe Products through the We-Connect App and caused injury to members of the Class.

98. The Defendant engaged in intentional deception and concealment to gain access to App Class Members' Personal and/or Private Information. Further, Defendant's practices materially impaired the condition and value of Class Members' We-Vibe Products.

99. Defendant' trespass to chattels, nuisance and interference caused real and substantial damage to Class Members.

100. As a direct and proximate result of Defendant' trespass to chattels, nuisance, interference, unauthorized access of and intermeddling with Class Members' property, the Defendant has injured and impaired the condition and value of Class Members' We-Vibe Products, as follows:

(a) By devaluing, interfering with, and/or diminishing Class Members' possessory interest in their We-Vibe Products;

(b) By infringing on Class Members' right to exclude others from their We-Vibe Products;

(c) By infringing on Class Members' right to determine, as owners of their We-Vibe Products, what information their We-Vibe Products and/or the We-Connect App are capable of being intercepted, monitored, collected, recorded, utilized, transmitted, and/or stored; and

(d) By compromising the integrity, security, and ownership of Class Members' We-Vibe Products.

F. Breach of Implied Warranties

101. At all times relevant hereto, applicable law imposed a duty that requires that the We-Vibe Products be of merchantable quality and fit for the ordinary purposes for which they are used.

102. The Defendant knew of the specific use for which the We-Vibe Products were purchased i.e. to engage in sexual communications through the We-Connect App that are expected to remain private, and they impliedly warranted that the products were fit for such use, especially so as the Defendant marketed them for this particular purpose. Their secret interception, monitoring, collection, recording, utilization, storage, and/or transmission practices substantially impairs the use, value, and informational security of the We-Vibe Products.

103. The We-Connect App was specifically designed to intercept, monitor, collect, record, utilize, transmit, and/or store App Class Members' Personal and/or Private Information and the only way to avoid it was to not use the We-Connect App to any useful degree. At all times relevant hereto, the Defendant was aware of this product feature. Thus, the We-Vibe Products, when sold at all times thereafter, were not in merchantable condition or quality and were not fit for their ordinary intended purposes.

104. The Defendant knew, or should have known, that usage of their We-Vibe Products with the We-Connect App were inferior to and unsecure as compared to the other similar products sold by other manufacturers, particularly so due to their knowledge of their untoward practices with respect to App Class Members' Personal and/or Private Information.

105. The We-Vibe Products were unfit, and inherently unsound for use with the We-Connect App, and the Defendant knew that they would not pass without objection in the trade; that they were not fit for the ordinary purpose for which they were used, and that they were unmerchantable.

106. Consequently, the Defendant breached the implied warranty of merchantability, to wit: they failed to sell vibrators that the usage thereof does not necessarily allow for secret interception, monitoring, collection, recording, utilization, transmission, and/or storage of their Personal and/or Private Information.

107. As a direct and proximate result of Defendant's breach of the implied warranties of merchantability and fitness for a particular purpose, Purchaser Class Members have suffered damages.

G. Fraudulent Concealment

108. The Defendant concealed and omitted material facts regarding We-Vibe Products and the We-Connect Application in that it fraudulently concealed and/or intentionally failed to disclose that it used the We-Connect Application to intercept, monitor, collect, record, utilize, transmit, and/or store a substantial amount of information about its consumers' personal usage habits.

109. The Defendant had a duty to disclose material facts regarding the interception, monitoring, collection, recording, utilization, transmission, and/or storage of App Class Members' Personal and/or Private Information as:

(a) The Defendant and App Class Members were in a special, confidential, and/or fiduciary relationship by reason of its entrustment with their Personal and/or Private Information;

(b) The Defendant's conduct in surreptitiously intercepting, monitoring, collecting, recording, utilizing, transmitting, and/or storing App Class Members' Personal

and/or Private Information amounts to an unconscionable thing for it to do to them; and

(c) The Defendant concealed its actions from Class Members such that they were wholly unaware that their legal rights were being compromised.

110. The Defendant's unconscionable practices were known and/or accessible only to the Defendant at the time the Plaintiffs and Class Members purchased the We-Vibe Products and downloaded the We-Connect App as well as at the times that they utilized the We-Vibe Products and the We-Connect App. Neither the Plaintiffs nor the Class Members could, in the exercise of reasonable diligence, have independently discovered the Defendant's intrusive practices prior to purchasing the We-Vibe Products and downloading the We-Connect App, nor prior to the exposure of the Defendant's practices at the Def Con Conference in August 2016 as described hereinabove.

111. The facts concealed and/or not disclosed by the Defendant to the Plaintiffs and Class Members are material facts that a reasonable person would have considered important in deciding whether to purchase a We-Vibe Product and/or whether to download and utilize the We-Connect Application.

112. The Defendant actively concealed and/or suppressed these material facts, in whole or in part, with the intent to induce the Plaintiffs and Purchaser Class Members to purchase the We-Vibe Products at a higher price than regular vibrators, and to protect its profits.

113. The Defendant possessed exclusive knowledge of its data interception, monitoring, collection, recording, utilization, transmission, and/or storage policies and the committed facts were material because they directly impact the value of the We-Vibe Product.

114. The Class Members were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. The Class Members' actions were reasonable and justified. The Defendant was in exclusive control of the material facts concerning its data collection policies and such facts were not known to the public or to the Class Members.

115. As a result of the concealment and/or suppression of facts, the Plaintiffs and Class Members were misled and have been injured in an amount to be proven at trial.

H. Intentional and/or Negligent Misrepresentation

116. The tort of intentional and/or negligent misrepresentation can be made out as:

(a) There was a relationship of proximity in which failure to take reasonable care would foreseeably cause loss or harm to the App Class;

(b) The Defendant made a Representation that was untrue, inaccurate and/or misleading;

(c) The Defendant acted negligently in making the representation;

(d) The Representation were reasonably relied upon by the Class; and

(e) The Class has sustained damages as a result of their reliance.

117. The Defendant represented to the Class Members that they intended to "build the user's trust and confidence in Internet use by promoting the use of fair information practices" and that it was "committed to all reasonable protection of our customer's privacy". In addition, the Defendant represented, upon launching the We-Connect App, that the App Class Member would be able to "create a secure connection between your smartphones." These representations were untrue as the Defendant was secretly intercepting, monitoring, collecting, recording, utilizing, transmitting, and/or storing App Class Members' Personal and/or Private Information.

118. These material misrepresentations made by the Defendant are false and their materiality is evidenced by the fact that Purchaser Class Members even purchased the We-Vibe Products and that App Class Members downloaded and utilized the We-Connect App in the first place.

119. At the time that the Defendant made the misrepresentations herein alleged, it knew that they were false, it had no reasonable grounds to believe that they were true as there was ample evidence to the contrary as set forth in detail in this Statement of Claim, and the Defendant made the material representations recklessly.

120. The Defendant knew or were reckless in not knowing that its representations were untrue. The Defendant either had actual knowledge of the fact that when the We-Vibe Products were used with the We-Connect App that they were intercepting, monitoring, collecting, recording, utilizing, transmitting, and/or storing App Class Members' Personal and/or Private Information or it was reckless or negligent in not knowing.

121. The Defendant made the Representation herein alleged with the intention of inducing the Class Members to act by purchasing their We-Vibe Products and/or by installing the We-Connect Application onto their Smart Devices in reliance thereupon by appealing to the purchasers' sexual desires and by intimating that their information would be protected.

122. Class Members acted in justifiable and reasonable reliance on these material misrepresentations and purchased the We-Vibe Products specifically under the belief that their Personal and/or Private Information would be safe.

123. The Class Members were unaware of the fact that the We-Vibe Products, when utilized with the We-Connect App exposed their Personal and/or Private Information to interception, monitoring, collection, recording, utilization, transmission, and/or storage.

124. The Class Members were without the ability to determine the truth of these statements on their own and could only rely on the Defendant to this end.

125. The safety of Personal and/or Private Information when engaging in sexual activity is a primary selling point to the Plaintiffs and the Class Members. Had the Class Members known the true facts, they would not have purchased the We-Vibe Products and/or utilized the We-Connect App and would have opted instead for a safer alternative.

126. By reason of the foregoing, the Class Members are entitled to recover damages and other relief from Defendant.

I. Breach of Implied Covenant of Good Faith and Fair Dealing

127. It is a well-established tenet of contract law that there is an implied covenant of good faith and fair dealing in every contract.

128. As alleged herein, the Defendant failed to disclose that it designed the We-Connect App to intercept, monitor, collect, record, utilize, transmit, and/or store highly intimate and sensitive data regarding consumers' personal We-Vibe Product usage. This runs contrary to the concepts of good faith and fair dealing in that the Defendant was acting with dishonesty in failing to make Class Members aware of its intrusive policies.

129. The Defendant had a duty to take reasonable efforts to inform Class Members that the We-Connect Application secretly intercept, monitors, collects, records, utilizes and transmits highly personal information about the consumers using it.

130. The Defendant, who benefitted from selling products that secretly collect and transmit such usage data cannot be said to be in good faith or dealing fairly with Class Members.

131. As a direct and proximate result of the Defendant's breach of its implied covenants, the Plaintiffs and the Class Members have been damaged in an amount to be determined at trial.

STATUTORY REMEDIES

132. The Defendant is in breach of the *Consumer Protection Act*[3], the *Competition Act*, *PIPEDA*, the *Freedom of Information and Protection of Privacy Act*[4], the *Sale of Goods Act*; and/or other similar/equivalent legislation.

133. The Plaintiffs plead and rely upon trade legislation and common law, as it exists in this jurisdiction, and the equivalent/similar legislation and common law in other Canadian provinces and territories.

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[3] While the *Consumer Protection Act* applies only in Ontario, other Canadian provinces and territories have similar Consumer Protection Legislation including, but not limited to: the *Business Practices and Consumer Protection Act*, SBC 2004, c.2, as amended, including ss. 4, 5 & 8-10; the *Fair Trading Act*, RSA 2000, c. F-2, as amended, including ss. 6, 7 & 13; *The Consumer Protection Act*, SS 1996, c. C-30.1, as amended, including ss. 5-8, 14, 16, 48 & 65; *The Business Practices Act*, CCSM, c. B120, as amended, including ss. 2 & 23; the *Consumer Protection Act*, RSQ c. P-40.1, as amended, including ss. 219, 228, 253 & 272; the *Consumer Protection and Business Practices Act*, SNL 2009, c. C-31.1, as amended, including ss. 7, 8, 9 & 10, and the *Trade Practices Act*, RSNL 1990, c. T-7, as amended, including ss. 5, 6 & 14; the *Consumer Product Warranty and Liability Act*, SNB 1978, c. C-18.1, including ss. 4, 10, 12, 15-18, 23 & 27; the *Consumer Protection Act*, RSNS 1989, c. 92, including ss. 26 & 28A; the *Business Practices Act*, RSPEI 1988, c. B-7, as amended, including ss. 2-4; the *Consumers Protection Act*, RSY 2002, c 40, as amended, including ss. 58 & 86; the *Consumer Protection Act*, RSNWT 1988, c C-17, as amended, including ss. 70 & 71; and the *Consumer Protection Act*, RSNWT (Nu) 1988, c C-17, as amended, including ss. 70 & 71.

[4] While the *Freedom of Information and Protection of Privacy Act* applies only in Ontario, other Canadian provinces and territories have similar Provincial Privacy Legislation including, but not limited to: the *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165, as amended; the *Privacy Act*, RSBC 1996, c 373, as amended; the *Personal Information Protection Act*, SA 2003, c P-6.5, as amended; the *Freedom of Information and Protection of Privacy Act*, RSA 2000, c F-25, as amended; *The Privacy Act*, RSS 1978, c P-24, as amended; *The Freedom of Information and Protection of Privacy Act*, SS 1990-91, c F-22.01, as amended; *The Privacy Act*, CCSM c P125, as amended; *The Freedom of Information and Protection of Privacy Act*, CCSM c F175, as amended; *An Act respecting the Protection of Personal Information in the Private Sector*, CQLR c P-39.1, as amended; the *Civil Code of Québec*, CQLR c CCQ-1991, as amended; the *Charter of Human Rights and Freedoms*, CQLR c C-12, as amended; the *Privacy Act*, RSNL 1990, c P-22, as amended; the *Access to Information and Protection of Privacy Act*, 2015, SNL 2015, c A-1.2, as amended; the *Right to Information and Protection of Privacy Act*, SNB 2009, c R-10.6, as amended; the *Freedom of Information and Protection of Privacy Act*, SNS 1993, c 5, as amended; the *Freedom of Information and Protection of Privacy Act*, RSPEI 1988, c F-15.01, as amended; The *Access to Information and Protection of Privacy Act*, RSY 2002, c 1, as amended; the *Access to Information and Protection of Privacy Act*, SNWT 1994, c 20, as amended; the *Access to Information and Protection of Privacy Act*, SNWT (Nu) 1994, c 20, as amended.

A. Breach of the *Consumer Protection Act*

134. At all times relevant to this action, the Plaintiffs and Class Members were "consumer[s]" within the meaning of that term as defined in s.1 of the *Consumer Protection Act*.

135. At all times relevant to this action, the Defendant was a "supplier" within the meaning of that term as defined in s.1 of the *Consumer Protection Act*.

136. The transactions by which the Plaintiffs and Purchaser Class Members purchased We-Vibe Products and the transaction whereby the Plaintiffs and App Class Members installed the "free" We-Connect App onto their Smart Devices, were "consumer transaction[s]" within the meaning of that term as defined in s.1 of the *Consumer Protection Act*.

137. The Defendant is a resident in Ontario for the purpose of s. 2 of the *Consumer Protection Act*.

138. The Defendant has engaged in an unfair practice by making a Representation to Class Members which was and is "false, misleading or deceptive" and/or "unconscionable" within the meaning of ss. 14, 15 and 17 of *the Consumer Protection Act*, as follows:

(a) Representing that the We-Vibe Products and/or the We-Connect Application have performance characteristics, accessories, uses, benefits or qualities which they do not have; i.e. the ability to utilize the We-Vibe Products with the We-

Connect App in such a manner that Personal and/or Private Information is not manipulated and that there are privacy protections in place;

(b) Representing that their goods are of a particular standard or quality in terms of privacy when they are not;

(c) Representing that a specific price advantage existed with regards to the "free" We-Connect App; and/or

(d) Using exaggeration, innuendo and/or ambiguity as to the material fact and/or in failing to state the material fact that App Class Members' Personal and/or Private Information would be compromised.

139. These representations were materially misleading and failed to disclose the following material facts: (a) the We-Connect App downloaded by the Plaintiffs and the App Class are not "free" in so far as the Defendant obtains the Plaintiffs and App Class Members' valuable information assets without consent or notice, as described above and (b) the Defendant does not abide by its commitments to users.

140. Further, the Defendant's conduct alleged herein is unfair insofar as it offends public policy, is oppressive and causes consumers substantial injury.

141. The Representation was and is unconscionable because *inter alia* the Defendant knows or ought to know that consumers are likely to rely, to their detriment, on its misleading statements as to the security of their Personal and/or Private Information when using the We-Vibe Products with the We-Connect App.

142. The Plaintiffs and the Class Members relied on the representations/omissions made by the Defendant.

143. The reliance upon the representations/omissions by the Plaintiffs and Class Members is established by his or her purchase of a We-Vibe Product and/or installation of the We-Connect App on their Smart Device.

144. The Plaintiffs and Class Members are entitled to recover damages and costs of administering the plan to distribute the recovery of the action in accordance with the *Consumer Protection Act*.

145. The Representation was and is false, misleading, deceptive and/or unconscionable such that it constituted an unfair practice which induced the Class to purchase the We-Vibe Products and/or to install the We-Connect App onto their Smart Devices as a result of which they are entitled to damages pursuant to the *Consumer Protection Act*.

B. Breach of the *Competition Act*

146. At all times relevant to this action, the Defendant's design, manufacture, marketing, promotion, advertising, labelling, sale, and/or support was a "business" and the We-Vibe Products and the We-Connect Application were "product(s)" within the meaning of that term as defined in s. 2 of the *Competition Act*.

147. The Defendant made certain representations to the public and in so doing breached s. 52 of the *Competition Act* because the Representation:

(a) Was false and/or misleading in a material respect;

(b) Was made for the purpose of promoting, directly or indirectly, the supply or use of the We-Vibe Product and/or the We-Connect App or for the purpose of promoting, directly or indirectly, the business interests of the Defendant;

(c) Was made knowingly or recklessly;

(d) Was made to the public; and

(e) Stated a level of security that was false.

148. The Class Members relied upon the Representation by purchasing the We-Vibe Products and/or by installing the We-Connect Application onto their Smart Device and thereafter suffered damages and loss.

149. Pursuant to s. 36 of the *Competition Act*, the Defendant is liable to pay the damages which resulted from the breach of s. 52.

150. Pursuant to s. 36 of the *Competition Act*, the Class Members are also entitled to recover their full costs of investigation and substantial indemnity costs paid in accordance with the *Competition Act*.

C. Breach of *PIPEDA*

151. The Defendant's business of designing, manufacturing, marketing, promoting, advertising, labelling, selling, and/or supporting the We-Vibe Products and/or the We-Connect App consisted of a "commercial activity" within the meaning of the that term as defined in s.2 of *PIPEDA*.

152. The Defendant is an “organization” within the meaning of that term as defined in s.2 of *PIPEDA*.

153. The Personal and/or Private Information that was intercepted, monitored, collected, recorded, utilized, transmitted, and/or stored by the Defendant was “personal information” and was in the form of a “record” within the meaning of those terms as defined in s.2 of *PIPEDA*.

154. The Defendant collected and/or used the Personal and/or Private Information of App Class Members for purposes that no reasonable person would consider appropriate in the circumstances. Further it was not in compliance with the principles as espoused in Schedule 1 of *PIPEDA* in that the principles of accountability, identifying purposes, consent, limiting collection, limiting use, disclosure, and retention, safeguards, and openness were not adhered to by any means.

155. Under *PIPEDA*, the Class Members have a right to protection, privacy and security of their Personal and/or Private Information and the Defendant is under a corresponding obligation to protect its customers’ rights to privacy.

156. The Defendant is responsible for the Personal and/or Private Information of App Class Members as it was wholly under its control to do so and it breached its duty to protect this information when it intercepted, monitored, collected, recorded, utilized, transmitted, and/or stored their Personal and/or Private Information.

157. The purposes for which Class Members' Personal and/or Private Information was intercepted, monitored, collected, recorded, utilized, transmitted, and/or stored was not identified by the Defendant either at or before the time the information was intercepted, monitored, collected, recorded, utilized, transmitted, and/or stored and Class Members were completely unaware that information was being intercepted, monitored, collected, recorded, utilized, transmitted, and/or stored and that their privacy rights were being violated.

158. The Defendant made no reasonable effort to ensure that Class Members were advised of the purposes for which the information would be intercepted, monitored, collected, recorded, utilized, transmitted, and/or stored and in fact, actively deceived Class Members when it made false, misleading and/or deceptive representations in its Privacy Policy. The Defendant therefore deliberately arrogated Class Members' ability to consent thereto.

159. The breach of the Class Members' privacy by the Defendant constitutes a breach of *PIPEDA* for which damages may be awarded.

D. Breach of the *Freedom of Information and Protection of Privacy Act*

160. At all times relevant to this action, App Class Members' Personal and/or Private Information consisted of "personal information" and it was in form of a "record" within the meaning of those terms as defined in s. 2 of the *Freedom of Information and Protection of Privacy Act*.

161. The Defendant's storage of App Class Members' Personal and/or Private Information was in the form of a "personal information bank" within the meaning of that term as defined in s.2 of the *Freedom of Information and Protection of Privacy Act*.

162. The Defendant was in breach of the *Freedom of Information and Protection of Privacy Act* in collecting and using App Class Members' Personal and/or Private Information without authorization and without informing them in accordance with ss. 38, 39, and 41.

E. Breach of the *Sale of Goods Act*

163. At all times relevant to this Claim, Purchaser Class Members were "buyer[s]" within the meaning of that term as defined in s.1 of the *Sale of Goods Act*.

164. At all times relevant to this action, the Defendant was a "seller" within the meaning of that term as defined in s.1 of the *Sale of Goods Act*.

165. The We-Vibe Products were "goods" within the meaning of that term as defined in s.1 of the *Sale of Goods Act*.

166. There were implied conditions as to merchantable quality or fitness pursuant to ss. 15 and 16 of the *Sale of Goods Act*.

167. The Defendant was aware that the customers purchased the We-Vibe Products based on their representations and based on their marketing and advertising and there is therefore an implied warranty or condition that the goods will perform as presented.

168. The Defendant committed a fault or wrongful act by breaching the implied condition as to quality or fitness for a particular purpose. By placing into the stream of commerce a product that was unfit for the purpose for which it was marketed and/or advertised, as per ss. 15 and 16 of the *Sale of Goods Act*, the Defendant is liable. The Purchaser Class is entitled to maintain an action for breach of warranty under ss. 52 & 53 of the *Sale of Goods Act*.

CAUSATION

169. The acts, omissions, wrongdoings, and breaches of legal duties and obligations on the part of the Defendant are the direct and proximate cause of the Plaintiffs' and Class Members' injuries.

170. The Plaintiffs plead that by virtue of the acts, omissions and breaches of legal obligations as described above, they are entitled to legal and/or equitable relief against the Defendant, including damages, consequential damages, specific performance, rescission, attorneys' fees, costs of suit and other relief as appropriate in the circumstances.

DAMAGES

171. By reason of the acts, omissions and breaches of legal obligations of the Defendant, the Plaintiffs and Class Members have suffered economic loss and damages, the particulars of which include, but are not limited to, the following general, compensatory and punitive damages.

A. General Damages (Non-Pecuniary Damages)

172. The general damages being claimed in this Statement of Claim include:

a) Pain and suffering;

b) Loss of enjoyment of life;

c) Embarrassment/humiliation;

d) Stress/distress;

e) Anxiety/anguish;

f) Trouble; and

g) Inconvenience.

B. Special Damages (Pecuniary Damages)

173. The special damages being claimed in this Statement of Claim include the purchase price of the We-Vibe Product(s) and/or the overpayment of the purchase price of the We-Vibe Product(s).

C. Punitive (Exemplary) and Aggravated Damages

174. The Defendant has taken a cavalier and arbitrary attitude to its legal and moral duties to the Class Members and has been knowingly designing, manufacturing, marketing, selling, and supporting the We-Vibe Products and/or the We-Connect Application with the intention of monitoring, collecting, recording, utilizing, and transmitting its customers' Personal and/or Private Information.

175. At all material times, the conduct of the Defendant as set forth was malicious, deliberate, and oppressive towards their customers and the Defendant conducted itself in a willful, wanton and reckless manner as to Class Members' privacy rights, such as to warrant punitive damages.

176. By engaging in such deplorable conduct and tactics, the Defendant committed a separate actionable wrong for which this Honourable Court should voice its disapproval and displeasure with an award of punitive damages.

177. In addition, it should be noted since the Defendant is part of a highly-revered, multi-million-dollar corporation, it is imperative to avoid any perception of evading the law without impunity. Should the Defendant only be required to disgorge monies, which should not have been retained and/or withheld, such a finding would be tantamount to an encouragement to other businesses to deceive their customers as well. Punitive and aggravated damages are necessary in the case at hand to be material in order to have a deterrent effect on other corporations.

WAIVER OF TORT, UNJUST ENRICHMENT AND CONSTRUCTIVE TRUST

178. The Plaintiffs plead and rely on the doctrine of waiver of tort and state that the Defendant's conduct, including the alleged breaches of the *Consumer Protection Act*, the *Competition Act*, *PIPEDA*, the *Freedom of Information and Protection of Privacy Act*, the *Sale of Goods Act*; and/or other similar/equivalent legislation constitutes wrongful conduct which can be waived in favour of an election to receive restitutionary or other equitable remedies.

179. The Plaintiffs reserve the right to elect at the Trial of the Common Issues to waive the legal wrong and to have damages assessed in an amount equal to the gross revenues earned by the Defendant or the net income received by the Defendant or a percent of the sale of the We-Vibe Products as a result of the Defendant's unfair practices and fraudulent concealments which resulted in revenues and profit for the Defendant.

180. Further, the Defendant has been unjustly enriched as a result of the revenues generated from the sale of the We-Vibe Products and as such, *inter alia*, that:

(a) The Defendant has obtained an enrichment through the revenues and profits from the sale of the We-Vibe Products as well as through the receipt of App Class Members' Personal and/or Private Information;

(b) The Plaintiffs and other Class Members have suffered a corresponding deprivation; and

(c) The benefit obtained by the Defendant and the corresponding detriment experienced by the Plaintiffs and Class Members has occurred without juristic reason. Since the monies that were received by the Defendant resulted from the Defendant's wrongful acts, there is and can be no juridical reason justifying the Defendant's retaining any portion of such money paid.

181. Further, or in the alternative, the Defendant is constituted as a constructive trustee in favour of the Class Members for all of the monies received because, among other reasons:

(a) The Defendant was unjustly enriched by receipt of the monies paid for the We-Vibe Products as well as from App Class Members' Personal and/or Private Information;

(b) The Purchaser Class Members suffered a corresponding deprivation by purchasing the We-Vibe Products and the App Class Members suffered from having their privacy rights violated;

(c) The monies were acquired in such circumstances that the Defendant may not in good conscience retain them;

(d) Equity, justice and good conscience require the imposition of a constructive trust;

(e) The integrity of the market would be undermined if the court did not impose a constructive trust; and

(f) There are no factors that would render the imposition of a constructive trust unjust.

182. Further, or in the alternative, the Plaintiffs claim an accounting and disgorgement of the benefits which accrued to the Defendant.

COMMON ISSUES.

183. Common questions of law and fact exist for the Class Members and predominate over any questions affecting individual members of the Class. The common questions of fact and law include:

(a) Did the Defendant intercept, monitor, collect, record, utilize, transmit, and/or store App Class Members' Personal and/or Private Information?

(b) Did the Defendant design, manufacture, market, promote, advertise, label, sell, and/or support the We-Vibe Products and/or the We-Connect Application to: (i) intercept, collect, and record highly intimate and sensitive data regarding consumers' personal We-Vibe Product use, including the date and time of each usage, as well as, the chosen vibration settings, and to (ii) transmit and store such usage data – along with the user's personal email address – to its servers?

(c) Did the Defendant fail to disclose material terms regarding the interception, monitoring, collection, recording, utilization, transmission, and/or storage of App Class Members' Personal and/or Private Information?

(d) Did the Defendant engage in unfair, misleading, and/or deceptive acts or practices in failing to clearly and conspicuously disclose their data collection practices?

(e) Did the Defendant violate the privacy of Class Members?

(f) Does the Defendant's conduct constitute an invasion of privacy (intrusion upon the seclusion) of the Plaintiffs' and App Class Members' private affairs?

(g) Is the Defendant in breach of contract?

(h) Did the Defendant breach its duties to Class Members?

(i) Was the Defendant negligent in failing to disclose its interception, monitoring, collection, recording, utilization, transmission, and/or storage of App Class Members' highly-sensitive personally identifiable information?

(j) Did the Defendant breach its fiduciary duty to Class Members?

(k) Did the Defendant commit the tort of trespass to chattels, conversion, and/or nuisance?

(l) Did the Defendant breach its implied warranties of merchantability and fitness for a particular purpose?

(m) Did the Defendant commit fraudulent concealment?

(n) Did the Defendant commit intentional and/or negligent misrepresentation?

(o) Did the Defendant's acts or practices breach the *Consumer Protection Act*, the Consumer Protection Legislation, the *Competition Act*, *PIPEDA*, the *Freedom of Information and Protection of Privacy Act*, the *Sale of Goods Act*, and/or other similar/equivalent legislation?

(p) Have the Class Members been damaged by the Defendant's conduct, and, if so, what is the proper measure of such damages?

(q) Is the Defendant responsible for all related pecuniary damages, including, but not limited to reimbursement of the purchase price of the We-Vibe Product(s) or in the alternative, the overpayment of the purchase price of the We-Vibe Product(s)?

(r) Is the Defendant responsible to pay punitive damages to the Class Members, and in what amount?

(s) Was the Defendant unjustly enriched by selling products to the Purchaser Class without informing them that the We-Connect App was programmed to secretly intercept, monitor, collect, record, utilize, transmit and/or store Personal and/or Private Usage Information about its users without their knowledge or consent?

(t) Should an injunctive remedy be ordered (i) prohibiting the Defendant from intercepting, monitoring, collecting, recording, utilizing, transmitting, and/or storing its customers' Personal and/or Private Usage Information without their informed consent, and (ii) requiring the Defendant to destroy any and all such information currently in its possession?

EFFICACY OF CLASS PROCEEDINGS

184. The Class Members are so numerous that joinder into one action is impractical and unmanageable. The Class Members are geographically dispersed and number in the thousands. Continuing with the Class Members' claim by way of a class proceeding is both practical and manageable and will therefore provide substantial benefits to both the parties and to the Court.

185. Given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Defendant. Even if the Class Members themselves could afford such individual litigation, the court system could not as it would be overloaded, and, at the very least, is not in the interests of judicial economy.

Furthermore, individual litigation of the factual and legal issues raised by the conduct of the Defendant would increase delay and expense to all parties and to the court system.

186. By their very nature, privacy violations affect many individuals and if it were not for the class action mechanism which facilitates access to justice, these types of claims would never be heard.

187. This class action overcomes the dilemma inherent in an individual action whereby the legal fees alone would deter recovery and thereby in empowering the consumer, it realizes both individual and social justice as well as rectifies the imbalance and restore the parties to parity.

188. Also, a multitude of actions instituted in different jurisdictions, both territorial (different provinces) and judicial districts (same province), risks having contradictory and inconsistent judgments on questions of fact and law that are similar or related to all members of the Class.

189. In these circumstances, a class action is the only appropriate procedure and the only viable means for all of the members of the Classes to effectively pursue their respective legal rights and have access to justice.

190. The Plaintiffs have the capacity and interest to fairly and fully protect and represent the interests of the proposed Classes and have given the mandate to their counsel to obtain all relevant information with respect to the present action and intend to keep informed of all developments. In addition, class counsel is qualified to prosecute complex class actions.

LEGISLATION

191. The Plaintiffs plead and rely on the *Class Proceedings Act*, the *Courts of Justice Act*, the *Consumer Protection Act*, the Consumer Protection Legislation, the *Competition Act*, *PIPEDA*, the *Freedom of Information and Protection of Privacy Act*, the *Sale of Goods Act*, and other.

JURISDICTION AND FORUM

Real and Substantial Connection with Ontario

192. There is a real and substantial connection between the subject matter of this action and the province of Ontario because:

(a) The Defendant has its head office in Ottawa, Ontario;

(b) The Defendant engages in business with residents of Ontario;

(c) The Defendant derives substantial revenue from carrying on business in Ontario; and

(d) The damages of Class Members were sustained in Ontario.

193. The Plaintiff proposes that this action be tried in the City of Ottawa, in the Province of Ontario as a proceeding under the *Class Proceedings Act*.

Date: April 13, 2017

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L.S. and M.C.
Plaintiffs

STANDARD INNOVATION CORPORATION
Defendant

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED IN OTTAWA

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

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