



Court File No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Electronically issued
Délivré par voie électronique : 03-May-2021
London

JOHN PRINS

Plaintiff

and

LG ELECTRONICS CANADA, INC.

Defendant

Proceeding under the *Class Proceedings Act, 1992*, SO 1992, c 6.

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff.
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 Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, 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 May 3, 2021 Issued by _____
Local Registrar

Address of court office: London Courthouse
80 Dundas Street
London, Ontario N6A 6A3

TO: LG ELECTRONICS CANADA, INC.
20 Norelco Drive
North York ON M9L 2X6

CLAIM

1. The Plaintiff, on his own behalf and on behalf of all Class Members, seeks:
 - (a) an order certifying this action as a class proceeding and appointing the Plaintiff as the representative plaintiff of the proposed national class pursuant to the *Class Proceedings Act, 1992*, SO 1992, c 6;
 - (b) a declaration that the Defendant's actions (as hereinafter described) were false, misleading, and deceptive contrary to Part III of the *Consumer Protection Act, 2002*, SO 2002, c 30, Schedule A (the "*Consumer Protection Act*") and the parallel provisions of the consumer protection legislation in other Canadian provinces as described in Appendix 1 hereto (the "Consumer Protection Legislation");
 - (c) a declaration that it is in the interests of justice to disregard the requirement to give notice pursuant to section 18(5) and section 101 of the *Consumer Protection Act* and the Consumer Protection Legislation;
 - (d) damages, in an amount to be determined, pursuant to section 18(2) of the *Consumer Protection Act* and the Consumer Protection Legislation;
 - (e) a declaration that the Defendant's actions (as hereinafter described) were false and misleading contrary to section 52 of the *Competition Act*, RSC 1985, c C-34 (the "*Competition Act*");
 - (f) a declaration that the Defendant breached its contract with the Plaintiff and Class Members and is consequently liable for damages;

- (g) a declaration that the Defendant breached its duty of care to the Plaintiff and Class Members;
- (h) a declaration that the Defendant was unjustly enriched at the expense of the Plaintiff and Class Members;
- (i) pecuniary and special damages in the amount of \$20,000,000 or as aggregated following a trial of the common issues;
- (j) non-pecuniary damages in an amount to be assessed for each Class Member;
- (k) exemplary, punitive, and aggravated damages in the amount of \$5,000,000;
- (l) a declaration that any funds received by the Defendant through the sale of the LG Refrigerators (as hereinafter defined) are held in trust for the benefit of the Plaintiff and Class Members;
- (m) a reference to decide any issues not decided at the trial of the common issues;
- (n) costs of administration and notice, plus applicable taxes, pursuant to section 26(9) of the *Class Proceedings Act, 1992*, SO 1992, c 6;
- (o) costs of this action pursuant to the *Class Proceedings Act, 1992*, SO 1992, c 6, the *Courts of Justice Act*, RSO 1990, c C 43, and the *Rules of Civil Procedure*, RRO 1990, Reg 194;
- (p) prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, RSO 1990, c C 43, as amended;

- (q) post-judgment interest in accordance with section 129 of the *Courts of Justice Act*, RSO 1990, c C 43, as amended; and,
- (r) such further and other relief as to this Honourable Court may seem just.

THE PARTIES

The Plaintiff

- 2. The Plaintiff, John Prins, is a resident of Belleville, Ontario.
- 3. On or about January 12, 2019, the Plaintiff purchased a new refrigerator manufactured by the Defendant, Model LG LFXS28968S (the “Plaintiff’s LG Refrigerator”), from Lowes. The Plaintiff chose the Defendant’s product in part because he understood the Defendant’s refrigerators to be reliable, fully functional, high-quality, and designed with premium features. Before purchasing the Defendant’s product, the Plaintiff reviewed sales materials representing these characteristics as present in the LG Refrigerator and was aware of the existence of a manufacturer’s warranty that would cover certain defects. All of this information informed the Plaintiff’s decision to purchase the Defendant’s product.
- 4. The Plaintiff’s LG Refrigerator was installed, maintained, and repaired consistent with the Defendant’s factory recommendations.
- 5. On or about April 4, 2021, the Plaintiff’s LG Refrigerator failed because of the Compressor Defect, as hereinafter defined. The refrigerator and freezer failed to keep food and beverages appropriately cool and/or frozen, creating a health risk to the Plaintiff and his family. As a result, the Plaintiff was forced to consume food earlier than he otherwise would have, to avoid it spoiling. LG’s service department was closed at this time.

6. When the Plaintiff contacted LG on April 5, 2021, he was instructed to call Trans Global Services of Mississauga (“TGS”) and was told they were the warranty repair company. The Plaintiff was unable to reach a representative of TGS, so he set up an online appointment for a technician to come by the following day.
7. The technician came at 9:30am on April 6, 2021. He diagnosed the issue as a compressor failure, said the parts should be covered by LG, and that he could be back on April 9, 2021 with the parts to install. On the morning of April 9, 2021, the Plaintiff received an email from TGS with a quote for the repair, including parts, for \$671.33. When the Plaintiff called TGS to say that the parts were supposed to be covered by warranty, they indicated they would get confirmation from LG, but it could take a week to hear back from them.
8. The Plaintiff began getting food daily from the grocery stores, including more expensive ready made meals, as opposed to their typical once a week grocery visit. He was forced to throw out some fruits and vegetables, dips and other dairy products, and was unable to keep any leftovers from dinner. In order to keep some foods cool, the Plaintiff purchased a second hand mini-fridge.
9. Having not heard back from TGS about the repair, the Plaintiff followed up on April 16, 2021 to see if LG had approved the warranty. They said LG had not. After almost two weeks without an operational fridge/freezer, the Plaintiff followed up with LG. LG said they could approve the parts warranty repair. The Plaintiff then immediately called TGS and they said it would take 24 hours to receive approval from LG.
10. On April 19, 2021, TGS emailed the Plaintiff with a new quote for the repair of \$274.38.

11. On April 27, 2021, the Plaintiff's LG Refrigerator was finally repaired. He paid TGS \$274.38 for the labour portion of the repair to fix the Compressor Defect.
12. The Plaintiff was not aware and/or advised of any defect in the refrigerator generally, or compressor specifically, when he purchased it. Had the Plaintiff been aware of the Compressor Defect, he would not have purchased the LG Refrigerator or would not have paid the premium price that was paid for it.

The Class

13. The Plaintiff seeks to represent the following class (the "Class") of which the Plaintiff is a Class Member:

All Canadian residents who purchased, other than for resale, an LG Refrigerator from LG or its authorized retailers between January 30, 2014 and the date of certification.

The Defendant

14. The Defendant, LG Electronics Canada, Inc. ("LG"), is an Ontario corporation with its principal place of business in North York, Ontario.

THE COMPRESSOR

15. LG designs, manufactures, markets, distributes, warrants, and sells home appliances, including the LG Refrigerators, throughout Canada. LG sells the products through retail stores such as Best Buy, Home Depot, Lowes, and Costco and through smaller appliance stores, both in store and online. The LG Refrigerators range in price from \$745 upwards of \$10,000.
16. The compressor is a critical component of a refrigerator. It moves or pumps refrigerant - – the cooling substance that changes from liquid to gas – through the refrigerator's system. The refrigerator's temperature sensors trigger the compressor to start and stop the cooling process and once the temperature rises above a set level, the compressor starts by drawing cold refrigerant gas from the refrigerator's evaporator. The refrigerant enters the compressor through an intake valve and the compressor then puts pressure on the refrigerant gas (compressing it) which raises the refrigerant's temperature and pushes the gas out through its discharge valve, then through the coils on the outside of the refrigerator. When the hot gas in the coils meets the cooler air temperature in the room, it becomes a liquid. The refrigerant then passes through an expansion valve, which decreases its pressure, and continues to flow through the coils inside the freezer and the refrigerator. As the cold liquid refrigerant moves through the coils, it cools the air in the refrigerator by absorbing the heat from the surrounding air. The refrigerant then evaporates into a gas, flows back to the compressor, and the process repeats.
17. In the LG Refrigerators the LG's linear compressor and related parts, including the evaporator, are defective, causing the compressor to fail. The tubing of the evaporator is prone to corrosion and pitting from ordinary usage, whereby pinholes develop in the tubing.

The pinholes cause leakage and allow air to enter the tubing, which causes the refrigerant to generate excess pressure as it flows from the evaporator to the condenser. The excess pressure puts additional stress on the compressor. The compressor's components are defective and unable to withstand the excess pressure, which also contaminates oil in the compressor.

18. When a refrigerator's compressor fails, the refrigerator is unable to cool and freeze food and beverages, making it unfit for its intended use.

THE REPRESENTATIONS

19. In or about 2001, LG first introduced its proprietary linear compressor ("linear compressor") in refrigerators which was designed to be an energy-efficient, more reliable, and more durable compressor than the conventional rotary compressor used in many other refrigerators
20. LG markets, promotes, advertises, and sells its products in a variety of ways including, but not limited to, their own website (www.lg.com/ca_en) and other authorized retailers both online and instore.
21. In its various press releases, marketing materials, and advertisements, LG frequently describes the linear compressor technology as being energy efficient, durable, reliable, and with the ability to keep foods fresher for longer periods of time. LG's own website and product pages (located at www.lg.com/ca_en) advertise the compressor using statements such as the following:

- (i) “Our Smart Cooling Plus System, enabled by LG’s exclusive Linear Compressor motor maintains the optimal humidity and temperature levels in your fridge, which means your food stays fresher, longer”.¹
- (ii) “When you buy a refrigerator, you don’t want to worry that it won’t last. Because the Linear Compressor motor uses fewer moving parts and operates more efficiently, LG confidently backs the motor with a 10-year warranty”.²

(collectively the “Representations”).

22. In addition to these online postings, LG markets, promotes, advertises, and sells its products, including LG Refrigerators, in a number of other ways, including, but not limited to:

- (a) Television commercials;
- (b) In-store advertisements and displays;
- (c) Employee training and sales tactics; and
- (d) Print advertising.

23. Through these various forms of marketing, promotion, advertising, and sale, LG made the Representations regarding the LG Refrigerators. The Plaintiff and Class Members reasonably relied on the Representations when purchasing the LG Refrigerators..

¹ See, for example - https://www.lg.com/ca_en/refrigerators/lg-LSXC22396S

² See, for example = https://www.lg.com/ca_en/refrigerators/lg-LFXC22526S

THE WARRANTY

24. As highlighted in its sales and marketing materials, LG provided all purchasers of the LG Refrigerators with an express warranty which is included on LG's own website as follows:

Inverter Linear Compressor

10 Year Warranty on Linear Compressor

With less vibration, moving parts and noise than a conventional LG compressor system, the LG Inverter Linear Compressor is quieter and more durable. As the Inverter Linear Compressor is the heart of your refrigerator we back this with a 10 year parts warranty on the compressor.³

25. The terms of the warranty are further included in the Owner's Manual for each product and contain the following language:

³ See, for example - https://www.lg.com/ca_en/refrigerators/lg-LRFC2503S

For Canada

TERMS AND CONDITIONS

ARBITRATION NOTICE: THIS LIMITED WARRANTY CONTAINS AN ARBITRATION PROVISION THAT REQUIRES YOU AND LG TO RESOLVE DISPUTES BY BINDING ARBITRATION INSTEAD OF IN COURT, UNLESS THE LAWS OF YOUR PROVINCE OR TERRITORY DO NOT PERMIT THAT, OR, IN OTHER JURISDICTIONS, IF YOU CHOOSE TO OPT OUT. IN ARBITRATION, CLASS ACTIONS AND JURY TRIALS ARE NOT PERMITTED. PLEASE SEE THE SECTION TITLED "PROCEDURE FOR RESOLVING DISPUTES" BELOW.

Should your LG Refrigerator ("Product") fail due to a defect in materials or workmanship under normal and proper use, during the warranty period set forth below, LG Electronics Canada, Inc. ("LGECI") will, at its option, repair or replace the Product upon receipt of proof of the original retail purchase. This limited warranty is valid only to the original retail purchaser of the Product and applies only to a Product distributed, purchased and used within Canada, as determined at the sole discretion of LGECI.

WARRANTY PERIOD (Note: If the original date of purchase cannot be verified, the warranty will begin sixty (60) days from the date of manufacture)			
Refrigerator	Sealed System (Condenser, Dryer, Connecting Tube and Evaporator)		Linear / Inverter Compressor
One (1) year from the date of original retail purchase	One (1) year from the date of original retail purchase	Seven (7) years from the date of original retail purchase	Ten (10) years from the date of original retail purchase
Parts and Labor (internal/functional parts only)	Parts and Labor	Parts only (Consumer will be charged for labor)	Part only (Consumer will be charged for labor)

- Replacement products and parts are warranted for the remaining portion of the original warranty period or ninety (90) days, whichever is greater.
- Replacement products and parts may be new, reconditioned, refurbished, or otherwise factory remanufactured, all at the sole discretion of LGECI.
- Proof of original retail purchase specifying the Product model and date of purchase is required to obtain warranty service under this Limited Warranty.

LGECI'S SOLE LIABILITY IS LIMITED TO THE LIMITED WARRANTY SET OUT ABOVE. EXCEPT AS EXPRESSLY PROVIDED ABOVE, LGECI MAKES NO, AND HEREBY DISCLAIMS, ALL OTHER WARRANTIES AND CONDITIONS RESPECTING THE PRODUCT, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND NO REPRESENTATIONS SHALL BE BINDING ON LGECI. LGECI DOES NOT AUTHORIZE ANY PERSON TO CREATE OR ASSUME FOR IT ANY OTHER WARRANTY OBLIGATION OR LIABILITY IN CONNECTION WITH THE PRODUCT. TO THE EXTENT THAT ANY WARRANTY OR CONDITION IS IMPLIED BY LAW, IT IS LIMITED TO THE WARRANTY PERIOD SET OUT ABOVE. UNDER NO CIRCUMSTANCES SHALL LGECI, THE MANUFACTURER OR DISTRIBUTOR OF THE PRODUCT, BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, DIRECT, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF GOODWILL, LOST PROFITS, LOSS OF ANTICIPATED PROFITS, LOST REVENUE, LOSS OF USE, OR ANY OTHER DAMAGE, WHETHER ARISING DIRECTLY OR INDIRECTLY FROM ANY CONTRACTUAL BREACH, FUNDAMENTAL BREACH, TORT OR OTHERWISE, OR FROM ANY ACTS OR OMISSIONS. LGECI'S TOTAL LIABILITY, IF ANY, SHALL NOT EXCEED THE PURCHASE PRICE PAID BY YOU FOR THE PRODUCT.

This Limited Warranty gives you specific legal rights. You may also have other rights that vary from province to province depending on applicable provincial laws. Any term of this Limited Warranty that negates or varies any implied condition or warranty under provincial law is severable where it conflicts with such provincial law without affecting the remainder of this warranty's terms.

THE COMPRESSOR DEFECT

26. Contrary to LG's Representations, the LG Refrigerators are not energy efficient, durable, reliable, and do not have the ability to keep foods fresher for longer periods of time. Instead, the LG Refrigerators all suffer from a latent defect which causes the LG Refrigerators to cease cooling and/or freezing food (the "Compressor Defect"). The Compressor Defect, which creates issues not only with the compressor but other parts such as the fan, causes the LG Refrigerators to become useless and unfit for their intended purpose significantly earlier than their anticipated useful life.
27. The labour costs to diagnose and replace the Compressor Defect range from several hundreds of dollars to over a thousand dollars. The technicians that LG dispatches to consumers' homes often require multiple service visits to diagnose and repair this known problem. Consumers are forced to endure long periods without a functioning refrigerator and are forced to pay for repeated service visits.
28. LG failed to disclose the Compressor Defect to consumers in any of its marketing or advertising, nor did it ever disclose the Compressor Defect to consumers at the point when they purchased the LG Refrigerators. Instead, LG highlights the quality and durability of the LG Refrigerators, including the superiority of their "linear compressors", thereby concealing the existence of the Compressor Defect.
29. LG has been aware of the Compressor Defect through consumer complaints, warranty claims, litigation in the United States, and public news articles. Despite such ongoing knowledge, LG has actively concealed and failed to disclose the Compressor Defect and made misleading statements regarding the LG Refrigerators and the Compressor Defect.

30. Further, despite being aware of the Compressor Defect, LG replaces the defective compressor and component parts with similarly defective parts, causing consumer to incur additional and unnecessary costs without correcting the defect. In many cases, LG explicitly informs customers that the repairs are not covered under warranty even when the complaint is reported within the warranty period. In other cases, LG requires consumers to pay for the labour associated with replacing the defective compressor and/or initial diagnostic service visits.
31. LG has not implemented an effective remedy for putative Class Members who own an LG Refrigerator with the Compressor Defect and Class Members continue to suffer damages. In order to rectify the Compressor Defect, the Plaintiff and Class Members have expended considerable time and incurred out-of-pocket expenses.

CAUSES OF ACTION

Breach of the *Consumer Protection Act, 2002*

32. At all material times, the Plaintiff and Class Members were “consumer[s]” within the meaning of that term as defined in section 1 of the *Consumer Protection Act* and the parallel Consumer Protection Legislation. At all material times, the Defendants were “supplier[s]” within the meaning of that term as defined in section 1 of the *Consumer Protection Act* and the parallel Consumer Protection Legislation.
33. At all material times, LG used the Representations in its advertising, marketing, and sales in Canada. LG engaged in an extensive, nationwide, uniform marketing and advertising campaign replete with false and misleading information.

34. The Representations were designed to, and did in fact, exploit the Plaintiff's and Class Members' desire for an energy efficient, durable, and reliable product. The Plaintiff and Class Members relied on, or should be deemed to have relied on, the Representations.

LG Engaged in Unfair Practices

35. LG engaged in unfair practices by making the false, misleading or deceptive Representations contrary to section 14 and 17 of the *Consumer Protection Act, 2002* and the parallel provisions of the Consumer Protection Legislation.
36. In particular, but without limiting the scope of LG's representations contrary to sections 14 and 17 of the *Consumer Protection Act* and the Consumer Protection Legislation, LG falsely, misleadingly or deceptively made representations:
- (a) that the LG Refrigerators had characteristics, benefits, or qualities that the products did not have;
 - (b) that the LG Refrigerators had performance characteristics that the products did not have;
 - (c) that the LG Refrigerators were of a particular standard and quality that the products were not; and
 - (d) using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact, where such use or failure tended to deceive the Plaintiff and Class Members.

37. LG expressly warranted to the Plaintiff and the Class Members that the LG Refrigerators were of high quality. LG misrepresented these qualities by providing a product that was subject to a known defect. LG knowingly sold a defective product without informing consumers about the defect.
38. The Plaintiff pleads and relies on the provisions of the *Consumer Protection Act, 2002* and the parallel provisions of the Consumer Protection Legislation.

Breach of the *Competition Act*

39. At all material times, LG's supervision, control, and inspection of the research, development, testing, manufacturing, production, marketing, advertising, promotion, distribution, sale, and warranty of the LG Refrigerators was "business" and the LG Refrigerators were a "product[s]" within the meaning of those terms as defined in section 2 of the *Competition Act*.
40. LG's Representations and the acts associated with those Representations are in breach of section 52 of Part VI of the *Competition Act*, were and are unlawful, and therefore, LG is liable to pay damages and costs of investigation pursuant to section 36 of the *Competition Act*.
41. LG knowingly or recklessly made the false or misleading material Representations to the public, including the Class, for the purpose of promoting, directly or indirectly, the supply or use of the LG Refrigerators contrary to section 52(1) of the *Competition Act* as follows:
- (a) the Representations were made for the purposes of promoting, directly or indirectly, the business interests of the Defendants;

- (b) the Representations were made knowingly or recklessly;
 - (c) the Representations were made to the public; and
 - (d) the Representations stated a level of performance and quality that was false and was not based on adequate or proper testing.
42. The Plaintiff and Class Members relied on the Representations by purchasing the LG Refrigerators and suffered damages and losses as particularized herein.
43. Pursuant to section 36 of the *Competition Act*, LG is liable to pay the damages which resulted from their breach of section 52 of the *Competition Act*.
44. Pursuant to section 36 of the *Competition Act*, the Plaintiff and Class Members are entitled to recover their full costs of investigation as well as their substantial indemnity costs in accordance with the provisions of the *Competition Act*. In addition, pursuant to the *Competition Act*, the Plaintiff and Class Members are entitled to recover the costs of administering the plan to distribute the recovery and the costs to determine the damages of each Class Member.
45. The Plaintiff pleads and relies on the provisions of the *Competition Act*.

Negligent Misrepresentation

46. LG was in a proximate and special relationship with the Plaintiff and Class Members by virtue of, among other things:
- (a) their design, manufacture, and testing of the LG Refrigerators;

- (b) their skill, experience and expertise in the design, manufacture, and testing of the LG Refrigerators;
 - (c) the fact that the Class Members had no means of knowing or independently testing the Compressor Defect; and
 - (d) the need for Class Members to rely on the Representations and integrity of LG in respect of the LG Refrigerators.
47. LG owed a duty of care to the Plaintiff and Class Members. It was intended by LG and reasonably foreseeable that the Class Members would reasonably rely upon the Representations when purchasing the LG Refrigerators and would suffer the damage described below as a result.
48. The Representations were false and were made intentionally or negligently. LG made and continues to make the Representations regarding the LG Refrigerators to the Plaintiff and Class Members.
49. The Representations are untrue, inaccurate, and/or misleading. LG acted negligently in making such Representations.
50. The Plaintiff and Class Members reasonably relied on the Representations in deciding whether to purchase the products. Their reliance can be inferred on a class-wide basis from the purchase of the LG Refrigerators. Had the Representations not been made, the Class Members would not have purchased the LG Refrigerators and/or would not have purchased the LG Refrigerators at the stipulated price.

51. The Plaintiff and Class Members suffered damages as a result of relying on the Representations in purchasing the LG Refrigerators. LG is liable to pay damages to the Class Members.

Negligence

52. LG was negligent as it knew or ought to have known that its unlawful acts committed by way of production, marketing, and sale of the LG Refrigerators would result in harm to the Plaintiff and Class Members.
53. At all material times, LG owed a duty of care to the Plaintiff and Class Members to:
- (a) ensure that the LG Refrigerators were fit for intended and/or reasonably foreseeable use;
 - (b) conduct appropriate testing to determine that the LG Refrigerators were fit for intended and/or reasonably foreseeable use;
 - (c) properly, adequately, and fairly warn of the Compressor Defect;
 - (d) ensure that consumers and the public were kept fully and completely informed of all defects associated with the LG Refrigerators in a timely manner;
 - (e) monitor, investigate, evaluate, and follow up on reports of defects of the LG Refrigerators;
 - (f) not withhold from consumers and the public material facts concerning repairs for the LG Refrigerators.

54. LG negligently breached its duty of care.

55. The Plaintiff states that his damages and the Class Members' damages were caused by the negligence of LG. Such negligence includes, but its not limited to, the following:

- (a) LG failed to ensure that the LG Refrigerators were free of defects and of merchantable quality;
- (b) LG failed to adequately test the LG Refrigerators in a manner that would fully disclose the magnitude of the Compressor Defect;
- (c) LG failed to provide the Plaintiff and Class Members with a proper, adequate, and/or fair warning of the Compressor Defect associated with the LG Refrigerators;
- (d) LG failed to design and establish an effective and timely procedure for repair of the LG Refrigerators;
- (e) LG failed to adequately monitor, evaluate, and act upon reports of the Compressor Defect;
- (f) LG failed to provide any or any adequate updates and/or current information to the Plaintiff and Class Members in a timely fashion respecting the Compressor Defect;
- (g) after becoming aware of the Compressor Defect, LG failed to issue adequate warnings, failed to issue a timely recall, failed to publicize the problems, and failed to otherwise act properly in a timely manner to alert consumers to the Compressor Defect;

- (h) LG represented that the LG Refrigerators were fit for intended purposes and of merchantable quality when LG knew or ought to have known that those representations were false;
- (i) LG made misrepresentations that were unreasonable given that the Compressor Defect was known or ought to have been known by LG; and
- (j) LG failed to timely cease the manufacturing, marketing, and/or distribution of the LG Refrigerators when they knew or ought to have known of the Compressor Defect.

56. As a result of LG breaching its duty of care owed to the Plaintiff and Class Members, the Plaintiff and Class Members suffered damages.

Breach of the *Sale of Goods Act*

57. LG's marketing and sale of the LG Refrigerators included an implied condition as to the quality and fitness of the products. Given the known Compressor Defect, as described in detail above, it is clear that the LG Refrigerators were not of merchantable quality or fit for use.

58. The Plaintiff repeats and relies upon the allegations made in the preceding paragraphs.

59. The Plaintiff pleads and relies on the provisions of the *Sale of Goods Act*, RSO 1990, c S 1 and the parallel provisions of the *Sale of Goods Act* in other Canadian provinces as described in Appendix 2 hereto.

Breach of Contract

60. As part of their purchase agreements, the Plaintiff and Class Members entered into agreements with the Defendants that consisted of both implied and express terms and warranties, including the condition that the LG Refrigerators were free of defects, of merchantable quality, and fit for intended and/or reasonably foreseeable use.
61. LG breached express and implied terms and warranties of these agreements by, *inter alia*:
- (i) supplying the Plaintiff and Class Members with products that were prone to fail, and become inoperable;
 - (ii) supplying the Plaintiff and Class Members with products that suffered from a latent, material Compressor Defect that adversely affected the use of the product; and
 - (iii) supplying the Plaintiff and Class Members with a product that failed to perform to the standard, characteristics, and qualities that LG warranted.
62. As a result of LG's breach of contract, the Plaintiff and Class Members sustained foreseeable damages.

Unjust Enrichment

63. Through LG's production, marketing, and sale of the LG Refrigerators, and through the replacement of the defective batteries, LG was unjustly enriched by profits received and retained from the Plaintiff and Class Members. The Plaintiff and Class Members were correspondingly deprived by paying for a product that was defective, unfit for use, and not of merchantable quality. There is no established juristic reason for the enrichment of LG.

64. Revenue generated from the production, marketing, and sale of the LG Refrigerators was revenue received and retained by LG at the expense of the Plaintiff and Class Members. LG must be required to disgorge all of the revenues thereby received.

DAMAGES

65. The Plaintiff's and Class Members' damages were caused by the actions of LG. As a result of LG's misrepresentations, deceit, unfair business practices, breaches of contract, and negligence, the Plaintiff and Class Members have suffered and will continue to suffer damages.
66. Rescission of the agreement between the Plaintiff/Class Members and LG pursuant to section 18(1) of the *Consumer Protection Act* and the Consumer Protection Legislation is not possible in the circumstances. The Plaintiff and Class Members are therefore entitled to recover damages pursuant to section 18(2) of the *Consumer Protection Act* and the parallel provisions of the Consumer Protection Legislation.
67. The Plaintiff claims pecuniary and special damages for costs, time, and expenses incurred in the process of repairing the LG Refrigerators and/or the defective compressor. As a result of LG's conduct, the Plaintiff and Class Members have suffered and continue to suffer expenses and special damages of a nature and amount to be particularized prior to trial.
68. The Plaintiff claims punitive, aggravated, and exemplary damages for the reckless and unlawful conduct of LG. LG's acts, wrongdoings, and breaches of duties constitute

unlawful business practices, the effects of which were and are borne by the Plaintiff and Class Members.

PLACE OF TRIAL

69. The Plaintiff proposes that this action be tried in the City of London.

May 3, 2021

MCKENZIE LAKE LAWYERS LLP

140 Fullarton Street, Suite 1800

London, Ontario N6A 5P2

Michael J. Peerless (LSO# 34127P)

Matthew D. Baer (LSO# 48227K)

Emily Assini (LSO# 59137J)

Tel: 519-672-5666

Fax: 519-672-2674

Lawyers for the Plaintiff

APPENDIX 1

Alberta: *Consumer Protection Act*, RSA 2000, c C-26.3

British Columbia: *Business Practices and Consumer Protection Act*, SBC 2004, c 2

Manitoba: *The Business Practices Act*, CCSM c B120, c 2 and *The Consumer Protection Act*, CCSM c C200

New Brunswick: *Consumer Product Warranty and Liability Act*, SNB 1978, c C-18.1

Newfoundland and Labrador: *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1

Northwest Territories: *Consumer Protection Act*, RSNWT 1988, c C-17

Nova Scotia: *Consumer Protection Act*, RSNS 1989, c 92

Nunavut: *Consumer Protection Act*, RSNWT (Nu) 1988, c C-17

Prince Edward Island: *Consumer Protection Act*, RSPEI 1988, c C-19 and the *Business Practices Act*, RSPEI 1988, c B-7

Saskatchewan: *The Consumer Protection and Business Practices Act*, SS 2014, c C-30.2

Yukon: *Consumers Protection Act*, RSY 2002, c 40

APPENDIX 2

Alberta: *Sale of Goods Act*, RSA 2000, c S-2

British Columbia: *Sale of Goods Act*, RSBC 1996, c 410

Manitoba: *The Sale of Goods Act*, CCSM c S10

New Brunswick: *Sale of Goods Act*, RSNB 2016, c 110

Newfoundland and Labrador: *Sale of Goods Act*, RSNL 1990, c S-6

Northwest Territories: *Sale of Goods Act*, RSNWT 1998, c S-2

Nova Scotia: *Sale of Goods Act*, RSNS 1989, c 408

Nunavut: *Sale of Goods Act*, RSNWT (Nu) 1998, c S-2

Prince Edward Island: *Sale of Goods Act*, RSPEI 1988, c S-1

Saskatchewan: *Sale of Goods Act*, RSS 1978, c S-1

Yukon: *Sale of Goods Act*, RSY 2002, c 198

JOHN PRINS
Plaintiff

-and- LG ELECTRONICS CANADA, INC.
Defendant

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
LONDON

STATEMENT OF CLAIM

MCKENZIE LAKE LAWYERS LLP
140 Fullarton Street, Suite 1800
London, Ontario N6A 5P2

Michael J. Peerless (LSO# 34127P)
Matthew D. Baer (LSO# 48227K)
Emily Assini (LSO# 59137J)
Tel: 519-672-5666
Fax: 519-672-2674

Lawyers for the Plaintiff