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10 *Attorneys for Plaintiff Dulce Alondra Velasquez-Reyes*

11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13 **EASTERN DIVISION**

14 Dulce Alondra Velasquez-Reyes, on
15 behalf of herself and others similarly
16 situated,

17 Plaintiff,

18 v.

19 Samsung Electronics America, Inc.,

20 Defendant.

CASE NO. 5:16-CV-01953

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiff Dulce Alondra Velasquez-Reyes, individually and on behalf of others
2 similarly situated, alleges the following against Defendant Samsung Electronics
3 America, Inc. (“Samsung”).

4 **NATURE OF THE ACTION**

5 1. This is an action arising out of Samsung’s material misrepresentations
6 that precede and induce consumer purchases of its Galaxy S7 cellular phones.
7 Samsung heavily promotes these phones as being water resistant when they are not.

8 2. In a nationwide advertising campaign, Samsung portrays people
9 dunking Galaxy S7 phones in fish tanks, spraying Galaxy S7 phones with jets of
10 water and dousing them with champagne, and holding the phones while kayaking
11 through river rapids and surfing in the ocean. Such depictions of water resistance
12 permeate Samsung’s advertisements of the Galaxy S7 phones, and the claimed
13 water-resistant feature distinguishes these phones from similar products marketed
14 and sold by Samsung’s competitors. Samsung’s advertisements regarding water
15 resistance, however, are misleading and false.

16 3. Ms. Reyes purchased her Galaxy S7 phone after being exposed to
17 Samsung’s representations that it was water resistant. But her phone was
18 permanently damaged after she briefly dropped it in shallow water. The Galaxy S7
19 phones of many other consumers likewise have sustained damage from exposure to
20 liquid or moisture.

21 4. Samsung’s representations induced Ms. Reyes and millions of
22 consumers like her to purchase Samsung’s purportedly water-resistant phones. Had
23 these consumers known that Samsung’s representations of water resistance were not
24 accurate, they would not have purchased a Galaxy S7 phone, or they would have
25 paid significantly less for the product.

1 **COMMON ALLEGATIONS OF FACT**

2 11. Samsung holds the largest share of the United States cellular phone
3 market. Samsung’s flagship line of cell phones is the Galaxy S7 series. Phones in
4 this series include the Galaxy S7, Galaxy S7 Edge, and Galaxy S7 Active
5 (collectively, the “S7 Phone”).

6 12. Samsung’s material misrepresentations of the S7 Phone in a widely
7 seen advertising campaign give rise to this action.

8 **Samsung’s Representations That Its Galaxy S7 Phones Are Water Resistant**

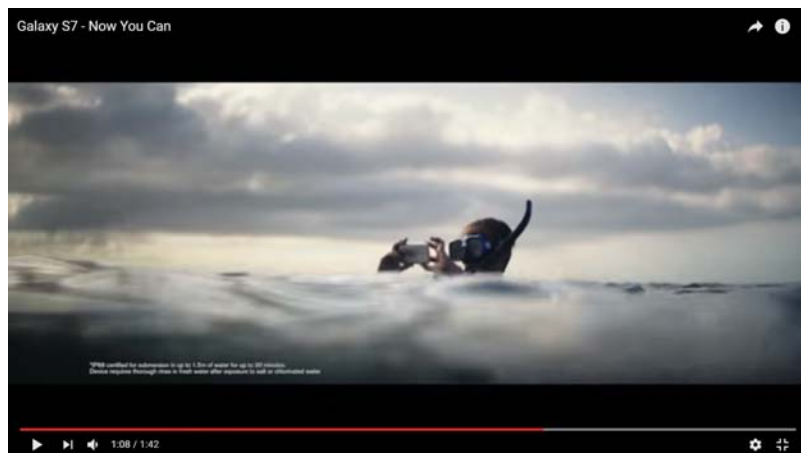
9 13. Samsung markets the S7 Phone through nationally-televised
10 advertisements, print advertisements, and online advertisements.

11 14. Samsung represents in advertisements for the S7 Phone that the phone
12 is water resistant.

13 15. Samsung’s claims of water resistance are objective in nature. As part of
14 its advertising campaign, Samsung consistently represents that the S7 Phone is
15 “water resistant up to 5 feet of water for up to 30 minutes.”

16 16. Samsung television commercials show a popular rap musician pouring
17 champagne onto an S7 Phone. Samsung television commercials also show people:

- 18 a. Snorkeling with an S7 Phone¹;



26
27 ¹ Galaxy S7 – Now You Can, <https://www.youtube.com/watch?v=x3hqaTapWSo>
28 (last visited Aug. 30, 2016).

b. surfing with an S7 Phone²;



² *Id.*

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c. kayaking through river rapids with an S7 Phone³;



³ *Id.*

- d. dunking an S7 Phone in a fish tank⁴;
- e. dropping an S7 Phone under a garden hose⁵; and



- f. spraying jets of water directly onto an S7 Phone⁶.

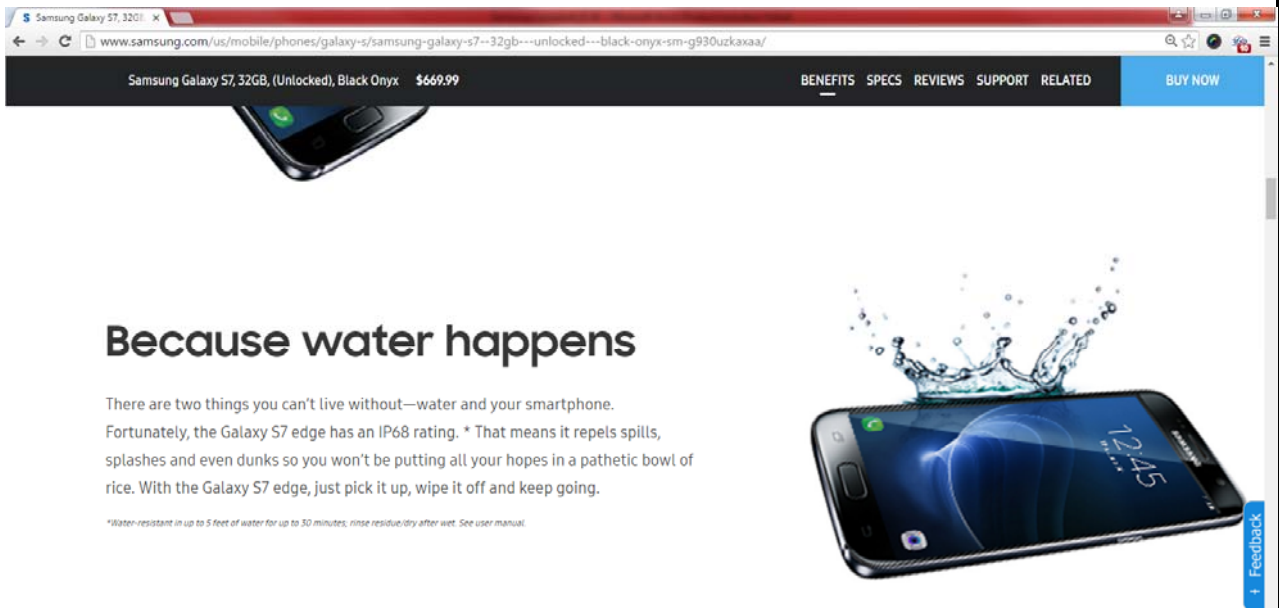


⁴ Galaxy S7: Champagne Calls, <https://www.youtube.com/watch?v=l5aF23XpBwU> (last visited Aug. 30, 2016).

⁵ AT&T Longest Fumble, <https://www.youtube.com/watch?v=4HaBMOk54Ys> (last visited Aug. 30, 2016).

⁶ Galaxy S7 – Now You Can, <https://www.youtube.com/watch?v=x3hqaTapWSo> (last visited Aug. 30, 2016).

1 17. Samsung’s website represents that the S7 Phone is water resistant. The
2 website includes a video showing an S7 Phone emerging from a pool of water and
3 remaining fully operational. Samsung’s website also states “Because water
4 happens”⁷ and “Feel free to get your phone wet.” As shown below, Samsung
5 represents on its website that S7 Phones “repel spills, splashes and even dunks so
6 you won’t be putting all your hopes in a pathetic bowl of rice.” (Placing a water-
7 damaged cell phone in a bowl of rice is a common method for trying to counteract
8 water damage.)



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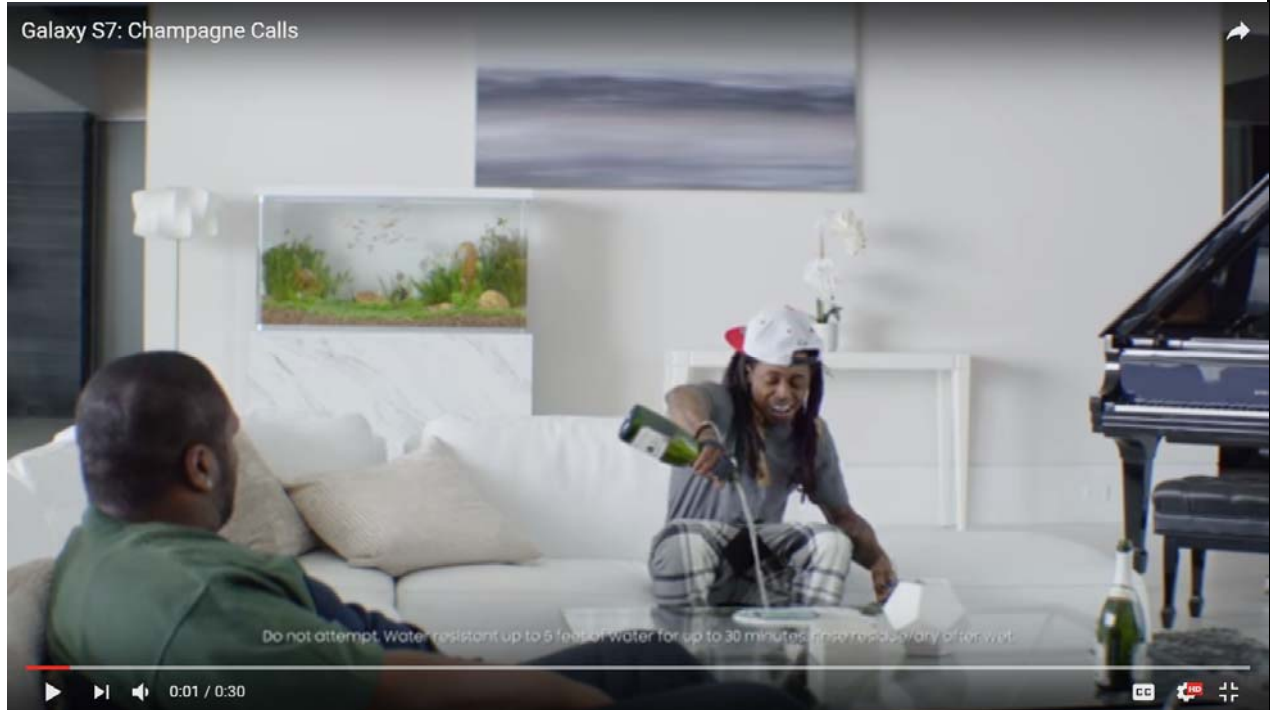
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Plaintiff’s Galaxy S7 Phone

18. Plaintiff Dulce Alondra Velasquez-Reyes (“Ms. Reyes”) purchased a Samsung Galaxy S7 phone on May 1, 2016 from her cellular service provider, MetroPCS.

⁷ Samsung Galaxy S7, 32GB, (Unlocked), Black Onyx <http://www.samsung.com/us/mobile/phones/galaxy-s/samsung-galaxy-s7--32gb---unlocked---black-onyx-sm-g930uzkaxaa/> (last visited Aug. 30, 2016).

1 19. Before she purchased her Galaxy S7 phone, Ms. Reyes viewed
2 advertisements on national television and YouTube in which Samsung represented
3 that the Galaxy S7 is water resistant. For example, Ms. Reyes watched Samsung
4 advertisements making objective claims of water resistance and featuring the well-
5 known rapper Lil Wayne pouring champagne directly onto a Galaxy S7 phone.⁸



18 20. Samsung’s representations of water resistance materially influenced
19 Ms. Reyes’s choice to purchase her Galaxy S7 phone. Ms. Reyes would not have
20 purchased a Galaxy S7 phone absent Samsung’s representations that the device was
21 water resistant.

22 21. On or around July 20, 2016, Ms. Reyes inadvertently dropped her
23 phone in a toilet. Ms. Reyes retrieved the phone after approximately 10 seconds of
24 submersion. She dried the phone with a shirt and then pressed the “home” button to
25 start it up. The phone started up and appeared to function but then shut down a few

26 _____
27 ⁸ Galaxy S7: Champagne Calls, <https://www.youtube.com/watch?v=l5aF23XpBwU>
28 (last visited Aug. 30, 2016).

1 seconds later. Ms. Reyes tried to start up the phone again, but the phone again shut
2 itself down. When Ms. Reyes tried to start up the phone a third time, the phone
3 would no longer initiate the start-up process.

4 **Further Details Regarding the S7 Phones and Water Damage**

5 22. Notwithstanding its promotion of the S7 Phone as water resistant,
6 Samsung would not repair or replace Ms. Reyes's S7 Phone when it failed after
7 being briefly submerged in water. Samsung's refusal to repair or replace Ms.
8 Reyes's phone was consistent with Samsung's response to other consumers who
9 have experienced similar failures.

10 23. Samsung outfits the internal components of the S7 Phone with
11 moisture-detecting stickers. These stickers are located near points of ingress on the
12 phone's enclosure—the places at which liquid or moisture is most likely to breach
13 the phone's gaskets and seals. These stickers allow Samsung to determine if any
14 liquid or moisture has entered the phone. The stickers appear white unless they are
15 exposed to liquid or moisture. If the stickers are exposed to liquid or moisture, they
16 turn a pinkish color.

17 24. Samsung's inclusion of these moisture-detecting stickers evidences the
18 fact that the S7 Phone is not water resistant as represented. The moisture-detecting
19 stickers do not contribute to the S7 Phone's functionality. Nor do the stickers
20 provide any benefit to the user. Samsung inserts these stickers so that its
21 technicians can identify at a glance whether the phone's internal components have
22 come into contact with liquid or moisture.

23 25. The S7 Phone's susceptibility to water damage results from structural
24 factors known to Samsung. Samsung does not apply a water-repellent coating to
25 the circuit board of the S7 Phone even though such technology is available. The
26 lack of such a coating renders the circuit board vulnerable to short-circuiting and
27 corrosion. Moreover, the gaskets and seals adjoining the S7 Phone's enclosure

1 deteriorate with ordinary usage and become ineffective at repelling liquid.
2 Additionally, the S7 Phone's enclosure is incapable of protecting the circuit board
3 from damage caused by direct exposure to saltwater or jets of water. As a result of
4 these structural deficiencies, the S7 Phone suffers damage or permanent
5 disablement when its circuit board comes into contact with liquid or moisture.

6 **CLASS ACTION ALLEGATIONS**

7 26. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure
8 23 on behalf of the following proposed Class and Subclass:

9
10 **The Nationwide Class**

11 All individuals in the United States who purchased a new
12 Galaxy S7, Galaxy S7 Edge or Galaxy S7 Active cellular
13 phone.

14 **The California Subclass**

15 All individuals in California who purchased a new Galaxy
16 S7, Galaxy S7 Edge or Galaxy S7 Active cellular phone.

17 27. Excluded from the proposed Class and Subclass are Samsung's officers,
18 directors, legal representatives, successors, and assigns, any entity in which
19 Samsung has a controlling interest, and any Judges to whom this case is assigned
20 and their immediate family members.

21 28. The requirements of Federal Rule of Civil Procedure 23(a), (b)(1),
22 (b)(2), and (b)(3) are met in this case.

23 29. Numerosity. The proposed Class consists of millions of consumers
24 who purchased S7 phones, making joinder of each Class member impracticable.

25 30. Commonality and Predominance. Common questions of law and fact
26 exist for each of the causes of action and predominate over questions affecting only
27 individual Class members. Questions common to the Class include:

1 a. Whether Samsung violated the False Advertising Law, Cal. Bus.
2 & Prof. Code § 17500, *et seq.*, by disseminating untrue and misleading statements
3 about the S7 Phone with intent to induce purchases;

4 b. Whether Samsung violated the Unfair Competition Law, Cal.
5 Bus. & Prof. Code § 17200, *et seq.*, by engaging in unlawful, unfair, and/or
6 fraudulent practices;

7 c. Whether Samsung made false representations concerning the
8 water resistance of its S7 Phones with the intent to deceive consumers;

9 d. Whether Samsung made false representations concerning the
10 water resistance of its S7 Phones with the intent to induce consumers to rely upon
11 such representations;

12 e. Whether Samsung's acts and omissions detailed herein are
13 immoral, unethical, oppressive, unscrupulous, or substantially injurious to
14 consumers, and/or caused harm to consumers that outweighs any utility of
15 Samsung's conduct;

16 f. Whether Samsung was unjustly enriched by reason of the
17 aforementioned practices and violations;

18 g. Whether Plaintiff, the Class, and the Subclass are entitled to
19 damages and, if so, in what amount; and

20 h. Whether Plaintiff, the Class, and the Subclass are entitled
21 equitable relief, including restitution.

22 31. Typicality. Plaintiff's claims are typical of the claims of the proposed
23 Class. Plaintiff and Class members sustained similar injuries as a result of
24 Samsung's fraudulent marketing practices and false advertising. The Samsung
25 advertisements that Plaintiff viewed were typical of the advertisements viewed by
26 Class members. Each Class member's legal claims arise from the same wrongful
27 course of conduct and pervasive advertising campaign.

1 Phone.

2 42. Samsung's misrepresentations and omissions are material. As
3 Samsung's pervasive advertising of the S7 Phone as water resistant demonstrates,
4 reasonable consumers regard water resistance as an important feature in deciding
5 which cell phone to purchase. Consumers paid a premium price for the S7 Phone
6 because, on the basis of Samsung's representations, the consumers expected to
7 receive a water-resistant device.

8 43. Samsung is aware that its representations of water resistance are false
9 when it makes them. Samsung's misrepresentations described and excerpted above
10 were uniform across the Class. Samsung promoted its S7 Phones in a widespread
11 nationwide advertising campaign. All of the promotional materials in Samsung's
12 advertising campaign contained the same material misrepresentations of the S7
13 Phone's water resistance.

14 44. In making the misrepresentations and omissions described and
15 excerpted above, Samsung intended that consumers would rely on such
16 misrepresentations and omissions.

17 45. Samsung owed a duty to disclose, rather than suppress, material facts
18 about vulnerabilities in the S7 Phone's water resistance because: (1) Samsung had
19 exclusive knowledge of the S7 Phone's vulnerabilities; (2) Samsung was aware that
20 Plaintiff and Class members did not know of the S7 Phone's vulnerabilities to water
21 damage and Samsung's concealment of those vulnerabilities; (3) Samsung was
22 aware that the true facts regarding the S7 Phone's vulnerabilities to water damage
23 would be important to reasonable prospective purchasers of the S7 Phone; and (4)
24 Samsung made representations concerning the water resistance of the S7 Phone that
25 were misleading, deceptive, and incomplete without disclosing the true facts
26 regarding the S7 Phone's vulnerability to water damage.

27 46. Plaintiff and Class members believed and relied upon Samsung's
28

1 material misrepresentations and omissions. Class members also are presumed to
2 have believed and relied upon Samsung’s misrepresentations and omissions because
3 the facts Samsung misrepresented and concealed are material to a reasonable
4 consumer’s decision whether to purchase an S7 Phone.

5 47. Samsung’s fraudulent and false advertising induced Plaintiff and Class
6 members to purchase S7 Phones. Plaintiff and Class members would not have
7 purchased S7 phones, or would have paid less for their phones, in the absence of
8 Samsung’s fraudulent and false advertising.

9 48. As a result of Samsung’s fraudulent and false advertising, Plaintiff and
10 Class members sustained actual damages. Had Plaintiff and Class members known
11 that the S7 Phone is not, in fact, water resistant, they would not have purchased the
12 S7 Phone or would have paid significantly less for it.

13 49. Plaintiff and Class members are entitled to damages in an amount to be
14 proven at trial.

15 **SECOND CLAIM FOR RELIEF**
16 **Violations of the False Advertising Law (“FAL”),**
17 **Cal. Bus. & Prof. Code § 17500, *et seq.***

18 50. Plaintiff incorporates the above allegations by reference.

19 51. Plaintiff brings this cause of action on behalf of the California Subclass.

20 52. Samsung violates the FAL by using false and misleading statements,
21 and material omissions, to promote the sale of the S7 Phone. The S7 Phone does
22 not possess the level of quality or value that Samsung promised. Samsung
23 represents in a widespread advertising campaign that the S7 Phone is water resistant
24 when it is not.

25 53. Samsung is or should be aware through the exercise of reasonable
26 diligence that its statements regarding the S7 Phone’s water resistance are and were
27 false and misleading.

1 54. The general public is and was likely to be deceived by Samsung's false
2 and misleading advertising of the S7 Phone as water resistant. Plaintiff and
3 California Subclass members purchased S7 Phones in reliance on Samsung's false
4 and misleading advertising of these phones as water resistant.

5 55. As a direct and proximate result of Samsung's acts and omissions in
6 violation of the FAL, Plaintiff and California Subclass members have been and
7 continue to be harmed. Samsung's violations of the FAL caused Plaintiff and
8 California Subclass members to suffer out-of-pocket losses. Plaintiff and California
9 Subclass members would not have purchased S7 Phones, or would have paid
10 significantly less for them, had Plaintiff and California Subclass members known
11 that, contrary to Samsung's false advertising, the phones are vulnerable to damage
12 from liquid and moisture.

13 56. Plaintiff brings this action under Business and Professions Code section
14 17535 to enjoin the violations described herein and to require Samsung to issue
15 appropriate corrective disclosures. Plaintiff and California Subclass members thus
16 seek: (a) an order requiring Samsung to cease its false advertising; (b) full
17 restitution of all monies paid to Samsung as a result of its false advertising; (c)
18 interest at the highest rate allowable by law; and (d) payment of Plaintiff's
19 reasonable attorneys' fees and costs under applicable law, including Federal Rule of
20 Civil Procedure 23 and California Code of Civil Procedure section 1021.5.

21 **THIRD CLAIM FOR RELIEF**

22 **Violations of the Unfair Competition Law ("UCL"),**
23 **Cal. Bus. & Prof. Code § 17200, et seq.**

24 57. Plaintiff incorporates the above allegations by reference.

25 58. Plaintiff brings this cause of action on behalf of the California Subclass.

26 59. Samsung engaged in unlawful, unfair, and fraudulent practices in
27 violation of the UCL.

1 60. Samsung’s acts, omissions, and practices described above are unlawful
2 because they violate the FAL as set forth in the incorporated Second Claim for
3 Relief.

4 61. Samsung’s acts, omissions, and practices constitute “unfair” practices
5 because they are contrary to California’s legislatively declared policy condemning
6 deceptive advertising of goods and services. Samsung falsely represented that the
7 S7 Phone is water resistant when it is not.

8 62. Samsung’s conduct comprises unfair methods of competition and
9 business practices in at least the following respects:

10 a. Samsung represents that the S7 Phone is water resistant despite
11 the fact that the phone’s internal components are not water resistant;

12 b. Samsung conceals that the gaskets and seals on the S7 Phone’s
13 enclosure deteriorate with normal usage, rendering the phone’s internal components
14 susceptible to damage from liquid or moisture;

15 c. Samsung conceals that exposure to jets of water damages the S7
16 Phone; and

17 d. Samsung conceals that exposure to saltwater damages the S7
18 Phone.

19 63. Samsung’s acts and practices are contrary to California public policy
20 and constitute immoral, unethical, and unscrupulous practices that caused
21 substantial injury to Plaintiff and California Subclass members.

22 64. The gravity of the harm resulting from Samsung’s conduct set forth
23 above outweighs any utility of such conduct. There are reasonably available
24 alternatives that would further Samsung’s legitimate business interests, such as
25 using commercially available technology to make the internal components of the S7
26 phones water resistant and refraining from purveying material misrepresentations
27 and omissions to the consuming public.

1 65. Plaintiff and California Subclass members could not reasonably have
2 avoided injury as a result of Samsung’s unfair conduct. Plaintiff and Class
3 members did not know, and had no reasonable means of discovering, that
4 Samsung’s advertisements were false and misleading prior to purchasing S7
5 Phones.

6 66. Samsung’s fraudulent conduct also violates the UCL. Samsung
7 affirmatively and knowingly represents that the S7 Phone is water resistant when, in
8 fact, it is not. Furthermore, Samsung conceals the true facts regarding the S7
9 Phone’s susceptibility to damage from exposure to liquid or moisture. Samsung’s
10 material misrepresentations and omissions are highly likely to mislead the public
11 and induce misinformed consumer purchases.

12 67. All of Samsung’s unlawful and unfair conduct, failures to disclose, and
13 fraudulent representations alleged herein occurred in the course of Samsung’s
14 business and were part of a generalized course of conduct.

15 68. Samsung’s unlawful, unfair, and fraudulent conduct alleged herein was
16 designed to and did induce Plaintiff and California Subclass members to purchase
17 the S7 Phone.

18 69. Plaintiff and California Subclass members would not have purchased
19 the S7 Phone, or would have paid a lower price for it, in the absence of Samsung’s
20 unlawful, unfair, and fraudulent business conduct.

21 70. As a direct and proximate result of Samsung’s unlawful, unfair, and
22 fraudulent business conduct, Plaintiff and California Subclass members have
23 suffered concrete and particularized injuries, including by overpaying for their S7
24 Phones.

25 71. Plaintiff and the California Subclass are entitled to appropriate relief,
26 including restitution, declaratory relief, and a permanent injunction prohibiting
27 Samsung from engaging in the aforementioned practices that violate the UCL.

1 Plaintiff further seeks reasonable attorneys' fees and costs under applicable law,
2 including Federal Rule of Civil Procedure 23 and California Code of Civil
3 Procedure section 1021.5.

4
5 **FOURTH CLAIM FOR RELIEF**
6 **Unjust Enrichment**

7 72. Plaintiff incorporates the above allegations by reference.

8 73. Plaintiff brings this cause of action on behalf of the Nationwide Class.

9 74. Plaintiff and Class members conferred a benefit on Samsung by
10 purchasing S7 Phones.

11 75. The S7 Phones Plaintiff and Class members purchased did not possess
12 the water-resistant qualities Samsung represented they possessed. Contrary to
13 Samsung's representations, the S7 Phones are not water resistant. Purchasers of S7
14 Phones are not provided with water-resistant phones even after the phones are
15 damaged or disabled.

16 76. Under these circumstances, retention by Samsung of revenues traceable
17 to S7 Phones is unjust and inequitable.

18 77. Plaintiff and Class members are entitled to restitution of their losses.
19 Samsung should be required to disgorge its ill-gotten gains.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff, on behalf of herself and the Class and Subclass
22 defined herein, respectfully requests that the Court:

23 A. Certify this case as a class action pursuant to Federal Rule of
24 Civil Procedure 23, appoint the named Plaintiff to be the Class representative and
25 the undersigned counsel to be Class counsel;

26 B. Award Plaintiff and Class members appropriate monetary relief,
27 such as actual damages and/or restitution;

28 C. Award Plaintiff and Class members equitable, injunctive and

1 declaratory relief as appropriate under the applicable law;

2 D. Award Plaintiff and Class members pre-judgment and post-
3 judgment interest as prescribed by law;

4 E. Award reasonable attorneys' fees and costs as permitted by law;
5 and

6 F. Enter such other and further relief as may be just and proper.

7 **DEMAND FOR JURY TRIAL**

8 Plaintiff hereby demands a jury trial on all issues so triable.

9
10 Dated: September 12, 2016

Respectfully submitted,

11 By: /s/ Daniel C. Girard

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

13 Jordan Elias (State Bar No. 228731)

14 Simon S. Grille (State Bar No. 294914)

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