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SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES – UNLIMITED CIVIL

17 JENNIFER HYATT, individually and on behalf
 18 of all others similarly situated,

19 Plaintiff,

20 vs.

21 GOOGLE, LLC,

22 Defendant.

Case No.: **24STCV03286**

CLASS ACTION COMPLAINT FOR VIOLATIONS OF:

- 1) CALIFORNIA’S CONSUMERS LEGAL REMEDIES ACT, CAL. CIVIL CODE §§ 1750, ET SEQ.;
- 2) CALIFORNIA’S FALSE ADVERTISING LAW, BUS. & PROF. CODE §§ 17500 ET SEQ.;
- 3) CALIFORNIA BUS. & PROF. §§ 17200, ET SEQ.;
- 4) CALIFORNIA’S SONG-BEVERLY CONSUMER WARRANTY ACT, CALIFORNIA CIVIL CODE §§ 1790, ET SEQ.;
- 5) NEGLIGENT MISREPRESENTATION; AND
- 6) INTENTIONAL MISREPRESENTATION.

JURY TRIAL DEMANDED

INTRODUCTION

- 1
2 1. Plaintiff JENNIFER HYATT (“Ms. Hyatt” or “Plaintiff”), individually and on behalf of all
3 others similarly situated, brings this Class Action Complaint for damages, injunctive relief, and
4 any other available legal or equitable remedies, resulting from the illegal actions of Defendant
5 GOOGLE, LLC, (“Google” or “Defendant”) is unlawfully representing and advertising the
6 Google Pixel Pro 6 phones (hereinafter the “Product”) as a functional working phone, when
7 instead Defendant knows the Products are defective and are prone to overheating and unusable
8 (the “Defect”) which renders the Product’s functionally useless and unreliable by inhibiting the
9 Product’s most basic functions; such as making calls and keeping the device powered on.
- 10 2. The unlawfully represented Products are sold by Defendant in various smartphone and
11 electronics retail stores located throughout California and advertised on Defendant’s website as
12 well.¹ Plaintiff alleges as follows upon personal knowledge as to herself and her own acts and
13 experiences, and, as to all other matters, upon information and belief, including investigation
14 conducted by her attorneys.
- 15 3. Specifically, Plaintiff purchased the Product, because of Defendant’s advertisements of the
16 Product, which represented that consumers could expect the Product to function and perform as
17 any other quality, working phone. However, the Product contains a debilitating defect of which
18 Defendant was aware.
- 19 4. Defendant’s conduct constitutes violations of: (1) California’s Consumers Legal Remedies Act
20 (“CLRA”), Cal. Civ. Code §§ 1750, et seq.; (2) California’s False Advertising Law (“FAL”),
21 Bus. & Prof. Code § 17533.7; (3) California’s Unfair Competition Law (“UCL”), Bus. & Prof.
22 Code §§ 17200, et seq.; (4) California’s Song-Beverly Consumer Warranty Act (“SBCWA”),
23 Cal. Civ. Code §§ 1790; (5) negligent misrepresentation; and (6) intentional misrepresentation.
24 This conduct caused Plaintiff, and others similarly situated, damages, and requires restitution
25 and injunctive relief to remedy and prevent further harm.

26
27 ¹ Plaintiff seeks class wide relief on behalf of all purchasers of any of Defendant’s products that are
28 substantially similar to the consumable consumer packaged product purchased by Plaintiff that are
advertised as normal working phones but overheat, are unusable, and are thus defective, in violation
of California law(s).

JURISDICTION AND VENUE

- 1
- 2 5. Jurisdiction is proper pursuant to this Court’s general jurisdiction.
- 3 6. The Court has jurisdiction over Plaintiff’s claims for damages, restitution, injunctive relief, and
- 4 declaratory relief arising from Defendant’s unlawful business practices under California’s
- 5 CLRA, FAL, and UCL; as well as the SBCWA; negligent and intentional misrepresentation.
- 6 7. This Court has personal jurisdiction over Defendant because they conduct substantial business
- 7 in the State of California and County of Los Angeles, have sufficient minimum contacts with
- 8 this State and County, and otherwise purposefully avail themselves of the markets in this State
- 9 and County through the promotion, sale, and marketing of their products in this State, to render
- 10 the exercise of jurisdiction by this Court permissible under traditional notions of fair play and
- 11 substantial justice.
- 12 8. Venue is proper in this Court pursuant to California Code of Civil Procedure § 395(a) because
- 13 Plaintiff resides within this County and many of the acts and transactions giving rise to this
- 14 action occurred in this district because Defendant:
- 15 a. is authorized to conduct business in this district and have intentionally availed
- 16 themselves of the laws and markets within this county;
- 17 b. does substantial business within this county; and is subject to personal jurisdiction
- 18 in this county; and
- 19 c. is subject to personal jurisdiction in this county.

PARTIES

- 20
- 21 9. Plaintiff is an individual residing in the city of Glendale, County of Los Angeles, State of
- 22 California.
- 23 10. Defendant is a Delaware corporation, with a principal business in Mountain View, California,
- 24 doing business in the State of California and within the County of Los Angeles.
- 25 11. Unless otherwise indicated, the use of Defendant’s name in this Class Action Complaint
- 26 includes all agents, employees, officers, members, directors, heirs, successors, assigns,
- 27 principals, trustees, sureties, subrogees, representatives, insurers, and franchisees of Defendant.
- 28

FACTUAL ALLEGATIONS

- 1
- 2 12. Plaintiff re-alleges and incorporates by reference all the above paragraphs of this Class Action
- 3 Complaint as though fully stated herein.
- 4 13. Defendant manages, and exerts control over the distribution, testing, and advertisements of their
- 5 Products in California.
- 6 14. On or about December 6, 2021, Plaintiff purchased the Product from Verizon Wireless Services,
- 7 LLC.
- 8 15. Plaintiff chose to purchase the Product over other similar models because the Products were
- 9 advertised as being normal, usable phones able to perform standard functions associated with
- 10 any smart phone, and which were represented to be the smartest, fastest, and most secure Pixel
- 11 phones.
- 12 16. Plaintiff relied on these representations made by Defendant when deciding to purchase the
- 13 Product, truly believing she was purchasing a phone of functional quality.
- 14 17. Based on Defendant’s representations, Plaintiff believed that the Product was made with high
- 15 quality materials, operated quickly, and had highly optimized basic and complex functions; not
- 16 only objectively, but in comparison to other similar devices and models of the Product.
- 17 18. Relying on Defendant’s representations and product name, Plaintiff purchased the Product for
- 18 \$899.99
- 19 19. Immediately after purchasing the Product, Plaintiff was shocked to discover that the Product
- 20 was prone to an overheating Defect; often the Product would heat to the point of being unable to
- 21 hold in Plaintiff’s bare hands.
- 22 20. Due to the Defect, the Product would begin to shut down features or simply stop working
- 23 altogether.
- 24 21. Plaintiff requested a new replacement of the phone, the Product, of the same model from
- 25 Verizon. However, replacement models contained the same overheating Defect.
- 26 22. Over the next several months, Plaintiff requested numerous replacement phones from Verizon,
- 27 each phone was always the same model; a Google Pixel 6 Pro phone. All of which had the same
- 28 overheating Defect, which would render the phone virtually unusable after minimal use.

- 1 23. Google is well aware of the Product’s Defect; Google has included a section on its website
2 entitled “Help keep your Pixel phone from feeling too warm or hot.”
- 3 24. Google has failed to initiate a campaign informing consumers of the Defect and/or recalling the
4 Product and removing it from the market.
- 5 25. Plaintiff valued that the Product was to be a functioning phone. Had Plaintiff been aware that
6 the Product overheated and did not actually function, she would not have purchased the Product.
- 7 26. Plaintiff has been harmed by not receiving the Product she bargained for.
- 8 27. Defendant continues to manufacture, market and/or sell the Class Products that have been and
9 are currently still represented and advertised as working and functioning Products. Defendant
10 makes these representations on their website, and in various smartphone and electronics retail
11 stores.
- 12 28. Contrary to the representations, Defendant’s Class Products are not working nor useable phones
13 as they are prone to a debilitating Defect.
- 14 29. Defendant intentionally conceals this fact from consumers by misrepresenting the quality of the
15 device through advertisements claiming the Product can perform as a regular phone, when that
16 is not true. Additionally, Defendant has not put out a statement or recall informing consumers of
17 the defective Class Products.
- 18 30. As such, Defendant has falsely represented that their Class Products are able to perform and
19 function as normal phones, and of superior quality to other models of smartphone. Defendant
20 possesses superior knowledge of the true facts that were not disclosed, thereby tolling the
21 running of any applicable statute of limitations.
- 22 31. On information and belief, Defendant charged excess monies for its Class Products in
23 comparison to Defendant’s competitors during the entirety of the relevant four-year statutory
24 time period, based on Defendant’s false designations that the Product works and performs as a
25 quality phone should and that the Product is high quality (or some derivative thereof).
- 26 32. On information and belief, Defendant’s Defective Class Products, including the Product
27 purchased by Plaintiff, are not worth the purchase price paid by Plaintiff and putative Class
28

1 members. The precise amount of damages will be proven at the time of trial, in large part, by
2 expert testimony.

3 33. As a result of Defendant's false and misleading statements and failure to disclose (or adequately
4 disclose), as well as Defendant's other conduct described herein, Plaintiff and other similarly
5 situated consumers purchased millions of Defendant's Class Products and have suffered, and
6 continue to suffer, injury in fact, including the loss of money and/or property.

7 **CLASS ACTION ALLEGATIONS**

8 34. Plaintiff re-alleges and incorporates by reference all of the above paragraphs of this Complaint
9 as though fully stated herein.

10 35. Plaintiff brings this action individually and on behalf of all others similarly situated against
11 Defendant, pursuant to California Code of Civil Procedure Section 378.

12 36. Plaintiff represents, and is a member of the class, ("the Class") consisting of:

13 a. "All persons within California who purchased one or more of
14 Defendant's Products during the three (3) years immediately
15 preceding the filing of the Complaint through the date of class
16 certification, which were represented and/or advertised as a working
17 phone, but which contain a Defect.

18 b. "All persons within California who purchased one or more of
19 Defendant's Products during the four (4) years immediately preceding
20 the filing of the Complaint through the date of class certification.

21 37. Excluded from the Class is the Defendant and any of its officers, directors, and employees.

22 38. Plaintiff reserves the right to modify or amend the Class definition before the Court determines
23 whether certification is appropriate.

24 39. This action has been brought and may properly be maintained as a class action under the
25 provisions of § 382 of the California Code of Civil Procedure because there is a well-defined
26 community of interest in the litigation and the proposed Class is easily ascertainable.

27 40. **Numerosity.** Plaintiff does not know the number of members in the Class, but Plaintiff
28 currently believes that there are thousands, if not more, members of the Class within the State of
California. The members of the Class are so numerous and geographically disbursed that joining

1 all Class members is impractical, and the disposition of their claims in the Class action will
2 provide substantial benefits both to the parties and to the court. This matter should therefore be
3 certified as a Class action to assist in the expeditious litigation of this matter.

4 **41. Commonality.** There is a well-defined community of interest in the questions of law and fact
5 involved affecting the parties to be represented. Common questions of fact and law exist in this
6 matter that predominate over questions that may affect individual Class members, including, but
7 not limited to, the following:

- 8 a. Whether Defendant committed the wrongful conduct alleged herein;
- 9 b. Whether Defendant's claims and representations, as alleged herein, are untrue,
10 misleading, and/or reasonably likely to deceive the average consumer;
- 11 c. Whether Defendant's acts, transactions, or course of conduct constitute the violations
12 of law alleged herein;
- 13 d. Whether Defendant's conduct violates California Civil Code §§ 1750, *et seq.*;
- 14 e. Whether Defendant's advertising is false, untrue, or misleading within the meaning
15 of California Business & Professions Code §§ 17500, *et seq.*;
- 16 f. Whether Defendant's conduct is an unfair, fraudulent, or unlawful act or practice
17 within the meaning of California Business & Professions Code §§ 17200, *et seq.*;
- 18 g. Whether Defendant's advertising is unfair, deceptive, untrue, or misleading within
19 the meaning of California Business & Professions Code §§ 17200, *et seq.*;
- 20 h. Whether Defendant's advertising and conduct constitutes a violation of express
21 and/or implied warranty within the meaning of California Civil Code §§ 1790, *et*
22 *seq.*;
- 23 i. Whether Defendant acted negligently and intentionally in making the
24 misrepresentations contained regarding the Products thought its stores, menus, and
25 website;
- 26 j. Whether Defendant's Products are defective and overheat.
- 27 k. Whether Defendant's Products are unmerchantable.

- 1 1. Whether Defendant, through its conduct, received money that, in equity and good
2 conscience, belongs to Plaintiff and members of the Class;
- 3 m. Whether the members of the Class sustained and/or continue to sustain damages
4 attributable to Defendant's conduct, and, if so, the proper measure and appropriate
5 formula to be applied in determining such damages; and
- 6 n. Whether the members of the Class are entitled to injunctive and/or any other
7 equitable relief, including but not limited to restitution and/or disgorgement of ill-
8 gotten gains.

9 **42. Typicality.** As a person who purchased one or more of Defendant's products, Products, that
10 were advertised as a working phone of high quality but contains the Defect, Plaintiff is asserting
11 claims that are typical of the Class. Plaintiff's claims involve the same violations of law by
12 Defendant as other Class Members' claims. Plaintiff and members of the Class also sustained
13 damages arising out of Defendant's common course of conduct complained herein. Plaintiff is
14 advancing the same claims and legal theories on behalf of himself and all absent members of the
15 Class. Defendant has no defenses unique to the Plaintiff.

16 **43. Adequacy of Representation.** Plaintiff will fairly and adequately represent and protect the
17 interests of other members of the Class in that Plaintiff has no interests antagonistic to any
18 member of the Class. Further, Plaintiff has retained counsel experienced in handling class action
19 claims and claims involving violations of the consumer laws, including violations of the CLRA
20 and California Business and Professions Code, and, specifically, false, and deceptive
21 advertising. Plaintiff's attorneys are aware of no interests adverse or antagonistic to those of
22 Plaintiff and proposed Class.

23 **44. Superiority.** A class action is superior to all other available means for the fair and efficient
24 adjudication of this controversy. Individualized litigation would create the danger of
25 inconsistent and/or contradictory judgments arising from the same set of facts. Individualized
26 litigation would also increase the delay and expense to all parties and court system and the
27 issues raised by this action. The damages or other financial detriment suffered by individual
28 Class members may be relatively small compared to the burden and expense that would be

1 entailed by individual litigation of the claims against the Defendant. The injury suffered by each
2 individual member of the proposed class is relatively small in comparison to the burden and
3 expense of individual prosecution of the complex and extensive litigation necessitated by
4 Defendant’s conduct. It would be virtually impossible for members of the proposed Class to
5 individually and effectively redress the wrongs to them. Even if the members of the proposed
6 Class could afford such litigation, the court system could not. Individualized litigation increases
7 the delay and expense to all parties, and to the court system, presented by the complex legal and
8 factual issues of the case. By contrast, the class action device presents far fewer management
9 difficulties, and provides the benefits of single adjudication, economy of scale, and
10 comprehensive supervision by a single court. Therefore, a class action is maintainable pursuant
11 to Cal. Code of Civil Procedure § 382.

12 45. Unless the Class is certified, Defendant will retain monies received as a result of Defendant’s
13 unlawful and deceptive conduct alleged herein. Unless a class-wide injunction is issued,
14 Defendant will also likely continue to, or allow its agents to, advertise, market, promote and
15 package Defendant’s Class Products in an unlawful and misleading manner, and members of the
16 Class will continue to be misled, harmed, and denied their rights under California law.

17 46. Further, Defendant has acted or refused to act on grounds that are generally applicable to the
18 class so that declaratory and injunctive relief is appropriate to the Class as a whole, making class
19 certification appropriate.

20 **FIRST CAUSE OF ACTION**

21 **VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT**

22 **CAL. CIV. CODE SECTION 1750, ET SEQ.**

23 47. Plaintiff re-alleges and incorporates by reference all of the above paragraphs of this Complaint
24 as though fully stated herein.

25 48. California Civil Code Section 1750, et seq., entitled the Consumers Legal Remedies Act
26 (hereinafter “CLRA”), provides a list of “unfair or deceptive” practices in a “transaction”
27 relating to the sale of “goods” or “services” to a “consumer.” The Legislature’s intent in
28

1 promulgating the CLRA is expressed in Civil Code Section 1760, which provides, *inter alia*,
2 that its terms are to be:

3 Construed liberally and applied to promote its underlying purposes,
4 which are to protect consumers against unfair and deceptive business
5 practices and to provide efficient and economical procedures to secure
6 such protection.

6 49. Defendant’s products constitute “goods” as defined pursuant to Civil Code Section 1761(a).

7 50. Plaintiff, and the Class members, are each a “consumer” as defined pursuant to Civil Code
8 Section 1761(d).

9 51. Each of Plaintiff’s and the Class members’ purchases of Defendant’s products constituted a
10 “Transaction” as defined pursuant to Civil Code Section 1761(e).

11 52. Civil Code Section 1770(a (5), (7) and (9)) provides that:

12 The following unfair methods of competition and unfair or deceptive
13 acts or practices undertaken by any person in a transaction intended to
14 result or which results in the sale or lease of goods or services to any
15 consumer are unlawful:

15 (5) [r]epresenting that goods or services have sponsorship,
16 approval, characteristics, ingredients, uses, benefits, or
17 quantities which they do not have or that a person has a
18 sponsorship, approval, status, affiliation, or connection which
19 he or she does not have;

18 (7) [r]epresenting that goods or services are of a particular
19 standard, quality, or grade...; [and]

19 (9) [a]dvertising goods or services with intent not to sell them
20 as advertised.”

21 53. Defendant violated Civil Code Section 1770(a)(5), (7) and (9) by marketing and representing
22 that their Products are functioning, quality phones when they actually contain a Defect.

23 54. Plaintiff relied on Defendant’s representations.

24 55. As a result of Defendant’s false representations and deceitful conduct regarding its warranties,
25 Plaintiff and Class members were injured because they: (a) would not have purchased the Class
26 products if the true facts were known concerning the Defendant’s false and misleading claims at
27 time of purchase, or Plaintiff and Class members would have paid substantially less; (b) paid a
28

1 premium price for the Class Products as a result of Defendant’s false advertisements and
2 misrepresentations; and (c) purchased products that did not have the sponsorship,
3 characteristics, and qualities promised by Defendant, but were defective.

4 56. Under *California Civil Code* § 1780(a) and (b), Plaintiff, individually and on behalf of the
5 Class, seeks an injunction requiring Defendant to cease and desist the illegal conduct alleged in
6 this Complaint. Specifically, Plaintiff and Class members are entitled to a permanent injunction
7 that compels Defendant to immediately: (1) cease and desist from the continued sale of the
8 products that contain the same or similar misrepresentations as the Class products; (2) initiate a
9 corrective advertising campaign to notify Class members who are victims of the above-
10 described illegal conduct about the true nature the Class products; and (3) initiate a full recall of
11 the Class products with an offer to refund the purchase price, plus reimbursement of interest.

12 57. Pursuant to section 1782(d), on two separate occasions, by letter dated April 12, 2023, and by
13 another letter dated June 5, 2023, Plaintiff notified Defendant in writing by certified mail, return
14 receipt requested, of the particular violations of section 1770 and demanded that Defendant
15 rectify the problems associated with the actions detailed above and give notice to all affected
16 consumers of Defendant’s intent to so act.² Defendant failed to rectify or agree to rectify the
17 problems associated with the actions detailed above and give notice to all affected consumers
18 within thirty days of the date of written notice pursuant to section 1782. Therefore, Plaintiff
19 and the Class further seek actual, punitive, and statutory damages, as deemed appropriate.

20 58. Attached hereto as Exhibit B is a sworn affidavit from Plaintiff pursuant to Cal. Civ. Code §
21 17801(d).

22 **SECOND CAUSE OF ACTION**

23 **VIOLATIONS OF CALIFORNIA’S FALSE ADVERTISING LAW (“FAL”)**

24 **BUS. & PROF. CODE §§ 17500, ET SEQ.**

25 59. Plaintiff re-alleges and incorporates by reference all of the above paragraphs of this Complaint
26 as though fully stated herein.

27 _____
28 ² A true and correct copy of Plaintiff’s demand letters dated April 12, 2023, and June 5, 2023, are
attached hereto as Exhibit A.

- 1 60. Plaintiff and Defendant are both “person[s]” as defined by Cal. Bus. & Prof. Code § 17506.
- 2 61. Cal. Bus. & Prof. Code § 17535 authorizes a private right of action on both an individual and
3 representative basis.
- 4 62. Defendant misrepresents their products as functioning, quality phones when Defendant’s
5 products are in fact Defective.
- 6 63. These misrepresentations, acts, and non-disclosures by Defendant constitute false and
7 misleading advertising in violation of Cal. Bus. & Prof. Code §§ 17500, *et seq.*
- 8 64. At all times relevant, Defendant’s representations and advertising of their Products was, and is,
9 untrue, misleading, and likely to deceive the reasonable consumer and the public.
- 10 65. Defendant engages in the false and/or misleading advertising and marketing of the products, as
11 alleged herein, with the intent to directly or indirectly induce consumers to purchase its
12 products, which Defendant knew contained a Defect and did not perform as a regular phone as
13 advertised.
- 14 66. Because Defendant knew or should have known that the representations and/or omissions
15 alleged herein were untrue or misleading, Defendant acted in violation of Cal. Bus. & Prof.
16 Code §§ 17500, *et seq.*
- 17 67. Had Defendant truthfully advertised that their products were not able to perform as normal,
18 working phones and contained a defects , Plaintiff and the putative Class members would not
19 have purchased the products or would have purchased a different product from another retailer.
- 20 68. This false and misleading advertising of the products by Defendant presents a continuing
21 threat to consumers, as Defendant’s conduct is ongoing to this day.
- 22 69. As a direct and proximate result of the aforementioned acts and omissions by Defendant,
23 Defendant received and continues to hold monies rightfully belonging to Plaintiff and the
24 putative Class members, who were led to purchase the Defective Products during the Class
25 Period.
- 26 ///
- 27 ///
- 28 ///



1 **THIRD CAUSE OF ACTION**

2 **VIOLATION OF BUSINESS & PROFESSIONS CODE**

3 **BUS. & PROF. CODE, SECTION 17200, ET SEQ.**

4 70. Plaintiff re-alleges and incorporates by reference all of the above paragraphs of this Complaint
5 as though fully stated herein.

6 71. Plaintiff and Defendant are each “person[s]” as defined by California Business & Professions
7 Code § 17201. California Business & Professions Code § 17204 authorizes a private right of
8 action on both an individual and representative basis.

9 72. “Unfair competition” is defined by Business and Professions Code Section § 17200 as
10 encompassing several types of business “wrongs,” four of which are at issue here: (1) an
11 “unlawful” business act or practice, (2) an “unfair” business act or practice, (3) a “fraudulent”
12 business act or practice, and (4) “unfair, deceptive, untrue or misleading advertising.” The
13 definitions in § 17200 are drafted in the disjunctive, meaning that each of these “wrongs”
14 operates independently from the others.

15 73. By and through Defendant’s conduct alleged in further detail above and herein, Defendant
16 engaged in conduct which constitutes unlawful, unfair, and/or fraudulent business practices
17 prohibited by Bus. & Prof. Code § 17200 et seq.

18 ***A. “Unlawful” Prong***

19 74. A business act or practice is “unlawful” under the UCL if it violates any other law or regulation.

20 75. Defendant has committed acts of unfair competition, including those described above, by
21 engaging in a pattern of “unlawful” business practices, within the meaning of Bus. & Prof.
22 Code §§ 17200, et seq. by manufacturing, distributing, and/or marketing Defendant’s Class
23 Products with false representations of the product quality, in violation of California’s CLRA,
24 Civil Code § 1750, et seq., and California’s False Advertisement statute, Bus. & Prof. Code §§
25 17500, et seq., by falsely representing that the products referenced herein are working, quality
26 phones when the products are in fact Defective.

27 ***B. “Unfair” Prong***

28 76. A business act or practice is “unfair” under the UCL if it offends an established public policy

1 or is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers, and
2 that unfairness is determined by weighing the reasons, justifications, and motives of the
3 practice against the gravity of the harm to the alleged victims.

4 77. Defendant has committed acts of unfair competition that are prohibited by Bus. & Prof. Code
5 section 17200 et seq. Defendant engaged in a pattern of “unfair” business practices that violate
6 the wording and intent of the statutes by engaging conduct and practices that threaten an
7 incipient violation of law/s or violate the policy or spirit of law/s by manufacturing, distributing,
8 and/or marketing Defendant’s products with a false representation of quality, in violation of
9 California’s CLRA, Civil Code § 1750, et seq. and California’s False Advertisement statute,
10 Bus. & Prof. Code §§ 17500, et seq. by falsely representing that the products referenced herein
11 are working, quality phones when Defendant’s products are in fact Defective and prone to
12 overheating which renders the Product’s basic functions unusable.

13 78. Alternatively, Defendant engaged in a pattern of “unfair” business practices that violate the
14 wording and intent of the abovementioned statute/s by engaging in practices that are immoral,
15 unethical, oppressive or unscrupulous, the utility of such conduct, if any, being far outweighed
16 by the harm done to consumers and against public policy by manufacturing, distributing, and/or
17 marketing Defendant’s Class Products with false representation of quality, in violation of
18 California’s CLRA, Civil Code § 1750, et seq. and California’s False Advertisement statute,
19 Bus. & Prof. Code §§ 17500, et seq. by falsely representing that the products referenced herein
20 are quality, working phones when they are in fact Defective and prone to overheating which
21 renders the Product’s basic functions unusable.

22 79. Alternatively, Defendant engaged in a pattern of “unfair” business practices that violate the
23 wording and intent of the abovementioned statute/s by engaging in practices, including
24 manufacturing, distributing, marketing, and/or advertising Defendant’s products with false
25 representation of quality, wherein: (1) the injury to the consumer was substantial; (2) the injury
26 was not outweighed by any countervailing benefits to consumers or competition; and (3) the
27 injury was not of the kind that consumers themselves could not have reasonably avoided.

28

C. “Fraudulent” Prong

1
2 80. A business act or practice is “fraudulent” under the UCL if it is likely to deceive members of the
3 consuming public.

4 81. Defendant’s acts and practices alleged above constitute fraudulent business acts or practices as
5 they deceived Plaintiffs and are highly likely to deceive members of the consuming public.

6 82. Defendant engaged in acts of unfair competition, including those described above and herein,
7 prohibited and in violation of Bus. & Prof. Code § 17200 et seq., by engaging in a pattern of
8 “fraudulent” business practices within the meaning of Bus. & Prof. Code § 17200 et seq, by
9 manufacturing, distributing, and/or marketing Defendant’s Class Products in violation of
10 California’s CLRA, Civil Code § 1750, et seq. and California’s False Advertisement statute,
11 Bus. & Prof. Code §§ 17500, et seq. by falsely representing that the products referenced herein
12 are quality, working phones when Defendant’s products are in fact Defective and prone to
13 overheating which renders the Product’s basic functions unusable.

14 83. Plaintiff reserves the right to allege further conduct that constitutes other fraudulent business
15 acts or practices. Such conduct is ongoing and continues to this date.

16 ***D. “Unfair, Deceptive, Untrue or Misleading Advertising” Prong***

17 84. Defendant’s advertising is unfair, deceptive, untrue and/or misleading in that consumers are led
18 to believe that Defendant’s Class Products are quality, working phones when Defendant’s
19 products are in fact Defective and prone to overheating which renders the Product’s basic
20 functions unusable.

21 85. Plaintiff, a reasonable consumer, and the public would likely be, and, in fact were, deceived and
22 misled by Defendant’s representations and advertising as they would, and did, interpret the
23 representation in accord with its ordinary usage, that the products are actually quality, working
24 phones.

25 86. Defendant’s unlawful, unfair, and fraudulent business practices and unfair, deceptive, untrue, or
26 misleading advertising presents a continuing threat to the public in that Defendant continued to
27 engage in unlawful conduct resulting in harm to consumers.

28

1 87. Defendant engaged in these unlawful, unfair, and fraudulent business practices motivated solely
2 by their self-interest with the primary purpose of collecting unlawful and unauthorized monies
3 from Plaintiff and all others similarly situated, thereby unjustly enriching Defendant.

4 88. Such acts and omissions by Defendant are unlawful and/or unfair and/or fraudulent and
5 constitute a violation of Business & Professions Code §§ 17200, et seq. Plaintiff reserves the
6 right to identify additional violations by Defendant as may be established through discovery.

7 89. As a direct and proximate result of the acts and representations described above and herein,
8 Defendant received and continues to receive unearned commercial benefits at the expense of
9 their competitors and the public.

10 90. As a direct and proximate result of Defendant's unlawful, unfair, and fraudulent conduct
11 described herein, Defendant have been and will continue to be unjustly enriched by the receipt
12 of ill-gotten gains from customers, including Plaintiff, who unwittingly provided money to
13 Defendant based on their representations.

14 91. Plaintiff suffered an "injury in fact" because Plaintiff's money was taken by Defendant as a
15 result of their false representations set forth above.

16 92. In prosecuting this action for the enforcement of important rights affecting the public interest,
17 Plaintiff seeks the recovery of attorneys' fees, which is available to a prevailing plaintiff in class
18 action cases such as this matter.

19 **FOURTH CAUSE OF ACTION FOR**
20 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY PURSUANT TO THE SONG-BEVERLY**
21 **CONSUMER WARRANTY ACT**

22 93. Plaintiff incorporates all of the above paragraphs of this Complaint as though fully stated in this
23 cause of action.

24 94. Plaintiff and Class members are "buyers" and "lessees" of a "consumer good" as defined by
25 California Civil Code § 1791(b), 1791(h) and 1791(a).

26 95. Google is the warrantor of the Product's implied warranties.

27 96. Plaintiff's and Class members' purchase or lease of the Class Products were accompanied by
28 Google's implied warranty of merchantability guaranteed by California Civil Code §1791.1(a).

1 97. The implied warranty of merchantability requires that a vehicle pass without objection in the
2 trade under the contract description; be fit for the ordinary purposes for which it would be used;
3 that it be adequately contained, packaged, and labeled; and lastly, that it conforms to the
4 promises or affirmations of fact made. California Civil Code §1791.1(a)(1)-(4).

5 98. The Class Products defect constitutes a breach of the implied warranty of merchantability
6 because it causes the phone to overheat and not properly causing the phones features, functions,
7 and applications to shut down and/or cease functions under normal use. Thus, the Class
8 Products do not pass without objection, are not fit for their ordinary purposes, and do not
9 conform to the promises made about them. As such, the Class Products' defect violates
10 California Civil Code §1791.1(a)(1)-(4).

11 99. Plaintiff and Class members have justifiably revoked acceptance of the Class vehicles and are
12 entitled to rescind the phones' purchase contract and to restitution of all money paid pursuant to
13 it.

14 100. Plaintiff and Class members have been proximately damaged by Google's failure to comply
15 its affirmative obligations under the implied warranty of merchantability.

16 101. Plaintiff and Class members are entitled to the remedies provided by California Civil Code
17 §1794, and including her attorney's fees, costs, and expenses.

18 **FIFTH CAUSE OF ACTION FOR**
19 **NEGLIGENT MISREPRESENTATION**

20 102. Plaintiff repeats, re-alleges and incorporates by reference the above allegations as if fully
21 stated herein.

22 103. At a date presently unknown to Plaintiff, but at least four (4) years prior to the filing of this
23 action, and as set forth above, Defendant represented to the public, including Plaintiff, by
24 menus, advertisements, and other means, that their Products are quality, working phones, when
25 they are actually Defective and prone to overheating which renders the Product's basic functions
26 unusable.

27 104. Defendant made the representations herein alleged with the intention of inducing the public,
28 including Plaintiff and putative class members, to purchase their Products.

1 105. Plaintiff and other similarly situated persons in California saw, believed, and relied upon
2 Defendant's advertising representations and, in reliance on them, purchased the Class Products,
3 as described herein.

4 106. At all times relevant, Defendant made the misrepresentations herein alleged when Defendant
5 knew or should have known these representations to be untrue, and Defendant had no
6 reasonable basis for believing the representations to be true.

7 107. As a proximate result of Defendant's negligent misrepresentations, Plaintiff and other
8 consumers similarly situated were induced to purchase, purchase more of, or pay more for
9 Defendant's Class Products, due to the unlawful acts of Defendant, in an amount to be
10 determined at trial, during the Class Period.

11 **SIXTH CAUSE OF ACTION FOR**
12 **INTENTIONAL MISREPRESENTATION**

13 108. Plaintiff repeats, re-alleges and incorporates herein by reference the above allegations as if
14 fully stated herein.

15 109. At a date presently unknown to Plaintiff, but at least four (4) years prior to the filing of this
16 action, and as set forth above, Defendant intentionally represented to the public, including
17 Plaintiff, by promoting and other means, that Defendant's Class Products were quality, working
18 phones, when Defendant's products are in fact Defective.

19 110. Defendant made the representations herein alleged with the intention of inducing the public,
20 including Plaintiff, to purchase Defendant's Class Products for Defendant's own financial gain.

21 111. Defendant intentionally made such misrepresentations by printing and advertising its
22 misrepresentations in its stores and on their website.

23 112. Defendant's misrepresentations of the Class Products as quality, working phones was
24 misleading because Defendant's products are in fact not actually quality but instead Defective
25 and prone to overheating which renders the Product's basic functions as unusable.

26 113. Plaintiff and other similarly situated persons in California saw, believed, and relied upon
27 Defendant's advertising representations and, in reliance on such representations, purchased the
28 Class Products, as described above.

1 114. At all times relevant, Defendant intentionally made the misrepresentations herein alleged,
2 allowed the misrepresentations to continue to be made by its resellers and Defendant knew the
3 representations to be false.

4 115. As a proximate result of Defendant's intentional misrepresentations, Plaintiff and other
5 consumers similarly situated were induced to spend an amount of money to be determined at
6 trial on Defendant's misrepresented Products.

7 116. Defendant knew that their Class Products were in fact not quality, working phones but
8 instead Defective, but nevertheless made the representations described herein with the intention
9 that consumers rely on Defendant's representations.

10 117. Defendant also knew that its advertisements, as well as their website, represented its Class
11 Products as quality, working phones, when Defendant clearly knew that they were actually
12 Defective.

13 118. Plaintiff and other consumers similarly situated, in purchasing and using the Class Products
14 as herein alleged, did rely on Defendant's representations, including the representations on
15 Defendant's advertisements and website, all to their damage and/or detriment as herein alleged.

16 119. Plaintiff alleges the "who, what, when, where, and how" of the alleged deception by
17 Defendant as follows:

- 18 i. The "who" is Defendant;
- 19 ii. The "what" is representation that the Class Products are quality working
20 phones when in fact the Class Products are Defective and prone to
21 overheating which renders the Product's basic functions unusable;
- 22 iii. The "when" is the date Plaintiff purchased the product and the Class Period
23 of four (4) years prior to the filing of the Complaint;
- 24 iv. The "where" is in Defendant's product advertisements and marketing; and
- 25 v. The "how" is the allegation that Defendant did not disclose that their Class
26 Products are in fact not quality working phones but instead Defective.

27 120. By engaging in the acts described above, Defendant is guilty of malice, oppression, and
28 fraud, and each Plaintiff is therefore entitled to recover exemplary or punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court grant Plaintiff and the putative Class members the following relief:

- That this action be certified as a Class Action;
- That Plaintiff be appointed as the Class Representative;
- That Plaintiff’s attorneys be appointed as Class Counsel;
- That Defendant’s wrongful conduct be adjudged and decreed to violate the consumer protection statutes raised herein;
- That Plaintiff and each of the other members of the Class recover the amounts by which Defendant has been unjustly enriched;
- An order requiring imposition of a constructive trust and and/or disgorgement of Defendant’s ill-gotten gains and to pay restitution to Plaintiff and all members of the Class and to restore to the Plaintiff and members of the class all funds acquired by means of any act or practice declared by this Court to be an unlawful, fraudulent, or unfair business act or practice, in violation of laws, statutes or regulations, or constituting unfair competition;
- Distribution of any monies recovered on behalf of members of the Class via fluid recovery or *cy pres* recovery were necessary and as applicable, to prevent Defendant from retaining the benefits of their wrongful conduct;
- That Defendant be enjoined from continuing the wrongful conduct alleged herein and be required to comply with all applicable laws;
- A temporary, preliminary and/or permanent order for injunctive relief requiring Defendant to: (i) discontinue its false and/or misleading statement/s; and (ii) undertake an immediate public information campaign to inform members of the proposed class as to their prior practices;
- Pre-judgment interests from the date of filing of this suit;
- that Plaintiff and each member of the putative Class recover their costs of suit.

1 **FIRST CAUSE OF ACTION FOR**
2 **VIOLATIONS OF CALIFORNIA'S CONSUMER LEGAL REMEDIES ACT**
3 **CAL. BUS. & PROF. CODE §§ 1750, ET SEQ.**

- 4 • Actual damages, injunctive relief, restitution, and punitive damages pursuant to Cal. Civ.
5 Code § 1780(a); and
6 • An award of costs and attorney's fees pursuant to Cal. Civ. Code § 1780(d).

7 **SECOND CAUSE OF ACTION FOR**
8 **VIOLATIONS OF CALIFORNIA'S FALSE ADVERTISING LAW**
9 **CAL. BUS. & PROF. CODE §§ 17500, ET SEQ.**

- 10 • Restitution and injunctive relief pursuant to Bus. & Prof. Code § 17535; and
11 • Recovery of reasonably attorney's fees pursuant to, *inter alia*, California Code of Civil
12 Procedure § 1021.5.

13 **THIRD CAUSE OF ACTION FOR**
14 **VIOLATIONS OF CALIFORNIA'S UNFAIR COMPETITION LAW**
15 **CAL. BUS. & PROF. CODE §§ 17200, ET SEQ.**

- 16 • Restitution and injunctive relief pursuant to Bus. & Prof. Code § 17203; and
17 • Recovery of reasonable attorneys' fees pursuant to, *inter alia*, California Code of Civil
18 Procedure § 1021.5.

19 **FOURTH CAUSE OF ACTION FOR**
20 **VIOLATIONS OF CALIFORNIA'S THE SONG-BEVERLY CONSUMER WARRANTY ACT**

- 21 • Restitution and injunctive relief pursuant to Cal. Civ. Code § 1793.2(d)(2)(A);
22 • Recovery of reasonable attorney's fees pursuant to, Cal. Civ. Code § 1794(d); and
23 • Actual damages pursuant to Cal. Civ. Code § 1794(a)

24 **FIFTH CAUSE OF ACTION FOR**
25 **NEGLIGENT MISREPRESENTATION**

- 26 • A judgment against Defendant for general and compensatory damages in an amount to
27 be determined at trial; and

28 **SIXTH CAUSE OF ACTION FOR**
INTENTIONAL MISREPRESENTATION

- A judgment against Defendant for general and compensatory damages in an amount to
be determined at trial;
• Punitive damages pursuant to Cal. Civ. Code § 3294; and

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EXHIBIT A



April 12, 2023

SENT VIA CERTIFIED MAIL; RETURN RECEIPT REQUESTED

Google, LLC
1600 Amphitheatre Parkway
Mountain View, CA 94043

SENT VIA CERTIFIED MAIL; RETURN RECEIPT REQUESTED

Google, LLC
c/o Corporation Service Which Will Do Business in California as CSC – Lawyers Incorporating
Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

RE: Notice and Demand Letter Pursuant to California Civil Code § 1782

To Whom It May Concern:

This letter serves as notice and demand for corrective action pursuant to the Consumers Legal Remedies Act, California Civil Code § 1782 (“CLRA”), California’s Unfair Competition Law (“UCL”), California Business & Professions Code §§ 17200, *et seq.*, California’s Song-Beverly Consumer Warranty Act, California Civil Code §§ 1790, *et seq.*, and California’s False Advertising Law, California Business & Professions Code §§ 17500, *et seq.* This letter is sent on behalf of our client, Jennifer Hyatt,¹ a consumer and purchaser of Google, LLC’s (“You” of “Google”) Pixel 6 Pro (the “Phone”), and on behalf of similarly situated individuals in the state of California. The purpose of this letter is to advise You of Google’s violations of numerous consumer protection statutes, and to resolve these issues outlined below in the most efficient manner. In addition, we hereby demand that you take immediate corrective action within thirty (30) days as further described below.

I. Facts

On or around December 6, 2021, Ms. Hyatt purchased the Phone from Verizon Wireless Services, LLC (“Verizon”). Ms. Hyatt chose to purchase the Phone over other similar models because of the advertised to be state of the art phones which are the smartest, fastest and most secure Pixel phones. Ms. Hyatt, and other similarly situated individuals, relied on these representations made by Google when deciding to purchase the Phone and believed she was purchasing a phone of excellent quality.

Approximately one month of purchasing the Phone, Ms. Hyatt noticed that the Phone began to overheat, often to the point of being very uncomfortable to hold (the “Defect”). Due to the

¹ This firm represents Ms. Hyatt. Please refrain from contacting Ms. Hyatt directly. Please direct any and all communications to this office.

Defect, the phone would start shutting down features or simply stop working altogether. Ms. Hyatt contacted Verizon and requested a replacement for the Phone. When Ms. Hyatt received her replacement Phone, she realized that it had the same Defect and immediately requested it be returned. Over the next several months, Ms. Hyatt requested, and was sent by Verizon, multiple replacements of the Phone, exact same Pixel 6 Pro phone, all of which had the same Defect. Every Phone that was sent to Ms. Hyatt would overheat after minimal use, rendering the Phone virtually unusable.

Ms. Hyatt and other similarly situated individuals discovered, the Phone contains a Defect that causes the Phone to overheat quickly without extensive use, severely limiting the Phone's worth. In fact, Google is well aware of the Phone's Defect; Google has included a section on its website entitled "Help keep your Pixel phone from feeling too warm or hot."² However, Google has failed to initiate a campaign informing consumers of the Defect and/or recalling the Phone and removing it from the market.

As a result of this unfair and deceptive conduct, Ms. Hyatt, and other similarly situated individuals, were deceived by Google and its misrepresentations regarding the Phone. Ms. Hyatt, and other similarly situated individuals paid a premium price for the Phone, relying on the representations that Google made regarding the Phone and the Tensor chip.

II. Violations of Law

The CLRA

As a result of Google's failure to disclose the true nature of the Phone and failing to provide the Phone as represented at the time of the Parties' transaction, Ms. Hyatt has suffered damages and loss of money. As the result of Google's unfair and deceptive practices, Ms. Hyatt has paid Google under the false impression (created by Google) that she was paying for a "state-of-the-art" product which functioned better than any other product on the market. Ms. Hyatt relied on Google's representations of the Phone and the Tensor chip, believing it to be of top quality and well worth the premium price that she paid for the Phone. However, the Phone is not even of a standard quality.

Under section 1770(a)(2) of the CLRA, it is unlawful to misrepresent the source, sponsorship, approval, or certification of goods or services. Google misrepresented the Phone as a "state-of-the-art" product, which performed better than other phones on the market, when in fact, the Phone contained a Defect that limited the Phone's use and worth.

Under section 1770(a)(5) of the CLRA, it is unlawful to represent that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have. Google represented that the Phone was a "state-of-the-art" product, which performed better than other phones on the market, when in fact, the Phone contained a Defect that limited the Phone's use and worth.

² https://support.google.com/pixelphone/answer/3333708?hl=en&ref_topic=7084009

Under section 1770(a)(7) of the CLRA, representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model if they are of another is a violation of the CLRA. In this case, Google represented to Ms. Hyatt that the Phone was a “state-of-the-art” product, which performed better than other phones on the market, when in fact, the Phone contained a Defect that limited the Phone’s use and worth.

Under section 1770(a)(9) of the CLRA, advertising goods or services with intent not to sell them as advertised is a violation of the CLRA. Google advertised the Phone as a “state-of-the-art” product, which performed better than other phones on the market, when in fact, the Phone contained a Defect that limited the Phone’s use and worth.

The above-described material representations and omissions are false and misleading and constitute unlawful, unfair, or fraudulent acts or practices and unfair methods of competition in violation of the CLRA, including but not limited to §§ 1770(a)(2), (a)(5), (a)(7), and (a)(9).

The UCL

The representations and omissions by Google also violate, among other things, California’s Unfair Competition Law (“UCL”), California Business & Professions Code §§ 17200, *et seq.* The UCL permits civil recovery for “any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising. There are “three varieties of unfair competition, practices which are: unlawful, unfair, or fraudulent.” *Daughtery v. American Honda Motor Co., Inc.*, 144 Cal.App.4th 824, 837 (2006).

If our client had known the true nature of the Phone and its functionality, she would not have agreed to purchase the Phone. Our client is a citizen of the State of California and is a consumer as defined in California Civil Code § 1761(d) because she paid for the Phone for personal, family, or household purposes. Our client reasonably relied upon Google’s above-described representations regarding the Phone, believing it to be of a certain standard and quality. As a result, our client suffered a monetary loss and continues to suffer damages.

To establish an unlawful business practice, a UCL action borrows violations of other laws and treats these violations, when committed pursuant to business activity, as unlawful practice. *Peterson v. Cellco Partnership*, 164 Cal. App. 4th 1583, 1590 (2008). Google’s unlawful violation of the CLRA is an unlawful practice that unfairly and deceptively misleads consumers and creates unfair competition for Google’s consumers. In addition, California’s UCL establishes that “[a]n act or practice is unfair if the consumer injury is substantial; is not outweighed by any countervailing benefits to consumers or to competition; and is not an injury the consumers themselves could reasonably have avoided.” 144 Cal. App. 4th at 839.

Google’s business practices created substantial injury to Ms. Hyatt which is evidenced by a Defect that causes the Phone to overheat quickly without extensive use and severely limiting the Phone’s worth. Finally, the term fraudulent, as used in California’s UCL, has historically required only a showing that members of the public are likely to be deceived. *Daughtery*, 144 Cal.App. at 838. Ms. Hyatt received multiple replacement phones, each of which had the same Defect that caused them to overheat. Consequently, Google violated California’s Unfair Competition Law by participating in unfair business practices and substantially harming Ms. Hyatt. It is an unfair

business practice to advertise a product as being of a certain value or standard, when in fact, it is not. Google advertised and represented to Ms. Hyatt that the Phone was a “state-of-the-art” product, which performed better than other phones on the market, when in fact, the Phone contained a Defect that limited the Phone’s use and worth.

The Song-Beverly

Section 1792 of the Song Beverly provides that “every sale of consumer goods that are sold in this state shall be accompanied by the manufacturer’s and the retail seller’s implied warranty that the goods are merchantable.” And “implied warranty of merchantability” requires that the consumer good: (1) pass without objection in the trade under the contract description; (2) are fit for the ordinary purposes for which goods are used; (3) are adequately contained, packaged, and labeled and; (4) conform to the promises and affirmations of fact made on the container or label. See Cal. Civ. Code § 1791.1(a).

Google failed to meet this requirement of the Song Beverly when Google decided to sell the Phone to Ms. Hyatt and other similarly situated individuals, knowing that the Phone’s Defect was a breach of the implied warranty of merchantability. The Defect causes the phone to overheat and not function as promised and as any reasonable consumer would expect. A Phone that cannot perform the most basic of features, such as making calls, because it shuts down is not merchantable. Due to Google’s violation of the Song Beverly, Ms. Hyatt is entitled to actual damages and attorneys fees and costs.

The FAL

California’s False Advertising Law (“FAL”) makes it unlawful for “any person, firm, corporation or association, or any employee thereof with the intent directly or indirectly to dispose of real or personal property” to “make or disseminate or cause to be disseminated before the public [...] in any advertising device [...] or in any other manner or means whatever, including over the Internet, any statement, concerning that real or personal property [...] or concerning any circumstance of matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading...” See Cal. Bus. & Prof Code § 17500.

Google violated California’s False Advertising Law by advertising the Phone as “faster and more intelligent,” and with an overall superior performance, when in fact the Phone contained a Defect that prevented the Phone from being used as advertised. Google knew or should have known that the phone was prone to overheating and shutting down as a result of the overheating.

III. **Pre-Filing Resolution**

The purpose of this letter is to advise Google of our client’s position and invite Google to respond before initiating a lawsuit in an effort to efficiently resolve this matter efficiently without the need for the parties to incur additional attorneys’ fees and costs.

We hereby demand on behalf of our client, and other California consumers similarly situated,

that Google immediately:

- (1) provide a full refund of all monies paid by Ms. Hyatt for the Phone, including any other fees and charges associated with the Phone and its exchanges;
- (2) initiate a corrective advertising campaign to inform consumers about the true nature of the Phone;
- (3) initiate a full recall of the Phone with an offer to refund the purchase price, plus reimbursement of interest and;
- (4) pay an amount for reasonable attorneys' fees and costs.

We request that Google comply with this demand within thirty (30) days from receipt of this letter.

Please be advised that your failure to comply with this request within thirty (30) calendar days may subject you to the following remedies under the CLRA:

- (1) The actual damages suffered;
- (2) An order enjoining you for such methods, acts or practices;
- (3) For restitution of property if applicable;
- (4) Punitive damages;
- (5) Court costs and reasonable attorneys' fees; and
- (6) Any other relief which the court deems proper.

Additionally, Google is hereby given notice that it may not destroy, conceal, or alter relevant papers or electronic documents, or files and other relevant data on its computers, or in its possession, with respect to any matter or account related to our client, as this information must be preserved for possible use in litigation. Further, Google must suspend any routine deletion practices that would result in loss of data concerning any matter or account related to our client. Google's failure to comply with this notice can result in severe sanctions being imposed by the court (and liability in tort) for spoliation of evidence or potential evidence.

If Google wishes to enter into discussions to resolve the demands asserted in this letter, please contact me at the phone number or e-mail below within **thirty (30) days** from receipt of this letter. Otherwise, my client may elect to proceed with filing an action against Google for its violations of law, including, but not limited to, the statutes referenced herein.

Your anticipated response and cooperation with this matter is appreciated.

Yours truly,

/s/ Gustavo Ponce

Gustavo Ponce, Esq.
Direct Line: 800-400-6808 Ext: 20
Email: gustavo@kazlg.com

June 5, 2023

SENT VIA CERTIFIED MAIL; RETURN RECEIPT REQUESTED

Google, LLC
1600 Amphitheatre Parkway
Mountain View, CA 94043

SENT VIA CERTIFIED MAIL; RETURN RECEIPT REQUESTED

Google, LLC
c/o Corporation Service Which Will Do Business in California as CSC – Lawyers Incorporating
Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

RE: Notice and Demand Letter Pursuant to California Civil Code § 1782

To Whom It May Concern:

This second letter serves as second notice and demand for corrective action pursuant to the Consumers Legal Remedies Act, California Civil Code § 1782 (“CLRA”), California’s Unfair Competition Law (“UCL”), California Business & Professions Code §§ 17200, *et seq.*, California’s Song-Beverly Consumer Warranty Act, California Civil Code §§ 1790, *et seq.*, and California’s False Advertising Law, California Business & Professions Code §§ 17500, *et seq.* This letter is sent on behalf of our client, Jennifer Hyatt,¹ a consumer and purchaser of Google, LLC’s (“You” of “Google”) Pixel 6 Pro (the “Phone”), and on behalf of similarly situated individuals in the state of California. The purpose of this letter is to advise You of Google’s violations of numerous consumer protection statutes, and to resolve these issues outlined below in the most efficient manner. In addition, we hereby demand that you take immediate corrective action within thirty (30) days as further described below.

I. Facts

On or around December 6, 2021, Ms. Hyatt purchased the Phone from Verizon Wireless Services, LLC (“Verizon”). Ms. Hyatt chose to purchase the Phone over other similar models because of the advertised to be state of the art phones which are the smartest, fastest and most secure Pixel phones. Ms. Hyatt, and other similarly situated individuals, relied on these representations made by Google when deciding to purchase the Phone and believed she was purchasing a phone of excellent quality.

¹ This firm represents Ms. Hyatt. Please refrain from contacting Ms. Hyatt directly. Please direct any and all communications to this office.

Approximately one month of purchasing the Phone, Ms. Hyatt noticed that the Phone began to overheat, often to the point of being very uncomfortable to hold (the “Defect”). Due to the Defect, the phone would start shutting down features or simply stop working altogether. Ms. Hyatt contacted Verizon and requested a replacement for the Phone. When Ms. Hyatt received her replacement Phone, she realized that it had the same Defect and immediately requested it be returned. Over the next several months, Ms. Hyatt requested, and was sent by Verizon, multiple replacements of the Phone, exact same Pixel 6 Pro phone, all of which had the same Defect. Every Phone that was sent to Ms. Hyatt would overheat after minimal use, rendering the Phone virtually unusable.

Ms. Hyatt and other similarly situated individuals discovered, the Phone contains a Defect that causes the Phone to overheat quickly without extensive use, severely limiting the Phone’s worth. In fact, Google is well aware of the Phone’s Defect; Google has included a section on its website entitled “Help keep your Pixel phone from feeling too warm or hot.”² However, Google has failed to initiate a campaign informing consumers of the Defect and/or recalling the Phone and removing it from the market.

As a result of this unfair and deceptive conduct, Ms. Hyatt, and other similarly situated individuals, were deceived by Google and its misrepresentations regarding the Phone. Ms. Hyatt, and other similarly situated individuals paid a premium price for the Phone, relying on the representations that Google made regarding the Phone and the Tensor chip.

II. Violations of Law

The CLRA

As a result of Google’s failure to disclose the true nature of the Phone and failing to provide the Phone as represented at the time of the Parties’ transaction, Ms. Hyatt has suffered damages and loss of money. As the result of Google’s unfair and deceptive practices, Ms. Hyatt has paid Google under the false impression (created by Google) that she was paying for a “state-of-the-art” product which functioned better than any other product on the market. Ms. Hyatt relied on Google’s representations of the Phone and the Tensor chip, believing it to be of top quality and well worth the premium price that she paid for the Phone. However, the Phone is not even of a standard quality.

Under section 1770(a)(2) of the CLRA, it is unlawful to misrepresent the source, sponsorship, approval, or certification of goods or services. Google misrepresented the Phone as a “state-of-the-art” product, which performed better than other phones on the market, when in fact, the Phone contained a Defect that limited the Phone’s use and worth.

Under section 1770(a)(5) of the CLRA, it is unlawful to represent that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have. Google represented that the Phone was a “state-of-the-art” product, which

² https://support.google.com/pixelphone/answer/3333708?hl=en&ref_topic=7084009

performed better than other phones on the market, when in fact, the Phone contained a Defect that limited the Phone's use and worth.

Under section 1770(a)(7) of the CLRA, representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model if they are of another is a violation of the CLRA. In this case, Google represented to Ms. Hyatt that the Phone was a "state-of-the-art" product, which performed better than other phones on the market, when in fact, the Phone contained a Defect that limited the Phone's use and worth.

Under section 1770(a)(9) of the CLRA, advertising goods or services with intent not to sell them as advertised is a violation of the CLRA. Google advertised the Phone as a "state-of-the-art" product, which performed better than other phones on the market, when in fact, the Phone contained a Defect that limited the Phone's use and worth.

The above-described material representations and omissions are false and misleading and constitute unlawful, unfair, or fraudulent acts or practices and unfair methods of competition in violation of the CLRA, including but not limited to §§ 1770(a)(2), (a)(5), (a)(7), and (a)(9).

The UCL

The representations and omissions by Google also violate, among other things, California's Unfair Competition Law ("UCL"), California Business & Professions Code §§ 17200, *et seq.* The UCL permits civil recovery for "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising. There are "three varieties of unfair competition, practices which are: unlawful, unfair, or fraudulent." *Daughtery v. American Honda Motor Co., Inc.*, 144 Cal.App.4th 824, 837 (2006).

If our client had known the true nature of the Phone and its functionality, she would not have agreed to purchase the Phone. Our client is a citizen of the State of California and is a consumer as defined in California Civil Code § 1761(d) because she paid for the Phone for personal, family, or household purposes. Our client reasonably relied upon Google's above-described representations regarding the Phone, believing it to be of a certain standard and quality. As a result, our client suffered a monetary loss and continues to suffer damages.

To establish an unlawful business practice, a UCL action borrows violations of other laws and treats these violations, when committed pursuant to business activity, as unlawful practice. *Peterson v. Celco Partnership*, 164 Cal. App. 4th 1583, 1590 (2008). Google's unlawful violation of the CLRA is an unlawful practice that unfairly and deceptively misleads consumers and creates unfair competition for Google's consumers. In addition, California's UCL establishes that "[a]n act or practice is unfair if the consumer injury is substantial; is not outweighed by any countervailing benefits to consumers or to competition; and is not an injury the consumers themselves could reasonably have avoided." 144 Cal. App. 4th at 839.

Google's business practices created substantial injury to Ms. Hyatt which is evidenced by a Defect that causes the Phone to overheat quickly without extensive use and severely limiting the Phone's worth. Finally, the term fraudulent, as used in California's UCL, has historically required only a showing that members of the public are likely to be deceived. *Daughtery*, 144 Cal.App. at 838. Ms. Hyatt received multiple replacement phones, each of which had the same Defect that

caused them to overheat. Consequently, Google violated California's Unfair Competition Law by participating in unfair business practices and substantially harming Ms. Hyatt. It is an unfair business practice to advertise a product as being of a certain value or standard, when in fact, it is not. Google advertised and represented to Ms. Hyatt that the Phone was a "state-of-the-art" product, which performed better than other phones on the market, when in fact, the Phone contained a Defect that limited the Phone's use and worth.

The Song-Beverly

Section 1792 of the Song Beverly provides that "every sale of consumer goods that are sold in this state shall be accompanied by the manufacturer's and the retail seller's implied warranty that the goods are merchantable." And "implied warranty of merchantability" requires that the consumer good: (1) pass without objection in the trade under the contract description; (2) are fit for the ordinary purposes for which goods are used; (3) are adequately contained, packaged, and labeled and; (4) conform to the promises and affirmations of fact made on the container or label. See Cal. Civ. Code § 1791.1(a).

Google failed to meet this requirement of the Song Beverly when Google decided to sell the Phone to Ms. Hyatt and other similarly situated individuals, knowing that the Phone's Defect was a breach of the implied warranty of merchantability. The Defect causes the phone to overheat and not function as promised and as any reasonable consumer would expect. A Phone that cannot perform the most basic of features, such as making calls, because it shuts down is not merchantable. Due to Google's violation of the Song Beverly, Ms. Hyatt is entitled to actual damages and attorneys fees and costs.

The FAL

California's False Advertising Law ("FAL") makes it unlawful for "any person, firm, corporation or association, or any employee thereof with the intent directly or indirectly to dispose of real or personal property" to "make or disseminate or cause to be disseminated before the public [...] in any advertising device [...] or in any other manner or means whatever, including over the Internet, any statement, concerning that real or personal property [...] or concerning any circumstance of matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading..." See Cal. Bus. & Prof Code § 17500.

Google violated California's False Advertising Law by advertising the Phone as "faster and more intelligent," and with an overall superior performance, when in fact the Phone contained a Defect that prevented the Phone from being used as advertised. Google knew or should have known that the phone was prone to overheating and shutting down as a result of the overheating.

III. Pre-Filing Resolution

The purpose of this letter is to advise Google of our client's position and invite Google to respond before initiating a lawsuit in an effort to efficiently resolve this matter efficiently without the need for the parties to incur additional attorneys' fees and costs.

We hereby demand on behalf of our client, and other California consumers similarly situated, that Google immediately:

- (1) provide a full refund of all monies paid by Ms. Hyatt for the Phone, including any other fees and charges associated with the Phone and its exchanges;
- (2) initiate a corrective advertising campaign to inform consumers about the true nature of the Phone;
- (3) initiate a full recall of the Phone with an offer to refund the purchase price, plus reimbursement of interest and;
- (4) pay an amount for reasonable attorneys' fees and costs.

We request that Google comply with this demand within thirty (30) days from receipt of this letter.

Please be advised that your failure to comply with this request within thirty (30) calendar days may subject you to the following remedies under the CLRA:

- (1) The actual damages suffered;
- (2) An order enjoining you for such methods, acts or practices;
- (3) For restitution of property if applicable;
- (4) Punitive damages;
- (5) Court costs and reasonable attorneys' fees; and
- (6) Any other relief which the court deems proper.

Additionally, Google is hereby given notice that it may not destroy, conceal, or alter relevant papers or electronic documents, or files and other relevant data on its computers, or in its possession, with respect to any matter or account related to our client, as this information must be preserved for possible use in litigation. Further, Google must suspend any routine deletion practices that would result in loss of data concerning any matter or account related to our client. Google's failure to comply with this notice can result in severe sanctions being imposed by the court (and liability in tort) for spoliation of evidence or potential evidence.

If Google wishes to enter into discussions to resolve the demands asserted in this letter, please contact me at the phone number or e-mail below within **thirty (30) days** from receipt of this letter. Otherwise, my client may elect to proceed with filing an action against Google for its violations of law, including, but not limited to, the statutes referenced herein.

Your anticipated response and cooperation with this matter is appreciated.

Yours truly,

/s/ Gustavo Ponce


Gustavo Ponce, Esq.
Direct Line: 800-400-6808 Ext: 20
Email: gustavo@kazlg.com

AFFIDAVIT OF JENNIFER HYATT

I, JENNIFER HYATT, DECLARE:

1. On or about December 6, 2021, I purchased Defendant’s Google Pixel Pro 6 (the “Product”) from Verizon Wireless Services, LLC.
2. At the time of my purchase and review of the Product, I was in the County of Los Angeles, California, where I also reside.
3. It is my understanding that Defendant GOOGLE LLC conducts business in the County of Los Angeles, State of California.

I declare under the penalty of perjury under the laws of the state of California that the foregoing is true and correct, executed on February 7, 2024.

By: 
Jennifer Hyatt (Feb 7, 2024 08:34 PST)

Jennifer Hyatt



ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [‘Unusable’: Google Pixel Pro 6 Lawsuit Claims ‘Defective’ Smartphones Prone to Overheating](#)
