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14 **UNITED STATES DISTRICT COURT**

15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

16
 17 **DEMETRIUS MARTIN**, an individual;
 18 **OMAR ATEBAR**, an individual; **ESTHER**
 19 **VEGA**, an individual; and, **JESUS VEGA**, an
 individual; on behalf of themselves and all other
 similarly situated persons;

20 **PLAINTIFFS,**

21 **v.**

22 **SAMSUNG ELECTRONICS AMERICA,**
 23 **INC.**, a New York Corporation; and
 24 **SAMSUNG ELECTRONICS CO., LTD.**,
 a Foreign Corporation,

25 **DEFENDANTS.**

26 **CASE NO.:**

27 **CLASS ACTION COMPLAINT**

- 28 **1. FRAUDULENT CONCEALMENT / NON-DISCLOSURE;**
- 2. VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW;**
- 3. VIOLATIONS OF CALIFORNIA'S FALSE ADVERTISING LAW;**
- 4. VIOLATION OF CALIFORNIA'S CONSUMER LEGAL REMEDIES ACT; AND**
- 5. UNJUST ENRICHMENT**

JURY TRIAL DEMANDED

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1 Plaintiffs **DEMETRIUS MARTIN, OMAR ATEBAR, ESTHER VEGA, and JESUS**
2 **VEGA** (collectively hereinafter, “**PLAINTIFFS**”) bring this action on behalf of themselves and
3 all other similarly situated individuals, by and through their attorneys, for injunctive relief,
4 restitution and damages caused by the conduct of **DEFENDANTS SAMSUNG ELECTRONICS**
5 **AMERICA, INC. and SAMSUNG ELECTRONICS CO., LTD.** (collectively hereinafter,
6 “**SAMSUNG**”), and each of them, as follows:

7 **I. INTRODUCTION**

8 1. **SAMSUNG** manufactures and sells smartphones which pose a threat to the safety
9 of consumers. These dangers made international headlines when numerous Samsung Note7
10 devices exploded and burst into flames leading to a complete recall of the product. **SAMSUNG**
11 has yet to determine the cause of the problems with the Note7, and continues to sell, market, and
12 distribute other smartphones which are at risk of overheating, fire and explosion. **SAMSUNG**
13 recalled the Note7 while leaving other dangerous products in the marketplace. Unfortunately, the
14 problem is not limited to the Note7. The Note7 recall was a Band-Aid to a pervasive problem for
15 which major surgery was required.

16 2. **SAMSUNG** has been made repeatedly aware of the issues with its smartphones, yet
17 has failed to warn consumers of the dangers posed by the lithium ion batteries in the devices.
18 **SAMSUNG** markets its phones as durable, reliable, always available, and the “hub” of consumers’
19 lives. **SAMSUNG** expects and encourages consumers to use their phone for all aspects of their
20 lives and to always have their phone with them. Despite this expected ubiquity, **SAMSUNG**
21 conceals from consumers that the products are, in fact, ticking time bombs.

22 3. **SAMSUNG** designs, manufactures and advertises the batteries in its smartphones to
23 have maximum duration with minimum charge times. **SAMSUNG** also designs, manufactures and
24 advertises its smartphones to have superior computing capacity and power, and to effectively run a
25 multitude of applications and processes simultaneously. The desire to design a product with each
26 of these, and other, qualities led **SAMSUNG** to manufacture smartphones which pose a risk of
27 overheating, fire and explosion. While **SAMSUNG** recalled the Note7, it has failed, and continues
28 to fail, to recall other dangerous products, failed to warn consumers of the dangers they pose, and

1 failed to adequately respond to consumers whose phones have suffered from overheating, fire and
2 explosion.

3 4. The extreme risk of overheating, fire, and explosion along with **SAMSUNG'S**
4 concomitant refusal to recall the products leaves **PLAINTIFFS** and each member of the Class
5 owning phones that have the propensity for the following:



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1 **II. JURISDICTION AND VENUE**

2 5. This action is within the jurisdiction of this Court by virtue of 28 U.S.C. §
3 1332(d)(2). **PLAINTIFFS** and **SAMSUNG** are citizens of different states and the amount in
4 controversy of this action exceeds the sum of \$5,000,000, exclusive of interest and costs.

5 6. This Court has personal jurisdiction over **MARTIN, ATEBAR, E. VEGA, and J.**
6 **VEGA** because they reside in California, and submit to the Court's jurisdiction in this case.
7 Additionally, **MARTIN** lives in this District and purchased the device at issue in this District.

8 7. This Court has personal jurisdiction over **SAMSUNG ELECTRONICS**
9 **AMERICA, INC.**, because it conducted and continues to conduct substantial business in
10 California, and has sufficient minimum contacts with California, including: Samsung Media
11 Solutions Center America, a division of **SAMSUNG ELECTRONICS AMERICA, INC.**, is
12 based out of Mountain View, California; and, **SAMSUNG ELECTRONICS AMERICA, INC.'S**
13 printer product division is headquartered in Irvine, California.¹

14 8. This Court has personal jurisdiction over **SAMSUNG ELECTRONICS CO., LTD**
15 because it conducted and continues to conduct substantial business in California, and has sufficient
16 minimum contacts with California, including: Samsung Strategy and Innovation Center, a global
17 organization within **SAMSUNG'S** Device Solutions division, is headquartered in Menlo Park,
18 California; Samsung Information Systems America is headquartered in San Jose, California;
19 Samsung Semiconductor, Inc. is headquartered in San Jose, California; and, Samsung Open
20 Innovation Center is located in Palo Alto, California.²

21 9. Venue is proper in this Court under 28 U.S.C. § 1391 because **SAMSUNG**
22 innovates, researches, develops, improves, and markets a substantial amount of phones in this
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24 ¹ See Samsung, U.S. Divisions, available at: [http://www.samsung.com/us/aboutSamsung/Samsung_electronics](http://www.samsung.com/us/aboutSamsung/Samsung_electronics/us_divisions/)
25 [/us_divisions/](http://www.samsung.com/ContactUs/ElectronicsAmerica/index.htm); <http://www.samsung.com/ContactUs/ElectronicsAmerica/index.htm>;
26 <http://www.samsung.com/ContactUs/InformationSystemsAmerica/index.htm>; see also Gannes, Liz, "Samsung
27 Confirms Four New Bay Area Offices," Allthingsd.com (Dec. 29, 2012 at 2:13PM) available at:
28 <http://allthingsd.com/20121229/SAMSUNG-confirms-four-new-bay-area-offices/>; "Samsung Electronics Announces
New Silicon Valley R&D Center," BusinessWire.com (Sept. 19, 2012 at 9:00 AM) available at:
[http://www.businesswire.com/news/home/20120919005456/en/Samsung-Electronics-Announces-Silicon-Valley-](http://www.businesswire.com/news/home/20120919005456/en/Samsung-Electronics-Announces-Silicon-Valley-Center)
Center.

² *Ibid.*

1 District. **SAMSUNG** “has been a presence in Silicon Valley for more than two decades.”¹
 2 **SAMSUNG’S** Media Solutions Center (a.k.a. Research and Development Center)², which is
 3 located in this District, “delivers innovative, connected experiences across Samsung’s *mobile* and
 4 digital ecosystem that enhance the experience of owning a Samsung product,”³ is “[c]omprised of
 5 two six-story LEED Platinum designed office buildings totaling nearly 385,000 square feet, and
 6 two parking structures,” and “serves as an epicenter of innovation and is home to some of the
 7 world’s top talent,” including “more than 250 doctorate recipients from some of the best schools
 8 around the globe.”⁴ According to a **SAMSUNG** press release, the “great successes” of the labs
 9 housed at the Media Solutions Center “benefit Samsung’s vast portfolio of mobile, visual display,
 10 home appliance, wearable and audio and stereo products.”⁵ **SAMSUNG** also maintains and
 11 operates a Strategy and Innovation headquarters “within Samsung’s Device Solutions division,
 12 with the core missions of open innovation in collaboration with entrepreneurs and strategic
 13 partners,” within this District. Not to mention, Samsung’s Information Systems America and
 14 Semiconductor divisions are headquartered in this District, along with an Open Innovation Center.⁶
 15 Therefore, a substantial part of the events and/or omissions alleged in this complaint, giving rise to
 16 **PLAINTIFFS’** claims, occurred in, emanated from and/or were directed from this District. Venue
 17 is also proper because **SAMSUNG** is subject to this District’s personal jurisdiction with respect to
 18 this action.

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 23 ¹ “Samsung Electronics Announces New Silicon Valley R&D Center,” BusinessWire.com (Sept. 19, 2012 at 9:00 AM)
 24 available at: <http://www.businesswire.com/news/home/20120919005456/en/samsung-Electronics-Announces-Silicon-Valley-Center>.

² See *Ibid.*

25 ³ See samsung, U.S. Divisions, available at: http://www.samsung.com/us/aboutsamsung/samsung_electronics/us_divisions/.

26 ⁴ “Research at the Core of SAMSUNG Research America’s New Mountain View Campus,” SAMSUNG Newsroom
 27 (Sept. 1, 2015) available at: <https://news.SAMSUNG.com/global/research-at-the-core-of-SAMSUNG-research-america-new-mountain-view-campus>.

⁵ *Ibid.*

28 ⁶ See SAMSUNG, U.S. Divisions, available at:
http://www.SAMSUNG.com/us/aboutSAMSUNG/SAMSUNG_electronics/us_divisions/.

1 **III. THE PARTIES**

2 **A. PLAINTIFFS**

3 10. Plaintiff **DEMETRIUS MARTIN** is a resident of San Francisco, California.
4 Plaintiff **MARTIN** purchased a Samsung Galaxy S6 Edge+ smartphone in California, and suffered
5 the injuries and damage complained of herein in the State of California.

6 11. Plaintiff **OMAR ATEBAR** is a resident of Elk Grove, California. Plaintiff
7 **ATEBAR** purchased a Samsung Galaxy S7 smartphone in Elk Grove, California, and suffered the
8 injuries and damage complained of herein in the State of California.

9 12. Plaintiff **ESTHER VEGA** (“**E. VEGA**”) is a resident of Elk Grove, California.
10 Plaintiff **E. VEGA** came into possession of her Samsung Galaxy S7 in Elk Grove, California, and
11 suffered the injuries and damage complained of herein in the State of California.

12 13. Plaintiff **JESUS VEGA** (“**J. VEGA**”) is a resident of Stockton, California.
13 Plaintiff **J. VEGA** came into possession of his Samsung Galaxy Note5 in Elk Grove, California,
14 and suffered the injuries and damage complained of herein in the State of California.

15 **B. DEFENDANTS**

16 14. **PLAINTIFFS** are informed and believe, and thereon allege, that **SAMSUNG**
17 **ELECTRONICS CO., LTD.** was, at all relevant times mentioned herein, a foreign corporation
18 organized and existing under the laws of the Republic of Korea, with its principal place of business
19 located at 129 Samsung-Ro, Yeongtong-Gu, Suwon-si, Gyeonggi-do, Korea. **SAMSUNG**
20 **ELECTRONICS CO., LTD.** is the parent company of **SAMSUNG ELECTRONICS**
21 **AMERICA, INC.**

22 15. **PLAINTIFFS** are informed and believe, and thereon allege, that **SAMSUNG**
23 **ELECTRONICS AMERICA, INC.** was, at all relevant times mentioned herein, a New York
24 corporation organized and existing under the laws of the state of New York and registered with the
25 California Secretary of State to conduct business in California. **SAMSUNG ELECTRONICS**
26 **AMERICA, INC.** touts itself as “a recognized innovation leader in consumer electronics design
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1 and technology.”¹ **SAMSUNG ELECTRONICS AMERICA, INC.** is also a wholly owned
2 subsidiary of Defendant **SAMSUNG ELECTRONICS CO., LTD.**

3 16. **SAMSUNG** is the largest seller of smartphones in the world, dominating 22.8% of
4 the worldwide market in the second quarter of 2016, nearly double the market share of the next
5 highest competitor.² In 2011 alone, **SAMSUNG** reported \$143.1 billion in sales and had 206,000
6 employees worldwide.³ As of March 2016, **SAMSUNG** held the largest share of the United
7 States’ smartphone market, at 28.8 percent.⁴

8 **C. AGENCY & CONCERT OF ACTION**

9 17. At all times herein mentioned, **SAMSUNG**, and each of them, hereinabove, were
10 the agents, servants, employees, partners, aiders and abettors, and/or joint venturers of each of the
11 **SAMSUNG** entities named herein and were at all times operating and acting within the purpose
12 and scope of said agency, service, employment, partnership, enterprise, and/or joint venture, and
13 each Defendant has ratified and approved the acts of each of the remaining **SAMSUNG** entities.
14 Each of the **SAMSUNG** entities aided and abetted, encouraged, and rendered substantial
15 assistance to the other **SAMSUNG** entities in breaching their obligations to **PLAINTIFFS** and the
16 Class, as alleged herein. In taking action to aid and abet and substantially assist the commission of
17 these wrongful acts and other wrongdoings complained of, as alleged herein, each of the
18 **SAMSUNG** entities acted with an awareness of his/her/its primary wrongdoing and realized that
19 his/her/its conduct would substantially assist the accomplishment of the wrongful conduct,
20 wrongful goals, and wrongdoing.

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24 ¹ See Samsung, U.S. Divisions, available at: http://www.samsung.com/us/aboutsamsung/samsung_electronics/us_divisions/.

25 ² The next closest competitor was Apple with only 11.7% in worldwide sales of smartphones. “Smartphone Vendor
26 Market Share, 2016 Q2,” International Data Corporation (IDC), available at:
<http://www.idc.com/prodserv/smartphone-market-share.jsp>.

27 ³ “Samsung Electronics Announces New Silicon Valley R&D Center,” BusinessWire.com (Sept. 19, 2012 at 9:00AM)
available at: <http://www.businesswire.com/news/home/20120919005456/en/samsung-Electronics-Announces-Silicon-Valley-Center>.

28 ⁴ Spence, Ewan “Samsung Topples Apple as Galaxy S7 Defeats iPhone” available at
<http://www.forbes.com/sites/ewanspence/2016/05/04/samsung-overtakes-apple-us-smartphone-sales/#dcc15d3289f9>

1 **IV. FACTUAL BACKGROUND**

2 **A. SAMSUNG'S GALAXY S AND NOTE PRODUCTS**

3 18. **SAMSUNG** makes Android-based mobile devices, including its popular “Galaxy”
4 line of smartphones, phablets, and tablets. New flagship smartphones are released each year and
5 are identified as part of the “Galaxy S” series. The first generation “Galaxy S” phone hit the
6 market in June 2010, and was followed in subsequent years by the SII, SIII, S4, S5, S6, and S7. In
7 between the roll-out of a new flagship model, **SAMSUNG** commonly releases one or more
8 iteration of the prior flagship model. These interim iterations are often followed by variants that
9 have the word “Edge,” “Edge+,” or “Active” added to the model name. *See* Table in ¶21.

10 19. In late 2011, **SAMSUNG** began selling a high-end smartphone/tablet hybrid which
11 it called the “Galaxy Note.” Galaxy Note products were larger than regular smartphones and
12 include a stylus for additional functionality.

13 20. Since April 2015, **SAMSUNG** has released the following Galaxy S6, S7 and Note¹
14 models:

GALAXY S SERIES	
Model	Release Date
S6	April 2015
S6 Edge	April 2015
S6 Active	July 2015
S6 Edge+	August 2015
S7	March 2016
S7 Edge	March 2016
S7 Active	June 2016
GALAXY NOTE SERIES	
Model	Release Date
Note 5	August 2015
Note 7	August 2016

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26 21. The “Galaxy S” and “Galaxy Note” phones are powered by lithium ion batteries.
27 Lithium-ion batteries power a host of consumer electronic devices, including computers and power

28 ¹ **SAMSUNG** did not release a “Note6.”

1 tools. Prior to the Note5 and S6 models, the battery was removable. For the Note5, Note7, S6,
2 and S7 models, the battery is encompassed in the product and is no longer removable.

3 22. The batteries in **SAMSUNG’S** phones are measured in milli-ampere hours
4 (“mAh”), which is a unit of electric charge that expresses the capacity of a battery – how much
5 total energy a battery can discharge before needing to be recharged. A battery’s discharge rate is
6 the amount of current being drawn from the battery. The length of time a battery will run depends
7 on both the battery’s capacity and discharge rate.

8 23. The Note7 and S6 Active use lithium ion batteries with the same capacity. The S6
9 Edge+, S7 and Note5 use lithium ion batteries with the same capacity. The S7 Edge and S7 Active
10 both use lithium ion batteries with greater capacity than the Note7.

11 24. The following chart shows the battery capacity of **SAMSUNG’S** Note and Galaxy
12 S devices:

GALAXY S SERIES	
<u>Model</u>	<u>Battery Capacity</u>
S6	2,550 mAh
S6 Edge	2,600 mAh
S6 Edge+	3,000 mAh
S7	3,000 mAh
S6 Active	3,500 mAh
S7 Edge	3,600 mAh
S7 Active	3,900 mAh
GALAXY NOTE SERIES	
<u>Model</u>	<u>Battery Capacity</u>
Note 5	3,000 mAh
Note 7	3,500 mAh

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26 25. The Galaxy S6 Active, the Galaxy S7 Edge, and the Galaxy S7 Active all contain
27 batteries with at least the capacity of the recalled Note7 battery.

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1 26. The S6, S6 Edge, S6 Edge+, S6 Active, S7, S7 Edge, S7 Active, and Note5 (the
2 “Subject Phones”), as well as the Note7, all pose a risk of overheating, fire and explosion as they
3 were designed, engineered, developed, manufactured, produced and/or assembled in a substantially
4 similar manner to the Note7. While **SAMSUNG** has recalled the Note7, it has not done so with
5 respect to the Subject Phones.

6 **B. THE DANGERS OF THE LITHIUM ION BATTERIES IN SAMSUNG’S**
7 **SMARTPHONES**

8 27. The dangers posed by lithium ion batteries made headlines recently when numerous
9 **SAMSUNG** Note7 devices exploded and burst into flames. This caused the Consumer Product
10 Safety Commission (“CPSC”) to order a formal recall of the Note7. The Note7 devices have also
11 been banned from all commercial air travel. **SAMSUNG** initially offered an exchange program
12 for the Note7. While investigation into the Note7 defect is ongoing, **SAMSUNG** has admitted an
13 unspecified “battery cell issue” is the root problem.

14 28. Lithium ion batteries are often used in consumer electronics. However, they
15 present inherent risks which require software, hardware and design solutions and protections to
16 operate safely. The electrolyte material in the batteries is highly volatile, flammable, and
17 potentially explosive if it gets too hot. Dr. Donald Sadoway, a Materials Chemistry professor at
18 MIT, described why lithium ion batteries explode in an interview with *Time Magazine*:¹

19 If the temperature gets high enough . . . at some point, if you get up to about 400-
20 500 degrees Centigrade, the metal oxide in the negative electrode actually starts
21 liberating oxygen. And that’s really dangerous, because now, instead of having a
22 fire . . . getting its oxygen from the air surrounding it, it’s getting its oxygen from
inside the battery itself. ***The term of art is, this has now become a bomb.*** You’ve
got fuel and oxygen in the same place at the same time.

23 29. This is often referred to as a “thermal runaway” event, after which the battery will
24 catch fire or explode. A thermal runaway event generates high temperatures exceeding 1100
25 degrees Fahrenheit. It can happen in a variety of circumstances, including when the battery is
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28 ¹ “We Asked a Battery Expert Why Samsung’s Phones Are Catching Fire, by Alex Fitzpatrick, published by Time
Magazine on September 9, 2016 (emphasis added), available at: <http://time.com/4485396/samsung-note-7-battery-fire-why/>

1 overcharged, when it is rapidly discharged, when there is a cell defect, when there is cell damage,
2 and in heat.¹ According to Scientific American:

3 *... faulty batteries can be overcharged. Well-made batteries will stop charging*
4 *automatically once they're full*, but that's not always the case for faulty batteries,
5 If left plugged in for too long, the lithium ions can collect in one spot and be
6 deposited as metallic lithium within the battery.... Also, heat from the overcharging
7 can cause oxygen bubbles within the gel, which are highly reactive with metallic
8 lithium.²

9 30. In cellular phones, both software and hardware regulate the temperature, charging
10 and use of the battery. If the software protocols are programmed or set incorrectly a thermal
11 runaway event can occur. A careless manufacturing process that leaves unwanted material in the
12 battery can also lead to thermal runaway. A poorly manufactured separator that breaks can also
13 lead to thermal runaway. As can a defective thermal spreader can lead to a thermal runaway.

14 31. **SAMSUNG** initially stated the Note7's problem was limited to only one (1) of its
15 two (2) battery supply sources. After the initial recall and exchange of the Note7 devices, more
16 explosions of the devices were reported. On October 13, 2016, SAMSUNG announced it was
17 recalling all Note7 devices, original and exchanged. As reported by the Wall Street Journal³:

18 The X-ray and CT scans showed a pronounced bulge.

19 After reports of Galaxy Note 7 smartphones catching fire spread in early
20 September, Samsung Electronics Co. executives debated how to respond. Some
21 were skeptical the incidents amounted to much, according to people familiar with
22 the meetings, but others thought the company needed to act decisively.

23 A laboratory report said scans of some faulty devices showed a protrusion in Note
24 7 batteries supplied by Samsung SDI Co., a company affiliate, while phones with
25 batteries from another supplier didn't.

26 It wasn't a definitive answer, and there was no explanation for the bulges. But with
27 consumers complaining and telecom operators demanding answers, newly
28 appointed mobile chief D.J. Koh felt the company knew enough to recall 2.5 million
phones. His suggestion was backed by Samsung's third-generation heir apparent,
Lee Jae-yong, who has advocated for more openness at one of the world's most
opaque conglomerates.

¹ See, Federal Aviation Administration ("FAA"), Summary of Findings from Previous Tests – Lithium-ion, available at: [http://www.icao.int/safety/DangerousGoods/pptfaa/Full scale ion and large format.pptx](http://www.icao.int/safety/DangerousGoods/pptfaa/Full%20scale%20ion%20and%20large%20format.pptx) (last accessed October 13, 2016).

² <https://www.scientificamerican.com/article/the-science-behind-samsung-phone-battery-fires/> (last accessed October 13, 2016) (emphasis added).

³ Cheng, Jonathan and McKinnon, John, "The Fatal Mistake that Doomed Samsung's Galaxy Note," available at <http://www.wsj.com/articles/the-fatal-mistake-that-doomed-Samsungs-galaxy-note-1477248978>.

1 That decision in early September—to push a sweeping recall based on what turned
2 out to be incomplete evidence—is now coming back to haunt the company.

3 Two weeks after Samsung began handing out millions of new phones, with
4 batteries from the other supplier, the company was forced to all but acknowledge
5 that its initial diagnosis was incorrect, following a spate of new incidents, some
6 involving supposedly safe replacement devices. With regulators raising fresh
7 questions, Messrs. Lee and Koh decided to take the drastic step of killing the phone
8 outright.

9 32. **SAMSUNG** instructed consumers who had a Note7 device to “please power down
10 immediately” and “contact the carrier or retail outlet where they purchased their device.”¹

11 **SAMSUNG** stated that it was announcing the program “in cooperation with the U.S. Consumer
12 Product Safety Commission and in partnership with carriers and retailers.”²

13 33. Consumers could turn in their Note7 devices (both the original and exchanged
14 versions) for refunds, exchanges for **SAMSUNG** products or other smartphones and offered
15 between \$25 and \$100 “bill credits.” Consumers who exchanged their Note7 for other
16 **SAMSUNG** devices were offered \$100 bill credits.³ Consumers who elected to receive a refund
17 or purchase a different brand of smartphone, were offered \$25 bill credits, “less any incentive
18 credits already received.”⁴

19 34. Outside of the Note7 recall, **SAMSUNG** has taken no steps to recall or warn
20 consumers about the risks of overheating, fire and explosion posed by its Subject Phones.

21 **C. SAMSUNG WAS AND IS AWARE OF OVERHEATING PROBLEMS WITH**
22 **THE SUBJECT PHONES, FAILED TO FIX THE PROBLEM OR WARN**
23 **ITS CUSTOMERS**

24 35. **SAMSUNG** made the choice to increase the power of the battery in the Subject
25 Phones despite knowing that older models and generations with less powerful batteries were
26 experiencing problems with overheating, catching fire, and even exploding. The problem dates
27 back several years; and well before the release of the Subject Phones. It is only with the Note7
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¹ See “Samsung Note7 Safety Recall” available at <http://www.samsung.com/us/note7recall/>, updated October 13, 2016.

² *Ibid.*

³ For consumers who had already exchanged their phones, they were offered a \$75 bill credit in addition to the \$25 bill credit from the exchange program. *Ibid.*

⁴ *Ibid.*

1 that complaints of overheating, fire and explosion became so overwhelming that **SAMSUNG**
2 could no longer ignore or mask the problem.

3 36. **SAMSUNG** had good reason to be concerned about overheating in its smartphones.
4 The occurrence of similar incidents in other models of **SAMSUNG** phones and electronic devices
5 have been reported through the media and consumer protection agencies for years. Despite
6 knowledge and awareness, **SAMSUNG** failed to fix the root problem, notify or warn the public of
7 the dangers its electronic devices presented, initiate a recall of all devices where overheating,
8 explosion, and/or fire were foreseeable, or otherwise address the problem. Instead, **SAMSUNG**
9 provided individual consumers with replacements without disclosing the risks and defects in the
10 Subject Phones.

11 37. The CPSC has recorded numerous consumer incident reports of **SAMSUNG**
12 phones and accessories overheating, catching fire, and even exploding. The reports relate to a
13 variety of devices—including the Galaxy S2, Galaxy Tab 2, Galaxy Tab 3, Galaxy S3, Galaxy S4
14 Active, Galaxy S5, Galaxy S6, Galaxy S6 Edge, and Galaxy S6 Active. The consumer complaints
15 of such problems date back to August of 2011.

16 38. Consumer reports to CPSC regarding unsafe Samsung Galaxy S and Samsung
17 Galaxy Note products (not including complaints regarding the Note7) include the following:

18 • On December 6, 2012, a Health Care Professional reported that a Galaxy S3 got
19 “warm” and caused a “partial thickness” burn on a consumer’s right cheek. CPSC Report No.
20 20121206-FE67D-2147461269.

21 • On February 28, 2013, a consumer reported that he or she observed a Galaxy S2
22 “overheating” and “battery swelling.” The consumer expressed “[f]ear of battery fire.” CPSC
23 Report No. 20130228-0C612-2147458351.

24 • On August 16, 2013, a consumer reported that a Galaxy S2 began “hissing,” made a
25 loud “POP,” and filled the room with a noxious smoke. The incident occurred while the device
26 was charging at night. CPSC Report No. 20130816-D0B19-2147453034.

27 • On January 20, 2014, a consumer reported that a Samsung Galaxy S3 and charging
28 cord became “visibly burned and melted.” The consumer reported “[i]t looks like it had been on
fire momentarily.” The incident occurred while the device was charging. CPSC Report No.
20140120-0DFDC-2147448018.

• On April 17, 2014, a consumer reported that a Galaxy S4 started to “smell” and
“smoke,” causing the charger to melt into the phone. The incident occurred while the device was
charging. CPSC Report No. 20140417-51573-2147445343.

1 • On April 25, 2014, a consumer reported that a Galaxy S3 made a “loud pop,” and
2 “the battery ... shot the back cover and battery out of the phone spraying a black fluid out and
3 pouring out black smoke ... the battery pack was red in color and smoking hot” The device
4 was charging at the time. CPSC Report No. 20140425-7FBF6-2147445126

5 • On May 1, 2014, a consumer reported that a Galaxy S4 became “extremely hot”
6 and burned the consumer’s son. The consumer contacted Samsung about the incident, but they had
7 not called back at the time of the report. The consumer reported he felt the “phone is dangerous.”
8 CPSC Report No. 20140501-C2DA6-2147444903.

9 • On May 12, 2014, a consumer reported that a Galaxy S4 “became so hot it melted
10 the cable. I’m not sure if there was fire but the device was certainly smoking.” The device was
11 charging at the time. CPSC Report No. 20140512-5B5C8-2147444606.

12 • On September 29, 2014, a consumer reported that a Galaxy S4 began smoking and
13 the “battery caught on fire,” damaging the consumer’s floor. The consumer reported the incident
14 directly to Samsung. CPSC Report No. 20140929-BD00A-1431381

15 • On November 2, 2014, a consumer reported that a Galaxy S4 began burning in the
16 consumer’s pocket. When the consumer pulled the phone out of his or her pocket, it seared the
17 consumer’s skin. The consumer further reported “[t]he temperature was equivalent to pulling
18 something out of the oven after baking or boiling water and dunking your hand in it.” CPSC
19 Report No. 20141102-D37FA-2147439274.

20 • On November 13, 2014, a consumer reported that a refurbished Galaxy S4 awoke
21 the consumer with the smell of burning electronics, and burned the consumer’s hand before the
22 consumer realized “the phone was starting to catch fire.” The consumer further reported that
23 “[t]he charging port was burnt, the cord was melted, and [his or her] sheets and mattress pad were
24 burnt.” CPSC Report No. 20141113-0F420-2147438923.

25 • On December 30, 2014, a consumer reported that a Galaxy S4 “literally melted to
26 [the consumer’s] counter” while charging. The consumer further reported that “[t]he area around
27 the charging port was black and melted.” CPSC Report No. 20141230-C86A9-2147437158.

28 • On July 24, 2015, a consumer reported that a Galaxy Note 2 “became hot,” and
emitted “large amounts of smoke” and “sparks.” The consumer further reported that the battery
“projected out of the back of the device ... leaving burn marks and a hole in the carpet.” CPSC
Report No. 20150724-ABD3B-2147429986.

 • On August 9, 2015, a consumer reported that a Galaxy S5 began “smoking from the
point at which the charge plugs into the phone.” Both the phone and charger had “burn marks and
were melted slightly.” The consumer further reported that he or she feared the phone or charger
would have started a fire if the consumer had not woken up. CPSC Report No. 20150809-FD1A7-
2147429518.

 • On September 19, 2015, a consumer reported that the Samsung charging device for
a Galaxy S6 was “overheating excessively under normal use.” “The consumer further reported
that the heating was “severe” enough to burn the consumer. CPSC Report No. 20150919-9088D-
2147428266.

 • On December 29, 2015, a consumer reported that a Samsung phone charger for a
“Newer Samung Galaxy” had “almost started on fire.” The “phone was red hot,” the tip of the
charger was black, and the phone was “completely toast.” The consumer further reported: “Totally
unsafe! My house could have started on fire.” CPSC Report No. 20151229-96F83-2147425364.

1 • On January 18, 2016, a consumer reported that a Galaxy S6 Edge became
2 “extremely hot to touch,” and developed a crack in the screen. CPSC Report No. 20160118-
B87EB-2147424570.

3 • On January 23, 2016, a consumer reported that a Galaxy S6 began emitting a
4 “strange smell,” and that the Samsung charger was “warped, melted, and discolored.” The
5 consumer further reported that the phone was “extremely hot” to the point it would have “burned a
small child.” The incident occurred while the phone was charging. CPSC Report No. 20160123-
F8845-2147424397.

6 • On January 14, 2016, a consumer reported that a charging device for a Galaxy S4
7 got “extremely hot and started to melt.” CPSC Report No. 20160114-AC115-1545877.

8 • On March 21, 2016, a consumer reported that a Samsung charging device for a
Galaxy S6 “caught on fire and melted.” CPSC Report No. 20160321-83C90-2147420788.

9 • On September 16, 2016, a consumer reported that a Galaxy S4 Active “melted” into
10 the charging cable. The phone burned the consumer’s finger. The consumer further reported that
the phone “probably could have got a fire.” CPSC Report No. 20160916-61984-2147414098.

11 • On September 16, 2016, a consumer reported that the battery of a Samsung Galaxy
12 S5 is “bulging” and the phone is “warm to touch.” The consumer further reported that Samsung
refused to do anything other than sell the customer a new battery because the phone “had not yet
13 exploded.” CPSC Report No. 20160916-13A98-2147414102.

14 • On September 16, 2016, a consumer reported that a Samsung Galaxy S6 Active
15 “burned up while charging via a Samsung charger.” The incident set off smoke alarms, filled the
customer’s bedroom with smoke, charred curtains and bedding, and burned through the hardcover
16 of a book. The consumer reported that she contacted Samsung about the incident, and that
Samsung gave her the “runaround.” CPSC Report No. 20160916-1BB3F-2147414093.

17 39. Numerous additional complaints have been submitted by consumers to
18 saferproducts.gov. Reports at saferproducts.gov related to the Subject Phones include the
19 following:

20 • On November 16, 2015, a consumer reported suffering “a first degree burn of my
21 right ring finger due to excessive heat from the charger at the point of connection to the phone
while on ‘fast charge’ mode.”

22 • On September 23, 2016, a consumer reported using a Samsung Galaxy S6 “when it
23 started reporting it no longer had service. It then got very hot near the power button. I burnt my
finger trying to get it to turn off.” The consumer explained that “Despite getting hot enough that I
24 got a burn that blistered, the phone has never reported itself as being overheated.”

25 • On September 21, 2016, a consumer reported their Galaxy S6 “heats up to the point
26 where it can’t be used because it’ll burn,” and that Samsung had refused to address his serious
concern about his own safety and risk of fire or explosion.

27 • On September 19, 2016, a consumer reported their five month old Galaxy S6
28 charger was overheating and had “melted plastic from the overheating of the charger.” The
consumer reported the “Heating is severe,” and that the phone “gets very hot to the touch. . .

1 enough to burn myself.” The consumer also reported that the “chargers are original chargers, from
2 the box . . . that came with the phone.”

3 • On August 17, 2016, a consumer being burned and scarred as a result of repeated
overheating of their Galaxy S6 Edge.

4 • On January 18, 2016, a consumer reported that “during operation” of their Galaxy
S6 Edge, it “became extremely hot to touch and the screen developed a crack.”

5 • On September 30, 2016, a consumer reported the following about their Galaxy S6
Active: “9-26-2016 I woke up at 5:30 took phone off charger and did usual checking email and
6 played games on phone until 6:30. Phone was not hot that I could tell. After taking kids to the bus
7 about 20 minutes without using the phone I took it out of my pocket laid it on my bed and it
8 popped really loud and start spewing smoke and melted plastic out of the phone on both ends,
screen shattered and the case melted. The smoke alarms went off and the phone was too hot to
touch.”

9 • On September 16, 2016, a consumer reported their Galaxy S6 Active “burned up
10 while charging via a Samsung charger. The smoke alarms went off and our bedroom was filled
with smoke. There was char on the curtains about 2 feet away from the bed and charred marks on
11 the headboard; the phone burned through the hardcover of a book.” The consumer complained
about receiving the “runaround” from Samsung customer service and suffering through substantial
12 delays prior to receiving a replacement and check for the property damage.

13 • On September 2, 2016, a consumer reported the battery in their Galaxy S6 Active
caught fire and nearly caused a house fire.

14 • On June 21, 2016, a consumer reported that at “1230am on June 9, 2016 using the
15 Samsung charger that is issued with the phone. The phone was sitting on the side of the bed, with
nothing covering it, and around 4am [] it pretty much exploded and caught on fire. The sound was
16 so loud it woke my child up in the next room. The fire burnt through my sheets, mattress . . .”

17 • On October 1, 2016, a consumer reported their Galaxy S7 was having significant
18 problems with the “phone getting extremely and dangerously hot.” The consumer reported the
problem to Samsung, but was told that the S7 was not affected by the recall of the Note7 and that
19 Samsung would not replace it because it was outside the 30-day warranty period. According to the
report, the problem worsened until the “phone got so hot that it melted into the [] case.”

20 • On September 26, 2016, a consumer reported her phone charger cord was “hot,
melted and smoking” while her Galaxy S7 was plugged in and charging.

21 • On September 16, 2016, a consumer reported her “two-month-old Samsung S7
Edge got so hot that it burned my hand and I could not hold onto it.”

22 • On September 10, 2016, a consumer reported he had placed his S7 Edge in his
23 “right front pocket” and that “shortly thereafter he noticed his phone whistling, screeching, and
vibrating, as well as smoke coming from his pocket.” According to the report, the consumer
24 suffered burns to his hand when he tried to remove the phone from his pocket and that, “without
warning the S7 Edge exploded and caught fire” causing second and third degree burns.
25

26 40. **SAMSUNG** is and was aware of these reports and the hazards posed by their
27 phones because consumers report the incidents directly to **SAMSUNG**, and **SAMSUNG** has also
28 acknowledged the reports by responding on the consumer agency’s website with a boilerplate

1 response. Many consumers report that **SAMSUNG** failed to take their complaints seriously, and
 2 refused to provide any compensation beyond merely replacing the dangerous and defective phones
 3 with similarly risky products.

4 41. **SAMSUNG** even took specific steps to attempt to address the overheating issues in
 5 designing the hardware for the S7, relying on unconventional technology and unproven designs to
 6 attempt to provide a partial solution to the overheating problems in its smartphones hardware
 7 designs.

8 42. **SAMSUNG'S** website describes the new hardware used to attempt to address these
 9 concerns, known as a “thermal spreader.” According to **SAMSUNG**, the thermal spreader it
 10 designed was “unlike conventional thermal spread technology.”¹ **SAMSUNG'S** team responsible
 11 for designing the system further stated that “due to the spatial limits of smartphones, the cooling
 12 system’s cooling capacity alone is not enough to cool the device. We need to calculate the amount
 13 of electric current and optimize the heat control algorithm to minimize occurring heat. In other
 14 words, the new thermal spreader hardware controls the heat more effectively but the software heat-
 15 control algorithm must be made compatible to ensure best performance.”²

16
 17 **D. SAMSUNG'S CONCEALED OF THE DANGERS POSED BY ITS**
 18 **PRODUCTS**

19 43. Despite knowledge of the overheating problem existing across multiple models and
 20 generations of **SAMSUNG** phones and despite choosing to put increasingly powerful batteries in
 21 smaller spaces in the Subject Phones, **SAMSUNG** concealed from consumers the risks of fire,
 22 explosion and overheating.

23 44. **SAMSUNG** marketed the S6 Active as indestructible, innovative, and better than
 24 ever. According to **SAMSUNG**: “AT&T is bringing its customers the toughest and most advanced
 25 member of the Galaxy S family. The Samsung Galaxy S6 Active . . . is designed with your active
 26

27 ¹ See <https://news.samsung.com/global/faces-of-innovation-galaxy-s7-s7-edge-how-we-created-the-cooling-system-in-the-galaxy-s7-and-s7-edge>.

28 ² *Ibid.*

1 lifestyle in mind. It gives you the durability you want while boasting a sleek, lightweight design
2 and all of the innovation the Galaxy S6 has to offer.”¹

3 45. It is “[b]uilt to withstand whatever everyday life throws its way, the Samsung
4 Galaxy S6 active has IP68 certified casing that is water resistant up to 1.5 meters for up to 30
5 minutes, shock resistant, and dust proof.”²

6 46. According to Tim Baxter, President, Chief Operating Officer, and General Manager
7 of **SAMSUNG**: “With the Galaxy S6 active, we’re delivering consumers with high durability
8 coupled with the powerful performance of Samsung’s latest flagship smartphone. The result is a
9 smartphone that brings ruggedized capabilities and water resistance coupled with the camera,
10 battery and design features that empower our consumers and business users to do more.”³

11 47. According to Kwangjin Bae, the Principal Engineer at IT & Mobile
12 Communications, “the goal was to make Samsung latest flagship smartphone as strong and durable
13 as possible,” for which, “[t]he development team for the Galaxy S6 worked around the clock. It
14 was one of the most difficult times of my life and all the members of the group from bottom to the
15 top worked together as one in developing the new product. It was not an easy task because it was
16 uncharted territory for all of us.”⁴

17 48. **SAMSUNG** bragged: “[i]n introducing innovation, not only in design and
18 engineering, but also in manufacturing processes, Samsung adheres to its notoriously strict quality
19 control policy. Each product undergoes intense durability testing such as drop tests, bending test
20 and performance testing among many other steps. Samsung takes to ensure the highest quality
21 products. By fusing together innovation with durability, Samsung is able to provide the level of
22 quality consumers expect from Samsung.”⁵

23
24
25 ¹ “Samsung Galaxy S6 active Available Exclusively at AT&T,” Samsung Newsroom (June 9, 2015) available at:
<https://news.samsung.com/global/Samsung-galaxy-s6-active-available-exclusively-at-att>.

26 ² *Ibid.*

27 ³ *Ibid.*

28 ⁴ “[Editorial] The Perfect Fusion: The Story Behind the Metal and Glass of the Galaxy S6,” Samsung Newsroom (June
1, 2015) available at: <https://news.Samsung.com/global/the-perfect-fusion-the-story-behind-the-metal-and-glass-of-the-galaxy-s6-ass-and-metal-was-not-without-its-challenges-the-story-behind-the-galaxy-s6-sound>.

⁵ “Forming Glass, Metal Frame – The Art of Craftsmanship in the Galaxy S6,” Samsung Newsroom (March 2, 2015)
available at: <https://news.samsung.com/global/forming-glass-forging-metal-the-art-of-craftsmanship-in-the-galaxy-s6>.

1 49. **SAMSUNG** marketed the S6 Edge+ as being “More than a phone, it’s the hub of
2 your life, always with you, always on...you do everything with your phone... shouldn’t you expect
3 more from it?” And **SAMSUNG** also worked to decrease the charging time, advertising that, on
4 the S6, S7 and Note5 models that charging was faster than ever and the phone could be fully
5 charged in ninety minutes.

6 50. **SAMSUNG** advertised the S6 as having “next level performance” and “next level
7 charging,” including built in wireless charging.

8 51. **SAMSUNG** advertised and marketed the S7 models by explaining that it was “not
9 just launching a new phone, we are launching a new way of thinking about what a phone can do.”
10 **SAMSUNG** stated, “our phones go everywhere with us,” and told consumers “Time is valuable. If
11 time is the most valuable thing, why would you waste time charging your phone” in advertising the
12 “fast charging” capabilities of the S7 models.

13 52. **SAMSUNG** advertised the S7 Active as the “toughest Samsung ever” and touted its
14 battery performance and fast charging capability.

15 53. Despite these descriptions and marketing efforts, **SAMSUNG** concealed from
16 consumers the risks of overheating, fire, and explosion posed by the Subject Phones.
17 **SAMSUNG’S** omissions were material to consumers’ purchasing decisions in that had consumers
18 been warned of the dangers of the products, they would not have purchased the Subject Phones or
19 would have paid less for the Subject Phones than they paid.

20 54. Even while **SAMSUNG** was performing its recalls of the Note7, it continued to
21 attempt to conceal the scope of the problem. **SAMSUNG** reportedly offered to pay at least one
22 consumer in China approximately \$900 to replace his Note7 if he agreed not to publicize a video
23 of his smartphone overheating and smoking.¹ **SAMSUNG** has also issued copyright claims to
24 YouTube in order to take down parody videos posted by the public of the Note7 bursting into
25 flames or exploding.² And despite the well-publicized recall of the Note7, **SAMSUNG** continues

26
27 ¹ Wee, Sui-Lee, “Samsung’s Uneven Handling of Galaxy Note 7 Fires Angers Chinese,” (available at
http://www.nytimes.com/2016/10/19/business/Samsung-galaxy-note7-china-test.html?_r=0).

28 ² BBC News, October 21, 2016, “Samsung ‘blocks’ exploding Note 7 parody videos” (available at
<http://www.bbc.com/news/technology-37713939>).

1 to hide the risks of the Subject Phones, and has taken no steps to warn its customers or recall
 2 additional products subject to the same dangers, despite the fact that **SAMSUNG** has yet to
 3 identify the cause of the overheating, explosions and fires in the Note7 or the Subject Phones.

4 55. On October 12, 2016, in the midst of the Note7 recalls, **SAMSUNG** reportedly¹
 5 sent push notifications directly to some of its consumers' smartphones:

6
 7 Safety Recall Notice ×

8
 9 
 10 Your Galaxy S7 is not an affected
 11 device.

12 The Galaxy S7 is not subject to recall.
 13 You can continue to use your device
 14 normally

15 56. **SAMSUNG** knew the Subject Phones were defectively designed or manufactured,
 16 would fail without warning, posed a risk to the public, and were not suitable for their intended use.
 17 Until the problem became too widespread, publicized, and pervasive to ignore with the Note7,
 18 **SAMSUNG** failed to warn **PLAINTIFFS**, the Class and the public about the inherent dangers of
 19 the Subject Phones, despite having a duty to do so. Additionally, **SAMSUNG** has continued to fail
 20 to warn consumers of the dangers related to the Subject Phones, implying the Note7 is an outlier
 21 and that **SAMSUNG'S** other products, including the Subject Phones, are safe.

22 57. **SAMSUNG** owed **PLAINTIFFS** a duty to disclose the defective nature of Subject
 23 Phones, including the dangerous risk of explosion, fire and overheating, because **SAMSUNG**:

24 a. possessed exclusive knowledge of the defects rendering the Subject Phones
 25 inherently more dangerous and unreliable than similar smartphone products; and,

26 b. intentionally concealed the dangerous situation with the Subject Phones through
 27 their marketing campaign and recall programs.

28 ¹ Haselton, Todd "Samsung to Galaxy S7 Owners: Your Phone is NOT Recalled" (available at
<http://www.technobuffalo.com/2016/10/12/galaxy-s7-not-recalled/>).

1 58. **SAMSUNG**, and each of them, designed, engineered, developed, manufactured,
2 tested, produced, assembled, labeled, supplied, imported, distributed, and sold the Subject Phones
3 and their component parts and constituents, which were intended by **SAMSUNG**, and each of
4 them, to be used as a consumer smartphone.

5 59. The Galaxy S6 is unsafe for its intended use by reason of defects in its design,
6 engineering, development, manufacturing, testing, production, and/or assembly, such that it cannot
7 safely serve its purpose, but can instead expose the public and **PLAINTIFFS** to serious injury.

8 60. The Galaxy S6 Edge is unsafe for its intended use by reason of defects in its design,
9 engineering, development, manufacturing, testing, production, and/or assembly, such that it cannot
10 safely serve its purpose, but can instead expose the public and **PLAINTIFFS** to serious injury.

11 61. The Galaxy S6 Edge+ is unsafe for its intended use by reason of defects in its
12 design, engineering, development, manufacturing, testing, production, and/or assembly, such that it
13 cannot safely serve its purpose, but can instead expose the public and **PLAINTIFFS** to serious
14 injury.

15 62. The Galaxy S6 Active is unsafe for its intended use by reason of defects in its
16 design, engineering, development, manufacturing, testing, production, and/or assembly, such that it
17 cannot safely serve its purpose, but can instead expose the public and **PLAINTIFFS** to serious
18 injury.

19 63. The Galaxy Note5 is unsafe for its intended use by reason of defects in its design,
20 engineering, development, manufacturing, testing, production, and/or assembly, such that it cannot
21 safely serve its purpose, but can instead expose the public and **PLAINTIFFS** to serious injury.

22 64. The Galaxy S7 is unsafe for its intended use by reason of defects in its design,
23 engineering, development, manufacturing, testing, production, and/or assembly, such that it cannot
24 safely serve its purpose, but can instead expose the public and **PLAINTIFFS** to serious injury.

25 65. The Galaxy S7 Edge is unsafe for its intended use by reason of defects in its design,
26 engineering, development, manufacturing, testing, production, and/or assembly, such that it cannot
27 safely serve its purpose, but can instead expose the public and **PLAINTIFFS** to serious injury.

28

1 66. The Galaxy S7 Active is unsafe for its intended use by reason of defects in its
2 design, engineering, development, manufacturing, testing, production, and/or assembly, such that it
3 cannot safely serve its purpose, but instead exposes the public and **PLAINTIFFS** to serious injury.

4 **E. PLAINTIFFS' EXPERIENCES**

5 **1. Demetrius Martin's Samsung S6 Edge+**

6 67. Plaintiff **MARTIN** purchased a Samsung S6 Edge+. Since the original purchase in
7 August or September 2015, the phone has been replaced twice. He purchased the phone for his
8 former partner, Jeremy Estrada, and Plaintiff **MARTIN** pays for the phone and cell phone plan.

9 68. Within two weeks of the original purchase the phone began malfunctioning and
10 became pixelated. Plaintiff **MARTIN** was ultimately issued a replacement Samsung S6 Edge+
11 through AT&T.

12 69. The replacement S6 Edge+ consistently overheated and hot to the touch. On or
13 about December 30, 2015, the S6 Edge+ caught fire while it was plugged in. As a result of the
14 fire, the phone's battery expanded into an egg shape, and the front and back of the phone shattered.
15 Fortunately, Mr. Estrada was able to knock the phone off of the table to avoid his house catching
16 on fire. However, the fire still filled his home with smoke.

17 70. When Plaintiff **MARTIN** went to his carrier (AT&T) to replace the burned phone,
18 he was told he needed to go through the manufacturer, **SAMSUNG**, for replacement. An AT&T
19 employee told Plaintiff **MARTIN** it looked like the phone had not yet exploded but that it still
20 could. Plaintiff **MARTIN** put the phone into a fireproof container because he was worried it
21 would explode.

22 71. In early September 2016, Plaintiff **MARTIN** called **SAMSUNG** to report the issue.
23 **SAMSUNG** was initially fairly prompt in responding and asked if there was property damage.
24 However, after Plaintiff **MARTIN** told **SAMSUNG** that the phone had caused a burn in the rug,
25 and after several follow up calls, **SAMSUNG** ceased responding. Plaintiff **MARTIN** sent a video
26 and / or photo of the phone to show **SAMSUNG** the problem.

27 72. **SAMSUNG** eventually sent a simple mailer envelope to return the phone and
28 finally sent (another) replacement **SAMSUNG** S6 Edge+. This phone also runs hot and Plaintiff

1 **MARTIN** is concerned the product is not safe and poses a risk of fire. **SAMSUNG** has not
2 responded to his inquiries about the safety or risks associated with the phone.

3 73. Photos of Plaintiff **MARTIN**'S phone after the fire are below:



19 (front)



20 (back including battery)

21 74. In order to attempt to understand the problem and potential risks, Plaintiff
22 **MARTIN** asked **SAMSUNG** if there was a problem with the S6 Edge+ model. **SAMSUNG** did
23 not provide a response.

24 **2. Omar Atebar's Experience**

25 75. Plaintiff **ATEBAR** purchased three of the Subject Phones as part of a single plan
26 with T-Mobile. Plaintiff **ATEBAR** pays a monthly fee for each phone. Plaintiff **ATEBAR**
27 received two Galaxy S7 devices and one Galaxy Note5.

1 76. Plaintiff **ATEBAR** uses his Galaxy S7 every day, including for navigation
 2 purposes. During use of his phone and while operating certain applications, the phone heats up, a
 3 “danger” screen appears, usually within 10-15 minutes of using navigation applications. When the
 4 phone overheats, Plaintiff **ATEBAR** is forced to attempt to cool the phone with an air conditioner
 5 so that the phone can be used. All of these issues impair and impede her normal use of the product.

6 3. Esther Vega’s Experience

7 77. Plaintiff **E. VEGA** has a Galaxy S7. She uses her S7 daily. While using her S7,
 8 Plaintiff **E. VEGA** noticed her S7 overheats while she is talking on the phone, has issues
 9 connecting to the internet, randomly opens applications on its own, randomly dims and fails to
 10 charge. All of these issues impair and impede her normal use of the product.

11 4. Jesus Vega’s Experience

12 78. Plaintiff **J. VEGA** acquired his Samsung Note5 in April 2016. He uses the device
 13 daily. While using his device, Plaintiff **J. VEGA** has experienced the device overheat while
 14 talking on the device and running social media applications. While using the device he has
 15 received numerous warnings regarding overheating, as well as encountered shortened battery life
 16 and phone sluggishness. All of these issues impair and impede his use of the device.

17 **V. CLASS ACTION ALLEGATIONS**

18 79. The following Class and Subclass may properly be maintained as a Class action
 19 pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure:

20 Class: All persons residing in the State of California who purchased, in the State of
 21 California, at least one (1) of the Subject Phones at any time during the four (4) year
 22 period preceding the filing of this Class Action Complaint and continuing through
 the date of trial. The Subject Phones are the S6, S6 Edge, S6 Edge+, S6 Active, S7,
 S7 Edge, S7 Active, and Note5 (see ¶ 26).

23 CLRA Subclass: All persons residing in the State of California who purchased, in
 24 the State of California, for personal, family, or household purposes, at least one (1)
 25 of the Subject Phones at any time during the three (3) year period preceding the
 filing of this CLASS Action Complaint.¹ The Subject Phones are the S6, S6 Edge,
 S6 Edge+, S6 Active, S7, S7 Edge, S7 Active, and Note5 (see ¶ 26).

26
 27
 28 ¹ **PLAINTIFFS** are representatives, and members of the Class and the CLRA Subclass. Because all members of the
 CLRA Subclass are also members of the Class, **PLAINTIFFS** will refer to the Class and the CLRA Subclass
 collectively as the “Class” unless otherwise specified.

1 80. Excluded from the Class are **SAMSUNG**, their employees, co-conspirators,
2 officers, directors, legal representatives, heirs, successors and wholly or partly owned subsidiaries
3 or affiliated companies; Class Counsel and their employees; and the judicial officers and their
4 immediate family members and associated court staff assigned to this case. Also excluded are any
5 individuals claiming damages from personal injuries arising from an overheating, fire, explosion or
6 other incident. Further excluded is any individual who after purchase of a Subject Phone returned
7 the Subject Phone and received a full refund of his or her purchase price.

8 81. In the addition, the following Class may properly be maintained as a class action
9 pursuant to FRCP 23(b)(2) on behalf of the following individuals:

10 Injunction Class: All persons residing in the State of California who, following trial,
11 remain in possession of a Subject Phone. The Subject Phones are the S6, S6 Edge,
12 S6 Edge+, S6 Active, S7, S7 Edge, S7 Active, and Note5 (see ¶ 26).

13 82. Excluded from the Injunction Class are **SAMSUNG**, its employees, co-
14 conspirators, officers, directors, legal representatives, heirs, successors and wholly or partly owned
15 subsidiaries or affiliated companies; Class Counsel and their employees; and the judicial officers
16 and their immediate family members and associated court staff assigned to this case. Also
17 excluded are any individuals claiming damages from personal injuries arising from an overheating,
18 fire, explosion or other incident.

19 83. Throughout discovery in this litigation, **PLAINTIFFS** may find it appropriate
20 and/or necessary to amend the definition of the Class, the CLRA Subclass, and/or the Injunction
21 Class. **PLAINTIFFS** will formally define and designate a Class definitions when they seek to
22 certify the Classes alleged herein.

23 84. Pursuant to Rule 23(a)(1), the Class is so numerous that joinder of all members is
24 impracticable. While the exact number of Class members is unknown to **PLAINTIFFS** at this
25 time, **PLAINTIFFS** believe there are millions of members of the Class.

26 85. Pursuant to Rule 23(a)(3), **PLAINTIFFS**' claims are typical of the claims of the
27 other members of the Class. **PLAINTIFFS** and other Class members received the same
28 nondisclosures about the safety and quality of Subject Phones. **PLAINTIFFS** and Class members
purchased **SAMSUNG** Galaxy S and Note products that they would not have purchased at all, or

1 for as much as they paid, had they known the truth regarding the overheating problems and fire
2 hazards. **PLAINTIFFS** and the members of the Class have sustained injury in that they overpaid
3 for the **SAMSUNG** smartphones due to **SAMSUNG'S** wrongful conduct.

4 86. Pursuant to Rule 23(a)(4) and (g)(1), **PLAINTIFFS** will fairly and adequately
5 protect the interests of the members of the Class and Injunction Class and have retained counsel
6 competent and experienced in class action and consumer fraud and protection litigation.

7 87. Pursuant to Rules 23(b)(2), **SAMSUNG** has acted or refused to act on grounds
8 generally applicable to the Injunction Class, thereby making appropriate final injunctive relief or
9 corresponding declaratory relief with respect to the Injunction Class as a whole. In particular,
10 **SAMSUNG** has failed to properly repair, exchange, recall or replace the Subject Phones.
11 **SAMSUNG** also continues to sell the Subject Phones and has failed to properly warn consumers
12 of the risks of overheating, fire and explosion with the Subject Phones.

13 88. Pursuant to Rule 23(a)(2) and (b)(3), common questions of law and fact exist as to
14 all members of the Class and predominate over any questions solely affecting individual members
15 thereof. Among the common questions of law and fact are as follows:

- 16 a. whether **SAMSUNG** had knowledge of the defects affecting the Subject
17 Phones;
- 18 b. whether **SAMSUNG** concealed defects affecting Subject Phones;
- 19 c. whether **SAMSUNG** violated the unlawful prong of the UCL by its
20 violation of the CLRA;
- 21 d. whether **SAMSUNG'S** omissions regarding the risks of the Subject Phones
22 were likely to deceive a reasonable person in violation of the fraudulent prong of the UCL;
- 23 e. whether **SAMSUNG'S** business practices, including the manufacture and
24 sale of phones with a risk of overheating, explosion and fire that **SAMSUNG** failed to adequately
25 investigate, disclose and remedy, offend established public policy and cause harm to consumers
26 that greatly outweighs any benefits associated with those practices;
- 27 f. whether **SAMSUNG'S** omissions regarding the risks of the Subject Phones
28 were likely to deceive a reasonable person in violation of the False Advertising Law;

1 designed and prone to overheating, catching fire, and explosion, despite sole and exclusive
2 knowledge.

3 94. At no time, did **SAMSUNG** disclose to **PLAINTIFFS** and the Class that the
4 Subject Phones were defectively designed and prone to overheating, catching fire, and explosion.
5 Indeed, despite direct knowledge to the contrary, **SAMSUNG** continually failed to disclose to
6 consumers that the Subject Phones were defectively designed and prone to overheating, catching
7 fire, and explosion.

8 95. **PLAINTIFFS** and the Class interpreted **SAMSUNG** failure to disclose and
9 omissions as a representation that the Subject Phones did not pose the threat of danger by and
10 through, among others, overheating, fire, and/or explosion.

11 96. As a direct result of **SAMSUNG'S** failure to disclose that the Subject Phones were
12 defectively designed and prone to overheating, catching fire, and explosion, **PLAINTIFFS**
13 purchased or otherwise paid money for the Subject Phones which they otherwise would not have
14 done had **SAMSUNG** disclosed the fact that the Subject Phones were defectively designed and
15 prone to overheating, catching fire, and explosion.

16 97. At all times mentioned herein, **SAMSUNG** was, and remain, in a superior position
17 to know the truth about the Subject Phones and their propensity to overheat, catch fire, and
18 explode.

19 98. The facts concealed by **SAMSUNG** are material facts because any reasonable
20 consumer would have considered the fact that the Subject Phones' propensity to overheat, catch
21 fire, and explode to be important in deciding whether to purchase the Subject Phones as opposed to
22 another, but less expensive, smartphone.

23 99. **PLAINTIFFS** and the Class reasonably and justifiably relied on **SAMSUNG**
24 failure to disclose that the Subject Phones were prone to overheating, catching fire, and explosion
25 when purchasing the Subject Phones. **PLAINTIFFS** and the Class would not have purchased the
26 Subject Phones were it not for the material omissions by **SAMSUNG**.

27
28

1 **FOURTH CAUSE OF ACTION**
2 **VIOLATIONS OF THE CONSUMER LEGAL REMEDIES ACT**
3 **CAL. CIV. CODE §§ 1750 ET SEQ.**
4 **(PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS)**

4 114. **PLAINTIFFS** hereby reallege and incorporate by reference each and every
5 allegation set forth above, as if fully set forth in detail herein.

6 115. California Civil Code section 1770(a) provides that it is unlawful to use unfair
7 methods of competition and unfair or deceptive acts or practices in a transaction intended to result
8 or which results in the sale or lease of goods or services to any consumer. California Civil Code
9 section 1770(a) is specifically violated by, among other things: “Representing that goods or
10 services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which
11 they do not have.” Cal. Civ. Code § 1770(a)(5).

12 116. The acts and practices on the part of **SAMSUNG**, as alleged herein, constituted and
13 constitute unlawful methods of competition, unfair, or deceptive acts undertaken in a transaction
14 which resulted in the sale of goods to consumers including, but in no way limited to, **SAMSUNG**
15 failure to disclose that the Subject Phones were prone to overheating, catching fire, and explosion.

16 117. Plaintiff seeks an order awarding restitution or disgorgement of **SAMSUNG’S**
17 revenues and profits from the sale of the Subject Phones.

18 118. As a direct and proximate result of **SAMSUNG’S** violations of the CLRA as
19 alleged herein, **PLAINTIFFS** and Class have been injured by, including but not limited to, the
20 following: (a) the infringement of their legal rights as a result of being subjected to the common
21 course of fraudulent conduct alleged herein; (b) being induced to purchase the Subject Phones,
22 which they would not have done had they been fully informed of **SAMSUNG’S** acts, omissions,
23 practices, and nondisclosures as alleged herein, in violation of, *inter alia*, the CLRA, the FAL, and
24 the UCL; (c) being induced to rely on **SAMSUNG’S** deceptive, fraudulent, and intentional
25 omissions to their detriment as a result of **SAMSUNG’S** conduct as alleged in this Class Action
26 Complaint, in violation of, *inter alia*, the CLRA, the FAL, and the UCL; and (d) unknowingly
27 being subjected to fraudulent concealment and deceit as a result of **SAMSUNG’S** conduct.

1 Accordingly, **SAMSUNG** engaged in acts of fraud, malice, or oppression and in conscious
2 disregard of the rights and well-being of Plaintiff and the Class.

3 119. As a direct and proximate result of **SAMSUNG** conduct in violation of the CLRA,
4 **PLAINTIFFS** and the Class have been harmed.

5 WHEREFORE, **PLAINTIFFS** and the Class pray for relief as set forth below.

6
7 **FIFTH CAUSE OF ACTION**
8 **UNJUST ENRICHMENT**
9 **(PLAINTIFFS AND THE CLASS AGAINST SAMSUNG)**

10 120. **PLAINTIFFS** hereby re-allege and incorporate by reference each and every
11 allegation set forth above, as if fully set forth in detail herein.

12 121. As a result of their wrongful and fraudulent acts and omissions, as set forth above,
13 pertaining to the Subject Phones, **SAMSUNG** charged a higher price for the Subject Phones than
14 the Subject Phones' true value and **SAMSUNG** obtained monies which rightfully belong to
15 **PLAINTIFFS** and the Class.

16 122. **SAMSUNG** enjoyed the benefit of increased financial gains, to the detriment of
17 **PLAINTIFFS** and the Class, who paid a higher price for Subject Phones which actually had lower
18 values. It would be inequitable and unjust for **SAMSUNG** to retain these wrongfully obtained
19 profits.

20 123. **PLAINTIFFS**, therefore, seek an order establishing **SAMSUNG** as constructive
21 trustee of the profits unjustly obtained, plus interest.

22 **VII. PRAYER FOR RELIEF**

23 WHEREFORE, **PLAINTIFFS** pray that this Court enter judgment in their favor on every
24 claim for relief set forth above and award them relief including, but not limited to, the following:

- 25 1. An Order appointing **PLAINTIFFS** to represent the Class pursuant to FRCP 23(a)
26 and designating **PLAINTIFFS**' counsel as Class Counsel;
- 27 2. An order enjoining **SAMSUNG** from any future violations of the CLRA, FAL and
28 UCL;
3. An order enjoining **SAMSUNG** from selling the Subject Phones;

- 1 4. For economic losses, in an amount according to proof at trial;
- 2 5. For restitution for **PLAINTIFFS** and the Class in an amount according to proof at
- 3 trial;
- 4 6. An award for **PLAINTIFFS** for the costs of suit and reasonable attorneys' fees as
- 5 provided by law;
- 6 7. For interest upon any judgment entered as provided by law; and,
- 7 8. For such other and further relief as the Court may deem just and proper.

8
9 Dated: November 2, 2016

COTCHETT, PITRE & MCCARTHY, LLP

10 By: /s/ Anne Marie Murphy
11 Niall P. McCarthy
12 Anne Marie Murphy
13 Eric J. Buescher

STONEBARGER LAW, APC

14 By: /s/ Gene J. Stonebarger
15 Gene J. Stonebarger
16 Richard D. Lambert
17 Crystal L. Kelly

18 **VIII. JURY DEMAND**

19 Plaintiff demands trial by jury on all issues so triable.

20 Dated: November 2, 2016

COTCHETT, PITRE & MCCARTHY, LLP

21 By: /s/ Anne Marie Murphy
22 Niall P. McCarthy
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