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11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13 **SAN JOSE DIVISION**

14
15
16 PATRICIA WEEKS and WALEED ANBAR,
17 on behalf of themselves and all others similarly
18 situated,

Plaintiffs,

v.

20 GOOGLE LLC,

Defendant.

Case No.

CLASS ACTION COMPLAINT FOR:

1. **Breach of Express Warranty;**
2. **Breach of the Implied Covenant of Good Faith and Fair Dealing;**
3. **Breach of the Implied Warranty of Merchantability;**
4. **Violation of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, et seq.;**
5. **Violation of California's Unfair Competition Law;**
6. **Violation of California's Consumers Legal Remedies Act; and**
7. **Fraudulent Concealment.**

DEMAND FOR JURY TRIAL

27
28
CLASS ACTION COMPLAINT

1 Plaintiffs Patricia Weeks and Waleed Anbar, individually and on behalf of all others similarly
2 situated, allege as follows against Defendant Google LLC.

3 **SUMMARY OF THE ACTION**

4 1. This is a consumer protection class action on behalf of individuals who purchased Pixel
5 and Pixel XL smartphones. The Pixel phones contain a manufacturing defect that renders their
6 microphone and speakers prone to malfunctioning and failing. The defect compromises the phone's
7 core functionality, preventing consumers from communicating by voice call and from using features
8 like Google Assistant (a counterpart to Apple's "Siri" for the iPhone).

9 2. Google designed, manufactured, marketed, and sold the Pixel phones. It promoted the
10 Pixel phones as premium products and priced them from \$649 to \$869. Yet, immediately after
11 launching the phones, customers complained directly to Google of "severe microphone issues."
12 Despite receiving hundreds of complaints shortly after launch—and admitting the phones have a
13 "faulty microphone"—Google continues to sell the Pixel phones without telling purchasers about the
14 microphone defect. Moreover, instead of fixing the defective Pixel phones, providing refunds, or
15 replacing the devices with non-defective phones, Google has replaced defective phones with other
16 defective phones, resulting in many consumers repeatedly experiencing the microphone defect.

17 3. The microphone defect in the Pixel phones is substantially certain to manifest and
18 existed within the phones when sold. Plaintiffs were consequently deprived of the benefit of their
19 bargain, and seek relief through this action.

20 **PARTIES**

21 4. Plaintiff Patricia Weeks is a citizen of the state of Florida.

22 5. Plaintiff Waleed Anbar is a citizen of the state of California.

23 6. Defendant Google LLC is incorporated under Delaware law and maintains its principal
24 place of business at 1600 Amphitheater Parkway, Mountain View, California 94043.

25 **JURISDICTION AND VENUE**

26 7. This Court has original jurisdiction under 28 U.S.C. § 1331 based on Plaintiffs' claims
27 under the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.* The Court has supplemental
28 jurisdiction over Plaintiffs' state law claims under 28 U.S.C. § 1367.

1 8. This Court also has jurisdiction over this lawsuit under the Class Action Fairness Act, 28
2 U.S.C. § 1332, because this is a proposed class action in which: (1) there are at least 100 Class
3 members; (2) the combined claims of Class members exceed \$5,000,000, exclusive of interest,
4 attorneys' fees, and costs; and (3) Plaintiffs and Defendant are domiciled in different states.

5 9. The Court has personal jurisdiction over Google LLC because its principal place of
6 business is within this District and it has sufficient minimum contacts in California to render the
7 exercise of jurisdiction by this Court proper and necessary.

8 10. Venue is also proper in this District under 28 U.S.C. § 1391(b) because Google's
9 principal place of business is within this District and a substantial part of the events or omissions giving
10 rise to the claims occurred in this District.

11 **INTRADISTRICT ASSIGNMENT**

12 11. Assignment to the San Jose Division is appropriate under Local Rule 3-2(c) because
13 Google is headquartered in Mountain View, California and a substantial part of the conduct at issue in
14 this case occurred in Santa Clara County.

15 **PLAINTIFF-SPECIFIC ALLEGATIONS**

16 **Plaintiff Patricia Weeks**

17 12. Patricia Weeks purchased a Pixel phone from the Google Store for \$749 on December 2,
18 2016.

19 13. While engaging in pre-purchase research about the phone, Dr. Weeks encountered
20 several advertisements portraying the phone as high-quality and well-functioning, including: (1)
21 advertisements promoting Google Assistant with the catch phrase, "Hey Google"; and (2) ads
22 comparing Google Assistant favorably to Siri. She did not see any disclosure that the phones'
23 microphones were prone to fail. Google's advertisements materially influenced Dr. Weeks's decision
24 to buy a Pixel.

25 14. Dr. Weeks never had an opportunity to negotiate the terms of purchase or warranty with
26 Google. She was not aware of any disclaimer of or limits on warranty coverage prior to purchase.

27 15. After only a few weeks of normal usage (*i.e.*, making phone calls, sending text
28 messages, using applications, and accessing the internet), Dr. Weeks's phone began to malfunction.

1 She first noticed that something was wrong when she couldn't use the Google Assistant feature. She
2 soon discovered that callers on the other end of the line couldn't hear her speaking.

3 16. Dr. Weeks contacted Google on March 2, 2017 to report her microphone failure and
4 seek assistance. A Google representative tried to troubleshoot the problems, but was unable to fix her
5 phone. The Google representative acknowledged the phone was defective and admitted to Dr. Weeks
6 that Google was aware of the problems.

7 17. Dr. Weeks asked Google for her money back or for a new, non-defective replacement.
8 Google refused.

9 18. As a result of the microphone defect and Google's failure to provide warranty service,
10 Dr. Weeks no longer uses her Pixel and instead uses a replacement phone.

11 19. Dr. Weeks did not know that the Pixel phones have defective microphones when she
12 bought her phone. Had Google disclosed the defect to her, she would not have bought a Pixel or would
13 have paid substantially less for it.

14 **Plaintiff Waleed Anbar**

15 20. On October 25, 2016, Waleed Anbar purchased a Google Pixel phone from Google for
16 \$649. He made this purchase in California.

17 21. Mr. Anbar purchased the Pixel because—prior to purchase—he saw advertisements
18 touting the quality of the Pixel, including ads demonstrating voice call functionality and the Google
19 Assistant feature. The latter feature was the primary reason Mr. Anbar bought a Pixel phone. At no
20 point did he see any acknowledgment by Google that the phone was susceptible to microphone failure
21 or that such failure could make it impossible to use Google Assistant. The advertisements Mr. Anbar
22 encountered touted the phones as high-quality devices with superior functionality to competing
23 products. These advertisements materially influenced Mr. Anbar, leading him to buy a Pixel.

24 22. Mr. Anbar had no opportunity to negotiate the terms of purchase of his phone, or the
25 terms of Google's warranty. He was not aware of any limitation or disclaimer of warranty coverage
26 before he bought his phone.

27 23. After approximately six months of ownership, the sound quality on Mr. Anbar's Pixel
28 began to deteriorate. Over the next eight months, the problem became worse—the built-in microphone

1 stopped working, the headphone jack became unusable, and the Google Assistant feature was rendered
2 useless.

3 24. Mr. Anbar contacted Google on January 23, 2018. Google refused to refund Mr.
4 Anbar's money or replace his phone with a non-defective model, and instead referred him to
5 uBreakiFix—Google's designated third-party repair provider—for paid repairs. After learning the
6 repairs would cost as much as a brand new device, Mr. Anbar bought a replacement phone.

7 25. Mr. Anbar did not know the Pixel was defective before purchasing the phone. Had he
8 known, he would not have bought the Pixel or would have paid substantially less for it.

9 26. Plaintiffs each use Google's search engine, and prefer the Android operating system to
10 Apple's operating system. Because of their experience with the Pixel phones, however, they are unable
11 to depend on Google's representations about its Pixel line of products. Google continues to advertise
12 the Pixels' high quality and the functionality of the Google Assistant feature. As a result, though
13 Plaintiffs would like to buy more Google mobile phone products, they will not unless Google takes
14 sufficient steps to cure the microphone defect and ensure the accuracy of its representations about its
15 Pixel product line.

16 **COMMON FACTUAL ALLEGATIONS**

17 27. Cell phones have increasingly become a necessity of life in the United States.

18 28. Approximately nine out of every ten Americans owns a cell phone. Forty-one percent of
19 American households, encompassing 93 million adults and nearly 35 million children, have no landline,
20 and use cell phones exclusively.

21 29. The average American consumer replaces their cell phone every 30 months.¹

22 **Google Launches the Pixel Phones**

23 30. Marketed as "the first phone by Google," Google released the Pixel phones on October
24 20, 2016. Google controls the design, development, marketing, sales, and support for the Pixel phones.
25 The phones bear Google's logos and the phrase "Made by Google." Google directed virtually every

26 _____
27 ¹ Thomas Gryta, *Americans Keep Their Cellphones Longer*, Wall Street Journal (Apr. 18, 2016), available at
28 <https://www.wsj.com/articles/americans-keep-their-cellphones-longer-1461007321> (last visited Feb. 7, 2018);
Andrew Meola, *People are Taking Longer to Upgrade Their Smartphones*, Business Insider (June 30, 2016),
available at <http://www.businessinsider.com/people-are-taking-longer-to-upgrade-their-smartphones-2016-6> (last
visited Feb. 7, 2018).

1 aspect of the development and manufacture of the phones. Google also contracted with HTC to help
2 build the devices.

3 31. Designed to compete directly with Apple’s iPhone, the Pixel phones are premium
4 smartphones priced between \$648 and \$849 on release, significantly higher than the average
5 smartphone price of approximately \$550.

6 32. Google sells the Pixel phones directly to consumers as well as through authorized
7 resellers. Google extends a written warranty to those who “purchased [the] phone from Google or its
8 authorized resellers.”² Under its express warranty, “Google warrants that a new phone . . . will be free
9 from defects in materials and workmanship under normal use”³

10 33. Google announced the phone at a launch event in San Francisco on October 4, 2016.
11 The Youtube video of the event was linked to by technology publications and viewed over 500,000
12 times (including by each Plaintiff here).⁴ The Google Assistant’s functionality was a centerpiece in
13 Google’s marketing presentation on the Pixels, along with the devices’ high quality and Google’s
14 overall responsibility for them. Representations Google made concerning its phone include:

- 15 • “Today, I am very excited to introduce you to a new phone made by Google. We call it Pixel.”
- 16 • “The first phone made by Google inside and out.”
- 17 • “When I look ahead at where computing is headed, it’s clear to me that we are evolving from a
18 mobile first to an AI first world. At the heart of these efforts is our goal to build the Google
19 Assistant. Which is why, today we are going to bring the assistant to . . . the context of the
20 phone, which you always carry with you”
- 21 • “Pixel is the first phone with the Google Assistant built in.”
- 22 • After asking Google Assistant to play a song by the Lumineers: “the assistant knows that I like
23 to listen to music on youtube, so that’s the app it opens up.”

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27 ² <https://support.google.com/store/troubleshooter/3070579?hl=en#ts=7168940%2C7168941> (last visited Feb. 5,
2018).

28 ³ *Id.*

⁴ <https://www.youtube.com/watch?v=p1qHV6ReJLI&feature=share> (last visited Feb. 5, 2018).

1 34. Following the launch event, Google rolled out an advertising campaign emphasizing the
2 Pixels’ sound, microphones, and Google Assistant function as high-quality features that justified the
3 premium price.

4 35. A nonexhaustive list of the advertisements and representations that Plaintiffs saw prior
5 to purchase include: (1) representations that the phones have “Crisp sound quality with single bottom-
6 firing speaker”; “Adaptive audio amplifier to maximize speaker performance and durability”, and as
7 containing “3 microphones . . . with noise cancellation”; (2) advertisements touting the device as “The
8 first phone with Google Assistant” and promoting the functionality of Google Assistant;⁵ (3) a
9 documentary-style video advertisement showing a man using Google Assistant to get directions, set a
10 reminder, find nightlife recommendations, and design a jacket;⁶ and (4) advertisements featuring video
11 call and speakerphone functionality, including advertisements with narratives about camping and
12 puppies.⁷ Google’s dedicated Pixel webpage, where consumers can purchase the device from Google,
13 also prominently advertises the Google Assistant feature.⁸

14 **The Microphone Defect Manifests Immediately After Launch**

15 36. The Pixel phones are defective in that the microphones have a propensity to fail, which
16 renders the phones unusable for telephone calls and other voice command activities, including Google
17 Assistant.

18 37. Shortly after releasing the Pixel phones in October 2016, Google began receiving
19 complaints on its “Pixel Phone Help” website about the microphone defect.⁹ On October 21, 2016—
20 the day after the phones were released—Google announced on its website that it would investigate the
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24 ⁵ See, e.g., <https://www.youtube.com/watch?v=Rykmwn0SMWU> (last visited Feb. 3, 2018);
<https://www.youtube.com/watch?v=duBwldh5Jmc>; <https://www.youtube.com/watch?v=fZ19ybOtFCs> (last
25 visited Feb. 3, 2018).

26 ⁶ See <https://www.youtube.com/watch?v=sDx-Ncucleo> (last visited Feb. 3, 2018).

27 ⁷ See <https://www.youtube.com/watch?v=dVrhxDB6oqc> (last visited Feb. 3, 2018);
<https://www.youtube.com/watch?v=TDWxGma0Lx8> (last visited Feb. 3, 2018).

28 ⁸ See https://store.google.com/us/product/pixel_phone?hl=en-US (last visited Feb. 3, 2018).

⁹ https://support.google.com/pixelphone/forum/AAAAb4-OgUsIW_gxTpXX3s/?hl=by (last visited Feb. 5,
2018).

1 problem.¹⁰ Google has therefore known of the microphone defect since at least the day after the Pixel
2 phones became available to the public.

3 38. Since those initial complaints, thousands of consumers have posted online about
4 microphone and audio failures, including formation of a twitter campaign titled #defectivepixel.¹¹
5 Consumers commonly report that the microphone stops working after a short period of use rendering
6 the devices unsuitable for their main function—talking on the phone. Publicly available complaints
7 demonstrate that the microphone defect manifests the same way across Google’s customer base,
8 immediately impairing consumers’ ability to use the phones:

- 9 • **10/20/16:** “Received my pixel today and after a few hours of use and set up the microphone
10 stopped working entirely I factory reset the phone and the issue still persists”¹²
- 11 • **10/24/16:** “Have had my Pixel since last Thursday (10/20), and [the microphone] stopped
12 working today (10/24).¹³
- 13 • **10/26/16:** “I definitely have a non-functioning mic. Google Assistant will not respond to my
14 voice and if I make a phone call the person on the other line cannot hear me.”¹⁴
- 15 • **12/23/16:** “I am also facing Microphone issue. I’m not able to hear other side on the call and
16 even they do not get my voice. Voice is not recording on video recorded with the camera app.
17 Voice Assistant is also not working. Contacted support and did all the troubleshooting but still
18 the problem persists.”¹⁵

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22 ¹⁰ *Id.*

23 ¹¹ *E.g., id.*;

24 https://www.reddit.com/r/GooglePixel/comments/58gx6c/got_my_new_pixel_has_microphone_issues/ (last
25 visited Feb. 5, 2018); <https://twitter.com/search?q=pixel%20microphone%20&src=typd> (last visited Feb. 5,
2018); <https://forums.androidcentral.com/google-pixel-pixel-xl/738630-pixel-xl-microphone-problems.html> (last
26 visited Feb. 5, 2018).

27 ¹² https://support.google.com/pixelphone/forum/AAAAb4-OgUsIW_gxTpXX3s#promoted (last visited Feb. 2,
2018).

28 ¹³ https://productforums.google.com/forum/#!topic/phone-by-google/IW_gxTpXX3s (last visited Feb. 2, 2018).

¹⁴ *Id.*

¹⁵ *Id.*

- 1 • **2/20/17:** “I am having the same issues now . . . Worked fine for a month or two. Now it
2 doesn’t. Doesn’t work in call, doesn’t work with assistant. Doesn’t work with speaker on
3 phone. . . . Hopefully no one calls me in an emergency needing help and can’t hear me talk.”¹⁶
- 4 • **5/31/17:** “I’ve had the phone less than 4 months. The sound keeps going away. In the middle
5 of a conversation I can no longer hear people nor can they hear me. The phone will not answer
6 when receiving a call. I cannot dial out. After turning it on and off about 3 times I can finally
7 get a call through but to soon lose the caller because they could no longer hear me.”¹⁷
- 8 • **6/26/16:** “Microphone is sporadically cut and people can’t hear me on phone conversations,
9 voice notes or any other microphone dependent feature. This means, my phone can’t a) be used
10 as a phone to place a call when required, as phone sporadically freezes and b) let me have a
11 conversation with whoever I’m calling, as mic keeps bugging out. Imagine I have an accident
12 and need to call 911?”¹⁸
- 13 • **7/22/17:** “I have the same problem with the microphone cutting out as well. It happens
14 randomly but it can be bad to the point where the other party can not make out what I’m trying
15 to say. I already spoke with a Google Rep and I was told it’s a possible hardware issue.”¹⁹
- 16 • **12/30/17:** “My pixel calls stopped function[ing] properly around 12/23/17. When I make a call,
17 the phone app freezes but the call goes out. The person I am calling hears no one on the line. I
18 hear nothing as well. When I try to hang up there is at least a 20 second delay in the disconnect
19 tone. . . . I am at a loss for what to do. I cannot make calls . . . What can I do to fix this issue? I
20 have cancer and two kids under 3. This is my only phone.”²⁰

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24 ¹⁶ *Id.*

25 ¹⁷ <https://productforums.google.com/d/msg/phone-by-google/XdrbaaZ0kL4/Zyjhv6tACQAJ> (last visited Feb. 2,
2018).

26 ¹⁸ <https://productforums.google.com/forum/#!topic/phone-by-google/Z94uFoUOq90;context-place=forum/phone-by-google>
27 (last visited Feb. 2, 2018).

28 ¹⁹ *Id.*

²⁰ https://productforums.google.com/forum/#!topic/phone-by-google/RGIpDaLLD_A;context-place=forum/phone-by-google (last visited Feb. 2, 2018).

1 39. In March 2017, Google confirmed that its Pixel and Pixel XL smartphones have
2 microphone problems. Google stated that the problems are caused by “a hairline crack in the solder
3 connection on the audio codec” and a “faulty microphone.”²¹

4 40. According to technology-industry journalists who reported on the defect, the problems
5 “are hardware-related, so you can’t just install an update to fix them.”²² Google downplayed the nature
6 and extent of the defect in March 2017 statements to the technical press, claiming “[t]his problem tends
7 to be transient because of the nature of the crack” and “[b]ased on temperature changes or the way you
8 hold the phone, the connection may be temporarily restored and the problems may go away.”²³ Google
9 also admitted, however, that the defect “is especially frustrating as a user because, just when you think
10 you’ve got it fixed, the problem randomly comes back.”²⁴

11 41. Google brought the Pixel to market after only nine months of development time. As
12 technology industry publication ARS Technica observed, “Nine months is an incredibly short amount
13 of time to bring a smartphone to market.” Google previously adhered to an 18-month timeline for
14 smartphone development.

15 **Google’s Deficient Response to the Problem**

16 42. As early as October 24, 2016, Google employees told customers that Google was
17 “continuing to investigate this issue and are taking it very seriously.”²⁵ But, instead of offering refunds
18 or non-defective replacements, Google assured consumers it was “trying to get to the bottom of it,” and
19 directed those “experiencing microphone issues” to contact Google customer support or their place of
20 purchase.²⁶

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23 ²¹ Steve Dent, *Some Google Pixel Phones Are Having Microphone Issues*, Engadget (March 9, 2017), available at
24 <https://www.engadget.com/2017/03/09/some-google-pixel-phones-are-having-microphone-issues/> (last visited
Feb. 2, 2018).

25 ²² *Id.*

26 ²³ James Walker, *Google Admits the Microphones are Breaking on Some Pixel Phones*, Digital Journal (Mar. 9,
2017), available at <http://www.digitaljournal.com/tech-and-science/technology/google-admits-the-microphones-are-breaking-on-some-pixel-phones/article/487538> (last visited Feb. 2, 2018).

27 ²⁴ *Id.*

28 ²⁵ https://productforums.google.com/forum/#!topic/phone-by-google/IW_gxTpXX3s (last visited Feb. 2, 2018).

²⁶ *Id.*

1 43. In the face of mounting complaints, on October 29, 2016, Google attempted to minimize
2 the scale of the problem, stating “[t]hanks for the reports, all. We are investigating this on a few
3 devices to get to the root cause. We’ll provide an update when we figure out what’s causing this (and
4 what you can do to resolve it!)”²⁷

5 44. In November 2016, Google issued “[a]pologies to anyone who is encountering issues
6 with the mic,” and stated it had not yet isolated a cause because “this bug is proving very hard to track
7 down.” Later in November, faced with continuing complaints, the same employee again apologized,
8 said Google was “still trying to get to the bottom of it,” and assured upset consumers that the company
9 was “taking it seriously,” adding “[t]his is really frustrating us too!”²⁸

10 45. On December 11, 2016, Google advised consumers, “[w]e are still trying to assess the
11 root cause. It may be a manufacturing issue that increases the chances of loose connection or possibly
12 one bad batch.” In the same communication, Google again apologized and acknowledged, “[w]e
13 realize that a working mic is pretty important to using the phone!”²⁹

14 46. In January 2017, Google reported to its customers “there is no known software fix. So
15 far, we’ve traced all failures back to hardware problems (normally a faulty internal connection).”
16 Google instructed consumers to seek replacement phones from Google or the merchant from whom
17 they purchased their Pixel.³⁰

18 47. Also in January 2017, Google experienced an increase in complaints from customers
19 who, after experiencing the microphone defect on their first Pixel phone, experienced a subsequent
20 microphone failure on their replacement Pixel. On January 5, 2017, a Google employee wrote one such
21 consumer, stating that although Google believed the problem was rare, “[o]bviously, that doesn’t line
22 up with your experience having seen this on 2/2 phones!” He reassured the consumer that, as of
23 January 2017, Google had “taken steps to reinforce the failing connection in the factory to minimize the
24 chances of this happening to new phones.”³¹ Nevertheless, the microphone defect persisted.

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26 ²⁷ *Id.*

27 ²⁸ *Id.*

28 ²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

1 48. On February 21, 2017, a Google employee announced that Google had identified several
2 root causes of the microphone defect, all centering on systemic manufacturing errors. “The most
3 common problem is a hairline crack in the solder connection on the audio codec.”³²

4 49. Google further stated the crack impairs all three microphones in the Pixel and its ability
5 to process audio, thereby eroding the phones’ core functionality, *i.e.*, the ability to communicate by
6 voice call.³³

7 50. According to Google, microphone failures may also result from “a faulty microphone.”
8 These problems “might be caused by the diaphragm in the mic getting stuck” and can sometimes be
9 fixed by applying heat from a hair dryer. Google also stated that “all of the cases we’ve investigated
10 have been the result of a hardware problem, requiring replacement of the device.” One Google
11 representative admitted that “it’s certainly frustrating if it happens to you. I was unlucky enough to
12 have it happen on my personal device, so I know how maddening it is.”³⁴

13 51. Despite the growing volume of complaints, and Google’s knowledge that the problems
14 resulted from a systemic hardware defect related to the manufacturing process, Google refused to
15 provide its customers with satisfactory warranty service.

16 52. The Pixel warranty provides that, if there is a defect, “Google will in its sole discretion
17 and to the extent provided by law either repair your Phone using new or refurbished parts, replace your
18 Phone with a new or refurbished Phone functionally at least equivalent to yours, or accept the return of
19 the Phone in exchange for a refund of the purchase price you paid for the Phone.”³⁵

20 53. Instead of providing customers with a refund or replacing the Pixels with non-defective
21 phones, Google exercises the discretion it afforded itself under its warranty to provide consumers with
22 Pixel phones that suffer from the same systemic manufacturing defect. Google representatives even
23 acknowledged this business practice: “I’m very sorry to hear that some of you are having the same
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26 ³² https://support.google.com/pixelphone/forum/AAAAb4-OgUsIW_gxTpXX3s/?hl=by (last visited Feb. 5,
2018).

27 ³³ *Id.*

28 ³⁴ https://productforums.google.com/forum/#!topic/phone-by-google/IW_gxTpXX3s (last visited Feb. 5, 2018).

³⁵ <https://support.google.com/store/troubleshooter/3070579?hl=en#ts=7168940%2C7169349> (last visited Feb. 2,
2018).

1 problem with replacement phones and also that you aren't getting the level of customer service that you
2 should. That should not be happening.”³⁶

3 54. The myriad complaints on Google's Pixel User Community and other websites relate the
4 stories of consumers who, after reporting the microphone defect to Google, were provided with another
5 Pixel with the very same defect:

- 6 • **11/25/16:** “My replacement device has acted in the identical manner that the original did.
7 Microphone goes out approximately 2 minutes into a phone call. I've also contacted Verizon
8 several times regarding this issue. The[re] appears to be a big cover up by Verizon and or
9 Google in regards to the problem. Every time I have called to resolve the issue the technical
10 support representative states that this is a first for the Pixel Microphone issue and I've been the
11 only one to complain about the microphone issues. . . . This has become absolutely absurd,
12 unethical, and unprofessional.”³⁷
- 13 • **1/1/17:** “I received my first Pixel on 12/12/16. I didn't use the phone for long calls for the first
14 week. When I had any call longer than 15 minutes the mic stops and my client on the other end
15 is saying, 'are you there, I can't hear you.' . . . This occurred several days in a row. I purchased
16 my phone through Best Buy and they sent a replacement. I have had the replacement for 4
17 days with no problems, until today. On a call at the 20 min. mark the mic stopped. I hung up,
18 redialed and mic worked but once again stopped 10 min. into the call. So frustrating.”³⁸
- 19 • **2/19/17:** “The part that I am most pissed about is that why isn't Google coming clean to the
20 public about this issue. We have people from different parts of the world complaining about it
21 here and the count is rising every single day. Can't be just one bad batch. Has to be multiple
22 bad batches or a failure at the design/manufacturing level. So, instead of doling out refurbished
23 replacements to consumers, how about providing refunds to people who want it. I don't want to
24 be stuck with multiple bad replacements as has been the case with so many people on this
25 thread. . . . Own up to it Google. My two cents.”³⁹

26 ³⁶ https://productforums.google.com/forum/#!topic/phone-by-google/IW_gxTpXX3s (last visited Feb. 2, 2018).

27 ³⁷ *Id.*

28 ³⁸ *Id.*

³⁹ *Id.*

- 1 • **2/19/17:** “I’m about to receive my 4th Pixel phone and have the same exact issue very time.
2 Come on Google, acknowledge this problem and fix it.”⁴⁰
- 3 • **2/20/17:** “Just got my refurb and surprise the mic isn’t working right out of the box. I now have
4 \$1,400 tied up in 2 pixels (700 hold on my card), and haven’t been able to make or accept calls
5 for 12 days and counting. . . . I’ve been lied to and misled by Google support. They refuse to let
6 me talk to anyone above a tech specialist to give me an explanation about that. . . . Absolutely
7 unacceptable. I’ve been a Google, Nexus, Pixel product enthusiast but not after this.”⁴¹
- 8 • **2/26/17:** “Why can’t Google process refunds instead of multiple faulty replacements?”⁴²
- 9 • **2/27/17:** “If my third one from Verizon still causes me trouble, I’m calling Google to raise hell.
10 If I could get a refund now, I’d do it in a heartbeat. So ready to move on.”⁴³
- 11 • **3/1/17:** “Just received Pixel XL number 4. Downloaded contacts, updated phone, rebooted and
12 made my first call. 7 minutes into the call, the person couldn’t hear me any more . . . just like
13 the other 3 phones I had. . . . I don’t see any purpose in sending the 4th one back if they can’t
14 guarantee I will get a newly created one without the issue instead of a refurbished piece of crap.
15 So, what is the solution here? Do I call and complain and try and force them into a full refund?
16 Is there truly a plan to fix these bricks and guarantee that returns will be replaced with new
17 ones? How can you possibl[y] continue to ignore this issue to the level you have?”
- 18 • **3/1/17:** “About to get my 5th Pixel tomorrow. On this last day I have to endure with this one its
19 just gotten 1000 times worse, no matter what I do sound won’t play out of it (speaker or
20 headphones), the microphone won’t work, and so on. I can’t even have a phone call with my
21 phone. This is a joke.”⁴⁴

22 55. Google’s designated third-party repair provider—uBreakiFix⁴⁵— stated that attempts to
23 repair defective Pixel phones will inevitably fail. uBreakiFix representatives acknowledged that the

24 ⁴⁰ *Id.*

25 ⁴¹ *Id.*

26 ⁴² *Id.*

27 ⁴³ *Id.*

28 ⁴⁴ https://www.reddit.com/r/GooglePixel/comments/5wyvyy/about_to_get_my_5th_pixel_tomorrow_on_this_last/ (last visited Feb. 2, 2018).

⁴⁵ <https://support.google.com/store/answer/7182296?hl=en> (last visited Feb. 5, 2018).

1 microphone defect is a common issue, involving a defective solder point. They termed this defect
2 “unrepairable.”

3 56. In response to warranty claims, Google provided customers with futile repairs or with
4 Pixel phones suffering from the same defect, often resulting in repeat failure. Google thereby
5 precluded its customers from realizing warranty benefits.

6 57. Further, to add insult to injury, Google unilaterally reduced the warranty period for
7 affected consumers by providing them with refurbished replacement devices that carried only a 90-day
8 warranty period.⁴⁶

9 58. Despite its clear awareness of the Pixel defects, Google failed to disclose them or their
10 associated problems to consumers prior to purchase and failed to provide an adequate remedy to
11 consumers when the defects manifested. Instead, Google downplayed the scope and severity of the
12 problem, and tried to sweep the defect under the rug with apologies and ineffective warranty service.
13 Meanwhile, Google continued to manufacture, market, and sell the defective phones without notice to
14 the consuming public. Google continued to promote the device as top of the line and as offering a Siri
15 competitor in Google Assistant, a feature the faulty microphones disabled.⁴⁷

16 **CLASS ACTION ALLEGATIONS**

17 59. Plaintiffs bring this lawsuit under Federal Rules of Civil Procedure Rules 23(a), (b)(1),
18 (b)(2), (b)(3), and (c)(4) as representatives of a class defined as follows:

19 All individuals in the United States who purchased a Google Pixel or Pixel
20 XL smartphone, other than for resale, between October 4, 2016 and the
21 present.

22 60. The following persons and entities are excluded from the class:

- 23
- 24 • Google, its officers, directors, employees, subsidiaries, and affiliates;
 - 25 • all judges assigned to this case and any members of their immediate families; and,
 - 26 • the parties’ counsel in this litigation.

27 ⁴⁶ https://support.google.com/store/troubleshooter/3070579?hl=en&ref_topic=3244667#ts=7168940%2C7169349 (last visited Feb. 2, 2018).

28 ⁴⁷ <https://www.youtube.com/watch?v=Rykmwn0SMWU> (last visited Feb. 5, 2018).

1 Plaintiffs reserve the right to modify, change, or expand the Class definitions based upon discovery and
2 further investigation.

3 61. **Numerosity.** Google sold at least a million Pixel phones.⁴⁸ Members of the class are
4 widely dispersed throughout the country. The class members are accordingly so numerous that joinder
5 is impracticable.

6 62. **Typicality.** Plaintiffs' claims are typical of the claims of all class members in that
7 Plaintiffs, like all class members, purchased Pixel phones (subject to a common express warranty) that
8 they would not have purchased, or would have paid substantially less for, had they known of the defect
9 or the fact that Google would respond inadequately when the defect manifested.

10 63. **Adequacy.** Plaintiffs will fairly and adequately protect the interests of the class. They
11 have no interests antagonistic to the interests of other class members and are committed to vigorously
12 prosecuting this case.

13 64. Plaintiffs have retained competent counsel experienced in the prosecution of consumer
14 protection class actions involving defective smartphones.

15 65. **Predominance.** Questions of law and fact common to the class members predominate
16 over any questions that may affect only individual class members, because Google has acted on
17 grounds generally applicable to the class as a whole.

18 66. Questions of law and fact common to the class include:

- 19 • Whether the Pixel phones were defective at the time of sale;
- 20 • Whether the defect substantially impairs the value of the Pixel phones;
- 21 • Whether Google knew of the defect, but continued to promote and sell the Pixel phones without
22 disclosing the problems and their consequences to consumers;
- 23 • Whether a reasonable consumer would consider the defect and its consequences to be material;
- 24 • Whether Google carried out the discretion it afforded itself under its warranty in good faith;
- 25 • Whether Google breached express and implied warranties connected with the Pixel phones;

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27
28 ⁴⁸ Juliet Gallagher, *In a Rare Moment, Pixel's Sales Figures Are Revealed*, Gadget Hacks (June 13, 2017)
(available at <https://android.gadgethacks.com/news/rare-moment-pixels-sales-figures-are-revealed-0178148/>) (last
visited Feb. 5, 2018).

- 1 • Whether Google violated California’s Unfair Competition Law, CAL. BUS. & PROF. CODE §
- 2 17200, *et seq.*;
- 3 • Whether Google violated California’s Consumers Legal Remedies Act, CAL. CIV. CODE § 1750,
- 4 *et seq.*;
- 5 • Whether Plaintiffs overpaid for their phones as a result of the existence of the microphone
- 6 defect;
- 7 • Whether Plaintiffs are entitled to equitable relief, including restitution or injunctive relief; and
- 8 • Whether Plaintiffs are entitled to damages and other monetary relief, and if so, in what amount.

9 67. **Superiority.** A class action is superior to all other available methods for the fair and
10 efficient adjudication of this controversy. Because the amount of each individual class member’s claim
11 is small relative to the complexity of the litigation, and because of Defendant’s financial resources, no
12 class member is likely to pursue legal redress individually for the violations detailed in this complaint.
13 Individualized litigation would significantly increase the delay and expense to all parties and to the
14 Court and would create the potential for inconsistent and contradictory rulings. By contrast, a class
15 action presents fewer management difficulties, allows claims to be heard which would otherwise go
16 unheard because of the expense of bringing individual lawsuits, and provides the benefits of
17 adjudication, economies of scale, and comprehensive supervision by a single court.

18 68. Class certification is also appropriate under Rules 23(b)(1), (b)(2) and/or (c)(4) because:

- 19 • The prosecution of separate actions by the individual members of the class would create a risk
- 20 of inconsistent or varying adjudications with respect to individual class members, which would
- 21 establish incompatible standards of conduct for Google;
- 22 • The prosecution of separate actions by individual class members would create a risk of
- 23 adjudications that would, as a practical matter, be dispositive of the interests of other class
- 24 members not parties to the adjudications, or would substantially impair or impede their ability to
- 25 protect their interests;
- 26 • Defendant acted or refused to act on grounds generally applicable to the class, thereby making
- 27 appropriate final injunctive relief with respect to the members of the class as a whole; and
- 28 • The claims of class members include common issues that are appropriate for certification.

CLAIMS FOR RELIEF

1
2 69. Plaintiffs bring each of the following claims for relief pursuant to California law because
3 Google’s Terms of Sale for Devices specify “[t]he laws of California, U.S.A. apply to these terms.”⁴⁹
4 Plaintiffs’ reference to Google’s choice-of-law clause is without waiver of their position that Google’s
5 attempted disclaimer of warranties is void and/or unconscionable for the reasons specified in paragraphs
6 91 and 92, below. Plaintiffs learned of Google’s choice-of-law clause for the first time in preparing this
7 complaint and after being denied help as set forth in paragraphs 16, 17 and 24.

8 **FIRST CLAIM FOR RELIEF**
9 **Breach of Express Warranty**

10 70. Plaintiffs incorporate the above allegations by reference.

11 71. Google created and extended to consumers an express warranty in connection with every
12 sale of Pixel or Pixel XL phones by Google or its authorized resellers. Under the terms of the express
13 warranty, Google warranted that the Pixel phones would be “free from defects in materials and
14 workmanship under normal use in accordance with Google’s published user documentation for one
15 year from the date of original retail purchase”⁵⁰

16 72. Google’s warranty provides:

17 If a defect arises and you return your Phone during the Limited Warranty
18 period (which is one year for new devices and ninety days for refurbished
19 devices), Google will in its sole discretion and to the extent permitted by
20 law either repair your Phone using new or refurbished parts, replace your
21 Phone with a new or refurbished Phone functionally at least equivalent to
yours, or accept the return of the Phone in exchange for a refund of the
purchase price you paid for the Phone.⁵¹

22 73. Plaintiffs’ Pixel phones were defective at the time of sale. The defect in the Pixel
23 phones is embedded in the phone’s hardware, gives the phones’ microphones a substantial propensity to
24 fail—rendering the devices unsuitable for their primary purpose—and existed at all relevant times.

25
26 ⁴⁹ https://web.archive.org/web/20160910174222/https://store.google.com/intl/en-US_us/about/device-terms.html
(last visited Feb. 5, 2018).

27 ⁵⁰ https://support.google.com/store/troubleshooter/3070579?visit_id=1-636451602353993137-3447863607&p=pixelphonewarranty&rd=1#ts=7168940 (last visited Feb. 5, 2018).

28 ⁵¹ *Id.*

1 74. Plaintiffs used their Pixel phones in a manner consistent with the phones' operating
2 instructions prior to manifestation of the microphone defect.

3 75. Google was on actual notice of the defective nature of the phones prior to sale and
4 received timely notice of the breaches experienced by Plaintiffs and the class. Despite reasonable
5 opportunities to honor the promises in its express warranty, Google did not furnish an effective remedy
6 to Plaintiffs.

7 76. Google's failure to provide Plaintiffs with a non-defective replacement device or a
8 refund of the purchase price departs from commercially reasonable behavior and violated Plaintiffs'
9 objectively reasonable expectations arising from the express warranty.

10 77. Furthermore, because Google had actual knowledge of the defect as early as the day
11 after the phone was released yet continued to sell defective Pixel phones, the one-year and 90-day
12 limitations contained in Google's warranty are unenforceable and devoid of effect. The time limits
13 connected with Google's warranty are unconscionable and inadequate to protect Plaintiff and Class
14 members given the severity of the defect, the centrality of smartphones in daily life, and the fact that
15 the average consumer replaces his or her smartphone every 30 months. In its warranty for the second-
16 generation Pixel devices, Google itself acknowledges consumers' expectations of smartphone lifespans
17 by extending a two-year warranty.⁵²

18 78. Plaintiffs and Class members had no meaningful choice in determining the one-year or
19 90-day time limits for the Pixel products at issue here. Those terms unreasonably favor Google. A
20 gross disparity in bargaining power existed between Google and Class members. Neither Plaintiff was
21 made aware of the warranty terms prior to purchase. Google knew the Pixel phones were defective at
22 the time of sale and would fail. Consumers had no reasonable means of learning of the concealed
23 defect.

24 79. Any attempt by Defendant to disclaim or limit its express warranties vis-à-vis consumers
25 would be inappropriate under these circumstances. Any such asserted limitation is unconscionable and
26 unenforceable because Defendant knowingly sold a defective product without informing consumers and
27 failed to honor its express warranties.

28 ⁵² https://support.google.com/store/troubleshooter/3070579?hl=en&ref_topic=3244667#ts=7168940%2C7544604.

1 80. As a direct and proximate result of Defendant's breaches of express warranty, Plaintiffs
2 have been damaged in an amount to be proven at trial.

3 **SECOND CLAIM FOR RELIEF**

4 **Breach of the Implied Covenant of Good Faith and Fair Dealing**

5 81. Plaintiffs incorporate the above allegations by reference.

6 82. Google issued express warranties to Plaintiffs in connection with its sale of Pixel
7 phones.

8 83. A covenant of good faith and fair dealing is implied in every contract and imposes upon
9 each party a duty of good faith and fair dealing in its performance. Common law calls for substantial
10 compliance with the spirit, not just the letter, of a contract in its performance. The duty to act in good
11 faith and deal fairly requires adherence to commercial norms and prevents a contracting party from
12 acting in contravention of the counterparty's objectively reasonable expectations arising from the
13 agreement.

14 84. Google breached the covenant of good faith and fair dealing that accompanied its
15 warranty, and failed to exercise the discretion it arrogated to itself under the terms of its warranty in
16 good faith, in at least the following respects:

17 a. refusing to furnish Plaintiffs (and many others) with functional, equivalent, non-
18 defective replacement phones;

19 b. refusing to provide suitable repairs free of charge; and

20 c. refusing to refund the purchase price of Pixel phones that manifested the
21 microphone defect; and

22 d. electing to provide consumers with refurbished replacement Pixels (which
23 Google knew were defective) that had only 90-day warranty periods.

24 85. As a direct and proximate result of Google's violations of the covenant of good faith and
25 fair dealing, Plaintiffs have been damaged in an amount to be proven at trial.

26 **THIRD CLAIM FOR RELIEF**

27 **Breach of the Implied Warranty of Merchantability**

28 86. Plaintiffs incorporate the above allegations by reference.

1 87. By operation of law, Google—manufacturer of the Pixel phones and author of the
2 express warranty detailed at paragraphs 32, 52, and 72—impliedly warranted to Plaintiffs that the Pixel
3 phones were of merchantable quality and fit for their ordinary and intended use as smartphone devices.

4 88. Plaintiffs and members of the class either bought their Pixel phones directly from
5 Google (who manufactured the phones) or from its authorized resellers. Consumers who did not
6 purchase Pixel phones directly from Google are the intended third-party beneficiaries of written
7 distribution and supply agreements between Google and its authorized resellers, and of the implied
8 warranties that attach to those contracts. The retailer sellers were not intended to be the ultimate users
9 of the Pixel phones and have no rights under the warranty agreements connected with the phones.
10 Those agreements were designed for and intended to benefit end-users only.

11 89. Defendant breached the implied warranty of merchantability in connection with its sale
12 and distribution of the Pixel phones. At the point of sale, the Pixel phones contained a latent
13 manufacturing defect whose manifestation renders the product unfit for its ordinary and intended
14 purpose—making phone calls. The defect existed when the phones left Google’s possession and is
15 substantially certain to manifest.

16 90. Had Plaintiffs known of the embedded defect in the Pixel phones, they would not have
17 purchased or would have paid significantly less for them.

18 91. Google’s attempted disclaimer of the implied warranty of merchantability in its Terms
19 of Sale⁵³ is void and unenforceable. The disclaimer is inconsistent with the representations Google
20 made concerning the devices in its express warranty, *i.e.*, that the Pixel phones are “free from materials
21 and workmanship.”

22 92. Google’s disclaimer is also void as unconscionable. Google knew the day after it
23 released the Pixel phones to the general public that the devices were defective. It nevertheless
24 continues to sell the defective products to consumers without disclosing the defect, while affirmatively
25 misrepresenting purported attributes of the devices that were important to consumer purchasers.
26 Moreover, the remedies offered by Google to consumers were unfair, inadequate, and unconscionable
27 in that Google attempted futile repairs or replaced defective phones with refurbished defective phones,

28 ⁵³ https://web.archive.org/web/20160910174222/https://store.google.com/intl/en-US_us/about/device-terms.html
(last visited Feb. 5, 2018).

1 effectively running out the clock on consumers' warranty periods without providing meaningful relief.
2 Plaintiffs were unaware of, and had no opportunity to negotiate Google's disclaimer of implied
3 warranties provision, and had no reason to suspect Google would purport to wipe its hands of a defect
4 rendering the devices unusable for their most basic purpose. Fairness requires invalidating the
5 disclaimer of implied warranty of merchantability in Google's form document.

6 93. Google's warranty duration limits also are unconscionable and inadequate to protect
7 Plaintiffs for the reasons set forth in paragraphs 77-79, *supra*.

8 94. Plaintiffs furnished Google with an opportunity to cure its breach of warranty, and
9 otherwise complied with any and all obligations under the implied warranty of merchantability.
10 Nevertheless, and despite knowing of the defect before or concurrently with the release of the phones,
11 Google has refused to provide plaintiffs with appropriate warranty relief, leaving them without the
12 functional product they thought they were buying.

13 95. As a direct and proximate result of Defendant's breach of the implied warranty of
14 merchantability, Plaintiffs have sustained damages in an amount to be determined at trial.

15 **FOURTH CLAIM FOR RELIEF**

16 **Violation of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.* ("MMWA")**

17 96. Plaintiffs incorporate the above allegations by reference.

18 97. The Pixel phones are "consumer products" under the MMWA. 15 U.S.C. § 2301(1).

19 98. Plaintiff and Class members are "consumers" under the MMWA. 15 U.S.C. § 2301(3).

20 99. Defendant is a "supplier" and "warrantor" under the MMWA. 15 U.S.C. § 2301(4), (5).

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

23 101. Defendant's express warranties are written warranties within the meaning of section
24 2301(6) of the MMWA. The Pixel phones' implied warranties are accounted for under section 2301(7)
25 of the MMWA. Defendant cannot disclaim these warranties when it failed to provide merchantable
26 goods.

27 102. Defendant warranted to Plaintiff and Class members that the Pixel phones were free
28 from defects, of merchantable quality, and fit for the ordinary purposes for which smartphones are
used.

1 103. Defendant breached and refused to honor these obligations. The Pixel phones have a
2 defect that impairs consumers' ability to use them to talk to other people by phone. The defect
3 accordingly resulted in the Pixel phones failing to perform in accordance with their ordinary and
4 intended purposes.

5 104. Defendant has been given a reasonable opportunity to cure its breaches of warranty.
6 Defendant has had ample notice of the defects described above and experienced by Plaintiffs and other
7 Pixel purchasers, but has not provided an adequate remedy.

8 105. Google's attempted disclaimer of implied warranties is void and unenforceable for the
9 reasons stated in paragraphs 91-92, *supra*.

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

13 107. As a direct and proximate result of Defendant's breaches of implied and express
14 warranties pursuant to 15 U.S.C. § 2310(d)(1), Plaintiffs have suffered damages in an amount to be
15 determined at trial.

16 108. Plaintiffs also seek costs and expenses, including reasonable attorneys' fees, under the
17 MMWA. 15 U.S.C. § 2310(d)(2).

18 **FIFTH CLAIM FOR RELIEF**

19 **Violation of the California Unfair Competition Law, CAL. BUS. & PROF. CODE § 17200, *et seq.***
20 **("UCL")**

21 109. Plaintiffs incorporate the above allegations by reference.

22 110. The UCL proscribes acts of unfair competition, including "any unlawful, unfair or
23 fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising." CAL. BUS.
24 & PROF. CODE § 17200.

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

1 112. Defendant’s conduct is unfair because it violates California public policy, legislatively
2 declared in the Song-Beverly Consumer Warranty Act, requiring a manufacturer—defined as a person
3 or entity that “manufactures, assembles, or produces consumer goods”⁵⁴—to ensure that goods it places
4 on the market are fit for their ordinary and intended purposes.

5 113. Google acted in an immoral, unethical, oppressive, and unscrupulous manner, including
6 by:

- 7 a. Promoting and selling Plaintiffs phones it knew were defective;
- 8 b. Promoting and selling phones containing defects that caused their premature
9 failure;
- 10 c. Replacing defective phones with other defective phones, or attempting futile
11 repairs not directed to the underlying defect, instead of appropriately providing refunds or replacing
12 defective phones with non-defective phones;
- 13 d. Refusing to provide warranty relief where the microphone defect manifested
14 outside the warranty period;
- 15 e. Failing to exercise adequate quality control and due diligence over the Pixel
16 phones before launch, and instead rushing the devices to market; and
- 17 f. Minimizing the scope and severity of the defect instead of acknowledging and
18 providing relief to consumers.

19 114. The gravity of harm resulting from Defendant’s unfair conduct outweighs any potential
20 utility. The practices of selling defective phones without providing an adequate remedy to cure the
21 defect—and continuing to sell those phones without full and fair disclosure of the defect—harms the
22 public at large and is part of a common and uniform course of wrongful conduct. There are reasonably
23 available alternatives that would further Google’s business interests. The harm from Google’s conduct
24 was not reasonably avoidable by consumers.

25 115. Defendant’s conduct, as detailed in this complaint, is fraudulent in violation of the UCL
26 because it is likely to deceive a reasonable consumer. Google’s fraudulent acts include:

27
28

⁵⁴ CAL. CIV. CODE § 1791(j).

1 a. Knowingly and intentionally concealing from Plaintiffs the existence of the
2 defect in the Pixel phones;

3 b. Misleadingly promoting the Pixel phones as being high-quality, functional,
4 having a working Google Assistant, and not possessing a defect that would prevent them from serving
5 their most basic function; and

6 c. Promoting Google Assistant functionality while knowingly failing to disclose
7 that the microphone defect renders customers unable to use Google Assistant.

8 116. Google's misrepresentations and omissions alleged in this complaint caused Plaintiffs to
9 purchase their phones.

10 117. Google had a duty to disclose the microphone defect given its exclusive knowledge of
11 the condition prior to the sale of the Pixel phones and because it made partial representations about the
12 quality of the phones without also disclosing the microphone defect.

13 118. Plaintiffs suffered injury in fact, including lost money or property, as a result of
14 Google's unlawful, unfair and fraudulent acts. Absent Defendant's unlawful, unfair, and fraudulent
15 conduct, Plaintiffs would not have purchased their Pixel phones or at the prices they paid.

16 119. As is described in paragraph 26, *supra*, Plaintiffs wish to purchase further Pixel products
17 in the future, but are impaired from presently doing so in view of their inability to rely on Google's
18 statements concerning such products. Plaintiffs seek to enjoin Google from further commission of
19 these unlawful, unfair, and fraudulent acts or practices under CAL. BUS. & PROF. CODE § 17200.

20 120. Plaintiffs thus request that this Court enter such orders or judgments as may be
21 necessary to enjoin Google from continuing its unfair, unlawful, and fraudulent practices, and to restore
22 to Plaintiffs any money Google acquired through its prohibited acts and practices, including restitution,
23 as provided under CAL. BUS. & PROF. CODE § 17203, in addition to reasonable attorneys' fees and
24 costs.

25 **SIXTH CLAIM FOR RELIEF**

26 **Violation of California's Consumers Legal Remedies Act, CAL. CIV. CODE § 1750, *et seq.***
27 **("CLRA")**

28 121. Plaintiffs incorporate the above allegations by reference.

1 122. Google is a “person” within the meaning of Civil Code §§ 1761(c) and 1770, and
2 provided “goods” within the meaning of Civil Code §§ 1761(a) and 1770.

3 123. Google’s acts and practices, as alleged in this complaint, violate the CLRA, CAL. CIV.
4 CODE §§ 1770(a)(5), (7), (9), and (19) because they consist of unfair methods of competition and unfair
5 and deceptive acts and practices in connection with transactions—namely, the sale of defective Pixel
6 phones to Plaintiffs. This conduct was intended to result and did result in the sale of these goods to
7 consumers. Specifically, Google:

- 8 • Represented that the Pixel phones had characteristics, uses, and benefits they do not have;
- 9 • Represented that the Pixel phones were of a standard, quality, or grade that they are not;
- 10 • Advertised the Pixel phones with intend not to sell them as advertised; and
- 11 • Inserted unconscionable warranty limitations and disclaimers in its contracts with consumers.

12 124. As a direct and proximate result of Google’s conduct, Plaintiffs have been harmed, in
13 that they purchased products they otherwise would not have (or would have paid substantially less for).
14 Meanwhile, Google has generated more revenue than it otherwise would have, unjustly enriching itself.

15 125. Plaintiffs are entitled to equitable relief, reasonable attorneys’ fees and costs, declaratory
16 relief, and a permanent injunction enjoining Google from its unlawful, fraudulent, and deceitful
17 activity.

18 126. Pursuant to the provisions of CAL. CIV. CODE § 1782(a), on February 1 and 2, 2018,
19 Plaintiffs sent letters to Google notifying it of its CLRA violations and providing it with the opportunity
20 to correct its business practices. If Google does not hereafter correct its business practices, Plaintiffs
21 will amend (or seek leave to amend) the complaint to add claims for monetary relief, including
22 restitution, actual, and punitive damages under the CLRA.

23 127. Plaintiffs’ CLRA venue declarations are attached as Exhibits 1 and 2 to this complaint in
24 accordance with CAL. CIV. CODE § 1780(d).

25 **SEVENTH CLAIM FOR RELIEF**
26 **Fraudulent Concealment**

27 128. Plaintiffs incorporate the above allegations by reference.

28 129. Defendant intentionally suppressed and concealed material facts concerning the
performance and quality of the Pixel phones. Defendant knew of the microphone defect no later than

1 the day after it released the Pixel phones to the public, but failed to disclose that defect prior to or at the
2 time it marketed and sold the devices to consumers.

3 130. Because the microphone defect is a latent manufacturing defect, Plaintiffs had no
4 reasonable way of knowing that Defendant's representations were false and misleading, or that
5 Defendant had failed to disclose the microphone defect. Plaintiffs did not and could not reasonably
6 discover Defendant's deception on their own prior to purchase.

7 131. Defendant had a duty to disclose the microphone defect because it was within
8 Defendant's exclusive knowledge. Defendant had superior knowledge and access to the relevant facts,
9 and knew these facts were neither known to, nor reasonably discoverable by, Plaintiffs and other Pixel
10 purchasers. Defendant also had a duty to disclose the microphone defect because it made many
11 general, partial representations about the qualities of the phones, *i.e.*, that Google Assistant was a
12 feature that consumers would be able to access and use reliably.

13 132. In connection with its ongoing promotion and sale of the Pixel phones, Defendant
14 continues to defraud consumers by purposely concealing material information regarding the Pixel
15 phones' defective nature.

16 133. Plaintiffs were unaware of the omitted material facts and would not have acted as they
17 did had the facts been disclosed. Had Defendant informed them of the microphone defect, Plaintiffs
18 would not have purchased Pixel phones or would have paid substantially less for them.

19 134. Plaintiffs reasonably relied to their detriment upon Defendant's material omissions and
20 fraudulent misrepresentations regarding the quality of the Pixels and the existence of the defect in
21 deciding to purchase their Pixel phones.

22 135. Plaintiffs sustained damage as a direct and proximate result of Defendant's deceit and
23 fraudulent concealment. Among other damages, Plaintiffs did not receive the value of the premium
24 price they paid for their phones. Plaintiffs would not have purchased Pixels had they known of the
25 defect (or would have paid substantially less for them).

26 136. Defendant's acts were done maliciously, oppressively, deliberately, with intent to
27 defraud, and in reckless disregard of Plaintiffs' rights, interests, and well-being, to enrich Defendant.
28

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

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiffs, on behalf of themselves and members of the class, respectfully
5 request that this Court:

6 A. Determine that the claims alleged herein may be maintained as a class action
7 under Federal Rule of Civil Procedure 23, and issue an order certifying the class defined above and
8 appointing Plaintiffs as class representatives;

9 B. Award all actual, general, special, incidental, statutory, punitive, and
10 consequential damages and restitution to which Plaintiffs and the class members are entitled;

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

12 D. Grant appropriate injunctive and declaratory relief, including, without limitation,
13 an order that requires Google to provide appropriate disclosure of the defective nature of the phones
14 and to return to Plaintiffs and class members all costs attributable to remedying or replacing defective
15 Pixel phones, including but not limited to economic losses from the purchase of replacement phones;

16 E. Award reasonable attorneys' fees and costs; and

17 F. Grant such further relief as the Court deems appropriate.

18 **DEMAND FOR JURY TRIAL**

19 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury of all issues
20 triable as of right.

21
22 Dated: February 6, 2018

Respectfully submitted,

23 By: /s/ Adam E. Polk

24 Daniel C. Girard (State Bar No. 114826)

Jordan Elias (State Bar No. 228731)

25 Adam E. Polk (State Bar No. 273000)

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