

Todd M. Friedman (216752)
Adrian R. Bacon (280332)
Law Offices of Todd M. Friedman, P.C.
324 S. Beverly Dr., #725
Beverly Hills, CA 90212
Phone: 877-206-4741
Fax: 866-633-0228
tfriedman@toddfllaw.com
abacon@toddfllaw.com

Attorneys for Plaintiff,

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WILFREDO CRUZ JR., individually,
and on behalf of other members of
the general public similarly situated,

Plaintiff,

vs.

KANOA INC.; CIVIL BARTEN
VAN DER LUBBE; and DOES 1-50,
inclusive, and each of them,

Defendant.

Case No.

CLASS ACTION COMPLAINT

- (1) Violation of Unfair Competition Law (Cal. Business & Professions Code §§ 17500 *et seq.*) and
- (2) Violation of Unfair Competition Law (Cal. Business & Professions Code §§ 17200 *et seq.*)
- (3) Violation of Consumer Legal Remedies Act (Cal. Civ. Code §§ 1750 *et seq.*)

Jury Trial Demanded

1 Plaintiff WILFREDO CRUZ JR. (“Plaintiff”), individually and on behalf of
2 all other members of the public similarly situated, allege as follows:

3 **NATURE OF THE ACTION**

4 1. Plaintiff brings this class action Complaint against Defendant
5 KANOA INC. and CIVAL BARTEN VAN DER LUBBE (hereinafter
6 “Defendant”) to stop Defendant’s practice of falsely advertising the sale of a
7 product it has no intention to distribute and to redress for a nationwide class of
8 consumers (“Class Members”) who paid valuable consideration for the product
9 that the Class Members did not receive, within the applicable statute of limitations
10 period, by Defendant.

11 2. Defendants is a Delaware corporation and is engaged in the
12 development and sale of technological hardware for various technological devices
13 with its headquarters and principle place of business in California.

14 3. Defendants represent that it will develop and sell earbuds, that can
15 connect to Bluetooth enabled technology (the “Class Products”) to consumers
16 when in fact they do not intend to sell the Class Products to consumers.

17 4. Plaintiff and others similarly situated paid valuable consideration to
18 pre-order the Class Products from Defendants and expected to receive the Class
19 Product on or around April 2016, but did not receive it because Defendants ceased
20 development.

21 5. Defendants misrepresented and falsely advertised to Plaintiff and
22 others similarly situated that they would provide a certain product by a certain date
23 if Plaintiff and others similarly situated pre-ordered it, when in fact they did not
24 and had no intention to do so.

25 6. Defendants’ misrepresentations to Plaintiff and others similarly
26 situated caused them to pay valuable consideration for the Class Products, which
27 Plaintiff and others similarly situated would not have purchased absent these
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1 misrepresentation by Defendants. In doing so, Defendants violates California
2 consumer protection laws.

3 **NATURE OF THE CASE & COMMON ALLEGATIONS OF FACT**

4 7. Consumers purchases wireless earbuds from Defendant's website,
5 which Defendant advertises to release and ship on or around April 2016.

6 8. Consumers rely on the representations and advertisements of loan
7 providers in order to know which loans to purchase.

8 9. Consumers paid valuable consideration, in the form of \$149.43USD,
9 for the product, but Defendant did not ship the products purchased.

10 10. Defendants profit from the sale of the pre-orders of the products.
11 Without Defendants' representations, many of the consumers would not have
12 purchased their products.

13 11. Defendants made no attempt to refund the monies Plaintiff and others
14 similarly situated after cancelling plans to develop and sell their product.

15 12. The aforementioned representations are objectively false, and
16 constitute a false advertisement under Cal. Bus. & Prof. Code §§ 17500 et. seq.,
17 and an unlawful, unfair, or deceptive business practices under Cal. Bus. & Prof.
18 Code §§ 17200 et. seq.

19 13. Defendants' violations of the law include, but not limited to, the false
20 advertising, marketing, representations, and sale of the invalid higher interest to
21 consumers in California.

22 14. On behalf of the class, Plaintiff seeks an injunction requiring
23 Defendants to cease advertising, developing, and selling wireless technology and
24 an award of damages to the Class Members, together with costs and reasonable
25 attorneys' fees.

26 **JURISDICTION AND VENUE**

27 15. This class action is brought pursuant to Federal Rule of Civil
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1 Procedure 23.

2 16. This matter is properly venued in the United States District Court for
3 the Eastern District of California, in that Defendant does business in the Eastern
4 District of California and has its principal place of business and headquarters
5 within the Northern District of California. A substantial portion of the events
6 giving rise to Defendant's liability took place in the Eastern District of California.

7 17. There is original federal subject matter jurisdiction over this matter
8 pursuant to the Class Action Fairness Act of 2005, Pub. L. 109-2, 119 Stat. 4 (Feb.
9 18, 2005), by virtue of 28 U.S.C. §1332(d)(2), which explicitly provides for the
10 original jurisdiction of federal courts in any class action in which at least 100
11 members are in the proposed plaintiff class, any member of the plaintiff class is a
12 citizen of a State different from the State of citizenship of any defendant, and the
13 matter in controversy exceeds the sum of \$5,000,000.00, exclusive of interests and
14 costs.

15 18. In the case at bar, there are at least 100 members in the proposed Class
16 and Sub-classes, the total claims of the proposed Class members are in excess of
17 \$5,000,000.00 in the aggregate, exclusive of interests and costs, and Plaintiff seeks
18 to represent a nationwide class of consumers, establishing minimum diversity.

19 **THE PARTIES**

20 19. Plaintiff WILFREDO CRUZ JR. is a citizen and resident of the State
21 of California, County of Kern.

22 20. Defendant KANOA INC. is a corporation with its principle place of
23 business located with its headquarters in the State of California, County of San
24 Francisco.

25 21. Defendant CIVAL BARTEN VAN DER LUBBE is the chief
26 executive officer of KANOA INC., and is a resident of the State of California,
27 County of San Francisco.

22. The above named Defendants, and its subsidiaries and agents, are collectively referred to as “Defendants.” The true names and capacities of the Defendants sued herein as DOE DEFENDANTS 1 through 50, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known

23. Plaintiff alleges, on information and belief, that Defendants’ marketing campaigns, as pertains to this matter, were created by Defendants at its principle place of business in California, and were disseminated from California, nationwide.

24. Plaintiff is informed and believes, and thereon alleges, that at all time relevant, Defendants’ sales of products are governed by the controlling law in the state in which they do business and from which the sales or products, and the allegedly unlawful acts originated, which is California.

25. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein were performed by, or is attributable to, Defendants and/or its employees, agents, and/or third parties acting on its behalf, each acting as the agent for the other, with legal authority to act on the other’s behalf. The acts of any and all of Defendants’ employees, agents, and/or third parties acting on its behalf, were in accordance with, and represent, the official policy of Defendants.

26. Plaintiff is informed and believes, and thereon alleges, that said Defendants are in some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and transactions of each and all its employees, agents, and/or third parties acting on its behalf, in proximately

1 causing the damages herein alleged.

2 27. At all relevant times, Defendants ratified each and every act or
3 omission complained of herein. At all relevant times, Defendants, aided and
4 abetted the acts and omissions as alleged herein.

5 **PLAINTIFF'S FACTS**

6 28. On or around February 8, 2016, Plaintiff purchased the Class Products
7 from Defendants, through their website, by paying valuable consideration in the
8 form of \$149.43USD.

9 29. According to the receipt, attached hereto as "Exhibit A", on or around
10 April 2016, the Class Products would arrive to Plaintiff, and others similarly
11 situated.

12 30. Defendants informed Plaintiff and other similarly situated that the
13 Class Products shipping date would be pushed to Summer 2017.

14 31. On or around August 2017, Defendants informed Plaintiff, and others
15 similarly situated, through a statement on Defendant's website, that development
16 of the Class Products ceased and they will not refund any monies to whomever
17 purchased the Class Products through pre-order.

18 30. Plaintiff and others similarly situated attempted to contact
19 Defendants, through telephone calls and electronic mail, about obtaining refunds
20 for their purchase, but Defendants have not returned any of their inquiries.

21 32. Defendants' sales tactics rely on falsities and have a tendency to
22 mislead and deceive a reasonable consumer.

23 33. Plaintiff is informed, believes, and thereupon alleges that such
24 representations were part of a common scheme to mislead consumers and
25 incentivize them to purchase Defendants products.

26 34. In purchasing the Class Products, Plaintiff relied upon Defendant's
27 representations.

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1 35. Plaintiff would not have purchased the Class Product if he knew that
2 the Defendant would not release their product by April 2016.

3 36. Had Defendant properly marketed, advertised, and represented the
4 release date Plaintiff would not have paid for the Class Product.

5 37. Plaintiff gave his money to Defendants because of the representations
6 of Defendants. Defendants benefited from falsely representing the delivery date of
7 the Class Product. Plaintiff received nothing for giving his money to Defendants.
8 Defendants benefited on the loss to Plaintiff and provided nothing of benefit to
9 Plaintiff in exchange.

10 38. Had Defendants properly marketed, advertised, and represented the
11 appropriate delivery date for the Class Product, no reasonable consumer who came
12 across Defendants' advertisement of the Class Product would purchase it.

13 **CLASS ACTION ALLEGATIONS**

14 39. Plaintiff brings this action, on behalf of himself and all others
15 similarly situated, and thus, seeks class certification under Federal Rule of Civil
16 Procedure 23.

17 40. The class Plaintiff seeks to represent (the "Class") is defined as
18 follows:

19 All consumers, who, between the applicable statute of
20 limitations and the present, purchased the Class Product,
21 and did not receive a refund when the development of
the Class Product ceased.

22 41. As used herein, the term "Class Members" shall mean and refer to the
23 members of the Class described above.

24 42. Excluded from the Class are Defendant, its affiliates, employees,
25 agents, and attorneys, and the Court.

26 43. Plaintiff reserves the right to amend the Class, and to add additional
27 subclasses, if discovery and further investigation reveals such action is warranted.
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1 44. Upon information and belief, the proposed class is composed of
2 thousands of persons. The members of the class are so numerous that joinder of
3 all members would be unfeasible and impractical.

4 45. No violations alleged in this complaint are contingent on any
5 individualized interaction of any kind between class members and Defendant.

6 46. Rather, all claims in this matter arise from the identical, false,
7 affirmative written statements that the services would be provided for Class
8 Members', when in fact, such representations were false.

9 47. There are common questions of law and fact as to the Class Members
10 that predominate over questions affecting only individual members, including but
11 not limited to:

- 12 (a) Whether Defendant engaged in unlawful, unfair, or deceptive
13 business practices in advertising and selling products to
14 Plaintiff and other Class Members;
- 15 (b) Whether Defendant made misrepresentations with respect to
16 the delivery date of the products purchased;
- 17 (c) Whether Defendant profited from the sale of the products;
- 18 (d) Whether Defendant violated California Bus. & Prof. Code §
19 17200, *et seq.*, California Bus. & Prof. Code § 17500, *et seq.*,
20 and California Civ. Code § 1750, *et seq.*;
- 21 (e) Whether Defendant violated California Bus. & Prof. Code §
22 17200, *et seq.*, California Bus. & Prof. Code § 17500, *et seq.*,
23 and California Civ. Code § 1750, *et seq.*;
- 24 (f) Whether Plaintiff and Class Members are entitled to equitable
25 and/or injunctive relief;
- 26 (g) Whether Defendant's unlawful, unfair, and/or deceptive
27 practices harmed Plaintiff and Class Members; and
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(h) The method of calculation and extent of damages for Plaintiff and Class Members.

48. Plaintiff is a member of the class he seeks to represent

49. The claims of Plaintiff are not only typical of all class members, they are identical.

50. All claims of Plaintiff and the class are based on the exact same legal theories.

51. Plaintiff has no interest antagonistic to, or in conflict with, the class.

52. Plaintiff is qualified to, and will, fairly and adequately protect the interests of each Class Member, because Plaintiff paid a higher interest from Defendant during the Class Period. Defendant's unlawful, unfair and/or fraudulent actions concerns the same business practices described herein irrespective of where they occurred or were experienced. Plaintiff's claims are typical of all Class Members as demonstrated herein.

53. Plaintiff will thoroughly and adequately protect the interests of the class, having retained qualified and competent legal counsel to represent himself and the class.

54. Common questions will predominate, and there will be no unusual manageability issues.

FIRST CAUSE OF ACTION

Violation of the California False Advertising Act

(Cal. Bus. & Prof. Code §§ 17500 *et seq.*)

55. Plaintiff incorporates by reference each allegation set forth above.

56. Pursuant to California Business and Professions Code section 17500, *et seq.*, it is unlawful to engage in advertising "which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading...or...to so make or disseminate or cause to be so made or

1 disseminated any such statement as part of a plan or scheme with the intent not to
2 sell that personal property or those services, professional or otherwise, so
3 advertised at the price stated therein, or as so advertised.”

4 57. California Business and Professions Code section 17500, *et seq.*’s
5 prohibition against false advertising extends to the use of false or misleading
6 written statements.

7 58. Defendant misled consumers by making misrepresentations and
8 untrue statements about the Class Products, namely, Defendant would deliver the
9 Class Products on or around April 2016 fully knowing and intending not to deliver
10 the Class Products to Plaintiff, and others similarly situated, and made false
11 representations to Plaintiff and other putative class members in order to solicit
12 these transactions.

13 59. Specifically, Defendant explicitly stated that the delivery date of the
14 Class Products would occur in April 2016.

15 60. Defendant knew that their representations and omissions were untrue
16 and misleading, and deliberately made the aforementioned representations and
17 omissions in order to deceive reasonable consumers like Plaintiff and other Class
18 Members.

19 61. As a direct and proximate result of Defendants’ misleading and false
20 advertising, Plaintiff and the other Class Members have suffered injury in fact and
21 have lost money or property. Plaintiff reasonably relied upon Defendant’s
22 representations regarding delivery of the Class Products, namely that the Class
23 Products’ delivery will occur on or around April 2016. In reasonable reliance on
24 Defendant’s false advertisements, Plaintiff and other Class Members purchased
25 the Class Products. In turn Plaintiff and other Class Members ended up losing
26 money because Defendants did not refund their money after cancelling
27 development of the Class Products, and therefore Plaintiff and other Class
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1 Members have suffered injury in fact.

2 62. Plaintiff alleges that these false and misleading written
3 representations made by Defendant constitute a “scheme with the intent not to sell
4 that personal property or those services, professional or otherwise, so advertised
5 at the price stated therein, or as so advertised.”

6 63. Defendant advertised to Plaintiff and other putative class members,
7 through written representations and omissions made by Defendant and its
8 employees, that the Class Products would be delivered by April 2016.

9 64. Defendant knew that the Class Products would not meet the deadline
10 given to Plaintiff and other class members.

11 65. Thus, Defendant knowingly sold a product to Plaintiff and other class
12 members they had no intention to sell or develop.

13 66. The misleading and false advertising described herein presents a
14 continuing threat to Plaintiff and the Class Members in that Defendant persists and
15 continues to engage in these practices, and will not cease doing so unless and until
16 forced to do so by this Court. Defendant’s conduct will continue to cause
17 irreparable injury to consumers unless enjoined or restrained. Plaintiff is entitled
18 to preliminary and permanent injunctive relief ordering Defendant to cease their
19 false advertising, as well as disgorgement and restitution to Plaintiff and all Class
20 Members Defendant’s revenues associated with their false advertising, or such
21 portion of those revenues as the Court may find equitable.

22 **SECOND CAUSE OF ACTION**

23 **Violation of Unfair Business Practices Act**

24 **(Cal. Bus. & Prof. Code §§ 17200 *et seq.*)**

25 67. Plaintiff incorporates by reference each allegation set forth above.

26 68. Actions for relief under the unfair competition law may be based on
27 any business act or practice that is within the broad definition of the UCL. Such
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1 violations of the UCL occur as a result of unlawful, unfair or fraudulent business
2 acts and practices. A plaintiff is required to provide evidence of a causal
3 connection between a defendant's business practices and the alleged harm--that is,
4 evidence that the defendant's conduct caused or was likely to cause substantial
5 injury. It is insufficient for a plaintiff to show merely that the defendant's conduct
6 created a risk of harm. Furthermore, the "act or practice" aspect of the statutory
7 definition of unfair competition covers any single act of misconduct, as well as
8 ongoing misconduct.

9 **UNFAIR**

10 69. California Business & Professions Code § 17200 prohibits any
11 "unfair ... business act or practice." Defendant's acts, omissions,
12 misrepresentations, and practices as alleged herein also constitute "unfair"
13 business acts and practices within the meaning of the UCL in that its conduct is
14 substantially injurious to consumers, offends public policy, and is immoral,
15 unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs
16 any alleged benefits attributable to such conduct. There were reasonably available
17 alternatives to further Defendant's legitimate business interests, other than the
18 conduct described herein. Plaintiff reserves the right to allege further conduct
19 which constitutes other unfair business acts or practices. Such conduct is ongoing
20 and continues to this date.

21 70. In order to satisfy the "unfair" prong of the UCL, a consumer must
22 show that the injury: (1) is substantial; (2) is not outweighed by any countervailing
23 benefits to consumers or competition; and, (3) is not one that consumers
24 themselves could reasonably have avoided.

25 71. Here, Defendants' conduct has caused and continues to cause
26 substantial injury to Plaintiff and members of the Class. Plaintiff and members of
27 the Class have suffered injury in fact due to Defendants' decision to falsely sell
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1 products they have no intention to produce or sell. Thus, Defendants' conduct has
2 caused substantial injury to Plaintiff and the members of the class.

3 72. Moreover, Defendants' conduct as alleged herein solely benefits
4 Defendants while providing no benefit of any kind to any consumer. Such
5 deception utilized by Defendants convinced Plaintiff and members of the Class
6 that Defendants were developing a specific wireless technology, in order to induce
7 them to spend money. In fact, knowing that they had no intention to deliver the
8 product by the delivery date, Defendants unfairly profited in that Defendants knew
9 that the product would not be developed or delivered timely. Thus, the injury
10 suffered by Plaintiff and the members of the Sub-Class is not outweighed by any
11 countervailing benefits to consumers.

12 73. Finally, the injury suffered by Plaintiff and members of the Sub-Class
13 is not an injury that these consumers could reasonably have avoided. After
14 Defendants, falsely represented the delivery date of the product and its actual
15 development, these consumers suffered injury in fact due to Defendants' sales of
16 the Class Product as a pre-order. Defendants failed to take reasonable steps to
17 inform Plaintiff and class members that the product would not be delivered at the
18 delivery date. As such, Defendants took advantage of Defendants' position of
19 perceived power in order to deceive Plaintiff and the Class members to pay for a
20 product Defendants did not intend to deliver. Therefore, the injury suffered by
21 Plaintiff and members of the Class is not an injury which these consumers could
22 reasonably have avoided.

23 74. Thus, Defendant's conduct has violated the "unfair" prong of
24 California Business & Professions Code § 17200.

25 **FRAUDULENT**

26 75. California Business & Professions Code § 17200 prohibits any
27 "fraudulent ... business act or practice." In order to prevail under the "fraudulent"
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1 prong of the UCL, a consumer must allege that the fraudulent business practice
2 was likely to deceive members of the public.

3 76. The test for “fraud” as contemplated by California Business and
4 Professions Code § 17200 is whether the public is likely to be deceived. Unlike
5 common law fraud, a § 17200 violation can be established even if no one was
6 actually deceived, relied upon the fraudulent practice, or sustained any damage.

7 77. Here, not only were Plaintiff and the Class members likely to be
8 deceived, but these consumers were actually deceived by Defendants. Such
9 deception is evidenced by the fact that Plaintiff paid valuable consideration for a
10 product Defendants had no intent to deliver to Plaintiff. Plaintiff’s reliance upon
11 Defendants’ deceptive statements is reasonable due to the unequal bargaining
12 powers of Defendants and Plaintiff. For the same reason, it is likely that
13 Defendants’ fraudulent business practice would deceive other members of the
14 public.

15 78. As explained above, Defendants deceived Plaintiff and other Class
16 Members by representing the product would be ready for delivery by a certain
17 date.

18 79. Thus, Defendants’ conduct has violated the “fraudulent” prong of
19 California Business & Professions Code § 17200.

20 **UNLAWFUL**

21 80. California Business and Professions Code Section 17200, et seq.
22 prohibits “any unlawful...business act or practice.”

23 81. As explained above, Defendants deceived Plaintiff and other Class
24 Members by falsely representing the delivery date of the Class Products purchased
25 by class members and Plaintiff.

26 82. Defendants used false advertising, marketing, and misrepresentations
27 to induce Plaintiff and Class Members to purchase their products, in violation of
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1 California Business and Professions Code Section 17500, et seq. Had Defendants
2 not falsely advertised, marketed or misrepresented the delivery date of the product,
3 Plaintiff and Class Members would not have purchased the Class Products.
4 Defendants' conduct therefore caused and continues to cause economic harm to
5 Plaintiff and Class Members.

6 83. These representations by Defendant are therefore an "unlawful"
7 business practice or act under Business and Professions Code Section 17200 *et*
8 *seq.*

9 84. Defendant has thus engaged in unlawful, unfair, and fraudulent
10 business acts entitling Plaintiff and Class Members to judgment and equitable
11 relief against Defendant, as set forth in the Prayer for Relief. Additionally,
12 pursuant to Business and Professions Code section 17203, Plaintiff and Class
13 Members seek an order requiring Defendant to immediately cease such acts of
14 unlawful, unfair, and fraudulent business practices and requiring Defendant to
15 correct its actions.

16 **THIRD CAUSE OF ACTION**

17 **Violation of Consumer Legal Remedies Act**

18 **(Cal. Civ. Code § 1750 *et seq.*)**

19 85. Plaintiffs incorporate by reference each allegation set forth above
20 herein.

21 86. Defendant's actions as detailed above constitute a violation of the
22 Consumer Legal Remedies Act, Cal. Civ. Code §1770 to the extent that Defendant
23 violated the following provisions of the CLRA:

- 24 a. Representing that goods or services have sponsorship, approval,
25 characteristics, ingredients, uses, benefits, or quantities which they do
26 not have or that a person has a sponsorship, approval, status, affiliation,
27 or connection which he or he does not have. Cal. Civ. Code § 1770(5);
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- b. Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another. *Cal. Civ. Code* § 1770(7);
- c. Advertising goods or services with intent not to sell them as advertised; *Cal. Civ. Code* §1770(9);
- d. Representing that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law; *Cal. Civ. Code* §1770(14); and
- e. Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not; *Cal. Civ. Code* §1770(16);

87. On or about October 17, 2017, through their Counsel of record, using certified mail with a return receipt requested, Plaintiffs served Defendants with notice of its violations of the CLRA, and asked that Defendants correct, repair, replace or otherwise rectify the goods and services alleged to be in violation of the CLRA; this correspondence advised Defendants that they must take such action within thirty (30) calendar days, and pointed Defendants to the provisions of the CLRA that Plaintiffs believe to have been violated by Defendants. A true and correct copy of Plaintiff's CLRA notice letter is attached hereto as Exhibit A. Defendants have not replied to this correspondence, and have thereby refused to timely correct, repair, replace or otherwise rectify the issues raised therein.

MISCELLANEOUS

88. Plaintiff and Class Members allege that they have fully complied with all contractual and other legal obligations and fully complied with all conditions precedent to bringing this action or all such obligations or conditions are excused.

REQUEST FOR JURY TRIAL

89. Plaintiff requests a trial by jury as to all claims so triable.

PRAAYER FOR RELIEF

90. Plaintiff, on behalf of himself and the Class, requests the following

relief:

- (a) An order certifying the Class and appointing Plaintiff as Representative of the Class;
- (b) An order certifying the undersigned counsel as Class Counsel;
- (c) An order requiring KANOA INC. and CIVAL BARTEN VANDER LUBBE, at its own cost, to notify all Class Members of the unlawful and deceptive conduct herein;
- (d) An order requiring KANOA INC. and CIVAL BARTEN VANDER LUBBE to engage in corrective advertising regarding the conduct discussed above;
- (e) Actual damages suffered by Plaintiff and Class Members as applicable or full restitution of all funds acquired from Plaintiff and Class Members from the purchase of the Class Products during the relevant class period;
- (f) Punitive damages, as allowable, in an amount determined by the Court or jury;
- (g) Any and all statutory enhanced damages;
- (h) All reasonable and necessary attorneys' fees and costs provided by statute, common law or the Court's inherent power;
- (i) Pre- and post-judgment interest; and
- (j) All other relief, general or special, legal and equitable, to which Plaintiff and Class Members may be justly entitled as deemed by the Court.

CLASS ACTION COMPLAINT

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Exhibit A

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

ATTORNEYS FOR CONSUMERS

21550 OXNARD ST., SUITE 780

WOODLAND HILLS, CA 91367

877-206-4741 TOLL FREE

866-633-0228 FACSIMILE

CALIFORNIA OFFICE

WWW.TODDFLAW.COM

E-MAIL: TFRIEDMAN@TODDFLAW.COM

WRITER LICENSED IN:
CALIFORNIA

November 1, 2017

Via U.S. Certified Mail

Kanoa, Inc.

760 Bryant

San Francisco, CA 94107

Cival Barten Van Der Lubbe

18 10th Street, #233

San Francisco, CA 94103

**Confidential Settlement Communication Pursuant to FRE 408 and CEC 1152 and
Notice of Violations of CLRA Pursuant to Cal. Civ. Code §§1782(a)(2)**

Re: *Wilfredo Cruz Jr., individually, and on behalf of all others similarly situated v. Kanoa, Inc.;
and Cival Barten Van Der Lubbe*

To Whom It May Concern:

Please be advised that our office represents Wilfredo Cruz Jr., and other similarly situated individuals, in pursuing class action wide legal claims against the Kanoa, Inc. and Cival Barten Van Der Lubbe ("Kanoa"), for violations of the Consumer Legal Remedies Act ("CLRA") and California Business and Professions Code §17200 ("BPC").

Thus, please accept this correspondence as notice pursuant to the CLRA, of Defendants' violations thereof. Be advised, you have thirty (30) calendar days from the date of receipt of this notice, to correct, repair, replace, or otherwise rectify the goods or services alleged to be in violation of § 1770 of the CLRA, as further outlined below.

Having been formally notified of our representation, we respectfully demand you not contact our client for any reason. Instead, please direct all future contact and correspondence to this office. We reserve the right to seek injunctive relief against you should you fail to honor these directives.

The purpose of this letter is to advise your company of its violations and to quickly resolve the matter of my client's right to compensation for the same, without resorting to expensive and unnecessary litigation. Before additional damages accrue, including needless attorney fees, we should work together expeditiously to correct the inequity that occurred in connection with your company's handling of the matters detailed below.

Please review the violations set forth below and contact our offices immediately, to discuss settlement.

Facts

In or around February 2016, Wilfredo Cruz Jr., while leisurely browsing through Facebook, saw an advertisement of your product, a particular brand of earbuds (“the earbuds”). After clicking the advertisement, he was redirected to your company website for further information about the earbuds and how to purchase it. Wilfredo Cruz Jr. gave valuable consideration for the earbuds by paying an amount of \$149.43 for the earbuds.

Kanoa advertised the earbuds as wireless technology that connects to a person’s Bluetooth enabled device and allows them to listen to music and conduct telephone calls. The unique design of the earbuds were to accommodate consumer with a very active lifestyle.

Wilfredo Cruz Jr.’s purchase of the earbuds constituted as a pre-order. Kanoa advertised on their website that the earbuds would retail for about \$300, but consumers can pre-order the earbuds with a 50% reduced purchase price. According to the purchase confirmation email Wilfredo Cruz Jr. received, Kanoa would ship the earbuds to him in or around April 2016. By April 2016, Wilfredo Cruz Jr. received notice, through Kanoa’s website, that they have pushed the earbuds release to July 2017.

In August 2017, a negative review, posted on YouTube, of the earbuds began to circulate the Internet heavily. The review of the earbuds brought to light to Wilfredo Cruz Jr., and others whom pre-order the product, various problems with the earbuds. Some of these problems include: poor connectivity, via Bluetooth, with a device; the earbuds did not properly charge; and did not adequately flush out outside noise when in use. Kanoa faced problems, stemming from this review, instantaneously. Following the review, Kanoa informed Wilfredo Cruz Jr., and others whom pre-ordered the earbuds, that the project was cancelled and they would not be receiving anything for the money they paid.

Wilfredo Cruz Jr., and other similarly situated, began to contact Kanoa through email and telephone, but received no response back from Kanoa. Kanoa’s website has shut down and their contact information no longer works. No one will answer when the telephone rings, and email inquiries are not responded.

In purchasing the earbuds at the time of purchase, Wilfredo Cruz Jr. relied upon Kanoa’s representations that it will ship the earbuds to its consumers who purchased them at the appointed release date. These representations were clearly false because not only did Kanoa pushed back the release date of the earbuds several times, but, after a negative review, they shut down operations on the product and told customers who pre-ordered that it will be unlikely refunds will be given. Wilfredo Cruz Jr. would not have purchased the earbuds if he knew Kanoa had no intention to finish creating and releasing the earbuds.

Had Kanoa properly marketed, advertised, and represented the earbuds will not be released at the designated time, or at all, Wilfredo Cruz Jr. would not have pre-ordered the earbuds.

Defendant benefited from falsely advertising the release date of the earbuds and Wilfredo Cruz Jr. received nothing for the consideration he paid to pre-order the earbuds. Had Kanoa properly marketed, advertised, and represented the release date of the earbuds, no reasonable consumer would have pre-ordered the earbuds from Kanoa.

Wilfredo Cruz Jr. is informed, believes, and based thereon alleges that Kanoa engaged in the exact same false misrepresentations and practices with respect to all the pre-orders they received for the earbuds like the pre-order Wilfredo Cruz Jr. purchased from viewing the advertisement on Facebook.

CLRA (Cal. Civ. Code §17500 et seq.) Violations

Among other things, the CLRA prohibits the following “unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction to result or which results in the sale or lease of goods or services” to a consumer:

1. Section 1770(a)(1) of the CLRA prohibits anyone from “[p]assing off goods or services as of those of another.” As discussed above, Defendants made false and misleading representations regarding the release date and shipping date of the earbuds purchased by Wilfredo Cruz Jr. and other consumer, whom pre-ordered.
2. Section 1770(a)(5) of the CLRA prohibits anyone from “[r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have” As discussed above, Defendant’s acts and practices constitute misrepresentations regarding the release date and shipping date for the pre-orders made by Wilfredo Cruz Jr. and other consumer whom pre-ordered the earbuds.
3. Section 1770(a)(7) of the CLRA prohibits anyone from “[r]epresenting that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.” By falsely marketing, advertising, and representing the release date and shipping date of the earbuds, Defendants lead Wilfredo Cruz Jr. and others, whom per-ordered the earbuds, to believe that they would received a product at a certain time after paying valuable consideration for it.

4. Section 1770(a)(9) of the CLRA prohibits anyone from “[a]dvertising goods or services with intent not to sell them as advertised.” Defendant falsely advertised and marketed April 2016 as the release and shipping of the earbuds, when in fact Defendant intended to never actually ship the earbuds to the consumers whom pre-ordered them.
5. Section 1770(a)(14) of the CLRA prohibits anyone from “[r]epresenting that a transaction confers or involves rights, remedies, or obligations which it does not have or involve....” Defendant’s acts and practices constitute misrepresentations regarding the rights, remedies, or obligations involved with the pre-order of the earbuds, namely, that Defendant would not ship the earbuds at all, as promised, when consumers purchased the earbuds expecting a delivery date on or around April 2016.
6. Section 1770(a)(16) of the CLRA prohibits anyone from “[r]epresenting that the subject of a transaction has been supplied in accordance with a previous representation when it has not.” Defendant misrepresented that the earbuds would ship to consumer whom pre-ordered on or around April 2016.

Further, under the CLRA, a consumer may recover actual damages, an order enjoining any such practices that are prohibited by the CLRA, restitution of property, punitive damages and reasonably attorney’s fees and costs. *Cal. Civ. Code* §1788 (a) and (d).

By engaging in the conduct detailed above, Kanoa violated subsections (1), (5), (7), (9), (14), and (16) of the CLRA, thereby entitling Wilfredo Cruz Jr. and similarly situated class members to the recovery of actual damages, punitive damages, attorney’s fees and costs.

CBPC (Cal. Bus. Prof. Code §17200)

The CPBC §17200 prohibits unlawful, unfair or fraudulent business acts or practices, and subjects anyone engaging in such conduct to a civil penalty of \$2,500 for each violation thereof. *Cal. Bus. Prof. Code* §§17200 and 17206. Further, any person may bring an action to enjoy or restrain any violation of this act and recover actual damages resulting from such violations. *Cal. Bus. Prof. Code* §4381(b)-(c).

Kanoa’s conduct, as detailed above, violate numerous provisions of the CLRA; consequently, said conduct constitutes unlawful business practices. Further, to the extent that Kanoa sold their earbuds

with no intent of providing it to Wilfredo Cruz Jr. and similarly situated consumers, said conduct constitutes fraudulent and unfair business practices, all of which subjects Kanoa to statutory penalties of \$2500 per each class member, as well as actual damages, and attorney's fees and costs.

Class Potential

At this stage, Kanoa's fraudulent and deceptive business practices have impacted thousands of consumers throughout the nation. Thus, we anticipate a nation-wide class of thousands of consumers whom Wilfredo Cruz Jr. will more than adequately represent the conduct detailed above is systematic in nature. Thus, certifying a class will be very straightforward. Upon certifying a class, we will seek not only actual damages, but punitive damages and statutory damages, in addition to attorney's fees and costs. Kanoa is facing seven-figure liability, at the very least.

Demand

We intend to take this matter up as a class action, and therefore expect that any offers to settle this case must contemplate class-wide settlement. Please contact our offices within twenty (21) days of your receipt of this correspondence, to discuss settlement. Also, please be aware of the CLRA notice provided herein.

Regards,

A handwritten signature in dark ink, appearing to be 'Todd M. Friedman', with a long, sweeping horizontal line extending to the right.

Todd M. Friedman, Esq.
Attorney at Law

CIVIL COVER SHEET

Case 1:17-cv-01476-DAD-JLT Document 1-1 Filed 11/01/17 Page 1 of 2

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

WILFREDO CRUZ JR., individually, and on behalf of other members of the general public similarly situated

(b) County of Residence of First Listed Plaintiff Kern
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Law Offices of Todd M. Friedman, P.C., 21550 Oxnard St., Suite 780
Woodland Hills, CA 91367; (877) 206-4741

DEFENDANTS

KANOA INC.; CLIVE BARTEN VAN DER LUBBE; and DOES 1-50, inclusive, and each of them

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☒ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. §1332(d)(2)

Brief description of cause:
Class Action Fairness Act

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
5,000,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

11/01/2017

SIGNATURE OF ATTORNEY OF RECORD

/s/Todd M. Friedman

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Case 1:17-cv-01476-DAD-JLT Document 1-1 Filed 11/01/17 Page 2 of 2
INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Consumer Claims Kanoa Marketed Wireless Ear Buds It Never Intended on Selling](#)
