

1 Daniel C. Girard (State Bar No. 114826)
2 Jordan Elias (State Bar No. 228731)
3 Simon S. Grille (State Bar No. 294914)

4 **GIRARD GIBBS LLP**
5 601 California Street, 14th Floor
6 San Francisco, California 94108
7 Tel: (415) 981-4800
8 *dcg@girardgibbs.com*
9 *je@girardgibbs.com*
10 *sg@girardgibbs.com*

11 *Attorneys for Plaintiffs*

12 [Additional Counsel on Signature Page]

13 **UNITED STATES DISTRICT COURT**
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN JOSE DIVISION**

16 ROY BERRY, JONATHAN
17 MAKCHAROENWOODHI, ALEX
18 GORBATCHEV, BRIAN CHRISTENSEN,
19 ANTHONY MARTORELLO, KHANH TRAN,
20 EDWARD BEHELER, YURIY DAVYDOV,
21 REBECCA HARRISON, ZACHARY HIMES,
22 TAYLOR JONES, PAUL SERVODIO, JUSTIN
23 LEONE, JAMES POORE, JR., and KENNETH
24 JOHNSTON, individually and on behalf of all
25 others similarly situated,

26 Plaintiffs,

27 v.

28 HUAWAI DEVICE USA, INC. and GOOGLE,
INC.,

Defendants.

Case No. 5:17-cv-02185-BLF

**CONSOLIDATED AMENDED
COMPLAINT**

CLASS ACTION

JURY TRIAL DEMANDED

TABLE OF CONTENTS

1

2 SUMMARY OF THE ACTION1

3 JURISDICTION AND VENUE4

4 PARTIES4

5

6 A. California Plaintiffs.....4

7 B. Florida Plaintiff.....7

8 C. Illinois Plaintiff9

9 D. Indiana Plaintiff9

10 E. Michigan Plaintiff12

11 F. New York Plaintiff.....13

12 G. North Carolina Plaintiffs.....14

13 H. North Dakota Plaintiff.....17

14 I. Ohio Plaintiff18

15 J. Pennsylvania Plaintiff20

16 K. Texas Plaintiff.....21

17 L. Washington Plaintiff22

18 M. Defendants23

19

20 COMMON FACTUAL ALLEGATIONS.....24

21

22 A. The Google Nexus 6P24

23 B. The Widespread Bootloop and Battery Drain Defects Become Apparent27

24 C. The Impact of the Battery Drain and Bootloop Defects on Consumers28

25 D. Defendants’ Continued Failure to Remedy the Defects35

26 CLASS ACTION ALLEGATIONS39

27 CAUSES OF ACTION42

28

1 COUNT I
 2 BREACH OF EXPRESS WARRANTY
 (Against Defendants).....42

3 COUNT II
 4 BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY
 (Against Defendants).....46

5
 6 COUNT III
 7 VIOLATIONS OF THE MAGNUSON-MOSS
 WARRANTY ACT, 15 U.S.C. §§ 2301 *et seq.* (“MMWA”)
 (Against Defendants).....48

8
 9 COUNT IV
 10 DECEIT AND FRAUDULENT CONCEALMENT
 (Against Defendants).....50

11
 12 COUNT V
 13 UNJUST ENRICHMENT
 (Against Defendants).....52

14
 15 COUNT VI
 16 VIOLATIONS OF THE SONG-BEVERLY CONSUMER WARRANTY ACT FOR BREACH OF
 IMPLIED WARRANTY OF MERCHANTABILITY (CAL. CIV. CODE §§ 1791.1 & 1792)
 (Against Defendants).....52

17
 18 COUNT VII
 19 VIOLATIONS OF THE UNFAIR COMPETITION LAW
 (CAL. BUS. & PROF. CODE § 17200, *et seq.*) (“UCL”)
 (Against Defendants).....54

20
 21 COUNT VIII
 22 VIOLATIONS OF THE CONSUMER LEGAL REMEDIES ACT
 (CAL. CIV. CODE § 1750, *et seq.*) (“CLRA”)
 (Against Defendants).....56

23
 24 COUNT IX
 25 VIOLATIONS OF THE FALSE ADVERTISING LAW
 (CAL. BUS. & PROF. CODE § 17500, *et seq.*) (“FAL”)
 (Against Defendants).....59

26
 27 COUNT X
 28 VIOLATIONS OF THE FLORIDA DECEPTIVE AND UNFAIR
 TRADE PRACTICES ACT (“FDUTPA”)
 FLA. STAT. §§ 501.204, *et seq.*
 (Against Defendants).....61

1 COUNT XI
 2 VIOLATIONS OF THE ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS
 3 PRACTICES ACT (“Illinois CFA”) 815 ILL. COMP. STAT. §§ 505/1, *et seq.*
 (Against Defendants).....62

4 COUNT XII
 5 VIOLATIONS OF THE ILLINOIS UNIFORM DECEPTIVE
 6 TRADE PRACTICES ACT (“Illinois DTPA”) 815 ILL. COMP. STAT. §§ 510/1, *et seq.*
 (Against Defendants).....65

7 COUNT XIII
 8 VIOLATIONS OF THE INDIANA DECEPTIVE CONSUMER SALES ACT
 9 IND. CODE §§ 24-5-0.5-1, *et seq.* (“IDCSA”) (Against Defendants).....66

10 COUNT XIV
 11 VIOLATIONS OF THE MICHIGAN CONSUMER PROTECTION ACT
 12 MICH. COMP. LAWS § 445.903, *et seq.* (“Michigan CPA”) (Against Defendants).....68

13 COUNT XV
 14 VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349
 15 N.Y. GEN. BUS. LAW § 349 (Against Defendants).....71

16 COUNT XVI
 17 VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 350 N.Y. GEN. BUS. LAW § 350
 18 (Against Defendants).....72

19 COUNT XVII
 20 VIOLATIONS OF THE NORTH CAROLINA UNFAIR AND DECEPTIVE TRADE PRACTICES
 21 ACT N.C. GEN. STAT. §§ 75-1.1, *et seq.* (“NCUDTPA”) (Against Defendants).....73

22 COUNT XVIII
 23 VIOLATIONS OF THE NORTH DAKOTA CONSUMER FRAUD ACT
 24 N.D. CENT. CODE §§ 51-15-01, *et seq.* (“North Dakota CFA”) (Against Defendants).....75

25 COUNT XIX
 26 VIOLATIONS OF THE OHIO DECEPTIVE TRADE PRACTICES ACT
 27 OHIO REV. CODE §§ 4165.01, *et seq.* (“ODTPA”) (Against Defendants).....77

28 COUNT XX

1 VIOLATIONS OF THE OHIO CONSUMER SALES PRACTICES ACT
OHIO REV. CODE §§ 1345.01, *et seq.* (“OCSPA”)79
2 (Against Defendants).....

3 COUNT XXI
4 VIOLATIONS OF THE PENNSYLVANIA UNFAIR TRADE
PRACTICES AND CONSUMER PROTECTION LAW
5 PA. STAT. ANN. §§ 201-1, *et seq.* (“PAUTPCPL”)81
6 (Against Defendants).....

7 COUNT XXII
8 VIOLATIONS OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT
TEX. BUS. & COM. CODE §§ 17.41, *et seq.* (“TDTPA”)83
9 (Against Defendants).....

10 COUNT XXIII
11 VIOLATIONS OF WASHINGTON CONSUMER PROTECTION ACT
WASH. REV. CODE §§ 19.86, *et seq.* (“WCPA”)85
12 (Against Defendants).....

13 PRAYER FOR RELIEF87

14 DEMAND FOR JURY TRIAL.....88

15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Roy Berry, Jonathan Makcharoenwoodhi, Alex Gorbachev, Brian Christensen, Anthony
2 Martorello, Khanh Tran, Edward Beheler, Yuriy Davydov, Rebecca Harrison, Zachary Himes, Taylor
3 Jones, Paul Servodio, Justin Leone, James Poore, Jr., and Kenneth Johnston, individually and on
4 behalf of all others similarly situated, bring this class action against Defendants Huawei Device USA,
5 Inc. (“Huawei”) and Google, Inc. (“Google”) (collectively “Defendants”), and allege the following.

6 **SUMMARY OF THE ACTION**

7 1. This is a consumer protection case on behalf of purchasers of Google Nexus 6P
8 smartphones (the “Phones”). Defects in the Phones give them a propensity to (i) experience an endless
9 bootloop cycle rendering them unresponsive and forever unusable (the “Bootloop Defect”) and (ii)
10 suffer severe battery drainage causing them to stop working prematurely, even when the screen
11 indicates ample battery life remains (the “Battery Drain Defect”) (collectively, the “Defects”).
12 Thousands of consumers have experienced these Defects, both of which cause the Phones to fail.
13 Defendants’ warranties and the remedies thereunder also fail of their essential purpose because
14 Defendants have not been able to remove or resolve the Defects. Each defect existed in the Phones
15 when Defendants marketed and sold them.

16 2. The Bootloop Defect often manifests without warning. When it manifests, the Phones
17 go into a death spiral. They suddenly turn off, turn back on, and remain stuck at the Google boot-up
18 screen. At that point, the Phones are completely unresponsive and non-functional—they do not
19 proceed past the start-up screen to the home screen. To the extent photographs and other data on the
20 Phones have not been backed up, these data are permanently lost.

21 3. When the Battery Drain Defect manifests, the Phones shut down despite the screen
22 indicator showing remaining battery life of as high as 70-80%. Once shut down, the Phones fail to turn
23 on unless and until they are plugged into a charger. At that point, the screens show remaining battery
24 life at the same level as immediately preceding the shut-off, and the battery soon drains again, causing
25 shut downs in an endless cycle. Cold weather appears to exacerbate this problem.

26 4. The Bootloop and Battery Drain Defects have manifested thousands of times, both
27 within and shortly outside the one-year warranty period for the Phones. As a result, consumers across
28 the country have found themselves with Google Nexus 6P smartphones that do not work as intended

1 (or at all). Where the Defects have manifested outside of the warranty period, Defendants have refused
2 to provide any remedy, leaving consumers with the choice of retaining an unreliable, poorly
3 performing Phone or obtaining a repair or replacement at their own cost. Defendants also have
4 repeatedly denied warranty claims of consumers whose Phones experienced the Defects while still
5 under warranty. Defendants have engaged in a pattern and practice of blaming a minor cosmetic
6 issue—such as a cracked bezel or scratched screen on a Phone that was otherwise working fine, but for
7 the Defects—as a pretext to avoid providing warranty service. Similarly, when consumers have
8 contacted Google or Huawei about the Defects, instead of providing assistance, Defendants have
9 routinely stated that the problem is the other Defendants’ fault.

10 5. Where Defendants have processed warranty claims, they have replaced defective
11 Phones with equally defective Phones of the same model. Further, Defendants have forced consumers
12 to wait several weeks or even several months to receive an accommodation. These excessive delays in
13 Defendants’ warranty service have caused consumers, who rely on working cell phones in their daily
14 lives, to lose both time and money. Repaired or replacement phones provided by Defendants suffer
15 from the same Defects and associated problems as the original Phones. As such, numerous consumers
16 have obtained multiple replacement Phones due to the same problems.

17 6. At all relevant times, Defendants knew or should have known of the Phones’
18 propensity to experience excessive battery drain and total bootloop failure. Although these Defects
19 involved material facts that would have been highly important to consumers looking to purchase a cell
20 phone, Defendants failed to disclose either defect. This concealment served to induce their sales of the
21 defective Phones and enabled them to later charge the consumers for repairs or new Phones.

22 7. Google executives touted the Nexus 6P as superior to the iPhone 6 Plus specifically
23 with regard to its battery charging capabilities. Defendants falsely promoted the Nexus 6P as a high-
24 end smartphone with best-in-class battery charging capabilities and lifespan, as shown in the Google
25 advertisements reproduced on the next page.¹

26
27
28 ¹ Images available at: <https://www.google.com/nexus/6p/> (last visited April 19, 2017);
<http://www.androidauthority.com/leaked-presentation-reveals-the-nexus-6p-will-feature-a-big-3450mah-battery-644759/> (last visited April 19, 2017).



Nexus 6P

Built on a foundation of power

- Made for immersive media experiences: movies, TV shows, gaming--all with a bright, big screen so you won't miss any details
- Performance speed will keep you on top of multitasking between apps and any work you have to do on the go
- Battery life keeps you going all day and into the night



8. As a direct and proximate result of the Defects and Defendants' unfair and deceptive practices relating to them, Plaintiffs have suffered injury in fact and incurred damages, such as monetary costs to repair and replace their Phones. Plaintiffs accordingly seek redress for Defendants' breaches of express and implied warranties and violations of consumer protection law.

1 **JURISDICTION AND VENUE**

2 9. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §
3 1331 because it arises under the laws of the United States and pursuant to 28 U.S.C. § 1332(d)
4 because: (i) there are 100 or more class members; (ii) the aggregate amount in controversy exceeds
5 \$5,000,000, exclusive of interest and costs; and (iii) at least one plaintiff and defendants are citizens
6 of different states. This Court has supplemental jurisdiction over the state law claims pursuant to 28
7 U.S.C. § 1367.

8 10. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because
9 Defendants transact business and are subject to personal jurisdiction in this district. A substantial part
10 of the conduct giving rise to these claims occurred within this district. Defendants advertised in this
11 district and gained substantial revenue and profits from their sales of Phones in this district.

12 11. This Court has personal jurisdiction over Defendants because they have conducted
13 substantial business in this judicial district and intentionally and purposefully placed the Phones into
14 the stream of commerce within this district and throughout the United States.

15 **PARTIES**

16 **A. California Plaintiffs**

17 **Plaintiff Jonathan Makcharoenwoodhi**

18 12. Makcharoenwoodhi is a citizen of California who resides in Monterey Park, California.
19 In or about April 2016, he purchased his Phone from Best Buy (IMEI 867686022575458) for
20 \$544.99. The Phone began experiencing the Battery Drain Defect and early shut-off problems in or
21 around February 2017.

22 13. At first his phone would start shutting off with 25% battery life purportedly still
23 remaining. The Phone would have approximately 25% battery life, then go to 0% instantaneously and
24 shut off. Over the following months, this issue became worse. Makcharoenwoodhi would charge the
25 Phone fully, but the Phone would turn off with 80-85% battery life purportedly still remaining. If he
26 connected the Phone to a charger and fully charged the Phone, it would turn back on and the battery
27 would operate for approximately 10 minutes before the battery would run out and the Phone would
28 turn off again.

1 14. Makcharoenwoodhi tried numerous troubleshooting methods, including a factory reset,
2 but none of these methods resolved the problems with his Phone.

3 15. Makcharoenwoodhi contacted Huawei in an effort to obtain relief under the warranty.
4 Huawei informed Makcharoenwoodhi that his warranty was voided because his Phone had a small
5 dent by the volume button. This cosmetic flaw had no effect on the Phone's functioning. As a result
6 of Huawei's failure to resolve the Defect in Makcharoenwoodhi's Phone, Makcharoenwoodhi was
7 left with an unreliable Phone with battery life and functionality far worse than he expected when he
8 purchased the device.

9 16. Huawei instructed Makcharoenwoodhi that he should seek a repair from a third party,
10 at his own cost. Makcharoenwoodhi bought a new cell phone instead.

11 17. Makcharoenwoodhi suffered ascertainable loss as a direct and proximate result of the
12 Battery Drain Defect and Defendants' concealment of this defect, including loss of use, payment for a
13 new placement phone, and diminished value.

14 18. Makcharoenwoodhi would not have purchased his Phone had he known that it
15 contained the Battery Drain Defect.

16 **Plaintiff Alex Gorbachev**

17 19. Gorbachev is a citizen of California who resides in Oakland, California. On October
18 29, 2015, he purchased a Google Nexus 6P smartphone from the Google Store. Gorbachev paid
19 \$546.40 for his Phone (serial number 510KPNY0013975).

20 20. During his first few months of owning the Phone, Gorbachev regularly experienced
21 incidents in which it would suddenly shut down and restart without warning, sometimes on a daily
22 basis.

23 21. On the morning of March 17, 2017, Gorbachev attempted to use his Phone to request
24 a car ride using the Uber app. When he pressed the screen to submit his request for a ride, his Nexus
25 6P froze and stopped responding to touch for ten to fifteen seconds. After this brief pause, the
26 Phone's screen went black and then cycled through the boot-up process to a screen showing the
27 Google logo. The boot-up process stalled at this screen, again going black before proceeding to the
28

1 Google logo screen and going black again. The Phone continued to repeat this loop ceaselessly for
2 much of the day.

3 22. Later that day, Gorbachev learned his Uber request was processed before the Phone
4 entered the bootloop. Uber consequently charged him a cancellation fee.

5 23. That same day, Gorbachev contacted Google’s customer technical support. A Google
6 representative told him that his warranty had expired and that Google would not provide him with
7 any relief.

8 24. Gorbachev’s Phone never proceeded past the Google logo screen again.

9 25. Gorbachev purchased a new phone to replace his inoperable Nexus 6P.

10 26. Gorbachev suffered ascertainable loss as a direct and proximate result of the
11 Bootloop Defect and Defendants’ concealment of this defect, including loss of use, payment for a
12 new replacement phone, and diminished value of his Phone.

13 27. Gorbachev would not have purchased his Phone had he known that it contained the
14 Bootloop Defect.

15 **Plaintiff Brian Christensen**

16 28. Christensen is a citizen and resident of California. On or about November 27, 2015,
17 Christensen purchased his Google Nexus 6P Phone directly from Huawei. He paid \$700.93 for his
18 Phone (IMEI 867980020315169). Huawei shipped the Phone to Christensen on December 9, 2015.

19 29. Christensen’s Phone began malfunctioning in early December 2016 when it
20 experienced the Battery Drain Defect. It would power down without warning despite showing a
21 battery charge of as high as 27%.

22 30. Christensen contacted Google customer service about the issue. He learned from
23 Google that there was a known hardware defect with the Nexus 6P, but Google would not provide
24 any support because Christensen purchased the Phone directly from Huawei.

25 31. Christensen next contacted Huawei. A Huawei representative informed him that the
26 problems with the Nexus 6P were software related and that Huawei could not help him.

27 32. Approximately two weeks after these calls, the Phone manifested the Bootloop
28 Defect—the phone would reboot continuously to the “Google” screen, failing to turn on.

1 33. Christensen again contacted Huawei, and was refused customer service on the basis
2 that the Phone's warranty had expired. Christensen then participated in a three-way call with Google
3 and Huawei. During this call, a Google representative stated that Christensen's Nexus 6P failed
4 because of a known hardware defect. The Huawei representative responded by offering to handle the
5 call.

6 34. Google's representative then left the call, after which Huawei's representative told
7 Christensen that Huawei would not repair or replace his Phone because his warranty had expired.
8 Christensen even offered to pay for the cost of repairs, but the Huawei representative said there was
9 nothing Huawei could do for him.

10 35. Defendants have done nothing to fix the problems with Christensen's Phone and have
11 not offered or provided an adequate remedy.

12 36. Christensen suffered ascertainable loss as a direct and proximate result of the
13 Bootloop Defect and Defendants' concealment of this defect, including loss of use, out-of-pocket
14 losses, and diminished value.

15 37. Christensen would not have purchased his Phone had he known that it contained the
16 Bootloop Defect.

17 **B. Florida Plaintiff**

18 **Plaintiff Anthony Martorello**

19 38. Martorello is a citizen and resident of Florida. On May 24, 2016 he purchased a Google
20 Nexus 6P smartphone directly from Google (IMEI 867979021949067). Martorello paid \$549 for his
21 Phone, in addition to a Nexus Protect insurance plan for which he paid an additional \$89.

22 39. On or around June 7, 2016, Martorello began experiencing the Battery Drain Defect
23 shortly after he downloaded an update from Google to his Phone's software. His Phone's battery
24 frequently drained to 60% shortly after he unplugged it from the charger. When plugged back in, the
25 Phone almost immediately returned to a 100% charge. The Phone also experienced early shut offs,
26 often shutting off when the battery retained a charge as high as 80%. This problem frequently
27 occurred. After these shut down incidents, Martorello's Phone would not power back on unless it was
28 plugged into a charger.

1 40. On or around July 7, 2016, Martorello experienced the Bootloop Defect. His Phone
2 randomly shut off, then proceeded through the boot up process, stalled before fully turning on, and
3 then shut down again, repeating this loop *ad infinitum* until he shut the Phone down completely.

4 41. On July 16, 2016, Martorello contacted Google regarding his bootlooped Phone. The
5 Google representative informed him Google could not provide him with a solution and direction him
6 to contact Huawei for warranty coverage.

7 42. Also on July 16, 2016, Martorello emailed Huawei to make a warranty claim for his
8 bootlooped Phone. The Huawei representative offered him various ineffective troubleshooting
9 suggestions but no further assistance or relief. The Huawei representative then suggested Martorello
10 contact Google, because the Phone's IMEI number showed the Phone was within Google's one-year
11 warranty and Google was the only entity that could process the return.

12 43. On July 19, 2016, Martorello again contacted Google to make a warranty claim. The
13 Google representative again informed Martorello that Google could offer no solution.

14 44. Although Martorello experienced the Bootloop Defect less than a year after purchasing
15 the Phone—within the warranty period—he was denied warranty coverage by both Google and
16 Huawei.

17 45. Martorello purchased a new Google Nexus 6P at a cost of \$549.

18 46. On or around January 26, 2017, Martorello began experiencing the Battery Drain
19 Defect in his second Phone shortly after he downloaded an update from Google to his Phone's
20 software. His Phone's battery frequently drained to 60% shortly after he unplugged it from the
21 charger.

22 47. Days after the Battery Drain Defect manifested in his second Phone, Martorello
23 experienced the Bootloop Defect again.

24 48. On February 5, 2017, Martorello made a claim under his Nexus Protect insurance. He
25 paid a deductible of \$89.99 and received a refurbished Phone.

26 49. Martorello's refurbished Phone also suffers from the Battery Drain Defect and his
27 Phone's battery drains much more quickly than normal. The Phone also experiences random shut
28 downs, much like the one that precipitated the bootloop and total failure of his first Phone.

1 50. Martorello suffered ascertainable loss as a direct and proximate result of the Bootloop
2 and Battery Drain Defects and Defendants' concealment of these defects, including lost time, loss of
3 use, out-of-pocket losses, and diminished value.

4 51. Martorello would not have purchased his Phone had he known that it contained the
5 Bootloop and Battery Drain Defects.

6 **C. Illinois Plaintiff**

7 **Plaintiff Khanh Tran**

8 52. Tran is a citizen of Illinois who resides in Chicago, Illinois. Tran saw online
9 advertisements representing that the Google Nexus 6P had a superior battery life. These
10 advertisements materially influenced Tran's decision to purchase a Nexus 6P Phone for \$672,
11 through the Google Store, on or about January 25, 2016 (IMEI 867979020909724), inclusive of a
12 Nexus Protect insurance plan for which he paid \$89.

13 53. Tran's Phone worked normally until the end of February 2017—mere weeks after his
14 warranty period lapsed—when the Phone began shutting down randomly. Tran ran the Phone through
15 recovery mode and was able to recover personal data. The Phone then worked for approximately a
16 day, after which the Bootloop Defect manifested and rendered Tran's Phone useless.

17 54. Tran contacted Google support and was informed that he needed to file a Nexus Protect
18 insurance claim and pay a deductible in order to obtain a refurbished replacement device.

19 55. Tran paid a \$79 deductible. He received a refurbished Phone in March 2017.

20 56. Tran suffered ascertainable loss as a direct and proximate result of the Bootloop Defect
21 and Defendants' concealment of this defect, including lost time, loss of use, payment of a deductible,
22 and diminished value.

23 57. Tran would not have purchased his Phone had he known that it contained the Bootloop
24 Defect.

25 **D. Indiana Plaintiff**

26 **Plaintiff Edward Beheler**

27 58. Beheler is a citizen of Indiana who resides in Lafayette, Indiana. On July 12, 2016, he
28 purchased a Google Nexus 6P smartphone from Amazon (IMEI 867979022017799). Beheler paid

1 \$509.99 for his Phone. He also bought a Huawei smartwatch for \$299.95 in the same transaction. As
 2 part of Amazon’s “Prime Day” promotion, he received a \$230.20 discount on the transaction total.

3 59. The Nexus 6P’s purportedly long battery life factored heavily into Beheler’s decision
 4 to purchase this Phone. In the months following his purchase, his Nexus 6P’s battery operated
 5 satisfactorily and generally held a charge from morning until evening.

6 60. In or around March 2017, Beheler began to experience sudden and severe drain of his
 7 Nexus 6P’s battery. The Phone’s battery life became very short—the Phone started running out of
 8 battery and turning off shortly after being taken off a charger, often turning off when the battery had
 9 as much as 70% of its charge remaining and sometimes even as much as 90%. In less than one hour
 10 his Phone would go from a fully charged battery to shutting down, despite being in safe mode with
 11 Google’s Chrome browser the only open application. When plugged back in, the Phone would show
 12 the same battery charge level as immediately prior to its shutting down.

13 61. The below April 2017 screenshot of Beheler’s Phone demonstrates the sudden shut off,
 14 even where the Phone shows a relatively high battery charge, followed by the restoration of battery
 15 charge, after the Phone is connected to A/C power, to the same level indicated prior to the shut off:



1 62. On April 3, 2017, Beheler took a business trip to a factory in Kansas in which he was
2 unable to charge his Nexus 6P frequently. He experienced several battery drains and shut offs during
3 a short period. On April 5, 2017, prior to a business dinner, Beheler's Phone was fully charged, but
4 midway through the dinner the battery suddenly drained and the Phone shut off. On April 7, 2017, the
5 Phone again died several times in the span of a few hours while Beheler was trying to use it in an
6 airport.

7 63. Beheler contacted Google's customer support after his business trip. The Google
8 representative walked him through some troubleshooting steps, and stated that the Phone was
9 defective and needed to be replaced due to a hardware defect. But Google would not provide any
10 assistance or relief, on the basis that Beheler bought the Phone from Amazon instead of Google. The
11 Google representative told him to contact Huawei's customer support.

12 64. On or about April 11, 2017, Beheler called Huawei's customer support. A Huawei
13 representative agreed that the Phone was defective, and told Beheler that he could send the Phone in
14 to be repaired or replaced.

15 65. Through online research, Beheler found that consumers were reporting that Huawei's
16 repair department was overwhelmed by warranty claims and repairs related to the Defects, with some
17 consumers reporting that they had gone without a phone for up to four weeks. Because of his work
18 and family obligations, Beheler cannot go without a cell phone or other means of contact for such an
19 extended period of time.

20 66. Beheler contacted Google customer support several more times about his Phone's
21 severe battery drain. Each Google representative reiterated Google's refusal to provide any form of
22 service or support for a Nexus 6P not purchased directly through the Google Store, and that Beheler
23 should direct his concerns to Huawei.

24 67. Beheler recently bought an iPhone for \$250 to replace his Nexus 6P.

25 68. Beheler suffered ascertainable loss as a direct and proximate result of the Bootloop
26 Defect and Defendants' misrepresentations and omissions relating to this defect, including lost time,
27 loss of use, purchase of a replacement phone, and diminished value.

28

1 69. Beheler would not have purchased his Phone had he known that it contained the
2 Battery Drain Defect.

3 **E. Michigan Plaintiff**

4 **Plaintiff Roy Berry**

5 70. Berry is a citizen of Michigan who resides in Pinckney, Michigan. On or about
6 November 3, 2015, he purchased his Google Nexus 6P Phone on the Google Store. Berry paid
7 \$776.94 for his Phone (IMEI 867980020165655), inclusive of a Nexus Protect plan for which he paid
8 \$89.

9 71. Approximately six months after his purchase, while his Phone was still under warranty,
10 Berry's Phone began experiencing the Battery Drain Defect: the Phone would shut off with
11 approximately 20-30% battery life remaining. When this happened, Berry would need to put his
12 Phone on a charger to get it to turn on again.

13 72. Berry contacted Google support and was told that Google would fix the problem with
14 its next software update. The problem persisted, however, and Berry later learned that Google deems
15 the Battery Drain Defect an "unwarrantable issue."

16 73. While his Phone was still under warranty, Berry contacted Google to discuss his
17 options. Google advised him to file an insurance claim and state that he had experienced a power port
18 issue (even though his problem stemmed from his Phone battery) so that his Nexus Protect plan claim
19 would be approved. Google informed that once the claim was approved, Berry would need to pay an
20 insurance deductible before receiving a refurbished Phone.

21 74. Berry filed a claim under his Nexus Protect plan and paid an \$89 deductible. He
22 received a refurbished Phone in early February 2017.

23 75. Approximately two months after receiving his replacement Phone, Berry experienced
24 the Bootloop Defect. He contacted Google support and was advised to wipe user data and flash the
25 factory image, but neither troubleshooting method worked. After Berry had tried everything Google
26 suggested, Google told Berry that Google could not do anything more for him free of charge, and that
27 he must either pay a fee for a repair or contact Huawei.

1 76. Berry paid \$687.94 to obtain a new (third) Phone from Google, which he received in or
2 about mid-April 2017.

3 77. Berry suffered ascertainable loss as a direct and proximate result of the Battery Drain
4 and Bootloop Defects and Defendants' concealment of these defects, including lost time, loss of use,
5 purchase of a replacement phone, and diminished value.

6 78. Berry would not have purchased his Phone had he known that it contained the Battery
7 Drain and Bootloop Defects.

8 **F. New York Plaintiff**

9 **Plaintiff Yuriy Davydov**

10 79. Davydov is a citizen of New York who resides in Rego Park, New York. On or about
11 December 21, 2015, Davydov purchased his Google Nexus 6P Phone through Amazon. He paid
12 \$557.35 for his Phone (IMEI 867979020959901) together with a Nexus 6P case for it.

13 80. Within a few months, Davydov noticed that the Phone's battery had begun depleting
14 more quickly than usual. With each software update, the problem became worse.

15 81. Approximately six months into owning his Phone, Davydov began to notice additional
16 power problems with the Phone. It randomly turned on and off throughout the day. When Davydov
17 was talking on the Phone, calls suddenly dropped and the Phone turned off without warning.
18 Davydov performed a factory reset of the Phone, but this did not help.

19 82. The next month, Davydov started noticing that the Phone would completely turn off
20 despite showing approximately 20% battery life remaining. When this happened, he needed to plug
21 the Phone into a charger to get it to reboot.

22 83. Davydov contacted Google about these problems and was told that Google could do
23 nothing to help because he did not buy the Phone from Google. Google told Davydov to contact
24 Huawei.

25 84. Davydov then spoke with a Huawei support technician who recommended a series of
26 troubleshooting methods, none of which succeeded in fixing the problems with the Phone. Instead,
27 Davydov again had to plug the Phone into a charger to get it to turn on.

28

1 85. During this call, the Huawei representative informed Davydov that slightly over a
2 month remained on his warranty and he could send his Phone in for possible warranty repair or
3 replacement, but that Huawei could not guarantee that the service would be free. The Huawei
4 representative further disclosed that this process could take at least a month and Huawei does not
5 provide loaner or temporary phones. The Huawei representative suggested that, instead, Davydov
6 might buy a temporary phone to use during the month (or longer period) in which Huawei would be
7 examining his Phone, and then simply return the temporary phone later. Because Davydov could not
8 go a month without a phone, he declined to send his Phone to Huawei for possible repair or
9 replacement.

10 86. Davydov's Phone still experiences the Battery Drain Defect. To keep the Phone
11 operable, he is forced to carry around a 12000 mAh portable battery, which is the size of his Phone.

12 87. Davydov is now burdened with an unreliable Phone that achieves only a portion of the
13 battery life that he thought it would when he purchased the device. Defendants have done nothing to
14 correct the problems with his Phone and have failed to offer or provide an adequate remedy. Davydov
15 has had to purchase a new Phone due to the unreliability of his Nexus 6P Phone.

16 88. Davydov suffered ascertainable loss as a direct and proximate result of the Battery
17 Drain Defect and Defendants' concealment of it, including lost time, loss of use, payment for the
18 portable battery to keep the Phone operational, and diminished value.

19 89. Davydov would not have purchased his Phone had he known that it contained the
20 Battery Drain Defect.

21 **G. North Carolina Plaintiffs**

22 **Plaintiff Rebecca Harrison**

23 90. Harrison is a citizen of North Carolina who resides in Asheville, North Carolina.

24 91. Harrison saw advertisements representing that the Nexus 6P's battery life was very
25 good and touting the Nexus 6P as Google's top-of-the-line phone. These advertisements materially
26 influenced Harrison's decision to purchase a Nexus 6P Phone for \$552.99, through Amazon, on or
27 about April 11, 2016 (IMEI 867979021864183).

1 92. Beginning in around February 2017, Harrison's Phone began shutting down
2 unexpectedly, exhibiting the Battery Drain Defect. Her Phone shuts down with anywhere between 30-
3 80% battery life remaining. Once the Phone turns off, Harrison must attach it to a charger to get it to
4 turn back on, and when it does turn on, the Phone displays the approximately the same battery life as
5 was displayed just before the early shut-off.

6 93. This problem creates a significant burden for Harrison as she is a realtor who routinely
7 uses her Phone for work, including by communicating via e-mail and text message, taking and
8 reviewing photos, and accessing the SentiLock system to obtain entry to homes listed for sale. The
9 Battery Drain Defect has caused Harrison's Phone to malfunction and turn off in the middle of many
10 work-related appointments.

11 94. On March 19, 2017, Harrison called Huawei to make a warranty claim. The Huawei
12 representative told Harrison that she would receive an e-mail requesting information, and would need
13 to respond to the information request in order to get a shipping label for return merchandise
14 authorization. Harrison sent in the requested information but has yet to hear back from Huawei. Nor
15 has Huawei responded to her follow-up e-mails. Thus, despite its promises, Huawei has failed to
16 provide a remedy for Harrison's defective Phone.

17 95. Harrison also contacted Amazon, whose representative informed her that her only
18 option at this point would be to return the Phone for a partial refund.

19 96. Harrison purchased a replacement battery, for \$75, on March 28, 2017.

20 97. Harrison suffered ascertainable loss as a direct and proximate result of the Battery
21 Drain Defect and Defendants' concealment of it, including lost time, loss of use, payment for the
22 replacement battery, and diminished value.

23 98. Harrison would not have purchased her Phone had she known that contained the
24 Battery Drain Defect.

25 **Plaintiff Zachary Himes**

26 99. Himes is a citizen of North Carolina who resides in Midland, North Carolina. On
27 March 25, 2016, he purchased a Google Nexus 6P smartphone from Best Buy (IMEI
28 867686022513335). He paid \$449.99 for his Phone.

1 100. In or around January 2017, the battery in Himes’s Phone began shutting down while the
2 screen still showed a charge on the battery.

3 101. As time wore on, Himes began experiencing shut-offs at higher and higher percentages
4 of battery charge. Within a few weeks after the early shut-off problem started, the Phone was turning
5 off regularly at around a 30% battery charge.

6 102. In February 2016, Himes contacted Google about these problems. Google suggested
7 several troubleshooting steps, none of which succeeded in resolving the problems.

8 103. Himes contacted Google by e-mail on February 8, 2017, after Google’s troubleshooting
9 steps proved ineffective, and was advised that he needed to contact the manufacturer, Huawei. On
10 February 10, 2017, Himes contacted Huawei about his battery problems. Huawei also suggested
11 several troubleshooting steps, none of which succeeded in fixing his battery problems.

12 104. Himes followed up with Huawei again after these steps failed to resolve the problems.
13 The Huawei representative informed him the device would require a software update to return to
14 normal functioning, and that such a software update would be forthcoming shortly, after which the
15 problem would be resolved. Himes never received any such update.

16 105. The problems with Himes’s Phone have continued to worsen. His Phone is now
17 essentially a landline—it must be plugged into a power source to work. If he tries to use Phone while
18 not plugged in, the battery usually dies within minutes. The Phone can then only be turned back on by
19 plugging it in, and when the Phone subsequently turns on, it usually shows at least 80% battery
20 remaining.

21 106. Himes’s Phone has even died several times while plugged into a power source.

22 107. Even in “safe mode,” which only allows the Phone to perform basic functions, such as
23 phone calls and texting, Himes’s Phone often still shuts off with a significant amount of battery
24 remaining.

25 108. Himes is now burdened with a Phone that is reliable only in its dysfunction and which
26 achieves only a portion of the battery life he expected at the time of purchase. This issue has become
27 so disruptive for Himes that Himes has been forced to purchase a new phone. Because he could only
28

1 afford half of the price of the new phone, he was forced to finance the remaining price of the new
2 phone.

3 109. Himes suffered ascertainable loss as a direct and proximate result of the Battery Drain
4 Defect and Defendants' concealment of it, including lost time, loss of use, and diminished value.

5 110. Himes would not have purchased his Phone had he known that contained the Battery
6 Drain Defect.

7 **H. North Dakota Plaintiff**

8 **Plaintiff Taylor Jones**

9 111. Jones is a citizen of North Dakota who resides in Grand Forks, North Dakota. On or
10 about January 13, 2016, he purchased his Phone through Google. Jones paid \$649 for the Phone
11 (IMEI 867980020268988).

12 112. Jones began experiencing severe battery drain and early shut-off in his Phone
13 approximately nine months after his purchase. His Phone shut down without warning any time the
14 battery dropped below a 30% charge. When the Phone was exposed to cold or freezing temperatures,
15 the early shut-off often occurred with a battery charge of as high as 80%.

16 113. Jones contacted Google, which sent him a replacement Phone. Before starting to use
17 this new Phone, Jones tested it to see if it would exhibit the same problems. He fully charged and then
18 discharged the replacement Phone to determine if it would experience early shut-off and, if so, at
19 what battery charge percentage. This testing revealed that the replacement Phone had the same
20 problem as his initial Phone. Therefore, on or about February 28, 2017, Jones contacted Google
21 again, requesting to send back the replacement device. Google indicated that it would send a
22 refurbished device to Jones when it received the first replacement Phone.

23 114. Thereafter, Jones experienced the same severe battery drain and early shut-off incidents
24 with his second replacement Phone. On or about March 10, 2017, Jones contacted Google to request a
25 non-defective replacement. This time, Google informed Jones that it was refusing to provide another
26 replacement because his original Phone was out of warranty. By that point, however, Google had
27 already sent him multiple Phones after his initial warranty had expired, each of which was defective.

1 115. On March 21, 2017, Jones escalated his complaint to a supervisor, who explained that
2 Google has a policy and practice of providing only a limited number of device replacements before
3 referring Nexus 6P customers to Huawei. The Google supervisor stated that the Battery Drain Defect
4 was “not in fact a software issue. It is a hardware issue caused by the battery.”

5 116. By this point, Huawei’s warranty had expired. Because Jones could not rely on the
6 Nexus 6P for day-to-day operation—it had become useless to him—he purchased a new cell phone.
7 He sold his replacement Nexus 6P for a loss, at approximately \$360 (well below what Jones paid for
8 his Phone).

9 117. Jones suffered ascertainable loss as a direct and proximate result of the Battery Drain
10 Defect and Defendants’ concealment of it, including lost time, loss of use, payment for a replacement
11 phone, and diminished resale value.

12 118. Jones would not have purchased his Phone had he known that it contained the Battery
13 Drain Defect.

14 **I. Ohio Plaintiff**

15 **Plaintiff Paul Servodio**

16 119. Servodio is a citizen of Ohio who resides in Akron, Ohio. On or about March 12, 2016,
17 he purchased his Phone through Newegg. Servodio paid \$452.99 for his Phone (IMEI
18 867686022413478).

19 120. While on vacation, on February 15, 2017, Servodio’s Phone unexpectedly shut down
20 when he was in the middle of sending a text message. The battery showed an approximately 30%
21 charge. The Phone then started to re-boot, but never completed the boot cycle. Over a two-hour drive,
22 Servodio tried to charge the Phone and restart it several times, to no avail.

23 121. That same day Servodio called Google’s Project Fi support. Heather at Google walked
24 him through various troubleshooting steps, none of which worked. Heather said that his Phone may
25 have been experiencing the infinite bootloop problem, but she could not be sure. She suggested that
26 Servodio call Project Fi later, when he had access to a computer. Later in the day, Servodio called
27 Project Fi again, and again tried the same troubleshooting methods at Google’s advice. None of these
28 methods succeeded in bringing his Phone back to life. Servodio was transferred to an employee in

1 hardware support who informed him that the Phone was experiencing the Bootloop Defect and he
2 should call Huawei.

3 122. Huawei determined that Servodio's Phone qualified for refurbishment. Servodio was
4 told he would receive an e-mail with instructions concerning the process to receive a refurbished
5 Phone. He was issued Huawei Ticket/Issues number T486035-021517. Later that night Servodio
6 received an e-mail from Huawei requesting that he take pictures of his Phone and provide other
7 details, which Servodio did. Huawei told Servodio it would take at least 10 days for the necessary
8 repairs to be made and for his repaired Phone to arrive at his home. Servodio indicated that this was
9 unacceptable because he was on vacation for another 13 days, owns a business, and cannot go
10 without access to a cell phone. Huawei refused to expedite the repairs or to ship Servodio a loaner
11 Phone to use in the interim. Servodio was then transferred to a Huawei supervisor, Lidia, who
12 reviewed the photos he had sent of his Phone and saw a small dent on its side. Lidia then told
13 Servodio that Huawei could not guarantee the return process would be authorized or that any
14 refurbished Phone would work, given the small dent. Servodio said that he nonetheless wanted to go
15 forward with the repair process.

16 123. After the call with Huawei, Servodio spoke to Google again and was offered \$30.00 off
17 the purchase of a new phone, and a statement credit equivalent to expedited shipping. Servodio
18 agreed and purchased a new Pixel 32G for \$649.00. He received the new phone and Project Fi SIM
19 card on February 17, 2017.

20 124. Later that night, Servodio received an e-mail from Lidia at Huawei. Her message stated
21 that after she had reviewed the photos of the Nexus 6P (and its IMEI number), she had determined
22 that Servodio's Phone was not eligible for warranty coverage (even though the Phone remained
23 within the 12-month warranty). Although Servodio responded to the e-mail the next day, he never
24 received a response from Lidia or from anyone else at Huawei.

25 125. The failure of his Phone caused Servodio to miss e-mails from airlines concerning
26 flights for the second leg of his vacation. As a result, he was forced to make new flight, hotel, and
27 rental car arrangements, at considerable expense.

28

1 126. Servodio suffered ascertainable loss as a direct and proximate result of the Bootloop
2 Defect and Defendants' concealment of it, including lost time, loss of use, travel expenses, and
3 diminished value.

4 127. Servodio would not have purchased his Phone had he known that it contained the
5 Bootloop Defect.

6 **J. Pennsylvania Plaintiff**

7 **Plaintiff Justin Leone**

8 128. Leone is a citizen of Pennsylvania who resides in Monroeville, Pennsylvania.

9 129. Leone watched the live stream of the Nexus 6P release event in San Francisco and was
10 exposed to Google's representations regarding the Phone at that event. Based on those
11 representations, Leone understood that one of Google's main selling points for the Phone was its
12 superior battery life.

13 130. On or about October 5, 2015, partly in reliance on Google's representations regarding
14 the Phone's battery life, Leone purchased his Phone through the Google Store. Leone paid \$623.28
15 for his Phone (IMEI 867686020737555), inclusive of a Nexus Protect plan for which he paid \$89.

16 131. In late September 2016, while still under warranty, Leone's Phone manifested the
17 Battery Drain Defect. His Phone shut off at random while he was using it, with anywhere from 40-
18 80% battery charge showing. This happened a few times a week, more often when the weather was
19 cold.

20 132. After Leone upgraded to Android Nougat, the Battery Drain Defect began occurring
21 much more often, almost daily. Leone tried flashing the latest factory image from Google, to no avail.

22 133. Leone contacted Google support on December 14, 2016, in an effort to get his Phone
23 repaired or replaced. But, because Leone's Phone had cosmetic damage (screen scratches, dents in the
24 metal frame, cracked rear glass), Google refused to provide any repair or replacement and transferred
25 him to Nexus Protect.

26 134. Google represented to Leone that he would have been eligible for an extended warranty
27 for the battery drain problems if not for the cosmetic damage to his Phone. This cosmetic damage had
28 no effect on his Phone's functionality.

1 135. Through Nexus Protect, Leone paid a \$79 deductible to have his Phone replaced based
2 on physical damage (rather than the Defect).

3 136. Not long after receiving his replacement Nexus 6P Phone in early January 2017, Leone
4 again began experiencing the Battery Drain Defect. His Phone shuts off with anywhere between 20-
5 100% battery life remaining. Sometimes after Leone removes his Phone from the charger, the Phone
6 turns off within a few minutes.

7 137. When Leone's Phone experiences these early shut-off problems due to the Battery
8 Drain Defect, the Phone will not power back on unless and until it is connected to a charger. Once the
9 Phone turns back on, the battery indicator does not show any material loss in battery power—the
10 percentage charge is right around its level immediately prior to the shut-off.

11 138. Leone's Phone experiences battery drain incidents almost daily and sometimes multiple
12 times a day, sometimes only lasting for mere minutes before failure.

13 139. Leone is stuck with an unreliable Phone that achieves only a portion of the battery life
14 that he thought it would when he purchased the device.

15 140. Leone suffered ascertainable loss as a direct and proximate result of the Battery Drain
16 Defect and Defendants' concealment of it, including lost time, loss of use, and diminished value.

17 141. Leone would not have purchased his Phone had he known that contained the Battery
18 Drain Defect.

19 **K. Texas Plaintiff**

20 **Plaintiff James Poore, Jr.**

21 142. Poore is a citizen of Texas who resides in Austin, Texas. In or about February 2016, he
22 purchased his Phone from Huawei through Amazon. Poore paid \$604.02 for his Phone (IMEI
23 867979021283293).

24 143. In or around October and November 2016, Poore's Phone began manifesting the
25 Battery Drain Defect. The Phone would turn off despite 10-15% battery life showing. When this
26 occurred, the Phone would not turn back on unless and until it was plugged into a charger.

27 144. When Poore's Phone would power back on, the display would show that the Phone had
28 roughly the same remaining battery life as when it experienced the shutoff.

1 145. During the next few months, this problem worsened. Currently, Poore's Phone will
2 power off with 25-30% battery charge remaining, and will not turn back on unless plugged into
3 power.

4 146. During a trip to Seattle in January 2017, Poore's Phone powered off with 45% battery
5 remaining. At the time of this incident, Poore needed to use his Phone to request an Uber ride for an
6 important appointment, but could not do so because the Phone unexpectedly failed.

7 147. While his Phone was still covered by the one-year warranty, Poore contacted Huawei to
8 request that his Phone be repaired or replaced. Huawei informed Poore that the issue was "still under
9 investigation" and that Huawei would not authorize (and was not authorizing) repairs or replacements
10 for these battery problems. Huawei advised Poore to contact Google.

11 148. When Poore called Google, a Google representative told him that since he had not
12 bought the Phone through the Google Play Store, Google was refusing to provide any repair or
13 replacement. The Google representative told Poore that he needed to contact Huawei.

14 149. Poore is now stuck with a Phone that is unreliable and achieves only a portion of the
15 battery life that he thought it would when he purchased the device. Instead of taking any steps to
16 make Poore whole, Defendants have blamed each other.

17 150. Poore suffered ascertainable loss as a direct and proximate result of the Battery Drain
18 Defect and Defendants' concealment of it, including lost time, loss of use, and diminished value.

19 151. Poore would not have purchased his Phone had he known that it contained the Battery
20 Drain Defect.

21 **L. Washington Plaintiff**

22 **Plaintiff Kenneth Johnston**

23 152. Johnston is a citizen of Washington who resides in Spokane Valley, Washington.

24 153. Johnston viewed television and online advertisements regarding the Nexus 6P Phone.
25 The advertisements that Johnson viewed promoted the Phone in part on the basis of its superior
26 battery life. These advertisements materially influenced Johnston's decision to purchase a Nexus 6P
27 Phone for \$489.14, from Best Buy, in October 2016 (IMEI 86768602288042).

1 154. In or around December 2016, Johnston’s Phone began experiencing intermittent,
2 random reboots. Around the same time, the battery on his Phone began failing even when a charge
3 remained on the battery—generally when it reached a 30-40% charge.

4 155. In mid-December, Johnston contacted Google, whose representative told him that
5 Google does not provide support for these battery problems and that he should contact Huawei.

6 156. Thereafter, a Huawei representative offered Johnston two options: (1) uninstall all
7 non-factory apps that did not come with the Phone, which might solve the problem; or (2) send the
8 Phone to Huawei and for troubleshooting. Johnston further learned that if he were to choose option
9 (2), he would be left indefinitely without a smartphone while Huawei attempted to identify and solve
10 the problem.

11 157. Johnston is now burdened with a Phone that is reliable only in its dysfunction and
12 achieves only a portion of the battery life that he expected at the time of purchase. On April 18, 2017,
13 Johnston’s Phone shut down without warning in the middle of the night, causing him to be extremely
14 late to work and nearly costing him his job and livelihood. Johnston’s Phone continues to experience
15 random reboots and shut-offs from early battery drain.

16 158. Johnston suffered ascertainable loss as a direct and proximate result of the Battery
17 Drain Defect and Defendants’ concealment of it, including lost time, loss of use, and diminished
18 value.

19 159. Johnston would not have purchased his Phone had he known that contained a Battery
20 Drain Defect.

21 **M. Defendants**

22 160. Defendant Huawei Device USA, Inc. is a corporation organized and existing under the
23 laws of the state of Texas, with its principal place of business located at 5700 Tennyson Parkway,
24 Suite 500 Plano, Texas 75024.

25 161. Defendant Google, Inc. is a corporation organized and existing under the laws of the
26 state of Delaware, with its principal place of business located at 1600 Amphitheatre Parkway,
27 Mountain View, California 94043.

1 162. Defendants, and each of them, are now, and/or at all times mentioned in this complaint
2 were legally responsible for the events, happenings and circumstances alleged in this complaint.
3 Defendants proximately caused Plaintiffs and all others similarly situated to be subjected to the
4 unlawful practices, wrongs, complaints, injuries, and damages alleged in this complaint.

5 163. Defendants, and each of them, at all times mentioned in this complaint concurred and
6 contributed to the various acts and omissions of the other Defendant in proximately causing the
7 complaints, injuries, and damages alleged in this complaint. Defendants, and each of them, at all
8 times mentioned in this complaint approved of, condoned and/or otherwise ratified each of the acts
9 and omissions described in this complaint.

10 164. Defendants, and each of them, at all times mentioned in this complaint aided and
11 abetted the acts and omissions of the other Defendant thereby proximately causing the damages set
12 forth in this complaint.

13 **COMMON FACTUAL ALLEGATIONS**

14 **A. The Google Nexus 6P**

15 165. On September 29, 2015, in San Francisco, California, Google unveiled the newest
16 version of its Nexus 6 smartphone, called the Nexus 6P. In conjunction with its release, Google
17 touted the Nexus 6P as its “most premium phone yet.”² The Nexus 6P resulted from a collaborative
18 effort between Google and Huawei and displays trademarks from both companies. Huawei
19 manufactured the device and Google developed its software. Both companies market and distribute
20 the Phones.

21 166. Defendants released the Nexus 6P for pre-order on September 29, 2015 through the
22 Google Store in the United States, United Kingdom, Ireland, and Japan, with release in additional
23 countries in the weeks that followed.³ Images of the Nexus 6P from advertisements appear below.

24
25
26
27 ² <http://www.theverge.com/2015/9/29/9410551/google-nexus-6p-announced-size-price-release-date>
(last visited April 14, 2017).

28 ³ <http://www.androidpolice.com/2015/09/28/exclusive-nexus-6p-will-be-available-for-pre-order-on-september-29th-starting-499-99-in-the-u-s-uk-ireland-canada-and-japan/> (last visited April 14, 2017).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



1 167. The Nexus 6P has a 5.7-inch WQHD display and a completely new design, at 7.3mm
2 thick.⁴ The Nexus 6P is equipped with a 3450mAh battery, dual front-facing speakers, and the
3 Snapdragon 810 v2.1 processor.⁵ The front of the Nexus 6P contains an 8-megapixel camera that
4 Defendants advertised as optimized for indoor photography and featuring slow-motion video, 4K
5 video, and burst mode for photos.⁶

6 168. Nexus 6P Phones are premium smartphones. Defendants priced the Phones at \$499
7 (32 GB), \$549 (64 GB), and \$649 (128 GB).⁷ Further, Defendants marketed the Nexus 6P as
8 “unlocked,” meaning that consumers could use it with many different carriers without being required
9 to enter into a particular cellular service agreement.⁸ Defendants sell the Phones to consumers directly
10 as well as through authorized retailers, including Newegg and Best Buy.

11 169. At the Nexus 6P launch event, Google claimed that the Nexus 6P would possess best-
12 in-class features, including ultra-fast battery charging by which it would charge twice as fast as the
13 iPhone 6 Plus.⁹ Google’s Vice President of Engineering Dave Burke stated that the Nexus 6P is:

- 14 • “the most advanced Android software built into innovative hardware”;
- 15 • “the very latest and best in material design”; and
- 16 • capable of “charg[ing] fully in about half the time of an iPhone 6 Plus.”¹⁰

17 170. Google’s Product Management Director Sabrina Ellis also discussed the Nexus
18 Protect insurance package at the launch event. Ellis characterized Nexus Protect as providing
19 coverage for those “drops, spills, and cracks we all worry about.” She stated that because Nexus
20
21
22

23 ⁴ <http://www.theverge.com/2015/9/29/9410551/google-nexus-6p-announced-size-price-release-date>
24 (last visited April 14, 2017).

25 ⁵ <http://www.androidpolice.com/2015/09/28/exclusive-nexus-6p-will-be-available-for-pre-order-on-september-29th-starting-499-99-in-the-u-s-uk-ireland-canada-and-japan/> (last visited April 14, 2017).

26 ⁶ <http://www.theverge.com/2015/9/29/9410551/google-nexus-6p-announced-size-price-release-date>
27 (last visited April 14, 2017).

28 ⁷ *Id.*, at embedded videos.

⁸ *Id.*

⁹ *Id.*

¹⁰ <https://www.youtube.com/watch?v=-THMyqbmiYk> (last visited April 14, 2017).

1 Protect support would be offered 24/7, consumers with valid claims would “get a new device as early
2 as the next business day.”¹¹

3 171. As recently as April 2017, Google’s website advertised the Nexus 6P as containing a
4 battery that “keeps you talking, texting, and apping into the night.”¹²

5 172. Neither Google’s nor Huawei’s website mentions the Battery Drain Defect or the
6 Bootloop Defect.

7 **B. The Widespread Bootloop and Battery Drain Defects Become Apparent**

8 173. Unbeknownst to consumers, Nexus 6P Phones suffer from two Defects that inevitably
9 cause the Phones to experience either total failure (*i.e.*, the Bootloop Defect) or severe battery
10 drainage with early shut-off (*i.e.*, the Battery Drain Defect).

11 174. When the Bootloop Defect manifests, the Phone unexpectedly turn off, and upon
12 turning back on get stuck in the bootup process, failing to proceed beyond the start-up screen.

13 175. A bootlooped Phone is thus essentially an expensive paperweight. Once the Bootloop
14 Defect occurs, the Phones no longer operate and cannot be used to make calls, send text messages,
15 access the internet, or perform any other function. Consumers permanently lose all access to any data
16 or information stored on their Phone, including photographs, videos, text messages, and contact lists,
17 to the extent such data have not been backed up. Consumer complaints of bootlooping in the Nexus
18 6P began appearing online at least as early as September 2016.

19 176. The Battery Drain Defect in the Phones has also caused widespread problems in the
20 form of severely diminished battery life and premature shut-off incidents.

21 177. When the Battery Drain Defect manifests, consumers experience a complete loss of
22 operability in their Phones, even though the screens show that the battery is still partially (and in
23 some cases almost fully) charged. Consumers report having the same experience: the Phone will be
24 working fine, and the battery will show a partial charge remaining (*e.g.*, between 15-45%) when
25 suddenly, the Phone turns off and will not turn back on. This problem sometimes occurs with as much
26 as 80-90% battery life remaining.

27 ¹¹ <http://www.theverge.com/2015/9/29/9410551/google-nexus-6p-announced-size-price-release-date>
28 (last visited April 14, 2017), at embedded video.

¹² <https://www.google.com/nexus/6p/> (last visited April 14, 2017).

1 178. The early shut-off occurs contemporaneously with the battery drain; when this
2 happens, the consumer can get the Phone to turn back on only by plugging it into a charger or other
3 power source. Eventually, after being on a charger for some period of time, the Phone turns back on
4 and the screen indicates that the battery has nearly the same or similar charge as the screen indicated
5 just before the premature shut-off.

6 179. Cold weather appears to exacerbate the Battery Drain Defect and early shut-off
7 problems. The Battery Drain Defect manifested more often and at higher charges in Plaintiffs Jones's
8 and Leone's Phones at colder temperatures.

9 180. By causing the Phones to stop working unexpectedly, the Defects raise serious safety
10 concerns. One Nexus 6P owner was temporarily stranded on a freezing night after her Phone abruptly
11 died when she was trying to request a ride from the ride-sharing app Uber.¹³

12 181. Despite Defendants' awareness of the Defects and countless reports of the associated
13 problems from consumers—including in complaints made directly to Huawei and Google, on
14 Defendants' message boards, and on consumer websites—Defendants continue to sell Phones without
15 fixing or disclosing the Defects.

16 182. Defendants have refused to confirm the existence of these problems in the Phones and
17 refuse to provide relief to consumers whose Nexus 6P Phones experience bootlooping or battery drain
18 and early shut-off.

19 **C. The Impact of the Battery Drain and Bootloop Defects on Consumers**

20 183. As discussed above, all Plaintiffs have experienced one or both of the Defects in their
21 Phones. Their experiences are by no means isolated occurrences.

22 184. The internet is replete with complaints by consumers who purchased a Nexus 6P
23 Phone, only to experience the same bootloop and battery drain/early shut-off problems. Examples of
24 some of these complaints are below:

25
26
27
28 ¹³ See <http://www.androidpolice.com/2016/12/20/some-nexus-6ps-have-developed-a-battery-early-shutoff-problem-and-itsbecoming-a-safety-issue/> (last visited April 18, 2017).

1 [-] AlphaM93 2 points 10 days ago

2 I am extremely disappointed that a big company like Google does not know how to fix this problem.

3 I bought a Google Nexus 6P in February 2016. The phone came with a 1 year warranty. One week after the warranty
4 expired, the Nexus 6P decided to freeze after taking a photo and thereafter rebooted. (17/02.2017) Since then, my
5 Nexus 6P has been in a never-ending boot loop. The 6P was running Android Nougat 7.1.1 (N4F260) at the time it
6 froze. To think that Google has flagged this as a minor bug/defect is absurd and not acceptable. If this is not fixed, I
7 am not buying another Google phone and I will make sure that others in my region do not fall into the same rip off!

8 Kind regards,

9 Huawei Nexus 6P (H1512) 64GB - Aluminium Owner.

10 [https://www.reddit.com/r/Nexus/comments/4zhx53/never_ending_boot_loop_with_android_7_nougat/d
12 e0d4k3/](https://www.reddit.com/r/Nexus/comments/4zhx53/never_ending_boot_loop_with_android_7_nougat/d
11 e0d4k3/) (last visited March 3, 2017)

13 [-] JRTStudio 1 point 28 days ago

14 FYI for others finding this issue. If it happens 11 days after your warranty expires, don't expect a replacement from
15 Google if you purchased from them. Here is the experience my wife had with her Nexus 6P I bought her to encourage
16 testing of my Android apps. Spoiler alert, it's going to be tuff to keep her using an Android phone.

17 Over the last couple days, I would look over and see my phone was trying to reboot. It would get stuck at the very
18 beginning with the Google logo flashing (long before you even get to sign in to start Android). I couldn't even get
19 the phone to turn off.

20 So I called Google for help and they alerted me there was nothing they could do since my warranty expired just 6
21 days ago. I told them my phone was bricked at 53 weeks and they said it was "expected wear and tear". So I said,
22 "to confirm, you are telling me that this is expected behavior after only a year and you won't do anything to help"
23 and they said "yes". When I tried getting their full name or ID numbers, they would tell me they can't give those.
24 It took a while of prodding before they would even give me a case number. I talked to 3 managers there who all
25 said I was out of luck by 11 days with my now bricked phone.

26 [permalink](#) [embed](#) [save](#) [parent](#) [give gold](#)

27 [https://www.reddit.com/r/Nexus/comments/4zhx53/never_ending_boot_loop_with_android_7_nougat/d
29 d9lj2q/](https://www.reddit.com/r/Nexus/comments/4zhx53/never_ending_boot_loop_with_android_7_nougat/d
28 d9lj2q/) (last visited March 3, 2017)

Nexus 6P bootloop - stuck on Google logo



Don Lew

[Subscribe](#) 25

14,309 views

[+](#) Add to [Share](#) [...](#) More

[Like](#) 57 [Dislike](#) 16

[Share](#) [Embed](#) [Email](#) [x](#)



<https://youtu.be/9iqpfUqb8gU>

Start at: 5:45

Published on Oct 1, 2016

Very sad- my Nexus 6P froze and restarted, getting stuck at the Google logo. Bootloop happened about a week after OTA update to Android 7.0 Nougat. ::cries::

Video recorded on my Nexus 5X, apparently now my daily driver. ::cries some more::

<https://www.youtube.com/watch?v=9iqpfUqb8gU> (last visited March 3, 2017)



f10wmastr 1 month ago

most users have tried re-flashing factory images or wiping their data to no avail. Once you contact Google, the company will send you a refurbished unit. Though Google says the bootloop is strictly a hardware issue, it is curious that both Nexus 6P and Nexus 5X devices are suddenly affected by it after the most recent Nougat update.

Reply · 1

Id. (last visited March 3, 2017)



David Schwab 2 months ago (edited)

Happened to mine too! Google sabotage? Super pissed off. Weirdly right after 12 month warranty and right after 7.1.1 update. Coincidence? Super expensive phone that was still WAY in it's prime. I was looking forward to at least another year. Thinking about never buying a Google phone again.

Reply ·

[View all 3 replies](#)

Id. (last visited March 3, 2017)



Ramtin Irandost · 2 months ago

This article is really late. My 6p was effected by the bootloop before 7.1 update. Google was making it really difficult for me to get a replacement so I had to just deal with it. I wiped catch reset my phone couple of times but didn't seem to help and then the problem just went away by itself. I was beta tester for couple of Google's apps and I opted out of those I feel like thats what helped but I'm not quite sure. It's also noteworthy to mention that my phone only restarted when I wasn't using it.

1 ^ | v · Reply · Share ›

<http://www.androidauthority.com/nexus-6p-bootloop-issues-738275/> (last visited March 3, 2017)



Os Portillo · 2 months ago

My 6P just "died" on me back on the 25th. Was working normal, then went dead with 65%+ charge. Won't turn on while charging, it's actually not even holding any charge.

I'm sending it today to Huawei to work it out with the warranty. Such a great phone, affected so we are tempted to buy the new Pixels. Shame on you Google, never been so disappointed with them.

^ | v · Reply · Share ›

Id. (last visited March 3, 2017)



Thomas Cole · 2 months ago

This issue is older than this. I had one of my 6P's (my wives) get stuck in a bootloop months ago. We had to argue with Huawei and get Google involved just to get them to take the phone on the warranty that was almost up. Google offered to charge me full price for the phone and then release the money back on return of the old phone. I can't afford to do that and would not even if I could afford it. The 6P was the last purchase I will ever make from Google because of their customer service issues, I don't even use their software anymore.

^ | v · Reply · Share ›

Id. (last visited March 3, 2017)



thejaycan · 2 months ago

My 6P bit the dust in this manner. I'm glad to see it getting more attention, because I thought it was just my phone. I only had flashed up to 7.0 (pure nexus ROM) when it died. The flash went fine as did all the app reinstalls (did a clean flash) and it was working for half the day and then I launched Google Maps and it did a hard crash, all the way back to the Google screen and then proceeded to do its bootloop thing (no boot animation). I tried reflashing the ROM, the boot IMG, thebstoxk recovery, cleared data, cache, system, and even internal storage, no dice. Then I tried flashing back to Google stock from the official sources, nothing. Relocked the bootloader and reflashed stock source, still nothing. At that point, RMA'd it. Got new one and no problems on 7.1.1 on the pure nexus ROM. Just a bummer as I've had good luck recovering "bricked" devices until this one.

3 ^ | v · Reply · Share ›

<https://www.xda-developers.com/nexus-6p-users-experiencing-random-bootloops/> (last visited March 3, 2017)



thejaycan · 2 months ago

My 6P bit the dust in this manner. I'm glad to see it getting more attention, because I thought it was just my phone. I only had flashed up to 7.0 (pure nexus ROM) when it died. The flash went fine as did all the app reinstalls (did a clean flash) and it was working for half the day and then I launched Google Maps and it did a hard crash, all the way back to the Google screen and then proceeded to do its bootloop thing (no boot animation). I tried reflashing the ROM, the boot IMG, thebstoxk recovery, cleared data, cache, system, and even internal storage, no dice. Then I tried flashing back to Google stock from the official sources, nothing. Relocked the bootloader and reflashed stock source, still nothing. At that point, RMA'd it. Got new one and no problems on 7.1.1 on the pure nexus ROM. Just a bummer as I've had good luck recovering "bricked" devices until this one.

3 ^ | v · Reply · Share ›

battery drain I had read about online. Google Support as always is totally useless & on complete denial

^ | v · Reply · Share ›

ady
re
(last

)



AlexFarr → freddie andersson · 5 months ago

I've had the same issue, phone draining quickly and shutting down normally at 15% but I've had it happen at 25%. RMA'd my 6P and I have a fresh one sitting at home now, updated it to last Marshmallow update and think I'll leave it there until Google address the problem... I shouldn't have to do that though and it seems like more than just a knackered battery with people reporting the exact same thing.

^ | v · Reply · Share ›

<http://www.androidauthority.com/samsung-lg-lcd-delay-764136/#comment-2994769785> (last visited April 14,2017)



DevD · 4 months ago

Mine started the 2nd day after i installed the 7.1.1 which was last Monday. My phone randomly shuts down when i receive a call. The phone battery would be anywhere between 20%-65%. When it reboots the phone shows switched on the battery saver mode and charge would be 10%-15%. I can;t see the last caller id when shutdown happened. This is crazy. I am missing calls with no idea who called. This is critical. Hope Google and Huawei is working on this. Else the best phone of 2015-2016 is going to be the worst phone ever.

^ | v · Reply · Share ›

<http://www.androidauthority.com/samsung-lg-lcd-delay-764136/#comment-3065853865> (last visited April 14, 2017)



Pavan · 5 months ago

+1. Battery is draining at a jet speed. I thought my 6P battery is getting old

^ | v · Reply · Share ›

<http://www.androidauthority.com/samsung-lg-lcd-delay-764136/#comment-2978851185> (last visited April 14,2017)



Yash Mehta · 5 months ago

Battery is draining so fast and takes hell lot of time to charge back. First it used to tak 1 hr or 1 and half hr max. And now it takes almost 3 hrs to charge and sometimes it shows '5 hrs for full'. This is really frustrating and not what I expected from 7.0 update. I have also tweeted about this to nexus but no replies. Please fix Google.

^ | v · Reply · Share ›

<http://www.androidauthority.com/samsung-lg-lcd-delay-764136/#comment-2978082660> (last visited April 14, 2017)



Cara Leigh
@psychicstorm

Follow

[@GoogleStore](#) why does my nexus 6p shut down when it claims to have 90% battery? won't turn on until plug it in and sure enough 90% battery 🙄

RETWEET
1

LIKE
1



<https://twitter.com/psychicstorm/status/852146771354628096> (last visited April a14, 2017)



Chris Holley
@sdfitnoexcuses

Follow

[@Google](#) Please fix your battery issues with your Nexus 6P. Your service with this has been horrible. #googlefails

LIKE
1



<https://twitter.com/sdfitnoexcuses/status/851661079914532864> (last visited April 14, 2017)



Ckmk
@chukumukoo

Follow

Google still ignores Nexus 6p users. For months customers suffer from battery shutdowns. And nothing. Silence

[@GoogleNexus](#)

LIKE
1



11:16 AM - 8 Apr 2017



<https://twitter.com/chukumukoo/status/850744112190038017> (last visited April 14, 2017)



Kevin Annand @AnnandKevin · Mar 29

@googlenexus tried all the troubleshooting for **battery** issues with my **Nexus 6P**, is there a fix coming? Drains faster, dies randomly at 15%



<https://twitter.com/AnnandKevin/status/847110772941606912> (last visited April 14,2017)



Jaden Ng Donq Sheng Yes yess yesss!!!! Android Authority i love you for bringing this issue in social media.. I used this phone for less than a year.. i think Google is not working on it... My nexus 6p having a huge battery draining for the past few months and it's really ridiculous.. Google just want us to change to PIXEL maybe??

Like · Reply · 79 · October 31, 2016 at 9:06am

https://www.facebook.com/androidauthority/posts/1137761776273542?comment_id=1137787889604264&comment_tracking=%7B%22tn%22%3A%22R0%22%7D (last visited April 14, 2017)

★★★★★ Died after after 11 months.

By Tommy on January 31, 2017

Offer Type: Phone | Color: Graphite | Size: 64 GB | **Verified Purchase**

purchased in 2/2016, phone just died 1/31/2017. Warranty only good for 1 year.

Phone has been doing great up until last month or so. Battery will suddenly say low and shut down. Even if I have 20%+. The highest it shut down was at 49%. It will reboot but will shut down right after it loads.

Now, the phone is bricked. It restarted on me in the middle of a text message, and started to boot but the phone never loaded completely and now won't turn on and won't charge. Tried everything in google support with no success.

I guess I'll go back to apple. Never had any issue this early in the phones life.

1 comment | 2 people found this helpful. Was this review helpful to you? Report abuse

https://www.amazon.com/gp/customer-reviews/R15DQL12OO5EVM/ref=cm_cr_getr_d_rvw_ttl?ie=UTF8&ASIN=B015YCRYZM (last visited April 14,2017)

1 ★☆☆☆☆ Great software at the price of unreliable hardware!

2 By Gsdotwq on June 22, 2016

3 Offer Type: Phone | Color: Graphite | Size: 64 GB | **Verified Purchase**

4 Specs for this phone are great on paper. So is the user experience with google's vanilla android. But beware of hardware durability. After about 4 months of use, one day the battery died and it refused to recharge. Huawei's disappointing customer service wants me to send it in for 2 weeks. I don't blame them, they are after all playing by the book. So read the warranty before you buy this phone.

5 Reliability of our smartphones is so important in today's world that maybe, just maybe it doesn't matter how good the software ecosystem is, if the hardware is not durable for you to enjoy it.

6 ▶ 5 comments | 18 people found this helpful. Was this review helpful to you? Report abuse

7 https://www.amazon.com/gp/customer-reviews/R121YD5FSNCG3Z/ref=cm_cr_getr_d_rvw_ttl?ie=UTF8&ASIN=B015YCRYZM (last visited April 14, 2017).

8
9
10
11 185. A consumer-initiated petition on change.org demands that Defendants address the Defects in the Nexus 6P.¹⁴

12 **D. Defendants' Continued Failure to Remedy the Defects**

13
14 186. Defendants are aware that the Phones are defective and that the defects have had a massive effect on consumers across the country.

15
16 187. At first, Google downplayed the situation despite numerous consumer complaints. In September 2016, a Google representative responded to consumer complaints about the Bootloop Defect:

17
18
19 We understand that a very small number of users are experiencing a bootloop issue on your device. We are continuing to investigate the situation, but can confirm that this is strictly a hardware related issue. For those of you that are currently experiencing this, please contact your place of purchase for warranty or repair options.

20
21 We're sorry for the inconvenience and appreciate your continued patience.¹⁵

22
23
24
25
26 ¹⁴ See https://www.change.org/p/google-inc-get-repair-replacement-support-from-google-and-huawei-for-the-nexus-6p?source_location=topic_page (last visited April 14, 2017).

27 ¹⁵ <https://www.xda-developers.com/nexus-6p-users-experiencing-random-bootloops/> (last visited April 18, 2017); see also https://www.reddit.com/r/Nexus/comments/4zhx53/never_ending_boot_loop_with_android_7_nougat/ (last visited April 18, 2017).

1 188. But then, in October 2016, the same Google representative confirmed that Google was
2 aware of the malfunctioning batteries in Nexus 6P phones. Google announced that it was
3 investigating the problem and monitoring consumer posts on social websites like Twitter:

4 Just want to let you all know that this is something we have been keeping
5 track of, and our team is investigating.

6 As most of you know, poor battery life immediately after an update is not
7 uncommon, given the way system updates happen. That being said, many
8 of you are reporting that you have been experiencing abnormal battery
9 drain for multiple days now Thanks for all the relevant data on
10 usage, and please continue to post your experiences here and elsewhere
11 we monitor (Forum, Twitter, etc).¹⁶

12 189. Despite this acknowledgement, and the reality that (a) thousands of consumers have
13 complained about both the Bootloop Defect and Battery Drain Defect, (b) countless consumers have
14 contacted both Defendants about repairing and/or replacing their Phones, and (c) Defendants know
15 of the problems with Phones described herein, Defendants failed to disclose these problems to
16 consumers prior to purchase and, once the problems manifested in the Phones, failed to provide an
adequate remedy.

17 190. Defendants consistently fail to provide a non-defective replacement or repaired phone
18 to consumers, even when their Phones remain under warranty. Defendants often point to a cosmetic
19 issue (such as a cracked screen) as an excuse not to provide a repair or replacement.

20 191. Oftentimes the problems in Nexus 6P Phones manifest soon after the warranty period
21 expires. In those cases, Defendants deny relief to the consumers unless they pay out of pocket for
22 repairs.

23 192. Thus, consumers report that they have been required to obtain a repair or replacement
24 at their own expense. Defendants are not standing behind their product or their promises to repair
25 Phones. It is unusual for Defendants to offer any given Nexus 6P consumer a repair or a refurbished
26 device at no cost. Even where consumers have received repaired or refurbished Phones from
27

28 ¹⁶https://www.reddit.com/r/Nexus6P/comments/53xt82/nougat_ota_battery_drain_whats_the_official_word/ (last visited April 18, 2017).

1 Defendants, those Phones contain the same Defects as the originally purchased Phones. As a result,
2 Defendants' warranties fail of their essential purpose.

3 193. When consumers call Google or Huawei customer support, consumers typically
4 experience Google and Huawei representatives pointing fingers at one another and bouncing them
5 back and forth between companies on a series of calls. These calls often end in no ultimate recourse
6 for the consumers. Google consistently turns away consumers who call about Nexus 6P problems
7 stemming from the Defects, advising the consumers to speak to Huawei because "it's a hardware
8 issue." Google also consistently informs consumers who purchased their Phones through the Google
9 Store that (a) there is nothing Google can do, and/or (b) the consumers should file an insurance claim
10 through Assurant (Nexus Protect), which requires payment of a deductible typically exceeding \$75.

11 194. Likewise, Huawei consistently turns away consumers who call to report Nexus 6P
12 problems, telling them to "go talk to Google, it's a software issue." Huawei also employs run-around
13 tactics with consumers who have experienced the Defects, whether in or out of warranty. Ordinarily,
14 Huawei tells consumers with out-of-warranty Phones that experienced either Defect that Huawei will
15 not do anything for them. Other consumers, however, report that Huawei has said or done any of the
16 following, among other things:

- 17 a. Huawei is investigating the issue and there is nothing that can be done at this
18 time, but Huawei will follow up when it determines the problem—Huawei
19 rarely follows up with these customers;
- 20 b. The consumers can send in their device to Huawei, but Huawei cannot promise
21 that a repair or replacement will be cost free, or even possible at all, and when
22 consumers ask what they ought to do in the interim so that they have a phone,
23 Huawei advises them to go buy a new one and then return that phone at a later
24 date (consumers generally are not receptive to (a) going without their Phone
25 for an extended period of time and (b) buying a new phone with the intent to
26 return it later);
- 27 c. Huawei will issue a return merchandise authorization for a Phone, but will not
28 make a repair or provide replacement for weeks or months; when consumers
follow up regarding the status of their Phones, Huawei "promises" that the
matter is being "escalated" or fails to respond at all; or
- d. Huawei simply denies relief to consumers with in-warranty Phones for no
apparent reason and without explanation.

1
2 195. When Defendants are not playing the blame game, they often walk consumers through
3 a series of troubleshooting steps that provide no benefit and do not fix the Defects.

4 196. Defendants require consumers to pay full-freight shipping costs and other fees out of
5 their own pockets for a repair or replacement, or to pay a costly deductible when submitting a damage
6 claim through Assurant under a Nexus Protect plan.

7 197. Consumers who are able to obtain a replacement device are routinely provided with
8 refurbished or used phones. This leaves consumers in a situation where they have paid for a brand
9 new Phone, but are receiving something of less value. Further, the refurbished replacement Phones
10 contain the same Defects and are highly susceptible and prone to experiencing the same problems
11 again—in some cases multiple additional times. Many consumers received obviously damaged
12 refurbished devices and spent time requesting multiple replacements or return merchandise
13 authorizations.

14 198. Although Defendants know of the Bootloop Defect and the Battery Drain Defect, they
15 engage in a pattern and practice of refusing to repair Phones in which one or both defects have
16 manifested.

17 199. Even after consumer complaints relating to the Bootloop and Battery Defect
18 proliferated, Defendants failed to acknowledge that Nexus 6P Phones contain Defects that cause fatal
19 bootlooping and early shut-off from battery drainage. Defendants continue to fail to adequately repair
20 or replace the defective Phones.

21 200. Had these problems been known and disclosed to Plaintiffs and other consumers who
22 purchased the Phones, they would not have made the purchases. At the time they purchased their
23 Phones, Plaintiffs were unaware and had no reasonable way to learn of the problems with the Phones.

24 201. Defendants made affirmative representations about the quality of the Phones while
25 failing to disclose and suppressing a material fact about the Phones, namely that they contain defects
26 that result in either bootlooping or excessive battery drain, each of which inevitably renders the
27 Phones inoperable or, in the case of bootlooped Phones, completely useless.

1 202. Defendants had a duty to disclose these problems because they had exclusive
2 knowledge of the problems. Had Defendants disclosed the material facts relating to the Defects to
3 Plaintiffs and Class members, they would not have bought these Phones.

4 203. As a result of the Defects and Defendants' refusal to adequately address and remedy
5 the associated product failures, consumers across the United States have paid and continue to pay
6 significant sums for repairs, replacements, insurance deductibles connected with insurance claims,
7 and other out-of-pocket costs.

8 204. The Defects have also caused numerous consumers to experience loss of use of their
9 Phones, loss in value of their Phones, and loss of access to photos and other valuable intellectual
10 property accessible only through their Phones.

11 **CLASS ACTION ALLEGATIONS**

12 205. Plaintiffs bring this lawsuit on behalf of themselves and all similarly situated
13 individuals and entities, pursuant to Federal Rule of Civil Procedure 23(a), 23(b)(2) and 23(b)(3). The
14 proposed class and subclasses are defined as follows:

15 **Nationwide Class**

16 All persons or entities in the United States who purchased or own at least
17 one Nexus 6P Phone.

18 **California Subclass**

19 All persons or entities in the state of California who purchased or own at
20 least one Nexus 6P Phone.

21 **Florida Subclass**

22 All persons or entities in the state of Florida who purchased or own at least
23 one Nexus 6P Phone.

24 **Illinois Subclass**

25 All persons or entities in the state of Illinois who purchased or own at least
26 one Nexus 6P Phone.

27 **Indiana Subclass**

28 All persons or entities in the state of Indiana who purchased or own at
least one Nexus 6P Phone.

1 **Michigan Subclass**

2 All persons or entities in the state of Michigan who purchased or own at
3 least one Nexus 6P Phone.

4 **New York Subclass**

5 All persons or entities in the state of New York who purchased or own at
6 least one Nexus 6P Phone.

7 **North Carolina Subclass**

8 All persons or entities in the state of North Carolina who purchased or
9 own at least one Nexus 6P Phone.

10 **North Dakota Subclass**

11 All persons or entities in the state of North Dakota who purchased or own
12 at least one Nexus 6P Phone.

13 **Ohio Subclass**

14 All persons or entities in the state of Ohio who purchased or own at least
15 one Nexus 6P Phone.

16 **Pennsylvania Subclass**

17 All persons or entities in the Commonwealth of Pennsylvania who
18 purchased or own at least one Nexus 6P Phone.

19 **Texas Subclass**

20 All persons or entities in the state of Texas who purchased or own at least
21 one Nexus 6P Phone.

22 **Washington Subclass**

23 All persons or entities in the state of Washington who purchased or own at
24 least one Nexus 6P Phone.

25 206. Excluded from the Class and Subclasses are Defendants, their affiliates, subsidiaries,
26 parents, successors, predecessors, any entity in which Defendants or their parents have a controlling
27 interest; Defendants' current and former employees, officers and directors; the Judge(s) and/or
28 Magistrate(s) assigned to this case and their staffs and immediate family members; any person who
properly obtains exclusion from the Classes; any person whose claims have been finally adjudicated
on the merits or otherwise released; and the parties' counsel in this litigation. Plaintiffs reserve the
right to modify, change, or expand the Class and Subclass definitions based upon discovery and
further investigation.

1 207. **Numerosity.** The Class is so numerous that joinder of all members is impracticable.
2 At least tens of thousands of Class members have been subjected to Defendants' conduct described
3 herein. Over 3,500 consumers have contacted counsel for Plaintiffs to report having experienced one
4 or both of the Defects. The Class is objectively defined and presently ascertainable by reference to
5 records in the possession of Defendants or third parties.

6 208. **Existence and Predominance of Common Questions of Fact and Law.** Common
7 questions of law and fact exist as to all members of the Class. These questions predominate over the
8 questions affecting individual Class members. These common legal and factual questions include:

- 9 a) Whether the Phones are defective in that they were prone to failing prematurely
10 due to the Bootloop Defect and the Battery Drain Defect;
- 11 b) Whether Defendants knew of the Defects but failed to disclose the problems and
12 their consequences to consumers;
- 13 c) Whether a reasonable consumer would consider the Defects and their
14 consequences to be material;
- 15 d) Whether Defendants breached express and implied warranties relating to the
16 Phones;
- 17 e) Whether Defendants' conduct violates state consumer protection laws and other
18 laws as asserted herein;
- 19 f) Whether Plaintiffs and Class members overpaid for their Phones as a result of
20 the Defects alleged herein;
- 21 g) Whether Defendants' conduct was deceitful;
- 22 h) Whether Plaintiffs and Class members are entitled to equitable relief, including
23 restitution or injunctive relief; and
- 24 i) Whether Plaintiffs and Class members are entitled to damages and other
25 monetary relief and, if so, in what amount.

26 209. **Typicality.** Plaintiffs' claims are typical of the claims of the Class in that Plaintiffs
27 and all Class members purchased or own defective Phones and sustained economic injury in the same
28 manner by reason of Defendants' uniform course of conduct described herein. Plaintiffs and all Class

1 members have the same claims against Defendants relating to the conduct alleged herein, and the
2 events and conduct giving rise to Plaintiffs claims for relief are identical to those giving rise to the
3 claims of all Class members.

4 210. **Adequacy.** Plaintiffs are adequate representatives for the Class because their interests
5 do not conflict with the interests of the Class that they seek to represent. Plaintiffs have retained
6 counsel competent and highly experienced in complex class action litigation, including consumer
7 protection class actions, and counsel intends to prosecute this action vigorously. The interests of the
8 Class will be fairly and adequately protected by Plaintiffs and their counsel.

9 211. **Superiority.** A class action is superior to all other available means of fair and efficient
10 adjudication of the claims of Plaintiffs and Class members. The injury suffered by each individual
11 Class member is relatively small in comparison to the burden and expense of individual prosecution
12 of these claims. Even if Class members could afford to pursue individual litigation, the court system
13 could not. Individualized litigation would risk inconsistent or contradictory judgments while
14 increasing the delay and expense to all parties, and to the judicial system, from the complex legal and
15 factual issues presented here. By contrast, the class action device presents far fewer management
16 difficulties, and provides the benefits of single adjudication, an economy of scale, and comprehensive
17 supervision by a single court. Members of the Class can be readily identified and notified of this
18 action based upon, *inter alia*, the records (including databases and e-mails) that Defendants or third
19 parties maintain regarding sales of Phones. Plaintiffs know of no difficulty to be encountered in the
20 management of this action that would preclude its maintenance as a class action.

21 212. Defendants have acted or refused to act on grounds generally applicable to Plaintiffs
22 and Class members, making final injunctive relief and declaratory relief appropriate with respect to
23 the Class as a whole.

24 **CAUSES OF ACTION**

25 **COUNT I**
26 **BREACH OF EXPRESS WARRANTY**
27 **(Against Defendants)**

28 213. Plaintiffs repeat and reallege the allegations above as if fully set forth herein.

1 214. Plaintiffs assert this claim on behalf of the Nationwide Class.

2 215. In the alternative, this claim is brought by Makcharoenwoodhi, Gorbachev, and
3 Christensen on behalf of the California Subclass; Martorello on behalf of the Florida Subclass; Tran
4 on behalf of the Illinois Subclass; Beheler on behalf of the Indiana Subclass; Berry on behalf of the
5 Michigan Subclass; Davydov on behalf of the New York Subclass; Harrison and Himes on behalf of
6 the North Carolina Subclass; Jones on behalf of the North Dakota Subclass; Servodio on behalf of the
7 Ohio Subclass; Leone on behalf of the Pennsylvania Subclass; Poore on behalf of the Texas Subclass;
8 and Johnston on behalf of the Washington Subclass, under, respectively, CAL. COM. CODE § 2313;
9 FLA. STAT. § 672.313; 810 ILL. COMP. STAT. § 5/2-313; IND. CODE § 26-1-2-313; MICH. COMP. LAWS
10 § 440.2313; N.Y. U.C.C. § 2-313; N.C. GEN. STAT. § 25-2-313; N.D. CENT. CODE § 41-02-30; OHIO
11 REV. CODE § 1302.26; 13 PA. STAT. ANN. § 2313; TEX. BUS. & COM. CODE § 2.313; and WASH. REV.
12 CODE § 62A.2-313.

13 216. Huawei and Google are each a “merchant” as defined under the Uniform Commercial
14 Code (“U.C.C.”) and by the respective state statutes under which Plaintiffs alternatively assert this
15 claim.

16 217. The Phones are “goods” as defined under the U.C.C. and by the respective state
17 statutes under which Plaintiffs alternatively assert this claim.

18 218. Huawei created an express warranty within the meaning of the U.C.C. and the
19 respective state statutes under which Plaintiffs alternatively assert this claim.

20 219. Huawei expressly warranted that the Phones were free from material defects and, at a
21 minimum, would work properly. Huawei also expressly warranted that it would repair or replace “any
22 parts of the [Phone] that are defective or malfunctioning during normal usage.”¹⁷

23 220. Huawei’s warranty for each Phone provides:

24 Huawei Device USA Inc., (“Huawei”) represents and warrants to the
25 original purchaser (“Purchaser”) that Huawei’s phones and accessories
26 (“Product”) are free from material defects, including improper or inferior

27
28 ¹⁷ <http://consumer.huawei.com/us/support/warranty-policy/mobile-phone/index.htm> (last visited April 14, 2017).

1 workmanship, materials, and design, during the designated warranty
2 period[.]¹⁸

3 221. At all relevant times, including prior to and at the time of their purchases of Phones,
4 Plaintiffs and Class members relied on the promises in Huawei's express warranty. These promises
5 were part of the basis of the bargain connected with these transactions for the sale of goods.

6 222. Huawei breached its express warranty by:

7 a. selling Plaintiffs and Class members Phones containing Defects substantially
8 certain to cause the Phones to fail to function properly, or at all; and

9 b. failing to adequately repair or replace Plaintiffs' and Class members' Phones
10 that failed during the warranty period.

11 223. Huawei did not furnish an effective remedy to Plaintiffs and Class members. Despite
12 reasonable opportunities to honor the promises in its express warranty, Huawei failed to provide
13 Plaintiffs and Class members with conforming Nexus 6P Phones free of defects.

14 224. Plaintiffs and Class members experienced the Defects within the warranty period. In
15 breach of Huawei's express warranty, Huawei failed to inform Plaintiffs and Class members that the
16 Phones were defectively designed and failed to fix the defective Phones free of charge (and
17 altogether).

18 225. Huawei breached its express warranty that promised to repair and correct
19 manufacturing, materials or workmanship, and design defects and to provide Phones conforming to
20 the warranty. To date, Huawei has not repaired or adjusted, and has been unable to repair or adjust,
21 the Defects in the Phones.

22 226. The time limit connected with Huawei's warranty is unconscionable and inadequate to
23 protect Plaintiffs and Class members. Plaintiffs and Class members had no meaningful choice in
24 determining the one-year time limit, the terms of which unreasonably favored Huawei. A gross
25 disparity in bargaining power existed between Huawei and Class members. Huawei knew or should
26 have known that the Phones were defective at the time of sale and would fail. Consumers had no
27 reasonable means of learning of the concealed Defects.

28

¹⁸ *Id.*

1 227. Through its advertisements, public statements, and other statements disseminated
2 through consumable media, Google expressly warranted several attributes and qualities of the Phones
3 by representation as detailed above, such as:

- 4 a. “Get up to seven hours of use after only ten minutes of charging”;
5 b. “Battery life keeps you going all day and into the night”;
6 c. that Phones contain a battery that “keeps you talking, texting, and apping into
7 the night”; and
8 d. that when consumers need to file a warranty claim for Phones, they can “get a
new device as early as the next business day.”

9 228. These statements included objective affirmations of fact and promises. Plaintiffs and
10 Class members were exposed to and relied on the foregoing statements when they decided to buy
11 Nexus 6P Phones. Accordingly, Google’s express warranties formed part of the basis of the bargain
12 that was reached when Plaintiffs and Class Members purchased their Phones.

13 229. Google breached these express warranties in part because the Phones did not, in fact,
14 get up to seven hours of use after only ten minutes of charging, and because Google did not provide
15 any warranty claimant with a new device on the next business day. Instead, Google failed to
16 adequately repair or replace Plaintiffs’ and Class members’ Phones whose batteries failed during the
17 warranty period. Despite reasonable opportunities to honor the promises in its express warranty,
18 Google failed to provide Plaintiffs and Class members with conforming, non-defective Nexus 6P
19 Phones.

20 230. Defendants received timely notice of the breaches experienced by Plaintiffs and Class
21 members. Defendants were provided notice of the Defects by complaints lodged by consumers before
22 or within a reasonable amount of time after the allegations of the Defects became public.

23 231. Plaintiffs and Class members used their Nexus 6P Phones in a manner consistent with
24 the Phones’ operating instructions. Plaintiffs and Class members performed their duties under the
25 terms of the foregoing express warranties or have been excused from such performance as a result of
26 Defendants conduct described herein.

27 232. Any attempt by Defendants to disclaim or limit their express warranties vis-à-vis
28 consumers would be inappropriate under these circumstances. Any such asserted limitation is

1 unconscionable and unenforceable because Defendants knowingly sold a defective product without
2 informing consumers and because they failed to honor their express promises.

3 233. As a direct and proximate result of Defendants' breaches of express warranty,
4 Plaintiffs and Class members have suffered economic damages, including costly repairs, loss of use,
5 replacement costs, substantial loss in value and resale value of the Phones, and other harm.

6
7 **COUNT II**
8 **BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY**
9 **(Against Defendants)**

10 234. Plaintiffs repeat and reallege the allegations above as if fully set forth herein.

11 235. Plaintiffs assert this claim on behalf of the Nationwide Class.

12 236. In the alternative, this claim is brought by Makcharoenwoodhi, Gorbachev,
13 Christensen on behalf of the California Subclass; Martorello on behalf of the Florida Subclass; Tran
14 on behalf of the Illinois Subclass; Beheler on behalf of the Indiana Subclass; Berry on behalf of the
15 Michigan Subclass; Davydov on behalf of the New York Subclass; Harrison and Himes on behalf of
16 the North Carolina Subclass; Jones on behalf of the North Dakota Subclass; Servodio on behalf of the
17 Ohio Subclass; Leone on behalf of the Pennsylvania Subclass; Poore on behalf of the Texas Subclass;
18 and Johnston on behalf of the Washington Subclass, under, respectively, CAL. COM. CODE § 2314;
19 FLA. STAT. § 672.314; 810 ILL. COMP. STAT. § 5/2-314; IND. CODE § 26-1-2-314; MICH. COMP. LAWS §
20 440.2314; N.Y. U.C.C. § 2-314; N.C. GEN. STAT. § 25-2-314; N.D. CENT. CODE § 41-02-31; OHIO
21 REV. CODE § 1302.27; 13 PA. STAT. ANN. § 2314; TEX. BUS. & COM. CODE § 2.314; and WASH. REV.
22 CODE § 62A.2-314.

23 237. Huawei and Google are "merchants" as defined under the U.C.C. and by the
24 respective state statutes under which Plaintiffs alternatively assert this claim.

25 238. The Phones are "goods" as defined under the U.C.C. and by the respective state
26 statutes under which Plaintiffs alternatively assert this claim.

27 239. Huawei and Google impliedly warranted that the Phones were of a merchantable
28 quality. The law implies a warranty that the Nexus 6P smartphones were merchantable in the relevant

1 transactions. These phones, when sold and at all times thereafter, were not in merchantable condition
2 and are not fit for the ordinary purpose for which phones are used.

3 240. At the point of sale, the Nexus 6P Phones contained unseen manufacturing or design
4 defects whose manifestation renders the product inoperable during its useful life. The defects in the
5 Nexus 6P Phones existed when the Phones left Defendants' possession and rendered them unfit for
6 their ordinary and intended purpose. At all relevant times, including when the Phones entered the
7 stream of commerce and were purchased by Plaintiffs and Class members, the Phones were defective
8 and substantially certain to fail.

9 241. Defendants breached the implied warranty of merchantability because the Phones they
10 sold are not of a merchantable quality, but instead contain a Bootloop Defect and a Battery Drain
11 Defect. Had Plaintiffs and Class members known of the embedded defects in the Nexus 6P, they
12 would not have purchased their Phones.

13 242. Plaintiffs and Class members were in privity of contract with Huawei and Google by
14 virtue of their interactions with Huawei and Google. Alternatively, privity of contract need not be
15 established, and is not required, because Plaintiffs and Class members are the intended third-party
16 beneficiaries of the implied warranties and other contracts between Defendants and the retailers who
17 sell the Phones. Defendants' warranties were designed for the benefit of consumers who purchase(d)
18 Phones.

19 243. Plaintiffs furnished Defendants an opportunity to cure their breach of warranty, to no
20 avail. Defendants have refused to recall, adequately repair, replace, or refund the purchase price of
21 failed Nexus 6P Phones.

22 244. Any attempt by Defendants to disclaim the implied warranty of merchantability
23 imposed by law would be inappropriate, particularly given the parties' unequal bargaining power and
24 Defendants' exclusive knowledge of the Defects and true quality of the Phone.

25 245. Google's express attempt to disclaim or limit the implied warranty of merchantability
26 vis-à-vis consumers is unconscionable and unenforceable. Google knowingly sold a defective product
27 without disclosing the Defects, while affirmatively misrepresenting purported attributes of the
28 product that were important to consumer purchasers. Moreover, the remedies Google offered injured

1 purchasers were inadequate and unconscionable. Fairness therefore requires invalidating the
2 disclaimer of the implied warranty of merchantability in Google’s form document.

3 246. The strict time limit of Defendants’ warranty period is also unconscionable and was
4 inadequate to protect Plaintiffs and Class members. Among other things, Plaintiffs and Class
5 members had no meaningful choice in determining the one-year time limit, the terms of which
6 unreasonably favored Defendants. A gross disparity in bargaining power existed between Defendants
7 and Class members, and Defendants knew (or exercising due diligence should have known) that the
8 Phones were defective at the time of sale and that the Phones would fail well before their useful lives.

9 247. Plaintiffs and Class members have complied with any and all obligations under the
10 implied warranty of merchantability or otherwise have been excused from such compliance by reason
11 of Defendants’ conduct described herein.

12 248. Defendants’ breach of the implied warranty of merchantability damaged Plaintiffs and
13 Class members in an amount to be determined at trial.

14 **COUNT III**
15 **VIOLATIONS OF THE MAGNUSON-MOSS**
16 **WARRANTY ACT, 15 U.S.C. §§ 2301 *et seq.* (“MMWA”)**
17 **(Against Defendants)**

18 249. Plaintiffs repeat and reallege the allegations above as if fully set forth herein.

19 250. Plaintiffs and Class members are “consumers” within the meaning of the MMWA. 15
20 U.S.C. § 2301(3).

21 251. The Phones are “consumer products” within the meaning of the MMWA. 15 U.S.C. §
22 2301(1).

23 252. Huawei is a “supplier” and “warrantor” within the meaning of the MMWA. 15 U.S.C.
24 § 2301(4)-(5).

25 253. Google is a “supplier” and “warrantor” within the meaning of the MMWA. 15 U.S.C.
26 § 2301(4)-(5).

27 254. Section 2310(d) of the MMWA provides a cause of action for consumers harmed by
28 the failure of a warrantor to comply with a written or implied warranty.

1 255. Huawei’s express warranties are written warranties within the meaning of Section
2 2301(6) of the MMWA. The Phones’ implied warranties are accounted for under Section 2301(7) of
3 the MMWA, which warranties Huawei cannot disclaim under the MMWA, when it fails to provide
4 merchantable goods.

5 256. As set forth herein, Huawei breached its warranties with Plaintiffs and Class members.

6 257. Additionally, 15 U.S.C. § 2304(d) provides in pertinent part:

7
8 [T]he warrantor may not assess the consumer for any costs the warrantor
9 or his representatives incur in connection with the required remedy of a
10 warranted consumer product. . . . [I]f any incidental expenses are incurred
11 because the remedy is not made within a reasonable time or because the
12 warrantor imposed an unreasonable duty upon the consumer as a condition
of securing remedy, then the consumer shall be entitled to recover
reasonable incidental expenses which are so incurred in any action against
the warrantor.

13 *Id.*

14 258. The Nexus 6P phones share common defects and are prone to failure in that the
15 Phones bootloop or experience battery drain/early shutoff.

16 259. Despite demands by Plaintiffs and the Class for Huawei to pay the expenses
17 associated with diagnosing and repairing the defective phones, Huawei routinely refuses to do so.

18 260. Google also breached the implied warranty of merchantability as alleged herein by
19 offering for sale and selling Phones that were not in merchantable condition at the time they were
20 sold. The Phones were not merchantable because, when sold, the Phones contained latent defects
21 which cause the Phones to bootloop and experience severe battery drain and early shut-off.

22 261. Any disclaimer of implied warranties by Google was unconscionable due to the
23 parties’ unequal bargaining power and Google’s exclusive knowledge of the Defects and true quality
24 of the Phones.

25 262. Defendants’ attempts to disclaim or limit the implied warranty of merchantability vis-
26 à-vis consumers are unconscionable and unenforceable. Defendants’ unilateral warranty limitations
27 are unenforceable because Defendants’ knowingly sold a defective product without informing
28 consumers about the Defects. Moreover, the remedies offered by Defendants to buyers were unfair,

1 inadequate, and unconscionable. Fairness requires invalidating the disclaimer of the implied warranty
2 of merchantability in Google's form document.

3 263. As a direct and proximate result of Defendants' breaches of implied and express
4 warranties pursuant to 15 U.S.C. § 2310(d)(1), Plaintiffs and Class members have suffered damages
5 in an amount to be proven at trial.

6 264. Plaintiffs and Class members would suffer economic hardship if they returned their
7 Phones but did not receive the return of all payments made by them. Because Defendants are refusing
8 to acknowledge any revocation of acceptance and return immediately any payments made, Plaintiffs
9 and Class members have not reaccepted their Phones by retaining them.

10 265. The amount in controversy for Plaintiffs' individual claims meets or exceeds the sum
11 of \$25. The amount in controversy of this action exceeds the sum of \$50,000, exclusive of interest
12 and costs, computed on the basis of all claims proposed to be adjudicated in this lawsuit.

13 266. Plaintiffs and Class members are entitled to recover damages as a result of
14 Defendants' breach of warranties.

15 267. Plaintiffs and Class members are also entitled to seek costs and expenses, including
16 reasonable attorneys' fees, under the MMWA. 15 U.S.C. § 2310(d)(2).

17 **COUNT IV**
18 **DECEIT AND FRAUDULENT CONCEALMENT**
19 **(Against Defendants)**

20 268. Plaintiffs repeat and reallege the allegations above as if fully set forth herein.

21 269. This claim is brought by Makcharoenwoodhi, Gorbachev, and Christensen on behalf
22 of the California Subclass; Martorello on behalf of the Florida Subclass; Tran on behalf of the Illinois
23 Subclass; Beheler on behalf of the Indiana Subclass; Berry on behalf of the Michigan Subclass;
24 Davydov on behalf of the New York Subclass; Harrison and Himes on behalf of the North Carolina
25 Subclass; Jones on behalf of the North Dakota Subclass; Servodio on behalf of the Ohio Subclass;
26 Leone on behalf of the Pennsylvania Subclass; Poore on behalf of the Texas Subclass; and Johnston
27 on behalf of the Washington Subclass.

28 270. Defendants concealed and suppressed material facts concerning the performance and
quality of the Phones, and the quality of the Huawei, Google, and Nexus brands. Specifically,

1 Defendants knew (or in the exercise of reasonable diligence should have known) of the Defects, but
2 failed to disclose them prior to or at the time they marketed Phones and sold them to consumers.
3 Defendants engaged in this concealment in order to boost sales of their Nexus 6P smartphones.

4 271. Plaintiffs and Class members had no reasonable way of knowing that Defendants'
5 representations were false and misleading, or that Defendants had omitted to disclose highly
6 important details relating to the Defects. Plaintiffs and Class members did not and could not
7 reasonably discover Defendants' deception on their own.

8 272. Defendants had a duty to disclose the true performance of the Phones because the
9 scheme and its details were known and accessible only to Defendants; Defendants had superior
10 knowledge and access to the relevant facts; and Defendants knew these facts were neither known to,
11 nor reasonably discoverable by, Plaintiffs and the Class. Defendants also had a duty to disclose the
12 Defects because they made many general, partial representations about the qualities of the Phones.

13 273. Defendants still have not made full and adequate disclosures, and continue to defraud
14 consumers by concealing material information regarding the true performance of Phones.

15 274. Plaintiffs and Class members were unaware of the omitted material facts and would
16 not have acted as they did, in that they would not have purchased the Phones, had they known of the
17 facts Defendants suppressed. Plaintiffs' and Class members' actions in purchasing Phones were
18 justified. Defendants were in exclusive control of the material facts and such facts were not
19 reasonably known to the public, Plaintiffs, or Class members.

20 275. Plaintiffs and Class members relied to their detriment upon Defendants' reputations,
21 fraudulent misrepresentations, and material omissions regarding the quality of Phones and the Defects
22 in deciding to purchase their Phones.

23 276. Plaintiffs and Class members sustained damage as a direct and proximate result of
24 Defendants' deceit and fraudulent concealment. Among other damages, Plaintiffs and Class members
25 did not receive the value of the premium price they paid for their Phones. Plaintiffs and Class
26 members would not have purchased Phones had they known of the Defects.

27 277. Defendants' acts were done maliciously, oppressively, deliberately, with intent to
28 defraud, and in reckless disregard of Plaintiffs' and Class members' rights and well-being, to enrich

1 Defendants. Defendants' conduct warrants an assessment of punitive damages in an amount sufficient
2 to deter such conduct in the future, which amount is to be determined according to proof.

3 **COUNT V**
4 **UNJUST ENRICHMENT**
5 **(Against Defendants)**

6 278. Plaintiffs repeat and reallege the allegations above as if fully set forth herein.

7 279. Plaintiffs assert this claim on behalf of the nationwide Class based upon universal
8 principles in equity.

9 280. As the intended and expected result of its conscious wrongdoing, Defendants have
10 unfairly profited and benefited from Plaintiffs' and Class members' purchase of defective Phones.

11 281. Defendants have voluntarily accepted and retained these profits and benefits with full
12 knowledge and awareness that, as a result of Defendants' misconduct alleged herein, Plaintiffs and
13 the Class were not receiving Phones of the quality, nature, fitness, or value that had been represented
14 by Defendants, and that a reasonable consumer would expect.

15 282. Defendants have been unjustly enriched by their fraudulent, deceptive, and otherwise
16 unlawful conduct in connection with the sale of Phones and by withholding benefits from Plaintiffs
17 and the Class at the expense of these parties.

18 283. Equity and good conscience militate against permitting Defendants to retain these
19 profits and benefits. Defendants should be required to make restitution of its ill-gotten gains resulting
20 from the conduct alleged herein.

21 **COUNT VI**
22 **VIOLATIONS OF THE SONG-BEVERLY CONSUMER WARRANTY ACT FOR BREACH**
23 **OF IMPLIED WARRANTY OF MERCHANTABILITY**
24 **(CAL. CIV. CODE §§ 1791.1 & 1792)**
25 **(Against Defendants)**

26 284. Plaintiffs repeat and reallege the allegations above as if fully set forth herein.

27 285. Makcharoenwoodhi, Gorbachev, and Christensen assert this claim on behalf of the
28 California Subclass.

28 286. Plaintiffs and California Subclass members, who purchased Nexus 6P smartphones,
are "buyers" within the meaning of CAL. CIV. CODE § 1791(b).

1 287. The Nexus 6P smartphones are “consumer goods” within the meaning of CAL. CIV.
2 CODE § 1791(a).

3 288. Huawei is a “manufacturer” of the Nexus 6P smartphones within the meaning of CAL.
4 CIV. CODE § 1791(j).

5 289. Defendants impliedly warranted to Plaintiffs and California Subclass members that
6 their Nexus 6P smartphones were “merchantable” within the meaning of CAL. CIV. CODE
7 §§ 1791.1(a) & 1792; however, the Nexus 6P smartphones are not of the quality that a buyer would
8 reasonably expect.

9 290. CAL. CIV. CODE § 1791.1(a) states:

10 “Implied warranty of merchantability” or “implied warranty that goods are
11 merchantable” means that the consumer goods meet each of the following:

- 12 (1) Pass without objection in the trade under the contract description.
- 13 (2) Are fit for the ordinary purposes for which such goods are used.
- 14 (3) Are adequately contained, packaged, and labeled.
- 15 (4) Conform to the promises or affirmations of fact made on the
16 container or label.

17 291. Because of the Defects, the Nexus 6P smartphones would not pass without objection
18 in the smartphone trade.

19 292. Defendants breached the implied warranty of merchantability by manufacturing and
20 selling Nexus 6P smartphones containing the Defects. The Defects deprived Plaintiffs and California
21 Subclass members of the benefit of their bargain.

22 293. As a direct and proximate result of Defendants’ breach of the implied warranty of
23 merchantability, Plaintiffs and California Subclass members received goods whose defective
24 condition substantially impairs their value to Plaintiffs and California Subclass members. Plaintiffs
25 and California Subclass members have been damaged as a result of the diminished value of
26 Defendants’ products, the products’ malfunctioning, and the nonuse of their Nexus 6P smartphones.

27 294. Plaintiffs and California Subclass members have had sufficient direct dealings with
28 either Defendants or their agents (*e.g.*, dealerships and technical support) to establish privity of

1 contract between Defendants on one hand, and Plaintiffs and California Subclass members on the
2 other hand. Nonetheless, privity is not required because Song-Beverly expressly imposes warranty
3 duties upon “manufacturers” and because Plaintiffs and California Subclass members are the intended
4 third-party beneficiaries of the implied warranties that run from Defendants to their retailers. The
5 retailers were not intended to be the ultimate consumers of the Nexus 6P smartphones and have no
6 rights under the warranty agreements connected with the Nexus 6P smartphones; these agreements
7 were designed for and intended to benefit the end-users only.

8 295. Pursuant to CAL. CIV. CODE §§ 1791.1(d) & 1794, Plaintiffs and California Subclass
9 members are entitled to damages and other legal and equitable relief, including, at their election, the
10 purchase price of their Nexus 6P smartphones, or the overpayment or diminution in value of their
11 Nexus 6P smartphones.

12 296. Pursuant to CAL. CIV. CODE § 1794, Plaintiffs and California Subclass members are
13 entitled to reasonable attorneys’ fees and costs.

14 **COUNT VII**
15 **VIOLATIONS OF THE UNFAIR COMPETITION LAW**
16 **(CAL. BUS. & PROF. CODE § 17200, *et seq.*) (“UCL”)**
17 **(Against Defendants)**

18 297. Plaintiffs repeat and reallege the allegations above as if fully set forth herein.

19 298. Makcharoenwoodhi, Gorbachev, and Christensen assert this claim on behalf of the
20 California Subclass.

21 299. The UCL proscribes acts of unfair competition, including “any unlawful, unfair or
22 fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising.” CAL. BUS.
& PROF. CODE § 17200.

23 300. Defendants’ conduct is unlawful, in violation of the UCL, because it contravenes the
24 legislatively declared policy against unfair methods of business competition. Additionally,
25 Defendants’ conduct is unlawful because it violates the Magnusson-Moss Warranty Act, the Song-
26 Beverly Warranty Act, the California Consumers Legal Remedies Act, California’s False Advertising
27 Law and constitutes breach of express and implied warranties, fraudulent concealment, and unjust
28 enrichment.

1 301. Defendants' conduct is unfair because it violated California public policy,
2 legislatively declared in the Song-Beverly Consumer Warranty Act, requiring a manufacturer to
3 ensure that goods it places on the market are fit for their ordinary and intended purposes. Defendants
4 acted in an immoral, unethical, oppressive, and unscrupulous manner, including by:

- 5 a. Knowingly selling Plaintiffs and California Subclass members Phones with the
6 Defects;
- 7 b. Refusing to repair or replace Phones with Defects where the Defects manifest
8 outside the warranty period;
- 9 c. Engaging in a pattern and practice of blaming minor cosmetic issues as a pretext
10 to avoid providing warranty service;
- 11 d. Requiring consumers to wait several weeks to several months to receive
12 accommodation for warranty claims;
- 13 e. Providing repaired or replacement phones that contain the same Defects as the
14 original Phones.

15 302. The gravity of the harm resulting from Defendants' unfair conduct outweighs any
16 potential utility of the conduct. The practice of selling defective phones without providing an
17 adequate remedy to cure the Defects harms the public at large and is part of a common and uniform
18 course of wrongful conduct. There are reasonably available alternatives that would further
19 Defendants' business interests of increasing sales and preventing false warranty claims. The harm
20 from Defendants' unfair conduct was not reasonably avoidable by consumers.

21 303. Defendants' conduct, as described herein, is fraudulent in violation of the UCL.
22 Defendants fraudulent acts include:

- 23 a. Knowingly and intentionally concealing from Plaintiffs and California Subclass
24 members the existence of the Defects in the Phones;
- 25 b. Falsely marketing the Phones as being functional and not possessing defects that
26 would render them useless; and
- 27 c. Promoting the battery capabilities and lifespan despite knowing of the
28 significant Defects in the Phones.

1 304. Defendants' misrepresentations and omissions alleged herein caused Plaintiffs and
2 California Subclass members to purchase their Phones.

3 305. Defendants had a duty to disclose the Defect because they had exclusive knowledge of
4 the Defects prior to making sales of Phones and because Defendants made partial representations
5 about the quality of the Phones, but failed to fully disclose the Defects too.

6 306. Plaintiffs and California Subclass members have suffered injury in fact, including lost
7 money or property, as a result of Defendants' unlawful, unfair and fraudulent acts. Absent
8 Defendants' unlawful, unfair and fraudulent acts, Plaintiffs and California Subclass members would
9 not have purchased their Phones at the prices they paid (had they purchased them at all).

10 307. Plaintiffs seek to enjoin further unlawful, unfair, and fraudulent acts or practices by
11 Defendants under CAL. BUS. & PROF. CODE § 17200.

12 308. Plaintiffs request that this Court enter such orders or judgments as may be necessary
13 to enjoin Defendants from continuing their unfair, unlawful, and fraudulent practices, and to restore
14 to Plaintiffs and California Subclass members any money Defendants acquired by unfair competition,
15 including restitution, as provided for under CAL. BUS. & PROF. CODE § 17203, in addition to
16 reasonable attorneys' fees and costs.

17 **COUNT VIII**
18 **VIOLATIONS OF THE CONSUMER LEGAL REMEDIES ACT**
19 **(CAL. CIV. CODE § 1750, *et seq.*) ("CLRA")**
20 **(Against Defendants)**

21 309. Plaintiffs repeat and reallege the allegations above as if fully set forth herein.

22 310. Makcharoenwoodhi, Gorbachev, and Christensen assert this claim on behalf of the
23 California Subclass.

24 311. The CLRA proscribes "unfair methods of competition and unfair or deceptive acts or
25 practices undertaken by any person in a transaction intended to result or which results in the sale of
26 goods or services to any consumer." CAL. CIV. CODE § 1770(a)

27 312. The Phones are "goods" as defined in CAL. CIV. CODE § 1761(a).
28

1 313. Plaintiffs and California Subclass members are “consumers” as defined in CAL. CIV.
2 CODE § 1761(d), and Plaintiffs, California Subclass members, and Defendants are “persons” as
3 defined in CAL. CIV. CODE § 1761(c).

4 314. The purchases by Plaintiffs and California Subclass members are “transactions” as
5 defined by CAL. CIV. CODE § 1761(e).

6 315. Defendants’ conduct, as described herein, was and is in violation of the CLRA.
7 Defendants’ conduct violates at least the following enumerated CLRA provisions:

- 8 a. § 1770(a)(5): Representing that goods have sponsorship, approval,
9 characteristics, uses, benefits, or quantities which they do not have;
- 10 b. § 1770(a)(7): Representing that goods are of a particular standard, quality, or
11 grade, if they are of another;
- 12 c. § 1770(a)(9): Advertising goods with intent not to sell them as advertised; and
13 d. § 1770(a)(16): Representing that goods have been supplied in accordance with a
14 previous representation when they have not.

15 316. As alleged above, Defendants made numerous representations concerning the benefits,
16 performance, and capabilities of the Phones that were misleading. In purchasing the Phones, Plaintiffs
17 and California Subclass members were deceived by Defendants’ failure to disclose that the Phones
18 are highly susceptible to the Defects.

19 317. Plaintiffs and California Subclass members have suffered injury in fact and actual
20 damages resulting from Defendants’ material omissions and misrepresentations because, *inter alia*,
21 they lost money when they purchased their Phones or paid an inflated purchase price for the Phones.

22 318. Defendants knew, should have known, or were reckless in not knowing that the
23 Defects in the Phones rendered them not suitable for their intended use.

24 319. Defendants had a duty to disclose the Defects because Huawei and Google had
25 exclusive knowledge of the Defects prior to making sales of Phones and because Defendants made
26 partial representations about the quality of the Phones, but failed to fully disclose the Defects.

1 320. Huawei represented that its phones were free from material defects and, at a
2 minimum, would actually work properly. But the Phones suffer from the Bootloop Defect and the
3 Battery Drain Defect, and do not work properly once the Defects manifest.

4 321. Likewise, Google executives promoted the quality of the Phones, and Google
5 advertised the Phones’ battery power, claiming that the Phones:

- 6 a. “Get up to seven hours of use after only ten minutes of charging”;
- 7 b. “Battery life keeps you going all day and into the night”; and
- 8 c. contain a battery that “keeps you talking, texting, and apping into the night”.

9 322. Google executives’ representations were false—Google was aware that the Phones
10 suffered from the Defects. And Google was aware that their Phones’ battery did not perform as
11 advertised.

12 323. The facts concealed and omitted by Defendants to Plaintiffs and California Subclass
13 members—that the Phones are defective and fail prematurely—are material in that a reasonable
14 consumer would have considered them to be important in deciding whether to purchase the Phones or
15 pay a lower price. Had Plaintiffs and California Subclass members known about the defective nature
16 of the Phones, they would not have purchased their Phones.

17 324. Under CAL. CIV. CODE § 1780(a), Plaintiffs and California Subclass members seek
18 actual damages, an order enjoining Defendants from further engaging in the unfair and deceptive acts
19 and practices alleged herein, and restitutionary relief to remedy Defendants’ violations of the CLRA
20 as set forth herein.

21 325. Under CAL. CIV. CODE § 1780(b), Plaintiffs seek an additional award against
22 Defendants of up to \$5,000 for each California Subclass member who qualifies as a “senior citizen”
23 or “disabled person” under the CLRA. Defendants knew or should have known that its conduct was
24 directed to one or more Class members who are senior citizens or disabled persons. Defendants’
25 conduct caused one or more of these senior citizens or disabled persons to suffer a substantial loss of
26 property set aside for retirement or for personal or family care and maintenance, or assets essential to
27 the health or welfare of the senior citizen or disabled person. One or more California Subclass
28 members who are senior citizens or disabled persons are substantially more vulnerable to Defendants’

1 conduct because of age, poor health or infirmity, impaired understanding, restricted mobility, or
2 disability, and each of them suffered substantial physical, emotional, or economic damage resulting
3 from Defendants' conduct.

4 326. Pursuant to CLRA section 1780(a)(4), Plaintiffs also seek punitive damages against
5 Defendants because they carried out reprehensible conduct with willful and conscious disregard of
6 the rights of others, subjecting Plaintiffs and the California Subclass to potential cruel and unjust
7 hardship as a result. Defendants intentionally and willfully concealed material facts that only they
8 knew. Defendants' unlawful conduct likewise constitutes malice, oppression, and fraud warranting
9 exemplary damages under CAL. CIV. CODE § 3294.

10 327. Plaintiffs further seek an order awarding costs of court and reasonable attorneys' fees
11 under CAL. CIV. CODE § 1780(e), and any other just and proper relief available under the CLRA.

12 328. Gorbachev sent CLRA notices to Huawei and Google on March 30, 2017.

13 329. Makcharoenwoodhi sent CLRA notices to Huawei and Google on April 19, 2017.

14 330. Christensen sent CLRA notices to Huawei and Google on May 23, 2017.

15 331. These letters provided the notice required by CAL. CIV. CODE § 1782(a). Plaintiffs sent
16 the CLRA notices via certified mail, return receipt requested, to Huawei's and Google's principal
17 place of business, advising them that they are in violation of the CLRA and must correct, replace or
18 otherwise rectify the goods alleged to be in violation of CAL. CIV. CODE § 1770. Defendants were
19 further advised that in the event the relief requested has not been provided within thirty (30) days,
20 Plaintiffs would amend this complaint to include a request for monetary damages pursuant to the
21 CLRA.

22
23 **COUNT IX**
24 **VIOLATIONS OF THE FALSE ADVERTISING LAW**
25 **(CAL. BUS. & PROF. CODE § 17500, *et seq.*) ("FAL")**
26 **(Against Defendants)**

27 332. Plaintiffs repeat and reallege the allegations above as if fully set forth herein.

28 333. Makcharoenwoodhi, Gorbachev, and Christensen assert this claim on behalf of the
California Subclass.

334. The FAL provides, in pertinent part:

1 “It is unlawful for any . . . corporation . . . with intent directly or
2 indirectly to dispose of real or personal property . . . to induce the public
3 to enter into any obligation relating thereto, to make or disseminate or
4 cause to be made or disseminated . . . from this state before the public in
5 any state, in any newspaper or other publication, or any advertising
6 device, . . . or in any other manner or means whatever, including over
7 the Internet, any statement . . . which is untrue or misleading, and which
8 is known, or which by the exercise of reasonable care should be known,
9 to be untrue or misleading.”

10 CAL. BUS. & PROF. CODE § 17500.

11 335. Defendants violated the FAL by using false and misleading statements, and material
12 omissions to promote the Phones. Defendants promoted false and misleading through advertising,
13 marketing and other publications. Defendants knew, or through the exercise of reasonable care should
14 have known, that their statements and material omissions were untrue and misleading to Plaintiffs and
15 California Subclass members.

16 336. Defendants’ misrepresentations and omissions regarding the reliability and
17 functionality of Phones were material and likely to deceive a reasonable consumer.

18 337. Plaintiffs and California Subclass members have suffered an injury in fact, including
19 the loss of money or property, as a result of Defendants’ material misstatements and omissions. In
20 purchasing their Phones, Plaintiffs and California Subclass members relied on the misrepresentations
21 and/or omissions of Defendants with respect to the performance and reliability of the Phones.
22 Defendants’ representations were false: the Phones are defective.

23 338. All of the wrongful conduct alleged herein occurred, and continues to occur, in the
24 conduct of Defendants’ business. Defendants’ wrongful conduct is part of a pattern or generalized
25 course of conduct that is still being perpetuated and repeated, both within California and nationwide.

26 339. Plaintiffs, individually and on behalf of the California Subclass, request that this Court
27 enter such orders or judgments as may be necessary to prohibit Defendants from continuing their
28 pattern of using misleading statements and omissions and to restore to Plaintiffs and California
Subclass members the money Defendants acquired through such statements and omissions, including
restitution or restitutionary disgorgement, and for such other relief set forth below.

COUNT X
VIOLATIONS OF THE FLORIDA DECEPTIVE AND UNFAIR
TRADE PRACTICES ACT (“FDUTPA”)
FLA. STAT. §§ 501.204, et seq.
(Against Defendants)

340. Plaintiffs repeat and reallege the allegations above as if fully set forth herein.

341. Martorello asserts this claim on behalf of the Florida Subclass.

342. The FDUPA prohibits “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.” FLA. STAT. § 501.204(1).

343. Defendants’ acts and practices are unfair in at least the following respects: Defendants knowingly sold Martorello and Florida Subclass members Phones with the Defects, refused to honor warranties, required consumers to wait several weeks to several months on warranty claims, and replaced Phones under warranty with other defective Phones.

344. Defendants’ acts and practices are contrary to Florida law and policy and constitute immoral, unethical, oppressive, and unscrupulous business practices that caused substantial injury to Martorello and Florida Subclass members. The gravity of the harm resulting from Defendants’ unfair conduct outweighs any potential utility of the conduct. The practice of selling defective phones without providing an adequate remedy to cure the Defects harms the public at large and is part of a common and uniform course of wrongful conduct. There are reasonably available alternatives that would further Defendants’ business interests of increasing sales and preventing false warranty claims. The harm from Defendants’ unfair conduct was not reasonably avoidable by consumers.

345. Defendants’ acts and practices are deceptive because Defendants willfully failed to disclose and actively concealed the Defects in Phones; represented that Phones have characteristics, uses, benefits, and qualities which they do not have; represented that Phones are of a particular standard and quality when they are not; advertised Phones with the intent not to sell them as advertised; and otherwise engaging in conduct likely to deceive.

1 346. Defendants’ deceptive acts and practices were likely to mislead consumers in acting
2 reasonably in the circumstances, causing Martorello, and Florida Subclass members to purchase
3 Phones with the Defects.

4 347. Defendants’ actions as set forth above occurred in the conduct of trade or commerce.

5 348. Martorello and Florida Subclass members relied on Defendants to make full disclosure
6 as to the true nature of the Phones, namely the existence of the Defects, and in reliance thereupon and
7 in light of this omission, Martorello and Florida Subclass members were deceived. Had the Defects
8 been disclosed, Martorello and Florida Subclass members would not have paid for their Phones, or
9 would have paid less for them.

10 349. Defendants’ conduct proximately caused injuries to Martorello and Florida Subclass
11 members.

12 350. Martorello and Florida Subclass members were injured as a result of Defendants’
13 conduct in that Martorello and Florida Subclass members overpaid for their Phones and did not
14 receive the benefit of their bargain, and their Phones have suffered a diminution in value. These
15 injuries are the direct and natural consequence of Defendants’ misrepresentations and omissions.

16 351. Martorello and Florida Subclass members are entitled to actual damages and, pursuant
17 to FLA. STAT. § 501.2105, reasonable costs and attorneys’ fees.

18 COUNT XI
19 **VIOLATIONS OF THE ILLINOIS CONSUMER FRAUD AND**
20 **DECEPTIVE BUSINESS PRACTICES ACT (“Illinois CFA”)**
21 **815 ILL. COMP. STAT. §§ 505/1, et seq.**
22 **(Against Defendants)**

22 352. Plaintiffs repeat and reallege the allegations above as if fully set forth herein.

23 353. Tran asserts this claim on behalf of the Illinois Subclass.

24 354. Tran and Illinois Subclass members are “consumers” as that term is defined in 815
25 ILL. COMP. STAT. § 505/1(e).

26 355. Defendants’ acts or practices as set forth above occurred in the conduct of “trade” or
27 “commerce” under 815 ILL. COMP. STAT. § 505/2.

1 356. Defendants' acts and practices are unfair in at least the following respects: Defendants
2 knowingly sold Tran and Illinois Subclass members Phones with the Defects, refused to honor
3 warranties, required consumers to wait several weeks to several months on warranty claims, and
4 replaced Phones under warranty with other defective Phones.

5 357. Defendants' acts and practices are contrary to Illinois law and policy and constitute
6 immoral, unethical, oppressive, and unscrupulous business practices that caused substantial injury to
7 Tran and Illinois Subclass members. The gravity of the harm resulting from Defendants' unfair
8 conduct outweighs any potential utility of the conduct. The practice of selling defective phones
9 without providing an adequate remedy to cure the Defects harms the public at large and is part of a
10 common and uniform course of wrongful conduct. There are reasonably available alternatives that
11 would further Defendants' business interests of increasing sales and preventing false warranty claims.
12 The harm from Defendants' unfair conduct was not reasonably avoidable by consumers.

13 358. Defendants' acts and practices are deceptive because Defendants willfully failed to
14 disclose and actively concealed the Defects in Phones; represented that Phones have characteristics,
15 uses, benefits, and qualities which they do not have; represented that Phones are of a particular
16 standard and quality when they are not; advertised Phones with the intent not to sell them as
17 advertised; and otherwise engaging in conduct likely to deceive.

18 359. Defendants were aware that they were manufacturing, selling, and distributing Phones
19 throughout the United States that did not perform as advertised, including in terms of quality,
20 workmanship, and performance.

21 360. Defendants' conduct and false representations/omissions were material to Tran and
22 Illinois Subclass members.

23 361. Defendants used deceptive acts and practices with intent that consumers, such as Tran
24 and Illinois Subclass members, would rely upon Defendants representations and omissions in
25 selecting and purchasing their Phones.

26 362. Defendants intentionally and knowingly misrepresented or omitted material facts
27 regarding the Phones with an intent to mislead Tran and Illinois Subclass members.

28

1 363. Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive
2 reasonable consumers, including Tran and Illinois Subclass members, about the true performance of
3 Phones, the quality of Phones and the Google and Huawei brands, and the true value of the Phones.

4 364. Defendants knew or should have known that its conduct violated the Illinois CFA.

5 365. Defendants owed Tran and Illinois Subclass members a duty to disclose the Defects
6 and the true performance of Phones because Defendants possessed exclusive knowledge of the
7 Defects; because the Phones did not contain the qualities or characteristics, or perform, as advertised;
8 because Defendants intentionally concealed the foregoing from Tran and Illinois Subclass members;
9 and because Defendants made incomplete representations about the Phones while purposefully
10 withholding material facts from and Tran and Illinois Subclass members that contradicted these
11 representations.

12 366. Because Defendants fraudulently concealed the Defects, the value of the Phones has
13 greatly diminished and Tran and Illinois Subclass members overpaid for their Phones.

14 367. Tran and Illinois Subclass members suffered ascertainable loss caused by Defendants'
15 misrepresentations and concealment of material information relating to the Defects. Tran and Illinois
16 Subclass members would have paid less for their Phones or would not have purchased them at all but
17 for Defendants' violations of the Illinois CFA.

18 368. As a direct and proximate result of Defendants' violations of the Illinois CFA, Tran
19 and Illinois Subclass members have suffered injury in fact and actual damage.

20 369. Pursuant to 815 ILL. COMP. STAT. § 505/10a(a), Tran, individually and on behalf of
21 Illinois Subclass members, seeks actual damages as well as punitive damages (pursuant to 815 ILL.
22 COMP. STAT. § 505/10a(c)), because Defendants acted with fraud and malice and were grossly
23 negligent in selling phones they knew were substantially certain to fail.

24 370. Tran and Illinois Subclass members also seek an order enjoining Defendants' unfair
25 and deceptive acts or practices, reasonable attorneys' fees, and any other just and proper relief
26 available under 815 ILL. COMP. STAT. § 505/1, *et seq.*

COUNT XII
VIOLATIONS OF THE ILLINOIS UNIFORM DECEPTIVE
TRADE PRACTICES ACT (“Illinois DTPA”)
815 ILL. COMP. STAT. §§ 510/1, et seq.
(Against Defendants)

371. Plaintiffs repeat and reallege the allegations above as if fully set forth herein.

372. Tran asserts this claim on behalf of the Illinois Subclass.

373. Defendants are “persons” as defined in 815 ILL. COMP. STAT. § 510/1(5).

374. In the course of Defendants’ business, they willfully failed to disclose and actively concealed the Defects in Phones as described herein. Accordingly, Defendants engaged in deceptive trade practices as defined in 815 ILL. COMP. STAT. § 510/2, including representing that Phones have characteristics, uses, benefits, and qualities which they do not have; representing that Phones are of a particular standard and quality when they are not; advertising Phones with the intent not to sell them as advertised; and otherwise engaging in conduct likely to deceive.

375. Defendants intended for Tran and Illinois Subclass members to rely on their aforementioned unfair and deceptive acts and practices, including the misrepresentations and omissions alleged hereinabove.

376. Defendants’ actions as set forth above occurred in the course of their business.

377. Defendants’ knew or should have known that their conduct violated the Illinois DTPA.

378. Defendants possessed exclusive knowledge of the Defects; the Phones did not contain the qualities or characteristics, or perform, as advertised; Defendants intentionally concealed the foregoing from Tran and Illinois Subclass members; and Defendants made incomplete representations about the Phones while purposefully withholding material facts from Tran and Illinois Subclass members that contradicted these representations. For each of these reasons, Defendants had a duty to disclose the Defects to Tran and Illinois Subclass members.

379. Defendants’ conduct and false representations and omissions were material to Tran and Illinois Subclass members in connection with their purchases of Phones.

1 380. Tran and Illinois Subclass members suffered ascertainable loss caused by Defendants’
 2 misrepresentations and its concealment of and failure to disclose material information. Class
 3 members who purchased Phones either would have paid less for their Phones or would not have
 4 purchased them at all but for Defendants’ violations of the Illinois DTPA.

5 381. Defendants’ conduct alleged herein proximately caused injuries to Tran and Illinois
 6 Subclass members.

7 382. Tran and Illinois Subclass members were injured as a result of Defendants’ conduct.
 8 Tran and Illinois Subclass members overpaid for their Phones and did not receive the benefit of their
 9 bargain. These injuries were the direct and natural consequence of Defendants’ misrepresentations
 10 and omissions in violation of the Illinois DTPA.

11 383. Pursuant to 815 ILL. COMP. STAT. § 510/3, Tran and Illinois Subclass members are
 12 entitled to an award of injunctive relief to prevent Defendants’ deceptive trade practices and, because
 13 Defendants’ conduct was willful, an award of reasonable attorneys’ fees and costs.

14
 15 **COUNT XIII**
VIOLATIONS OF THE INDIANA DECEPTIVE CONSUMER SALES ACT
IND. CODE §§ 24-5-0.5-1, et seq. (“IDCSA”)
(Against Defendants)
 16
 17

18 384. Plaintiffs repeat and reallege the allegations above as if fully set forth herein.

19 385. Beheler asserts this claim on behalf of the Indiana Subclass.

20 386. The IDCSA provides for a private right of action by a person damaged by “relying
 21 upon an uncured or incurable deceptive act.” IND. CODE 24-5-0.5-4(a).

22 387. Additionally, the IDCSA expressly allows persons damaged by a “deceptive act” to
 23 maintain a class action. *Id.* § 24-5-0.5-4(b).

24 388. The IDCSA defines a “deceptive act” as when a supplier commits an “unfair, abusive,
 25 or deceptive act, omission, or practice in connection with a consumer transaction” whether such
 26 conduct occurred before, during, or after the transaction. *Id.* § 24-5-0.5-3(a). Further, deceptive acts
 27 “include both implicit and explicit misrepresentations.” *Id.*

1 389. The IDCSA enumerates some “representations as to the subject matter of the
2 consumer transaction, made orally, in writing, or by electronic communication, by a supplier” that are
3 considered *per se* deceptive acts. *Id.* § 24-5-0.5-3(b). Pertinent here are the following deceptive acts
4 which Defendants have committed as alleged herein:

- 5 a. (b)(1): That such subject of a consumer transaction has sponsorship, approval,
6 performance, characteristics, accessories, uses, or benefits it does not have
7 which the supplier knows or should reasonably know it does not have.
- 8 b. (b)(2): That such subject of a consumer transaction is of a particular standard,
9 quality, grade, style, or model, if it is not and if the supplier knows or should
10 reasonably know that it is not.
- 11 c. (b)(8): That such consumer transaction involves or does not involve a
12 warranty, a disclaimer of warranties, or other rights, remedies, or obligations,
13 if the representation is false and if the supplier knows or should reasonably
14 know that the representation is false.

15 390. Defendants represented that Phones are premium products of high quality, including
16 (among other representations) that the Phones have high-performing batteries that will keep
17 consumers “talking, texting, and apping into the night.”

18 391. But Defendants sold Phones to Beheler and Indiana Subclass members that do not
19 perform or have the characteristics, uses, benefits or quality that Defendants represented its Phones to
20 have. Instead, Defendants sold Beheler and Indiana Subclass members smartphones that bootloop and
21 cease operating despite indicating high percentages of remaining battery life.

22 392. Defendants have refused and continue to refuse to provide an adequate remedy for the
23 problems that plague Phones.

24 393. As set forth herein, Defendants have engaged in multiple deceptive acts in violation of
25 the IDCSA. Therefore, Beheler and Indiana Subclass members seek both injunctive relief and
26 monetary damages against Defendants pursuant to the IDCSA, §§ 2, 4.

27 394. Furthermore, Defendants omitted and concealed information about the Defects from
28 Beheler and Indiana Subclass members. Defendants had a duty to disclose the truth about Phones,

1 including the Defects, and Beheler and Indiana Subclass members could not have discovered the truth
2 on their own. Beheler relied upon Defendants’ representations and omissions with respect to Phones,
3 and it was Defendants’ concealment of the Defects that induced Beheler to purchase his Phone.

4 395. The Defects are incurable and cannot be remedied as indicated by the fact that
5 attempted repairs and replacement devices result in the same problems for consumers.

6 396. As a result of Defendants’ conduct alleged herein, Beheler and Indiana Subclass
7 members have suffered irreparable harm. Beheler’s and Indiana Subclass members’ injuries were
8 proximately caused by Defendants’ conduct as alleged herein. Beheler, individually and on behalf of
9 the Indiana Subclass, seek an award of damages for Defendants’ willful violations of the IDCSEA,
10 costs, reasonable attorneys’ fees, and such other relief deemed appropriate and proper by the Court.

11 **COUNT XIV**
12 **VIOLATIONS OF THE MICHIGAN CONSUMER PROTECTION ACT**
13 **MICH. COMP. LAWS § 445.903, *et seq.* (“Michigan CPA”)**
14 **(Against Defendants)**

15 397. Plaintiffs repeat and reallege the allegations above as if fully set forth herein.

16 398. Berry asserts this claim on behalf of the Michigan Subclass.

17 399. Berry and Michigan Subclass members are “person[s]” within the meaning of the
18 MICH. COMP. LAWS § 445.902(1)(d).

19 400. At all relevant times, Defendants were “persons” engaged in “trade or commerce”
20 within the meaning of the MICH. COMP. LAWS § 445.902(1)(d) and (g).

21 401. The Michigan CPA prohibits “[u]nfair, unconscionable, or deceptive methods, acts, or
22 practices in the conduct of trade or commerce” MICH. COMP. LAWS § 445.903(1). Defendants
23 engaged in unfair, unconscionable, or deceptive methods, acts or practices prohibited by the
24 Michigan CPA, including: “(c) Representing that goods or services have . . . characteristics . . . that
25 they do not have”; “(e) Representing that goods or services are of a particular standard . . . if they are
26 of another”; “(s) Failing to reveal a material fact, the omission of which tends to mislead or deceive
27 the consumer, and which fact could not reasonably be known by the consumer”; “(y) Gross
28 discrepancies between the oral representations of the seller and the written agreement covering the
same transaction or failure of the other party to the transaction to provide the promised benefits”;

1 “(bb) Making a representation of fact or statement of fact material to the transaction such that a
2 person reasonably believes the represented or suggested state of affairs to be other than it actually is”;
3 and “(cc) Failing to reveal facts that are material to the transaction in light of representations of fact
4 made in a positive manner.” MICH. COMP. LAWS § 445.903(1).

5 402. In the course of its business, Defendants touted Phones as being of high quality while
6 willfully failing to disclose the Defects discussed herein and otherwise engaged in activities with a
7 tendency or capacity to deceive. Defendants also engaged in unlawful trade practices by employing
8 deception, deceptive acts or practices, fraud, misrepresentations, and concealment, suppression, or
9 omission of material facts with intent that others rely upon these methods in connection with the sale
10 Phones.

11 403. By failing to disclose the Defects, by marketing Phones as of high quality, and by
12 presenting themselves as reputable manufacturers and distributors that stood behind their products
13 after they were sold, Defendants engaged in deceptive business practices in violation of the Michigan
14 CPA.

15 404. Defendants’ deceptive acts or practices were likely to and did in fact deceive
16 reasonable consumers, including Berry and Michigan Subclass members, about the true performance
17 of Phones, the quality of Defendants’ brand, and the true value of the Phones.

18 405. Defendants knew or should have known that their conduct violated the Michigan
19 CPA.

20 406. Defendants owed Berry a duty to disclose the Defects and the true performance of
21 Phones because they possessed exclusive knowledge of the Defects in Phones; because the Phones
22 did not contain the qualities or characteristics, or perform, as advertised; because Defendants
23 intentionally concealed the foregoing from Berry and the Michigan Subclass; and because Defendants
24 made incomplete representations about the Phones while purposefully withholding material facts
25 from the Class that contradicted these representations.

26 407. Defendants’ false representations and omissions related to facts that were material to
27 Berry and the Michigan Subclass. The concealed and misrepresented facts would have been highly
28 important to a reasonable consumer in determining whether to purchase a Phone.

1 408. Defendants' acts and practices are also unfair in at least the following respects:
2 Defendants knowingly sold Berry and Michigan Subclass members Phones with the Defects, refused
3 to honor warranties, required consumers to wait several weeks to several months on warranty claims,
4 and replaced Phones under warranty with other defective Phones.

5 409. Defendants' acts and practices are contrary to Michigan law and policy and constitute
6 immoral, unethical, oppressive, and unscrupulous business practices that caused substantial injury to
7 Berry and Michigan Subclass members. The gravity of the harm resulting from Defendants' unfair
8 conduct outweighs any potential utility of the conduct. The practice of selling defective phones
9 without providing an adequate remedy to cure the Defects harms the public at large and is part of a
10 common and uniform course of wrongful conduct. There are reasonably available alternatives that
11 would further Defendants' business interests of increasing sales and preventing false warranty claims.
12 The harm from Defendants' unfair conduct was not reasonably avoidable by consumers.

13 410. Berry and Michigan Subclass members suffered ascertainable loss caused by
14 Defendants' misrepresentations and concealment of and failure to disclose material information, and
15 failure to honor promised benefits in the form of express and implied warranties. Michigan Subclass
16 members who purchased Phones either would have paid less for their Phones or would not have
17 purchased them at all but for Defendants' violations of the Michigan CPA. Michigan Subclass
18 members also suffered ascertainable loss through Defendants' failure to honor the warranties as
19 promised.

20 411. Defendants' conduct alleged herein proximately caused injuries to Berry and
21 Michigan Subclass members.

22 412. Berry and Michigan Subclass members were injured as a result of Defendants'
23 conduct. Berry and Michigan Subclass members overpaid for their Phones and did not receive the
24 benefit of their bargain. These injuries are the direct and natural consequence of Defendants'
25 misrepresentations and omissions in violation of the Michigan CPA.

26 413. Berry seeks injunctive relief to enjoin Defendants from continuing their unfair and
27 deceptive acts; monetary relief against Defendants measured as the greater of (a) actual damages in
28 an amount to be determined at trial and (b) statutory damages in the amount of \$250 for Berry and

1 each Michigan Subclass member; reasonable attorneys' fees; and any other just and proper relief
2 available under MICH. COMP. LAWS § 445.911.

3 414. Berry also seeks punitive damages against Defendants because the conduct herein was
4 willful and carried out with conscious disregard of the rights of others. Defendants intentionally and
5 willfully misrepresented the qualities and characteristics of Phones, concealed material facts that only
6 they knew, and repeatedly gave Michigan Subclass members the run-around, pointing fingers at one
7 another and generally declining to take ownership of the problems alleged herein—all to avoid the
8 expense and public relations nightmare of correcting the Defects in Phones. Defendants' unlawful
9 conduct constitutes malice, oppression, and fraud warranting punitive damages.

10 **COUNT XV**
11 **VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349**
12 **N.Y. GEN. BUS. LAW § 349**
13 **(Against Defendants)**

14 415. Plaintiffs repeat and reallege the allegations above as if fully set forth herein.

15 416. Davydov asserts this claim on behalf of the New York Subclass.

16 417. New York's General Business Law § 349 makes unlawful "[d]eceptive acts or
17 practices in the conduct of any business, trade or commerce."

18 418. In the course of Defendants' business, they willfully failed to disclose and actively
19 concealed the Bootloop Defect and Battery Drain Defect in Phones as described above.

20 419. Accordingly, Defendants engaged in unfair methods of competition, unconscionable
21 acts or practices, and unfair or deceptive acts or practices as defined in N.Y. GEN. BUS. LAW § 349,
22 including representing that Phones have characteristics, uses, benefits, and qualities which they do
23 not have; representing that Phones are of a particular standard and quality when they are not;
24 advertising Phones with the intent not to sell them as advertised; and otherwise engaging in conduct
25 likely to deceive.

26 420. Defendants' actions as set forth above occurred in the conduct of trade or commerce.

27 421. Defendants' deception relates to widely consumed consumer products and therefore
28 affects the public interest. Defendants' unlawful conduct constitutes unfair acts or practices that have
the capacity to deceive consumers and are harmful to the public at large.

1 422. Defendants' conduct proximately caused injuries to Davydov and New York Subclass
2 members.

3 423. Davydov and New York Subclass members have suffered ascertainable loss as a result
4 of Defendants' conduct in that Davydov and New York Subclass members overpaid for their Phones
5 and did not receive the benefit of their bargain, paid out of pocket costs relating to the Defect, and
6 their Phones have suffered a diminution in value (to the extent they are even operable). These injuries
7 are the direct and natural consequence of LG's misrepresentations and omissions.

8 424. Davydov, individually and on behalf of the New York Subclass, request that this
9 Court enter such orders or judgments as may be necessary to enjoin Defendants from continuing their
10 unfair, unlawful, and deceptive practices. Davydov and New York Subclass members are entitled to
11 recover their actual damages or \$50, whichever is greater. Defendants acted willfully or knowingly,
12 so Davydov and New York Subclass members are entitled to recover three times their actual
13 damages. Davydov is also entitled to reasonable attorneys' fees.

14
15 **COUNT XVI**
16 **VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 350**
17 **N.Y. GEN. BUS. LAW § 350**
18 **(Against Defendants)**

19 425. Plaintiffs repeat and reallege the allegations above as if fully set forth herein.

20 426. Davydov asserts this claim on behalf of the New York Subclass.

21 427. New York's General Business Law § 350 makes unlawful "[f]alse advertising in the
22 conduct of any business, trade or commerce[.]" False advertising includes "advertising, including
23 labeling, of a commodity . . . if such advertising is misleading in a material respect," taking into
24 account "the extent to which the advertising fails to reveal facts material in the light of . . .
25 representations [made] with respect to the commodity" N.Y. GEN. BUS. LAW § 350-a.

26 428. Defendants caused to be made or disseminated through New York, through
27 advertising, marketing, and other publications, statements that were untrue or misleading, and which
28 were known, or which by the exercise of reasonable care should have been known to Defendants, to
be untrue and misleading to consumers, including Davydov and New York Subclass members.

1 429. Defendants have violated N.Y. GEN. BUS. LAW § 350 because the representations or
2 omissions regarding the Defects in Phones as described above were material and likely to deceive a
3 reasonable consumer.

4 430. Davydov and New York Subclass members have suffered injury, including the loss of
5 money or property, as a result of Defendants' false advertising. In purchasing Phones, Davydov and
6 Class members relied on the misrepresentations and/or omissions of Defendants with respect to the
7 quality, functionality, and performance of the Phones. Defendants' representations turned out to be
8 untrue because the Phones are prone to failure, diminished or complete loss of functionality, and
9 other failures as described hereinabove due to the Defects. Had Davydov and the New York Subclass
10 members known this, they would not have purchased their Phones and/or paid as much for them.

11 431. Accordingly, Davydov and New York Subclass members overpaid for their Phones
12 and did not receive the benefit of the bargain.

13 432. Davydov, individually and on behalf of the New York Subclass, request that this
14 Court enter such orders or judgments as may be necessary to enjoin Defendants from continuing their
15 unfair, unlawful, and deceptive practices. Davydov and New York Subclass members are entitled to
16 recover their actual damages or \$50, whichever is greater. Defendants acted willfully or knowingly,
17 and Davydov and New York Subclass members are entitled to recover three times their actual
18 damages (of up to \$10,000 per individual). Davydov is also entitled to reasonable attorneys' fees.

19 **COUNT XVII**
20 **VIOLATIONS OF THE NORTH CAROLINA UNFAIR**
21 **AND DECEPTIVE TRADE PRACTICES ACT**
22 **N.C. GEN. STAT. §§ 75-1.1, *et seq.* ("NCUDTPA")**
23 **(Against Defendants)**

24 433. Plaintiffs repeat and reallege the allegations above as if fully set forth herein.

25 434. Harrison and Himes assert this claim on behalf of the North Carolina Subclass.

26 435. The NCUDTPA prohibits a person from engaging in "[u]nfair methods of competition
27 in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce[.]" The
28 NCUDTPA provides a private right of action for any person injured "by reason of any act or thing

1 done by any other person, firm or corporation in violation of” the NCUDETPA. N.C. GEN. STAT. § 75-
2 16.

3 436. Defendants’ acts and practices complained of herein were performed in the course of
4 Defendants’ trade or business and thus occurred in or affected “commerce,” as defined in N.C. GEN.
5 STAT. § 75-1.1(b).

6 437. Defendants’ acts and practices are unfair in at least the following respects: Defendants
7 knowingly sold Harrison, Himes, and North Carolina Subclass members Phones with the Defects,
8 refused to honor warranties, required consumers to wait several weeks to several months on warranty
9 claims, and replaced Phones under warranty with other defective Phones.

10 438. Defendants’ acts and practices are contrary to North Carolina law and policy and
11 constitute immoral, unethical, oppressive, and unscrupulous business practices that caused substantial
12 injury to Harrison, Himes, and North Carolina Subclass members. The gravity of the harm resulting
13 from Defendants’ unfair conduct outweighs any potential utility of the conduct. The practice of
14 selling defective phones without providing an adequate remedy to cure the Defects harms the public
15 at large and is part of a common and uniform course of wrongful conduct. There are reasonably
16 available alternatives that would further Defendants’ business interests of increasing sales and
17 preventing false warranty claims. The harm from Defendants’ unfair conduct was not reasonably
18 avoidable by consumers.

19 439. Defendants’ acts and practices are deceptive because Defendants willfully failed to
20 disclose and actively concealed the Defects in Phones; represented that Phones have characteristics,
21 uses, benefits, and qualities which they do not have; represented that Phones are of a particular
22 standard and quality when they are not; advertised Phones with the intent not to sell them as
23 advertised; and otherwise engaging in conduct likely to deceive.

24 440. Defendants’ conduct proximately caused injuries to Harrison, Himes and North
25 Carolina Subclass members.

26 441. Defendants acted with willful and conscious disregard of the rights of others,
27 subjecting Harrison, Himes, and North Carolina Subclass members to unjust hardship as a result, such
28 that an award of punitive damages is appropriate.

1 442. Harrison, Himes, and North Carolina Subclass members were injured as a result of
2 Defendants' conduct in that Harrison, Himes, and North Carolina Subclass members overpaid for
3 their Phones and did not receive the benefit of their bargain, and their Phones (to the extent operable)
4 have suffered a diminution in value. These injuries are the direct and natural consequence of
5 Defendants' violations alleged herein.

6 443. Harrison and Himes, individually and on behalf of North Carolina Subclass, seek
7 treble damages pursuant to N.C. GEN. STAT. § 75-16, and an award of reasonable attorneys' fees
8 pursuant to N.C. GEN. STAT. § 75-16.1.

9 **COUNT XVIII**
10 **VIOLATIONS OF THE NORTH DAKOTA CONSUMER FRAUD ACT**
11 **N.D. CENT. CODE §§ 51-15-01, *et seq.* ("North Dakota CFA")**
12 **(Against Defendants)**

13 444. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth
14 herein.

15 445. Jones brings this claim on behalf of the North Dakota Subclass.

16 446. The North Dakota CFA prohibits a person from engaging in "any deceptive act or
17 practice, fraud, false pretense, false promise, or misrepresentation, with the intent that others rely
18 thereon in connection with the sale or advertisement of any merchandise, whether or not any person
19 has in fact been misled, deceived, or damaged thereby." N.D. CENT. CODE § 51-15-02. The Phones
20 are "merchandise" as defined by the North Dakota CFA. N.D. CENT. CODE § 51-15-02(3).

21 447. The North Dakota CFA provides a private right of action against any person who has
22 acquired money or property "by means of any practice declared to be unlawful" by the North Dakota
23 CFA. N.D. CENT. CODE § 51-15-09.

24 448. In the course of its business, Defendants willfully failed to disclose and actively
25 concealed the defects discussed herein and otherwise engaged in activities with a tendency or
26 capacity to deceive. Defendants also engaged in unlawful trade practices by employing deception,
27 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression, or omission of
28

1 any material fact with intent that others rely upon such concealment, suppression, or omission, in
2 connection with the sale of Phones.

3 449. Defendants knew that Phones had defective components and knew that the Phones
4 were equipped with the Bootloop and Battery Drain Defects, but concealed that information.

5 450. By failing to disclose that the Phones were equipped with the defects, by marketing
6 their Phones as reliable and of high quality, and by presenting themselves as reputable businesses in
7 the smartphone industry that stand behind their Phones after they were sold, Defendants engaged in
8 deceptive business practices in violation of the North Dakota CFA.

9 451. Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive
10 reasonable consumers, including Jones and North Dakota Subclass members, about the true
11 performance of the Phones, the quality of the Google, Huawei, and Nexus brands, and the true value
12 of the Phones.

13 452. Defendants intentionally and knowingly misrepresented material facts regarding the
14 Phones with an intent to mislead Jones and the North Dakota Subclass.

15 453. As alleged above, Defendants made material statements about the quality and
16 reliability of the Phones that were false and misleading.

17 454. Defendants owed Jones and North Dakota Subclass members a duty to disclose the
18 true performance and reliability of the Phones, because Defendants:

- 19 a. Possessed exclusive knowledge that the Phones included and are equipped with
20 serious defects;
- 21 b. Intentionally concealed the foregoing from Jones and North Dakota Subclass
22 members; and
- 23 c. Made incomplete representations about the reliability and performance of the
24 Phones generally, and the Bootloop and Battery Drain Defects in particular,
25 while purposefully withholding material facts from Jones and North Dakota
26 Subclass members that contradicted these representations.

27 455. Because Defendants fraudulently concealed the defects and the true performance of
28 the Phones, the value of the Phones has greatly diminished (to the extent they are even operable).

1 456. The true performance of Phones, fraudulently concealed by Defendants, was highly
2 important and material to Jones and the North Dakota Subclass in connection with their Phone
3 purchases.

4 457. Jones and North Dakota Subclass members suffered ascertainable loss caused by
5 Defendants' misrepresentations and concealment of and failure to disclose material information.
6 Class members who purchased the Phones either would have paid less for their Phones or would not
7 have purchased them at all but for Defendants' violations of the North Dakota CFA.

8 458. Defendants' unlawful acts and practices complained of herein affect the public
9 interest.

10 459. As a direct and proximate result of Defendants' violations of the North Dakota CSPA,
11 Jones and North Dakota Subclass members have suffered injury in fact and actual damage.

12 460. Defendants knowingly committed the conduct described herein, and thus, under N.D.
13 CENT. CODE § 51-15-09, are liable to Jones and the North Dakota Subclass for treble damages, as
14 well as for reasonable attorneys' fees and costs.

15 **COUNT XIX**
16 **VIOLATIONS OF THE OHIO DECEPTIVE TRADE PRACTICES ACT**
17 **OHIO REV. CODE §§ 4165.01, *et seq.* ("ODTPA")**
18 **(Against Defendants)**

19 461. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth
20 herein.

21 462. Servodio asserts this claim on behalf of the Ohio Subclass.

22 463. A "person" who is injured or who is likely to be injured as a result of a deceptive
23 practice may maintain an action for relief under the statute. OHIO REV. CODE § 4165.03(A)(1)-(2).

24 464. The ODTPA defines a "person" broadly to include, *inter alia*, a corporation, business
25 trust, partnership, unincorporated association, and limited liability company. OHIO REV. CODE §
26 4165.01(D). As such, Servodio and Class members are "persons" within the meaning of the ODTPA.

27 465. Defendants' conduct alleged herein violated the ODTPA by reason of Defendants
28 doing the following in the course of business:

- 1 a. Representing that goods have sponsorship, approval, characteristics,
2 ingredients, uses, benefits, or quantities that they do not have or that a person
3 has a sponsorship, approval, status, affiliation, or connection that the person
4 does not have;
- 5 b. Representing that goods are of a particular standard, quality, or grade, or that
6 goods are of a particular style or model, if they are of another; and
- 7 c. Advertising goods with intent not to sell them as advertised.

8 466. In the course of its business, Defendants willfully failed to disclose and actively
9 concealed the defects discussed herein and otherwise engaged in activities with a tendency or
10 capacity to deceive. Defendants also engaged in unlawful trade practices by employing deception,
11 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression, or omission of
12 any material fact with intent that others rely upon such concealment, suppression, or omission, in
13 connection with the sale of Phones.

14 467. Defendants knew that Phones were defective and knew that the Phones were equipped
15 with the Bootloop and Battery Drain Defects, but concealed that information.

16 468. By failing to disclose that the Phones were equipped with the defects, by marketing
17 their Phones as reliable and of high quality, and by presenting themselves as reputable businesses in
18 the smartphone industry that stand behind their Phones after they were sold, Defendants engaged in
19 deceptive business practices in violation of the ODTPA.

20 469. Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive
21 reasonable consumers, including Servodio and Ohio Subclass members, about the true performance
22 of the Phones, the quality of the Google, Huawei, and Nexus brands, and the true value of the Phones.

23 470. Defendants intentionally and knowingly misrepresented material facts regarding the
24 Phones with intent to mislead and induce purchases by Servodio and Ohio Subclass members.

25 471. As alleged above, Defendants made material statements about the quality and
26 reliability of the Phones that were false and misleading.

27 472. Because Defendants fraudulently concealed the defects and the true performance of
28 the Phones, the value of the Phones has greatly diminished (to the extent they are even operable).

1 473. The true performance of Phones, fraudulently concealed by Defendants, was highly
2 important and material to Servodio and the Ohio Subclass in connection with their Phone purchases.

3 474. Servodio and Ohio Subclass members suffered ascertainable loss caused by
4 Defendants' misrepresentations and concealment of and failure to disclose material information. Ohio
5 Subclass members who purchased the Phones either would have paid less for their Phones or would
6 not have purchased them at all but for Defendants' violations of the WCPA.

7 475. As a direct and proximate result of Defendants' conduct as alleged herein and
8 resulting violations of the ODTPA, Servodio and Ohio Subclass members have been injured, entitling
9 Servodio and Ohio Subclass members to actual damages, injunctive relief, reasonable attorneys' fees
10 due to Defendants' willful engagement in the conduct described herein, and all other relief that this
11 Court deems appropriate.

12 **COUNT XX**
13 **VIOLATIONS OF THE OHIO CONSUMER SALES PRACTICES ACT**
14 **OHIO REV. CODE §§ 1345.01, *et seq.* ("OCSPA")**
15 **(Against Defendants)**

16 476. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth
17 herein.

18 477. Servodio asserts this claim on behalf of the Ohio Subclass.

19 478. The OCSPA is broadly drafted, applying to the sale of consumer goods "to an
20 individual for purposes that are primarily personal, family, or household [uses]." OHIO REV. CODE §
21 1345.01(A). Accordingly, the conduct at issue in this case clearly falls within the scope of the
22 OCPSA.

23 479. The OCSPA prohibits unfair, deceptive, and unconscionable practices in consumer
24 sales transactions. OHIO REV. CODE § 1345.02(A).

25 480. The OCSPA further provides that "a consumer" has a private cause of action for
26 violations of the statute, and expressly allows for class actions. OHIO REV. CODE § 1345.09.

27 481. Defendants' conduct, as alleged herein, is unfair, deceptive, and unconscionable in
28 violation of the OCSPA.

482. Defendants acted in the face of prior notice that their conduct was deceptive, unfair, or
unconscionable. Material omissions and misrepresentations concerning Phones constitute a violation

1 of the statute. It is also a deceptive act or practice for purposes of the OCSPA if a supplier makes
2 representations, claims, or assertions of fact in the absence of a reasonable basis in fact. *See* OHIO
3 ADMIN CODE § 109:4-3-10(A).

4 483. Defendants had specific notice that failing to honor express and implied warranties
5 violates the OCSPA. *See, e.g., Nee v. State Indus., Inc.*, 3 N.E.3d 1290, 1306 (Ohio Ct. App. 2013)
6 (recognizing that “failure to honor an express warranty can constitute an unfair or deceptive act or
7 practice under CSPA.”); *Brown v. Decorator Carpets of Canton, Inc.*, 1979 WL 185083, at *2 (Ohio
8 Ct. Com. Pl. Nov. 5, 1979) (finding suppliers who failed to honor express warranties liable under the
9 OCSPA); *Mason v. Mercedes-Benz USA, LLC*, 2005 WL 1995087 at *5 (Ohio Ct. App. Aug. 18,
10 2005) (recognizing a breach of implied warranty of merchantability as the basis for OCSPA liability).

11 484. Defendants’ conduct is unfair in at least the following respects: Defendants sold
12 Servodio and Ohio Subclass members Phones with the Defects, refused to honor warranties, required
13 consumers to wait several weeks to several months on warranty claims, and replaced Phones under
14 warranty with other defective Phones.

15 485. Defendants’ acts and practices are contrary to Ohio law and policy and constitute
16 immoral, unethical, oppressive, and unscrupulous business practices that caused substantial injury to
17 Servodio and Ohio Subclass members. The gravity of the harm resulting from Defendants’ unfair
18 conduct outweighs any potential utility of the conduct. The practice of selling defective phones
19 without providing an adequate remedy to cure the Defects harms the public at large and is part of a
20 common and uniform course of wrongful conduct. There are reasonably available alternatives that
21 would further Defendants’ business interests of increasing sales and preventing false warranty claims.
22 The harm from Defendants’ unfair conduct was not reasonably avoidable by consumers.

23 486. As a direct and proximate result of Defendants’ violations of the OCSPA, Servodio
24 and the Ohio Subclass have been injured.

25 487. Servodio and the Ohio Subclass have suffered injuries in fact and actual damages,
26 including financial losses from out-of-pocket expenses, fees, loss of use, loss of personal intellectual
27 property such as photos, and devaluation of Phones, resulting from Defendants’ conduct and practices
28

1 in violation of the OCSPA. These injuries are of the type that the OCSPA was designed to prevent
2 and are the direct and proximate result of Defendants' unlawful conduct.

3
4 **COUNT XXI**
5 **VIOLATIONS OF THE PENNSYLVANIA UNFAIR TRADE**
6 **PRACTICES AND CONSUMER PROTECTION LAW**
7 **PA. STAT. ANN. §§ 201-1, *et seq.* ("PAUTPCPL")**
8 **(Against Defendants)**

9 488. Plaintiffs repeat and reallege the allegations above as if fully set forth herein.

10 489. Leone asserts this claim on behalf of the Pennsylvania Subclass.

11 490. By failing to disclose and actively concealing the Defects in Phones, Defendants
12 engaged in unlawful acts and practices prohibited by the PAUTPCPL, including (1) representing that
13 the Phones have characteristics, uses, benefits, and qualities which they do not have, (2) representing
14 that the Phones are of a particular standard, quality, and grade, or of a particular style or model when
15 they are not, (3) advertising the Phones with the intent not to sell them as advertised, (4) engaging in
16 acts or practices which are otherwise unfair, misleading, false, or deceptive to the consumer, and (5)
17 failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to or
18 after a contract for the purchase of goods or services made.

19 491. Defendants' acts and practices are unfair in at least the following respects: Defendants
20 knowingly sold Leone and Pennsylvania Subclass members Phones with the Defects, refused to
21 honor warranties, required consumers to wait several weeks to several months on warranty claims,
22 and replaced Phones under warranty with other defective Phones.

23 492. Defendants' acts and practices are contrary to Pennsylvania law and policy and
24 constitute immoral, unethical, oppressive, and unscrupulous business practices that caused substantial
25 injury to Leone and Pennsylvania Subclass members. The gravity of the harm resulting from
26 Defendants' unfair conduct outweighs any potential utility of the conduct. The practice of selling
27 defective phones without providing an adequate remedy to cure the Defects harms the public at large
28 and is part of a common and uniform course of wrongful conduct. There are reasonably available
alternatives that would further Defendants' business interests of increasing sales and preventing false

1 warranty claims. The harm from Defendants' unfair conduct was not reasonably avoidable by
2 consumers.

3 493. As alleged above, Defendants made numerous material statements about the
4 characteristics, capabilities, and qualities of Phones that were either false or misleading. Each of these
5 statements contributed to the deceptive context of Defendants' unlawful advertising and
6 representations (and omissions) as a whole.

7 494. Defendants owed Leone and Pennsylvania Subclass members a duty to disclose the
8 defective nature of the Phones because Defendants:

- 9 a. Possessed exclusive knowledge of the Defects;
10 b. Intentionally concealed the Defects in order to avoid an obligation to recall
11 Phones or remedy the battery drain and bootlooping; and
12 c. Made incomplete representations about the characteristics and performance
13 Phones, while purposefully withholding material facts from Leone and
14 Pennsylvania Subclass members that contradicted these representations.

15 495. Defendants' deceptive acts or practices were likely to and did in fact deceive
16 reasonable consumers, including Leone and Pennsylvania Subclass members, about the true
17 performance and characteristics of Phones.

18 496. Leone and Pennsylvania Subclass members relied on Defendants' reputations and
19 representations—along with Defendants' failure to disclose the Defects—in purchasing Phones.

20 497. As a result of their reliance, Leone and Pennsylvania Subclass members have been
21 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
22 bargain and overpayment at the time of purchase and/or the diminished value of their Phones. If not
23 enjoined, Defendants will continue to harm Leone and Pennsylvania Subclass members.

24 498. Among other injurious consequences attributable to the Defects, they caused the value
25 of Phones to decrease.

26 499. Leone and Pennsylvania Subclass members are entitled to \$100 or actual damages,
27 whichever is greater. Leone and Pennsylvania Subclass members are also entitled to other relief as
28 provided under the UTPCPL, including treble damages.

1 500. Further, as provided for under PA. STAT. ANN. § 201-9.2, Leone seeks court costs and
2 reasonable attorneys’ fees as a result of Defendants’ violations of the UTPCPL.

3
4 **COUNT XXII**
5 **VIOLATIONS OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT**
6 **TEX. BUS. & COM. CODE §§ 17.41, et seq. (“TDTPA”)**
7 **(Against Defendants)**

8 501. Plaintiffs repeat and reallege the allegations above as if fully set forth herein.

9 502. Poore asserts this Count on behalf of the Texas Subclass.

10 503. The TDTPA provides that a person may not engage in any fraud, misleading or
11 deceptive trade practice in the sale of any consumer good. *See* TEX. BUS. & COM. CODE § 17.46.

12 504. Poore and Defendants are “persons” within the meaning of the TDTPA. *See* TEX. BUS.
13 & COM. CODE § 17.45(3).

14 505. The Phones are “goods” under the TDTPA. *See id.* § 17.45(1).

15 506. Poore and Texas Subclass members are “consumers” as defined in the TDTPA. *See id.*
16 § 17.45(4).

17 507. Defendants have at all relevant times engaged in “trade” and “commerce” as defined
18 under TDTPA Section 17.45(6), by advertising, offering for sale, selling, and/or distributing the
19 Phones in Texas, directly or indirectly affecting Texas citizens through that trade and commerce.

20 508. In the course of its business, Defendants sold Phones with the Battery Drain and
21 Bootloop Defects. Defendants concealed and omitted to disclose these problems and otherwise
22 engaged in activities with the tendency or capacity to deceive. Defendants also engaged in unlawful
23 trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or
24 concealment, suppression or omission, in connection with sales of Phones.

25 509. Defendants acted in violation of the TDTPA by, among other violations:

- 26 a. representing that goods or services have sponsorship, approval, characteristics,
27 ingredients, uses, benefits, or quantities which they do not have or that a person
28 has a sponsorship, approval, status, affiliation, or connection which the person
does not;

- 1 b. representing that goods or services are of a particular standard, quality, or grade,
- 2 or that goods are of a particular style or model, if they are of another;
- 3 c. advertising goods or services with intent not to sell them as advertised; and
- 4 d. failing to disclose information concerning goods or services which was known
- 5 at the time of the transaction if such failure to disclose such information was
- 6 intended to induce the consumer into a transaction into which the consumer
- 7 would not have entered had the information been disclosed.

8 TEX. BUS. & COM. CODE § 17.46(b)(5), (7), (9), (24).

9 510. Defendants have known of the Defects in Phones from complaints and
10 communications by Poore and Texas Subclass members, but continued to conceal the Defects in
11 order to induce sales.

12 511. By willfully failing to disclose and actively concealing the Defects, by marketing
13 Phones as of high quality, and by presenting themselves as reputable smartphone manufacturers and
14 distributors that stood by their products after they were sold when Defendants in fact do not,
15 Defendants engaged in false, misleading, and deceptive business practices in violation of the TDTPA.

16 512. Defendants' false, misleading, or deceptive acts or practices were likely to and did in
17 fact deceive reasonable consumers, including Poore and Texas Subclass members, about the quality,
18 workmanship, performance, and true value of the defective Phones.

19 513. Defendants intentionally and knowingly misrepresented material facts regarding the
20 Phones with intent to mislead Poore and Texas Subclass members.

21 514. Defendants owed Poore and Texas Subclass members a duty to disclose the Defects
22 because Defendants possess exclusive knowledge about the Defects; because the Phones did not
23 contain the qualities or characteristics, or perform, as advertised; because Defendants intentionally
24 concealed the foregoing from Poore and Texas Subclass members; and because Defendants made
25 incomplete, false or misleading representations about the characteristics, quality, workmanship,
26 value, and performance of Phones while purposefully withholding material facts from Poore and
27 Texas Subclass members that contradicted these representations.

1 515. Poore and Texas Subclass members overpaid for Phones due to Defendants' conduct
2 described herein. The Defects in Phones caused to incur out-of-pocket expenses and other damages.
3 Poore and Texas Subclass members have suffered ascertainable losses.

4 516. Poore and Texas Subclass members seek an injunction forbidding Defendants from
5 committing similar violations, as provided by TEX. BUS. & COM. CODE § 17.50(b)(2), as well as court
6 costs and reasonable and necessary attorneys' fees as provided for by TEX. BUS. & COM. CODE §
7 17.50(d).

8 517. On or about April 19, 2017, Poore notified Defendants of the damage and Defect in
9 his Phone in satisfaction of TEX. BUS. & COM. CODE § 17.505. Poore has made pre-suit attempts to
10 remedy the Defect in his Phone, to no avail.

11 **COUNT XXIII**
12 **VIOLATIONS OF WASHINGTON CONSUMER PROTECTION ACT**
13 **WASH. REV. CODE §§ 19.86, *et seq.* ("WCPA")**
14 **(Against Defendants)**

15 518. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth
16 herein.

17 519. Johnston asserts this claim on behalf of himself and the Washington Subclass.

18 520. The WCPA broadly prohibits and makes unlawful to commit "[u]nfair methods of
19 competition and unfair or deceptive acts or practices in the conduct of any trade or commerce."
20 WASH. REV. CODE ANN. § 19.86.020. The WCPA provides a private right of action for "[a]ny person
21 who is injured in his or her business or property" by violations of the Act. WASH. REV. CODE §
22 19.86.090.

23 521. Defendants' actions as set forth herein occurred in the conduct of "trade" or
24 "commerce" under the WCPA. WASH. REV. CODE § 19.86.010(2).

25 522. Defendants' acts and practices are unfair in at least the following respects: Defendants
26 knowingly sold Johnston and Washington Subclass members Phones with the Defects, refused to
27 honor warranties, required consumers to wait several weeks to several months on warranty claims,
28 and replaced Phones under warranty with other defective Phones.

1 523. Defendants' acts and practices are contrary to Washington law and policy and
2 constitute immoral, unethical, oppressive, and unscrupulous business practices that caused substantial
3 injury to Johnston and Washington Subclass members. The gravity of the harm resulting from
4 Defendants' unfair conduct outweighs any potential utility of the conduct. The practice of selling
5 defective phones without providing an adequate remedy to cure the Defects harms the public at large
6 and is part of a common and uniform course of wrongful conduct. There are reasonably available
7 alternatives that would further Defendants' business interests of increasing sales and preventing false
8 warranty claims. The harm from Defendants' unfair conduct was not reasonably avoidable by
9 consumers.

10 524. Defendants' acts and practices are deceptive because Defendants willfully failed to
11 disclose and actively concealed the Defects in Phones; represented that Phones have characteristics,
12 uses, benefits, and qualities which they do not have; represented that Phones are of a particular
13 standard and quality when they are not; advertised Phones with the intent not to sell them as
14 advertised; and otherwise engaging in conduct likely to deceive.

15 525. Defendants' acts or practices were likely to and did in fact deceive reasonable
16 consumers, including Johnston and Washington Subclass members, about the true performance of the
17 Phones, the quality of the Google, Huawei, and Nexus brands, and the true value of the Phones.

18 526. Defendants intentionally and knowingly misrepresented material facts regarding the
19 Phones with an intent to mislead Johnston and Washington Subclass members.

20 527. As alleged above, Defendants made material statements about the quality and
21 reliability of the Phones that were either false or misleading.

22 528. Defendants owed Johnston and Washington Subclass members a duty to disclose the
23 true performance and reliability of the Phones, because Defendants:

- 24 a. Possessed exclusive knowledge that the Phones included and are equipped with
- 25 defects;
- 26 b. Intentionally concealed the foregoing from Johnston and Washington Subclass
- 27 members; and/or
- 28

1 c. Made incomplete representations about the reliability and performance of the
2 Phones generally, and the Bootloop and Battery Drain Defects in particular,
3 while purposefully withholding material facts from Johnston and the Class that
4 contradicted these representations.

5 529. Because Defendants fraudulently concealed the defects and the true performance of
6 the Phones, the value of the Phones has greatly diminished (to the extent they are even operable).

7 530. The true performance of Phones, fraudulently concealed by Defendants, was highly
8 important and material to Johnston and the Washington Subclass in connection with their Phone
9 purchases.

10 531. Johnston and Washington Subclass members suffered ascertainable loss caused by
11 Defendants' misrepresentations and concealment of and failure to disclose material information.
12 Class members who purchased the Phones either would have paid less for their Phones or would not
13 have purchased them at all but for Defendants' violations of the WCPA.

14 532. As a direct and proximate result of Defendants' violations of the WCPA, Johnston and
15 Washington Subclass members suffered injury in fact and actual damage.

16 533. Defendants' actions in engaging in the above-named unfair practices and deceptive
17 acts were negligent, knowing and willful, and wanton and reckless with respect to the rights of
18 Johnston and Washington Subclass members.

19 534. Johnston, on behalf of himself and the Washington Subclass members, seeks relief
20 under WASH. REV. CODE § 19.86.090, including, but not limited to, actual damages, treble damages,
21 injunctive relief, and reasonable attorneys' fees and costs.

22 535. In accordance with WASH. REV. CODE § 19.86.095, a copy of this Consolidated
23 Amended Complaint has been served on the Attorney General of Washington.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiffs, on behalf of themselves and the members of the Class, respectfully
26 request that this Court:

27 A. Certify this case as a class action under FED. R. CIV. P. 23 and appoint Plaintiffs
28 as class representatives and counsel for Plaintiffs as Class Counsel;

1 B. Award all actual, general, special, rescissory, incidental, statutory, punitive and
2 consequential damages to which Plaintiffs and Class members are entitled;

3 C. Award pre-judgment and post-judgment interest on such monetary relief;

4 D. Grant appropriate injunctive and/or declaratory relief, including, without
5 limitation, an order that requires Defendants to repair, recall, and/or replace the Phones and to extend
6 the applicable warranties to a reasonable period of time, or, at a minimum, to provide Plaintiffs and
7 Class members with appropriate curative notice regarding the existence and cause of the Defect;

8 E. Award Plaintiffs and Class members restitution or other equitable relief;

9 F. Award Plaintiffs and Class members their reasonable costs and expenses
10 incurred in this action, including counsel fees and expert fees; and

11 G. Award such other and further relief as the Court may deem just and proper.

12 **DEMAND FOR JURY TRIAL**

13 Plaintiffs respectfully demand a jury trial for all claims so triable.

14
15 Dated: May 23, 2017

Respectfully submitted,

16
17 By: /s/ Benjamin F. Johns

18 Benjamin F. Johns (*pro hac vice*)
19 Andrew W. Ferich (*pro hac vice*)
20 Jessica L. Titler (*pro hac vice*)
CHIMICLES & TIKELLIS LLP
361 W. Lancaster Avenue
21 Haverford, Pennsylvania 19041
22 Tel: (610) 642-8500
bfj@chimicles.com
23 awf@chimicles.com
jt@chimicles.com

24
25 Daniel C. Girard (State Bar No. 114826)
Jordan Elias (State Bar No. 228731)
26 Simon S. Grille (State Bar No. 294914)
GIRARD GIBBS LLP
27 601 California Street, 14th Floor
San Francisco, California 94108
28 Tel: (415) 981-4800

1 dcg@girardgibbs.com
2 je@girardgibbs.com
3 sg@girardgibbs.com

4 Cory S. Fein (State Bar No. 250758)
5 **Cory Fein Law Firm**
6 712 Main St., #800
7 Houston, TX 77002
8 Tel: (415) 981-4800
9 Fax: (530) 748-0601
10 cory@coryfeinlaw.com

11 *Attorneys for Plaintiffs and the Proposed Class*

CERTIFICATE OF SERVICE

I, Benjamin F. Johns, certify that on May 23, 2017, I caused the foregoing Consolidated Amended Complaint to be filed using the Court's CM/ECF system, thereby causing it to be served upon all registered ECF users in this case.

Benjamin F. Johns

Benjamin F. Johns

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28