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

15
16 IN RE NEXUS 6P PRODUCTS LIABILITY
17 LITIGATION

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

18 **SECOND CONSOLIDATED AMENDED**
19 **CLASS ACTION COMPLAINT FOR:**

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1. **Breach of Express Warranty;**
 2. **Breach of the Implied Warranty of Merchantability;**
 3. **Violation of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, et seq.;**
 4. **Violation of the Song-Beverly Consumer Warranty Act;**
 5. **Violation of California’s Unfair Competition Law;**
 6. **Violation of California’s Consumer Legal Remedies Act; and**
 7. **Fraudulent Concealment.**

DEMAND FOR JURY TRIAL

1 Plaintiffs, individually and on behalf of all others similarly situated, allege as follows against
2 Defendants Google LLC and Huawei Device USA, Inc.

3 **SUMMARY OF THE ACTION**

4 1. This action is brought on behalf of individuals who purchased Nexus 6P smartphones.
5 The Nexus 6P is defective. Its battery drains at an accelerated pace, causing the phone to shut off
6 prematurely, even with up to 90% battery life remaining. It freezes and randomly reboots during
7 normal use. Ultimately, the Nexus 6P fails permanently in an endless bootloop cycle, during which its
8 screen alternately goes black and displays the Google logo without ever advancing to the home screen.
9 The problems with the Nexus 6P are material, and compromise the devices' core functionality. A
10 Consumer with a defective Nexus 6P faces a constant threat of random shutdowns, requiring them to
11 connect to a battery source when using their Nexus 6P, effectively converting their "mobile" phone into
12 a landline. When the Nexus 6P reaches the terminal bootloop stage, it becomes permanently inoperable
13 and unsuitable for any purpose.

14 2. Through a joint business venture, Google and Huawei developed, manufactured,
15 marketed, and sold the Nexus 6P. Google and Huawei released the Nexus 6P after a short development
16 cycle. Google and Huawei knew the Nexus 6P was defective at or before the time of release through
17 (1) pre-release testing, and (2) complaints that began to come in within days of launch. Despite
18 knowing the Nexus 6P was prone to fail, Google and Huawei failed to disclose to consumers that the
19 Nexus 6P is defective. Although the Nexus 6P came with a one-year written warranty covering defects
20 in design, materials, and workmanship, Google and Huawei routinely refused to honor their warranty
21 obligations. Instead of fixing reported problems, Google and Huawei have blamed each other for the
22 issues consumers experienced, denied warranty service for pretextual reasons, and obfuscated the
23 source of the Nexus 6P's problems. When Google and Huawei have agreed to replace a defective
24 Nexus 6P, they provide a replacement Nexus 6P that is also defective, exposing consumers to repeat
25 failures.

26 3. The defect is substantially certain to manifest—tens of thousands of consumers have
27 reported random shutdowns and reboots, accelerated battery loss, and bootlooping failures. Plaintiffs
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1 have consequently been deprived of the benefit of their bargain, and bring this action to obtain relief for
2 themselves and other Nexus 6P purchasers.

3 **PARTIES**

4 4. Plaintiffs Jonathan Makcharoenwoodhi, Alex Gorbachev, and Brian Christensen are
5 citizens and residents of California.

6 5. Plaintiff Anthony Martorello is a citizen and resident of Florida.

7 6. Plaintiff Edward Beheler is a citizen and resident of Indiana.

8 7. Plaintiff Yuriy Davydov is a citizen and resident of New York.

9 8. Plaintiffs Rebecca Harrison and Zachary Himes are citizens and residents of North
10 Carolina.

11 9. Plaintiff Taylor Jones is a citizen and resident of North Dakota.

12 10. Plaintiff Paul Servodio is a citizen and resident of Ohio.

13 11. Plaintiff Justin Leone is a citizen and resident of Pennsylvania.

14 12. Plaintiff James Poore, Jr. is a citizen and resident of Texas.

15 13. Plaintiff Kenneth Johnston is a citizen and resident of Washington.

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

18 15. Defendant Huawei Device USA, Inc. is incorporated under Texas law and maintains its
19 principal place of business at 5700 Tennyson Parkway, Suite 500 Plano, Texas 75024.

20 **JURISDICTION AND VENUE**

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

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

1 **PLAINTIFF-SPECIFIC ALLEGATIONS**

2 **Plaintiff Jonathan Makcharoenwoodhi (California)**

3 24. In April 2016, Mr. Makcharoenwoodhi purchased a Nexus 6P from a Best Buy store in
4 California for \$544.99.

5 25. Before purchasing the Nexus 6P, Mr. Mackharoenwoodhi: (1) saw several
6 advertisements in which Google made representations about the Nexus 6P's high quality and
7 functionality, including that the Nexus 6P had excellent battery life; and (2) reviewed the material on
8 the Nexus 6P's box. Immediately upon receiving his phone, but before using it, Mr.
9 Makcharoenwoodhi went through the phone's initial set-up process, in which Google provided him
10 with information about the device, including information about the battery.

11 26. In February 2017, Mr. Makcharoenwoodhi's Nexus 6P began experiencing accelerated
12 battery drain, and repeatedly shut down randomly, even when the phone showed it was more than 80%
13 charged. On March 21, 2017, Mr. Makcharoenwoodhi contacted Huawei for an effective repair,
14 replacement with a non-defective phone, or a refund under Huawei's warranty. Huawei denied his
15 claim because of a small dent by the volume button of his phone that had no effect on his phone's
16 functionality. Mr. Makcharoenwoodhi accordingly purchased a replacement phone.

17 **Plaintiff Alex Gorbachev (California)**

18 27. On October 29, 2015 Mr. Gorbachev purchased a Nexus 6P from the Google Store for
19 \$546.40 while in California.

20 28. Before purchasing the Nexus 6P, Mr. Gorbachev saw several advertisements in which
21 Google made representations about the Nexus 6P's high quality and functionality, including claims that
22 the Nexus 6P battery would quickly recharge in full. Immediately upon receiving his phone, but before
23 using it, Mr. Gorbachev reviewed the material on the Nexus 6P's box and went through the phone's
24 initial set-up process, in which Google provided him with information about the device.

25 29. On March 17, 2017, after experiencing two months of random shutdowns and reboots,
26 Mr. Gorbachev's Nexus 6P entered a permanent bootloop cycle. He contacted Google on the same
27 day to request an effective repair, replacement with a non-defective phone, or a refund, but Google
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1 refused to help him because his warranty had expired. Mr. Gorbachev accordingly purchased a
2 replacement phone.

3 **Plaintiff Brian Christensen (California)**

4 30. On November 27, 2015, Mr. Christensen purchased a Nexus 6P directly from Huawei
5 for \$700.93 while in California.

6 31. Before purchasing the Nexus 6P, Mr. Christensen visited the Nexus 6P webpages on
7 Google and Huawei's websites, and saw representations by both Google and Huawei about the Nexus
8 6P's high quality and functionality, including that the battery could "get up to seven hours of use after
9 only ten minutes of charging." Mr. Christensen also watched the Nexus 6P launch event, in which
10 Google and Huawei touted the phone as "premium" and highlighted its "long-lasting 3450 mAh
11 battery." Huawei shipped the phone to Mr. Christensen on December 9, 2015. Immediately upon
12 receiving his phone, but before using it, Mr. Christensen reviewed the material on the Nexus 6P's box
13 and went through the phone's initial set-up process, in which Google provided him with information
14 about the battery.

15 32. In early December 2016, Mr. Christensen's Nexus 6P began experiencing accelerated
16 battery drain, and repeatedly shut down randomly, even when the phone showed it was charged. Mr.
17 Christensen called Huawei customer service in late December 2016 to report the battery drain problem
18 and request an effective repair, replacement with a non-defective phone, or a refund under Huawei's
19 warranty. Huawei denied warranty relief, blaming the battery drain condition on a software problem,
20 and directed Mr. Christensen to contact Google. Mr. Christensen contacted Google in early January
21 2017. Google told Mr. Christensen that the battery problems he reported were caused by a known
22 hardware defect with the Nexus 6P. Google, however, refused to provide any assistance because Mr.
23 Christensen purchased his phone directly from Huawei. Mr. Christensen again contacted Huawei on
24 January 12, 13, and 16, but Huawei maintained that his Nexus 6P's battery drain problems were
25 software-related and refused to help him.

26 33. In late January 2017, Mr. Christensen's Nexus 6P bootlooped and failed permanently.
27 Mr. Christensen again contacted Huawei, but Huawei refused to offer any assistance because his
28 warranty had expired. Mr. Christensen then contacted Google on February 2, 2017, but Google again

1 refused to provide support because Mr. Christensen had not purchased his phone from the Google store.
2 Mr. Christensen then participated in a three-way call with Google and Huawei representatives during
3 which the Google representative once again refused assistance, reiterating that his Nexus 6P had failed
4 because of a known hardware defect. Mr. Christensen accordingly purchased a replacement phone.

5 **Plaintiff Anthony Martorello (Florida)**

6 34. On May 24, 2016, Mr. Martorello purchased a Nexus 6P directly from Google for \$549
7 while in Florida and paid an additional \$89 for the Nexus Protect insurance plan.

8 35. Before purchasing the Nexus 6P, Mr. Martorello saw several Google and Huawei
9 representations about the Nexus 6P's high quality and functionality, including that the Nexus 6P had a
10 long battery life. Mr. Martorello also saw the Google launch event described in paragraph 102, below.
11 Immediately upon receiving his phone, but before using it, Mr. Martorello reviewed the material on the
12 Nexus 6P's box and went through the phone's initial set-up process, in which Google provided him
13 with information about the device.

14 36. Mr. Martorello's Nexus 6P began experiencing accelerated battery drain in June 2016—
15 his battery drained quickly, and his Nexus 6P repeatedly shut down randomly, even when the phone
16 showed it was more than 80% charged. On July 7, 2016, Mr. Martorello's Nexus 6P entered the
17 bootloop cycle. On July 16, 2016, he contacted Google, which denied assistance and directed him to
18 Huawei for warranty help. That same day Mr. Martorello contacted Huawei. After an ineffective
19 attempt at troubleshooting, the Huawei representative directed Mr. Martorello back to Google, advising
20 that his phone was still within Google's one-year warranty and that Google was the only entity that
21 could process a return. On July 19, 2016, Mr. Martorello again contacted Google to request an
22 effective repair, replacement with a non-defective phone, or a refund, but a Google representative once
23 again said that Google could not help him. Although Mr. Martorello's phone bootlooped only two
24 months after his purchase and well within the one-year warranty period provided for in Huawei's
25 express warranty, Google and Huawei each denied his requests for warranty service.

26 37. On July 25, 2016, Mr. Martorello made a claim through Nexus Protect to obtain a
27 replacement Nexus 6P. On January 26, 2017, his replacement Nexus 6P also began experiencing
28 accelerated battery drain, and on January 27 began bootlooping intermittently. On February 5, 2017,

1 Mr. Martorello again made a claim under his Nexus Protect insurance plan, paid a deductible of \$89.99,
2 and received a refurbished Nexus 6P. The refurbished Nexus 6P was also defective—it suffered from
3 accelerated battery drain and randomly shut down. Mr. Martorello accordingly purchased a
4 replacement phone.

5 **Plaintiff Edward Beheler (Indiana)**

6 38. On July 12, 2016, Mr. Beheler purchased a Nexus 6P from Amazon for \$509.99 while in
7 Indiana.

8 39. Before purchasing the Nexus 6P, Mr. Beheler saw several advertisements in which
9 Google made representations about the Nexus 6P’s high quality and functionality, including that the
10 battery would “[g]et up to seven hours of use after only ten minutes of charging.” Immediately upon
11 receiving his Nexus 6P, but before using it, Mr. Beheler reviewed the material on the Nexus 6P’s box
12 and went through the phone’s initial set-up process, in which Google provided him with information
13 about the device, including information about the battery.

14 40. In March 2017, Mr. Beheler’s Nexus 6P began experiencing accelerated battery drain,
15 and repeatedly shut down randomly, even when the phone showed it was 90% charged. In April 2017,
16 Mr. Beheler contacted Google customer support. Google stated Mr. Beheler’s Nexus 6P was defective,
17 but Google refused to offer an effective repair, to replace Mr. Beheler’s Nexus 6P with a non-defective
18 phone, or to provide a refund because he had purchased his phone from Amazon. Google told Mr.
19 Beheler to contact Huawei.

20 41. On April 11, 2017, Mr. Beheler spoke with a Huawei representative who agreed that his
21 Nexus 6P was defective and told him to send his phone in for repair or replacement. Mr. Beheler
22 discovered from online reports that Huawei’s repair department was overwhelmed by warranty claims,
23 resulting in repairs and replacement requests taking up to four weeks to process. Mr. Beheler further
24 discovered online reports that consumers’ repaired or replaced Nexus 6Ps also were defective. Mr.
25 Beheler accordingly declined Huawei’s offer. He could not go a month without a mobile phone, and he
26 did not want another defective Nexus 6P. Over the next few weeks, Mr. Beheler contacted Google
27 several times for assistance. Each time a Google representative reiterated that Google would not help
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1 him and that he must direct his concerns to Huawei. Mr. Beheler accordingly purchased a replacement
2 phone.

3 **Plaintiff Yuriy Davydov (New York)**

4 42. On December 21, 2015, Mr. Davydov purchased a Nexus 6P from Amazon for \$499.99
5 while in New York.

6 43. Before purchasing the Nexus 6P, Mr. Davydov saw several advertisements in which
7 Google made representations about the Nexus 6P's high quality and functionality, including that the
8 Nexus 6P could achieve a full battery charge quickly. Immediately upon receiving his phone, but
9 before using it, Mr. Davydov reviewed the material on the Nexus 6P's box and went through the
10 phone's initial set-up process, in which Google provided him with information about the device,
11 including information about the battery.

12 44. On April 15, 2016, Mr. Davydov's Nexus 6P began experiencing accelerated battery
13 drain, and repeatedly shut down randomly, even when the phone showed it was charged. On
14 September 20, 2016, Mr. Davydov separately contacted both Google and Huawei about the problem.
15 Google refused warranty assistance on the grounds that Mr. Davydov did not buy his Nexus 6P from
16 Google. Huawei attempted without success to troubleshoot the problem, and advised that he could
17 send his phone in for repair or replacement but that Huawei could not guarantee the warranty service
18 would be free. Mr. Davydov discovered from online reports that Huawei's repair department was
19 overwhelmed by warranty claims, resulting in repairs and replacement requests taking up to four weeks
20 to process. Mr. Davydov further discovered online reports that consumers' repaired or replaced Nexus
21 6Ps also were defective. Mr. Davydov could not go a month without a mobile phone, and he did not
22 want another defective Nexus 6P. Mr. Davydov accordingly declined Huawei's offer and purchased a
23 replacement phone.

24 **Plaintiff Rebecca Harrison (North Carolina)**

25 45. On April 11, 2016, Mrs. Harrison purchased a Nexus 6P from Amazon for \$552.99
26 while in North Carolina.

27 46. Before purchasing the Nexus 6P, Mrs. Harrison saw advertisements from Google and
28 Huawei representing that the Nexus 6P had excellent battery life and otherwise emphasizing the

1 phone's high quality and functionality. Immediately upon receiving her phone, but before using it,
2 Mrs. Harrison reviewed the material on the Nexus 6P's box and went through the phone's initial set-up
3 process, in which Google provided her with information about the device, including information about
4 the battery.

5 47. Beginning in February 2017, Mrs. Harrison's Nexus 6P began experiencing accelerated
6 battery drain, and repeatedly shut down randomly, even when the phone showed it was 80% charged.
7 Mrs. Harrison contacted Huawei on March 19, 2017 to request an effective repair, replacement with a
8 non-defective phone, or a refund under Huawei's warranty. A Huawei representative told her that she
9 would receive an email requesting information to process her warranty claim, and that she should reply
10 to that email in order to obtain a return shipping label. Although Mrs. Harrison sent Huawei the
11 requested information, Huawei never followed up with her. Huawei also failed to respond to her
12 follow-up emails and has never provided a remedy for her defective phone. Mrs. Harrison accordingly
13 purchased a replacement phone.

14 **Plaintiff Zachary Himes (North Carolina)**

15 48. On March 25, 2016, Mr. Himes purchased a Nexus 6P from Best Buy for \$449.99 while
16 in North Carolina.

17 49. Before purchasing the Nexus 6P, Mr. Himes saw several advertisements in which
18 Google and Huawei made representations about the Nexus 6P's high quality and functionality,
19 including that the battery would "[g]et up to seven hours of use after only ten minutes of charging," and
20 otherwise had superior battery charging capabilities. Immediately upon receiving his phone, but before
21 using it, Mr. Himes reviewed the material on the Nexus 6P's box and went through the phone's initial
22 set-up process, in which Google provided him with information about the device, including information
23 about the battery.

24 50. In January 2017, Mr. Himes's Nexus 6P began experiencing accelerated battery drain,
25 and repeatedly shut down randomly, even when the phone showed it was charged. On February 8,
26 2017, Mr. Himes contacted Google by email to request an effective repair, replacement with a non-
27 defective phone, or a refund. Google declined, attempted unsuccessfully to troubleshoot the problem,
28 and then instructed Mr. Himes to contact Huawei. On February 10, 2017, Mr. Himes contacted Huawei

1 to request an effective repair, replacement with a non-defective phone, or a refund under Huawei's
2 warranty. Like Google, Huawei did not offer warranty assistance, but instead attempted unsuccessfully
3 to troubleshoot Mr. Himes's Nexus 6P. When troubleshooting failed, Huawei told Mr. Himes that a
4 forthcoming software update would solve his problems. Neither Google nor Huawei ever provided
5 such an update. Mr. Himes accordingly purchased a replacement phone.

6 **Plaintiff Taylor Jones (North Dakota)**

7 51. On January 13, 2016, Mr. Jones purchased a Nexus 6P from Google for \$649 while in
8 North Dakota.

9 52. Before purchasing the Nexus 6P, Mr. Jones saw several advertisements in which Google
10 and Huawei made representations about the Nexus 6P's high quality and functionality, including
11 representations on both companies' websites touting the Nexus 6P's superior battery charging
12 capabilities, including claims that the Nexus 6P is "built on a foundation of power." Immediately upon
13 receiving his phone, but before using it, Mr. Jones reviewed the material on the Nexus 6P's box and
14 went through the phone's initial set-up process, in which Google provided him with information about
15 the device, including information about the battery.

16 53. In October 2016, Mr. Jones's Nexus 6P began experiencing accelerated battery drain,
17 and repeatedly shut down randomly, even when the phone showed it was charged. He contacted
18 Google, which sent him a replacement Nexus 6P on October 24, 2016. That replacement immediately
19 experienced accelerated battery drain: it, too, shut down prematurely, even when showing that the
20 battery was 80% charged. In January 2017, Mr. Jones contacted Google about his defective
21 replacement Nexus 6P. Google sent him a replacement Nexus 6P on January 16, 2017. Mr. Jones's
22 second replacement Nexus 6P was also defective, exhibited accelerated battery drain, and randomly
23 shut down. In February 2017, Mr. Jones again contacted Google requesting an effective repair,
24 replacement with a non-defective phone, or a refund. Google sent him a third replacement Nexus 6P on
25 February 10, 2017. Mr. Jones's third replacement also proved defective—like his other Nexus 6Ps, it
26 experienced accelerated battery drain and prematurely shut off, even when showing the battery was
27 charged. Mr. Jones contacted Google to report his defective phone and seek assistance. Google sent
28 him a fourth replacement Nexus 6P on February 23. Mr. Jones's fourth Nexus 6P also proved

1 defective. Like his previous Nexus 6Ps, it too exhibited accelerated battery drain and randomly shut
2 down. On March 10, 2017, Mr. Jones once again contacted Google, which refused to provide another
3 replacement on grounds that his phone was out of warranty. Mr. Jones accordingly purchased a
4 replacement phone.

5 **Plaintiff Paul Servodio (Ohio)**

6 54. On March 12, 2016, Mr. Servodio purchased a Nexus 6P from online retailer Newegg
7 for \$452.99 while in Ohio.

8 55. Before purchasing the Nexus 6P, Mr. Servodio saw several advertisements in which
9 Google and Huawei made representations about the Nexus 6P's high quality and functionality,
10 including an advertisement stating that the battery would "[g]et up to seven hours of use after only ten
11 minutes of charging," as well as Huawei's claim on NewEgg's website that the Nexus 6P is "built on a
12 foundation of power." Immediately upon receiving his phone, but before using it, Mr. Servodio
13 reviewed the material on the Nexus 6P's box and went through the phone's initial set-up process, in
14 which Google provided him with information about the device, including information about the battery.

15 56. On February 15, 2017, Mr. Servodio's Nexus 6P began experiencing accelerated battery
16 drain, and subsequently shut down, entering a terminal bootloop cycle. He contacted Google several
17 times the same day to request an effective repair, replacement with a non-defective phone, or a refund.
18 Google refused, and instead attempted unsuccessfully to troubleshoot Mr. Servodio's Nexus 6P before
19 directing him to Huawei.

20 57. Mr. Servodio contacted Huawei the same day. Huawei told Mr. Servodio that he
21 qualified for a refurbished Nexus 6P. Mr. Servodio then received an email from Huawei instructing
22 him to take and send pictures of his phone. He did so, but a Huawei supervisor denied warranty service
23 on the grounds that: (1) Mr. Servodio's phone had minor cosmetic damage; and (2) his warranty
24 expired (even though he had more than 20 days of his warranty period remaining). Mr. Servodio
25 accordingly purchased a replacement phone.

26 **Plaintiff Justin Leone (Pennsylvania)**

27 58. On October 5, 2015, Mr. Leone purchased a Nexus 6P through the Google Store for
28 \$528.94 while in Pennsylvania. He also purchased an \$89 Nexus Protect plan.

1 76. Both Google and Huawei are major smartphone manufacturers. The Nexus 6P was the
2 eighth smartphone since 2010 in Google’s “Nexus” line of Android phones. In 2015 alone, Huawei
3 produced and shipped over 100 million smartphones worldwide.

4 77. Google was responsible for design and development of the Nexus 6P’s Android
5 operating system. Google’s role in the Nexus 6P’s development also extended beyond software.
6 Google held itself out as a manufacturer of its Nexus phones. It advised members of the press that
7 “Nexus is built by the same people who build” the phone’s operating system. Google’s industrial
8 designers, mechanical engineers, and product designers exercised significant control over the design,
9 development, and manufacturing process for the Nexus 6P.

10 78. In an interview with technology industry publication *Wired*, Google Nexus 6P industrial
11 designer Alberto Villarreal and product manager Sandeep Waraich made clear that Google controlled
12 development of the device, including key design and manufacturing elements:

13 It was a big challenge,’ [Villarreal] says. “The sensor is pretty big, but we still wanted to
14 have clean devices, and optimize them for ergonomics.” The Nexus team learned a lot
15 from the Nexus 6, which some people found too wide and too thick to really be wieldy.
16 “You can’t afford a large device to be very bulky,” says Sandeep Waraich, a product
17 manager on the project. “You have to make it very thin, very sculpted, very narrow.” So
18 Villarreal thinned the device down, shrunk the screen from 6 to 5.7 inches, and moved
19 most of the circuitry to that small hump on top. “The location of the camera here is
higher up, and not centered,” he says. “That made sense for all the componentry inside—
but we wanted to make it, again, something more stable so it didn’t feel like there was a
big bump on one side.”

20 79. In a September 30, 2015 “Ask Us Anything” forum on Reddit, Google’s Nexus 6P team
21 described that “[e]ach Nexus product is a collaboration between Google and the OEM – from
22 conception to specs to design to hardware and software development – drawing the best of Google’s
23 and the OEM’s technologies.”

24 80. Google’s Nexus 6P team informed members of the press that Google took the lead in
25 designing the phone and integrating many of the phone’s components like the camera, battery, and
26 display. They further acknowledged that Google faced “major engineering challenges” while designing
27 the phone around the hundreds of different components it contained. In producing the Nexus 6P,
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1 Google dictated the selection of major components, such as the camera, and also micromanaged small
2 details such as adjustments to the phone's screws.

3 81. Google controlled the manufacturing as well as the design of the Nexus 6P. At a
4 December 2015 Google Nexus Open Studio Event in New York City, members of Google's Nexus 6P
5 team indicated that Google was actively involved throughout the 80 different steps of the Nexus 6P's
6 manufacturing process, and that Google employees were on the Nexus 6P manufacturing line. Google
7 also required that all aluminum leftovers from the production process be collected and recycled.

8 **Google and Huawei Rush the Development of the Nexus 6P**

9 82. It typically takes 18 months to develop and test a smartphone, with some phones taking
10 more than two years. In February 2015, Huawei advised the technical press that before being released,
11 a new smartphone must undergo five months of extensive testing involving thousands of engineering
12 prototypes.

13 83. In early November 2015, Eric Fang, Huawei's Vice President of Research and
14 Development in the United States, admitted that the Nexus 6P was released after "a very short
15 development cycle." In December 2015, Google Nexus 6P developers confirmed that the Nexus 6P
16 was developed and released in just seven months.

17 84. There were no special circumstances suggesting that the Nexus 6P could be adequately
18 developed in this truncated time period. To the contrary, Google and Huawei acknowledged that the
19 Nexus 6P's development posed unique challenges for both companies. Google engineers told *Wired*
20 that the need to design the phone around specific components like the camera while still maintaining a
21 sleek, attractive appearance was a major challenge. As for Huawei, its previous devices targeted the
22 Asian market; the Nexus 6P represented Huawei's first major foray into the U.S. market. Huawei
23 stated in a press release that, as a result, it "face[d] a lot of complexities in the technology" such as
24 fitting all the necessary hardware for international LTE bands into the phone's aluminum unibody case.

25 **Pre-Release Testing of the Nexus 6P**

26 85. Google and Huawei conducted testing of the Nexus 6P, including its internal
27 components, durability, and performance, before it was released.

28

1 86. Extensive pre-release testing is a critical step in the smartphone development process.
2 Defective or damaged smartphone components, or loose connections between components, can cause
3 major problems with the devices—like the bootloop and battery problems Plaintiffs experienced. Pre-
4 release testing allows the manufacturer to take steps to identify and eliminate or mitigate defects.

5 87. Using advanced equipment, smartphone producers can detect flaws relatively easily.
6 But once flaws have been identified, it is difficult and time consuming for producers to address the
7 flaws through design changes. Therefore, sufficient time must be afforded after internal testing to make
8 adjustments to the phone’s design, internal components, and manufacturing process.

9 88. Given that pre-release testing alone typically takes five months, and Google and Huawei
10 developed and released the Nexus 6P from start to finish in only seven months, Google and Huawei
11 could not have dedicated the standard five months to product testing. Instead, it took Google and
12 Huawei months to agree on basic Nexus 6P design elements. They spent three months finalizing the
13 location of the USB Type-C connector on the bottom of the phone alone.

14 89. Although the development cycle for the Nexus 6P was rushed, Google and Huawei
15 employed advanced equipment to test the phones. That testing reasonably should have alerted each
16 company to the defective nature of the Nexus 6P. Google and Huawei did not afford themselves
17 sufficient time to take remedial design and manufacturing measures to mitigate the defect that their
18 testing should have uncovered.

19 90. Huawei owns and operates multiple research and testing facilities at which its phones—
20 including the Nexus 6P—are tested before being released to the public. Google engineers worked
21 closely with Huawei engineers during the Nexus 6P’s pre-release testing. Huawei and Google
22 regularly shared pre-release testing data with each other.

23 91. To test the Nexus 6P’s durability and reliability, Google and Huawei used advanced
24 machinery that simulates how consumers use their phones. The testing equipment performs a variety of
25 stress tests, such as repeatedly dropping the phones from different angles, bending the phones, plugging
26 and unplugging the phones’ connectors thousands of times to test the strength of the phones’
27 connections, and subjecting the phones to extreme temperatures and humidity. These tests allow
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1 engineers to evaluate not only the strength and durability of a device’s external case and screen, but
2 also its delicate and complex internal components and their connections to the internal circuit board.

3 92. Such pre-release testing is aimed in part at preventing random shutdowns and device
4 failures, including through bootlooping. When a smartphone starts up, for example, its software
5 attempts to test and activate each of the phone’s hardware components. If the connections between the
6 hardware components are damaged or become loose, the phone’s software may not be able to activate
7 the necessary components, which can prevent the phone from booting up and trigger the fatal bootloop
8 cycle.

9 93. Inside every smartphone is a printed circuit board or “pcb” that houses the phone’s
10 essential hardware components. These components, like the processor or random access memory, are
11 connected to the pcb with metal alloys that are soldered into place. Electrical current from the battery
12 flows through wires and conducting channels on the pcb and through the components via the metal
13 solder joints and into tiny wires inside the components. The wires and conducting materials can only
14 handle a certain amount of electrical current before they become irreparably damaged. As a result,
15 manufacturers must ensure that the amount of current does not exceed these limits. Damage or defects
16 in any of the delicate circuits, wires, solder joints, and components may impact the flow of electrical
17 current and result in component failure. When such failure occurs, the smartphone may freeze,
18 randomly shut down, or bootloop.

19 94. Internal components—such as the processor and battery—generate significant amounts
20 of heat. Excessive heat can damage internal circuits and wires and cause phones to shut down or
21 become inoperable. Effective thermal management and pre-release testing for thermal vulnerabilities is
22 therefore vital to ensuring smartphone reliability.

23 95. Modern circuits often consist of millions of tiny components that cannot be seen by the
24 human eye. Thus, to evaluate and test smartphone components, smartphone manufacturers, including
25 Google and Huawei, utilize sophisticated software, such as electronic design automation, to design and
26 optimize the layout of circuits and the placement of components, and to measure the amount of
27 electrical current flowing through the circuits.

28

1 96. Google and Huawei’s pre-release testing of the Nexus 6P included testing of internal
2 components for problems not visible to the human eye. For instance, Google engineers stated that the
3 Nexus 6P’s pre-release testing involved testing for thermal issues related to the phone’s Qualcomm
4 Snapdragon 810 processor. (A processor is a critical component that serves as the brain of the
5 smartphone, and like a computer, performs calculations and executes code in response to commands.)
6 Pre-release testing of the Snapdragon 810 processor and the Nexus 6P’s thermal management was
7 especially important because a smartphone’s delicate internal components are susceptible to damage or
8 degradation from excessive heat, and at the time Google and Huawei were testing the Nexus 6P, the
9 Snapdragon 810 processor was known within the smartphone industry and publicly to be prone to
10 overheating and thermal management problems. In January 2015, for instance, Samsung decided not to
11 use the Snapdragon 810 in its Galaxy S6 phone due to overheating problems revealed during
12 Samsung’s internal testing. Shortly after, LG also decided not to use the Snapdragon 810 in its G4
13 smartphone because of similar overheating concerns.

14 97. To perform thermal testing on the Nexus 6P, Google and Huawei engineers used
15 advanced microscopes and computer imaging software to examine the thermal characteristics of
16 components and component wear and tear—including circuitry—at a microscopic level. Google and
17 Huawei engineers exposed the Nexus 6P’s internal circuitry and components to high temperatures and
18 voltages and used advanced microscopes and imaging software to evaluate the impact of temperature
19 and the flow of electrical current on the phones’ circuit board, electrical wires, and solder points.
20 Smartphone manufacturers generally run the results of such tests through mathematical equations to
21 determine the lifespan of a phone’s components under various operating conditions.

22 98. The Nexus 6P’s battery, like all its components, was similarly subjected to pre-release
23 testing. Huawei owns and operates labs dedicated to developing and testing lithium-ion batteries.
24 CTIA, the American wireless trade association, instructs smartphone producers to conduct specific and
25 exhaustive testing of smartphone batteries, including “analysis of and mitigation of known and
26 potential faults,” efforts to “minimize latent problems,” over-current and over-voltage protection, and
27 testing to ensure that any impurities in the batteries do not exceed “critical limits.” If a battery fails
28 during pre-release testing, engineers use microscopes and other scanning equipment, such as X-rays, to

1 determine the root cause of the failure and examine internal components for any contamination or
2 irregularities. During production, as well, batteries are X-rayed to guard against battery cell
3 contamination.

4 99. In sum, industry-standard testing allows a smartphone manufacturer to examine the
5 device's internal components down to a microscopic level for defects like loose connections between
6 components, manufacturing flaws in components, overheating and thermal vulnerabilities, and battery
7 contamination. As Google's Nexus team noted, designing a phone and integrating hundreds of
8 different components represents a "major engineering challenge." Thus, any adjustments needed to
9 address problems disclosed by pre-release testing cannot be made quickly or easily.

10 100. As a result of Google and Huawei's pre-release testing for the Nexus 6P, Google and
11 Huawei were aware, or reasonably should have been aware, of the latent defect in the Nexus 6P before
12 bringing it to market. But Google and Huawei's decision to adhere to a September 2015 launch date
13 did not give them enough time to address the latent defect in the Nexus 6P.

14 **Google and Huawei Launch the Nexus 6P Without Disclosing the Defect**

15 101. Google and Huawei launched the Nexus 6P at a joint press event in San Francisco on
16 September 29, 2015. The launch event was available through online streaming and has been viewed
17 over 1.5 million times on YouTube.

18 102. Touting the Nexus 6P as "a truly premium device," Google and Huawei together
19 presented the Nexus 6P as the flagship Android phone and a direct competitor to the iPhone 6. Google
20 and Huawei each repeatedly emphasized the phone's high-quality construction and components, calling
21 the Nexus 6P the "most premium phone yet," and "the ultimate Android experience" with "[a] long-
22 lasting 3450 mAh battery." Google's Vice President of Engineering Dave Burke claimed that the
23 Nexus 6P was "the most advanced Android software built into innovative software," with "the very
24 latest and best in material design," capable of "charg[ing] fully in about half the time of an iPhone 6
25 Plus."

26 103. Google and Huawei emphasized the Nexus 6P's design and construction, highlighting its
27 "sophisticated" all "[m]etal unibody" and large durable screen "so your phone can go as hard as you
28 can[.]"

1 104. On each of their respective websites, as well as in press releases, Google and Huawei
2 claimed that the Nexus 6P’s “included Type-C fast charger gives up to seven hours of battery life from
3 a 10-minute charge.”

4 105. In advertising posted on retailer’s websites, Google and Huawei further represented that
5 “performance on the new Nexus is faster than ever, yet gentler on battery life” and that the Nexus 6P
6 would be “[f]irst in line for software updates and designed from the inside out with an Android-centric
7 point of view, Nexus is the ultimate Android experience.”

8 106. To promote the Nexus 6P, Google and Huawei ran an extensive multi-million dollar
9 online and television advertising campaign. One advertisement has been viewed more than 23 million
10 times. That advertisement promoted the Nexus 6P as “crafted from aeronautical-grade aluminum and
11 precision engineered for optimal comfort and performance.”

12 107. Initially, Google sold the Nexus 6P directly through the Google Store and Google’s
13 Project Fi at prices ranging from \$499 to \$649, depending on storage capacity. Huawei also sold the
14 Nexus 6P directly through its website and later sold the Nexus 6P through third-party retailers
15 including Best Buy, Newegg, and Amazon. Google began accepting preorders for the Nexus 6P on
16 September 29, 2015, with first shipments scheduled for October 27 or 28, 2015. Due to production
17 delays, however, most pre-ordered phones did not reach consumers until November 2015.

18 108. Customers who bought from Huawei’s website (Christensen) or the Google Store
19 (Gorbachev, Martorello, Jones, Leone) were required to purchase their Nexus 6P through Huawei and
20 Google’s online purchase portals, which provided them with information about the device, including
21 price and color, among other things. At no time did Huawei or Google disclose any defect associated
22 with the Nexus 6P through their respective purchase portals.

23 109. Before using their Nexus 6P, every Plaintiff was exposed to their phone’s external
24 packaging. Google and Huawei were jointly responsible for the design of the Nexus 6P’s external
25 packaging. The packaging references “Huawei” and the Google trademarks “Nexus” and “Android.”
26 The Nexus 6P’s packaging features a large stylized “P” and basic product information, such as the
27 phone’s model and serial numbers, device color, and a Federal Communications Commission
28

1 identification number. At no time did the external packing disclose any defect associated with the
2 Nexus 6P.

3 110. After purchasing but before using the Nexus 6P, every Plaintiff was required to, and did,
4 undertake Google's standard Nexus 6P set-up process on their device. During this process, Plaintiffs
5 interacted with Google, Google provided information about how to use the phone (including how to
6 optimize its battery life), and Plaintiffs conducted general set-up activities like: (1) connecting to the
7 internet; (2) migrating data; (3) linking the phone to their Google accounts; (4) scanning fingerprints;
8 (4) downloading Google's application; and (5) enrolling in Google services. Through the set-up
9 process, before Plaintiffs could begin using their phones, they were presented with and were required to
10 acknowledge additional information and disclosures about the phone such as Google's privacy policy,
11 terms of service, location services, and diagnostic information. At no time did Google disclose any
12 defect associated with the Nexus 6P as part of this set-up process.

13 111. Google permitted customers to return their Nexus 6P for a refund within 15 days of
14 receiving the phone. Huawei also permitted customers to return their Nexus 6P within 15 days.
15 Retailers such as Amazon, Best Buy, and Newegg similarly allowed customers to return products
16 within 14 to 30 days after purchase.

17 112. Google and Huawei had numerous opportunities to disclose the defective nature of the
18 Nexus 6P before or when Plaintiffs made their purchases, or during the period in which Plaintiffs could
19 have returned the phones for a full or partial refund. Neither Google nor Huawei made any such
20 disclosures.

21 **The Defect Manifests Soon After Launch**

22 113. Though the Nexus 6P appears to function normally when new, after a period of
23 operation, the Nexus 6P randomly shuts down, suffers from accelerated battery drain even when
24 displaying a nearly full charge, freezes, and ultimately fails permanently in an endless rebooting cycle.

25 114. When the Nexus 6P bootloops, it become unusable. The device is unable to proceed
26 beyond the initial Google start-up screen and cannot be fixed by resetting the phone. It is not possible
27 to use a bootlooped Nexus 6P for its ordinary and intended purpose—a bootlooped Nexus 6P cannot
28 make calls, send text messages, or perform any of its intended functions. Further, consumers

1 permanently lose access to all data and information stored on their phone, including photographs,
2 videos, text messages, and contact information.

3 115. Phones with accelerated battery drain are not suitable for their normal and intended
4 purpose—to serve as “mobile” communication devices. A Nexus 6P experiencing accelerated battery
5 drain shuts off suddenly, and without warning, even when its battery life icon shows that it is charged.

6 116. When a Nexus 6P whose screen shows the battery is charged turns off due to accelerated
7 battery drain and is then turned back on (after connecting to a power source), the screen shows that the
8 battery has the same or nearly the same level of charge as indicated just before the shutdown.

9 117. In order to use a Nexus 6P suffering from accelerated battery drain, a user must keep it
10 connected to a power source because it cannot run on battery power for more than a few minutes before
11 shutting off. Once a Nexus 6P suffers accelerated battery drain, it can no longer be used as a mobile
12 device.

13 118. For most consumers, the defect in the Nexus 6P manifests without warning. For others,
14 such as Plaintiff Gorbachev, the defect initially causes the Nexus 6P to randomly shut down and restart
15 before it enters a permanent bootloop cycle. In other instances the defect at first causes a noticeable
16 decrease in battery life before the phone starts to prematurely shut down despite showing a charge. In
17 all cases, however, manifestation of the defect in the Nexus 6P renders the device unsuitable for its
18 ordinary and intended purpose.

19 119. While pre-release testing should have made both Google and Huawei aware that the
20 Nexus 6P is defective in advance of launch, the record of public complaints received by both
21 Defendants demonstrates that each knew of the problems with the Nexus 6P concurrent with its release.
22 Large-scale delivery of the Nexus 6P did not begin until November 2015. But almost immediately after
23 Defendants released the Nexus 6P at the end of October 2015, consumers began posting about the
24 defect on social media, internet message boards, and product pages on retailer websites.

25 120. Many consumers also complained directly to Google and Huawei about the Nexus 6P.
26 Some of the earliest complaints appeared in an early November 2015 topic posted on Google’s own
27 Nexus 6P product forum—a site frequented by Google employees, who monitor consumer complaints.
28

1 The following complaints—many from Google’s own message board—demonstrate that consumers
2 notified Google and Huawei of defects associated with the Nexus 6P almost immediately after launch:

- 3 • October 31, 2015: “I received my 32gb Nexus 6P this past Thursday . . . I turned on Airplane
4 mode and turned it off again and BOOM the phone powers off and enters into a constant
5 rebooting loop. It was flashing the Google start up screen over and over and over again. I
6 called Google [customer service] and they walked me through more extensive troubleshooting.
7 But alas, no luck.”¹
- 8 • November 1, 2015: “I just had this problem occur as well. I was just fumbling with my phone
9 putting it in my car dock and then [the] phone reset itself and got stuck in bootloop . . . Quick
10 call to Google rep, apparently I did everything he was going to recommend I try to troubleshoot
11 the problem so he went and processed my RMA and replacement device.”²
- 12 • November 5, 2015: “[J]ust got it today in the mail and decided to restart the phone . . . and now
13 it[’]s stuck in the colorful bootloop and has been for over 2 hours.”³
- 14 • November 6, 2015: “My battery seemed to be draining quite quickly . . . I had next to nothing
15 running in the background and all that I did during that . . . time was browse the news in the
16 Google news and weather app.”⁴
- 17 • November 7, 2015: “Same thing happened to me. Rebooting in my pocket just as I needed to
18 use it.”⁵
- 19 • November 10, 2015: “I have [had] the same problem with my brand new [N]exus 6P . . . and it
20 is there since [the first] day [I] bought this phone [I] tried all the solutions available like factory
21 reset, wipe cache, safe mode but it didn’t help[] me [I] am very disappointed [in] [G]oogle.”

24
25 ¹ https://www.reddit.com/r/Nexus6P/comments/3qzco2/nexus_6p_constant_reboot_loop/ (last visited April 1,
2018).

26 ² <https://support.google.com/groups/answer/1649693?hl=en> (last visited April 1, 2018).

27 ³ <https://forum.xda-developers.com/nexus-6p/help/nexus-6p-stuck-bootloop-t3241318> (last visited April 1, 2018).

28 ⁴ https://www.reddit.com/r/Nexus6P/comments/3rrrfk/nexus_6p_battery_drain_does_this_seem_excessive/ (last
visited April 1, 2018).

⁵ <https://productforums.google.com/forum/#!topic/nexus/uhvZVgK2zz0> (last visited April 1, 2018).

- 1 • November 10, 2015: “I’ve had the Nexus 6P for about 4 days . . . Today, I turned it off for
2 about an hour in school – and when I turned it back on, it was stuck at the color animations we
3 see after the initial ‘Google’ load screen.”⁶
- 4 • November 11, 2015: “I just got my Nexus 6P last week. I have had the same experience with
5 random reboots. Virtually any application or task seems to cause the phone to reboot.”⁷
- 6 • November 13, 2015: “This happened to me for the first time today with my Nexus 6P hooked
7 up to the charger at my desk. Once it hit 100% it rebooted for no other reason.”⁸
- 8 • November 15, 2015: “My 6P will randomly reboot occasionally through the day . . . I’ve seen it
9 reboot when the phone is sitting idle and it will suddenly display ‘Google’ and the boot
10 animation.”⁹
- 11 • November 15, 2015: “I have brought the issue to Google’s attention . . . I will post if I find
12 anything helpful.”¹⁰
- 13 • November 15, 2015: “Same prob[lem] with my new 6p. My statement is that I was [using] the
14 same apps on my [N]exus 5 with zero issues. So people saying ‘it’s the apps’, I do not agree!”¹¹
- 15 • November 16, 2015: “I am getting this same problem. It is randomly rebooting. It did it just a
16 moment ago while I was on a call which is very frustrating as I didn[’]t realize I was speaking to
17 myself for almost a minute.”¹²
- 18 • November 19, 2015: “I woke up an hour late for work today thanks to waking up to a restarted
19 phone showing a please enter your PIN Screen. I use my phone as my alarm.”¹³
- 20 • November 20, 2015: “Keeps happening to me daily . . . Often it just reboots without me even
21 touching it[.]”¹⁴

22 _____
23 ⁶ <https://forums.androidcentral.com/nexus-6p/606812-why-isnt-my-nexus-6p-getting-past-loading-animation-screen.html> (last visited April 1, 2018).

24 ⁷ <https://productforums.google.com/forum/#!topic/nexus/uhvZVgK2zz0> (last visited April 1, 2018).

25 ⁸ *Id.*

26 ⁹ <https://productforums.google.com/forum/#!msg/nexus/ogHzWwDdpnE/7UIKDYroBQAJ> (last visited April 1, 2018).

27 ¹⁰ <https://productforums.google.com/forum/#!topic/nexus/uhvZVgK2zz0> (last visited April 1, 2018).

28 ¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

- 1 • November 22, 2015: “Same issue here. It is definitely the problem about the phone itself. So
2 disappointed [in] Google.”¹⁵
- 3 • November 22, 2015: “It randomly reboots your phone . . . It happens when you watch on
4 YouTube video or during [the] night. So disappointed [in] Google. Google said it [might be]
5 3rd party apps caus[ing] the problem but [I] had no problem on other Android phones with the
6 same apps.”
- 7 • November 22, 2015: “I don’t know if it is the same problem, but mine reboots and it is stuck in
8 the rebooting process![] [T]his is very annoying because the phone keeps rebooting in this
9 endless reboot loop[.]”¹⁶
- 10 • November 22, 2015: “Contacted Google. They’re shipping me a new one.”¹⁷
- 11 • November 23, 2015: “I have same issue just starting this weekend.”¹⁸
- 12 • November 24, 2015: “I have the same issue. I just got my 6P on Monday ... I have seen 3
13 reboots in less than 48 hours. For the latest one, the phone won’t start during reboot. Instead,
14 the white Google sign was cycling every 5 sec or so.”¹⁹
- 15 • December 1, 2015: “I am also getting a reboot ... when phone is charging and hits 100% but
16 only when battery was below 90% or more. I watched it happen during the day after that charge
17 cycle and it happens just about every night[.]”²⁰
- 18 • December 2, 2015: “I have this Nexus 6P for 2 days now, but it seems . . . my battery drains
19 really fast. I unplugged the charger at around 6:30 A.M. and my phone was then fully charged.
20 Now my phone has 71% battery left with a [screen on time] of 26 minutes.”²¹
- 21 • December 16, 2015: “What’s going on with my Nexus 6P’s battery? I’m only getting about an
22 hour and a half to 2 hours screen on time. That’s not good is it?”²²

23
24 ¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

27 ²¹ https://www.reddit.com/r/Nexus6P/comments/3v52at/battery_drains_really_fast_71_left_with_26/ (last visited
28 April 1, 2018).

²² <https://twitter.com/Bazsty/status/677155944846008320> (last visited April 1, 2018).

- 1 • December 17, 2015: “This phone is a major disappointment. I ordered it directly from
2 [H]uawei. The phone randomly reboot[s] even when not in use. I called [H]uawei and [they]
3 told me to do a bunch of things but none of them worked. They even accessed it remotely to try
4 to fix it but they couldn’t. I got really upset when they told me that they can only send it out for
5 repair and that would take 14 business days to get it back. No refund, no replacement. I then
6 called [G]oogle and they didn’t treat me any better. The representative told me the only way I
7 could get a replacement is if I had purchased the nexus protect extended warranty from Google.
8 That’s an extra \$80. I’m outraged about the way Huawei and [G]oogle handled the
9 situation.”²³
- 10 • December 19, 2015: “Major problem with battery drain. Really bad! [G]oogle needs to fix
11 this[.]”²⁴
- 12 • December 21, 2015: “Immediately after the last update my Nexus 6P went from amazing
13 battery life to such poor battery life that it shuts down even after just a few hours of NON USE
14 after charging”²⁵
- 15 • January 24, 2016: “Got my 3rd replacement on New Years. Was running well. Started with
16 the random rebooting again today.”²⁶
- 17 • February 4, 2016: “Hello everyone . . . after charging my phone at night [I] started the update
18 this morning then boo[m] [I] can’t start my nexus anymore . . . [I] got no command error then
19 boot loop all the way[.]”²⁷
- 20 • February 13, 2016: “I’ve been having severe battery drain issues that started ever since Android
21 6.0.1 came about and I have not been able to solve it even if I rest my phone . . . However over
22
23

24 ²³ [https://www.amazon.com/gp/customer-](https://www.amazon.com/gp/customer-reviews/R3F5CRHQ2TCSW8/ref=cm_cr_getr_d_rvw_ttl?ie=UTF8&ASIN=B015YCRZ06)
25 [reviews/R3F5CRHQ2TCSW8/ref=cm_cr_getr_d_rvw_ttl?ie=UTF8&ASIN=B015YCRZ06](https://www.amazon.com/gp/customer-reviews/R3F5CRHQ2TCSW8/ref=cm_cr_getr_d_rvw_ttl?ie=UTF8&ASIN=B015YCRZ06) (last visited April 1,
26 2018).

27 ²⁴ <https://twitter.com/andreaharry/status/678368648327782400> (last visited April 1, 2018).

28 ²⁵ <https://productforums.google.com/forum/#!msg/nexus/F7C-5nIqRqY/K2UHTGZpAQAJ> (last visited April 1,
2018).

²⁶ <https://productforums.google.com/forum/#!topic/nexus/uhvZVgK2zz0> (last visited April 1, 2018).

²⁷ <https://forum.xda-developers.com/nexus-6p/help/command-t3308390> (last visited April 1, 2018).

1 the course ... of about 4.5 hours; during which I used the phone for about 10 minutes, I have
2 had 20% battery drain, 13% of which is unaccounted.”²⁸

- 3 • February 19, 2016: “Nexus 6P is corrupted since this morning update . . . Then it’s stuck on
4 spinning boot animations . . . So I contacted Huawei Support . . . now I have to wait ~ 2 weeks
5 (they sen[t] it back to Huawei).”²⁹
- 6 • February 22, 2016: “Since Friday my Nexus 6P freezes on boot animation logo.”³⁰
- 7 • February 25, 2016: “I’ve been using my 6p for about 3 months now. Lately my battery has
8 gotten an average of 3-4 hours of [screen on time]. Compared to my first two months of use
9 where I was averaging around 5-6 hours. Is anyone having the same issue?”³¹
- 10 • March 25, 2016: “My Phone was running slow, and also was experiencing random crashes and
11 reboots. [I] decided [I] would [give] a factory reset a go. Since doing this, my phone only
12 boots to the ‘booting’ animation.... I have left it on the animation for 90 minutes and still no
13 change.”³²
- 14 • April 27, 2016: “Battery life has been [poor] since the first update after getting the phone.”³³
- 15 • June 2, 2016: “Hey my Nexus 6P started to boot loop today while using snapchat on the May
16 update. It won’t go past the white Google text, and won’t turn off unless I press the power and
17 down key and turn it off from there.... I can press the recovery button, but the phone doesn’t go
18 further than the Google text boot loop.”³⁴

21 _____
22 ²⁸ <https://forum.xda-developers.com/nexus-6p/help/nexus-6p-stuck-bootloop-t3241318> (last visited April 1,
2018).

23 ²⁹ https://www.reddit.com/r/Nexus6P/comments/46jwwl/nexus_6p_wont_start_since_update_and_oem_unlock/
24 (last visited April 1, 2018).

25 ³⁰ [https://forum.xda-developers.com/nexus-6p/help/nexus-6p-stock-mmb29p-stuck-boot-ota-
t3320485/post65466880#post65466880](https://forum.xda-developers.com/nexus-6p/help/nexus-6p-stock-mmb29p-stuck-boot-ota-t3320485/post65466880#post65466880) (last visited April 1, 2018).

26 ³¹ https://www.reddit.com/r/Nexus6P/comments/47ixu3/nexus_6p_battery_life_gotten_worse/ (last visited April
27 1, 2018).

28 ³² <https://productforums.google.com/forum/#!topic/nexus/XKkPyva5j6A> (last visited April 1, 2018).

³³ [https://www.reddit.com/r/Nexus6P/comments/4gn2xk/horrible_nexus_6p_battery_life_recently/#bottom-
comments](https://www.reddit.com/r/Nexus6P/comments/4gn2xk/horrible_nexus_6p_battery_life_recently/#bottom-comments) (last visited April 1, 2018).

³⁴ <https://productforums.google.com/forum/#!msg/nexus/Hi5qoZBKaZc/deZeQbUaAwAJ> (last visited April 1,
2018).

1 121. By August 2016, consumer complaints about bootloop and battery problems filled
2 Google's Nexus 6P product forum, internet message boards, Reddit, and social media.³⁵

3 122. Google and Huawei were aware of the consumer complaints immediately after they
4 released the Nexus 6P. Not only did many consumers contact Google and Huawei directly, but Google
5 and Huawei actively monitored and engaged with consumers on Reddit, internet message boards, social
6 media, and retailer websites.

7 123. At the December 2015 Google Nexus Open Studio event, Google employees
8 acknowledged that they were active on Reddit and subreddits dedicated to the Nexus 6P and Android
9 devices.

10 124. Huawei representatives frequently responded to both positive and negative reviews on
11 Nexus 6P product pages on retailer websites like Amazon and Newegg. Huawei representatives
12 promised consumers that their complaints and feedback would be passed on to the "development
13 team."³⁶ In a response to one negative Amazon review posted on November 3, 2015, a Huawei
14 representative wrote: "thank you for your feedback. We will relay this back to our team."³⁷ On
15 December 20, 2015, a Huawei representative responded to a complaint regarding constant booting
16 problems by writing, "I am sorry to hear you are having difficulty with your device rebooting."³⁸

17 125. On September 22, 2016, a Google employee using the account "GoogleNexusCM"
18 confirmed that Google monitored internet message boards, Reddit, and social media for the Nexus 6P,
19 stating: "Thanks for all the relevant data on usage, and please continue to post your experiences here
20 and elsewhere we monitor (Forum, Twitter, etc)."³⁹

21
22 ³⁵ See, e.g., <https://productforums.google.com/forum/#!topic/nexus/iPnYjg322Q8> (last visited April 1, 2018);
23 https://www.reddit.com/r/Nexus/comments/4zhx53/never_ending_boot_loop_with_android_7_nougat/ (last
24 visited April 1, 2018); [https://forum.xda-developers.com/nexus-6p/help/nexus-6p-android-7-0-bootloop-access-
25 t3449214](https://forum.xda-developers.com/nexus-6p/help/nexus-6p-android-7-0-bootloop-access-t3449214) (last visited April 1, 2018).

26 ³⁶ [https://www.amazon.com/gp/customer-
27 reviews/R3F5SCRHQ2TCSW8/ref=cm_cr_getr_d_rvw_ttl?ie=UTF8&ASIN=B015YCRYZM](https://www.amazon.com/gp/customer-reviews/R3F5SCRHQ2TCSW8/ref=cm_cr_getr_d_rvw_ttl?ie=UTF8&ASIN=B015YCRYZM) (last visited April 1,
28 2018).

29 ³⁷ [https://www.amazon.com/Huawei-Nexus-6P-unlocked-smartphone/product-
30 reviews/B015YCRYZM/ref=cm_cr_getr_d_paging_btm_224?ie=UTF8&reviewerType=all_reviews&sortBy=rec
31 ent&pageNumber=224](https://www.amazon.com/Huawei-Nexus-6P-unlocked-smartphone/product-reviews/B015YCRYZM/ref=cm_cr_getr_d_paging_btm_224?ie=UTF8&reviewerType=all_reviews&sortBy=recent&pageNumber=224) (last visited April 1, 2018).

32 ³⁸ *Id.*

33 ³⁹ [https://www.reddit.com/r/Nexus6P/comments/53xt82/nougat_ota_battery_drain_whats_the_official_word
34 /d7xre_p0/](https://www.reddit.com/r/Nexus6P/comments/53xt82/nougat_ota_battery_drain_whats_the_official_word/d7xre_p0/) (last visited April 1, 2018).

1 126. As partners and joint venturers with respect to the Nexus 6P, Google and Huawei each
2 was responsible for handling consumer complaints and warranty claims and shared information with
3 each other throughout their collaboration. No later than late October 2015, Google and Huawei each
4 was aware that the Nexus 6P is defective as a result of presale testing and/or the large volume of
5 consumer complaints regarding bootloop and battery drain problems with the Nexus 6P.

6 **Google and Huawei Fail to Adequately Address the Defective Nexus 6P**

7 127. Huawei provided a written one-year Limited Warranty with each Nexus 6P phone.
8 Huawei's Limited Warranty states in pertinent part:

9 Huawei Device USA Inc., ("Huawei") represents and warrants to the original purchaser
10 ("Purchaser") that Huawei's phones and accessories ("Product") are free from material
11 defects, including improper or inferior workmanship, materials, and design, during the
12 designated warranty period, and subject to the following terms and conditions, when used
normally and in accordance with all operating instructions.

13 During the limited warranty period, Huawei will repair or replace at Huawei's sole
14 option, any parts of the Product that are defective or malfunctioning during normal usage.
15 Huawei reserves the right to use new or refurbished replacement parts in repair of the
Product.

16 128. Although Huawei provided the warranty, Google and Huawei shared responsibility for
17 customer complaints and claims made pursuant to the Limited Warranty. Both entities troubleshot the
18 devices with consumers, took calls from consumers regarding defective phones, and in some instances,
19 provided warranty service, like issuing a replacement Nexus 6P. Google and Huawei's shared
20 responsibility for warranty claims is directly borne out by the experiences of Plaintiffs Gorbachev,
21 Christensen, Martorello, and Jones.

22 129. Notwithstanding Huawei's promise in the Limited Warranty that the Nexus 6P is free of
23 "material defects, including improper or inferior workmanship, materials, and design," Google and
24 Huawei sold the Nexus 6P to consumers—including Plaintiffs—knowing it is defective. Furthermore,
25 even though the Limited Warranty provides that defective phones will be repaired or replaced, Google
26 and Huawei refuse to provide an effective remedy for the defect, instead pointing fingers at each other,
27 attempting futile repairs or "troubleshooting," denying warranty claims based on minor cosmetic
28 damage and other pretexts, promising but not delivering warranty relief, and replacing defective Nexus

1 6Ps with other defective Nexus 6Ps. By replacing defective Nexus 6Ps with equally defective Nexus
2 6Ps, Google and Huawei each subjected consumers like Plaintiffs Martorello and Leone to repeated
3 product failures and ultimately failed to provide consumers with adequate warranty service.

4 130. Consumers have experienced difficulty getting either Google or Huawei to take
5 responsibility for their product. Google representatives frequently attempt to shift blame for the
6 defective Nexus 6P to Huawei, telling consumers that the phones' failure is attributable to hardware
7 problems and therefore Huawei's responsibility. Consumers who request help from Huawei fare no
8 better. As the experiences of Plaintiffs Himes or Johnston show, when consumers call Huawei, Huawei
9 tells them the problems are attributable to software flaws and that it therefore cannot help them.

10 131. In some instances—as with Plaintiffs Christensen and Johnston—Google and Huawei
11 have pointed fingers at each other, leaving the consumer with no relief. Google refused to help
12 Plaintiffs Christensen and Johnston on the grounds that their Nexus 6P problems were hardware related
13 and therefore Huawei's responsibility. Huawei refused warranty service on the grounds that the
14 problems were software related and therefore Google's responsibility.

15 132. When Google and Huawei have agreed to provide a replacement phone, they choose to
16 provide consumers with replacement Nexus 6Ps that are also defective, leaving consumers with phones
17 that are just as prone to fail. Plaintiff Leone, for example, had five Nexus 6Ps—each of which failed.
18 Mr. Martorello and Mr. Jones similarly experienced repeat failures as a result of having Nexus 6Ps
19 replaced with other Nexus 6Ps.

20 133. Plaintiffs Leone, Martorello, and Jones's experiences are not unique. A substantial
21 percentage of consumers who received a replacement Nexus 6P from Google or Huawei report that the
22 replacement also failed—typically within three months and sometimes outside the one-year warranty
23 period.

- 24 • “Every RMA came back ... and had the same issue with the phone shutting off early while the
25 battery still showed a charge.”⁴⁰

26
27
28 ⁴⁰ <https://forums.androidcentral.com/nexus-6p/770380-google-takes-no-responsibility-if-os-updates-cause-nexus-6p-devices-randomly-power-off.html> (last visited April 1, 2018).

- 1 • “Phone went into boot loop ... Google replaced it. The replacement phone also went into a
2 bootloop, which renders the phone unusable. Now Google or Huawei will not replace [it.]”⁴¹
- 3 • “The replacement suffered the same issue after a few months, and by then I was out of warranty
4 coverage and [G]oogle refused to send another replacement.”⁴²
- 5 • “I purchased this phone in July 2016 and Huawei had to replace it in May 2017 because of a
6 reboot problem. Now 5 months later the phone shuts off randomly despite having adequate
7 battery life. The RMA phone warranty was only good for 90 days—so now I am left with a
8 defective phone.”⁴³
- 9 • “The first one I received was defective, not always booting ... Amazon kindly replaced it ... A
10 few months after that... the [replacement] unit gets stuck in a boot loop.”⁴⁴

11 134. On September 16, 2016, a Google community manager on Reddit finally acknowledged
12 that the Nexus 6P is defective, but downplayed the extent of the problem, stating:

13 We understand that a very small number of users are experiencing a bootloop issue on
14 you[r] device. We are continuing to investigate the situation, but can confirm that this is
15 strictly a hardware related issue. For those of you that are currently experiencing this,
16 please contact your place of purchase for warranty or repair options.⁴⁵

17 135. A week later, on September 22, 2016, Google again acknowledged on Reddit that the
18 Nexus 6P is defective, and again downplayed the significance of the problems:

19 Just want to let you all know that this is something we have been keeping track of, and
20 our team is investigating. As most of you know, poor battery life immediately after an
21 update is not uncommon, given the way system updates happen. That being said, many

21 ⁴¹ https://www.amazon.com/gp/customer-reviews/RCRT1XOZK73XE/ref=cm_cr_getr_d_rvw_ttl?ie=UTF8&ASIN=B015YCRYZM (last visited April 1,
22 2018).

23 ⁴² https://www.amazon.com/gp/customer-reviews/R5MCF5VKPVASG/ref=cm_cr_getr_d_rvw_ttl?ie=UTF8&ASIN=B015YCRYZM (last visited April 1,
24 2018).

25 ⁴³ https://www.amazon.com/gp/customer-reviews/R1X0JSJ4Q6DQOC/ref=cm_cr_getr_d_rvw_ttl?ie=UTF8&ASIN=B015YCRYZM (last visited April 1,
26 2018).

27 ⁴⁴ https://www.amazon.com/gp/customer-reviews/R15AUV24WE42HV/ref=cm_cr_getr_d_rvw_ttl?ie=UTF8&ASIN=B015YCRYZM (last visited April 1,
28 2018).

⁴⁵ https://www.reddit.com/r/Nexus/comments/4zhx53/never_ending_boot_loop_with_android_7_nougat/ (last
visited April 1, 2018).

1 of you are reporting that you have been experiencing abnormal battery drain for multiple
2 days now . . . Thanks for all the relevant data on usage, and please continue to post your
3 experiences her and elsewhere we monitor (Forum, Twitter, etc).⁴⁶

4 136. Three months later, on December 27, 2016, a Google employee provided a short update
5 on the Nexus 6P defect, stating, “Thanks for your patience while we investigated this issue with
6 Huawei,” and acknowledging that the issue had caused inconvenience for “some of our Nexus 6P
7 users.”⁴⁷ The employee did not indicate that Google would provide a remedy or that Google and
8 Huawei were working towards a solution.

9 137. Although Google acknowledged the bootloop and battery problems by September 2016
10 neither Google nor Huawei has ever provided a permanent solution for the defect. Instead, each
11 company continued selling the defective phones to consumers.

12 **AGENCY AND CO-CONSPIRATOR ALLEGATIONS**

13 138. At all relevant times, Google and Huawei were principals, agents, joint venturers,
14 partners, affiliates, and co-conspirators of one another, and in doing the acts alleged herein, were acting
15 within the course and scope of that principal, agent, joint venture, partnership, affiliate, and co-
16 conspirator relationship. Google and Huawei had knowledge of the wrongful acts of each other and
17 ratified, approved, joined in, acquiesced, or authorized such wrongful acts; and retained the benefits of
18 those wrongful acts.

19 139. As described herein, Google and Huawei each knew the Nexus 6P was defective at or
20 before the time of release, yet failed to disclose the defective nature of the Nexus 6P to consumers.
21 Instead, Google and Huawei continued to sell the Nexus 6P at a premium price, and, when consumers
22 complained that the Nexus 6P is defective and asked Google and Huawei for help, Google and Huawei
23 engaged in a pattern of shifting blame for the problems to the other Defendant, and refusing to deliver
24 warranty service sufficient to provide Plaintiffs with a phone free from material defects.

25
26 ⁴⁶ https://www.reddit.com/r/Nexus6P/comments/53xt82/nougat_ota_battery_drain_whats_the_official_word/ (last
27 visited April 1, 2018).

28 ⁴⁷ https://www.reddit.com/r/Nexus6P/comments/5jf52u/some_nexus_6ps_have_developed_a_battery_early/dbotvgy/
/ (last visited April 1, 2018).

1 140. Google and Huawei aided and abetted, encouraged, and rendered substantial assistance
2 to one another in perpetrating upon Plaintiffs and the consuming public these breaches of warranty,
3 fraudulent concealment violations, and violations of unfair trade practice laws and other state statutes.
4 In taking action, as alleged herein, to aid, abet, encourage, and substantially assist the commissions of
5 the wrongful acts and other misconduct set forth herein, Google and Huawei each acted with awareness
6 of its primary wrongdoing and realized that its conduct would substantially aid the accomplishment of
7 the wrongful acts and practices set forth herein.

8 **CLASS ACTION ALLEGATIONS**

9 141. Plaintiffs bring this lawsuit under Federal Rules of Civil Procedure Rules 23(a), (b)(1),
10 (b)(2), and (b)(3) as representatives of the following Class:

11 All persons within the United States who purchased a Nexus 6P
12 smartphone, other than for resale, between September 29, 2015 and the
13 present.

14 142. The following persons and entities are excluded from the class: (1) Google and Huawei,
15 and their officers, directors, employees, subsidiaries, and affiliates; (2) all judges assigned to this case
16 and any members of their immediate families; and, (3) the parties' counsel in this litigation.
17 Plaintiffs reserve the right to modify, change, or expand the Class definition based upon discovery and
18 further investigation.

19 143. **Numerosity.** Google and Huawei sold hundreds of thousands of Nexus 6P phones.
20 Members of the class are widely dispersed throughout the country. Class members are accordingly so
21 numerous that joinder is impracticable.

22 144. **Typicality.** Plaintiffs' claims are typical of the claims of all class members in that
23 Plaintiffs, like all class members, purchased Nexus 6P phones (covered by the same Huawei express
24 warranty) that they would not have purchased, or would have paid substantially less for, had they
25 known of the defect or the fact that Google and Huawei would respond inadequately when the defect
26 manifested.

27 145. **Adequacy.** Plaintiffs will fairly and adequately protect the interests of the class. They
28 have no interests antagonistic to the interests of other class members and are committed to vigorously

1 prosecuting this case. Plaintiffs have retained competent counsel experienced in the prosecution of
2 consumer protection class actions involving defective smartphones.

3 146. **Predominance.** Questions of law and fact common to the class members predominate
4 over any questions that may affect only individual class members, because Google and Huawei acted
5 on grounds generally applicable to the class as a whole.

6 147. Questions of law and fact common to the class include:

- 7 a. Whether the Nexus 6P was defective at the time of sale;
- 8 b. Whether the defect substantially impairs the value of the Nexus 6P;
- 9 c. Whether Google or Huawei knew of the defect, but continued to promote and
10 sell the Nexus 6P without disclosing the problems and their consequences to consumers;
- 11 d. Whether a reasonable consumer would consider the defect and its consequences
12 to be material;
- 13 e. Whether Google or Huawei carried out the discretion they afforded themselves
14 under the Limited Warranty in good faith;
- 15 f. Whether Google or Huawei breached express and implied warranties connected
16 with the Nexus 6P;
- 17 g. Whether Google or Huawei's omissions regarding the defect were likely to
18 deceive a reasonable consumer;
- 19 h. Whether Google or Huawei violated California's Unfair Competition Law, CAL.
20 BUS. & PROF. CODE § 17200, *et seq.*;
- 21 i. Whether Plaintiffs overpaid for their phones as a result of the existence of the
22 latent defect;
- 23 j. Whether Plaintiffs are entitled to equitable relief, including restitution or
24 injunctive relief; and
- 25 k. Whether Plaintiffs are entitled to damages and other monetary relief, and if so, in
26 what amount.

27 148. **Superiority.** A class action is superior to all other available methods for the fair and
28 efficient adjudication of this controversy. Because the amount of each individual class member's claim

1 is small relative to the complexity of the litigation, and because of Google and Huawei's financial
2 resources, no class member is likely to pursue legal redress individually for the violations detailed in this
3 complaint. Individualized litigation would significantly increase the delay and expense to all parties and
4 to the Court and would create the potential for inconsistent and contradictory rulings. By contrast, a
5 class action presents fewer management difficulties, allows claims to be heard which would otherwise
6 go unheard because of the expense of bringing individual lawsuits, and provides the benefits of
7 adjudication, economies of scale, and comprehensive supervision by a single court.

8 149. Class certification is also appropriate under Rules 23(b)(1) and (b)(2) because:

9 a. The prosecution of separate actions by the individual members of the class would
10 create a risk of inconsistent or varying adjudications with respect to individual class members, which
11 would establish incompatible standards of conduct for Google and Huawei;

12 b. The prosecution of separate actions by individual class members would create a
13 risk of adjudications that would, as a practical matter, be dispositive of the interests of other class
14 members not parties to the adjudications, or would substantially impair or impede their ability to
15 protect their interests;

16 c. Google and Huawei acted or refused to act on grounds generally applicable to the
17 class, thereby making appropriate final injunctive relief with respect to the members of the class as a
18 whole; and

19 d. The claims of class members include common issues that are appropriate for
20 certification.

21 **CLAIMS FOR RELIEF**

22 150. Google directly sold the Nexus 6P to consumers through the Google Store and Google
23 Project Fi. For claims against Google, California law applies to all claims of those who purchased their
24 Nexus 6P directly from Google (Gorbachev, Martorello, Jones, Leone) because Google's Terms of
25 Sale for Devices provide for the application of California law.

26 151. For common law express and implied warranty, Magnusson Moss Warranty Act, and
27 fraudulent concealment claims: (1) against Huawei, or (2) against Google but brought by those who did
28

1 not purchase directly from Google, the law of the Plaintiffs’ respective states of residence applies, as
2 specified below.

3 **FIRST CLAIM FOR RELIEF**

4 **Breach of Express Warranty**
5 **(Against Huawei)**

6 152. Plaintiffs incorporate the above allegations by reference.

7 153. Plaintiffs Makcharoenwoodhi, Beheler, Davydov, Harrison, Himes, Servodio, and
8 Johnston bring this claim for breach of express warranty against Huawei under the laws of their
9 respective states of residence (California, Indiana, New York, North Carolina, Ohio, and Washington).

10 154. Plaintiffs Makcharoenwoodhi, Harrison, Himes, and Servodio additionally bring this
11 claim against Huawei for violation of the covenant of good faith and fair dealing that accompanied its
12 express warranty under the laws of their respective states of residence (California, North Carolina, and
13 Ohio).

14 155. Huawei provided a one-year written Limited Warranty to consumers in connection with
15 every sale of the Nexus 6P. Under the terms of the Limited Warranty, Huawei warranted that the
16 Nexus 6P was “free from material defects, including improper or inferior workmanship, materials, and
17 design, during the designated warranty period,” which for phones is “a period of 12 months from the
18 date of purchase.”

19 156. Huawei’s Limited Warranty provides that Huawei will “repair or replace at Huawei’s
20 sole option, any parts of the Product that are defective or malfunctioning during normal usage” and
21 “reserves the right to use new or refurbished replacement parts in repair of the Product.”

22 157. Notwithstanding the Limited Warranty, Plaintiffs’ Nexus 6Ps were materially defective
23 at the time of sale. The defect is embedded in the phone’s hardware, and gives the phones a substantial
24 propensity to fail—rendering the devices unsuitable for their primary purpose—and existed at all
25 relevant times.

26 158. The Limited Warranty was included with every Nexus 6P and also made available on
27 Huawei’s website.

28 159. Plaintiffs used their phones in a manner consistent with the phones’ operating instructions
prior to manifestation of the latent defect.

1 160. Huawei was on actual notice of the defective nature of the phones prior to selling
2 Plaintiffs their Nexus 6Ps and received timely notice of the breaches experienced by Plaintiffs. Despite
3 reasonable opportunities to honor the promises in its express warranty, Huawei failed to furnish an
4 effective remedy to Plaintiffs.

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

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

14 163. Huawei breached the covenant of good faith and fair dealing that accompanied its
15 Limited Warranty, and failed to exercise the discretion it afforded itself under the terms of its warranty
16 in good faith. Specifically, Huawei engaged in a uniform pattern and practice of exercising the
17 discretion afforded to it under its warranty to deny adequate warranty service through an effective
18 repair, replacement with a non-defective smartphone, or purchase-price refund. Despite knowledge that
19 the Nexus 6P is defective, Huawei deprived Plaintiffs and the class of warranty service through at least
20 the following patterns or practices:

- 21 a. Using minor, cosmetic damage to phones as a pretext to avoid providing warranty
22 service to consumers with defective Nexus 6Ps;
- 23 b. Promising, but failing to deliver warranty relief; and
- 24 c. Blaming the defective nature of the Nexus 6P on Google and/or software
25 problems, while knowing that the Nexus 6P's hardware is defective.

26 164. Each of Plaintiffs Makcharoenwoodhi, Beheler, Davydov, Harrison, Himes, Servodio,
27 and Johnston's Nexus 6P became defective during the one year warranty period. Each of Plaintiffs
28 Makcharoenwoodhi, Beheler, Davydov, Harrison, Himes, Servodio, and Johnston notified Huawei that

1 their Nexus 6P was defective within the warranty period and sought warranty relief from Huawei.
2 Plaintiffs thus performed all, or substantially all, of the significant things the Limited Warranty required
3 them to do. Plaintiffs were, however, excused from having to do those things as it would have been
4 futile given Huawei's actual knowledge of the defect and its subsequent failure to comply with its
5 warranty obligations.

6 165. All the conditions required for Huawei's performance under the Limited Warranty had
7 occurred as Plaintiffs' Nexus 6Ps were materially defective.

8 166. Huawei's refusal to provide effective repair, a non-defective replacement, or a refund
9 unfairly interfered with Plaintiffs' right to receive the benefits of the Limited Warranty.

10 167. As a direct and proximate result of Huawei's breaches of express warranty and the
11 covenant of good faith and fair dealing, Plaintiffs have been damaged in an amount to be proven at
12 trial.

13 **SECOND CLAIM FOR RELIEF**
14 **Breach of the Implied Warranty of Merchantability**
15 **(Against Huawei)**

16 168. Plaintiffs incorporate the above allegations by reference.

17 169. Plaintiffs bring this claim against Huawei under the laws of their respective states of
18 residence (California, Florida, Indiana, New York, North Carolina, North Dakota, Ohio, Pennsylvania,
19 Texas, and Washington).

20 170. By operation of law, Huawei—as a manufacturer of the Nexus 6P and as author of the
21 Limited Warranty—impliedly warranted to Plaintiffs that the phones they were purchasing were of
22 merchantable quality and fit for their ordinary and intended use as mobile smartphone devices.

23 171. Consumers who did not purchase phones directly from Huawei are the intended third-
24 party beneficiaries of: (1) the written distribution and supply agreements between Huawei and its
25 authorized resellers (i.e. Newegg, Best Buy, and Amazon), and of the implied warranties that attach to
26 those contracts; and (2) Huawei's Limited Warranty. The retailer sellers were not intended to be the
27 ultimate users of the Nexus 6P and have no rights under the express warranty agreements connected
28 with the phones. Those agreements were designed for and intended to benefit end-users only.

1 177. Plaintiffs bring this claim against Huawei under the laws of their respective states of
2 residence (California, Florida, Indiana, New York, North Carolina, North Dakota, Ohio, Pennsylvania,
3 Texas, and Washington).

4 178. The Nexus 6P is a “consumer product[]” under the MMWA. 15 U.S.C. § 2301(1).

5 179. Plaintiffs are “consumers” under the MMWA. 15 U.S.C. § 2301(3).

6 180. Huawei is a “supplier” and “warrantor” under the MMWA. 15 U.S.C. § 2301(4)-(5).

7 181. Through written and implied warranties, Huawei warranted to Plaintiffs that the Nexus
8 6P they purchased was free from defects, of merchantable quality, and fit for the ordinary purposes for
9 which smartphones are used.

10 182. Huawei breached and refused to honor these written and implied promises. As a result
11 of the defect, the Nexus 6P was rendered inoperable and/or cannot be used for more than a few minutes
12 on battery power. The phones fail to perform in accordance with their ordinary and intended purposes.

13 183. Huawei has been given reasonable opportunities to cure its breaches of warranty.
14 Huawei had actual knowledge and ample notice that the Nexus 6P is defective as detailed above, but
15 failed to provide an adequate remedy.

16 184. The amount in controversy for purposes of Plaintiffs’ individual claims exceeds \$25.
17 The amount in controversy in this action exceeds \$50,000, exclusive of interest and costs, computed on
18 the basis of all claims to be adjudicated in the suit.

19 185. As a direct and proximate result of Huawei’s breaches of implied and express warranties
20 pursuant to 15 U.S.C. § 2310(d)(1), Plaintiffs have suffered damages in an amount to be determined at
21 trial.

22 186. Plaintiffs also seek costs and expenses, including reasonable attorneys’ fees, under the
23 MMWA. 15 U.S.C. § 2310(d)(2).

24 **FOURTH CLAIM FOR RELIEF**
25 **Violation of the Song-Beverly Consumer Warranty Act, CAL. CIV. CODE § 1792, *et seq.***
26 **(Against Huawei and Google)**

27 187. Plaintiffs incorporate the above allegations by reference.
28

1 188. Plaintiffs Makcharoenwoodhi, Gorbachev, and Christensen bring this claim against
2 Google and Huawei.

3 189. Plaintiffs Makcharoenwoodhi, Gorbachev, and Christensen are “buyers” within the
4 meaning of Cal. Civ. Code. § 1791(b). They each purchased their Nexus 6P while located in
5 California.

6 190. Google and Huawei are manufacturers within the meaning of CAL. CIV. CODE § 1791(j).
7 Google was jointly responsible for designing the Nexus 6P and directed or was closely involved in all
8 stages of the Nexus 6P’s production and manufacturing process. Huawei worked with Google to
9 design the Nexus 6P and also manufactured the Nexus 6P.

10 191. The Nexus 6P is a “consumer good[.]” within the meaning of CAL. CIV. CODE § 1791(a).

11 192. Google and Huawei impliedly warranted to Plaintiffs that the Nexus 6P phones were
12 “merchantable” under CAL. CIV. CODE §§ 1791.1(a) and 1792.

13 193. Google and Huawei breached the implied warranty of merchantability by producing,
14 manufacturing, and selling phones that were not of merchantable quality. The Nexus 6P is defective,
15 resulting in sudden freezing, premature shutdowns, accelerated battery drain, and ultimately, a
16 permanent bootloop that renders the phone completely inoperable. The Nexus 6P therefore is unfit for
17 the ordinary purposes for which smartphones are used and would not pass without objection in the
18 smartphone trade.

19 194. The problems with the Nexus 6P are latent. Though the Nexus 6P appears operable
20 when new, the Nexus 6P defect existed at the time of sale and within the one-year Limited Warranty
21 period. Accordingly, any subsequent discovery of the defect beyond that time does not bar an implied
22 warranty claim under the Song-Beverly Act.

23 195. Any attempt by Google to disclaim its implied warranty obligations under the Song-
24 Beverly Act is ineffective due to its failure to adhere to CAL CIV. CODE §§ 1792.3 and 1792.4, which
25 provide that, in order to validly disclaim the implied warranty of merchantability, a manufacturer must
26 “in simple and concise language” state: “(1) The goods are being sold on an ‘as is’ or ‘with all faults’
27 basis. (2) The entire risk as to the quality and performance of the goods is with the buyer. (3) Should
28 the goods prove defective following their purchase, the buyer and not the manufacturer, distributor, or

1 retailer assumes the entire cost of all necessary servicing or repair.” Google’s attempted warranty
 2 disclaimer does not conform to Sections 1792.3 and 1792.4. The disclaimer does not contain the words
 3 “as is,” or “with all faults” and does not intimate that the buyer assumes the entire cost of all servicing
 4 or repair. Nor is the disclaimer stated in “simple and concise” language. The clause contains legal
 5 jargon and the same clause that includes the attempted disclaimer also affirms consumers’ rights to
 6 repair or replacement of their devices.⁴⁸

7 196. As a direct and proximate cause of Google and Huawei’s breaches of the Song-Beverly
 8 Consumer Warranty Act, pursuant to CAL. CIV. CODE § 1791.1(d) and 1794, Plaintiffs have been
 9 damaged in an amount to be proven at trial.

10 197. Plaintiffs also seek costs and expenses, including reasonable attorneys’ fees, under CAL.
 11 CIV. CODE § 1794.

12 **FIFTH CLAIM FOR RELIEF**
 13 **Violation of the California Unfair Competition Law**
 14 **CAL. BUS. & PROF. CODE § 17200, *et seq.* (“UCL”)**
 15 **(Against Huawei and Google)**

16 198. Plaintiffs incorporate the above allegations by reference.

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

20 **Unlawful**

21 200. This claim is asserted on behalf of (1) Plaintiffs Gorbachev, Martorello, Jones, and
 22 Leone against Google; and (2) Plaintiffs Makcharoenwoodhi, Christensen, Beheler, Davydov, Harrison,
 23 Himes, Servodio, Poore, and Johnston against Huawei.

24 201. Google and Huawei’s conduct is unlawful, in violation of the UCL, because their
 25 conduct contravenes the legislatively declared policy against unfair methods of business competition.
 26 Additionally Google and Huawei’s conduct is unlawful because, as set forth herein, it violates the
 27 California Consumer Legal Remedies Act (Huawei and Google), the Magnuson-Moss Warranty Act

28 ⁴⁸ See Dkt. 40-1 at ¶ 4 (citing https://store.google.com/intl/en-us_us/about/device-terms.html).

1 (Huawei), the Song-Beverly Warranty Act (Huawei and Google), and constitutes breach of express and
2 implied warranties (Huawei); and fraudulent concealment (Huawei and Google).

3 **Unfair**

4 202. This claim is asserted on behalf of (1) Plaintiffs Gorbachev, Martorello, Jones, and
5 Leone against Google; and (2) Plaintiffs Makcharoenwoodhi, Christensen, Beheler, Davydov, Harrison,
6 Himes, Servodio, Poore, and Johnston against Huawei.

7 203. As to Plaintiffs Gorbachev and Christensen, Google and Huawei’s conduct is unfair in
8 violation of the UCL, because it violates California public policy, legislatively declared in the Song-
9 Beverly Consumer Warranty Act, requiring a manufacturer—defined as a person or entity that
10 “manufactures, assembles, or produces consumer goods”⁴⁹—to ensure that goods it places on the
11 market are fit for their ordinary and intended purposes.

12 204. As to all Plaintiffs, Google and Huawei acted in an unethical, unscrupulous, outrageous,
13 oppressive, and substantially injurious manner, including as follows:

14 a. Google and Huawei each promoted and sold phones that each knew were
15 defective and likely to fail prematurely;

16 b. Google and Huawei failed to disclose that the Nexus 6P is defective, and
17 represented through advertising, product packaging, press releases, and other sources that the Nexus 6P
18 possessed particular qualities that were inconsistent with their knowledge;

19 c. Google replaced defective Nexus 6Ps with other defective Nexus 6Ps, exposing
20 Plaintiffs to repeated instances of failure;

21 d. Google and Huawei failed to exercise adequate quality control and due diligence
22 over the Nexus 6P before launch, and instead rushed the devices to market without affording adequate
23 time to allow for: (1) product testing and; (2) implementation of design and/or manufacturing measures
24 to eliminate or mitigate any defects the product testing identified; and

25
26
27
28 ⁴⁹ CAL. CIV. CODE § 1791(j).

1 e. Google minimized the scope and severity of the problems with the Nexus 6P in
2 public statements instead of acknowledging that the Nexus 6P is defective and providing adequate
3 relief to consumers.

4 205. The gravity of harm resulting from Google and Huawei's unfair conduct outweighs any
5 potential utility. The practice of selling defective phones without providing an adequate remedy to cure
6 the defect—and continuing to sell those phones without full and fair disclosure of the defect—harms
7 the public at large and is part of a common and uniform course of wrongful conduct.

8 206. The harm from Google and Huawei's conduct was not reasonably avoidable by
9 consumers because the Nexus 6P suffers from a latent defect, and Google and Huawei did not disclose
10 the defect, even after receiving a large volume of consumer complaints contemporaneous with
11 launching the Nexus 6P. Plaintiffs did not know of, and had no reasonable means of discovering that
12 the Nexus 6P is defective.

13 207. There were reasonably available alternatives that would further Google and Huawei's
14 business interests of satisfying and retaining their customers while maintaining profitability, such as:
15 (1) allowing adequate development time to analyze the results of pre-release testing and implementing
16 corrective measures; (2) acknowledging the defect and providing a permanent fix for defective phones;
17 (3) disclosing the defect to prospective purchasers; (4) extending the phone's warranty; and (5) offering
18 refunds or suitable non-defective replacement phones to consumers whose phones have failed.

19 **Fraud by Omission**

20 208. This claim is asserted on behalf of (1) Plaintiffs Martorello and Leone against Google,
21 and (2) Plaintiffs Makcharoenwoodhi, Beheler, Davydov, Harrison, Himes, Servodio, Poore, and
22 Johnston against Huawei.

23 209. Google and Huawei's conduct is fraudulent in violation of the UCL because it is likely
24 to deceive a reasonable consumer:

25 a. Google and Huawei knowingly and intentionally concealed from Plaintiffs that
26 the Nexus 6P contains a latent defect that renders the phone prone to fail.

27 b. Google and Huawei volunteered information to Plaintiffs through advertising, on
28 external packaging, during the initial set-up process, and through other means that the phones were

1 functional, premium devices without disclosing information that would have materially qualified these
2 partial representations.

3 c. Google and Huawei promoted the high-quality and premium features of the
4 phones—including superior battery performance—despite knowing they are defective and failed to
5 correct the misleading partial disclosures.

6 210. Google and Huawei had ample means and opportunities to alert Plaintiffs to the fact that
7 the Nexus 6P is defective, including on their web platforms selling the Nexus 6P; on the Nexus 6P's
8 external packaging; and as part of the standardized Nexus 6P set-up process. But, despite knowing of
9 the defect no later than late October 2015, Google and Huawei failed to disclose that the Nexus 6P is
10 defective to Plaintiffs. Had Google and Huawei disclosed that the Nexus 6P is defective, Plaintiffs
11 would not have purchased the Nexus 6P, would not have purchased it at the price they did, or would
12 have returned it during their respective buyer's remorse periods.

13 211. Google and Huawei were under a duty to disclose that the Nexus 6P is defective given
14 their exclusive knowledge of the defect prior to the sale of the Nexus 6P and because they made partial
15 representations about the phones without also disclosing the latent defect.

16 212. Plaintiffs suffered injury in fact, including lost money or property, as a result of Google
17 and Huawei's unlawful, unfair and fraudulent acts. Absent Google and Huawei's unlawful, unfair, and
18 fraudulent conduct, Plaintiffs would not have purchased the Nexus 6P, would not have purchased the
19 device at the price they did, or would have returned their devices for a refund during their respective
20 buyer's remorse periods.

21 213. Through their unlawful, unfair, and fraudulent conduct, Google and Huawei acquired
22 money that Plaintiffs once had an ownership interest in. Google acquired money from Plaintiffs
23 Gorbachev, Martorello, Jones, and Leone insofar as they purchased their Nexus 6P directly from
24 Google. Huawei acquired money in which Plaintiffs Makcharoenwoodhi, Christensen, Beheler,
25 Davydov, Harrison, Himes, Servodio, Poore, and Johnston once had an ownership interest in that
26 Huawei either sold them their Nexus 6P directly, or through its retailers (i.e., Amazon, Best Buy, and
27 Newegg).

28

1 214. Plaintiffs accordingly seek appropriate relief, including restitution under the UCL.
2 Plaintiffs also respectfully seek reasonable attorneys' fees and costs under applicable law, including
3 under California Code of Civil Procedure section 1021.5.

4 **SIXTH CLAIM FOR RELIEF**
5 **Violation of California's Consumer Legal Remedies Act**
6 **Cal. Civ. Code § 1750, *et seq.* ("CLRA")**
7 **(Against Huawei and Google)**

8 215. Plaintiffs incorporate the above allegations by reference.

9 216. Plaintiffs Makcharoenwoodhi, Martorello, Beheler, Davydov, Harrison, Himes, Jones,
10 Servodio, Leone, Poore, and Johnston bring this claim against Google. Plaintiff Makcharoenwoodhi
11 brings this claim against Huawei.

12 217. Google and Huawei are each a "person" within the meaning of CAL. CIV. CODE §§
13 1761(c) and 1770, and provided "goods" within the meaning of CAL. CIV. CODE §§ 1761(a) and 1770.

14 218. Google and Huawei's acts and practices, as alleged in this complaint, violate the CLRA,
15 CAL. CIV. CODE §§ 1770(a)(5), (7), and (9) because they consist of unfair methods of competition and
16 unfair and deceptive acts and practices in connection with transactions—namely, the sale of defective
17 phones to Plaintiffs. Specifically, Google and Huawei:

- 18 a. Represented that the Nexus 6P had characteristics, uses, and benefits it does not have;
19 b. Represented that the Nexus 6P was of a standard, quality, or grade that it is not; and
20 c. Advertised the Nexus 6P with intent not to sell the phone as advertised

21 219. Through pre-release testing and consumer complaints that began concurrent with
22 releasing the Nexus 6P, Google and Huawei were aware that the Nexus 6P was defective and prone to
23 fail.

24 220. Google and Huawei were under a duty to disclose that the Nexus 6P is defective because
25 they had superior knowledge of the defect—through pre-release testing and consumer complaints—and
26 because they made many general, partial representations regarding the Nexus 6P's high-quality and
27 premium features, including the battery, that were materially misleading.

28 221. Google and Huawei had ample means and opportunities to alert Plaintiffs to the fact that
the Nexus 6P is defective, including on their web platforms selling the Nexus 6P; on the Nexus 6P's

1 external packaging; and as part of the standardized Nexus 6P set-up process. Despite its exclusive
2 knowledge and opportunities to reveal the defective nature of the Nexus 6P, Google and Huawei failed
3 to disclose to Plaintiffs that the Nexus 6P is defective either prior to purchase or the expiration of
4 Plaintiffs' respective buyer's remorse periods.

5 222. Google and Huawei's omissions were material. Had Plaintiffs known that the Nexus 6P
6 is defective, they would not have purchased their Nexus 6P, would not have purchased their Nexus 6P
7 at the price they did, or would have returned their Nexus 6P during their respective buyer's remorse
8 periods.

9 223. Plaintiffs accordingly seek actual damages in an amount to be proven at trial, reasonable
10 attorneys' fees and costs, declaratory relief, and punitive damages.

11 224. Pursuant to California Civil Code § 1782(a), individually and on behalf of the Class:

12 a. Gorbachev sent a CLRA notice to Google and Huawei on March 30, 2017.

13 b. Makcharoenwoodhi sent a CLRA notice to Google and Huawei on April 19, 2017.

14 c. Christensen sent a CLRA notice to Google and Huawei on May 23, 2017.

15 225. Plaintiffs sent these CLRA notices via certified mail, return receipt requested, to Google
16 and Huawei's principal places of business, advising Google and Huawei that they are in violation of the
17 CLRA and must correct, replace or otherwise rectify the goods alleged to be in violation of CAL. CIV.
18 CODE § 1770. Plaintiffs further advised that in the event the relief requested has not been provided
19 within 30 days, Plaintiffs would amend the complaint to include a request for monetary damages
20 pursuant to the CLRA. Google and Huawei have failed to provide relief within 30 days and Plaintiffs
21 now seek monetary damages pursuant to the CLRA.

22 226. Plaintiffs' CLRA venue declarations are attached as Exhibits 1 – 11 to this complaint in
23 accordance with CAL. CIV. CODE § 1780(d).

24 **SEVENTH CLAIM FOR RELIEF**
25 **Fraudulent Concealment (Common Law)**
26 **(Against Huawei and Google)**

27 227. Plaintiffs incorporate the above allegations by reference.

28 228. Plaintiffs Makcharoenwoodhi, Martorello, Beheler, Davydov, Harrison, Himes, Jones,
Servodio, Leone, Poore, and Johnston bring this claim: (1) against Google under California, Indiana,

1 New York, North Carolina, Ohio, Texas, and Washington law; and (2) against Huawei under
2 California, Florida, Indiana, New York, North Carolina, North Dakota, Ohio, Pennsylvania, Texas, and
3 Washington law.

4 229. Google and Huawei intentionally suppressed and concealed material facts concerning
5 the performance and quality of the Nexus 6P. As alleged in this complaint, Google and Huawei knew
6 or reasonably should have known the Nexus 6P is defective through pre-release testing. Furthermore,
7 Google and Huawei were aware of consumer complaints concerning defect-related issues almost
8 immediately after the Nexus 6P was shipped to consumers in October 2015, but never disclosed the
9 defect to Plaintiffs.

10 230. Because the defective nature of the Nexus 6P is latent, Plaintiffs had no reasonable
11 means of knowing that Google and Huawei's representations concerning the Nexus 6P were
12 incomplete, false, or misleading, or that they had failed to disclose that the Nexus 6P is defective.
13 Plaintiffs did not and reasonably could not have discovered Google and Huawei's deception prior to
14 purchase or expiration of their respective buyer's remorse periods.

15 231. The existence of the defect is material. Had Plaintiffs known that the Nexus 6P is
16 defective, they would not have purchased their Nexus 6P, would not have purchased their Nexus 6P at
17 the price they did, or would have returned their Nexus 6P during their respective buyer's remorse
18 periods.

19 232. Google and Huawei had a duty to disclose the defect because they possessed exclusive
20 knowledge of it. Google and Huawei jointly conducted pre-release testing of the Nexus 6P and its
21 internal components, including stress testing and examination of internal circuits on a microscopic
22 level. This testing revealed, or reasonably should have revealed, the existence of the defect prior to the
23 phone's release and the information was accessible only to Google and Huawei.

24 233. Google and Huawei also had a duty to disclose the defect because through advertising,
25 press releases, statements made during the launch event, and other sources Plaintiffs were exposed to
26 prior to purchasing their phones, Google and Huawei made many general, partial representations
27 regarding the high-quality of the Nexus 6P and premium features of the phone—such as superior
28 battery life and the battery's fast charging capabilities—but failed to disclose facts that would have

1 materially qualified these partial representations. Having volunteered information to Plaintiffs, Google
2 and Huawei had the duty to disclose the entire truth and the existence of the defect.

3 234. All plaintiffs were exposed to Google and Huawei's specific representations about the
4 Nexus both before and immediately after purchase, within the time they could have returned their
5 Nexus 6P during their respective buyer's remorse periods. Every Plaintiff, for example, encountered
6 Google representations (online, during the purchase process, and/or in advertisements), and every
7 Plaintiff received information from Google—including about the Nexus 6P battery—during the Nexus
8 6P set-up process. Every Plaintiff likewise encountered the external packaging of the Nexus 6P, which
9 Huawei helped to develop, either prior to purchase or before using the phone and during the buyer's
10 remorse period. Martorello, Harrison, Himes, Servodio, Leone and Johnston encountered Huawei
11 representations concerning the Nexus 6P (online, in advertisements, and/or in the launch event),
12 including about the Nexus 6P's battery. None of the informational sources Plaintiffs encountered—
13 advertisements, websites, external packaging, the standard Nexus 6P set-up displays, or the Nexus
14 launch event—disclosed that the Nexus 6P is defective.

15 235. Google and Huawei concealed the defect in order to sell more phones at a premium
16 price, minimize damage to their respective brands, avoid reimbursing consumers who had already
17 purchased the Nexus 6P, avoid the costs of developing a fix for the defect, and avoid paying costs for
18 warranty repairs and replacements.

19 236. Plaintiffs were unaware of the omitted material facts and would not have acted as they
20 did had the facts been disclosed. Had Google and Huawei disclosed the information at the launch
21 event, or through advertising, press releases, the Nexus 6P's box, documentation within the phone's
22 box, or during the phone's initial setup process, Plaintiffs would have been aware of the defect and
23 acted differently. Specifically, Plaintiffs would not have purchased Nexus 6P phones, would have paid
24 substantially less for the phones, or would have returned the phones for a refund during the return
25 period.

26 237. Plaintiffs reasonably relied to their detriment upon Google and Huawei's material
27 omissions regarding the quality of the Nexus 6P and the existence of the defect in deciding to purchase
28 their phones.

1 Daniel C. Girard (State Bar No. 114826)
2 Jordan Elias (State Bar No. 228731)
3 Adam E. Polk (State Bar No. 273000)
4 Simon S. Grille (State Bar No. 294914)

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7 San Francisco, California 94108
8 Tel: (415) 981-4800
9 Email: dcg@girardgibbs.com
10 je@girardgibbs.com
11 aep@girardgibbs.com
12 sg@girardgibbs.com

13 Benjamin F. Johns
14 Andrew W. Ferich
15 Jessica L. Titler

16 **CHIMICLES & TIKELLIS LLP**

17 One Haverford Centre
18 361 West Lancaster Avenue
19 Haverford, PA 19041
20 Phone: (610) 642-8500
21 Fax: (610) 649-3633
22 Email: bfj@chimicles.com
23 awf@chimicles.com
24 jt@chimicles.com

25 *Interim Class Counsel*

26 Cory S. Fein (State Bar No. 250758)

27 **Cory Fein Law Firm**

28 712 Main St., #800
Houston, TX 77002
Tel: (415) 981-4800
Fax: (530) 748-0601
cory@coryfeinlaw.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2018, I electronically filed the foregoing document using the CM/ECF system, which will send notification of such filing to all counsel of record registered in the CM/ECF system.

/s/ Adam E. Polk

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EXHIBIT 1

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

In re Nexus 6P Products Liability Litigation

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

**CLRA VENUE DECLARATION OF
PLAINTIFF JONATHAN
MAKCHAROENWOODHI PURSUANT
TO CIVIL CODE SECTION 1780(d)**

1 I, Jonathan Makcharoenwoodhi, declare as follows:

2 1. I have personal knowledge of the facts stated herein and, if called upon to do so, could
3 competently testify thereto.

4 2. I am a Plaintiff in the above-captioned action.

5 3. I submit this declaration in support of the Second Consolidated Amended Class Action
6 Complaint, which is based in part on violations of the Consumers Legal Remedies Act, California Civil
7 Code section 1750 *et seq.*

8 4. The Second Consolidated Amended Class Action Complaint has been filed in the proper
9 place for trial of this action.

10 5. Defendant Google LLC has its principal place of business in Mountain View, California,
11 which is within Santa Clara County. Google conducts substantial business, including the acts and
12 practices at issue in this action, within Santa Clara County.

13 6. Defendant Huawei Device USA, Inc. partnered with Google to develop and manufacture
14 the Nexus 6P. Huawei maintains a facility in Santa Clara, California, where Huawei employees conduct
15 smartphone research and development activities. These employees focus on product testing, power
16 conservation, compatibility testing, and Android interoperability.

17 I declare under penalty of perjury under the laws of California and the United States that the
18 foregoing affidavit is true and correct to the best of my knowledge, and was executed by me in the city
19 of Monterey Park, California, on May 4, 2018.

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25 By: 
Jonathan Makcharoenwoodhi

EXHIBIT 2

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

In re Nexus 6P Products Liability Litigation

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

**CLRA VENUE DECLARATION OF
PLAINTIFF ANTHONY
MARTORELLO PURSUANT TO
CALIFORNIA CIVIL CODE SECTION
1780(d)**

1 I, Anthony Martorello, declare as follows:

2 1. I have personal knowledge of the facts stated herein and, if called upon to do so, could
3 competently testify thereto.

4 2. I am a Plaintiff in the above-captioned action.

5 3. I submit this declaration in support of the Second Consolidated Amended Class Action
6 Complaint, which is based in part on violations of the Consumers Legal Remedies Act, California Civil
7 Code section 1750 *et seq.*

8 4. The Second Consolidated Amended Class Action Complaint has been filed in the proper
9 place for trial of this action.

10 5. Defendant Google LLC has its principal place of business in Mountain View, California,
11 which is within Santa Clara County. Google conducts substantial business, including the acts and
12 practices at issue in this action, within Santa Clara County.

13 I declare under penalty of perjury under the laws of California and the United States that the
14 foregoing affidavit is true and correct to the best of my knowledge, and was executed by me in the city
15 of Margate, Florida on May 8, 2018.

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By: 
Anthony Martorello

EXHIBIT 3

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

In re Nexus 6P Products Liability Litigation

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

**CLRA VENUE DECLARATION OF
PLAINTIFF EDWARD BEHELER
PURSUANT TO CALIFORNIA CIVIL
CODE SECTION 1780(d)**

1 I, Edward Beheler, declare as follows:

2 1. I have personal knowledge of the facts stated herein and, if called upon to do so, could
3 competently testify thereto.

4 2. I am a Plaintiff in the above-captioned action.

5 3. I submit this declaration in support of the Second Consolidated Amended Class Action
6 Complaint, which is based in part on violations of the Consumers Legal Remedies Act, California Civil
7 Code section 1750 *et seq.*

8 4. The Second Consolidated Amended Class Action Complaint has been filed in the proper
9 place for trial of this action.

10 5. Defendant Google LLC has its principal place of business in Mountain View, California,
11 which is within Santa Clara County. Google conducts substantial business, including the acts and
12 practices at issue in this action, within Santa Clara County.

13 I declare under penalty of perjury under the laws of California and the United States that the
14 foregoing affidavit is true and correct to the best of my knowledge, and was executed by me in the city
15 of Lafayette, Indiana on May 9, 2018.

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20 By: 
Edward Beheler

EXHIBIT 4

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

In re Nexus 6P Products Liability Litigation

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

**CLRA VENUE DECLARATION OF
PLAINTIFF YURIY DAVYDOV
PURSUANT TO CALIFORNIA CIVIL
CODE SECTION 1780(d)**

1 I, Yuriy Davydov, declare as follows:

2 1. I have personal knowledge of the facts stated herein and, if called upon to do so, could
3 competently testify thereto.

4 2. I am a Plaintiff in the above-captioned action.

5 3. I submit this declaration in support of the Second Consolidated Amended Class Action
6 Complaint, which is based in part on violations of the Consumers Legal Remedies Act, California Civil
7 Code section 1750 *et seq.*

8 4. The Second Consolidated Amended Class Action Complaint has been filed in the proper
9 place for trial of this action.

10 5. Defendant Google LLC has its principal place of business in Mountain View, California,
11 which is within Santa Clara County. Google conducts substantial business, including the acts and
12 practices at issue in this action, within Santa Clara County.

13 I declare under penalty of perjury under the laws of California and the United States that the
14 foregoing affidavit is true and correct to the best of my knowledge, and was executed by me in the
15 neighborhood of Rego Park in New York, New York on May 5, 2018.

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21 By: _____


Yuriy Davydov

EXHIBIT 5

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

In re Nexus 6P Products Liability Litigation

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

**CLRA VENUE DECLARATION OF
PLAINTIFF REBECCA HARRISON
PURSUANT TO CALIFORNIA CIVIL
CODE SECTION 1780(d)**

1 I, Rebecca Harrison, declare as follows:

2 1. I have personal knowledge of the facts stated herein and, if called upon to do so, could
3 competently testify thereto.

4 2. I am a Plaintiff in the above-captioned action.

5 3. I submit this declaration in support of the Second Consolidated Amended Class Action
6 Complaint, which is based in part on violations of the Consumers Legal Remedies Act, California Civil
7 Code section 1750 *et seq.*

8 4. The Second Consolidated Amended Class Action Complaint has been filed in the proper
9 place for trial of this action.

10 5. Defendant Google LLC has its principal place of business in Mountain View, California,
11 which is within Santa Clara County. Google conducts substantial business, including the acts and
12 practices at issue in this action, within Santa Clara County.

13 I declare under penalty of perjury under the laws of California and the United States that the
14 foregoing affidavit is true and correct to the best of my knowledge, and was executed by me in the city
15 of Asheville, North Carolina on May 7, 2018.

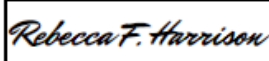
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EXHIBIT 6

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

In re Nexus 6P Products Liability Litigation

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

**CLRA VENUE DECLARATION OF
PLAINTIFF ZACHARY HIMES
PURSUANT TO CALIFORNIA CIVIL
CODE SECTION 1780(d)**

1 I, Zachary Himes, declare as follows:

2 1. I have personal knowledge of the facts stated herein and, if called upon to do so, could
3 competently testify thereto.

4 2. I am a Plaintiff in the above-captioned action.

5 3. I submit this declaration in support of the Second Consolidated Amended Class Action
6 Complaint, which is based in part on violations of the Consumers Legal Remedies Act, California Civil
7 Code section 1750 *et seq.*

8 4. The Second Consolidated Amended Class Action Complaint has been filed in the proper
9 place for trial of this action.

10 5. Defendant Google LLC has its principal place of business in Mountain View, California,
11 which is within Santa Clara County. Google conducts substantial business, including the acts and
12 practices at issue in this action, within Santa Clara County.

13 6. I declare under penalty of perjury under the laws of California and the United States that
14 the foregoing affidavit is true and correct to the best of my knowledge, and was executed by me in the
15 city of Midland, North Carolina on May 9, 2018.

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20 By: 
21 Zachary Himes

EXHIBIT 7

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

In re Nexus 6P Products Liability Litigation

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

**CLRA VENUE DECLARATION OF
PLAINTIFF TAYLOR JONES
PURSUANT TO CALIFORNIA CIVIL
CODE SECTION 1780(d)**

1 I, Taylor Jones, declare as follows:

2 1. I have personal knowledge of the facts stated herein and, if called upon to do so, could
3 competently testify thereto.

4 2. I am a Plaintiff in the above-captioned action.

5 3. I submit this declaration in support of the Second Consolidated Amended Class Action
6 Complaint, which is based in part on violations of the Consumers Legal Remedies Act, California Civil
7 Code section 1750 *et seq.*

8 4. The Second Consolidated Amended Class Action Complaint has been filed in the proper
9 place for trial of this action.

10 5. Defendant Google LLC has its principal place of business in Mountain View, California,
11 which is within Santa Clara County. Google conducts substantial business, including the acts and
12 practices at issue in this action, within Santa Clara County.

13 I declare under penalty of perjury under the laws of California and the United States that the
14 foregoing affidavit is true and correct to the best of my knowledge, and was executed by me in the city
15 of Chesapeake, Virginia on May 7, 2018.

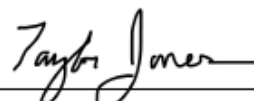
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22 Taylor Jones

EXHIBIT 8

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

In re Nexus 6P Products Liability Litigation

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

**CLRA VENUE DECLARATION OF
PLAINTIFF PAUL SERVODIO
PURSUANT TO CALIFORNIA CIVIL
CODE SECTION 1780(d)**

1 I, Paul Servodio, declare as follows:

2 1. I have personal knowledge of the facts stated herein and, if called upon to do so, could
3 competently testify thereto.

4 2. I am a Plaintiff in the above-captioned action.

5 3. I submit this declaration in support of the Second Consolidated Amended Class Action
6 Complaint, which is based in part on violations of the Consumers Legal Remedies Act, California Civil
7 Code section 1750 *et seq.*

8 4. The Second Consolidated Amended Class Action Complaint has been filed in the proper
9 place for trial of this action.

10 5. Defendant Google LLC has its principal place of business in Mountain View, California,
11 which is within Santa Clara County. Google conducts substantial business, including the acts and
12 practices at issue in this action, within Santa Clara County.

13 I declare under penalty of perjury under the laws of California and the United States that the
14 foregoing affidavit is true and correct to the best of my knowledge, and was executed by me in the city
15 of Akron, Ohio on May 8, 2018.

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21 By: 
22 Paul Servodio

EXHIBIT 9

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

In re Nexus 6P Products Liability Litigation

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

**CLRA VENUE DECLARATION OF
PLAINTIFF JUSTIN LEONE
PURSUANT TO CALIFORNIA CIVIL
CODE SECTION 1780(d)**

1 I, Justin Leone, declare as follows:

2 1. I have personal knowledge of the facts stated herein and, if called upon to do so, could
3 competently testify thereto.

4 2. I am a Plaintiff in the above-captioned action.

5 3. I submit this declaration in support of the Second Consolidated Amended Class Action
6 Complaint, which is based in part on violations of the Consumers Legal Remedies Act, California Civil
7 Code section 1750 *et seq.*

8 4. The Second Consolidated Amended Class Action Complaint has been filed in the proper
9 place for trial of this action.

10 5. Defendant Google LLC has its principal place of business in Mountain View, California,
11 which is within Santa Clara County. Google conducts substantial business, including the acts and
12 practices at issue in this action, within Santa Clara County.

13 I declare under penalty of perjury under the laws of California and the United States that the
14 foregoing affidavit is true and correct to the best of my knowledge, and was executed by me in the city
15 of Monroeville, Pennsylvania on May 7, 2018.

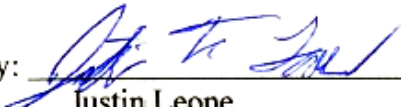
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EXHIBIT 10

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

In re Nexus 6P Products Liability Litigation

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

**CLRA VENUE DECLARATION OF
PLAINTIFF JAMES POORE
PURSUANT TO CALIFORNIA CIVIL
CODE SECTION 1780(d)**

1 I, James Poore, declare as follows:

2 1. I have personal knowledge of the facts stated herein and, if called upon to do so, could
3 competently testify thereto.

4 2. I am a Plaintiff in the above-captioned action.

5 3. I submit this declaration in support of the Second Consolidated Amended Class Action
6 Complaint, which is based in part on violations of the Consumers Legal Remedies Act, California Civil
7 Code section 1750 *et seq.*

8 4. The Second Consolidated Amended Class Action Complaint has been filed in the proper
9 place for trial of this action.

10 5. Defendant Google LLC has its principal place of business in Mountain View, California,
11 which is within Santa Clara County. Google conducts substantial business, including the acts and
12 practices at issue in this action, within Santa Clara County.

13 6. I declare under penalty of perjury under the laws of California and the United States that
14 the foregoing affidavit is true and correct to the best of my knowledge, and was executed by me in the
15 city of Houston, Texas on May 9, 2018.

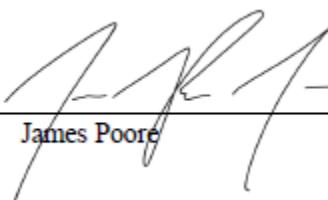
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EXHIBIT 11

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

In re Nexus 6P Products Liability Litigation

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

**CLRA VENUE DECLARATION OF
PLAINTIFF KENNETH JOHNSTON
PURSUANT TO CALIFORNIA CIVIL
CODE SECTION 1780(d)**

1 I, Kenneth Johnston, declare as follows:

2 1. I have personal knowledge of the facts stated herein and, if called upon to do so, could
3 competently testify thereto.

4 2. I am a Plaintiff in the above-captioned action.

5 3. I submit this declaration in support of the Second Consolidated Amended Class Action
6 Complaint, which is based in part on violations of the Consumers Legal Remedies Act, California Civil
7 Code section 1750 *et seq.*

8 4. The Second Consolidated Amended Class Action Complaint has been filed in the proper
9 place for trial of this action.

10 5. Defendant Google LLC has its principal place of business in Mountain View, California
11 which is within Santa Clara County. Google conducts substantial business, including the acts and
12 practices at issue in this action, within Santa Clara County.

13 I declare under penalty of perjury under the laws of California and the United States that the
14 foregoing affidavit is true and correct to the best of my knowledge, and was executed by me in the city
15 of Spokane Valley, Washington on May 7, 2018.

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20 By: 
21 Kenneth Johnston