



**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE  
COMMERCIAL COURT  
GROUP PROCEEDINGS LIST**

Case: S ECI 2023 05830

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**No. S ECI 2023 05830**

**B E T W E E N**

**Jeremey Clarke**

Plaintiff

-and-

**JB Hi-Fi Group Pty Ltd (ACN 093 114 286)**

Defendant

**AMENDED STATEMENT OF CLAIM**

**Pursuant to order 1(a) of Delany J made 22 May 2024**

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Date of Document:	<u>12 June 2024</u> <del>8 December 2023</del>	Solicitors Code:	564
Filed on behalf of:	The Plaintiff	DX:	N/A
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## Table of Contents

<b>A.</b>	<b>PARTIES AND GROUP MEMBERS</b> .....	<b>4</b>
A.1	THE DEFENDANT .....	4
A.2	THE PLAINTIFF.....	4
A.3	GROUP PROCEEDING .....	4
<b>B.</b>	<b>STATUTORY GUARANTEE UNDER THE AUSTRALIAN CONSUMER LAW</b> .....	<b>5</b>
<b>C.</b>	<b>JB HI-FI EXTENDED WARRANTIES</b> .....	<b>8</b>
C.1	EXTENDED WARRANTIES – INTRODUCTORY MATTERS .....	8
C.2	REPRESENTATIONS IN THE EXTENDED WARRANTIES BROCHURES.....	17
<b>D.</b>	<b>THE TRUE POSITION: LACK OF MATERIAL VALUE OF THE EXTENDED WARRANTIES</b> .....	<b>24</b>
<b>E.</b>	<b>EXTENDED WARRANTIES SALE PROCESS AND OTHER REPRESENTATIONS</b> .....	<b>24</b>
E.1	CIRCUMSTANCES OF THE IN PERSON SALES AND RELEVANT REPRESENTATIONS .....	24
E.2	CIRCUMSTANCES OF THE ONLINE SALES AND RELEVANT REPRESENTATIONS .....	27
E.3	FEATURES OF BOTH THE IN STORE AND ONLINE SALES PROCESSES AND THE CAUTIONARY MATTERS ..	30
<b>F.</b>	<b>PLAINTIFF’S PURCHASES</b> .....	<b>32</b>
<b>G.</b>	<b>PURCHASES OF CONSUMER GOODS AND EXTENDED WARRANTIES BY GROUP MEMBERS</b> <b>36</b>	
<b>H.</b>	<b>MISLEADING OR DECEPTIVE CONDUCT</b> .....	<b>37</b>
H.1	LONGER COVER MISLEADING CONDUCT CONTRAVENTIONS.....	37
H.2	ADDITIONAL BENEFITS MISLEADING CONDUCT CONTRAVENTIONS.....	38
H.3	MATERIAL VALUE MISLEADING CONDUCT CONTRAVENTIONS .....	41
H.4	CAUTIONARY MATTERS CONDUCT CONTRAVENTIONS.....	41
H.5	OTHER ACL MISREPRESENTATION CONTRAVENTIONS .....	43
H.6	MISLEADING OR DECEPTIVE CONDUCT – RELIANCE.....	45
<b>I.</b>	<b>UNCONSCIONABLE CONDUCT</b> .....	<b>46</b>
<b>J.</b>	<b>LOSS AND DAMAGE BECAUSE OF THE STATUTORY CONTRAVENTIONS-CONVENTIONS</b> ..	<b>48</b>
<b>K.</b>	<b>MISTAKE</b> .....	<b>49</b>
<b>L.</b>	<b>FAILURE OF CONSIDERATION</b> .....	<b>51</b>
<b>M.</b>	<b>LOSS AND DAMAGE BECAUSE OF MISTAKE AND FAILURE OF CONSIDERATION</b> .....	<b>52</b>
<b>N.</b>	<b>ORDERS SOUGHT BY THE PLAINTIFF</b> .....	<b>52</b>
<b>O.</b>	<b>COMMON QUESTIONS OF LAW OR FACT</b> .....	<b>53</b>
	<b>SCHEDULE 1 FURTHER PARTICULARS TO PARAGRAPH 19: EXTENDED WARRANTIES –</b> <b>MAXIMUM DURATIONS</b> .....	<b>59</b>

TABLE 1. 2011 TO 2022~~43~~ EXTENDED CARE PLAN (FROM JANUARY 2011 TO 30 DECEMBER 2013) ..... 60

TABLE 2. REPLACEMENT COVER PLANS ~~JUNE 2011 – PRESENT~~ 1 JANUARY 2011 – 8 DECEMBER 2023..... 64

TABLE 3. REPAIR COVER PLANS ~~JUNE 2011 – PRESENT~~ 1 JANUARY 2011 - 8 DECEMBER 2023 ..... 70

**SCHEDULE 2 – DEFINED TERMS..... 76**

## A. PARTIES AND GROUP MEMBERS

### A.1 The Defendant

#### 1. The Defendant (**JB Hi-Fi**):

- (a) is a company duly incorporated under the laws of Australia;
- (b) since 6 July 2001, has had its registered address in Victoria;
- (c) offers, for sale to consumers, goods including electronic devices, home appliances and home entertainment products (the **Consumer Goods**); and
- (d) offers, for sale to consumers, warranties in connection with sales of the Consumer Goods (the **Extended Warranties**, further defined below at paragraphs 10 to 14).

### A.2 The Plaintiff

#### 2. The Plaintiff:

- (a) is a natural person;
- (b) was and is a 'consumer' within the meaning of section 12BC of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) in his dealings with JB Hi-Fi;
- (c) in the alternative, was and is a 'consumer' within the meaning of section 3 of the *Australian Consumer Law* (**ACL**) in his dealings with JB Hi-Fi.

### A.3 Group proceeding

#### 3. The Plaintiff commences this proceeding as a group proceeding pursuant to Part 4A of the *Supreme Court Act 1986* (Vic) (**Supreme Court Act**) on his own behalf and on behalf of all persons who, subject to paragraph 4 below:

- (a) during the period
  - (i) at any time between 9 December 2017 and 8 December 2023 (the **Principal Claim Period**); or
  - (ii) in the case of persons who purchased the Extended Warranties on a day between 1 January 2011 and 8 December 2017 and who did not prior to 8 December 2017 discover, and could not with reasonable diligence have discovered, the mistake pleaded in paragraphs 78 to 85 below (the **Mistake Claim Period**);

purchased Consumer Goods from JB Hi-Fi, the price of which:

- A. did not exceed \$40,000 prior to 1 July 2021;
- B. did not exceed \$100,000 from 1 July 2021;

and, in connection with the purchase of the Consumer Goods, also purchased an Extended Warranty from JB Hi-Fi;

- (b) were and are “consumers” within the meaning of section 12BC of the ASIC Act in their dealings with JB Hi-Fi;
- (c) alternatively, were and are “consumers” within the meaning of section 3 of the ACL in their dealings with JB Hi-Fi;
- (d) have suffered loss or damage by reason of the contravening conduct of JB Hi-Fi as pleaded in this Statement of Claim;
- (e) were not at the time of the purchases of the Consumer Goods any of the following:
  - (i) a director, an officer, or a close associate (as defined in section 9 of the *Corporations Act 2001* (Cth) (**Corporations Act**)) of JB Hi-Fi; or
  - (ii) a Judge, Associate Judge or Judicial Registrar of the Supreme Court of Victoria;

(the **Group Members**).

- 4. Persons whose claims are governed by the law of the Northern Territory (**NT Claimants**) are a Group Member if:
  - (a) Paragraph 3 applies; and
  - (b) In the case of NT Claimants who purchased the Extended Warranties on a day between 1 January 2011 and 8 December 2020 and who did not prior to 8 December 2020 discover, and could not with reasonable diligence have discovered, the mistake pleaded in paragraphs 78 to 85 below (the **NT Mistake Claim Period**).
- 5. As at the date of the commencement of this proceeding there are seven or more Group Members.

## **B. STATUTORY GUARANTEE UNDER THE AUSTRALIAN CONSUMER LAW**

- 6. By reason of section 54(1) of the ACL, the Plaintiff and each Group Member, at the time of purchase of the Consumer Goods from JB Hi-Fi, automatically obtained the benefit of

a guarantee that the Consumer Goods purchased were of “acceptable quality” within the meaning of section 54(2) of the ACL (the **Statutory Guarantee**).

#### **Particulars**

1. The Statutory Guarantee applied as a matter of law, and provided that the Consumer Goods were of acceptable quality if they were as:
  - (a) fit for all the purposes for which goods of that kind are commonly supplied; and
  - (b) acceptable in appearance and finish; and
  - (c) free from defects; and
  - (d) safe; and
  - (e) durable;as a reasonable consumer fully acquainted with the state and condition of the goods (including any hidden defects of the goods), would regard as acceptable having regard to the matters in subsection 54(3) of the ACL.
7. There was no time limit which applied to the right of the Plaintiff and each Group Member to require JB Hi-Fi to comply with the Statutory Guarantee, provided the conditions in section 259 of the ACL were met.
8. The period of time for which the Statutory Guarantee operated with respect to each of the Consumer Goods purchased from JB Hi-Fi by the Plaintiff and the Group Members was the period which the reasonable consumer would regard as “acceptable” having regard to the matters in subsection 54(3) of the ACL.

#### **Particulars**

1. The matters set out in subsection 54(3) included:
  - (a) the nature of the goods; and
  - (b) the price of the goods (if relevant); and
  - (c) any statements made about the goods on any packaging or label on the goods;
  - (d) any representation made about the goods by JB Hi-Fi or the manufacturer of the goods;
  - (e) any other relevant circumstances relating to the supply of the goods, which included the expected lifespan of the Consumer Goods.
9. The Statutory Guarantee conferred rights on the Plaintiff and the Group Members pursuant to sections 259 to 264 and 266 (inclusive) of the ACL, and those rights included that:
  - (a) The Statutory Guarantee applied to the Consumer Goods, whether or not those Consumer Goods had been purchased by the Plaintiff and the Group Members for business or personal or household purposes;

- (b) If JB Hi-Fi failed to comply with the Statutory Guarantee in relation to the Consumer Goods purchased by the Plaintiff and the Group Members, the Plaintiff and Group Members had the right to take action to require JB Hi-Fi to remedy any failure to comply with the Statutory Guarantee:
- (i) where the failure to comply with the Statutory Guarantee could be remedied and was not a “major failure” (within the meaning of section 260 of the ACL), the Plaintiff and each Group Member could, pursuant to section 259 of the ACL, either:
    - A. require JB Hi-Fi to remedy the failure within a reasonable time; and/or
    - B. if JB Hi-Fi refused or failed to comply within a reasonable time:
      - (a) otherwise have the failure remedied and by action against JB Hi-Fi recover all reasonable costs incurred in having the failure remedied; or
      - (b) (subject to section 262 of the ACL) notify JB Hi-Fi that the Consumer Goods were rejected and the grounds for that rejection; or
  - (ii) Where the failure to comply with the Statutory Guarantee could not be remedied or was a “major failure” (within the meaning of section 260 of the ACL) the Plaintiff and each Group Member could, pursuant to section 259 of the ACL, either:
    - A. (subject to section 262 of the ACL) notify JB Hi-Fi that the Consumer Goods were rejected and of the grounds for that rejection; or
    - B. by action against JB Hi-Fi, recover compensation for any reduction in the value of the Consumer Goods below the price paid or payable for the consumer goods;
  - (iii) By reason of operation of section 261 of the ACL, where the Plaintiff or Group Members required JB Hi-Fi to, within a reasonable time, remedy a failure to comply with the Statutory Guarantee that was not a “major failure” (within the meaning of section 260 of the ACL), JB Hi-Fi could comply with the requirement by repairing the Consumer Goods, or replacing the Consumer Goods with goods of an identical type, or by refunding the money paid for the Consumer Goods;

- (iv) By reason of operation of section 263 of the ACL, where the Plaintiff or Group Members notified JB Hi-Fi that the Consumer Goods were rejected, then the Consumer Goods could be returned to JB Hi-Fi or collected by JB Hi-Fi within a reasonable time and then JB Hi-Fi was required to (at the election of the Plaintiff or Group Members) refund any money paid by them for the Consumer Goods or replace the rejected Consumer Goods with goods of the same type and of a similar value. In that event, JB Hi-Fi had no right to satisfy the “refund” requirement by permitting the Plaintiff or Group Members to acquire other goods from JB Hi-Fi;
- (v) By reason of operation of section 264 of the ACL, if the Consumer Goods were replaced by JB Hi-Fi, the Statutory Guarantee also applied in relation to the replacement consumer goods;
- (c) The Plaintiff and each Group Member had the right, pursuant to section 259(4) of the ACL, to recover damages from JB Hi-Fi for any loss or damage suffered by them because of JB Hi-Fi’s failure to comply with the Statutory Guarantee if that loss or damage, as a result of such a failure, was reasonably foreseeable;
- (d) Pursuant to section 266 of the ACL, the Statutory Guarantee was exercisable against JB Hi-Fi by any Group Member who received Consumer Goods acquired from JB Hi-Fi as a gift, in the same manner as if that Group Member had purchased the Consumer Goods from JB Hi-Fi themselves.

## **C. JB HI-FI EXTENDED WARRANTIES**

### **C.1 Extended Warranties – Introductory Matters**

- 10. During the period 1 January 2011 to 8 December 2023, JB Hi-Fi offered the Extended Warranties for sale to consumers who purchased the Consumer Goods (the **Relevant Period**).
- 11. During the Relevant Period, the Extended Warranties:
  - (a) were agreements, with detailed and complex terms, for protecting against and/or managing the risks of mechanical or electrical failure of the Consumer Goods;
  - (b) had express terms which were set out in brochures supplied to and/or made available to consumers by JB Hi-Fi;



- (c) had express terms which included important exclusions, exceptions and limits to the protections said to be offered by the Extended Warranties, which significantly limited:
  - (i) the circumstances in which the Extended Warranties would respond; and
  - (ii) the manner in which the Extended Warranties would respond, including the circumstances in which replacement consumer goods and / or repair of the Consumer Goods would be made available; and
  - (iii) the time period during which the Extended Warranties would respond.

12. Each of the Extended Warranties was:

- (a) a financial product within the meaning of section 12BAA(1)(b) and (5)(a) of the ASIC Act, because it was a means by which consumers sought to manage the financial consequences to them of particular circumstances occurring;
- (b) upon issue by JB Hi-Fi, a financial service provided by JB Hi-Fi, within the meaning of sections 12BAB(1)(b), (1AA), (7)(b) and (8) of the ASIC Act;
- (c) additionally or alternatively to paragraph 12(b) above, upon JB Hi-Fi arranging for a consumer to apply for or acquire the Extended Warranties, a financial service provided by JB Hi-Fi, within the meaning of sections 12BAB(1)(b), (1AA), (7)(a) and (8) of the ASIC Act;
- (d) supplied by JB Hi-Fi to the Plaintiff and the Group Members and acquired by them in “trade or commerce” within the meaning of section 12BA(1) of the ASIC Act.

13. Alternatively, each of the Extended Warranties:

- (a) was a “service” within the meaning of section 2 of the ACL, being:
  - (i) a right, benefit, privilege or facility that is provided, granted or conferred in trade or commerce (within the meaning of section 2 of the ACL); and/or
  - (ii) a contract for or in relation to the performance of work with the supply of consumer goods;
- (b) additionally or alternatively, was a “product related service” within the meaning of section 2 of the ACL, being:
  - (i) a service for or related to the repair of the consumer goods; and/or
  - (ii) a service otherwise related to the supply of the consumer goods;
- (c) was a service acquired by consumers, within the meaning of section 3(3) of the ACL where the amount paid or payable for the service:

- (i) did not exceed \$40,000 prior to 1 July 2021;
  - (ii) did not exceed \$100,000 from 1 July 2021; and
- (d) was supplied by JB Hi-Fi to the Plaintiff and the Group Members and acquired by them in “trade or commerce” within the meaning of section 2 of the ACL.
14. The Extended Warranties were described by different product names from time to time during the Relevant Period:
- (a) From no later than 1 January 2011 until ~~February 2022~~~~no earlier than 30 December 2013~~, JB Hi-Fi offered for sale in relation to the Consumer Goods a warranty and service product called an Extended Care Plan (the **2011 to 20222013 Extended Care Plan**);
  - ~~(b) Additionally or alternatively, from no later than 1 June 2011 until May 2016, JB Hi-Fi offered for sale in relation to the Consumer Goods a warranty and service product called a Customer Care Plan (the **2011 to 2016 Customer Care Plan**); and~~
  - ~~(c) Between May 2016 and February 2022, JB Hi-Fi offered for sale in relation to the Consumer Goods a warranty and service product called an Extended Care Plan (the **2016 to 2022 Extended Care Plan**); and~~
  - ~~(d) Between February 2022 and the date of filing, JB Hi-Fi offered for sale in relation to the Consumer Goods a warranty and service product called an Extra Care Plan (the **Current Extra Care Plan**)~~
- (together, the 2011 to ~~2022~~2013 Extended Care Plan, ~~2011 to 2016 Customer Care Plan~~, ~~the 2016 to 2022 Extended Care Plan~~ and the Current Extra Care Plan are the **Extended Warranties**).

#### Particulars

- 1. The website maintained by JB Hi-Fi during the period from at least 1 January 2011 to at least 30 December 2013 offered a JB Hi-Fi Extended Warranty called the “JB Hi-Fi Extended Care Plan” or “Warranty Extension”. The terms of the 2011 to ~~2022~~2013 Extended Care Plan were set out in a brochure available upon request by way of email to [orders@jbhifionline.com.au](mailto:orders@jbhifionline.com.au). The Plaintiff infers that the terms that were available if a request was made from at least 1 January 2011 to ~~about July~~31 May 2011 were consistent with the terms in the ~~2009 Brochure~~2011 to 2016 Customer Care Plan.
  - 2. Further particulars will be provided after discovery, interrogatories, and evidence.
15. The terms of the Extended Warranties were set out in brochures known by different names from time to time during the Relevant Period:

- ~~(a) The terms of the 2011 to 2016 Customer Care Plan were set out in a document dated “Effective 1 June 2011” and titled “Customer Care Plan” or in a similar document during the period 1 January 2011 to about May 2016 (**2011 Brochure**).~~
- (~~a~~) The terms of the ~~2011~~2016 to 2022 Extended Care Plan were:
- (i) from 1 January 2011 to about July 2011, set out in a document titled “Enjoy... Extended Care Plan” and dated 2009 (**2009 Brochure**);
  - (ii) from about July 2011 to about 1 May 2012, set out in a document titled “Enjoy... Extended Care JB Hi-Fi July 2011” (**2011 Brochure**);
  - (iii) from about 1 May 2012 to about February 2014, set out in a document titled “JB Hi-Fi Extended Care Plan Enjoy Effective 1 May 2012” (**2012 Brochure**);
  - (iv) from about February 2014 to about July 2014 set out in a document titled “Enjoy... Extended Care JB Hi-Fi February 2014” (**February 2014 Brochure**);
  - (v) from about July 2014 to about January 2016, set out in a document titled “Enjoy... Extended Care JB Hi-Fi July 2014” (**July 2014 Brochure**);
  - (vi) from about January 2016 to about May 2016, set out in a document titled “Enjoy... Extended Care JB Hi-Fi January 2016” (**January 2016 Brochure**);
  - (~~i-vii~~) from about May 2016 to about ~~August 2017~~October 2018, set out in a document titled “Enjoy... Extended Care JB Hi-Fi May 2016” (**May 2016 Brochure**);
  - (~~viii~~) from about August 2017 to about February 2018, set out in a document titled “Enjoy... Extended Care JB Hi-Fi August 2017” (**2017 Brochure**);
  - (~~ix~~) from about February 2018 to about October 2018, set out in a document titled “Extended Care JB Hi-Fi February 2018” (**February 2018 Brochure**);
  - (~~ii-x~~) from about October 2018 to about ~~October 2020~~August 2021, set out in a document titled “Extended Care JB Hi-Fi October 2018” (**October 2018 Brochure**);
  - (~~xi~~) from about October 2020 to about August 2021, set out in a document titled “Extended Care JB Hi-Fi October 2020” (**2020 Brochure**); and
  - (~~iii-xii~~) from about August 2021 to about February 2022, set out in a document

titled “Extended Care JB Hi-Fi August 2021” (**2021 Brochure**);

(b) The terms of the Current Extra Care Plan were:

(i) from about February 2022 to about October 2023, set out in a document titled “JB Hi-Fi Extra Care February 2022” (2022 Brochure); and

(ii) from about October 2023 to the date of filing, set out in a document titled “JB Hi-Fi Extra Care October 2023” (2023 Brochure).

(together the 2009 Brochure, 2011 Brochure, 2012 Brochure, February 2014 Brochure, July 2014 Brochure, January 2016 Brochure, May 2016 Brochure, 2017 Brochure, February 2018 Brochure, October 2018 Brochure, 2020 Brochure, 2021 Brochure, 2022 Brochure and 2023 Brochure are the **Extended Warranty Brochures**).

16. The 2011 to ~~2022~~<sup>2023</sup> Extended Care Plan was described on the JB Hi-Fi website during the period from at least 1 January 2011 to at least 30 December 2013, as comprising a warranty extension plan, which was expressed to operate for different periods of time in accordance with the type and price of the Consumer Goods purchased.

17. The Extended Warranties were described in the Extended Warranty Brochures as comprising a Replacement Cover Plan and a Repair Cover Plan, each of which was expressed to operate for different periods of time and in accordance with different exclusions applicable to each of the Replacement Cover Plan and a Repair Cover Plan.

18. The express terms of the Extended Warranties offered by JB Hi-Fi during the Relevant Period included that:

(a) the Extended Warranties:

(i) applied only to Consumer Goods purchased for domestic use;

(ii) applied only to the Consumer Goods described in the purchase receipt and/or tax invoice (**Original Product**);

(iii) did not apply “to the extent that” the Original Product was otherwise covered under either a ~~m~~Manufacturer’s ~~w~~Warranty or (for all of the Extended Warranty Brochures other than the 2009 Brochure, the 2011 Brochure and the 2012 Brochure) a so-called JB Hi-Fi Voluntary Warranty;

(iv) limited the maximum amount payable thereunder to the purchase price of the Original Product;

(v) applied only to electrical or battery operated Consumer Goods;

- (vi) applied only to mechanical or electrical failure of the Original Product, which was defined as a sudden or unforeseen failure arising from a mechanical or electrical fault including as a result of normal wear or tear and normal deterioration (but excluding where the failure is the result of external influences such as physical impact, electrical surge, or liquid penetration);
- (b) there were numerous exceptions to the operation of the Extended Warranties including:
  - (i) (for all Extended Warranty Brochures other than the 2022 Brochure and the 2023 Brochure) the adoption of any exclusions outlined in the manufacturer's warranty, which was defined as any express warranty given by the manufacturer for a specific period of time after purchase, other than any consumer guarantees under the ACL;
  - (ia) (for the 2022 Brochure and the 2023 Brochure), faults caused by failure to follow the manufacturer's instructions for usage, installation, operation or maintenance;
  - (ii) defects or design faults that were covered by the manufacturer or distributor, whether or not through the process of a product recall;
  - (iii) unauthorised repairs;
  - (iv) mechanical or electrical failures caused by:
    - A. rust or corrosion;
    - B. liquid penetration;
    - C. cosmetic damage;
    - D. accidental damages from any cause;
    - E. accidental misuse, deliberate misuse or unauthorised alterations;
    - F. negligence;
    - G. infestations of vermin, pests of insects;

(v) repairs to any consumables, including but not limited to batteries, fuses, filters, bulbs or lamps;

(vi) (for all Extended Warranty Brochures other than the 2022 Brochure and the 2023 Brochure) excluded cover for all consequential losses of any type and damage to other goods or property:

including:

A. repairs to software, data, or removable data mediums caused by the mechanical or electrical failures; ~~and~~

~~B. (for all Extended Warranty Brochures other than the 2022 Brochure) damage to other goods or property;~~

except for:

~~C.~~B. if the Original Product was a clothes washer or clothes dryer: up to \$200 (inclusive of GST) for laundry costs as a result of a mechanical or electrical defect which rendered the washer or dryer inoperable for a period of greater than 7 working days, conditional on receipts for laundry costs being submitted to support the claim (until February 2022, when the amount was reduced to \$100).

~~D.~~C. if the Original Product was a fridge or freezer: up to \$200 (inclusive of GST) for food spoiled "as a result of a mechanical or electrical defect" (until February 2022, when the amount was reduced to \$100).

(vii) (for the 2022 Brochure and the 2023 Brochure), excluded cover for specified costs, loss, consequential loss, and damage.

(c) ~~From about May 2016 onward,~~ the Replacement Cover Plans ended upon the first replacement of the Original Product or application by JB Hi-Fi of an alternative remedy provided for in the Replacement Cover Plans.

(d) ~~F~~rom about February 2014 to about January 2016, Replacement Cover Plans were only available on products with a maximum purchase price of \$500, and from about January ~~May~~ 2016 onward, Replacement Cover Plans were only available on products with a maximum purchase price of \$1,000.

#### **Particulars**

1. The terms of the Extended Warranty Brochures.

2. The Plaintiff infers that the terms that were available to a consumer if a request was made in the period from at least 1 January 2011 to 31 May 2011, were consistent with the terms in the 200944 Brochure.
3. Further particulars will be provided after discovery, interrogatories and evidence.

18A. There were fundamental terms of the Extended Warranties, which included:

- (a) an implied term that the Extended Warranties possessed a material value to the consumer; and/or
- (b) express terms that the Extended Warranties operated for a period of time longer than the Statutory Guarantee and/or provided additional benefits which were not available under the Statutory Guarantee; and/or
- (c) implied terms that the Extended Warranties operated for a period of time longer than the Statutory Guarantee and/or provided additional benefits which were not available under the Statutory Guarantee; and/or
- (d) an implied term that the Extended Warranties were reasonably fit for purpose, such purpose being to provide to the consumer a warranty which operated for a period of time longer than the Statutory Guarantee and/or to provide additional benefits which were not available under the Statutory Guarantee; and/or
- (e) an implied term that the Extended Warranties would be of such a nature and quality, state or condition that they might reasonably be expected to achieve the result that the consumer wished the Extended Warranties to achieve, being that it was a warranty that would:
  - (i) extend beyond the period of cover provided by the Statutory Guarantee;
  - (ii) provide benefits additional to those provided by the Statutory Guarantee; and/or
  - (iii) possess a material value.

Particulars

1. In relation to the implied fundamental term pleaded at 18A(a), reference is made to paragraphs 18, 19, 20(b), 20(d) and 20A and the particulars thereto.
2. In relation to the express fundamental terms pleaded at 18A(b), reference is made to paragraphs 18, 19, 20(a), 20(c), 21, 22 and 23 and the particulars thereto.
3. In relation to the implied fundamental terms pleaded at 18A(c), reference is made to paragraphs 18, 19, 20(b), 20(d) and 20A and the particulars thereto.
4. In relation to the implied fundamental terms pleaded at 18A(d) & (e), reference is made to paragraph 13 above, and to the circumstance that the term is implied by law

by reason of the application of section 61(1) & (2) of the ACL. and section 12ED of the ASIC Act.

19. The period of cover for which the Extended Warranties operated was:
- (a) limited to a maximum period of cover; and
  - (b) the maximum period of cover was different according to the type of Consumer Goods and/or price paid for the Consumer Goods.

#### **Particulars**

1. The maximum period of cover of the Extended Warranties applicable to the Consumer Goods could differ according to:
  - (a) the type or price of Consumer Goods;
  - (b) whether the Extended Warranty provided repair or replacement cover; and
  - (c) according to the duration of a manufacturer's warranty or the duration of the alleged JB Hi-Fi Minimum Voluntary Warranty Policy.
2. The period of cover under each of the Extended Warranties applicable to the Consumer Goods during the period January 2011 to date is set out in the tables at Schedule 1 to this pleading (to the best of the Plaintiff's current knowledge at the date of filing).

#### Replacement Cover Plans

3. The period of time for which Replacement Cover Plans operated:
  - (a) was never greater than a 4 year period commencing on the date on which the Consumer Goods were purchased, and in most cases less than 4 years; and
  - (b) between about ~~July~~June 2011 to April 2016, was expressed to operate from the expiry of any applicable express warranty given by the manufacturer of the Consumer Goods for a maximum period set out in the tables at Schedule 1 to this pleading (to the best of the Plaintiff's current knowledge at the date of filing);
  - (c) between about May 2016 and January 2022, was expressed to operate from the expiry of any applicable express warranty given by the manufacturer of the Consumer Goods or 12 months from the date the Consumer Goods were purchased (whichever was latest), until a maximum of 4 years from the date of purchase; and
  - (d) from about February 2022 onward, was expressed to operate from 12 months from the date the Consumer Goods were purchased/delivered until a maximum of 3 years from the date of purchase/delivery.

#### Repair Cover Plans

4. The period of time for which Repair Cover Plans operated:
  - (a) Was never greater than a 6 year period for all Consumer Goods other than air conditioners, or 7 years for air conditioners, commencing on the date on which the Consumer Goods were purchased, and often for a shorter period of time; and
  - (b) between about January 2011 to May 2011, was expressed to operate until a maximum of 5 years for all Consumer Goods.
  - (c) between about ~~July~~June 2011 to April 2016, was expressed to operate from the expiry of any applicable express warranty given by the



manufacturer of the Consumer Goods for a maximum period set out in the tables at Schedule 1 to this pleading (to the best of the Plaintiff's current knowledge at the date of filing).

- (d) between about May 2016 and July 2021, was expressed to operate from the expiry of either any applicable express warranty given by the manufacturer of the Consumer Goods or the applicable so called "JB Hi-Fi Minimum Voluntary Warranty Period" as identified in the relevant Extended Warranty Brochure (whichever was latest) until a maximum of:
    - (i) for all Consumer Goods except for whitegoods as defined in the relevant Extended Warranty Brochure (**Whitegoods**): 5.5 years from the date of purchase;
    - (ii) for Whitegoods: 6 years from the date of purchase.
  - (e) between about August 2021 and January 2022 was expressed to operate from the expiry of either any applicable express warranty given by the manufacturer of the Consumer Goods covered or the applicable so called "JB Hi-Fi Minimum Voluntary Warranty Period" as identified in the relevant Extended Warranty Brochure whichever was latest) until a maximum of:
    - (i) for all Consumer Goods except for Whitegoods: 5.5 years from the date of purchase;
    - (ii) for Whitegoods: 5 years from the date of purchase if the purchase price was \$500 or less, otherwise 6 years from the date of purchase; and
  - (f) from about February 2022 onward was expressed to operate from the expiry of either any applicable express warranty given by the manufacturer of the Consumer Goods or the applicable so called "JB Hi-Fi Minimum Voluntary Warranty Period" as identified in the relevant Extended Warranty Brochure (whichever was latest) until a maximum of 5 years after the date of purchase/delivery.
5. Further particulars will be provided after discovery, interrogatories, and evidence.

## **C.2 Representations in the Extended Warranties Brochures**

20. Each of the Extended Warranty Brochures contained or made:

- (a) express representations that the Extended Warranty provided a warranty in relation to the Consumer Goods which operated for a period of time which was longer than the period of time applicable to the Consumer Goods under the Statutory Guarantee; and
- (b) implied representations that the Extended Warranty provided a warranty in relation to the Consumer Goods which operated for a period of time which was longer than the period of time applicable to the Consumer Goods under the Statutory Guarantee;
- (c) alternatively, express representations that JB Hi-Fi held the opinion based on reasonable grounds that the Extended Warranty provided a warranty in relation to the Consumer Goods which operated for a period of time which was longer than

the period of time applicable to the Consumer Goods under the Statutory Guarantee; and/or (in circumstances where JB Hi-Fi did not have reasonable grounds for that opinion for the reasons alleged at paragraphs 26, 27 and 58);

- (d) alternatively, implied representations that JB Hi-Fi held the opinion based on reasonable grounds that the Extended Warranty provided a warranty in relation to the Consumer Goods which operated for a period of time which was longer than the period of time applicable to the Consumer Goods under the Statutory Guarantee. (in circumstances where JB Hi-Fi did not have reasonable grounds for that opinion for the reasons alleged at paragraphs 26, 27 and 58)

20A. Each of the express and implied representations of opinion pleaded in subparagraphs 20 (c) and (d) above was accompanied in each case by an implied representation that JB Hi-Fi held the opinion represented on reasonable grounds, in circumstances where JB Hi-Fi did not have reasonable grounds for that opinion for the reasons alleged at paragraphs 26, 27 and 58.

(together the representations in paragraphs 20 and 20A above are the Brochure Longer Cover Representations).

#### **Particulars to paragraphs 20 and 20A**

1. As to the express representations, the Extended Warranty Brochures contained statements that the Extended Warranty was “additional to”; “in addition to”; “for a longer period than”; and “beyond” the period of time applicable under the ACL and / or under the so called “JB Hi-Fi Voluntary Warranty”, and/or under the manufacturer’s warranty.

1a. The 2009 Brochure stated that:

***“JB Hi-Fi Extended Care gives you a whole lot more than some ordinary extended warranty. It provides you with peace of mind in covering a wider range of circumstances that can affect the enjoyment of your investment. This Extended Warranty Plan applies in addition to any existing warranty included in the Original Purchase Price for Your Product or insurance applicable and all other warranties or guarantees expressed or implied by mandatory provisions of law.”***  
**[emphasis added]**

1b. The 2011 Brochure stated that:

“Over time:

- ***your manufacturer's warranty will expire and your protection and rights under the ACL reduce and eventually expire as more time passes since you purchased the goods; and***
- ***the probability of inherent defects causing failure reduces and the probability of wear and tear causing failure increases. Unless the failure has occurred because the goods were not of acceptable durability, the ACL does not entitle you to a remedy for problems arising solely as a result of wear and tear. Most manufacturer's warranties provide you with additional protection where faults arise as a result of reasonable wear and tear.***

JB Hi-Fi Extended Care provides customers who purchase our goods with additional protection and peace of mind for mechanical or electrical failure:

- **arising after your manufacturer's warranty has expired and for a longer period than your ACL rights are likely to provide protection; and**
- **resulting from reasonable wear and tear after the manufacturer's warranty has expired where the ACL does not provide a remedy because the goods are still of acceptable durability.** [emphasis added]

2. The 2011 Brochure and the 2012 Brochure stated that:

*"This ~~Extended Care Agreement~~Customer Care Plan provides some benefits which are **additional** to Your ACL rights, however some of the benefits may overlap with your ACL rights. ... This ~~Extended Care Agreement~~Customer Care Plan applies **in addition to any existing warranty** included in the Original Purchase Price for Your Products or insurance applicable and all other warranties or guarantees expressed or implied by mandatory provisions of law."* [emphasis added]

3. Each of the February 2014 Brochure, July 2014 Brochure, January 2016 Brochure, May 2016 Brochure, 2017 Brochure, February 2018 Brochure, October 2018 Brochure, 2020 Brochure and 2021 Brochure stated that:

*"**In addition to your JB Hi-Fi Voluntary Warranty, JB Hi-Fi wants to ensure that you can enjoy many years of trouble free ownership of your purchase for a longer period than your ACL rights are likely to provide**, which is why JB Hi-Fi is delighted to offer JB Hi-Fi Extended Care. [emphasis added]"*

3a. Further, each of the May 2016 Brochure, 2017 Brochure, February 2018 Brochure, October 2018 Brochure, 2020 Brochure and 2021 Brochure stated:-----

*How long does the protection against defects last ?*

*Benefits of the Extended Care Repair Cover Plan:*

- *The number of years (**beyond** the manufacturer's warranty and the JB Hi-Fi Voluntary Warranty Period) shown in row E of the table on the back of this brochure" [emphasis added]*

*Benefits of the Extended Care Replacement Cover Plan:*

- *The number of years (**beyond** the first 12 months from the date of purchase, or the expiry of the manufacturer's warranty if the manufacturer's warranty is for longer than 12 months) shown in row E of the table on the back of this brochure"*

4. The 2022 Brochure and 2023 Brochure stated that:

*"**In addition to your JB Hi-Fi Voluntary Warranty, JB Hi-Fi wants to ensure that you can enjoy peace of mind on your purchase for a longer period than your ACL rights are likely to provide**, which is why JB Hi-Fi is delighted to offer JB Hi-Fi Extra Care". [emphasis added]*

....

*How long does the protection against defects last ?*

*Benefits of JB Hi-Fi Extra Care Replacement Cover Plan:*

- *The period commencing on the date which is 12 months after the date of purchase and ending on the date which is 3 years after the date of purchase.*

*Benefits of JB Hi-Fi Extra Care Repair Cover Plan:*

- *The period commencing on the later of the expiry of the manufacturer's warranty and the JB Hi-Fi Voluntary Warranty Period and ending on the date which is 5 years after the date of purchase. " [emphasis added]*

5. As to the implied representations, the Extended Warranty Brochures by their titles and by their reference to products or services called Extended Care Repair Cover or Extra Repair Cover and Extended Care Replacement Cover or Extra Replacement Cover, impliedly represented that the Extended Warranty provided a period of cover and benefits which were "Extended" or "Extra" when compared with the period of time applicable and the benefits available under the ACL and / or under the so called "JB Hi-Fi Voluntary Warranty".
6. Alternatively, as to the express and implied representations of opinion pleaded in paragraphs 20(c) and (d) and 20A, the use of the phrase and its variants, "for a longer period than your ACL rights are likely to provide" represented that JB Hi Fi held the opinion that the Extended Warranties offered cover for a longer period than the Statutory Guarantee.
7. As to the implied representations that the opinions represented by JB Hi-Fi were held by it on reasonable grounds, each of the February 2014 Brochure, July 2014 Brochure, January 2016 Brochure, May 2016 Brochure, 2017 Brochure, February 2018 Brochure, October 2018 Brochure, 2020 Brochure, 2021 Brochure, 2022 Brochure and 2023 Brochure included a page with a table purporting to identify the:
  - (i) Original Purchase date;
  - (ii) Manufacturer Warranty expiry date;
  - (iii) JB Hi-Fi Minimum Voluntary Warranty expiry date;
  - (iv) Extended/Extra Care Cover commencement date;
  - (v) (for all Extended Warranty Brochures other than the 2022 Brochure and the 2023 Brochure) Extended Care Period; and
  - (vi) Extended/Extra Care Cover expiry date;

together with a "declaration" to be signed by the consumer and the JB Hi-Fi sales person (the **Declaration**).
8. The inclusion of the Declaration in each iteration of the Brochure which contained the Declaration conveyed to the consumer that the opinions expressed therein were being represented by JB Hi-Fi on an occasion of formality and seriousness, and that those opinions were reliable.
9. The express and implied representations of opinion were contained in formal documents where there was an obvious information asymmetry about an important risk and expressed in a manner which conveyed to the consumer that JB Hi-Fi's opinion was a settled, considered and approved position of JB Hi-Fi.
10. The express and implied representations of opinion were expressed in a manner which was emphatic rather than tentative and:
  - a. were not qualified by any direction or recommendation which notified the consumer that JB Hi-Fi had no basis for its otherwise unqualified claim that the Extended Warranties operated for an extended period of time; and

- b. prior to 2017, were not qualified by any direction or recommendation that the consumer obtain their own advice in relation to the operation of the Statutory Guarantee or the Extended Warranties.
  - 11. The consumer reading the Brochures would have reasonably understood that JB Hi-Fi had reasonable grounds for expressing the opinions stated therein, for reasons including the information asymmetry referred to above and JB Hi-Fi's capacity as a large national retailer (and a wholly owned subsidiary of a publicly listed company) to obtain its own legal and other advice about the matter in relation to which it was expressing an opinion.
21. Each of the Extended Warranty Brochures contained express representations that the Extended Warranty provided additional benefits which were not available under the Statutory Guarantee, including the benefits that:
- (a) the Extended Warranty provided for certainty as to the exact period of cover; and
  - (b) the Extended Warranty provided for the convenience of having experienced operational and technical staff to manage the repair and/or replacement process; and
  - (c) the Extended Warranty provided a specified 30 days for repair time guarantee other than the 2022 Brochure and 2023 Brochure, which specified 10 business days; and
  - (d) the Extended Warranty included the availability of a loan product (other than in respect of the period from February 2022 onwards, when this ceased to be a term of the Extended Warranty); and
  - (e) the Extended Warranty included Toll Free technical assistance.
22. Each of the May 2016 Brochure, the 2017 Brochure, the February 2018 Brochure, the October 2018 Brochure, the 2020 Brochure, the 2021 Brochure, and the 2022 Brochure and the 2023 Brochure contained a table purporting to compare the rights and remedies under the Statutory Guarantee with the “benefits of” the Extended Warranties (the **comparison table**);

#### Particulars

- 1. The comparison table purported to describe the following as benefits of the Extended Care and Extra Care Repair Plans and as benefits of the Extended Care and Extra Care Replacement Plans when compared with the Statutory Guarantee:
  - (a) protection against mechanical and electrical failure;
  - (b) “automatic replacement” with a new replacement product;
  - (c) JB Hi-Fi was obliged (via the JB Hi-Fi Extra Care Administrator) to provide the remedy for defective products;
  - (d) the provision of technical assistance in the form of a Helpline;

- (e) a loan product provided if the repair takes longer than 10 days (until February 2022 when this ceased to be a term of the Extended Warranties);
- (f) replacement of the Consumer Goods in circumstances where the repair took more than 30 days (until February 2022, when this period of time was altered to refer to repairs taking more than 10 business days “from the date of assessment”);
- (g) the Repair Cover Plans applied to any repaired product for the remainder of the JB Hi-Fi Extended Care or JB Hi-Fi Extra Care period of warranty (but new replacement Consumer Goods were not covered by the Extended Warranties);
- (h) compensation of up to \$200 for “Food Spoilage” caused by the failure of a fridge or freezer (until February 2022, when the amount was reduced to \$100);
- (i) compensation of up to \$200 (until February 2022, when the amount was reduced to \$100) for “Laundry Costs” when washing machines and dryers required repair and the repair took more than 7 days (until February 2022, when this period was extended to 10 days).

(together, the representations in paragraphs 21 and 22 are the **Brochure Additional Benefits Representations**).

23. The comparison table did not include important information about the additional benefits of the Statutory Guarantee when compared to the Extended Warranties.

#### **Particulars**

1. The comparison table failed to identify certain benefits of the Statutory Guarantee which were not part of the Extended Warranties such as:
  - (a) cover for Consumer Goods used for business or commercial purposes, unlike the Extended Warranties which are confined to Consumer Goods purchased for household use;
  - (b) cover for defects other than electrical or mechanical failure;
  - (c) the right of the purchaser to choose the remedy in certain circumstances, rather than the remedy being at the discretion of JB Hi-Fi;
  - (d) that where the Consumer Goods were replaced in certain circumstances, the replacement goods were required to be of an identical type;
  - (e) that where the Consumer Goods were replaced in certain circumstances, the replacement goods were required to be the same type and of similar value if such goods were reasonably available to JB Hi-Fi;
  - (f) the right to be refunded any monetary value the consumer had paid for the Consumer Goods in certain circumstances and the fact that the Statutory Guarantee did not permit the use of store credits to satisfy that obligation;
  - (g) the right to recover compensation from JB Hi-Fi for any reduction in the value of the Consumer Goods to below the price paid for them in certain circumstances;
  - (h) the right to obtain compensation for consequential losses and costs incurred by reason of any failure by JB Hi-Fi to comply with the

Statutory Guarantee if that loss or damage was reasonably foreseeable;

- (i) the right to have the failure remedied by means other than through JB Hi-Fi and to recover from JB Hi-Fi all reasonable costs incurred by the consumer in having the failure so remedied;
- (j) that the rights under the Statutory Guarantee passed to any person to whom the Consumer Goods were given by the consumer as a gift, without the need to notify the administrator of the Extended Warranties within a fixed time period after they did so.

24. Each of the Extended Warranty Brochures stated that the Extended Warranties were subject to a 15 day cooling off or “free look” period with respect to the purchase of the Extended Warranty, during which the purchase could be cancelled.
25. Each of the February 2014 Brochure, the July 2014 Brochure, January 2016 Brochure, the May 2016 Brochure, the 2017 Brochure, the February 2018 Brochure, the October 2018 Brochure, the 2020 Brochure, the 2021 Brochure, ~~and~~ the 2022 Brochure and the 2023 Brochure purported that provided free of charge with each purchase of Consumer Goods was a so-called JB Hi-Fi Voluntary Warranty which, by its language, implied the conferral by JB Hi-Fi on the consumer of a benefit.

#### Particulars

1. The Plaintiff refers to and repeats particulars 1, 3, 3a, 4, ~~and~~ 5 and 7 to paragraph 20A above.
2. The terms of the so called JB Hi-Fi Voluntary Warranty appear to have been set out from time to time in the period from at least February 2014 to the present, in a separate brochure as follows:
  - (a) From January 2011 to about December 2013, in a document entitled “Consumer Guarantees Consumer Electronic Devices & Home Entertainment Products” also referred to as the “Voluntary Warranty Guide January 2011”;
  - (b) From about December 2013 to about February 2014, in a document entitled “Consumer Guarantees Consumer Electronic Devices, Home Appliances & Home Entertainment Products” also referred to as the “Voluntary Warranty Guide December 2013”;
  - (c) From February 2014 to about July 2014, in a document entitled “Consumer Guarantees Consumer Electronic Devices, Home Appliances & Home Entertainment Products” also referred to as the “JB Hi-Fi Voluntary Warranty Guide February 2014”;
  - (d) From July 2014 to about January 2018, in a document entitled “Refunds & Warranties Consumer Electronic Devices, Home Appliances & Home Entertainment Products” also referred to as the “JB Hi-Fi Voluntary Warranty Guide July 2014 v 2”;
  - (e) From January 2018 to the date of filing, in a document entitled “Refunds & Warranties Consumer Electronic Devices, Home Appliances & Home Entertainment Products” also referred to as the “JB Hi-Fi Voluntary Warranty Guide Jan 2018”.
3. The Plaintiff does not know if or how the documents identified in particular (2) were provided to the Group Members save that for persons

purchasing online in the period from at least August 2022, the document identified in particular (2)(e) was made available in the manner pleaded at paragraph 31(c)(v) below.

4. Further particulars will be provided after discovery, interrogatories and evidence.

#### **D. THE TRUE POSITION: LACK OF MATERIAL VALUE OF THE EXTENDED WARRANTIES**

26. During the Relevant Period, the true position was that the Extended Warranties were of little or negligible value to the Plaintiff and Group Members because:

- (a) the period of cover of the Extended Warranties substantially or wholly overlapped with the period of cover which automatically applied by reason of the Statutory Guarantee; and
- (b) the benefits which applied under the Extended Warranty substantially or wholly overlapped with the benefits which automatically applied by reason of the Statutory Guarantee.

#### **Particulars**

1. The relevant benefits which automatically applied by reason of the Statutory Guarantee, including the period of cover, are set out at paragraphs 6 - 9 of this Statement of Claim.
2. The relevant benefits which applied under the Extended Warranty, including the period of cover, are set out at paragraphs 18, 18A, 19, 21, 22, 23 and Schedule 1 of this Statement of Claim.
3. With respect to the overlap between the benefits which applied under the Extended Warranty and the benefits which automatically applied by reason of the Statutory Guarantee, the Plaintiff refers to and repeats paragraph 61 of this Statement of Claim.

27. During the Relevant Period, the true position was that the so-called JB Hi-Fi Voluntary Warranty was of no substance or value to the Plaintiff and Group Members given the period of cover and benefits which automatically applied by reason of the Statutory Guarantee.

#### **E. EXTENDED WARRANTIES SALE PROCESS AND OTHER REPRESENTATIONS**

##### **E.1 Circumstances of the in person sales and relevant representations**

28. During the Relevant Period, the purchase of the Extended Warranties in connection with the purchase of Consumer Goods in a JB Hi-Fi store occurred in circumstances where the system or process was as follows:



- (a) the consumer was considering a purchase of Consumer Goods and attended a JB Hi-Fi store for that purpose;
- (b) the consumer while at the JB Hi-Fi Store decided to purchase Consumer Goods;
- (c) a JB Hi-Fi sales person recommended to the consumer that they purchase an Extended Warranty in connection with the purchase of the Consumer Goods;
- (d) the JB Hi-Fi sales person did not explain, or did not fully or accurately explain, the operation of, and rights automatically conferred by, the Statutory Guarantee;
- (e) the sales person usually did not provide the consumer with a copy of the Extended Warranty Brochure until shortly before, during or after the purchase of the Extended Warranties (and in some cases supplied the Extended Warranty Brochure by email after the consumer had left the store);
- (f) the consumers described in paragraph 28(e) above ~~was~~ not given a meaningful opportunity to read and consider the contents of the Extended Warranty Brochure prior to paying for the Extended Warranty;
- (g) on some occasions other than those described in paragraphs 28(e) above and 28(h) below, the sales person showed pages of the Extended Warranty Brochure to the consumer in a manner which permitted the consumer to read at least the prominent parts of the Extended Warranty Brochure and / or the sales person read out to the consumer or summarised for the consumer parts of the Extended Warranty Brochure prior to the consumer purchasing an Extended Warranty;
- (h) on some occasions other than those described in paragraph 28(e) and 28(g) above, the sales person provided the consumer with a copy of the Extended Warranty Brochure and the consumer read the Extended Warranty Brochure prior to the consumer purchasing an Extended Warranty;
- (i) some of the consumers described in each of paragraphs 28(e), 28(g) and 28(h) above read the Extended Warranty Brochure or read additional parts of the Extended Warranty Brochure after purchasing an Extended Warranty;
- (g j) the Extended Warranty Brochure contained in a prominent position in the document:
  - (i) the Brochure Longer Cover Representation, pleaded and particularised above at paragraph 20, including the Declaration;

- (ii) the Brochure Additional Benefits Representations pleaded and particularised above at paragraphs 21 and 22, including the comparison table;

(together, these are the **prominent parts** of the Extended Warranty Brochure);

- (h k) the Extended Warranty Brochure contained the cooling off period and refund terms pleaded at paragraph 24, but the text in relation to the 15 day cooling off or free look period was not prominent, and was located towards the end of the document, near the definition section; and
- (i l) the Extended Warranty Brochure did not contain reference to the additional benefits of the Statutory Guarantee pleaded above at paragraph 23.

29. During the Relevant Period, on each occasion during which the consumer purchased an Extended Warranty in person at a JB Hi-Fi store, a sales person on behalf of JB Hi-Fi impliedly represented that the Extended Warranties:

- (a) operated longer than any other warranty to which the consumer was automatically entitled (**In Store Longer Cover Representation**); and/or
- (b) possessed a material value to the consumer, such that a prudent consumer would rationally purchase the Extended Warranties (**In Store Material Value Representation**);

#### Particulars

1. By recommending a product called an "Extended Warranty" with product names which were, from time to time, "JB Hi-Fi Extended Care Repair Cover", "JB Hi-Fi Extended Care Replacement Cover", "JB Hi-Fi Extra Care Repair Cover", "JB Hi-Fi Extra Care Replacement Cover", the sales persons impliedly represented that the warranty being offered for sale possessed attributes which rendered it something which was "extended" or "extra" including that it:
  - (a) was a warranty with a duration that was "extended" or longer or in addition to and when compared with each of the Statutory Guarantee, the manufacturer's warranty and the JB Hi-Fi Voluntary Warranty; and
  - (b) provided a benefit or benefits to the consumer which were "extra" and therefore different from and additional to the benefits which automatically operated in favour of the consumer under the Statutory Guarantee, the manufacturer's warranty and the JB Hi-Fi Voluntary Warranty;
  - (c) was a product which possessed an ascertainable material value worth the price the consumer paid for it.
2. The implied representations were made orally and/or in writing and arose from the circumstances of the In Store sales pleaded above at paragraph 28.

(Paragraphs 28 and 29 together are the **In Store Sales Process**)

## E.2 Circumstances of the online sales and relevant representations

30. From 1 January 2011 until at least 30 December 2013, the purchase of the Extended Warranties in connection with the purchase of Consumer Goods online from the JB Hi-Fi website occurred in circumstances where:

- (a) when the consumer viewed the Consumer Goods on the JB Hi-Fi website, an option appeared on the website page as a “Suggested Product Options – Warranty” which listed alternative available Extended Warranties as a separate product;
- (b) alternatively, when the consumer viewed the Consumer Goods on the JB Hi-Fi website, the Extended Warranties appeared on the website page under sections of the website page titled “related offer” or “related product” or “also viewed”;
- (c) the terms and conditions for the Extended Warranties were not available on the JB Hi-Fi website;
- (d) the terms and conditions for the Extended Warranties were only available upon request by email to [orders@jbhifionline.com.au](mailto:orders@jbhifionline.com.au);
- (e) if the Extended Warranty product was selected, the consumer was redirected to a separate product page for the Extended Warranty, in which the text stated the following:
  - (i) *“Enjoy your new purchase even more knowing that your valuable investment is 100% protected”;*
  - (ii) *“It’s more than a warranty. JB Hi-Fi Extended Care gives you a whole lot more than some ordinary extended warranty. It provides you with peace of mind in covering a wider range of circumstances that can affect your enjoyment of your investment.”;*
  - (iii) *“No lemon guarantee. No one wants a lemon product. JB Hi-Fi Extended Care will replace it if it fails over and over again.”;*
  - (iv) *“If you have a claim before the manufacturer’s warranty has expired, you will need to contact the manufacturer directly...If you have a claim after the manufacturer’s warranty has expired and you have purchased a JB Hi-Fi Extended Care Plan, please contact the JB Hi-Fi Warranty Helpline....”;*
  - (v) *“No excess charges\*....Your product protection has no hidden extra costs or no excess charges for any repairs.*

*Parts, labour and service\*.... You have no out-of-pocket expenses for the life of your JB Hi-Fi Extended Care Plan....*

*\*Please refer to the extended warranty contract for full disclosure of the terms and conditions”;*

(vi) *“Note that a maximum of 5 year cover applies (including manufacturer’s warranty period) to any product”;*

(vii) *“For further details and Terms & Conditions of the JB Hi-Fi Extended Care Plan, please email [orders@jbhifionline.com.au](mailto:orders@jbhifionline.com.au) for a brochure”;*

(f) The consumer was then prompted to complete the purchase by either viewing their “cart” or going to “check out”.

31. Between a date not presently known to the Plaintiff (but which was no later than August 2022) and the date of filing, the purchase of the Extended Warranties in connection with the purchase of Consumer Goods online from the JB Hi-Fi website occurred in circumstances where:

(a) when the consumer viewed the Consumer Goods on the JB Hi-Fi website, an option appeared on the website page which stated: “Add Extended Warranty”;

(b) alternatively, when the consumer added the Consumer Goods they intended to purchase to their on line “cart”, an option appeared on the website page which stated: “Add Extended Warranty”; and

(c) if “Add Extended Warranty” was selected, then a pop up window appeared on the screen, in which the text stated the following:

(i) *“JB Hi-Fi Extra Care Repair Cover is an extended warranty that provides you with certainty that your product will be repaired if it becomes faulty during the period of the cover (see Summary of warranty periods below)”;*

(ii) *Manufacturer’s warranty [number of years];*

(iii) *JB Hi-Fi Minimum Voluntary Warranty; [number of years];*

(iv) *JB Hi-Fi Extra Care Repair Cover [number of years];*

(v) *“JB Hi-Fi Extra Care Repair Cover Features: Even if you do not purchase JB Hi-Fi Extra Care you may be entitled to a refund, repair or replacement under the Australian Consumer Law- even after expiry of the Manufacturer’s warranty and the JB Hi-Fi Minimum Voluntary Warranty period. However the exact duration of ACL rights is uncertain and do not provide the certainty that JB Hi-Fi Extra Care does. Find out more about your ACL rights and the JB*

*Hi-Fi Minimum Voluntary Warranty in our Refunds and Warranties Guide.*” A link (accessible by clicking onto a separate website page) was supplied to a document titled “Refunds & Warranties”, also referred to as the “JB Hi-Fi Voluntary Warranty Guide Jan 2018”;

- (vi) “*By purchasing JB Hi-Fi Extra Care you accept and agree to the full JB Hi-Fi Extra Care Terms and Conditions.*” A link (accessible by clicking onto a separate website page) was supplied to the 2022 Brochure;
  - (vii) The consumer was then prompted to complete the purchase by either viewing their “cart” or going to “check out”;
- (d) if the consumer in the process of making a purchase of a Consumer Goods had not by the point of “check out” selected to purchase the Extended Warranty, a further prompt would appear at the point of check out saying “Add Extended Warranty JB Hi-Fi Extra Care: Repair Cover” or “Add Extended Warranty JB Hi-Fi Extra Care: Replacement Cover”;
- (e) At the point of payment, on the webpage between “Billing Address” and “Pay Now” button, appears the text: “By placing your order.... you confirm that you agree and accept our website terms of sale ....”. A link (accessible by clicking) was supplied to the document “Website terms of sale”. That document contains over 16 pages of text, and at pages 2 to 3 thereof refers briefly to the ACL.
32. The online sales system in the period from January 2014 to August 2022 made similar provision for prompting the purchase of the extended warranty by Consumers as pleaded in paragraphs 30 and/or 31.

#### **Particulars**

- 1. JB Hi-Fi has offered the Extended Warranties for sale online throughout the period from at least January 2011 and it can be inferred that the online sales system was in similar form throughout the period from 2014 to 2022.
  - 2. Further particulars will be provided following discovery interrogatories and evidence.
33. During the Relevant Period, on each occasion on which the consumer purchased an Extended Warranty online, in the circumstances as pleaded in paragraphs 30 to 32, JB Hi-Fi impliedly represented that the Extended Warranties:
- (a) operated longer than any other warranty (**Online Longer Cover Representation**); and/or

- (b) possessed a material value to the consumer, such that a prudent consumer would rationally purchase the Extended Warranties (**Online Material Value Representation**);

#### **Particulars**

1. By offering a product called an “Extended Warranty”, JB Hi-Fi impliedly represented that the warranty being offered for sale possessed attributes including:
  - (a) a warranty with a duration that was “extended” or longer or in addition to and when compared with each of the Statutory Guarantee, the manufacturer’s warranty and the JB Hi-Fi Voluntary Warranty; and
  - (b) a benefit or benefits to the consumer which were different from and in addition to the benefits which automatically operated in favour of the consumer under the Statutory Guarantee, the manufacturer’s warranty and the JB Hi-Fi Voluntary Warranty;
  - (c) an ascertainable material value, such that the consumer was paying a price for a product with some value.

(Paragraphs 30 to 33 together are the **Online Sales Process**).

### **E.3 Features of both the In Store and Online Sales Processes and the Cautionary Matters**

34. During the Relevant Period, it was the case that whether the Extended Warranties were purchased by the consumer in store or online, in both cases:
- (a) the terms and conditions of the Extended Warranties were not able to be negotiated by the consumer and were presented to them for purchase on a “take it or leave it” basis; and
  - (b) from the period from at least 1 January 2011 to at least 30 December 2013, JB Hi-Fi adopted a uniform price formula for purchase of the Extended Warranties, by which it set the price for those Extended Warranties by reference to the type and price category of the Consumer Goods;
  - (c) from a time not yet known to the Plaintiff after 30 December 2013, JB Hi-Fi adopted, with ad hoc exceptions, a uniform price formula for purchase of the Extended Warranties as follows:
    - (i) the Replacement Cover Plan was priced at 15% of the price of the Consumer Goods;
    - (ii) the Repair Cover Plan was priced at 10% of the price of the Consumer Goods;

- (d) from the period 2011 to 2013, the consumers were not informed prior to purchase that the Extended Warranties were subject to a 15 day cooling off period and this term could only be ascertained by a close reading of the Extended Warranty Brochures, and at other times outside the window 2011 to 2013, the cooling off period term could only be ascertained by reading a pop out window on the webpage;
- (e) JB Hi-Fi failed to disclose or to adequately disclose to the consumers that:
  - (i) the Extended Warranties provided for a period of cover in relation to the Consumer Goods which substantially (and in some cases wholly) overlapped with the period during which the rights under the Statutory Guarantee automatically applied;
  - (ii) the Statutory Guarantee which applied automatically provided benefits to the consumers beyond those contained in the Extended Warranties, namely:
    - A. the Statutory Guarantee applied to Consumer Goods used for business or commercial purposes, unlike the Extended Warranties which were confined in their operation to Consumer Goods purchased for household use;
    - B. in respect of most Consumer Goods, the Statutory Guarantee provided or was likely to provide longer periods of cover than the Extended Warranties;
    - C. the Statutory Guarantee conferred a right on the consumer to choose the remedy in the event of faulty Consumer Goods, rather than the remedy being at the discretion of JB Hi-Fi, and prohibited the use of store credits for the purpose of providing a refund or providing products of lesser quality when replacing the Consumer Goods;
    - D. the Statutory Guarantee conferred the right to obtain compensation for consequential losses and costs incurred by reason of the failure of the Consumer Goods; and
- (f) as a result of the matters referred to in paragraphs 34(e)(i) and 34(e)(ii) above, the Extended Warranties were likely to be of little or negligible value to the Plaintiff and Group Members (together, the **Cautionary Matters**).

35. During the Relevant Period:

- (a) JB Hi-Fi did not disclose the Cautionary Matters to consumers who purchased the Extended Warranties either In Store or Online;
- (b) JB Hi-Fi did not have or implement any system for training sales personnel to make disclosure of the Cautionary Matters to consumers who purchased In Store; and
- (c) the JB Hi-Fi websites did not contain reference to the Cautionary Matters.

#### **Particulars**

- 1. The failure to disclose the Cautionary Matters is to be inferred from the fact of purchase by the consumers, namely the purchase by them of an Extended Warranty of little or negligible value for the reasons alleged at paragraph 26 above.
- 2. Further particulars will be provided after discovery, interrogatories and evidence.

#### **F. PLAINTIFF'S PURCHASES**

- 36. On 21 November 2020, the Plaintiff attended a retail store of JB Hi-Fi at Eastland Shopping Centre in Ringwood, Victoria (**JB Hi-Fi Eastland**).
- 37. As at 21 November 2020, the Plaintiff:
  - (a) was 21 years of age;
  - (b) was a full time student and reliant on Centrelink benefits as his primary source of income;
  - (c) had limited personal savings;
  - (d) had moved into a new residence on 19 November 2020;
  - (e) urgently required a refrigerator as he did not own one;
  - (f) had a limited budget, by reason of his reliance on Centrelink benefits and the need to acquire other essential household items to make his new residence habitable.
- 38. The Plaintiff attended JB Hi-Fi Eastland with the intention, and for the purpose, of purchasing a new refrigerator.
- 39. Prior to attending JB Hi-Fi Eastland the Plaintiff had:
  - (a) compared refrigerator prices at Good Guys, JB Hi-Fi, and Betta Home and Living;
  - (b) decided to purchase a LG GB-445UPLE refrigerator (**Fridge**) because:
    - (i) it was on sale at JB Hi-Fi;
    - (ii) it was the same brand of refrigerator owned by his mother and former partner;



- (iii) it was within his budget.
40. While at JB Hi-Fi Eastland, the Plaintiff approached a sales person employed by (or on behalf of) JB Hi-Fi and had a conversation during which the Plaintiff informed the salesperson:
- (a) that he wished to purchase the Fridge;
  - (b) of his personal circumstances, including:
    - (i) that he did not currently have a refrigerator and had recently moved; and
    - (ii) his urgent need to purchase and receive quick delivery of a refrigerator.
41. During the course of that conversation, the salesperson:
- (a) recommended to the Plaintiff the purchase of the Extended Warranty to cover the Fridge;
  - (b) stated that the Extended Warranty would provide a longer period of cover than the Fridge would otherwise be covered for;
  - (c) briefly showed the Plaintiff a copy of an Extended Warranty Brochure (being the October 2018 Brochure titled "Extended Care JB Hi-Fi October 2018"), including briefly drawing the Plaintiff's attention to the following prominent parts:
    - (i) the comparison table; and
    - (ii) the Declaration, which the salesperson completed and signed to define the:
      - A. Original Purchase date;
      - B. Manufacturer Warranty expiry date;
      - C. JB Hi-Fi Minimum Voluntary Warranty expiry date;
      - D. Extended Care Cover commencement date;
      - E. Extended Care Period; and
      - F. Extended Care Cover expiry date;
  - (ca) did not ask the Plaintiff to sign the Declaration on the line underscored with the words "Customer Signature";
  - (d) did not inform the Plaintiff that the Extended Warranty was subject to a 15 day cooling off period;
  - (e) did not otherwise explain the operation of, and rights conferred by, the Statutory Guarantee;

- (f) did not explain the operation of, and rights conferred by, JB Hi-Fi's Minimum Voluntary Warranty; and
- (g) did not otherwise explain the operation of, and rights conferred by, the manufacturer's warranty that applied to the product the Plaintiff was looking to purchase.

**Particulars**

- 1. The JB Hi-Fi salesperson stated words to the effect that:
    - (a) the Fridge would be covered by warranty for a period of two years and would not be covered beyond that period if he did not purchase the Extended Warranty; and
    - (b) it would be a "good idea" to get the Extended Warranty.
  - 2. The manufacturer's "baseline" warranty on the Fridge was for a period of two years after purchase.
42. Prior to the statements made by the JB Hi-Fi salesperson, the Plaintiff had not intended to purchase an Extended Warranty.
43. As a result of the statements made by the JB Hi-Fi salesperson, the Plaintiff:
- (a) was concerned about the risk and inconvenience of the Fridge breaking down after 2 years;
  - (b) believed it was necessary to purchase the Extended Warranty for the Fridge to be protected beyond the period of 2 years;
  - (c) believed that the Extended Warranty conferred additional benefits including that JB Hi-Fi would manage any problems with the Fridge while it was under the Extended Warranty; and
  - (d) by reason of the matters set out in paragraphs 43(a) to 43(c) above, believed that the Extended Warranty possessed a material value.
44. Following the statements made by the JB Hi-Fi salesperson, the Plaintiff purchased:
- (a) the Fridge for \$745.17;
  - (b) an Extended Warranty, being an Extra Care Repair Cover Plan for \$62.57; and
  - (c) a delivery and connection package for \$65.

**Particulars**

- 1. JB Hi-Fi Receipt No. 110630290-1.
- 2. The prices paid by the Plaintiff for the Fridge and for the Extended Warranty were discounted. The price paid by the Plaintiff for the Extra Care Repair Cover Plan was approximately 8.4% of the price of the Fridge.

45. The Plaintiff purchased the Extended Warranty because of the statements made by the JB Hi-Fi salesperson set out at paragraph 41 above.
46. Prior to the Plaintiff paying for the Extended Warranty, the JB Hi-Fi salesperson did not give the Plaintiff:
- (a) a copy of the 2018 Brochure;
  - (b) the opportunity to read 2018 Brochure;
  - (c) a copy of any document recording the terms of the manufacturer warranty;
  - (d) a copy of any document recording the terms of the JB Hi-Fi Minimum Voluntary Warranty.
47. At or about the time the Plaintiff paid for the Fridge and the Extended Warranty, the JB Hi-Fi salesperson completed and signed a form at the back of the 2018 Brochure.
48. Immediately after the Plaintiff paid for the Extended Warranty, the JB Hi-Fi salesperson provided the Plaintiff with:
- (a) his receipt for the purchase of the Fridge and the Extended Warranty;
  - (b) a copy of the 2018 Brochure;
  - (c) a copy of the Declaration ~~a declaration attached to the 2018 Brochure~~ signed by the JB Hi-Fi salesperson (~~Declaration~~); and
  - (d) JB Hi-Fi's "manufacturer after sales assistance" guide for LG.

**Particulars**

- 1. JB Hi-Fi Receipt No. 110630290-1
  - 2. 2018 Brochure.
  - 3. Declaration bearing the date 23 November 2020 which was the intended delivery date of the Fridge.
  - 4. Document entitled "JB Hi-Fi Home: Thank you for your purchase of a home appliance from JB Hi-Fi Home: Manufacturer After Sales Assistance – LG".
49. At or about the time of paying for the Fridge and the Extended Warranty, the Plaintiff received a text message from JB Hi-Fi which:
- (a) confirmed his purchase of the Fridge and Extended Warranty; and
  - (b) provided a link to a webpage setting out the terms and conditions for home delivery.
50. On or about 23 November 2020, the Plaintiff received delivery of the Fridge.

51. Upon receiving delivery of the Fridge, the Plaintiff also received a copy of the manufacturer's (LG's) warranty guide (**Manufacturer Warranty Guide**).
52. The Manufacturer Warranty Guide stated that the manufacturer provided:
  - (a) an "original warranty" of 2 years; and
  - (b) after expiry of the "original warranty", an additional 3 year warranty (total 5 years) for the "sealed [refrigerator] system"; and
  - (c) after expiry of the "sealed system warranty", an additional 5 year warranty (total 10 years) for the "inverter compressor".

#### **Particulars**

1. LG Warranty Card "Refrigerator (Inverter Compressor)".

### **G. PURCHASES OF CONSUMER GOODS AND EXTENDED WARRANTIES BY GROUP MEMBERS**

53. Each of the Group Members during either the:
  - (a) Principal Claim Period; or
  - (b) the Mistake Claim Period; or
  - (c) the NT Mistake Claim Period;(together the **Claim Period**);  
purchased one or more Consumer Goods from JB Hi-Fi and the Extended Warranties.
54. The purchases by the Group Members were made either:
  - (a) In person at a JB Hi-Fi Store in accordance with the In Store Sales Process as pleaded at paragraphs 28 and 29; or
  - (b) Online, using the JB Hi-Fi website in accordance with the Online Sales Process as pleaded at paragraphs 30 to 33.
55. Each of the Group Members automatically became, by reason of the operation of sections 54 and 259 to 264 of the ACL, entitled to the Statutory Guarantee in relation to the Consumer Goods purchased by them.

## H. MISLEADING OR DECEPTIVE CONDUCT

### H.1 Longer Cover Misleading Conduct Contraventions

56. During the Relevant Period, prior to the Plaintiff and the Group Members paying for the Extended Warranties:

- (a) JB Hi-Fi made the In Store Longer Cover Representation to the Plaintiff;
- (b) JB Hi-Fi made ~~either~~ the In Store Longer Cover Representation to some of the Group Members ~~or~~ and made the Online Longer Cover Representation to some of the Group Members; and
- (c) JB Hi-Fi made the Brochure Longer Cover Representations to the Plaintiff and some of the Group Members.

#### Particulars

- 1. The Instore Longer Cover Representations were made orally and/or in writing and / or arose by implication from the circumstances of the In Store sales pleaded above at paragraph 28.
- 2. The Online Longer Cover Representation were made in writing.

56A. During the Relevant Period, JB Hi-Fi made the Brochure Longer Cover Representations to some of the Group Members after they had purchased an Extended Warranty, but before the expiration of the 15 day "Free Look" cooling off period.

57. The In Store Longer Cover Representation, the Online Longer Cover Representation, and the Brochure Longer Cover Representations were representations as to a future matter within the meaning of section 12BB of the ASIC Act or section 4 of the ACL and JB Hi-Fi did not have, at the time those representations were made, reasonable grounds for making those representations.

58. The In Store Longer Cover Representation, ~~and~~ the Online Longer Cover Representation and the Brochure Longer Cover Representations were misleading or deceptive, or likely to be misleading or deceptive, because for most of the Consumer Goods sold by JB Hi-Fi to the Plaintiff and the Group Members, the period of time for which the Statutory Guarantee operated or was likely to operate exceeded the period of time for which the Extended Warranty operated.

#### Particulars

- 1. By reason of section 54(3) of the ACL, the Statutory Guarantee operated with respect to each of the Consumer Goods purchased by the Plaintiff and the

Group Members for the period which a reasonable consumer would regard as acceptable having regards to matters including:

- (a) the nature of the Consumer Goods;
  - (b) the price of the Consumer Goods;
  - (c) other relevant circumstances including the expected lifespan of the Consumer Goods.
2. The expected life span of the Consumer Goods exceeded the period of cover for those Consumer Goods under the Extended Warranties.
  3. As a result of the matters stated in particulars (1) and (2) above, the Statutory Guarantee applied or was likely to apply to those Consumer Goods for a period which was longer than the Extended Warranties applied for.
59. As a result of the matters alleged at paragraphs 56 to 58, JB Hi-Fi:
- (a) engaged in conduct that was misleading or deceptive or likely to mislead or deceive consumers including the Plaintiff and Group Members; and
  - (b) contravened:
    - (i) section 12DA or 12DB(1)(a) of the ASIC Act; or alternatively
    - (ii) section 18 or section 29(1)(b) of the ACL;
- (together and severally the **Longer Cover Misleading Conduct Contraventions**).

## **H.2 Additional Benefits Misleading Conduct Contraventions**

60. During the Relevant Period, JB Hi-Fi made the Brochure Additional Benefits Representations to some of the Group Members prior to the Group Members paying for the Extended Warranties and made the Brochure Additional Benefits Representations to some of the Group Members after they purchased an Extended Warranty but before the expiration of the “Free Look” or 15 day cooling off period.
61. The Brochure Additional Benefits Representations were~~was~~ misleading or deceptive, or likely to be misleading or deceptive, because:
- (a) the description of the alleged benefits of the Extended Warranties was based upon an unexpressed and unexplained assumption that none of the numerous exceptions to the terms of the Extended Warranties applied; and
  - (b) the description of the alleged benefits of the Extended Warranties omitted the fact that in most cases the Statutory Guarantee offered at least the same or longer entitlement to a repair or replacement of the Consumer Goods than the period which applied under the Extended Warranties;

- (c) the description of the alleged benefits of the Extended Warranties omitted the fact that in most cases the Statutory Guarantee offered the same or a similar benefit to consumers;
- (d) the majority of the alleged benefits represented as applying under the Extended Warranties also automatically applied under the Statutory Guarantee for some or all of the duration of the Extended Warranties; and
- (e) some of the purported benefits of the Extended Warranties were of little or negligible value to the consumers either at all, or when compared with the rights which automatically applied under the Statutory Guarantee.

### **Particulars**

1. As to the Brochure Additional Benefits Representations:
  - (a) The alleged benefit of certainty as to the exact period of cover only constituted a benefit in circumstances where the period of cover supplied by the Extended Warranty exceeds that which automatically applies under the Statutory Guarantee.
  - (b) The alleged benefit of the convenience of having experienced operational and technical staff to manage the repair and/or replacement process only constituted a benefit if it were otherwise the case that JB Hi-Fi allocated poorly trained and/or incompetent persons to manage claims made by consumers under the Statutory Guarantee.
  - (c) The alleged benefit of the specified days for repair time guarantee only constituted a benefit if:
    - (i) the failure was not a “major failure” or the Plaintiff or Group Member did not otherwise have a right to a replacement product or refund under the Statutory Guarantee; and/or
    - (ii) 30 days for a repair (or 10 business days for a repair under the Current Extra Care Plan ~~according to the 2022 Brochure~~) was shorter than the reasonable time provided for under the Statutory Guarantee; and/or
    - (iii) the Plaintiff or Group Member did not otherwise have more rights and/or remedies they preferred available to them under the Statutory Guarantee.
  - (d) The alleged benefit of the availability of a loan product only constituted a benefit if:
    - (i) the failure was not a “major failure” or the Plaintiff or Group Member did not otherwise have a right to a replacement product or refund under the Statutory Guarantee; and/or
    - (ii) the Plaintiff or Group Member did not otherwise have more rights and/or remedies they preferred available to them under the Statutory Guarantee ACL; and / or
    - (iii) the Plaintiff or Group Member remembered to expressly make the request for a loan product once it was apparent that the repairs were “likely to take longer than 10 working days”; and/or
    - (iv) the Plaintiff or Group Member was unable to rent a replacement product and claim it as part of their damage under the Statutory Guarantee; and/or

- (v) the Consumer Goods were an item which did not have any personalised features, so as to make the “loan product” suitable for and of benefit to the Plaintiff or Group Member.
  - (e) The alleged benefit of toll free technical assistance only constituted a benefit if the failure was not a “major failure” and the Plaintiff or Group Member did not otherwise have a right to a replacement product or refund under the Statutory Guarantee and the information constituting the technical assistance could not be obtained elsewhere at no cost (such as from the manufacturer or Google searches).
2. Further, the comparison table (as pleaded at paragraph 22) stated that:
- (a) protection against mechanical and electrical failure was a benefit of the Extended Warranties, in circumstances where that “benefit” was also part of the Statutory Guarantee; and
  - (b) there was “automatic replacement” benefit under the Extended Warranties despite the fact that:
    - (i) an automatic replacement under the Extended Warranty was dependent on the particular facts and circumstances and on the exceptions not applying; and
    - (ii) the circumstances under which a replacement would be provided under the terms of the Extended Warranties were more restrictive than those under the Statutory Guarantee; and
  - (c) there was a benefit to having an administrator undertake JB Hi-Fi’s obligations where no benefit is apparent from that delegation; and
  - (d) there was a benefit by reason of JB Hi-Fi providing an assistance helpline, even though some suppliers and manufacturers also provided a free helpline and it was possible throughout the Relevant Period for consumers to contact JB Hi-Fi using its published telephone number; and
  - (e) there was a benefit in the form of a “loan product,” despite the fact that the cost of renting a replacement product may be claimable as damages under the Statutory Guarantee;
  - (f) there was a benefit to the repair time guarantee, despite the fact that under the Statutory Guarantee, Consumer Goods would be replaced if the failure was a “major failure” and the Plaintiff or Group Member had a right to a replacement product or refund under the Statutory Guarantee;
  - (g) there was a benefit in the nature of compensation in a fixed or maximum amount for “Food Spoilage” and “Laundry Costs”, when there is no cap on damages under the Statutory Guarantee for foreseeable consequential loss;
3. Further, the comparison table did not set out the additional benefits of the Statutory Guarantee as pleaded at paragraph 23.

62. As a result of the matters alleged at paragraphs 60 to 61, JB Hi-Fi:

- (a) engaged in conduct that was misleading or deceptive or likely to mislead or deceive consumers including the Plaintiff and Group Members; and
- (b) contravened:
  - (i) section 12DA or 12DB(1)(a) of the ASIC Act; or alternatively
  - (ii) section 18 or section 29(1)(b) of the ACL;



(together and severally the **Additional Benefits Misleading Conduct Contraventions**).

### **H.3 Material Value Misleading Conduct Contraventions**

63. During the Relevant Period, prior to the Plaintiff and the Group Members paying for the Extended Warranties:
- (a) JB Hi-Fi made the In Store Material Value Representation to the Plaintiff; and
  - (b) JB Hi-Fi made either the In Store Material Value Representation to some of the Group Members and made or the Online Material Value Representation to some of the Group Members.
64. The In Store Material Value Representations and the Online Material Value Representations were misleading or deceptive, or likely to be misleading or deceptive, by reason of the matters pleaded at paragraphs 26, 58 and 61.
65. By reason of the matters alleged at paragraphs 63 to 64 above, JB Hi-Fi:
- (a) engaged in conduct that was misleading or deceptive or likely to mislead or deceive consumers including the Plaintiff and Group Members; and
  - (b) contravened:
    - (i) section 12DA or 12DB(1)(a) of the ASIC Act; or alternatively
    - (ii) section 18 or section 29(1)(b) of the ACL;

(together and severally the **Material Value Misleading Conduct Contraventions**).

### **H.4 Cautionary Matters Conduct Contraventions**

66. In circumstances where during the Relevant Period:
- (a) consumers who purchased the Consumer Goods had the automatic benefit of the Statutory Guarantee;
  - (b) consumers (including the Plaintiff and Group Members) approached JB Hi-Fi:
    - (i) for the purpose of purchasing the Consumer Goods; and
    - (ii) not for the purpose of purchasing the Extended Warranties;
  - (c) the Extended Warranties were offered to consumers after the consumers had decided to or agreed to purchase the Consumer Goods;
  - (d) JB Hi-Fi recommended the purchase of the Extended Warranties in respect of the Consumer Goods;

it was reasonable for the Plaintiff and Group Members to expect that prior to them paying for the Extended Warranties JB Hi-Fi would adequately disclose to the consumers the Cautionary Matters pleaded in paragraph 34 above.

67. Further or alternatively, JB Hi-Fi ought reasonably to have known that, in the absence of disclosure of the Cautionary Matters, there was a material risk that the Plaintiff and Group Members:
- (a) would or might purchase the Extended Warranties based on inaccurate information;
  - (b) would or might purchase the Extended Warranties despite the fact that they were of little or negligible value to them;
  - (c) would not or might not be able to make an informed decision as to whether the Extended Warranties were suitable for them;
  - (d) would or might purchase Extended Warranties that were not suitable for them; and
  - (e) by reason of paragraphs 67(a) to 67(d) would or might incur costs that a properly informed consumer would not have incurred.

**Particulars**

1. JB Hi-Fi ought reasonably to have known the Cautionary Matters because JB Hi-Fi:
  - a. approved the Extended Warranties Brochures and distributed them to stores for supply to consumers in circumstances where it was clear that the consumers would rely on the contents of those Extended Warranties Brochures;
  - b. was a large national retailer (and a wholly owned subsidiary of a publicly listed company) with the resources and ability to obtain its own legal and other advice about the Cautionary Matters in circumstances where there was an asymmetry of information and resources compared with the position of the consumers; and
  - c. was subject to the statutory obligation under section 61 of the ACL and/or section 12ED of the ASIC Act to ensure it sold a service which was fit for purpose, rendered with due care and skill, and was of such a nature and quality, state or condition that might reasonably be expected to achieve the result that the consumer wished the Extended Warranties to achieve.

68. JB Hi-Fi took no steps to ensure that it adequately disclosed the Cautionary Matters to the Plaintiff and Group Members.

**Particulars**

1. The Plaintiff refers to and repeats paragraphs 34 to 35.
69. As a result of the matters alleged in paragraphs 66 to 68 above, JB Hi-Fi:
- (a) engaged in conduct that was misleading or deceptive or likely to mislead or deceive consumers including the Plaintiff and Group Members; and

- (b) contravened:
  - (i) section 12DA of the ASIC Act; or alternatively
  - (ii) section 18 or section 29(1)(m) of the ACL;

(together and severally the **Cautionary Matters Conduct Contraventions**).

## H.5 Other ACL Misrepresentation Contraventions

69A. During the Relevant Period, prior to the Plaintiff and some of the Group Members paying for the Extended Warranties JB Hi-Fi made:

- (a) the In Store Longer Cover Representation to the Plaintiff;
- (b) the In Store Longer Cover Representation to some of the Group Members and made the Online Longer Cover Representation to some of the Group Members;
- (c) the Brochure Longer Cover Representations to the Plaintiff and some of the Group Members;
- (d) the Brochure Additional Benefits Representations to some of the Group Members;
- (e) the In Store Material Value Representation to the Plaintiff; and
- (f) the In Store Material Value Representation to some of the Group Members and made the Online Material Value Representation to some of the Group Members.

### Particulars

The Plaintiff refers to and repeats paragraphs 56, 60 and 63.

69B. During the Relevant Period, after the purchase of an Extended Warranty, but before the expiration of the 15 day “Free Look” cooling off period:

- (a) JB Hi-Fi made the Brochure Longer Cover Representations to some of the Group Members; and
- (b) JB Hi-Fi made the Brochure Additional Benefits Representations to some of the Group Members.

### Particulars

The Plaintiff refers to and repeats paragraphs 56A and 60.

70. By making the representations pleaded at paragraphs 69A-69B (**Representations**) (and by reason of the matters pleaded at paragraphs 20-23, 25, 26, 27, 28-33, 41-45, 53-55, 56, 56A, 60 and/or 63), JB Hi-Fi ~~made a false or misleading representation concerning:~~

- (a) made implied representations that there was a need for the Plaintiff and the Group Members to ~~have~~ purchase and pay the purchase price of the Extended Warranty

in order for them to acquire the asserted benefits and cover conveyed by the Representations (the **Need to Have Misrepresentation**); and/or

- (b) made implied representations as to the existence, exclusion or effect of the Extended Warranties; and/or as compared to the existence, exclusion or effect of the Statutory Guarantee, namely that the Extended Warranties provided the benefits and cover conveyed by the Representations and that the Statutory Guarantee did not provide those benefits and cover (the **Existence and Effect Misrepresentation**); and/or
- (c) made implied representations that there was a requirement on the part of the Plaintiff and the Group Members to purchase and pay the purchase price for an Extended Warranty in order to receive the asserted benefits and cover conveyed by the Representations and to adequately manage the financial consequences associated with any need to replace or repair the Consumer Goods purchased by them, in circumstances where that Extended Warranty:
  - (i) was wholly or partly equivalent to the Statutory Guarantee; and
  - (ii) provided benefits which the Plaintiff and Group Members already had the benefit of automatically under the ACL (the **Requirement to Purchase Misrepresentation**).

70A The Need to Have Misrepresentation, Existence and Effect Misrepresentation and Requirement to Purchase Misrepresentation were misleading or deceptive or likely to be misleading or deceptive because:

- (a) the Plaintiff and Group Members automatically had the benefits and cover provided by the Statutory Guarantee;
- (b) the benefits and cover provided by the Statutory Guarantee were provided to the Plaintiff and Group Members for free;
- (c) the period of cover of the Extended Warranty substantially or wholly overlapped with the period of cover which automatically applied by reason of the Statutory Guarantee; and
- (d) the benefits which applied under the Extended Warranty substantially or wholly overlapped with the benefits which automatically applied by reason of the Statutory Guarantee.
- (e) by reason of the matters pleaded in (a)-(d), the true position was that the Plaintiff and Group Members were not required to pay money in order to receive the benefits and cover conveyed by the Representations and to adequately manage

the financial consequences associated with any need to replace or repair the Consumer Goods purchased by them as those benefits and cover were wholly or partly equivalent to the benefits and cover provided under the Statutory Guarantee for free.

**Particulars**

The Plaintiff refers to and repeats paragraphs 26, 58, 61 and 64 and the particulars thereto.

71. By reason of the matters pleaded in paragraphs 70-70A, JB Hi-Fi engaged in conduct that was misleading or deceptive or likely to mislead or deceive consumers including the Plaintiff and Group Members (the **Specific ACL Misrepresentations Conduct**).
72. By engaging in the Specific ACL Misrepresentations Conduct, JB Hi-Fi contravened each of:
- (a) sections 29(1)(l), 29(1)(m) and 29(1)(n) of the ACL;
  - (b) sections 12DB(1)(h), 12DB(1)(i) and 12DB(1)(j) of the ASIC Act.
- (the **Specific ACL Misrepresentations Contraventions**).

**H.6 Misleading or Deceptive Conduct – Reliance**

72A. The Plaintiff relied on:

- (a) the In Store Longer Cover Representation; and/or
  - (b) the In Store Material Value Representation; and/or
  - (c) the Brochure Longer Cover Representations; and/or
  - (d) the Need to Have Misrepresentation; and/or
  - (e) the Existence and Effect Misrepresentation; and/or
  - (f) the Requirement to Purchase Misrepresentation
- when deciding to purchase an Extended Warranty.

72B. Some of the Group Members relied on:

- (a) the In Store Longer Cover Representation; and/or
- (b) the In Store Material Value Representation; and/or
- (c) the Online Longer Cover Representation; and/or
- (d) the Online Material Value Representation; and/or

- (e) the Brochure Longer Cover Representations; and/or
  - (f) the Brochure Additional Benefits Representations; and/or
  - (g) the Need to Have Misrepresentation; and/or
  - (h) the Existence and Effect Misrepresentation; and/or
  - (i) the Requirement to Purchase Misrepresentation
- when deciding to purchase the Extended Warranty.

72C. Some of the Group Members relied on the Brochure Longer Cover Representations, and/or the Brochure Additional Benefits Representations in deciding not to exercise their right to cancel their purchase of an Extended Warranty and obtain a refund under the 15 day “Free Look” cooling off period.

#### **I. UNCONSCIONABLE CONDUCT**

73. During the Relevant Period, it was the case that:

- (a) the bargaining position of the Plaintiff and the Group Members and the bargaining position of JB Hi-Fi was grossly unequal in that:
  - (i) the Plaintiff and the Group Members were consumers whose primary purpose in dealing with JB Hi-Fi was for the purpose of purchasing the Consumer Goods and not for the purpose of purchasing the Extended Warranties;
  - (ii) the Plaintiff and many of the Group Members consumers were vulnerable;
  - (iii) some of the Group Members had a low household income;
  - (iv) JB Hi-Fi was part of the group of companies wholly owned by JB Hi-Fi Limited ACN 093 220 136, being a publicly listed company with contract expertise and financial, legal and human resources that far exceeded the expertise or resources of the Plaintiff and Group Members;

#### **Particulars**

1. JB Hi-Fi Limited Annual Reports for the financial years ending 30 June of 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022 and 2023.
2. As to the vulnerability of the Plaintiff, the Plaintiff refers to and repeats paragraphs 34, 37, 40, 73(a)(iii) and 74 of this Statement of Claim.
3. As to the vulnerability of the Group Members, the Plaintiff refers to and repeats paragraphs 34, 73(a)(iii) and 74 of this Statement of

Claim.

- (b) the Extended Warranties purchased were of little or negligible value to the Plaintiff and Group Members;
  - (c) JB Hi-Fi did not price the Extended Warranties by reference to any of the following:
    - (i) the expected lifespan of the particular Consumer Goods; or
    - (ii) the likely period during which the Statutory Guarantee would apply to the particular Consumer Goods; or
    - (iii) the claims profile associated with the particular Consumer Goods.
  - (d) JB Hi-Fi used unfair sales tactics in connection with the sale of the Extended Warranties by:
    - (i) engaging in the Longer Cover Misleading Conduct Contraventions; and/or
    - (ii) engaging in the Additional Benefits Misleading Conduct Contraventions; and/or
    - (iii) engaging in the Material Value Misleading Conduct Contraventions; and/or
    - (iv) engaging in the Cautionary Matters Conduct Contraventions; and/or
    - (v) engaging in the Specific ACL Misrepresentations Contraventions;
    - (vi) purporting to provide free of charge with each purchase of Consumer Goods a so called JB Hi-Fi Voluntary Warranty which, by its language, implied the conferral by JB Hi-Fi on the consumer of a benefit which was in fact of no substance given automatic operation of the Statutory Guarantee;
    - (vii) failing to provide the Extended Warranty Brochures to the Plaintiff and Group Members until either shortly before, during or after the payment was made;
    - (viii) failing to provide the Refunds and Warranties Brochure at all, or until either shortly before, during or after the payment was made;
    - (ix) from the period 2011 to 2013, by making provision for a 15 day “cooling off” or refund period in relation to the Extended Warranties, the terms of which were only set out in the Extended Warranty Brochure and the existence of which was only ascertainable by the Plaintiff and Group Members on a close reading of the brochure and at other times outside the window 2011 to 2013, the cooling off period term could only be ascertained by reading a pop out window on the webpage;
- (together, and either any one of (i) to (ix) alone or in any combination, the **Unfair**

**Sales Tactics).**

- (e) it was not reasonably necessary, in order to protect the legitimate interests of JB Hi-Fi, for the Extended Warranties:
  - (i) to have the terms described in paragraphs 11 and 15 to 19; or
  - (ii) to be sold using the Unfair Sales Tactics.

74. In the circumstances alleged in paragraph 73, JB Hi-Fi by selling the Extended Warranties engaged in conduct that unfairly took advantage of and exploited:

- (a) the Plaintiff's and the Group Members' lack of familiarity with complex agreements;
- (b) the Plaintiff's and the Group Members' lack of familiarity with their rights under the ACL including under the Statutory Guarantee;
- (c) the fact that the Plaintiff and the Group Members at the time of the engagement by JB Hi-Fi in the Unfair Sales Tactics were focussed on the primary purpose of making a purchase of the Consumer Goods.

75. By reason of the matters alleged in paragraphs 73 to 74 above, JB Hi-Fi engaged in conduct that was, in some or all of the circumstances described in paragraphs 73 to 74 unconscionable within the meaning of:

- (a) sections 12CB and 12CC of the ASIC Act; or
- (b) sections 21 and 22 of the ACL; or
- (c) section 20 of the ACL;

**(Unconscionable Conduct).**

76. By engaging in the Unconscionable Conduct, JB Hi-Fi contravened:

- (a) section 12CB(1) of the ASIC Act; or
- (b) section 21 of the ACL; or
- (c) section 20 of the ACL;

**(the Unconscionable Conduct Contraventions).**

**J. LOSS AND DAMAGE BECAUSE OF THE STATUTORY CONTRAVENTIONS CONVENTIONS**

77. The Plaintiff and the Group Members each purchased or retained the Extended Warranties because of:

- (a) the Longer Cover Misleading Conduct Contraventions; and/or



- (b) the Additional Benefits Misleading Conduct Contraventions; and/or
  - (c) the Material Value Misleading Conduct Contraventions; and/or
  - (d) the Cautionary Matters Misleading Conduct Contraventions; and/or
  - (e) the Specific ACL Misrepresentations Contraventions; and/or
  - (f) the Unconscionable Conduct Contraventions;
- and have suffered loss or damage as a result.

#### Particulars

1. Payment by the Plaintiff and Group Members of the cost of the Extended Warranties.
2. The Plaintiff has suffered loss and damage in the amount of \$62.67, being the cost of the Extended Warranty he purchased which was of no material value.

#### K. MISTAKE

78. The matters pleaded at paragraphs 26-27, 34-35, 58, 61, 64 and 71 above constituted material information that was relevant to the decision of the Plaintiff and Group Members as to whether to purchase the Extended Warranties.
79. As a result of the matters pleaded at paragraphs 20-23, 26, 28-33 and 36-72 above, when ~~each of~~ the Plaintiff and at least some Group Members purchased the Extended Warranties, they were labouring under one or more of the following causative unilateral mistakes, namely:
- (a) a mistaken belief that the Extended Warranties operated for a longer period than the Statutory Guarantee (the **Longer Cover Mistake**); and
  - (b) a mistaken belief that the Extended Warranties provided benefits in addition to the Statutory Guarantee (the **Additional Benefits Mistake**); and
  - (c) a mistaken belief that the Extended Warranties possessed a material ~~financial~~ value (the **Material Value Mistake**); and
  - (d) a mistaken belief that there was a need to have the Extended Warranty; and
  - (e) a mistaken belief about the existence, exclusion or effect of the Extended Warranties and/or the Statutory Guarantee; and
  - (f) a mistaken belief that there was a requirement on the part of the Plaintiff and the Group Members to pay for an Extended Warranty in circumstances where that Extended Warranty:
    - (i) was wholly or partly equivalent to the Statutory Guarantee; and

- (ii) provided benefits which the Plaintiff and Group Members already had the benefit of automatically under the ACL;

(collectively (d), (e), and (f) are the **Specific ACL Mistakes**);

(each of, or any combination of, the Longer Cover Mistake, the Additional Benefits Mistake, the Material Value Mistake and the Specific ACL Mistakes are the **Extended Warranty Mistakes**).

80. Each of the Extended Warranty Mistakes was:

- (a) a unilateral mistake made by the Plaintiff and the Group Members;
- (b) as to serious matters in relation to the operation of the Extended Warranties; and
- (c) in respect of the fundamental terms of the Extended Warranties.

80A. The fundamental terms of the Extended Warranties referred to in paragraph 80(c) are those pleaded at paragraph 18A above.

81. JB Hi-Fi induced the adoption of the Extended Warranty Mistakes on the part of the Plaintiff and the Group Members by engaging in the conduct described at paragraphs 28 to 33 and 36 to 74 above.

82. JB Hi-Fi knew or was aware of circumstances which indicated that the Plaintiff and the Group Members had agreed to purchase their respective Extended Warranties labouring under the Extended Warranty Mistakes and JB Hi-Fi:

- (a) did nothing to correct the Extended Warranty Mistakes; and/or
- (b) chose to leave the Plaintiff and the mistaken Group Members labouring under the Extended Warranty Mistakes.

#### Particulars

- 1. JB Hi-Fi knew or was aware of circumstances which indicated that the Plaintiff and the Group Members had agreed to purchase their respective Extended Warranties labouring under the Extended Warranty Mistakes by reason of the In Store Sales Process pleaded at paragraphs 28-29, the Online Sales Process pleaded at paragraphs 30-33, and the Unfair Sales Tactics pleaded at paragraph 73.

83. By reason of the matters pleaded in paragraphs 78 to 82 above:

- (a) the Plaintiff and the Group Members are entitled, at their election, to rescind the Extended Warranties; or
- (b) the Extended Warranties are void.

84. By reason of the matters pleaded in paragraphs 78 to 83 above:

- (a) the payments for the Extended Warranties are monies had and received by JB Hi-Fi to the use of the Plaintiff and the Group Members; and
- (b) JB Hi-Fi has been unjustly enriched by the receipt of the payments for the Extended Warranties at the expense of the Plaintiff and the Group Members; and
- (c) it would be unconscionable for JB Hi-Fi to retain the payments for the Extended Warranties; and
- (d) JB Hi-Fi is obliged to make restitution and repay the payments for the Extended Warranties to the Plaintiff and the Group Members.

85. By reason of the matters pleaded in paragraphs 78 to 82 above, the Group Members did not on a day prior to:

- (a) in the case of NT Claimants, three years prior to the commencement of this proceeding;
- (b) in the case of all other Group Members, six years prior to the commencement of this proceeding;

discover, and could not with reasonable diligence have discovered, the Extended Warranty Mistakes.

#### **L. FAILURE OF CONSIDERATION**

86. In the alternative, by reason of the matters pleaded at paragraphs 26-27, 34-35, 58, 61, 64, 71 and 73 to 85 above, the Extended Warranties were purchased by the Plaintiff and the Group Members in circumstances which constituted a total failure of consideration.

##### **Particulars**

1. The Plaintiff and the Group Members purchased an Extended Warranty which provides little or negligible benefit to the Plaintiff and Group Members in addition to the benefits which automatically apply under the Statutory Guarantee. As a result, the Plaintiff and Group Members made payments for an Extended Warranty which does not in fact constitute or provide any extension or extended period of operation to the Statutory Guarantee and as a result they have paid for a service which does not provide the benefits which the Plaintiff and Group Members bargained for and intended to purchase and which was of no material value.

87. By reason of the matters pleaded in paragraph 86 above:

- (a) the payments for the Extended Warranties are monies had and received by JB Hi-Fi to the use of the Plaintiff and the Group Members; and
- (b) JB Hi-Fi has been unjustly enriched by the receipt of the payments for the Extended Warranties at the expense of the Plaintiff and the Group Members; and

- (c) it would be unconscionable for JB Hi-Fi to retain the payments for the Extended Warranties; and
- (d) JB Hi-Fi is obliged to repay and make restitution of the payment sums to the Plaintiff and the Group Members.

**M. LOSS AND DAMAGE BECAUSE OF MISTAKE AND FAILURE OF CONSIDERATION**

88. By reason of the Extended Warranty Mistakes pleaded at paragraphs 78 to 85 above or alternatively, by reason of the Failure of Consideration pleaded at paragraphs 86 to 87 above, the Plaintiff and the Group Members purchased the Extended Warranties and as a result have suffered loss or damage.

**Particulars**

- 1. Payment by the Plaintiff and the Group Members of the cost of the Extended Warranties.
- 2. The Plaintiff has suffered loss and damage in the amount of \$62.67, being the cost of the Extended Warranty he purchased which was of no material value.

**N. ORDERS SOUGHT BY THE PLAINTIFF**

89. The Plaintiff claims on his own behalf and on behalf of the Group Members:

- (a) an order that the Extended Warranties are void pursuant to section 12GM(7)(a) of the ASIC Act or section 243(a) of the ACL;
- (b) an order directing JB Hi-Fi to refund to the Plaintiff and the Group Members the payments made for the purchase of the Extended Warranties pursuant to section 12GM(7)(d) of the ASIC Act or section 243(d) of the ACL;
- (c) additionally or alternatively, an order for compensation for loss or damage pursuant to sections 12GF, 12GM(1), or 12GM(7)(e) of the ASIC Act or sections 236, 237(1)(a)(i) or 243(e) of the ACL;
- (ca) alternatively, an award of damages in an aggregate amount pursuant to s33Z(1)(e) or s33Z(1)(f) of the *Supreme Court Act 1986* (Vic);
- (d) in respect of the claims in mistake and for failure of consideration:
  - (i) a declaration that the Plaintiff and the Group Members are entitled, at their individual election, to an order for rescission of the Extended Warranties;
  - (ii) an order for restitution requiring that JB Hi-Fi repay the full amount of the payments made by the Plaintiff and the Group Members for the Extended Warranties;
- (e) pre-Judgment Interest;

- (f) post-Judgment Interest;
- (g) an order under section 48 of the *Limitation of Actions Act 1936* (SA) that any Group Member who has a claim for monies had and received by JB Hi-Fi to the use of the Group Member by reason of mistake or failure of consideration, that is governed by the law of South Australia and that accrued before the date 6 years before the date of the filing of this Statement of Claim, be granted an extension of time until the date of the filing of this Statement of Claim;
- (h) an order under section 38 of the *Limitation of Actions Act 2005* (WA) that any Group Member who has a claim for monies had and received by JB Hi-Fi to the use of the Group Member by reason of mistake or failure of consideration, that is governed by the law of Western Australia and that accrued before the date 6 years before the date of the filing of this Statement of Claim, be granted an extension of time until the date of the filing of this Statement of Claim;
- (i) judgment pursuant to section 33Z(1) of the Supreme Court Act;
- (j) pursuant to section 33ZJ of the Supreme Court Act, an order that the Group Members reimburse the Plaintiff, in such proportions as the Court may deem appropriate, any costs incurred by the Plaintiff and not recovered pursuant to (l) hereof;
- (k) such further order as the Court may deem appropriate; and
- (l) costs.

**O. COMMON QUESTIONS OF LAW OR FACT**

The questions of law or fact common to the claims of the Plaintiff and the Group Members are:

ASIC Act

1. Are the Extended Warranties a “financial product” within the meaning of sections 5(1) and 12BAA(1)(b) of the ASIC Act?
2. Are the Extended Warranties a “financial service” within the meaning of sections 5(1) and 12BAB(1)(b), (1AA), (7)(b) and (8) of the ASIC Act?
3. Are the Extended Warranties a “financial service” within the meaning of sections 5(1), 12BAB(1)(b), (1AA), (7)(a) and (8) of the ASIC Act?
4. Were the Extended Warranties acquired by the Plaintiff and Group Members in the course of “trade or commerce” within the meaning of

section 12BA(1) of the ASIC Act?

ACL

5. Are the Extended Warranties a “service” or a “product related service” within the meaning of section 2 of the ACL?
6. Were the Extended Warranties acquired as a “service” by a “consumer” within the meaning of section 3 of the ACL?
7. Were the Extended Warranties acquired by the Plaintiff and Group Members in the course of “trade or commerce” within the meaning of section 2 of the ACL?

The True Position and the Extended Warranties

8. Did the Extended Warranties have the terms pleaded in paragraphs 11 and 15-19?
9. Were the Extended Warranties likely to be of little or negligible value to the Plaintiff and Group Members?

Misleading or Deceptive Conduct

10. Did JB Hi-Fi make the:
  - (a) Brochure Longer Cover Representations to the Plaintiff and Group Members as pleaded at paragraph 20?
  - (b) Brochure Additional Benefits Representations to the Plaintiff and Group Members as pleaded at paragraphs 21 and 22?
  - (c) In Store Longer Cover Representation to the Plaintiff and Group Members as pleaded at paragraph 29(a)?
  - (d) In Store Material Value Representation to the Plaintiff and Group Members as pleaded at paragraph 29(b)?
  - (e) Online Longer Cover Representation to the Plaintiff and Group Members as pleaded at paragraph 33(a)?
  - (f) Online Material Value Representation to the Plaintiff and Group Members as pleaded at paragraph 33(b)?
11. Did JB Hi-Fi fail to disclose the Cautionary Matters to the Plaintiff and Group Members as pleaded at paragraphs 34 and 35?
12. Did JB Hi-Fi make the:

- (a) Need to Have Misrepresentation as pleaded at paragraph 70(a)?
  - (b) Existence and Effect Misrepresentation as pleaded at paragraph 70(b)?
  - (c) Requirement to Purchase Misrepresentation as pleaded at paragraph 70(c)?
13. Were the In Store Longer Cover Representation, the Online Longer Cover Representation, and the Brochure Longer Cover Representations as to a future matter within the meaning of section 12BB of the ASIC Act or section 4 of the ACL?
14. Did JB Hi-Fi have reasonable grounds for making the In Store Longer Cover Representation, the Online Longer Cover Representation, and the Brochure Longer Cover Representations?
15. If not, did JB Hi-Fi contravene sections 12DA or 12DB(1)(a) of the ASIC Act or alternatively sections 18 or section 29(1)(b) of the ACL?
16. Were each of the:
- (a) In Store Longer Cover Representation, the Online Longer Cover Representation, and the Brochure Longer Cover Representations;
  - (b) Brochure Additional Benefits Representations; and
  - (c) Material Value Implied Representations;
- misleading or deceptive or likely to mislead or deceive?
17. Was it misleading or deceptive or likely to mislead or deceive to fail to disclose the Cautionary Matters?
18. Were each of the:
- (a) Need to Have Misrepresentations;
  - (b) Existence and Effect Misrepresentations;
  - (c) Requirement to Purchase Misrepresentations;
- misleading or deceptive or likely to mislead or deceive?
19. Did JB Hi-Fi engage in misleading or deceptive conduct or conduct that was likely to mislead or deceive in contravention of section 12DA or 12DB(1)(a) of the ASIC Act?
20. Did JB Hi-Fi engage in misleading or deceptive conduct or conduct that

was likely to mislead or deceive in contravention of section 18 or 29(1)(b) of the ACL?

21. Did JB Hi-Fi contravene sections 12DB(1)(h), 12DB(1)(i) and 12DB(1)(j) of the ASIC Act?
22. Did JB Hi-Fi contravene sections 29(1)(l), 29(1)(m) and/or 29(1)(n) of the ACL?
- 22A. Did any of the contravening conduct by JB Hi-Fi cause the Plaintiff or Group Members to purchase the Extended Warranties?

Unconscionable Conduct

23. Did JB Hi-Fi engage in the Unfair Sales Tactics?
24. Did JB Hi-Fi engage in conduct that was unconscionable within the meaning of and in contravention of sections 12CB and 12CC of the ASIC Act?
25. Did JB Hi-Fi engage in conduct that was unconscionable within the meaning of and in contravention of sections 21 and 22 of the ACL?
26. Did JB Hi-Fi engage in conduct that was unconscionable in contravention of the unwritten law, within the meaning of section 20 of the ACL?

Mistake

27. Did the matters pleaded at paragraphs 26-27, 34-35, 58, 61, 64 and/or 71 constitute material information that was relevant to the decision of the Plaintiff and Group Members as to whether to purchase the Extended Warranties?
28. If so, were the Plaintiff and Group Members at the time of purchase of the Extended Warranties labouring under the Extended Warranty Mistakes as pleaded at paragraph 79 above?
29. Was the Extended Warranty Mistakes a mistake:
  - (a) as to serious matters in relation to the operation of the Extended Warranties?
  - (b) in respect of the fundamental terms of the Extended Warranties?
30. Did JB Hi-Fi induce the Plaintiff and Group Members to adopt the Extended Warranty Mistakes?
31. Did JB Hi-Fi know or was it aware of circumstances indicating that the



Plaintiff and Group Members were labouring under the Extended Warranty Mistakes?

32. If so, did JB Hi-Fi fail to correct the Extended Warranty Mistakes and/or choose to leave the Plaintiff and the mistaken Group Members labouring under the Extended Warranty Mistakes?
33. By reason of the Extended Warranty Mistakes, are the Plaintiff and the mistaken Group Members entitled to rescind the Extended Warranties and/or are the Extended Warranties void?
34. If so, is JB Hi-Fi obliged to make restitution and repay the cost of the Extended Warranties to the Plaintiff and the Group Members?

Failure of consideration

35. By reason of JB Hi-Fi's misleading or deceptive conduct and/or unconscionable conduct and/or the Extended Warranty Mistakes, were the Extended Warranties ~~were~~ purchased by the Plaintiff and the Group Members in circumstances which constituted a total failure of consideration?
36. If so, is JB Hi-Fi obliged to make restitution and repay the payments for the Extended Warranties to the Plaintiff and the Group Members?

Loss and Damage

37. Are the Plaintiff and the Group Members entitled to an award of compensation for loss or damage by reason of any contraventions as alleged in the Statement of Claim:
  - (a) under the ASIC Act?
  - (b) under the ACL?
  - (c) at common law or equity?
38. Should the Court make an award of damages in favour of the Plaintiff and Group Members in an aggregate amount pursuant to s33Z(1)(e) or s33Z(1)(f) of the *Supreme Court Act 1986* (Vic), and if so, in what amount?

Dated: ~~8 December 2023~~ 12 June 2024

This pleading was settled by Rachel Doyle SC,  
Rachel Francois and Kathleen Morris of counsel.

*W. Doyle*

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Rachel Doyle SC  
Castan Chambers

*P. Francois*

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*Maurice Blackburn Lawyers*

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Maurice Blackburn Lawyers  
Solicitors for the Plaintiff

## SCHEDULE 1

### FURTHER PARTICULARS TO PARAGRAPH 19: EXTENDED WARRANTIES – MAXIMUM DURATIONS

1. For the period from approximately 1 January 2011 to at least 30 December 2013, to the best of the Plaintiff's current knowledge, the latest date on which the Extended Warranties affording Repair Cover expired is in Table 1. ~~The Plaintiff does not presently know whether in the period from 1 January 2011 to approximately 31 May 2011, the Extended Warranties offered by JB Hi-Fi in this period included Replacement Cover in addition to Repair Cover and does not know whether there were Consumer Goods further to those stated in Table 1, on which an Extended Warranty was available.~~
2. ~~[not used] For the period from approximately June 2011 to about May 2016, the Plaintiff does not know whether the Extended Warranties offered by JB Hi-Fi in this period included Replacement Cover. If they did, then to the best of the Plaintiff's current knowledge the latest date on which the Replacement Cover Extended Warranties expired is in Column A of Table 2.~~
3. For Replacement Cover Extended Warranties operative in the period from 1 January 2011 to 8 December 2023 ~~approximately May 2016 to about February 2022~~, to the best of the Plaintiff's current knowledge, the latest date on which the Extended Warranties expired is in Column B of Table 2.
4. ~~[not used] For Replacement Cover Extended Warranties operative in the period from approximately February 2022 to the date of filing, the latest date on the Extended Warranties expired is in Column C of Table 2.~~
5. For Repair Cover Extended Warranties operative in the period from 1 January 2011 to 8 December 2023 ~~approximately June 2011 to about May 2016~~, to the best of the Plaintiff's current knowledge, the latest date on which the Extended Warranties expired is in Column A of Table 3.
6. ~~[not used] For Repair Cover Extended Warranties operative in the period from approximately May 2016 to about August 2021, the latest date on which the Extended Warranties expired is in Column B of Table 3.~~
7. ~~[not used] For Repair Cover Extended Warranties operative in the period from approximately August 2021 to about February 2022, the latest date on which the Extended Warranties expired is in Column C of Table 3.~~

8. ~~[not used] For Repair Cover Extended Warranties operative in the period from approximately February 2022 to the date of filing, the latest date on the Extended Warranties expired is in Column D of Table 3.~~

9. Further particulars will be provided after discovery, interrogatories, and evidence.

**Table 1. 2011 to ~~2021~~ Extended Care Plan (from January 2011 to 30 December 2013)**

<b>Product category</b>	<b>Consumer Goods on which Extended Warranties were available</b>	<b>Extended Warranty Code (if known)</b>	<b>Latest date on which Extended Warranty cover expired:</b>	<b>Maximum duration of period in which Extended Warranty provided cover</b> (Operative from expiry of the manufacturer's warranty only)
3D LCD	3D LCD TVs priced at \$1,001 - \$1,500	2EWLCD3D1500	5 years from purchase	2 years
3D Plasma	3D Plasma Screen TVs priced at \$1,001 - \$1,500	2EWPPT3D1500	5 years from purchase	2 years
	3D Plasma Screen TVs priced at \$3,001 - \$5,000	4EWLCD3D5000	5 years from purchase	4 years
LCD	LCD TVs, LCD/DVD Inbuilt Combos (non-portable), LCD Photo Frames priced at \$0 - \$500, \$501 - \$1,000, \$1,001 - \$1,500, \$2,001 - \$3,000, \$3,001 - \$5,000 or \$5,001 - \$10,000	2EWLCD500 2EWLCD1000 2EWLCD1500 2EWLCD3000 2EWLCD5000 2EWLCD10000	5 years from purchase	2 years
	LCD TVs, LCD/DVD Inbuilt Combos (non-portable), LCD Photo Frames priced at \$0 - \$500 or \$501 - \$1,000, \$2,001 - \$3,000, \$3,001 - \$5,000 or \$5,001 - \$10,000	4EWLCD500 4EWLCD1000	5 years from purchase	4 years
Plasma	Plasma TVs, Plasma/DVD combo units, Projection TVs, Projectors priced at	2EWPPT1000 2EWPPT1500	5 years from purchase	2 years

<b>Product category</b>	<b>Consumer Goods on which Extended Warranties were available</b>	<b>Extended Warranty Code (if known)</b>	<b>Latest date on which Extended Warranty cover expired:</b>	<b>Maximum duration of period in which Extended Warranty provided cover</b> (Operative from expiry of the manufacturer's warranty only)
	\$0 - \$1,000, \$1,001 - \$1,500, \$1,501 - \$2,000 or \$2,001-\$3,000 or \$3,001 - \$5,000 or \$5,001 - \$10,000	2EWPPT2000 2EWPPT3000 2EWPPT5000 2EWPPT10000		
	Plasma TVs, Plasma/DVD combo units, Projection TVs, Projectors priced at \$0 - \$1,000, \$1,001 - \$1,500 and \$1,501 - \$2,000, \$2,001 - \$3,000, \$5,001 - \$10,000	4EWPPT1000 4EWPPT1500 4EWPPT2000 4EWPPT3000 4EWPPT10000	5 years from purchase	4 years
Appliances	Cordless Phones, Set Top Boxes, VCRs priced at \$501 - \$1,000	2EWAPP1000	5 years from purchase	2 years
	Cordless Phones, Set Top Boxes, VCRs priced at \$501 - \$1,000	4EWAPP1000	5 years from purchase	4 years
	Printers & Scanners priced at \$501 - \$1,000	4EWAPP1000	3 years from purchase	2 years

<b>Product category</b>	<b>Consumer Goods on which Extended Warranties were available</b>	<b>Extended Warranty Code (if known)</b>	<b>Latest date on which Extended Warranty cover expired:</b>	<b>Maximum duration of period in which Extended Warranty provided cover</b> (Operative from expiry of the manufacturer's warranty only)
Audio & DVD	Audio (including Car), Car Alarms, DVD Home Theatres Systems, DVD Players, DVD Recordables, DVD/VCR Inbuilt Combos, priced at \$0 to \$10,000	2EWADV500 2EWADV1000 2EWADV2000 2EWADV5000 2EWADV10000	5 years from purchase	2 years
	Games Consoles, Handheld PDAs, Universal Remote Controls, Navigation, Portable DVD/MP3s priced at \$0 - \$10,000	2EWADV500, 2EWADV1000, 2EWADV2000, 2EWADV5000, 2EWADV10000	3 years from purchase	2 years
	Audio (including Car), Car Alarms, DVD Home Theatres Systems, DVD Players, DVD Recordables, DVD/VCR Inbuilt Combos, priced at \$0 - \$10,000	4EWADV500, 4EWADV1000, 4EWADV2000, 4EWADV5000, 4EWADV10000	5 years from purchase	4 years

<b>Product category</b>	<b>Consumer Goods on which Extended Warranties were available</b>	<b>Extended Warranty Code (if known)</b>	<b>Latest date on which Extended Warranty cover expired:</b>	<b>Maximum duration of period in which Extended Warranty provided cover</b> (Operative from expiry of the manufacturer's warranty only)
Computer	Desktop Computers (1 of Monitor, Hard Drive, Speakers, Keyboard, Mouse), Portable Computers/Laptops, Monitors priced at \$0 - \$1,000	2EWCOM1000	5 years from purchase	2 years
	Desktop Computers (1 of Monitor, Hard Drive, Speakers, Keyboard, Mouse), Portable Computers/Laptops, Monitors priced at \$3,500 - \$5,500	2EWCOM5500	5 years from purchase	2 years
Photographic	Camcorders, Digital Cameras, Lenses priced at \$0 - \$500 or \$501 - \$1,000	2EWPHE1000 2EWPHE1000	5 years from purchase	2 years
	Camcorders, Digital Cameras, Lenses priced at \$0 - \$501, \$1,001 - \$2,000 or \$5,001 - \$10,000	4EWPHE500	5 years from purchase	4 years

**Table 2. Replacement Cover plans ~~June 2011~~ – present – 1 January 2011 – 8 December 2023**

Notes:

1. The 2009 Brochure and 2011 Brochure applied ~~between in or around June 2011 and about May 2016~~ in the period from 1 January 2011 to about 1 May 2012
2. The 2012 Brochure applied from about 1 May 2012 to about February 2014
3. The February 2014 Brochure applied from about February 2014 to about July 2014
4. The July 2014 Brochure applied from about July 2014 to about January 2016
5. The January 2016 Brochure, May 2016 Brochure, 2017 Brochure, February 2018 Brochure, October 2018 Brochure, 2020 Brochure and 2021 Brochures applied between ~~around May~~ about January 2016 and about February 2022.
6. The 2022 Brochure and the 2023 Brochure applied from ~~about in or around~~ February 2022 to the present 8 December 2023.

No.	Consumer Goods	<b>Column A. 2011 Brochure:</b> Extended Warranty cover commenced on expiry of the manufacturer's warranty and expired:	<b>Column A. 2009 and 2011 Brochure:</b> Extended Warranty cover commenced on expiry of the manufacturer's warranty:	<b>Column B. 2012 Brochure:</b> Extended Warranty cover commenced on expiry of the manufacturer's warranty:	<b>Column C. February 2014 Brochure:</b> Extended Warranty cover commenced on expiry of the manufacturer's warranty or 12 months from the purchase date (whichever was latest) and expired:	<b>Column D. July 2014 Brochure:</b> Extended Warranty cover commenced on expiry of the manufacturer's warranty or 12 months from the purchase date (whichever was latest) and expired:	<b>Column BE. January and May 2016, 2017, February and October 2018, 2020 and 2021 Brochures:</b> Extended Warranty cover commenced on expiry of the manufacturer's warranty or 12 months from the purchase date (whichever was latest) and expired:	<b>Column CF. 2022 and 2023 Brochures:</b> Extended Warranty cover commenced 12 months from the date of purchase/delivery and expired:
1.	Air conditioners	<del>3 years after purchase,</del>	<u>3 years after purchase</u>	<u>2 or 3 years after purchase</u>	<u>3 years after purchase</u>	<u>3 years after purchase</u>	Extended Warranty not available	<u>3 years after purchase/delivery (Wall mounted air</u>



No.	Consumer Goods	<b>Column A- 2011 Brochure:</b> Extended Warranty cover commenced on expiry of the manufacturer's warranty and expired:	<b>Column A. 2009 and 2011 Brochure:</b> Extended Warranty cover commenced on expiry of the manufacturer's warranty:	<b>Column B. 2012 Brochure:</b> Extended Warranty cover commenced on expiry of the manufacturer's warranty:	<b>Column C. February 2014 Brochure:</b> Extended Warranty cover commenced on expiry of the manufacturer's warranty or 12 months from the purchase date (whichever was latest) and expired:	<b>Column D. July 2014 Brochure:</b> Extended Warranty cover commenced on expiry of the manufacturer's warranty or 12 months from the purchase date (whichever was latest) and expired:	<b>Column BE. January and May 2016, 2017, February and October 2018, 2020 and 2021 Brochures:</b> Extended Warranty cover commenced on expiry of the manufacturer's warranty or 12 months from the purchase date (whichever was latest) and expired:	<b>Column CF. 2022 and 2023 Brochures:</b> Extended Warranty cover commenced 12 months from the date of purchase/delivery and expired:
		in the case of all Consumer Goods on which an Extended Warranty was available						conditioners excluded)
2.	Air purifiers		<u>3 years after purchase</u>	<u>2 or 3 years after purchase</u>	<u>3 years after purchase</u>	<u>3 years after purchase</u>	4 years after purchase	3 years after purchase/delivery
3.	Cameras including drones		<u>3 years after purchase</u>	<u>2 or 3 years after purchase</u>	<u>3 years after purchase</u>	<u>3 years after purchase</u>	4 years after purchase	3 years after purchase/delivery
4.	Clothes washing machines		<u>3 years after purchase</u>	<u>2 or 3 years after purchase</u>	<u>3 years after purchase</u>	<u>3 years after purchase</u>	Extended Warranty not available	3 years after purchase/delivery
5.	Clothes dryers		<u>3 years after purchase</u>	<u>2 or 3 years after purchase</u>	<u>3 years after purchase</u>	<u>3 years after purchase</u>	Extended Warranty not available	3 years after purchase/delivery

No.	Consumer Goods	<b>Column A- 2011 Brochure:</b> Extended Warranty cover commenced on expiry of the manufacturer's warranty and expired:	<b>Column A. 2009 and 2011 Brochure:</b> Extended Warranty cover commenced on expiry of the manufacturer's warranty:	<b>Column B. 2012 Brochure:</b> Extended Warranty cover commenced on expiry of the manufacturer's warranty:	<b>Column C. February 2014 Brochure:</b> Extended Warranty cover commenced on expiry of the manufacturer's warranty or 12 months from the purchase date (whichever was latest) and expired:	<b>Column D. July 2014 Brochure:</b> Extended Warranty cover commenced on expiry of the manufacturer's warranty or 12 months from the purchase date (whichever was latest) and expired:	<b>Column BE. January and May 2016, 2017, February and October 2018, 2020 and 2021 Brochures:</b> Extended Warranty cover commenced on expiry of the manufacturer's warranty or 12 months from the purchase date (whichever was latest) and expired:	<b>Column CF. 2022 and 2023 Brochures:</b> Extended Warranty cover commenced 12 months from the date of purchase/delivery and expired:
6.	Desktop computers		<u>3 years after purchase</u>	<u>2 or 3 years after purchase</u>	<u>Extended Warranty not available</u>	<u>3 years after purchase</u>	4 years after purchase	3 years after purchase/delivery
7.	Dishwashers		<u>3 years after purchase</u>	<u>2 or 3 years after purchase</u>	<u>3 years after purchase</u>	<u>3 years after purchase</u>	Extended Warranty not available	3 years after purchase/delivery
8.	Electric scooters, bikes, boards		<u>3 years after purchase</u>	<u>2 or 3 years after purchase</u>	<u>3 years after purchase</u>	<u>3 years after purchase</u>	4 years after purchase	3 years after purchase/delivery
9.	Fitness machines		<u>3 years after purchase</u>	<u>2 or 3 years after purchase</u>	<u>3 years after purchase</u>	<u>3 years after purchase</u>	4 years after purchase	3 years after purchase/delivery
10.	Fridges and freezers		<u>3 years after purchase</u>	<u>2 or 3 years after purchase</u>	<u>3 years after purchase</u>	<u>3 years after purchase</u>	Extended Warranty not available	3 years after purchase/delivery

No.	Consumer Goods	<b>Column A- 2011 Brochure:</b> Extended Warranty cover commenced on expiry of the manufacturer's warranty and expired:	<b>Column A. 2009 and 2011 Brochure:</b> Extended Warranty cover commenced on expiry of the manufacturer's warranty:	<b>Column B. 2012 Brochure:</b> Extended Warranty cover commenced on expiry of the manufacturer's warranty:	<b>Column C. February 2014 Brochure:</b> Extended Warranty cover commenced on expiry of the manufacturer's warranty or 12 months from the purchase date (whichever was latest) and expired:	<b>Column D. July 2014 Brochure:</b> Extended Warranty cover commenced on expiry of the manufacturer's warranty or 12 months from the purchase date (whichever was latest) and expired:	<b>Column BE. January and May 2016, 2017, February and October 2018, 2020 and 2021 Brochures:</b> Extended Warranty cover commenced on expiry of the manufacturer's warranty or 12 months from the purchase date (whichever was latest) and expired:	<b>Column CF. 2022 and 2023 Brochures:</b> Extended Warranty cover commenced 12 months from the date of purchase/delivery and expired:
11.	Headphones		<u>Extended Warranty not available</u>	<u>2 or 3 years after purchase</u>	<u>3 years after purchase</u>	<u>3 years after purchase</u>	4 years after purchase	3 years after purchase/delivery
12.	iPads, tablets		<u>3 years after purchase</u>	<u>2 or 3 years after purchase</u>	<u>Extended Warranty not available</u>	<u>3 years after purchase</u>	4 years after purchase	3 years after purchase/delivery
13.	Laptops		<u>3 years after purchase</u>	<u>2 or 3 years after purchase</u>	<u>Extended Warranty not available</u>	<u>3 years after purchase</u>	4 years after purchase	3 years after purchase/delivery
14.	Massage machines		<u>3 years after purchase</u>	<u>2 or 3 years after purchase</u>	<u>3 years after purchase</u>	<u>3 years after purchase</u>	4 years after purchase	3 years after purchase/delivery
15.	Microwaves		<u>3 years after purchase</u>	<u>2 or 3 years after purchase</u>	<u>3 years after purchase</u>	<u>3 years after purchase</u>	4 years after purchase	3 years after purchase/delivery

No.	Consumer Goods	<b>Column A- 2011 Brochure:</b> Extended Warranty cover commenced on expiry of the manufacturer's warranty and expired:	<b>Column A. 2009 and 2011 Brochure:</b> Extended Warranty cover commenced on expiry of the manufacturer's warranty:	<b>Column B. 2012 Brochure:</b> Extended Warranty cover commenced on expiry of the manufacturer's warranty:	<b>Column C. February 2014 Brochure:</b> Extended Warranty cover commenced on expiry of the manufacturer's warranty or 12 months from the purchase date (whichever was latest) and expired:	<b>Column D. July 2014 Brochure:</b> Extended Warranty cover commenced on expiry of the manufacturer's warranty or 12 months from the purchase date (whichever was latest) and expired:	<b>Column BE. January and May 2016, 2017, February and October 2018, 2020 and 2021 Brochures:</b> Extended Warranty cover commenced on expiry of the manufacturer's warranty or 12 months from the purchase date (whichever was latest) and expired:	<b>Column CF. 2022 and 2023 Brochures:</b> Extended Warranty cover commenced 12 months from the date of purchase/delivery and expired:
16.	Mobile phones		<u>Extended Warranty not available</u>	<u>2 or 3 years after purchase</u>	<u>Extended Warranty not available</u>	<u>Extended Warranty not available</u>	Extended Warranty not available until the 2021 Brochure, then 4 years after purchase	3 years after purchase/delivery
17.	Ovens, cooktops and rangehoods		<u>3 years after purchase</u>	<u>2 or 3 years after purchase</u>	<u>3 years after purchase</u>	<u>3 years after purchase</u>	4 years after purchase	3 years after purchase/delivery
18.	Printers and scanners		<u>3 years after purchase</u>	<u>2 or 3 years after purchase</u>	<u>3 years after purchase</u>	<u>3 years after purchase</u>	4 years after purchase	3 years after purchase/delivery
19.	Small electrical appliances		<u>3 years after purchase</u>	<u>2 or 3 years after purchase</u>	<u>3 years after purchase</u>	<u>3 years after purchase</u>	4 years after purchase	3 years after purchase/delivery

No.	Consumer Goods	<b>Column A- 2011 Brochure:</b> Extended Warranty cover commenced on expiry of the manufacturer's warranty and expired:	<b>Column A. 2009 and 2011 Brochure:</b> Extended Warranty cover commenced on expiry of the manufacturer's warranty:	<b>Column B. 2012 Brochure:</b> Extended Warranty cover commenced on expiry of the manufacturer's warranty:	<b>Column C. February 2014 Brochure:</b> Extended Warranty cover commenced on expiry of the manufacturer's warranty or 12 months from the purchase date (whichever was latest) and expired:	<b>Column D. July 2014 Brochure:</b> Extended Warranty cover commenced on expiry of the manufacturer's warranty or 12 months from the purchase date (whichever was latest) and expired:	<b>Column BE. January and May 2016, 2017, February and October 2018, 2020 and 2021 Brochures:</b> Extended Warranty cover commenced on expiry of the manufacturer's warranty or 12 months from the purchase date (whichever was latest) and expired:	<b>Column CF. 2022 and 2023 Brochures:</b> Extended Warranty cover commenced 12 months from the date of purchase/delivery and expired:
20.	Smart home		<u>3 years after purchase</u>	<u>2 or 3 years after purchase</u>	<u>3 years after purchase</u>	<u>3 years after purchase</u>	4 years after purchase	3 years after purchase/delivery
21.	Smart watches, health monitors		<u>3 years after purchase</u>	<u>2 or 3 years after purchase</u>	<u>3 years after purchase</u>	<u>3 years after purchase</u>	4 years after purchase	3 years after purchase/delivery
22.	Speakers, soundbars, home theatre systems		<u>3 years after purchase</u>	<u>2 or 3 years after purchase</u>	<u>3 years after purchase</u>	<u>3 years after purchase</u>	4 years after purchase	3 years after purchase/delivery
23.	TVs		<u>3 years after purchase</u>	<u>2 or 3 years after purchase</u>	<u>3 years after purchase</u>	<u>3 years after purchase</u>	4 years after purchase	3 years after purchase/delivery
24.	Vacuum cleaners		<u>3 years after purchase</u>	<u>2 or 3 years after purchase</u>	<u>3 years after purchase</u>	<u>3 years after purchase</u>	4 years after purchase	3 years after purchase/delivery

**Table 3. Repair Cover plans ~~June 2011 – present~~ 1 January 2011 - 8 December 2023**

Notes:

1. The 2009 Brochure applied in the period from 1 January 2011 until about July 2011
2. The 2011 Brochure and the 2012 Brochure applied from about July 2011 to about February 2014~~between in or around June 2014 and about May 2016~~
3. The ~~2016 and 2018~~ February 2014 Brochure and July 2014 Brochure applied from about February 2014 to about January 2016~~between around May 2016 and about August 2021.~~
4. The ~~2021~~ January 2016 Brochure, the May 2016 Brochure, the 2017 Brochure, the February 2018 and the October 2018 Brochure applied from about January 2016 to about October 2020~~between around August 2021 and February 2022~~
5. The 2020 Brochure and the 2021 Brochure applied from about October 2020 to about February 2022
6. The 2022 Brochure and the 2023 Brochure applied from about in or around February 2022 to the present 8 December 2023

	<b>Consumer Goods</b>	<b>Column A. 2009 Brochure</b> Extended Warranty cover commenced on expiry of manufacturer's warranty and expired:	<b>Column AB. 2011 and 2012 Brochure</b> Extended Warranty cover commenced on expiry of manufacturer's warranty and expired:	<b>Column BC. February 2014 and July 2014 Brochures</b> Extended Warranty cover commenced on the later of expiry of manufacturer's warranty or the applicable "JB Hi-Fi Minimum Voluntary Warranty Period" and expired:	<b>Column BD. January 2016, May 2016, 2017, February 2018 and October 2018 Brochures</b> Extended Warranty cover commenced on the later of expiry of manufacturer's warranty or the applicable "JB Hi-Fi Minimum Voluntary Warranty Period" and expired:	<b>Column GE. 2020 and 2021 Brochures</b> Extended Warranty cover commenced on the later of expiry of manufacturer's warranty or the applicable "JB Hi-Fi Minimum Voluntary Warranty Period" and expired:	<b>Column DE. 2022 and 2023 Brochures</b> Extended Warranty cover commenced on the later of expiry of manufacturer's warranty or the applicable "JB Hi-Fi Minimum Voluntary Warranty Period" and expired:
1.	Air conditioners	<u>5 years after purchase</u>	7 years after purchase	<u>Extended Warranty not available</u>	Extended Warranty not available	Extended Warranty not available	5 years after purchase/delivery (not available on wall mounted air conditioners)
2.	Air purifiers		5 years after purchase in the case of all other Consumer Goods on which an Extended Warranty was available	<u>5.5 years after purchase</u>	5.5 years after purchase	5.5 years after purchase	5 years after purchase/delivery
3.	Cameras including drones				5.5 years after purchase	5.5 years after purchase	5 years after purchase/delivery
4.	Clothes washing machines < \$500				6 years after purchase	5 years after purchase	5 years after purchase/delivery
5.	Clothes washing machines > \$500				6 years after purchase	6 years after purchase	5 years after purchase/delivery
6.	Clothes dryers < \$500				6 years after purchase	5 years after purchase	5 years after purchase/delivery
7.	Clothes dryers > \$500				6 years after purchase	6 years after purchase	5 years after purchase/delivery

	<b>Consumer Goods</b>	<b><u>Column A. 2009 Brochure</u></b> Extended Warranty cover commenced on expiry of manufacturer's warranty and expired:	<b><u>Column AB. 2011 and 2012 Brochure</u></b> Extended Warranty cover commenced on expiry of manufacturer's warranty and expired:	<b><u>Column BC. February 2014 and July 2014 Brochures</u></b> Extended Warranty cover commenced on the later of expiry of manufacturer's warranty or the applicable "JB Hi-Fi Minimum Voluntary Warranty Period" and expired:	<b><u>Column BD. January 2016, May 2016, 2017, February 2018 and October 2018 Brochures</u></b> Extended Warranty cover commenced on the later of expiry of manufacturer's warranty or the applicable "JB Hi-Fi Minimum Voluntary Warranty Period" and expired:	<b><u>Column GE. 2020 and 2021 Brochures</u></b> Extended Warranty cover commenced on the later of expiry of manufacturer's warranty or the applicable "JB Hi-Fi Minimum Voluntary Warranty Period" and expired:	<b><u>Column DE. 2022 and 2023 Brochures</u></b> Extended Warranty cover commenced on the later of expiry of manufacturer's warranty or the applicable "JB Hi-Fi Minimum Voluntary Warranty Period" and expired:
8.	Desktop computers				5.5 years after purchase	5.5 years after purchase	5 years after purchase/delivery
9.	Dishwashers < \$500				6 years after purchase	5 years after purchase	5 years after purchase/delivery
10.	Dishwashers > \$500				6 years after purchase	6 years after purchase	5 years after purchase/delivery
11.	Electric scooters, bikes, boards				5.5 years after purchase	5.5 years after purchase	5 years after purchase/delivery
12.	Fitness machines				5.5 years after purchase	5.5 years after purchase	5 years after purchase/delivery
13.	Fridges and freezers < \$500				6 years after purchase	5 years after purchase	5 years after purchase/delivery
14.	Fridges and freezers > \$500				6 years after purchase	6 years after purchase	5 years after purchase/delivery
15.	Headphones				5.5 years after purchase	5.5 years after purchase	5 years after purchase/delivery



	<b>Consumer Goods</b>	<b>Column A. 2009 Brochure</b> <u>Extended Warranty cover commenced on expiry of manufacturer's warranty and expired:</u>	<b>Column AB. 2011 and 2012 Brochure</b> Extended Warranty cover commenced on expiry of manufacturer's warranty and expired:	<b>Column BC. February 2014 and July 2014 Brochures</b> <u>Extended Warranty cover commenced on the later of expiry of manufacturer's warranty or the applicable "JB Hi-Fi Minimum Voluntary Warranty Period" and expired:</u>	<b>Column BD. January 2016, May 2016, 2017, February 2018 and October 2018 Brochures</b> Extended Warranty cover commenced on the later of expiry of manufacturer's warranty or the applicable "JB Hi-Fi Minimum Voluntary Warranty Period" and expired:	<b>Column GE. 2020 and 2021 Brochures</b> Extended Warranty cover commenced on the later of expiry of manufacturer's warranty or the applicable "JB Hi-Fi Minimum Voluntary Warranty Period" and expired:	<b>Column DE. 2022 and 2023 Brochures</b> Extended Warranty cover commenced on the later of expiry of manufacturer's warranty or the applicable "JB Hi-Fi Minimum Voluntary Warranty Period" and expired:
16.	iPads, tablets				5.5 years after purchase	5.5 years after purchase	5 years after purchase/delivery
17.	Laptops				5.5 years after purchase	5.5 years after purchase	5 years after purchase/delivery
18.	Massage machines				5.5 years after purchase	5.5 years after purchase	5 years after purchase/delivery
19.	Microwaves				5.5 years after purchase	5.5 years after purchase	5 years after purchase/delivery
20.	Mobile phones			<u>Extended Warranty not available</u>	Extended Warranty not available	<u>Extended Warranty not available until the 2021 Brochure, then</u> 5.5 years after purchase	5 years after purchase/delivery

	<b>Consumer Goods</b>	<b><u>Column A. 2009 Brochure</u></b> Extended Warranty cover commenced on expiry of manufacturer's warranty and expired:	<b><u>Column AB. 2011 and 2012 Brochure</u></b> Extended Warranty cover commenced on expiry of manufacturer's warranty and expired:	<b><u>Column BC. February 2014 and July 2014 Brochures</u></b> Extended Warranty cover commenced on the later of expiry of manufacturer's warranty or the applicable "JB Hi-Fi Minimum Voluntary Warranty Period" and expired:	<b><u>Column BD. January 2016, May 2016, 2017, February 2018 and October 2018 Brochures</u></b> Extended Warranty cover commenced on the later of expiry of manufacturer's warranty or the applicable "JB Hi-Fi Minimum Voluntary Warranty Period" and expired:	<b><u>Column GE. 2020 and 2021 Brochures</u></b> Extended Warranty cover commenced on the later of expiry of manufacturer's warranty or the applicable "JB Hi-Fi Minimum Voluntary Warranty Period" and expired:	<b><u>Column DE. 2022 and 2023 Brochures</u></b> Extended Warranty cover commenced on the later of expiry of manufacturer's warranty or the applicable "JB Hi-Fi Minimum Voluntary Warranty Period" and expired:
21.	Ovens, cooktops and rangehoods < \$500			<u>5.5 years after purchase</u>	6 years after purchase	5 years after purchase	5 years after purchase/delivery
22.	Ovens, cooktops and rangehoods > \$500				6 years after purchase	6 years after purchase	5 years after purchase/delivery
23.	Printers and scanners				5.5 years after purchase	5.5 years after purchase	5 years after purchase/delivery
24.	Small electrical appliances				5.5 years after purchase	5.5 years after purchase	5 years after purchase/delivery
25.	Smart home				5.5 years after purchase	5.5 years after purchase	5 years after purchase/delivery
26.	Smart watches, health monitors				5.5 years after purchase	5.5 years after purchase	5 years after purchase/delivery
27.	Speakers, soundbars, home theatre systems				5.5 years after purchase	5.5 years after purchase	5 years after purchase/delivery

	<b>Consumer Goods</b>	<b><u>Column A. 2009 Brochure</u></b> Extended Warranty cover commenced on <u>expiry of manufacturer's warranty and expired:</u>	<b><u>Column AB. 2011 and 2012 Brochure</u></b> Extended Warranty cover commenced on expiry of manufacturer's warranty and expired:	<b><u>Column BC. February 2014 and July 2014 Brochures</u></b> Extended Warranty cover commenced on the <u>later of expiry of manufacturer's warranty or the applicable "JB Hi-Fi Minimum Voluntary Warranty Period" and expired:</u>	<b><u>Column BD. January 2016, May 2016, 2017, February 2018 and October 2018 Brochures</u></b> Extended Warranty cover commenced on the later of expiry of manufacturer's warranty or the applicable "JB Hi-Fi Minimum Voluntary Warranty Period" and expired:	<b><u>Column GE. 2020 and 2021 Brochures</u></b> Extended Warranty cover commenced on the later of expiry of manufacturer's warranty or the applicable "JB Hi-Fi Minimum Voluntary Warranty Period" and expired:	<b><u>Column DE. 2022 and 2023 Brochures</u></b> Extended Warranty cover commenced on the later of expiry of manufacturer's warranty or the applicable "JB Hi-Fi Minimum Voluntary Warranty Period" and expired:
28.	TVs				5.5 years after purchase	5.5 years after purchase	5 years after purchase/delivery
29.	Vacuum cleaners				5.5 years after purchase	5.5 years after purchase	5 years after purchase/delivery

Schedule 2 – Defined Terms

Defined Term	Defined in Paragraph
<u>2009 Brochure</u>	<u>15</u>
2011 Brochure	15
2011 to <del>2022</del> 2013 Extended Care Plan	14
<del>2011 to 2016 Customer Care Plan</del>	44
<del>2016 to 2022 Extended Care Plan</del>	44
<u>2012 Brochure</u>	<u>15</u>
<u>2017 Brochure</u>	<u>15</u>
<u>2020 Brochure</u>	<u>15</u>
2021 Brochure	15
2022 Brochure	15
<u>2023 Brochure</u>	<u>15</u>
Additional Benefits Misleading Conduct Contraventions	62
Additional Benefits Mistake	79
Brochure Additional Benefits Representations	22
Brochure Longer Cover Representations	<u>20A</u>
Cautionary Matters	34
Cautionary Matters Conduct Contraventions	69
Claim Period	53
Consumer Goods	1
Comparison Table	22
Current Extra Care Plan	14
Declaration	<u>20A</u>
Existence and Effect Misrepresentation	70
Extended Warranties	14
Extended Warranty Brochures	15
Extended Warranty Mistakes	79
<u>February 2014 Brochure</u>	<u>15</u>
<u>February 2018 Brochure</u>	15
Fridge	39
Group Members	3
In Store Longer Cover Representation	29
In Store Material Value Representation	29

<b>Defined Term</b>	<b>Defined in Paragraph</b>
<b>In Store Sales Process</b>	29
<b><u>January 2016 Brochure</u></b>	15
<b>JB Hi-Fi</b>	1
<b>JB Hi-Fi Eastland</b>	36
<b><u>July 2014 Brochure</u></b>	<u>15</u>
<b>Longer Cover Misleading Conduct Contraventions</b>	59
<b>Longer Cover Mistake</b>	79
<b>Manufacturer Warranty Guide</b>	51
<b>Material Value Misleading Conduct Contraventions</b>	65
<b>Material Value Mistake</b>	79
<b><u>May 2016 Brochure</u></b>	<u>15</u>
<b>Mistake Claim Period</b>	3
<b>Need to Have Misrepresentation</b>	70
<b>NT Claimants</b>	4
<b>NT Mistake Claim Period</b>	4
<b><u>October 2018 Brochure</u></b>	<u>15</u>
<b>Online Longer Cover Representation</b>	33
<b>Online Material Value Representation</b>	33
<b>Online Sales Process</b>	33
<b>Original Product</b>	18
<b>Principal Claim Period</b>	3
<b><u>Prominent parts</u></b>	<u>28</u>
<b>Relevant Period</b>	10
<b><u>Representations</u></b>	<u>70</u>
<b>Requirement to Purchase Misrepresentation</b>	70
<b><u>Specific ACL Misrepresentations Contraventions</u></b>	<u>72</u>
<b>Specific ACL Misrepresentations Conduct</b>	71
<b>Specific ACL Mistakes</b>	79
<b>Statutory Guarantee</b>	6
<b><u>Unconscionable Conduct</u></b>	<u>75</u>
<b>Unconscionable Conduct Contraventions</b>	76
<b>Unfair Sales Tactics</b>	73
<b><u>Whitegoods</u></b>	<u>19</u>