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Superior Court of CA,  
County of Santa Clara  
20CV372511  
Reviewed By: R. Walker

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF SANTA CLARA COUNTY**

10 NICHOLAS GOGLIA, individually and on  
11 behalf of all others similarly situated,

12 Plaintiff,

13 v.

14 GOOGLE LLC,

15 Defendant.

Case No. **20CV372511**

**CLASS ACTION COMPLAINT FOR:**

- 1. **California’s Unfair Competition Law;**
- 2. **California’s Consumers Legal Remedies Act**
- 3. **California’s False Advertising Law**

JURY TRIAL DEMANDED

1 Plaintiff Nicholas Goglia (“Plaintiff”), individually and on behalf of all others similarly situated,  
2 file this Class Action Complaint against Defendant Google LLC (“Google” or “Defendant”), and hereby  
3 alleges the following based on personal knowledge as to his own conduct, and upon information and  
4 belief as to all other matters.

### 5 SUMMARY OF THE ACTION

6 1. This is a consumer protection class action on behalf of individuals who purchased first-  
7 generation Pixel 3 and Pixel 3 XL (collectively, “Pixel 3”) smartphones. The Pixel 3 is defective. The  
8 Pixel 3 defects are two-fold: (1) the Pixel camera suffers from a malfunctioning autofocus feature, which  
9 causes the screen display to go black or the camera application to fail altogether; and (2) the Pixel’s  
10 battery drains at an accelerated pace after a short period of normal use, causing the phone to overheat  
11 and/or prematurely shut off (collectively, the “Defect”). The problems with the Pixel 3 are material and  
12 compromise the devices’ core functionality. Consumers with a Pixel 3 face a constant threat of camera  
13 failure and premature shutdowns, requiring them to have to constantly refresh the camera application  
14 and/or connect to a power source when using their Pixel 3, effectively converting their “mobile” phones  
15 into landlines.

16 2. Google designed, manufactured, marketed, and sold the Pixel phones (directly and  
17 indirectly through third parties), which are marketed as premium products ranging in price from \$799 to  
18 \$899. Google knew the Pixel 3 was defective at or before the time of release through pre-release testing  
19 and complaints from consumers shortly after launch. Despite knowing that the Pixel 3 was prone to fail,  
20 Google failed to disclose to consumers that the Pixel 3 is defective. Although the Pixel 3 came with a  
21 one-year written warranty covering defects in design, materials, and workmanship, Google routinely  
22 refuses to honor its warranty obligations. Instead of fixing the reported problems, Google has denied  
23 warranty service for pretextual reasons and obfuscated the source of the Pixel 3’s problems. When Google  
24 has agreed to replace a defective Pixel, they provide a replacement Pixel 3 that is also defective, exposing  
25 consumers to repeat failures.

26 3. The Defects are substantially certain to manifest—thousands of consumers have reported  
27 issues related to a malfunctioning or failing camera and/or accelerated battery loss. In particular,  
28 consumers have reported that the Pixel 3 camera application itself is riddled with problems,

1 predominantly with a malfunctioning autofocus feature, which causes pictures to be blurry and out of  
2 focus. Several owners report that the camera's viewfinder will wobble even if the phone is left untouched  
3 on a table or another hard surface, as captured by several owners on YouTube.<sup>1</sup> Consumers further report  
4 that the Pixel 3 batteries are prone to rapid draining. In some cases, this can cause the phone to overheat,  
5 leading applications to freeze and become unresponsive. Several owners have reported having both the  
6 camera and battery issues simultaneously, demonstrating that the malfunctioning camera application  
7 leads to significant draw on the battery. Plaintiff has consequently been deprived of the benefit of his  
8 bargain.

9 4. Google's deceptive marketing and the sale of the Pixel 3 with the undisclosed Defect  
10 continue to this day. On behalf of the general public of California, Plaintiff seeks declaratory and  
11 injunctive relief against Google to, *inter alia*, extend the warranty period, provide notification of the  
12 warranty extension to past Pixel 3 purchasers, provide restitution, and enjoin it from continuing to  
13 deceptively advertise and sell its Pixel 3 phones without disclosing the presence of the Defect.

#### 14 PARTIES

15 5. Plaintiff Nicholas Goglia is an adult individual residing in Eureka, California.

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

#### 18 JURISDICTION AND VENUE

19 7. This is brought as a class action to remedy violations of California law by Google. This  
20 Court has subject matter jurisdiction over this action pursuant to the California Code of Civil Procedure.

21 8. The Court has personal jurisdiction over Google LLC because its principal place of  
22 business is within this District and it has sufficient minimum contacts in California to render the exercise  
23 of jurisdiction by this Court appropriate.

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27 <sup>1</sup> [https://www.youtube.com/watch?v=Y\\_wRNGdeV4w](https://www.youtube.com/watch?v=Y_wRNGdeV4w) (last visited Nov. 2, 2020). YouTube User  
28 Julius Gunnilstam captured footage of his phone left stationary on a table, and the camera viewfinder's  
focus inexplicably shaking.



1 3's box. Plaintiff Goglia also went through the phone's initial set-up process, in which Google provided  
2 Plaintiff Goglia with information about the device, including information about the camera and battery.

3 14. Almost immediately after purchase, the battery on his Pixel 3 began inexplicably draining,  
4 which caused the phone to prematurely shutdown while in operation. After two months of this issue, the  
5 phone would completely shut off and was unable to be turned back on.

6 15. As his phone was still under warranty at this time, Plaintiff Goglia contacted Google  
7 Support to inquire about the issue, explaining that he was unable to boot-up his phone. Google provided  
8 a replacement Pixel 3 that was covered under the initial one-year warranty.

9 16. Within approximately ten months of receiving the replacement Pixel 3, however, it began  
10 exhibiting issues with the camera. Specifically, the camera application on Plaintiff Goglia's phone began  
11 exhibiting focusing issues, among other problems, that prevented him from being able to use his camera  
12 to take photos or capture video.

13 17. In or around March 2020, Plaintiff Goglia contacted Google about the camera defect.  
14 Google refused to cover the cost for a repair of the phone's camera, since Plaintiff Goglia was outside  
15 the initial warranty by several months.

16 18. Plaintiff Goglia was required to pay Google \$230.59 out-of-pocket to have the  
17 malfunctioning camera module repaired on his phone.

18 19. Had Plaintiff Goglia had been made aware of the Defects prior to purchasing his Pixel 3  
19 smartphone, he would not have purchased it or would have paid significantly less for the phone than he  
20 did.

### 21 **COMMON FACTUAL ALLEGATIONS**

22 20. Mobile phones have become a necessity of everyday life in the United States.

23 21. The vast majority of Americans—approximately 96%—own a cellphone of some kind.  
24 Nearly 81% of Americans own smartphones. For 2020, the number of smartphone users in the United  
25 States is estimated to reach 275.66 million.

26 22. Consumers use smartphones to perform a wide variety of tasks, including making phone  
27 calls, sending and receiving emails and text messages, accessing the internet, getting directions, using  
28 applications and taking photographs. Nearly 59.2% of adults in the United States live in households

1 without a working landline telephone, and roughly one-in-five American adults are “smartphone-only”  
2 internet users—meaning they own a smartphone, but do not have traditional home broadband service.  
3 The average consumer uses—almost exclusively—the cameras inside their smartphones for taking  
4 pictures these days. Americans are relying exclusively on their cell phones to make calls, take photos and  
5 access the internet more than ever before.

6 23. On average, consumers in the United States replace their smartphones every three years.

7  
8 **Google Markets and Launches the Pixel 3 Smartphone  
While Touting its Battery and Camera Capabilities**

9 24. Google is a major smartphone manufacturer. The Pixel 3 was the third smartphone since  
10 2016 in Google’s “Pixel” line of smartphones.

11 25. Google controls the design, development, marketing, sales, and support for the Pixels. The  
12 phone bears Google’s logos and is branded as being “Made by Google.” Google directed virtually every  
13 aspect of the development and manufacture of the phones. Since 2015, Google has controlled the  
14 manufacturing process for its line of smartphones, including the Pixels.<sup>3</sup> As a part of taking over control  
15 of the manufacturing process, Google wanted to make its own hardware in order to prioritize the research  
16 and development process for specific components of its smartphones: cameras and sensors.<sup>4</sup> “Because it  
17 fully designs and sells the Pixel handsets,” Google holds itself out as the original equipment manufacturer  
18 of the devices.<sup>5</sup>

19 26. Google sells the Pixel 3 directly to consumers as well as through authorized retailers, such  
20 as Verizon, Amazon, Walmart and Best Buy.<sup>6</sup>

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23  
24 <sup>3</sup> Plutis, Diana, *The latest developments of Google’s Pixel Series*, VERSUS (May 13, 2019), available:  
<https://versus.com/en/news/the-latest-developments-of-google-s-pixel-series> (last visited Nov. 2, 2020).

25 <sup>4</sup> *See id.*

26 <sup>5</sup> Ron Amadeo, *Google Pixel Review: The Best Android Phone, Even If It Is A Little Pricey*, ARS  
Technica (Oct.18, 2017), available: <https://arstechnica.com/gadgets/2016/10/google-pixel-review-bland-pricey-but-still-bestandroid-phone> (last visited Nov. 2, 2020).

27 <sup>6</sup> Coll, Lucas, *The Google Pixel is one of the best Android phones you can buy –here’s where you can*  
28 *get one*, Business Insider (June 1, 2019), available at: <https://www.businessinsider.com/where-to-buy-google-pixel-phone> (last visited Nov. 2, 2020).

1           27. Google provides a written warranty for “[a]ll Made-by-Google device, like Pixel  
2 phones.”<sup>7</sup> This includes devices “bought on the Google Store, at authorized retail stores, and from  
3 carriers.”<sup>8</sup> Under the express terms of the warranty, “Google warrants that a new phone ... will be free  
4 from defects in materials and workmanship under normal use ... for one year from the date of original  
5 retail purchase ....”<sup>9</sup>

6           28. Google and its authorized resellers allow Pixel purchasers to return their devices for a full  
7 refund within approximately two weeks after purchase.<sup>10</sup>

8           29. On October 9, 2018, Google announced the release of the Pixel 3 and 3XL at a launch  
9 event in New York City. The YouTube video of the event was linked to by technology publications and  
10 has been viewed over 1.9 million times.<sup>11</sup>

11           30. Both Pixel 3 models were priced at a manufacturer’s suggested retail price of \$799 and  
12 \$899, respectively, with costs for “fully loaded” devices of well over \$1,000. The U.S. release date was  
13 set for October 18, 2018.

14           31. At the launch event, along with the Pixel’s high quality and Google’s overall responsibility  
15 for it, the camera functionality and extended battery life figured prominently in Google’s marketing  
16 presentation. Representations Google made at the launch event concerning the Pixel 3 include:

- 17           • “we designed the world’s best camera and put it in the world’s most helpful phone”
- 18           • “designed from the inside out to be the smartest, most useful device in your life”
- 19           • “everyone raves about the Pixel camera, and today the smartest camera gets even better  
20 with the Pixel 3”
- 21           • “with motion auto-focus, just tap on ... anything else that won’t hold still, and they’ll stay  
22 in focus as they move around the frame”

24 <sup>7</sup> See [https://support.google.com/store/answer/6160400?hl=en&ref\\_topic=3244667](https://support.google.com/store/answer/6160400?hl=en&ref_topic=3244667) (last visited Nov. 2,  
25 2020).

26 <sup>8</sup> *Id.*

27 <sup>9</sup> See <https://support.google.com/store/troubleshooter/3070579#ts=7168940%2C9158651> (last visited  
28 Nov. 2, 2020).

<sup>10</sup> [https://support.google.com/store/answer/2411741?hl=en&ref\\_topic=3244667](https://support.google.com/store/answer/2411741?hl=en&ref_topic=3244667) (last visited Nov. 2,  
2020).

<sup>11</sup> <https://www.youtube.com/watch?v=EsoQGTA1SxY> (last visited Nov 2, 2020).

1           32.     Google emphasized the functions of the camera at the launch event, including the Pixel 3  
2 camera’s new “auto-focus” feature. This feature, among others, relies on the camera’s built-in intelligent  
3 A.I. that automatically senses and captures pictures at the opportune moment.

4           33.     Google also demonstrated the Pixel 3’s auto-focus feature, or “motion auto-focus,” which  
5 is meant to capture subjects and maintain them in focus while in constant motion. Google used the  
6 example of an energetic dog running around a park during the launch event, and explained how, with the  
7 use of this feature, the subject “stays in focus as they move around the frame.”

8           34.     Google also rolled out advertisements and marketing materials that emphasized the Pixel  
9 3’s camera and battery life.

10          35.     Starting with the first Google Pixel released in 2016, Google placed significant emphasis  
11 on the phone’s camera.<sup>12</sup> Even before its launch, Google marketed the Pixel 3 as using AI “to make sure  
12 you never miss the shot” and that the “Pixel 3 helps you get that perfect shot on the first try.”<sup>13</sup>

13          36.     Google boasted that “the best camera gets even better with Pixel 3” by using AI to help  
14 capture the “perfect photo every time,” with the new additional features of Super Res Zoom, Night Sight,  
15 Group Selfie, Portrait Mode, and Motion Auto Focus.<sup>14</sup> Google stated that the Motion Auto Focus “will  
16 make sure your Pixel 3 camera stays in sharp focus automatically.”<sup>15</sup>

17          37.     Google further stated that the Pixel 3 “prioritizes battery power for your most important  
18 apps to make your phone last all day.”<sup>16</sup>

19          38.     Google further made representations concerning the quality of Pixel 3 phones through  
20 print and video advertising<sup>17</sup>:

24 <sup>12</sup> Plutis, Diana, *The latest developments of Google’s Pixel series*, Versus (May 13, 2019), available:  
25 <https://versus.com/en/news/the-latest-developments-of-google-s-pixel-series> (last visited Nov. 2, 2020).

26 <sup>13</sup> Queiroz, Mario, *Google Pixel 3: Make every day more extraordinary*, Google (Oct. 9, 2018),  
available: <https://www.blog.google/products/pixel/google-pixel-3/> (last visited Nov. 2, 2020).

27 <sup>14</sup> *Id.*

27 <sup>15</sup> *Id.*

28 <sup>16</sup> *Id.*

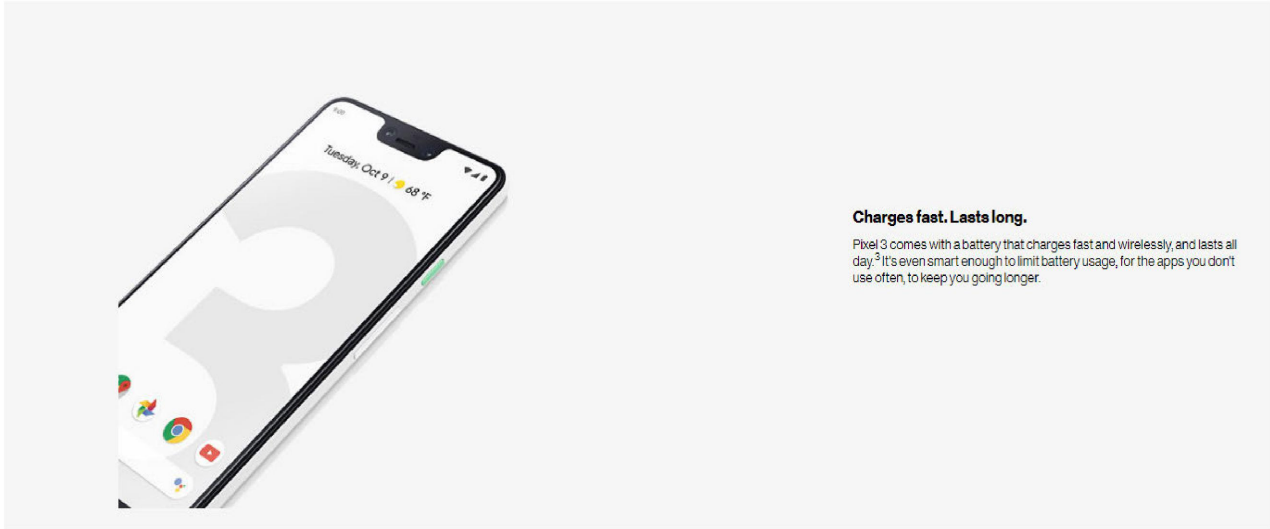
<sup>17</sup> <https://www.verizon.com/smartphones/google-pixel-3/> (last visited Nov. 2, 2020).



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**A camera so good it deserves unlimited storage.**

Get everyone in the picture with wide-angle selfies — no selfie stick required. Snap portraits like a pro with Portrait Mode. Capture smiles, not blinks, for a great photo every time. And save all your favorite moments with free, unlimited photo storage.<sup>4</sup>



**Charges fast. Lasts long.**

Pixel 3 comes with a battery that charges fast and wirelessly, and lasts all day.<sup>5</sup> It's even smart enough to limit battery usage, for the apps you don't use often, to keep you going longer.

39. “On the Road with the Pixel,” available on Google’s YouTube page,<sup>18</sup> captures the way professional photographer, A.J. Rezac, uses the Pixel 3 to snap photographs while on his outdoor adventures without the burden of heavy equipment. In one scene, while driving and the van is in motion, he takes a photo of the rolling scenery accompanied by a roaming grizzly bear, impressing upon viewers that the Pixel 3’s camera makes taking clean photos of objects in constant motion possible.

<sup>18</sup> <https://www.youtube.com/watch?v=6ZUrZSmqpts>, published 9/13/19 (last visited Nov. 2, 2020).



## The Camera Defect

1  
2 47. Soon after the Pixel 3's release, consumers began experiencing issues with the phone's  
3 camera, including the autofocus defect, as well as the camera application shutting-down, crashing, and/or  
4 "going black" unpredictably.

5 48. By November 20, 2018, reports emerged that "hundreds of Pixel 3 owners" had taken to  
6 online channels such as Reddit and the Google Product Forums since the beginning of the month with  
7 complaints that their cameras were no longer working. The overarching sentiment was that the cameras  
8 were "unreliable," frequently displaying a "Camera Error" message or a failure of the camera application  
9 to launch altogether.<sup>20</sup>

10 49. In response to these initial complaints, Google reportedly told BuzzFeed that it had  
11 "identified a fix that will roll out in the coming weeks."<sup>21</sup>

12 50. Clearly, whatever the purported "fix" Google was referencing, it did not remedy the  
13 Defect. The internet is replete with complaints from consumers experiencing the same types of  
14 malfunctions and failures of the Pixel 3 camera over the subsequent months. The following complaints—  
15 many from Google's own message board—demonstrate that owners notified Google of defects associated  
16 with the camera soon after launch:

- 17
- 18 ▪ From sjcdal, on 12/01/18<sup>22</sup>
    - 19 • "Twice yesterday my Pixel 3 XL 128GB was unable to change focus on the rear camera. Very blurry image. (I took several photos, but trashed them or I would post example.) Reading it appears to be the Laser Distance Sensor is not functioning. I took off the clear plastic case, cleaned the area around the sensor, and restarted the phone. After doing this multiple times, it seemed to come back. But same problem resurfaced a couple of hours later. No amount of cleaning the area, or leaving the case off completely could restore it."
  - 22 ▪ From HolePhoto, on 12/25/18<sup>23</sup>
    - 23 • "I've had a pixel 3 since release and in the last week the rear facing camera has stopped focussing, it lets me tap to focus but picture stays blurred. I've cleared the cache and forced

24 <sup>20</sup> Zhang, Michael, *Google Pixel 3 Users Are Reporting Camera Failures*, PetaPixel (Nov. 20, 2018),  
25 <https://petapixel.com/2018/11/20/google-pixel-3-users-are-reporting-camera-failures/> (last visited Nov.  
26 2, 2020).

26 <sup>21</sup> *Id.*

27 <sup>22</sup> <https://forums.androidcentral.com/google-pixel-3-pixel-3-xl/927310-blurry-camera-image-laser-distance-sensor-problem.html> (last visited Nov. 2, 2020).

28 <sup>23</sup> [https://www.reddit.com/r/GooglePixel/comments/a9h2vi/pixel\\_3\\_camera\\_focus\\_not\\_working\\_for\\_1\\_week/](https://www.reddit.com/r/GooglePixel/comments/a9h2vi/pixel_3_camera_focus_not_working_for_1_week/) (last visited Nov. 2, 2020).

1 restart the app a bunch of times. I also found it started working the other day when I  
2 switched between front facing and rear cams and it worked for a bit, but now that's not  
working anymore.”

3 ■ From High Plains Thrifter, on 3/27/19:<sup>24</sup>

- 4 • “I high number of times when I open the camera app on my Pixel 3 to take a photo or  
5 record video, the image sent to the display is distorted as if the camera was shaking  
violently. I have to close the app and reopen it several time before it finally stops.”

6 ■ From Agustin Sosa, on 4/10/19<sup>25</sup>

- 7 • “about 3 weeks ago the camera started crashing, sometimes it opens ok, but when swiching  
8 to video mode or another, it gets black and stop working. i’ve tried safe mode, delete data  
and cache, even restore to fabric, nothing works. i only bought this phone because its  
camera so its really disappointing.”

9 ■ From Nqavi, on 5/17/19<sup>26</sup>

- 10 • “I have the same issue as well. I patiently waited with a jittery camera for two security  
11 updates to resolve the issue, and nothing yet. I've been working with Pixel support today  
12 and they offered no help. They told me that since only a handful or so of people have  
reported the issue, they won't look into it. Their only remedy is to offer a refurbished  
phone.”

13 ■ From Josh Bradford, on 6/5/19<sup>27</sup>

- 14 • “It is not a crashing issue, it's a focus issue. No updates have fixed it. I have been in contact  
15 with support for 3 days now, I have done all of their troubleshooting steps twice, and they  
16 still are not offering much help. Despite the fact that this is clearly a widespread and  
17 known issue, they want me to send my phone in for them to inspect before I get a new  
one. I can't really go a week or so without having a working phone. The only thing that has  
18 changed throughout this process is the delay in responses from Google.”

19 ■ From Brandon D'Augustine, on 11/20/19

- 20 • “Yup. Same issue here. Google needs to step up to the plate and admit faulty  
21 hardware/software. I've babied this phone for the three months I've had it, and camera  
22 wobble started at the 30-day mark. That, unfortunately, coincided with my arrival to  
Iceland- so many photos and videos out of focus and generally terrible. Google support's  
23 solution? They want to replace my new phone with a used one! Terrible. This will be the  
last time I buy a Google product.”

24 ■ From Bradford26, on 1/28/20<sup>28</sup>

- 25 • “I'm a long time #teampixel / #nexus user but the focus on my Pixel 3 camera is beyond  
26 terrible. Tried all the troubleshooting steps and no luck.”

25 <sup>24</sup> <https://support.google.com/pixelphone/thread/3111111?hl=en> (last visited Nov. 2, 2020).

26 <sup>25</sup> <https://support.google.com/pixelphone/thread/3892399?hl=en> (last visited Nov. 2, 2020).

27 <sup>26</sup> [https://www.reddit.com/r/GooglePixel/comments/b0cr3l/pixel\\_3\\_having\\_problems\\_with\\_camera\\_foc  
us/enys4z4/?utm\\_source=reddit&utm\\_medium=web2x&context=3](https://www.reddit.com/r/GooglePixel/comments/b0cr3l/pixel_3_having_problems_with_camera_focus/enys4z4/?utm_source=reddit&utm_medium=web2x&context=3) (last visited Nov. 2, 2020).

28 <sup>27</sup> <https://support.google.com/pixelphone/thread/2701270> (last visited Nov. 2, 2020).

<sup>28</sup> <https://twitter.com/Bradford26/status/1222271333674967042> (last visited Nov. 2, 2020)



- 1           ▪ From ChungHueyWu, on 11/2/18<sup>33</sup>
- 2           • “My Pixel 3 (64G, received yesterday) also overheated during a 30-40min Line video chat
- 3           and dropped 25% battery. The overheating never happened even on a Honor 3C after 4
- 4           years of use. I hope such issue on Pixel 3 is fixable.”
- 5           ▪ From Fred Miller, on 2/25/19<sup>34</sup>
- 6           • “Launch Date + 3 months... Google now has a full inventory of Refurbished Pixel 3's... see a problem there?”
- 7           ▪ From Cynthia M., on 7/6/19<sup>35</sup>
- 8           • “My Pixel 3 battery rapidly depleted from 20 percent to empty in seconds and google only
- 9           agreed to send a refurbished phone though I asked for a new one. I just received the
- 10          refurbished phone and the fingerprint sensor has a dark stain, and when I tried turning on
- 11          the phone it had 0% battery... I am concerned that this one also has battery issues, because
- 12          why would they ship a depleted phone? As far as I know it is not good for the battery to
- 13          remain at empty so I assume they would want to ship with at least 40% charge, and the
- 14          fact that it dropped to zero in transit is worrisome. Was anyone able to get them to agree
- 15          to send a new phone, and if so, how? I would really like to have a new phone since that's
- 16          what I paid for...”
- 17          ▪ From David Rhyne, on November 6, 2019<sup>36</sup>
- 18          • “On paper and in reviews, this phone looks decent. But in real life, it's one of the worst
- 19          phones I've ever used. The apps have gotten buggier and buggier with time, and this easily
- 20          has the worst battery life of any phone I've used in this decade. I'm hoping to get an iPhone
- 21          next.”
- 22          ▪ From Yakou, 8 months ago<sup>37</sup>
- 23          • “The battery life is ridiculous. It won't last a few hours without needing to be charged. I
- 24          don't even have any opened apps and its still draining battery life. whenever i charge it, it
- 25          overheats right away and i am using the charger that it came with. the touch feedback is
- 26          slow. the processor is slow. i am constantly having to restart or refresh my phone and
- 27          apps.”
- 28          ▪ From BlnaryMike, on 6/13/20<sup>38</sup>
- “Pixel 3xl, fully charged, playing music for 3h and battery is dead. Screen off, standing
- up on a stand, volume set to low”

<sup>33</sup>[https://www.reddit.com/r/GooglePixel/comments/9rah06/pixel\\_3\\_overheating\\_and\\_shutting\\_down\\_during/](https://www.reddit.com/r/GooglePixel/comments/9rah06/pixel_3_overheating_and_shutting_down_during/) (last visited Nov. 2, 2020).

<sup>34</sup> *Id.* (last visited Oct. 13, 2020).

<sup>35</sup> <https://support.google.com/pixelphone/thread/1244200?hl=en> (last visited Nov. 2, 2020).

<sup>36</sup> [https://www.amazon.com/gp/customer-reviews/R2JL1OXL6M53E/ref=cm\\_cr\\_getr\\_d\\_rvw\\_ttl?ie=UTF8&ASIN=B07P8MQHSH](https://www.amazon.com/gp/customer-reviews/R2JL1OXL6M53E/ref=cm_cr_getr_d_rvw_ttl?ie=UTF8&ASIN=B07P8MQHSH) (last visited Nov. 2, 2020).

<sup>37</sup> <https://www.verizon.com/smartphones/google-pixel-3/#reviewsHeading> (last visited Nov. 2, 2020).

<sup>38</sup> <https://twitter.com/madebygoogle/status/1271785572273655809> (last visited Nov. 2, 2020).



1           59. Less than a month after the Pixel 3’s release, online publications were already reporting  
2 on the battery defect. On November 1, 2018, the *Washington Post* published an article dubbing the Pixel  
3 3 among the “worst” in terms of overall battery life compared with other smartphones, including the Pixel  
4 2.<sup>43</sup> The article documented that the Pixel 3’s battery lasted nearly an hour and a half less than Google’s  
5 Pixel 2 battery. A few days later on November 9, 2018, TrustedReview<sup>44</sup> also reported that owners of the  
6 Pixel 3 were complaining about their phones overheating and rapid drain of the Pixel 3 battery.

7           60. Complaints about the camera defect emerged around the same time. On or around  
8 November 20, 2018, it was reports that “hundreds of Pixel 3 owners” had taken to online channels such  
9 as Reddit and the Google Product Forums with complaints that their cameras were no longer working.  
10 The overarching sentiment of the complaints—which began to emerge two weeks prior—was that the  
11 cameras were “unreliable,” frequently displaying a “Camera Error” message or a failure of the camera  
12 application to launch altogether.<sup>45</sup> Similarly, on December 24, 2018, many users, as reported by Mobile  
13 Syrup,<sup>46</sup> were reporting a fatal camera bug that caused the camera application to fail. An increasing  
14 number of online complaints were also beginning to report the camera defect.<sup>47</sup>

15           61. Six months after launch, reports continued that Google still had not fixed the “annoying  
16 quirks and problems” that plagued the Pixel 3 since launch, with the predominant complaint by far being  
17 with the Pixel 3 camera.<sup>48</sup> Articles identified regular complaints from users who experienced issues with  
18 the application launching as well as the actual process of taking the shot. One report on Reddit even

19 \_\_\_\_\_  
20 <sup>43</sup> Fowler, Geoffrey, *It’s not your imagination: Phone battery life is getting worse*, The Washington  
21 Post (Nov. 2, 2020), available: [https://www.washingtonpost.com/technology/2018/11/01/its-not-your-  
imagination-phone-battery-life-is-getting-worse/](https://www.washingtonpost.com/technology/2018/11/01/its-not-your-<br/>imagination-phone-battery-life-is-getting-worse/) (last visited Nov. 2, 2020).

22 <sup>44</sup> <https://www.trustedreviews.com/news/pixel-3-battery-problem-3618221> (last visited Nov.2, 2020).

23 <sup>45</sup> See, e.g. Zhang, Michael, *Google Pixel 3 Users Are Reporting Camera Failures*, PetaPixel (Nov. 20,  
2018), <https://petapixel.com/2018/11/20/google-pixel-3-users-are-reporting-camera-failures/> (last  
24 visited Nov. 2, 2020).

25 <sup>46</sup> See Lamont, Jonathan, *Google may have fixed the Pixel 3 ‘fatal error’ camera bug*, mobile syrup  
(Dec. 24, 2018), [https://mobilesyrup.com/2018/12/24/google-pixel-3-fatal-error-camera-bug-  
december-security-patch/](https://mobilesyrup.com/2018/12/24/google-pixel-3-fatal-error-camera-bug-<br/>december-security-patch/) (last visited Nov. 2, 2020).

26 <sup>47</sup> [https://www.reddit.com/r/GooglePixel/comments/a9h2vi/pixel\\_3\\_camera\\_focus\\_not\\_working\\_for\\_1\\_w  
eek/](https://www.reddit.com/r/GooglePixel/comments/a9h2vi/pixel_3_camera_focus_not_working_for_1_w<br/>eek/) (last visited Nov. 2, 2020).

27 <sup>48</sup> Schoon, Ben, *Google Pixel 3 owners are still facing problems 6 months later, here’s the list*, 9to5  
28 Google, (May 1, 2019), available: [https://9to5google.com/2019/05/01/google-pixel-3-problems-6-  
months/](https://9to5google.com/2019/05/01/google-pixel-3-problems-6-<br/>months/) (last visited Nov. 2, 2020).



1 mentioned a whopping 12 seconds to fully load up the camera application.<sup>49</sup> Apparently, Google had  
2 tried to fix the issues with updates, but that did not solve the problems completely.<sup>50</sup>

3 62. On August 5, 2019, tech blog *Android Police*<sup>51</sup> reported on the widespread complaints  
4 about the camera on the Pixel 3 that had been accumulating for over six months. According to *Android*  
5 *Police*, reports regarding a “shaking/stuttering/vibrating issue” with the Pixel 3 had been mounting for  
6 over half a year, with “hundreds of replies accumulating among threads discussing the issue at Google’s  
7 Pixel Help forums, as well as other venues.”<sup>52</sup> The issue seemed to be, “[b]y all appearances, [ ] a  
8 hardware problem.”<sup>53</sup> The article demonstrated the defect manifesting through a video showing the  
9 viewfinder shaking “wildly” with “inconsistent focus in photos.”<sup>54</sup> Some consumers have speculated that  
10 it is caused by the camera’s optical image stabilization or autofocus mechanism “bugging out.”<sup>55</sup>

11 63. Despite being aware of the Defects, Google has yet to acknowledge the problem or offer  
12 a suitable remedy. Google instead tries to downplay the significance of the Defects, claiming that the  
13 “issue seems to have affected a small number of units.”<sup>56</sup> The scores of customers complaints  
14 experiencing the exact same issues tell a different story. Google’s customer service for the Pixel 3 is  
15 reportedly “rough” and users report “horror stories of complete incompetence” when trying to go through  
16 Google’s customer service to get issues with their Pixel 3s taken care of.

17 64. Since the Pixel 3 launched, Google has released a series of software and security patches,  
18 but these “patches” have caused more problems than they have solved. According to Google’s Pixel  
19 Update Bulletin, its March 2019 security patch was supposed to improve “Startup and responsiveness of  
20

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21 <sup>49</sup> *Id.*

22 <sup>50</sup> *Id.*

23 <sup>51</sup> Hager, Ryan, *The Pixel 3 can’t ‘shake’ all these user complaints of stuttering camera performance*,  
24 *Android Police* (Aug. 5, 2019), <https://www.androidpolice.com/2019/08/05/the-pixel-3-cant-shake-all-these-user-complaints-of-stuttering-camera-performance/> (last visited Nov. 2, 2020).

25 <sup>52</sup> *Id.*

26 <sup>53</sup> *Id.*

27 <sup>54</sup> *Id.*

28 <sup>55</sup> *Id.*

29 <sup>56</sup> Hegde, Pranav, *Google Pixel 3 users complaint about focusing issues, shaky camera viewfinder*,  
30 *Money Control* (Aug. 7, 2019), available at: <https://www.moneycontrol.com/news/trends/google-pixel-3-users-complain-about-focusing-issues-shaky-camera-viewfinder-4300581.html> (last visited Nov. 2, 2020).

1 Camera app.”<sup>57</sup> The March security update did not fix the camera defect, and for many users it had the  
2 opposite effect. Following the March security update, users of the Pixel 3 reported stability issues with  
3 their camera application, where the camera application “lags heavily and tends to completely glitch out  
4 during use.”<sup>58</sup>

5 65. Similar reports emerged of accelerated battery drain following Android operating system  
6 updates. Google’s support forum is replete with complaints from Pixel 3 owners who experienced  
7 depleted battery performance after upgrading their operating systems to Android 10. Consumer  
8 complaints to Google seemingly fell on deaf ears, as consumers reported that Google’s support team  
9 refused to acknowledge any problems with the update.<sup>59</sup>

10 66. There is no known fix for the Defects aside from a hardware replacement. But instead of  
11 offering refunds or non-defective replacements, Google’s uniform response is to provide owners that  
12 report either issue to go through a series of troubleshooting steps to diagnose the problem or—when the  
13 troubleshooting steps inevitably fail—require users to mail in their Pixel 3 for a factory “refurbished”  
14 phone. Several users summarize their experiences in contacting Google about the Defects:

15 • From Arch, 6/6/19<sup>60</sup>

- 16 ○ Same issue started for me a few weeks ago on a new Pixel 3 purchased in March.  
17 Problem is now chronic, rendering video chats useless. Contacted Google Fi  
18 support team yesterday and they have been expertly unhelpful, by offering to  
19 swap out for a refurbished phone. Why refurbished, when I paid \$800 for a new  
20 (defective) phone? If you're going to thrust a refurbished replacement on me, less  
21 than 3months after I purchase a new phone, then have the decency to credit the  
22 difference. Take it or leave it' was the essential message from the Google Fi  
23 support team. Sorely disappointed in Google after being a loyal Fi customer the  
24 last few years.

24 <sup>57</sup> Li, Abner, *Google fixing Pixel 3 camera issues, Bluetooth, & more with March security patch*,  
25 9to5Google (May. 4, 2019), available at: <https://9to5google.com/2019/03/04/pixel-3-camera-issues-fix/>  
(last visited Nov. 2, 2020).

26 <sup>58</sup> Rox, Ricci, *March update messes up the Google Camera app, leaves Pixel users in the lurch*,  
27 Notebook Check (Mar. 10, 2019), available at: [https://www.notebookcheck.net/March-update-messes-  
up-the-Google-Camera-app-leaves-Pixel-users-in-the-lurch.413806.0.html](https://www.notebookcheck.net/March-update-messes-up-the-Google-Camera-app-leaves-Pixel-users-in-the-lurch.413806.0.html) (last visited Nov. 2, 2020).

28 <sup>59</sup> <https://support.google.com/pixelphone/thread/13838358?hl=en> (last visited Nov. 2, 2020).

<sup>60</sup> <https://support.google.com/pixelphone/thread/4824557?hl=en> (last visited Nov. 2, 2020).

- 1 • From Jerry Morey, 8/31/19<sup>61</sup>
  - 2 ○ Google support is terrible at supporting their products. After troubleshooting
  - 3 with them for an hour they agree that its a hardware problem and it needs to be
  - 4 replaced under warranty. But since I didn't buy the phone at the Google store I
  - 5 have to send the phone back first before they send me a replacement. Wtf
  - 6 Google?
- 7 • From Oscar A. Mata T., on 9/12/19<sup>62</sup>
  - 8 ○ I have tried all suggested task to reduce the battery draining, but since I can see
  - 9 that all are based in use and settings, this approach is completely useless. I have
  - 10 exactly the same settings from the previous Android version, (Pie), and I use my
  - 11 device exactly the same way as I did with Pie. This issue was caused by the system
  - 12 upgrade itself. It's not an issue related to settings or use, because the only factor
  - 13 that changed here was the system, not my use habits or settings, just do the math.
  - 14 Said that, I need a true, functional and final solution to my issue. After a week,
  - 15 the issue still persists without change, my battery drains fast when the display is
  - 16 on. After spend almost \$900,00 on a premium phone I expect a technical support
  - 17 in the same level of my investment, not a truncated or biased replies to try to calm
  - 18 users with half truth or lies. Google must be honest with customers and assume
  - 19 the consequences of the failures of your products, just like that. I will not accept
  - 20 the easy way for Google, I accept the ways that works for me, who paid a lot of
  - 21 money for a premium devices that just now has issue because the failures in the
  - 22 software Made by Google.

23 67. Google’s standard practice of replacing defective Pixel 3s with other defective Pixel 3s,  
24 instead of providing refunds or non-defective phones, caused warranty claimants to experience repeat  
25 failures. By mid-2019, increasing numbers of consumers were complaining to Google of failures on  
26 replacement Pixel 3s.

27 68. Google has long known that the Pixel 3 was fatally flawed. Standard product testing  
28 should have alerted Google to the Defects even prior to launching the devices.

69. Despite the growing number of complaints, and Google’s knowledge of the Defects,  
Google has declined to provide its customers with adequate warranty service in accordance with their  
reasonable expectations.

70. The Pixel 3 warranty provides that, if there is a defect, “Google will in its sole discretion  
and to the extent permitted by law repair your Device using new or refurbished parts, replace your Device

<sup>61</sup> <https://support.google.com/pixelphone/thread/4875076?hl=en> (last visited Nov. 2, 2020).

<sup>62</sup> <https://support.google.com/pixelphone/thread/13981460?hl=en> (last visited Nov. 2, 2020).

1 with a new or refurbished Device functionally at least equivalent to yours, or accept the return of your  
2 Device in exchange for a refund of the purchase price you paid for your Device.”<sup>63</sup> Plaintiff and members  
3 of the Class lacked the ability to negotiate or even review the terms of the warranty prior to purchase.  
4 The warranties are offered on a “take-it-or-leave-it” basis.

5 71. Instead of providing refunds or replacing Pixel 3s with non-defective phones, Google  
6 exercises its discretion under the warranty to provide consumers with Pixel 3s that suffer from the same  
7 systemic Defects.

8 72. The myriad complaints on Google’s Pixel 3 User Community and other websites relate  
9 the stories of consumers who, after reporting the Defects to Google, received another Pixel 3 from Google  
10 that suffered from the same Defects:

- 11 ■ From Ruth, on 9/17/19<sup>64</sup>
  - 12 • “Not only is the phone so unstable tech support can't help other than to replace the phone...  
13 Pixel refuses to extend the warranty. I am on the third phone. The first two had the same  
14 issues plus unique ones as well. Phone would shut down, apps close on their own and the  
15 phone would lock up and not close or navigate. Two phones, same issues. Battery life was  
16 terrible even though I had taken off most applications. I was told if I didn't like the model  
17 to pay more and upgrade. I paid \$900 for the original phone! Horrible customer service.”
- 18 ■ From Scott Castell, on 11/5/19<sup>65</sup>
  - 19 • “I have this exact issue [of the camera malfunctioning], performed all of the above steps,  
20 then eventually got a replacement device from Google under warranty. Incredibly the  
21 refurbished replacement device has then same issue! They are sending me a replacement ,  
22 again, it must be a hardware issue
- 23 ■ From SDflyer, on 12/31/19<sup>66</sup>
  - 24 • “I bought into the camera hype of this phone and in the end it was a \$600 mistake. I  
25 purchased this in November 2018. After a few months, the camera started acting up. The  
26 software would launch, but the hardware wouldn't. I contacted Google and they gave me  
27 something like a 12 or 13 step troubleshooting process that took 4-5 hours. After finishing  
28 that, I was still having the camera issue so they replaced it with a refurbished unit. The  
camera worked well on the refurb, but after a few months the battery life dropped off a  
cliff. It was still usable, but nothing like it had been in the beginning...”

<sup>63</sup> <https://support.google.com/store/troubleshooter/3070579#ts=7168940%2C9158651> (last visited Nov. 2, 2020).

<sup>64</sup> [https://www.consumeraffairs.com/cell\\_phones/google-pixel.html?page=4](https://www.consumeraffairs.com/cell_phones/google-pixel.html?page=4) (last visited Nov. 2, 2020).

<sup>65</sup> <https://support.google.com/pixelphone/thread/3892399?hl=en> (last visited Nov. 2, 2020).

<sup>66</sup> [https://www.amazon.com/gp/customer-reviews/R6B5BINKSCQK6/ref=cm\\_cr\\_getr\\_d\\_rvw\\_ttl?ie=UTF8&ASIN=B07P8MQHSH](https://www.amazon.com/gp/customer-reviews/R6B5BINKSCQK6/ref=cm_cr_getr_d_rvw_ttl?ie=UTF8&ASIN=B07P8MQHSH) (last visited Nov. 2, 2020).

- 1           ▪ From Steve Bekker, on 2/20/20<sup>67</sup>  
2           • “Google customer service is terrible. I'm facing the exact same issue and I'm on my third  
3           Pixel 3. At this point I'm out of warranty. I contacted support, they escalated the case to  
4           level 2 and let me know it may be a couple of weeks to a month before somebody gets  
5           back to me. This is unacceptable.”

6           73. In response to warranty claims, Google wasted its customers' time with futile  
7           troubleshooting sessions, or provided ineffective repairs or Pixel 3s with the same defect, often resulting  
8           in repeat failure. Google thereby precluded its customers from realizing warranty benefits.

9           74. Google's designated third-party repair provider—uBreakiFix—has acknowledged that the  
10           Defects are a common issue.

11           75. Despite knowing of the Pixel 3's defective nature before it placed the Pixel 3 on the market  
12           and before Plaintiff purchased their Pixel 3, Google failed to disclose the defect and its associated  
13           problems to Plaintiff and other consumers prior to purchase and failed to provide Pixel 3 owners with an  
14           adequate remedy with the Defects manifested. Instead, Google downplayed the severity and scope of the  
15           problem, and tried to sweep the Defects under the rug with ineffective warranty service. Meanwhile,  
16           Google continued to promote its Pixel 3s as top-of-the-line and as offering one of the best cameras on  
17           the market.<sup>68</sup>

18           76. On or around May 3, 2019, Google's CEO<sup>69</sup> acknowledged that the Pixel 3's sales had  
19           been underwhelming, despite Google's marketing and sales efforts. As of March 31, 2020, Google  
20           officially stopped selling its Pixel 3 smartphones,<sup>70</sup> though the phones are still available for purchase  
21           through certain third party retailers.<sup>71</sup> However, Google promises software support for the Pixel 3 through

22           

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23           <sup>67</sup> <https://support.google.com/pixelphone/thread/26938208> (last visited Nov. 2, 2020).

24           <sup>68</sup> See, e.g., <https://www.youtube.com/watch?v=6ZUrZSmqpts> (last visited Nov. 2, 2020);

25           <sup>69</sup> <https://www.businessinsider.com/analysis-real-story-google-declining-pixel-smartphone-sales-2019-5>,  
26           published May 3, 2019 (last visited Nov. 2, 2020).

27           <sup>70</sup> Gartenberg, Chaim, *Google ends sales of the Pixel 3*, The Verge (Mar. 31, 2020), available:  
28           <https://www.theverge.com/2020/3/31/21200925/google-pixel-3-xl-discontinued-store-sales-phone-camera>  
(last visited Nov. 2, 2020).

29           <sup>71</sup> See, e.g., <https://www.walmart.com/ip/Google-Pixel-3-Smartphone-4G-LTE-64-GB-CDMA-GSM-5-5-2160-x-1080-pixels-443-ppi-flexible-OLED-RAM-4-12-2-MP-2x-front-cameras-Android-pink-New/659355382>  
(last visited Nov. 2, 2020); <https://www.newegg.com/white-google-5-5-gsm-hspa-lte/p/23B-001E-000K1> (last visited Nov. 2, 2020); <https://www.amazon.com/Google-Pixel-Memory->

1 October 2021.<sup>72</sup> Google still has not remedied the Defect, recalled the phones, provided restitution,  
2 extended its warranty, or disclosed the existence of the Defect.

3 **CLASS ACTION ALLEGATIONS**

4 77. Plaintiff brings this lawsuit on behalf of themselves and all others similarly situated, as a  
5 class action pursuant to section 382 of the California Code of Civil Procedure and section 1781 of the  
6 California Civil Code. The proposed class is defined as follows:

7 All residents of California who purchased one or more Pixel 3 or Pixel XL smartphones.

8 78. Excluded from the Class is Google, its affiliates, subsidiaries, parents, successors,  
9 predecessors, any entity in which Google or its parents have a controlling interest; Google’s current and  
10 former employees, officers and directors; the Judge(s) and/or Magistrate(s) assigned to this case and their  
11 staffs and immediate family members; any person who properly obtains exclusion from the Class; any  
12 person whose claims have been finally adjudicated on the merits or otherwise released; and the parties’  
13 counsel in this litigation. Plaintiff reserves the right to modify, change, or expand the Class definitions  
14 based upon discovery and further investigation.

15 79. **Numerosity.** The Class is so numerous that joinder of all members is impracticable.  
16 Thousands of Class members have been subjected to Google’s conduct described herein. Counsel for  
17 Plaintiff have received over 1,218 intakes from California to date from potential Class Members who  
18 have experienced the Defects complained of herein. The Class is objectively defined and presently  
19 ascertainable by reference to records in the possession of Google or third parties.

20 80. **Existence and Predominance of Common Questions of Fact and Law.** Common  
21 questions of law and fact exist as to all members of the Class. These questions predominate over the  
22 questions affecting individual Class members. These common legal and factual questions include:

23 a. Whether the Pixel 3 phones were defective at the time of sale in that they were  
24 prone to failing prematurely due to the camera and battery defects;

25  
26  
27 [Unlocked-Clearly/dp/B07P9R5HF4](https://www.bestbuy.com/site/google-pixel-3-64gb-unlocked-just-black/6319224.p?skuId=6319224) (last visited Nov. 2, 2020); <https://www.bestbuy.com/site/google-pixel-3-64gb-unlocked-just-black/6319224.p?skuId=6319224> (last visited Nov. 2, 2020).

28 <sup>72</sup> *Id.*

1           b.       Whether Google unlawfully, falsely, deceptively, or misleadingly represented that  
2 the Pixel 3 phones had qualities that they did not have;

3           c.       Whether Google knew of the defect but continued to sell the phones and failed to  
4 disclose the problems and their adverse consequences to consumers;

5           d.       Whether a reasonable consumer would consider the defect and its consequences  
6 to be material;

7           e.       Whether Google’s conduct violates consumer protection laws and other laws as  
8 asserted herein;

9           f.       Whether Plaintiff and Class members overpaid for their Pixel 3 phones as a result  
10 of the defect alleged herein;

11          g.       Whether Google’s conduct was deceitful; and

12          h.       Whether Plaintiff and Class members are entitled to equitable relief, including  
13 restitution or injunctive relief.

14          81.       **Typicality**. Plaintiff’s claims are typical of the claims of the Class in that Plaintiff and all  
15 Class members purchased or own defective phones and sustained economic injury in the same manner  
16 by reason of Defendant’s uniform course of conduct described herein. Plaintiff and all Class members  
17 have the same claims against Google relating to the conduct alleged herein, and the events and conduct  
18 giving rise to Plaintiff’s claims for relief are identical to those giving rise to the claims of all Class  
19 members.

20          82.       **Adequacy**. Plaintiff is an adequate representative for the Class because his interests do  
21 not conflict with the interests of the Class that he seek to represent. Plaintiff has retained counsel  
22 competent and highly experienced in complex class action litigation, including consumer protection class  
23 actions, and counsel intends to prosecute this action vigorously. The interests of the Class will be fairly  
24 and adequately protected by Plaintiff and his counsel.

25          83.       **Superiority**. A class action is superior to all other available methods for the fair and  
26 efficient adjudication of this controversy. Because the amount of each individual Class member’s claim  
27 is small relative to the complexity of the litigation, and because of Google’s financial resources, no Class  
28 member is likely to pursue legal redress individually for the violations detailed herein. Individualized

1 litigation would significantly increase the delay and expense to all parties and to the Court and would  
2 create the potential for inconsistent and contradictory rulings. By contrast, a class action presents fewer  
3 management difficulties, allows claims to be heard which would otherwise go unheard because of the  
4 expense of bringing individual lawsuits, and provides the benefits of adjudication, economies of scale,  
5 and comprehensive supervision by a single court without the unnecessary duplication of effort and  
6 expense that numerous individual actions would engender.

7 84. Plaintiff is unaware of any difficulties that are likely to be encountered in the management  
8 of this action that would preclude its maintenance as a class action.

9 **PUBLIC INJUNCTIVE RELIEF**

10 85. Plaintiff seeks an injunction on behalf of himself, the putative class of similarly situated  
11 California residents, and the general public, prohibiting Google from making material omissions and  
12 misrepresentations to the public as to the nature of its Pixel 3. Plaintiff also seeks a public injunction  
13 requiring Google to notify all Google Pixel 3 smartphone owners, and the public at large, about the  
14 Defects, setting forth a description of the Defects in the Google Pixel 3 smartphones and that the Pixel 3  
15 camera and battery do not perform as marketed. Under the circumstances, this injunctive relief should  
16 also include an order requiring Google to provide restitution and to extend the warranty on the Pixel 3  
17 and Pixel 3 XL.

18 86. The injunctive relief sought is essential to eradicating Google’s continuing deceptive  
19 scheme. In the absence of an injunction, Google will remain free to continue to mislead members of the  
20 public regarding the Pixel 3 Defects, causing consumers to believe Google’s material misrepresentations  
21 and omissions concerning the function and reliability of the Pixel 3’s camera and battery life.

22 87. Google lures consumers into purchasing the Pixel 3 by touting the Pixel 3’s camera feature  
23 as “so good it deserves unlimited storage” and promoting the camera’s “optical + electronic image  
24 stabilization” and “fixed focus” among the camera’s key features. It also markets the Pixel 3 as having  
25 an “all day battery” that “charges fast” and “lasts long.” Google does not disclose to consumers that the  
26 Pixel 3 is defective, causing these features to fail. Members of the general public have the right to know  
27 the latent defects with these features.





1           94.     Google’s conduct also constitutes unfair business practices for at least the following  
2 reasons:

- 3           a.     The gravity of harm to Plaintiff and the proposed Class from Google’s acts and  
4 practices far outweighs any legitimate utility of that conduct;
- 5           b.     Google’s conduct is immoral, unethical, oppressive, unscrupulous, or substantially  
6 injurious to Plaintiff and the members of the proposed Class; and
- 7           c.     Google’s conduct undermines and violates the stated policies underlying the  
8 Consumers Legal Remedies Act—to protect consumers against unfair and sharp  
9 business practices and to promote a basic level of honesty and reliability in the  
10 marketplace.

11           95.     As a direct and proximate result of Google’s business practices, Plaintiff and proposed  
12 Class members suffered injury in fact and lost money or property, because they purchased and paid for a  
13 product that they otherwise would not have (or would have paid less for).

14           96.     Google’s wrongful acts will continue unless restrained and enjoined by order of this Court.  
15 Plaintiff and the proposed Class are entitled to an injunction and other equitable relief, including  
16 restitutionary disgorgement of all profits accruing to Google, because of Google’s ongoing unfair and  
17 deceptive practices, and such other orders as may be necessary to prevent Google’s future violations of  
18 the UCL. Pursuant to Cal. Bus. & Prof. Code § 17203, Plaintiff is entitled to (i) an order on behalf of the  
19 general public of the State of California enjoining Google from committing violations of the UCL; (ii)  
20 requiring Google to immediately cease the sale of Pixel 3 phones with the camera defect; (iii) requiring  
21 Google to give individualized notice to all consumers who purchased Pixel 3’s in the State of California  
22 during the applicable limitations periods and the public at large of the existence of the Defects; (iv)  
23 requiring Google to give individualized notice to all consumers who purchased Pixel 3’s in the State of  
24 California within the applicable limitations periods of their rights under the UCL and applicable  
25 California law; (v) requiring Google to repair or replace Class members’ Pixel 3’s with non-defective  
26 Pixel 3’s; and (vi) establishing an effective monitoring mechanism to ensure Google’s continued  
27 compliance with the terms of the injunction. To the extent any of these remedies are equitable, Plaintiff  
28 seek them in the alternative to any adequate remedy at law they may have.

1 **COUNT II**

2 **VIOLATION OF CALIFORNIA'S CONSUMERS LEGAL REMEDIES ACT**  
3 **CAL. BUS. & PROF. CODE §§ 1750, et seq. ("CLRA")**

4 97. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth  
5 herein.

6 98. The CLRA proscribes "unfair methods of competition and unfair or deceptive acts or  
7 practices undertaken by any person in a transaction intended to result or which results in the sale of goods  
8 or services to any consumer."

9 99. The Pixel 3 phones are "goods" as defined in CAL. BUS. & PROF. CODE § 1761(a).

10 100. Plaintiff and the other Class members are "consumers" as defined in CAL. BUS. & PROF.  
11 CODE § 1761(d), and Plaintiff, the other Class members, and Google is a "person" as defined in CAL.  
12 BUS. & PROF. CODE § 1761(c).

13 101. As alleged above, Google made numerous representations concerning the benefits,  
14 performance, and capabilities of the Pixel 3 phones that were misleading. In purchasing the Pixel 3  
15 phones, Plaintiff and the other Class members were deceived by Google's failure to disclose that the  
16 Pixel 3 phones are highly susceptible to camera and/or battery failures. Google also heavily touted the  
17 quality of their camera, which is rendered inoperable when the camera's automatic focus defect inevitably  
18 manifests.

19 102. Google's conduct, as described herein, was and is in violation of the CLRA. Google's  
20 conduct violates at least the following enumerated CLRA provisions:

21 a. § 1770(a)(5): Representing that goods have sponsorship, approval, characteristics,  
22 uses, benefits, or quantities which they do not have;

23 b. § 1770(a)(7): Representing that goods are of a particular standard, quality, or  
24 grade, if they are of another;

25 c. § 1770(a)(9): Advertising goods with intent not to sell them as advertised;

26 d. § 1770(a)(16): Representing that goods have been supplied in accordance with a  
27 previous representation when they have not; and

28 e. § 1770(a)(19): Inserting an unconscionable provision in the contract (*i.e.*, the one  
year warranty limitation).

1           103. Plaintiff and the other Class members have suffered injury in fact and actual damages  
2 resulting from Google’s material omissions and misrepresentations because, *inter alia*, they lost money  
3 when they purchased their Pixel 3 phones or paid an inflated purchase price for the Pixel 3 phones.

4           104. Google knew, should have known, or was reckless in not knowing that the Defects in the  
5 Pixel phones rendered them not suitable for their intended use.

6           105. Google had a duty to disclose the defective nature of the Pixel 3 phones because Google  
7 had exclusive knowledge of the defect prior to making sales of Pixel 3 phones and because Google made  
8 partial representations about the quality of the Pixel 3 but failed to fully disclose the defect.

9           106. The facts concealed and omitted by Google to Plaintiff and the other Class members —  
10 that the Pixel 3 phones are defective and fail to perform their most fundamental, basic function — are  
11 material in that a reasonable consumer would have considered them to be important in deciding whether  
12 to purchase the Pixel 3 phones or pay a lower price. Had Plaintiff and the other Class members known  
13 about the defective nature of the Pixel 3 phones, they would not have purchased their Pixel 3 phones, or  
14 would not have paid the artificially inflated prices they paid.

15           107. Under CAL. CIV. CODE § 1780(a), Plaintiff seeks an order enjoining Google from further  
16 engaging in the unfair and deceptive acts and practices alleged herein, and restitutionary relief to remedy  
17 Google’s violations of the CLRA as alleged herein.

18           108. Unless enjoined and restrained by a court of law, Google will continue to commit the  
19 violations alleged herein with respect to Plaintiff, Class members, and other members of the general  
20 public of the State of California. Plaintiff seeks a public injunction (i) enjoining Google from committing  
21 future violations of the CLRA in the State of California; (ii) requiring Google to immediately cease the  
22 sale of Pixel 3 phones with the Defects; (iii) requiring Google to give individualized notice to all  
23 consumers who purchased Pixel 3’s in the State of California during the applicable limitations periods  
24 and the public at large of the existence of the Defects; (iv) requiring Google to give individualized notice  
25 to all consumers who purchased Pixel 3’s in the State of California within the applicable limitations  
26 periods of their rights under the CLRA and applicable California law (including their right to restitution);  
27 and (v) establishing an effective monitoring mechanism to ensure Google’s continued compliance with  
28 the terms of the injunction.



1           117. As a direct and proximate result of such actions, Plaintiff and Class members have  
2 suffered an injury in fact, including the loss of money or property, as a result of Google’s material  
3 misstatements and omissions. In purchasing a Pixel 3, Plaintiff and Class members relied on the false  
4 advertising, misrepresentations, and/or omissions of Google alleged herein.

5           118. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct  
6 of Google’s business. Google’s wrongful conduct is part of a pattern or generalized course of conduct  
7 that is still being perpetuated and repeated nationwide.

8           119. Plaintiff, individually and on behalf of the Class, requests that this Court enter such orders  
9 or judgments as may be necessary to prohibit Google from continuing their pattern of using misleading  
10 statements and omissions in the course of advertising the Pixel 3 phones, and to restore to Plaintiff and  
11 Class members’ the money Google acquired through such statements and omissions, including restitution  
12 or restitutionary disgorgement, and for such other relief set forth below.

13           120. Plaintiff seeks, on behalf of those similarly situated, an injunction to prohibit Google from  
14 continuing to engage in the false, misleading and deceptive advertising and marketing practices  
15 complained of herein.

16           121. Plaintiff and those similarly situated are further entitled to and do seek both a declaration  
17 that the above-described practices constitute false, misleading and deceptive advertising, and injunctive  
18 relief restraining Defendant from engaging in any such advertising and marketing practices in the future.  
19 Such misconducted by Defendant, unless and until enjoined and restrained by order of this Court, will  
20 continue to cause injury in fact to the general public and the loss of money and property in that Google  
21 will continue to violation the laws of California, unless specifically ordered to comply with same. This  
22 expectation of future violations will require current and future customers to repeatedly and continuously  
23 seek legal redress in order to recover monies paid to Google to which Google is not entitled. Plaintiff,  
24 those similarly situated and/or other consumers in California have no other adequate remedy at law to  
25 ensure future compliance with the California Business and Professions Code alleged to have been  
26 violated herein.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff, individually and on behalf of members of the Class, respectfully  
3 requests that the Court certify the proposed Class, designate Plaintiff as Class representative, appoint the  
4 undersigned as Class Counsel, and enter judgment through an Order:

5 A. For a public injunction on behalf of the People of the State of California as alleged  
6 herein in the form of, at a minimum, disclosing the defective nature of the phones and to return to Class  
7 members all costs attributable to remedying or replacing defective Pixel 3 phones, including but not  
8 limited to restitution and other equitable relief;

9 B. Awarding reasonable attorneys’ fees and costs as permitted by law;

10 C. Entering such other or further relief as the Court may deem just and proper.

11 **DEMAND FOR JURY TRIAL**

12 Plaintiff hereby demands a trial by jury for all claims so triable.

13  
14 Dated: November 3, 2020

Respectfully submitted,

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