ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

C[redacted] CERUTTI

Plaintiff

and

AUDIBLE, INC.

Defendant

Proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, C. 6

STATEMENT OF CLAIM

TO THE DEFENDANT

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.

IF YOU PAY THE PLAINTIFF'S CLAIM, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court.

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 June 22, 2026 Issued by ………………………………
Local registrar

Address of Court office: Ontario Superior Court of Justice
161 Elgin Street, 2nd Floor
Ottawa, ON K2P 2K1

TO: **AUDIBLE, INC.**
1 Washington Park, 16th Floor
Newark, New Jersey
07102, U.S.A.

A. OVERVIEW

1. The Plaintiff wishes to institute a class action on behalf of the following class, of which she is a member, namely:

> All persons resident in Canada who acquired Audible Credits that expired.

2. The present proposed class action concerns the Defendant's unlawful practices relating to the expiration of Audible Credits: (i) 12 months after their issuance, or (ii) upon cancellation of a consumer's membership. Consumers such as the Plaintiff paid for Audible Credits with the reasonable expectation that such Credits could be used to buy audiobooks and other audio titles of their choosing. However, they were unable to use all of their Credits before they expired, resulting in the loss of valuable prepaid Credits.

3. The Plaintiff contends that the Defendant's conduct of imposing unlawful and abusive expiration terms depriving consumers of the benefit of what they had purchased:

- violates the *Consumer Protection Act, 2002*, S.O. 2002 and s. 25.3 of the *General Regulation*, O Reg 17/05 and analogous provisions in Other Canadian Provincial and Territorial Consumer Protection Legislation;
- amounts to unfair practices under s. 15(1) and (2) of the *Consumer Protection Act, 2002*, S.O. 2002 and analogous provisions in Other Canadian Consumer Protection Legislation in force in Canada's provinces and territories; and
- constitutes a breach of its implied covenant of good faith and fair dealing; and
- gives rise to unjust enrichment and a corresponding right to restitution.

4. The Plaintiff and each Class Member have incurred financial loss as a result of the Defendant's conduct.

5. The significant legally-cognizable injuries suffered by Plaintiff and Class Members are the direct and proximate result of the Defendant's faults and otherwise unlawful conduct.

6. The Defendant is therefore liable to compensate Plaintiff and Class Members for injuries they incurred. Restitutionary relief and disgorgement is sought in the alternative. The

Defendant is also liable to pay punitive damages to Plaintiff and Class Members due to the egregious and systemic nature of its unlawful conduct.

7. The Plaintiff also seeks injunctive relief enjoining the Defendant to cease its unlawful conduct with respect to the expiration of Audible Credits.

B. DEFINED TERMS

8. In this Statement of Claim, the following terms have the following meanings:

   a. "**Class**" and "**Class Members**" means all persons resident in Canada who acquired Audible Credits that expired.

   b. ***"Consumer Protection Act"*** means the *Consumer Protection Act, 2002*, S.O. 2002, c. 30.[1]

   c. ***"General Regulation"*** means the *General Regulation*, O. Reg., 17/05.

   d. **"Other Consumer Protection Legislation"** means:

      - *Consumer Protection Act*, C.Q.L.R. c. P-40.1, as amended, including ss. 187.1 & 187.3 (Quebec);

      - *Business Practices and Consumer Protection Act*, SBC 2004, c.2, as amended, including ss. 8, 9 & 56.1-56.2 (British Columbia);

      - *Consumer Protection Act*, RSA 2000, c C-26.3, as amended, including ss. 5-8 & 13, and *Gift Card Regulation*, Alta Reg 146/2008, including ss. 1, 2, 4 & 7 (Alberta);

      - *Consumer Protection and Business Practices Act*, SS 2013, c. C-30.2, as amended, including ss. 5-9, 36 & 47-53 (Saskatchewan);

[1] Note that the *Consumer Protection Act, 2002* is scheduled to be "repealed on a day to be named by proclamation of the Lieutenant Governor" and replaced by the *Consumer Protection Act, 2023*, S.O. 2023, which "comes in to force on a day to be named by proclamation of the Lieutenant Governor."

- *The Business Practices Act*, CCSM, c B120, as amended, including ss. 2-9 & 23, and the *Consumer Protection Act*, CCSM c. 200, including ss. 170-171 (Manitoba);

- *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1, as amended, including ss. 7-10, and *Gift Card Regulations*, NLR 14/11, including ss. 2-4 (Newfoundland);

- *Consumer Product Warranty and Liability Act*, SNB 1978, c 18.1 at ss. 4, 13 & 15, and *Gift Cards Act*, RSNB 2011, c 165, including ss. 1-3 & 6 (New Brunswick);

- *Consumer Protection Act*, RSNS 1989, c 92, including ss. 26-29, and the *Gift Card Regulations*, NS Reg 325/2009, including ss. 2-4 (Nova Scotia);

- *Business Practices Act*, RSPEI 1988, c B-7, as amended, including ss. 2-4, and *Gift Cards Act*, c G-4.1, including ss. 1-3 & 6 (Prince Edward Island);

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

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

- *Consumer Protection Act*, RSNWT (Nu) 1988, c C-17, incl. ss. 70 & 71 (Nunavut).

C. RELIEF SOUGHT

9. The Plaintiff claims against the Defendant on her own behalf and on behalf of the Class, of which she is a member:

   a. an Order certifying this action as a class proceeding and appointing the Plaintiff as the Representative Plaintiff of the Class;

b. a Declaration that the Defendant unjustly enriched itself at Plaintiff and Class Members' expense in the amount corresponding to the value of the Audible Credits that expired;

c. a Declaration that the Defendant violated the *Consumer Protection Act, 2002*, S.O. 2002 and s. 25.3 of the *General Regulation*, O Reg 17/05 and analogous provisions of Other Consumer Protection Legislation by imposing expiry dates on Audible Credits;

d. a Declaration that the Defendant violated ss. 15(1) and (2) of the *Consumer Protection Act, 2002* and analogous provisions of Other Consumer Protection Legislation;

e. a Declaration that the Defendant breached its implied covenant of good faith and fair dealing;

f. injunctive relief enjoining the Defendant to cease its unlawful conduct with respect to the expiration of Audible Credits;

g. special damages for out-of-pocket and inconvenience expenses incurred;

h. restitution to the extent of the unjust enrichment realized by Defendant;

i. disgorgement of profit realized by Defendant at Plaintiff and Class Members' expense;

j. an order enjoining the Defendant to reimburse the Plaintiff and Class Members the amount corresponding to the value of the Credits that expired;

k. punitive and exemplary damages, including under s. 18(11) of the *Consumer Protection Act* and analogous provisions of Other Consumer Protection Legislation;

l. a reference to decide any issues not decided at the trial of the common issues;

m. costs of this action on a substantial indemnity basis or in an amount that provides full indemnity plus the costs of distribution of an award under ss. 24 or 25 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 ("*CPA*");

n. costs of administration and notice, plus taxes, associated with the distribution and the fees payable to a person administering the distribution pursuant to s. 26(9) of the *Consumer Protection Act*;

o. pre-judgment compounded and post-judgment interest pursuant to ss. 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. 43; and

p. Such further and other relief as this Honourable Court deems just.

D. THE PARTIES

The Plaintiff

10. The Plaintiff resides in East York, Ontario.

11. In or around 2018, the Plaintiff became an Audible Premium Plus member.

12. During the course of her membership, the Plaintiff paid for and accumulated multiple Audible Credits.

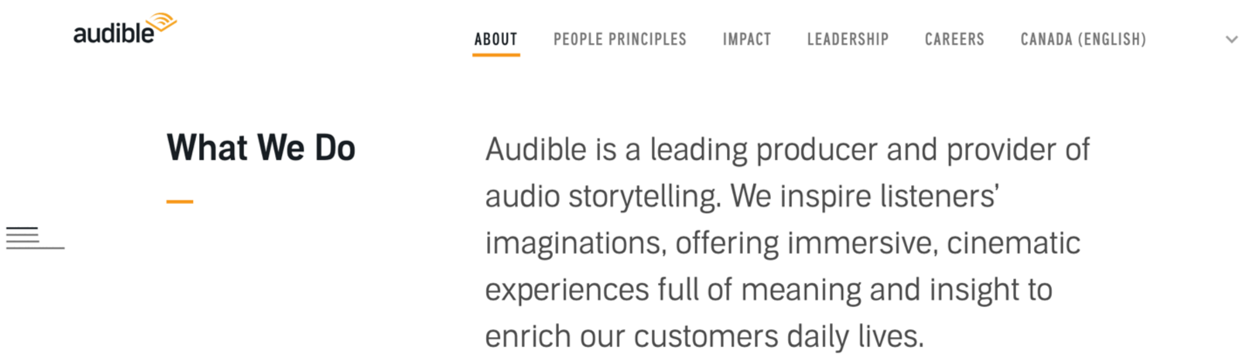
13. In or around August 2025, the Plaintiff cancelled her Premium Plus membership and switched to a Standard membership. At the time of cancellation, she had multiple unused Audible Credits remaining.

14. Following the cancellation, the Plaintiff discovered that her unused Credits had disappeared from her account, as Audible expired these unused Credits. As a result, she lost the value of the credits that she had paid for.

The Defendant

15. Defendant Audible, Inc. ("Audible") is a Delaware corporation whose principal place of business is located in Newark, New Jersey. Audible is one of the most popular audiobook

platforms worldwide. It describes itself as "the leading producer and provider of audio storytelling", as seen in the screenshot below and on its website here: https://www.audible.ca/about/our-company.



16. Audible's websites www.audible.ca and www.audible.com are both accessible to Canadian consumers.

17. Audible, Inc. is the owner of several trademarks registered and used in Canada.

18. Audible has derived substantial revenue from the sale of Credits to consumers residing in Ontario and the rest of Canada.

E. FACTS

I. Audible Memberships and Credits

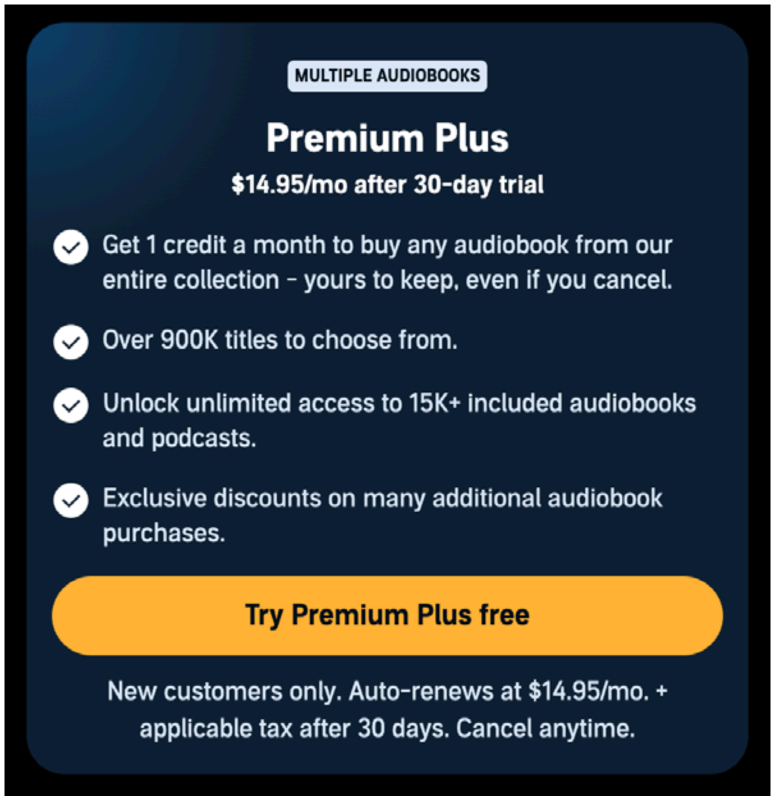
19. Audible owns, constitutes and/or operates a leading platform that sells and streams hundreds of thousands of individual audiobook titles. The Defendant sells credits ("Audible Credits" or "Credits"), which consumers can use to purchase audiobooks and other audio titles, as part of a paid membership subscription.

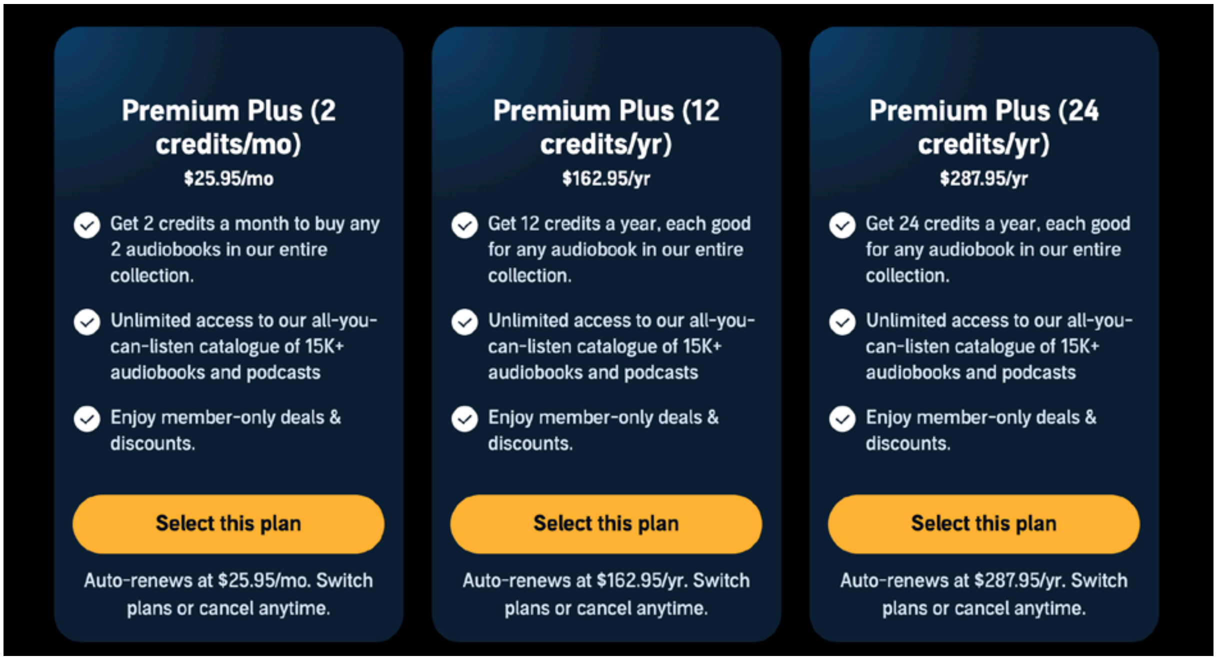
20. Audible actively promotes two membership plans: (i) Standard (monthly) and (ii) Premium Plus (monthly or annual).

21. The Standard membership is a monthly subscription priced at $8.99/month, through which consumers can select one (1) audiobook per month, that remains available for them to listen to so long as they are a member. Standard memberships do not include Audible Credits and

do not permit consumers to buy additional Audible Credits. Only Premium Plus members may acquire Audible Credits.

22. Audible offers its Premium Plus memberships at higher price points, and includes both monthly and annual plan options. The Premium Plus monthly plans are priced at $14.95 or $25.95 per month and the annual plans are priced at $162.95 or $287.95 per year.





23. Audible Premium Plus memberships can be purchased directly through a web browser at www.audible.ca or www.audible.com, or through the Audible mobile application through billing systems operated by Apple or Google Play.

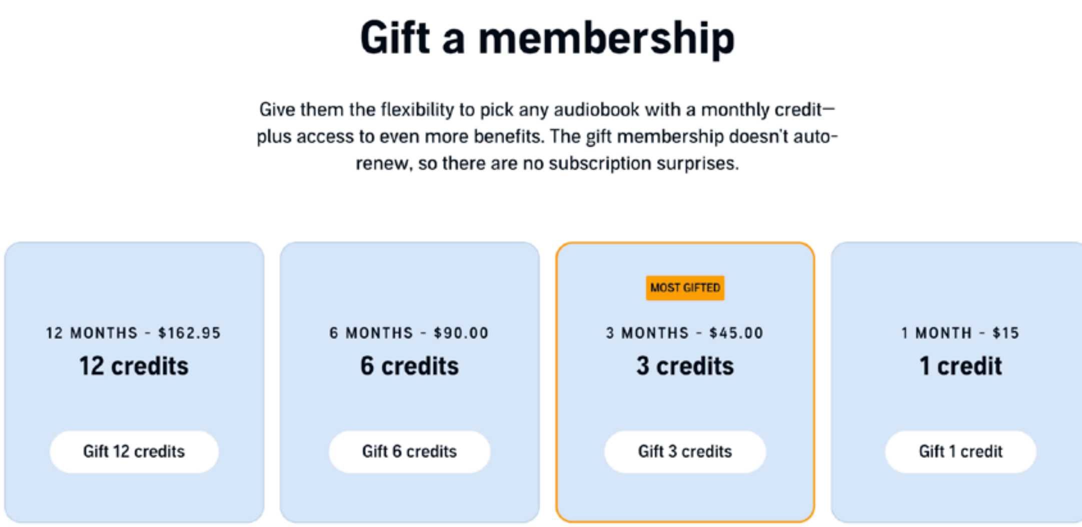
24. When a consumer purchases an Audible Premium Plus membership, they are issued a specified number of Credits during each billing cycle that can be used to buy audiobooks and other audio titles. For example, monthly Premium Plus memberships provide 1 or 2 Credits per month, while annual Premium Plus memberships provide 12 or 24 Credits per year.

25. Each Audible Credit can be used to buy any Audible title marked with a "1 credit" badge.

26. As a result, Credits allow Premium Plus members to purchase audiobooks and other audio titles at a cost that is often significantly lower than the price in dollars charged to non-Premium Plus members purchasing titles individually. The ability to "get more bang for your buck" through the use of Credits is a central feature and key selling point of Audible's Premium Plus memberships.

27. Audible Premium Plus members may also purchase additional Credits on an *à la carte* basis once they've run out of Credits acquired as part of their membership. The price of these additional Credits varies depending on the type of Premium Plus membership, and can be purchased individually or in bundles.

28. Audible also allows consumers to gift Credits by gifting a membership that supplies Credits to the recipient.



29. Audiobooks purchased by Audible Premium Plus members using Credits remain accessible even after the cancellation of their memberships.

II. Audible Credits Are Gift Cards with Unlawful Expiration Terms

30. Audible Credits expire 12 months after they are issued. Only Credits purchased through the Audible mobile application available through the iOS App Store or Google Play don't expire.

Credit Type	Explanation	Expiration Date
Membership credit	Credits you get as part of an Audible membership plan billed through Audible or Amazon.	12 months from the issue date
iOS App Store membership credit	Credit(s) you get as part of an Audible membership plan billed through the App Store.	Credits don't expire
Google Play membership credit	Credits you get as part of an Audible membership plan billed through the Google Play Store.	Credits don't expire
Return credit	Credits you receive from returning a title that was purchased with a credit. **Note:** Credits you receive from returning a title that was purchased with an App Store credit or Google Play Store credit do not expire.	12 months from the issue date
Extra credit	Credits you can purchase when you've run out. **Note**: Extra credits purchased through the App Store or Google Play Store don't expire and will remain in your account even after cancellation.	12 months from the issue date
Gift credit	Credits you get when redeeming an Audible gift membership.	12 months from the issue date
Complimentary credit	Credits you receive from a special offer or as a courtesy.	12 months from the issue date
Special credit	Credits you receive as part of a promotional offer.	12 months from the issue date

31. In addition, per Audible's Service Conditions of Use, when a consumer cancels their membership, any unused Credits expire immediately.

Credits

As part of a membership plan or a Service promotion, we may issue you credits redeemable for content on the Service ("**Credits**"). Credits may only be redeemed on the Service, have no cash value, are non-transferrable and non-refundable. All Credits are valid for a limited time as described in the applicable membership and promotional terms and conditions. Credits expire immediately upon the cancellation or termination of your membership unless used prior to cancellation or termination.

32. Audible's illicit practice of expiring consumers' paid-for Credits violates consumer protection laws, in particular, the *General Regulation*, O. Reg., 17/05 prohibiting gift card agreements that have an expiry date (s. 25.3), a further elaborated below.

III. Audible's Conduct is Exploitative, Unfair and Abusive

33. Audible markets and sells its Premium Plus memberships primarily on the basis that members are issued Credits redeemable for audiobook titles of their choosing, as well as the exclusive ability to purchase additional Credits, benefits that are not available under the Audible Standard membership plan or to non-members.

34. In reality, however, Audible imposes unfair and abusive expirations terms that deprive consumers of the benefit of the Credits they paid for. Credits obtained through a Premium Plus membership automatically expire after 12 months if unused. In addition, all unused Credits expire immediately upon cancellation of a membership, even where those Credits had not yet expired due to the lapse of time. As a result, consumers are often unable to use the Credits that Audible promised and that they paid for before they expire.

35. Moreover, there is no way for a consumer to retain Credits beyond the 12-month expiration period or cancel their membership without losing the Credits they paid for and have accumulated. Consumers are not refunded, compensated or otherwise credited for the unused value they lose as a result of the expiration.

36. Consequently, consumers routinely lose Credits purchased through their Premium Plus memberships before they are able to redeem them for audiobooks or other audio titles,

leaving them to pay for membership benefits and digital value that they never receive, while Audible retains the full benefit of the amounts paid for such expired Credits.

37. Further, Audible's expiration terms operate to pressure consumers into maintaining Premium Plus memberships they may no longer want or need in order to avoid losing Credits that they have already paid for. Consumers who cancel their memberships and consumers approaching the 12-month expiration period of their Credits are effectively forced to either rapidly use accumulated Credits before the expiration date or the cancellation of their membership, or forfeit them entirely.

38. As mentioned above, Audible Credits purchased via the iOS Apple Store or Google Play do not expire, despite being functionally identical to Audible Credits purchased directly through a web browser at www.audible.ca or www.audible.com. The same digital credits are therefore treated differently depending solely on the purchase channel selected by the consumer.

39. Accordingly, Audible's practice of expiring Credits is neither technologically necessary nor operationally unavoidable. Audible evidently possesses the ability to permit consumers to retain and use their paid-for Credits indefinitely, as demonstrated by their treatment of Credits obtained through iOS Apple Store and Google Play.

40. Audible operates a system whereby consumers are encouraged to accumulate Credits through recurring Premium Plus membership payments, while simultaneously imposing expiry conditions that deprive them of the benefit of those paid-for Credits if they are not used within an arbitrary timeframe.

41. Further, Audible knew or ought to have known that many consumers would be unable to use all accumulated Credits within the imposed expiration period and would frequently retain unused Credits at the time of cancellation, including because consumers may not listen to audiobooks at a pace matching the monthly accumulation of Credits, may temporarily decrease their listening habits, or may reasonably intend to save Credits for future use for titles they truly want. Despite the foreseeability of consumers accumulating unused Credits, Audible maintains policies that caused such paid-for Credits to expire.

42. Audible knowingly implemented and maintained these expiration practices despite having the ability to operate a system in which Credits do not expire, thereby profiting at the expense of consumers who had already paid for Credits through their Premium Plus memberships. The foregoing leaves no doubt as to the exploitative, abusive and unfair nature of Audible's Credit expiration terms and practices.

F. CAUSES OF ACTION

43. The Plaintiff advances several causes of action in the present proposed class action:

- unjust enrichment;
- statutory causes of action under
    - the *Consumer Protection Act, 2002*, S.O. 2002, the *General Regulation*, O Reg 17/05, and Other Canadian Consumer Protection Legislation in force in Canada's provinces and territories; and
- breach of implied covenant of good faith and fair dealing.

Unjust Enrichment

44. In essence, the Defendant unjustly enriched itself at the Plaintiff and Class Members' expense by receiving and retaining a financial benefit consisting of amounts paid for Audible Credits that later expired, without providing audiobooks or other audio titles, reimbursement or equivalent compensation those Credits were intended to obtain.

45. The Plaintiff and Class Members were correlatively deprived and impoverished in the amount corresponding to the value of the Audible Credits that expired.

46. As the enrichment violated the *Consumer Protection Act*, s. 25.3 of *General Regulation*, O. Reg., 17/05 and analogous provisions of Other Provincial and Territorial Consumer Protection Legislation, there was no juristic reason for the Defendant enriching itself at the Plaintiff and Class Members' expense.

47. The Defendant is therefore legally required to pay restitution to the Plaintiff and Class Members.

Consumer Protection Act, 2002 and Other Consumer Protection Legislation

48. The Plaintiff alleges that the Defendant has contravened the *Consumer Protection Act, 2002*, the *General Regulation*, O. Reg., 17/05 and analogous provisions in Other Canadian Provincial and Territorial Consumer Protection Legislation. In particular:

- Defendant violated s. 25.3 of *General Regulation*, O. Reg., 17/05 and analogous provisions in Other Canadian Consumer Protection Legislation in force in Canada's provinces and territories, and

- Defendant engaged in unfair practices under ss. 15(1) and (2) of the *Consumer Protection Act, 2002* and analogous provisions of Other Canadian Consumer Protection Legislation in force in Canada's provinces and territories,

Section 25.3 of the General Regulation, O. Reg. 17/05

49. Audible's expiration terms violate section 25.3 *General Regulation*, O. Reg, 17/05 prohibiting expiration dates on gift cards, and analogous provisions of Other Consumer Protection Legislation.

50. The *General Regulation* broadly defines the term "gift card" to not only cover physical cards, but "a voucher in any form, including an electronic credit." This definition includes the expiring Audible Credits.

51. The *General Regulation* defines a "gift card" and a "gift card agreement" as follows:

> **23.** In the Act and this Part,
>
> "gift card" means a voucher in any form, including an electronic credit or written certificate, that is issued by a supplier under a gift card agreement and that the holder is entitled to apply towards purchasing goods or services covered by the voucher; ("carte-cadeau")

"gift card agreement" means a future performance agreement under which the supplier issues a gift card to the consumer and under which,

(a) if the card is not reloadable, the consumer makes payment in full when entering into the agreement, or

(b) if the card is reloadable, the consumer makes payment in an amount equal to the initial value of the card when entering into the agreement; ("convention de carte-cadeau")

[…]

52. The *General Regulation*, O. Reg., 17/05 prohibits gift card agreements that have an expiry date (s. 25.3):

No expiry dates

25.3 (1) No supplier shall enter into a gift card agreement that has an expiry date on the future performance of the agreement.

(2) A gift card agreement with an expiry date on its future performance shall be effective as if it had no expiry date if the agreement is otherwise valid.

53. Audible Credits meet the definition of gift cards under the *General Regulation*, as they constitute electronic credits that can be applied by consumers to towards purchasing goods through Audible. Moreover, the consumer pays the Credits in full when entering into the agreement, in accordance with their membership plan, as well as through the purchase of additional Credits *à la carte*.

Unfair Practices

54. Part III of the *Consumer Protection Act, 2002*, prohibits "Unfair Practices", which includes "unconscionable representations" (s. 15(1) and (2)).

55. The Defendant is a "supplier" under the Act. The relevant part of the definition of "supplier" in s.1 of the Act is as follows:

> **“supplier”** means a person who is in the business of selling, leasing or trading in goods or services or is otherwise in the business of supplying goods or services…

56. The definition of “supplier” is largely analogous in Other Consumer Protection Legislation.

57. The Defendant has violated the Act by engaging in “Unfair Practices” in the form of “unconscionable representations” (s. 15(1) and (2)).

58. Importantly, no direct definition of “unconscionable representation” is provided, and its identification instead involves a contextual assessment in which “may be taken into account that the person making the representation… knows or ought to know” a variety of non-exhaustive circumstances. The listed circumstance most pertinent to the present proposed class proceeding is:

> (a) that the consumer is not reasonably able to protect his or her interests because of disability, <u>ignorance</u>, illiteracy, inability to understand the language of an agreement or similar factors.

59. The Defendant has violated the Act by engaging in the above unfair practices. In particular:

- The Defendant represented to the Plaintiff and Class Members that Audible Credits would expire 12 months after their issuance or upon the cancellation of a membership, and that such expiry terms were valid, binding, and enforceable.

- The Defendant knew or out to have known that such expiry terms were contrary and in violation of applicable consumer protection legislation and were therefore invalid and unenforceable. Notwithstanding the foregoing, the Defendant continued to communicate and enforce the purported expiry terms, thereby inducing the Plaintiff and Class Members to believe that they would irrevocably lose their Audible Credits if they did not redeem them before the stated expiry date or prior to cancelling their memberships.

- The Plaintiff and Class Members were not reasonably able to protect their interests, as they were entitled to rely upon the Defendant's representations that the contractual terms governing their memberships complied with applicable law and were legally enforceable.

60. By representing that unlawful and unenforceable expiry terms were binding upon consumers, the Defendant engaged in unconscionable representations and unfair practices within the meaning of the Act.

Breach of Implied Covenant of Good Faith and Fair Dealing

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

62. Plaintiff and the Class Members entered into agreements with the Defendant for the purchase of Audible Credits. Those agreements were subject to the implied covenant that Defendant would conduct business with Plaintiff and the Class Members in good faith and would deal fairly with them.

63. Defendant breached those implied covenants by imposing and enforcing terms and/or policies under which Audible Credits expired 12 months following their issuance or upon cancellation of a membership, thereby depriving the Plaintiff and Class Members of the benefit of Credits for which they had paid, which were unlawful under the *Consumer Protection Act, 2002*, s. 25.3 of the *General Regulation*, O. Reg., 17/05 and analogous provisions of Other Consumer Protection Legislation.

64. Defendant knew, or should have known, that the expiration terms were prohibited under the *Consumer Protection Act, 2002,* s. 25.3 of the *General Regulation*, O. Reg., 17/05 and analogous provisions of Other Consumer Protection Legislation, and therefore invalid and unenforceable. By knowingly enforcing contractual terms that were unlawful, the Defendant acted in bad faith.

65. Moreover, Defendant knew, or should have known, that the expiration terms were unconscionable and by abusing its discretion in the performance of the contract that many consumers would be unable to redeem all of their Audible Credits before they expired or

before cancelling their memberships, yet continued to enforce its expiry policy for its own financial benefit.

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

COMMON ISSUES

66. The present proposed class action raises the following common issues:

i. Are Audible Credits "gift card[s]" issued under "gift card agreement[s]" within the meaning of s. 23 of the *General Regulation*, O. Reg., 17/05?

ii. Did the Defendant violate and is it continuing to violate the *Consumer Protection Act, 2002*, s. 25.3 of *General Regulation*, O. Reg., 17/05 and/or analogous provisions of Other Consumer Protection Legislation?

iii. Did the Defendant violate and is it continuing to violate the *Consumer Protection Act, 2002*, s. 15(1) and (2) and/or analogous provisions of Other Consumer Protection Legislation?

iv. Did the Defendant engage in unlawful practices through its conduct regarding the expiration of Audible Credits?

v. Did the Defendant's unlawful conduct result in Class Members being deprived of the benefit of what they paid for?

ix. Did the Defendant become unjustly enriched at Class Members' expense?

x. Should the Defendant be disgorged of its profits in favour of the Plaintiff?

xi. Should injunctive relief be issued to prohibit the Defendant from continuing its unlawful and unfair practices?

xii. What is the nature and extent of damages that Class Members are entitled to?

xiii. Should the Defendant be condemned to pay to Class Members compensatory damages, and if so, in what amount?

xiv. Should the Defendants be condemned to pay to Class Members punitive or exemplary damages, and if so, in what amount?

Compensatory Damages

67. The Plaintiff and each Class Member has suffered legally-cognizable and compensable injuries and loss as a direct and proximate result of the Defendant's unlawful, tortious, and inequitable conduct.

68. The fundamental purpose of the law of compensatory damages is that the Plaintiff is to be compensated to the extent of the harm or loss suffered as a result of the Defendant's conduct (*restitutio in integrum*).

69. The compensatory damages are equivalent to the amount corresponding to the value of the Credits that expired.

Punitive Damages

70. The Plaintiff seeks on her own behalf, and of that of Class Members, punitive or exemplary damages for the Defendant's conduct at issue in the present proposed class action.

71. First, the Plaintiff seeks punitive or exemplary damages for Defendants' flagrant violations of the prohibitions of expiration dates on gift cards under s. 25.3 of the *General Regulation*, O. Reg., 17/05 equivalent prohibitions and provisions under Other Consumer Protection Legislation.

72. In particular, ss. 18(11) of the *Consumer Protection Act, 2002* expressly provides that "A court may award exemplary or punitive damages in addition to any other remedy in an action commenced" under the said *Act*. Equivalent or analogous provisions in Other Consumer Protection Legislation also provide for punitive or exemplary damages.

73. In addition, or alternatively, the Plaintiff also seeks punitive or exemplary damages at common law on their own behalf and that of Class Members in respect of the Defendant's conduct falling beyond the scope of the *CPA, 2002,* the *General Regulation,* and Other Consumer Protection Legislation.

74. The said conduct displayed serious negligence, carelessness, and ignorance, and was high-handed, wilful, reckless, and in marked disregard for the rights and interests of Plaintiff and Class Members.

75. In addition, the Defendant is continuing to engage in its unlawful conduct at the time this class action is being filed.

76. The Plaintiff asserts that an award of punitive damages is required to denounce and condemn the Defendant's shocking and outrageous conduct and to deter further breaches by the Defendant and/or others. The interest in behaviour modification – one of the key purposes of class actions – is very high in the present case and warrants punitive damages.

Disgorgement

77. Alternatively, the Plaintiff seeks on her own behalf, and of that of Class Members, an order requiring the Defendant to disgorge all profits generated as a result of its breaches of the *Consumer Protection Act*, the *General Regulation* and Other Consumer Protection Legislation, as well as for unjust enrichment.

78. As disgorgement is a gains-based remedy, the amount of profits requested to be disgorged from Defendant corresponds to the amount corresponding to the value of the expired Audible Credits.

79. The Plaintiff only seeks a disgorgement remedy if the amount to be disgorged exceeds the amount of damages that this Honourable Court is amenable to order. If the amount to be disgorged is lower than the amount that may be ordered in damages, the Plaintiff and Class Members only seek said amount of damages.

JURISDICTION

80. The Plaintiff contends that there is a real and substantial connection between the Province of Ontario and the out-of-province Class Members and Defendant by virtue of Defendant carrying on business in Ontario and Class Members having sustained injury in Ontario, and by virtue of contracts connected with the dispute having been made in the Province within

the meaning of the Supreme Court of Canada's judgment in *Lapointe Rosenstein Marchand Melancon LLP v. Cassels Brock & Blackwell LLP*, 2016 SCC 30.

81. The common issues shared between the non-resident and resident class plaintiffs further establish a real and substantial connection in accordance with *Sanis Health Inc. v. British Columbia*, 2024 SCC 40, at para. 90.

VENUE

82. The Plaintiff proposes that the present class action be tried in Ottawa, Ontario.

83. The Plaintiff pleads and relies upon the relevant provisions of the *Competition Act*, the *Consumer Protection Act, 2002*, the *General Regulation*, O. Reg., 17/05 and Other Canadian Provincial and Territorial Consumer Protection Legislation.

DATE: June 22, 2026

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Plaintiff Defendant

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT OTTAWA

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

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